

OMBUDSPERSON INSTITUTION



ANNUAL REPORT 2016

No. 16

Prishtina, 2017



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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

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Table of contents:

Ombudsperson's statement.....	8
Ombudsperson Institution	9
Mandate of the Ombudsperson Institution	10
Access to the Ombudsperson Institution	14
1. HUMAN RIGHTS SITUATION IN REPUBLIC OF KOSOVO.....	16
1.1. Legislation	16
1.2. Judicial protection of rights	20
1.2.1. Delay of judicial proceedings	22
1.2.2. Prescription of cases	23
1.2.3. Non execution of court decisions.....	24
1.2.4. Private enforcement agents	25
1.2.5. Lack of effective legal remedies	25
1.2.6. Legal representation of citizens	26
1.3. The role of executive organs in protection of human rights	27
1.3.1. Property issues	27
1.3.2. The Privatisation Agency of Kosovo (PAK)	28
1.3.3. The Special Chamber of the Supreme Court of Kosovo.....	29
1.3.4. Kosovo Property Agency	30
1.3.5. Responsibility for Living Environment	33
1.3.6. The rights of access to public documents	39
1.4. Rights of the child	43
1.4.1. Legal framework and the rights of the child	43
1.4.2. Complaints filed concerning the rights of the child	43
1.4.3. The right of children to education.....	43
1.4.4. Children with disabilities	44
1.4.5. Violence and the security situation in schools	45
1.4.6. Right to health.....	45
1.4.7. Rights of the child in procedures before administrative and judicial organs	47
1.5. Freedom of religion in Kosovo.....	47
1.6. Gender Equality.....	49
1.6.1. Right to employment	50

1.6.2.	The right to property and inheritance.....	52
1.6.3.	Right to health protection.....	53
1.6.4.	Domestic violence.....	53
1.6.5.	Rights of LGBT persons	55
2.	EQUALITY BEFORE THE LAW –NON-DISCRIMINATION.....	57
2.1.	Ombudsperson Institution as a mechanism for protection from discrimination	57
2.2.	Socio-economic issues	63
2.3.	Minority communities.....	67
2.4.	Property rights.....	72
2.5.	Education	74
2.6.	The Use of Language	78
2.6.1	Office of the Language Commissioner (OLC)	82
2.6.2	Complaints addressed to Ombudsperson	82
3.	NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE (NPMT).....	84
3.1.	Visits of the European Committee for the Prevention of Torture in Kosovo	85
3.2.	Complaints of persons deprived of liberty	86
3.3.	Conditional release	86
3.4.	Visit to the Detention Centre in Prizren	86
3.5.	Visit to the Detention Centre in Mitrovica	87
3.6.	Visit to the Detention Centre in Lipjan	88
3.7.	Visit to the Correctional centre for females and juveniles in Lipjan.....	92
3.8.	Visit to the Dubrava Correctional Centre	97
3.9.	A visit to Detention Centre for Foreigners	105
3.10.	Visit to the Regional Police Custody Centre in Prishtina.....	108
3.11.	Visit to the border crossing point Prishtina International Airport “Adem Jashari”	110
3.12.	Border crossing point “Hani i Elezit”	110
3.13.	Border crossing point “Vërmicë”	111
3.14.	Visit to Special Institute in Shtime	111
3.15.	Visit to the Centre for Integration and Rehabilitation of Chronic Psychiatric Sick People in Shtime	113
4.	SUMMARY OF REPORTS WITH RECOMMENDATIONS.....	115
4.1.	Ex officio reports	115

4.1.1.	Ex officio report no. 757/2015 concerning judicial decisions on abolition and remitting of ability to act to residents in Special Institute of Shtime and Community Based Homes	115
4.1.2.	Ex officio report no. 239/2016, concerning prescription of judicial proceedings and execution of decisions of Basic Courts in minor offence cases	117
4.1.3.	Ex officio report no. 488/2016 concerning termination of investigation of criminal offences of corruption in conformity with Criminal Procedure Code of the Republic of Kosovo, Article 159.....	119
4.1.4.	Ex officio report no. 415/2016 concerning lack of access to court building in the Mitrovica North, namely denial of the right of access to justice	121
4.1.5.	Ex officio report no. 421/2016 of Ombudsperson Institution of the Republic of Kosovo concerning the right to life, in the case of B.R.....	122
4.1.6.	Ex officio report no. 425/2015 of Ombudsperson concerning lack of effective legal remedies.....	124
4.1.7.	Ex officio report no. 563/2016 of Ombudsperson concerning the procedure for the review of the Ombudsperson's Annual Report according to the Rules of procedure of the Assembly of the Republic of Kosovo	125
4.1.8.	Ex officio report no. 499/2016 of Ombudsperson concerning the failure to respect legal procedures during the recruitment process of personnel according to competitions advertised by Municipal Education Departments in the Republic of Kosovo	126
4.1.9.	Ex officio report no. 382/2016 of Ombudsperson concerning the violation of dignity and the right of pensioners to pensions.....	127
4.1.10.	Ex officio report no. 894/2016 of Ombudsperson concerning National Assessment of Sexual and Reproductive Health and Rights of Kosovo.....	128
4.2.	Complaints-based reports	130
4.2.1	Report with recommendations no. 322/2015 concerning violation of the right to living environment	130
4.2.2	Report with recommendations no. 348/2015, concerning restriction of the Right to Access Public Document by Municipality of Fushë Kosova.....	130
4.2.3	Report with recommendations no. 223/2015, no. 229/2015 and no. 65/2016 recorded against the Privatisation Agency of Kosovo concerning the release of the properties of Socially-Owned Enterprises sold by Privatization Agency of Kosovo from illegal occupants	132
4.2.4	Report with recommendations no. 185/2012 concerning the delay of judicial proceedings in the case C. no. 3439/15 on the division of the property earned in the joint ownership	133
4.2.5	Report with recommendations no. 431/2015 concerning the complaint filed by I.R., regarding the procedure of allocation of a grant for construction of a stable and	

associated buildings and agricultural mechanisms by Agency for Agricultural Development (AAD).....	134
4.2.6 Report with recommendations no. 291/2014 concerning procedural delays from the Basic Court in Prishtina on the settlement of the case P no.42/15 of complainant Rr. B.....	135
4.2.7 Report with recommendations no. 6/2016 concerning unauthorized inspections of KEDS in private properties.....	135
4.2.8 Reports with recommendations no. 113/2016 and no. 114/2016 concerning the non-execution of decisions by the Privatization Agency of Kosovo	137
4.2.9 Report with recommendations no. 303/2015 concerning the non-execution of plenipotentiary judgment of the Basic Court in Prizren	137
4.2.10 Report with recommendations no. 595/2015 concerning positive obligations stemming from Article 29 and Article 31, paragraph 2 of Constitution of the Republic of Kosovo, and Article 5 of European Convention on the Protection of Human Rights and Fundamental Freedoms	138
4.2.11 Report with recommendations no. 702/2015 concerning the restriction of the right for access to public documents by Municipality of Klllokot.....	139
4.2.12 Report with recommendations no. 733/2015 concerning the failure of MEST to review the complaint filed by Mrs F.G. within legal time.....	140
4.2.13 Report with recommendations no. 160/2015 concerning violation of rights deriving from the employment relationship	141
4.2.14 Report with recommendations no. 29/2016 for releasing the usurped municipal public property	142
4.2.15 Report with recommendations no. 72/2015 concerning the lack of effective legal remedies	143
4.2.16 Report with recommendations no. 564/2016 concerning the defendant's rights in the criminal procedure	144
4.3 Ombudsperson's Opinions	145
4.3.1 Ombudsperson's Opinion no. 25/2016 concerning the execution of the judgment of European Court on Human Rights in the case of Grudić v. Serbia, Application no. 31925/08	145
4.3.2 Ombudsperson's Opinion no. 528/2016 concerning the appeal procedures of administrative decisions regarding the issue of recognition and verification of the status of the Kosovo Liberation Army veterans.....	147
4.3.3 Ombudsperson's Opinion no. 280/2016 concerning the situation created in the areas with special economic interest zone, according to Decision no. 4/119, dated 3 November 2004 and Decision no. 02/57, dated 13 March 2009 of the Government of Kosovo and the proposal for undertaking effective measures for solving the issue .	148

4.3.4	Ombudsperson's Opinion no. 322/2015 on clarification of legal procedures which should be undertaken by the Municipality of Gjakova in solving environmental problems in "Durgut Vokshi" street in Gjakova.....	149
4.3.5	Ombudsperson's opinion no. 668/2016 concerning the impact of violence into the health and social life of children, and the actions to be undertaken by responsible institutions.....	150
4.4	Ombudsperson as a friend of the court (amicus curiae)	151
4.4.1	Case no. 2/2016 concerning the violation of the rights of persons deprived of liberty for adequate medical treatment	151
4.4.2	Case no. 440/2016 concerning the treatment of the case C-III-13/0514 from the Special Chamber of the Supreme Court.....	152
4.4.3	Case no. 406/2016 concerning courts judgements on similar issues, but with different conclusions.....	153
4.5	Requests for interim measures.....	154
4.5.1	Request addressed to Ministry of Justice on the application of Interim Measures for the implementation of the decision through which all persons who were on medical treatment outside the prison environment were returned to serve the sentence.....	154
4.5.2	Request addressed to KEDS on the application of the Interim Measure concerning inspections in the private properties of residents	155
4.6	Letters of recommendation of Ombudsperson addressed relevant authorities	155
4.6.1	Letter of recommendation for case no. 33/2016	155
4.6.2	Letter of recommendations for case no. 441/2015.....	156
4.6.3	Letter of recommendation for case no. 557/2015	156
4.6.4	Letter of recommendation for case no. 320/2015	156
4.6.5	Letter of recommendation for case no. 398/2016	158
4.6.6	Letter of recommendation for ex officio case no. 625/2016.....	158
4.6.7	Letter of recommendation for case no. 202/2016	159
4.7	Reports of National Preventive Mechanism against Torture.....	160
4.7.1	Ombudsperson's national preventive mechanism against torture published a report concerning monitoring of Detention Centre in Lipjan.....	160
4.7.2	Ombudsperson published the report from the visit to the correctional centre for Females and Juveniles in Lipjan	162
5	ACTIVITIES OF THE OMBUDSPERSON INSTITUTION OF KOSOVO.....	163
5.1	Activities of the Group for the Rights of the Child	163
5.2	Activities in the promotion of the mandate of Ombudsperson based on competences given by Law no. 05/L-021 on Protection from Discrimination.....	167
5.3	Cooperation and the activities within the Network of Southeast NPMTs.....	168

5.3.1	Cooperation with the NPMT of the People's Advocate of the Republic of Albania	169
5.4	NPMTs visits.....	169
5.5	International Cooperation.....	170
5.6	Media and public relations	176
6	Financing.....	181
6.1	OIK Budget	181
6.2	Financing of the OIK from the Budget of the Republic of Kosovo	181
6.3	Final OIK budget and execution of expenditures for 2016	183
6.4	OIK donor financing.....	183
7	Statistics	184
7.1	Statistical summary of complaints and cases for 2016.....	184
7.2	Graphic presentation of statistics, 1 January 2016 - 31 December 2016.....	191

Ombudsperson's statement

The main goal of the Ombudsperson's work is restoring of individuals' violated rights through recommendations addressed to responsible authorities, in the function of finding and using of effective remedies, to amend violations produced and to improve situation of human rights and freedoms in the country.

This Annual Report brings to the Assembly of Republic of Kosovo description and assessment of the situation of human rights in Kosovo for 2016. I strongly believe that the Assembly will give due attention and will use it as a mechanism in developing more efficient policies to exercise parliamentary control, in order to strengthen protection of human rights and the rule of law.

Within mandate implementation, during this reporting period, 173 recommendations have been addressed to public institutions of Republic of Kosovo, which marks an increase of 203% compared to the previous year. Furthermore, an increase of 100% has been achieved concerning Ex-Officio investigated cases (investigations on own initiative), compared with last year, which mainly pertaining to systematic violation of human rights and freedoms.

Within organizational and functional scope of the Ombudsperson Institution, a National Preventive Mechanism against Torture has been established, in compliance with Article 17 of the Law no. 05/L-019 on Ombudsperson.

At the same time, we have started with reorganization process, the only one since OI has been established, the process started with the approval of Internal OI Regulation, which aims increase of efficiency of the Institution and increase of capacities for implementation of mandates entrusted by the Constitution and Laws.

Furthermore, in December 2016, OI for the first time has adopted the "Strategy and Development Plan of OI for the years 2017 – 2019", through which objectives and main priorities have been set, based on which OI activities will be performed during these years.

Notwithstanding, crucial element in protection of human rights and freedoms at country's national level remains inter-institutional cooperation of authorities, by respecting the spirit of separation of powers in achieving accurate understanding of institution such is the Ombudsperson Institution, by state's political leaders, government and members of parliament, as a specific and powerful mechanism on public's disposal to oversee executive authority.

Ongoing political struggles for development of democracy and growth of liberal spirit should start from the commitment, in core of which is protection and respect of human rights. In this setting, I would like to believe that majority of assessments and

recommendations given in this Annual Report, will gain due attention of authorities and that in near future these issues will be resolved and overcome. I would like to believe on commitment of decision-makers, government leaders and public authorities that the respect and protection of human rights will be turned into a reality for Kosovo society. In order to overpass these challenges, sustainable and courageous policies, based on respect of human rights are required by authorities.

Ombudsperson Institution

According to the Constitution of the Republic of Kosovo (Articles 132-135) the Ombudsperson Institution (OIK) is defined as a constitutional category, specifically as an independent constitutional institution.¹ The Ombudsperson supervises, promotes and protects fundamental rights and freedoms of natural and legal persons from illegal and improper actions or inactions of public authorities, institutions and persons or authorities exercising public authorisations in the Republic of Kosovo (hereinafter: public authorities), as well as the establishment of the National Preventive Mechanism against Torture (NPMT).² In addition, the Ombudsperson represents equality mechanism for promoting, monitoring and supporting equal treatment without discrimination on grounds recognized by the Law on Gender Equality and the Law on Protection from Discrimination,³ while Law on Ombudsperson provides that the OIK is composed of: Ombudsperson, five (5) Deputy Ombudspersons and the staff of the OIK.⁴

The Ombudsperson Institution is constitutional category and the Constitution of Republic of Kosovo guarantees it's functional, budgetary, organisational independence and has determined the mandate of the Ombudsperson to admit and investigate complaints from each person, within or outside the territory of Republic of Kosovo, claiming that his/her rights and freedoms have been violated foreseen by the constitution, laws and other acts as well as other international standards on human rights and international Conventions, particularly with the European Convention on Human Rights (ECHR). The Ombudsperson is independent on exercising her/his duties and does not accept any instructions or intrusions from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo. Each body, institution or other authority, which exercises legal power in the Republic of Kosovo, is obliged to respond on Ombudsperson's requests and disclose to him all requested documents and information in accordance with the law. But, during 2016 as well there were some activities which were considered as intrusions on Ombudsperson Institution independent work, guaranteed by the Constitution, and relating to this on 29 April 2016, Ombudsperson filed a request with the Constitutional Court of Kosovo for the assessment of constitutionality of the Administrative Circular no. 01/2016 on Classification of Jobs and Catalogue of Job

¹ *Constitution of the Republic of Kosovo, Articles 132-135.*

² *Ibid., Article 132 and Law no. 05/L-019 on Ombudsperson, Article 1, paragraph 1.*

³ *Law no. 05/L-019 on Ombudsperson, Article 1, paragraph 2.*

⁴ *Law no. 05/L-019 Ombudsperson, Article 5.*

Positions in the Civil Service issued by Ministry of Public Administration (MPA) on 21 January 2016, claiming that it had violated the OIK constitutional independence and other independent institutions listed in Chapter XII of the Constitution of the Republic of Kosovo.

This Circular was issued to implement Regulation no. 05/2012 on Classification of Jobs and Catalogue of Job positions in the Civil Service of the Republic of Kosovo, adopted by the Government of the Republic of Kosovo by Decision no. 05/12 on 5 February 2015.

On 16 November 2016, Constitutional Court through the judgment took a decision that Administrative Circular no. 01/2016 entirely violates the independence of independent institutions set forth by Constitution of Kosovo and it is anti-constitutional in relation to these institutions. Therefore, Administrative Circular is invalid in relation to OIK as a complainant and in relation to other independent institutions, which are expressly listed in Chapter XII of Constitution, and with reference to Constitutional Court (Chapter VIII of Constitution).⁵

Mandate of the Ombudsperson Institution

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

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

In its work, OIK is guided by the principles of impartiality, independence, the supremacy of human rights, confidentiality, and professionalism⁶ and has organisational, administrative and financial independence in the fulfilment of the obligations provided for by the Constitution and the law.⁷

In the framework of his constitutional⁸ and legal⁹ powers, the Ombudsperson conducts investigations on complaints received from any natural or legal person related to allegations of the violation of human rights provided for by the Constitution, laws and other acts, as well as by international human rights instruments, and especially by the

⁵ *Judgment of the Constitutional Court of Kosovo in the case no. KO 73/16, published on 8 December 2016.*

⁶ *Law no. 05/L-019 on Ombudsperson*

⁷ *Ibid.*, Article 3, paragraph 3.

⁸ *Constitution of the Republic of Kosovo, Article 132.*

⁹ *Law no. 05/L-019 on Ombudsperson, Article 16.*

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

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

If during the investigation conducted regarding human rights issues the Ombudsperson observes the presence of criminal offence, he/she can request from respective competent Prosecution initiation of investigation as well as may appear in the capacity of the Court's friend (*amicus curiae*) in judicial proceedings dealing with human rights, equality issues and protection from discrimination. The Ombudsperson does not intervene on cases and other legal procedures, except in the cases related to administration of justice (delays of judicial procedures and failure to execute judicial decisions), but the Ombudsperson may provide general recommendations on the functioning of the judicial system, as well as can initiate matters with the Constitutional Court of Kosovo in accordance with the Constitution and the Law on Constitutional Court.¹⁰

The new Law on Ombudsperson has also provided for the creation of the National Preventive Mechanism against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (NPMT)¹¹ and within one (1) year after this law's entering into force, the Ombudsperson Institution will begin exercising its legal powers and obligations as the NPMT.¹² In conformity with this, on 14 January 2016, Ombudsperson signed the Decision through which the NPMT has been established as a special structure within OIK.

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

¹⁰ Constitution of the Republic of Kosovo, Article 113, paragraph 2, and Article 135, paragraph 4; Law no. 05/L-019 on Ombudsperson, Article 16, paragraph 10; Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo, Article 29.

¹¹ Law no. 05/L-019 on Ombudsperson., Article 17.

¹² Ibid., Article 38.

The Ombudsperson performs other functions provided for by the Law on Protection from Discrimination, the Law on Gender Equality, and other legislation in force; collects statistical data concerning cases of discrimination and equality presented to the OIK, which he also publishes; reports and makes recommendations on policies and practices on combating discrimination and promoting equality; cooperates with social partners and NGOs that deal with issues of equality and anti-discrimination, as well as with international bodies similar to the Ombudsperson.¹³

Except investigation of alleged violations and discrimination of human rights, the Ombudsperson aims increasing of citizens' trust in public administration, in judicial system and other institutions and bodies of the state through commitments on strengthening rule of law, establishment and development of governance culture and good administration for a professional, efficient, effective, transparent, accountable and responsible administration towards its citizens.

The Ombudsperson also has further legal responsibilities: not only to investigate alleged violations of human rights and acts of discrimination, but also to work to eliminate them; to draft and approve specific procedures for receiving and handling complaints from children, as well as the creation of a specialized team for children's rights and of a permanent programme for raising the awareness of children regarding their rights and the role of Ombudsperson Institution in their protection; to inform about human rights and to make recommendations to the Government, the Assembly, and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality, and non-discrimination; to publish notifications, opinions, recommendations, proposals and his/her own reports; to recommend promulgation of new Laws in the Assembly, amendment and supplementation of the Laws in force as well as promulgation or amendment and supplementation of sub-legal and administrative acts by institutions of the Republic of Kosovo; to prepare annual, periodical and other reports on the situation of human rights and freedoms in the Republic of Kosovo; to recommend the harmonization of domestic legislation with international standards on human rights and freedoms, equality, and discrimination, and to conduct research on the issue of human rights and fundamental freedoms, equality, and discrimination in the Republic of Kosovo; to cooperate, in accordance with the Constitution and legislation in force, with all local and international institutions dealing with the protection of human rights and freedoms; to keep-safe the confidentiality of all information and data he or she receives, paying special attention to safety of complainants, damaged parties, and witnesses, in conformity with the Law on personal data protection (an obligation binding on the Ombudsperson, his deputies and the OIK staff, even after the end of the mandate or employment contract).¹⁴

¹³ *Law on Ombudsperson no. 05/L-019, Article 16, paragraphs 13-16.*

¹⁴ *Ibid., Article 18.*

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

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

If the requests for intervention and efforts to mediate are not successful, the Ombudsperson may issue a report, ensuring public analysis and exposure for violations of human rights or of applicable laws, along with recommendations for the public institution, to avoid violations. Reports are the last advocacy tool of the institution; the report is addressed to the authority that has committed the violence, while the copy of the report is delivered to the Assembly of Kosovo and to other relevant organisations. While annual report for the previous year, is presented to the Assembly by the Ombudsperson until 31 of March of the following year, which is reviewed in the plenary session in the Assembly during the spring session.¹⁵

The Ombudsperson, within legal liabilities as well as with intention to accomplish efficiently the mandate determined by the Constitution and by the Law on Ombudsperson¹⁶, on 25 March 2016 has approved *Regulation No. 01/2016 on Internal Organization and Systematization of Job Positions in the Ombudsperson Institution*, which has been published in Official Gazette of Republic of Kosovo on 31 March 2016 and has entered into effect the same day; while on 26 May 2016 has approved Regulation No. 02/2016 on Rules of the Procedures of the Ombudsperson Institution which has been published in Official Gazette of Republic of Kosovo, on 27 May 2016 and has entered into force on 10 June 2016. Regulation no. 01/2016 on Internal Organisation and Systematisation of Job Positions in the Ombudsperson Institution has foreseen the new organisational structure in OIK, divided in sectors, departments and specific divisions.¹⁷ According to this Regulation, five (5) sectors were foreseen to be created, such as: *Sector on Protection and Supervision of Human Rights* with two (2) Departments (Department of Admission and Administration of Complaints and Department of Investigation of Complaints); *Sector on Protection from Discrimination* with two (2) Departments (Department on Protection from Discrimination and Department on Protection of the rights of the child); *National Preventive Mechanism against Torture*

¹⁵ *Ibid.*, Article 29

¹⁶ Law No. 05/L-019 on Ombudsperson, Article 37

¹⁷ Regulation no. 01/2016 on Internal Organisation and Systematisation of Job Positions in the Ombudsperson Institution, Article 5.

with the relevant Department on Prevention of Torture; *Sector on Investigation and Legal Service*, within which there will be Department on Legal Affairs; and *Sector on Reporting and Promotion of Human Rights*, within which there will be Department on Cooperation, Reporting and Promotion of Human Rights.

The powers of Ombudsperson to review issues dealing with the protection from discrimination in general and gender discrimination in particular were provided for by two other basic laws on human rights (Law on Protection from Discrimination and Law on Gender Equality).

Thus, according to the Law on Gender Equality¹⁸, the Ombudsperson is a gender equality institution that deals with cases related to gender discrimination, in accordance with procedures provided for by Law on Ombudsperson.

On the other hand, according to the Law on Protection from Discrimination¹⁹, the Ombudsperson is an independent institution, which undertakes promotion and protection of human rights and deals with cases of discrimination in accordance with the Law on Ombudsperson.

The Office of Good Governance (OGG) within the Office of the Prime Minister (OPM)²⁰ is responsible for monitoring the implementation of the Ombudsperson's recommendations dealing with the implementation of the Law on Protection from Discrimination.

Access to the Ombudsperson Institution

In order to facilitate the access of the citizens of Kosovo to OIK, aside from the Main Office in Prishtina, OIK has regional offices in Ferizaj, Gjakova, Gjilan, Mitrovica, Peja, Prizren and Gracanica. Furthermore, within the Regional Office of the OIK in Mitrovica, there is a sub-office that operates in Mitrovica north.

Citizens' complaints can be filed with the OI any business day (Monday to Friday) from 8:00 to 16:00. Ombudsperson Institution welcomes citizens who claim that their rights have been violated. They are welcomed by the OIK's legal advisers, who handle cases carefully, confidentially, and professionally.

Another easier mode of access for citizens is the holding of Open Days by the Ombudsperson and his deputies. They are organised in Prishtina and in the regional offices. Regional offices inform citizens of the respective municipalities about open days through publication of dates throughout these municipalities, via local media and via the OIK's official website.

¹⁸ Law no. 05/L-020 on Gender Equality, Article 13.

¹⁹ Law no. 05/L-021 on Protection from Discrimination, Article 9.

²⁰ Ibid., Article 10, paragraph 1, subparagraph 1.2.

Other forms of access are via mail, phone and e-mail, which are being used increasingly often and actually are used by citizens living abroad in filing complaints. In the OIK's Main Office in Prishtina, there is a telephone line, free of charge, for urgent matters, but also for other ordinary cases.

OIK officials conduct regular visits to all prisons and places where people with limited freedom in Kosovo are held. To enable direct communication with convicted persons, in cooperation with the authorities of the Kosovo Correctional Service and with prison authorities in Kosovo, the OIK since 2004 has placed mailboxes in visible areas in all prisons and detention centres in the Republic of Kosovo, that are opened only by representatives of the OIK. This practice has shown that the mailboxes located in prisons, namely in places where persons deprived of freedom are held, helped many prisoners or detainees establish their first contacts with the Ombudsperson. Such boxes are also placed in Institutes and Centres of Mental Health, which facilitates patients' access to OIK. These institutes and centres are visited regularly every month by OIK representatives.

1. HUMAN RIGHTS SITUATION IN REPUBLIC OF KOSOVO

1.1. Legislation

During 2016 the Ombudsperson has also monitored the process of drafting, reviewing, and adopting laws. According to the legislative programme for 2016 adopted by Government of the Republic of Kosovo in its 70th meeting, through decision no. 01/70 dated 15 January 2016 (which was supplemented several times during the year), 108 draft laws were planned for review and adoption during 2016 (of them 53 new ones and 55 amending and supplementing existing laws). It is worth mentioning that half of the draft laws (a total of 51) were determined in the National Programme for the Implementation of Stabilisation and Association Agreement (NPISAA), of them 23 new draft laws and 28 draft laws amending and supplementing the existing laws.

Unlike 2015, when 65 % of proposed draft laws were with amendments and supplements, during 2016 the number of such draft laws was lower, considering that 50 % of proposed draft laws with amendments and supplements were conditioned by NPISAA. Notwithstanding, adoption of huge number of amended and supplemented laws remains a concern that in a way may present a problem for those that enforce laws.

System of law drafting is decentralised system, which implies that compilation of draft laws is done by respective governmental sectors, while the Legal Department within the Prime Minister Office is the only office, which in the central level, coordinates and controls proposed draft laws from government sectors. This Office, due to the overload and limited capacities, has scarce possibilities to conduct appropriate quality control of the proposed laws.

Furthermore, low level of law implementation remains a widespread problem in the country. One of main reason of failure to implement them rests with frequent amendments done to laws, a phenomenon than further influences on inadequate information of public institutions to prepare their implementation. Another feature which greatly influences on law level of law implementation is also the conflict of legal provisions, or laws and sublegal acts. Other element which effects on low level of implemented laws is the absence of independent judicial review of compatibility of primary and secondary legislation. Notwithstanding, courts hardly in any case were involved in review of such legislation.

However, in situations when no appropriate law implementation occurs greater parliamentary control towards the executive should be placed, control which may assist on increase of Government's responsibility on law implementation. But, since the Assembly is overloaded with huge number of laws proposed by the Government, the Assembly has a tiny space to exercise other mandates established by the Constitution such is parliamentary control. On the other hand, time in disposal for law endorsement

is a period of one year, interval which greatly influences on diminishing of the quality of laws, whereas in some countries with developed democracy, the period for law approval is from 18 months to 2 or to 3 years. The most prominent feature of the legislative process in the country is that state's activity is measured by the number of adopted laws. The legislation seems to be the primary likely response to socio-economic challenges as well as others.

Another feature which has accompanied entire adopted legislation so far is the lack of lingual and terminology consistency of laws, this phenomenon despite difficulty in adequate implementation of laws produces difficulties in interpretation during the implementation and creates legal uncertainties as well. Thus, standardisation of legal terminology in a form of legal dictionary needs to be done as well as to conduct qualitative lingual verification of laws prior to final approval by the Assembly.

On the other hand, during 2016, the Assembly of the Republic of Kosovo adopted 52 laws. While there are 26 other draft laws under review, 9 of which have passed the first review (reading) in the Assembly, 10 have been disseminated to the members of Parliament, and seven have not been disseminated to members of Parliament at all.

None of the adopted laws in 2016 belong to legislation with vital interest²¹, whereas some draft laws in this area which were foreseen under the legislative programme for this year have not been adopted either.

Only the draft law on the Education Inspectorate in the Republic of Kosovo has passed the first review in the Assembly of Kosovo, while draft law on Higher Education in the Republic of Kosovo and draft law on amending and supplementing Law No. 02/L-31 on Freedom of Religion in Kosovo have been disseminated to members of Parliament. While at the end of the year, the Assembly received the draft law for amending and supplementing Law no. 03/L-064 on Public Holidays in the Republic of Kosovo, but it did not disseminate the same to members of Parliament.

A number of draft laws with vital interest have not been processed at all this year.²²

In 2016, the following laws were adopted in the area of legislation, which mainly deal with vulnerable groups: Law no. 05/L-067 on the Status and Rights of Paraplegic and Quadriplegic Persons; Law no. 05/L-077 for Registration and Provision of Services and Measures for the Employment of Unemployed Persons, Jobseekers and Employers; Law no. 05/L-078 on Amending and Supplementing Law no. 03/L-019 on Training, Professional Rehabilitation and Employment of Persons with Disabilities; Law no. 05/L-

²¹ *Constitution of the Republic of Kosovo, Article 81 and amendments 2 and 3 of Constitution of the Republic of Kosovo, effective as of 7 September 2012.*

²² *Draft law on amending and supplementing law no. 03/L-047 on the protection and promotion of the rights of Communities and their members in the Republic of Kosovo; Draft law on amending and supplementing law no. 02/L-88 on Cultural heritage and Draft law on amending and supplementing Law no. 03/L-041 on Administrative Municipal Boundaries.*

087 on Minor Offence; and Law no. 05/L-047 on Amending and supplementing Law no. 04/L-065 on Copy rights and related rights.

While Government of Kosovo on 18 February 2016 adopted *Administrative Instruction No. 03/2016 on Special Measures for Registration of Joint Immovable Property on Behalf of Both Spouses*, which is an affirmative measure to stimulate spouses to register the joint immovable property in the public registers.

Only the draft law on the Protection of Children has passed in the first review in the Assembly of Kosovo, while Draft law on amending and supplementing law no. 02/L-31 on Religious freedom in Kosovo was disseminated to members of Parliament, while draft law on amending and supplementing law no. 03/L-064 on Public Holidays in the Republic of Kosovo was received by the Assembly, but was not disseminated to members of Parliament.

However, a number of other draft laws mainly dealing with vulnerable groups²³ have not been processed this year either.

OIK in its annual report of 2015 drew the attention to the omissions in the process of harmonisation of laws and to the proposed draft laws with the existing laws, upon which case in order to consolidate legislation it recommended to strengthen the Department for Standardisation, Approximation and Legal harmonisation in the Assembly of Kosovo.

In this respect, it should be pointed out that the Assembly of Kosovo established the Unit for Legal Analyses, which will function within the Department for Standardisation, Approximation and Legal harmonisation. This Unit will help Parliamentary Committees with legal expertise during the review and amendment of draft laws, and it is expected to impact on the strengthening of professional capacities for legal analyses and approximation of legislation in Kosovo with the European Union legislation and for implementation of Stabilization and Association Agreement (SAA). National Democratic Institute (NDI) from the USA offered professional support for the establishment of the Unit for Legal Analysis and will further help with the provision of professional training. The unit will have ten (10) experts in the area of European rights and it is expected to become functional in the first quarter of 2017.

²³ Draft Law for amending and supplementing Law No. 03/L-047 on Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo; the Draft law for amending and supplementing Law no. 03/L-172 for Protection of Personal Data; the Draft Law for amending and supplementing the Juvenile Justice Code; the Draft Law for amending and supplementing Criminal Procedure Code no. 04/L-123; the Draft Law for amending and supplementing Law No.079/L-149 On Execution of Penal Sanctions, the Draft Law for amending and supplementing Law No. 2004/26 on Heritage; the Draft Law for the Pension of Police Officers in Kosovo; the Draft Law for amending and supplementing Law No. 04/L-217 on Asylum; the Draft Law on Protection of the Consumer; the Draft Law on Labour Inspectorate and the Draft Law for amending and supplementing Law No. 04/L-131 on pension Schemes Financed by the State.

While in respect of the process of codification of laws, namely the summary of laws regulating the same or similar area, which was recommended to the Assembly of Kosovo last year, through OIK's opinions, it can be concluded that no action was taken in this regard during 2016.

OIK received a series of draft laws and draft administrative instructions from the Government and ministries, soliciting comments. According to the Rules of Procedure of the Government of the Republic of Kosovo, no. 09/2011, determines that the body that proposes draft laws and sublegal acts is obligated to consult not only with relevant ministries but also with the OIK on their compliance "... *internationally accepted standards on human rights and fundamental freedoms...*".²⁴ Ombudsperson made comments and recommendation to the draft Law on Protection of Children and the Draft Law on Minor Offences.

The Ombudsperson assesses that the practice, on the part of state institutions of the Republic of Kosovo, of consulting with the OIK on draft laws, draft administrative instructions and other sub-legal acts, is a positive one.

In addition, the Ombudsperson reconfirms his willingness to provide the OIK's assistance and professional support in this area and recommends that all domestic institutions should send normative acts to OIK for consultation and comment, in particular those that are related to human rights and freedoms.

Within the responsibilities of the Ombudsperson provided for by Law on Ombudsperson is also the responsibility: "*to recommend promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo*".²⁵

The Ombudsperson recommended the Assembly of the Republic of Kosovo to amend and supplement these laws and sublegal acts:

- Amendment of Article 159 of Criminal Procedure Code, no. 04/L-123, to remove the two-year statutory restriction for all criminal offences in the Chapter XXXIV "Official Corruption and Criminal Offenses against Official Duty" of Criminal Procedure Code of the Republic of Kosovo no. 04/L-082 (see: Report with recommendations *ex officio*, on 5 August 2016).
- Amendment of Article 72 of the Rules of procedure of the Assembly of the Republic of Kosovo to determine special procedures for the review of Ombudsperson's Annual Report, including the supervision of the level of implementation of its recommendations by other state authorities (see: Report with recommendations *ex officio* A. no. 563/2016).

²⁴ Rules of procedure of the Government of the Republic of Kosovo, Article 7, paragraph 2.

²⁵ Article 18, paragraph 1, subpar. 1.7.

Furthermore, the Ombudsperson recommended Ministry of Labour and Social Welfare (MLSW), in accordance with the powers and legal authority, to initiate procedures to amend Law no. 04/L-131 on the Pension Schemes Financed by the State, to eliminate the violation of the dignity and the right of pensioners to pension (see: Report with recommendations *ex officio* A. no. 382/2016).

Ombudsperson recommended Kosovo Judicial Council (KJC) to initiate the drafting of the legal instrument, which would constitute an effective remedy within the meaning of Article 13 of ECHR, which provides facilitation in the form of prevention and compensation regarding the complaints in the delay of judicial proceedings (see: Report with recommendations for case A. no. 185/2012).

In addition, during the investigation of complainants' cases in OIK, the lack of promulgation of sublegal acts set forth by relevant laws was observed.

Law no. 04/L-149 on Execution of Penal Sanctions (Article 83, paragraph 7) determines that: *"The education of the convicted persons shall be regulated through a secondary legislation issued by the Minister of Education with the consent of the Minister of Justice"*. This sublegal act according to Law (Article 249, paragraph 3) was supposed to be promulgated in a period of six (6) months for the entrance into force of this law. However, although law entered into force on 12 September 2013, this sublegal act was not promulgated yet, therefore, the education of convicted persons²⁶ has not been regulated.

Another case deals with the right of re-election of school directors and deputy principals.²⁷ Although, *Administrative Instruction of MEST no. 08/2014 Procedures and Selection Criteria of Director and Deputy director of the Instructive and Educational and training institution* (Article 8, par. 3) determines that "Selected candidates for director / deputy director at the certain institutions have the right to be re-elected in the same institution without public competition based on the performance assessment which is regulated by special sublegal act", such an act is still missing.

1.2. Judicial protection of rights

Despite the legal and organisational reform, domestic judiciary did not manage to secure the protection of human rights according to international standards, in particular ECHR and case-law of European Court of Human Rights (ECtHR).

Judiciary's strategic plan 2014-2019,²⁸ contains objectives which deal with the acceleration of the resolution of judicial cases, relevant management and accountability, strengthening of assessment and disciplinary mechanisms, inclusion of minority communities in the judicial system and the enhanced education and training of judges and

²⁶ C. no. 602 / 2014.

²⁷ C. no. 142/2016.

²⁸ Kosovo Judicial Council, Strategic Plan of Judiciary 2014-2019, pg. 14, 19, 22 and 26 www.kgjk-ks.org

courts personnel, which should be satisfied in order for judicial system to be as functional as possible and be at citizens' service.

Lack of access to justice in the Northern part of Kosovo and its non-integration in the overall judicial system has remained a challenge for years also despite the conclusion of Brussels Agreement of 10 February 2015. Right of access to justice is a right determined and protected by ECHR, which includes the right to fair and impartial trial for effective legal remedies. This year, Ombudsperson published a report with recommendations²⁹ regarding this right, drawing the attention of relevant institutions to the need for undertaking adequate actions for the fulfilment of this right. OI has raised concern regarding statutory limitation over 1500 cases on criminal matter which have never been reviewed and over 2500 civil cases for which no actions have ever been taken, which seriously threatens the principle of legal security and access to justice in a certain region, compared with other part of the country, even though under the same legal and constitutional authority.

The domestic judicial system continues to be supported in the area of rule of law by the European Union Mission on the Rule of Law in Kosovo (EULEX), on the basis of the Law on Ratification of International Agreement between the Republic of Kosovo and European Union.³⁰

International judges and prosecutors will continue to assist domestic judicial authorities in developing and strengthening the independence of the justice system. Judges work with domestic judges on mixed judicial panels in the areas of war crimes, genocide, terrorism, organised crime, corruption, inter-ethnic crimes, serious murders, economic crimes, but also for trying civil cases, in accordance with the Law.³¹

Ombudsperson observed that when taking a decision on issues, courts rarely refer to or they do not refer to the ECtHR case-law at all, and in cases when this happens they are generalised, and are not concrete in relation to the circumstances of the case in practice. It is worth mentioning that according to Article 53 of Constitution of the Republic of Kosovo, human rights are interpreted consistent with the court decisions of ECtHR.

Concerning the protection of rights and fundamental freedoms in the area of judiciary, Ombudsperson has limited mandate determined by Law on Ombudsperson, according to which the Ombudsperson may provide general recommendations on the functioning of the judicial system. The Ombudsperson will not intervene in the cases and other legal procedures that are taking place before the courts, except in case dealing with allegations

²⁹ Report with recommendations Ex officio No. 415/2016, concerning Lack of access to Court building in the Mitrovica North, namely denial of the right of access to justice, addressed to Kosovo Judicial Council, Kosovo Prosecutorial Council, Basic Court in Mitrovica and Basic Prosecution office in Mitrovica.

³⁰ Law no. 04/L-274 Law on Ratification of International Agreement between the Republic of Kosovo and European Union for the rule of Law in Kosovo

³¹ Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, No. 03L 053, Article 5. Paragraph 1.

on administration of justice, namely on delays of judicial proceedings and non-execution of judicial decisions.³²

On the basis of the number of complaints filed with OIK during this reporting year, it results that citizens continue to mistrust judicial system. They continue to face delays of procedures for deliberation of their cases for years, non-execution of plenipotentiary court decisions, ineffective decisions, prescription of judicial cases, as well as errors in their personal notes affecting the inability of the realisation of their rights. Moreover, Ombudsperson observed that there is a citizens' perception on the lack of objectivity during the deliberation of their cases.

1.2.1. Delay of judicial proceedings

Like in previous years, Ombudsperson continues to receive complaints against courts which mainly deal with delay of the resolution of their cases. Complaints mainly deal with procedural delays regarding the civil nature disputes, such as property, obligational, labour and social³³ disputes as well as penal³⁴ disputes. This comes as a result of a huge number of old and unresolved cases and the presentation of new cases. Ombudsperson did not observe any notable progress in relation to the previous reporting period regarding the increase of the number of judges,³⁵ which would more or less impact on the improvement of the situation.

KJC, in the statistical report of courts for the first half of 2016, reported that the number of cases remaining unresolved is 417,733.³⁶ According to this report, courts have had a total of 664,465 judicial cases, while they resolved 246,700. During these six months, citizens filed 223.838 new judicial cases.

Despite the huge number of unresolved cases during these six months of 2016, a decrease of 7544 cases is observed compared to the same reporting period of 2015. Notwithstanding this, KJC should be engaged to support the judiciary in improving the situation.

Ombudsperson observed that when it is about procedural delays, especially for cases which go from one instance to another during the review process or in situations when cases are returned for retrial, the tendency of courts is to calculate the period of the deliberation of the case from the day when the case was transferred to that court, while according to ECtHR case law, the calculation period for the resolution of a judicial case commences from the day when citizens have filed the suit with the competent court.

³² Law no. 05/L-019 on Ombudsperson, Article 16.8

³³ Complaint no.185/2012, Report with recommendations for the Court of Appeal on 5.5.2016, Compliant no. 438/2015 against Basic Court in Ferizaj, Compliant no. 584/2016, against Basic Court in Prishtina, Complaint no. 232/2016, against Basic Court in Prishtina, A.882/2016, against Court of Appeal.

³⁴ Complaint no. 232/2016, against Basic Court in Prishtina, A.no.923/2016 – against BCP

³⁵ Kosovo Judicial Council, the first six-month report 2016, Statistics on regular courts, www.kgjk-ks.org, pg.3.

³⁶ Ibid., pg.3.

Further, Ombudsperson observed that courts do not treat with emergency the disputes stemming from employment relationship³⁷ as is required under Law on Contested Procedure.

Lack of an internal legal mechanism contributes to the aggravating situation regarding the delay of procedures within courts through which the right to a trial within a reasonable time was violated to citizens within the meaning of article 6 of ECHR, for which they might request compensation due to violation of this right.

1.2.2. Prescription of cases

Ombudsperson observed that a number of citizens' cases are still subscribed in courts and prosecution offices, which seriously damages the trust of citizens to justice and violates human rights.³⁸ Courts do not provide statistical data for prescribed cases, which violates legal certainty.

Regarding the issue of prescription of minor offence cases at the stage of judicial proceedings and at the stage of enforcement of decision, in 2016, Ombudsperson conducted an *ex officio* investigation, in order to detect the situation regarding the prescription of cases, while Ombudsperson requested information for 2015 from Basic Courts and Police branches of the Republic of Kosovo. Statistics obtained from Basic Courts indicate that the number of minor offence cases prescribed was 26,266. Basic Courts in all regional centres have had prescribed cases, but the problem seems to aggravate in the Basic Court in Prishtina and Basic Court in Gjakova, where the number of minor offence cases prescribed was 11,860, namely 9,492. This means that roughly 83% of minor offence cases prescribed in 2015 were from these two courts.

Unfortunately, the statistics submitted by the Police branches indicate that the problem of the prescription of the execution is even more serious than that of prescription of procedure. During 2015 a total of 32,860 warrant orders received from Basic Courts on minor offence cases were prescribed. Merging the number of cases of prescription of procedure with the number of cases of prescription of execution has resulted that during 2015, a total of 59,126 cases were prescribed, at the stage of judicial proceedings and at the stage of execution and this costs a minimum of €808,095 to the domestic budget. Regarding these findings, Ombudsperson submitted a Report with recommendations³⁹ to relevant institutions for the supplementation of legislation in order to prevent the prescription of cases.

Prescription of cases may be a result of burdening courts with judicial cases and the inability of deliberation within the time period due to the insufficient number of judges. However, there are cases when prescription comes as a result of negligence or abuse. The

³⁷ C.no. 549/2015

³⁸ Judgment no. P.no.2215/13, dated 08.01.2016, Basic Court in Prishtina
Decision no.P.no.923/14, dated 21.10.2016, Basic Court in Prishtina

³⁹ Ex officio case no.239/2016, dated 25 April 2016, addressed to the Assembly of the Republic of Kosovo.

Office of the Disciplinary Counsel (ODC) in all cases of prescription of judicial cases must investigate in detail the cause of prescription of cases, without any exception and must initiate relevant procedures against the responsible persons allowing for the prescription of judicial cases.

1.2.3. Non execution of court decisions

During this year, Ombudsperson not only has received a considerable number of complaints⁴⁰ concerning non-execution of court decisions, but also has initiated *ex officio*⁴¹ cases.

In some specific situations, among others, after the investigation of complaints we observed how an impediment in the execution of decisions was the economic and financial situation of the debtor, despite the actions undertaken by the court. In a case investigated, we observed that an impediment of the execution was the high amount of means requested by the court to be deposited by the creditor in order to execute the decision, about which there was a report with recommendations published for the execution of the plenipotentiary court decision.⁴²

Execution of court decisions at the domestic level still remains low, which is a worrying fact for the Ombudsperson. The KJC's⁴³ six-month report of 2016 concerning civil cases is an indicator that courts have dealt with 3,179 cases, of which they executed 880, while 2,299 remained unexecuted.

Ombudsperson expressed its concern that there is still a high number of plenipotentiary court decisions remaining unexecuted. Some of these decisions were even deliberated by the Constitutional Court of the Republic of Kosovo, upon which case there were violations found of Article 31 of Constitution, within the meaning of Article 6 of ECHR for which he requested that these decisions be executed.⁴⁴ In this respect, Ombudsperson draws the attention of relevant authorities that according to ECHR and ECtHR case-law, the execution of plenipotentiary decisions is part of the right for a fair and impartial trial obliging them to undertake indispensable measures for the realisation of this right.

⁴⁰ Complaints, A.928/2016, against Basic Court in Prishtine, A.842/2016, against Basic Court in Prishtina, A.778/2016, against Basic Court in Prishtine – Glllogoc branch, A.303/2015, against Basic Court in Prizren.

⁴¹ Complaints, A.928/2016, against Basic Court in Prishtine, A.842/2016, against Basic Court in Prishtina, A.778/2016, against Basic Court in Prishtine- Glllogoc branch, A.303/2015, against Basic Court in Prizren.

⁴² Report with recommendations no. 910/2016, dated 12.08.16, against Basic Court in Prizren.

⁴³ Kosovo Judicial Council, the first six-month report 2016 , Statistics on regular courts, www.kgjk-ks.org , pg. 37

⁴⁴ Case KI 08/09 dated 17 December 2010 concerning the execution of the final and binding decision of the Municipal Court in Ferizaj dealing with the material reimbursement of employees of the Steel Tube Factory and case KI 187/13 through which the execution of the Kosovo Property Agency is required regarding the case of Nadežda Jovanović

1.2.4. Private enforcement agents

It can be observed that private enforcement agents have improved the level of execution of courts decisions and citizens are provided with more efficient and effective possibility in the realisation of their rights. But in some cases, private enforcement agents have exceeded legal norms regarding the execution of court decisions,⁴⁵ issuing enforcement orders for the execution of decisions in commercial banks, upon which case they requested the freezing of complainants' bank accounts.⁴⁶ During the investigation, Ombudsperson observed that complainants have been users of social assistance, old age pensions and these incomes were frozen in the execution process, in contradiction with the law, which determines legal constraints for the amounts which cannot be an object of execution. After the Ombudsperson's actions, the issue of the complainants was resolved, that their bank accounts were freed and prohibitions are done in compliance with the law. Ombudsperson was notified that Ministry of Justice has conducted an ex post assessment of the Law on Enforcement Procedure and it is expected to be seen whether the debated issues are identified in the assessment report.

1.2.5. Lack of effective legal remedies

The number of complaints filed with OIK indicates that citizens run into big difficulties even during the realisation and the protection of human rights in the first instance procedure, in the Basic Court in Prishtina – Departments for Administrative Matters. They are dealing with the non-efficiency of this court concerning the administrative contests.⁴⁷ From the investigation conducted it results that this court, when deliberating on the administrative contests, apart from delays, it does not decide on the substance of the issue, but only on procedural violations, returning the issue for settlement to the administrative body,⁴⁸ while administrative bodies during the reconsideration are mainly taking rejection decisions and the issue again ends up in court.

Such a situation is worrying for the Ombudsperson, as citizens are deprived of the right to effective legal remedies. In particular, this situation affects persons with disabilities applying for pensions of persons with disabilities within the Pensions Administration Department of Kosovo (PADK) of MLSW, who in this case are obliged to pursue repetitive procedures, but without a decision on the merits and without an appropriate court deliberation.

Ombudsperson assesses that, in administrative contests, the court should use the possibility and the legal competence that administrative decisions of MLSW are

⁴⁵ Law no. 04/L-139 on Enforcement Procedure, Article 323.

⁴⁶ Complaints no. 600/2016, C.no.413/2016, C.no.90/2016, C. no.525/2016, C.no.430/2016, C.no.389/2016, C. no. 457/2016, C. no.23/2016, against Private enforcement agents.

⁴⁷ Complaints no. 196/2016, A.no. 230/2016, C.no. 911/2016, C no.905/2016, C.no.855/2016, against Basic Court in Prishtinë- Administrative Department.

⁴⁸ Report with recommendations Complaint no.: 72/2015 dated 17 August 2016, against Basic Court in Prishtina-Administrative Department.

deliberated on the merit of the case and redress violations, by deciding on the merit of the case in accordance with Law on Administrative Conflicts.

In this respect, Ombudsperson drafted a report with recommendations which was addressed to relevant bodies, asking elimination of deficiencies found for the issue in question.⁴⁹

1.2.6. Legal representation of citizens

Another issue which impedes full realisation of the right for judicial protection deals also with the inadequate representation of parties by the defence counsels in different judicial issues. In this respect, OIK received complaints against lawyers but also requests on the advising purposes regarding addressing of their concerns.⁵⁰ In all these cases, complainants have been informed on their right for changing lawyers, withdrawing the authorisation for representation and the possibility of filing complaints to the Kosovo Bar Association (KBA).

KBA has a normative framework regarding the work standards and the Code of Ethics on the conduct of lawyers, but it did not manage to establish a system which would efficiently supervise and follow the compliance of these standards.

Free legal aid is a constitutional category⁵¹ and shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice. However, a challenge for the provision of the free legal aid in relation to the citizens' requirements is the lack of budgetary means, which makes unable the provision of legal assistance to citizens in the entire territory of the Republic of Kosovo in conformity with Law on Free Legal Aid.⁵²

Delay of procedures in deliberation of judicial cases, lack of effective legal remedies, low scale of execution of decisions are the issues which require the attention and adequate addressing by relevant authorities.

Therefore, Ombudsperson among others reiterates the need for creating an internal legal mechanism, within the meaning of Article 13 of ECHR, which would guarantee the citizens the right to effective legal remedies in cases of violation of the right in the resolution of their cases within a reasonable time and non-execution of plenipotentary court decisions, rights which are determined under Article 6 of ECHR and guaranteed by the Constitution of the Republic of Kosovo.

⁴⁹ Report with recommendations, Ex-Officio no. 425/2015, dated 22 August 2016, against Basic Court in Prishtina- Administrative Department.

⁵⁰ Complaints A.549/2015 A.537/2016, A.516/2015, Complaint of Z. D. dated 22.08.2016, against Kosovo Bar Association.

⁵¹ Constitution of the Republic of Kosovo, Article 31, paragraph 6.

⁵² Annual report 2015 of the Agency for Free Legal Aid.

1.3. The role of executive organs in protection of human rights

According to the Constitution of the Republic of Kosovo, human rights and fundamental freedoms are indivisible, inalienable, and inviolable, as well as the basis of the legal order of the Republic of Kosovo. Protection, advancement and respect for human rights and freedoms require undertaking of relevant actions by organs, institutions and authorities exercising legitimate authority at central and local level.

1.3.1. Property issues

During this year, Ombudsperson received complaints from citizens regarding their property issues such as; property contests, cash compensations, expropriations etc. Complaints are mainly addressed to Ombudsperson at the stage when issues are being treated by competent judicial or administrative bodies, or no legal action was taken regarding the issues raised. Therefore, regarding the individual complaints when we do not deal with any systematic violation, citizens are instructed to use legal remedies available and wait for the final decisions of the competent bodies.

This does not mean that property issues in Kosovo are regulated to that degree so as to have high expectations that competent bodies will decide fairly at any time. Numerous problems regarding the property issues have been identified in the Kosovo National Strategy on Property Rights (NSPR), which was published in December 2016.⁵³ NSPR points out that *[L]ack of clarity in immovable property rights legislation, widespread informality in the property sector and inconsistent enforcement of rights has weakened human rights, disempowers marginalized communities and impedes economic growth.*

Ombudsperson hails the promulgation of NSPR and the dedication of relevant authorities and ministries on the commitment that deficiencies regarding property issues will be addressed and will be worked on the strengthening and developing legal certainty on property rights for all Kosovo citizens.

Nonetheless, although NSPR points out the issue of the lack of Law on Restitution, it does not make any recommendation for promulgation of the law or any justification whether the Republic of Kosovo should or should not have such a law. It is known that other post socialist states have promulgated Laws on Restitution. Ombudsperson presented his views regarding the Law on Restitution in previous reports and remains worried that the lack of restitution of properties be it physically, where possible, or lack of adequate monetary compensation not only violates human rights but also constitutes a risk to the Republic of Kosovo in the future when citizens will be able to raise their issues with ECtHR.

Ombudsperson considered that compliance of recommendations by NSPR requires comprehensive engagement of all bodies, authorities and institutions which are presented

⁵³ Government, Ministry of Justice, National Strategy on Property Rights, December 2016; http://www.md-ks.net/repository/docs/National_Strategy_and_Annexes_ALB.pdf

as actors and have a determined role according to NSPR. Moreover, Ombudsperson considers that improving the work of the judiciary is especially needed. This is so because NSPR has foreseen numerous solutions for the issues which until now have not been treated and these issues may potentially end up in courts, which apart from current challenges may face also new situations and increase the number of cases.

1.3.2. The Privatisation Agency of Kosovo (PAK)

The situation regarding complaints in OIK against the Privatisation Agency of Kosovo (PAK) did not change. During this year, the Ombudsperson received complaints against PAK, while there is a small change regarding the nature of complaints. During previous years, complaints had more to do with the non-inclusion in the lists of the former employees of socially owned enterprises benefiting 20% from the sale of the enterprises and regarding the KPA decisions on compensation of persons who are as creditors in relation to socially owned enterprises that have been privatised. While during the reporting year, the number of complaints regarding the 20% from the sale of socially owned enterprises has decreased, the number of complaints dealing with the implementation of decisions of PAK has increased.

1.3.2.1. Non-implementation of PAK decisions

Regarding the non-implementation of PAK decisions, on 15 July 2016, Ombudsperson published two reports with recommendations, for two separate complaints filed with OIK⁵⁴ upon which case it recommended PAK to undertake immediate measures for the implementation of its own decisions issued on 28 June 2011.

Ombudsperson received a response from PAK regarding the two published reports claiming that PAK possesses information that Special Chamber of the Supreme Court of Kosovo (SCSC) has pending complaints regarding the socially owned enterprise privatised. This implies that regarding to the complaints submitted with SCSC by the parties unsatisfied with PAK decisions, a final decision should be taken by SCSC in order to proceed with dissemination of payments for the creditors of socially owned enterprise and PAK is unable to determine the exact time of dissemination due to the dependency of the issue on the final decision of SCSC.

A similar response is received by the Ombudsperson in almost all situations when it is about the implementation of PAK decisions through which PAK recognises the right for compensating creditors in the privatisation process or liquidation of socially owned enterprises. Regarding the implementation of these decisions, OIK representatives participated in a public debate in the Radio and Television of Kosovo (RTK) upon which case the public was informed that PAK decisions for compensation are subject to a judicial process within SCSC, although there is no direct complaint against those decisions, the process of dissemination of funds remains a guarantee for the completion

⁵⁴ C. 113/2016 and C. 114/2016

of processes which are under review within SCSC regarding any complaint against privatisation or liquidation of socially owned enterprises. This was also confirmed by the PAK officer. Therefore, PAK was requested to notify creditors upon the issuance of decisions for the recognition of the right to compensation that dissemination of funds will be done after the entire process of privatisation or liquidation of the socially owned enterprise ends up with final decisions issued by SCSC.

Vacating the properties of socially owned enterprises from illegal users sold by the Privatisation Agency of Kosovo

During 2015 and in the beginning of 2016, Ombudsperson received several complaints from new owners of the properties privatised regarding the usurpation of these properties and the inability to vacate them from unauthorised users. During the investigation of the case, Ombudsperson found that there is hesitation from the law enforcement authorities to vacate the properties usurped. Despite the Ombudsperson's concerns on the failure of law enforcement authorities to react on time, Ombudsperson had focused investigations on PAK responsibilities for vacating these properties. In this respect, Ombudsperson learned that in November 2014, PAK issued a Decision No. 270/2014 and the Guideline for Releasing of the Assets of Socially Owned Enterprises from Usurpers (Illegal Users) which is valid for properties which are currently under PAK jurisdiction and the actions taken by PAK for releasing the properties on sale, but which is not valid for properties sold before November 2014. Irrespective of the fact that PAK decision constitutes a good initiative to ensure that PAK will guarantee sale of properties vacated from legal deficiencies, namely the usurpation of properties, this does not resolve the situation of properties sold by PAK by not releasing them from illegal usurpers and occupants. Therefore, Ombudsperson issued a report with recommendations for PAK, Kosovo Police and State Prosecutor, recommending, *inter alia*, the releasing of properties.⁵⁵ After the publication of the report with recommendations, Ombudsperson received a response from State Prosecutor regarding the issues raised in the report; Office of the Chief State Prosecutor transferred them under the competence of relevant basic prosecution offices for further procedural and legal treatment. Ombudsperson also received a response from PAK, informing that PAK submitted the list of all assets sold where there were usurpers at the moment of their sale to Kosovo Police, the Department for Economic Crimes.

After the publication of the report with recommendations by Ombudsperson, there was an action undertaken by Kosovo Police for releasing the usurped properties, among others also those properties which were treated by the Ombudsperson in the report.

1.3.3. The Special Chamber of the Supreme Court of Kosovo

The work and efficiency of the SCSC, during 2016 noted no improvement, like in the previous years, and the situation remains still disturbing. Ombudsperson during the work he had with parties observed an additional concern from citizens, whose cases are under

⁵⁵ See report with recommendations, dated 19 April 2016, against the Privatisation Agency of Kosovo

deliberation within this court, due to the extraordinary delays. During official communication between Ombudsperson and SCSC regarding the complaints recorded in OIK, Ombudsperson is regularly informed on the developments on the case procedures in SCSC and in the majority of responses received by the Ombudsperson, it is concluded that there is procedural delays. SCSC failed to meet the criteria of Article 6 of ECHR within the meaning of a regular process, within a reasonable time and Article 13 of ECHR, because not only citizens are waiting for years for resolution of cases, they also do not have any effective legal remedy for the realisation of their right for a trial within a reasonable time.

Ombudsperson during previous years has published numerous reports with recommendations regarding the cases presented in OIK, but it seems these recommendations have yielded no effect, as the situation has not changed. Ombudsperson concludes that it is about a systematic problem for the case in question; therefore in order to identify main issues causing these delays, he had a meeting with the President Judge of SCSC who informed him about problems and issues that SCSC is facing in its work. Among numerous issues identified by the President Judge of SCSC, Ombudsperson assesses that main problems which are causing delays are the provisions of the Law on Special Chamber, namely Article 3.1 of the law, which determines the number of composition of judges. The increase of the number of judges would be one possible solution, as according to current data, each judge is charged with 1.300 cases out of 21.300 cases which are currently with SCSC. Also another difficulty which SCSC is facing is the issue of the translation of documents. According to the President Judge of SCSC, there are currently 31.000 pages pending translation. Taking into consideration difficulties presented by President Judge of SCSC and based on his assessments, if this trend is followed, the court will need many years to complete the cases which are with the court, not counting new cases which are expected to come. Therefore, Ombudsperson, considers that the SCSC's proposal for amending the Law on Special Chamber should be supported and in this regard, Ombudsperson planned to address the relevant authorities and the Assembly of the Republic of Kosovo with a proposal for amending Law on Special Chamber.

1.3.4. Kosovo Property Agency

Complaints filed against Kosovo Property Agency (KPA) marked a decrease during 2016; however, there are a number of unsolved issues about which the Ombudsperson has reported over the previous years.

1.3.4.1. Properties in the Mitrovica North

Over the previous years, Ombudsperson has reported about the inability for releasing properties in the Mitrovica North. According to KPA, from March 2014 to the end of 2016, there were a total of 13 evictions executed in the Mitrovica North. According to KPA, there is progress in the execution of evictions in this part of Kosovo, and although

at the initial stage, it is expected that it will have an impact onto the stability and property rights in this part of Kosovo.

1.3.4.2. Requests for compensation of category A

KPA has inherited unsolved duties of its predecessor, Housing and Property Directorate (HPD). The situation regarding the compensation of category A remained unchanged, because according to KPA, under the current financial conditions, it would not be able to cover the expenses related to the implementation of 143 decisions issued according to Article 4 of UNMIK Regulation 2000/60 interrelated to the scheme of HPD for compensation.

The amount needed to carry out the relevant compensation payment totals € 3.2 million. As KPA has no financial capacities, it had sent a letter to all donors, offering them a proposal to finance this scheme. This issue has also been addressed to Government of Kosovo to request necessary funds for the implementation of this scheme also during 2016. Notwithstanding the attempts made, KPA was unable to secure these funds.

In this respect, Constitutional Court issued three judgments, concluding that failure to enforce the decision of Housing and Property Claims Commission (HPCC) regarding this compensation is in contradiction with the principles of the application of law and constitutes violation of human fundamental rights guaranteed by Constitution of the Republic of Kosovo.

1.3.4.3. Cases of re-usurpation of properties vacated by the KPA

According to the data available with OIK, KPA has constantly faced the repetition of re-usurpation of properties. The biggest obstacle for returning the property right to displaced persons in general is finding a sustainable solution in the country. In cases of illegal re-usurpations, KPA has the competence to effect second evictions. However, since the KPA mandate does not provide for a clear alternative on the solution of the contest or mediation before settlement, the KPA possibilities in finding sustainable solutions are limited. However, KPA is mediating in cases when usurpers have built buildings onto the properties requested in order to find an amicable and sustainable solution over the implementation phase.

The illegal usurpation of the immovable property and breaking of the official lock is a criminal offence according to Criminal Code of the Republic of Kosovo and KPA refers these cases to court, when they occur and asks EULEX's support that these cases are deliberated in Prosecution and Courts. However, according to KPA this was not as effective as expected and did not have the effect of prevention requested. According to KPA, in order to address this, an agreement was concluded on 23 August 2012 with Kosovo police and Prosecutors, in order to apprehend these re-usurpers and for the courts to treat these cases in a serious manner in accordance with Criminal Code of the Republic of Kosovo. KPA hopes that apprehension and detention of these persons will yield the

desired effect to prevent cases of serial re-usurpations, which brings about the unnecessary spending of KPA and Kosovo Police resources carrying out more than one eviction from the same property, to the same illegal usurper.

During 2016, 16 cases of re-usurpation were initiated to relevant prosecutions. All cases are pending in prosecutions or basic courts. This brings the total number of cases for re-usurpation in relevant prosecutions to 386. Out of which, 217 cases were decided by relevant municipal/basic court and 169 cases are pending in prosecutions or basic courts. According to KPA, after the implementation of the Agreement of 23 August 2012, in 2015, KPA requested the apprehension of two persons for illegal usurpation, who were not present on the day of eviction.

1.3.4.4. Implementation of decisions

According to the applicable legislation, the efficient implementation of final decisions for claims is reached through measures, including but not limited to, placing the property under KPA administration, eviction, sequestration and destruction of illegal structures, auctions and rental agreements. The implementation of HPCC decisions is the responsibility of the Executive Secretariat which is carried out by the Implementation Unit. The implementation activities including eviction of illegal usurpers are carried out by the KPA Eviction Unit. During the reporting period for 2016, 1090 decisions were implemented.

1.3.4.5. New mandate

After the adoption by the Assembly of the Republic of Kosovo and publication in the Official Gazette of the Republic of Kosovo, Law on Kosovo Property Comparison and Verification Agency (KPCVA) entered into force on 3.11.2016. The establishment of KPCVA is a result of the Agreement on Return, Comparison and Verification of cadastral registers reached in Brussels in 2011 between Kosovo and Serbia.

This law deals with the resolution of claims regarding the private immovable property, including agricultural property and private commercial property as well as the comparison and resolution of differences between original cadastral documents taken from Kosovo from Serbian authorities before June 1999 and current cadastral documents in the Republic of Kosovo on the private property, private commercial property and private property of religious communities.

It is important to mention that transitory provisions of this Law determine that parts of mandate and responsibilities of KPA and HPD transferred to this Agency, will be transferred to KPCVA, mainly those sections which deal with the implementation of HPCC decisions, and the properties which are currently under KPA administration, which ensure that unsolved issues will not be cast into oblivion.

According to KPA, its current professional and administrative capacities are on the ready to be executed successfully in the process of transformation from KPA to KPCVA.

Ombudsperson recommends that maximum support should be provided to KPCVA in the execution of its functions according to new Law and in the implementation of unimplemented decisions inherited from KPA and HPD.

1.3.5. Responsibility for Living Environment

Cases of violation of the right of citizens to a safe and healthy environment were noted this year too. No improvement to the quality of air, waters and land was marked. Dividing agricultural lands into parcels and destruction of forest areas continued, along with the difficulties of the public to qualitative environment information.

There is no improvement noted regarding the public participation in the processes neither when deciding on the promulgation of regulation plans, when roads are constructed or even high residential buildings nor regarding the timelines for revision of cases dealing with the pollution of environment, noise, constructions without permits, etc., by courts. The failure to respect basic construction norms, problems with road infrastructure, irrelevant waste management, noise, insufficiency of monitoring systems, non-cooperation of central and local level environment inspectorates have remained as challenges and require the attention and the increase of the attempts from state institutions.

To place environment into the government priorities was not made possible, despite the aggravating environment situation, which should be addressed adequately. Ecologic taxes⁵⁶ are not used for purposes of protection of environment, as foreseen by Law on Road and Ecological Tax for Vehicles. Lack of interest for environment became a serious issue for the public health and quality of life in Kosovo⁵⁷.

Inter-institutional cooperation for the effective solution of environmental problems in the issues dealing with different laws noted no improvement. The actions undertaken in raising awareness and education of citizens in the protection of environment are insufficient.

Compared to the previous year, no progress was identified this year either in the protection of air from pollution. Problems caused from the industrial emissions are still present, use of old transport means and low quality fuel, dust released from the construction of roads and premises, exercise of quarry and activities, firing stubble fields, irrelevant management of landfills, urban and industrial waste. Competent organs did not manage to accomplish legal liabilities for planning activities as preventive measures of the protection of air from pollution. Strategy and Action Plan for Quality of Air was not implemented.

⁵⁶ Law No. 04/L-117, on road and ecological tax, aims at increasing the quality of protection of environment which is collected by the Vehicle Registration Centre in the Ministry of Internal Affairs, and paid to the budget of the Republic of Kosovo.

⁵⁷ http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf, pg.4

Serious pollution continued from the dust in the form of PM10 and PM2.5⁵⁸. General assessment of air lacked since there was no continuous data from some monitoring stations.

Municipality of Prishtina in the period October-December 2016 faced enormous exceeding of the allowed air⁵⁹ values. Although during this period Prishtina tackled the alarm ceiling, (430 PM 2.5⁶⁰, a level which constitutes risk to the health of citizens, even in short exposure), competent bodies failed in undertaking effective necessary measures for the protection of citizens.

Citizens of the Municipality of Obiliq continue facing the restriction of the right for safe and healthy environment. Municipality of Obiliq differs from other countries with 90 exceeding of VML within the year, from serious pollution from the dust in the form of PM10 and PM2.5⁶¹. According to the assessment of emissions in Power Plant Kosova A and Kosova B for 2015, exceeding of dust emissions were recorded in mg/Nm³, exceeding of emissions of SO₂ in mg/Nm³⁶², and emissions of NO_x in mg/Nm³⁶³,

⁵⁸ Monitoring stations are differing in Obiliq with 90 days of exceeding of VML within the year, Gjilan with 75, Prishtina-NHIK with 74, Prishtina-Rilindja with 66, Drenas with 61 and Hani i Elezit with 45 days of exceeding, compared to 35 days allowed according to Administrative Instruction No. 2/2011, on quality of air norms the exceeding of parameters allowed was recorded. Main polluters continued to be KEK, industrial complexes Trepça, Ferronikel.

⁵⁹ KEK, old vehicles, lack of catalysts in vehicles, low quality of fuel, heating through coal, firewood and other alternatives combustion, negligence of competent bodies to connect neighbourhoods and premises in co-generation system, negligence of control in the construction of buildings according to principles of energy efficiency, construction without permits and those in contradiction with planned environment norms, no fencing around the building under construction, and pollute the areas around in absence of respecting construction rules, lack of greenery areas, unprofessional and irrational planning of road infrastructure, improper planning of road and access into them also by the cyclists and pedestrians which would directly decrease the use of motoric vehicles in urban part, as well as awareness raising of citizens through campaigns on the use of joint transport (car sharing), non-coordination of road infrastructure to the neighbourhood – buildings along the road in both directions, traffic jams, as a result of the assessment of impact into the environment from the construction without criteria in previous years and in the reporting year, opting by the citizens in using the own motoric transport in absence of organised urban transport, especially in absence of pavements, pedestrian paths, safe connections, underpasses and overpasses ranked the Municipality of Prishtina among the countries with highest pollution of air in the world.

⁶⁰ <http://telegrafi.com/alarmante-ndotja-e-ajrit-ne-prishtine-ne-nivelin-te-larte-te-rrezikshmerise-foto/>

⁶¹ <http://www.who.int/mediacentre/factsheets/fs313/en/> , PM affects more people than any other pollutant. The major components of PM are sulfate, nitrates, ammonia, sodium chloride, black carbon, mineral dust and water. It consists of a complex mixture of solid and liquid particles of organic and inorganic substances suspended in the air. The most health-damaging particles are those with a diameter of 10 microns or less, ($\leq PM_{10}$), which can penetrate and lodge deep inside the lungs. Chronic exposure to particles contributes to the risk of developing cardiovascular and respiratory diseases, as well as of lung cancer.

⁶² <http://www.who.int/mediacentre/factsheets/fs313/en/> , SO₂ can affect the respiratory system and the functions of the lungs, and causes irritation of the eyes. Inflammation of the respiratory tract causes coughing, mucus secretion, aggravation of asthma and chronic bronchitis and makes people more prone to infections of the respiratory tract. Hospital admissions for cardiac disease and mortality increase on days

during the entire year. Monitoring of the level of pollution, committed by KEK/operator, is done through inadequate methodology, and in contradiction with national and international⁶⁴ legislation requirements. Although there is constant exceeding of allowed values recorded in the Municipality of Obiliq, neither Ministry of Environment and Spatial Planning (MESP), neither Municipality nor the operator have informed the inhabitants on the alarming ceiling being affected.⁶⁵ They have also failed to inform inhabitants on the preventive measures as a minimum standard within their liabilities and responsibilities.

Although the allowed values identified during the reporting year were exceeded, no special or serious information campaign was organised by the ministry in question, central institutions, municipalities or authorised organisations⁶⁶, which would contain information on pollution, impact to health, and preventive measures. The document published by MESP dealing with the instruction of citizens to protection from air pollution⁶⁷ was not published through accessible public means, and was visible only on the MESP website. Concrete emergency measure from local authorities in cooperation with Ministry to normalise the situation of the quality of air was not undertaken.

Uncontrolled use of resources and damaging of river beds as a form of degradation of water resources has continued. The state's legal obligation for securing the development and stable utilisation of water resources, which are indispensable for the protection of public health, environment protection and socio-economic development⁶⁸ remained an unimplemented legal provision. No actions were taken for improving water infrastructure, building of plants for treating polluted waters and adaptation to climate changes in the water sector. Payments for exploitation and discharge of waters continued to be a challenge.

Capacity of river beds is exceeded by the uncontrolled digging, thus causing damage not only to the ecosystem of rivers but also causing floods. The most degraded rivers which continue to be utilised are Drini i Bardhë, Lumëbardhi i Pejës, Ereniku, Desivojci, Krivareka and Ibri.

with higher SO₂ levels. When SO₂ combines with water, it forms sulphuric acid; this is the main component of acid rain which is a cause of deforestation.

⁶³ <http://www.icopal-noxite.co.uk/nox-problem/nox-pollution.asp>, NOx mainly impacts on respiratory conditions causing inflammation of the airways at high levels. Long term exposure can decrease lung function, increase the risk of respiratory conditions and increases the response to allergens. NOx also contributes to the formation of fine particles (PM) and ground level ozone, both of which are associated with adverse health effects.

⁶⁴ Information received from MESP, on 21 November 2016.

⁶⁵ Information received from representatives of the Municipality of Obiliq, KEK management and MESP representative.

⁶⁶ Law No. 03/L-025 on Protection of Environment, Article 54.

⁶⁷ <http://mmph-rks.org/sq/Publikime/Udhezues-Mbrojtja-nga-ndotja-e-ajrit-1565>

⁶⁸ Law No. 04/L-147, on Kosovo Waters, Article 1.2.

Although it being a human right, 0.7% of population have no access to waterworks service.⁶⁹ Only 53% of population discharge sewage waters through the sewage connected to the public system, 16% discharge sewage waters through the sewage which is not managed by public companies, while 27 % of population use other forms of discharge (channels, septic holes, etc.), while 4% have no sewage system⁷⁰. Polluted waters are not treated. Those waters continue to be discharged directly into the rivers. The plant for treating urban waters in Llaushë of Skënderaj continues to be the only plant for polluted waters, which is functioning with obstacles.

The right of citizens to a safe and healthy environment, property right, and enjoyment of home continued to be violated by the air pollution, and degradation of land areas from the impact of human activities. No improvement of planning of the land utilisation was observed in accordance with concepts of sustainable development. The fragmentation of agricultural land, uncontrolled destination of land use from agricultural to construction land, although low, improper management of landfills, discharge of sewage waters from the landfills, untreated water from industries, illegal waste landfills⁷¹, digging interventions, in road opening and river exploitation, land erosion, land compression, pollution from economic and industrial activities (chemical pollution) remain problematic also during the reporting year.

While an issues in itself is land sliding and damages caused from land sliding from mine activities. Notable activities were taken by Ombudsperson, regarding the restriction of the rights, of the inhabitants around the area with Special Economic Interest “New Digging Field” due to the damages caused in their property from the activities in the mine and from land sliding.

Uncontrolled deforestation continued risking their stable management as well as land erosion.

Mismanagement of landfills and their impact on environment continued. Compaction, covering and flowing of sewage waters and penetration into private properties continued. The largest amount of waste was deposited in sanitary landfill in Mirash⁷², which is not being managed in accordance with laws and applicable regulation on management of landfills. Irregularities in management of landfill have attracted many stray dogs, rodents and birds as carriers of diseases in the chain of ecologic system⁷³ and that half of it is filled with water, and is stinking.

⁶⁹ [http://www.ammk-rks.net/repository/docs/Raporti_i_ujrave_i_2015_shqip_\(2\).pdf](http://www.ammk-rks.net/repository/docs/Raporti_i_ujrave_i_2015_shqip_(2).pdf), pg.38

⁷⁰ C. 418/2016

⁷¹ Hazardous waste landfill from Trepça in village Mazgit placed without any criteria in the agricultural land.

⁷² Annual report on the Kosovo environment situation, pg. 28,

⁷³ Information received to the response of MESP in the request of Ombudsperson, dated 3 October 2016

There are 1062 illegal landfills recorded⁷⁴. There was inert and construction waste observed also in urban environments. There is no appropriate infrastructure for keeping or treating hazardous waste. They are often mixed with household waste⁷⁵. Their processing, treatment and recycling still remain a fragile phase.

No improvement was noted in the promotion of high quality of life and sustainable systems for the development of settlements, in spatial planning, which would create preconditions for a balanced social and economic development, equal treatment, free movement and adequate access to public services for all citizens in the entire territory of Kosovo.

The right to private life and home enjoyment is still limited even due to the failure to meet minimum requirements foreseen by the Construction legislation, which deals with measures of life safety and public health of inhabitants, adequate lights and ventilation, access, access of persons with disabilities, energy saving including also those dealing with green areas, garages and parking lots, as well as associated areas of premises.

No improvement was recorded regarding the situation of pavements, they continued to have insufficient width compared to the number of citizens and often are followed-up with their norms far from those foreseen, with the lack of accessible elements, ramps which would create continuous connection between different levels of the pavement, with unobstructed public surfaces, and access to main roads of circulation. Pavements are followed-up with holes, damaged manholes, blocking of pavements with vehicles, from hotel services⁷⁶, with exposed goods, construction material without any protective measures or without any warning signs. All these have obstructed the free movement of citizens in general, and the movement of persons with disabilities in particular. Lack of road infrastructure was also an object of complaints filed during 2016 with OIK.

In addition, no improvement was in the infrastructure, which would guarantee the right to life, health and safety of children, next to schools and kindergartens. Lack of adequate fences, even the green fence as an auxiliary part of pedestrian paths/pavements next to kindergartens, playgrounds and schools as well as lack of underpasses and overpasses, in highways and regional roads remain a worrying issue requiring the undertaking of immediate measures and coordination among municipalities, Ministry of Infrastructure (MI) and Kosovo Police. Non-inclusion of citizens in decision-making contributes to such situation, which would include citizens' interests before the commencement of the construction of roads that would provide more effective and rational solution.

Municipality of Prishtina and MI failed and they showed no good will in finding a possibility to an effective solution for a safe crossing of pupils and students, of the school

⁷⁴Annual report on the Kosovo environment situation, pg. 31.

⁷⁵ http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf

⁷⁶ C. 753/2016

group and Faculty of Agriculture, in the road Prishtina- Fushë Kosova, next to “Adem Jashari”⁷⁷ barracks.

Violation of privacy and home enjoyment is being limited also by the failure of competent bodies to exercise their positive obligations through keeping under control of the pollution from noise. No protection from noise is installed in motorways. Despite attempts and initiative of MESP for drafting a new Law on Protection from Noise, it is still not adopted.

Information of the public regarding environmental information marked no step forward. Irrespective of the environmental situation, especially during October – December 2016, competent bodies did not manage to continuously inform the citizens regarding the environmental situation, which has been deteriorated especially during October-December 2016 period. Moreover, until October 2016, the public was never informed on the exceeding of the ceiling of alarm on poor quality of air⁷⁸. Information of the public according to the Kosovo Environmental Protection Agency (KEPA) is done through monthly, periodical and annual reports. ⁷⁹.

During the reporting year, OIK initiated investigations for 24 complaints regarding the right to safe and healthy environment.

On 12 October 2016, Ombudsperson published a Report with recommendations⁸⁰, regarding the undertaking of actions for freeing the road-area in order that competent municipal bodies secure free and unhindered movement of the inhabitants.

On 4 March 2016, Ombudsperson published a Report with recommendations⁸¹, through which he recommended the Municipality of Gjakova to undertake immediate measures for solving the problem of the sewage system for the inhabitants in the street “Durgut Vokshi” in Gjakova, in accordance with powers and legal authority and in cooperation with all other relevant authorities.

On 13 October 2016, Ombudsperson published the Opinion regarding the situation created in the areas of the special economic interest zone according to Decision no. 4/119, dated 3 November 2004 and Decision 02/57, dated 13 March 2009 of the Government of Kosovo and the proposal for undertaking effective measures for the resolution of the issue, through which he concluded that citizens of these areas were left pending and the state failed in meeting positive obligations foreseen by the Constitution and laws in relation to these citizens, to respect their rights: the right to safe and healthy environment, the right to life, right to privacy and right to enjoyment of property and

⁷⁷ C. 577/2015

⁷⁸ Information received from MESP representatives

⁷⁹ Information received to MESCP response in the request of Ombudsperson dated 3 October 2016, question no. 2 Have you undertaken warning measures that may constitute a risk to environment, health and human life?

⁸⁰ C.no. 29/2016, D. H. against Municipality of Vushtrri

⁸¹ C. no: 322/2015 S.P. against Municipality of Gjakova

recommended the Commission for Agriculture, Forestry, Environment and Spatial Planning in the Assembly of the Republic of Kosovo, to determine the final date when expropriation/displacement of inhabitants is to commence and the entire process of expropriation/displacement should be done based on priorities and applicable legislation.

On 14 October 2016, Ombudsperson published a Legal opinion regarding the case A. no. 322/2015, the purpose of which was the clarification of legal and expropriation procedures, regarding the actions that Municipality of Gjakova should take in solving the problem with living environment and access to the city's sewage system for the inhabitants in the street of "Durgut Vokshi" in Gjakova.

1.3.6. The rights of access to public documents

Although the right of access to public documents is guaranteed by the Constitution of the Republic of Kosovo, merged and made concrete in the Law on Access to Public Documents (LAPD), the respect of this right and the implementation of the law continues to be challenging either due to the law's uncertainties or due to negligence of the officials in handling requests for access to public documents, and also due to lack of the will of institutions for implementing the law.

Although Ombudsperson observed awareness-raising of the citizens on this right, it remains for relevant institutions to work on the path towards the promotion of this right, which would directly impact the improvement of transparency and accountability of state institutions and improvement of the trust of citizens on their work.

To date, we have not been able to establish a certain form of experts' coordination related to interpretation of Law on access to public documents. Such coordination would enable possible exchange of practices and experiences from the area of access to public documents, but also in the area of protection of personal data, as well as the classification of documents. Such coordination would enable acceleration of responses to requests, resolution of uncertainties, and equal treatment of similar requests in different institutions and above all, effective solution of cases making a balance among the rights.

Article 4, paragraph 1 of LAPD guarantees that *"Any applicant of document shall have the right of access to documents of the public institutions" but at the same time foresees conditions and responsibilities of applicants of documents, requesting that the applicant should comply with principles, conditions and restrictions established under the Law*". However, the legislator has not clarified clearly, although the reasons of restriction are foreseen in the law, which are principles and conditions to which the applicant of documents should comply with.

We observed the use of specific and unique forms determined by institutions themselves, which impact on the delay of the response from institutions⁸². Use of forms is in contradiction with LAPD, since this law clearly determined that *"Documents shall be*

⁸² C. no. 318/2016

made accessible to the public based on a direct request, either following a written application or in electronic form, with exception to information restricted by Law”.

As per promotion of the right of access to public documents still remains to be done, while no action has been taken in order to raise the awareness of citizens to the restrictions during the use of documents received by institutions. Although the law (Article 4, paragraph 4) determines that *“Public documents received from the applicant cannot be used for denigration, propagandistic and commercial purposes”*, sometimes information users exceed their boundaries of freedom of expression. To date, we encountered no response of public institutions approving the request for access, which refers to the above-mentioned provision. The referral to this Article in the responses of institutions would help raise the awareness of users on the right for access to public documents, which along with this right, in specific cases there are also restrictions.

One of the issues identified is also the legal gap, not clearly determining as of who is the competent officer to decide on the applications for access to public documents. Although Article 5, paragraph 3 of LAPD stipulates that *“Unit or officer for communication with citizens, after the receipt and the initial review of an application for access to official documents, shall evaluate which is the relevant unit within the public institution that should have the requested document. After the receipt of the document from the relevant unit within the public institution, this document, pursuant to the applicable law, shall be sent to the requesting applicant”*, between the stage of assessment by the officer as of which is the relevant unit within the public institution that should have the public document, and the stage of the receipt of the document by the unit, it does not determine who decides on the provision or the rejection of the application.

The legislative has created confusion since is it not providing additional clarification as of who may be considered “Third party” in the procedure of the realisation of the right for access to public documents in the implementation of Article 6, paragraph 4, according to which *“The applicant of a document shall have the right to remain anonymous against the third parties”*.

Although the law regulates the situation when the public institution does not possess, or does not supervise information and has knowledge about the relevant body, its sector or another institution, making a liability that the application is submitted to relevant body or its sector, which is possessing or supervising the information, Ombudsperson observed the lack of the will of officers within institution to follow-up the application to the body, or relevant sector, even when they are located under the same area.

Although responses of the institution on the receipt of applications are fast and within legal time, the time to decide on allowing or rejecting the application, despite the importance of giving timely information often exceeds the time foreseen by law.

Restriction foreseen by Article 12 of LAPD constitute a long list of a restriction, which leaves a relatively big possibility for interpretation of the restriction of the right, not based on law, and not necessarily for a democratic society.

Law, Article 12, paragraph 2, determines that: *“Access to information contained in a document may be refused if disclosure of the information undermines or may undermine any of the interests listed in paragraph 1 ..., unless there is an overriding public interest in disclosure”*. However, it is observed that responsible officers in public institutions are not willing to meet their constitutional obligation, to limit the right to expression only to the extent which is indispensable for an open and democratic society, in order to comply with the purpose for which the restriction is allowed, and to pay attention to the right limited, importance of the purpose of restriction, and the volume of restriction, the relation between restriction and purpose aimed to be achieved.

Despite the interest of citizens for information about the environment and in contradiction with principles of Laws on Environment, which have integrated the pillar of Aarhus Convention within the information on environment, according to LAPD, (Article 12, paragraph 1.10) they remain in the list of expectations. Restriction of information concerned should be done only partially and only to the extent indispensable, if the documents requested contain information which fall within one or within more of these categories: systems, installations, infrastructure, projects or protection services related to security interests of the Republic of Kosovo.

Ombudsperson has never encountered any documents or decisions, through which the public institution which has rejected the access to documents either in full or in part, has provided a well-founded reason for rejection. Although they were mentioned, the reasons set forth by Article 12, no legal convincing justification for restriction of the right was given.

An impact on the failure to respect deadlines for a timely response to the applications of citizens for access to public documents, according to the Ombudsperson, is also lack of untimely classification of documents. As a constitutional right, the right for access to public documents is however not an absolute right. It should be protected in proportion and should be balanced with other rights, without prejudicing other interests. During the investigation and review of cases, regarding the restriction of the right for access to public documents, Ombudsperson observed that state institutions which are keeping, drafting or receiving information, in the majority of cases have not classified documents on time, or have not classified them at all as is foreseen by Law no. 03/L-178 on Classification of Information and Security Clearances and Law no. 03/L-172 on Protection of Personal Data. Ombudsperson called on to the public authorities that classification of documents should be done before the drafting of the act, which would facilitate the process of the provision of access or rejection to the application for access.

Despite these problems, the attempts for amending and supplementing LAPD to surpass the challenges to date have failed, as only a concept paper was drafted. During 2016, the draft law for amending and supplementing the Law on Classification of Information and Security Clearances was not adopted, while the failure to select state supervisors of the National Agency for Personal Data Protection (NAPDP) constitutes a difficulty into the work of this institution, especially in the issuance of decisions and opinions regarding the issues from their scope.

During 2016, OIK investigated 24 complaints regarding the restriction of the right for access to public documents.

On 14 March 2016, Ombudsperson published the Report with recommendations, A.no.348/2015, A. G. against Municipality of Fushë Kosova, regarding the following restriction for access to public documents: *“The list of all registered businesses in the Fushë Kosova Municipality”*, in *“List of properties on use and ownership of Fushë Kosova Municipality”* in *“The copy of documents regarding bid awarding to the designated company for placement and maintenance of public solar-powered lighting in the area of Fushë Kosova Municipality for 2012, 2013 and 2014”*, in *“The copy of documents regarding bid awarding to the designated company for opening of drinking water wells in the area of Fushë Kosova in 2015”*.

After investigation and analysis of the case, Ombudsperson concluded that the failure of the Municipality of Fushë Kosova to respond to the request of A. G. and incomplete response to the request were in contradictions with provision of Law no. 03/L-215 on Access to Public Documents has recommended the Municipality of Fushë Kosova “to enable A. G. access to requested documents except information limited by law, due to the privacy, business trade secrets or classified security information and Municipality should undertake steps to strengthen public officials’ capacities regarding implementation of the Law on Access to Public Documents as well as the Law on Ombudsperson”.

On 3 October 2016, Ombudsperson published a Report with recommendations, A.no.702/2015, Zh. D. against Municipality of Klllokot, regarding the restriction of the right for access to the *“List of all employees in the Municipality”*, recommending Municipality of Klllokot to review the request of Zh. D. for access to public documents in conformity with Law on Access to Public Documents and Municipality should undertake actions in capacity building of public officials regarding the implementation of Law on Access to Public Documents, and Law on Ombudsperson.

1.4. Rights of the child

1.4.1. Legal framework and the rights of the child

During this reporting period, legal framework of the rights of the child was not supplemented by Law on Protection of Children. Although Draft law on Protection of Children has been drafted since 2013, it will remain again part of the legislative government programme for 2017. On 15 November 2016, KOMF, UNICEF, European Union Office in Kosovo and OIK submitted suggestions/recommendations to Parliamentary Commission on Human Rights, Gender Equality, Missing Persons and Petitions regarding this Draft law. The purpose of submission of recommendations was the supplementation of the draft law in order for it to become more comprehensive, practical and easier implementable by public institutions and other persons, in order to create powerful mechanisms for the protection of children and to increase the accountability of relevant institutions, suggesting also the inclusion of punitive measures for failing to implement this law. The Assembly of Kosovo should undertake necessary actions for reviewing the draft law without further delays, including also recommendations put forward by institutions and NGOs operating in the area of protection of children. In addition, the process of drafting and adoption of the Strategy and Action Plan on the rights of the child 2017-2021 should continue.

In this respect, Ombudsperson in this Annual Report points out that adoption of the law in question and other relevant documents would facilitate and supplement legal framework for protection and promotion of the rights of the child in Kosovo. However, in addition to drafting and adopting laws, including also the Law on Protection of Children it is also more than necessary for laws to be implemented adequately and in full. This obligation remains a challenge for Kosovo Institutions. They should coordinate and step up attempts and actions towards their adequate implementation, namely to ensure relevant respect, protection and implementation of the rights of the child.

1.4.2. Complaints filed concerning the rights of the child

The OIK, during this reporting year, received 73 complaints, mainly filed by parents of children. Out of this number, 53 were accepted for investigation, while the others were declared inadmissible, since the matters they dealt with were outside the jurisdiction of the OIK, there was no violation of human rights, or the complainants were able to use or were using legal remedies.

1.4.3. The right of children to education

Cases which were received by OIK including those initiated ex-officio, and which refer to the right to education for which OIK initiated investigations have dealt with lack of elementary conditions for learning in some schools, difficulties and obstacles for inclusion of children with disabilities in education, school year not commencing on time

in the Correctional Centre in Lipjan and failure of issuance of relevant children's documentation, necessary for continuing learning, after they are released from this centre, school dropout and use of violence against children. Six out of 14 complaints in total related to the right to education were selected according to the complainants' request while others are being investigated.

Out of the complaints investigated in the area of education, one refers to the issue of providing transportation for attending school for the children of one neighbourhood, in one village of Ferizaj, whose parent due to remoteness and insecure road, and the potential of the presence of wolves and bears, asked assistance from OIK, to mediate in order that municipal authorities offer him transportation⁸³. Municipal authorities declared that they provided public transportation to the children of the school of the village, but not to the children of the complainant, since such a thing would be costly to Municipality, due to the remoteness of the neighbourhood. They had provided the possibility to the parent to cover fuel expenses, but, according to them, the parent had rejected this option. OIK will continue to mediate to find a better possibility to provide safe transportation to the children in question, namely to enable them to enjoy the right of education without discrimination.

Provision of transportation remains problematic this year too also for the children with disabilities. This year, OIK mediated with the relevant municipal authorities of Gjakova, to seek the possibility to execute the payment of expenditures for transportation in the case in question for one student with disabilities, who will be forced to leave classes in the relevant school in Prizren, if municipal authorities do not undertake appropriate actions in accordance with the applicable legislation.

1.4.4. Children with disabilities

The situation of children with disabilities in Kosovo remains difficult. Difficulties in the provision of support in transportation are not the only barriers they are facing. From the complaints investigated during this year⁸⁴, and information obtained from representatives of institutions and NGOs⁸⁵, it appears the situation of boys and girls with disabilities has marked no visible progress. They are still facing numerous difficulties and barriers in all areas of life. In the area of education, namely at school, they are also facing inadequate school infrastructure, lack of personal assistants, lack of supportive teachers and often lack of individual education plans, which is denying them full enjoyment of the right to a quality, comprehensive education, as is set out by Law.

In the area of health, they are encountering difficulties in relation to the realisation of the right to quality and free health services, since they are not always able to provide free

⁸³OIK, cases: C.no.792/2016 and C.no.818/2016

⁸⁴OIK, cases: C.no .817/2016, C.nr.393/2016, C.no. 295/2016, C.nr.818/2016

⁸⁵ Information provided by representatives of state and non-state institutions, at the seminar organised by the Association of the Blind of Kosovo on "How to improve legislation regarding children with disabilities in Kosovo?" on 12 December 2016, among others.

medicines and other equipment that would enable the improvement of health, free movement and a life of dignity.

The inclusion and the provision of social services in the community, for children with disabilities is also scarce. Daily care centres for children with disabilities are functioning in Ferizaj, Gjilan, Peja and Prizren. Activities of these centres in the provision of social and family services for children with disabilities are managed by NGO “PEMA”, an organisation which is licenced by state bodies, in accordance with Law on Social and Family Services. At the end of 2016, OIK representatives in accordance with Law on Ombudsperson visited these centres. During the meetings, they were informed that due to financial difficulties, these centres risk to close. If this occurs, the situation of children with disabilities attending these centres may aggravate and worsen, with the fact that they would not be able to receive necessary support and the specialised care. Ombudsperson, *inter alia*, points out that the indispensability of undertaking actions, including the material support, namely allocating the adequate budget to improve the situation of the children with disabilities, so that they can enjoy their rights in full.

1.4.5. Violence and the security situation in schools

In respect of violence against children, OIK during this reporting period conducted investigations for four cases, three of which were initiated *ex officio*⁸⁶. In both of these cases, after the completion of investigations, it resulted that school authorities, considering the circumstances of cases have undertaken necessary actions. In the first case, the child who refused to go to school, claiming that he was beaten by the teacher, teacher was changed, while judicial proceedings against the suspected teacher are being conducted before justice bodies. In the second case, the issue of violence between fellow children was addressed by school authorities in accordance with applicable legislation. In another case, regarding the claims on the use of violence by the primary school teacher, OIK requested from school authorities to address the issue, on which case school authorities, after the review and assessment of the case, served disciplinary measures on the teacher. Use of violence against children, as well as the increase of these cases, when violence is also exercised by educators and teachers, entitled to implement pedagogic norms and careful behaviour with the children, made Ombudsperson treat the impact of violence on the health and social life of children and he addressed to responsible institutions through a form of an opinion, in order to draw the attention regarding the negative impact of violence against children, as well as the importance of its prevention, by identifying, referring and treating it on time⁸⁷.

1.4.6. Right to health

The health sector is one of the sectors the least financed in the Republic of Kosovo, which results not only in the non-provision of qualitative services but also on the deferral

⁸⁶ OIK, cases: C.no.384/2016, C.no. 668/2016, C.no.571/2016, C.no.162/2016

⁸⁷ OIK, case C.no.668/2016

of the implementation of institutional and legal reforms. In terms of the right to health, OIK received four complaints, out of which two were positively resolved, while investigations are being conducted for the two others.

One of the complaints investigated *ex-officio* in the area of health deals with the issue of the blind of a number of children born premature in the Neonatology Clinic, due to the failure to respect medical protocols upon their treatment⁸⁸, based on an article of the daily newspaper “Zëri”. Considering the seriousness and the importance of this issue, namely information supporting the reasonable suspicion that the blinding of children could have been as a result of the inaction of competent health institutions, Ombudsperson requested from relevant authorities to undertake immediate actions to investigate this issue. Now there are investigations being conducted in the relevant public prosecution office regarding this issue.

Ombudsperson considering the information obtained from another newspaper in question, initiated *ex officio* investigations regarding the issue of the lack of medicines from the essential list of medicines in University Clinical and Hospital Service in Kosovo, namely Paediatric Clinic, Intensive Paediatric and Haematology Ward.⁸⁹ Information on lack of medicines from the essential list in medical institutions, and in particular, lack of necessary medicines for medical treatment of children were quite worrying for the Ombudsperson, therefore, he addressed several times to Ministry of Health asking to be informed on the situation and actions undertaken, or those planned to be undertaken that the issue of lack of essential medicines and their timely supply to medical institutions should be addressed adequately and sustainably. Unfortunately, OIK has still not received a response from the ministry in question. OIK mediated also in one other case dealing with the failure of health authorities to the request filed by a citizen for financial assistance for medical treatment abroad⁹⁰, while it is investigating one case, concerning the claims that health employees demonstrated offensive behaviour and unprofessional treatment⁹¹.

Lack of medicines from the essential list of medicines, delays in supply, and consequently failure to provide adequate health services in medical institutions, violates the rights for qualitative health services to children guaranteed by the applicable legislation in Kosovo, namely it risks them their welfare, health and sometimes life. In relation to the health right, right to life and security, given the information obtained regarding some cases of death of children in circumstances that can be attribute also to the failure to undertake adequate actions by state authorities, OIK in cooperation with KOMF, in September of this year, started investigation regarding the loss of the life of children in Kosovo, in order to establish reasons and factors that caused them. After the

⁸⁸ OIK, case C.no 92/2016

⁸⁹ OIK, case C.no 386/2016

⁹⁰ OIK, case C.no 373/2016

⁹¹ OIK, case C.no.515/2016

completion of investigations, OIK and KOMF will submit recommendations to relevant authorities in order that they can undertake relevant actions also in drafting adequate policies for their prevention.

Government of Kosovo, *inter alia*, though responsible mechanisms for health public institutions should conduct supply with medicines from the essential list and other sanitary material during all times, it should enhance control in health institutions of all levels, in order that health employees can provide qualitative health services and make them unable to misuse their working positions to the prejudice of patients.

1.4.7. Rights of the child in procedures before administrative and judicial organs

The OIK during this reporting period received a number of complaints against courts dealing with lengthy judicial procedures, relating to trusting children in guardianship and education as well as regarding the failure to realise personal contacts of children with the parent.⁹² In relation to non-realisation of contacts or the inability to realise regular contacts with children as well as regarding the adoption procedures, OIK also received complaints against centres for social work.⁹³ In both situations, OIK approached relevant institutions asking them to undertake necessary actions in order for children to be able to realise their rights, guaranteed also by the Convention on the Rights of the Child. Courts, namely centres for social work, should undertake all actions necessary so that cases of children or cases affecting the rights of the child be settled without delay, within the legal time set, in order not to damage or risk the health of children, their welfare or their life. They should also undertake all actions necessary so that the best interest of children is primary during their work, including here the respect of the right of the child to be heard. In the context of the right to be heard, Save the Children in cooperation with OIK, this year, conducted the research “Zëri ynë (our voice)”.⁹⁴ The research presents how 1588 Kosovo children perceive their situations and think regarding the respect and compliance with their rights. Save the Children, in cooperation with Ombudsperson Institution recommended the Assembly of the Republic of Kosovo, Government, municipalities and schools to create procedures and structures ensuring that the opinions of the children are heard and are taken into account during decision-making about the issue of children.

1.5. Freedom of religion in Kosovo

During 2016, Ombudsperson Institution followed the situation regarding religious communities, namely freedoms of religion in Kosovo.

One of the biggest problems indicated by all religious communities during last years is still the unregulated legal status of religious communities due to the failure to adopt the

⁹² OIK cases C.no 167/2016, C.no.139/2016

⁹³ OIK cases C.no.574/2016, C.no. 505/2016, C.no.531/2016, C.no. 840/2016

⁹⁴ See the report at:

https://kosovo.savethechildren.net/sites/kosovo.savethechildren.net/files/library/Young%20Voices%20Report_eng.pdf

Law on amending and supplementing of the Law on Freedom of Religion in Kosovo, which during 2016 was not resolved either. The Assembly has still not adopted the law in question, although Ombudsperson drew the attention on the indispensability of adoption of the same in his annual reports during four last years.⁹⁵

The return of the immovable property of religious communities has not been reviewed either, which in different forms has been alienated in the last decades, irrespective of the fact that now it has become an object of the privatisation process, to which the multiyear issue of the adoption of the law on return of properties relates, and for which there was no official discussion during 2016.

Like in the previous years, cooperation between religious communities was on a good level. During 2016, many meetings were held with the participation of representatives of all religious communities, who have sent messages of peace and cooperation, which should be an example for believers of all religious communities.⁹⁶

Islamic religious community, like in the previous years, stressed that the lack of legal regulation is a big obstacle and problem, which would considerably facilitate functioning, property issues, financing, donations and so forth. Decision of Municipality of Gračanica should be mentioned as a positive example of tolerance, which has allotted the Islamic Community the location to build a Mosque in this Municipality, the construction of which should start as of 2017.

One of the problems that OIK indicated in previous years faced by Islamic Religious Community is the issue of attendance of students wearing religious scarf (hijab); this issue is currently solved, depending on how tolerant directors of schools or directors of Municipality Education Departments are, as there is currently no single legal solution. To solve this issue, OIK indicated in previous years, not only for the need to achieve a legal solution as the only path for overcoming numerous discussions which time after time have negative connotation to the prejudice of exercising religious rules. In this regard, we remind that OIK in its report for 2015⁹⁷ showed that adoption of a legal solution is the manner to overcome numerous debates, which to date have not caused a practical solution to enable these students to attend schools freely, respecting their religious and customs beliefs. In respect of wearing hijab at school, OIK during 2016 received a complaint, which is under procedure.⁹⁸

Serbian Orthodox Church (SOC) during 2016 faced the same problems as in previous years, the lack of legal provisions and the problem of damage of religious premises, although during 2016, with exception of individual incidents of a lower importance, problems like these were in fewer.

⁹⁵ OIK, Annual report for 2015, pg. 63

⁹⁶ *Office of the President of the Republic of Kosovo* 31 May 2016, <http://www.president-ksgov.net/?page=2,6,4487#.WGJ3sDhtWM8>, accessed on 20 December 2016.

⁹⁷ OIK, Annual report for 2015, pg. 64

⁹⁸ C. No.64/2016-

A special problem that SOC expressed is the issue of the use of Christ the Saviour Temple in Prishtina, which the same as the previous year was a topic of debate because of the period and the place it was built on. During September 2016, Christ the Saviour Temple was put on fire and after this the Clerics together with the believers of SOC cleaned and regulated the Temple on self-initiative.⁹⁹ Also during the marking of the Saint Nikola festivity, on 19 January 2016, a group of armed persons was arrested in front of the gate of the Deçan Monastery, who thanks to the timely reaction of the Kosovo Police and KFOR, they were hindered to commit what they intended, to cause damages to the Monastery,¹⁰⁰ while on 28 February, the Church of Blessed Lady in the Village Pejçiq near Prizren was broken into and different Church items were taken from.

In addition to these cases, in the majority of Temples restored, believers were enabled visits without big incidents, while the saint liturgy was served during this year in the Church in Ferizaj, in the presence of a big number of believers.¹⁰¹

Adoption of Law on Regulation of Legal Positions of Religious Communities also for Kosovo Diocese is one of the most important issues solved during 2016. During 2016, representatives of Catholic Church participated actively in the development of interethnic cooperation in Kosovo.

Lack of legislation for regulating the legal position of religious communities was one of the most important ones also for the Protestant Church in Kosovo, as well as the resolution of the issue of determining land for cemeteries, and for building Protestant Church, which was supported by Municipality of Prishtina, which responded positively to these requests.¹⁰² Moreover, during the announcement on allotting land for the construction of the Protestant Church in Kosovo by Municipality of Prishtina, it was also announced the allotment of land for the construction of Synagogue, because the Jewish Community is the only religious community which presently has no Temple, where believers could exercise their religious rituals.

1.6. Gender Equality

Gender equality means the basic principles of a society which aims at development of democracy and protection of equal rights for men and women. Gender equality also offers equal opportunities for all men and women, as people of different gender identities

⁹⁹ Ministry for Communities and Returns, 10 September 2016, <http://mzp-rks.org/sr-l/aktuelno/vesti/item/267-jevti%C4%87-osu%C4%91uje-jo%C5%A1-jedno-skrnavljenje-hrama-hrista-spasa-u-pri%C5%A1tini.html>, accessed on 20 December 2016.

¹⁰⁰ Koha ditore 31 January 016, <http://koha.net/?id=3&l=96207>, accessed on 20 December 2016.

¹⁰¹ Ministry for Communities and Returns 11 September 2016, <http://mzp-rks.org/sr-l/aktuelno/vesti/item/268-vi%C5%A1e-od-200-raseljenih-srba-posetilo-uro%C5%A1evac.html> accessed on 20 December 2016.

¹⁰² Koha net, 3 March 2016, <https://koha.net/?id=8&l=101435>, accessed on 20 December 2016

in society, which contributes to economic, social, cultural and political progress, by ensuring equal opportunities in all areas of a democratic society.¹⁰³

Gender-based discrimination includes differentiation in treatment, including less favourable treatment against women, “due to pregnancy and motherhood, marital status, nationality, race, disability, sexual orientation, social status, religious belief or religion, age or some other reason set forth by Law or by applicable international agreements and instruments”.¹⁰⁴ Every democratic society, as the basis in the combat against gender discrimination, means the existence of Law on Gender Equality. In 2015, in the Republic of Kosovo, after a process of amendments and supplements made in the old Law on Gender Equality, a new Law on Gender Equality¹⁰⁵ was adopted. The adoption of sublegal acts for the implementation of this Law is regulated under Article 24 of Law on Gender Equality, based on Government decisions, and on the proposal of the Agency of Gender Equality.

On 16 September 2016, according to the Government decision, Regulation no. 12/2016 on duties and responsibilities of relevant officials for gender equality at central and local level was adopted. In addition, the sublegal act was adopted, which regulates the issue of property of women in Kosovo for specific measures for registration of joint immovable properties on behalf of both spouses¹⁰⁶, which entered into force on 4 March 2016. The purpose of this guidance is to ensure an increase of access of women to property rights and registration of the property.

During 2016, Agency on Gender Equality, within the Office of the Prime Minister, commenced the assessment process of implementation of Law on Gender Equality. This assessment will include, *inter alia*, the following issues: special measures, quotas, statistics broken down based on gender and gender budgeting. The working group will continue to work after a certain legal deadline also in 2017.

Although legal framework regulating the issue of gender discrimination in Kosovo, which aims at improving the status of women and elimination of gender inequality in society, improved during 2016, there is still a gap between the normative basis in this area and the implementation of the same into practice. A lot of facts indicate that women are at a less favourable position than men in the area of employment, career promotion, and in particular this goes for women with disabilities, aged women, Roma community women, pregnant women and mothers of minor children.

1.6.1. Right to employment

The multi-year experience repeated many times during previous year, which indicates that a big number of women are complaining on the problem relating to the right to

¹⁰³ European Charter on Gender Equality

¹⁰⁴ Article 4, paragraph 1 of Law on Gender Equality no. 05/L-020

¹⁰⁵ Law on Gender Equality no.05 / L-020

¹⁰⁶ Government of Kosovo – Administrative Instruction no.3/2016

employment, economic and social issues and parental care, as well as in relation to their rights during pregnancy and maternity leave, and domestic violence. Also the fact should be stressed that Kosovo citizens hardly recognise violation of gender-based rights, neither do they recognise discrimination when it is committed by one of the administrative bodies. In addition, many of the problems that women are often mentioning in their complaints are not always interpreted as gender-based discrimination, marriage or family life, or manifold discrimination against women, but are interpreted as a violation of employment rights or social and health rights, since society problems in general are not viewed from the gender perspective.

Although the number of women employed is increasing, the majority of these women have the main responsibility for their families and family life. The number of mothers working throughout Kosovo has increased. Irrespective of this employment tendency, the increase of distribution of responsibilities and liabilities within the family between men and women is still low. The continuous responsibility of women to work and take care of other family members and lack of social services, which should facilitate such situation are caused in many cases by the inequality at the labour market. The equal treatment of men and women at labour market depends on the provision of sufficient number of institutions, and services relating to children care and aged people of the family, which depend on women.

The quota for representation of women was set forth in the Law on Gender Equality, which would in all areas cover 50% of female population, which is to eliminate the existing inequality between men and women. Representation quota, as an affirmative measure, will allow for creating of a culture of women participation at work, which should be maintained in a time period, until it is substituted by real competition.

In this reporting period, Ombudsperson received a number of complaints from women relating to the right to employment, which specifically refers to failure to respect employment contract¹⁰⁷, dismissal from work¹⁰⁸, abuse at work place¹⁰⁹, as well as non-payment of salaries.¹¹⁰ OIK received a complaint regarding double discrimination, which was filed by a woman with disabilities, who was rejected in every competition, which was announced for work position.¹¹¹

Ombudsperson, *inter alia*, received a complaint regarding the right to employment during pregnancy period and after giving birth¹¹². In respect to this case, one should mention that the same complaint is pending before the competent court¹¹³.

¹⁰⁷ C. No.116/2016

¹⁰⁸ C. No.946/2016

¹⁰⁹ C. No.786/2016

¹¹⁰ C. No.612/2016

¹¹¹ C. No.785/2016

¹¹² C. No.366/2016 and C. No.521/2016,

¹¹³ C. No.521/2016,

1.6.2. The right to property and inheritance

The right to property is absolutely a right guaranteed by Constitution of the Republic of Kosovo, as the highest domestic legal act. In addition, the right to property is also regulated by other positive laws, such as Law on Gender Equality, Family Law, Law on Inheritance, Law on Property and Law on Protection from Discrimination.

Law on Inheritance in Kosovo¹¹⁴, Article 3 determines that all children of decedent under the same conditions are the same at inheritance, which means that women and men are guaranteed equal rights regarding the property inheritance. However, due to tradition and patriarchalism in our society, in the majority of cases property is inherited by men, and this situation is mainly expressed in rural areas, unfortunately this practise is also present in urban areas. In majority of cases, only men represent the subject of the right to inheritance, while women through announcement, especially if they are children to decedents, waive their inheritance in favour of male children, and such a situation exists in all communities in Kosovo without exception. In cases when women receive their share of inheritance, there were cases when they were exposed to intimidation and blackmails from their spouses or other men within their immediate close family.

During 2016, the issue of property of women in Kosovo was subject to special attention from the Government, but also from local NGOs and international organisations. In the beginning of 2016, Government of Kosovo took a positive step, when it adopted the administrative instruction on special measures for registration of joint immovable property on behalf of both spouses,¹¹⁵ according to Agency on Gender Equality, regarding the adoption of affirmative measures to urge spouses to register their joint property in the public register.

The said Instruction was adopted according to Article 93 (4) of Constitution of the Republic of Kosovo and in accordance with Article 6, paragraphs 1 and 6 of Law on Gender Equality. The purpose of Instruction is to directly impact on the behaviour of spouses regarding the property earned during marriage, which cannot be alienated without the consent of both spouses. Similarly, the purpose of this instruction is to increase access of women to property, as well as registration of property on their behalf, but also to accelerate the achievement of equality, as a fact between men and women in the viewpoint of property rights.

One year after the entry into force of Law on Gender Equality, this was the first affirmative measure adopted by Government of Kosovo, the purpose of which was promotion of gender equality in the viewpoint of property rights. Notwithstanding what was said above, when it is about complaints filed by women with OIK regarding the

¹¹⁴ Law on Inheritance in Kosovo no. 2004/26,

¹¹⁵ Administrative Instruction No. 03/2016 on Special Measures for Registration of Joint Immovable Property on behalf of Both Spouses, adopted on 18.02.2016, under the Decision of the Government of the Republic of Kosovo no. 07/75.

issues which deal with inheritance, this number is not so big, and this does not mean that such a situation is also in practice.

One of the cases in which OIK is currently working deals with the issue of the right to inheritance and gender equality.¹¹⁶ In this case, the request for monitoring of judicial proceedings was submitted during 2016. The complainant though her complaint alleged that she was hindered from her uncle to enter the house property, which was built by her father in the joint family courtyard, and which she had inherited after the death of her father. The process is completed before the Municipal Court in Prishtina, in the first instance, while the decision was taken in favour of the complainant. However, the case is now in the procedure before Court of Appeal of second instance, based on the complaint filed by the other party.

1.6.3. Right to health protection

One of positive obligations of the state is also the undertaking of measures to protect the right to health and elimination of discrimination of citizens in this area. Considering that 50% of overall population are women, the failure to implement Law on Health Insurance is reflected also to the other half. Law on Health Insurance was created in 2004, and adopted in 2007, but has not been implemented so far. Even after frequent promises by the Government, as of January 2017, Health Insurance Fund will be functional and will start collecting funds for the same, it has not occurred yet. Ombudsperson has continuously stressed the need for solving this issue, as well as implementation of Law; unfortunately this recommendation of the Ombudsperson was not implemented to date. The consequent implementation of this law would considerably ensure better financing of health system, and improvement of quality of health services. Irrespective of all explanations and justifications made by the Government due to failure of this Law to function, the failure to implement the same represents one of most serious violations of human rights in Kosovo.

1.6.4. Domestic violence

Domestic violence continues to be a serious problem in Kosovo society, the roots of which should be sought far into the past and in the reforms defined in the behaviour against women, which may be physical, psychological, economical, etc. UN Declaration on Elimination of Violence against Women, which supplements CEDAW, gives a definition of violence against women, as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

¹¹⁶ C. No.316/2011

When it is about domestic violence, only a small number of cases are reported to competent authorities and cases are processed further, while in the meantime, unfortunately, the number of unreported cases is higher. Such situations are particularly present in rural areas, where the social position of women is subject to the position of men and when society is not sufficiently aware about the concept of gender equality. In the majority of cases, the most frequent victims of domestic violence are women, children and aged people.

One of the most common forms of violence against women is violence committed by their spouses. However, the problem in reporting such cases and their institutional resolution depends also on victims of violence that are giving up from further processing, like due to the failure to report violence. All said is a consequence of the fact that victims of violence are usually dependent emotionally and economically on their abusers, and are afraid to start the entire process and go through with it to the end. In the majority of cases, domestic violence within the society itself is treated as an internal family issue, which should not be spoken outside home, and in some cases it happens that reporting causes negative consequences to the victim of violence itself and even in the form that causes revenge by the abuser, it occurs for a woman to become a subject of moral judgement in the surroundings where she lives. It is also very important, how and in what form authorities respond to domestic violence. Therefore, any inaction or a failure of relevant authorities to act, when it is about the protection of victims of violence, is unjustified.

Form the data available with OIK, obtained from Kosovo Police which deal with cases of domestic violence in Kosovo during 2016, it is as follows: there were 322 cases reported in Prishtina, in Gjilan 142, in Ferizaj 142, in Peja 191, in Gjakova 101, in Prizren 186, in Mitrovica South 82 and in Mitrovica North 61 cases of domestic violence. In these cases, the state authorities should guarantee economic, social, health and psychological protection for victims of domestic violence. It is true that there is a solid legal basis in Kosovo for protection from domestic violence, but this is not sufficient in itself, if laws are not implemented constantly in practice.

Ombudsperson in his previous annual reports has regularly recommended including within the Constitution of the Republic of Kosovo and Convention of the Council of Europe (Istanbul Convention) combating violence against women and domestic violence, adopted in August 2014. This recommendation was made within the Enlargement Strategy of European Commission.

In mid-2016, OIK organised a roundtable on “Coordination of institutions and protection of domestic violence”, with the financial support of the Council of Europe, within the project “Support to implementation of European Human Rights Standards and the reform of Ombudsperson Institution in Kosovo”. In the event in question, within the recommendations made by Ombudsperson it is stressed that close cooperation between state institutions, civil society and society in general is necessary, to prevent violence

against women, and to achieve a stance and common opinion that violence against women is unacceptable and intolerable.

In addition, recommendations mentioned that Kosovo institutions offering assistance for victims of domestic violence should implement consistently all recommendations deriving from the Ombudsperson's report; to implement professional specialisation of judges of Basic Court on the issue of domestic violence; to strengthen coordination of institutions dealing with domestic violence; OIK should play an active role in the Strategy to combat domestic violence; to harmonise Law on Protection from Domestic Violence with other laws due to inconsistencies in some provisions; to submit statistical data on the reported cases of domestic violence to institutions dealing with this issue (e.g. police, prosecution, courts etc.); and the implementation of the Convention of the Council of Europe in combating violence against women and domestic violence, Istanbul Convention.

1.6.5. Rights of LGBT persons

The issue of the protection of rights of LGBT persons is also a topic of the report in front of you. Primarily, Constitution of the Republic of Kosovo in Article 24 guarantees equality before the law to all citizens without exception or discrimination.

Further, Article 22 of Constitution of the Republic of Kosovo guarantees direct applicability of international agreements and instruments and the same shall have priority in cases of conflict, over provisions of laws and other acts of public institutions, of which it is worth mentioning Universal Declaration of Human Rights and European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; which in Article 14 and in protocol 12 guarantees protection from discrimination.

In addition, Law on Protection from Discrimination¹¹⁷ is one of basic laws protecting citizens from discrimination and in Article 1 includes gender identity, compared to other basis of discrimination, such as sex and sexual orientation. Therefore, the inclusion of gender identity as one of the causes that people may be treated differently, under this law guarantees equal treatment.

The inclusion of sexual orientation and gender identity in the Law on Protection from Discrimination is the key and this means that the term LGBT, which is an abbreviation for lesbian, gay, bisexual, and transsexual persons remains an overcome term, as according to the Law on Protection from Discrimination, the most accurate term accepted for this community should be SOGI which means *sexual orientation and gender identity*.

Law on Protection from Discrimination in Article 12 determines Ombudsperson as a competent body to resolve complaints against discrimination. According to Article 9, Ombudsperson is a state institution for equality, for promotion and protection of human rights and cases related to discrimination. In accordance with the above-mentioned,

¹¹⁷ Law on Protection from Discrimination 05/L-021

Ombudsperson published a number of public assessments on issues of LGBT persons, and this issue was reported in the previous OIK annual reports. Ombudsperson within its department for non-discrimination has a special unit dealing with individual complaints and with *ex officio* investigations, and a number of complaints were received from LGBT persons during this reporting period.

Ombudsperson has good cooperation with civil society, which deal with the protection of the rights of LGBT persons and in many cases obtains information regarding the problems they are facing with.

Although there is a legal framework serving to protect the rights of LGBT persons in Kosovo, based on complaints submitted to OIK, and based on the meeting with members of this community and Non-Governmental Organisations (NGOs) dealing with LGBT problems, conclusion is reached that their rights are still not respected, starting from their families, and all the way to the society in whole. According to the information available with Ombudsperson, problems usually LGBT persons are facing in Kosovo come from the perception of the society, which is not sufficiently prepared to accept their difference. Abuses with these persons are very frequent within the family, in addition to this, abuse is also observed in education. There are a number of cases, when teachers in school harass and discriminate people based on their sexual orientation and in accordance with this, Ombudsperson thinks that it is indispensable for the Government of Kosovo to undertake concrete steps in order to include information regarding the rights of LGBT persons within the education system.

In the previous period, Ombudsperson received a complaint¹¹⁸ regarding the physical abuse of two LGBT persons; the second case was initiated *ex officio*¹¹⁹ regarding the article in the portal of Gazeta Express “*Two gays attacked in Ferizaj*”. After the investigation of these cases, and in accordance with its mandate, Ombudsperson is at the final stage of presenting its findings to Basic Court in Prishtina, as Amicus Curiae, which refers to the procedure in cases of homophobia.

Further, Ombudsperson considers that the assessment of crimes committed out of hatred is very important as well. Criminal offences motivated from trends and prejudices against certain groups of people who meet the following criteria: that the act committed is a criminal offence, and the motive of commission was existence of prejudice, it is suspected that it constitutes a criminal offence committed out of hatred. Language of hatred and crimes committed out of hatred, violate the principle of equality and non-discrimination, which are essential elements in a democratic society.

Ombudsperson considers that Government should take into consideration that protection against crimes of hatred is guaranteed under special laws, in order that cases of crimes committed as a result of hatred be investigated and punished in accordance with law.

¹¹⁸ C. 415/2016

¹¹⁹ Ex officio 379/2016

It is also worth mentioning that Ombudsperson participates as a monitor in the meetings of the Advisory and Coordination Group at national level of the Republic of Kosovo on the rights of LGBT persons organised by the Office of Good Governance, within the Office of the Prime Minister and in all other activities organised by civil society regarding the above-mentioned community.

2. EQUALITY BEFORE THE LAW –NON-DISCRIMINATION

2.1.Ombudsperson Institution as a mechanism for protection from discrimination

Ombudsperson is a mechanism of equality for promoting, monitoring and supporting equal treatment without discrimination on the basis protected by the Law on Gender Equality and Law on Protection for Discrimination, which along with Law on Ombudsperson comprise the legal human rights package, which entered into force in July 2015¹²⁰. Ever since 2004, a special group for protection from discrimination functioned in the Ombudsperson in conformity with Law no. 2004/3, against discrimination. In 2016, two regulations were adopted and entered into force, Regulation no. 01/2016, on Internal Organisation and Systematisation of Job positions in the Ombudsperson Institution and Regulation no. 02/2016, of Rules of Procedure of Ombudsperson according to which, a Sector for Protection from Discrimination is established.

The responsibility of the Sector for Protection from Discrimination is to treat all cases dealing with discrimination, according to the meaning of any of the basis determined under Article (1) of the Law on Protection from Discrimination and Law on Gender Equality, in accordance with procedures determined by Law on Ombudsperson. This sector, *inter alia*, will deal with the review of children's complaints, rights of communities and their members, persons with disabilities, LGBT persons and will propose laws, regulations and initiatives for amendments in laws and regulations in order to improve human rights protection.

Law on Protection from Discrimination determines the Ombudsperson as a mechanism for treating cases dealing with discrimination based on constitutional competences. However, based on this law, Ombudsperson is given additional mandate in some issues; it provides assistance to victims of discrimination during preparation of complaints from discrimination and provides essential information to persons who have filed a complaint for discrimination with regard to their rights, obligations and court possibilities, as well as other protective tools. It also provides advice, guidance and support to subjects of public and private sector, on best practices in the promotion of equality, adapting to diversity and combating discrimination on the grounds covered by the relevant Law on Gender Equality and Law on Protection from Discrimination, and moreover,

¹²⁰See <https://gzk.rks-gov.net> Law on Ombudsperson, Law no. 05/L -021 on Protection from Discrimination and Law on Gender Equality,

Ombudsperson may participate in the capacity of the court's friend (*amicus curiae*) in proceedings related to issues of equality and protection from discrimination.

Further, Article 12.1 of the Law on Protection from Discrimination entitles a person or group of persons to file a complaint to the Ombudsperson regarding Article 1 of this law. Article 12.2 of this law gives mandate to Ombudsperson to treat complaints in accordance with the procedures specified in the Law on Ombudsperson, while Article 9.2.2 of the Law on Protection from Discrimination, among others gives the competence, *inter alia*, to provide assistance to victims of discrimination during preparation of complaints from discrimination. Therefore, it can be seen from this that the above-mentioned Articles are not harmonised with the legislation in force which determines the mandate of Ombudsperson, the fact that can cause legal uncertainty.

On 2 November 2015, Ombudsperson organised a workshop with the support of the United Nations Development Programme (UNDP) about the Challenges in the implementation and functionalization of Law no. 05/L-021, on Protection from Discrimination, on the topic "Implementation of Law on Protection from Discrimination – Procedures and Authorities responsible – Ombudsperson, Judiciary, and other actors – Challenges and Possibilities". A number of joint recommendations derived from this workshop from Ombudsperson, Judicial system and Prosecutorial system in Kosovo, but the same have not been implemented to date.

The following are the recommendations derived from this workshop:

- OI to increase citizens' awareness regarding the content of the Law on Protection from Discrimination through information and awareness-raising campaigns, in cooperation with media and civil society, which have in focus human rights.
- To utilise judicial practice of the European Court on human rights.
- The Law to provide legal certainty be applicable and accessible.
- To set priorities for protection from discrimination and listing of fields where discrimination cases are more likely to occur.
- To conduct trainings for judges, prosecutors and lawyers concerning initiation, handling, decision making as well as protection of cases based on discrimination, based on the Law on Protection from Discrimination.
- To draft Guidelines for implementation of the Law on Protection from Discrimination
- To promulgate sub-legal acts within the foreseen timeline with the Law on Protection from Discrimination (six months after this Law has entered into force)
- To publish the summary of decisions of the European Court on Human Rights (ECHR) on discrimination cases as well as additional budgetary support for OIK in accomplishment of legal liabilities in implementation of additional powers of the Ombudsperson according to basic laws on human rights (Law on

Ombudsperson, Law on Protection from Discrimination, Law on Gender Equality).

During this reporting period, Ombudsperson Institution, in addition to the individual complaints of persons with disabilities, has also received complaints regarding general problems that persons with disabilities are facing and which are directly related to human rights and disability-based discrimination. Ombudsperson received these complaints during regular meetings with civil society representatives and based on them has initiated cases for further investigations.¹²¹

Based on these information available with Ombudsperson, the situation of persons with disabilities continues to be very difficult in Kosovo, despite the existence of a legal infrastructure for persons with disability.

During this reporting year, the Assembly of the Republic of Kosovo, on 25 May 2016, adopted the Law on the Status and Rights of Paraplegic and Quadriplegic Persons for persons with disabilities which regulates the status, the rights, and compensation for necessary monthly expenses for personal guardians of paraplegic and quadriplegic persons.

This Law is expected to be implemented as of 1 January 2017, but a worrying fact is that this law is not included in the Budget Law for 2017. To this end, Ombudsperson received a complaint from Non-Governmental Organisation of Paraplegics and Quadriplegics and Child paralysis of Kosovo “Handikos”. In connection with this complaint, Ombudsperson addressed the Ministry of Labour and Social Welfare with a letter, but received no response.

As is mentioned in Ombudsperson’s previous annual reports¹²², the issue of persons with disabilities is, *inter alia*, directly regulated by the Law on Pension Schemes financed by the State no. 04/L-131, the Law on material support for families of children with permanent disabilities, no. 03/L-022, Law on Vocational Ability, Rehabilitation and Employment of people with disabilities – no. 03/L-019, Law on Construction no. 04/L-110 and the Administrative Instruction on technical conditions of constructed premises for access of people with disabilities no. 33/2207¹²³, Law on the Blind no. 04/L-092.

Law on Material Support for families with children with permanent disabilities no. 03/L-022 provides that children under the age of 18 are to receive material support in the amount of 100 euros. After the age of 18, they are treated by the Law on Pension Schemes financed by the State no. 04/L-131, which did not set out the objective scale of disability, and the amount of financial support for these persons is €75. Therefore, despite the fact that the living needs of persons with disabilities change, they continue to be

¹²¹ *Inter alia*, see complaint no. C. 729/2016 from OIK database.

¹²² See annual report of Ombudsperson 2015-section, Equality before the law

¹²³ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=7480>

included in a category for relevant material compensation and the amount of financial support after reaching maturity age decreases for 25 Euros.

The issue of reassessment of the rights of persons with disabilities concerning their pensions was raised in the meeting that Ombudsperson has had with Non-Governmental Organisations, which represent the interest of persons with disabilities in Kosovo continues to be concerning.

As was reported in the Ombudsperson's Annual Report of 2015, persons with disabilities with the same diagnosis, after the reassessment by the medical commission are removed from the list of pension beneficiaries for persons with disabilities, because according to the assessment they do not meet the criteria required. Persons with disabilities continue to raise questions about the precision of the work of the medical commission, because when conducting reassessment medical commission does not assess the applicants according to the diagnosis of professional doctors, but it assess them according to their subjective perception.

According to legal advice of decisions of the Ministry of Labour and Social Welfare, complainants are entitled to file a suit with the Basic Court, Department for Administrative Matters. Court in majority of cases does not decide on issues of cases of merit but only on procedural issues by turning the case over to be reviewed with the medical commission in the Ministry of Labour and Social Welfare.

Movement of cases in this circulation format by the Medical Commission in the Appeal Commission, Court and again Medical Commission does not provide effective legal remedies to the complainant to file a complaint taking into consideration the fact that in almost all cases, complainants receive same decisions, like the first decision taken by medical commission. Because of this as well as based on complaints lodged during 2014 and 2015, the Ombudsperson has initiated *ex officio*¹²⁴ investigations.

During the investigations regarding complainants' allegations for losing the right to pensions of permanent disability, Ombudsperson elaborated two cases¹²⁵, in the report with recommendations addressed to the Ministry of Labour and Social Welfare, namely Pension Administration Department of Kosovo and Kosovo Judicial Council as well as to the Basic Court in Prishtina, Department for Administrative Matters through which has drawn attention that legal remedies available to citizens for their complaints are not effective legal remedies and per this regard it has been recommended that the court should alter judicial practice by deciding on issues based on merits.

All Kosovo municipalities lack proper infrastructure with roads, public institutions premises, collective residential buildings including those built for social cases and public schools. Therefore, we can still confirm that local level in Kosovo has failed in improving

¹²⁴ From the Ombudsperson Institution database, complaint no. 425/2015

¹²⁵ From the database A.196/2016 and A.230/2016

the infrastructure for free access for persons with disabilities, and especially those using wheelchairs as subsidiary movement tool. Lack of ramps built according to standards for free access in public buildings especially for persons using wheelchairs as subsidiary movement tool makes them feel discriminated also among their peers, among persons of other categories with disabilities, as unlike others not using wheelchairs as subsidiary movement tool, they cannot have free access in the area of goods and services, especially access to health institutions, which are crucial for them. However, Municipality of Prishtina, during 2016 has done some improvements as per this regard, by building an elevator, which will help persons with disabilities, including those using wheelchairs as moving tools. Municipality of Prishtina has also built an elevator for free access to persons with disabilities in the premises of Main Family Medical Centre in Prishtina, but still within the MFC, persons with disabilities have no free access as the premises have no internal elevator and stairs are used for movement.

However, Municipality of Prishtina still did not undertake any action to ensure free movement for persons with disabilities in the old residential buildings and in collective buildings. The number of schools in the Municipality of Prishtina, like in all other municipalities in Kosovo, which meet the conditions for free access of children with disabilities for education remains small, considering the fact that in old schools even if horizontal access that children can use to enter with movement tools, they cannot move within school premises, because schools do not meet the conditions for vertical access and have no adequate toilets for children with disabilities.

Employment for persons with disabilities remains still a challenge. Law on Employment of People with Disabilities which foresees 1 person with disabilities should be in 50 employees and still remains unimplemented. Based on information obtained by the Ombudsperson from the Association of Paraplegics and Children paralysis of Kosovo” Handikos”, it appears that there is a limited number of employed persons based on this law to date.

As was reported in the previous year by the Ombudsperson, related to persons with disabilities in the health system, their situation continues to remain the same. In health sector, persons with disabilities are exempted from paying but they are obliged to secure medicines themselves. There are insufficient medicines in the essential list for persons with disabilities. On this issue, the Ombudsperson contacted the person responsible in the Ministry of Health who declared that there are sufficient medicines in the essential list, but the supply with medicines in the essential list to the primary health public institutions is done according to the request of these institutions.

The right to employment in Kosovo is guaranteed by the Constitution of the Republic of Kosovo and is regulated by the Law on Labour and Law on Civil Service in Kosovo. Ombudsperson Institution in Kosovo continues to receive complaints regarding the discrimination in employment relationship, both in private sector and in public sector.

Complaints concerning employees in private sector are: lack of employment contracts, failure to respect the right to daily, weekly, annual leave and maternity leave, safety at work, discrimination regarding salaries etc., constitutes breach of law and continues the uncertainty at work, adding fear to employees for being fired from the work, without procedures and without possibility to complain. This is considered among the main reasons why employees in the private sector are not denouncing or do not witness openly regarding violations committed by the employers, that is mainly represented as a result of fiscal evasion (informal economy, tax evasion), in order that employers can benefit.

While in public sector, complaints are mainly focused on age-discrimination and gender-based discrimination as well as on contracts on special services which are extended in contradiction with the law.

Ombudsperson received complaints for unequal treatment regarding the education personnel in secondary and primary schools in some municipalities of Kosovo, in dividing teaching hours for filing the regular norm.¹²⁶ According to complainants' allegations, teaching hours are not allocated to employees of secondary and primary education according to the criteria required by the competition, but according to political support of heads of Municipality. These cases are being investigated by the Ombudsperson, and Ombudsperson addressed Municipalities through the report with recommendations regarding the non-compliance of legal procedures during the recruitment process of personnel according to competitions advertised by Municipal Education Departments in the Republic of Kosovo.¹²⁷

Termination of the employment relationship due to age is an element which constitutes discrimination. According to legislation in Kosovo, the age to establish regular employment relationship starts from 18 years of age and ends with pension, 65 years of age. Regarding age discrimination at employment relationship, Ombudsperson published Reports with recommendations; termination of employment relationship due to age continues to remain a problem, which employees in public institution in Kosovo are facing¹²⁸.

Employment contracts are an element which creates insufficient stability of employment relationship. There are many public institutions which are regulating the employment relationship according to social agreements.¹²⁹ Despite the fact that works, according to these agreements, should be concluded no later than at a period of up to six months, there are employees having such contracts with the employer for over 10 years. Employees who have regulated the employment relationship this way have been discriminated in relation to employees who have regular employment contracts, taking into consideration the fact of other benefits guaranteed by law, such as work experience, right to annual

¹²⁶From OIK database, complaint A.656/2016, 657/2016

¹²⁷From OIK database, ex-officio case 499/2016

¹²⁸From OIK database, complaint no. A3/2016

¹²⁹From OIK database, complaint no. 630/2015

leaves and sick leaves, rights to utilisation of effective legal remedies in cases of employment contests, etc.

Measures undertaken by competent state institutions, starting from labour inspectorate regarding the avoidance of violations are insufficient and in many cases their decisions are not respected by the public and private sector, therefore, we consider that it diminishes the action of the function of the legal state in the protection of human rights in the area of employment.

The Ombudsperson continues to observe as of great importance the issue of enforcement of the Law on Protection from Discrimination. On bases of this it is more than necessary that discrimination grounded cases rest with the judicial system, based on the Law on Protection from Discrimination. Thus, in this setting, the Ombudsperson considers as mandatory training of judges, prosecutors and attorneys on enforcement of the Law on Protection from Discrimination as per initiation, handling and deciding on cases submitted in the judiciary.

Furthermore, the Ombudsperson discloses his concern regarding the absence of sub-legal acts foreseen by the Law on Protection from Discrimination, thus recommends the Kosovo government to promptly accomplish liabilities which in this respect, derive from the Law on Protection from Discrimination.

2.2.Socio-economic issues

Ombudsperson has constantly raised the issue of including the International Covenant on Economic, Social and Cultural Rights in the Constitution of the Republic of Kosovo, which still has remained out of the list of legal instruments which according to the Constitution of the Republic of Kosovo are directly applicable in Kosovo.

2.2.1. Social shelter

Cases of social shelter still continue to remain a challenge for local self-governance bodies, as well as for the citizens in need. Requests for social shelter are high, while possibilities to provide social shelter are small. During the reporting year, a progress was observed in some municipalities about the provision of social shelter to the inhabitants having such requests, but the capacities offered seem to be insufficient.

There are a number of cases under investigation with OIK against municipalities regarding the complaints for failing to provide social shelter.

On 1 November 2016, Municipality of Prishtina initiated a public competition for application for apartments available with Municipality under the Special Programme of Social Residence, in the main building built in the village Hajvali, with 50 units/apartments, giving them under non-profitable rent to the categories in difficult conditions. We learned from the media reporting that, on 31 January 2017, Municipal

Commission for Assessment and Selection of Potential Beneficiary Families from the Special Programme of Social Residence started to assess and verify the habitation conditions of all those who applied to the Special Programme for Social Residence, so that it can learn directly from the ground and ascertain the authenticity of applications.

2.2.2. *Social assistance*

During the reporting year, complaints were filed against MLSW regarding the termination of social assistances.

Ombudsperson observed that despite amending and supplementing Law for the Scheme on Social Assistance, a challenge remains with the criterion set to benefit social assistance, namely the limitation to benefit social assistance for children under the age of 5 (Article 4.5a). Regarding this Article, Ombudsperson has constantly expressed the concern and asked the removal of this limitation, as it constitutes discrimination to age, asking for amending and supplementing this Law, however, the Ombudsperson's recommendations were not implemented.

Such limitation constitutes age discrimination because children¹³⁰ mean every person under the age of 18, with the exception of cases when the adult age is reached earlier, in accordance with the legislation applicable to them. According to the claims of the affected families by this limitation, there are assessments that such a limitation worsens the difficult situation, as these families give birth to a child every 5 years in a planned manner in order that they are not terminated the social assistance.

2.2.3. *The issues of pensions*

The right to pension in Kosovo is regulated in accordance with Law no. 04/L-131, on Pension Schemes Financed by the State. This law shall regulate the right to basic age pensions, age contribution-payer pensions, permanent disability pensions, early pensions, family pensions and work disability pensions, and the right to family pension. During the reporting year, Ombudsperson observes that a part of the schemes set forth by this Law was not implemented, such as the family pension, the right to work disability pensions, age contribution-payer pensions is implemented partially because pensioners who used to enjoy this right until 1999, several years afterwards did not receive age contribution pensions, but received only the basic age pension.

Ombudsperson learned that the failure to implement or partial implementation of the law deals with the unlawful suspension of pensions from the Republic of Serbia in 1999. In this regard, on 15 February 2016, Ombudsperson published an opinion addressed to the Committee of Ministers of the Council of Europe on the non-execution of judgment of the European Court on Human Rights (ECtHR), in the case *Grudiq v. Serbia*, number 31925/08 (2012). The opinion expressed the concern that Republic of Serbia failed to meet the obligations against Kosovo pensioners, according to the ECtHR judgment, in

130 Article 1 of the Convention on the Rights of the Child

2012, in the case *Grudiq v. Serbia*. ECtHR judgment in the case *Grudiq v. Serbia* is a principle judgment, through which Serbia is obliged to compensate on the same way, according to the above-mentioned judgment, age contribution-payer pensions, work disability pensions and family pension to the citizens of Kosovo, who used to enjoy these pensions until 1999, when they were terminated by Serbia, arbitrarily.

This opinion of the Ombudsperson Institution of the Republic of Kosovo constitutes the first step when a national human rights institution, such as Ombudsperson addressed to the Committee of Minister of the Council of Europe, based on Rule 9 of the Regulation dealing with the oversight of enforcement of judgments for the implementation of an ECtHR decisions against a third country.¹³¹

2.2.3.1. Inability to meet the 15 year criterion for the execution of the age contribution-payer pensions

During the reporting year, Ombudsperson received a number of complaints regarding age contribution-payer pensions by citizens who did not manage to meet one of the criteria for recognition of age contribution-payer pensions, namely age contribution-payer pension's experience which is the minimum 15 years. Complaint is received and has been repeated several times from the Union's Federation of Kosovo Public Administration (SPAK) and same complaints were presented by a number of individual citizens. Complaints claim that they could not meet the 15 year criterion, because during the 90s of the last century, they were expelled violently from work, on discriminatory basis and against their will. Ombudsperson addressed MLSW regarding the issue but received no response. In addition, regarding these complaints, Ombudsperson informed Kosovo Government. From the meetings that OIK representatives have had with MLSW officials, it was concluded that Government of Kosovo has no strategy regarding this category, because of the lack of a Law which would regulate the status of this category due to budget inabilities. However, Ombudsperson considers that the issue of this category should be treated by Government of Kosovo and in this regard, a dialogue between the parties is required in order to reach an acceptable solution in favour of these citizens. This is due to the fact that these citizens were expelled from work on discriminatory basis and against their will, so these citizens continue to be discriminated due to the failure to treat this problem.

2.2.3.2. Categorisation of pension according to qualification structure

OIK received complaints from beneficiaries of contribution-payer pensions regarding the categorisation of pensions according to qualification structure and the duration of the payment of contributions, namely complaints regarding Article 5.5 of Administrative Instruction 09/2015 of MLSW, dated December 2015. According to Article 5.5 of AI 09/2015, all evidences, documents proving the qualification should be dating before 01.01.1991. OIK raised the concern regarding this provision with MLSW and received a

¹³¹ See page 140

response that out of 15 years of pension contribution-payer work experience at least half of this experience should be contribution-payer according to the alleged qualification. Ombudsperson has been analysing the legality of this provision. Also, Ombudsperson observes another issue which has to do with the duration of the pension contribution-payer work experience, irrespective of the qualification, which should be treated by AI 09/2015. Criterion which should be met to benefit contribution-payer pension is that the applicant should have 15 years of pension contribution-payer work experience, and this criterion is valid for all applying for pension contribution-payer. While applying for categorisation of pensions according to qualification structure, applicants should have at least 7.5 years out of 15 years of pension contribution-payer work experience. However, AI 09/2015 does not include the duration of years of work, which is also a very important element for a fairer and more balanced categorisation. It is about categorisation of pensioners who may have not had any qualification during the entire contribution-payer work experience, but possess a long work-experience up to 40 years, of which only 15 years are taken into consideration and their pensioning is minimal compared to pensions categorised according to qualification structure.

2.2.3.3. Termination of contribution-payer pensions

During this year, Ombudsperson received a considerable number of complaints, addressed against MLSW, dealing with the removal of pensioners from pension schemes, which in addition to contribution-payer pensions were also included in other pension schemes, regulated by special laws. According to complainants they were removed from the list of beneficiaries of pensions without announcement, and in almost many cases, they were removed from the right to pensions, where the level of payment was higher than in other pensions, where they were beneficiaries according to special laws.

Law no. 04/L-131, on Pension Schemes Financed by the State, Article 8 determines conditions and criteria for recognition of the right to age contribution-payer pension; where paragraph 3 determines that *persons who meet the conditions and criteria for the age contribution-payer pension may not be users of any other pension scheme established by this Law*. Article 16 of this Law determines restrictions in the number of pensions paid according to which *the persons who are beneficiaries of any pension of pension Schemes defined with this Law, in no circumstance, can be the beneficiaries of any pension from special pension schemes that are managed and administrated by the Ministry*.

However, the right to pension is a right to property. Law no. 04/L-131, on Pension Schemes Financed by the State in the above-mentioned Articles determines that the pensioner cannot be included into two pension schemes managed by MLSW. Treating pensioners in accordance with this law constitutes a violation of their right, as the contribution-payer pension is their right earned with their contributions paid during the 15 years of experience in their work, while pensions earned according to special laws such as pensions for the blind, disability, pensions regulating the right and special benefits for the members of martyrs' families, invalids, veterans, deceased invalids,

members taken hostage or missing KLA and members of their families are pensions which a person or a family is compensated for a special reason, therefore, the exclusion of any person from the pension scheme discriminates pension beneficiaries in relation to other persons, who are beneficiaries of that pension, because they would be treated the same under equal terms. Moreover, Article 21 of Law on Pension Schemes Financed by the State determines conditions for Cessation of payment of basic age pensions or contribution-payer pensions and that in no case a condition for cessation of payment of age basic pension or contribution-payer pension is not the benefit of some other pension earned by some other special law.

Ombudsperson addressed the MLSW asking information on the legal grounds for waiving the right of pensioners to pensions arbitrarily, without announcement and without the possibility to choose between the two pensions, but it received no response.

Another worrying issue is that despite the fact that conditions for cessation of pensions are determined by Law, MLSW obliges pensioners to report every six months to PADK to prove they are alive, or else they are removed from the pension scheme. Due to different reasons, such as age, diseases and inability to move, it can occur that they are not able to report within the deadline set by MLSW, therefore, they are removed from the list of pension scheme. Regarding this issue, Ombudsperson received numerous complaints and after their investigation, assessed that human dignity of pensioners and the right to pensions is violated. Regarding this issue, the Ombudsperson has published a report with recommendations, which has been delivered to MLSW.¹³²

2.3. Minority communities

Ombudsperson Institution of Kosovo (OIK) from the beginning of its establishment has paid special attention to the state of play of human rights of minority communities in Kosovo, and because of this, the annual report in front of you will consistently continue with the reporting and work to promote and protect the rights of minority communities in Kosovo. In all previous years, Ombudspersons has pointed out serious problems which minority community face as well as has drawn attention on these issues in every subsequent annual report without any indication by institutions that such situations will improve, in order that rights be respected, above all, by institutions and citizens. It has been observed that there are specific achievements in the creation of satisfactory situation towards the improvement and advancement of freedom of movement, the establishment of new municipalities in the areas which are mainly inhabited by Serbian community members, access to justice, media, issuance of personal documents in the language and alphabet of minorities. In this respect, one should remind and reiterate that respect of the rights of minorities contributes to the development of political and social stability.

¹³² Report with recommendations ex-officio 382/2016, see <http://www.ombudspersonkosovo.org/>

It is indispensable that OIK reiterates to authorities but the citizens as well, that minority rights are based on the principle of an integrated society which means the return of the displaced persons and refugees, use of mother tongue, respect for and implementation of official languages and the ones in use, as well as maintaining cultural, religious and national identity.

Montenegrin community in Kosovo reviles its concern due to non-recognition of this community within the Constitution of Kosovo, as well as the problems that this community face. In the beginning of 2016, there was an initiative of Montenegrin community representatives to draft a Strategy for promotion and integration of this community, but until the end of this reporting period, there were no positive developments on this issue.

The Strategy has also included the resolution of the issue of displaced Montenegrins from Kosovo and the return of their properties in order to facilitate the returning process and their integration.

It should also be pointed out that big problems faced every day also by the members of Albanian community in the North of Kosovo, and other non-Serb communities living in this region. Due to the evident insecure situation on the integration of the North of Kosovo in the overall state system of Kosovo, members of non-Serb communities in the north, that comprise a minority community, especially members of Albanian community, are facing difficulties and challenges in the administrative and legal aspect.¹³³ Socio-economic situation of non-Serb communities in the North of Kosovo is severe, the unemployment rate is very high and their political participation is insufficient. The problems of non-Serb communities, especially the problems of Albanian community in the North of Kosovo are not resolved and neglected, and in absence of their representatives, their basic needs are marginalised and neglected by all.

The most common problems they are facing are poor access to health services, discrimination in employment, inability to obtain information in Albanian language, access to public services, etc. Albanian and other non-Serb communities in the North of Kosovo are not sufficiently involved in the decision-making process at municipal level and have no sufficient representatives of their own, therefore in the next period, works need to be done on their better integration, in order to avoid their further marginalisation.

The representatives of Roma, Ashkali and Egyptians still face many survival problems in all aspects of life, and in particular when we speak about the high level of poverty, lack of appropriate education, employment, etc. According to Constitution, Kosovo has foreseen a number of international instruments which offer sufficient base to guarantee and compulsory respect of human rights, however, in practice the situation does not suffice notwithstanding initiatives contributing to the alleviation of the situation in which Roma, Ashkali and Egyptian communities happen to be.

¹³³ This is valid for municipalities of Zvečan, Zubin Potok, Leposaviq and Mitrovica North

During this reporting period, OIK has paid special attention to the promotion of human rights of Roma, Ashkali and Egyptian communities. The said promotion has been done through media as well as in the meetings with citizens with Roma, Ashkali and Egyptian communities. Huge contribution in this matter was provided by civil society organisations (NGO) dealing with the issue of Roma, Ashkali and Egyptian such as NGO “Voice of Roma, Ashkali and Egyptians“ (VoRAE), NGO „Unapređenje Zajednica“, NGO “The Idea Partnership”, NGO “Health for All”, etc.

2.3.1. Return and Safety

As was emphasised in all previous reporting periods, the number of displaced persons within the country and refugees from the minority communities who have fled Kosovo is becoming much smaller, although according to information from the Ministry for Communities and Returns (MCR) there is huge interest in their return.

According to the data of the UN High Commissioner for Refugees (UNHCR), in Kosovo for last 16 years, 25,458 persons from minority communities have returned¹³⁴. During 2016, there were 356 persons returned which is less than in 2015, when the number of returnees was 782¹³⁵. In addition, collective centres still continue to operate in which 468 persons are finding shelter in the Municipality of Mitrovica (Northern and Southern part), Leposaviq, Zubin Potok, Zvečan, Shtërpçë, Graçanicë and Obiliq.¹³⁶ Local governments have still not found a permanent solution to accommodate persons, accommodated in the collective centres in the above-mentioned municipalities. It is a fact that the majority of people in collective centres are still accommodated in the Municipality of Shtërpca, irrespective of the fact that this Municipality in cooperation with MCR has received significant funds for construction of residential units for these persons. However, until the end of this reporting period, they have been placed in collective centres and have not resolved the sheltering situation. In this regard, Ombudsperson considers that it is about time that Municipality of Shtërpca seriously and responsibly deals with this issue.

For this issue, Human Rights Commissioner of the Council of Europe, requested closure of these collective centres as soon as possible and also pointed out the necessity of finding a sustainable solution for all displaced persons.¹³⁷

Trend of returning of displaced people has been observed, but this return is not sustainable since those returned are mainly old age persons, which after a short period of the assistance by MCR and humanitarian organisations have no economic perspective.

¹³⁴ From 2000 to November 2016, 11.567 Serbs, 13 Turks, 3.685 Roma, 17 Montenegrin, 1.458 Gorans, 3 Croats, 1,863 Bosnians and 7258 Ashkali dhe Egyptians have returned. Statistical data of UNHCR from November 2016;

¹³⁵ According to UNCHR data, from January to November 2016, 202 Serbs, 7 Turks, 30 Roma, 1 Montenegrin, 11 Bosnian and 95 Ashkali and Egyptians.

¹³⁶ Displaced persons internally in collective centres in Kosovo: Mitrovica North 23, Mitrovica South 13, Leposaviq 90, Zubin Potok 39, Zvečan 31, Shtërpca 247, Graçanica 21 and Obiliq 4.

¹³⁷ <https://www.coe.int/en/web/commissioner/-/kosovo-high-time-to-restore-social-cohesion-and-safeguard-media-freedom>

This sends a negative message to younger people and people able to work to potential returnees to Kosovo. Despite lack of economic perspective it should be mentioned here that during 2016 there were a number of interethnic incidents¹³⁸ that might impact on their interest for return in the future.

Respective authorities have regularly and publicly condemned such incidents in their Municipalities as well as there was a reaction by the prosecution as well, which presents a positive example, which in many ways may impact on the awareness-raising of citizens and majority and the minority communities.

The return of Roma, Ashkali and Egyptian communities in Kosovo from the countries of the region still continues to be problematic. Institutions of Kosovo provide them with temporary shelter for up to 12 months. However, after this period, the majority of families are still facing big difficulties and are unable to resolve their sheltering problem. In the previous period, OIK representatives were in contact with some returned Roma families, who out of fear could not return in the places they used to live before 1999, now they live in other cities throughout Kosovo. OIK representatives informed them on the procedures of civil registration, and also successfully mediated with the institutions responsible for the provision of support for these persons, through different schemes of the forecasted assistance. The report issued by the Organisation for Security and Cooperation in Europe (OSCE)¹³⁹, in December of 2016, considerable progress was mentioned in the implementation of legal framework and policies for reintegration of repatriated persons in Kosovo. Despite some challenges which are faced by repatriated people in Kosovo, such as access to shelter, education, social assistance and employment, according to this report, municipalities have considerably improved their work by approving a local plan of action and also increased communication between central and local level institutions. The above-mentioned OSCE report evaluated the reassessed assessment of needs of legal framework and policies of repatriated persons as satisfactory, including also those belonging to minority communities in Kosovo.

When it is about the work and MCR attempts, system and conditions of return of displaced persons has not improved at all, but it remained the same as in the previous years. Although houses and apartments are continuing to be built for returnees, buildings and enabling return is not sufficient only, as the new generation should be invited to take up this step and ensure them opportunities for employment /self-employment, or as support for projects of initial businesses and economic sustainability of the same. In this regard, a big challenge is the “Skopje initiative”, one of the most important conferences,

¹³⁸ OIK confirmed the information mentioned above in the meeting with OSCE, which was held in Prishtina, on 22 December 2016. In addition, the Ministry for Communities and Returns reported the incidents mentioned on its official website <http://mzp-rks.org/sr-l/aktuelno/vesti.html> or <http://mzp-rks.org/al/aktualitetet/lajmet.html>

¹³⁹ OSCE Mission report on Assessment of Kosovo for the implementation of legal framework and policies for the reintegration of repatriated persons in Kosovo, December 2016.

held in 2016, and which referred to promotion of specific activities in the process of return of displaced people, organised under the care of OSCE Mission in Kosovo. Although many good recommendations were reached and many documents were adopted and a strategy for permanent solution of the issue of the displaced people, there is no specific information or documents in the official website of MCR, neither there is a serious initiative to start implementing recommendations from Skopje, by establishing working groups to be dealing with adopted strategies, etc.

The recommendation resulting after all this is that there is a need to create a legal framework for return, in order that the issue of displaced people is regulated by law. This includes adoption of a comprehensive law for displaced people / refugees and their return. Law on displaced persons and refugees would determine a criterion as of when these people would be considered as displaced, and when that status is terminated. In fact, a number of these persons are already integrated in Kosovo outside the residence they used to live before 1999, but are still considered and are deemed as displaced persons within the country, which opens the door for different misuses. Such misuse places displaced persons, those who really are in need of help, in an unfavourable position and as a result their situation is marginalised. This is a problem which derives from the lack of regular legislation which adjusts this field and which in the upcoming period should be regulated inevitably.

2.3.2. Citizenship and civil registration

During the reporting period, OIK received a number of complaints regarding the inability to obtain a certificate of citizenship, filed by the displaced persons who were born in Kosovo and have lived there until June 1999, when they moved out from Kosovo.¹⁴⁰ Nonetheless, citizenship of the Republic of Kosovo is regulated by Law on Citizenship (Article 32, paragraphs 1, 3 and 4)¹⁴¹, as well as by Administrative Instruction on the criteria including evidence of citizenship of former FRY on 01.01.1998. (Article 3, paragraphs 1,3 and 4)¹⁴², which specifically regulates the procedure on obtaining

¹⁴⁰ Complaints no. 683/16, 822/16 i 867/16

¹⁴¹ Law on Citizenship in the Republic of Kosovo, no. 04/L-215, Article 32, paragraphs 1,3 i 4:

„1. All persons who on 1 January 1998 were citizens of the Federal Republic of Yugoslavia and on that day were habitually residing in the Republic of Kosovo shall be citizens of the Republic of Kosovo and shall be registered as such in the register of citizens irrespective of their current residence or citizenship or the citizenship they currently possess.

3. The registration of persons referred to in paragraphs 1., and 2 of this Article in the register of citizens shall take effect upon the application of the person who fulfils the requirements set out in this Article.

4. The competent body shall determine in sub-legal acts the criteria which shall constitute evidence of the citizenship of the Federal Republic of Yugoslavia and habitual residence in the Republic of Kosovo on January 1, 1998“

¹⁴² Administrative Instruction MIA no. 5/2014 about the criteria that contain evidence about the citizenship of the Federal Republic of Yugoslavia and permanent residence in the territory of Kosovo on 1 January 1998., Article 3, paragraphs 1,3 and 4:

“ 1. All persons that were citizens of Federal Republic of Yugoslavia on January 1, 1998 and had permanent residence in Kosovo on this date and that document their status, are considered to be citizens of Kosovo and will be registered as such in the register of citizens.

citizenship, and regulates the issue of citizenship for persons, who until 1999 lived in Kosovo, irrespective of where their residence at the time they submitted the application for citizenship was. Complaints were filed against Municipal Directory of civil registration / registration offices in the Municipality of Ferizaj, Peja and Prizren, since civil registration offices requested from complainants, during the application, to submit a certificate of residence in Kosovo, although the same cannot be obtained because these persons are considered displaced and have a place of residence in the Republic of Serbia. As a result, complainants were issued extracts of birth certificates, in which the part where citizenship is indicated was deleted irrespective of the fact that these people were citizens of the Republic of Kosovo.

To avoid such problems in the future, Ombudsperson considers that it is necessary that the Civil Registration Agency (CRA), in cooperation with Ministry of Internal Affairs (MIA) should submit all municipal offices for civil registration / registration offices a circular in which will re-submit Administrative Instruction of MIA no. 05/2014, to avoid such omission of the civil registration officers to provide the possibility for all Kosovo citizens equally and without exception, to exercise their civil rights.

Regarding the registration of Roma, Ashkali and Egyptians, one should point out that there was good progress in this area, while competent institutions have continued with good practices to provide to members of these communities free civil registration services once a month during the year, but the same persons are exempted from the payment of taxes due to be paid in case of delays during registration.

2.4. Property rights

Enjoyment and free possession of private property is still one of the biggest problems faced by the majority of minority community members. The problem of the rights of property and the respect of the same remains a big challenge for citizens, prosecution, police, judicial authorities, which when they have to do with the usurped property still do not deal with criminal charges and do not treat them with consistency in the criminal procedure, as well as in the civil procedure where legal owners cannot enter their property and possess it freely. These cases are still not given a priority, although it is necessary for this to happen.

Although Kosovo Property Agency has resolved all the allegations raised, this Agency is still at a difficult situation when it is about specific funds for demolition of constructions

3. To prove FRY citizenship, a person must present one of the official documents as defined below and issued before January 1, 1998 or evidence:

3.1. Citizenship Certificate of FRY;

3.2. Birth Certificate, marriage certificate;

3.3. Passport of FRY, Identification Card of FRY;

3.4. Any other document that proves the citizenship of FRY; “

4. In case there are no official documents from paragraph 3 of this article, another evidence can be taken into consideration, including the evidence that prove that this person has completed all conditions in FRY citizenship. CD within MIA assess this evidence and take an appropriate decision“

without permit in the usurped property, for the demolition of which applications were submitted to the Agency from land owners. When it is about the resolution of above-mentioned requests, KPA managed to resolve about 30 such requests through mediation, but there are other requests for the demolition of buildings, for which it is not known when and how it will be carried out. In addition, one of the challenges expected is transformation of KPA to the Agency to verify the property, is also the competences dealing with asset management which is put under its administration, required by the citizens who are not able to return and that their immovable property should be vacated from same usurpers. There were initiatives that MCR should deal with this issue, but based on the information available with OIK, MCR considered that it is not under its mandate to manage with the property of the displaced persons; therefore, this issue has still remained open for dialogue and further discussion among institutions¹⁴³. Moreover, such a problem is still present which relates to the fact that the majority part of immovable property, in which before the armed conflict in Kosovo, families with inadequate documentation of Roma, Ashkali and Egyptian communities used to live, and a part of it has been usurped by third parties. This challenge still stands as something that should be resolved by institutions.

When it is about the reoccupying of the property, the situation is the same with that of reported in the previous annual report of OIK.¹⁴⁴ OIK in the recent years has received complaints regarding the work of the Prosecution dealing with same omissions and violation of the rights of citizens to possess property peacefully and freely, reoccupation of their property and the effective and immediate eviction of usurpers of the usurped immovable properties, about which OIK has been discussing in the recent years, given that it is necessary to point out and to remind how Prosecution and Police authorities have constantly and non-selectively failed to implement the Criminal Code, Criminal Procedure Code and Law on Police in cases of usurpation and re-usurpation of immovable property. It is of paramount importance to the members of minority community that the omissions made in the work of prosecutors, courts and police should be improved and perpetrators should be punished adequately, because such penal policy in such cases to date gives the impression of only of a formal punishment, without sustainable effect since same perpetrators have been committing same offences, making it difficult for the owner to possess their property, and to have the same under their possession.

Within the issue of the above-mentioned property rights of displaced persons and refugees, one should also mention the issue of property tax collection for persons whose property has been usurped, or has been usurped by third parties for many years. In fact there are positive signals from Ministry of Finance that Administrative Instruction on

¹⁴³ OIK received this information in a meeting it had with OSCE, held in the regional Office in Gračanica, on 14 December 2016.

¹⁴⁴ OIK annual report for 2015, section 1.4. Minority communities, property rights, pg. 53,

regulating the above-mentioned issue in accordance with the factual situation will be adopted during 2017, with the initiative and attempts of the OSCE Mission in Kosovo, which for many years has attempted to resolve this problem regarding the collection of taxes from the owners of the usurped immovable properties.¹⁴⁵

2.5. Education

When it is about education of minority communities, there is still no unified education system, as well as formal cooperation between the established systems of education in Kosovo, one according to the curriculum of Ministry of Education, Science and Technology of the Republic of Kosovo (MEST), and the second one operates in accordance with the curriculum of the Ministry of Education, Science and Technology Development of the Republic of Serbia. Situation has been the same as in all previous reporting systems.¹⁴⁶ Members of minority communities pursue one of the said systems of education, depending on the city and area they live, and on the language they speak. MEST provides education in Albanian, Bosnian and Turkish language, while the education system of Serbia provides education in Serbian language which is attended by the members of the Serb, Roma, Gorani communities (in the villages of the Municipality of Dragash) and a part of Bosnian community in the North of Kosovo. Teaching classes in the Roma language are provided for the pupils of the Roma community in some schools within two education systems. The only cooperation recorded between the Kosovo authorities and primary and secondary schools operating within the curriculum of the Republic of Serbia is through the Department for Education in the municipalities which are mainly inhabited by members of Serbian community, and which assist these schools in the viewpoint of supply with firewood, office supply, infrastructural projects, if necessary, as well assistance in the aspect of logistics in the implementation of extracurricular activities of pupils.

There is no progress yet in the improvement of the situation of textbooks in the Bosnian and Turkish language. Members of Bosnian and Turkish language, as well as OIK have from year in, year out, pointed out the problem of the lack of textbooks in these languages, which have not resolved by MEST. Textbooks for Bosnian language for the lower grades are still poor and inadequate, while textbooks for higher grades (secondary schools) are still missing, but they are provided from Bosnia and Herzegovina, and same situation goes also for the textbooks in the Turkish language. What is important to mention in this case is not only the problem of imports and high costs of these texts, but also the incompliance of the education curricula in Kosovo, with that of Bosnia and Herzegovina and Turkey.

¹⁴⁵ OIK received this information in a meeting with OSCE held in the regional Office in Graçanica, on 14 December 2016.

¹⁴⁶ OIK Annual Reports for 2013, 2014 and 2015

Problems in education are also encountered by members of Gorani community who are attending classes in very bad conditions in the villages of Dragash Municipality. Part of members of Gorani community attends classes according to the curriculum of MEST, while a part according to the curriculum of the Republic of Serbia, and hence they attend classes in two shifts depending on what system they work. In the past, there were problems and poor communication between two directors of two separate education systems, and thus, it was pupils and teachers to suffer the most, classes were more often than not held. Poor communications is overcome, cooperation has improved, except in the village Krushevë, where pupils attending classes in Serbian language were not allowed to have classes in the same building of the school in this village, but they have to commute to the other neighbouring villages in order not to miss classes. However, what is the biggest problem in the villages Rapçe, Mlike and Gllloboçica is poor and demolished infrastructure in schools, old buildings, broken heating ovens (especially in the village Rapçe where heating is missing in classrooms), lack of firewood during winter period, and so forth. Problems mentioned above were also reported by OSCE and ECMI, in addition to OIK, however, Municipality of Dragash has not undertaken any action to improve the school situation.

Although there are many problems relating to the area of education of minority community, one has to mention the positive ones, such as nostrification of diplomas obtained in the University of Mitrovica North. Considering that the basic mandate of the Office for Community Issues in the Office of the Prime Minister is full integration of all minority communities, the issue of verification of diplomas obtained in the University of Mitrovica North was raised during 2015. The verification work continued also during 2016, during which period the Office for Community Issues of the Government of the Republic of Kosovo signed a Memorandum of Understanding with Municipality of Graçanicë, Mitrovica North and Ranillug. Education departments in the said municipalities started to receive requests for verification of diplomas from 1 June 2016. In addition to these offices, requests may also be filed to MEST building, making a total of four offices dealing with collection of requests and distribution of applicants' verified documents. By the end of 2016, there were more than 200 requests presented, out of which, the majority have been verified successfully, while the verification process will continue also during 2017.¹⁴⁷ However, the problem associated with the verification process during the entire process is presented by the verification of diplomas obtained during the period from 1999 to 2000, a period which is not included in this process, as well as diplomas from high profile schools of professional studies, which is still requiring an adequate solution.¹⁴⁸

¹⁴⁷ Information obtained on 20 December, 2016 from the Director of the Office for Community Issues in the Government of Kosovo, Mr Ivan Tomiq.

¹⁴⁸ *Ibid.*,

Positive effect of verification of diplomas obtained in the University of Mitrovica North could be seen only after the analysis of the representation of minority communities in the Civil Service of Kosovo both in central and local level for the upcoming period.

When it is about education of Roma, Ashkali and Egyptians, one has to mention that during the reporting period, there were some positive and encouraging results. MONT developed the curriculum in Roma language, while in some schools; Roma pupils attend classes in the Roma language, but only as an elective course. During previous years, OIK reported also on its remarks related to the registration of minority communities in the University of Prishtina, with the quotas of reserved places. During 2016, MEST issued an Administrative Instruction No. 09/2016 for the implementation of affirmative measures and reserved places for the enrolment of candidates from minority communities in public higher education institutions in Kosovo, and also other facilitation measures were described at the high education level, while on the OIK initiative and in addition to this, OIK was also authorised to monitor the implementation of Administrative Instruction mentioned above. Depending on specific circumstances, OIK will be able to act in accordance with its mandate in this regard.

Like in the previous year, in 2016, MEST in cooperation with local and international donors, such as; “Roma Education Fund” (REF), “Kosovo Foundation for Open Society” (KFOS), EU project „SIMRAES 2“ and NGO “VoRAE“ with the support of HEKS granted 500 scholarships for students coming from Roma, Ashkali, and Egyptian communities, who are attending secondary schools in Kosovo.

However, the biggest problem in the area of education is still the on-going drop-out from compulsory education of Roma, Ashkali and Egyptian pupils. The biggest number of pupils that dropped out school in the recent years is as a result of migration of a big number of families from these communities in the Western countries of Europe. According to the information that OIK received during 2016, children continue to drop-out school, but in fewer numbers than before. Since 2012, MEST issued an Administrative Instruction No.19/2012 on Establishment and Enforcement of teams for Prevention and Response towards Abandonment and Non-enrolment of Compulsory Education, which aim is to determine general principles, responsibilities and procedures for establishment and enforcement of teams for prevention of this problem. According to this instruction, the establishment of teams is done at the primary school level, at municipal level. During monitoring and assessment of the performance of these teams, OIK reached a conclusion that these teams in some municipalities were completely inactive. Moreover, teams have not submitted a single report on their work to Municipal Education Department on quarterly basis; as is foreseen in the Administrative Instruction in question. Despite the fact that the work and activities are of a big importance in the prevention of the abandonment of compulsory education, teams are still established only on paper, while work has reduced to a minimum or there is no work at all. In this regard, concrete findings and assessments will be published by OIK at the time when this

research is completed in all municipalities of Kosovo, and concrete recommendations will be given for all institutions relevant to their obligations based on the Administrative Instruction no. 19/2012.

Strategy for integration of Roma, Ashkali and Egyptian communities 2017-2021

OSCE Mission in Kosovo, in cooperation with the Office for Good Governance, human rights, equal opportunities and non-discrimination, on 15 November 2016, presented a final draft of the comprehensive strategy for integration of Roma, Ashkali and Egyptian communities for the period 2017-2021. This strategy includes four main areas, such as; education, employment, health, and social issues and shelter in order to improve the socio-economic conditions of Roma, Ashkali and Egyptians.

Representatives of the Government of the Republic of Kosovo state that objectives in the above-mentioned strategy will be satisfied completely, including budgeting of activities planned in different sectors.

Government of Kosovo, in 2008, adopted a strategy for integration of Roma, Ashkali and Egyptian communities for the period 2009-2016, and later the Action Plan for implementation of this strategy. Representatives of civil society, including Non-Governmental Organisations dealing with Roma, Ashkali and Egyptian issues, and OIK have constantly criticised that Government has not undertaken concrete actions for its implementation. In this regard, OIK made its recommendations in order to implement the strategy better and asked that the next strategy includes fewer sectors, and more results. In the new strategy, this recommendation has been implemented, therefore, now there are only 4 out of 11 sectors established, the number that was in the previous strategy (including 9 sectors and 2 subsectors). In the upcoming period, use and effectiveness of the new strategy will be assessed in accordance with the situation on the ground and the role of institutions in the areas in which priorities are listed in the strategy.

However, there are tendencies which members of Egyptian community in Kosovo, along with representatives of civil society do not support and which have been initiated by representatives of Egyptian community in the Assembly of Kosovo, to exclude this community from this strategy. It means that due to dissatisfactions with the contradictory implementation of previous Strategy 2009-2015, and due to the lack of concrete results especially in respect of socio-economic situation and failure to resolve sheltering problems of this community, MPs of Liberal Egyptian Party (LEP) requested that Egyptians should be left outside this Strategy, which refers to Roma, Ashkali and Egyptians, but there should be a special platform made with reference to situation in the Egyptian community in Kosovo.¹⁴⁹

¹⁴⁹<https://www.facebook.com/VetonBerisha.faqjazrtare/photos/a.302089563298523.1073741828.301054553402024/529807707193373/>

In this regard, Ombudsperson expressed its concern regarding specific indicators that Egyptian community will be left outside the new Strategy and thinks that this will not happen, because by doing so, this community will be placed at an inconvenient situation, compared to Roma and Ashkali community, where the three of them together form a more vulnerable community in Kosovo.

In this regard, on 2 August 2016, Ombudsperson at a press conference gave his opinion on the Strategy for integration of Roma, Ashkali and Egyptian community in Kosovo. Ombudsperson pointed out that the Strategy, mainly those strategies dealing with human rights in Kosovo have developed in big numbers, but so far they have not achieved the purpose of their adoption. The above-mentioned strategies dealing with human rights, which are over 13 are unnecessary due to the big number which complicates the situation unnecessarily, therefore, it is indispensable to summarise all of them in one document, which will contain specific information, objectives, deadlines, accountability in implementation, budget, assessment, etc.

2.6. The Use of Language

Kosovo belongs to one of those states, which have regulated the issue of the use of official languages at central and local level, via a number of laws and sublegal acts.

Ombudsperson, like in the previous reporting years, other than acting according to the citizen's complaints regarding the violation of the right on the use of official languages has also paid full attention to monitoring and assessment of implementation of the Law on the Use of Languages and the respect of language rights in the Republic of Kosovo, both at central and local level.

Over years, by monitoring the official use of languages in the Republic of Kosovo and the respect of the legal framework in the use of languages, it is clear that the exercise of the equal rights on the use of Albanian and Serbian languages¹⁵⁰, as well as the use of other official languages of minority communities at local level, which should be done in accordance with the law are still under process. Other than the existing constitutional and legal basis and the establishment of a specialised mechanism for protection and promotion, by establishing the Office of Language Commissioner, it still requires the development and provision of a number of other conditions in respect of its realisation. Above all, responsible conduct of legislative, executive and judicial authorities, for the implementation of legal framework regulating language rights to fully satisfy the respect of principle of equal opportunities in the realisation of language rights and distribution of justice.

¹⁵⁰ Article 5 paragraph 1 of Constitution of the republic of Kosovo:

1. "The official languages in the Republic of Kosovo are Albanian and Serbian."

Article 2 of Law on the Use of languages

2.1 "Albanian and Serbian and their alphabets are official languages of Kosovo and have equal status in Kosovo institutions.

This process is progressing very slowly. Notwithstanding small progress in the respect of language rights over years, the road to be taken through full legal implementation in the achievement of equality in the use of official languages in Kosovo has still not reached its end, and it still causes insecurity and social inequality in the exercise and respect of language rights.

There is a special and unequal practice in the institutions of central and local level system regarding the exercise of the right on the use of official languages and it is noted that there is still a social resistance for the recognition of this right, which during this reporting period, continues to deteriorate the principle of equality in the use of Albanian and Serbian language and the policy of equal opportunities, while the opening the door fully for discrimination. While the prevention of discrimination is, *inter alia*, based on the language constitutes a basic principle of the international right on human rights. Prevention of discrimination based on language is regulated also by domestic law, i.e. Constitution of Kosovo and Special Law on Protection from Discrimination.¹⁵¹

The Constitution, in addition to specific provisions that directly regulate the issue of official use of Albanian and Serbian language and the use of other minority community languages in Kosovo is also relevant for the exercise of this right and other constitutional provisions that guarantee the equality before the law¹⁵², which expressly states that language should not be a reason for discrimination. Other than this, other constitutional articles guarantee equality before the law and directly or indirectly belong to the language rights and the protection from discrimination during the exercise of other rights which are protected, for example in proceedings before the court, other state bodies or organisations exercising public authority.¹⁵³

Law on the Use of Languages¹⁵⁴ is also important for regulation of the right for official use of their language at the legal level, the purpose of which is to ensure the use of official languages and the languages of communities, mother tongue of whom is not an official language in Kosovo institutions and other enterprises or organisations carrying out public functions and services. This law also prohibits explicitly any discrimination based on the basis of language.¹⁵⁵

¹⁵¹ Law on Protection from Discrimination no. 05/L-021, Article 1.

¹⁵² Article 24 of Constitution of the Republic of Kosovo [Equality Before the Law]

“1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.

2. No one shall be discriminated against on grounds of race, colour, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.

3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.”

¹⁵³ See Article 3 of Constitution, Article 29 paragraph 2, Article 30 paragraphs 1 and 5, Article 40, Article 57, Article 58 and Article 59

¹⁵⁴ Law on the Use of Languages, No. 02/L-37

¹⁵⁵ See Article 3 of Law on the Use of Languages

In this regard, one has to mention the fact that only Municipality of Gračanica has included the Roma language as the official language. However, irrespective of the fact that Roma language is officially used, there is still no translation of official documents and forms in the Roma language in this Municipality. Officials of the Municipality of Gračanica have declared that they are ready to hire a translator and a certain number of officials to work not only for interpretation but also to work with citizens from the Roma community, but have not received a positive answer from the Ministry of Administration and Ministry of Finance and the request has not been adopted so far. Other municipalities in which Roma community members live in a considerable number, they still they cannot realise their rights to have their language in the official use.

Ombudsperson also observes that during regulation of this issue, the equal use of official languages and alphabets should also be taken into consideration, because there are also other members of minority communities living in the territory of Kosovo using Serbian language, the alphabet of which is Latin, and because of this reason, Government should clearly specify how these two alphabets of Serbian language should be used officially, based on the respect of equality of all citizens of Kosovo using Serbian language and the right for expression of national identity through the use of language and letters (alphabet).

Following the implementation of language rights and analysing the data and practices collected at central and local level¹⁵⁶, during the reporting period, Ombudsperson concluded that irrespective of small improvements, the situation regarding the use of official languages has not changed considerably, in comparison to previous reporting periods¹⁵⁷. The majority of these problems still exist, and are more or less still the same.

Therefore, Ombudsperson reiterates and indicates some key issues, such as: public authorities do not urge the implementation of the right in the official use of the language and writing at local and central level in accordance with the adopted international standards and domestic relevant law; neither central nor local level of government did not plan nor did they allocate sufficient funds necessary for the realisation of the right for the use of official language; the problems of the issue of languages in the process of drafting legislation make difficult the inclusion of communities in the legislative process in two governance levels, lack of officials with the public authorities those who know well official languages and may establish proper communication with parties; the problem at two levels of governance is the insufficient number of translators, their qualifications, their insufficient development and certification, which results in low level of the quality of texts translated and inconsistencies between the different linguistic versions; violation of the right on the equal use of Serbian language in the administrative procedure initiated

¹⁵⁶ Data collected during the meetings in 2016 with the Language Commissioner, OSCE Mission in Kosovo and NGO ECMI Kosovo, following their reports and researches regarding the implementation of the language rights in Kosovo; in the meetings of OIK representatives with citizens, from individual complaints with OIK regarding violation of language rights, reading laws, regulations and other regulations documents of state bodies: through media and others.

¹⁵⁷ See OIK annual reports for 2012, 2013, 2014, and 2015; section “Use of language”.

before competent authorities at central and local level; failure to respect official languages in the official websites of specific institutions on both levels of governance.

In addition, the learning of official languages is at a level which does not meet the social integration of minority communities, which results further in the increase of the number of officials who know only one language in public administration.

In order to implement the bilingual policy and ensure equality of both official languages, as is described in the legislation, Ombudsperson reiterates that the need of learning Albanian and Serbian language at the early stages of education system in Kosovo should be seriously taken up and should be treated by Government, and by Serbian and Albanian political representatives of the Assembly of Kosovo.

For years, Ombudsperson was concerned about the situation in municipalities in Northern part of Kosovo, which are inhabited by the Serbian majority community, where Kosovo Albanian, for several years now, have problems in accomplishing their language rights, as use of official languages in Kosovo is not respected at all in these municipalities.

Ombudsperson is also concerned about the fact that although Inter-ministerial Commission for Community Issues decided in the mid reporting period to adopt the proposal of the Strategy for the protection and promotion of language rights, whereby through this decision, the members of commission are charged to finding ways to ensure funds for financing the Strategy needs, it is still not adopted.

Ombudsperson thinks that legal framework of Kosovo sets high standards regarding the right of the official use of the language. To meet such an ambitious concept of multi-language, which is promoted by the state through legislation needs a higher engagement of all state structures and social structures in full, as under the current circumstances this is not realistic to be achieved, and for a long time this gap will be present in this area between the normative and current situation, under the existing social circumstances, for a long time, as a result that the state has not contributed and worked in parallel with the adoption of legislation, in building capacities for the effective implementation of the legislation in the area of language rights.

In general, there is good will to regulate a public sphere, however, problems in practice are very much emphasised and still there is no full equality reached about the official languages in Kosovo, in accordance with the legislation for the enjoyment of language rights of the citizens without discrimination.

Broadly viewed, Ombudsperson draws the attention of the Government, that if this issue continues to be marginalised and if problems identified are not solved continuously, the process of meeting the equality of the official languages at the central level as well as the official language and languages under official use at the local level¹⁵⁸, may in the near future run into difficulties. Since the issue of language and the respect of the language

¹⁵⁸ See Article 1 and 2, of Law on the Use of Languages

policy is a central issue for the protection and promotion of the rights of communities in Kosovo and one of the principles of a democratic society, one has to take into account that it plays an important role in the process of European integration which Kosovo aspires.

Ombudsperson observed that Government of Kosovo, like in the previous period, has not undertaken notable attempts for the implementation of Ombudsperson's recommendations regarding the realisation of the rights of language given in previous reports.

2.6.1 Office of the Language Commissioner (OLC)

Ombudsperson observed that during the reporting period, OLC as a central mechanism for the protection and respect of language rights has identified a number of challenges regarding the harmonisation with the Law on the Use of Languages at the municipal and central level institutions in Kosovo and has undertaken a number of activities with the purpose to execute its mandate and its "visibility" regarding citizens.

Ombudsperson expressed his satisfaction that during the reporting period, OLC has undertaken an initiative and through contacts with the municipal structures in the municipalities of North Kosovo, has held a number of meetings and has raised the issue of challenges in the achievement of the respect of language rights, in accordance with the law and pointed out the need that these activities are continued and increased in future, in order to achieve concrete results.¹⁵⁹

The cooperation of OLC with the network of Non-Governmental Organisations in order to raise the awareness on language rights and improve the implementation of law, inclusion in the implementation of relevant projects, development of mobile applications for complaints, development and promotion of "Guidance for Civil employees for the implementation of language rights", is also of manifold importance, as well as other activities of OLC and raise the awareness of society regarding the need to respect multi language.¹⁶⁰

Based on information obtained by OLC, there were no expected results in the implementation of Commissioner's recommendations present regarding the monitoring and assessment of language rights and complaints received, which are addressed with the central and local level institutions.

2.6.2 Complaints addressed to Ombudsperson

During the reporting period, Ombudsperson received some individual complaints from citizens, within which other than claims for violation of human rights protected, also mentioned the violation of language rights. The reason for a small number of complaints regarding the violation of rights on the use of language is perhaps the existence of

¹⁵⁹ Information which were provided by the language Commissioner during the meetings held in 2016

¹⁶⁰ Ibid

mechanisms specialised for the protection of language rights, namely Office of Language Commissioner, to which these complaints are preliminary addressed, which reviews and resolves the complaints of this nature, which during this year received and resolved 47¹⁶¹ individual citizens' complaints.

A small number of complaints, which are dealing with language rights cannot be interpreted in a manner that the respect of these rights is at a satisfactory level, but are preliminary interpreted that community members are either poorly informed regarding their language rights, or due to other causes they do not report such cases and hence do not seek protection from relevant mechanisms, and because of this, it is an obligation of the established mechanisms of protection to require problem solving identified in the implementation of the language policy, in the systematic level.

Like in the previous reporting period, complaints pertain to the violation of the right on using Serbian language in the procedures before competent bodies, both at central and local level. Complaints were received and recorded, and are under the investigation process to verify legal facts and relevant circumstances.

One of the complaint ¹⁶² in the reporting period, among others, referred to allegations of the non-respect of equality of Serbian language as one of the two equal official languages in the Republic of Kosovo, because the Kosovo Energy and Distribution System Company (KEDS) as a public company did not provide for the complainant to receive the correspondence in Serbian language, which was submitted by this company.

After determining facts and relevant legal circumstances in this specific case, which deals with the non-respect of equality of official languages in the Republic of Kosovo by KEDS and violation of the Law on the Use of Languages, Article 11, which refers to the use of languages in publicly owned enterprises, after Ombudsperson reviewed all facts and circumstances in the complainant's case, based on evidences presented, Ombudsperson gave an opinion that while discharging the duties under its scope of work, KEDS has legally exercised its activities taking care of a good administration conduct, and without delay immediately responded to the complainant's complaint, in the language of the party in procedure, instructing on legal remedies, where complainant addressed the possibility of further use of legal remedies available. Therefore, as a result of the above-mentioned, after the completion of investigation and the review of violation of human rights in the complainant's case, it resulted that there was no violation of human rights and fundamental freedoms, neither there was mismanagement.

¹⁶¹ Information obtained from OLC on 31.01.2017.

¹⁶² C.no.489/2016.

3. NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE (NPMT)

National Preventive Mechanism against Torture (NPMT), in compliance with the Law on Ombudsperson, presents for the first time the summary of separate Report of NPMT, as a part of general OI Report.

United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was adopted on 10 December 1984 by the United Nations General Assembly and entered into force in 1987.

On 18 December 2002, United Nations General Assembly adopted the Optional Protocol of Convention against Torture (OPCAT). This protocol entered into force on 22 June 2006. Optional Protocol determined that each member state shall create a National Preventive Mechanism against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

The Republic of Kosovo is not a signatory party of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, since it is not a member of the United Nations yet.

However, Article 22 of Constitution of the Republic of Kosovo determines human rights and fundamental freedoms guaranteed by the international agreements and instruments guaranteed by this Constitution are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions: One of the conventions foreseen by this Article is also United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

The Assembly of the Republic of Kosovo, on 28 May 2015, adopted Law no. 05/L-019 on Ombudsperson.

Article 17 of Law on Ombudsperson sets forth that the Ombudsperson acts as National Preventive Mechanism against Torture and other cruel, inhuman and degrading treatments and punishments. On 16 January 2016, Ombudsperson signed a decision for the establishment of the National Preventive Mechanism against Torture (NPMT).

NPMT protects rights of persons deprived of liberty, to whom is imposed any measure of police detention, detention on remand, imprisonment or placement at a place supervised by public bodies and from where they cannot leave on their will.

Law determined the duties of this mechanism, which are: undertake regular and unannounced visits to places of deprivation of liberty, including police detention, detention on remand, stay at health institutions, customs detention, prohibition of

emigration and every other place when it is suspected that there are violations of human rights and freedom.

According to this Law, a specialized branch shall be set up at the Ombudsperson's Institution that will be tasked with functions of the NPM. The staff of this branch in addition to jurists shall include a variety of professionals of different fields, including medical doctors, psychologists and social workers with relevant experience in this field. When exercising functions of the National Preventive Mechanisms, the Ombudsperson and his/her representatives shall have the right to access information about the health status of any person held in places of deprivation of liberty, including access to relevant medical records, as well as, with consent of the person, they shall be entitled to access to his/her personal data.

The Ombudsperson can make recommendations on compatibility of laws, and other sub-legal or administrative acts, guidelines and applicable practices in Kosovo in line with the Constitution of Kosovo and international standards as concerns the prevention of torture and other cruel, inhuman or degrading treatment or punishment. The Ombudsperson shall further co-operate with international and other national bodies in charge of prevention of torture and other cruel, inhuman and degrading treatment or punishment.

The Ombudsperson can make observations and recommendations to responsible persons and institutions where the persons deprived of their liberty are held in all types of facilities and circumstances on how to improve the treatment and conditions of the latter. Ombudsperson in the role of NPMT, shall be obliged to report in the future like other states which have set up NPMT according to OPCAT.

During this year, NPMT worked towards staffing the team with indispensable personnel. NPMT is comprised of two lawyers, one psychologist and one medical doctor. Based on the Law on Ombudsperson, NPMT shall publish a special annual report.

3.1. Visits of the European Committee for the Prevention of Torture in Kosovo

The Committee for the Prevention of Torture (CPT) visited Kosovo based on the Agreement between United Nations Mission in Kosovo (UNMIK) and the Council of Europe for technical cooperation regarding the European Convention for the Prevention of Torture and other and other cruel, inhuman or degrading treatment or punishment (23 August 2004). Ever since, CPT visited Kosovo in 2007, 2010 and 2015.¹⁶³

During these visits, CPT submitted a number of recommendations to the competent authorities of the Republic of Kosovo regarding the findings during the visits made to

¹⁶³ For more information, please visit website: <http://www.cpt.coe.int/en/>

places where persons deprived of liberty are held in the Republic of Kosovo and asked authorities to submit their responses to these findings and recommendations.

3.2. Complaints of persons deprived of liberty

During 2016, OIK conducted regular visits in all centres where persons deprived of liberty are held. One hundred and forty four (144) complaints are filed by the persons deprived of liberty to OIK, of them, 60 cases are initiated for investigation. Other cases are declared inadmissible or are instructed for further actions to be undertaken by parties.

OIK received 76 complaints against Kosovo Police (KP), of them 43 cases are initiated for investigation, others are declared inadmissible, are forwarded to Police Inspectorate, or parties were advised for further actions.

3.3. Conditional release

A considerable number of complaints are filed to OIK against the conditional release panel (CRP), who disagreed with the CRP decisions, as decisions are not submitted on time or they had no information whether their request was reviewed or when will it be reviewed.

OIK received 21 complaints against CRP, of them, 12 cases are initiated for further investigation, while others were declared inadmissible or after the receipt of information about their status of their case, complaints have not been processed further. In all cases the CRP was informed as well.

In 2016, CRP reviewed a total of 427 cases, of them in 137 cases requests for conditional release were adopted, 250 are rejected, 26 termination of procedures, 8 suspensions, 2 overruled as inadmissible, and six deferrals for 2017.

There were 223 cases and no revoking from those with conditional release under the supervision by Kosovo Probation Service (KBS).

3.4. Visit to the Detention Centre in Prizren

On 7 July 2016, NPMT visited the Detention Centre in Prizren¹⁶⁴ and published a special report. During the visit, NPMT received no complaints on ill-treatment from convicted persons and detainees. NPMT concluded that general accommodation conditions were good; no complaint was received on ill-treatment or on the excessive use of force by correctional officers, and for violation of the rights of convicted persons or detainees guaranteed by international standards and applicable domestic laws.

During the visit, NPMT observed that cells where detainees were accommodated were not of the size determined by international standards, medical personnel did not have

¹⁶⁴ Report form the visit to the Detention Centre in Prizren and Mitrovica published on the OIK's official website at: http://www.ombudspersonkosovo.org/repository/docs/Report_on_Monitoring-Mitrovica_and_Prizren_Detention_Centres_%282%29-SHQIP-final-1_844553.pdf

adequate offices for work. There were detainees and convicted persons with mental problems in this centre.

3.5. Visit to the Detention Centre in Mitrovica

On 8 July 2016, NPMT visited the Detention Centre in Mitrovica. During the visit to this Centre, authorities provided NPMT with full support; it had access to all places, and was given access to all relevant documents and was given the possibility to interview detainees and convicted persons without the presence of correctional officers.

Detention Centre in Mitrovica has been operating as a detention centre since 1999, but at the same time it is also a place where convicted persons sentenced for longer periods are accommodated. This is one of the most essential problems of this centre, since the capacities of the centre are not foreseen for accommodation of convicted persons for longer periods. In terms of capacity, the average number of convicted persons accommodated in this centre is approximately 40, while the total capacity of the centre is 56 convicted persons.

During the visit to this centre, NPMT received no complaint on the ill-treatment or on the excessive use of force by correctional officers. NPMT concluded that accommodation conditions in this centre are good, cells have been renovated and each cell possesses special toilets, they possess sufficient natural light, and heating during winter season is good.

In terms of regime, NPMT was informed that some of the convicted persons have been engaged as carpenters, some others are engaged in kitchen and laundry. Detainees and convicted persons have had numerous training courses, such as; cooking, welding and tailoring. Centre provides computer education to detainees and convicted persons. Persons deprived of liberty are entitled to clean air (outdoor exercises) two times a day, one for 1 hour and the other for 30 minutes. The centre is equipped with physical fitness equipment. Possibility to learn is offered to each person accommodated in this centre, initially those who cannot read or write and to the youth. NPMT received no complaint from detainees and convicted persons regarding the respect of these rights.

NPMT concluded that medical services are at a satisfactory level and meet minimum standards. While in terms of the contacts with the outside world, detainees may be visited only based on a permit issued by the pre-trial judge. Detainees are entitled to be visited once a week according to a permit issued by the pre-trial judge, while convicted persons twice a week. NPMT received no complaint from detainees or convicted persons regarding these rights.

Detainees and convicted persons can file their complaints to the management of the Detention Centre and to Ombudsperson through the complaint boxes installed on both sides of the centre to which only personnel of the Ombudsperson has access. The monitoring team was informed by the detainees and convicted persons that management

usually responds to their requests and complaints without delay. NPMT received no complaints from detainees and convicted persons regarding this right. During this visit, NPMT concluded that relevant authorities should undertake actions to create adequate conditions for the accommodation of convicted persons sentenced for longer periods.

3.6. Visit to the Detention Centre in Lipjan

On 7 September and 19 October 2016, NPMT visited the Detention Centre in Lipjan. On 21 December 2016, Ombudsperson submitted a report on the findings to the competent authorities of the Republic of Kosovo. During the visit, NPMT had full cooperation of the Detention Centre in Lipjan. NPMT received no complaint from detainees and convicted persons on ill-treatment and use of excessive force by the correctional officers of this centre. In addition, during the visit, the monitoring team received no complaint on violence among the persons accommodated in this centre, neither where detainees are accommodated nor where convicted persons are accommodated.

Regarding material conditions, NPMT observed that conditions, where convicted persons were accommodated, were better than those of detainees. In the block where convicted persons were accommodated, NPMT observed that there were from 1 to 2 persons in maximum accommodated in the cell. During the visit, NPMT observed no overpopulation. Cells possess TV (are not property of DCL) and lockers for keeping their clothes. NPMT was informed by convicted persons that they are brought bedclothes from their homes and are not property of DCL. Convicted persons could take a shower as many times as they wish, while bathrooms were generally in good condition. During the visit, NPMT observed that there is no humidity in the cells where convicted person are held.

NPMT observed that in the parts of DCL where detainees were accommodated, some cells were leaking and they needed painting. During the visit to DCL, the monitoring encountered no overpopulated cells and a maximum of 3 persons were accommodated in them. Toilets and bathrooms were in good condition. NPMT was informed by directory of DCL that closure of this centre and accommodation of detainees in the centre in Hajvali was planned. Regarding the announcement that this centre was to be closed, NPMT will monitor the situation and will ask updated information from competent authorities.

In terms of food, food was distributed to the accommodated persons in their cells. The kitchen where food is prepared to the accommodated persons in DCL and for personnel is new and provides good conditions. NPMT was satisfied with the storages where food is stored, it encountered no expiry food and unstamped meat. In this case, NPMT recommended that dietary packages should be richer for persons suffering from different diseases.

In terms of regime, detainees in DCL can work only on the competent court permit. They are provided one hour of walking before noon and one hour of walking in the afternoon

during the summer season, while during winter season, this time is reduced to 45 minutes. During this period, detainees and convicted persons can do sports such as, basketball, football and running, while gym is activated only during winter season. However, DCL is not able to offer courses and training neither for convicted persons nor for detainees. NPMT encourages relevant authorities to step up activities outside the cell in DCL. NPMT considers that the longer the period of accommodation in detention the richer the development and regime offered should be.

The responsibility for healthcare in the Correctional Service was transferred from Ministry of Justice to Ministry of Health in July 2013. During the visit, NPMT concluded that there were few improvements regarding infrastructure conditions of medical personnel compared to previous visits. Medical personnel fears that with the coming of autumn and winter, it can leak again in their offices and their working conditions will worsen. NPMT concluded that the area where medical services are administered are not appropriate and are small.

Medical personnel and Directory expressed their concern due to the concern that detainees with mental problems are accommodated in DCL, because of the lack of accommodation spaces in the Institute on Forensic Psychiatric or some other adequate place. During the visit, NPMT was informed that currently in DCL there were two detainees with mental problems accommodated, while seven were being treated in the psychiatric ward of Kosovo University Clinical Centre (KUCC). NPMT recommended relevant authorities to undertake necessary actions for accommodating these persons in special institutions in accordance with European Prison Rules¹⁶⁵ adopted by the Council of Europe and Law on Execution of Penal Sanctions.

During the visit in DCL, on 7 September 2016, NPMT was informed that the detainee B.TH., was on hunger strike as a sign of dissatisfaction with the competent court's decision to extend the detention measure up to 1 October 2016. NPMT was informed by medical personnel on the actions undertaken to provide the detainee the necessary healthcare. From the documents presented by medical personnel and the claims of the detainee on hunger strike, the NPMT team concluded that the detainee on hunger strike was provided adequate medical service. Medical personnel during every visit informed the detainee on his health situation and eventual consequences. NPMT concluded that medical personnel undertook proper measures in accordance with the Declaration of Malta on Hunger Strikers¹⁶⁶.

¹⁶⁵ European Prison Rules, Rule 12.1 "Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose", at: http://www.coe.int/t/dgi/criminallawcoop/Presentation/Documents/European-Prison-Rules_978-92-871-5982-3.pdf, (9.09.2016).

¹⁶⁶ Adopted by the 43rd Assembly of World Medical Assembly, St. Julian's, Malta, November 1991, and was reviewed by the 44th Assembly of World Medical Assembly, Marbella, Spain, September 1992, and was reviewed by the 57th Assembly of WMA General Assembly, Pilanesberg, South Africa, in October 2006, at: <http://www.wma.net/en/30publications/10policies/h31/> (9.09.2016).

Importance of medical screening for the newly-arrived

European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 paid particular attention to the medical screening, especially of newly-arrived prisoners or detainees, not only for detecting (transmissible) diseases and preventing suicides, but also for contributing to the prevention of torture through the proper recording of injuries.

DCL informed the NPMT team the newly-arrived are screened within a 24 hour time in DCL. These mean a general screening during which anamnesis is taken from the prisoner whether he/she has any disease to declare, which is recorded in his/her medical file. However, DCL and other centres where detainees and prisoners are held are still not able to conduct systematic screens about tuberculosis, hepatitis and AIDS. NPMT recommended authorities to undertake steps towards enabling such screens.

In the reports for Kosovo, in 2016, European Committee for the Prevention of Torture recommended that self-injury should not be considered as disciplinary violation, as is practised in some countries. NPMT was informed by the Directory of DCL that self-injury in this centre is not considered a disciplinary violation. NPMT hails such an attitude since self-injury is not included in the group of disciplinary sanctions set forth by Article 102 of Law on Execution of Penal Sanctions.

NPMT was informed that medical service does not participate in decision-making regarding the ability of detainee or the convicted person to face disciplinary sanction of solitary confinement. NPMT considered that medical personnel's role is clear in this aspect. The doctor's participation in decision-making who as a matter of fact is the doctor of the detained or convicted person would compromise the doctor-patient relation, unless this sanction is taken for medical reasons

During the visit in DCL, NPMT received no complaint from convicted persons and detainees regarding the right for contacts with the outside world and the right for filing complaints within the directory of DCL and Central Directory in KCS. NPMT observed that there are complaint boxes available for the accommodated persons in DCL placed by the Kosovo Correctional Service and the complaint boxes placed by Ombudsperson Institution. Complaint boxes placed by Ombudsperson Institution may be opened only by the personnel of this institution, which provides confidentiality for complainants in filing complaints.

After the visit, Ombudsperson submitted the following report with recommendations to relevant authorities: Competent authorities should make attempts to provide the convicted persons and detainees with training courses, training and activities outside their cells; to take necessary actions for accommodation of persons with mental problems in special establishments in compliance with European Prison Rules adopted by the Council of Europe and Law on Execution of Penal Sanctions. NPMT should be informed about the

process of the closure of the Detention Centre in Lipjan and about the transfer of accommodated persons in the Detention Centre in Prishtina; Relevant authorities should take serious actions to enable systematic screenings of accommodated persons in order to detect diseases on time, such as: tuberculosis, hepatitis, AIDS; to create adequate conditions for work for medical and correctional personnel.

3.7. Visit to the Correctional centre for females and juveniles in Lipjan

On 7 and 19 October 2016, NPMT visited the Correctional Centre for Females and Juveniles in Lipjan, which is a semi-open institution, the only in the Republic of Kosovo, where several categories of the convicted persons are accommodated, such as: juveniles on educational measure, detained and convicted juveniles and convicted, detained and juvenile females.

During the visit, the personnel of Correctional Service and medical personnel provided NPMT with full cooperation, enabling access to relevant documents, areas where detainees and convicted persons are accommodated, areas where they conduct activities and the dining hall. In addition, the team was provided with the possibility to talk to convicted and detained persons without the presence of correctional officers.

NPMT received a number of complaints from juveniles concerning the excessive use of force by some of the correctional officers. NPMT observed that there was a tense situation among juveniles and correctional officers and among the juveniles themselves. NPMT also observed that signs of violence can still be observed on some juveniles caused during the conflict among them. NPMT informed the Director of Lipjan Correctional Centre concerning the allegations of juveniles, about the concerns expressed and requested to investigate allegations on the excessive use of force by correctional officers. NPMT also requested to be informed about the investigation results. NPMT received no complaint on ill-treatment or excessive use of force from the convicted, detained of juvenile females accommodated in this centre.

In this respect, NPMT brought to the attention of European Committee for the Prevention of Torture (CPT), regarding the issue of violence among prisoners, stressed the state's responsibility to protect prisoners from other prisoners aiming to harm them and asked to address the issue of violence among prisoners. In addition, CPT requested that prison personnel be well-trained to intervene and manage with such situations. NPMT concludes that the undertaking of adequate actions and implementation of more psycho-social professional programmes would help decrease tensions and violence among juveniles and should be a priority for relevant authorities.

In respect of material conditions, NPMT observed that conditions in which male gender juveniles were accommodated were not good, especially toilettes were old, damaged and

were stinking, there was humidity and hygienic conditions were not on a good level. Cells where juveniles were accommodated were huge and had sufficient light, but walls were not painted. Cells were cold, as windows were not closing properly. In addition, NPMT observed that juvenile beds lacked bedclothes, mattresses were not of good quality and blankets were too thin. Accommodated persons were complaining that it was cold during the night. NPMT encourages relevant authorities to ensure heating depending on atmospheric conditions and to invest for improving the accommodation conditions of the juveniles.

Accommodation conditions in these blocks where convicted persons and detainees were accommodated were good and it could be observed that there were new investments done, especially in toilettes which were in very good condition. NPMT observed no overpopulation in the blocks where juveniles and females were accommodated in this centre. There was sufficient light in the cells. NPMT in some cases received allegations from convicted females accommodated in this centre that during winter, in some cells of the ground floors which are located at the corners of premises, humidity is present, which could also be observed during the visit made by NPMT. NPMT will monitor the situation regarding the issue of heating in this centre and will request from relevant authorities to be informed on these complaints.

NPMT received no complaints from the accommodated persons regarding the quality and quantity of food. During the kitchen inspection, NPMT observed that personnel do not use gloves during dissemination and preparation of food. During the visit, they claimed that their sanitary booklets were sent to National Institute of Public Health. According to the allegations of the kitchen chef, hand swab was not taken during laboratory analysis.

NPMT was informed by the Directory of Lipjan Correctional Centre that the new Correctional Centre for juveniles with educational measure has been built, but there is no specific date when will the transfer of juveniles with educational measure be done in this Centre. NPMT visited this centre which was almost just about to be opened for juveniles accommodated there. The centre provides good accommodation conditions and reconciliation of juveniles.

With regard to regime in the Lipjan Correctional Centre, lower secondary school and upper secondary school functions within the public education system. Following the contacts with Ministry of Education, Science and Technology (MEST), NPMT was informed that lessons started in this centre as of 26 September 2016. According to Directory, although lessons are on-going, there are considerable problems with the division of juveniles into classrooms of different levels, which seems to be inappropriate due to the contents of educational curricula. NPMT was also informed that Ministry of Education, Science and Technology (MEST) engaged 8 regular teachers in employment relationship in this centre.

There are currently the following professional training offered for hydro installation, electro installation and construction in this centre. From the statistics sent by Directory, it is observed that there are different programmes, training courses and training organised such as EQUIP programme, and sports and cultural activities. While in the case of accommodated females, NPMT observed that females are in general engaged in kitchen and in cleaning and they attend courses such as: tailoring and hairdressing (there were 2 juveniles included in the hairdressing course, while 5 convicted females were included in tailoring).

Like in other correctional centres, in this centre too, detainees are currently engaged with few duties. Their engagement can be done only on the competent court permit. NPMT encourages relevant authorities to step up engagements outside the cell also for detainees. Moreover, the longer the period of accommodation in detention, the richer the regime provided.

NPMT was informed by convicted females that they are enabled to take a walk outside their cell, twice a day, for one hour, which is in accordance with Article 37 of Law on Execution of Penal Sanctions. Article 139 of Juvenile Justice Code stipulates that a minor has the right to spend at least three (3) hours daily in open environment within the institution. NPMT received no complaints regarding the respect of this right neither from minors nor from convicted females.

Regarding health care, the newly-arrived are screened within a 24 hour time from the moment of their arrival at Correctional Centre for Females and Juveniles. These mean a general screening during which anamnesis is taken from the prisoner whether he/she has any disease to declare, which is recorded in his/her medical file. However, Correctional Centre and other centres where detainees and prisoners are accommodated still have no possibilities to conduct systematic screening for tuberculosis and transmissible diseases such as: TB, HBS, HCV and HIV. NPMT encourages relevant authorities to take serious actions to enable such systematic screenings for convicted persons, detainees and personnel in order to detect such diseases on time and to conduct comprehensive medical screening on the newly-arrived persons.

NPMT has been interested whether medical personnel are providing the accommodated persons in Lipjan Correctional Centre with medical services in the presence of correctional officers. According to medical personnel, medical services are administered without the presence of correctional officers, but they observe from the outside. NPMT encourages such an attitude and practice of non-presence of security officers during the administration of medical¹⁶⁷ services. In addition, NPMT encourages that medical services should be administered outside the observation and hearing of correctional

¹⁶⁷ European Committee for the Prevention of Torture in the report for Kosovo after the visit made to Kosovo in 2015 had remarks regarding the provision of medical services in the presence of correctional officers in some Correctional Centres, and recommended to put an end to such practices.

officers to maintain confidentiality and the doctor-patient relation, except in specific cases.

During the screening of medical documentation and conversations with authorities and accommodated persons in Lipjan Correctional Centre, NPMT observed that there were cases of self-injuries. The main tool used for causing body injuries and self-injuries appears to be the shaving tool known as “BIC”. NPMT considers that this shaving tool should be removed from use and relevant authorities should provide another alternative.

Regarding disciplinary sanctions which can be imposed to juveniles, Article 122, and paragraph 2 of Juvenile Justice Code determines that a minor may not be subject to solitary confinement as a disciplinary punishment. During the visit, NPMT was interested to see the cell where minors are held when they are at isolation, according to the explanation of the Director of this Centre; they alleged that this does not constitute disciplinary sanctions of solitary confinement, but only those of isolation in specific situations, which lasts only for some hours.

Article 122 of Juvenile Justice Code stipulates that a minor may be accommodated in a special unit of the educational-correctional institution as a disciplinary punishment under the following conditions: the period of accommodation in a special unit may not exceed fifteen (15) days, the minor shall not be accommodated alone in the special unit, the minor shall be entitled to exercise his or her right to spend at least three (3) hours daily outside closed premises during free time, the minor shall have access to textbooks and other books, and, the minor shall be visited by a medical officer and educator once a day and twice a week by the director of the educational-correctional institution.

However, from the inspection of one of the cells where they are accommodated or isolated in those situations, the impression is given that Lipan Correctional Centre, when accommodating minors in a special unit, cannot satisfy the requirements set forth by Article 122 of Juvenile Justice Code. The isolation of the minor in such conditions is more of a resemblance to the imposing of disciplinary sanctions of solitary confinement, since in the inspected cell (for isolation), the accommodation conditions do not satisfy the minimum standards of accommodation and there is no space for accommodating more than one minor.

Regarding the contacts with the outside world, Article 120 of Juvenile Justice Code stipulates that a minor shall have the right to receive a visit at least once each week for a minimum of one hour by his or her parent, adoptive parent, guardian, spouse, child, adopted child, and other relatives by blood in a direct line or in a collateral line to the fourth degree. A minor shall have the right to receive a visit at least once a month by other persons who will not have a negative influence on execution of the measure. NPMT received no complaints from minors regarding this right. NPMT considers that contacts

with the outside world, especially visits made by the family or other relatives, are of an essential importance in the context of social rehabilitation of convicted persons.

During the interview with minors and the conversation with Directory of Lipjan Correctional Centre, NPMT observed that there are tensions among juveniles, and time after time, these tensions are associated with physical violence among them. CPT in the report on the visit made to Serbia in 2015 (25 May - 5 June 2015)¹⁶⁸, regarding the violence among prisoners stressed the state's responsibility to protect prisoners from other prisoners whose intention is to harm them.

Further in the report, the CPT invited Serbian authorities to provide necessary resources and instructions to prison managers to guarantee a more proactive approach regarding the security of all prisoners. In addition to the increase of the number of personnel, the existing expertise and skills should be expanded in the provision of further specialised training. Moreover, the CPT recommended Serbian authorities that in the light of these recommendations they should develop a national strategy for the prevention of violence and intimidation among prisoners.

Therefore, in the light of above-mentioned comments and recommendations, NPMT encourages relevant authorities in Kosovo to take actions and to implement more professional psycho-social programmes, which would help decrease tensions and violence among the juveniles. NPMT considers that such a thing, taking occasional tensions and violence into consideration, should be a priority for relevant authorities.

CPT, in the report for the visit made to Kosovo in 2015 stressed that effective system of filing complaints is basic safeguards against ill-treatment in prisons and detention centres. Persons accommodated in these centres should have avenues to file complaints, within the prison or the detention centre and be entitled to confidential access to an appropriate authority.

Article 91 of the Law on Execution of Penal Sanctions provides for a detailed procedure by which detainees and prisoners may address complaints or requests to the Director of a specific Kosovo Correctional Service establishment. The procedure includes deadlines for responses by the Director, and the possibility to refer a complaint under certain circumstances to a higher authority, in particular the General Directory of the Correctional Service and the Minister of Justice.

NPMT observed that there are complaint boxes available to the accommodated persons in Lipjan Correctional Centre placed by the Kosovo Correctional Service and the complaint boxes placed by Ombudsperson Institution. Complaint boxes placed by Ombudsperson Institution may be opened only by the personnel of this institution, which provides

¹⁶⁸ European Committee for the Prevention of Torture, report from the visit made to Serbia in 2015, published on 24 June 2016, at: <http://www.cpt.coe.int/4C35B9F6-3F66-4397-9F20-2C16F5199D93/FinalDownload/DownloadId-9489844769FDABA923BB0B064C85DADA/4C35B9F6-3F66-4397-9F20-2C16F5199D93>, (25.10.2016)

confidentiality for complainants in filing complaints. In addition, the accommodated persons may address complaints to Ombudsperson through free telephone line.

NPMT observed that Directory of Lipjan Correctional Centre provides adequate possibilities for filing complaints and submissions; it reviews them and submits a response to the accommodated persons in this Centre.

After the visit, Ombudsperson addressed the following recommendations to the Ministry of Justice and Kosovo Correctional Service: To step up engagements outside the cell for detained persons; investigate allegations for excessive use of force by correctional officers; improve material accommodation conditions in the blocks where detained juveniles are accommodated, and in other blocks when such a thing is necessary; decrease of these tensions and putting an end to acts of violence among juveniles should be a priority for relevant authorities; taking into consideration that the current shaving tool (BIC) has become a frequent phenomenon for causing self-injuries, relevant authorities are recommended to provide another alternative – to engage a barber. While Ministry of Education was recommended to implement more professional psycho-social programmes and group treatments for juveniles that would help decrease tensions and violence among juveniles.

3.8. Visit to the Dubrava Correctional Centre

Dubrava Correctional Centre (DCC) is a high security level institution composed of several different sectors. The interior is divided into two parts where one of them is the area for the development of agriculture and other uses, and the habitable part where adult prisoners are mainly located.

Usually, prisoners are placed in 8 residential blocks, but during the visit, NPMT was informed that block 5 was being renovated, while patients who are provided medical assistance are accommodated in the Hospital Ward, except severe cases which are sent to public hospitals. Whereas, outside the prison wall is the semi-open block where low risk prisoners are accommodated who have minimal escort. The capacity of DCC is 1183 beds. At the time when NPMT visited this centre, there were 840 convicted persons accommodated there. NPMT was informed that due to the preparations for the closure of the Detention Centre in Lipjan (DCL), there were 40 detainees accommodated in DCC transferred from DCL. European Committee for the Prevention of Torture visited DCC in 2007, 2010 and 2015¹⁶⁹.

During the visit made by NPMT to the DCC, the personnel of Correctional Service and personnel of Prison's Health Department provided the monitoring team with full cooperation. The team, without any delay, had access to all places visited. The team was provided with all necessary information to discharge their duty and the team has been made possible to talk to convicted and the detained persons without the presence of

¹⁶⁹ For more info, please visit website: <http://www.cpt.coe.int/en/>.

correctional officers or other personnel. In addition, NPMT was also allowed to use photo cameras.

Before the visit to this centre, NPMT received a complaint from a prisoner S.Z alleging that on 24 October 2016 he was physically and severely ill-treated by correctional officers. Concerning this complaint, the NPMT team visited the prison hospital, checked the complainant's file and interviewed the complainant. In this case, the examination of the person in question was done starting with the medical documentation and the records of all protocols (History of disease and all other protocols), but his name was recorded only in the self-injury protocols. In addition, a physical examination was done to the complainant. From the examination, it was concluded that the only injury seen on the complainant's body was caused as a result of self-injury (confirmed also by the patient's anamnesis).

Concerning the health care, NPMT concluded that the complainant was offered all possibilities for treating the injury, and also for stitching it, which was rejected by the complainant. The complainant also rejected the medication treatment for this injury. After committing self-injury, the complainant was sent for a medical treatment without his will, since he was bleeding.

In this regard, NPMT interviewed the social worker who claimed that he had seen the complainant bleeding, since he committed self-injury, but he has not seen correctional officers ill-treating him physically. In addition, there were a number of correctional officers interviewed claiming that they simply sent the complainant for a medical treatment without his will, as after committing self-injury, he was bleeding.

Based on what was said, NPMT concluded that the complainant was not psychically ill-treated and no excessive force was used against him by correctional officers, but the complainant was sent to the prison's hospital without his will, since after committing self-injury, the complainant was bleeding.

NPMT during the visits made to DCC interviewed a considerable number of prisoners and received no other complaints regarding physical ill-treatment or excessive use of force from correctional officers.

During the visit, NPMT received no serious complaints from the convicted persons concerning the food quality. NPMT was informed from the chef that the kitchen has been facing lack of equipment for cooking and baking. In addition, there is lack of inventory, uniforms, work gloves, while the equipment at their availability were with deficiencies. NPMT was informed that some of the machineries (baking ovens), which were purchased for the needs of the kitchen, due to the failure to meet standards were never used, neither they can be used now, and they have been kept in the warehouse for a long time. NPMT

expresses its serious concern, concerning this issue, since the purchase of such machineries is done with the money of the taxpayers of the Republic of Kosovo and at the same time, such a situation constitutes misadministration and misuse of the public money. NPMT, therefore, requires from relevant authorities to investigate the purchase of these expensive machineries, which cannot be used at all, as they are not adequate.

Regarding the conditions in the blocks, NPMT observed that the block has been renovated, toilets and showers were in good condition, cells contained no humidity; they were painted and clean. NPMT was informed that hot water was missing in certain parts of the block. Such a thing was also confirmed by correctional officers. In general, cells were warm, with sufficient lights and ventilation. It could still be observed that convicted persons were using plastic bags to place their items, as they were lacking lockers.

Daily press has not been distributed in the blocks for two years now. NPMT reiterates that the provision of daily press is a right which is guaranteed by the Law on Execution of Penal Sanctions.¹⁷⁰ According to the Directory of this centre, concerning the provision of daily press to the convicted persons, competent bodies are working on the tendering procedures and the press will soon be available to the convicted persons.

In block no. 2, NPMT observed that detained persons were accommodated there temporarily. NPMT observed that detained persons and convicted persons are accommodated in the same wing and they can contact each other without any problem.¹⁷¹ According to authorities, the detained persons brought here will be staying for a short period of time and then will be transferred to adequate centres for the detained persons.¹⁷² According to the head of the block, there are no cases of violence among the convicted persons. The last case occurred in January 2015.

According to the convicted persons and correctional officers, heating is not at a satisfactory level; the heating system is old and is facing technical problems. There is lack of administrative material and technical problems with photocopy machines and lack of inventory for the convicted persons and correctional personnel. Wing V1 needs painting and intervention in sanitary water closets. NPMT was informed by the directory of correctional centre that renovations are soon planned in this block. NPMT will monitor the situation concerning the planned renovations.

¹⁷⁰ Law on Execution of Penal Sanctions, Article 87: “A convicted person has the right to have access to the daily and periodical press in his or her mother tongue and other sources of public information”.

¹⁷¹ Law on Execution of Penal Sanctions, Article 33.7: “Convicted persons shall not be accommodated in the same part of the facility as persons detained on remand”.

¹⁷² UN Minimal Rules for the Treatment of Prisoners, Article 8.b: “Untried prisoners shall be kept separate from convicted prisoners”. European Prison Rules, Article 18.8: “Untried prisoners are kept separately from sentenced prisoners”.

In block no. 3 are accommodated the advanced convicted persons. NPMT was informed that there was no lack of hot water and the convicted persons could take a shower 3 times a week. There were 2, 4 and 6 persons accommodated in one cell. Cells offered appropriate light and ventilation. NPMT observed that in V1 wing of this block, showers and taps were damaged to a certain degree.

In block no. 4 are accommodated convicted persons with standard regime. NPMT observed that this block needs renovations. In the first floor it could be observed that humidity had penetrated into the cells where convicted persons were accommodated, cells had sufficient light and ventilation, showers and toilets were in bad condition. During the visit, NPMT observed that in one cell there was humidity and water was leaking. According to the announcement from the directory, the renovation of this block is soon to start. NPMT will monitor the situation concerning the planned monitoring and will also request updated information from relevant authorities.

During the visit, NPMT was informed that block no. 5 has been renovated and the technical handover of the facility is expected. There are currently no convicted persons or detained persons accommodated here.

In block no. 6 are accommodated convicted persons with advanced regime. Conditions in the block were generally good, cells have sufficient light and ventilation, they contain no humidity, they have hot water and the convicted persons who are engaged at work can take a shower every day, while others 3 times a week.

In block no. 7, heating was at satisfactory level, there was hot water, and cells provided light and appropriate ventilation. Convicted persons can do fitness. The block has been painted by the convicted persons and there were some small renovations made. Bathrooms and showers are in good condition. The block possesses a kitchen which is used by the convicted person to cook, but they are also brought food from the correctional centre kitchen.

In block no. 8, NPMT observed that cells needed painting. NPMT was informed that tendering procedures for painting of the block are under administration. The convicted persons claimed that they can take showers as many times as they wish and their clothes are washed at DCC. In addition, NPMT was informed by the convicted persons that they are not provided with bedclothes and they should bring them from their homes, while blankets are provided by DCC.¹⁷³ Relevant authorities should act in accordance with the

¹⁷³ Article 16 of Administrative Instruction on House Rules in the Correctional Institutions: *“Each convicted person has his own bed made of specific matrices, pillow with slipcover, two bed sheets, and one or two blankets for summer, respectively two (2) up to three (3) blankets during winter, depending on heating. Each convicted person will be responsible for their bed with all components of the bed and a locker for personal belongings”*.

obligations deriving from Article 16 of Administrative Instruction on House Rules in the Correctional Institutions.

NPMT observed that the convicted persons in these cells are obliged to keep their things in plastic bags or cartoon bags, since the areas at their availability are not sufficient. CPT in the report of the visit in Kosovo 2015 concluded the same problem and requested from the relevant authorities to avoid this deficiency.¹⁷⁴

Relevant authorities in the Republic of Kosovo in their response sent to the CPT, on 8 September 2016, emphasised that steps will be undertaken to avoid this deficiency. NPMT will continue to monitor the situation concerning this issue and the resolution of the problem based on the response of Kosovo authorities. Regarding the regime, DCC provides 4 regimes for the convicted persons: basic, standard, advanced and semi-open regimes. In DCC, about 340 convicted persons are engaged at work. The engagement at work is higher during the summer season. Convicted persons are usually engaged at work in the kitchen, cleaning and the centre's farms. The convicted persons may move freely within the blocks where they are accommodated and are entitled to 3 hours of walking a day during summer season, while 2 hours a day during winter season.¹⁷⁵

In addition, within the correctional centre, there are 3 workshops functioning, which in fact are also professional training centres, where training on welding, construction, machinery, carpeting, technical maintenance, water and electricity installation are organised. Courses whose duration is for 3 months are organised in these workshops. NPMT observed that these courses were however available only to a limited number of convicted persons.

The officers who met the NPMT in these workshops expressed their concern about the fact that expensive machineries were purchased, which cannot be used, as they are not completed technically. NPMT, like in the kitchen case, requests from relevant authorities to investigate these cases of supplies with costly machinery and which in fact cannot be used due to deficiencies. All these machineries are in fact paid by the taxpayers' money of the Republic of Kosovo and whatever misuses are unacceptable.¹⁷⁶

In addition, the secondary school functions in the DCC, which currently engages 17 teachers. Computer and accounting courses are organised within the school. Tailoring is foreseen within the DCC, which has been dysfunctional and out of the working material for some time now.

¹⁷⁴ Council of Europe, European Committee for the Prevention of Torture, the report from the visit in Kosovo in 2015, published in September 2016.

¹⁷⁵ According to Article 37 of Law on Execution of Penal Sanctions, the convicted persons are entitled to at least 2 hours of walking.

¹⁷⁶ See paragraph 13 of this report (kitchen).

Health care

The responsibility for healthcare in the Correctional Service was transferred from Ministry of Justice to Ministry of Health in July 2013. The prison hospital for the convicted persons functions in the Dubrava Correctional Centre, which provides medical services for the convicted persons. NPMT observed that the hospital does not possess an elevator through which the access would be enabled to the second floor of the convicted persons with disabilities.

Authorities of the Republic of Kosovo in their response sent to CPT concerning the conclusion in their report for the visit made to Kosovo, that the convicted persons with disabilities lacked adequate access to hospital, emphasized that the issue was addressed to Kosovo Correctional Service to avoid this deficiency and to install an elevator. Further, the authority's response mentioned that this issue will not occur during this year based on the current budget and based on the plans for reconstruction of Correctional Service. NPMT will monitor the implementation of this CPT recommendation and the commitment of authorities of the Republic of Kosovo to implement the same.

NPMT was informed that hospital was renovated the previous year. However, NPMT observed that infrastructure was considerably damaged in the second floor of hospital, (floor tiles and the inventory in the corridor in the dining hall). These damages are a result of non-qualitative work executed by the company engaged, which have been technically accepted. This situation presents a misuse of public money and is an obligation of competent authorities to investigate this issue.

Taking into account the number of self-injuries which is increasing and the number of persons with mental problems, the persons using narcotic substances, NPMT expresses its concern due to the fact that there is only one regular psychologist employed in this centre, while the psychiatrist is engaged only once a week. Based on the number of the convicted persons accommodated in this centre, it cannot be expected that only one psychologist can respond to all requests for psychological treatment in an adequate manner. In addition, there is also lack of continuing professional training for psychologist and social workers.

NPMT was informed from the medical service that a worrying problem is presented by the inability to send the convicted persons requiring medical services outside the centre due to the lack of regular transport. DCC possesses an auto ambulance, which does not meet the conditions and is not fully functional and does not possess the elementary things for administering adequate medical assistance.

During the visit, NPMT observed that there is no proper cooperation between the social service, correctional service and psychologist, where many a times the psychologist is

facing difficulties at work, since the competent officers do not bring the cases planned for treatment to his office. In addition, there is lack of continuing professional training for psychologists and social workers.

DCC informed the NPMT team that the newly-arrived persons are screened within a 24 hour time from the moment of their arrival in this centre. These mean a general screening during which anamnesis is taken from the prisoner whether he/she has any disease to declare, which is recorded in his/her medical file. Regarding the confidentiality of medical services, NPMT hails the fact that these services are administrated to convicted persons without the presence of correctional officers and this way the doctor-patient relation is maintained.

In general, NPMT was informed that medical personnel is not provided with appropriate training for the work specifics and let alone for the use of sophisticated apparatuses they possess. These apparatuses are mainly applied by external clients of relevant specifics. NPMT requests from relevant authorities to identify the professional training needs for medical personnel.

During the visit, NPMT was informed that at the moment the centre is facing lack of different office material, inventory, computers, printers and cartridges. NPMT encourages relevant authorities to undertake all actions necessary in order that DCC is supplied with all necessary material for work.

According to the applicable legislation, prisoners may be subjected to the following disciplinary sanctions: reprimand, deprivation of an assigned privilege, an order to make restitution, and solitary confinement¹⁷⁷. Remand prisoners may be subjected to the following sanctions: of prohibition or restriction on visits or correspondence, except contacts with defence counsel, the Ombudsperson and diplomatic missions. NPMT observed that DCC keeps records on the disciplinary sanctions imposed where data regarding the measure, reason, and time of impose and completion are recorded.

DCC Directory informed NPMT that self-injury in this Centre is not considered a disciplinary violation. NPMT hails such an attitude since self-injury is not included in the group of disciplinary sanctions set forth by Article 102 of Law on Execution of Penal Sanctions.¹⁷⁸

NPMT was informed that medical service does not participate in decision-making regarding the ability of detainee or the convicted person to face disciplinary sanction of solitary confinement. NPMT considered that medical personnel's role is clear in this aspect. The doctor's participation in decision-making who as a matter of fact is the doctor

¹⁷⁷ Paragraphs from 101 to 113 of Law on Execution of Penal Sanctions.

¹⁷⁸ European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 stressed the concern due to the fact that in some Correctional Centres in Kosovo, self-injury is considered a disciplinary violation.

of the detained or convicted person would compromise the doctor-patient relation, unless this sanction is taken for medical reasons.¹⁷⁹

However, NPMT expresses the concern due to the fact that the applicable legislation¹⁸⁰ sets forth that before the convicted person is placed to a solitary confinement, the director of the service of correctional institution should request the doctor's opinion in writing which testifies that the convicted person is at good physical and psychological condition. NPMT requests from relevant authorities that the provisions in force of these acts are amended in accordance with the CPT recommendation in the report for Kosovo in compliance with the 21st CPT's general report.

In regard to the contacts with the outside world, NPMT received no complaints regarding the right from convicted nor from detained persons accommodated in this DCC.

In DCC, the newly-arrived persons are required to undergo an admission procedure lasting at most 30 days. During this period, they are assessed and categorised in special cells, before they are accommodated in normal cells. During the visit, NPMT observed that DCC possesses a register which records data regarding the convicted person accommodated in the admission block. Regarding the contacts with the outside world and walking during this period, convicted persons declared that they are allowed two phone calls during the period they are accommodated in this block.

NPMT received no complaints from the convicted persons accommodated in this regime. NPMT considers that DCC does not implement a restrictive regime against the convicted persons during the period they are in the admission block.

Security-related issues

During the visit, NPMT observed that the so called *pepper spray* is still part of standard equipment of correctional officers in DCC. In addition, NPMT was informed that this *pepper spray* has expired. CPT in the reports for visits in Kosovo in 2011 and 2015 requested from relevant authorities to put an end to such practise, considering the damaging effects caused by the substances, while this equipment should not be part of the standard equipment of correctional officers anymore.

NPMT was informed by the directory that in some blocks and facilities in DCC there are no security cameras. NPMT encourages DCC authorities to equip all corridors of blocks and external areas with security cameras, which according to CPT in fact constitute one

¹⁷⁹ European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 required from relevant authorities to put an end to the practice of the request made by the doctor to confirm that detainee or the prisoner is in a situation to face the sanction.

¹⁸⁰ Article 107 of Law on Execution of Penal Sanctions and Article 76 of Administrative Instruction on House Rules in the Correctional Institutions.

of guarantees for protection from ill-treatment. In the report for Ireland for 2010, CPT encourages relevant authorities to install more security cameras in places where persons deprived of liberty are accommodated.

NPMT also encourages relevant authorities to provide technical possibilities so that the data recorded by the security cameras are stored for a long time, since eventual allegations for ill-treatment or excessive use of physical force can be investigated more effectively in this way.

Procedures for filing complaints

Effective system of filing complaints is basic safeguards against ill-treatment in prisons and detention centres. Persons accommodated in these centres should have avenues to file complaints, within the prison or the detention centre and be entitled to confidential access to an appropriate authority.

NPMT observed that there are complaint boxes available to the convicted persons in DCC placed by the Kosovo Correctional Service and complaint boxes placed by OIK. Complaint boxes placed by OIK may be opened only by the personnel of this institution, which provides confidentiality for complainants in filing complaints. NPMT received no complaints from detained persons and convicted persons concerning the issue of filing complaints or delays in the review of the complaints within the legal time.

3.9. A visit to Detention Centre for Foreigners

Detention Centre for Foreigners (DCF) was opened in June 2015 and operates within the Department of Citizenship, Asylum and Migration (DCAM) of Ministry of Internal Affairs (MIA). According to Article 2 of Regulation (MIA) No. 03/2014 on Operation of the Detention Centre For Foreigners (hereinafter “Regulation”), foreigners who are subject to forced removal as well as for the foreigners who are considered to breach public security are held in this centre, in order to verify their identity or for other reasons. Capacity of this centre is 76 persons.

During the visit made to DCF, personnel of the centre offered NPMT full cooperation. The team had access to all areas of the Centre. The team was provided with all necessary information to discharge the duty. During the visit made to DCF, there were no foreigners accommodated there.

NPMT checked the files of some foreigners. During the check-up of registers and files of the accommodated persons in this centre, NPMT observed that in September 2015, one Iranian citizen I.P had filed a written complaint alleging that he was physically ill-treated by the security guards. According to the centre officials, the case was investigated by the

Kosovo Police. In this respect, NPMT asked Kosovo Police to inform on the results of investigation of complaint filed by the Iranian citizen.

On 15 December 2016, Kosovo Police informed NPMT that the case in question had been investigated by the Kosovo Police. Following the completion of investigations, on 11 November 2015, Kosovo Police filed criminal charges with the General Department of Basic Prosecution Office in Prishtina.

Based on the legal provisions on the foreigners, a foreigner who is accommodated in the centre shall be notified in written form, in one of the official languages and in English, for his/her detainment at the detention centre, which shall contain the reasons for the detention, the detention period, the right to provide him/her with legal protection, as well as to contact his/her relatives".¹⁸¹ Based on the documentation checked, NPMT observed that these rights are complied with, regarding the foreigners in the centre. However, since there were no foreigners during our visit, NPMT interviewed no foreigner to obtain their claims regarding the respect of these rights.

According to Regulation and Law on Foreigners, the foreigner accommodated in this centre shall have the following rights: information concerning the right of appeal for the detention in the Centre, the right to free legal aid, the right to an interpreter of his/her language or in a language he/she understands, the right to communicate with relevant local and international authorities and with Non-Governmental Organisations.¹⁸²

Standards of European Committee for the Prevention of Torture regarding the detention of foreigners determine that within the safeguards against ill-treatment, the foreigner shall have equal rights as all other categories of detained persons, which means that they are entitled to inform the person of their choice from the moment of detention on their situation and have access to medical services, lawyer, the right to be informed on their legal position in the language they understand, and if necessary to provide them with an interpreter. NPMT was informed by the Centre that MIA possesses a list of interpreters who are providing interpretation services also in other foreign languages in addition to the services in English. Based on personal data of foreigners accommodated in the centre, these rights are generally complied with by relevant authorities.

NPMT observed that there are security cameras operating in all corridors of the Centre which are continuously operational. In the report of the visit made to Ireland in 2010, CPT considered the existence of security cameras as one of safeguards against the physical ill-treatment in the centres where persons deprived of liberty are held.¹⁸³

During the visit to the Centre, NPMT visited two facilities where foreigners are held, including all areas such as interview rooms, isolation rooms, sleeping rooms, family rooms, rooms for the activities of the adults, which were equipped with TV, playing

¹⁸¹ Law 04/L-219 on Foreigners, Article 108

¹⁸² Article 9 of Regulation (MIA) no. 03/2014 on Operation of the Detention Centre for Foreigners

¹⁸³ CPT report on the visit made to Ireland in 2010, published in 2011, paragraph 18.

cards, chess-board and there was a library on the corner with a small number of books, room of activities for children equipped with toys and designed according to standards, the room enabling exercise of religious activities, kitchen equipped with appliances, as well as laundry sufficiently equipped for the capacities of Centre. All rooms offered good accommodation, heating, cleanliness and sufficient natural light. The Centre offered appropriate bathrooms and non-stop hot water, where foreigners can take a shower as many times as they wish. In general, NPMT considers that the Centre complies with all conditions for accommodation of the foreign persons.

Regarding regime, Article 24, paragraph 1 of Regulation determines that each detained foreigner in the centre has the right to outdoor exercise at least (2) hours a day in the outdoor environments of the centre. For health purposes, the Head of the Centre may extend the time of outdoor exercises. Further, Article 24 paragraph 3 determines that during the outdoor exercise, cultural and sports activities can be developed. However, NPMT observed that Centre has a small sports field, which is not equipped with associated elements where foreigners would be able to do concrete sports activities, such as basketball, football and other sports. NPMT encourages relevant authorities to step up their attempts to providing opportunities for concrete sports activities for foreigners in this centre.

Standards set forth by CPT regarding the rights of the foreign detainee determine the right to receive services from a medical doctor as a fundamental right and as one of the safeguards against ill-treatment. NPMT was informed that medical services are administered to foreigners in this centre by the Family Medical Centre in Prishtina and the University Clinical Centre.

During the visit, NPMT was informed that no general medical examination is conducted to foreigners accommodated in this Centre, except if they require such a thing. NPMT is of the opinion that general examination of foreigners, upon their admission in this centre, is very important due to an early detection of diseases such as tuberculosis, hepatitis, HIV AIDS, which would prevent spreading of such diseases.

Regarding disciplinary measures, which are imposed on foreigners in the detention centre, during the control of documentation, NPMT observed that, isolation measures were imposed in two cases to date.

Regarding the contacts with the outside world, CPT considers that detained persons should have every possibility to be in proper contact with the outside world (including the possibility to make phone calls and receive visits) and their free movement within the centre of their detention should be limited as little as this is possible. Regulation determines that the foreigner in this centre has the right to keep correspondence, receive package and other items.¹⁸⁴

¹⁸⁴ Article 25 of Regulation on the Detention Centre for Foreigners

In addition, Regulation determines that the foreigner has the right to make phone calls for free as needed in duration of 5 minutes from 09:00 until 16:00.¹⁸⁵ According to Regulation, foreigners are also enabled calls from abroad as well as visits.¹⁸⁶

Regarding the right to file complaints, Article 19 of Regulation determines that the foreigners have the right to appeal to the Head of the Centre in regard to their conditions of admission in the Centre and personnel's behaviour. The complaint will be submitted to DCAM within 7 days. Further, Regulation determines that an appeal box shall be located inside the Centre which shall be administered by the Centre. A special appeals box shall be placed and administered by the Ombudsperson Institution.¹⁸⁷

NPMT observed that there is an appeals box available for foreigners in the Centre placed by the Centre. In addition, during the visit NPMT placed an appeal box which can be accessed only by Ombudsperson Institution of Kosovo personnel and NPMT team, which provides confidentiality to complainants when filing complaints.

3.10. Visit to the Regional Police Custody Centre in Prishtina

During the visit to Regional Police Custody Centre in Prishtina, Kosovo Police provided NPMT with full cooperation. The team without any delay had access to all places visited. The team was provided with all necessary information to discharge their duty and was able to speak in private with persons deprived of their liberty.

During the visit of NPMT, there were three detained persons in the Centre. NPMT checked their files and interviewed these persons. One of the detainees complained to NPMT that during the interview in the Police Station in Fushë Kosova, he was physically ill-treated by two police officers. Regarding this allegation, NPMT visited Police Station in Fushë Kosova. Police officers from this Station denied that they had exercised physical violence against this detainee. Kosovo Police offered full cooperation to NPMT during the investigation of this allegation, offering access to the detainee's file and relevant medical reports.

According to CPT standards, there are three fundamental rights (the right of the person concerned to have the fact of his detention notified to a third party of his choice, the right of access to a lawyer, and the right to request a medical examination) that should be applied from the very outset of deprivation of liberty. These rights should be implemented not only in the case of persons detained but also in cases when citizens are obliged to stay at police or with Police for other reasons as well (for example, for identification purposes).

Article 13 of Criminal Procedure Code determines that any person deprived of liberty shall be informed promptly, in a language which he or she understands, of the right to

¹⁸⁵ Article 26 of Regulation on the Detention Centre for Foreigners

¹⁸⁶ Article 27 of Regulation on the Detention Centre for Foreigners

¹⁸⁷ Article 19 paragraphs 2 and 3 of Regulation on the Detention Centre for Foreigners

legal assistance of his or her own choice, the right to notify or to have notified a family member or another appropriate person of his or her choice about the arrest and these circumstances are applied every time during the period of deprivation from liberty.¹⁸⁸

NPMT received no complaints from arrested persons who were in the Regional Police Custody Centre in Prishtina regarding these rights. In addition, based on the documentation reviewed, it appears that Kosovo Police has complied with these rights. During the visit, NPMT observed that there were written information in every cell regarding the rights of persons arrested, in Albanian, Serbian and English. During the visit made to this Centre, NPMT encountered no minor arrested.

This Centre was renovated during 2016. NPMT observed that cells were clean, had sufficient space, each cell had clean mattresses and bedclothes, but they had very little natural light and cells were not equipped with calling system. Ventilation system was operating within the centre. Toilets and showers were in good condition and there was also hot water. NPMT observed that work conditions of police officers working in this centre were not good. NPMT considers that relevant authorities should undertake necessary actions for elimination of these deficiencies

During the visit, NPMT was informed that detained persons who are held in the Centre have no right to outdoor exercise. In the 12th general report published in 2002, European Committee for the Prevention of Torture pointed out that, within possibilities, daily outdoor exercises should be provided to persons who are held in Police arrest for more than 24 hours.

Regarding the administration of medical services, they are a fundamental right of persons arrested by Police. Medical services are administered by public institutions, such as; Family Medical Centre and University Clinical Centre, depending on the needs of treatment. NPMT received no complaints from persons interviewed, regarding this right. In addition, from the documentation reviewed, it was observed that Police recorded the notification on the right to medical services, in their personal file.

During the visit to the Police Station “Qendra (Centre)”, NPMT also visited the room which is financed by UNICEF, where minors are interviewed. NPMT got an impression that this room offers comfortable conditions to interview minors, since it is not frightening at all; there is also furniture and a modest library with a number of book titles.

After the visit, NPMT submitted the following recommendations to relevant authorities: To undertake actions to provide more natural light in this Centre; Outdoor exercise should be provided, within possibilities, to persons detained in this Centre for more than 24 hours; Calling system should be installed in cells; Better working conditions should be created for police officers in this Centre.

¹⁸⁸ See also Articles 29 and 30 of Constitution

3.11. Visit to the border crossing point Prishtina International Airport “Adem Jashari”

During the visit, we visited the room where temporary detained persons are held who stay there for no more than six (6) hours and this detention is made based on a court or prosecution's order. These persons are held in this room until they are taken from there by the respective unit of the Kosovo police.

The competent police officer informed NPMT that airport is in no possession of a transit zone. During the visit made to this border crossing point, NPMT also visited the areas (2 rooms with 8 beds each) where persons are held to whom the entry in the territory of the Republic of Kosovo is denied on different accounts. These persons should return where they came from within 72 hours. If this does not take place within this period, they are sent to the Detention Centre for Foreigners.

These rooms offer good accommodation conditions, are appropriately clean, with toilets and showers in good condition, and they are also offered access to internet through “WI-FI”, which enables them establish contacts with their families or other persons. NPMT considers that these rooms comply with standards set forth by the CPT regarding the conditions of detention of persons to whom the entrance into the territory of a specific country is rejected.

During the visit made by NPMT there were no persons accommodated in these rooms, neither there was any person in the room where persons detained are held temporarily based on court orders or based on prosecution requests.

Medical service personnel of Airport are comprised of six nurses and three general practitioners (medical doctors). Medical services are offered 24 hours to detained persons and to Airport personnel. During the visit, NPMT observed that this medical centre is equipped with all necessary equipment, three ambulatory beds, medicines and two ambulances with equipment.

3.12. Border crossing point “Hani i Elezit”

During the visit made to this border crossing point with the Republic of Macedonia, NPMT was informed that there was a temporary detention room for persons held for no longer than 6 hours. Persons are usually detained based on domestic court and prosecution's warrants and on the international warrants.

NPMT observed that the room for temporary detention in this border crossing point had sufficient space, clean mattresses and bedclothes, heating, and proper ventilation. According to competent officials in this border crossing point, after persons are detained, the Border Police immediately informs the respective units of Kosovo Police which takes the detained person and sends him/her to a respective institution. This unit informs the detained person on his/her rights and other procedures.

Regarding medical services, NPMT was informed that if necessary these services are requested from the nearest Family Medical Centre.

From the documentation it can be observed that files of detained persons are filled in with sufficient data and sufficient documents in this border crossing point regarding detention, the submission to respective unit of Kosovo Police and reasons for detention. During the visit made by NPMT, there were no detained or accommodated persons in the temporary detention room.

3.13. Border crossing point “Vërmicë”

During the visit made to this border crossing point with the Republic of Albania, NPMT was informed that this border crossing point possesses two temporary detention rooms (for 6 hours) and one interview room. Border police had ready-made forms in the official languages and in English, through which detained persons are informed on their rights. While regarding the right to a lawyer, the lawyer is provided by the Kosovo Bar Association and they are usually lawyers from Prizren. According to the officials of this border crossing point, Kosovo Police is in possession of a list of interpreters for European languages and the Arabic one.

The temporary detention rooms were in good condition regarding the area, cleanliness; rooms possessed clean mattresses and bedclothes, as well as satisfactory heating. Medical services are offered by Family Medical Centre in Prizren. There were complete data in the files of the detained persons regarding their detention and submission to the respective unit of Kosovo Police.

3.14. Visit to Special Institute in Shtime

On 13 December 2016, NPMT visited the Special Institute in Shtime (hereinafter “SISH”). The monitoring team was composed of one legal advisor, one doctor and one psychologist

Special Institute in Shtime (SISH) is managed by the Ministry of Labour and Social Welfare (MLSW), which is run by the Director of Institute. It is an open-type institution, which provides 24 hour services: food, footwear, health care, work therapy, education, and social treatment. Beneficiaries of services in this institution are mainly persons with mental disabilities – mental development delay.

The Capacity of SISH is for 64 residents, while during the last visit made, there were 59 residents present, of whom 39 males and 20 females, the average age of whom was 45 years of age.

During 2016, a new facility was constructed in the area of SISH where the administration of this institution was located, while the part where administration was located was adapted for habitation, which facilitated the work of the personnel and enabled

categorisation of residents according to sex and health status. Light category of residents was accommodated in the block A1, medium category in Block A2 and serious category in Block B.

SISH also had activity areas, one room for painting, craftsman and tailoring room, and the recreational hall equipped with equipment, such as; chess, domino, playing cards. NPMT assesses positively the restructuring of blocks within the Institution, as well as categorisation of residents according to sex and health status, which provides security to residents.

During the visit made by NPMT in rooms where residents were accommodated, there were mainly 2 to 3 beds in one room, there was natural light and rooms were warm and clean, and were in compliance with Article 6, paragraph 1.10 of Law No. 05/L-025 on Mental Health.¹⁸⁹

During the visit, NPMT was informed that, psycho-social activities are advanced in SISH, due to infrastructural possibilities and the number of staff for the execution of recreational activities and occupational therapy. Also, an activity they regularly do is excursions during the year e.g., going nature and sightseeing in some touristic city.

A regular general practitioner is engaged in SISH, one psychiatrist once a week, while dentistry services are provided by the Elderly Care Home in Prishtina. In case of need, other health and specialist services are provided by Medical Family Centre in Shtime, Regional Hospital in Ferizaj and University Clinical Centre in Prishtina. Unlike other residential institutions of mental health, SISH in 2016 made regular gynaecology visits to residents.

In SISH, they had several registers, such as; register of neuropsychiatric visits, visits outside SISH, infections, wounds bandaging, register of worries, sterilities, however, death, suicide attempts, injuries, and self-injuries register was missing. NPMT encourages registering cases of self-injuries, corporal damages, suicide attempts, deaths and cases when means of restraint are used.

The clinic where medical personnel were working did not meet the conditions due to small and inconvenient areas, there was no sufficient light. NPMT concludes that the area used for medical services does not meet the minimum conditions for administration of these services.

During the visit of NPMT to the Centre, a positive climate and good relations could be observed between the residents and the staff. Therefore, NPMT recorded no case of torture or ill-treatment done by the staff to persons with mental disabilities – mental development delay.

¹⁸⁹Article 6, paragraph 1.10 of Law No. 05/L-025 on Mental Health, determines “*the right to provide appropriate living, hygienic, nutritional and security conditions*”

During the visit, NPMT observed that there were stray dogs within the fences of the institution, which could be a danger for residents; therefore, NPMT recommends undertaking of measures for eliminating the problem of the presence of stray dogs in the courtyard of Institution.

Although residents accommodated in SISH, due to mental development delay are not able to file complaints, OIK has placed complaint boxes which can be opened only by personnel of this institution, which provides confidentiality to the family members of residents in filing complaints. NPMT has never received any complaint by the staff or family members of residents accommodated in SISH.

NPMT, among other recommendations addressed to relevant authorities, asked promulgation of sublegal acts in accordance with Article 18, paragraph 2 of Law no. 05/L-025 on Health.

3.15. Visit to the Centre for Integration and Rehabilitation of Chronic Psychiatric Sick People in Shtime

On 26 June 2016 and 13 December 2016, NPMT visited the Centre for Integration and Rehabilitation of Chronic Psychiatric Sick People in Shtime (hereinafter “CIRCPSP”). The monitoring team was composed of one legal advisor, one doctor and one psychologist.

CIRCPSP is an open type institution, within the Hospital and University Clinical Service in Kosovo (HUCSK), which provides 24 hour services. It is established in 2006, with a total of 48 rooms, with capacity of up to 80 beds.

Residents in this centre are mainly diagnosed with psychotic disorders, such as *Schizophrenia*. At the moment of the visit, there were 63 residents in total, of them 36 males and 27 females. The average age was about 54 years of age, belonging to different nationalities, such as; 43 Albanians, 8 Serbs, 5 Ashkali, 1 Macedonian, and 2 Muslims.

During the visit, NPMT observed that in rooms where residents were accommodated, there were mainly 2 to 3 beds in one room, there was natural light and rooms were mainly warm and clean. In residents' rooms, there were bedside cabinets for placing clothes and personal belongings, however, residents lacked personal footwear, and every time they are washed, they are changed among residents. However, there were no decorations for visual stimulation for residents.

Kitchen of the centre was on the ground floor, where food is served, but it does not meet the proper conditions, since it lacks proper light and ventilation. Therefore, NPMT recommends MoH to build a new kitchen.

During the visit, NPMT observed that psycho-social activities in CIRCPSP are reduced due to the lack of vocational and supporting wards, where recreational activities could take place. The Centre organises excursions, taking residents to nature and sightseeing in

some touristic city. In absence of staff, treatment offered to residents consists mainly in pharmacotherapy, while effective psycho-social rehabilitation is insufficient. NPMT recommends that in the future the Centre should focus on project planning for building a vocational unit, and engaging a clinical psychologist and one additional social worker.

In CIRCPSP, regular psychiatric services are provided, while in case of need, other health and specialist services are provided by Medical Family Centre in Shtime, Regional Hospital in Ferizaj and University Clinical Centre in Prishtina.

NPMT visited rooms which were regulated within the Centre thanks to donations, which serve for isolating cases identified with some contagious disease. NPMT was informed that TB test was conducted to some residents, and the team was also informed that vaccination against flu is administered every year. NPMT recommends that regular gynaecology services are offered to females, and all should undergo regular laboratory analysis.

The Centre keeps 19 registers, such as: register of drug addicts, sexual abuses, corporal damages, self-injuries, suicides, deaths, register of workers' damages caused by residents, register for laboratory analysis, dentistry visits conducted outside the Centre, register for sterilisation, vaccination, register on psychiatric and general examinations, and register on injuries and would bandaging, etc. NPMT encourages the staff to describe the relevant event in detail in registers.

During the register check-up, NPMT recorded a high number of residents' damages, which were as a result caused to one another, self-injuries as well as injuries caused by stray dogs within the fence of the Institution. NPMT recommends undertaking of measures for eliminating the problem of the presence of stray dogs in the courtyard of Institution.

During the visit of NPMT to the Centre, a positive climate and good relations could be observed between residents and the staff. NPMT recorded no case of torture or ill-treatment done by the staff to persons with mental disorders.

OIK placed complaint boxes, which can be opened only by personnel of this institution, which provides confidentiality to complainants in filing complaints. NPMT has never received a complaint from residents or their family members. NPMT encourages the staff to inform the family members of residents on the possibility to filing complaints through the complaint boxes of OIK, placed in this Centre.

Recommendations deriving after the visits conducted in the Detention Centre in Lipjan and Correctional Centre in Lipjan have been included in the Annual report, while recommendations for other visits conducted during 2016 will be published in special reports, which will be summarised in the NPMT general report. Implementation of recommendations will be followed-up during 2017.

4. SUMMARY OF REPORTS WITH RECOMMENDATIONS

In conformity with the authority entrusted to Ombudsperson under Article 135, paragraph 3 of Constitution of the Republic of Kosovo, and Article 16, paragraph 8 and Article 27 of Law on Ombudsperson no. 05/L-019, during 2016, Ombudsperson published reports, opinions, amicus curiae, requests for interim measures, summarised as follows:

4.1. Ex officio reports

4.1.1. Ex officio report no. 757/2015 concerning judicial decisions on abolition and remitting of ability to act to residents in Special Institute of Shtime and Community Based Homes

On 4 February 2016, Ombudsperson published ex officio 757/2015 regarding judicial decisions on abolition and remitting the ability to act to persons with mental disabilities – mental development delay who are residents in the Institutions managed by Ministry of Labour and Social Welfare (MLSW).

After visits made by Ombudsperson Institution officials in the above mentioned institutions and examination of official reports from the visits it resulted that from the total 124 residents accommodated in Special Institute in Shtime (SISH), House of Children with mental disabilities (HCD) in Shtime and Community-based Home (CBH) in Ferizaj, Vushtrri, Deçan, Kamenicë, Graçanicë, 41 of them did not possess court decisions, 12 of them did not have any identification document, while 9 of them still had UNMIK ID cards.

This report is based on facts and evidence available with Ombudsperson Institution of Kosovo (OIK), regarding the accommodation of persons with mental development delay in the residential institution, without personal documents and court decisions, for abolition and remitting the ability to act, which are determined as criteria according to AI no. 11/2014 and Laws in force. In addition, main concern deals with the restriction of the freedom of movement of persons according to international standards.

During the analysis conducted, Ombudsperson observed that not all institutions are completed with files with decisions for permanent or temporary abolition of the ability to act, in the state institutions where persons with psychic delays are accommodated under care.

Ombudsperson reiterates that Constitution as the highest legal act protects and guarantees human rights and fundamental freedoms; therefore each institution should act in consistence with it. Article 21 of Constitution expressly determines the obligation of all bodies to respect the human rights and fundamental freedoms of others; therefore, this principle should be respected by everyone, including relevant institutions for taking care

of persons with mental disabilities – mental development delay, as well as the judicial system in Kosovo.

The Ombudsperson notes that in order to comply with Article 5.1 of the European Convention on Human Rights (ECHR), the restriction of freedom of movement should be legal, within the meaning of the domestic law including respect of the procedure established by law and namely to protect individuals from arbitrariness, any deprivation of liberty must be in accordance with Article 5 of ECHR.

The Ombudsperson considers that the deadlines for consideration and decision of cases by the judiciary are guaranteed by Article 6 of the ECHR. Delay of procedures for issuing decisions for abolishing or remitting of the right to act, to residents of SISH and CBH constitute violation of above given articles. Moreover, the Ombudsperson considers that it is state's legal obligation that mentally disabled people under the care of residential institutions, are kept and treated in accordance with national legislation, with due respect for the rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Ombudsperson deems that abolition of the ability to act is a legal liability of the court, abiding by procedures determined with the applicable legislation, including foreseen legal times. Such situations should be applied also against persons with mental disabilities - delays in mental development, who are under institutional care. It is important that the Family Law is strictly applied, which in Article 224 stipulates that "Persons who by court order are partially or fully deprived of their capacity to act are placed under custody, exercised by the Custodian Body. The court has to forward the decision within a ten-day period to the competent Custodian Body which, within 30 days from the day of the decision, has to provide custody".

Ombudsperson also assesses that Residents' placement for an indefinite time in SISH or in Community Based Homes, without their prior assessment by competent custodian authority, by the Centre for Social Work, origin of patient's situation and background, and neglecting the circumstances, in case the conditions have been reached for return, or to propose further extension of the stay, is in contradiction with Administrative Instruction no.11 / 2014 itself, Article 10.3, on work and the criteria for placement of residents, people with mental disabilities- delays in mental development in SISH and CBH.

Based on information, evidence, facts and legal analysis regarding the case in question, Ombudsperson addressed relevant authorities with the following recommendations:

Centres for Social Work (CSW) should be involved in obtaining civil registry documents and civil status of 12 residents who have no identification document (responsible for SISH residents are: CSW in Lipjan for five cases, CSW in Ferizaj for one case; CSW in Rahovec for one case, CSW in Novobërda for one case; CSW in Podujeva for one case and CSW in Pristina for one case, while for two residents in CBH in Graçanica, CSW in

Gračanica is responsible); to reassess 41 identified cases who continue to remain without judicial decisions and should be treated without further delay. Furthermore, reassessment of cases should be conducted by the relevant commission identified as cases with judicial decisions to whom ability to act has been partially abolished (there were cases in 2006, 2008, see CBH-Shtime); Courts should apply the law on appointment of legal guardians for residents after the ability to act has been abolished; Courts should treat CSW requests for abolition of ability to act to persons with mental limited abilities - delay in mental development with priority; The number of working staff in CBH in Kamenica should be increased for which the Municipality should expose greater willingness in order to enable recruitment of additional staff.

4.1.2. Ex officio report no. 239/2016, concerning prescription of judicial proceedings and execution of decisions of Basic Courts in minor offence cases

On 25 April 2016, Ombudsperson published the report with recommendations no. 239/2016, concerning Prescription of judicial proceedings and execution of decisions of Basic Courts in minor offence cases. The purpose of this report is to prove the seriousness of the prescription problem in minor offences cases; To draw the attention to harmful consequences caused by prescription of minor offence cases to the state budget of the Republic of Kosovo, and the respect of human rights; Provide an assessment on the solutions to this problem proposed in the Draft law no. 05/L-087 on Minor Offences; To provide recommendations to the Assembly of the Republic of Kosovo for a fair and more efficient solution of the problem.

Consequences caused from the prescription of minor offence cases comprise the main topic of this Report, in which summarised facts have been analysed from the viewpoint of legal provisions for regulating judicial proceedings and execution of decisions in minor offence cases, also from the statistical viewpoint of the problem of persecution of minor offence case, in the judicial proceedings stage and stage of execution of sanctions, in order to detect the measure and present the problem of prescription of these cases.

Merging the number of cases of prescription of procedure with the number of cases of prescription of execution, it results that during 2015, there were in total 26,266 cases prescribed which when adding 32860 minor offence cases received during 2015, total to 59,126 cases prescribed. If this number is kept constant from year into year, we could expect that out of 327,162 cases received by Basic Courts in 2015; about 20% of them will be prescribed, be it at the judicial procedure stage or at the execution stage.

The tremendous dimensions of the problem of prescription of minor offence cases be at the stage of procedure or at the stage of execution cause a number of serious consequences for the Republic of Kosovo.

Harmful consequences of prescription to the budget of the Republic of Kosovo only during 2015 are deemed to be in minimum € 808,095, with a likelihood that this harm will increase even higher for the budget of the state in the upcoming years.

Other than the extraordinary budget impact, the problem of prescription of minor offence cases have also harmful consequences in the respect of human rights, namely constitutes violation of the right to life and security in conformity with Article 25 and 29 of the Constitution of the Republic of Kosovo, Articles 2 and 5 of the European Convention on Human Rights and Article 3 of the Universal Declaration on Human Rights.

In addition, problem of prescription constitutes violation of the right to property in conformity with Article 46 of the Constitution of the Republic of Kosovo and Article 1 of the First protocol of European Convention on Human Rights.

To understand the connection between these rights and the problem of prescription, one should pay attention to Article 53 of the Constitution which stipulates that; “Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights” (“ECtHR”).

Court decisions of ECtHR clearly define that all states, not only they have negative obligations not to violate the rights set out in the Convention, but also have positive obligations which is to protect these rights from the risk of violations from other persons.

Since the problem of prescription of minor offence cases constitutes not only a huge harm to the budget of the Republic of Kosovo, but also a violation of human rights, the Ombudsperson has found it indispensable that competent authorities should find an efficient solution to this problem as soon as possible.

Ombudsperson concludes in the report in question that a source of solution may be the Draft law no. 05/L-087 on Minor offence, which aim at completely substituting old legislation and bringing necessary reforms to the system of minor offences.

However, the proposal in the draft law in question, on transfer of competences for judging of some minor offence cases from Basic Courts to administrative bodies is considered by the Ombudsperson as violation of the right to a fair and impartial trial in conformity with article 31 of the Constitution of the Republic of Kosovo and Article 6 of European Convention on Human Rights, despite the fact that it can facilitate the problem of prescription of procedure.

Such a transfer of competences from the judiciary to the state administration is considered by the Ombudsperson that it can be done only if the defendant is able to dispute the decision of the administrative body before a tribunal meeting the criteria of Article 6, par. 1 of ECHR and has full jurisdiction on all factual and legal issues, which Draft law no. 05/L-086 on Minor offence does not provide for such a possibility.

In addition, the Ombudsperson considered that the 50% deduction of penalties rendered if paid within deadline, as set forth in the draft law no. 05/L-087 on Minor offence, Article 30, paragraph 3 is not a right solution to the problem of prescription of execution. Such a solution is risking causing more harm to state budget than the problem itself, which pretends to be a solution.

Since two proposed solutions in the Draft law no. 05/L-087 on Minor offence are presented as problematic, Ombudsperson considers that extension of prescription deadlines of procedure and execution would be an efficient solution to the problem of prescription and would not constitute violation of human rights according to the “margin of appreciation” of European Court of Human Rights (ECtHR).

Based on these findings, and in conformity with Article 135, par. 3 of Constitution of the Republic of Kosovo, and Article 16, par. 4 of Law no. 05/L-019 on Ombudsperson, the Ombudsperson recommends the Assembly of the Republic of Kosovo to: (1) (a) Amend Draft Law no. 05/L-087 on Minor Offences in order not to transfer competences from Basic Courts to Administrative bodies for judging minor offence cases, or (b) amend Draft law no. 05/L-087 on Minor Offence in order to ensure the possibility to dispute decisions of bodies on minor offence before a tribunal meeting criteria of Article 6, par. 1 of European Convention on Human Rights, and with complete jurisdiction to review all factual and legal issues; (2) Remove entirely Article 30, par. 3 of Draft Law no. 05/L-087 on Minor Offence: “In the case of payment of fine, within the deadline set by minor offence ordinance, the fined person is released from the payment of 50% from the amount of the fine rendered”; and (3) Prolong statutory limitations of judicial proceedings and execution of decisions in minor offence cases, up to the degree that the Assembly of the Republic of Kosovo deems necessary to facilitate considerably the problem of prescription, without exceeding rationale boundaries in conformity with the case laws of the Member States of the Council of Europe.

Ombudsperson’s report concerning prescription of judicial proceedings and execution of decisions of Basic Courts in minor offence cases addressed President of the Assembly of the Republic of Kosovo; President of the Commission for Human Rights, Gender Equality, Missing Persons and Petitions; President of the Commission for Legislation, Mandates, Immunities, Rules of Procedure of Assembly and Supervision of the Anti-corruption Agency; Deputy president of the Commission for Legislation, Mandates, Immunities, Rules of Procedure of Assembly and Supervision of the Anti-corruption Agency, and Chairman of the Working Group for the Draft Law No. 05/L-87 on Minor Offences.

4.1.3. Ex officio report no. 488/2016 concerning termination of investigation of criminal offences of corruption in conformity with Criminal Procedure Code of the Republic of Kosovo, Article 159

On 5 August 2016, Ombudsperson Institution of the Republic of Kosovo published the ex officio report, report with recommendations concerning termination of investigation of criminal offenses of corruption in conformity with Criminal Procedure Code of the Republic of Kosovo, Article 159. This report has three key purposes: (1) To provide an accurate interpretation of the concept of termination of investigation in conformity with Article 159 of Criminal Procedure Code; (2) To assess, in particular from the viewpoint of human rights, the problem of automatic termination of investigation of criminal

offenses of corruption; (3) Based on this decision, to provide the state institutions with recommendations for a fairer and more efficient solution of the problem.

The report points out legal definition of the term “Corruption” according to Law no. 03/L-159 on Anti-Corruption Agency. In conformity with this Law, corruption includes “any abuse of power or any other behaviour for the purpose of achieving or obtain of an advantage for himself or for illegal profit for his/her self or any other person” (id., Article 2, par. 1, subpar. 3).

The report contains legal analysis regarding criminal offences of corruption according to Code No. 04/L-082, Criminal Code of the republic of Kosovo, which in Chapter XXXIV contains 16 criminal offenses of official corruption and criminal offences against official duty. In addition, the report analyses criminal procedure stages and termination of investigation of criminal offences of corruption, according to the Code No. 04/L-123, Criminal Procedure Code.

Further in the report are analysed contradictory interpretations of Article 159 of Criminal Procedure Code by prosecutors and judges and the concept of “completion of investigation” and “termination of investigation” is elaborated, while the Criminal Procedure Code clearly distinguishes these two concepts, according to Article 240 of Criminal Procedure Code. The Ombudsperson in its analysis considers that the problem of non-filing of indictments after termination of investigation according to Article 159 may be resolved only with the amendment of the Criminal Procedure Code by the Assembly of the Republic of Kosovo.

The report offers clarification concerning the connection between prosecution of cases of corruption and protection of human rights, pointing out that criminal offences of corruption have harmful consequences in the respect of human rights, as it draws the attention that inconsistent interpretations of Article 159 of Criminal Procedure Code constitute a violation of the right for equality before the law, and endanger legal certainty.

Ombudsperson considers amending of the Criminal Procedure Code, as a more efficient and simpler possible legislative solution so that it determines no specific limitation for completion of investigation and filing of the indictment against criminal offences set forth in Chapter XXXIV of Criminal Code. By removing the limitation for such cases, prosecutors shall have no obstacle in the prosecution of cases of corruption after two years of investigation, except the statutory limitations set forth in Article 106 of the Criminal Code, so they could neither use the current two-year limitation as a justification not to deal with complex cases by substance nor with cases which are politically sensitive.

Based on the above-mentioned assessment, Ombudsperson finds that:

(1) Article 159 of the Code no. 04/L-123, the Criminal Procedure Code of the Republic of Kosovo, accurately interpreted, sets a two-year limitation on the investigation phase of

criminal cases, after which investigation is terminated and filing of the indictment is not allowed; (2) Problem of inefficient prosecution of criminal offenses of corruption causes negative consequences to the respect of human rights; (3) Contradictory interpretations of Article 159 of Criminal Procedure Code between different judges and prosecutors constitute violation of the right for equality before the law, and endanger legal certainty; (4) Circulars issued by the Supreme Court do not achieve the purpose of the unique implementation of laws and provide only an illusion of legal certainty; (5) Amending the Criminal Procedure Code to remove the two year limitation for all criminal offences under Chapter XXXIV, “Official Corruption and Criminal Offenses against Official Duty”, of the Code no. 04/L-082, Criminal Procedure Code of the Republic of Kosovo is the most efficient solution of adequate non-prosecution of the cases of corruption and would not constitute a violation of the right for a trial within a reasonable time

Given this, Ombudsperson recommends the Assembly of the Republic of Kosovo to amend Article 159 of the Code no. 04/L-123, Criminal Procedure Code, to remove the two-year limitation for all criminal offenses of Chapter XXXIV “Official Corruption and Criminal Offenses against Official Duty”, of Criminal Procedure Code of the Republic of Kosovo no. 04/L-082.

4.1.4. Ex officio report no. 415/2016 concerning lack of access to court building in the Mitrovica North, namely denial of the right of access to justice

On 8 August 2015, Ombudsperson Institution of the Republic of Kosovo published ex officio report with recommendations concerning Lack of access to Court building in the Mitrovica North namely denial of the right of access to justice.

The purpose of this report is to draw the attention of responsible authorities whether the Court in the Mitrovica North is providing access to justice, and whether this access is in conformity with the standard of equal treatment of citizens before Constitution.

Through this report, the Ombudsperson is aiming at drawing the attention of competent institutions on the negative consequences from the non-application of Law, violation of fundamental human rights for access to justice, and to recommend a possible solution.

The report clarifies that blocking of cases in the North and incomplete functioning of the judicial system in Mitrovica for more than eight years constitutes a serious violation of human rights guaranteed by the European Convention on Human Rights. This report shall be focused on the right of access to justice – which is a fundamental right and a strengthening means and a source of the realisation of human rights.

Taking into account the elements by which a right for access to justice is characterised – which is required through courts, it may be established that in the case of the Court of Mitrovica, this right has been generally violated, and in particular: 1) Denial of access to information; 2) Access to court decisions, and 3) Unwillingness of the court with jurisdiction to act.

International Human Rights Law forces countries to guarantee the right of every individual to visit and have access to courts – or to receive a judicial protection relating a criminal, civil, administrative issue or even to ascertain that the right of an individual has been violated. Knowing that over 2700 civilian cases and over 1500 criminal cases have been left un-adjudicated, this has not only discriminated a part of the citizens of Kosovo (North Municipalities), but it also constitutes a burden, and loss of credibility and reliability on the judicial system of the Republic of Kosovo.

Therefore, Ombudsperson finds that citizens of the Republic of Kosovo in general, and the inhabitants of that region that fall under the territorial competence of that court have constantly been denied the right of access to justice, since 20 February 2008, and to date. This denial of access to the Court in Mitrovica North constitutes a violation of. (1) The right to a fair trial, which is protected by Article 6 of the European Convention on Human Rights (ECHR) and by Article 102 par. 2 of the Constitution of the Republic of Kosovo. (2) Upon violation of the right to access a court, it also violates the right for a legal effective remedy set forth and protected by Article 13 of the European Convention on Human Rights (ECHR) and by Article 32 of the Constitution of the Republic of Kosovo. (3) Right to a fair trial and within a reasonable time by an independent court established by law, which is set forth and protected by Article 6 of the European Convention on Human Rights (ECHR), (4) Right of judicial protection of rights set forth by Article 54 of the Constitution of the Republic of Kosovo, (5) Right to protection of property and possessions set forth and protected by Article 1 of the European Convention on Human Rights - ECHR (Additional Protocol Paris, 20.III.1952), namely by Article 46 of the Constitution of the Republic of Kosovo. (6) Irregular functioning of judicial system and the denial of the right of access to court causes serious consequences also to the rule of law, strengthening of the public order and protection of the region from unlawful practices, (7) Legal prescriptions: Criminal offenses for which, based on the Criminal Code of the Republic of Kosovo, prescriptions are foreseen, as a result of lack of access to court and irregular functioning of judicial bodies occur after the expiry of the legal limitation foreseen.

Based on these findings, the Ombudsperson recommends the: 1) Kosovo Judicial Council to functionalise the judicial system in the region of Mitrovica, in at the shortest time possible, enabling access to civilian and criminal case files, which have been blocked since 2008, and hence proceed with the subsequent ones, and 2) The Court in the Mitrovica North should take all measures required, to remove all physical and administrative obstacles for access to documents, and should cooperate, at the appropriate level, with the other part of branches of the Court of Mitrovica.

4.1.5. Ex officio report no. 421/2016 of Ombudsperson Institution of the Republic of Kosovo concerning the right to life, in the case of B.R

The Ombudsperson, based on an article of the “Telegrafi.com”, portal, on 12 July 2016, initiated an *ex officio* case, concerning the allegations of the writings in the written and

electronic media, on the lack of necessary psychiatric treatment for the deceased B. R. (B.R. who was diagnosed with a chronic psychiatric disease and has been under medical treatment since 2003).

The purpose of the report published on 10 August 2016 is to draw the attention to consequences of non-cooperation from responsible health authorities with the Police and family, as a result of which a person lost his life.

Based on the all evidences presented and facts gathered, as well as based on relevant laws, which determine the right to life, the Ombudsperson finds in the concrete case that, there was violation of Human Rights and Fundamental Freedoms, since health institutions have not acted in compliance with principles of Constitution and legislation in force.

The Ombudsperson considers that health institution, who accepted the person with mental disorders for treatment, has not provided the necessary professional assistance to the same person. The fact is concerning that as a result of inadequate treatment and failure to keep the patient under supervision led to his departure from this institution unnoticed, therefore, the circumstances of the departure of B.R., from the institution in question, remain unclear until a further notice, thus leaving room for different interpretations. During investigation of this case, the Ombudsperson has been informed that there were also other cases of departures of persons with mental disorders from similar institutions in other centres of Kosovo, therefore, such cases have also happened before.¹⁹⁰

The Ombudsperson considers that the failure of the Health Institution to inform the Court constituted violation of Article 78 of the Law on Out Contentious Procedure, while whatever reasoning provided by the health institution is groundless.

The Ombudsperson finds that, responsible authorities have failed in undertaking measures related to positive obligations, namely protection of indefeasibility of physical and psychological human integrity, especially in cases when integrity and human life are in danger. Failure of the family to cooperate with authorities also constitutes a problem in itself. Failure to inform competent authorities has impacted on the failure to undertake preventive measures.

The Ombudsperson finds that health authorities lacked necessary information regarding the measures imposed by the Court to B.R., therefore, as a result of inappropriate investigation on the past of B.R., and failure to cooperate with other state bodies, including the court and prosecution office, and by neglecting the situation allowed recidivism of the criminal offense of B.R.

¹⁹⁰ see OIK report C.no.89/2015, published on 3 November 2015
http://www.ombudspersonkosovo.org/repository/docs/1488-2015_Raport_me_rekomandime,_shqip_252019.pdf

Ombudsperson recommended: Health Inspectorate of Ministry of Health in compliance with powers and authority deriving from Article 33 of Law no. 05/L-025 on Mental Health should assess the treatment of the deceased B.R., in conformity with Article 19, paragraph 1, of Law on Mental Health, during the period of this stay in the Psychiatric Ward of RH in Gjilan, from 6 to 9 July 2016, and depending on the findings on the ground, all necessary actions should be taken and inform all Institutes of Mental Health in the Republic of Kosovo that such eventual cases are not repeated in the future. Police Inspectorate of Kosovo, in compliance with powers and legal authority should assess meeting of the legal criteria on the use of the firearm by the police officer, in conformity with Article 27 of Law 04/L-076 on Police. While, Ministry of Health and Kosovo University Clinic and Health Service should issue an instruction, through which it will inform all health institutions on their duties and responsibilities, when facing cases of treating persons with mental disorders and oblige them to act in conformity with Law no. 05/L-025 on Mental Health and undertake all necessary actions to increase the professional and ethical level of the staff and require from the health staff to treat patients with responsibility and maximum professionalism, by providing them professional health services and supervising them during the entire working hours, as long as such persons are in the health institution.

4.1.6. Ex officio report no. 425/2015 of Ombudsperson concerning lack of effective legal remedies

On 22 August 2016, Ombudsperson Institution of the Republic of Kosovo published the report concerning lack of effective legal remedies, namely regarding violation of rights of persons with disabilities regarding on-going procedures that they are obliged to pursue but without a decision on the merits and without an appropriate court review. Report was based on an ex officio case no. 425/2015, summarising all complaints of a similar nature, which are described in the report with no. A. 196/16 against Basic Court in Prishtina and case no. A. 230/2016 against Pension Administration department – Ministry of Labour and Social Welfare.

Based on facts and circumstances described in the report, the Ombudsperson considers that decisions of the commission of complaints as a second instance in all cases confirm the decisions of Medical Commission in MLSW as a first instance and provide legal advice to complainants to continue with judicial proceedings in administrative conflicts.

The Ombudsperson considers that Courts in none of their procedures considered the implementation of the material right of the issue. This deficiency is still on-going, because in administrative conflicts, courts ascertain only procedural violations in the MLSW decisions. This is viewed as an omission of courts to utilise the possibility and legal powers to review the MLSW decisions based on the merits of the case and at the same time repair violations by modifying the administrative decisions, in conformity with the Law on Administrative Conflicts.

The Ombudsperson finds that Courts after deciding on cases over a two-year (2 year) limitation by returning the issue to the administrative body for retrial, by justifying only with procedural violations made judgements to be inefficient, since the administrative body is again issuing an opposable decision to the parties and cases are again filed with Courts. As a result, parties are having an impression that their right is recognised according to the court's decision, but they are soon disappointed with the court's decision after repetitive rejection from the administrative body, since their case is sent back for revision to the administrative body and this is creating the impression of a legal uncertainty and ineffective appealing remedies.

Based on these findings, Ombudsperson recommended Ministry of Labour and Social Welfare, namely the Pension Administration Department of Kosovo, the Council of Complaints should handle requests and complaints of persons with disabilities, in conformity with powers and authorisations deriving from law, based on the evidences presented for their health conditions and specifically the subsequent decisions should be in line with the court's legal views, or in harmony with court's remarks. They should assess the court's judgements in order to take right decisions for parties and to avoid automatic processing of complaints based on their previous rejections, and to Kosovo Judicial Council and Basic Court in Prishtina, Department for Administrative Matters, that in conformity with powers and legal authority should undertake all actions necessary, other than procedural violations to decide in the administrative conflict lawsuit also based on the merits of the case, since in many cases of decisions for procedural violations, the parties' request has been rejected again by the administrative body, and lawsuits for administrative conflict in these cases should be reviewed within reasonable time and without any procedural delays, since in many cases parties have been losing their right on re-application for pension for persons with disabilities set forth according to law, 6 months, since the administrative body is not recognising their application, without the case being decided by the court.

4.1.7. Ex officio report no. 563/2016 of Ombudsperson concerning the procedure for the review of the Ombudsperson's Annual Report according to the Rules of procedure of the Assembly of the Republic of Kosovo

On 30 September 2016, Ombudsperson published a report with recommendations to provide a correct interpretation regarding Article 72 of Rules of Procedure of the Assembly of Kosovo concerning the procedure for the review of annual reports of independent bodies, Ombudsperson submitted a report with recommendations to the President of the Assembly of the Republic of Kosovo and two respective parliamentary commissions.

The main feature of Ombudsperson's reports is to provide information on the situation of human rights in the Republic of Kosovo, as well as to make concrete recommendations addressed to responsible public institutions on the improvement of this situation; therefore, it is necessary to be an integral review of findings in the area of human rights.

The ombudsperson's role in the presentation of recommendations is confirmed by Constitution, as well as by Law no. 05/L-019 on Ombudsperson.

The report analyses and proves the supplementation of Rules of Procedure of the Assembly of the Republic of Kosovo, namely Article 72 of this regulation, which determines Special procedures regarding independent bodies, established by the Assembly, which means Ombudsperson's Annual Report should not be subject to voting on approval according to procedures of this provision, since OIK is not an institution established by the Assembly, but an institution directly foreseen in the Constitution, and its work is of specific nature.

Ombudsperson in its report concludes that respecting fully International and European Human Rights standards requires from the Assembly of the Republic of Kosovo to play a role in the oversight of the level of implementation of recommendations addressed to other public authorities by the Ombudsperson.

Ombudsperson in its reports recommended the Assembly of the Republic of Kosovo to clarify expressly that specific procedures for the review of "annual report of an independent body, established by the Assembly", defined in Article 72 of Rules of Procedure of the Assembly of the Republic of Kosovo, including voting on the approval of the report, are not applied to the Ombudsperson's Annual Report. In addition, the Assembly is recommended to supplement the Rules of procedure of the Assembly of the Republic of Kosovo to define specific procedures for the review of Ombudsperson's Annual Report, including the oversight of the level of implementation of his recommendations by other public authorities.

4.1.8. Ex officio report no. 499/2016 of Ombudsperson concerning the failure to respect legal procedures during the recruitment process of personnel according to competitions advertised by Municipal Education Departments in the Republic of Kosovo

On 23 November 2016, Ombudsperson submitted to Mayors of Prishtina, Gjilan, Viti, Ferizaj, Lipjan, Klina, Rahovec, Novobërda and Obiliq the ex officio report regarding the failure to respect legal procedures during the recruitment process of personnel according to competitions advertised by Municipal Education Departments in the Republic of Kosovo.

The purpose of this report is the promotion of equality and drawing the attention of Municipal Education Departments (MED) in the Republic of Kosovo, regarding the need to undertake relevant actions for the implementation of the law and the respect of legal recruitment procedures. Analysing documentation and competitions advertised by MED in 19 Municipalities of the Republic of Kosovo, it was observed that during the drafting of competitions, in the past and now, criteria were set forth, which were in contradiction with the law, thus making equal treatment unable.

Based on competitions analysed, Ombudsperson observes that the above-mentioned MEDs mentioned in the report have not undertaken any action in order that competitions advertised are in compliance with the applicable laws in Kosovo, and to ensure that they meet the liability set forth by Law on Local Self-Government, which in Article 4, paragraph 2, expressly determines that: “All municipal organs shall ensure that the citizens of the Municipality enjoy all rights and freedoms [...], that they enjoy fair and equal opportunities in utilities at all levels.”

Ombudsperson observes that according to the court decisions of European Court of Human Rights (ECtHR), “the right not to be discriminated is violated when States treat persons in similar situations unequally, without giving any objective and reasonable justification”. Based on all evidences presented and facts gathered, Ombudsperson, in compliance with the relevant legislation, found that there was violation of the competition advertised and concluded that there was violation of Human Rights and Fundamental Freedoms, since responsible officers of MEDs in the Municipality of Prishtina, Gjilan, Viti, Ferizaj, Lipjan, Klina, Rahovec, Novobërda and Obiliq have acted in contradiction with the applicable legislation.

Ombudsperson considers it indispensable that these practices should not be repeated in the future, in order that all actions of municipal bodies are in compliance with legal provisions and at the function of the protection of human rights and freedoms.

Ombudsperson recommended: (1) Municipality of Prishtina to undertake all measures necessary to ensure the right guaranteed by Constitution to candidates that every person is free to choose his/her occupation, 2) Municipality of Gjilan and Municipality of Viti should undertake all measures to stop such cases of unequal treatment and ensure that all candidates enjoy equal rights and opportunities for employment in the education institutions, irrespective of the place where they live or where they were born, 3) Municipality of Prishtina, Viti, Ferizaj and Rahovec should ensure that the commission for the selection of teachers is established in accordance with law, 4) Municipality of Ferizaj, Lipjan and Klina should guarantee the right of every candidate to apply in all work positions without further limitations, and 5) Municipality of Viti, Novobërda and Obiliq should undertake all measures that drafting of competitions in the future is done based on legal acts which are in force.

4.1.9. Ex officio report no. 382/2016 of Ombudsperson concerning the violation of dignity and the right of pensioners to pensions

On 25 November 2016, Ombudsperson submitted the ex officio report with recommendations to the Ministry of Labour and Social Welfare concerning the violation of dignity and the right of pensioners to pensions. The report deals with the obligation of pension users to report every six (6) months with the competent body of MLSW, in order to avoid the termination of their pension and is based on an article of “Koda ditore” newspaper, dated 30 May 2016.

The purpose of this report is to draw the attention of the Assembly of the Republic of Kosovo and Ministry of Labour and Social Welfare (MLSW) regarding the indispensability of the protection of human dignity of pensioners as a result of the reporting procedures deriving from the Law on Pension Schemes financed by the State (Law no. 04/L-131) and Administrative Instruction (MLSW no. 05/2015). The report deals with the indispensability of the protection of human dignity of pensioners of the Republic of Kosovo and the pensioners' rights, as a result of the reporting procedures deriving from the Law on Pension Schemes financed by the State (Law no. 04/L-131) and Administrative Instruction (MLSW no. 05/2015), based on an analysis of international standards and domestic legislation analysis.

The Ombudsperson observes that by doing so human dignity was violated; a right which is guaranteed by Constitution, and the reduction or the suspension of the rights to pension constitutes intervention in the right to peaceful enjoyment of the property, finding this legal measure discriminatory, which violates the pensioners' dignity and which is contradiction with the effect the law tried to provide in principle.

Therefore, in order to protect human dignity of pensioners and the possibility to enjoy their right peacefully and freely, Ombudsperson recommended MLSW to initiate procedures for amending Law on Pension Schemes financed by the State, in order to repair violations against pensioners and should functionalise its verification sources in relation to the pensioners' status also through other forms analysed in the report and should make a public announcement for amending the procedures.

4.1.10. Ex officio report no. 894/2016 of Ombudsperson concerning National Assessment of Sexual and Reproductive Health and Rights of Kosovo

Aiming to set rights of individuals violated and setting the standards guaranteed, and promoting good practices, on 22 December 2016, Ombudsperson presented the Report on "Reproductive and Sexual Health and Rights in Kosovo: A reality beyond the Law?".

Sexual and reproductive health and rights (SRHR) have a protection framework under the Constitution of the Republic of Kosovo, including not only the rights recognised under Constitutional chapter on human rights, but also the rights recognised under International human rights treaties, which Constitution recognised as directly applicable and have a priority in case of the conflict under domestic legislation.

This report, the first of its kind in Kosovo aims at assessing achievements and political, economic, social and cultural barriers on sexual and reproductive health in the country, through human rights guaranteed by Constitution; holding relevant authorities accountable against their legal obligations in relation to SRHR; making recommendations for actions creating potential for progress and support to the execution of SRHR for Kosovo population. The assessment was realized by Ombudsperson Institution of Kosovo (OIK) through technical and financial support of the United Nations Population Fund (UNFPA), National office in Kosovo and is based on the review of relevant documents

and publications, as well as on the consultations with public authorities, civil society and international organizations and experts in the area.

The assessment focused on seven key issues: contraceptive information and services; safe abortion; maternal health; HIV/AIDS; comprehensive sexual education; violence against women; cancer and reproductive health, considering within the focus assessment also vulnerable groups; reliability and availability of data, non-discrimination, privacy including confidentiality and participation. The broader health system and socio-economic context as two main issues are so highly relevant for understanding SRHR, during the preparation of the report, which also identified areas of progress and obstacles.

Data was analysed with three overarching questions in mind: what is the status of SRHR of the population of Kosovo, including marginalized groups? Which key laws, policies and initiatives have been adopted by the Government, and what is their implementation status? What are the main consistencies and discrepancies between the constitutional protections of SRHR and the reality? The report includes recommendations based on findings to these questions. The report concludes that Kosovo made significant progress regarding constitutional framework for the protection of SRHR; an extensive number of relevant laws and policies; progress in developing a new health system with appropriate referral system, in particular regarding issues of SRHR: low rate of maternal mortality and low prevalence of HIV/AIDS.

While obstacles and challenges identified have to do with: low levels of budgetary contributions to health; limited implementation of laws and policies; poor coordination between sectors as well as between central and municipal authorities; significant limitations in data collection including in the health information system which is hampered by limited reporting of, and inaccurate data; more limited access to healthcare for persons living in rural areas; and the tendency of the population to bypass family medicine centres and directly seek out specialist sexual and reproductive healthcare. There is also weak monitoring and accountability, including in respect of illegal practices such as clandestine abortion, and implementation of policies. Limited participation of the population including marginalized groups in the development of SRHR-related policies is limited, privacy and confidentiality is poorly respected by health professionals, the majority of policies on sexual and reproductive health have expired etc.

The report points out that Kosovo needs: update, implement and monitor the implementation of policies, develop the Health Information System so that appropriate and disaggregated data is routinely collected; extend the provision of age-appropriate compulsory comprehensive sexuality education across all schools; improve privacy and confidentiality in healthcare settings; enhance knowledge of and access to modern methods of contraception; support implementation of the legislative and policy framework on violence against women through raising awareness of SRHR in this context amongst the population, judiciary and other key institutions; address illegal abortion services; and address the SRHR of at-risk groups.

4.2. Complaints-based reports

4.2.1 Report with recommendations no. 322/2015 concerning violation of the right to living environment

On 4 March 2016, Ombudsperson published a report with recommendations based on the complaint filed by Mrs S. P. and 15 other families, residents of “Durgut Vokshi” street in Gjakovë, concerning violation of the right to living environment.

The complaint received in Ombudsperson Institution of Kosovo consists on the fact that residents in the “Durgut Vokshi” street in Gjakova, had filed a complaint with the Municipality of Gjakova, in June 2015, regarding the failure to connect to city sewage system and as a result of sewage waters flowing on surface, polluting the environment and exposing the residents of this street to risk and to infectious diseases.

After legal analysis, in conformity with the Constitution of the Republic of Kosovo (Article 52), European Convention on Human Rights (Article 8) as well as assessments and conclusions of the European Court of Human Rights with the right to respect for private and family life, and Law on Local Self-Governance No. 03/L-040 (Article 17), Law on Strategic Environmental Assessment no.03/L-230 (Article 1), Law on Environmental Protection no.03/L-025, Law for Prevention and Fight against Infectious Diseases No.02/L-109, Law on Public Health No. 02/L-78 (Article 6), Law on the Inspectorate of Environment, Waters, Nature, Spatial planning and Construction no. 04/L-175 (Article 10), Law on Expropriation of Immovable Property No.03/L-139 (Article 1), Ombudsperson recommended Municipality of Gjakova: 1), Municipality of Gjakova, in accordance with the powers and legal authority and in cooperation with all other responsible authorities should undertake immediate steps in solving the problem of sewage system for the residents of "Durgut Vokshi" Street in Gjakova; (2) Directorate for Health and Social Welfare in Municipality of Gjakova, in accordance with the powers and legal authority, should undertake all necessary actions to detect epidemiologic and health condition of the residents of this area as well as the environmental pollution level. Depending on the findings on the ground, it should draft a written report and inform the residents and institutions about the situation and eventual hazards as well as undertake necessary measures for protecting health of residents; (3) Department of Urban and Environmental Protection of the Municipality of Gjakova, in accordance with the powers and legal authority, should initiate procedures for drafting the urban regulatory plan for “Durgut Vokshi” Street in Gjakova, through which it would determine necessary environmental infrastructure for the residents of this area, in accordance with relevant standards as the ultimate solution to this problem.

4.2.2 Report with recommendations no. 348/2015, concerning restriction of the Right to Access Public Document by Municipality of Fushë Kosova

On 14 March 2016, Ombudsperson published a report with recommendations concerning Restriction of the Right to Access Public Document. The purpose of this Report is to

draw attention of the Municipality of Fushë Kosova regarding the complaint of Mrs A.G., regarding restriction of the Right to Access Public Documents and the constitutional responsibility of domestic public authorities to cooperate with Ombudsperson Institution.

Ombudsperson's legal responsibilities are based on Article 18.1.2 of Law No. 05/L-019 on Ombudsperson, which is: "to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases".

Based on legislation analysis, Ombudsperson pointed out in the report in question that the right of access to public documents is guaranteed under Article 41 of Constitution of the Republic of Kosovo. Paragraph 1 of this article, determines that: "Every person enjoys the right of access to public documents", while paragraph 2, of the same Article of Constitution, determines that: "Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification".

The spirit of Article 41 of the Constitution of Kosovo has been conveyed also to Law on Access to Public Documents No. 03/L-215, according to which: "This Law shall guarantee the right of every natural and legal person to have access, without discrimination on any grounds, following a prior application, to official documents maintained, drawn or received by the public institutions". In addition, Article 9.1, of the Law No. 02/L-28 on Administrative Procedure like Administrative Instruction no. 05/2013, on Transparency in Municipalities are in the function of strengthening transparency and the right to be informed.

Universal Declaration of Human Rights also guarantees "Freedom to seek, receive and impart information and ideas through any media and regardless of frontiers", and European Convention on Human Rights, which determines in Article 10, that: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers". On the other hand, European Court of Human Rights, points out also delays in providing information may constantly waive the value of information or the entire value and the interest shown therewith.

Ombudsperson also observes that like Constitution of Kosovo, European Convention foresees the right to provide or impart information as a right that is not absolute and restriction to this right can be done for certain reasons.

In this case, Municipality of Fushë Kosova failed to provide evidence or proof justifying the rejection of requests for access to documents requested by Mrs A.G. In addition, Municipality of Fushë Kosova responded to one of the requests filed, but with delay, and

the response did not contain the advice on using legal remedies, as is foreseen by Law on Access to Public Documents.

The Ombudsperson, bearing on mind that “Only the law has the authority to determine tasks and responsibilities for legal and natural persons”, as well as based on the above given facts, ascertains that failure of the Municipality of Fushë Kosova to respond regarding the party’s request and partial response to the request provided are in contradiction with the provisions of Law No. 03/L-215 for Access to Public Documents.

Therefore, with the intention to improve the Respect of the Right for Access to Public Documents as a constitutional and legal right, in order that this right is practiced by citizens as a powerful tool for controlling the work of governmental bodies, which will impact on improvement of the work of state bodies and increase transparency and accountability, Ombudsperson, in accordance with Article 135, paragraph 3, of the Constitution of the Republic of Kosovo, and Article 27, Law on Ombudsperson No. 05 / L-019 recommended Municipality of Fushë Kosova to enable the party access to requested documents except information limited by law, due to the privacy, business trade secrets or classified security information and Municipality should undertake steps to strengthen public officials’ capacities regarding implementation of the Law on Access to Public Documents as well as the Law on Ombudsperson.

4.2.3 Report with recommendations no. 223/2015, no. 229/2015 and no. 65/2016 recorded against the Privatisation Agency of Kosovo concerning the release of the properties of Socially-Owned Enterprises sold by Privatization Agency of Kosovo from illegal occupants

On 19 April 2016, Ombudsperson Institution of the Republic of Kosovo published a report with recommendations concerning the release of the properties of Socially-Owned Enterprises sold by the Privatization Agency of Kosovo from illegal occupants. The purpose of this Report is to draw attention of the Privatization Agency of Kosovo (PAK), Kosovo Police and the State Prosecutor regarding the usurpation of the privatized properties by illegal occupants.

The report is based on three separate complaints filed by complainants against PAK regarding usurpation of properties, which they purchased from PAK, through the process of privatisation of socially owned enterprises. During the analysis of cases, Ombudsperson observed that courts are hesitant to decide regarding the civil suits for the release of usurped properties. However, Ombudsperson pointed out that the illegal usurpation of the property is a criminal offence punished by Article 332 of Criminal Code of the Republic of Kosovo, no. Nr.04/082 and in concrete cases, Kosovo Police and relevant prosecutions should undertake concrete steps before cases are processed in civil procedure.

Ombudsperson reminds that the right for protection of property is guaranteed by Article 46 of Constitution of the Republic of Kosovo and Article 1 of Protocol no. 1 of European

Convention and Human Rights (ECHR). The Ombudsperson, in compliance with Article 135 paragraph 3, of the Constitution of Republic of Kosovo as well as Article 18 paragraph 1.2 of the Law on Ombudsperson, recommended: (1) Privatization Agency of Kosovo should supplement Decision No. 270/2014 dated 21 November 2014 also for the properties for which the Agency holds the responsibility for the legal shortcomings of accomplishment, which were sold before 21 November 2014; (2) Kosovo Police should act according to general duties and powers determined by Article 10, paragraph 1, point 1, point 2 and point 5, of the Law No. 04/I-076 on Police and to proceed cases of illegal usurpation of privatized properties to the respective public prosecution offices in compliance with Criminal Code and Criminal Procedure Code; (3) Public prosecutions should initiate criminal proceedings against occupants of privatized properties in compliance with Criminal Code and Criminal Procedure Code.

4.2.4 Report with recommendations no. 185/2012 concerning the delay of judicial proceedings in the case C. no. 3439/15 on the division of the property earned in the joint ownership

On 5 May 2016, Ombudsperson published a report with recommendations concerning delay of judicial proceedings in the case C. no. 3439/15 on the division of the property earned in the joint ownership. This report is based on the individual complaint filed by Mrs M.M. and the purpose of this Report is to draw attention of the Court of Appeal in Prishtina, regarding the need to undertaking actions relevant to improving the work of the Judiciary, and efficient and effective functioning of the courts. However, in 2000, the complainant filed a claim for recognition of the right of ownership, based on joint marital contribution, until reporting there was no final form court decision taken which would resolve this issue.

In this case, Ombudsperson found that there was no special method or legal way and none were placed at the availability of the complainant; which she could use to complain on the delay of procedure, forecasting or hoping to achieve whatever facilitation as a form of prevention of injustice or compensation for the injustice experienced and there were violations of the right to a fair judicial trial within a reasonable time, guaranteed under abovementioned legal acts, there were violations of the right to effective legal remedies. Taking this into consideration, Ombudsperson recommended the Court of Appeal considering the fact that the complainant has initiated the judicial procedure since 2000 and regarding this case there are a number of court decisions issued and still there is no final form decision. The Court should consider the possibility to take actions to decide on the case, within a reasonable time, despite the fact that the case has been with this Court since 09.07.2015. while, considering that we have to do with systematic violation of rights for a fair judicial process, made known also through a large number of complaints received in this nature, Kosovo Judicial Council should initiate compiling a legal instrument, which would constitute an effective remedy within the meaning of Article 13 of European Convention on Human Rights, which provides facilitation in the

form of prevention or compensation related to complaints for the delay of judicial procedure.

4.2.5 Report with recommendations no. 431/2015 concerning the complaint filed by I.R., regarding the procedure of allocation of a grant for construction of a stable and associated buildings and agricultural mechanisms by Agency for Agricultural Development (AAD)

On 16 May 2016, Ombudsperson published a report with recommendations concerning the complaint filed by I.R., regarding the procedure of allocation of a grant for construction of a stable and associated buildings and agricultural mechanisms by AAD. The purpose of this Report is to draw attention of the Ministry of Agriculture, Forestry and Rural Development (MAFRD), to the right of Mrs Isufi to be informed regarding the complaint filed on 15.06.2015, against the decision of AAD, REF: 07/4, dated 02.06.2015 within the time limits in conformity with the Law no. 02/L-28 on the Administrative Procedures of the Republic of Kosovo.

In this report, Ombudsperson found that complainant was not informed on the review of her complaint by the Commission for Review of Complaints for rural development Projects for 2015. This is so due to the fact that it was sent to a wrong address, although the complainant had written a correct address on the application form. Ombudsperson assessed that checklist of documents submitted is not consistent with criteria set out in Administrative Instruction no.01/2015 on Measures and Criteria of Support in Agriculture and Rural Development for 2015 and Applicant's guidelines.

Lack of decision of Commission for Review of Complaints makes the complainant unable to use effective remedies, as is set forth in Article 33, paragraph 6 of Administrative Instruction no. 01/2015 on Measures and Criteria of Support in Agriculture and Rural Development for 2015, which cites that "The applicant may address to the competent court against the decision of the Commission for Review of Complaints, in a period of time of 30 days". Inability to use legal remedies is in full conflict with Article 13 "Right to an effective remedy" of European Convention on Human Rights. Therefore, Ombudsperson recommended Ministry of Agriculture, Forestry and Rural Development to harmonise the checklist of documents submitted with the Administrative Instruction no. 01/2015 on Measures and Criteria of Support in Agriculture and Rural Development for 2015 and Applicant's guidelines, specifying that the checklist should highlight criteria required based on this Instruction, and among them also the sketch of the building, and to issue and submit the decision of the Commission for Review of Complaint, as is set out in Article 33, paragraph 4 of Administrative Instruction no.01/2015 on Measures and Criteria of Support in Agriculture and Rural Development for 2015.

4.2.6 Report with recommendations no. 291/2014 concerning procedural delays from the Basic Court in Prishtina on the settlement of the case P no.42/15 of complainant Rr. B.

On 10 June 2016, Ombudsperson published a report with recommendations concerning procedural delays from the Basic Court in Prishtina on the settlement of the case P no.42/15 of complainant Rr. B., and the purpose of the report is to draw the attention of Basic Court in Prishtina, concerning the indispensability of undertaking relevant actions for improving the work of the judiciary and efficient and effective functioning of the courts. The report was based on individual cases, facts and evidences as well as on case letters available with Ombudsperson Institution.

Ombudsperson found that there was no special method or legal way and none were placed at the availability of the complainant; which he could use to complain on the delay of procedure, forecasting or hoping to achieve whatever facilitation as a form of prevention of injustice or compensation for the injustice experienced. In the concrete case, there were violations of the right to a fair judicial trial within a reasonable time, guaranteed under abovementioned legal acts, and there were violations of the right to effective legal remedies in handling of the case by the courts/judiciary, guaranteed by Article 31. 32 and 54 of Constitution of the Republic of Kosovo, Article 6, paragraph 1 of ECHR, Article 7, paragraph 1 and Article 11, paragraph 2 on Law on Courts and Criminal Procedure Code of Kosovo, Article 5, paragraph 2, Article 62, paragraph 1.1. Taking this into consideration, Ombudsperson recommended the Basic Court in Prishtina the fact that the suit has been filed in 2012 and regarding this case there is no procedural action in settlement of the case; it should take immediate measures for review and decide on the merits of the case, without further delays regarding the case. In addition, Kosovo Judicial Council should initiate compiling a legal instrument which would constitute an effective remedy within the meaning of Article 13 of European Convention on Human Rights, which provides facilitation in the form of prevention or compensation related to complaints for the delay of judicial procedure.

4.2.7 Report with recommendations no. 6/2016 concerning unauthorized inspections of KEDS in private properties

On 14 July 2016, Ombudsperson Institution of the Republic of Kosovo published a report with recommendations regarding unauthorized controls conducted by KEDS in private properties and customers' residential places, which is based on citizens' complaints relating to this issue. The purpose of this Report is to inform the State Prosecutor on allegations regarding unauthorized inspections conducted in private properties and customers' residential places by KEDS, as well as to draw the attention to KEDS, the Ministry of Economic Development and the Energy Regulatory Office regarding possible violation of human rights.

Ombudsperson's powers based on Article 16, paragraph 5 of Law on Ombudsperson stipulate that: "If the Ombudsperson during the investigation conducted observes the presence of criminal offence, than he/she informs competent body for initiation of investigation."

On 29 January 2016, the Ombudsperson, immediately after receiving the complaint from the first complainant, had requested from KEDS to set interim measures through which it recommended to suspend KEDS activities, which were the inspection of residential premise, because the unauthorized inspection of residential places can constitute violation of the right to private life.

Further, Ombudsperson and General Director of KEDS have had correspondence, about which the Minister of Economic Development and Chair of the Board of Energy Regulatory Office were kept informed, from whom, Ombudsperson received no reaction.

Legal provisions, regulations and procedures to which KEDS referred to were analysed and was found, regarding adverse allegations – complainants on the one hand and KEDS on the other hand, as a responsible party – it remains under the competence of relevant prosecution offices to carry out investigations about the manner in which KEDS carried out inspections in consumer's properties.

Ombudsperson reminded that searches in private premises on the suspicion of criminal offences may be carried out only on court order by the police, thus respecting provision of Criminal Procedure Code no. 04/L-123, namely in accordance with Article 105 and 108 of the Code. Ombudsperson also reminds that illegal inspections are punished by Article 201, paragraph 1 of Criminal Code of the Republic of Kosovo, No.04/L-082.

The Ombudsperson draws attention of KEDS, the Ministry of Economic Development and the Energy Regulatory Office that unauthorized possible controls constitute breach of the right to private life guaranteed by Article 36, paragraph 1 and 2 of the Constitution of Republic of Kosovo.

In addition, European Convention on Human Rights (ECHR) guarantees the right on the respect of family and private life. The Ombudsperson draws attention of the Ministry of Economic Development and the Energy Regulatory Office to Article 3, paragraph 2 of the Constitution of Republic of Kosovo which stipulates: "The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and the participation by all Communities and their members". Ombudsperson in this report recommended that (1) State Prosecutor should request from competent Basic Prosecution Offices initiation of investigations against responsible officials of the Kosovo Company for Distribution and Supply of Electricity- KEDS regarding unauthorized inspections within residential premises and the electrical appliances that are customers' property, (2). Kosovo Company for Distribution and Supply of Electricity: (a) should terminate

unauthorized entrances within flats or any other private residential places, for possible inspection of electrical appliances, that are customers' private properties, (b) improve distribution network and the installations in order to be able to control electricity losses and avoiding in this way inspections within customers' properties, specifically inspections within customers' living premises, and (c) in cases when there are suspicions for misuse or loss of electricity, request from relevant institutions initiation of investigations; (3) Ministry of Economic Development and Energy Regulatory Office should protect the rights of the citizens of the Republic of Kosovo, as foreseen by the Constitution, in relation to Kosovo Company for Distribution and Supply of Electricity, which as a private company, exercises public authorization in the Republic of Kosovo.

4.2.8 Reports with recommendations no. 113/2016 and no. 114/2016 concerning the non-execution of decisions by the Privatization Agency of Kosovo

On 20 July 2016, Ombudsperson published two reports with recommendations regarding the non-execution of decisions by the Privatisation Agency of Kosovo (PAK). The purpose of these Reports is to draw attention of the Privatization Agency of Kosovo regarding the need to undertake appropriate actions on implementation of final decision with no. PRZ004-0042 dated 28 June 2011 and on implementation of final decision with no. PRZ004-0054, dated 28 June 2011, without further delays.

These reports are based on individual complaints of complainants and on complainants' facts and proofs as well as on the case files available with Ombudsperson Institution of Kosovo (OIK) regarding the delay of the procedure on implementation of these decisions. After the summary of facts and legal analysis regarding each case separately, the Ombudsperson, in the capacity of recommendation provider for the Privatization Agency of Kosovo, starting from the principle of enforcement of legality, good intention for improving the work and increase of the level of lawfulness for enforcement of final decisions as well as for a legal solution of this problem, and in compliance with Article 135, paragraph 3 of the Constitution of Republic of Kosovo, deemed it reasonable to recommend the Privatisation Agency of Kosovo to undertake immediate measures to enforce the final decision in the case, No. PRZ004-00425, dated 28 June 2011, and in the case no. PRZ004-0054, dated 28 June 2011.

4.2.9 Report with recommendations no. 303/2015 concerning the non-execution of plenipotentiary judgment of the Basic Court in Prizren

On 12 August 2016, Ombudsperson published a report with recommendations concerning the complaint no. 303/2015 concerning the non-execution of plenipotentiary judgment of the Municipal Court – now Basic Court in Prizren (C.no.462/10, dated 21.12.2011).

The report is based on an individual complaint filed with Ombudsperson Institution against Basic Court in Prizren, concerning the non-execution of plenipotentiary judgment of the Basic Court in Prizren and regarding the party's claims for unequal treatment and

violation of principle of equality before the law and noncompliance with the Law on Enforcement Procedure.

The Ombudsperson further finds that the failure of the decision to be enforced by the Court and the failure of competent bodies of the Republic of Kosovo to ensure effective mechanisms in the meaning of enforcement of final form decisions is in conflict with the principles of the rule of law and constitutes violation of fundamental human rights guaranteed by Article 21 of Constitution, and the authorities failed to undertake necessary actions for enforcement of judgment, and this is why the violation of the right to a fair trial within a reasonable time, guaranteed by par. 1 of Article 6 of European Convention on Human Rights, occurred. In this case, Ombudsperson recommended Kosovo Judicial Council to initiate compiling a legal instrument that would constitute an effective remedy in the meaning of Article 13 of European Convention on Human Rights, which ensures facilitation, in the form of prevention or reimbursement regarding the complaints on delay of judicial proceedings and to ensure equality on the use of official languages in all courts, so that all procedures, documents, information and documents related to procedures should be issued within a reasonable time in the official language of parties. While, the Office of the Disciplinary Counsel should investigate the case regarding the duration of the enforcement procedure as well as the potential misuse of the duty by responsible officials.

4.2.10 Report with recommendations no. 595/2015 concerning positive obligations stemming from Article 29 and Article 31, paragraph 2 of Constitution of the Republic of Kosovo, and Article 5 of European Convention on the Protection of Human Rights and Fundamental Freedoms

On 26 September 2016, Ombudsperson published a report with recommendations, based on the individual complaint filed by I.D. and its purpose is to identify some of the weaknesses of institutional actions in handling this case and to draw the attention of the responsible institutions to the measures to be taken in order to implement the right of mandatory psychiatric treatment for persons with mental disorders. Complainant filed a complaint against the Forensic Psychiatry Institute in Prishtina, regarding the allegations for failure to implement the decision of Basic Court on mandatory psychiatric treatment in custody for her son.

Based on all evidences presented and facts gathered, and based on relevant laws, which determine the right to private and family life, as well as the right to health, the Ombudsperson finds that the complainant's complaint is reasonable and lawful. In the concrete case, the Ombudsperson finds that there was violation of Human Rights and Fundamental Freedoms, since responsible authorities, which according to health legislation in force are given the powers and are under the obligation to undertake positive obligations related to the case, have failed to meet the citizen's duties and responsibilities in relation to the citizen.

The Ombudsperson finds that B.D. should have gone through necessary psychiatric treatment in relevant healthcare institutions or to take his ability to act and assign guardianship. From the circumstances of the case it can be clearly seen that leaving Mr B.D., without a guardianship and his free movement on the street caused an accident and his health was jeopardised. Negligence of the family and absence of cooperation of responsible authorities contributed to this situation, which failed to provide proper care and provide proper health care.

Based on this, Ombudsperson recommended Ministry of Health to undertake measures for creation of a database through which the medical treatment of these persons could be followed (calendar of parenteral therapy – storage), which could be accessed by all mental health institutions in the Republic of Kosovo, in all (primary, secondary and tertiary) levels, taking into account the respect and provisions of Law on Mental Health; Mental Health Institutions, in conformity with powers and legal authority and in cooperation with other authorities responsible, should undertake necessary measures on the ground so that persons with mental disorders with predispositions to cause physical violence and property damage are removed from the public, and are treated in Mental Health Institutions with beds, until they become harmless to environment and society; Ministry of Health, in conformity with powers and legal authority, should undertake all necessary measures for functionalization of multidisciplinary teams in order to protect mental health of these persons, maximally trying to integrate these persons and re-socialise them in family and society, as harmless persons, on the contrary (when rehabilitation treatment is unsuccessful or mental illness is incurable), one should take into account the possibility to file a request to remove the ability to act and place them in relevant institutions in conformity with legislation in force.

4.2.11 Report with recommendations no. 702/2015 concerning the restriction of the right for access to public documents by Municipality of Klllokot

On 3 October 2016, Ombudsperson published a report with recommendations the purpose of which is to draw the attention of Municipality of Klllokot to the complaint filed by Mr Zh. D. concerning the restriction of the right for access to public documents.

Ombudsperson observed that provision of access to documents and provision with information is not a service, but is a right guaranteed by international instruments, Constitution and other legal acts mentioned above. European Court of Human Rights in the case of Autronic Ag V. Switzerland, points out that “Freedom to receive information includes the right to seek and request information, through all legal means possible”.

The Ombudsperson, taking into account that *“Only the law has the authority for determining rights and obligations for legal and natural persons”*, and based on facts provided above, finds that failure of Municipality to respond regarding the request, and incomplete response to the request are in contradiction with provisions of LAPD provisions and in this case, Ombudsperson recommended that Municipality of Klllokot

should review the request of Mr D., for access to public documents in conformity with Law and should undertake actions in capacity building of public officials regarding the implementation of Law on Access to Public Documents, and Law on Ombudsperson.

4.2.12 Report with recommendations no. 733/2015 concerning the failure of MEST to review the complaint filed by Mrs F.G. within legal time

On 7 October 2016, Ombudsperson addressed a report with recommendations to MEST concerning the failure to review the complaint filed by the complainant within legal time. In this case, Ombudsperson observes that delay of procedures occurred as a result of the failure of MEST to handle the complainant's complaint as is set out by law, namely LAP, which in Article 11 expressly determines that; *"The public administration bodies, within the scope of their competences, shall decide on any request, submitted by natural and legal persons."* In addition, the present Law accurately determines situation and deadlines for response, even when these bodies consider themselves incompetent. Due to procedural delays in the complainant's case, on 4 February 2016, Ombudsperson addressed MEST, through a letter, and on 11 March 2016, through a repeated letter, regarding which, on 6 April 2016, he received a response with a decision as attachment, with the following contents: *"Complaint No.613-2 dated 11.03.2016 filed by Mr Hilmi Jashari – Ombudsperson for Mrs is not reviewed."* Whereas further to the reasoning of this decision, Commission for Submissions and Complaints of the Ministry of Education, Science and Technology; *"...is announced incompetent for the review and for treatment of this case"*.

Ombudsperson observes that treatment of the complainant's complaint by MEST, as a complaint filed by Ombudsperson on her behalf is in contradiction with LAP, which precisely sets out entities of legal and administrative processes, submissions and obligations of decision-making bodies to decide on submissions.

Ombudsperson is not a party and neither is a representative of the complainant as is treated in this decision. According to Law on Ombudsperson No. 05/L -019, Article 16, regarding his powers and mandate it determines expressly: *"The Ombudsperson has the power to investigate complaints received from any natural or legal person related to assertions for violation of human rights envisaged by the Constitution, Law and other acts,..."*, which means that Ombudsperson does not compile submissions on behalf of parties neither does he represent them at court or administrative proceedings. Therefore, in this case too, his request was to be informed regarding at what stage the procedure of the complainant's issue is, as well as actions undertaken by MEST for this case to be processed within a reasonable time in conformity with law.

Ombudsperson is especially concerned about the treatment of the complainant because of the fact that when she visited MEST – Protocol Office, on 14 May 2016, to receive a response regarding her complaint, she was not provided with a response by the officer of

this office, with a reasoning: *“that she should have been provided with a copy of the decision by Ombudsperson...”*.

Ombudsperson points out that the right of the complainant for an administrative hearing without delay is guaranteed also by LAP. Article 90, paragraph 1, precisely determines the time of publication of administrative acts; *“Individual and collective administrative acts are serviced to interested parties no later than 30 days.”* While in the case of Mrs G, considering that 18 months have passed is an evidence of violation of the right, namely denial of this right guaranteed by Constitution and law.

Ombudsperson recommended Ministry of Education, Science and Technology to guarantee the review of complaints for all parties, within a reasonable time and in conformity with laws in force; announce absolutely invalid the administrative acts (Article 93.3); Promulgate an administrative act based on Law on Administrative Procedure (Article 84), (contents of the administrative act).

4.2.13 Report with recommendations no. 160/2015 concerning violation of rights deriving from the employment relationship

On 10 October 2016, published a report with recommendations concerning violation of rights deriving from the employment relationship, which is already submitted to responsible parties.

Case was initiated based on the complaint filed against the Mayor of Gjakova and Main Family Medicine Centre (MFMC) in Gjakova, regarding the failure to enforce plenipotentiary decisions of the Independent Oversight Board of the Kosovo Civil Service (IOBKCS), and plenipotentiary decisions of Executive Body of the Labour Inspectorate (EBLI), regarding the return of the party to the previous work position.

In his report, Ombudsperson concludes that it is worrying the fact of neglect of final administrative decisions and failure to undertake procedural actions for their implementation, for elimination of violations committed or negotiation of the issue with the complainant to compensate the aggrieved party. Under these circumstances, the complainant was forced to address the competent court for enforcement procedures as a result of the failure of competent bodies to undertake effective measures concerning positive obligations.

Ombudsperson observes that Basic Court (BC) in Gjakova did not treat the complainant's suit as a case with priority and the Court did not act according to Legal opinion of Supreme Court of the Republic of Kosovo regarding objections filed against enforcement orders issued by enforcement bodies no later than 15 days, after its receipt.

Ombudsperson wishes to draw the attention to constitutional and legal obligation for other institutions and authorities in the country, to respond to Ombudsperson's requests and to provide it with the documents or information required. In the case in question,

failure of MFMC and Directory of Health and Social Welfare (DHSW) was surpassed after the meeting that OIK representative has had with the mayor in question.

Based on all evidences presented and facts gathered, Ombudsperson finds that there was violation of Human Rights and Fundamental Freedoms; it has been acted in contradiction with Constitution, European Convention, Labour law as well as other relevant legal acts. Through the report regarding the case, Ombudsperson submitted the recommendations to Main Family Medicine Centre in Gjakova and mayor of Gjakova, in conformity with powers and legal authority to undertake all necessary actions that the neglect of administrative decisions of EBLI and IOBCSK is not repeated anymore, and to establish the Commission for Complaints and Submission in MFMC.

Minister of Ministry of Labour and Social Welfare has been recommended that in conformity with powers and legal authority, within the cooperation with Kosovo police, should report when eventual cases of violation of human rights in terms of employment relationship, which according to the Criminal Code are qualified as criminal offenses. In addition, he was recommended to promulgate an instruction for regional offices of Labour Inspectors and EBLI to follow up the implementation of their decisions, and apply the penalty part in conformity with law, when they find violation of rights in terms of employment relationship.

While Ombudsperson recommended the President Judge of Basic Court in Gjakova, in the report in question, that in conformity with legal powers and authority it should act swiftly in the cases of disputes in terms of employment relationship, in conformity with Article 475 of Law on Enforcement Procedure, whereas in enforcement procedure of decisions of EBLI and IOBKCS according to objection, the court should act within legal times in conformity with Legal Opinion of the Supreme Court of the Republic of Kosovo No. 223/2015 dated 14 July 2015.

4.2.14 Report with recommendations no. 29/2016 for releasing the usurped municipal public property

On 12 October 2016, Ombudsperson submitted the Municipality of Vushtri a report with recommendations for releasing the usurped municipal public property and for creating conditions for free access to the main road of the village of Strofc.

The report is based on the party's complaint addressed to OIK concerning difficulties of movement and access to the public road in the village of Strofc, a road which is in the municipal property of Municipality of Vushtrri, but which is blocked by one of inhabitants of the village in question, making unable the use of the road.

In the report, Ombudsperson finds that Municipality, namely Directory on Geodesy, Cadastre and Property, Directory on Urbanism and Environmental Protection and Directory on Inspection in the Municipality of Vushtrri failed to prevent negative effects of influence to the environment due to the road closure. The delay in undertaking

efficient actions regarding the public municipal property for several years is an evidence of non-willingness and irresponsibility of competent municipal organs for undertaking respective actions in accordance with their legal obligations regarding citizens. In addition, Ombudsperson mentioned the obligation of authorities to respond to citizens' complaints - requests in accordance with the determined legal norms.

Legal analysis points out the constitutional obligation of municipal bodies to react in the function of the respect of human rights and fundamental freedoms guaranteed as well as rule of law on good governance. It is also mentioned that the failure of Municipality of Vushtrri to use powers to ensure free and unhindered movement falls in conflict with Article 2 of European Convention on Human Rights, as is under the findings of European Court of Human Rights that authorities should undertake concrete actions in the protection of the rights guaranteed.

Based on the facts regarding the case, and legal analysis and findings, Ombudsperson, in conformity with legal powers and authority, recommended that Municipality of Vushtrri at the shortest time possible, should undertake measures to remove all obstacles for releasing the road and guarantee unhindered access to the main road of the village. While the recommendation addressed to Directory on Geodesy, Cadastre and Property and Directory on Urbanism and Environmental Protection is to review requests of parties and the obligation to respond to them within the time set by law.

4.2.15 Report with recommendations no. 72/2015 concerning the lack of effective legal remedies

On 17 October 2016, Ombudsperson published a report with recommendations regarding the lack of effective legal remedies based on the complaint filed by P.K and it aims to draw attention of the Ministry of Labour and Social Welfare (MLSW) and the Basic Court in Prishtina, to provide the complainant the guaranteed legal and constitutional possibility to effective legal remedies. P. K. lodged a complaint with the Ombudsperson Institution on behalf of his mother, against the Ministry of Labour and Social Welfare (MLSW), namely the Department of Martyrs' Families, War Invalids and Civilian War Victims (DMFWICWV), regarding refusal of the request for recognition of family pension of civil war victim from the date of application. The Report is based on individual complaint and aims to point out some of omissions of institutional actions in the handling of this case as well to draw the attention of the Department of Martyrs' Families, War Invalids and Civilian War Victims (DMFWICWV), namely the Ministry of Labour and Social Welfare and the Basic Court in Prishtina to the provision of guaranteed constitutional and legal opportunities for effective legal remedies.

Ombudsperson considers that DMFWICWV delivered unfounded and unlawful decisions through which it refused the right to family pension, irrespective that courts found that administrative decisions of DMFWICWV were unfounded.

Ombudsperson in the report considered that Courts in their procedures in this case have not considered the implementation of the substantive right and this deficiency had accompanied courts also in administrative contests, in a systematic manner, since they had only found legal violations in the decisions of DMFWICWV, but **have not used** the possibility and legal powers to redress these violations, by changing the decision of DMFWICWV by a judgment, in conformity with Law on Administrative Conflicts. Therefore, Ombudsperson recommended Ministry of Labour and Social Welfare that in conformity with powers and authority deriving from Law, MLSW should treat requests and complaints of citizens on the basis of evidences presented and should pay special attention to the courts' judgments and assess them in order to take a fair decision for the parties and should not return them to judicial proceedings. While, Basic Court in Prishtina, Department for Administrative Matters, in conformity with powers and legal authority, Department for Administrative Matters should undertake all actions necessary in the suit to decide not only about procedural violations for administrative dispute but also the issue of the merits of parties, since in many cases of decisions for procedural violations, parties' request is refused by the administrative body.

4.2.16 Report with recommendations no. 564/2016 concerning the defendant's rights in the criminal procedure

On 20 October 2016, Ombudsperson published a report with recommendations, which has been submitted to Kosovo Prosecutorial Council, Chief State Prosecutor, Kosovo Judicial Council and Kosovo Judicial Institute as responsible authorities, and deals with the rights of the defendant in the criminal procedure – at the stage of investigation and the filing of indictment.

The case was initiated after the party's complaints through which concern was raised on violation of their human rights upon the filing of the indictment by the Special Prosecution of the Republic of Kosovo within the Serious Crimes Prosecution Department of the Basic Court in Gjilan, who were not informed about this action by the Prosecution, but as a matter of fact, they learned about it only through media, which constitutes failure to meet the obligation by the prosecution to inform parties.

In the concrete case, Ombudsperson found that there is violation of fundamental rights of defendant persons in the criminal procedure, to be informed on the indictment immediately after the filing of the indictment, and before this fact is made public in the media. Consequently, actions of Special Prosecution violated the principle of equality of the arms in procedure; in addition, giving notice to media about the filing of the indictment without preliminary informing the accused persons is in contradiction with the obligation of the Prosecution for the protection of human dignity and also constitutes a violation of principle recognised for presumption of innocence.

The purpose of this report is to draw the attention to the indispensability of protection of human dignity, to implement the presumption of innocence and other rights of persons

that may be an object of investigation and of indictment for criminal offences, prove the violation of rights of parties in the criminal procedure, by pointing out violation of legal provisions in the case about which the persons accused complained, through correct interpretation of legal provisions guaranteeing these rights, which are obligatory for justice bodies.

Based on the statements of parties, who filed complaints and based on legal analysis, Ombudsperson observed that there is no legal gaps from the viewpoint of regulation of rights of the defendant in criminal procedure (at the stage of investigation and the filing of the indictment), however, the problem lies in the failure of justice bodies to implement legal obligations, both in the case of filing of the indictment by Special Prosecution and publication in the media, without preliminary informing the persons involved in the indictment.

Hence, Ombudsperson recommended Kosovo Prosecutorial Council and Chief State Prosecutor to respect the rights of defendants in order to be timely informed about the indictment against them and enable them to use efficiently the legal right for objecting the indictments, and to respect the principle of presumption of innocence and protection of dignity of defendants in compliance with CPC, Constitution of the Republic of Kosovo and International Standards (especially ECHR). In respecting these principles, the public should be notified about the stage of investigation, however, persons accused should be always informed before the notice is given to media. Ombudsperson addressed the recommendations to Kosovo Judicial Council to instruct all Basic Courts in the Republic of Kosovo, in order that judges in pre-trial testimony are additionally careful for the respect of rights of defendant persons at the stage of investigation and the filing of the indictment. While Kosovo Judicial Institute was recommended to provide additional training focused on the rights of the defendant person at the stage of investigation and the filing of the indictment, in conformity with highest human rights standards.

4.3 Ombudsperson's Opinions

4.3.1 Ombudsperson's Opinion no. 25/2016 concerning the execution of the judgment of European Court on Human Rights in the case of Grudić v. Serbia, Application no. 31925/08

On 15 February, Ombudsperson published an Opinion addressed to the Committee of Ministers of the Council of Europe, on non-execution of the judgment of European Court of Human Rights (ECtHR) for the case Grudiq v. Serbia, no. 1925/08 (2012).

In the introductory statement of this opinion, Ombudsperson Institution of the Republic of Kosovo expressed its concern on the failure of Republic of Serbia to meet the obligation of the Kosovo pensioners, according to ECtHR judgment, in 2012, for the case Grudiq v. Serbia. ECtHR judgment in the case of Grudiq v. Serbia is a principle judgment, through which Serbia is obliged to compensate them on the same manner, according to the above-mentioned judgment, contribution-payer pensions, work disability

pensions, and family pensions for the citizens of Kosovo, who enjoyed these pensions until 1999, when they were discontinued from Serbia arbitrarily.

Serbia has constantly justified in order to avoid the implementation of this judgment of ECtHR, despite the obligation to respect European Convention on Human Rights, and hence the obligation for the implementation of ECtHR decisions. On the other hand, considering that until now, institutions of the Republic of Kosovo have not raised this issue in the instances through which they would require the implementation of ECtHR judgement and hence, Ombudsperson, for all the cases of this nature has deemed it reasonable to provide this opinion, based on the Regulation of the Committee of Ministers of the Council of Europe, dealing with oversight of execution of judgments. Ombudsperson's Opinion has clarified legal and chronologic background in detail, regarding the concerned issue and has concluded that, in order that Republic of Serbia acts in full accordance with the judgment of European Court of Human Rights in the case *Grudić v. Serbia*, Serbian authorities should: (1) reassess all applications from Kosovo residents for the resumption of pension payment in cases in which the applications were rejected on the basis of the applicants' having received Basic Pension provided for by UNMIK Regulation 2001/35; (2) publicly announce, for the benefit of Kosovo residents who have not yet applied for resumption of pension payment that their having received Basic Pension provided for by UNMIK Regulation 2001/35, will no longer be considered as a disqualifying factor; (3) publicly announce that current recipients of the age contribution-payer pension from the Republic of Kosovo, even if they would be eligible for resumption of pension payments from the Republic of Serbia, may nonetheless be eligible for the payment of arrears, including statutory interest, for the period of time prior to their receiving pension payments from the Republic of Kosovo; (4) render positive decisions for the resumption of pension payments in the case of all Kosovo residents who fulfil the original statutory requirements set forth by law for receiving payments under the Pensions and Disability Insurance Fund and who are not presently receiving the age contribution-payer pensions from the Republic of Kosovo; (5) pay arrears in full, including statutory interest, to Kosovo residents whose pensions were unlawfully suspended, from the date of which payments were suspended until the date on which (a) those pension payments were resumed by the Republic of Serbia, or (b) the applicants began receiving the age contribution-payer pensions from the Republic of Kosovo; (6) clarify precisely what missing documentation is responsible for the Republic of Serbia's rejection of 84.3% of applicants from Kosovo residents as incomplete, and if necessary, accept documentation from the Republic of Kosovo as valid for the purposes of executing the *Grudiq* judgment in full; (7) Take all necessary measures to transfer to the Republic of Kosovo all contributions that were paid by Kosovo residents prior to 1999 and that remained the possession of SPDIF, as a long-term solution for ensuring the sustainability of pension payments to Kosovo residents who made contributions to SPDIF in accordance with law.

The Ombudsperson's opinion of the Republic of Kosovo constitutes the first case when a human rights institution has addressed the Committee of Ministers of the Council of Europe, based on Rule 9 of the Regulation dealing with the oversight of the execution of judgments for the implementation of an ECtHR decision against a third country.

4.3.2 Ombudsperson's Opinion no. 528/2016 concerning the appeal procedures of administrative decisions regarding the issue of recognition and verification of the status of the Kosovo Liberation Army veterans

In order to provide an appropriate legal solution, after a long debate and after the dissatisfactions expressed regarding the work of the Government Commission on recognition and verification of the status of the Kosovo Liberation Army veterans, on 6 September 2016, Ombudsperson published an opinion concerning the appeal procedures of administrative decisions regarding this issue.

On 1 June 2016, Government of Kosovo adopted Decision no. 05/90 approving the report of the Government Commission for Recognition and Verification of the Status of National Martyr, Invalid, Veteran, Member or the Internees of Kosovo Liberation Army, approving the evidence presented by the Commission and leaving open the review and adoption of the final list in the future. In his opinion, Ombudsperson concludes that the decision in question is not in conformity with the legislation in force and hence it violates the rights of procedures for the regulation of the war veteran status.

Ombudsperson considers it necessary that the Government of the Republic of Kosovo needs to review the work of the Government Commission regarding the legal provisions, which have to do with the respect of deadlines, the lack of which right makes unable the filing of an appeal against the decision issued by the Government Commission for Recognition and Verification of the Status of National Martyr, Invalid, Veteran, Member or the Internees of Kosovo Liberation Army. Determining deadlines enables the right of appeal with the competent court, as is provided for by Law on Administrative Conflicts, the purpose of which is judicial protection of the rights of natural and legal persons, whose interest may have been violated by individual decisions or by the actions of public administration bodies.

Therefore, Ombudsman considers that the amendment of the Regulation on Government Commission is needed, regarding provisions which determine deadlines for issuing decisions of the Government Commission after the appeal, and expressly determining the nature of decisions of the Special Committee for the review of appeals (deciding through the final administrative act).

In addition, Ombudsperson considers the amendment of the Regulation on Government Commission in respect of the composition of the Special Committee for the review of appeals as needed. Currently, members are selected among the members of Government Commission, who took the first instance decision, which does not present the proper alternative.

4.3.3 Ombudsperson's Opinion no. 280/2016 concerning the situation created in the areas with special economic interest zone, according to Decision no. 4/119, dated 3 November 2004 and Decision no. 02/57, dated 13 March 2009 of the Government of Kosovo and the proposal for undertaking effective measures for solving the issue

On 13 October 2016, Ombudsperson published an opinion through which he provided the assessment regarding the situation created in the areas of special economic interest zone in the village Hade, Sibovc, Leshkoviç and Cërna Vodica of Municipality of Obiliq.

Government of Kosovo with decision no. 4/119, dated 3 November 2004, announced lands of village Hade, Sibovc, Leshkoviç and Cërna Vodica of Municipality of Obiliq, special interest zone and prohibited the constructions and over constructions, with decision no. 02/57, dated 13 March 2009 of Government of Kosovo, through which it announced special economic interest zone the “Fusha e Mihjes së Re (New digging area)” with an area 143,254 km², which includes cadastral zones of Obiliq, Fushë Kosovë, Vushtrri and Drenas.

Displacement and expropriation process of some neighbourhoods in the village Hade was followed by lack of information regarding the process which created uncertainties, and the area dedicated for the displacement of residents called Hadja e re (new Hade) was never completed with residential infrastructure, which would create and guarantee qualitative and residential conditions to inhabitants, with dignity. New constructions in the interest zone continued in village Hade, and also in the village Shipitullë, without them being hindered. Ministry of Environment and Spatial Planning, and Municipality of Obiliq failed to exercise their legal powers for controlling and prohibiting the constructions in the interest zone. Based on investigations conducted on the ground and other information, Ombudsperson observes that the digging activity in the villages Hade and Shipitullë has made the life of inhabitants difficult. Announcing areas a special zone hindered the enjoyment of the right of property/home. Although environmental situations is far from desired standards, and pollution norms, according to existing reports it often exceeded the allowed limits determined by domestic legislation, with possibility of negative impact on citizen's health, although a positive state's obligation, displacement, expropriation or movement of population as a proportional and effective measure for problem solving has not been conducted since 2004.

While inhabitants have constantly faced and they still continue to face the pollution of air, water and land, noise and quakes due to the operation of heavy machinery, competent bodies have continued to keep silent and have not made any attempts in finding a solution regarding such uncertain situation, in which there is no improvement, which tendency is worsening.

Ombudsperson considers that the long unclear situation of uncertainty which the inhabitants of the zones in questions are facing, with no progress or improvement

observed, which is only worsening should end; to avoid possible risks from the land sliding or similar environmental accidents; negligence and the failure of competent bodies for controlling the situation since 2004 should end; the state should make a balance of interests between the citizens and economic interests; and in order that the state meets positive obligations for the protection of citizens' rights and freedoms.

The Ombudsperson expressed its opinion that this issue should be discussed in the Assembly and the Minister of Ministry of Economic Development and Environment and Spatial Planning, should make a speech in the parliamentary session on the steps ensuring solution and the nearest time possible when conditions are met for commencing with the first stage of displacement/ expropriation. In addition, Ombudsperson considers it important to set the nearest, final date, when displacement/expropriation is to start and the entire process of displacement/expropriation should be done based on priorities and legislation in force.

4.3.4 Ombudsperson's Opinion no. 322/2015 on clarification of legal procedures which should be undertaken by the Municipality of Gjakova in solving environmental problems in "Durgut Vokshi" street in Gjakova

On 14 October 2016, Ombudsperson addressed a legal opinion to mayor of Gjakova regarding clarification of legal procedures, which should be undertaken by the Municipality of Gjakova towards solving of the environmental problems and provide access to sewage system of the city for residents in "Durgut Vokshi" street in Gjakova.

Ombudsperson was informed through the complaint filed by the complainant, that her house and about 15 (fifteen) other houses in the street "Durgut Vokshi", in Gjakova, have no access to the sewage system, therefore, sewage and faeces waters is released on the surface, degrading the environment, and residents of this street face the risk of infectious diseases.

According to European Convention on Human Rights, the state is required to undertake steps to enable rights to persons according to Article 8 as well as may ask to protect persons from activities of other private persons who hamper them to enjoy their rights effectively. The State shall take in consideration the fact if correct equilibrium has been set between general interest of the community and the interest of the person in order to determine if a positive obligation exists. Considering this, Ombudsperson considers that application of Article 4, paragraph 2 of Law on Expropriation of Immovable Property no. 03/L-139 is appropriate, which determines that the Expropriating Authority of a Municipality shall be the mayor of such Municipality, unless the municipal council of such Municipality through an act adopted pursuant to Article 12 of the Law on Local Self-Government, designates, another Municipal Public Authority to act as the Municipality's Expropriating Authority. The Expropriating Authority of a Municipality may expropriate immovable property only when the expropriation will exclusively affect private rights falling within the scope of paragraph 2 of Article 4 of this Law, the

concerned immovable property lies wholly within the Municipality's borders, and when the expropriation is clearly and directly related to the accomplishment of one of the following public purposes, as are determined in the paragraphs of Article 4:

In addition, Ombudsperson considers that the Expropriating Authority shall organise a public hearing in order to include the public in decision-making, in accordance with Law on Expropriation of Immovable Property, since any such decision on expropriation without including the public in decision-making may constitute sufficient basis for a suit to be challenged and annulled by the court (*see judgment of Constitutional Court of Kosovo KI 56/09, Fadil Hoxha and 59 others against Municipal Assembly of Prizren, dated 22 December 2010*).

4.3.5 Ombudsperson's opinion no. 668/2016 concerning the impact of violence into the health and social life of children, and the actions to be undertaken by responsible institutions

Exercise of violence against children, and the increase of such cases, when this violence is also exercised by educators and teachers who are entitled to implement psychological norms and careful behaviours with children made Ombudsperson treat the impact of violence into the health and social life of children and on 15 November 2016, Ombudsperson through a form of an opinion addressed responsible institutions, to draw the attention to the negative impact of violence against children, and the importance of the prevention of it, by identifying, referring and treating it in due time.

During the direct meetings that Ombudsperson representatives have had with children of lower secondary and upper secondary schools, offering the possibility to discuss together relating their concerns they are facing, not only within school environment, but also in families or elsewhere, the majority of concerns expressed had to do with physiological and physical violence, but also with sexual harassment, which were investigated, treated and addressed by OIK to relevant institutions.

In addition, OIK has initiated *ex officio* investigations regarding the actions of responsible institutions for the protection of children on streets (children who are begging, cleaning windows of cars, selling different items, etc.), and who are directly facing the risk for abuse.

Violence against children is extraordinary complex and with serious psycho-social consequences, which directly impact on the increase and development of children, and consequences may continue to give effects also in adult age. Violence against children may be manifested as physical and emotional/psychological abuse, negligent treatment, and sexual exploitation or as any other exploitation which results in the harm of the child's health. Protection of children from violence remains a challenge of state and society, which requires close coordination and cooperation of professionals and relevant institutions, to which relevant recommendations are addressed through this opinion:

Ministry of Education, Science and Technology should conduct public information campaigns to raise awareness of society about the consequences of abuse against children, and to continuously promote non-violent methods of education and discipline; engage psychologists and pedagogues in all schools, to support and assist children; create appropriate systems for children, so that they may report violence and be informed about mechanisms where they can address complaints; develop capacities of education staff regarding the consequences of violence against children and the importance of timely identification and referral of these cases to responsible authorities.

Ministry of Labour and Social Welfare namely Centres for Social Work and Ministry of Internal affairs: In conformity with powers and legal authority and in cooperation with all other responsible institutions should undertake relevant actions to protect and assist children in need, in particular, children doing jobs that risk their health, children collecting things in containers, children selling items on the streets and cafeteria, children who are begging and who may be potential victims of different forms of abuse.

Ministry of Health should: Develop training programmes for the staff in primary healthcare institutions, regarding the importance of timely identification and reporting of cases of abuse against children, and the legal consequences that the healthcare staff may bear in cases of failure to report; Increase the number of mental healthcare services for children and teenagers in Kosovo, and strengthen them via intervention programmes for meeting the developmental needs, as well as for early identification and treatment of cases at risk for psychiatric disorders.

4.4 Ombudsperson as a friend of the court (*amicus curiae*)

4.4.1 Case no. 2/2016 concerning the violation of the rights of persons deprived of liberty for adequate medical treatment

On 2 February 2016, Ombudsperson published Legal opinion concerning the violation of the rights of persons deprived of liberty for adequate medical treatment guaranteed by Article 27 of Constitution of the Republic of Kosovo, Article 43 of Law on Execution of penal sanctions, Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, as well as European Prison Rules clearly determining the state obligation for treating sick people. In the issue in question, the complainant alleges that he had not received any treatment or adequate medical examination, in accordance with his mental health.

Constitution as the highest legal act protects and guarantees human rights and fundamental freedoms; therefore practical implementation and execution of these rights is under the interest of the state functioning. State guarantees serve the protection of human dignity and functioning of legal state. Constitution in Article 27, expressly determines that “No one shall be subject to torture, cruel, inhuman or degrading treatment or punishment.”

Ombudsperson referred to the European Court's jurisprudence, in particular to 39806/05 *Paladi v. Moldova*, where the court has unanimously decided that there was violation of Article 3 (prohibition of inhuman and degrading treatment) of European Convention, the Court has unanimously concluded that there is violation of Article 3 of European Convention within the meaning of undisputed need of the complainant for constant specialised medical treatment and the lack or expansion of such an assistance during the time of his detention.

Ombudsperson considers that restriction of the right for adequate medical treatment cannot be considered as a disciplinary measure due to exceeding or violating rules of the Correctional Service. Moreover, it is an undisputed fact that High Security Prison cannot offer the services required. The station of this prison offers services until 16:00, namely 19:00, but there is no cardiologist, only medical doctor. While, the complainant was in the prison hospital, he was suffering effects of his medical conditions. In relation to mental effects he may have known that he was at risk in medical emergency at any moment, emergency with serious consequences and there was no qualified medical assistance available. The applicant was not only rejected the necessary medical assistance by authorities, but he was placed under high security regime; this may have led to a considerable nightmare. According to ECtHR, *"the state should guarantee that a person is detained in conditions which are in accordance with his human dignity, so that the manner and method of the execution of the measure should not make the detained person a subject of nightmare and difficulty of an intensity which exceeds the inevitable level of natural suffering in detention and considering the practical requests of detention, his health and welfare should be ensured adequately, inter alia, the detainee should be provided adequate medical assistance"*.

Ombudsperson, from the investigation of the case, observes that the opinion of three medical doctors, in the area of cardiology that the detained persons needs hospitalisation and further examination, since the High Security prison cannot offer the required services.

As a conclusion, Ombudsperson points out that lack of medical assistance at the adequate time, added to the authority's rejection to offer him the adequate medical treatment administered by civilian doctors, created a strong feeling of lack of security, which combined with physical suffering leads to degrading treatment, thereby violating Article 3 of European Convention on Human Rights.

4.4.2 Case no. 440/2016 concerning the treatment of the case C-III-13/0514 from the Special Chamber of the Supreme Court

On 8 February 2016, Ombudsperson addressed SCSC as a court's friend concerning the indictment filed before the court in the issue of KBI "Kosova Export" from Fushë Kosova represented by the Privatisation Agency of Kosovo case no. C-III-13/0514 for which, no decision was taken by the Court.

The case deals with the privatisation of the property, which was taken by the owners in 1963 for the establishment of the Socially Owned Enterprise. In 1997, the complainant initiated a procedure for the return of property and according to the complainant the Court decided to return the property to owners, but due to the circumstances prevailing at that time, the complainant did not accept the Court's decision.

Considering the legal complexity of the issue and considering the fact that according to information available with Ombudsperson, there is currently a similar case pending to be decided upon by the Constitutional Court (KI 76/2015), Ombudsperson recommended that SCSC suspends the judicial review of the issue C-III-13/0514, until a case KI 76/2015 is decided in Constitutional Court, since there are grounded suspicions that may cause irreparable damages to the party.

4.4.3 Case no. 406/2016 concerning courts judgements on similar issues, but with different conclusions

On 16 September 2016, Ombudsperson submitted a legal opinion to relevant authorities as *Amicus Curiae* (court's friend), concerning the case 406/2016. Numerous cases when domestic courts issue judgments on cases which review the same legal issue, but which differentiate in their result, made the Ombudsperson to present this Legal Opinion, which summarises his attitude regarding this issue.

On issuing different judgments on the same matter, courts are questioning the issue of legal certainty and the rights foreseen by Constitution and other legal instruments for the protection of human rights. The *amicus curiae* are focused on legal certainty as basic principle of the rule of law, focusing on the judicial judgments. Prevention of legal uncertainty contributes to the increase of the trust of citizens in the judicial system, advancement of rule of law and the prohibition of violation of human rights guaranteed by international instruments and Constitution.

In this legal opinion, Ombudsperson concludes that by issuing different judgments on the same matter courts violate right to a fair trial, guaranteed by the European Convention on Human Rights and Constitution of the Republic of Kosovo.

To prevent the repetition of identical state of play and without creating further legal uncertainty, Ombudsperson considers that attention must be held to the ECtHR practice which determines that the guarantees foreseen by ECHR enshrine include the obligation for courts to give sufficient reasons for their decisions and that a final judgment cannot be questioned by the other. Finally, a certain importance must be given to the obligation on publishing courts' final decision, which further on influence legal certainty.

4.5 Requests for interim measures

4.5.1 Request addressed to Ministry of Justice on the application of Interim Measures for the implementation of the decision through which all persons who were on medical treatment outside the prison environment were returned to serve the sentence

Ombudsperson Institution, namely National Preventive Mechanism against torture (NPMT) and other Cruel, Inhuman or Degrading Treatment or Punishment, established by Ombudsperson, in January of this year, within the legal responsibilities, on 26 September 2016, visited the Dubrava Correctional Centre (DCC).

During this visit, NPM visited the Dubrava Prison Hospital, on which case it received different complaints from the persons serving the sentence, of different ages, including those over 85 years of age, immovable, without health care, with wet clothes caused by and faeces, with beds without bedclothes and blankets, with fevers and cold, while the staff and all people of these premises were exposed to stinking.

During this time, NPM had met responsible persons of hospital and understood that these prisoners were outside CC for more than three years, since their sentence was suspended, given their age and the nature of the disease. They were returned to serve the sentence based on the decision taken just recently by the Minister of Justice.

Considering that the return of these persons in CC made unable the adequate treatment in accordance with their needs, Ombudsperson recommended Ministry on Justice to apply the Interim Measure for the implementation of decision, which means that that all persons under such health condition should be sent urgently for medical treatment into institutions of Hospital Clinical and University Service of Kosovo, in compliance with health needs, in order to enable them adequate medical treatment.

This recommendation is based on paragraph 5 of Article 18, of Law No. 05/L-019, on Ombudsperson and it clearly meets the substantial criteria for Interim Measure, because the inability of provisions of necessary health care from relevant authorities may be considered as violation of human dignity, violation of the right to life, failure to respect norms for the prevention of torture and other Cruel, Inhuman or Degrading Treatment or Punishment, violation of the right to health and non-respect of positive obligations, guaranteed by domestic Constitution and international instruments on human rights, which are directly applicable in the Republic of Kosovo.

Ombudsperson in the letter submitted to relevant authorities requested that Interim Measure remains in force, while investigation regarding this issue is completed, and publish a Report which would make concrete recommendations on the measures to be taken by relevant authorities.

4.5.2 Request addressed to KEDS on the application of the Interim Measure concerning inspections in the private properties of residents

Ombudsperson received separate requests regarding the activities of Kosovo Company for Distribution and Supply of Electricity (KEDS j.s.c.) for controlling electrical appliances in apartments, houses and private premises. Based on these allegations, KEDS employees carry out these controls without authorisations from competent bodies and they are carried out collectively in certain neighbourhoods.

Considering that the unauthorised control of the apartment may cause violation of the private and property right, both these rights are guaranteed by Constitution of the Republic of Kosovo and with international instruments on human rights, which are directly applicable in the Republic of Kosovo, Ombudsperson requested from relevant authorities to undertake interim measures (suspension) of these activities, which according to preliminary investigations, it is believed that they are being taken by KEDS. It is requested for this interim measure to be in force while Ombudsperson concludes investigations regarding this issue and comes out with final findings and recommendations.

4.6 Letters of recommendation of Ombudsperson addressed relevant authorities

4.6.1 Letter of recommendation for case no. 33/2016

On 8 March 2016, Ombudsperson addressed a letter of recommendation regarding the complaint it had to with the rejection of the request for benefiting the grant (scholarship) for doctoral degree. The complainant stated that she is continuing doctoral studies in the Ben Gurion University of the Negev, and that she had applied to the competition announced by MEST on 23.09.2015, according to which the criteria for benefiting a grant (scholarship) was that the University where the applicant is studying should rank among 500 best ones in the world. According to the competition, ranking shall be taken into account according to the assessment of *Times Higher Education* or some other official ranking internationally recognised. The complainant was not selected as beneficiary of the grant (scholarship) by the Scientific Council of MEST with the justification that the university where she studies did not meet the conditions provided for by competition, since according to the commission it did not rank in the list of 500 best universities in the world.

Ombudsperson observed that the complainant presented all facts and evidences she meets the criteria set forth with competition to be a beneficiary of the grant (scholarship) for the doctoral studies and the justification given to the rejection of the application has no sustainable grounds. Ministry of Education, Science and Technology did not assess fairly and equally when deciding regarding to the beneficiaries of the grant (scholarship) and such unequal treatment in similar situations constitutes discrimination, considering this

Ombudsperson recommended Ministry of Education, Science and Technology to undertake necessary measures to review the applicant's application and to take a fair decision based on facts, evidences and proofs.

4.6.2 Letter of recommendations for case no. 441/2015

On 12 April 2016, Ombudsperson addressed a letter of recommendation to General Director of Kosovo Police, through which he considered that the form drafted regarding the employment of Kosovo Police did not contain sufficient information and failing to fill it in, in the form required constituted a cause for elimination of potential candidates for police officers. In this case, Ombudsperson recommended Kosovo police, to include additional questions in the employment application in accordance with the Criminal Procedure Code and other relevant laws, for candidates for the position of Kosovo police officers, especially about the questions interrelated with the issue of verification of the past of candidates, and additional questions in the application should include also other situations in which applicants may find themselves, who on different reasons should present themselves before police bodies, prosecution or courts.

4.6.3 Letter of recommendation for case no. 557/2015

On 23 May 2016, Ombudsperson in handling the complainant's complaint of Mr N.V. considered that Kosovo Judicial Council had violated the Law for Access to Public Documents when did not respond to the complainant's response. Although Article 7 of Law on Access to Public Documents no. 03/ L-215, determines a deadline of seven (7) days, from the time of recording the request, to issue a decision for allowing access to the document required or to provide a written response to justify full or partial rejection by notifying the applicant on the right of filing a request for review, this was not realised.

Ombudsperson in this issue observes that a long period of time has elapsed within which the complainant has not received any response regarding his request, as is set out in Article 7 of Law on Access to Public Documents no. 03/L-215, therefore, he recommended that relevant officers should response within the legal time within the meaning of duties, obligations and responsibilities deriving from the Law on Access to Public Documents.

4.6.4 Letter of recommendation for case no. 320/2015

On 24 October 2016, Ombudsperson submitted a letter of recommendation to the Ministry of Trade and Industry regarding the complaint received and claims that during the supply with fuel (gas) a filling station in the street "Ahmet Krasniqi" in the neighbourhood Arbëria in Prishtina was damaged as his vehicle tank has a maximum capacity of 45 litres, while according to the measurement apparatuses he was supplied with 52.13 litres of gas or 16% more than the maximum capacity of the tank, thus being damaged not only in the monetary value, but also regarding quantity.

Based on the Law no. 03/L-203 on Metrology, regulation of the system of verification, testing and calibration etalons of measuring units and control of the quality in Kosovo is foreseen to be conducted through Kosovo Metrology Agency (KMA) in the filling stations of fuel. Ombudsperson representative was informed in the meetings with officials of the Ministry that the apparatuses for measuring the quantity of gas was damaged and is not functional and was not able to conduct measuring, should come out with results and as a result it was not possible to respond to the party.

On 18 August 2016, a scandalous article was published in “Telegrafi” with topic “Scandalous: MTI has no equipment, nor staff for verification of the measuring units of gas¹⁹¹”, is said that *“MTI has no equipment, nor staff for verification of the measuring units of gas in Kosovo, there are many vehicles which are using gas as fuel, but during their supply with gas, it is not known whether they receive the amount they pay for gas and metrology agency does not conduct verification of measuring units of gas, in absence of professional staff and equipment for their verification”*.

KMA according to Law no. 03/L-203 on Metrology, expressly provides for to regulate the system of measuring units, measuring etalons, procedures for assessment of the conformity of measuring units, and is implemented in the fields which especially deal with protection of the human and animal health, protection of the consumer, environment and general technical safety, goods and services transactions. Therefore, Ombudsperson after the investigation concludes that MTI issues licences without conducting calibration of gas aggregates, thus damaging unfairly consumers, as based on the information provided for and the actions undertaken by Ombudsperson, it is clearly observed that MTI does not have equipment nor staff to control quantity and quality of gas, which is used to supply vehicles and is used in households.

Taking into account that there are approximately 390 filling stations selling gas with retail in Kosovo, MTI for three years now has not conducted calibration of gas equipment and issues licences without the calibration of these equipment, based on Article 4, of Law no. 04/L-121 on Protection of Consumer, which foresees the consumers’ rights, in order to avoid the violation of their rights, Ombudsperson considers that during the following period, MTI, namely KMA should be equipped with adequate equipment for verification of measuring units and should also recruit staff dealing with the calibration of equipment of fuel, namely diesel and gas.

Therefore, Ombudsperson recommended Ministry of Trade and Industry, in accordance with Law no. 03/L-203 on Metrology and other relevant laws, that KMA should as soon as possible supply with adequate equipment for verification of measuring units and should recruit staff to deal with calibration of equipment of gas fuel and discontinue the

¹⁹¹ [http://www.telegrafi.com/skandaloze-mti-ja-nuk-ka-pajisje-e-staf-per-verifikimin-mjeteve-matese-te-gazit/\(18.08.2016\)](http://www.telegrafi.com/skandaloze-mti-ja-nuk-ka-pajisje-e-staf-per-verifikimin-mjeteve-matese-te-gazit/(18.08.2016)). (Scandalous: MTI has no equipment, nor staff for verification of the measuring units of gas).

unlawful practice of licensing companies which are trading the gas item without calibrating gas aggregates.

4.6.5 Letter of recommendation for case no. 398/2016

On 10 November 2016, Ombudsperson addressed a letter of recommendation to Court of Appeal in Prishtinë concerning the case of Mr K.U. who complained on the duration of the court procedure in the case dealing with employment relationship.

Since complainant's case deals with the exercise and protection of employment rights, according to Law on Contested Procedure No. 03/L-006, in the part dealing with special court procedures, in Chapter XVI for procedure in contests deriving from employment relationship, Article 475 determines that: *"In contentious procedures in work environment, especially is setting the deadlines and court sessions, the court will always have in mind that these cases need to be solved as soon as possible"*.

Therefore, in accordance with the above-mentioned, Ombudsperson recommended the Court of Appeal, to review and to decide on the case in question without further delay, in order to process the case within a reasonable time, in conformity with the Law and Article 6 of European Convention on Human Rights.

4.6.6 Letter of recommendation for ex officio case no. 625/2016

On 10 November 2016, in the vicinity of the OIK offices, opposite the Main Family Medical Centre, Ombudsperson representatives have accidentally met a harsh communication situation between two traffic police officer, associated by two civilian police officers and one female citizen, as a pedestrian, accompanied by another person. Since the female citizen was in difficult emotional situation and was loudly heard referring to human rights and their violation by one of the traffic police officers with identification number #1260, OIK representatives considered it reasonable to monitor how the event was further developing. The communication was constantly aggravating with verbal confrontation between these police officers and the female citizen in question, until when the police officers told her that she would go with them to the police station "Qendra" in Prishtina, when also another police patrol was called.

OIK representatives on the spot informed the police officers present that they represent OIK and according to constitutional and legal powers they will go with them to the Police Station "Qendra" to monitor the case. At that moment, there was no objection by police officers, however, at the entrance office of Police Station, the female police officer with identification number #9309, after being informed about the reason of the visit of OIK representatives, offering her also the official IDs, addressed them asking for information regarding the relationship with the pedestrian in question and stating that the case does not need to be monitored and a pedestrian will be fined with a ticket.

Despite the fact that OIK representative explained the reason of their presence, based on the constitutional and legal right, OIK has to monitor the detention centres at any time

and under any circumstances, inviting them three times in a row to read the Article in Constitution, which is written in the official IDs of the OIK representatives, specifying the obligation of authorities to respond to the OIK requests, the police officer with ID. #9309 continued to behave neglectfully and arrogantly, refusing the request of OIK representatives to contact one of her supervisors and thus not allowing them to continue to monitor.

In addition, the fact should be stressed that according to observation of OIK representatives, the harsh communication between the police officer and the pedestrian continued also in the police station, with the pedestrian being in a very emotional state. The pedestrian was informed by the Police that she can complain against the imposing of the ticket at the Police station in Dardania.

Ombudsperson concludes that communication between authorities and citizens and the manner in which this communication is developed is essential to maintain trust and image of the institution and in the concrete case Kosovo Police reflect on the public opinion. Notwithstanding the legal side and eventual violations that pedestrian might have committed in the traffic, the verbal confrontation, in the style of arguing, which occurred in a public environment and the obstruction of the work of OIK representatives is unacceptable. Considering this, Ombudsperson recommended Kosovo police to work on the constant development of Kosovo Police capacities about the communication with citizens and institutions (their representatives), and in particular to inform them on the role and mandate of OIK and on Instruction no. 01/2015 *on the obligation of Organisational Units of Police to Cooperate and Support Ombudsperson in the Discharge of its official Duties, Kosovo Police, and also Kosovo Police Inspectorate* was required to undertake disciplinary investigations in order to impose immediate disciplinary measures according to the laws in force and other sublegal acts against the police officer with no. #9309, *due to serious disciplinary violation, namely severe and discrediting behaviour and serious violation of authorisation.*

4.6.7 Letter of recommendation for case no. 202/2016

On 14 December 2016, Ombudsperson addressed a letter to Basic Prosecution in Prishtina regarding the complaint dealing with the duration of procedures according to the criminal charges filed with Basic Prosecution in Prishtina (PP.8895/14, dated 23.12.2014).

The complainant filed criminal charges with Basic Prosecution in Prishtina regarding the entrance with violence, usurpation of the apartment and falsification of the transaction contract of immovable property – apartment by the usurper and his lawyer. Regarding this case, complainant addressed three times to Basic Prosecution in Prishtina with a written letter to inform on the status of criminal charges but he received no response to the letters.

During the investigation procedure of the complainant's complaint, legal advisor of Ombudsperson Institution, on 27.07.2016, in a meeting with the administrator of the Basic Prosecution in Prishtina was informed that three prosecutors were changed in the case of the complainant. After receiving information, the legal advisor met the case prosecutor, who informed him on being tasked with the complainant's case on 18.03.2016 and still did not start to work on it, but the previous prosecutor on 16.12.2015 sent an authorisation for questioning the defendant, Kosovo police – Police station in the centre in Prishtina, but there was no feedback by the Police in the case letters.

Regarding the above-mentioned, it is imperative that the work of each prosecutor to take care of the duties and prosecutor's responsibilities, in the meaning of relevant legal provisions and undertaking necessary legal actions for the detection of criminal offences and the detection of authors, as well as timely implementation of investigation of criminal charges. In addition, every institution is obliged to take care according to official duty and to carefully follow the deadlines in the meaning of prescription of criminal prosecution.

Since in the concrete case it is about for criminal charges PP.8895/14, dated 23.12.2014, dealing with usurpation of property, which requires emergency treatment, but it has been pending review in the Basic Prosecution in Prishtina for almost two years now, Ombudsperson recommended Basic Prosecution in Prishtina to carry out without delay the investigation in the case PP.8895/14, dated 23.12.2014 and to decide on the same, in accordance with Law and Article 6 of European Convention on Human Rights.

4.7 Reports of National Preventive Mechanism against Torture

4.7.1 Ombudsperson's national preventive mechanism against torture published a report concerning monitoring of Detention Centre in Lipjan

On 7 September and 19 October 2016, Ombudsperson National Preventive Mechanism against Torture visited the Detention Centre in Lipjan (DCL) which is submitted to relevant authorities.

DCL was built in 2003 (at the time was managed by UNMIK), while in September in 2004 it was closed due to technical reasons. Afterwards it was repaired and opened in October 2006, after which it functioned under the management of Ministry of Justice, namely Central directory. DCL accommodates detainees and a small number of the convicted persons accommodated in a special wing.

NPMT observed in the report that conditions where convicted persons were accommodated were good; while the cells where detainees were accommodated in some them they were leaking and needed painting, while toilets and showers were in good conditions. During the visit, NPMT observed no overpopulated cells with detainees or convicted persons. Regarding the notice that DCL Directory planned to close this centre

and accommodate detainees in the new facility in Hajvali, NPMT will monitor the situation and will ask updated information from competent authorities.

The report also contains specific recommendations regarding food, contact with the outside world, admission procedures, as well as procedures for filling complaints. Regarding health care, NPMT reminds that responsibility for healthcare in the correctional service was transferred from Ministry of Justice to Ministry of Health in July 2013. During the visit, it was concluded that areas where medical services are administered are inappropriate and small. In addition, the report identified also the concern of the medical personnel regarding the delays in the responses from courts in the cases of recommendations submitted and requests for court permits for sending detainees or convicted persons for medications outside DCL. Medical personnel and Directory have expressed their concern due to the fact that there are detainees with mental problems accommodated in DCL due to the lack of areas for accommodation in the Forensic psychiatric Institute or some other adequate place. Ombudspersons' CPT recommended relevant authorities to undertake necessary steps for placing these persons in special institutions in accordance with European Prison Rules adopted by the Council of Europe and Law on Execution of Penal Sanctions.

Also, NPMT recommended relevant authorities to undertake serious steps to enable systematic controls in order to detect on time such diseases and comprehensive medical screening should be done to the newly-arrived and encourages an attitude and practice of the non-presence of security officers during the administration of medical services.

NPMT hails the attitude of DCL Directory since self-injury is not considered a disciplinary violation, taking into account that self-injury is not included in the group of disciplinary violations set forth by Article 102 of Law on Execution of Penal Sanctions. During the visit in DCL, NPMT received no complaint from convicted persons and detainees regarding the ill-treatment and excessive use of force by the correctional officers of this centre. In addition, the monitoring team during the visit received no complaint for violence between persons accommodated in this centre, in the part of detainees accommodated, and where convicted persons are accommodated. However, during the visit, some correctional officers expressed their dissatisfaction regarding working conditions in general.

NPMT stated that during the visit to DCL, personnel of correctional service and personnel of Prison Health Department provided the team with full cooperation. The team without delay had access to all places visited and they were enabled to discuss with convicted and detained persons without the presence of correctional officers or other personnel.

Ombudsperson's NPMT through this report addressed their recommendation to Ministry of Justice, Kosovo Correctional Service and Ministry of Health.

4.7.2 Ombudsperson published the report from the visit to the correctional centre for Females and Juveniles in Lipjan

Ombudsperson submitted a report from the visit made on 7 and 19 October 2016, in the Correctional Centre for Females and Juveniles in Lipjan, to relevant authorities carried out by National Preventive Mechanism against Torture (NPMT) in accordance with Article 17 of Law no. 05/L-019 on Ombudsperson.

Correctional Centre for Females and Juveniles in Lipjan is a semi-open institution, the only in the Republic of Kosovo, where several categories of the convicted persons are accommodated, such as: juveniles on educational measure, detained and convicted juveniles and convicted, detained and juvenile females.

The report reminds that from July 2013, the responsibility for health care in the Correctional Service was transferred from Ministry of Justice to Ministry of Health and points out that European Committee for the Prevention of Torture in the report to the visit in Kosovo in 2015 pointed out the essential importance that medical screens means, especially in the cases of newly-arrived convicted persons and detainees, not only to identify infectious diseases and prevention of suicides, but also through contribution which is given in the aspect of prevention of torture through proper identification of injuries. NPMT concludes that Correctional Centre and other centres where detainees and prisoners are accommodated still have no possibilities to conduct systematic screening for tuberculosis and transmissible diseases such as: TB, HBS, HCV and HIV, therefore it encourages relevant authorities to take serious actions to enable such general systematic screenings to include in the registers as much detail as possible regarding the causes of corporal damages and self-injuries, including the photos together with the date of the event. In addition, NPMT encourages the non-presence of security officers during the administration of medical services, so that, medical services are administered outside the observation and hearing of correctional officers to maintain confidentiality and the doctor-patient relation, except in specific cases.

During the visit, NPMT observed that there was a tense situation among juveniles and correctional officers and among the juveniles themselves and informed the Director of the Correctional Centre in Lipjan and asked to inform on the results of investigations. The new report brings to the attention of European Committee for the Prevention of Torture regarding the violence among prisoners and stressed the state's responsibility to protect prisoners from other prisoners aiming to harm them and asked to address the issue of violence among prisoners and requested that prison personnel be well-trained to intervene and manage with such situations. NPMT concludes that the undertaking of adequate actions and implementation of more psycho-social professional programmes would help decrease tensions and violence among juveniles and should be a priority for relevant authorities. NPMT received no complaint from convicted females, detained and juvenile females that were accommodated in this centre or about the excessive use of force.

NPMT encourages relevant authorities to invest in the improvement of accommodation conditions of juveniles. The report has also included other findings regarding the transfer of juveniles in the correctional centre, food, education and professional training for persons accommodated in this Centre, their engagement outside the cell, availability of press, TV and literature. During the visit, NPMT received no complaint from juveniles regarding the right to be visited, nor regarding the right for phone calls.

Regarding admission procedures, Correctional Centre in Lipjan keeps a register with numerous data regarding the convicted persons or detainees accommodated in this centre. NPMT observed that Directory of Correctional Centre in Lipjan provides the possibility for filing complaints and requests, and reviews them and sends them to the accommodated persons in this Centre. NPMT stated that during the visit, personnel of correctional centre and personnel of Prison Health Department have demonstrated complete cooperation, providing necessary information and enabling conversations with the convicted or detained persons without the presence of correctional officers or other personnel. Ombudsperson's NPMT through this report addressed relevant recommendations to the Ministry of Justice and Ministry of Health.

5 ACTIVITIES OF THE OMBUDSPERSON INSTITUTION OF KOSOVO

5.1 Activities of the Group for the Rights of the Child

The Group for the rights of the child (GRC) within the OIK has been established specifically in order to supervise, protect and investigate violations of the rights of the child by public authorities in Kosovo.

During 2016, the GRC not only reviewed complaints filed before the OIK, but also undertook other activities to promote and protect the rights of the child, as well as to build professional capacities.

On 18-19 February 2016, OIK representative participated in the two day workshop "Gjakova Mike për Fëmijët (Gjakova, children's friend)" organised by Municipality of Gjakova, with the support of UNICEF. The purpose of workshop was to work regarding Municipality instructions on promotion and protection of the rights of the child and identification of budget and expenses for children.

On 15 March 2016, GRC participated in the consultation meeting organised by the Office of Prime Minister / Office for Good Governance in cooperation with the UNICEF office. The meeting's objective was to learn from local level governance actors about challenges, progress and possibility to execute rights of the child and to inform about strategic objectives and actions for the three upcoming years.

On 12 April 2016, GRC participated in the presentation of findings of the qualitative research regarding social norms and factors impacting on domestic violence, gender-based violence and physical punishment of children. The research conducted by UNICEF and DOTS analyses the attitudes and perceptions of men and women regarding gender-based violence and physical

punishment of children, social factors and individual factors affecting the adoption of practices of violence and for violence to be repeated from one generation to the other.

On 15 April 2016, GRC participated in a roundtable organised on the importance of institutionalisation of Case Management Roundtable. This roundtable was organised by the Office of Good Governance / Office of the Prime Minister in cooperation with Terre des Hommes. Roundtable's purpose was serving to discuss best practices and ways for the coordination of local and central stakeholders in the protection of the rights of the child.

On 29 April 2016, a consultative meeting was held organised by the Office of Prime Minister/Office of Good Governance, in cooperation with UNICEF office in Kosovo. First part of meeting was also GRC Main consultation objectives was information from local government stakeholders on challenges, progress and challenges and the possibility for the realisation of the rights of the child.

On 4 May 2016, OIK representative participated in the launching of the report from UNICEF "Strengthening family-based care, strengthening social work – An analysis of situation of family sheltering in Kosovo". Initially, findings and recommendations of the report were presented regarding the alternative care system for children without parental care in Kosovo. Presentation was followed with discussion focusing on the importance of preventive work and establishing an adequate and efficient system for the protection of children.

On 1 June 2016, on marking the Children's day, OIK representatives had meetings with children from Prishtina, Graçanica, Mitrovica, Prizren, Gjiilan, Gjakova and Ferizaj. During these meetings, children were informed with OIK mandate in the protection and promotion of human rights and in particular with the rights of the child. In addition, children had the opportunity to address their opinions and concerns to OIK representatives.

On 5 June 2015, an OIK representative was part of the programme "*Familja ime (My family)*" in Klan Kosova, where topic of discussion was the rights of the child, the respect of rights and their violation.

On 8 June 2016, GRC participated in the training on the Index of protection of children. During the training, the following issues were treated: purpose of index: background, process of Kosovo indexing, measured indicators, challenges, difficulties and results in the region.

On 15-16 June 2016, OIK representative was part of the workshop "Protection of the rights of the child in the penal justice system" organised by UNMIK – and (OHCHR). The workshop addressed the issue based on the rights of the child in the treatment of children and juveniles in the penal justice system. In addition, best practices were discussed with international experts on human rights regarding the implementation of principles of justice for children in the administration of justice for juveniles and children.

On 23 June 2016, GRC participated in the consultative meeting "Possibilities and challenges of readmission and reintegration of unaccompanied children". During this meeting, Draft instruction on Readmission and Reintegration of Unaccompanied Children was discussed regarding the current situation of these children.

On 24 June 2016, GRC participated in the conference "Protection of children from violence in school" organised by Kosovo Education Centre (KEC) with the support of UNICEF and

European Union Office. This conference presented results of the project “Protection of children from violence in school”. The project in question purpose was to support schools to implement regulation of GRK 21/2013 on the protocol of prevention and referral of violence to pre university education institutions.

On 7, 8 and 13 July 2016, OIK representative participated in the workshop for budget of services for children “Gjakova, for children”, finalisation of municipal regulation and was part of the roundtable on “Property right and education of the youth” in Gjakova.

On 14 July 2016, GRC participated in the second meeting of the working group for drafting the strategy and action plan on the rights of the child in Kosovo (2016 -2020) organised by Office of Good Governance / Office of Prime Minister in cooperation with UNICEF. During the meeting there were discussions on consultations with the municipal level and representatives of children on areas of priority of the strategy and action plan and further steps were determined in the process of drafting this strategy for 2016.

On 19 August 2016, OIK representative was part of public discussions on the Municipal Draft regulation for opening complaint boxes in primary, lower secondary and secondary schools organised by the Education Department in cooperation with Non-Governmental Organisation “Syri i Vizionit”. In this public discussion, there were comments and suggestions given on how this regulation should be more practical and implementable in all primary and secondary schools.

On 9 and 15 September 2016, Non-Governmental Organisation “Syri i Vizionit” in partnership with Save the Children organised daily workshop on “Unique drafting of the Code of Conduct” for primary and lower secondary schools in the Municipality of Peja, Gjakova and Klina. OIK representative participated in this workshop. The purpose of this workshop was drafting a code of conduct for all primary and lower schools thus impacting on the strengthening of mechanisms for the protection of children in schools and increase of quality in education by creating safe and appropriate environments for children in schools. Present in this workshop were also Directors of Education from Municipality of Peja, Gjakova and Klina, representatives from Kosovo Police, centres for social work, probation service, school directors and OIK.

From 20 - 21 September 2016, in Vilnius (Lithuania) the twentieth European Network of Ombudsman Conference was held (ENOC)¹⁹² in which OIK representatives participated as observers. Conference treated the topic on equal opportunities in education for all children with special focus on inclusiveness of children from vulnerable groups in education. Some of the topics treated were: giving an end to differences in schools, advancement of the health rights of the child, case laws of European Court of Human Rights regarding the rights of the child, etc.

On 27 September 2016, GRC participated in the public hearing regarding the Draft law on protection of children.

Within this campaign “The week against the violence against children” on 21 October 2016 the conference was held on “What should the state do in the protection of children” organised by NGO “Syri i Vizionit” in cooperation with Save the Children. Conference treated the issue of

¹⁹² ENOC was established in 1997 by 42 independent institutions dealing with the rights of the child in 34 European states. ENOC was established to encourage the full implementation of the Convention of the Rights of the Child, exchange of information, access and strategies, as well as to promote development of institutions of the rights of the child.

prevention of violence against children in pre-university institutions, completion of legislation, legal mechanisms and the role of Kosovo Police in prevention of violence against children.

On 21 October 2016, GRC participated in the first meeting of the Steering Committee on the Situation of Analysis for Children and Women in Kosovo, organised by UNICEF Office in Kosovo in cooperation with the Strategic Planning Office / Office of the Prime Minister. The purpose of the meeting was to provide a summary on the minimum role expected Situation of Analysis for Children and Women in Kosovo, roles and responsibilities of the Steering Committee and a summary of methodology of this analysis.

On 31 October and 1-2 November 2016, in Durrës was held a workshop on the review of Draft law on the Protection of Children, where Ombudsperson participated.

Within the promotional activities, OIK from 2 to 30 November 2016 conducted the information campaign “Familiarise Yourself with the Ombudsperson Institution” for pupils of primary and secondary schools. The main objective of the organisation of the campaign was to inform children on the role of the OIK in the protection and promotion of human rights, and on opportunities to address the OIK in cases of human rights violations. In addition, the provision of opportunities to children to be heard by OIK representatives was made through the campaign, namely to express their opinions, positions and concerns on different problems they are facing every day. During this campaign, many schools in the villages and city of Municipality of Prishtina, Gjilan, Mitrovica, Kamenica and Gjakova were visited.

On 11 November 2016, OIK representative participated in the morning programme in Klan Kosova, in which discussed was the information campaign “Familiarise Yourself with the Ombudsperson Institution” in the primary schools of Kosovo to inform children regarding the OIK work, in particular the rights of the child.

On 21 November 2016, presentation of findings of the report “Zëri ynë”, was made where OIK representatives participated. “Our voice” is a survey realised by the Save the Children in Kosovo, in partnership with Ombudsperson Institution. The survey was realised in the entire country with 1588 young people of 12-16 years of age and contains the opinions of the youth on different issues, such as: violence, harassment, and school expenditures, know your rights, future etc. Save the Children, in cooperation with Ombudsperson Institution of the Republic of Kosovo, recommended the Assembly of the Republic of Kosovo, municipalities, and schools to establish structures and procedures which ensure that the voice and opinions of children are heard during decision-making.

On 22 November 2016, the national conference of Index for protection of Children by KOMF was held. The workshop in question attended by governmental and non-governmental institutions, including OIK discussed about findings and index as an independent mechanism for measurement of indicators of every country in the area of protection of the rights of the child in accordance with Convention of the Rights of the Child.

On 22-23 November 2016, GRC participated in the workshop for compiling the indicators of the health of the child and mothers.

On 23 November 2016, OIK representatives participated in the programme “*Imazh*” of RTK where topic of discussion was “Right of the child to be heard”.

On 12 December 2016, Ombudsperson participated as a panel member in the seminar organised by the association of the Blind on “How to improve legislation regarding children with disabilities in Kosovo?”

On 14-15 December 2016, the 11th annual conference of the Children’s Rights Ombudsmen Network in South East Europe (CRONSEE),¹⁹³ was held in Skopje (Macedonia) on “The role of the Ombudsperson in the protection of refugee and migrant children”. GRC participated in this conference. Representatives of Ombudsmen, members of CRONSEE, and respective experts discussed about conditions and the situation of refugee and migrants children in the South East Europe counties. OIK representatives made a presentation regarding the situation in Kosovo.

On 21 Decembers 2016, GRC participated in the meeting on the presentation of findings from the research for the assessment of the situation and the project impact “Promotion of the use of internet in a safe and responsible manner by children” realised by the Centre for advanced studies FIT in cooperation with Save the Children in Kosovo.

On 22 December 2016, OIK representative participated in a meeting of the working group organised for drafting the Strategy and the Action Plan on the rights of the child (2017-2022) organised by OPM/OGG in cooperation with UNICEF. The meeting discussed the approach to be taken to the finalisation of the document and the determining of the work methodology and the upcoming steps.

5.2 Activities in the promotion of the mandate of Ombudsperson based on competences given by Law no. 05/L-021 on Protection from Discrimination.

On 3 March 2016, Ombudsperson Institution organised a roundtable on old-age persons with institutional care, rights and their equal treatment.

On 20 April 2016, Ombudsperson held a roundtable on discrimination at work and relating to work.

Ombudsperson and his representatives regarding the issue of discrimination were active in written media, radio and TV programmes, in international and local conferences, in the meetings of experts organised by NGO and state institutions as well as public debates which treated topics on the rights of persons with disabilities, LGBT community, discrimination of children in schools, etc.

Ombudsperson and his representatives conducted regular visits in NGOs regarding the issue of non-discrimination, which are representing the interest of the persons with disabilities, from whom Ombudsperson received complaints regarding the conditions for free access in public institutions and the legislation for persons with disabilities.

¹⁹³ CRONSEE was established in 2006, in order to cooperate, promote and exchange best practices in the protection of the rights of the child in South East European countries. The OIK has been a member of this network since 2009.

Ombudsperson and his representatives conducted regular visits with NGOs regarding the issue of non-discrimination, representing the interest of LGBT community (Lesbian, Gay, Bisexual and Transgender), were members of panels organised in roundtables treating the LGBT cases by the justice system in the health of Kosovo etc., and were also participants in the Advisory and Coordination Group at the national level in the Republic of Kosovo, on the rights of LGBT communities.

Ombudsperson Institution, regarding the development of staff capacities, have had training with international trainers specialised in the issue of discrimination almost on monthly basis and such training were planned to continue further.

5.3 Cooperation and the activities within the Network of Southeast NPMTs

During 2016, NPMT participated in all Networks of Southeast NPMTs (SEE-Network), as observers, within the meaning of cooperation, promotion and experience sharing in the area of protection of the rights of persons deprived of liberty.

On 21 and 22 April 2016, NPMT representatives participated in the workshop organised by the Network of Southeast NPMT in Salzburg, Austria. Topic of the workshop was “Homes for old people/social care institutions and dementia, standards and deprivation of freedom based on medicaments”. During this conference, NPMT representatives presented the situation and deficiencies in social care institutions, such as; Homes for old people and without family care in Prishtina, Community Homes for old age people without care in Gurrakoc and Skënderaj.

On 11 and 12 October 2016, NPMT representative participated in the workshop organised by the Ombudsmen Board in Austria on: “Homes for old people/social care institutions and dementia, standards and deprivation of freedom based on medicaments”. During this workshop, NPMT representatives along with other colleagues from NPMT of member countries and observers of the Network of Southeast Europe NPMT visited two institutions of social care in Vienna.

In this case, NPMT representatives during the visits made to these social institutions had the opportunity to closely see the work of the colleagues from NPMT Austria, work methodology, treatment in these institutions, activities, health care, etc. After the visits, they exchanged ideas and experience between NPMT of different participating countries and it was concluded that it is important for NPMT to visit such institutions also during weekends and at late evening hours in order to prevent eventual ill-treatments against persons of these categories.

From 28 - 30 November 2016, NPMT representative participated in the conference held in Zagreb (Croatia) within the Southeast Network of National Preventive Mechanisms against Torture on “10th anniversary of Optional protocol on the Prevention of Torture

and implementation of *Mandela Rules*, as well as the role of NPMT on the protection of rights of refugees and immigrants”.

NPMT representatives of Austria, Montenegro, Serbia, Slovenia, Bosnia and Herzegovina, Bulgaria, Hungary, Albania, Macedonia, Romania, Greece and representatives of UN subcommittee on Prevention of Torture, OSCE, Ludwig Boltzmann Institute and the Council of Europe participated in the conference.

Participants were divided into three working groups, sharing their experiences on finding opportunities to cooperate in the following areas: strengthening of the implementation of recommendations of NPMTs and their follow-up; implementation of Nelson Mandela Rules (UN Mandela Rules); the role of NPMTs in the protection of refugees and migrants.

5.3.1 Cooperation with the NPMT of the People’s Advocate of the Republic of Albania

On 23 and 24 March 2016, based on the agreement signed between the Ombudsperson of the Republic of Kosovo and People’s Advocate of the Republic of Albania¹⁹⁴, NPMT of both countries had a joint monitoring visit to the Police Commissariat in Lezhë and in the Institution of the Execution of Penal Decisions Shënkoll (Lezhë), in order to increase cooperation and exchange experiences on the work of NPMT.

5.4 NPMTs visits

Ombudsperson’s NPMT has had regular and unannounced visits, opened complaint boxes, conducted interviews without the staff’s presence, and submitted reports with recommendations, etc. During the visits, NPMT received complaints on ill-treatment and excessive use of force from correctional officers, and following their investigation, NPMT concluded that they were unfounded. NPMT during the visit to the Correctional Centre in Dubrava in one case, encountered negligence on health treatment, about which Ombudsperson has submitted a request for interim measure to Ministry of Justice, after which the situation of these convicted persons improved. To date, Ombudsperson received no response from Ministry of Justice regarding the request submitted for interim measure¹⁹⁵.

During 2016, NPMT visited the Detention Centre in Prizren, Detention Centre in Mitrovica, Correctional Centre for Females and Juveniles in Lipjan, Detention Centre in Lipjan, Correctional Centre in Dubrava, about which it issued a report with recommendations.

¹⁹⁴ Agreement signed between Ombudsperson of the Republic of Kosovo and People’s Advocate of the Republic of Albania, on 7 March 2016.

¹⁹⁵ C. no. 568 and 569/2016, request for Interim measure dated 29 September 2016, regarding the prevention of torture and inhuman and degrading treatment relating to the inadequate treatment in prisons.

NPMT also realised visits to other institutions, which do not constitute places of deprivation of liberty in the classical meaning, but which according to Article 4 and 20 of the Optional protocol of the Convention against torture and other forms of cruel, inhuman and degrading treatment or punishments fall under the competence of NPMT, such as: Centre for asylum seekers, Detention Centre for Foreigners, House for old people and without family care in Prishtina, Community Homes for old people without care in Skenderaj and Community Home for old people without care in Gurrakoc.

During this year, visits were realised also in other institutions where freedom of movement is limited, such as Mental Health Institute, Special Institute in Shtime (SISH), Centre for Integration and Rehabilitation of Chronic Psychiatric Sick people in Shtime (CIRCPSP), Kosovo Forensic Psychiatry Institute (KFPI), Emergency and Psychiatric Intensive Care Wards -(UPIC), and psychiatric wards and Institutes of Mental Health in Kosovo (IMHK) in: Prishtina, Prizren, Gjakova, Peja.

NPMT for the first time visited the border crossing points in Vërmica, Hani i Elezit and Prishtina International Airport “Adem Jashari”. During the visits to institutions where persons deprived of liberty are held, NPMT has had full cooperation from officers of these institutions.

5.5 International Cooperation

The relationship between National Human Rights Institutions (NHRI) and international system on human rights in the modern world is a mutual and a very important relationship. On the one hand, international system on human rights assists and promotes NHRI and has adopted Paris Principles as main normative standards for their functioning, on the other hand NHRI contributed to the international system on human rights with the participation in the session of the Council of Human Rights of the United Nations, using the procedure of complaint to bring to attention of the council the serious violations of human rights, or by cooperating with the Mechanisms of Treaties and Special Rapporteurs on human rights of United Nations.

Since the Republic of Kosovo is still not a member of the United Nations, the possibility of Ombudsperson Institution to contribute to the international system on human rights is limited, due to political barriers, however, as an independent constitutional institution it is committed to act as a connecting bridge for the exchange of best international practices in the area of human rights and contribute where they can, but also to prepare its capacities in a future whenever membership happens to be able to assume its obligations within the international system of human rights.

However, this year OIK contributed through meetings in which it participated and has had extraordinary good cooperation with counterpart institutions, networks and other international organisations for the protection and promotion of human rights.

These meetings, presented in the table below served the advancement of international cooperation of the Ombudsperson Institution and its networking in the international arena in the area of human rights.

No.	Description of activities	Date
1.	Conference "Children behind bars" Brussels, Belgium	15 February 016
2.	Meeting regarding the refugee crisis and the road ahead Thessaloniki, Greece	19 February 2016
3.	Ninth annual meeting of the Mediterranean Ombudsman Association	9-10 March 2016
4.	Third summit of Ombudsmen of East Partnership Brussels Belgium	15-16 March 2016
5.	Annual meeting of Global Alliance for National Human Rights Institutions (GANHRI) Geneva, Switzerland	21-23 March 2016
6.	Workshop with many beneficiaries on the force used by police Skopje Macedonia	30-31 March 2016
7.	Meeting "Homes for old people, institutional care and dementia – standards of health care and restrictions of freedom through medication" Salzburg, Austria	20-22 April 2016
8.	Official visit to the People's Advocate Institution in Albania	3 May 2016
9.	Study visit to Sweden	10-12 May 2016
10.	Study visit to Austria	31 May – 1 June 2016
11.	Regional meeting between People's advocate in Albania, Ombudsperson in Kosovo and Ombudsman in Macedonia and representatives of civil society from the three countries on "Cooperation of civil society with the ombudsman and cross border relationships" Pogradec, Albania	6 June 2016
12.	Conference on the topic "Children, Europe, emergency, protection and future of migrant children: A challenge for Europe" Paris, France	28 June 2016
13.	Regional conference "Legal protection against discrimination in Southeast Europe" Budva, Montenegro	27-30 June 2016
14.	Summer course regarding European environmental legislation Trier, Germany	27 June - 1 July 2016
15.	Workshop on: "Capacity building for monitors of the forced returning" Warsaw – Poland	28-29 June 2016
16.	High level conference on: "Challenges of human rights of the last wave of migrants and refugees" Tirana, Albania	7-8 September 2016
17.	Conference and General Assembly of ENOC, Vilnius, Lithuania	20-21 September 2016
18.	Eighth International Conference of Ombudsman Institutions for Armed Forces, Amsterdam, Netherlands	3-5 October 2016

19.	Meeting “Homes for old people, institutional care and dementia – standards of health care and restrictions of freedom through healing” Vienna, Austria	11-13 October 2016
20.	Meeting on the discussion of the report of Movement FOL for whistle-blowers, whose intention was to create a legal basis for the promotion of officers whistleblowing illegal acts” Durrës, Albania	14-16 October 2016
21.	Regional conference of ENV.net Struga, Macedonia	21-22 October 2016
22.	General Assembly of ENHRI and seminar against terrorism Zagreb, Croatia	27-28 October 2016
23.	Regional conference regarding the rights to asylum Ohrid, Macedonia	3-4 November 2016
24.	11 th world conference of International Ombudsman Institute (IOI) Bangkok, Thailand	14-19 November 2016
25.	Regional workshop regarding reporting mechanisms: best international practices Tirana, Albania	25 November 2016
26.	Conference on National Mechanisms against Torture within the southeast network Zagreb, Croatia	29, 30 November 2016
27.	Training regarding international work and diplomatic protocol London, England	3-6 December 2016
28.	Meeting on National Mechanisms Network against Torture in the Southeast network, regarding the rights of migrants and refugees Belgrade, Serbia	13-14 December 2016
29.	Meeting regarding migrant and refugee children Skopje, Macedonia	14-15 December 2016
30.	High level seminar “Freedom of expression: Role and mandate of national human rights institutions and other domestic mechanisms” Strasbourg, France	15-16 December 2016

Table: Participation in international training

Cooperation with counterparts and other international organisations

Cooperation with counterparts and other international organisations in Kosovo is very important for the work of Ombudsperson Institution. We have the pleasure to report that cooperation with counterparts from different places, with network and international organisations abroad and those which are with mission in Kosovo, is extremely well. Within this cooperation, a number of activities were realised which are elaborated below.

In the previous session it was reported, that OIK during 2016 participated in 30 different international activities. Participation in these activities was also a good opportunity to exchange information and best practices in order to start to implement the same in Kosovo.

Within cooperation with counterpart institutions in the region, OIK continued to have good cooperation, within which a number of activities were realised, the main focus of which this year was on the rights of refugees and issues of asylum and migration.

It is worth mentioning that Ombudsperson, Mr Hilmi Jashari during his speech in the High level conference on: *“Challenges of human rights of the last wave of migrants and refugees”, held in Albania, recommended that: Ombudsmen should have a unified access at world level regarding protection and monitoring of the rights of refugees; to change international standards regarding the rights of migrants and refugees, concretely Convention regarding the Status of refugees of 1951, since it does not treat sufficiently some of most important principles, such as: principle for the protection of dignity and principle of (non –refoulment).*

These recommendations were welcomed by the present people in the conference, while the Council of Europe representative committed to raise this issue even further in the future, in order that international standards are adapted to current circumstances created.

Ombudsperson was invited as a member of panel and participated in the 11th World Conference of International Ombudsman Institute (IOI), held in Bangkok, Thailand. He had a speech, in this conference, regarding the importance of cooperation between Ombudsmen and civil society and the indispensability for this cooperation to occur and to unify forces in order to advance and respect human rights.

During this year, an official visit was realised at the People’s Advocate of Albania, which purpose was stepping up further cooperation between two institutions, and also two other study visits, one in Sweden whose focus was issues of discrimination and equality and the other one in Vienna, which focus was on prevention of torture and other issues interrelated with the mandate of the institution and human rights in general.

Good cooperation also exists with other counterpart institutions in the region and beyond, with which the Ombudsperson of the Republic of Kosovo is in permanent communication on issues of common interest.

Projects with the support of international organisations

Ombudsperson Institution has very good cooperation also with organisations and foreign offices operating in Kosovo, which were a permanent supporting partner and continued to offer full assistance for strengthening the institution capacity building and promotion of mandates.

One of these organisations is the Council of Europe, which assisted the institution with the project, *“Support to the implementation of European standards on human rights in Kosovo and the reform of the Ombudsperson Institution in Kosovo”*, which was financed by the Norwegian Embassy and Swiss Embassy. There are a number of seminars realised within this project during the year regarding international human rights standards and case law of European Court of Human Rights, thematic roundtables, study visits in Sweden, an assessment of the implementation of the package of laws on human rights, three manuals were drafted regarding the work on cases of discrimination, the work with complaints and the work in monitoring the places of detention, and there were also 4 legal advisors from outside recruited. All these activities have had an undisputed impact on the increase of performance and better realisation of the mandate of Ombudsperson Institution.

This year too, the Organisation for Security and Co-operation in Europe (OSCE), like in previous years supported the OIK with some activities. Within this cooperation, there was a number thematic discussion roundtables realised, which helped Institution in promoting additional mandate at central and local level, which derived as a result of the adoption of the package of laws on human rights. These roundtables were organised in the following Municipalities of the Republic of Kosovo: Municipality of Graçanica (31 May), Municipality of Gjakova (4 July), Municipality of Zveçan (13 July), Municipality of Zubin Potok (26 September), Municipality of Leposaviç (10 October), Municipality of Mitrovica North (24 October), Municipality of Prizren (16 November), Municipality of Dragash (22 November), Municipality of Prishtina (2 December), Municipality of Graçanica (with focus on the Albanian community living there, on 5 December), Municipality of Rahovec and Malisheva (15 December).

In addition, within this cooperation, OSCE realised one promotion campaign through a TV spot and posters, which intention was promotion of the Law on Ombudsperson, Law on Protection from Discrimination and Law on Gender Equality. This campaign was launched on 11 November 2016 and was on air from 11 to 24 November 2016.

In addition, the United Nations Population Fund (UNFPA) offered financial and technical support in the realisation of the first assessment of human rights in the reproductive and sexual health, which resulted in a report entitled *“Rights in the sexual and reproductive health in Kosovo – a reality beyond the law”*, published on 8 December 2016. This report, with reference to international standards regarding this issue, assessed the current state of play, progress and challenges and included 62 recommendations addressed to responsible authorities regarding this issue. OIK welcomed this cooperation, which we hope will continue also in the future.

It is also worth mentioning another good cooperation with the office SAVE the CHILDREN in Kosovo, which in cooperation with OIK, on 21 November 2016, on the

day of the UN Convention on the Rights of the Child, published a report "Zëri Ynë (our voice)", which presents a research conducted throughout the country showing those who think and feel children of 12-16 years of age.

OIK wishes to thank the European Union Office in Kosovo, offices and other international organisations which supported OIK in the challenges and problems which it faced, but also helped each time the help was considered necessary. Ombudsperson is grateful and highly appreciates this cooperation.

Membership in international organisations

Membership in mechanisms dealing with human rights is known as a very important tool in the work of national human rights institutions, and it has extraordinary impact on the advancement of international cooperation and provides opportunities to exchange best practices in the area of human rights.

Given this fact, OIK has constantly worked to achieve to join in networks and mechanisms considered important and are related to the work and its mission. Like in the previous year, there is good news in this framework too, since on 10 March 2016, OIK joined the list of membership in the **Association of Mediterranean Ombudsmen (AMO)**¹⁹⁶. This association was established in 2008, in Marseille, France and today it is composed of many member institutions from the entire region around the Mediterranean. The association and its members are committed to protect and promote democracy, rule of law and social peace.

In addition to this, as was reported in the report of previous year, the OIK has also joined the following international mechanisms:

- ❖ International Ombudsmen Institute (IOI)¹⁹⁷
- ❖ European Ombudsmen Institute (EOI)¹⁹⁸
- ❖ European Network of National Human Rights Institutions (ENNHRI)¹⁹⁹
- ❖ Children Rights Ombudsperson for South East Europe (CRONSEE)
- ❖ Accession to the *Sarajevo Declaration for Cooperation*²⁰⁰

¹⁹⁶ For more information about the Association of Mediterranean Ombudsmen, visit this website: www.ombudsman-med.org

¹⁹⁷ For more information about the European Ombudsmen Institute, visit this website: www.theioi.org

¹⁹⁸ For more information about the European Ombudsmen Institute, visit this website: www.eoi.at

¹⁹⁹ For more information about European Network of National Human Rights Institutions, visit this website: www.ennhri.org

²⁰⁰ This declaration has formalised the cooperation and activities of all Ombudsmen Institutions in the region. The Ombudsperson Institution in Kosovo signed this Declaration on 4 April 2014.

OIK is also invited and takes part in the activities of some mechanisms and other networks, in which due to political barriers is only an observer, such as:

- ❖ Global Alliance of National Human Rights Institutions - GANHRI (which reviews the compliance with NHRI with the Paris Principles)
- ❖ European Network of Ombudsmen for Children - ENOC
- ❖ South East European National Preventive Mechanisms against torture (SEE NPM) (with which OIK participates in different meetings whose purpose is cooperation, promotion and exchange of experiences, in the area of protection of the rights of persons deprived of liberty).

Reporting to different international mechanisms

Every year, the OIK receives questionnaires on different topics from international organisations to report on the situation of human rights in Kosovo. Five questionnaires were sent this year and are listed in the following table.

Date	Report topic	Organisation / institution to which the report was sent
14 June 2016	Problems with blood feud in Kosovo	Swiss Refugee Council
13 September 2016	Best practices related to the war against discrimination of women in law and in practice	United Nations Working Group of discrimination against women in law and in practice
16 September 2016	Children with disabilities in Kosovo	French Defender of Rights
14 October 2016	Capacity building in monitoring human rights	UNDP regional Office

Table: List of reports submitted to international organisations

5.6 Media and public relations

In pursue of objectives determined in the Strategy of the Public and Media Office 2016 - 2018 of OIK, and in order to raise awareness and increase promotion of human rights, in the discharge of the mandate and mission of OIK, media and public communication was intensive, through different communication channels, including also direct communication with citizen(s), first above all during the process of admission of complaints with special focus during Open days.

The display of different materials for the public, be it in the format of summarised information, or in the format of Reports, Opinions or Legal opinions as a Court's friend (*amicus curiae*) has been done constantly, adapting the manner and means of communication depending on situation, message or the target group for communication.

Substantial information regarding the work of Ombudsperson, the mandate and constitutional and legal responsibilities are a priority, the work of the Media and Public Relations Office during 2016 has prioritised the publication of Case Reports, Special Reports and *Ex Officio* Reports. Their release is broken down according to months looks like in table 1:

Table 1 Publication of Reports/ Opinions / Amicus Curiae in the official website

2016	Raporte mbi rastet	Raporte të veçanta	Raporte <u>Ex Officio</u>
I			
II			2
III	2		
IV	1		1
V	2		
VI			
VII	3		
VIII	1	1	4
IX	1		3
X	6		1
XI			3
XII		1	2

These reports have been published on the OIK's official website followed by summarised information, with a tendency of having simple and understandable language for the citizen, but maintaining professionalism and without harming the clarity of legal analysis and of recommendations. Further, reports and information were submitted to media and were distributed also through the official page in the social network *Facebook*. Adding to this information also other statements and announcements regarding the activities and engagements of Ombudsperson, in the reporting period 1 January - 31 December 2016, their total number is 75. The same have also been distributed through e-mail, to electronic and written media and through them to the public wide. Broken down in numbers, according to months, they look like in the Table 2.

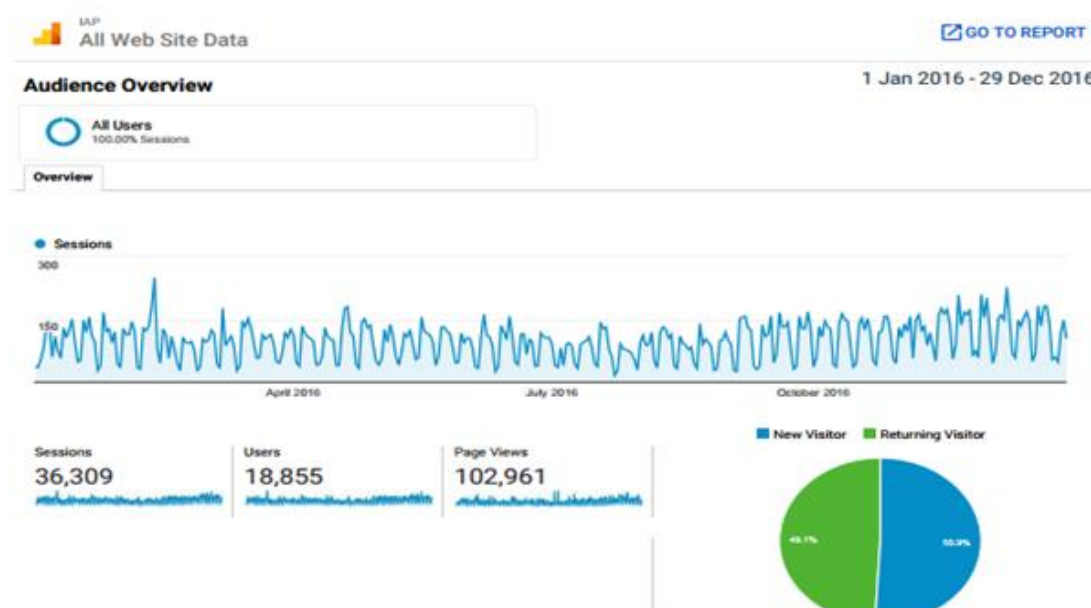
Table 2 Publication of information/ statements/ announcements/ photo news in the website

2016	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	4	3	6	8	3	6	3	6	6	10	12	8
Gjithsej:	75 informata/deklarata/njoftime/fotolajme											

Data regarding the audience of the website in the period January – December 2016 show that the website was accessed (visited) about 103.000 (one hundred and three thousand) times, while the number of users (visitors) exceeds 18.000 (eighteen thousand). Out of the total number of the visitors of the website, 49,1% clicked the OIK's website for the

first time, while 50,9% of visitors are returned to the website (see table 2, in which data from the inner website are presented).

Table 2 Data from the website on the number of visits and users



Ombudsperson also during this work was part of public presentations and declarations through media, as a response to the requirements of the latter, for issues of public interest and with focus on human rights, good administration or other social and economic processes in the country, which in one or the other manner are interrelated to the mandate and the role of the Ombudsperson. There are in total 135 media presentations, mainly form the Ombudsperson, but also from other OIK officials, in radio and televisions, electronic portals or written press. Further distribution or display of the same is not included here. In addition, there are also cases calculated when media referred to positions and recommendations of the Ombudsperson, which in this year were frequent, based on the routine monitoring of the presence of OIK in traditional media and in the new ones. Table 3 lists distribution of media presentations according to mediums based on the requests of media and journalists for pronunciations, interviews, open programmes for questions from citizens, debates and others.

Table 3 List of media presentations, distributed according to media

135 PARAQITJET MEDIALE TË SHPËRNDARA SIPAS MEDIUMEVE			
Agjencia e Lajmeve <u>Kosovapress</u>	3	Radio Kosova	6
Betimi për Drejtësi	3	Radio Urban FM	1
BIRN/Kallxo.com/Jeta n'Kosovë	8	Radio Vala Rinore	2
Gazeta Epoka e re	1	Radio Televizioni i Kosovës (RTK1)	14
Gazeta Express	2	RTK 1 (Redaksia në gjuhën rome)	1
Gazeta e re	1	RTK1 (Redaksia në gj. boshnjake)	1
Gazeta Fjala	6	Radio Televizioni i Kosovës (RTK2)	6
Gazeta Metro	1	Radio Televizioni i Kosovës (RTK3)	2
<u>Indeksonline</u>	2	Radio Televizioni 21 (RTV21)	3
Klan Kosova	11	<u>Top Channel</u>	1
Koha Ditore	7	<u>Tribuna Channel</u> (Gazeta Tribuna)	10
Kosova Sot	3	TV Dukagjini	1
Kosovapost.net	1	TV <u>Rrokum</u>	5
<u>Kohavision</u> (KTV)/Arta TV	21	<u>UBT News Portal</u>	1
Lajmi.net	1	Zëri	6
Radio Evropa e lirë	2	Zëri i Amerikës (Redaksia në shqip)	2
Radio Kosova (Zëri i <u>ashkalinjëve</u>)	1	Zëri i Amerikës (Redaksia në serbisht)	1

Thematic focus of requests from media for declarations / interviews of the Ombudsperson oscillated through different periods. While in the first quarter of 2016, the issue of accommodation of OIK prevailed and the issue of pensions handled by the Ombudspersons in the Report submitted to the Committee of Minister of the Council of Europe regarding the non-execution of the judgment of the European Court of Human Rights (ECtHR), second quarter was characterised by more topics, starting from the property right, discrimination at work, gender equality, the rights of the child, justice system, conditions in prisons and mental health centres, etc. In the third quarter, mainly but not only, the requests of media were oriented to the topics raised through OIK Reports: functioning of the legal system, effective legal remedies, rights of access to justice, right to private life, right of access to public documents, regarding the issue covered by NPMT of OIK etc., while during the last quarter of 2016, focus was mainly on the rights of the child and the OIK viewpoint within the mandate regarding the developments in the country during this period.

During 2016, there were three activities conducted with one special media coverage:

In November, OIK in partnership with Save the Children in Kosovo presented the findings of the Report “Zëri Ynë (Our voice)”, a research was conducted throughout the country, with children aged 12-16, regarding their viewpoints on different issues affecting their life, with special focus how much is the voice of the child heard in decision-making and other issues included in the Convention of the Rights of the Child.

In the beginning of December, the report on National Assessment of the Rights of Sexual and Reproductive Health was launched as a special report, conducted by OIK, with technical instructions and financial support from UNFPA, National Office in Kosovo and is based on the review of documents and relevant publications as well as in consultations with public authorities, civil society, international organisations and professional in the area.

In addition, at the end of the year, OIK made a media presentation in a special press conference, for the preliminary data of statistics and work done during 2016.

A special support, regarding the public information during 2016 was also provided by OSCE Mission in Kosovo, through the campaign for the promotion of the package on human rights in Kosovo, including Law on Ombudsperson, Law on Gender Equality and Law on Protection from Discrimination. The campaign placed the focus on the role and OIK responsibilities for the implementation of this legislation. The campaign was financed and realised by OSCE, in close coordination with OIK.

In October 2016, in the function of direct cooperation with media and to discuss jointly the media reporting in the country and issues marking the on-going debate regarding the freedom of expression and freedom of media against the right to privacy, inciting violence/hatred, or jeopardising security, Ombudsperson organised a roundtable on “Human rights and media reporting”, reaching a conclusion that the indispensability of maintaining a balance between human rights and freedoms guaranteed within a diverse social area similar to that of Kosovo.

It is also important to mention that as a result of Ombudsperson’s recommendation addressed to Kosovo Police on the need to inform the latter on the role and mandate of OIK, and the obligations that organs, institutions and authorities have exercising public and legitimate powers in Kosovo, including Police to respond to the requirements of the Ombudsperson in accordance with Domestic Constitution (Article 132.3), Kosovo Police informed OIK that it held meetings / workshops in all Regional Directories of Kosovo police and other Directories, where over 300 participants participated, with the majority of them being the supervising and management staff.

On the OIK initiative, during 2016, the broadcasting of a number of topics predefined on human rights started, a project which is being realised in cooperation with Radio and Television of Kosovo and will continue also in the first part of 2017.

A special segment regarding the transparency of the institution itself is also the treatment of requirements for access to public documents addressed to OIK. During 2016, OIK received nine (9) requests, eight (8) of which received a positive response, while for one of the requests, the party was instructed to the relevant institution where the required documents are located. It should be mentioned that the majority of requests have been addressed for more than one document, and sometimes different applicants have requested same documents. Taking these specifics into consideration, as a response to the

applications filed, there are 150 documents which are made available to the requesting parties.

6 Financing

6.1 OIK Budget

The OIK is an independent institution financed by the budget of the Republic of Kosovo. According to the Law on Ombudsperson “*the Ombudsperson Institution prepares its annual budget proposal and submits it for approval to the Assembly of the Republic of Kosovo.*”²⁰¹ According to this legal provision, the OIK is provided with a necessary budget “*irrespective of other legal provisions*”.²⁰²

6.2 Financing of the OIK from the Budget of the Republic of Kosovo

Based on the legal process of preparation and submission of the regular budget request, the Ombudsperson, submitted a budget request for 2016 to the Assembly of the Republic of Kosovo.

The Ombudsperson’s budget request for 2016 is based on the OIK work plan and activities planned. The budget in the beginning of fiscal budget of 2016 was allocated at the monetary value of 980,071.00 €, and this OIK budget was not allocated according to OIK budget request of 2016. Only after the repeated OIK requests during 2015, and in the beginning of 2016, the OIK budget was reallocated by the decisions-making bodies for 2016, fully according to the budget OIK request for 2016 at the monetary amount of 1.402.219.00€, according to Law on amending and supplementing of Law no. 05/L-071 for the Budget of the Republic of Kosovo for 2016.

The reflection of the condition, according to initial budget, reallocated budget, savings and budget expenses of the Ombudsperson Institution for 2016 will be presented in tabular form. While the report and detailed accounting of all flows in the OIK budget for 2016 according to special economic categories and sub-categories is submitted to the Assembly of the Republic of Kosovo, according to a standard form for financial reporting by independent institutions, as is required by the Commission for Budget and Finances of the Assembly of the Republic of Kosovo.²⁰³

The following table presents the OIK budget starting from *budget request, allocated budget, and final budget based on the Law on amending and supplementing Law no. 05/L-071 on Budget of the Republic of Kosovo for 2016, declaration of budget savings from OI, budget cuts with the decision of the Government of the Republic of Kosovo in December 2016 and final budget for 2016.*

²⁰¹ Law on Ombudsperson, No. 05/L-0195, Article 35, paragraph 2.

²⁰² *Ibid.*

²⁰³ Detailed financial report for OIK budget will be submitted to the Assembly of the Republic of Kosovo according to the unique form on financial reporting.

<i>Economic category</i>	Budget request for 2016	Budget allocated – initial for 2016	Reallocated budget with amending and supplementing of Law no. 05/L-071 on Budget for 2016	Declaration of budget savings and other budget cuts with the Government decision	Final budget for 2016	Final budget for 2015
Wages and Salaries	920.366.00	625.560.00	920.366.00	323.888.50	596.477.50	601.535.27
Goods and Services	390.353.00	329.011.00	390.353.00	63.632.74	326.720.26	314.201.73
Utilities	25.500.00	25.500.00	25.500.00	2.507.78	22.992.22	16.410.02
Capital Expenditures	66.000.00	0.00	66.000.00	15.800.00	50.200.00	0.00
Total budget	1.402.219.00	980.071.00	1.402.219.00	405.829.02	996.389.98	932.147.02

Table: Budget according to the budget requests, allocated budget, reallocated budget with amending and supplementing of Law, declaration of budget savings from OIK and the cuts on the decision of government and final budget for 2016

Budget planning, budget expenditures and statement of budget savings for 2016 have been implemented by OIK according to the needs and destinations of the work and functioning of the OIK, while monitoring and internal control in budget use was not lacking. For clarification, the statement of budget expenditures by OIK for 2016 was mainly done in Wages and salaries (in the amount of €250.000.00 due to the fact that the budget allocated was calculated for the entire year, while this budget for salaries was legally possible in use by OIK for the entire budget year, (only in August 2016) and Goods and Services (in the amount of €20.000.00 was due to the exemption of obligations for the rent of OIK accommodation into the offices of public building). While direct budget cuts of OIK budget by the Government of the Republic of Kosovo have been applied and implemented in December 2016. Assessing in full the declaration of budget savings of OIK and budget cuts of Government, we are fairly assessing that savings at the end of budget year are in the monetary measure of € 405.829.02.

Budget cuts in OIK for 2016 by the Government at the end of fiscal year has had no impact and obstacles regarding the full exercise of mandate and powers of OIK in 2016.

6.3 Final OIK budget and execution of expenditures for 2016

The OIK final budget for 2016 was spent by 99.52 %. The following table presents the final budget compared to budget expenditures for 2016. The tabular presentation of budget data has been organized according to economic categories and according to expenditures expressed in percentages (%).

No.	Economic categories	Final budget 2016	Budget used	Unused funds	Execution in %
1.	Wages and Salaries	596.477.50	596.477.50	0.00	100.00 %
2.	Goods and Services	326.720.26	324.706.06	2.014.20	99.38 %
3.	Utilities	22.992.22	20.264.20	2.728.02	88.13 %
4.	Capital Expenditures	50.200.00	50.200.00	0.00	100.00 %
Total		996.389.98	991.647.76	4.742.22	99.52 %

Table: Final budget and execution of budgetary expenditures for 2016

6.4 OIK donor financing

During 2016, the OIK received different donations from international organisations acting in Kosovo, such as; the Council of Europe, the OSCE, the UNDP, etc.

Specifically, the Council of Europe's donations should be named, which helped OIK with the project "*Support in the implementation of European Standards on human rights in Kosovo and the reform of Ombudsperson Institution in Kosovo*", which is financed by the embassy of the Kingdom of Norway and Swiss Embassy. Within this project there were training and seminars realised regarding international human rights standards and case law of European Court of Human Rights, thematic roundtable, study visits in Sweden, etc. There were also four (4) external legal advisors recruited, regarding the preparation of ex officio reports of the work for the six-month period, 15 July 2016 to 15 February 2017.

7 Statistics

7.1 Statistical summary of complaints and cases for 2016

As of 1 January 2016 to 31 December 2016, 1694 complaints and requests for legal advice or legal aid were filed by Kosovo citizens in the OIK Main Office in Prishtina and in its regional offices.

Most cases investigated by the OIK during the reporting period dealt with the right to a fair and impartial trial, health and social protection, right to employment and right to exercise one's occupation, property protection, right to legal protection, etc.

In the following table, the total number of complaints presented with OIK and cases investigated, cases resolved, reports for cases investigate, recommendations made in the reports have been presented in detail.

Table 1: Complaints filed by citizens to OIK during 2016

	Total number of complaints filed in the OIK	1694
	<i>Number of persons involved in the complaints presented²⁰⁴</i>	3686
<i>Ethnic background of complainants</i>		
	Albanian	1481
	Serb	101
	Ashkali	27
	Bosnian	23
	Egyptian	21
	Roma	19
	Turk	16
	Others	6
<i>Gender of complainants presented in the Ombudsperson Institution</i>		
	Male	1313
	Female	381
<i>Responsible authorities against which the complaints are filed (one complaint may have more than one responsible party)</i>		
	Courts	500

²⁰⁴ One complaint may have several complainants, alleging that their rights were violated by public authorities.

	Ministries	476
	Municipalities	283
	Police	80
	Natural person	69
	State prosecutors	57
	Publicly Owned Enterprises	49
	Privatisation Agency of Kosovo	38
	Private companies	30
	Foreign authorities	23
	Kosovo Property Agency	13
	Other	184

Table 2: Complaints announced inadmissible during 2016

	Number of complaints declared inadmissible	801
<i>Legal grounds of the inadmissibility of complaints based on the Law on Ombudsperson</i>		
	No violation, maladministration – Article 22, paragraph 1.1	241
	Using legal remedies – Article 22, paragraph 1.3	209
	Failure to exhaust legal remedies - Article 22, paragraph 1.4	184
	Outside of jurisdiction - Article 21, paragraph 1.3.1	119
	Lack of interest, failure of the complainant - Article 22, paragraph 1.2	44
	Filed after the legal deadline - Article 21, paragraph 1.3.2	4

Table 3: Cases initiated for investigation OIK during 2016

	Cases initiated for investigation from the complaints filed by citizens	893
	Cases initiated ex officio	56
<i>Ethnic background of citizens based on the cases investigated</i>		
	Albanian	755

	Serb	80
	Ashkali	18
	Bosnian	11
	Roma	10
	Turk	9
	Egyptian	4
	Others	6
<i>Complainants gender based on the cases investigated by the OIK</i>		
	Male	695
	Female	198
<i>Responsible authorities for cases investigated by the OIK (one complaint may have more than one responsible party)</i>		
	Courts	304
	Ministries	252
	Municipalities	171
	Police	45
	State prosecutors	35
	Privatisation Agency of Kosovo	24
	Publicly Owned Enterprise	22
	Natural person	14
	Kosovo Property Agency	9
	Private Companies	9
	Foreign authorities	8
	Other	94

Table 4: Cases investigated, based on the rights guaranteed by Constitution *(one case may include more than one violation of the rights guaranteed)*

	Right to a fair and impartial trial	259
	Health and social protection	152
	Right to employment and exercise of profession	146
	Property protection	143

	Right to legal remedies	93
	Rights of the accused	65
	Equality before the law	59
	The rights of the child	53
	Right to education	27
	Right of access to public documents	26
	Responsibility for living environment	24
	Right to privacy	19
	Right to life	18
	Judicial protection of rights	18
	Prohibition of torture, cruel, inhuman and degrading treatment	16
	Mediation cases	14
	Right to marriage and family	11
	Human dignity	8
	Freedom of movement	8
	Right of freedom and security	6
	Restriction of rights and fundamental freedoms	4
	Freedom of expression	2
	Rights of personal integrity	2
	Freedom of thought, conscience and religion	1
	Freedom of media	1
	Right to elect and participate	1
	Interpretation of human rights provisions	1

Table 5: Total number of cases closed by OIK during 2016 (*not only cases of 2016, but also cases recorded earlier and closed during this year*)

	Total number of cases closed	418
<i>Legal grounds for closing cases based on the Law on Ombudsperson</i>		
	Positively resolved, in accordance with the complainant's request - Article 21, paragraph 1.5.	247

	Inadmissible, no violation, maladministration – Article 22, paragraph 1.1	70
	Inadmissible, in the process of exhausting legal remedies – Article 22, paragraph 1.3	44
	Inadmissible, failure to exhaust legal remedies – Article 22, paragraph 1.4	37
	Closed due to lack of complainant's interest, failure of the complainant - Article 22, paragraph 1.2	10
	Inadmissible, outside of jurisdiction – Article 21, paragraph 1.3.1	2
	Closed with a report	8

Table 6: Reports with recommendations for cases from OIK

	Reports for cases investigated (from the citizens' complaints)	17
	Reports for cases investigated <i>ex officio</i>	12
	Letters with recommendations	8
	<i>Recommendations in the reports and letters of recommendation</i>	173
	Legal opinions	5
	Amicus Curiae	3
	Request for interim measure	2

Table 7: Implementation of recommendations issued in the reports for cases investigated by OIK

Responsible authority	<i>Implemented recommendations</i>	<i>Unimplemented recommendations</i>	<i>Pending implementation</i>
Ministry of Transport and Infrastructure	2		
Ministry of Education	1	3	5
Ministry of Health	4	3	30
Ministry of Labour and Social Welfare	2	4	3
Ministry of Economic Development			1
Ministry of Agriculture	2		

Ministry of Justice			12
Government of Kosovo			21
Municipality of Vushtrri			2
Municipality of Gjakova	2	4	
Municipality of Fushë Kosova		2	
Municipality of Prishtina		2	
Municipality of Gjilan	1		
Municipality of Viti	3		
Municipality of Ferizaj	1		1
Municipality of Rahovec	1		
Municipality of Lipjan	1		
Municipality of Novobërda	1		
Municipality of Obiliq	1		
Municipality of Klinë	1		
Municipality of Klllokot		2	
The Assembly of Kosovo		3	6
KEDS			3
Kosovo Police Inspectorate	2		
Privatisation Agency of Kosovo	1	2	
Kosovo Police	4	1	
Kosovo Judicial Council	2	5	5
Kosovo Prosecutorial Council			3
Judicial Institute		1	1
Agency on Gender Equality			2
Basic Court in Gjakova		1	
Basic Court in Prishtina		2	
Basic Court in Prizren		1	
Court of Appeal			2

The Office of Disciplinary Counsel	1		
Chief Prosecutors Office	2		
Basic Prosecution in Prishtina	1		
General recommendations			4
Total	36	36	101

7.2 Graphic presentation of statistics, 1 January 2016 - 31 December 2016

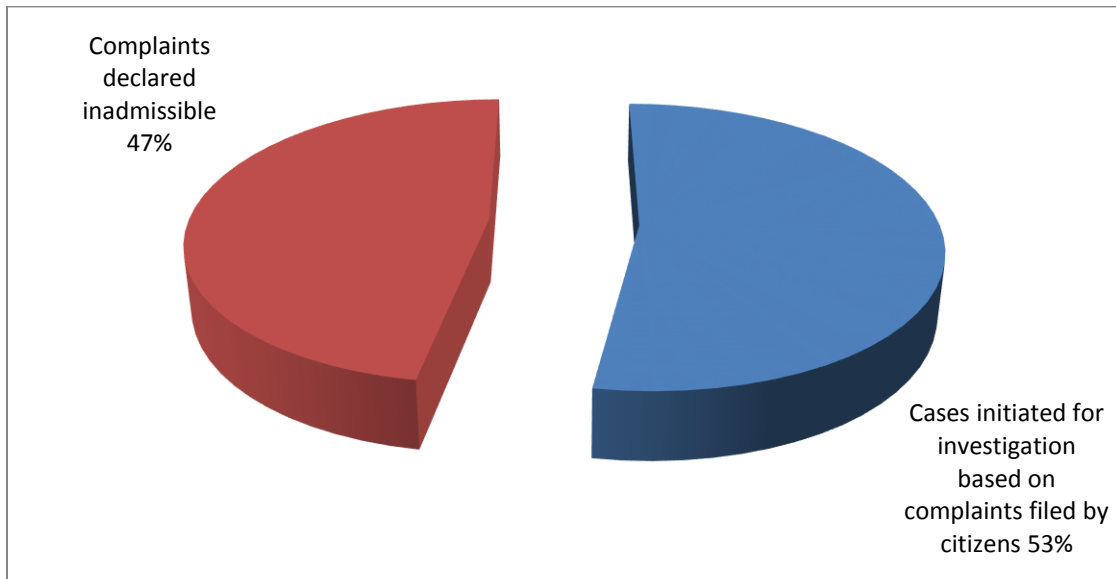


Figure 1: Review of complaints filed with OIK during 2016

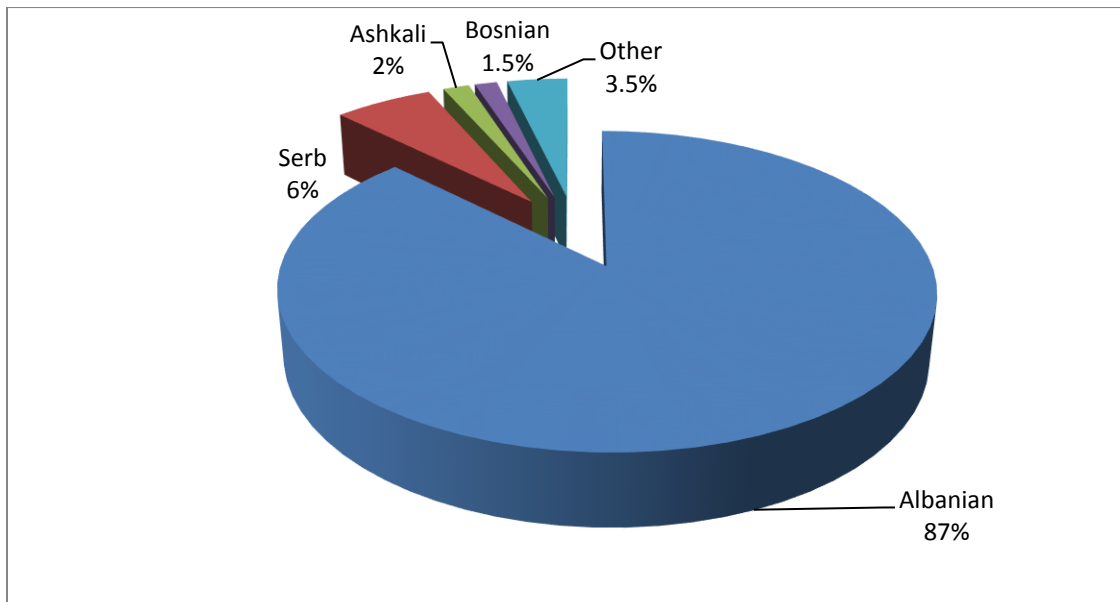


Figure 2: Ethnic background of citizens based on complaints filed in OIK during 2016

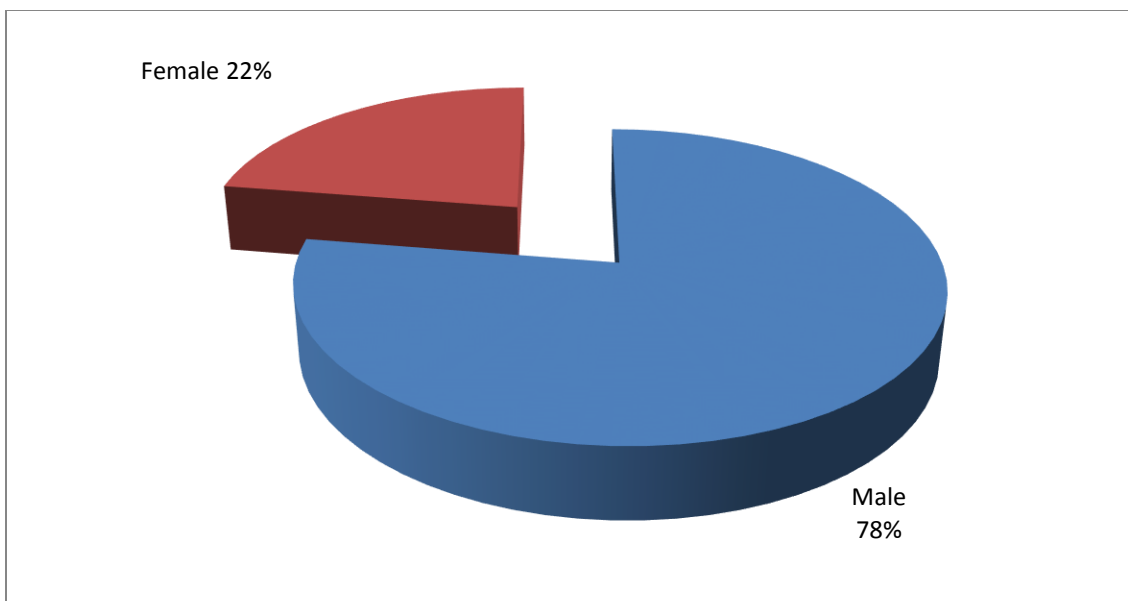


Figure 3: Gender of citizens based on complaints filed in OIK during 2016

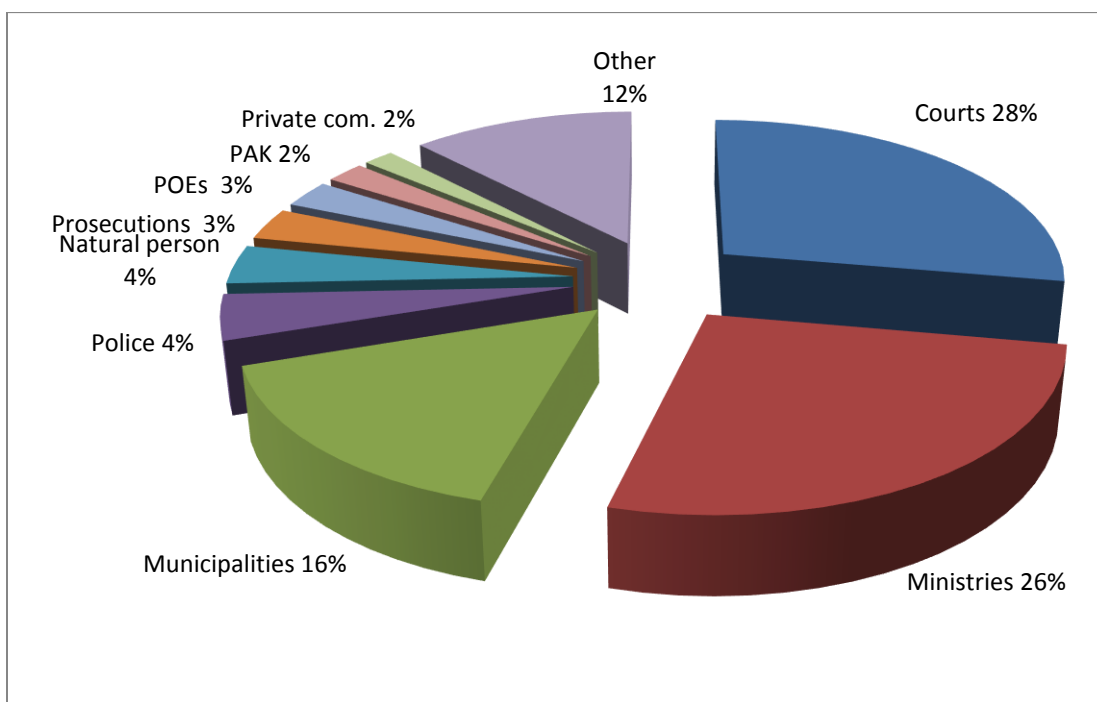


Figure 4: Responsible authorities of the complaints filed with OIK during 2016

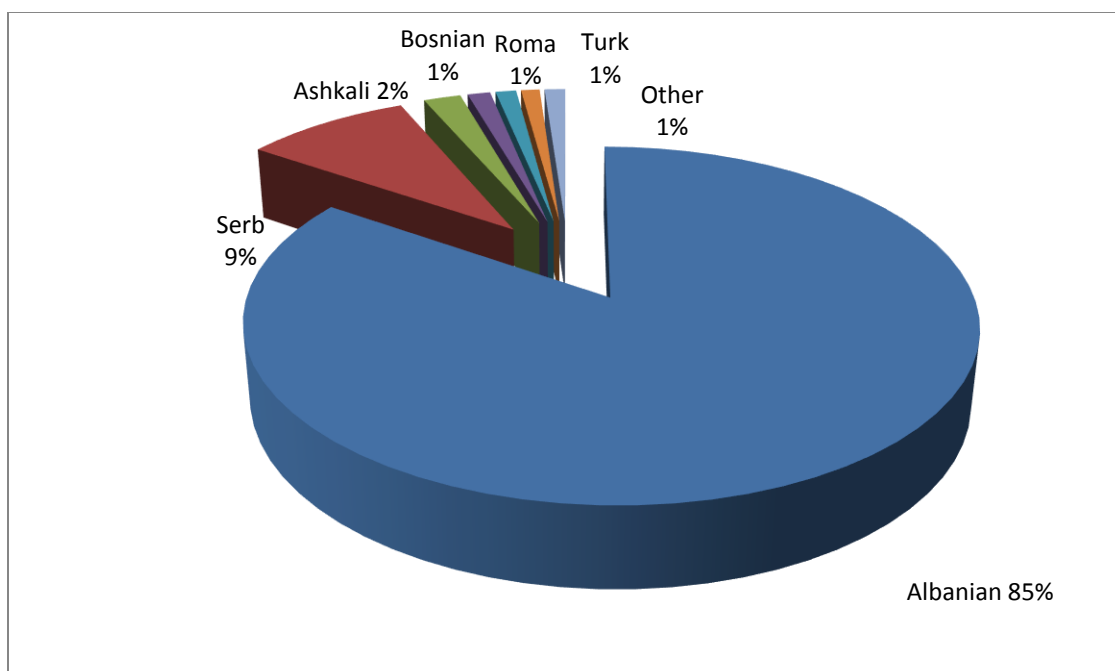


Figure 5: Ethnic background of citizens based on cases initiated for investigation during 2016

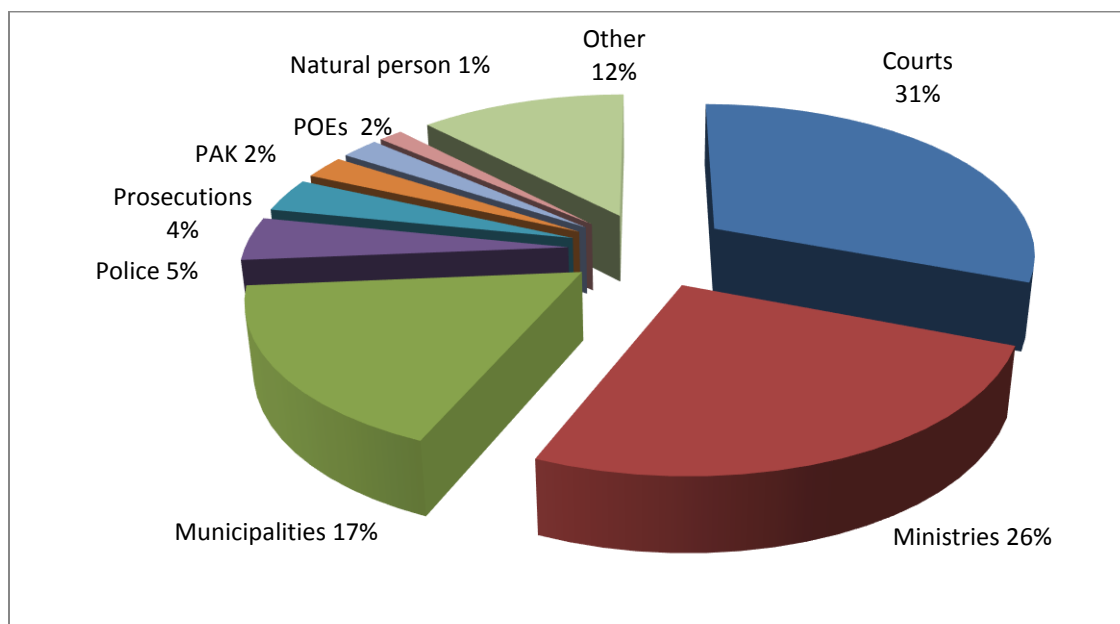


Figure 6: Responsible authorities on the cases investigated by OIK

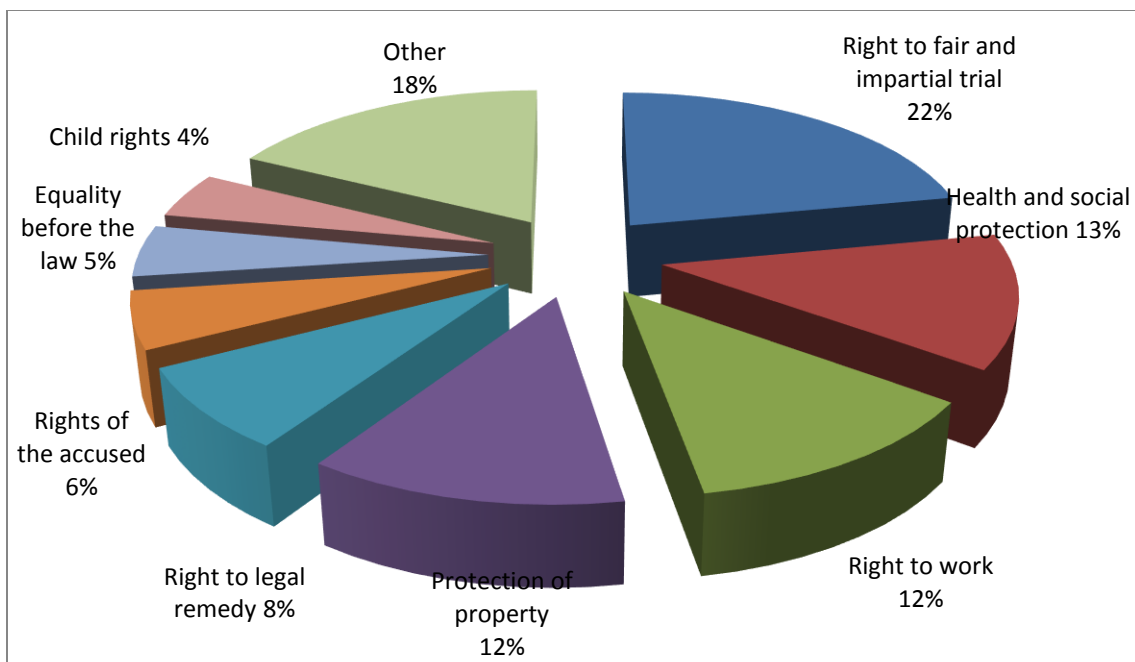


Figure 7: Cases investigated based on rights guaranteed by the Constitution

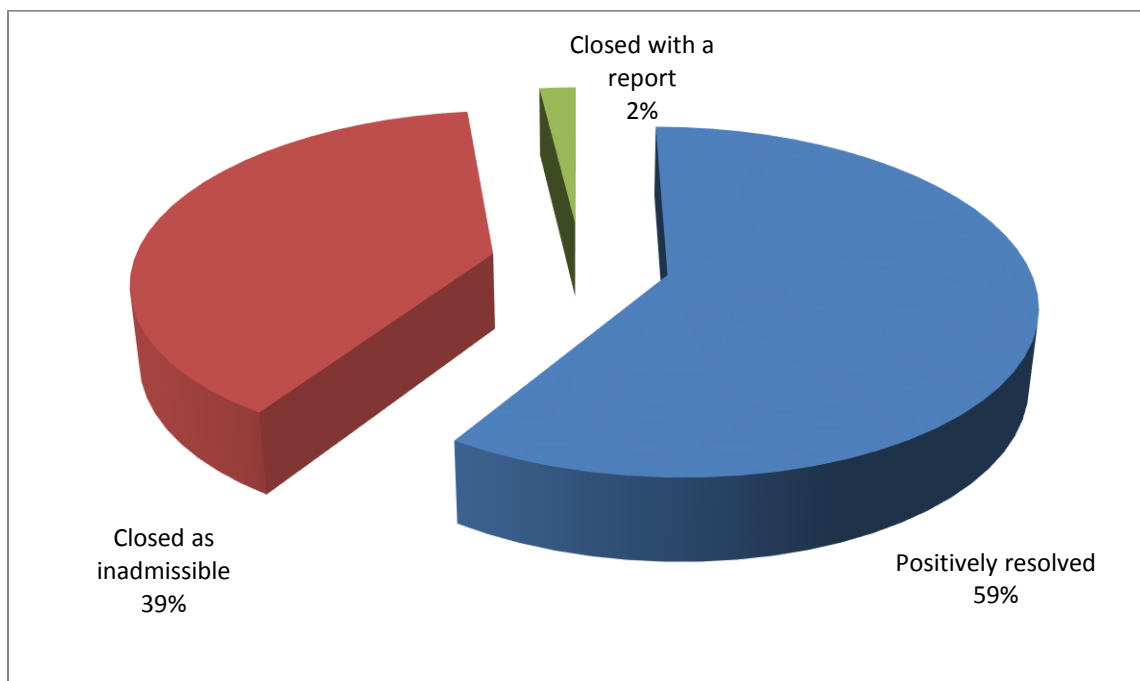


Figure 8: Cases closed by OIK during 2016 *(not only cases initiated in 2016, but also cases registered earlier and closed during this year)*

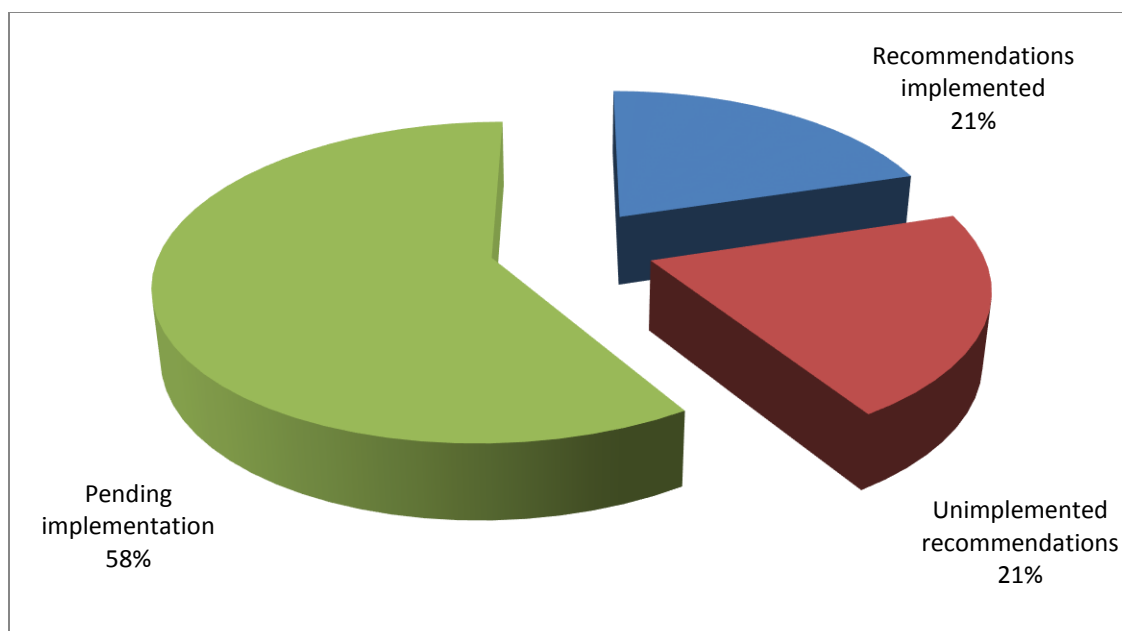


Figure 9: Implementation of recommendations issued in reports for cases investigated by the OIK

Acronyms

ACA	Anti-Corruption Agency
AMO	Association of Mediterranean Ombudsmen
BCP	Basic Court of Prishtina
BCPz	Basic Court of Prizren
CC	Correction Centre
CCK	Constitutional Court of Kosovo
CCRK	Criminal Code of the Republic of Kosovo
CNCR	Coalition of NGOs for Children's Rights
CDHRF	Council for Protection of Human Rights and Freedom
CPJC	Council for Protection and Justice for Children
CRONSEE	Southeast Europe Children's Ombudspersons Network
CRP	Conditional Release Panel
DAD	Department against Discrimination
DC	Detention Centre
DFMWI	Department of Families of Martyrs, War Invalids and Civil Victims
ECHR	European Convention for Human Rights
ECtHR	European Court of Human Rights
ECMI	European Centre for Minority Issues
ENOC	European Network of Ombudsmen for Children
EOI	European Ombudsmen Institute
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
GCR	Group for Children's Rights
HPD	Housing and Property Directorate
HPCC	Housing and Property Claims Commission
HSP	High Security Prison
ICC	International Coordination Committee of National Institutions
IMH	Institute for Mental Health
IOI	International Ombudsmen Institution
KBA	Kosovo Bar Association
KEC	Kosovo Energy Corporation
KEDS	Kosovo Electricity Distribution and Supply Company
KEPA	Kosovo Environmental Protection Agency
KESC	Kosovo Economic and Social Council
KFPI	Kosovo Forensic Psychiatry Institute
KIC	Kosovo Islamic Community
KJC	Kosovo Judicial Council
KJI	Kosovo Judicial Institute
KLA	Kosovo Liberation Army
KPA	Kosovo Property Agency
KPC	Kosovo Prosecutorial Council
KPS	Kosovo Probation Service
KRCT	Kosovo Rehabilitation Centre of Torture Victims
KSA	Kosovo Statistical Agency

KUCC	Kosovo University Clinical Centre
LAPD	Law on Access to Public Documents
LGBT	Lesbian, Gay, Bisexual and Transgender
MAFRD	Ministry of Agriculture, Forestry and Rural Development
MCR	Ministry for Communities and Return
MC	Municipal Council
MCSC	Municipal Community Safety Council
MESP	Ministry for Environment and Spatial Planning
MEST	Ministry of Education, Science and Technology
MIA	Ministry of Internal Affairs
MLGA	Ministry of Local Government Administration
MLSW	Ministry of Labour and Social Welfare
MoH	Ministry of Health
MoJ	Ministry of Justice
MPA	Ministry of Public Administration
NAPDP	National Agency for Personal Data Protection
NGO	Non-Governmental Organisation
NHRIs	National Human Rights Institutes
NPMT	National Preventive Mechanism against Torture
OAG	Office of the Auditor General
OCR	Office for Communities and Return
ODC	Office of the Disciplinary Counsel
OGG	Office for the Good Governance
OIK	Ombudsperson Institution of Kosovo
OPM	Office of the Prime Minister
OSCE	Organization for Security and Co-operation in Europe
PADK	Pensions Administration Department of Kosovo
PAK	Privatisation Agency of Kosovo
PIK	Police Inspectorate of Kosovo
RTK	Radio Television of Kosovo
SAAK	State Archives Agency of Kosovo
SCSC	Special Chamber of the Supreme Court of Kosovo
SOC	Serbian Orthodox Church
UDHR	Universal Declaration for Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development

