



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

Health emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo

Prishtina, 2021

Content

| | |
|--|-----------|
| Introduction | 1 |
| Methodology | 2 |
| Competence of the Ombudsperson | 3 |
| I. International standards and practices of countries with developed democracies | 4 |
| The United Nations Human Rights Office of the High Commissioner - COVID-19 Guidance and Human Rights | 5 |
| Emergency measures | 5 |
| Leaving no one behind | 5 |
| II. Restrictions on human rights and legislation in general | 7 |
| Activities of the Government of the Republic of Kosovo in issuing decisions related to the COVID-19 pandemic | 7 |
| Inadequate communication of information related to the COVID-19 pandemic by the Government of the Republic of Kosovo for the category of persons with disabilities | 10 |
| Activities in enacting laws related to the COVID-19 pandemic | 11 |
| Evaluation of Law No. 07 / L-006 on Preventing and Combating the COVID-19 Pandemic in the Territory of the Republic of Kosovo | 12 |
| Evaluation of Law No. 07 / L-015 on Economic Recovery COVID-19 | 13 |
| Assessment of the legality of the decision on the Fiscal Emergency Package and its comprehensiveness | 13 |
| III. Impact of the COVID-19 pandemic on public health | 17 |
| Ministry of Health, Hospital and University Clinical Service and Health Inspectorate | 19 |
| National Institute of Public Health in Kosovo (NIPHK) | 19 |
| Federation of Health Unions of Kosovo | 20 |
| Union of Nurses, Midwives and Other Health Professionals of Kosovo | 20 |
| Citizens infected with COVID-19 | 20 |
| Transport and burial rules for people dying of COVID-19 | 21 |
| Health care for people with disabilities during COVID-19 and social isolation measures | 21 |
| IV. Mental health and the impact of the COVID-19 pandemic | 25 |
| Mental health during the COVID-19 pandemic in the world: human rights in context | 25 |
| Mental health in Kosovo during the COVID-19 pandemic: human rights in context | 27 |
| Prevalence of mental health disorders in Kosovo during the COVID-19 pandemic | 28 |
| Responses of public mental health institutions during the pandemic | 29 |
| Indicators from work reports of MHCs | 31 |
| The impact of the pandemic on the mental health of the population | 31 |
| Difficulties experienced by people with mental disorders during the pandemic according to the perception of health workers | 33 |

| | |
|---|-----------|
| Experiences of mental health service users during the pandemic..... | 34 |
| Psycho-social assistance for people with disabilities during the COVID-19 pandemic | 38 |
| Access to information for people with disabilities during COVID-19 | 39 |
| V. The right to a fair and impartial trial (functioning of the judicial, prosecutorial system, police actions in imposing fines, misdemeanor proceedings during the COVID 19 pandemic in Kosovo) | 41 |
| The impact of the pandemic in the functioning of the judicial system | 41 |
| The impact of pandemic in the functioning of the prosecutorial system | 43 |
| The impact of pandemic in the functioning of the Kosovo Police..... | 44 |
| Impact of pandemic in the right to a fair and impartial trial | 44 |
| VI. The rights of non-majority communities and the impact of the Covid-19 pandemic.. | 50 |
| Informing non-majority communities about the Covid-19 pandemic..... | 50 |
| Economic assistance - procedures for access to the emergency fiscal package..... | 52 |
| Access to education and health services | 54 |
| VII. The rights of persons deprived of their liberty and the impact of the COVID-19 pandemic, from the point of view of the NMPT..... | 56 |
| Restriction of rights and freedoms in correctional facilities and detention centers | 56 |
| Restriction of rights and freedoms in institutions managed by the Ministry of Internal Affairs | 58 |
| Use of Detention Center for Foreigners as quarantine after the break out of COVID-19 | 58 |
| Student Center in Prishtina used as quarantine | 58 |
| Health care in correctional centers and detention centers | 59 |
| Challenges of the competent bodies to carry out the work during COVID-19..... | 59 |
| Limitation of rights and the fundamental freedoms of persons deprived of their liberty within the meaning of international standards..... | 60 |
| VIII. The impact of the pandemic on social and economic rights and right to work in the public and private sectors | 65 |
| Legal framework related to economic and social rights | 66 |
| The impact of COVID-19 pandemic on Kosovo's economy | 66 |
| The impact of COVID-19 pandemic on Kosovo's labor market | 67 |
| The impact of COVID-19 pandemic on poverty..... | 68 |
| Economic and social rights, and the right to work | 69 |
| Health care workers' rights | 71 |
| Tax Administration of Kosovo..... | 72 |
| The right to access pension savings | 73 |
| Loan deferral by the commercial banks | 75 |
| Consumer rights | 77 |
| Economic rights of businesses | 80 |
| Economic rights of women in business..... | 82 |

| | |
|---|------------|
| Delays, stalling in payments of government support measures | 83 |
| Pensions, social benefits and special benefits for people with disabilities during COVID-19 | 85 |
| IX. The impact of COVID-19 pandemic in Kosovo and responsibility for the environment..... | 87 |
| Government decisions on preventing COVID-19 pandemic and their impact on the environment..... | 88 |
| Laws and bylaws planned and adopted during the pandemic period dealing with environmental issues | 90 |
| The impact of COVID-19 pandemic on access to information..... | 90 |
| The impact of COVID-19 pandemic on citizens' participation in decision-making | 91 |
| The impact of COVID-19 pandemic on access to justice for environmental matters..... | 92 |
| Inspection supervision..... | 92 |
| Operation of mines | 93 |
| The impact of the COVID-19 pandemic on waste management | 93 |
| The impact of the COVID-19 pandemic on air quality..... | 94 |
| The impact of COVID-19 pandemic on waters | 95 |
| X. Domestic violence during the COVID-19 pandemic in Kosovo..... | 96 |
| Victims Advocacy and Assistance Office (VAPO) | 99 |
| XI. Freedom of gathering, freedom of belief, conscience and religion, as well as restrictions on these rights during the COVID-19 pandemic in Kosovo | 100 |
| Freedom of assembly | 100 |
| Freedom of belief, conscience and religion | 102 |
| XII. Freedom of expression, freedom of the media, the right to privacy and suffrage during the COVID-19 pandemic in Kosovo..... | 105 |
| Freedom of expression and freedom of the media | 105 |
| Limits and restrictions on freedom of expression without violating human rights | 105 |
| International guidelines for safeguarding freedom of expression during a pandemic | 107 |
| Developments during this period regarding freedom of expression and freedom of the media | 110 |
| Freedom to receive and provide information and ideas | 116 |
| Safety of journalists | 119 |
| The right to privacy during COVID-19 pandemic | 121 |
| Developments during this period regarding the right to privacy | 123 |
| Electoral rights during the COVID-19 pandemic | 127 |
| XIII. Children's rights, the impact of a health emergency on the lives of children, including children with disabilities, and the difficulties encountered during the COVID-19 pandemic in Kosovo..... | 129 |
| Protection of children's rights..... | 129 |
| The right to life, survival and development | 132 |

| | |
|---|------------|
| The right to health and social services | 134 |
| Health Services | 135 |
| Visits and interviews conducted by the OIK | 136 |
| Mental health | 137 |
| Social services..... | 138 |
| The right to protection from violence | 139 |
| Deprivation of liberty..... | 139 |
| Protecting the child without parental care | 141 |
| Visits and interviews conducted by the OI | 142 |
| XIV. The right to education and cultural activities during the pandemic | 145 |
| Government decisions regarding the education sector in Kosovo during the pandemic ... | 147 |
| Visits and interviews conducted by the OI | 151 |
| Pre-university education | 154 |
| Treatment of students with disabilities | 156 |
| Treatment of persons serving sentences | 157 |
| Higher education | 158 |
| Culture, youth and sports | 158 |
| XV. Recommendations of the Ombudsperson | 159 |

Introduction

In March 2020, The World Health Organization (WHO) estimated that the spread of the COVID-19 virus was reaching a pandemic level. Following this assessment, many states considered it necessary to take restrictive measures, mainly against the movement of citizens, in order to prevent the rapid spread of the virus. Kosovo was also affected by this situation, where after the confirmation of the first COVID-19 cases, on March 13, 2020, the Government of the Republic of Kosovo imposed several measures in response to the pandemic situation, which were then lifted, re-imposed and modified in several cases to comply with the Constitution of the Republic of Kosovo and international human rights law.

It is understandable that the COVID-19 pandemic poses a threat to public health in general and to human rights in particular, such as the right to life, and there is a rational link between government responsibilities in protecting public health and combating the pandemic and the danger that citizens face. However, according to international human rights standards, governments also have a responsibility to demonstrate that any restrictions imposed by them on human rights is balanced and proportionate to the real threat to citizens. Any measure taken that restricts rights must be aimed at achieving a legitimate aim, which needs to be strongly demonstrated.

From the Ombudsperson's point of view, the Report assesses the impact of COVID-19 on the fundamental rights of citizens and the application of government measures to prevent the spread of the pandemic. In this regard, this report addresses the impact of these measures, in particular the limitations of human rights and legislation in general; the impact of the pandemic on public health, on mental health; the impact of the pandemic on the right to a fair and impartial trial; the rights of persons deprived of their liberty; economic and social rights; labor law and the impact of the pandemic on the public and private sectors; living environment; domestic violence; freedom of assembly, belief, conscience and religion, as well as restrictions on these rights; freedom of expression, freedom of the media; the right to privacy and suffrage; children's rights and the impact of the health emergency on the lives of children, including children with disabilities; the right to education and cultural activities as well as the analysis of international standards and practices of countries with developed democracies.

This report reflects the human rights situation in an emergency situation triggered by the COVID-19 pandemic, for the period March 2020 to September 2021, and reflects the views of the Ombudsperson expressed through recommendations, which are addressed to public authorities in order to ensure respect of human rights standards in the future in any restrictive measures that may be imposed in emergency situations.

Naim Qelaj

Ombudsperson

METHODOLOGY

The report builds on qualitative and quantitative data collected through a mixed method approach. The work methodology was chosen depending on the topics covered in the report. Given that this report addresses the impact of COVID-19 on various aspects of human rights, and that a relatively large number of officials and researchers have contributed to the drafting of this report, different drafting and research methodologies have been applied.

Among other things, the Report is based on the analysis of legislation, decisions taken by the government, actions of the authorities, analysis of international conventions applicable in Kosovo, cases handled in the institution, interviews conducted, data extracted from reports of relevant institutions, especially from Kosovo Agency of Statistics. Some data are obtained from questionnaires, through which it is intended to create a clearer picture of the actions taken by the authorities and to get the general citizen perception of the actions of the authorities in relation to the undertaking of measures.

The questionnaire was used for the purpose of the position of persons with disabilities during the pandemic and of the general and specific measures taken to protect persons with disabilities during the pandemic. The questionnaire targeted local and central level institutions as well as NGOs dealing with issues of this nature. The questionnaire was also used for the purpose of assessing the impact of the pandemic on the mental health and psycho-social well-being of the general population. This questionnaire is composed of the general section as well as other section adapted from the questionnaire Mental Health Inventory, by Veil & Ware, and was conducted through social networks and through the research group.

Competence of the Ombudsperson

Article 132, paragraph 1 of the Constitution of the Republic of Kosovo stipulates: *"The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities."* While in the article 135, paragraph 3, stipulates: *"The ombudsperson is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed."* "Law No. 05 / L-019 on the Ombudsperson, the Ombudsperson, inter alia, has the following competencies and responsibilities:

- *The Ombudsperson has the power to investigate, either to respond to complaint filed or on its own initiative (ex officio), if from findings, testimonies and evidence presented by submission or by knowledge gained in any other way, there is a base resulting that the authorities have violated human rights and freedoms stipulated by the Constitution, laws and other acts, as well as international instruments on human rights "*(Article 16, paragraph 4);
- *"to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases. "*(Article 18, paragraph 1, subparagraph 1.2);
- *" to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination "*(Article 18, paragraph 1, subparagraph 1.5);
- *"to publish notifications, opinions, recommendations, proposals and his/her own reports"* (Article 18, paragraph 1, subparagraph 1.6).

By sending this report to the competent institutions, as well as its publication, the Ombudsperson intends to fulfill these constitutional and legal responsibilities.

I. International standards and practices of countries with developed democracies

Analyzing international standards and good human rights practices play an important role in shaping the path for states on how to respond during national health emergencies. They provide a unified comprehensive framework for the protection of human rights and freedoms by guiding states towards a response based on the perspective of human rights, in any restriction or deviation made to these rights, which are safeguarded by domestic laws, but also by the international law.

The right to the highest attainable standard of health is a human right, recognized in international human rights law. The International Covenant on Economic, Social and Cultural Rights, regarded as the main tool for the protection of the right to health, recognizes: "*The right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*" In Article 12, paragraph 2.3, in order to achieve the realization of this right, the Convention obliges states to take steps to: "*the prevention, treatment and control of epidemic, endemic, occupational and other diseases.*"¹

According to the Committee on Economic, Social and Cultural Rights of the United Nations, namely General Comment No. 14: "*Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.*"² Consequently, this right cannot be seen as separate, but closely related to the realization of other rights, such as: "*The right to food, shelter, work, education, human dignity, life, non-discrimination, equality, prohibition of torture, privacy, access to information, and freedoms of association, assembly, and movement. These and other rights and freedoms address the essential components of the right to health.*" Consequently, the right to health should be the foundation of the response of states in the fight against the COVID-19 pandemic.

*Siracusa Principles*³ on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, adopted by the Economic and Social Council of the United Nations, provides clear guidance on the actions of governments in restricting human rights in the event of national emergencies or of public health. According to them, the measures taken to protect the population, which limit the guaranteed rights, must be legal, necessary and proportionate. States should keep in mind that the state of emergency is limited in time and any restrictions on rights take into account the disproportionate impact on specific populations or vulnerable groups.

Various world organizations, since the outbreak of the pandemic, have been extensively committed to drafting adequate guidelines for states so that the measures and restrictions taken

¹ United Nations, International Covenant on Economic, Social and Cultural Rights, Article 12 (link: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>).

² United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14 regarding the highest attainable standard.

³ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1985, <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>

do not violate human rights. These guidelines should be a benchmark for any action to be taken, so as not to violate fundamental human rights safeguards.

The United Nations Human Rights Office of the High Commissioner - COVID-19 Guidance and Human Rights

On April 20, 2020, the United Nations Human Rights Office of the High Commissioner published the COVID-19 Guidance, which includes guidelines for states regarding respect for human rights in the face of health emergency caused by COVID-19.⁴ According to it: *"Respect for human rights across the spectrum, including economic, social, cultural, and civil and political rights, will be fundamental to the success of the public health response."*

Emergency measures

This Guidance regarding emergency measures advises, inter alia: *"Measures restricting human rights should be proportionate to the evaluated risk, necessary and applied in a non-discriminatory way, [...] having a specific focus and duration, and taking the least intrusive approach possible to protect public health."* It also recalls that some rights cannot be restricted even during a state of emergency (non derogable), including *"the principle of non-refoulment, the prohibition of collective expulsion, the prohibition of torture and ill-treatment, the right to freedom of thought, conscience and religion, and others."*⁵

Leaving no one behind

According to the guidance, there are individuals who are marginalized and face difficulties accessing public information and services, facing deep discrimination, therefore governments, in their response efforts, should take: *"Particular care to identify people who may be at risk of being missed or excluded, such as national, ethnic or religious minorities, migrants, displaced persons and refugees, older persons, persons with disabilities, LGBTI people, community or those affected by extreme poverty."* In this matter, an important role is given to the National Human Rights Institutions, such as the Institution of the Ombudsperson, but also to the civil society, which can assist in *"identifying people who may otherwise be missed or excluded, supporting the flow of accessible information to these groups, and providing feedback to authorities on the impact of measures on communities"*⁶, which this report will also address.

The United Nations system, which includes the United Nations Human Rights Office of the High Commissioner and Special Rapporteurs, calls on states to ensure that international human rights are at the heart of their actions and responses to COVID -19. To this end, in the Report *"COVID-19 and human rights report"*⁷ they have listed some recommendations for countries, and we are mentioning the most important ones below:

⁴ United Nations Human Rights Office of the High Commissioner, "COVID-19 Guidance" (link: https://unmik.unmissions.org/sites/default/files/alb_ohchr_covid-19_guidance.pdf)

⁵ Ibid.

⁶ Ibid.

⁷ United Nations, COVID-19 and Human Rights, April 2020, p. 21-22, (link: https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf)

Use maximum available resources at national and international levels to ensure availability, accessibility and quality of health care as a human right to all, without discrimination, including for issues not related to COVID-19 infection; and ensure that the right to life is protected at all times.

Ensure that stimulus packages and other actions to mitigate the economic impacts of the pandemic focus on human rights and adequately support the groups most affected by the loss of their livelihoods, such as informal and independent workers without access to unemployment benefits, and more generally people and groups without access to social safety nets.

Ensure that their national and local actions and recovery plans establish measures that address the disproportionate impact of the virus on certain groups and individuals, including migrants, displaced persons and refugees, people living in poverty, those without access to water, hygiene or adequate housing, persons with disabilities, women, older people, LGBTI persons, children and people in detention.

Ensure that accurate and reliable information reaches all, making it accessible in readily understandable formats and languages, including indigenous languages and those of minorities, adapting information for people with special needs, including the visually and hearing impaired, and reaching those with limited or no ability to read, or who lack access to the internet and usual media sources.

Guarantee freedom of expression, including freedom of the media, so that the information disseminated is uncensored.

Ensure that emergency measures, including those for the state of emergency, are lawful, proportionate, necessary and non-discriminatory, and have a specific focus and duration and are based on the least intrusive approach to the protection of public health.

Ensure that safeguards using new surveillance technologies in response to COVID-19 authorities include respect for privacy and data protection.

Mitigate the impact of the crisis on women and girls, including their access to sexual and reproductive health rights, protection from domestic violence and other forms of gender-based violence, and ensure their full and equal representation in all short-term decision-making, mitigation and long-term recovery.

Take measures to alleviate the situation with vulnerable groups, including migrants and refugees, outside their country of origin, in particular by granting temporary residence to migrants, imposing a moratorium on deportations and forced returns, and ensuring that individuals are able to return home voluntarily, safely and with dignity.

Take the lessons learned from this pandemic to refocus action on ending poverty and inequalities and addressing fundamental human rights concerns that have left us vulnerable from the pandemic and have greatly exacerbated its effects with a view to building a more inclusive and sustainable world including for future generations.

II. Restrictions on human rights and legislation in general

Activities of the Government of the Republic of Kosovo in issuing decisions related to the COVID-19 pandemic

On January 31, 2020, the World Health Organization (WHO) declared a state of global health emergency, due to the spread of this virus at an extremely rapid rate. Then, as a result of its spread at unpredictable rates and with unpredictable consequences, on March 11, 2020, the WHO declared a state of global pandemic.⁸

On March 13, 2020, the first two cases of COVID-19 in Kosovo were confirmed and as a result, the Government of the Republic of Kosovo began to take the first measures to prevent the spread of this virus. The first municipalities were quarantined, interurban and international traffic was also suspended, cafes, bars, restaurants, shopping malls, sports and cultural activities, school and university institutions were closed. Public institutions reduced the staff in the list of essential persons and private ones were ordered to organize work from home.

Regarding this issue, the Government of the Republic of Kosovo, with Decision No. 01/07, dated March 11, 2020, terminated the educational process in public and private educational institutions throughout the territory of the Republic of Kosovo, until March 27, 2020. Also the same decision restricted public and private activities. Also, organized international transport was terminated.

On March 12, the Government of the Republic of Kosovo, with Decision No. 01/08, established a Special Commission for Prevention of COVID-19 Infection. According to this decision, the Commission is tasked to manage the process of prevention of COVID-19 infection [...]. Thus, it is noticed that with this decision a special body has been created which has enabled the management of the process for the prevention of infection with COVID-19.

On March 13, 2020, the Government of the Republic of Kosovo issued Decision No. 01/09, thereby deciding to ban entry and exit in the municipalities of Klina and Viti. Also through this decision the interurban transport in the Republic of Kosovo and the organized international transport were terminated. Cafes, bars, pubs, restaurants and shopping malls were closed, except for pharmacies and grocery markets. All cultural and sports activities were suspended and the animal and vehicle markets were also closed.

Regarding this issue, the Government of the Republic of Kosovo, with Decision No. 01/11, dated 15 March 2020, declared a public health emergency.

On March 23, 2020, the Government of the Republic of Kosovo, with Decision No. 01/15, prohibited the movement of citizens and private vehicles from March 24, 2020, from 10:00 - 16:00 and from 20:00 - 06:00. Gatherings in all private and public places, indoors and outdoors [...] were also prohibited.

This decision also activated the Constitutional Court of the country, which on March 31, 2020 announced that it issued a Judgment in the case KO 54/20 (which entered into force on April 13, 2020), on the case filed by the President of the Republic of Kosovo, regarding the

⁸ Jamie Ducharme, "World Health Organization Declares COVID-19 a 'Pandemic.' Here's What That Means", Time Magazine, March 2020, (link: <https://time.com/5791661/who-coronavirus-pandemic-declaration/>)

assessment of the constitutionality of Decision No. 01/15 of the Government of the Republic of Kosovo, dated 23 March 2020, for which the Applicant claimed that it is not in accordance with the provisions of the Constitution of the Republic of Kosovo, Article 2 of Protocol No. 4 of the European Convention on Human Rights, Article 13 of the Universal Declaration of Human Rights, and Article 12 of the International Covenant on Civil and Political Rights. The constitutional issue involved in this case was the compatibility of the challenged Government Decision with the Constitution, namely whether the government, with its issuance, had restricted the fundamental rights and freedoms guaranteed or whether it went beyond the powers provided by law.⁹

In this regard, the Constitutional Court found that the Government's decision was not in accordance with Article 55 (Restriction of Fundamental Rights and Freedoms) of the Constitution, in conjunction with Articles: 35 (Freedom of Movement), 36 (Right to Privacy) , 43 (Freedom of Assembly) of the Constitution and Article 2 (Freedom of Movement) of Protocol No. 4, Article 8 (Right to private and family life) and Article 11 (Freedom of assembly and association) of the ECHR, and therefore decided to repeal it. During the review of this case, the court found that the restrictions contained in the challenged decision of the government regarding the above-mentioned constitutional rights and fundamental freedoms, are not "*defined by law*", and therefore are inconsistent with the guarantees contained in Articles 35, 36 and 43 of the Constitution in relation to the respective articles of the ECHR, and to the Article 55 of the Constitution, which clearly stipulates, in its paragraph 1, that the fundamental rights and freedoms guaranteed with the Constitution may be restricted only by law.

Furthermore, the Court emphasized the fact that the challenged decision of the government referred to the implementation of two laws, which authorized the MoH to take measures stipulated in those laws in order to prevent and combat the infectious diseases, but did not authorize the government to restrict constitutional rights and freedoms throughout the Republic of Kosovo and for all citizens of the Republic of Kosovo, without exception.¹⁰ Thus, the Court clarified that the government could not restrict any fundamental rights and freedoms through decisions, unless a restriction of the respective right is provided by law of the Assembly.¹¹ Therefore, in the spirit of this decision, it is clarified that the government can only implement a law of the Assembly that restricts a fundamental right and freedom and only to the specific extent authorized by the Assembly through the relevant law. Hence, taking into account the fact that Law No. 02 / L-78 on Public Health, defines the following groups as vulnerable: single-parent families, orphans, the extremely poor, victims of trafficking, the chronically ill,

⁹ Constitutional Court of Kosovo, Judgment in the case KO54 / 20, 31 March 2020, published on 6 April 2020, ref. no...:AGJ 1543/20 (link: <https://gjk-ks.org/decision/vleresim-i-kstruutshmerise-se-vendimit-nr-01-15-te-qeverise-se-republikes-se-kosoves-te-23-mars-2020/>)

¹⁰ Ibid.

¹¹ The Court clarified that the term "limitation" used in Article 55 of the Constitution implies the fact that the Assembly has the right to limit fundamental rights and freedoms, through law, but only insofar as, and to the extent that it is necessary that, in a open and democratic society, to fulfill the purpose for which the limitation is allowed, specifying that "limitation" means a lighter degree of intervention and this can be done even without declaring a State of Emergency; while "derogation" means a more severe degree of intervention, as it can never be done without declaring a State of Emergency.

the elderly, prisoners, the homeless, drug users with injections, the mentally ill, etc., the health authorities should focus on the treatment of at least some categories of persons.

Regarding this case, the Ombudsperson, on March 27, 2020, sent an Opinion to the Constitutional Court, expressing his views regarding this issue.

While the Constitutional Court was assessing the constitutionality of Decision No. 1/15 of the Government of the Republic of Kosovo, on March 27, 2020 the government has issued Decision No. 02/17, through which it has taken preventive measures in order to prevent and contain the spread of the COVID-19 virus, prohibiting the movement of citizens and private vehicles during the hours 17:00-06:00hrs, except for medical needs, production, supply and sales of essential goods (groceries and medications for humans and animals / poultry) and for services and activities related to pandemic management. Also with this decision the government prohibited the movement of citizens in open areas (squares) of cities of the Republic of Kosovo.

The Ombudsperson, also based on the decision of the Constitutional Court, has noticed that the Government of the Republic of Kosovo, until the entry into force of Law No. 07 / L-006 on Preventing COVID-19, did not have a clear legal basis despite the existence of Law No. 02/109 on Preventing and Combating Infectious Diseases.

However, the Ombudsperson has noticed that after the entry into force of the Law on Preventing COVID-19, on August 25, 2020, the legal basis was created at the request of the Constitutional Court, through which the restriction (limitation) of freedoms and human rights was made possible, guaranteed by the Constitution of the Republic of Kosovo. At the same time, the Ombudsperson has noticed that the Government of the Republic of Kosovo has continuously issued decisions with which it has taken measures proportional to the situation created, in order to protect against the COVID-19 pandemic.

The United Nations Human Rights Office of the High Commissioner Rights, in the guidance to stopping the spread of COVID-19, published on April 20, 2020, calls, inter alia, for accurate information on the COVID-19 pandemic:

"Relevant information about the COVID-19 pandemic must reach all people, without exception. This requires that information become available in easily understandable formats and languages, including indigenous and national, ethnic and religious minority languages, and that the information be adapted to people with disabilities, including those with visual impairments, and reach those who have limited or no reading ability or no internet access."

With the announcement of the quarterly state of public health emergency, in mid-March 2020, the Government of the Republic of Kosovo approved immediate measures aimed at preventing the spread of the virus. The dissemination of information regarding the COVID-19 pandemic situation in general, and the measures adopted in particular, was characterized by shortcomings in translation into the languages of non-majority communities, which predisposed misinterpretation and created uncertainty among members of non-majority communities who did not understand the language of the majority community. Issues of dissemination of

information, although varied as a phenomenon, were noted both in the central and local level authorities and in the Kosovo media in Serbian and Bosnian languages.

Thus, after the complaint related to the failure of the Ministry of Health (MoH) and the National Institute of Public Health in Kosovo (NIPHK) to inform citizens in Serbian language about the pandemic through their official website,¹² the OIK recommended to both authorities, in accordance with Article 5 (paragraph 1) of the Constitution and Law No. 02 / L-37 on the Use of Languages, to inform citizens and the public through their websites in both official languages of the Republic of Kosovo.¹³ On April 15, 2020, respectively on April 17, 2020, both NIPHK and MoH responded to the OIK. They explained: their communications are made in both official languages; in media communication they answer in Serbian language whenever questions are asked in such a language; their social networks / Facebook profile contains information in Albanian, Serbian and English; and that they are doing what is possible and that most of the information about COVID-19 is available in both languages, adding that the MoH website was recently reorganized and was gradually being filled with information.¹⁴ However, authorities said that due to the urgent situation of the pandemic, they were facing a lack of sufficient staff, and therefore they were open to translation assistance from any institution. The OIK then noticed an improvement in translations.¹⁵

The measures of movement restrictions for citizens, introduced in April 2020, among other things, provided that under precisely defined conditions, citizens were allowed to move outside their home for 90 minutes. The dissemination of information on these measures was characterized by two main drawbacks. First, information on the measures presented by the authorities on online portals and social networks left citizens unclear whether the relevant number specified the time allowed for movement of 90 minutes, referring to the identity number or ID card number, and whether the last or second-to-last number was the determinant for movement. Second, the authorities failed to publish the latest information in Serbian language in time, thereby leaving the non-majority communities dependent on getting information from unofficial sources or on their Albanian speaking skills.

Inadequate communication of information related to the COVID-19 pandemic by the Government of the Republic of Kosovo for the category of persons with disabilities

The Ombudsperson reiterates the importance of the right of access to information, especially during the COVID-19 pandemic, especially for the category of persons with disabilities, especially those with visual and hearing impairments to be informed about the situation with the COVID pandemic -19. For the category of blind persons, the Committee of Blind Women of Kosovo, in June 2020 reacted because until then no written information on protection against

¹² Complaint No.250 / 2020, Z. V.v. the Ministry of Health and the Kosovo Institute of Public Health, 15 April 2020.

¹³ Ibid.

¹⁴Public Communication Division, Ministry of Health of the Republic of Kosovo, Ref. No. 280/2020, 17/04/2020. See also Response to Complaint No. 250/2021, Kosovo Institute of Public Health, 15 / 04.2021.

¹⁵ Ibid.

pandemic-COVID-19 was printed in Braille alphabet¹⁶ and called for the full implementation of Law No. 04 / L -092 for Blind Persons.

The Ombudsperson recalls that the Convention on the Rights of Persons with Disabilities, in its Article 2, defines the term "*Language*", which includes: "*Spoken language and sign language as well as other forms of non-spoken language.*" The term: "*Discrimination on the basis of disability*" which means any distinction, exclusion or limitation on the basis of disability that is intended or affects the impairment or cancellation of recognition, enjoyment or exercise in a manner equal to others, of all fundamental human rights and freedoms in the political, economic, social, cultural, civil or any other field. " On September 29, 2010, the Government of the Republic of Kosovo had taken Decision No. 06/146, with which it had made official the Sign Language in the Republic of Kosovo¹⁷ and Regulation GRK No. 15 \ 2014 for the provision of services in sign language in the Republic of Kosovo.¹⁸

Based on the above, the Ombudsperson considers provision of accurate and complete information in the mother tongue for all categories of persons with disabilities as extremely important and a fundamental human right, whether through audio and audio-visual media services, through press services or in any other suitable form, especially in a pandemic situation where everyone's health is endangered. The Ombudsperson recalls that, based on its mandate and legal competencies, the Independent Media Commission (IMC) is legally authorized to influence audiovisual service providers towards fulfilling the right to information for different groups of persons with disabilities by adapting to diversity. Article 34 of Law No.04 / L-44 on the Independent Media Commission, explicitly stipulates: "*IMC shall encourage audiovisual media service providers to provide that their services gradually become accessible for people or persons with hearing and visual disabilities.*"

The ombudsperson recalls that respecting, protecting and fulfilling the right to freedom of expression, to express their opinions, including the freedom to seek, receive and disseminate information and ideas on an equal basis, is a basic precondition for building a sound and democratic society.

Activities in enacting laws related to the COVID-19 pandemic

Acting according to the instructions given by the Constitutional Court, the Assembly of the Republic of Kosovo approved the Law No. 07 / L-006 on Preventing and Combating COVID-19 Pandemic in the Territory of the Republic of Kosovo (hereinafter: the Law on Prevention of COVID-19) and Law No. 07 / 1-015 on Economic Recovery - COVID-19 (hereinafter: the Law on Economic Recovery). The adoption of these two laws was one of the most significant events that occurred in the legislative process during 2020.

What is worth noting in this case is the fact that the Republic of Kosovo through these two laws, from the moment of their adoption, has regulated the main issues that have emerged

¹⁶ Zëri Portal: "No information on protection against COVID-19 has been printed for the blind", 18 June 2020, available at: <https://zeri.info/aktuale/353760/asnje-informacion-per-mbrojtje-nga-covid-19-nuk-eshte-shtypur-per-te-verberit/>

¹⁷ Government of the Republic of Kosovo, Decision No. 06/146 on the officialization of Sign Language, issued on September 29, 2010:

http://kryeministri-ks.net/wp-content/uploads/docs/Vendimet_e_Mglejes_se_146-te_te_Qeverise_2010.pdf

¹⁸ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10363>

during the pandemic period so far. So, in addition to the legal definition of the possibility of issuing decisions on restrictive measures during the pandemic, the Republic of Kosovo has adopted a law which has defined support for entities affected by the situation created by the COVID-19 pandemic.

The Ombudsperson considers that the normative level for this period has been satisfactory, given that the issue of the legal basis for restrictive measures that can be taken in accordance with the situation created by the COVID-19 pandemic has been regulated, as well as the legal basis for financial support to entities that are affected by this situation.

Evaluation of Law No. 07 / L-006 on Preventing and Combating the COVID-19 Pandemic in the Territory of the Republic of Kosovo

This law aims to create the legal basis for the state institutions of the Republic of Kosovo, to combat and prevent the COVID-19 pandemic.¹⁹ Since the adoption of this law, the institutions of the Republic of Kosovo have taken concrete actions in order to prevent the COVID-19 pandemic, as it provides them with special powers to restrict constitutional freedoms and rights.²⁰

According to these legal provisions, the Ministry of Health has authorizations:

“1. During the duration of the COVID-19 pandemic, in addition to the authorizations from the Law No. 02 / L-109 on Combating and Preventing Contagious Diseases and Law No. 04 / L-125 on Health, the Ministry of Health has the following authorizations:

The limitation of freedoms and human rights, except those specified in Article 56 (2) of the Constitution, for as long as such is necessary to combat and prevent the spread of COVID - 19 disease;

[...]

Limitation of freedoms and rights related to the constitutional rights of freedom of movement (Article 35), freedom of gathering (Article 43) and privacy (Article 36) shall be done in such a way as to provide ample and detailed reasoning for the direct connection between the limitation and the measures taken to combat and prevent the spread of COVID-19. ”Article 4, paragraphs 1 and 4).

From the above mentioned provisions it is noticed that this law has authorized the MoH to issue decisions on the restriction of freedoms and human rights, guaranteed by the Constitution, when such a thing is necessary and indispensable. And after the entry into force of this law, all government decisions issued in order to protect against the COVID-19 pandemic, are based on this law.

¹⁹ Assembly of the Republic of Kosovo, Law No. 07 / L-006 on Preventing and Combating Pandemic COVID - 19, Article 1, 25 August 2020.

²⁰ *ibid*, Chapter II.

Evaluation of Law No. 07 / L-015 on Economic Recovery COVID-19

This law aims to supplement and amend nine (9) laws, in order to enable the recovery of the economy of the Republic of Kosovo after the negative effects caused by the COVID-19 pandemic.²¹

The same, in the substantive sense, consists entirely of transitional provisions, because they remain in force until 31 December 2021, and after this date all provisions are automatically repealed, except Article 5, which shall apply until 31 December 2028, and Article 7, paragraph 3.

Article 5 of the Law on Economic Recovery stipulates that for the purpose of economic recovery, participants may withdraw ten percent (10%) of their pension savings from the Kosovo Pension Savings Trust (KPST). According to this Article, the funds withdrawn by the participants who have savings up to nine thousand nine hundred and ninety nine euros (9999 euros) shall be compensated in the reimbursement form, starting from 2023.²² This stipulation has triggered discussions and reactions from the part of citizens who have more than nine thousand nine hundred and ninety-nine (9999) in pension savings, who will not be reimbursed according to this law.

Regarding this issue, the Ombudsperson has received several complaints from the citizens of the Republic of Kosovo, who claimed that this provision puts them in unequal treatment. There is still no explanation for the threshold of 9999 euros, so it has been opposed by citizens with savings over this ceiling. In this regard, regarding the claim of pensioners to have the right to withdraw funds from the Pension Trust, the Ministry of Finance, Labor and Transfers, at the request of the Ombudsperson, has clarified that according to legal provisions, only active participants in the trust are entitled to withdraw 10% of the amount.

Assessment of the legality of the decision on the Fiscal Emergency Package and its comprehensiveness

On March 30, 2020, the Government of the Republic of Kosovo issued Decision 01/19, approving the Emergency Fiscal Package. While on April 3, 2020, the Ministry of Finance and Transfers has issued Decision No. 31/2020 on the Approval of the Operational Plan for the Emergency Fiscal Package and on April 17, 2020 took the Decision No. 06/25 on the completion of the Emergency Fiscal Package.

²¹ Assembly of the Republic of Kosovo, Law No. 05 / L-057 on the Establishment of the Kosovo Credit Guarantee Fund; Law No. 04 / L-101 on Pension Funds of Kosovo, Amended and Supplemented by Law No. 04 / L-115 and with Law No. 05 / L-116; Law No. 05 / L-028 on Personal Income Tax; Law No. 05 / L-037 on Value Added Tax; Law No. 03 / L-048 on Public Financial Management and Accountability, Amended and Supplemented by Law no. 03 / L-221, with Law no. 04 / L-116, with Law no. 04 / L-194, with Law no. 05 / L-063 and with Law no. 05 / L-007; Law no. 03 / L-222 on Tax Administration and Procedures, Amended and Supplemented by Law no. 04 / L-102, with Law no. 04 / L-115 and with Law no. 04 / L-223; Law no. 04 / L-034 on the Privatization Agency of Kosovo, Amended and Supplemented by Law no. 04 / L-115, with Law no. 05 / L-080 and with Law no. 06 / L-023; Law no. 05 / L-092 on Amending and Supplementing Law no. 04 / L-042 on Public Procurement of the Republic of Kosovo, Amended and Supplemented by Law no. 04 / L-237 and with Law no. 05 / L-068; Law no. 03 / L-063 on Mines and Minerals, Amended and Supplemented by Law no. 04 / L-158.

²² Assembly of the Republic of Kosovo, Law No. 07 / L-015 on Economic Recovery - COVID-19, Article 5, on December 7, 2020.

In essence, the principle of legality materializes the values of the constitutional order, taking into account that administrative law is the concretization of constitutional values, for which all acts of public administration bodies must be in accordance with the law and in the spirit of compliance with the constitutional principle of the rule of law. The principle of legal certainty is the basis of the rule of law and ensures the trust of citizens in the state and the immutability of the law through the actions of administrative bodies, a principle which, among other things, consists in accuracy, clarity and consistency of the entire legal order of a state, i.e. not only specific norms, but the entire legal order is required to be understandable, predictable and not contradictory.

The following is a brief description of the 15 measures envisaged in the Emergency Fiscal Package:

- Measure 1 - Double payment of the social assistance scheme value for the months of March, April and May;
- Measure 2 - Additional payment in the amount of 30 Euros per month to all social and pension schemes beneficiaries receiving a monthly payment lower than 100 Euros for the months of March, April and May;
- Measure 3 - Financial support to business organizations under financial distress due to the emergency situation, including:
 - Coverage of expenditures for the employees' monthly salaries in the amount of 170 Euros (2 months);
 - Rent subsidy up to 50 percent of the rent value for small and medium enterprises; and
 - Coverage of the value of pension contributions for salaries with regard to the measures foreseen under this decision.
- Measure 4 - Provision of interest-free loans to publicly-owned enterprises (repayment period until the end of 2020);
- Measure 5 - Provision of financial support to municipalities of the Republic of Kosovo;
- Measure 6 - Provision of a salary allowance in the amount of 300 Euros to employees of the essential sectors who are directly exposed to the risk of infection for the months of April and May (medical staff, Kosovo Police, Correctional Service officers, officers of the Emergency Management Agency -firefighters, KSF, workers working in Quarantine, Labor Inspectorate, TAK- inspectors, customs officers, market inspectors, relevant municipal inspectors, Occupational Medicine Inspectorate);
- Measure 7 - Additional payment in the amount of 100 Euros to employees of grocery stores, bakeries and pharmacies, for the months of April and May;
- Measure 8 - Payment of monthly assistance in the amount of 130 Euros to citizens who lose their jobs due to the emergency situation (registration is done through TAK , for the months of April, May and June;

- Measure 9 - Support to initiatives and projects aimed at improving the lives of non-majority communities in the Republic of Kosovo that have been hit hard by the public health emergency situation, amounting up to 2 million euros;
- Measure 10 – Provision of financial liquidity for two categories: - micro-enterprises and the self-employed through certain programs of the Kosovo Credit Guarantee Fund, in the amount of up to 10 thousand euros for a period of 2 years, amounting up to 15 million euro; AND trade companies / companies authorized to provide basic services (similar to those of publicly-owned enterprises) with repayment period until 31.12.2020, within the value specified in point 1.4 of the decision for the Emergency Fiscal Package;
- Measure 11 - Increase of budget for grants and subsidies for the Ministry of Agriculture, Forestry and Rural Development in order to increase agricultural production, amounting to 5 million euros;
- Measure 12 - Increase of budget for grants and subsidies for the Ministry of Culture, Youth and Sports in order to avoid the situation created by the public health emergency in sports and cultural activities, amounting to 5 million euros;
- Measure 13 - Support to exporters in the Republic of Kosovo after the public health emergency situation ends, amounting to 10 million euros;
- Measure 14 - Financial support to companies registering employees with at least one year employment contract during the period of public health emergency situation, with 130 euros for the following two months after registration, amounting up to 6 million euros;
- Measure 15 - Payment of monthly assistance in the amount of 130 euros to citizens living under poor social conditions, declared as unemployed in the competent institution and who are not beneficiaries of any monthly income from the Kosovo Budget for April, May and June, amounting up to 3 million euros;

The measures envisaged by the decision on the Fiscal Emergency Package show that there is inclusion for all social categories. However, what is observed regarding the implementation of the Fiscal Emergency Package, from the citizens' complaints and from the media reports, is that the application for benefiting from some measures has been a complicated procedure; For example, application for Measure 14 for the payment of assistance in the amount of 130 euros²³. It was also noted that there were delays in the implementation of payments for the relevant measures of the Fiscal Emergency Package. In the interview of the former Minister of Finance and Treasury given to a portal²⁴, regarding the delays in the payments for Measure 15, he said: *"The delay of salaries of some employees from the Fiscal Emergency Package is due to the fact that their data were incorrectly uploaded in the system during the application to benefit from this package"* and *"while filling out the form, businesses entered their bank account and not the employees' account."*

²³ Ngadhnjim Avdyli, "Concerns over the Emergency Fiscal Package", Kosovo 2.0, April 2020 (link: <https://kosovotwopointzero.com/bregat-karshi-pakos-emergente-fiskale/>)

²⁴ Message: "Bislimi explains the delays of some payments from the Fiscal Emergency Package", May 2020, (link: <https://mesazhi.com/bislimi-explains-the-delays-of-a-some-payments-from-the-emergent-fiscal-package/>)

Also, from the statement that the Minister of Finance gave to the media, it was reported: *"The Government of Kosovo does not have sufficient funds to implement the Fiscal Emergency Package, without a budget review which has already been sent to the Assembly of Kosovo."*²⁵ The announcement in the media regarding the delays for the payments under Measure 15 of the Fiscal Emergency Package was given by the Ministry of Labor and Social Welfare (MLSW), which announced that from 17 August 2020, the notification and appeal process against the decision for monthly assistance has started in all centers for social work, according to Measure 15 of the Fiscal Emergency Package. From the above, it can be concluded that there has been comprehensiveness, but the implementation of these measures has been accompanied by delays.

²⁵ Bota e Lajmeve: "Minister Bajrami: Without budget review there are no second payments for employees", (link: <https://botaelajmeve.com/ministrja-bajrami-pa-rishikim-te-buxhetit-ska-pagesa-te-second-for-workers/>)

III. Impact of the COVID-19 pandemic on public health

2020 and 2021 were years of challenges or crisis situation not only in Kosovo, but the whole globe, due to the COVID-19 pandemic. Restrictive measures taken to prevent the threat to public health have brought to the fore the state's obligations for the right to life on the one hand and respect for human rights even in times of crisis on the other. The government treated the crisis caused by COVID-19 as a public health emergency, with many restrictions and prohibitions in all areas of life, while on the other hand there were citizens who denied the existence of COVID-19.

The situation with the COVID-19 pandemic has challenged the health systems in all countries, so even the health system of Kosovo is faced with a situation where it is caught unprepared to deal with health emergencies. Even before this situation, the Ombudsperson had warned the responsible authorities on the poor condition of the health system. This is due to the fact that in addition to the lack of capacity in the health system of the Republic of Kosovo, there was a lack of both information and approval of protocols for the treatment of this virus. To this end, most of the COVID-19 pandemic management strategy was based on facilitating the day-to-day management of COVID-19-infected cases and building additional capacity to accommodate and treat new cases.

In this regard, the Report of the European Commission and the reports of other organizations have ascertained the poor state of the health system in Kosovo. A multidimensional review for the Western Balkans of the pandemic period until February 2021 finds a moderate impact on health in Kosovo.²⁶ This report finds that Kosovo was hit by four waves of pandemic. This report cites factors of weaknesses in the health and social protection system and high levels of unemployment and informality. The same Report of the European Commission on Kosovo²⁷ quoted that in our country overall health expenditures remain the lowest in the region and that without publicly available health insurance, citizens' out-of-pocket costs are estimated at 40 % of total medical costs, compared to an average of 13% in the OECD.¹²

A brief publication by the WHO Liaison Office in Kosovo shows that from March to May 2020, all non-acute health services were suspended in Kosovo, with their subsequent gradual reopening.²⁸ This publication shows that the restrictive measures introduced to mitigate the outbreak of COVID-19, accompanied by the repositioning of health services and the capacity of the health workforce in COVID-19 treatment centers, have negatively affected the (essential) health services in Kosovo, including their access and utilization.

The "Rapid Socio-economic Impact Assessment of COVID-19 in Kosovo-3" report by UNDP, UN Women, UNFPA and UNKT, published in May 2021,²⁹ among other things, measured the

²⁶ OECD Library, "The effect of COVID-19 in Kosovo", (link: <https://www.oecd-ilibrary.org/sites/0314c10c-en/index.html?itemId=/content/component/0314c10c-en>)

²⁷ European Commission, "Report on Kosovo 2018", Brussels, November 2018. (link: https://eeas.europa.eu/sites/eeas/files/01_kosovo_report_2018_0.pdf)

²⁸ Ardita Tahirukaj et al, "Maintenance of Essential Health Services in Kosovo", World Health Organization (link: <https://hlh.who.int/learning-briefs/action-brief-kosovo---deep-dive>)

²⁹ United Nations in Kosovo, "Rapid socio-economic impact assessment of COVID-19 in Kosovo - 3", June 2021, (link: <https://kosovoteam.un.org/index.php/en/130632-rapid-socio-economic-impact-assessment-covid-19-kosovo-3>)

difficulties related to access to health and social services for about 1400 respondents. While in the first round in March 2020, 3% reported major difficulties, 23 % reported some difficulties, in the second round, in November 2020, 6 % reported major difficulties, 18 % reported some difficulties, in the third round, in March 2021, 4 % reported major difficulties, 13 % reported some difficulties.

Another report from the Aspen Institute³⁰ finds that the measures resulted in limited access to medical care, which is an even more troubling violation of the fundamental rights of citizens in need of immediate health care.

A report published in December 2020 by the Kosovo Center for Security Studies notes that the pandemic has jeopardized the protection of human rights and civil liberties, which are essential for a functioning democracy.³¹ These effects are particularly felt among disadvantaged or marginalized groups.

In the context of the created situation, the Ombudsperson has come up with two reports with recommendations to the responsible institutions, regarding the assessment of the realization of health rights during the COVID-19 pandemic period in Kosovo³² and access to health care services for people affected by the Human Immunodeficiency Virus (HIV) and Tuberculosis (TB) during the COVID-19 pandemic period in Kosovo.³³

The above-mentioned reports have addressed the problems created by COVID-19, without getting into the core of the difficulties and challenges of the treatment part of COVID-19 itself. As noted in these reports, the entire system focused on the prevention and treatment of the infected with COVID-19.

In the report on the assessment of the realization of health rights during the COVID-19 pandemic period in Kosovo, it is found that: *“During the health emergency in the Republic of Kosovo, regarding the selective provision of health services, without a legal basis, there were violations of fundamental human rights and freedoms. The relevant authorities have not fulfilled their constitutional and legal obligations towards the citizens and this had direct negative implications for the health and lives of persons who potentially needed health services.”* This also due to the fact that the authorities have not provided alternative options for patients who have not been provided with health care and have not been compensated.

³⁰ Aspen Institute, “COVID-19 Pandemic in the Western Balkans: Consequences and Policy Approach” 2020, (link: <https://www.aspeninstitute.de/wp-content/uploads/2020-The-Covid-19-Pandemic-in-the-Western-Balkans.pdf>)

³¹ Kosovo Center for Security Studies, “Between a rock and a hard place: Kosovo's challenges in dealing with the COVID-19 pandemic”, December 2020, (link: http://www.qkss.org/repository/docs/Covid19_ENG_656195.pdf).

³² Institution of the Ombudsperson in Kosovo, “Report with recommendations, Ex officio, Case no. 434/2020 regarding the restrictions on the provision of health services during the COVID-19 pandemic in Kosovo”, March 12, 2021, (link: <https://oik-rks.org/2021/03/12/raport-me-rekomandime-ex-officio-rasti-nr-4342020-ne-lidhje-me-kufizimet-e-ofrimin-te-sherbime-shendetesore-during-pandemic-covid-19-in-kosovo/>)

³³ Institution of the Ombudsperson in Kosovo, “Report with recommendations, ex officio no. 698/2020 regarding access to health care services for persons affected by the human immunodeficiency virus (HIV) and tuberculosis (TB) during the COVID-19 pandemic in Kosovo”, 27 January 2021, (link: <https://oik-rks.org/2021/01/27/raport-me-rekomandime-ex-officio-nr-6982020-ne-lidhje-me-qasjen-ne-sherbime-te-kujdesit-shendetesor-te-persons-affected-by-human-immunodeficiency-virus-hiv-and-tuberculosis-tb-during-ko/>)

Based on the findings presented and the facts gathered, in the Report regarding access to health care services for persons affected by the Human Immunodeficiency Virus (HIV) and Tuberculosis (TB), during the COVID-19 pandemic period in Kosovo, the Ombudsperson finds *“violations of fundamental human rights and freedoms, as the relevant authorities have failed to meet their constitutional and legal obligations towards persons infected with HIV / AIDS and TB, as a result of the situation created by the COVID pandemic- 19”*.

Ministry of Health, Hospital and University Clinical Service and Health Inspectorate

From the communication with the HUCSK, the Health Inspectorate (HI) and the MoH, regarding the impact of COVID-19 as well as the challenges they face, the Ombudsperson has found:

- Hospital capacity and staff have been limited in every aspect and this has affected the performance of the system itself,
- legislative shortcomings until the adoption of Law No. 07 / L-006 on Preventing and Combating the COVID-19 Pandemic in the Territory of the Republic of Kosovo,
- lack of specific guidelines and clinical protocols for the treatment of COVID-19, lack of specific and expensive therapies for the treatment of COVID-19,
- the challenge of managing the large influx of returned citizens from abroad, who had to be quarantined for two weeks and for whom health and social supervision and care had to be provided;
- lack of adequate infrastructure for storing vaccines in specific conditions (-70 degrees Celsius) for vaccines, etc.

National Institute of Public Health in Kosovo (NIPHK)

From the communication with the NIPHK, regarding the impact of COVID-19 and the challenges it faces, the Ombudsperson has found:

- Lack of supply of devices, reagents and staff (two RT PCR devices, with one microbiology specialist and a laboratory technician), all due to the continuing disregard by the responsible authorities for the needs for support in microbiology services in Kosovo.
- With the support of donors, from the beginning of June 2021, sufficient equipment for RT PCR testing has been provided and contracts have been concluded by the MoH for sufficient supply of consumables for RT PCR testing. Also in late 2020 and early 2021, twenty five (25) young doctors engaged in RT PCR testing for COVID19, started the specialization studies in medical microbiology.
- Tests have been provided to all persons who had epidemiological indications for testing (even without a doctor's referral) and active epidemiological monitoring has been performed in many public institutions of Kosovo.

Federation of Health Unions of Kosovo

According to the FHUK, the declaration of a state of emergency as a result of the first case of COVID-19 virus, found public health institutions and health workers unprepared and untrained for such emergency situations, and they were also understaffed.

According to them, during this period health workers faced many challenges, ranging from being uninformed of the virus and symptomatology, lack of source information about treatment, lack of staff in the testing process for COVID-19 (lack of nurses and specialists in certain fields), lack of tests for COVID-19, lack of supply of essential medicines, lack of special spaces for treatment of persons with COVID-19 (lack of creating adequate spaces for the treatment of patients with COVID-19), lack of medical equipment needed for treatment (supply of oxygen cylinders, respirators, lack of central oxygenation system), lack of guidelines for safety and health at work and a number of shortcomings that have subsequently resulted even in fatality for health workers. According to FHUK, until June 11, 2021, 37 health workers were identified to have died as a result of infection with COVID-19, while about 4000 health workers and support staff were infected.

Union of Nurses, Midwives and Other Health Professionals of Kosovo

According to the Union of Nurses, Midwives and Other Health Professionals of Kosovo (UNMHPK), there were violations of the rights of nurses, midwives and other health professionals during the COVID-19 pandemic in Kosovo, such as: extended hours without time off during most of the pandemic period both at the HUCSK and the FMC; loss of annual leave; severe shortage of nurses in clinics, wards and FMCs throughout Kosovo; lack of anti-COVID clothing training and training on access to COVID-19 infected patients which they believe has resulted in infection of nurses; lack of sufficient clothing, masks, gloves; lack of coverage of recovery costs from COVID-19, lack of payment for overtime work, etc.

Citizens infected with COVID-19

In order to have a more realistic assessment of the situation created by COVID-19, the Ombudsperson has established direct contacts with citizens, interviewing persons infected with COVID-19, and their companions. These persons belonged to different genders and different regions of Kosovo.

Also persons accompanying persons with COVID-19 who got infected while accompanying their family members at relevant hospitals / clinics were also interviewed, as well as persons, whose family members had a fatal outcome from COVID-19 infection.³⁴

The main concerns of the interviewed citizens were the difficult conditions in the hospitals, the non-streamlined hospital premises, the lack of medical staff, the lack of medicines for the treatment of COVID-19, the lack of home delivery of health services for the elderly and people with disabilities, the risk of spreading the virus to patients' companions, fear of being

³⁴Citizen interview A.N., July 4, 2021; E.D., July 5, 2021; Rr. L., July 13, 2021.

hospitalized, as in some cases deaths at hospitals and clinics were reported in social media³⁵ etc.

From this information, the Ombudsperson considers that the lack of coverage of treatment costs by public authorities, has financially affected patients, which is also contrary to the Law on Prevention and Control of COVID-19. While, lack of diagnostic support services and other services, such as rehabilitation or mental health, are restrictions on access to services. Also, due to the lack of protective equipment and the presence of companions, they and their families are endangered.

Transport and burial rules for people dying of COVID-19

Given the fact that a large number of citizens infected with COVID-19 resulted in fatalities, the Ombudsperson inquired on what was the course of action in cases when patients infected with COVID-19 died at health facilities, at any level, and whether there was any guideline / protocol or any letter from the MoH regarding the epidemiological rules for the cases in question. The MoH has announced that the declaration of death by the doctor for cases that have died from COVID-19 has been made according to the WHO guideline. According to the MoH, it build on the rules set by the Sanitary Inspectorate, the Law on Preventing and Combating the Spread of Infectious Diseases, the Law on the Sanitary Inspectorate, the ECDC document recommended by the NIPHK, and the Manual for Protection from the spread of COVID-19.

On the other hand, the Sanitary Inspectorate of Kosovo has announced that it has strictly implemented the rules of transport and burial for persons dying from COVID-19.

The Ombudsperson notes that this regulation was published in the media³⁶ on April 30, 2020 and on the websites of some municipalities its content was clear, but there was no release date and it was not protocolled or signed. At the bottom of the text there were the contact details and the name, e-mail address and telephone number of the Chief Inspector of the Sanitary Inspectorate of Kosovo.

This regulation was issued based on the Law on the Sanitary Inspectorate of Kosovo, the Law on Preventing and Combating Infectious Diseases, as well as the Ordinance on the conditions and manner of transport of deceased persons (OJ No. 17/1977). The regulation contains 13 points, which set out the rules of transport and burial for persons dying from COVID-19.

Health care for people with disabilities during COVID-19 and social isolation measures

In the context of health care, measures have been taken to protect the population, which include a number of restrictions and recommendations of the NIPHK, MoH and WHO.³⁷ But the

³⁵ Ekonomia Online, "Police block the entrances - four dead bodies are removed from the Infectious Diseases Clinic", July 2020, (link: <https://ekonomiaonline.com/nacionale/shendetesi/policia-bllokon-hyrjet-kater-trupa-te-pajete-nxirren-nga-infektiva/>)

³⁶ Sinjali, "Pandemic / These are the rules of transport and burial for people dying of COVID-19 in Kosovo", April 2020, (link: <https://sinjali.com/keto-jane-rregullat-e-transportit-dhe-varrimin-per-personat-qe-vdesin-nga-covid-19-ne-kosove/>)

³⁷ From the response of the Government of the Republic of Kosovo, dated 9 July 2021, which was sent by the Ministry of Finance, Labor and Transfer to the Questionnaire of the Institution of the Ombudsperson of Kosovo, sent via e-mail, on 21.6.2021.

situation with people with disabilities is different because the government has done little to provide the specific guidance and support that people with disabilities need in order to protect themselves during the COVID-19 pandemic.

There was a lack of support in situations where the personal assistant, who provides daily care and support for people with disabilities, had to be quarantined, or when the people who helped them, due to adherence to measures or fear of possible COVID-19 infection, could not provide the necessary assistance.

People with disabilities, irrespective of the COVID-19 situation, face daily inability to move due to lack of physical access to all roads and facilities where they receive services. It can therefore be concluded that the pandemic situation caused by COVID-19 has further exacerbated the already difficult situation of persons with disabilities.

According to information from the Infectious Diseases Clinic of the Clinical Center in Prishtina, within the reporting period, the Clinic has treated 12 patients with disabilities, one of them with a fatal outcome. In these cases no special protocols for people with disabilities have been applied to patients with COVID-19, but the need for specific accommodation depending on the special needs of these patients has been taken into account. Necessary measures have been taken in accordance with the available resources in order to meet the special needs of this category of patients. The professional competencies of the doctors and support staff of the Infectious Diseases Clinic during the pandemic period were focused on emergency treatment and were very complex to save lives.³⁸

The large influx and limited capacities of the Infectious Diseases Clinic, and depending on the stage they were in, resulted in the fact that the clinic does not have a measurable assessment with standard and variable statistical parameters. The cooperation of the Clinic with the National Institute of Public Health and other institutions has been of essential importance to draw accurate conclusions regarding the impact of COVID-19 on the overall health of persons with disabilities.³⁹

The quarantined people with disabilities, as well as the chronically ill, were unable to continue all the started and needed treatments due to the fear of contracting COVID-19, which led to a worsening of the health condition of this category of patients. When it came to people in need of dialysis, they underwent dialysis also with the help of HANDIKOS.⁴⁰

Regarding medical care and access to health, the Kosovo Committee of Blind Women informed that some blind and partially sighted members of their organization were affected by the COVID-19 virus, namely thirty blind and partially sighted people were infected. However, there is no information whether they encountered any problems during treatment. Two

³⁸ The response of the Infectious Diseases Clinic, dated July 6, 2021, to the Ombudsperson Questionnaire regarding the impact of the COVID-19 pandemic on people with disabilities, sent via e-mail, on 21.6.2021.

³⁹ Ibid.

⁴⁰ Meeting of the ombudsperson's representative with the director of the NGO HANDIKOS, held on July 8, 2021, in order to gather information regarding the general position of persons with disabilities in Kosovo, with a special focus on the position of persons with disabilities during the COVID-19 pandemic and the needs and challenges these people face, in general and during the pandemic.

members of the Kosovo Committee of Blind Women have died from COVID-19 infection. The dead were between the ages of fifty and sixty-five and were suffering from other diseases as well.⁴¹

COVID-19 treatment was very expensive and inaccessible to most of the society, but it particularly had a serious impact on blind people and their families. A blind person receives financial support of 250 euros per month, of which 125 euros belong to the companion, while 125 to the blind person and these funds are insufficient to cover the costs of infection with COVID-19. According to the Kosovo Blind Women Committee, the Ministry of Finance has ignored requests for support to this community.⁴²

Since the outbreak of the pandemic, the Kosovo Association of the Deaf has registered only one case of death of a deaf person who was homeless and who lost his life due to COVID-19 infection.⁴³

Based on the information gathered, it can be concluded that neither the relevant state institutions nor the relevant civil society organizations have data on the number of people with disabilities who were infected with COVID-19 or the number of deaths.

The state does not help this category of population even by providing specific assistive devices and leaves them under the care of families and the help of specialized NGOs.

There is no special section on the E-platform for people with disabilities to apply for vaccination, but it is only indicated that the appointment is made, among others, for patients with chronic diseases. Thus, people with disabilities do not have direct but indirect priority as patients with chronic diseases, although their problems and needs are much more complex than those of patients with chronic diseases.

Regarding vaccination against COVID-19, the Ministry of Health informs that all vaccination centers / units in Kosovo provide access for people with disabilities (except in the municipality of Deçan, but health personnel in this municipality have provided vaccination in the premises suitable for people with disabilities). The Ministry of Health has marked the entry and exit for people with disabilities. For all people with disabilities who were unable to go to the vaccination centers, the vaccination was done at home.⁴⁴

Findings

⁴¹ Response of the Committee of Blind Women of Kosovo, dated 29 June 2021, to the Questionnaire of the Ombudsperson regarding the impact of the COVID-19 pandemic on persons with disabilities, sent via e-mail, on 21.6.2021.

⁴² Ibid.

⁴³ The response of the Association of the Deaf of Kosovo, dated 30 June 2021, to the Questionnaire of the Ombudsperson regarding the impact of the COVID-19 pandemic on persons with disabilities, sent via e-mail, on 21.6.2021.

⁴⁴ From the response of the Government of the Republic of Kosovo, dated 9 July 2021 which was sent by the Ministry of Finance, Labor and Transfers, to the Questionnaire of the Institution of the Ombudsperson of Kosovo, sent via e-mail, on 21.6.2021.

Law on Preventing and Combating the COVID-19 Pandemic in the Territory of the Republic of Kosovo⁴⁵ has defined the responsibilities and role of institutions in taking measures to prevent, control, treat, monitor, secure funding and share responsibilities during the COVID-19 pandemic.

Despite the fact that the MoH had drafted a preparedness and response plan against COVID-19 and the government had allocated additional funds, there were difficulties and delays in the supply of protective equipment, tests, medications, respirators and other necessary materials.

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

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

The Ombudsperson considers that there is a need for drafting a special strategy and policy by the government for the treatment of people with disabilities and the elderly in emergency situations for the provision of health services, due to the fact that this category is more vulnerable and has specific difficulties in obtaining health services.

The focus on the prevention and treatment of patients with COVID-19, among others, has bypassed many citizens who had health needs of other natures, including chronic ones, which brought many challenges to health institutions, staff health and affected the budget of those infected with COVID-19 and their families.

⁴⁵Assembly of the Republic of Kosovo, Law no. 07 / L-006 on Preventing and Combating the COVID-19 Pandemic in the Territory of the Republic of Kosovo, 25 August 2020.

IV. Mental health and the impact of the COVID-19 pandemic

Mental health is an important indicator of the overall health status of a society. According to the World Health Organization (2010) mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community. On the other hand mental health problems are among the most important contributors to the global burden of illness and disability. Mental health problems are estimated to account for 31% of disability, among individuals of all ages and both sexes (World Health Organization, 2001).

The first effects of the pandemic on mental health were observed in many parts of the world, including Kosovo. Social isolation, lack of free movement, loss of jobs, economic problems, loss of family members, number of deaths in general, fear of infection, etc., all of these have directly affected mental health in general.

Mental health during the COVID-19 pandemic in the world: human rights in context

Since the onset of the pandemic, experts from all over the world have presented views on the possible negative effects of the pandemic on mental health services and have raised awareness about the need to address mental health issues and thus the issue of the increased possibility for violating / ignoring the rights of persons with mental disorders. Thus, those publications clearly state the views that international organizations, including the WHO, advocate for mental health integration and psycho-social support in the response to COVID-19.⁴⁶

Several studies⁴⁷ find that new mental health care requirements in low- and middle-income countries intersect with fragile health systems, scarce resources and manpower in response to COVID-19 containment strategies, and the limited and unequal general access to evidence-based interventions. While the European Committee for the Prevention of Torture (CPT) on 20 March 2020 issued a Declaration of Principles regarding the treatment of persons deprived of their liberty in the context of the COVID-19 disease pandemic. They remind all stakeholders of the absolute nature of the prohibition of torture and inhuman or degrading treatment.⁴⁸

⁴⁶Adhanom Ghebreyesus T. "Addressing Mental Health Needs: An Integral Part of COVID-19 Response." World Psychiatry 2020; 19: 129–30. 6 UN. United Nations Policy Brief: COVID-19 and the need for action in mental health. https://www.un.org/sites/un2.un.org/files/un_policy_brief-covid_and_mental_health_final.pdf (accessed May 24, 2020); Moreno, C., Wykes, T., Galderisi, S., Nordentoft, M., Crossley, N., Jones, N., ... & Arango, C. (2020). "How mental health care should change as a consequence of the COVID-19 pandemic?" The Lancet Psychiatry; American Psychological Association. Mental Health is a Human Right (2020). (Link: <https://www.apa.org/international/pi/2018/12/mental-health-rights>); Rahman M, Ahmed R, Moitra M, Damschroder L, Brownson R, Chorpita B, Idele P, Gohar F, Huang KY, Saxena S, Lai J, Peterson SS, Harper G, McKay M, Amugune B, Esho T, Ronen K, Othieno C and Kumar M (2021) "Mental distress and human rights violations during COVID-19: A rapid review of the evidence informing rights, mental health needs and public policy around vulnerable populations". Front. Psychiatry 11: 603875.

⁴⁷Kola L. Global mental health and COVID-19. Lancet Psychiatry 2020; 7: 655–57; De Sousa A, Mohandas E, Javed A. 91 / "Psychological interventions during COVID-19: challenges for low- and middle-income countries". Asian J Psychiatr 2020; 51: 102128; Vigo D, Thornicroft G, Gureje O. "The differential outcomes of coronavirus disease 2019 in low- and middle-income countries versus high-income countries." JAMA Psychiatry 2020; 77: 1207–08.

⁴⁸Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic", March 2020, (link: <https://rm.coe.int/16809cfa4b>)

Safeguards must never result in inhuman or degrading treatment of persons deprived of their liberty.

In the context of the COVID-19 pandemic, reports highlight the grave impact to mental health and violations of individual civil liberties and fundamental rights, including among marginalized populations⁴⁹, where among the marginalized groups obviously are people with mental disorders. In addition to the mentally ill in the community, living facilities for the mentally disabled and psychiatric inpatient units may be particularly vulnerable.⁵⁰

Among the rights that have been taken into account / ascertained are: equal access to health care⁵¹, continuous supply and access to medications; needs assessment, including mental and psycho-social health; testing priority; close consultation and active involvement of persons with disabilities and their representative organizations in their care; access to tailored information and the adoption of socio-economic assistance measures and social security networks.

An overview of studies examining human rights violations in response to COVID-19, targeting vulnerable populations, and its association with mental health and psychological well-being, from 24 studies between December 2019 and July 2020 of individuals living with mental illness or disability, concludes that these rights are disproportionately affected by the limitations of COVID-19; and that these violations of rights consist of significant levels of discrimination and stigma.⁵²

The World Health Organization (WHO) has asked countries to spend more on health from their budgets, as far as mental health is concerned.⁵³ On August 31, the WHO published the results of a research on the impact of the pandemic on health systems in 105 countries around the world.⁵⁴ From the data from five regions for the period March-June 2020, it is proven that almost every country (90%) has experienced outages in their health services and the most

⁴⁹Office of the High Commissioner for Human Rights. "COVID-19 and its dimensions of human rights": Guidance (2020).<http://digitallibrary.un.org/record/3860124/files/COVID19Guidance.PDF>; CRPD Committee (June 2020). 'Statement on COVID-19 and the Rights of Persons with Disabilities', (link: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25942&LangID=E>; Ruiz, R. (14 March 2020). "Coronavirus reveals everything that is wrong with our mental health care system." Mashable Australia. (Link: <https://mashable.com/article/coronavirusanxiety/> last accessed 25 July 2021; Thome J, Coogan AN, Simon F, Fischer M, Tucha O, Faltraco F, Marazziti D, Butzer H (2020). "The Impact of the COVID-19 Outbreak on the Medical-Legal and Human Rights of Psychiatric Patients". (1), e50, 1–2, (link:<https://doi.org/10.1192/j.eurpsy.2020.58>)

⁵⁰Kavoor, AR (2020). "COVID-19 in people with mental illness: Challenges and weaknesses". Asian Journal of Psychiatry, 51, 102051; Kola, L., Kohrt, BA, Hanlon, C., Naslund, JA, Sikander, S., Balaji, M., ... & Patel, V. (2021). "The Impact and Responses of COVID-19 Mental Health in Low- and Middle-income Countries: Imagining Global Mental Health." The Lancet Psychiatry; Vigo, D., Patten, S., Pajer, K., Krausz, M., Taylor, S., Rush, B., ... & Yatham, LN (2020). "Community mental health during the COVID-19 pandemic"; Kelly BD. "Coronavirus Disease: Challenges for Psychiatry." Br J Psychiatry 2020; 217 (1): 352–3.

⁵¹Onwumere J. "Informal Carers in Severe Mental Health Conditions: Issues Raised by the UK SARS-CoV-2 (COVID-19) Pandemic". Int J Soc Psychiatry 2020; May 10, (link: <https://doi.org/10.1177/0020764020927046>)

⁵²Rahman M, Ahmed R, Moitra M, Damschroder L, Brownson R, Chorpita B, Idele P, Gohar F, Huang KY, Saxena S, Lai J, Peterson SS, Harper G, McKay M, Amugune B, Esho T, Ronen K, Othieno C and Kumar M (2021), "Mental distress and human rights violations during COVID-19: A rapid review of evidence informing rights, mental health needs and public policy around vulnerable populations". Front. Psychiatry 11: 603875. doi: 10.3389/fpsy.2020.603875.

⁵³ WHO, "COVID-19 disrupting the provision of mental health services in most countries", (link: <https://www.who.int/news/item/05-10-2020-covid-19-disrupting-mental-health-services-in-most-countries-who-survey>)

⁵⁴ Ibid.

affected have been the low and middle income countries.⁵⁵ Over 60% reported outages of mental health services for people in need.⁵⁶

A poorer access to services and support received since the onset of the COVID-19 pandemic was found in 8 studies.⁵⁷ This has been found by other studies.⁵⁸ A study also finds that physical distancing has reduced having a lot of family, social and psychiatric support.

Mental health in Kosovo during the COVID-19 pandemic: human rights in context

From the onset of the pandemic it has been discussed about the impact it may have on mental health, but in the absence of analysis there have been no clear views on how this aspect should be addressed.

From media reports it has been observed that the pandemic has disrupted the provision of mental health services by depriving many people of the necessary support. Also it is observed that despite the growing demand for mental health support, the MoH has not allocated any additional funds for mental health services, because according to spokesperson in this ministry, the budget for mental health exists.⁵⁹ It is known that in Kosovo only 2% of the healthcare budget is spent on mental health services, which is again lower than the EU average of 4%.⁶⁰

In the face of the pandemic in Kosovo, the provision of essential mental health services to the population by Mental Health Centers in the form of home visits, emergency psychiatric visits, psychological helplines, etc., have continued.⁶¹ The Mental Health Center in Prizren continued to offer ICBT online therapy, as part of the Implementall project, funded by the European Commission, under the Horizon 2020 framework.⁶²

Meanwhile, during the pandemic, some fragmented attempts have continued, such as: the establishment of telephone and other online mental health support services (MoH and UP Department of Psychology) that provided psychological first aid during the pandemic.⁶³ A total of 35 volunteers provided psychological first aid via telephone, 7 days a week, where from April to August 2020 there were 1278 calls recorded from all over Kosovo and where the main concerns per call were: anxiety, depression, fear of COVID- 19, financial problems,

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Moreno, C., Wykes, T., Galderisi, S., Nordentoft, M., Crossley, N., Jones, N., ... & Arango, C. (2020). "How should mental health care change as a result of the COVID-19 pandemic?" *The Lancet Psychiatry*.

⁵⁸ Pfefferbaum B and North CS: Mental health and the Covid.19 pandemic. *N Engl J Med* 383: 510,512, 2020.

⁵⁹ Kasapolli-Selani, "Anxiety and depression, the most common problems in pandemic", (link: <https://www.evropaelire.org/a/shendeti-mendor-pandemia-/30917863.html>)

⁶⁰ Fanaj N & Mustafa: "The state of mental health reform in the light of new mental health interventions. Paper presented in the Section of Epidemiology and Social Psychiatry of the 19th Congress ", (link: https://www.researchgate.net/publication/324683979_STATE_OF_MENTAL_HEALTH_CARE_REFORM_IN_KOSOVO_IN_LIGHT_OF_NEW_MENTAL_HEALTH_INTERVENTIONS) 2018.

⁶¹ Fanaj, N., & Mustafa, S. (2021). "Depression measured by PHQ-9 in Kosovo during the COVID-19 outbreak: an online survey." *Psychiatria Danubina*, Vol. 33, No. 1, pp 95-100.

⁶² Ibid.

⁶³ Arenliu, A., Uka, F., & Weine, S. (2020). "Building online psychological and telephone first aid services in a low resource setting during COVID-19: The case of Kosovo". *Psychiatria Danubina*, 32 (3-4), 570-576.

interpersonal and social problems, health issues related to the COVID-19 pandemic or similar. During April, May and June, a total of 808 people contacted chat services.⁶⁴

Prevalence of mental health disorders in Kosovo during the COVID-19 pandemic

Very few studies that have measured the level of mental health disorders in Kosovo during the COVID-19 pandemic have been found online. Thus, an online study of 904 students from UP during the early stage of national lockdown due to the COVID-19 pandemic, finds that 22.4% reported mild anxiety levels, 10.9% reported moderate anxiety levels and 3.7% reported severe levels of anxiety.⁶⁵ Also 18.5% reported mild levels of depression, 7.9% reported moderate levels of depression and 1.7% reported severe levels of depression. According to the authors⁶⁶, the levels of depression and anxiety in this study were lower than those reported in Bangladesh, and the findings on the severity of anxiety were similar to the findings from studies exploring students' mental health during pandemics, such as those on anxiety in China, Italy, Croatia, Spain and Albania.

A quick online study to examine the impact of the COVID-19 pandemic on the status and health of healthcare professionals in a public health environment in Kosovo in April 2020, involving 592 healthcare workers, finds that 44.6% had abnormal level of anxiety and 38.7% of depression⁶⁷. According to the authors, the resulting levels were worrying, although a pre-COVID-19 comparison is missing.

In another online study⁶⁸, involving 155 participants, in the period 27.4.2020 to 5.6.2020, it turns out that 63% of participants agreed that the situation has exacerbated their psychological state; 35.6% had a mild to severe form of depression and 18.7% had minimal symptoms. Significantly higher depression resulted for women and for the 18- to 24-year-old age group.⁶⁹ According to the authors, the findings that 63% have worsening of their psychological state, is higher than reports in Italy (38%); in Spain (31%) and China (35%), but similar to Iran (61.1%) and Bangladesh (59.7%). The finding that 35.6% of participants reported moderate to severe depression symptoms, shows a high level of depression in this sample compared to the study in Albania 25.2% and in Bosnia and Herzegovina 28.4%, as well as with all other studies cited here, which marked 17.3 to 31.6%.⁷⁰

The Rapid Socio-Economic Impact Assessment of Covid-19 in Kosovo-3 Report by UNDP, UN Women, UNFPA and UNKTT, published in May 2021,⁷¹ among others, measured the

⁶⁴Ibid.

⁶⁵Arënlju, A. ; Bërxulli, D. ; Perolli - Shehu, B. ; Krasniqi, B. ; Gola, A. & Hyseni, F. (2021). "Anxiety and depression among Kosovar university students during the initial phase of the outbreak and lockdown of the COVID-19 pandemic", *Health Psychology and Behavioral Medicine*, 9: 1, 239-250, DOI: 10.1080 / 21642850.2021.1903327.

⁶⁶ Ibid.

⁶⁷ Gallopeni, F., Bajraktari, I., Selmani, E., Tahirbegolli, IA, Sahiti, G., Muastafa, A., ... & Tahirbegolli, B. (2020). "Anxiety and depressive symptoms among healthcare professionals during the COVID-19 pandemic in Kosovo: A cross-sectional study." *Journal of psychosomatic research*, 137, 110212.

⁶⁸Fanaj, N., & Mustafa, S. (2021). "Depression measured by PHQ-9 in Kosovo during the COVID-19 outbreak: an online survey." *Psychiatria Danubina*, Vol. 33, No. 1, pp 95-100.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ United Nations in Kosovo, "Rapid Assessment of the Socio-Economic Impact of COVID-19 in Kosovo-3", June 2021, (link: <https://kosovoteam.un.org/index.php/en/130632-rapid-socio-economic-impact-assessment-covid-19-kosovo-3>)

worsening of their psychological or mental health in about 1400 respondents. While in the first round, in March 2020, worsening were reported by 28%, in the second round, in November 2020, worsening were reported by 36%; in the third round, in March 2021, worsening were reported by 23%. An online survey Kosovo - Mental Health U-Report, dated October 30, 2020, finds that among 1401 respondents, only 8% used the mental health helpline, while 35% did not even know it existed.⁷² Also 18% answered that professional mental health support would be more helpful to feel better and safer during the pandemic.

An online study was published on 897 students from six universities in Kosovo, conducted in February 2021, which shows that 73.5% of the sample experienced anxiety, respectively 12.9% of them severe anxiety, 22.2% moderate anxiety and 38.4 % mild anxiety.⁷³ An e-mail communication with the DPP Information Office tells us that based on KP Information System data, in 2019 there were 31 suicides and 142 attempted suicide; in 2020 there were 40 suicides and 101 attempted suicide, while by 21 July 2021 there were 21 suicides and 81 attempted suicide. In our opinion, this increase for 9 cases does not show an increase, because still the figure of 40 cases is lower than the average for 19 post-war years in Kosovo which is 55 cases per year.⁷⁴

Responses of public mental health institutions during the pandemic

Regarding integration of human rights policies and practices into COVID-19 pandemic policy and response management in mental health institutions, respondents do not provide data on whether this has been achieved. Some produced documents that aim more at defining actions, such as: "Mental Health Action Plan during and after the COVID-19- 2020-2021 pandemic", signed in December 2020 and published on the website of the Ministry of Health, do not provide answers in this regard. On the contrary, this has remained an unknown document for the institutions and no attempt has been made to implement it. Another document conceived in November 2020: "Standard Operating Procedure (SOP) for the provision of mental health services during the pandemic", has not been approved or processed for implementation. The Ministry of Health's COVID-19 virus spread protection manual does not contain a single word that takes into account the specifics of people with mental disorders. Respondents to this question emphasize only the non-interruption of services.

In the management of the COVID-19 pandemic in mental health institutions, it is clear from the responses of the respondents that mental health representatives are not involved in any of the bodies or mechanisms established for the management of COVID-19 pandemic (MoH, HUCSK, municipality). Some premises of the Psychiatry Clinic are provided for use in other clinics where COVID-19 patients are hospitalized. Only one municipal committee had a mental health representative. Even three of the respondents who thought they were part of the health coverage, from the examples they give it appears that we are dealing here with usual provision

⁷² Western Balkans, "Kosovo - U-Mental Health Report", October 2020, (link: <https://westernbalkans.ureport.in/opinion/2100/>).

⁷³ Shala M, Çollaku Jetishi P, Hoxha A, Balaj Bllaca S, Preteni D. "One year after the first cases of COVID-19: Factors influencing anxiety among Kosovar university students". J Health Soc Sci. 2021; 6 (2): 241-254.

⁷⁴ Email correspondence with the Kosovo Police Information Officer, 21.07.2021.

of mental health services, but not of an integrative approach to pandemic management by institutions.

Regarding the continuous supply of medicines and access to them for the chronically ill psychiatric patients during the confrontation with the COVID-19 pandemic in mental health institutions, respondents' responses stated that the basic essential supply has been good despite the lack of some preparations. For the most part, respondents did not respond regarding access to medicines of chronically ill psychiatric patients during the pandemic.

Regarding the close consultation and active involvement of persons with disabilities and their representative organizations in dealing with the COVID-19 pandemic in mental health institutions it is clear that this has not happened in any case. Some of the respondents mentioned cases of cooperation that had to do with providing assistance in a shelter (one interviewer), in a church (one interviewer) or in a community-based home (one interviewer).

Regarding prioritization of testing the chronically ill psychiatric patients (placed in residential care), as a sensitive category when dealing with the COVID-19 pandemic, respondents said that despite the fact that they did not have any priorities, whenever they had an indication for testing, they did not encounter difficulties in getting tested.

Testing of chronically ill psychiatric patients, as a sensitive category when dealing with the COVID-19 pandemic, according to the respondents, it was done with indications and not according to whether it is a person with chronic psychiatric disorder.

Vaccination of chronically ill psychiatric patients (placed in residential care and others receiving services in MSC), as a sensitive category when dealing with the COVID-19 pandemic, according to respondents, is ranked with priority, after vaccination of the health workers; of ages over 80 years, 70 years, 55 years and then the chronically ill. Regarding the chronically ill psychiatric patients, who receive services in the MHC, the lists of patients have been compiled recently, but they do not have information whether something has been done to implement their priority vaccination. Only one MHC indicates that vaccination teams have come to the institution to vaccinate the persons.

Regarding the planning and optimization of the use of personal protective equipment (PPE) among health workers during the confrontation with the COVID-19 pandemic in mental health institutions, respondents stated that they were generally well supplied but not trained in the use of PPE. An MHC has refused the training provided by the Regional Hospital.

Regarding the fact whether there was information or information material adapted to the specifics of the category of persons with chronic psychiatric illness during the confrontation with the COVID-19 pandemic in mental health institutions, respondents stated that they had general information materials, but not adapted to the specifics of persons with chronic psychiatric illness.

Regarding the approach and support in receiving health services for the category of persons with chronic psychiatric illness during the confrontation with the COVID-19 pandemic in mental health institutions, the respondents stated that some MHCs have stopped their day care completely, some have greatly reduced the number of people in day care. According to decisions by the HUCSK Pandemic Management Committee, there were periods when only

emergency visits were performed. The Psychiatry Clinic stopped the outpatient visits. The Psychiatric Clinic and some MHCs have provided telephone consultations. An MHC offered an alternative treatment through online psychotherapy. Psychosocial, group and recreational activities were discontinued. Home visits and provision of antipsychotic depot preparations continued. Mental health services have also been provided in quarantine, at the airport and clinics with inpatients with COVID-19.

Regarding the fact of how the treatment was carried out in inpatient specialized mental health services (Integration Homes and ICRCPP Shtime) during the pandemic period, with special emphasis on the sphere of freedoms and rights, respondents stated that depending on the pandemic situation, psycho-social and recreational activities have decreased significantly, as well as outings for walks outside the CIH, but there have been periods during the ease of measures when these activities resumed. Physical contact with family members was discontinued and made by telephone.

Indicators from work reports of MHCs

Based on the annual reports of 2019 and 2020 and the semi-annual reports of 2021 of the MHC, we find that there is a decrease in the number of psychiatric visits (14%), psychological visits (58%), social worker services (42 %), day care (56%) and home visits (47%), from 2019 to 2020. The indicators for the first half of 2021 show that the number of psychiatric and psychological visits decreased slightly compared to 2020, while the social worker services, day care and home visits remain the same or have improved slightly compared to 2020.

From the reports we looked at whether there was any change in the categories of psychiatric disorders who had received services. It is clear that there is no change as psychotic disorders account for two thirds of service utilization: 72% (2019), 71% (2020) and 74% (2021). Anxiety and depressive disorders show no increase (hypothesized as a result of the pandemic) in the use of mental health services: 18% (2019), 19% (2020) and 16% (2021).

The impact of the pandemic on the mental health of the population

In the research published online on the OIK official Facebook page and then distributed to other accounts by the authors of the research, we had 196 respondents (192 Albanians and 4 Serbs). According to age they were from 17 to 73 years old, average age 37.41 years old. According to gender, 122 (62.2%) respondents were female, 72 (36.7%) male, while 2 (1%) cases did not state their gender. According to the place of residence, 158 or 80.6% of the respondents were from the city, 36 or 18.4% were from the village and 2 (1%) cases did not declare their place of residence. According to level of education completed, most of them had a bachelor's degree - 81 or 41.3%, followed by a master's degree 76 or 38.8%, a high school diploma 27 or 13.8%, a PhD 8 or 4.1% and a primary education 4 or 2%. Over half of the respondents - 113 or 57.7%, were married, 75 or 38.3% were unmarried, 5 or 2.6% widowed and 3 or 1.5% divorced. In terms of economic situation, most of them stated average condition, 130 or 66.3% good condition 59 or 30.1%, and 7 or 3.6% poor economic condition. 84.1% of them were employed.

When asked if they had any mental disorder before the pandemic, only 5 respondents or 2.6% said yes, 11.3% of respondents stated that they have a chronic medical illness. Nearly half of the respondents 90 or 45.9% stated that they were infected with COVID-19.

When asked whether they had any worsening of the mental state during the pandemic, 21, or 10.7% respondents answered yes; 66 or 33.7% somewhat.

When asked whether they felt the need to seek help from a psychologist / psychiatrist, 43 or 21.9% of respondents answered yes. But only 12 or 6.1% of respondents asked for help. The reasons given for not asking for help are as follows: I did not have information where to do that (18 respondents); I was ashamed (6 of them); I was afraid of infection (9 of them); I did not have trust (7 respondents); I have had bad experiences before (4 people). Of the persons who received assistance, it appears that 31% received assistance as an online consultation, 21% received assistance from private doctors, 17% by telephone, 10% in the clinic and the same in family medicine, 7% in the hospital. We must keep in mind that 4 cases have received assistance in two countries. 19.4% were not satisfied at all with the assistance provided, 51.6% were somewhat satisfied and 29% were very satisfied.

When asked why they did not receive assistance, 40 respondents answered, where 45% of them state the financial unaffordability of treatment by private doctors, 30% stated that this assistance was not provided at public health institutions and 25% because they could not travel.

11.4% of respondents stated that they have close relatives with mental illness, 9.7% of them received psychological / psychiatric assistance during the pandemic. Of these, 4.1% received assistance from private doctors, 2.6% from online consultations, 1.5% at hospital and 1% at MHC, at clinic and by telephone.

Mental Health Index measured by the questionnaire for the last month, i.e. up to the time of conducting the research, has shown the average value of 153.18 (standard deviation 31.21); the psychological distress of the respondents resulted in an average value of 63.28 (standard deviation 21.13), the psychological well-being resulted in an average value of 49.26 (standard deviation 9.15), the anxiety resulted in an average value of 23.98 (standard deviation 8.82), the depression resulted in an average value of 10.32 (standard deviation 4.11) and life satisfaction resulted in an average value of 7.85 (standard deviation 2.45).

Based on the total score range, these values are around the mean of the values and indicate an average level of difficulty. In terms of psychological stress, 65.8% of respondents are below average value; anxiety 67.4%; depression 64.1%; life satisfaction only 9.7%. While in the Mental Health Index only 12% of respondents are below average value.

Although women have a lower mental health index and higher psychological distress, anxiety and depression, these differences are not significant. The unemployed have been found to have a lower mental health index, while psychological distress, anxiety and depression are significantly higher. People who have previously stated that they have had a mental disorder have been found to have a lower mental health index, while psychological distress, anxiety and depression were significantly higher. People who have declared that they have suffered from chronic mental illness before have been found to have a lower mental health index, while psychological distress, anxiety and depression are significantly higher. Being infected with

COVID-19 has not been shown to affect mental health index, psychological distress, anxiety and depression. Persons who have declared that they are in poor economic condition have been found to have a lower index of mental health, while psychological distress, anxiety and depression are significantly higher.

Difficulties experienced by people with mental disorders during the pandemic according to the perception of health workers

The questionnaire regarding the difficulties experienced by persons with mental disorders during the pandemic according to the perception of health workers, was completed by 80 mental health professionals from all MHCs. These workers were selected for the fact that they were in direct contact with patients with mental disorders during the pandemic. The completion was done in direct contact with the OIK psychologist. 57 of them were female, 23 male. The age of the workers was from 22 to 62 years old (average 44.18 years old). By profession, 59 were nurses, 9 psychiatrists, 4 psychologists, 4 social workers, 3 psycho-social counselors and one administrative worker. The answers to the given questions are enabled through a scale in the range 1 (not important at all) to 5 (very important).

| Difficulties experienced by people with mental disorders during the pandemic | Average | Standard deviation |
|---|---------|--------------------|
| Restoration and worsening of mental health caused by COVID-19 stress | 4.66 | 0.65 |
| Increasing difficulties for families / caretakers | 4.53 | 0.68 |
| Lack of access to routine support from mental health services | 4.50 | 0.90 |
| Obligation to stay home in poor condition, or not having a home | 4.47 | 0.97 |
| Lack of access to the usual family and friend support networks | 4.43 | 0.88 |
| Lack of access to drugs and processes for its administration and monitoring | 4.43 | 0.78 |
| Lack of work and their usual activities | 4.35 | 0.84 |
| Increased risk of abusive family relationships | 4.35 | 0.87 |
| Difficulties with food, money or other basic resources for needs | 4.30 | 0.95 |
| Difficulty understanding or following current government requirements for social distancing, self-isolation and / or protection | 4.26 | 0.76 |
| Increased risk of drug and alcohol use or gambling | 4.22 | 0.86 |
| Reduced access to physical health care for problems other than COVID-19 | 4.18 | 1.07 |

| | | |
|--|------|------|
| Lack of access to routine support from other services (primary care, social care, voluntary sector) | 4.11 | 0.86 |
| Problems with police or other authorities due to lack of understanding / ability to comply with current government requirements for COVID-19 | 4.03 | 1.07 |

As can be seen from the table, mental health professionals almost unanimously rate the 14 factors summarized in this questionnaire as moderately important to very important. It is noteworthy that *Lack of access to routine support from mental health services* ranks third by importance (67.5% find it very important) and comes after the *Restoration and deterioration of mental health caused by COVID-19 stress* (75 % find it very important) and *Increasing difficulties for families / caretakers* (64% find it very important).

Experiences of mental health service users during the pandemic

The questionnaire regarding the experiences of mental health service users during the pandemic was completed by 121 respondents from all Mental Health Centers. Respondents were patients themselves in 113 cases (93.4%) while their family members in 8 cases (6.6%). Completion was done in all Mental Health Centers directly in contact with patients / their family members by the OIK psychologist (33 cases or 24.8%) and by nurses (91 cases or 75.2%). According to age, they were from 22 to 76 years old, average age 46.52 years old. By gender, 36 (29.8%) respondents were females, 85 (70.2%) males. By residence, 110 or 90.9% of respondents were from city, 11 or 9.1% were from the village. According to the diagnosis of disorder 108 or 89.3% of patients had schizophrenia, 8 cases did not state their diagnosis, 3 cases were with mental retardation and two cases with personality disorders. Answers were in the range of 0 (no) to a certain extent (1) and yes (2).

| Experiences of mental health service users during the pandemic | Average | Standard deviation | Answers YES (%) |
|---|---------|--------------------|-----------------|
| In the last 12 months, has anyone from mental health services supported you to join a group or participate in an activity? | 0.95 | 0.96 | 43.0 |
| Did the mental health services involve a member of your family or anyone else close to you as much as you would have liked? | 1.24 | 0.91 | 56.3 |
| Did you know who to contact outside the working hours of the MHC, if you were going to have a crisis? | 1.28 | 0.93 | 61.2 |
| In the last 12 months, have mental health services provided any help or advice to find financial or social support? | 1.50 | 0.82 | 71.1 |

| | | | |
|---|------|------|------|
| Were you involved in the visits as much as you would like on what care you would receive? | 1.52 | 0.70 | 64.1 |
| Have they ever discussed your medication with you? | 1.69 | 0.63 | 78.5 |
| Have you been given enough time to discuss your needs and treatment? | 1.82 | 0.45 | 84.3 |
| In the last 12 months, did you receive the help you needed when trying to contact mental health services? | 1.83 | 0.42 | 85.1 |
| In the last 12 months, do you feel that you have received mental health services often enough for your needs? | 1.85 | 0.46 | 89.2 |
| Overall, in the last 12 months, have you felt treated with respect and dignity by mental health services? | 1.90 | 0.37 | 92.6 |

These responses indicate that in most of the issues raised values above average result suggesting a somewhat satisfactory experience of these patients with mental health services. As can be seen from the table, the component that was mostly missing was the support from mental health services to join a group or participate in an activity (43% answer YES), inclusion from mental health services and a member of your family or someone close to them as much as you would have liked (56.3% answered YES), not knowing who to contact outside of the MHC working hours if they had a crisis (61.2% answering YES).

The answers with YES that exceed 80% in the case of receiving mental health assistance / services are especially positive and encouraging, and especially the feeling of treatment with respect and dignity by mental health services at a level of 92.6%. We have looked at whether there is a difference in family members' responses from patients and the only significant difference is that family members give more negative answers to the question: *In the last 12 months, do you feel that you have received mental health services often enough for your needs.*

We noticed a significant difference in the case of completing the questionnaire by the OIK psychologist with the cases when they were completed by nurses in the MHC. Thus to the question: Did you know who to contact outside the working hours of the MHCs if you were going to have a crisis?; In the last 12 months, did you receive the help you needed when you tried to contact mental health services?; Did the mental health services involve a member of your family or someone close to you as much as you would have liked?, positive responses were lower when the interviewer was an OIK psychologist; whereas in the question: In the last 12 months, have the mental health services provided any help or advice to you to find financial or social support?, the positive answers were higher when the interviewer was the OIK psychologist.

CIRCPP in Shtime also suffered because there was a reduction of services provided and realized, but no interruptions. Performance indicators from MHC reports show a decrease in services in 2020 compared to 2019, a decrease that continues in the first half of 2021; Thus, we have a decrease in services in 2020 compared to 2019 (from 14% for psychiatric visits, up

to 56% for daily stay and 58% for psychological visits), a decrease that continues in the first half of 2021.

In conclusion, acknowledging the complexity of the topic of this report to recognize the impact of the pandemic on mental health in the light of the right to health care, we decided on a mixed design - qualitative and quantitative, in which the essential points were investigated on several levels of Kosovar society: state institutions and responses, the mental health of the population in general, the perceptions of mental health workers as well as the experiences of mental health service users. Our findings are useful despite some limitations that may be outlined in this report.

Completed online research shows that about 44.4% (10.7% YES and 33.7% TO SOME EXTENT) had deterioration of mental state during the pandemic. This finding is lower than in the study of Fanaj & Mustafa (2021)⁵⁶ and closer to the levels of studies from other countries mentioned there. This result found is higher than in a report⁷⁵ reviewed here (23-36%). Although 21.9% felt the need for psychological / psychiatric help, a small number of them (6.1%) received help, lack of information on where help is provided is mentioned as the main reason they did not seek help. While 31% received help online, 21% from private doctors; but 19.4% were not satisfied at all with the assistance provided. These findings with a small number of respondents are difficult to generalize and can only serve as a quick indicator.

To know the state of mental health in the last month before this research, the figures show that 65.8% of respondents are below the average value of psychological distress; anxiety 67.4%; in depression 64.1%, while as regards Mental Health Index only 12% of respondents are below average. These findings indicate an average level of distress, anxiety and depression as well as a satisfactory level of mental health index. There is no significant difference in these results with a 2017 study in Kosovo⁷⁶.

Perhaps in line with this found level of anxiety and disorders may be the fact that anxiety and depressive disorders do not show an increase (hypothesized as a result of the pandemic) in the cumulative use of mental health services based on MHS reports.

We can say that these values are more positive and not in line with the findings of the few studies conducted on mental health during the pandemic in Kosovo.⁷⁷ This may also be influenced by the fact that the study is conducted at a stage when the pandemic is at a very low level and a significant relaxation has occurred in people's lives.

Finding according to the perception of mental health workers that the lack of access to routine support from mental health services, ranks third in importance (67.5% consider it as very important) in the difficulties experienced by persons with mental disorders during the

⁷⁵ United Nations in Kosovo, "Rapid Assessment of the Socio-Economic Impact of COVID-19 in Kosovo -3", July 2021, (link: <https://kosovoteam.un.org/index.php/en/130632-rapid-socio-economic-impact-assessment-covid-19-kosovo-3>)

⁷⁶ Fanaj, N., Mustafa, S., Shkëmbi, F., Kabashaj, B., & Fanaj, B. (2017). "Review of mental health problems as indicators for needs assessment for mental health services." *European Psychiatry*, 41 (S1), S570-S571.

⁷⁷ Fanaj, N., & Mustafa, S. (2021). "Depression measured by PHQ-9 in Kosovo during the COVID-19 outbreak: an online survey." *Psychiatria Danubina*, Vol. 33, No. 1, pp 95-100.

pandemic, this is an indication of the deterioration of mental health services during the pandemic.

Another indicator of the difficulties faced during the pandemic are the findings that according to mental health service users, the component that was most missing was *Support from mental health services to join a group or participate in an activity; Involvement from the mental health services of a member of your family or someone close to them* and *Not knowing who to contact outside of the MHS working hours if they have a crisis*. But on the other hand it is a commendable indicator the fact that over 80% positively evaluate receiving mental health assistance / services and especially the feeling of treatment with respect and dignity by mental health services at a level of 92.6%.

Interviews with public officials bring to light the fact that management by the MoH / HUCSK / institutions has failed to integrate human rights policies and practices into the COVID-19 pandemic response policy and management; mental health being part of the overall health coverage in managing the COVID-19 pandemic response; close consultation and active involvement of persons with disabilities and their representative organizations and having information or information material tailored to the specifics of the category of persons with chronic psychiatric illness. These are among the actions required by international organizations such as OHCHR, WHO, etc.⁷⁸

In line with the above findings is the fact that there was no prioritization in the testing of chronically psychiatric patients (placed in residential care) as a sensitive population, despite the fact that they realized these without difficulty when there were indications. Vaccination of chronically ill psychiatric patients (placed in residential care) has not been a priority either, although most of them have already been vaccinated, but vaccination of chronically ill psychiatric patients in the community as a sensitive category has stalled. In terms of planning and optimization of the use of personal protective equipment (PPE) with health workers, the training / education component lacked.

Access to and support in receiving health services for the category of persons with chronic psychiatric illnesses as well as treatment of inpatients in specialized mental health services (Integration Homes and CIRCPP Shtime) has been vulnerable, because there has been a reduction in services provided and realized, but not interruptions. Performance indicators from MHS reports show a decrease in services in 2020 compared to 2019, a decrease that continues in the first half of 2021; Thus, we have a decrease in services in 2020 compared to 2019 (from 14% for psychiatric visits, up to 56% for daily stay and 58% for psychological visits), a decrease that continues in the first half of 2021.

Therefore, taking into account the findings addressed above, the Ombudsperson estimates that despite the high levels of psychiatric disorders from several studies in Kosovo during the COVID-19 pandemic, the level of psychological stress, anxiety and depression at the time of our research is average. Even the perceived level of psychological deterioration from the

⁷⁸Adhanom Ghebreyesus T. "Addressing Mental Health Needs: An Integral Part of the COVID-19 Response." World Psychiatry 2020; 19: 129–30. 6 UN. Summary of United Nations Policy: COVID-19 and the need for action in mental health. (link: https://www.un.org/sites/un2.un.org/files/un_policy_brief-covid_and_mental_health_final.pdf (accessed May 24, 2020)).

COVID-19 pandemic, which reaches the figures of almost half of the participants, is comparable to findings in many other countries. At the same time, state responses (MoH / HUCSK / institutions) have failed in COVID-19 pandemic management policies to integrate human rights policies and practices into mental health as part of overall health coverage, in close consultation and active involvement of persons with disabilities and their representative organizations and having information or information material tailored to the specifics of the category of persons with chronic psychiatric illness in response to the COVID-19 pandemic. This makes the vulnerable population with chronic psychiatric illness more vulnerable to the possibility of experiencing inequality in access to health care and respect for their human rights.

Also, access and support in receiving health services for the category of persons with chronic psychiatric illnesses as well as treatment of inpatients in specialized mental health services (Integration Homes and CIRCPP Shtime) has been limited; there has been a decrease in the realization of services from 14% to 58%. In addition to the figures in the reports, this is also shown by the perception of mental health workers that Lack of access to routine support from mental health services ranks third in importance in the difficulties experienced by persons with mental disorders during the pandemic. Restrictions on receiving necessary support / treatment services are outlined as a violation of the right to receive health care.

While the non-prioritization in the testing of chronically psychiatric patients as a sensitive category, has been neutralized to some extent by the fact that they have performed the tests for persons placed in residential care without difficulties, when there were indications. Also, non-prioritization in vaccination of chronically psychiatric patients in the community is outlined as a missing right for this group of vulnerable and at-risk population of the COVID-19 pandemic.

On the other hand, it is encouraging that users of mental health services positively evaluate receiving mental health care / services and especially the feeling of being treated with respect and dignity by mental health services during the pandemic. Also, further investigations are required in order to describe in as much detail as possible the impact of the pandemic on mental health and the right to health care.

Psycho-social assistance for people with disabilities during the COVID-19 pandemic

According to the World Health Organization, the pandemic has led to an increased need for mental health services because isolation, fear, and loss of income caused additional psychological burdens and contributed to depression and stress.

During the quarantine, taking into account the issue of mental health and the need to provide people with free counseling services, the Ministry of Health collaborated with the Department of Psychology of the University of Prishtina to establish free tele-counseling services in Albanian and Serbian for all citizens who have experienced anxiety and distress as a result of quarantine isolation. This line was also available for Persons with Disabilities (PwDs).

In addition to this line for citizens who have experienced anxiety and distress as a result of quarantine isolation, many specialized NGOs dealing with the rights of PwDs in Kosovo provided psycho-social counseling. Specifically, the Forum of Persons with Disabilities in

Kosovo engaged psychologists through whom it provided psycho-social counseling for people with disabilities.⁷⁹

HANDIKOS also offered psychological help in the form of "peer support". Persons known to have COVID-19 were contacted on regular basis. Support was also given to families and their parents. The organization held online counseling and online activities for people with disabilities.⁸⁰

Access to information for people with disabilities during COVID-19

Persons with disabilities during COVID-19 did not have any additional information from the relevant institutions of the system, other than the general ones. They mainly received the necessary information from the civil sector. The NGO HANDIKOS, as an organization, translated and disseminated specific information published by the World Health Organization for people with disabilities and informed them about relevant manuals.

On July 5, 2021, the Institution of the Ombudsperson in Kosovo received a response from the Office of Good Governance, regarding access to information and based on the Regulation of the GRK 15/2014 on the provision of services in sign language for the period January - December 2020, 3498 hours of services were provided in the amount of € 34,980 for translators who assisted deaf people.

In cooperation with the Kosovo Association of the Deaf during January-May 2021, the Office of Good Governance also provided sign language services. During this period there were a total of 934 bookings from the deaf community and 1899 hours of sign language interpretation services in public institutions. Data were collected from the booking list and the payment list for the services provided.

The largest number of services was provided in the region of Prishtina with a total of 398 bookings or 43%, Prizren with 237 bookings or 25%, Mitrovica with 102 bookings or 11%, Gjakova with 73 bookings or 8%, Peja with 59 bookings or 6 %, Gjilan with 51 bookings or 5%, while in Ferizaj there was the least need for services, with 19 bookings or 2%.

The largest number of services in sign language is provided for services in municipalities with a total of 26%, family medicine centers 22%, regional hospitals 10%, social protection 10%, University Clinical Center of Kosovo 7%, followed by courts 4%, police 3%, tax administration 2% and others 10%.

By decision of the Cabinet of the Prime Minister, a Coordination Body was established for the process of coordination and monitoring of the certification of sign language interpreters, which will have the task of developing standards of interpretation, curriculum and their accreditation by relevant institutions and the beginning of providing qualifications by relevant institutions.

⁷⁹ Ibid.

⁸⁰ Meeting of the ombudsperson's representative with the director of the NGO HANDIKOS, held on July 8, 2021, in order to gather information regarding the general position of persons with disabilities in Kosovo, with a special focus on the position of persons with disabilities during the COVID-19 pandemic, the needs and challenges faced by these persons, in general and during the pandemic.

According to the NGO sector, the deaf community had very little information about COVID-19, as not all publications from the Ministry of Health and the Kosovo National Institute of Public Health were available in sign language. Thus, compared to the region, Kosovo had very little access to sign language in daily or live performances of relevant institutions. Exceptions are the provision of sign language services provided to citizens for services in public institutions and news in sign language on public television.⁸¹

The Association of the Deaf of Kosovo has always provided information on the pandemic, preventive measures and measures taken by the government and relevant bodies, through its website www.shksh.org. More than 100 videos have been published in sign language. Children were also supported by providing them with psychosocial assistance during the isolation.⁸²

As mentioned, there are no official statistics on the number of people with disabilities in Kosovo. However, according to the latest census, when it comes to the deaf community, there are about 5000 deaf people and about 4,500 people with hearing impairments.⁸³

In terms of access to information, the blind and visually impaired are informed through the Louise Braille alphabet (the alphabet for the blind). During the pandemic there was a serious violation of the rights of this category. Leaflets printed to inform citizens about COVID-19 protection were not printed in the Louise Braille alphabet and thus the blind and visually impaired were completely ignored.⁸⁴

Also, the blind and visually impaired did not have brochures printed in the alphabet of Louise Braille, i.e. a special alphabet for the blind and the visually impaired. This is a legal violation of Law No. 04 / L-092 on Blind Persons, respectively Article 11 (Access to Information), and of course other human rights laws.⁸⁵

In terms of access to information, there is an obvious need for better information regarding the impact of COVID-19 on the health of people with disabilities, especially those with specific forms of disability / illness, and it is necessary to inform these persons on how they can be protected.

Public information on measures against COVID-19 has not been systematically disseminated sufficiently, nor has it been disseminated in accessible formats and means, in order to reach all persons belonging to the category of persons with disabilities. Better information of people with disabilities about COVID-19, prevention and treatment is much needed, it is important that the information in question to be made available in Braille, but written in such a way that the information is understandable to all persons in this category. It would be good to create a section on the website of the Ministry of Health related to people with disabilities during the COVID-19 period.

⁸¹ From the response of the Association of the Blind of Kosovo, dated 30 June 2021, to the Questionnaire of the Institution of the Ombudsperson in Kosovo sent via e-mail on 21.06.2021.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ The response of the Committee of Blind Women of Kosovo dated June 29, 2021, to the questionnaire of the Institution of the Ombudsperson in Kosovo sent via e-mail on June 21, 2021.

⁸⁵ Ibid.

V. The right to a fair and impartial trial (functioning of the judicial, prosecutorial system, police actions in imposing fines, misdemeanor proceedings during the COVID 19 pandemic in Kosovo)

The Ombudsperson, within the constitutional and legal competencies, after the confirmation of the first cases with COVID-19 in Kosovo until now, has followed with increased care the functioning of the justice system in general, in terms of respecting the right of citizens to access justice and the right to a fair and impartial trial.

The rule of law is the main pillar of a country's democracy. By rule of law we mean a well-functioning legal system, which is related to respect for the hierarchy of norms, separation of powers, equality before the law of all individuals and full respect for fundamental human rights and freedoms, internationally accepted. In this sense, every action of the state must be based on the principles of the rule of law and in this case the trust of the citizens to the state authorities is created and increased.

So the rule of law is also closely linked to respect for human rights and freedoms. Undoubtedly, the appearance of the COVID-19 pandemic and its rapid spread in the Republic of Kosovo, introduced the need to take state protection measures to prevent the spread of the pandemic. The Government of Kosovo, respectively the Ministry of Health, from the beginning applied protective and preventive measures through the application of applicable laws, such as: Law No. 02 / L-109 on Prevention and Fighting against Infectious Diseases and Law No. 04 / L-125 on Health, for all public and private institutions, including courts, prosecutors and police. While a few months later, respectively in August 2020, the Assembly of the Republic of Kosovo approved the special law, namely Law No. 07 / L-006 on Prevention and Combating the COVID-19 Pandemic in the Territory of the Republic of Kosovo.

The Government of the Republic of Kosovo issued decisions on the state of emergency in public health, which limited the work of public institutions, and in some it was completely interrupted.⁸⁶ These decisions also affected the functioning of the country's judicial system.

The impact of the pandemic in the functioning of the judicial system

The Kosovo Judicial Council (KJC) is an institution competent to decide on the organization, management, administration and supervision of the functioning of courts in the territory of the Republic of Kosovo according to law.⁸⁷ KJC, within the legal competencies and based on Law no. 02 / L-109 on Prevention and Fighting against Infectious Diseases; Law no. 04 / L-125 on Health; Law on Prevention and Combating Pandemic COVID-19 in the Territory of the Republic of Kosovo, during the health emergency period, due to the COVID-19 pandemic, has taken measures for the functioning of the judicial system. However, the most important measures have been taken through special decisions which measures are placed outside the scope of the above laws, but based on Law no. 06 / L-055 on the Kosovo Judicial Council.

⁸⁶ Government of the Republic of Kosovo, Decision no.01 / 07, dated 15.3.2020, and Decision no.01 / 11, dated 15.3.2020.

⁸⁷ Assembly of the Republic of Kosovo, Law no. 06 / L-055 on the Kosovo Judicial Council.

Thus, on March 12, 2020, the KJC, based on the Law on the Kosovo Judicial Council, issued Decision 52/2020, which temporarily limited judicial actions involving the presence of the public and public access to all facilities of the courts of the Republic of Kosovo.⁸⁸

Whereas on March 15, 2020, the KJC issued Decision 53/2020 which substantially reduced all activities within the KJC and in all courts of the Republic of Kosovo.⁸⁹ Furthermore, the presidents of the courts appointed judges and administrative staff sufficient to take care of and carry out only matters of an urgent nature, such as setting measures to ensure the presence of defendants-detention or other measures, cases of domestic violence, and other emergencies that could eventually arise.

On May 8, 2020, the KJC issued Decision No. 83/2020, by which it decided that the courts of the Republic of Kosovo, in addition to urgent cases, also address issues in which the presence of the parties and the public is not necessary in the proceedings.⁹⁰

At the end of May 2020, the KJC issued Decision No. 85/2020 by which it decided from June 1, 2020, to resume work in the KJC and in the courts of the Republic of Kosovo, in accordance with and in full compliance with the measures to limit the spread of COVID-19, according to the recommendations of the National Institute of Public Health.⁹¹

On June 2, 2020, the KJC with Decision no. 86/2020, dated 29 May 2020, has approved the "Action Plan for Crisis Management". The purpose of this plan was to ensure the continued functioning of judicial institutions in the circumstances of emergency situations and in accordance with the decisions of key institutions, including strict health emergency measures, relief of measures or eventual reversal of the emergency situation. At the present time of the COVID-19 pandemic, this plan is based on the decisions of the health institutions of the Republic of Kosovo for the management of this pandemic, the situation created on the ground and the decisions / instructions issued by the KJC.

On July 14, 2020, the KJC decided to hold only hearings in cases of urgent nature, with cases related to targeted cases for visa liberalization, cases of domestic violence, cases of detention, those of imposing security measures as well as with cases where their processing was endangered from the beginning.

On July 27, 2020, the Assembly of Court Presidents and Supervisory Judges requested that during the COVID-19 pandemic, court hearings be held through the online platform⁹², where the first online hearings in the country's courts began⁹³.

⁸⁸Kosovo Judicial Council (KJC), Decision no. 52/2020.

⁸⁹ Ibid. Decision no.53 / 2020.

⁹⁰Ibid., Decision no. 83/202.

⁹¹Ibid, Decision no.85 / 2020.

⁹² Kosovo Judicial Council, "Assembly of Court Presidents requests that court hearings be held through the online platform", July 2020, (link: <https://www.gjyqesori-rks.org/2020/07/20/asambleja-e-kryetareve-te-gjykatavekerkon-qe-te-mbahen-seancat-gjyqesore-permes-platformes-online/>)

⁹³ Kosovo Judicial Council, Press Release: "Online hearing is held: The Basic Court in Prishtina today held an online court hearing", July 2020, (link: <https://www.gjyqesori-rks.org/2020/07/30/mbahet-seance-gjyqesore-online/>)

The impact of pandemic in the functioning of the prosecutorial system

The Kosovo Prosecutorial Council (KPC) is a competent institution to decide on the organization, management, administration and supervision of the functioning of prosecutions according to law.⁹⁴ On March 14, 2020, KPC, based on Law No. 06 / L-056 on the Kosovo Prosecutorial Council and in implementation of the decision of the Government of the Republic of Kosovo to take measures after confirmation of positive cases with COVID- 19, approved the decision on the essential reduction of activities within the KPC and the State Prosecutor. The Chief State Prosecutor and the Chief Prosecutors of the Prosecution Offices of the Republic of Kosovo were also authorized to appoint enough prosecutors and administrative staff to take care of and carry out only activities of an urgent nature and actions determined according to legal deadlines.

On May 29, 2020, the KPC approved the Crisis Management Action Plan (CMAP), which provided for the establishment of a Central Crisis Management Team (CCMT), which would manage day-to-day risks and report directly to the Chairman of the KPC and the Office of the Chief State Prosecutor. The CCMT's main role was to manage the services, the work in order to fulfill the legal mandate of the prosecutorial system. CMAP has also defined the operational activities of CCMT, such as: planning and acting decisively to protect the prosecutorial system, its people and the public; advise chief prosecutors on dealing with pandemic or other emergency situations; determine organizational priorities and non-core activity; ensure organizational continuity within possible resources, etc. Furthermore, CMAP has determined that CCMT should prepare a plan for recovery and future planning, i.e. prepare a plan for the recovery phase and return to normal activity; continuously review the activities of the crisis management team to identify lessons that can be integrated in the future into crisis management planning. Beyond that, the CMAP has authorized the CCMT to actively manage communications with the courts and the KJC, as well as with investigators from the Kosovo Police and other law enforcement agencies; use effective internal and external communications to ensure security and stability and obtain information on more effective crisis management; pro-actively manage communications with various ministries. The CCMT, according to the CMAP, is also supported by the CCMT at the regional prosecutor's offices, the Special Prosecution Office and the Appellate Prosecution Office (ERMK).

Also, on May 29, 2021, KPC approved Decision no. 244/20208, which determined, inter alia, the increase of the work activity of the KPC and the State Prosecutor, and that the chief prosecutors of the prosecution offices were authorized to coordinate the activities for an increased return of prosecutors to offices and for the administrative staff to carry out prosecutorial activities, as well as the full return to work of all employees had to be done in coordination with public health institutions in Kosovo⁹⁵.

On April 6, 2021, the Chairman of the KPC and the Chief State Prosecutor, based on the constitutional and legal competencies, as well as the implementation of the decision of the Government of the Republic of Kosovo to take measures to prevent the spread of the COVID-19 pandemic, have issued the Decision KPC / No. 208/2021 & A.no.105 / 2021 for the essential

⁹⁴Assembly of the Republic of Kosovo, Law no. 06 / L-056 on the Kosovo Prosecutorial Council

⁹⁵Kosovo Prosecutorial Council, Decision no. 244/2020, May 29, 2020.

reduction of activities within the KPC and the State Prosecutor. The Chief Prosecutors of the Prosecution Offices of the Republic of Kosovo were also authorized to appoint sufficient prosecutors and administrative staff to oversee and carry out only activities of an urgent nature and certain actions according to legal deadlines and court summons.

The impact of pandemic in the functioning of the Kosovo Police

Kosovo Police operates in accordance with Law No. 04 / L-076 on the Police. This law regulates the authorizations and duties of the Police of the Republic of Kosovo, its organization and other issues related to the activities and actions of the Police of the Republic of Kosovo. The police carry out orders and instructions lawfully issued by the public prosecutor or by the competent judge. The Police also cooperates and reports to the Office of the Public Prosecutor, competent for information regarding allegations of suspicious criminal activities, of which the Police have been notified in accordance with applicable law. In order to prevent and fight crime and increase security for all communities in the Republic of Kosovo, the Police communicates and cooperates with local government authorities, civil society organizations and local communities.

On March 12, 2020, Police during the health emergency due to the COVID-19 pandemic, issued an Operational Order for readiness and response. For the implementation of the Operational Instruction, 6500 police officers are engaged, in: a) preventive patrol 24/7, initially with two shifts, in the 12-hour shift; b) providing security in the Student Center, as a mandatory quarantine, and in the Infectious Diseases Clinic, with its presence 24/7; c) 166 entry-exit control points in 63 municipal areas in quarantine; d) 71,745 other control points; e) in the inspection of 12,880 citizens who are in self-isolation at home; f) 2,326 police escorts; g) 5,994 assistance to municipal inspectors, and h) 485 assistance to health services.⁹⁶

After the Government Decision No. 01/10, dated 5 July 2020⁹⁷, due to the small number of inspectors and the inability to cover each point, the Police provided support in completing the forms of minor offenses and handing them over to the sanitary inspector, who then proceeded to impose punitive measures.⁹⁸

Regarding its activities within 24 hours, the Police informed the public through press releases.

Impact of pandemic in the right to a fair and impartial trial

To address whether the actions of the justice system against the COVID-19 pandemic have affected the violation of the fundamental rights of the citizens of the country, the following legal basis must be looked at. First, the Constitution of the Republic of Kosovo, in Article 21, stipulates: "*The Republic of Kosovo protects and guarantees human rights and fundamental freedoms [...].*" At the same time, Article 31.1 guarantees the right to a fair and impartial trial: "*Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*" Judicial protection of rights, defined by

⁹⁶ Kosovo Police, "Annual Report 2021", (link: <https://www.kosovopolice.com/wp-content/uploads/2021/03/Raporti-Vjetor-Shqip-2020.pdf>)

⁹⁷ Office of the Prime Minister of Kosovo, Decisions from the 10th meeting, (link: <https://kryeministri-ks.net/wp-content/uploads/2020/07/Vendimet-nga-mgleja-e-10-t%C3%AB-e-Qeveris%C3%AB-1.pdf>)

⁹⁸ Ibid.

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

On the other hand, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), according to the Constitution of the Republic of Kosovo, as a legal document directly applicable in the Republic of Kosovo, which has priority, in case of conflict, over provisions, laws and other acts of public institutions, in paragraph 1 of Article 6 of the ECHR guarantees: *“In the determination of civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time.”*⁹⁹

Also Law No. 03 / L-199 on Courts, Article 7, paragraph 2, stipulates: *“Every person shall have equal access to the courts and no one shall be denied due process of law or equal protection of the law. Every natural or legal person has the right to a fair trial within a reasonable timeframe.”* Whereas according to article 7, paragraph 5, of the same law, it is provided: *“All courts should function in an expeditious and efficient manner to ensure the prompt resolution of cases.”*

To move then on to the role of State Prosecutor, Law No. 03 / L-225 on State Prosecutor, Article 2 defines the State Prosecutor as an independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts and other acts specified by law. Whereas Article 6 defines the efficiency of the State Prosecutor as one of the principles: *“The State Prosecutor shall exercise its functions in an efficient and effective manner and in accordance with the Constitution, the applicable law, and internationally recognized principles of non-discrimination, human rights, and fundamental freedoms”*.

To then address the role of the Police, Law No. 04 / L-076 on Police regulates the authorizations and duties of the Police of the Republic of Kosovo, its organization and other issues related to the activities and actions of the Police of the Republic of Kosovo. Article 2 sets out the principles on which the Kosovo Police works: fair and equal treatment of all persons; respect for human rights and fundamental freedoms; neutrality and impartiality regarding persons' political views and affiliations; integrity, honesty and accountability in public service; transparency - providing information to the public and being open to public; legitimacy, suitability and proportionality; commitment to employment, advancement and assignment of duties in comprehensive, merit-based and non-discriminatory manner, by reflecting the multiethnic character of Republic of Kosova and by recognizing the principles of gender equality and human rights foreseen by the Constitution.

Meanwhile the Criminal Code No.06 / L-074 has determined: *“Criminal offenses and criminal sanctions are foreseen only for those actions that infringe and violate the freedoms, human rights and other rights and social values guaranteed and protected by the Constitution of the Republic of Kosovo and international law to the extent that is not possible to protect these values without criminal sanctions of the state of Law.”*(Article 1, paragraph 1). Also, through the principle of legality, it has regulated: *“Criminal offenses, criminal sanctions and measures of compulsory treatment are defined only by law.”* (Article 2, paragraph 1); and: *“No criminal*

⁹⁹ Assembly of the Republic of Kosovo, Constitution of the Republic of Kosovo, Article 22.

sanction or measure of mandatory treatment may be imposed on a person for an act, if prior to the commission of the act, the law did not define the act as a criminal offense and did not provide a criminal sanction or measure of mandatory treatment for the act.” (Article 2, paragraph 2). The Criminal Code, in Chapter XXII, has defined the criminal offenses against public health (Article 249 - Spread of communicable diseases; and Article 250 - Failure to comply with health provisions during the epidemic). On the other side, Code no. 04 / L-123 of the Criminal Procedure (CPC) determines the rules of criminal procedure mandatory for the proceedings of the courts, the state prosecutor and other participants in criminal proceedings as provided for in the present Code. Article 5 also defines a fair and impartial trial within a reasonable time.

Then there is Law No. 05 / L-087 on Minor Offenses, which under Article 2 defines the notion of minor offence, according to which: *“Minor offence shall be the behaviour by which there are violated or jeopardized the public order and peace as well as social values guaranteed by the Constitution of the Republic of Kosovo, the protection of which is impossible without minor offence sanctioning”* While Article 3 has defined the principle of legality, according to which: *“No person shall be convicted for a minor offence nor impose a minor offence sanction for an offence which was not defined as an offence by law or acts (municipal regulation) of the Municipal Assembly before the omission, and for which a minor offence sanction was not determined.”*

Furthermore, minor offenses and sanctions for minor offenses can be determined by law and by acts (municipal regulations) of the Municipal Assembly.

Law no. 04 / L-125 on Health, Article 89, has defined the responsibilities of the Ministry of Health:

- *The implementation of health care during the state of emergency is provided by the Ministry in accordance with this law and other legislation in force.*
- *Health care activities in cases of emergencies from paragraph 1. of this article include:*
 - 2.1. the implementation of legal provisions in force;*
 - 2.2. adapting the health care system in compliance with the emergent planning;*
 - 2.3. implementing changes within referral and management system;*
 - 2.4. provision of emergency health care for citizens;*
 - 2.5. functioning of the provisional health care institutions;*
 - 2.6. activating supplementary and reserve resources.*
- *During emergency situations, the citizens’ rights defined by the law shall be guaranteed to an extent that will not endanger the efficiency of efforts undertaken to overcome the emergency situation.*
- *The human dignity shall in general be respected, regardless of the limitations from paragraph 3 of this Article.*

Also, the Law on Prevention and Fighting against Infectious Diseases, in Chapter IV, has defined safety measures for the protection of the population from infectious diseases.

The Law on Preventing and Combating the COVID-19 Pandemic in the Territory of the Republic of Kosovo regulates the legal basis for the institutions of the Republic of Kosovo for preventing and combating the COVID-19 pandemic. Also this law for the duration of the COVID-19 pandemic, in addition to the authorizations from the Law on Prevention and Fighting of Infectious Diseases and from Law No. 04 / L-125 on Health, in Chapter II, for the Ministry of Health has also defined special authorizations and restrictions on constitutional freedoms and rights.

Constitutional guarantees serve to protect human dignity and the functioning of the rule of law. The Constitution in Article 21 explicitly defines the obligation of all bodies to respect human rights and freedoms. Therefore, this principle is imperative and is the basis of the legal order of the Republic of Kosovo and must be respected by all.

Based on the facts presented above, the Ombudsperson brings to your attention that the right of citizens to access justice and the right to a fair and impartial process are fundamental rights guaranteed by Article 31 of the Constitution of the Republic of Kosovo which stipulates: *“Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers...”*; and Article 102 (General Principles of the Judicial System), which defines equal access of citizens to the courts, as well as guarantees the right to use a legal remedy against court decisions.

The right to a fair and impartial trial and access to justice in Kosovo must be exercised in accordance with the highest international standards, with particular emphasis on the criteria set by the ECHR and the decisions of the ECtHR, which prevail over domestic legislation. This standard is defined in Article 22 of the Constitution, which stipulates: *“Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are ...guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions...”*

In addition to these constitutional guarantees, the Ombudsperson would like to recall that there is an even more advanced standard regarding the right to a fair and impartial process, while it is mandatory that these provisions be interpreted in accordance with ECtHR decisions, such as is defined in Article 53 of the Constitution: *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”*

In addition to being enshrined in the Constitution, the right to a fair and impartial process and access to justice is more fully regulated within the provisions of the CPC. The Ombudsperson also recalls that the CPC, in its principal provisions, pays special attention to a fair, impartial and timely trial (Article 5).

The publicity of the main trial is one of the essential components of the right to a fair and impartial trial. Publicity contributes to increasing the trust of citizens in the courts, who also

have the opportunity to observe the independence, impartiality, objectivity of the courts when making decisions.

The CPC has determined the publicity of the main trial and the exclusion of the public from the main trial. Article 293 of the CPC stipulates: *"The main trial shall be held in open court; The main trial may be attended by the adults; "No arms or dangerous instruments are allowed inside the court room except for police officers guarding the accused, who can be armed."* Whereas Article 294 defines the exclusion of the public: *"At any time from the beginning until the end of the main trial, the single trial judge or trial panel may exclude on the motion of the parties or ex officio, but always after it has heard the parties, the public from the whole or part of the main trial if this is necessary for: 1.1. protecting official secrets; 1.2. maintaining the confidentiality of information which would be jeopardized by a public hearing; 1.3. maintaining law and order; 1.4. protecting the personal or family life of the accused, the injured party or of other participants in the proceedings; 1.5. protecting the interests of children; or 1.6. protecting injured parties, cooperative witnesses and witnesses as provided for in Chapter XIII of the present Code."* However, the CPC does not contain any provisions for deviating from the procedures provided for in Articles 293 and 294, in situations of epidemics or pandemics.

The COVID-19 pandemic, which the world is still facing with, has caused general challenges and consequences in Kosovo, including the justice system. The Ombudsperson estimates that the representative institutions of the justice system in Kosovo were faced with difficult and urgent decisions, always taking into account public health and safety and law enforcement.

But the Ombudsperson emphasizes that taking these decisions to address the issues that have arisen during this time, presents one of the challenges of the justice system, which is to guarantee the right of citizens to access justice, fair and impartial trial.

In this regard, the Ombudsperson notes that the KJC issued its decisions based on the Law on the Kosovo Judicial Council, as well as taking into account the decisions taken by the Ministry of Health to apply preventive measures against the COVID-19 pandemic to all public and private institutions based on the Law on Prevention and Fighting against Infectious Diseases, Law No. 04 / L-125 on Health, and the Law on Preventing and Combating Pandemic COVID-19 in the Territory of the Republic of Kosovo. Furthermore, KJC decisions have defined measures pertaining to the functioning of the judicial system, but specific decisions that have established restrictions / prohibitions on access to courts, or a ban on public participation in hearings (publicity of hearings), which affect the right to a fair and impartial trial, but are reasonable for the protection of the health of the citizens of the country in the time of the pandemic.

The Ombudsperson considers that the Law on Preventing and Combating the Pandemic COVID-19 in the Territory of the Republic of Kosovo regulates only the legal basis for the necessary and legitimate restriction of freedom of movement, freedom of assembly and privacy, in order to preserve public health and taking measures to combat and prevent the spread of the disease, but does not address some of the legal issues that emerged from the pandemic.

According to the KJC decisions, the courts have worked only with essential staff and for cases of urgent nature, court hearings in other criminal cases have been adjourned between March and June 2020. The Code No. 04 / L-123 of the Criminal Procedure, article 311, paragraph 3, and article 312, paragraph 3, stipulate that if the main trial has been adjourned for more than three (3) months, the main trial shall recommence from the beginning, then these legal provisions become applicable in almost all criminal cases pending trial in Kosovo. Moreover, the courts have applied the appropriateness of the trial by reading all the previous statements in the file, a practice that is not explicitly defined by the CPC and which at the same time creates legal uncertainty. This fact has been identified by the European Union Rule of Law Mission in Kosovo (EULEX), through the monitoring of most criminal cases in the courts.¹⁰⁰

Access to justice does not only mean physical access to institutions, but also access to information, access to quality services and legal remedies. The Ombudsperson estimates that in the first quarter of the outbreak of the COVID-19 pandemic, even access to justice was more difficult for citizens, who often faced with a lack of information on how the justice system will work, the services to be provided, including free legal aid services, what will happen to their cases that are being processed in the courts and for which they are obliged to complete them with additional documents and their concern that in this case they would lose the possibility for the realization of their rights, etc.

Such a concern of the citizens was addressed by GLPS (NGO that monitors court hearings with the project "Justice Today") to the head of the KJC, who stressed that the citizens of the country, who could not submit documents in their cases, will not miss the legal deadlines for the realization of their rights, because the institute "*restitutio in integrum* - restoration to original condition" will be implemented, which is provided by all applicable laws.¹⁰¹

The Ombudsperson estimates that the KJC, despite facing great challenges during the COVID-19 pandemic period, on June 2, 2020 had approved the Emergency Crisis Management Plan,¹⁰² as well as had taken measures to timely determine which cases were included in the framework of urgent cases to be handled as well as the cases where their processing was endangered from the beginning,¹⁰³ but it remains worrying that the judiciary is facing a major decline in efficiency in handling cases due to limited capacity.

However, the Ombudsperson finds that the KJC's decisions to temporarily limit judicial activity involving the public are left to the discretion of court presidents and case judges, as well as limiting public access to all court facilities, has left the possibility of individual interpretations according to the cases and room for dissatisfaction of citizens.

The Ombudsperson also notes that the KPC through decisions has organized the work in Kosovo prosecution offices. The Ombudsperson further states that the KPC, neither with the decisions

¹⁰⁰ European Union Rule of Law Mission in Kosovo (EULEX), "Special Report on the Impact of COVID-19 on the Rule of Law", March 2020-March 2021.

¹⁰¹ Group for Legal and Political Studies (GLPS), Justice Today Platform, "KJC informs citizens that they will not miss the legal deadlines for the realization of their rights", March 2020, (link: <http://www.rolpik.org/kgjk-informs-the-citizens-that-they-will-not-lose-the-legal-deadlines-for-the-realization-of-their-rights/>).

¹⁰² Kosovo Judicial Council, Emergency Crisis Management Plan, June 2, 2020, No. 01/267, (link: <https://www.gjyqesori-rks.org/manuale-dhe-udhezues/>).

¹⁰³ Kosovo Judicial Council, KJC Annual Report, 2020.

issued nor with the approval of the Crisis Management Plan, has given clear instructions to the prosecutors on which cases should be dealt with urgently, in which cases the undertaking of actions can be postponed, etc., although the KPC has identified cases that need to be acted upon promptly. However, all authorizations for action has been left to regional and central crisis management teams. Since the COVID-19 pandemic is not yet over and its duration is still unknown, the Ombudsperson considers that this issue of prioritization of cases during the pandemic to be acted upon by prosecutors should be regulated in order to avoid failing to properly and timely handle the cases.

At a time when Kosovo did not yet have a law to combat the COVID-19 pandemic, the Kosovo Police has filled out minor offence forms for persons who have not complied with the protection measures set by Government's decisions, respectively the ministry, which have been based on Law No. 02 / L-109 on Prevention and Fighting against Infectious Diseases and Law No. 04 / L-125 on Health, which have been delivered to the Sanitary Inspectorate for further action. The police has delivered hundreds of criminal reports to the State Prosecutor's Office due to criminal offenses against public health (regulated by Article 249 - Spread of communicable diseases; and Article 250 - Failure to comply with health provisions during the epidemic). Beyond that, the Police has issued thousands of reprimands to citizens for non-compliance with anti- COVID-19 measures.

VI. The rights of non-majority communities and the impact of the Covid-19 pandemic

Informing non-majority communities about the Covid-19 pandemic

Accurate, reliable and timely dissemination of information on the epidemiological situation and on the measures taken to prevent the spread of the COVID-19 pandemic virus by public authorities, in official languages and in official languages at the municipal level, has a direct impact on preventing the spread of the pandemic to the citizens of the country, without distinction. Timely receipt of information is a factor in enabling citizens and officials to organize their behavior in accordance with the public interest and legal rules regarding the pandemic. In this regard, and in a pandemic situation, public authorities, in particular those whose functions are related to public health, media and professional journalists have the main role and special responsibility for providing timely, accurate and reliable information to the public. With the announcement of the quarterly public health emergency situation, in mid-March 2020, the Government of the Republic of Kosovo approved immediate measures aimed at preventing the spread of the virus.

The dissemination of information regarding the COVID-19 pandemic situation in general and on the measures adopted in particular, in the languages of the communities was characterized by shortcomings. Faced with an unpredictable situation, despite government efforts, under time pressure, and lack of capacity, translation delays and translation omissions have been observed, creating the possibility for ambiguity and misinterpretation.

From the communications of the ombudsperson's representatives with representatives of Kosovo's non-majority communities: Serbs, Bosniaks, Gorani, Croats, Turks and Roma, it was

noted that the main issue they faced during the public health emergency was the inability to obtain information timely. Emphasizing that the issue of translation into the languages of non-majority communities is a general and ongoing issue and is not an isolated phenomenon of the pandemic period.

Issues with translating information into the languages of non-majority communities related to the COVID-19 pandemic was also a prevailing issue reported to the OIK by the Language Commissioner,¹⁰⁴ Kosovo Bosniak representative in the Community Consultative Council, representatives in municipal and return offices in the regions: Graçanica, Prizren, Peja, Gjilan, and the NGO "Aktiv"¹⁰⁵, have filed a complaint with the OIK. Given that the translation of information related to the COVID-19 pandemic into the languages of non-majority communities was not at the right level, The OIK noted that after contacting the relevant authorities and their intervention, the translations improved, but after a period of time, due to the changes and deterioration of the situation with the pandemic, the same problems arose in terms of information in the language of the communities.

Regarding the complaint related to the failure of the Ministry of Health (MoH) and the National Institute of Public Health in Kosovo (NIPHK) to inform the citizens in Serbian about the pandemic, through their official website,¹⁰⁶ OIK, in accordance with Article 5 (paragraph 1) of the Constitution and Law No. 02 / L-37 on the Use of Languages, recommended to the MoH and NIPHK to inform citizens and the public through their websites in both official languages of the Republic of Kosovo.¹⁰⁷ In the response received from NIPHK and MoH, on April 15, 2020, respectively on April 17, 2020, the OIK was notified: their communications are made in both official languages; in media communication they answer in Serbian whenever questions are asked in this language; their social networks / Facebook profile contains information in Albanian, Serbian and English languages and that they do efforts that information related to COVID-19 be in official languages.¹⁰⁸ From the response it was understood that due to the urgent situation of the pandemic, the authorities are facing a lack of sufficient capacity for translations. However, after the OIK's recommendation, an improved translation was noted.

Delays in translation were also observed during the dissemination of information regarding the measures which established the restrictions on the movement of citizens, introduced in April 2020, which among other things, provided that under precisely defined conditions, citizens would be allowed to move out of their homes for 90 minutes, in particular ambiguities arose whether the last or second-to-last number was determinant regarding movement.

Considering that non-compliance with the measures entails sanctions, members of the non-majority community, who did not understand Albanian, due to lack of translation and timely information, were placed in an unfavorable position.

¹⁰⁴ Email of the Language Commissioner, dated 19 April 2021.

¹⁰⁵ See also: "Covid-19 Between Reality and Misinformation", Rapid Response Civic Group "Active", Mitrovica 2020.

¹⁰⁶ Complaint No.250 / 2020, Z. V. vs. the Ministry of Health and the Kosovo Institute of Public Health, dated 15 April 2020.

¹⁰⁷ Ibid.

¹⁰⁸ Public Communication Division, Ministry of Health of the Republic of Kosovo, Ref. Nr. 280/2020, dated 17/04/2020, and the response to Complaint No. 250/2021, Kosovo Institute of Public Health, dated 15.4.2021.

The occasional failure of the authorities to implement the Law on the Use of Languages and to publish in a timely manner the measures / rules on their official websites in the official languages, may have resulted in effects in enjoying socio-economic assistance.

Economic assistance - procedures for access to the emergency fiscal package

The occasional failure of the authorities to respect language rights and to adapt aid application procedures to the needs and abilities of community members affected the socio-economic position of vulnerable citizens, including non-majority communities.

On April 3, 2020, aiming at mitigating the economic consequences of COVID-19, the Government of the Republic of Kosovo approved the Operational Plan for the Emergency Fiscal Package (EFP), measures that beneficiaries would benefit according to strict criteria and procedures.¹⁰⁹ Members of non-majority communities, who do not speak and / or do not understand official languages, received the information by delay. Publishing information on the official websites of the Ministry of Finance and Transfers (MFT) and the Employment Agency was an inadequate translation.

Furthermore, applications for assistance were expected to be completed and submitted in person or through an online electronic format, but due to problems with partial and poor translation, lack of electronic equipment or lack of e-education, citizens often applied in person to Centers for Social Work (CSW)¹¹⁰ thus creating unnecessary crowds and queues that also constituted a potential environment for virus infection.

Ministry of Finance and Transfers, in response to OIK explained the 15 general measures of the EFP: Measure 1 - which aims to double the income for social assistance beneficiaries up to 80 EUR for two (2) months;¹¹¹ Measure 2 - which aims to provide an additional contribution of 30 EUR for social assistance beneficiaries up to 100 EUR for three (3) months; and Measure 15 - which aims to help the categories of citizens / families without financial income, who are also not beneficiaries of the social scheme and live in a difficult social situation.¹¹² For concerns raised that poor dissemination of information to non-majority communities and inadequate translation of information may have had an effect on the desired impact of the EFP, the MFT explained that minority communities were beneficiaries of the EFP and financial assistance reached its effects. They further explained "... *From a total amount of measure 15 The Municipality of Leposavic benefited 2.5% although it accommodates 0.9% of families in the regular social assistance scheme*" and "*The Municipality of Kllokot benefited 0.5% of the total amount of measure 15, while families in the assistance scheme comprise exactly the same figure, or 0.5% of the total social scheme.*"¹¹³

¹⁰⁹ Decision 31/2020 of the Ministry of Finance and Transfers, dated 3.4.2020, which approved the Operational Plan of the Emergency Fiscal Package.

¹¹⁰ On the application procedure and the role and tasks of the CSW in the execution of Measure 15 of the Emergency Fiscal Package, see Decision no. 35/2020 of the Ministry of Finance and Transfers, dated 16.4.2020.

¹¹¹ Referring to the beneficiaries of the social scheme, as regulated by Law no. 2003/15 on the Social Assistance Scheme and Law no. 04 / L-096 on Amending and Supplementing Law no. 2003/15 on the Social Assistance Scheme. See point 11 of the MFT submission to the OIK, as mentioned in the footnote above.

¹¹² Ministry of Finance and Transfers: "Explanatory Memorandum regarding the complaints received from the OIK related to the Emergency Fiscal Package", No. 373/20120, dated 26.6.2020. In particular see points 10 to 16.

¹¹³ Items 17 to 18 of the Explanatory Memorandum, above.

The OIK underlines as a positive development that the government, through Measure 9 of the EFP allocated EUR 2,000,000 for special funds for initiatives and projects aimed at improving the lives of non-majority communities affected by the public health emergency. The measure was implemented through the Office for Communities, within the Office of the Prime Minister (OPM).¹¹⁴ This assistance was distributed in three arrangements: EUR 900,000 was allocated to civil society sector organizations (NGOs) through food and hygiene package distribution projects for vulnerable social families throughout Kosovo; EUR 800,000 was allocated as assistance to small businesses; and EUR 300,000 were allocated as assistance to persons with special needs. According to information from the OIK, received directly from the Office for Communities within the OPM, this assistance has been fully implemented.¹¹⁵

In August 2020, the authorities informed the citizens through text messages (SMS) about the procedures for obtaining financial assistance. Subsequently, the Ministry of Labor and Social Welfare (MLSW) issued a statement, in Albanian only, informing that citizens can file complaints to the competent CSWs until 31 August 2020, if they have not received a message (SMS), again creating crowds and queues in front of the respective centers. A similar situation was observed when citizens applied for EUR 15 financial assistance, as they again applied in person at the CSW as well as at the Employment Office. However, given that at the time of applying for assistance, most of the movement restriction measures were in force, a number of citizens who were unable to register electronically and did not have a movement permit during the working hours of the CSW made it difficult to apply for this type of assistance.

According to NGO "VoRAE", during the pandemic period, the number of socially vulnerable Roma, Ashkali, and Egyptian families increased, especially those whose livelihoods depended on informal industries gathering secondary raw materials, as they depended entirely on government assistance or humanitarian organizations.¹¹⁶ At the same time, the difficulties in following the procedures for applying the EFP package assistance mainly affected members of the Roma, Ashkali and Egyptian communities, due to low levels of E-education, lack of electronic equipment (smart phones, computers, etc.), lack of identification documentation, as well as poor access to information and services for disadvantaged people and families in society.

The disproportionate impact of the same policies that may have on different communities shows the importance of public authorities taking into account the situation and special needs of the communities they serve, whenever they prepare public policies and in particular in cases of public health emergencies.

However, as a very positive aspect, the OIK notes the actions of the Ministry of Communities and Returns (MCR), in March and October 2020, on the distribution of aid packages to the

¹¹⁴Measure 9, Operational Plan of the Fiscal Emergency Package. This measure focuses specifically on the aggravated socio-economic situation of Roma, Ashkali and Egyptians without excluding other non-majority communities (paragraph 2).

¹¹⁵The OIK received this information by e-mail from an employee of the Office of Communities in the Office of the Prime Minister on June 29, 2021; it should be noted that it was not specified what kind of assistance was provided to persons with special needs.

¹¹⁶ Data received from the NGO "VoRAE", on July 12, 2021.

most vulnerable returnees and members of the non-majority community.¹¹⁷ Thus, from March 31 to April 10, 2020, in 22 municipalities throughout Kosovo, the MCR distributed over 606 packages containing food and hygiene items to returnees and vulnerable families from all communities. Furthermore, the MCR, in cooperation with the EU Office in Kosovo, as part of the “Return and Reintegration” program, co-financed the distribution of 253 additional food and hygiene packages, mainly for returnees from Roma, Ashkali and Egyptian communities.¹¹⁸ While in October 2020, the MCR continued to distribute aid to families and individuals mostly at risk: returnees and internally displaced persons in isolated areas, the elderly, large families, vulnerable persons in society, as well as members of Roma, Ashkali, and Egyptian communities facing existential problems. Through this, winter food and basic food aid was distributed to 16 families in six municipalities.¹¹⁹

Another positive development that the OIK noted is that immediately after the period of isolation, the municipalities of Novo Brdo, Ranilug, Partesh, Klllokot, Viti, Kamenica and Shterpece distributed financial resources for humanitarian projects of the non-governmental sector, where vulnerable families were provided with aid packages (food, masks and hygiene items), including assistance to farmers, schools and health centers.

Access to education and health services

The right to education, protected by the Constitution of the Republic of Kosovo, laws and relevant human rights instruments, is in principle guaranteed, even during periods of public health emergencies. Since mid-March 2020, the education system in Kosovo has been continuously developing to adapt to the needs imposed for the protection of public health. An important feature of such an adaptation is to provide special attention to ensure that all, including members of vulnerable groups, continue to benefit from the right to education and have equal access to educational tools and materials during the health emergency.

From mid-March to September 2020, the education system of the 2019/2020 school year operated through online learning (distance learning). In addition to the general problems encountered especially at the beginning of organizing the distance learning process, students coming from the most sensitive part of non-majority communities: Roma, Ashkali and Egyptians were mainly exposed to difficulties in pursuing education due to many interconnected factors.

The Ombudsperson notes that children from the Serb and Roma communities still attend classes according to the curricula of the Republic of Serbia, while children from the non-majority community, who are integrated into the curricula of the Republic of Kosovo (including a number of children of the Serb community) attended distance learning broadcast by the Kosovo public broadcaster - RTK, but encountered delays and difficulties in attending

¹¹⁷ See: Report on the distribution of food and winter packages in 16 vulnerable municipalities (Report of the Ministry of Communities and Returns (MCR); Report on aid packages provided to vulnerable persons during the COVID-19 Virus pandemic in Kosovo, Phase I, and Phase II (MCR Report).

¹¹⁸ Report of the Ministry of Communities and Returns on aid packages delivered to victims of the COVID-19 virus pandemic in Kosovo, first and second phase, April 2020. “Report submitted to the OIK on June 16, 2021 via e-mail .

¹¹⁹ Report of the Ministry of Communities and Returns on the distribution of food packages and winter food for 16 vulnerable families, October 2020. Report submitted to the OIK on June 16, 2021 via e-mail.

the lessons. Like everyone else, Bosnian and Turkish students, as well as teachers, had difficulty accessing online learning; lack or poor internet connection in rural areas; lack of electronic equipment to attend classes; delays in starting the recording of teaching units; and at first a very small number of teachers agreed to participate in the recorded teaching. The Kosovo Bosniak community received a very low number of laptops and tablets, insufficient for all students who needed these tools to attend and actively engage in distance learning. Children from the Ashkali, Egyptian and Roma communities have largely not attended distance learning, entirely due to a lack of information technology tools.

Along with these problems, especially in the first 2-3 months of starting distance learning, there was a lack of sufficient information about the online teaching process and its organization.¹²⁰

MESTI has informed the Ombudsperson about the measures taken by this ministry to create conditions for students from non-majority communities during the pandemic period:

- *Due to the situation with the pandemic, MESTI has organized and conducted the filming of distance learning units in both Turkish and Bosnian since the beginning of the pandemic in March, when the online learning process took place, but the filming then continued to be carried out from September 2020 until the end of February 2021 when they have been finalized, also the filming for distance learning of the Roma language was conducted, which is taught as a supplementary learning (in January 2021). All these were broadcast on the RTK television channel. Now students can watch them on youtube.*
- *The OSCE and MESTI have distributed donations to compulsory education students, 215 tablets have been distributed and 60% of the tablets have been distributed to community students.*
- *Due to the situation with the pandemic in early education MESTI in cooperation with Save the children and UNICEF have launched the online platform: "Distance Education – Care, Development and Early Childhood Education for ages 0-6 years." This platform is also available in Turkish, Serbian and Roma.*

Regarding the provision of health services for members of non-majority communities, data from the Ministry of Health show that measures have been taken to enable them to take appropriate measures according to the circumstances and needs that have arisen as a result of the pandemic:

- *Non-majority communities have been part of the activities, starting with information through information materials since the onset of the pandemic in several languages: Albanian, Serbian, English, Turkish and Roma (materials prepared in cooperation with the WHO Office and UNKT), up to their inclusion in vaccination, where each municipality in Kosovo has been offered the same opportunities for vaccination against COVID-19.*
- *In order to involve the Roma, Ashkali, and Egyptian communities in a higher rate of vaccination, they were also provided with vaccination through the mobile teams of the*

¹²⁰ The OIK received information in a telephone conversation with the NGO "VoRAE" on July 12, 2021.

MoH and MFMCs (municipalities), with the support of UNICEF, a door-to-door campaign has been and is being conducted these days through volunteers and members of civil society organizations, to persuade vulnerable groups of the population to get vaccinated.

- *The MoH has not received any complaints from non-majority communities for failing to provide any services related to COVID-19, except for the requests of the Language Commissioner to comply with the implementation of the Law on Official Languages in the Republic of Kosovo.*

The Ombudsperson considers that it is important for the Ministry to continue to apply comprehensive measures for the provision of health services to all members of non-majority communities in all municipalities of the Republic of Kosovo.

VII. The rights of persons deprived of their liberty and the impact of the COVID-19 pandemic, from the point of view of the NMPT

Since the first COVID-19 cases in the country, the Government of the Republic of Kosovo approved the request of the Ministry of Health to take the first measures in order to combat and prevent COVID-19.¹²¹ Consequently, at the same time, the National Mechanism for the Prevention of Torture of the Ombudsperson (hereinafter: NMPT), due to the submission of cases with COVID-19 and based on the principle of not causing a greater damage, decided to suspend visits to places of deprivation of liberty until the situation changed. At the same time, the Kosovo Correctional Service (hereinafter: KCS) decided to temporarily suspend all family visits to all correctional and detention centers.

On March 12, 2020, the Health Department of Prisons (hereinafter: HDP), based on the decision of the Government of the Republic of Kosovo, took additional measures to prevent COVID-19 in prisons. Notice of these additional measures was sent to the relevant ministries and other competent institutions. One of these measures was to restrict the movement of prisoners inside and outside the correctional facility or detention facility, as long as it did not harm anyone's health. These measures were taken through operational orders.

While in September 2020, the NMPT resumed visits to places of deprivation of liberty. From March 2020 to August 2021, 53 visits were conducted to all places of deprivation of liberty, including the Detention Center for Foreigners and the centers for asylum seekers.¹²²

Restriction of rights and freedoms in correctional facilities and detention centers

The NMPT, through regular communications with the HDP and the KCS, in early 2020 was notified of operational plans prepared and implemented in all detention and correctional facilities. All these measures were taken in order to fight and prevent the COVID-19 pandemic.

With the decision of the KCS, dated March 11, 2020, family visits to all detention centers were banned. This ban lasted from March 11, 2020 until May 26, 2020, when the decision was made

¹²¹Government of the Republic of Kosovo, Decision No. 01/07, dated 11.3.2020.

¹²² The Ombudsperson Institution, "Reports of the National Mechanism for the Prevention of Torture", published so far can be found at: <https://oik-rks.org/raportet/raporte-mkpt-1/>.

to allow family visits for prisoners only by close family members. This decision limited some of the rights of prisoners, which are guaranteed by international conventions on the rights of prisoners, by Law no. 04 / L-146 on the Execution of Criminal Sanctions in the Republic of Kosovo and with Code no. 04 / L-123 of the Criminal Procedure of the Republic of Kosovo.

This decision also temporarily banned weekends for prisoners, visits of non-governmental organizations to KCS institutions, in order to monitor compliance with the rights of prisoners, as well as visits by defense lawyers, except in the case of detainees. These prohibitions were valid for a certain period. On 15 May 2020, NGOs were again allowed to visit correctional and detention facilities, while on 18 May 2020 visits by defense lawyers were allowed.

On July 10, 2020, the decision was made to temporarily suspend all family visits and visits by defense lawyers, due to the deterioration of the situation with COVID-19. On August 18, 2020, defense attorneys were again allowed to visit their defendants. On the same date family visits and free visits were allowed. On September 10, 2020, mitigation measures were taken to allow family visits, weekends, and home vacations.

On October 19, 2020, the decision was made to temporarily ban family visits, weekends and vacations at home. On December 21, 2020, family visits with a limited number of family members and weekends were allowed. On January 8, 2021, weekends for prisoners were banned. On January 22, 2021, the decision was made to allow a certain number of prisoners to take advantage of the weekends, and more than two visitors were allowed to visit the prisoners. On April 2, 2021, weekends for prisoners were again banned and the number of family members who could visit the prisoner was limited to one member only.

Also, in all correctional and detention centers, other rights were restricted, such as: the rights to sports activities, work, training and education, as well as the right to religious freedom in certain aspects. These restrictions were temporary, depending on the situation in the country with the COVID-19 pandemic.

On June 17, 2021, KCS through an official announcement on the website, announced the opinion on the facilitation of measures against COVID-19 in correctional and detention facilities.¹²³ These measures stipulated that the number of visitors per inmate would be allowed under the House Rules, while the wearing of masks would remain in effect during visits; quarantine lifted in all correctional facilities, the prisoner could be separated from the others only when the doctor finds that he has symptoms of COVID-19 or some other health reason; in the open type institution the convicts were allowed to work outside the correctional institutions, according to the Administrative Instruction MD-NR 02/2019; and the SKYPE virtual communication system would only be used in cases where a prisoner had no visits or was a foreign national and could not be visited by family.

¹²³ Kosovo Correctional Service, Press release: "Kosovo Correctional Service continues to facilitate anti-covid measures", July 2021, (link: https://shkk.rks-gov.net/lajmi_single/2989).

Restriction of rights and freedoms in institutions managed by the Ministry of Internal Affairs

From the information collected through the communication with the Ministry of Internal Affairs (MIA) and the Kosovo Police, the NMPT estimates that no decision was taken to restrict the basic rights of arrested and detained persons, such as: the right to a defense lawyer, the right to health services and the right to notify the family of the fact of arrest. During visits to places of deprivation of liberty, the NMPT did not receive complaints from persons deprived of their liberty for non-compliance with the above-mentioned fundamental rights.

Use of Detention Center for Foreigners as quarantine after the break out of COVID-19

During the visit to this center, the NMPT noticed that this center was used as a quarantine after the introduction of COVID-19. In 2020, over 100 foreigners were quarantined at this center. These restrictions were taken based on government decisions and the recommendations of the NIPHK. However, the NMPT considers that as long as COVID-19 continues to exist, and if the competent authorities are again forced to use this center as quarantine for foreigners, special protocols should be developed to treat quarantines, as this institution is envisaged to accommodate persons who are subject to forcible return from the territory of the country.

Student Center in Prishtina used as quarantine

With the Decision 01/13 of the Government of the Republic of Kosovo, dated March 18, 2020, it was decided that the Student Center in Prishtina be used as a quarantine. This decision also stipulated that the Student Center be transferred under the direct management of the Ministry of Health.

The NMPT, through communication with the competent bodies and review of relevant documentation, has noted that decisions to place persons in quarantine were taken by the Ministry of Health referring to Article 145 (point 2) of the Constitution of the Republic of Kosovo, Law no. 04 / L-125 on Health, Law no. 02 / L-109 on Prevention and Fighting of Infectious Diseases and the decision of the Government of the Republic of Kosovo, dated 15 March 2020.

Quarantined persons were informed about their rights in writing and verbally (including concrete instructions on how to behave in relation to hygienic measures). All medical services were documented in their files. At all times they had access to the Internet, telephone calls and the opportunity to lodge their complaints with the competent authorities, including the Ombudsperson, through the telephone numbers which were placed in this center.

During this time, quarantined persons underwent systematic medical examinations before entering quarantine and during the period of quarantine. The rooms were occupied by only one person. They were also supplied with hygienic materials and clothing.

During the period that this center was used as quarantine, a case of death occurred. In this regard, investigations are still ongoing by the Basic Prosecution in Prishtina. Also, to investigate this issue, the Assembly of the Republic of Kosovo established a Parliamentary Committee of Inquiry.

The Ombudsperson considers that the competent bodies should conduct independent, fast, effective and transparent investigations in relation to public oversight, in order to shed light on the case in question. Relatives of the deceased should also be given the opportunity to contribute to the investigation.¹²⁴

During this period, the Ombudsperson did not receive any complaints from quarantined persons regarding the treatment, accommodation conditions or conduct of competent officials, which would constitute a violation of human dignity.

The Ombudsperson also noted that the staff engaged in work in this center faced overload at work, long working hours and lack of staff. Health services were assisted by groups of volunteers (over 120). During the meeting with the officials of the Ministry of Health, the NMPT of the Ombudsperson was informed that the Student Center suffered extensive damage to the inventory during the period when it was used as quarantine.

Health care in correctional centers and detention centers

The NMPT through the visits so far has noticed that the health services were generally adequate, the supply of medicines was at a satisfactory level, and the available health staff was at a satisfactory level. Health authorities took health measures to combat and prevent the COVID-19 pandemic, prisoners were provided with instructions on how to comply with these measures, and information on COVID-19 was provided.

The NMPT has noticed that there have been delays in providing certain health services, but these delays and limitations occurred due to the outbreak of the COVID-19 pandemic and the determination of health emergencies by the competent authorities, as well as the lack of transport to public health institutions outside prisons. The NMPT has not found any serious violations of the health rights of prisoners as a result of these delays or postponements of treatments for later dates. During this period medical visits were added and there were tests for COVID-19.

Challenges of the competent bodies to carry out the work during COVID-19

From the information collected through visits and meetings with the competent KCS officials, the Ombudsperson was informed that so far one KCS official has lost his life as a result of COVID-19 and 237 others have been infected. As a result of the infections, prison authorities were forced to use officers from other units to meet their staffing needs. There were 44 prisoners infected and 5 of them died.

Regarding the challenges for performing the work and other challenges, the NMPT, on June 18, 2021, had a meeting with the competent officials of the Kosovo Police, where it was announced that as a result of the COVID-19 pandemic, so far 4109 police officers were in self-isolation, 1942 infected and 22 police officers died. On the day of the meeting, 5 infected police officers were reported.

Based on the operational order of the Kosovo Police, 75% of police officers engaged in issues with COVID-19, which include: comprehensive engagements, assistance to competent

¹²⁴Edwards k. United Kingdom (application no. 13071/87).

inspectors, monitoring compliance with the measure of self-isolation, and implementation of measures taken by the Government of the Republic of Kosovo and by other competent bodies.

The challenge for the Kosovo Police was the engagement of the majority of staff in this issue, decisions on the space allocated in the workplace (which means the reduction of staff into one office according to the recommendations of the NIPH), as well as the release of officials appointed by tasks due to certain health issues (440). Also, due to COVID-19, some investigative cases were suspended for some time.

The Ombudsperson notes that the challenges for the competent institutions to perform their official duties were considerable due to the above-mentioned issues. Therefore, the Ombudsperson considers that the Government of the Republic of Kosovo should have at its disposal a comprehensive strategy to support the Kosovo Police and the Kosovo Correctional Service in carrying out their duties defined by applicable laws and the Constitution of the country, in case of emergence of any situation such as this with the global COVID-19 pandemic. This support would mean logistical, financial, medical, as well as psychological support.

Limitation of rights and the fundamental freedoms of persons deprived of their liberty within the meaning of international standards

The Universal Declaration of Human Rights, adopted by the United Nations (UN) in 1948 and included in Article 22 of the Constitution of the Republic of Kosovo, which was adopted in 2008, stipulates that In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.¹²⁵ Also, the International Covenant on Civil and Political Rights, adopted by the UN in 1966, which entered into force in 1976 and was included in Article 22 of the Constitution of the Republic of Kosovo, which was adopted in 2008, stipulates that the rights and freedoms set forth in this Covenant may be restricted only when provided for by law and when necessary to protect national security, public order, public health or morals, or the rights and freedoms of others; when such restrictions are consistent with the other rights recognized in this Covenant.¹²⁶ The European Committee for the Prevention of Torture is a Council of Europe mechanism that monitors the implementation of the European Convention against Torture in the member states of the Council of Europe. On March 20, 2020, the CPT published the Statement of Principles on the Treatment of Persons Deprived of Their Liberty in the Context of the Global COVID-19 Pandemic.¹²⁷ Through this Statement, the CPT emphasizes that the outbreak of COVID-19 disease in the member states of the Council of Europe has created tremendous challenges in all

¹²⁵ Universal Declaration of Human Rights, adopted in 1948 by the UN, Article 29, paragraph 2. (link: https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.)

¹²⁶ International Covenant on Civil and Political Rights, Article 12.

¹²⁷ European Committee for the Prevention of Torture, "Statement of Principles relating to the Treatment of Persons Deprived of Their Liberty in the Context of the Corona virus: COVID-19 Pandemic", translated into Albanian in: <https://rm.coe.int/16809d569f>. English version at: <https://www.coe.int/en/web/cpt/-/covid-19-council-of-europe-anti-torture-committee-issues-statement-of-principles-relating-to-the-treatment-of-persons-deprived-of-their-liberty->.

countries where persons deprived of their liberty are being held. The CPT further states in the Statement:

"Recognizing the clear obligations to take decisive action to combat COVID-19, the CPT must remind all actors of the absolute nature of the prohibition of torture and of inhuman and degrading treatment. Protective measures must never result in inhuman or degrading treatment of persons deprived of their liberty."

In this regard, in Principle no. 1 of the statement in question, the CPT states:

"The basic principle must be to take all possible action to protect the health and safety of all persons deprived of their liberty. Taking such action also contributes to preserving the health and safety of staff."

Principle No. 2:

"WHO guidelines on fighting the pandemic as well as national health and clinical guidelines consistent with international standards must be respected and implemented fully in all places of deprivation of liberty."

Principle No. 4 explicitly states:

"Any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of Covid-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time. Persons deprived of their liberty should receive comprehensive information, in a language they understand, about any such measures."

Principle No. 7:

"While it is legitimate and reasonable to suspend non essential activities, the fundamental rights of detained persons during the pandemic must be fully respected. This includes in particular the right to maintain adequate personal hygiene (including access to hot water and soap) and the right of daily access to the open air (of at least one hour). Further, any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone or Voice-over-Internet-Protocol communication)."

Principle No. 8:

"In cases of isolation or placement in quarantine of a detained person who is infected or is suspected of being infected by the SARS-CoV-2 virus, the person concerned should be provided with meaningful human contact every day."

Principle No. 9:

"Fundamental safeguards against the ill-treatment of persons in the custody of law enforcement officials (access to a lawyer, access to a doctor, notification of custody) must be fully respected in all circumstances and at all times. Precautionary measures (such as requiring persons with symptoms to wear protective masks) may be appropriate in some circumstances."

United Nations Subcommittee on Prevention of Torture (SPT), which has the mandate to conduct visits to the signatory countries of the Optional Protocol to the UN Convention against Torture, the purpose of the visits is to assess the treatment of persons deprived of their liberty in the signatory states of the above-mentioned protocol. On March 25, 2020, the UN Subcommittee on Torture Prevention adopted a document entitled: "Advice of the Subcommittee on Torture Prevention to States Parties and National Preventive Mechanisms on the Corona virus pandemic".¹²⁸ In the document in question, among other things, this UN body asked to ensure that any restrictions on existing regimes are minimal, proportionate to the nature of the health emergency and, in accordance with the law, to adhere to the minimum standard for going out on daily basis for clean air considering at the same time the necessary measures to prevent and treat the pandemic. This document further requires that where visits are prohibited for health reasons, other ways be provided which provide prisoners with contact with their families and contacts with the outside world, for example by telephone, internet / email, video- communication and other appropriate electronic means. Such contacts should be facilitated, encouraged, and be frequent and free of charge. It should be ensured that basic procedural safeguards against ill-treatment (including the right to independent medical advice, legal assistance and ensure that third parties are notified of detention) remain available and operational regardless of access restrictions.

Penal Reform International is a non-governmental organization, which works globally in the field of promoting criminal justice systems, which are based on respect for human rights and freedoms. The same on March 16, 2020 published the expertise: "*Corona virus: Health care and human rights of prisoners.*"¹²⁹ In this expertise, the organization in question addresses the issue of restriction of the rights and freedoms of prisoners, more specifically the right to health care and hygiene, contacts with the outside world, quarantine, isolation and free movement within the institution correctional or detention facilities, as well as the importance of the access of monitoring bodies. Under international human rights law, every human being has the right to enjoy the highest attainable standard of physical and mental health. When a state deprives someone of their liberty, it undertakes to take care to guarantee medical care and to promote and protect his / her mental and physical health, as well as his / her well-being.¹³⁰

Penal Reform International emphasizes the importance of equality of medical care in prisons by emphasizing that in cases confirmed or suspected of COVID-19, prisoners should have urgent access to specialized health services without unnecessary complications. Penal Reform International further emphasizes that any restriction of contacts with the outside world should be proportionate, including the restriction on time and such measures should not be discriminatory. While restrictions on face-to-face or prison contacts may be legitimate in order to prevent the outbreak of COVID-19, the authorities which undertake such measures should have a comprehensive and transparent decision-making policy. At the same time, this

¹²⁸ UN Subcommittee on Torture Prevention, "Advice of the Subcommittee on Prevention of Torture to the signatory States and National Preventive Mechanisms on the Corona virus pandemic", (link: <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>).

¹²⁹ Penal Reform International, "Corona virus: Health care and human rights of prisoners", (link: <https://cdn.penalreform.org/wp-content/uploads/2020/03/FINAL-Briefing-Coronavirus.pdf>).

¹³⁰ Mandela Rules, Rules no. 24 and 18. (link: https://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/70/L.3)

organization determines that the ban or restriction of family visits should be replaced by increasing the possibilities of communication with the outside world, such as communication by phone, e-mail, as well as through video-calls. And when making decisions to restrict visits or stop visits, it must be borne in mind that contact is essential to the mental well-being of prisoners and can reduce the level of violence in prisons.

Regarding isolation or quarantine, the Penal Reform International emphasizes that the measures should be proportionate, authorized by law and not result in "de facto" solitary confinement. Any decision to quarantine persons should only be made on the basis of an independent assessment and should be proportionate to the risk it contains. Quarantine is done only if no alternative safeguards can be taken to prevent the spread of infection. When placed in quarantine or in isolation, the conditions of accommodation and regime must at least meet the criteria set out in the Mandela Rules.

Safeguards should allow for participation in court hearings and allow for the services of defense counsel. Any limitations, if necessary, should be individualized and based on independent medical findings. Total and comprehensive restrictive measures are contrary to the principle of the right to a fair trial and access to defense counsel.

On February 8, 2021, the World Health Organization published the manual for the prevention of COVID-19 in prisons and other places of detention.¹³¹ In this guide, the WHO, recognizing the need for the state to take measures to prevent COVID-19, seeks to respect the basic procedural guarantees set out in the Mandela Rules, respectively that the restrictions do not result in torture, humiliating and degrading treatment, clinical decisions should be made only by medical professionals, and family contacts should not be completely cut off.

With regard to the treatment of persons deprived of their liberty, the European Court of Human Rights in the case of *Chahal vs. The United Kingdom* established an absolute guarantee of the prohibition of torture provided for in Article 3 of the European Convention on Human Rights, which is part of the legal system of the Republic of Kosovo. During the field visits, communication with persons deprived of their liberty, directly and through other opportunities of communication with persons deprived of their liberty, the NMPT did not receive complaints of physical ill-treatment or excessive use of physical force by correctional officers in detention centers or correctional facilities.

In *Le Mailloux vs. France*, the European Court of Human Rights stressed the positive obligation of States to take the necessary measures to protect the life and physical integrity of persons under their jurisdiction, including in the field of public health. In this case, in his complaint the complainant refers to the failures of the French authorities to act in accordance with the positive obligations based on certain provisions of the ECHR, emphasizing the lack of state action under the obligations in question, such as taking measures to protect individual life and physical integrity.

General assessments of the Ombudsperson

¹³¹ World Health Organization, Internal Guide, February 8, 2021. (link: <https://apps.who.int/iris/bitstream/handle/10665/339830/WHO-EURO-2021-1405-41155-57257-eng.pdf?sequence=1&isAllowed=y>.)

As mentioned above, any restriction of fundamental rights and freedoms within the meaning of international and national human rights standards must be necessary, proportionate, law-based, non-discriminatory and respectful of human dignity, as well as to be subject to occasional review.

The break out of the pandemic and the declaration of the same by the WHO as a pandemic of global extent raised the need for concrete measures to be taken by the Government of the Republic of Kosovo in order to combat and prevent COVID-19. The protection of public health is the obligation of all competent authorities and citizens of a country. Restrictions on the rights of prisoners, inter alia, were subject to periodic review. Based on the situation with COVID-19 and the recommendations of the National Institute of Public Health, the restriction measures were severed or eased.

Based on the expertise presented by the above-mentioned international organizations and institutions after the outbreak of the COVID-19 pandemic, the restriction of contacts with the outside world should be compensated through other means of communication in such situations. The NMPT through visits to correctional centers and detention centers, after the suspension of family visits or their restriction, has noticed that the KCS has made available to prisoners rooms for communication through SKYPE and has also increased the number of calls to the prisoners.

During the visits, the NMPT was informed by certain directors of correctional and detention centers that they had received concerns from certain prosecutors and judges regarding this communication, especially in the case of detainees. These concerns refer to issues related to security and eventual impact on the investigative procedure.

It was also noted that decisions were made within the correctional and detention centers to restrict the freedom of movement of prisoners to a certain degree, in order to combat and prevent COVID-19. Based on the information collected, these restrictions were applied in cases of suspicion that any particular inmate may be infected with COVID-19 or have had contact with the potentially infected.

During this period, prisoners who were taken to public health institutions, to court hearings, or generally out of the detention center or correctional facility, were subject to quarantine for a period of two weeks.

The ombudsperson notes that in certain periods the right to contact the defense counsel was restricted, except in the case of detainees. In this regard, the Ombudsperson reiterates that the right to contact a defense counsel is a fundamental right of a person deprived of his liberty, guaranteed by the Constitution of the country, the Code of Criminal Procedure and international standards for fundamental human rights. Therefore, the competent authorities, even at times of pandemic, must ensure that this contact continues in a safe and confidential manner.

KCS decisions to restrict the fundamental freedoms and rights of prisoners refer to government decisions to restrict certain rights of citizens in general. Certain provisions in this regard can be found in the LESP and in the Administrative Instruction on House Rules. Therefore, the Ombudsperson considers that when making such decisions, which restrict the rights and

freedoms of prisoners, the KCS should refer to the provisions of the LESP and the Administrative Instruction on House Order in Correctional Institutions.

Based on the above, the Ombudsperson finds that the restriction of certain rights and freedoms of persons deprived of their liberty was in principle necessary, proportionate, based on local laws, on the recommendations of the competent health institutions of the country and in the recommendations of the WHO, as well as other organizations, which monitor the observance of the rights of persons deprived of their liberty.

Decisions on restrictions on the rights of prisoners, which restrict fundamental rights, did not refer to the provisions of the LESP nor to the Administrative Instruction on House Rules in Correctional Institutions. Restrictions were subject to periodic review, and depending on the situation in the country with the COVID-19 pandemic, these measures were severed or eased. While the restriction of the right to contacts with the outside world was compensated through the provision of other types of communication (SKYPE, increase of telephone calls). Also in certain periods there were restrictions on the right to meet and communicate with defense counsel.

VIII. The impact of the pandemic on social and economic rights and right to work in the public and private sectors

Economic and social rights and right to work were directly influenced by government decisions to combat the spread of the COVID-19 pandemic. However, as the epidemiological situation in the country began to stabilize gradually, in April 2020, the government planned to take a series of mitigation measures for businesses and citizens. Initially, from 4 May 2020, the opening of certain industries, such as construction and retail, was partially allowed. From May 18, 2020, the retail trade, dental surgeries and physiotherapy services, green markets, etc. were fully opened. While from June 2, 2020 Kosovo's economy began revitalization thanks to the full opening of many industries, including gastronomy (excluding parties) in general. However, although the epidemiological situation at the time justified the mitigation measures, the government considered it reasonable to impose new restrictive measures at the time the situation worsened. Thus, on July 5, 2020, the government ordered the businesses that provided gastronomy services to operate with reduced capacity (only in the outdoor areas) and during the hours 21:00 - 05:00 to be completely closed, and a few days later shopping malls were ordered to close at 21:00 and public markets were suspended. The government continued to amend and supplement restrictive measures against businesses by easing or severing them depending on the epidemiological situation, and, at the meeting held on November 11, 2020, imposed a series of new restrictive measures for citizens, as well as for businesses, depending on the level of risk of the municipality where they are located. From November 13, in municipalities classified as low risk, economic operators were allowed to work only from 05:00 to 20:00, while gastronomy and hospitality services were allowed to work after that time through "take away" services or by delivery. In municipalities classified as medium risk, the full operating hours of economic operators were reduced to 05:00 - 18:00, while in municipalities classified as high risk, the operating hours of economic operators were allowed

only in the period 05:00-19:00, and these restrictions continued until May 2021, as the number of infected decreased significantly and the epidemiological situation improved.

Legal framework related to economic and social rights

The Constitution of the Republic of Kosovo, as the highest act, protects and guarantees fundamental human rights and freedoms, therefore their practical realization is in the interest of the functioning of the rule of law. The Constitution explicitly states that it is the obligation of all bodies to respect human rights and freedoms, and this is an imperative principle and must be respected by all. Therefore, in the continuation of this report, we will talk about the economic and social rights provided by the Constitution, such as the right to work, including: economic and social rights of workers, protection from discrimination in relation to the right to work and from equal mistreatment of public and private sectors, deferral or suspension of loans by commercial banks, consumer rights and economic rights of businesses, the Pension Savings Fund and withdrawal of up to 10%, and inclusiveness in government support measures. Despite the state of emergency, in this case the COVID-19 pandemic, constitutional guarantees create an obligation for the state to protect the rights of all equally and to ensure full respect and implementation of the relevant legislation.

The Labor Law regulates labor rights and obligations, which in addition to guaranteeing the right to work also regulate that everyone has the right to respect the dignity of their personality at work, and also determine the conditions of occupational health and safety at work, necessary protection at work, the manner of establishing an employment relationship, scheduled working hours, daily and weekly breaks, paid annual leave, fair remuneration for work, as well as provides legal protection in case of termination of employment.

Under the Law on the Protection from Discrimination it is prohibited discrimination in the field of labour, i.e. violation of equal opportunities for entering into an employment relationship and equal enjoyment of all rights in the field of labour. Discrimination in the field of labour is also prohibited by the Law on Labour. Ensuring dignified work is enabled by the implementation of numerous provisions of other laws, such as: Law on Safety at Work, Protection of Health of Employees and Working Environment, Law on Gender Equality, etc.

The right to work is also guaranteed by agreements and international instruments, which are directly applicable in Kosovo and prevail over the laws of Kosovo. Therefore, the obligation to observe this right requires prevention of illegal acts, which hinder or prevent the enjoyment of the right to dignified work and employment relationship, and it is the duty of the state to ensure this right for all under equal conditions, as well as to ensure implementation and observance of the provisions of the legislation on the right to work.

The impact of COVID-19 pandemic on Kosovo's economy

Despite supportive policies, economic activity, according to the IMF, is estimated to have dropped by 6% in 2020,¹³² while according to KAS, this drop was 5.3%.¹³³ According to the

¹³² International Monetary Fund, 2021, IMF Staff report for Republic of Kosovo, Volume 2021, Issue 041, <https://doi.org/10.5089/9781513569536.002>

¹³³ KAS, 2021, Gross Domestic Product (GDP) by economic activities and expenditure approach, 2008 - 2020: <https://ask.rks-gov.net/media/6311/bpv-2008-2020.pdf>

World Bank estimates, the decline is expected to be 6.9% (World Bank, 2021). The fiscal deficit has increased by 7.7% of GDP, given the sharp decline in tax revenue collection and the implementation of mitigation and recovery measures of 4.2% of GDP (IMF, 2021). Growth is expected to rebound in 2021, and real activity will reach the pre-pandemic levels only in 2022 (IMF, 2021; World Bank, 2021). About 4.3% of GDP has been allocated for measures taken, for the health system (0.4% of GDP), salary bonuses for health and insurance employees for overtime hours and for the increased risk they face in performing their duties (0.5% of GDP), social transfers and subsidies for families in need (1.6% of GDP), as well as support for companies in the form of wage subsidies and easier access to loans (including POEs and farms with about 1.7% of GDP), and capital expenditures (less than 0.1% of GDP). To stimulate aggregate demand, the Law on Economic Recovery allowed the withdrawal of 10% of savings in personal pension savings accounts in the KPST (2.6% of GDP), most of which (1.8% of GDP) will be reimbursed from the budget starting in 2023 (only those who at the time of withdrawal had up to EUR 10,000 of savings in their accounts will be reimbursed). According to TAK, Kosovo has experienced a significant decline in revenues in the first nine months of 2020, over EUR 1 billion less than in 2019 (Civil Society Report, 2021).¹³⁴

The impact of COVID-19 pandemic on Kosovo's labor market

COVID-19 pandemic has also had a negative impact on the labor market during 2020. Compared to 2019, there is a decrease by 1.7% in the employment rate, where this decrease in men was 3.4%, while in women there was an increase by 0.2% (ASK, 2021). The main labour market indicators for the last three years are presented in the following table.

Table1. Key labor market indicators

| Key labor market indicators | | | |
|--|-------|-------|-------|
| Year | 2018 | 2019 | 2020 |
| | Total | Total | Total |
| Labour force participation rate | 40.9 | 40.5 | 38.3 |
| Inactivity rate | 59.1 | 59.5 | 61.7 |
| Employment to population rate (employment rate) | 28.8 | 30.1 | 28.4 |
| Unemployment rate | 29.6 | 25.7 | 25.9 |
| Unemployment rate among young people (15-24 years old) | 55.4 | 49.4 | 49.1 |

¹³⁴ United Nations Mission in Kosovo (UNMIK), "Civil Society Report on Human Rights in Kosovo in 2020", June 2020, (link: <https://unmik.unmissions.org/file/158952/download?token=eZSA6ENf>).

| | | | |
|---|------|------|------|
| Percentage of NEET youth among young population (15-24 years old) | 30.1 | 32.7 | 33.6 |
|---|------|------|------|

Source: KAS, 2021

The key indicators show that the labor force participation rate has decreased by 2.2% compared to 2019, while the inactivity rate has increased to 61.7% or by 2.2%. The employment rate during 2020 was 28.4%, which is a decrease by 1.7%, while the unemployment rate has marked a slight increase of 0.2% at 25.9%. The consequences of the pandemic, together with the measures taken by the government to subsidize the salaries of those who have lost their jobs, have increased the number of people who have been registered with the EARK as unemployed.

Table 2. Individuals registered as unemployed and vacancies, as reported by EARK

| Year | Number of registered unemployed individuals | Number of vacancies | Number of mediations (excluding ALMPs) | The share of vacancies filled by EARK |
|------|---|---------------------|--|---------------------------------------|
| 2015 | 112,179 | 11,506 | 3,574 | 31% |
| 2016 | 101,773 | 14,137 | 4,022 | 28% |
| 2017 | 93,866 | 12,511 | 3,215 | 26% |
| 2018 | 95,890 | 14,847 | 3,764 | 25% |
| 2019 | 70,790 | 9,462 | 4,160 | 44% |
| 2020 | 168,980 | | 1,330 | |

Source: EARK 2019, Labor and labour force 2018 and direct communication with EARK for data of 2019, 2020.

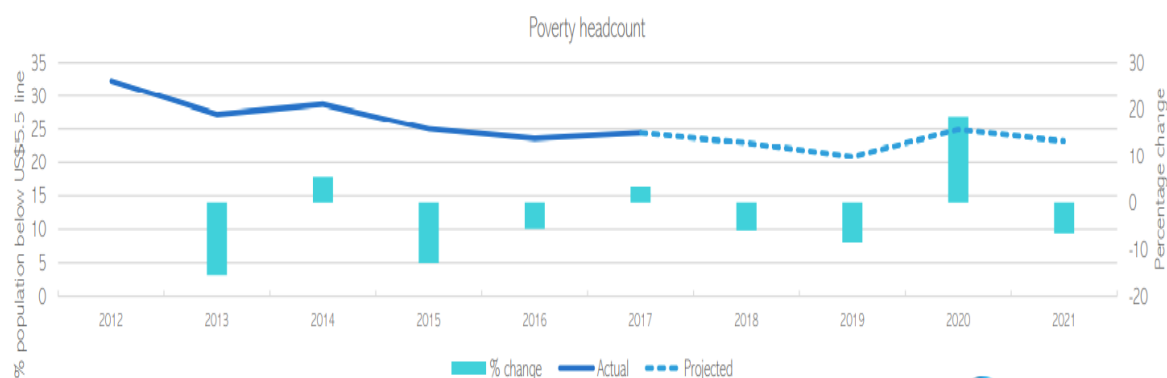
All labour indicators, together with the data of EARK, show the impact that COVID-19 pandemic had on the labour market during 2020, where compared to the previous year, it is mostly observed in the large number of persons who were registered with the EARK as unemployed.

The impact of COVID-19 pandemic on poverty

We have not encountered any analysis of local institutions regarding the impact of pandemic on poverty, however, according to the World Bank report: *“Like many countries in the world, Kosovo has been hit by the Covid-19 pandemic. Despite the supportive policies, economic activity is estimated to have dropped by 6% for 2020 (IMF, 2021), while according to KAS this drop has been 5.3% (KAS, 2021)¹³⁵. According to preliminary estimates of the World Bank (2021), from 2019 to 2020, the poverty rate in Kosovo is projected to have increased by about 5 percentage points, respectively from 20% to about 25% of the population with less than 4.74 Euros (5.5 USD) per day per capita. The projections are that the poverty rate will drop significantly in 2021.”*

¹³⁵ KAS, 2021, Gross Domestic Product (GDP) by economic activities and expenditure approach, 2008 - 2020: <https://ask.rks-gov.net/media/6311/bpv-2008-2020.pdf>

Chart 1: Poverty rate in Kosovo¹³⁶



According to the same report, while all Western Balkan countries have an unemployment benefit scheme, there is no such scheme in Kosovo.

Economic and social rights, and the right to work

The Ombudsperson highlights that the Constitution of the Republic of Kosovo, as the highest act, protects and guarantees fundamental human rights and freedoms. Also under the Law No. 03/L-212 on Labour and Law No. 05/L-021 on Protection from Discrimination it is prohibited the discrimination in the field of labour, respectively violation of equal opportunities and equal enjoyment of all rights in the field of labour.

Discussion meetings have been organized with the Union of Independent Trade Unions of Kosovo (BSPK) to discuss observance of employees' rights during the pandemic. According to the announcement of this union, it has not received any complaints and has not conducted any research on this topic.

Data from the reports of Labour Inspectorate, presented in the table, show that in 2020 the Inspectorate conducted 18,506 inspections, but 2,419 were related to monitoring the implementation of protection measures imposed by the government, which means they were not aimed at employees' rights. Out of the 8,509 complaints received, 84% of them were filed from the public sector.

The table shows that the number of complaints in 2020 has doubled, from 5,150 in 2019 to 10,455 in 2020.

Table 2. Data from the reports of the Labor Inspectorate

| | 2017 | 2018 | 2019 | 2020 | Difference 2019/2020 in% |
|-------------|-------|-------|--------|--------|-----------------------------|
| Inspections | 8,128 | 9,531 | 14,000 | 18,491 | 32% |
| Regular | 7,322 | 7,212 | 8,727 | 8,059 | -8% |

¹³⁶ World Bank, 2021, Republic Of Kosovo: Systematic Country Diagnostic (SCD) Update Concept Note Summary: <https://thedocs.worldbank.org/en/doc/95f8830195f586ccd61873093723cd6f-0080012021/original/Summary-Kosovo-SCD-Update-for-Consultations-ENG.pdf>.

| | | | | | |
|---|-------|-------|-------|--------|------|
| Based on complaints | 727 | 1,742 | 5,150 | 10,432 | 103% |
| Number of employees without employment contract | 1,750 | 1,251 | 1,557 | 460 | -70% |
| Number of legalized workers | 1,224 | 712 | 2,042 | 409 | -80% |
| Work schedule issues | 172 | 30 | 290 | 18 | -94% |
| Vacation issues | 1,096 | 1,149 | 1,878 | 198 | -89% |
| Wage issues | 1,437 | 1,315 | 1,826 | 439 | -76% |

Information regarding the realization of employees' rights guaranteed by the legislation in force was also collected from the meeting with the Kosovo Chamber of Commerce. Representatives of both chambers pointed out that the government with the measures taken has privileged public sector employees, who were relieved from duty while being paid 100%. This was not the case with private sector employees, some of whom have lost their jobs, some of whom have not been paid for the time they closed the business where they worked and who have not been compensated like public sector employees - paid by private sector taxes and private sector employees. No attempt by the government to balance wages in the private sector with the public sector has been observed. The support provided was poor, for a shorter period than the closure period of businesses, and there have been delays and there are still delays in implementing government measures.

On the other hand, unequal treatment is noted to have existed for public sector employees. A civil society report (Civil Society Report, 2021) noted that employees in Kosovo public institutions continued to have a legal obligation to work throughout the pandemic, although the Government of the Republic of Kosovo has taken several decisions to protect health and prevent the spread of the pandemic from the outset. In some cases, public sector employees (nurses, police officers, teachers and some of the civil servants) were forced to work even if the work environment did not provide conditions to maintain a safe physical distance and proper hygiene measures.

It was also reported that teachers with health problems also had to work with physical presence when schools reopened in September, raising particular concerns about their right to safety and health at work.

According to the General Director of the Kosovo Police, since December 15th, 293 police officers have been infected with COVID-19, 234 police officers have been put in quarantine and 12 police officers have died due to COVID-19, raising once again the implications for the right to health and safety at work of another category of employees.

While businesses had difficulty in their efforts to continue working as usual, the COVID-19 crisis unequally affected employees who experienced violations of the right to fair and favourable working conditions, such as: illegal termination of employment contracts, wage cuts, increased workload due to reduced staffing, late payment of overtime compensation and lack of adequate social security networks for employees. Some public sector employees, such

as police officers who worked long hours due to the pandemic, received compensation for overtime work with delays.

The Kosovo Women's Network (KWN) noted that as a result of isolation and the ban on public transport, women with disabilities could not go to work. After the relaxation of the measures, women providing care to children with disabilities said they could be exposed to the risk of infection, which would endanger and complicate the condition of the children under their care. Job losses and economic hardship have exacerbated their access to costly medicines, on which they depend. KWN stressed that it encourages the Ombudsperson that through this *ex-officio* initiated investigation to emphasize the importance of differentiating the different needs of women and men throughout this pandemic, which remained unaddressed and continue to be unaddressed.

Health care workers' rights

The pandemic has had a major impact on the health care workers' rights. The government decision, taken in March 2020, whereby it demanded the release from work of one parent, did not apply to health care workers. This situation was difficult because in that period all educational and child care institutions were closed. According to data from the Health Union Federation of Kosovo, 37% of health care staff was spouses within the health system, who have been forced to work and have encountered difficulties in caring for children. Unequal treatment has been identified in relation to the right to allowances for health care workers. The allowances approved in March 2020 have excluded from this right the sanitary aid workers and technical support workers. Article 20 of the Law on Preventing and Combating the COVID-19 Pandemic states that the government shall provide additional compensation above the basic salary for employees of state institutions engaged in the fight against the COVID-19 pandemic. According to this law, the categories of beneficiaries, the amount of and duration of the allowances compensation for employees of the state institutions engaged in the fight against the COVID-19 pandemic shall be determined by a sub-legal act issued by the government. During the previous government, the UHFK reached a consensus on the categorization of health personnel regarding allowances, but no sub-legal act has been issued yet, leaving room for arbitrary determination of allowances. The UHFK has repeatedly requested drafting of sub-legal acts, but has not found an understanding with the government. The amount of allowances was set by the government itself, and since the beginning of the pandemic it was discontinued for 3 months. The amount of allowances has changed, set at EUR 150, 250, 300 and finally was set at 10% of the health care workers salary, approximately 60 Euros per month. This amount is considered as very low, and not at all dignified for the work and responsibility of health care workers. The government's rationale for the UHFK is that health personnel have already been vaccinated, and the risk has been reduced. This reasoning is considered ungrounded, as the risk to health care workers still remains. Not all health professionals have been compensated, including health care workers in child care institutions, staff in health institutes, etc., who have not been compensated.

Occupational health and safety has been compromised for health care workers. Extended working hours has been highlighted as one of their challenges. At the beginning of the pandemic, health care workers, in the absence of personal protective equipment, were at risk

from COVID-19. At the same time, they are systematized in wards and jobs that do not correspond to the occupation and professional training of the health personnel. For example orthopedician was sent to intensive care or infectology. The decision not to use the annual leave for health personnel during 2020 is considered as another violation of employees' rights, which are guaranteed by the Law on Labour.

Tax Administration of Kosovo

Regarding tax policies, the Ministry of Finance and Transfers (MFT), in coordination with TAK, has extended the deadline for declaration and payment of tax liabilities, as well as pension liabilities and contributions, until 30 June 2020. Another temporary measure in relation to taxes was the abolition of VAT on imports of wheat and flour, as well as the extension of the deadline for public utility payments, until the end of April. Finally, on May 18th, the MFT took another decision announcing that the interest on property taxes will be suspended until 2021.

From the TAK reports for the years 2018-2020, it is noticed that in 2020, there were a total of 496 complaints, i.e. there has been a decrease in the number of complaints. However, the report does not show the reasons and complainants (employees, citizens, businesses, etc.), so adequate analysis of the effect of the pandemic cannot be performed. Although there is a lack of transparency during the recovery programs and assistance provided by the government to businesses, unequal treatment in general, ambiguity in the allocation of subsidies and application for payment of employees and rent payment has been noticed, because businesses are not helped at one and the same time, there have been numerous delays and rejections, and for all of these, businesses have had nowhere to address their complaints. Even at the time of writing this report, there are many of those whose requests have not been considered.

The Decision No. 04/2021 of the government, dated 27 January 2021, to facilitate the exercise of economic activity of all taxpayers, as a result of the difficult economic situation created by the pandemic, provided measures, such as: Postponed blocking of bank accounts for all taxpayers who have tax liabilities to TAK, until 30 April 2021; blocked bank accounts of all taxpayers who have tax liabilities have been released, until 30 April 2021; penalties were lifted for all taxpayers who have outstanding liabilities to TAK, if they make the payment of basic tax and interest, until 30 June 2021. Removal of these penalties for taxpayers is done if: taxpayers make a single payment of tax and interest; taxpayers make agreements with TAK for payment in instalments; taxpayers are in agreement with TAK and pay tax and interest.

While TAK is obliged that during this period to enable taxpayers to pay tax liabilities based on the financial capabilities of taxpayers, in order to maintain financial stability. However, complaints were reported from businesses that on account of their inability to pay the accumulated debt under the prior agreement with TAK, due to financial difficulties and due to the situation with the pandemic, they have been repeatedly warned by TAK inspectors that if they do not pay the instalments on time, their property will be confiscated. The response received from TAK states that the decision of the government does not interrupt the procedures of TAK to exercise its right under the law, through the Department of Debt Collection Management.

Table 3. Complaints to TAK

| | Number of complaints | | Source |
|------|----------------------|--|---|
| 2020 | 496 | | https://www.atk-ks.org/wp-content/uploads/2021/04/RaportVjetor2020Neni8L03L-222.pdf |
| 2019 | 612 | | https://www.atk-ks.org/wp-content/uploads/2020/07/RAPORT-VJETOR-2019.pdf |
| 2018 | 602 | | https://www.atk-ks.org/wp-content/uploads/2019/04/ALBRaportiVjetor2018.pdf |

The right to access pension savings

The inability of pensioners to withdraw funds from the Pension Savings Trust

Withdrawal of funds from the Kosovo Pension Savings Trust (KPST) upon reaching retirement age is provided for by law¹³⁷ and the CBK regulation¹³⁸. If the balance of savings is up to EUR 3,000, then the KPST will transfer these funds to any bank account provided by the contributor. If the balance is higher than EUR 3,000, the beneficiary will be transferred to the Withdrawal Program in Phases (PTF) of pension savings. The applicant will be able to withdraw 20% of the balance at once, while the rest each month of a minimum of EUR 200, or a maximum of 1% of the total balance (when the amount is over EUR 20,000)¹³⁹. Beneficiaries can choose one of the four banks that provide the PTF service: TEB, NLB Prishtina, Banka për Biznes or Banka Ekonomike, thus benefiting from a specific treatment, according to the contract of KPST with these banks. The entire balance of the beneficiary will be transferred to this account. Each month, no later than the second business day of each month, the bank will make the payment of the monthly instalment. These monthly payments will continue until the entire balance is exhausted.¹⁴⁰ According to the KPST report for 2020, the number of new savings accounts was 7,078. The value of funds withdrawn for 2020 was EUR 49,608,754.00. Out of 7,078 applications approved for withdrawal by the KPST, 4,997 persons have reached retirement age; 1,110 withdrawals were made by heirs of contributors who died before retirement age; 928 persons due to disability and 43 cases for contributors with non-resident citizen status.

Retired persons could not take advantage of this opportunity as their funds upon retirement and entry into the Withdrawal Program in Phases are transferred to the authorized bank and are no longer found in the KPST.

¹³⁷ Assembly of the Republic of Kosovo, Law no. 04/L-101 on Pension Funds of Kosovo

¹³⁸ Central Bank of the Republic of Kosovo, Regulation on Payment of Individual Savings Pensions

¹³⁹ Kosovo Pension Savings Trust, Annual Report 2020, (link: <http://www.trusti.org/sq/klientet/terheqja-e-kursimê/>, visited on 01/07/2020).

¹⁴⁰ Kosovo Pension Savings Trust, Annual Report 2020, (link: http://www.trusti.org/ëp-content/uploads/2021/05/RaportiVjetor_2020_shq_ueb.pdf), visited on 01/07/2020.

Case 2: Non equal treatment of persons who have withdrawn up to 10% from the Pension Savings Trust

One of the government's measures to support citizens and increase aggregate demand was the possibility of withdrawing up to 10% of pension savings from the Kosovo Pension Savings Trust.¹⁴¹ This right from 11 December 2020 to 31 December 2020 has been used by 397,572 people out of 644,582 (Table X), i.e. 61% of contributors. The application continued until 6 April 2021, after which the KPST will publish a full report.

Table 1. Applications from the Pension Savings Fund, 2020¹⁴²

| Amount to withdraw | Number of applicants | Structure of applicants by size of savings | Number of persons with pension savings | Percentage of persons who have withdrawn savings |
|------------------------|----------------------|--|--|--|
| Up to EUR 10 | 10,198 | 3% | 99,800 | 10% |
| EUR 11 to EUR 50 | 55,876 | 14% | 135,211 | 41% |
| EUR 51 to EUR 100 | 50,884 | 13% | 80,547 | 63% |
| EUR 101 to EUR 200 | 66,899 | 17% | 88,495 | 76% |
| EUR 201 to EUR 500 | 94,265 | 24% | 109,791 | 86% |
| EUR 501 to EUR 1,000 | 68,459 | 17% | 73,026 | 94% |
| EUR 1,001 to EUR 2,000 | 39,277 | 10% | 43,851 | 90% |
| EUR 2,001 to EUR 4,000 | 9,790 | 3% | 11,568 | 85% |
| Over EUR 4,000 | 1,925 | 1% | 2,293 | 84% |
| Total | 397,573 | 100% | 644,582 | 62% |

Source: Kosovo Pension Savings Trust, 2021.

According to Law no. 07/L-016 on Economic Recovery – Covid-19, Article 5, provides that persons who have savings up to the amount of EUR 9,999.00 shall be compensated in the reimbursement form, beginning from year 2023.¹⁴³ According to the KPST, the total amount calculated for reimbursement is EUR 101,772,416.00, for 372,650 beneficiaries who meet the condition set out under the paragraph 1, Article 5 of the Law no. 07/L-016¹⁴⁴. There is no

¹⁴¹ Kosovo Pension Savings Trust, Annual Report 2020, (link: http://www.trusti.org/ep-content/uploads/2021/05/RaportiVjetor_2020_shq_ueb.pdf), visited on 01/07/2020.

¹⁴² Kosovo Pension Savings Trust, Annual Report 2020, (link: http://www.trusti.org/ep-content/uploads/2021/05/RaportiVjetor_2020_shq_ueb.pdf), visited on 01/07/2020.

¹⁴³ Assembly of the Republic of Kosovo, Law no. 07/L-016 on Economic Recovery – Covid-19, Article 5.

¹⁴⁴ Assembly of the Republic of Kosovo, Law no. 07/L-016 on Economic Recovery – Covid-19, Article 5, paragraph 1

explanation for the threshold of EUR 9,999.00; therefore it has been opposed by citizens with savings above this ceiling. Of the total number of contributors, about 9% of contributors had savings of more than EUR 9,999, but the overall value of the reimbursement would be high.

Loan deferral by the commercial banks

In the response that the Ombudsperson received from the CBK, it was reported that the total number of persons who applied for loan deferral until the end of July 2020 was 77,629 persons, of whom 57,443 were natural persons (29,229 employees in private sector) and 20,186 were legal entities. Following the decision on loan deferral, the CBK has issued two instructions regarding the restructuring of loans, one in September 2020 and the other in February 2021, according to which customers have been able to use the right to restructure loans. According to the latest data, the present value of total restructured loans, including all phases (decision and instructions) in May 2021 was EUR 975.6 million, or 28.8% of the loan portfolio. In this case it should be noted that after the restructuring, customers have continued to pay instalments in accordance with the agreements signed with banks and there is stability in repayment of instalments after the restructuring.

Asked whether banks have reviewed all business and household loan suspension requests, the CBK reported that commercial banks have reviewed all business and individual loan suspension requests and all eligible requests according to the decision issued by the CBK and the Kosovo Banking Association, have been approved. The same response was provided by the Banking Association, which did not provide data on complaints, because the small number it received was referred to the CBK, because the Kosovo Banking Association does not have a mandate to handle customer complaints.

On 16 March 2020, aiming to support citizens and businesses, the CBK, in cooperation with the Kosovo Banking Associations, issued a decision¹⁴⁵ for loan deferral, which decision has been implemented by all lending institutions in Kosovo. Initially, the loans were deferred for one month and then deferred for another two months, i.e. deferred for 3 months. By May 2020, EUR 1.95 billion or 63.5% of the entire loan portfolio applied for a loan moratorium, while the approval rate of these applications was over 95% or EUR 1.87 billion (CBK, 2021). Following the end of the moratorium period, the CBK has published guidelines for loan restructuring in order to establish the criteria on which the loan restructuring process should be based for borrowers who have encountered financial difficulties as a result of the pandemic. Loan restructuring guidelines have made it possible to ease the loan burden on borrowers without implicating any deterioration in their classification in the Credit Registry of Kosovo.

Until August 2021, the CBK has received and reviewed a total of 816 complaints related to the deferral of loan instalment payments. Out of 816 complaints, 619 are related to the application of additional interest and 197 complaints are related to the requests for deferral of loan instalments. Out of 619 complaints, that banks have applied additional interest when deferring loan instalment payments, only 21 complaints have been approved in favour of the customer, as it has been proven that banks have made mistakes in calculating interest rates, but which have come as a result of technical problems in the banking systems. Banks have addressed

¹⁴⁵Central Bank of Kosovo, Decision no. 12-09/2020, dated 16.3.2021.

these cases by making the necessary corrections and adjustments, while another 598 complaints were rejected because only regular interest was applied in the case of deferral of loan instalment payments, which were documented through the payment plan. In terms of complaints regarding the applications for extension of the loan instalment payment deadline, out of 197 complaints, 113 complaints (57%) were approved. After analysing the complaints, the banks have approved 113 applications for deferral of loan instalment payments, and 84 complaints were rejected because they did not meet the criteria for deferral of loan instalments.

CBK representatives clarified that most of the customer complaints were related to the interest that banks have applied for the moratorium period. Although the CBK and commercial banks have clarified that no penalty interest will be applied during the moratorium period, and interest for the moratorium period will be paid in the months following the start of loan repayments (see details for some banks below), customers have misunderstood it thinking that during the moratorium period banks will not calculate interest on loans. This evidence shows that there was a need for greater dissemination of accurate and explicit information to the public. The following table shows the bank announcements we have identified on the respective websites.

Table 2. Criteria for loan deferral

| Bank | INSTRUCTIONS | LINK |
|------------------------|--|---|
| ProCredit Bank | The Bank notifies you that it will not apply penalty interest on deferred loan instalment payments. The regular interest payment for the months you request the deferral will be charged in the first instalment after the end of the deferral period, while the principal payment of the deferred instalments will be charged in the next loan instalments. | https://www.procreditbank-kos.com/shq/lajme/aplikacion-online-per-shytyrje-te-pageses-se-1343/ |
| Raiffeisen Bank Kosovo | <p>No additional cost shall be applied in the instalment deferral process.</p> <p>In case of loan deferral for the three months that the instalment is deferred, the calculated interest shall be paid in the first instalment (in June/July 2020).</p> <p>For the last three months of the loan, Raiffeisen Bank shall not apply any interest, while the last three instalments are principal only.</p> | https://www.raiffeisen-kosovo.com/Uploads/Richtext/Files/FAQ%20-%20shytyrje%20te%20kesteve.pdf |

| | | |
|----------|--|---|
| | After 3 months break, the instalments shall not be paid in total, as the loan agreement term will be extended for 3 months. | |
| TEB Bank | For the loan break period (one or two months), TEB shall not apply penalty interest. Also, for the same break period (one or two months) of the loan, TEB shall not apply additional charges, but only regular interest, which will be paid in the first month after the break, and in the following month the customer will start paying regular instalments", announces TEB Bank. | https://klankosova.tv/bqk-pagesa-e-kesteve-pezullohet-vetem-per-kredimarresit-meshtiresi-financiare/ |

Undoubtedly, the deferral of loan repayments has supported citizens and businesses and has had the advantage of not being reflected in their classification in the Credit Registry of Kosovo. However, in total, the customers, whose request for deferment of the instalments was approved, have paid more interest than the interest calculated at the moment of signing the loan. However, CBK representatives stated that this information has been disclosed to the customers whose request has been approved.

Consumer rights

In addition to the negative impact on economic growth, tax revenues and labor market, during the pandemic, Kosovo also experienced price increases, mainly in essential items and pharmaceuticals, which due to the pandemic market demand greatly increased, thus violating the rights of consumers, provided in Article 4 of Law No. 06/L-034 on Consumer Protection. According to KAS, the overall harmonized index of consumer prices in the country in 2020 was higher at an average of 0.2%, compared to 2019 (KAS, 2021). The data presented in the table below shows that, in general, prices increased during 2020 in consumers groups and sub-groups, such as: bread and cereals (2.3%); meat (1.8%), milk, cheese and eggs (1.8%); fruits (5.0%); coffee, tea and cocoa (5.4%); water, soft drinks, fruit and vegetable juices (1.7%) as well as medical products, apparatus and equipment (4.4%); telephone services (2.2%); hotel services (2.3%); insurance (15.7%), sugar and cakes (3.4%); tobacco (1.3%); household appliances (1.0%); outpatient services (5.8%); personal care (1.3%) and personal items (3.2%) (ASK, 2021).

Table 3. Average annual CPI/HICP changes - *Source KAS, 2021*

| Average annual CPI/HICP changes | | | |
|---------------------------------|------|------|------|
| | 2018 | 2019 | 2020 |

| | | | |
|--|------|-----|------|
| Total CPI - HICP | 1.1 | 2.7 | 0.2 |
| Food and non-alcoholic beverages | 1.5 | 5.4 | 1.7 |
| Alcoholic beverages, tobacco | 2.5 | 2.6 | 0.4 |
| Clothing and footwear | -0.6 | 0.3 | -0.9 |
| Housing, water, electricity, gas and other fuels | -2.8 | 0.1 | 0.2 |
| Furniture, household appliances and home maintenance | -0.3 | 1.2 | 0.5 |

According to the data of the Ministry of Trade and Industry, Department of Consumer Protection, in 2020 there were 1,107 complaints from consumers, which is double the number of complaints compared to 2019. As of 23 July 2021, the Department has received 618 complaints, exceeding the number of complaints for the entire year 2019. Trade-related complaints account for 44% of 2019 complaints, while 55% of those of 2020 (of which 27% are related to price increases). From the responses of the Department it is emphasized that in the second week of March 2020 they received complaints for abuses, price increases and lack of various items related to the violation of consumer rights. In addition to prices increase, there has been a shortage of essential products on the market, mainly: flour, oil, gloves, masks, etc. Of 1,107 complaints in 2020, 48% of them have been resolved.

Table 4. Data from the Department for Consumer Protection, 2018, 2019, 2020 and as of 23.7.2021

| | 2019 - Type of complaint | | 2020 - Type of complaint | | As of 23.7.2021 - Type of complaint | |
|---|--------------------------|----------------------|--------------------------|----------------------|-------------------------------------|----------------------|
| Complaints/Categories | Total | Prices increase | Total | Prices increase | Total | Prices increase |
| | 509 | | 1,017 | | 618 | |
| Complaints addressed to the Trade category | 222 | 0 | 563 | 154 | 293 | 1 |
| | | Poor quality service | | Poor quality service | | Poor quality service |
| Complaints addressed to the Telecommunications category | 134 | 89 | 115 | 61 | 82 | 40 |
| | | Unfair billing | | Unfair billing | | Unfair billing |

| | | | | | | |
|---|----|-----------------------|-----|-----------------------|----|-----------------------|
| Complaints addressed to the Water Supply category | 2 | 1 | 6 | 4 | 2 | 1 |
| | | Poor quality services | | Poor quality services | | Poor quality services |
| Complaints addressed to the Electricity category | 8 | 8 | 15 | 11 | 10 | 6 |
| | | Suspicious reading | | Suspicious reading | | Suspicious reading |
| Complaints addressed to the Metrology category | 2 | 2 | 5 | 2 | 9 | 8 |
| | | Suspicious product | | Suspicious product | | Suspicious product |
| Complaints addressed to the Health category | 5 | 4 | 20 | 7 | 15 | 4 |
| | | Poor quality services | | Poor quality services | | Poor quality services |
| Complaints addressed to the Financial Services category | 17 | 13 | 26 | 21 | 19 | 15 |
| | | Deadline expired | | Deadline expired | | Deadline expired |
| Complaints addressed to the Food category | 89 | 22 | 129 | 56 | 52 | 14 |
| | | Consumer fraud | | Consumer fraud | | Consumer fraud |
| Complaints addressed to the Online Shopping category | 22 | 15 | 93 | 74 | 65 | 60 |
| | | Fiscal coupon | | Fiscal coupon | | Fiscal coupon |
| Complaints addressed to the Tax | 8 | 8 | 44 | 44 | 21 | 21 |

| | | | | | | |
|--|--|--------|---|--------|----|--------|
| Administration of Kosovo category | | | | | | |
| | | Cartel | | Cartel | | Cartel |
| Complaints addressed to the Competition category | | | 1 | 1 | 11 | 8 |
| Complaints addressed to the Education Inspectorate category | | | | | 2 | |
| Complaints addressed to the Information and Privacy Agency category | | | | | 2 | |
| Complaints addressed to the Rejected due to absence of evidence category | | | | | 35 | |

Source: <https://konsumatori.rks-gov.net/statistics.php>

Economic rights of businesses

Inclusion in supporting government support measures

In the absence of a Law on Pandemic, the government decisions were illicit, is one of the main comments from business representatives. It was also emphasized that businesses and their representatives were not involved in the process of drafting the Law on Preventing and Combating COVID-19 Pandemics in the Territory of the Republic of Kosovo, adopted in August 2020.

“Law no. 07/L-006 on Preventing and Combating COVID-19 Pandemics in the Territory of the Republic of Kosovo, Article 2 stipulates: 1. Defines responsibilities and the role of state institutions, public, private and public-private health institutions in taking measures to prevent, control, treat, monitor, provision of funding and share of responsibilities during the COVID-19 pandemics. 2. This law defines measures and sanctions that will be taken against natural and legal persons, citizens of the Republic of Kosovo or foreign citizens residing in the Republic of Kosovo, who violate the rules, decisions and instructions issued by competent authorities throughout the duration of infection period, pandemics caused by COVID-19”.

Representatives of the interviewed businesses pointed out that in the absence of data on the impact of the pandemic, government measures have not helped the most affected sectors. The delaying by TAK of turnover declaration was considered unnecessary and a failure to provide access to data that would serve to measure the impact of the pandemic and design support measures. In the absence of data, support measures have supported businesses in a better position: for example the measure distributed per worker has favoured enterprises that have

been in a better financial position to retain workers, while businesses that have experienced a decline in the number of workers have benefited less.

The Government of the Republic of Kosovo took a series of steps to address the challenges posed by the COVID-19 pandemic. Initially, in March 2020, the government launched the Fiscal Emergency Package, a stimulus package worth EUR 179 million. The package aimed to provide support for segments of society in most need. A more systematic approach was established in August 2020, with the development of the Economic Recovery Program (Ministry of Finance, 2020), which has expanded the essential measures envisaged by the Fiscal Emergency Package. The approval of the Economic Recovery Program was followed by a government decision, which outlines the specific targeted measures and the plan of interventions for economic recovery. The package amounted to over EUR 350 million. While emergency stimulation relied solely on government funding, the Economic Recovery Program benefited also from the support of the European Commission, World Bank and the International Monetary Fund (IMF).

An important component of the Economic Recovery Program was the adoption (after many attempts in Parliament) of the Law on Economic Recovery - COVID-19, in December 2020. The law enabled the government to temporarily amend a series of laws to implement the Economic Recovery Program and use resources that otherwise the government would not have access to. To ensure easier access to finance, amendments have been made to the Law on the Establishment of the Credit Guarantee Fund. Access to 10% of pension savings was granted with amendments to the Law on Pension Funds. To provide tax relief, several amendments to existing laws have been adopted, including the Law on Personal Income Tax, the Law on Value Added Tax and the Law on Tax Administration and Procedures. To support domestic suppliers, amendments were made to the Law on Public Procurement. But even after the law was passed, and after all these amendments, there was stagnation and dissatisfaction in the inclusion of businesses.

The Kosovo Chamber of Commerce noted that the support provided by the government was not in compliance with the level of impact of the pandemic across sectors. It was also noted that there have been complaints by businesses that oversight of the adequate implementation of the preventive measures against COVID-19 pandemic has been selective. Businesses have pointed out that there has been more monitoring in Prishtina than in other places, and there have also been complaints that within the same place there have been selective inspections on businesses.

The Law on Preventing and Combating COVID-19 Pandemic in the territory of the Republic of Kosovo, Article 25, stipulates that: *“Legal entity that organizes activities prohibited by a decision of the competent body shall be punished with fine of two thousand (2000) Euros and the prohibition of activity, while the responsible person of the legal entity shall be punished with a fine of two thousand (2000) Euros”*. However, the representative of the Kosovo Gastronomes Association noted that according to the legislation in force, in case of any violation, the legal entity is first issued a reprimand, and if it repeats a violation, the entity may be ordered to close the business. This was not implemented at the time of the pandemic, especially during September, when inspectors even in the first violation filed a lawsuit and

closed businesses. For gastronomy, inspectors have not implemented the definition of open space under the Law on Tobacco Control. It has been pointed out that there have been misunderstandings among inspectors about this aspect, which has led to the imposition of fines and closure of businesses. Representatives of the gastronomy sector have pointed out that the increase in infection cases during the summer season came as a result of failure to inspect compliance with measures issued by government institutions (they mentioned termination of contracts by the current government for inspectors with term contracts) and non-application of vaccination conditions and diaspora testing. The lack of private sector cooperation with the government has been cited as an obstacle to good management of the pandemic situation, which was followed later with limitation of economic activity for certain sectors.

Economic rights of women in business

In the letter addressed by the Ombudsperson and questions submitted to the Kosovo Women's Network (KWN), among other things, an analysis supported by UN Women was emphasized, where it was concluded that the government support measures and budget cuts did not include the gender perspective. The same finding was reported by KWN reflected in their report *"Pandemic Knows No Gender"*. In the responses provided by KWN to the Ombudsperson's letter, it was stated that the government had organized very few substantive consultations with civil society organizations. As a result, civil society has not been sufficiently engaged in designing government support measures. KWN has only twice been invited to comment on the drafting of government measures, namely by the National Council for Economy and Investment in Kosovo (chaired by the Prime Minister), on the Government Economic Recovery Program - COVID-19 (June 2020) and for Emergency Fiscal Package, in early January 2021. The recommendations given have not been taken into account, and the consultation process was only formal. When asked about their involvement in providing information to inform the government's response to COVID-19, 83% of respondents from the Civil Society Organizations (CSOs) stated that they were not given any opportunity to be included, while 9% stated that they were given small opportunity, and 7% of the respondents stated that they were included moderately, whereas only one organization stated to have been substantially included¹⁴⁶. The responses of CSOs respondents were similar when asked about the involvement of other CSOs in planning and drafting government response. However, more CSOs tended to believe that other organizations had slightly more opportunities to contribute than they had.

Meanwhile, some CSOs took the initiative to send recommendations to the government. On March 22nd, before the government decided on the Emergency Fiscal Package, 12 CSOs submitted to the government their recommendations for measures to combat the economic consequences from the pandemic. The letter did not contain any gender perspective, perhaps in part due to the fact that none of the signatory organizations was WCSOs. Immediately after the Emergency Fiscal Package was adopted, KWN asked the government to better consider a gender perspective in its response to COVID-19.

¹⁴⁶ Ibid.

KWN urged the government to urgently conduct a comprehensive gender analysis to inform and guide further government action, including an *ex-ante* gender impact assessment, in accordance with the Law on Gender Equality. KWN also urged the government to involve more women in drafting programs and policies related to COVID-19, and in proposing short and long-term measures, particularly on social, economic, and health issues, including protection from gender-based violence. KWN recommended that the Ministry of Finance review the medium-term budget using the best principles of gender responsive budgeting, and based on the findings of gender impact assessments to take into account different needs of women and men.

However, some measures have been included in government measures to support the economic empowerment of women and address the damages caused by the pandemic. Within the Emergency Fiscal Package there was no measure specifically dedicated to addressing the needs of women, while only one of the measures in the Economic Recovery Program tries to specifically address the needs of women as an affirmative measure: Measure 10 - Providing financial support for projects and initiatives aimed at improving the position of women in society and economy, in the amount of EUR 2,000,000 and EUR 470,000 to support women-owned businesses - included in the Revised 2020 Budget. The Law on Economic Recovery Package, within the budget for the Credit Guarantee Fund, has provided a special window for covering up to 80% of the collateral for women-owned businesses.

Delays, stalling in payments of government support measures

The emergency health crisis caused by the COVID-19 pandemic has directly affected the labour market in almost all countries of the world. Restriction of movement has caused a drastic decline in business activities on the one hand, while the complete closure of many industries has left many employees without jobs. Unemployment rate in Kosovo was high even before the pandemic, in particular youth unemployment, women's unemployment and unemployment of graduates. Finally, the labour market may not be the same as it was before the pandemic, and the post-pandemic period may be a fresh start and a challenge for Kosovo's fragile economy.

As in many countries of the world, in Kosovo this pandemic and restrictive measures to prevent its spread, have made businesses and citizens, but also institutions, namely the government itself be affected by these developments. Since most businesses, initially for a period of three months, then for a shorter time and with various restrictions, have been almost completely closed, many of the employees have not been able to receive full salaries; some of them even have not received any salary from their employers. Furthermore, payments to citizens and businesses from government assistance packages have not yet been fully realized, and for many employees and businesses was unclear on how to apply and there has been uncertainty as to where to turn for advice or where to go for further complaints of exercising their right, i.e. lack of communication with businesses and transparency by MFLT and TAK. As a result, many business assistance applications have been suspended. According to the Kosovo Gastronomes Association, between one-third and one-half of businesses have remained unsupported: for example, only 33% have benefited from the latest gastronomy sector support measure (50% rent and employees' wages).

In *Table 9* are presented budget and expenditure data for the management and Emergency and Economic Recovery Package for 2020, and for the first half of 2021. In this time period, the government has allocated EUR 393 million for pandemic management and implementation of the Fiscal Emergency Package and Economic Recovery Package. Of these funds, 94% were spent during the same period. Of the total value spent in 2020, 80% were for transfers and subsidies, while this economic category accounted for 74% of the budget spent in the first half of 2021.

Table 9: Budget and expenditures for pandemic management and support packages, for the year 2020 and for the first half of 2021

| <i>Year 2020</i> | Budget | Expenditures | Realization |
|--------------------------------|--------------------|---------------------|--------------------|
| Fiscal Emergency Package | 172,163,254 | 168,037,902 | 98% |
| Economic Recovery Package 2020 | 122,402,469 | 117,509,114 | 96% |
| <i>First half of year 2021</i> | | | |
| Pandemic Management Package | 8,913,539 | 1,191,845 | 13% |
| Economic Recovery Package 2021 | 89,933,157 | 82,401,027 | 92% |
| Total | 393,412,419 | 369,139,888 | 94% |

Source: Ministry of Finance, Labor and Transfers, *Financial Reports*¹⁴⁷

Data by measures, on the number of employees and businesses benefiting from government support measures are shown in *Table 10*. The data show that businesses received support to cover 50% of rent, for the existing and new employees. Employees who have been exposed to risk while working during the pandemic have been supported. Under the Economic Recovery Package 2020, about 40,000 businesses have been compensated with EUR 290 for employees, namely a budget of EUR 59.5 million for a total of 205,231 employees.

Table 10: Beneficiaries of the Fiscal Emergency Package, 2020

| Measure | Number of beneficiaries | Amount in Euro | Description |
|----------------|--------------------------------|-----------------------|--|
| 3a | 137,469 | 49,144,777 | Coverage of monthly salary expenses in the amount of EUR 170 for the months of March and April 2020 |
| 3b | 10,081 | 5,864,717 | 50% rent subsidy for April and May 2020 |
| 6 | 25,508 | 14,787,285 | Additional salaries for health workers, police officers, guards, firefighters, military personnel, labor inspectors, Customs |

¹⁴⁷ <https://mf.rks-gov.net/desk/inc/media/73392B53-4800-4015-911D-5CC17E511EB0.pdf>; [04E85A56-B508-41C1-A6D6-427A0C091EF0.pdf](https://mf.rks-gov.net/desk/inc/media/04E85A56-B508-41C1-A6D6-427A0C091EF0.pdf) (rks-gov.net)

| | | | |
|-----------|---------------|------------------|---|
| | | | inspectors, TAK inspectors, for the months April and May. |
| 7 | 14,776 | 2,561,124 | Additional payment of EUR 100 in salary for employees at grocery stores, bakeries, pharmacies, for the months April and May 2020 |
| 8 | 804 | 322,140 | Payment of monthly assistance of EUR 130 for the citizens who have lost their jobs. |
| 14 | 14,463 | 3,820,821 | Financial support for businesses that register employees with an employment contract of at least one year, in the amount of EUR 130 for the next two months in 2020 |

Source: Ministry of Finance, Labour and Transfers, September 2021

Regarding the complaints of employees and businesses, from the meeting with the representatives of the Ministry of Finance, Labour and Transfers, respectively with the Treasury Department, it was emphasized that there were cases where for technical reasons, such as: discrepancy of personal data with the data of the bank account, providing the bank account on behalf of the natural person for measures that have been applied for legal persons, cases where the applicant for the support measure was a beneficiary of the social schemes, and other social beneficiaries. The Ministry has analysed the complaints and there are cases where the complaint was approved but was not paid in 2021, because the measure was applicable for 2020. This is an issue that is being analysed in the Ministry of Finance, Labour and Transfers, and it has not yet been decided on how to resolve these issues.

Pensions, social benefits and special benefits for people with disabilities during COVID-19

Regarding pension schemes, according to the Decision No. 06/58 of the Government of the Republic of Kosovo, dated 14 January 2021, Measure 16, point 1.16.1 - Support for pension schemes for individuals earning less than EUR 100 per month; and based on the proposal - Decision of the former Ministry of Labour and Social Welfare to approve an additional payment in the amount of EUR 30 for the months January-March 2021, which was completed, and from April 2021 until present time, the amount of benefits in the following schemes are equalized in the amount of EUR 100, the allowances to equalize the amount specified in the schemes are as follows: Basic pension - is EUR 90 + EUR 10 = EUR 100; Family pension - is EUR 90 + EUR 10 = EUR 100; Pension for people with disabilities - is EUR 75 + EUR 25 = EUR 100; Work Disability Pension - is EUR 90 + EUR 10 = EUR 100.

Special measures for persons with disabilities, with the exception of an additional payment of EUR 30, are that they are not required to undergo regular procedures before the Medical Commission for Reassessment, Reporting and Notification.¹⁴⁸

The government legal act for the support network for people with disabilities during the pandemic is the Government Decision no. 06/58, dated 14.1.2021, and Decision no. 17/2021, dated 8.4.2021, as well as the Government Decision no. 01/07, dated 11.3.2020, for the period April, May and June of 2020. In doing so, all special financial measures have been implemented within the pension schemes package.¹⁴⁹

On the other hand, the Legal Office of the Office of the Prime Minister, pursuant to its mandate, regarding the drafting of laws has not received any legal act from the relevant ministries for review and processing for approval by the Government of the Republic of Kosovo regarding support during the COVID-19 pandemic for people with disabilities. Also the Legal Office of the government is not aware of special measures that the government has approved during the COVID-19 pandemic for people with disabilities, and is not aware whether people with disabilities have had any privileges regarding freedom of movement throughout the duration of measures related to restrictions on population movement. Furthermore, to this office it is not known whether special financial measures were taken within the foreseen packages of economic assistance for persons with disabilities, during the COVID-19 pandemic.¹⁵⁰

It can be concluded that the state did not provide any special support to people with disabilities, other than the general support they received from the allocations as for all citizens.

Regarding the assistance provided by the Kosovo NGOs sector, with the assistance of the Municipality of Prishtina, respectively the Department of Social Protection, the Committee of Blind Women of Kosova has distributed fifty hygiene packages and fifty bags of twenty-five kg of flour and this was done twice. Also through Islamic assistance, the Committee of Blind Women of Kosova distributed fifty packages of food and meat for the three Eid al-Adha (Kurban Bajrami) holidays during the pandemic.¹⁵¹ The Charity Humanitarian Association "Bereqeti" also helped with fifty food packages for members of the Committee of Blind Women of Kosova.¹⁵²

The Committee of Blind Women of Kosova during the COVID-19 pandemic, with the assistance of the Assembly of the Republic of Kosovo, the Ministry of Culture, Youth and Sports, Municipality of Prishtina and Kosovo Women's Network, managed to carry out various activities during this period, always respecting protective measures.¹⁵³

During the pandemic, an event was held on the occasion of International White Cane Week (which is celebrated all over the world). The Committee of Blind Women of Kosova managed

¹⁴⁸ The response of the Government of the Republic of Kosovo, dated 9 July 2021, which was sent by the Ministry of Finance, Labour and Transfer to the questionnaire of the Ombudsperson Institution in Kosovo, sent via e-mail on 21.6.2021.

¹⁴⁹ Response of the Legal Office of the Government of the Republic of Kosovo, dated 9 July 2021, to the questionnaire of the Ombudsperson Institution in Kosovo, sent via e-mail on 21.6.2021.

¹⁵⁰ Ibid.

¹⁵¹ The response of the Committee of Blind Women of Kosova, dated 29 June 2021, to the questionnaire of the Ombudsperson Institution in Kosovo, sent via e-mail on 21.6.2021.

¹⁵² Ibid.

¹⁵³ Ibid.

to celebrate 7 and 8 of March, as well as advocated and lobbied to relevant institutions to improve the Law No. 04/L-092 on Blind Persons. On the official website and on Facebook, the Committee of Blind Women of Kosova has made a series of audio recordings, where blind and visually impaired people are informed about the rights they enjoy and where they should go in case they think that their rights have been violated, special attention was paid to informing women about their rights.¹⁵⁴

Also, regarding access to social benefits and services, the blind and visually impaired have not benefited any social services. The Committee of Blind Women of Kosova asked the former Minister of Finance to increase the compensation for the blind and visually impaired persons, but no response was received to the request, despite the repetition of the request. A subsidy was also requested for the employees of this organization.¹⁵⁵

The NGO HANDIKOS also provided protective masks, disinfectant materials, incontinence material and food for the disabled persons. This assistance was provided by the organization through donors.

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

Given the specifics of environmental developments in the country and the impact of environmental degradation on human rights, in particular on the right to life, the following analysis aims to assess how much has the state managed to include the integration of measures for respecting and protection of environment in measures responding to the COVID-19 pandemic.

This part of the report analyses the extent to which, within the current situation, the government has adapted policies for the functioning of environmental protection bodies in an effort to protect the lives and health of officials, in accordance with the rules for protection against COVID-19, in order to respect the main environmental principles (the principle of sustainable development, integration and prevention, environmental impact assessment, strategic environmental assessment, the principle of access to information, public participation in decision-making, access to justice, etc.).

Along with other institutions in the country, the competent bodies for environmental protection are coping with an unknown situation, facing difficult and urgent decisions which included the priority of protecting health and public safety. While the state was focused on protecting and guaranteeing the right to life and the right to health through restrictive measures, the impact on the environment from various activities has continued.

Ministry of Environment, Spatial Planning and Infrastructure (hereinafter MESPI), as the competent institution for drafting and implementing legislation for general management in the field of environment, water, spatial planning and housing and construction, in the period March 2020 - March 2021 faced with a complicated and very uncertain situation. The result of non-

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

inclusion in state policy priorities, insufficient capacity, environment and its protection was not found even in government decisions on protection from pandemic.

The first Commission, which aimed to prevent the spread of the virus, consisting of 22 representatives, did not include any representatives of the authorities dealing with environmental protection, which through expertise could help ensure the legality and proportionality.¹⁵⁶ Also, despite the fragile environmental situation and the impact of the pandemic in this area, government decisions initially ordered all institutions to operate with only essential staff, with the exception of health and security sector staff, not making any effort to find solutions under protective measures for the functioning of the supervising staff of environmental protection bodies.

The Government, despite the lack of functioning of supervisory bodies and inspectorates, through decisions on the conduct of economic activities during the public health emergency, allowed the operation and functioning of major operators with environmental impact, such as: construction, logging, coal mining, ores and quarries, waste related activities, etc.¹⁵⁷ MESPI, despite the continuous requests of the OIK via e-mail, letters and telephone calls, failed to prove that through its decisions it has established balanced policies by which it would exercise its powers in accordance with the Government measures for protection against pandemic.

As a result of changing of governments and in the ministry during the period February 2020 - March 2021, as well as the change of the structure of the ministry, there have been difficulties that have affected the adaptation of the actions of the ministry to the situation. Initially, MESP merged with the Ministry of Infrastructure and was renamed (Ministry of Infrastructure and Environment), from June into the Ministry of Economy (Ministry of Economy and Environment), and in March 2021 into the Ministry of Environment, Spatial Planning and Infrastructure (MESPI), are indicators of the lack of sustainable policies, which would rightly balance the interests in a pandemic situation.

Government decisions on preventing COVID-19 pandemic and their impact on the environment

The Government through the decision of 12 March 2020, with the exception of health sector and security sector staff, reduced public and private activities to essential staff only, did not provide for any measures that would regulate the functioning of supervising bodies dealing with environmental protection. On 15 March 2020, the Government declared a state of public health emergency.

The Ministry of Industry, Entrepreneurship and Trade, through Ordinance No. 01/04, dated 20 March 2020, for the conduct of economic activities during the public health emergency, ordered all economic operators to implement decisions of the Government of the Republic of Kosovo of 13 and 15 March 2020, and allowed manufacturers, processors and builders to carry out their activity without time constraints.

¹⁵⁶The Commission established under the Government Decision no. 01/08, dated 12 March 2020, was composed of 22 representatives, including the Prime Minister, 6 ministries, representatives of independent agencies, Kosovo Security Force, Kosovo Police, inspectorates, etc.

¹⁵⁷MELTIESI Ordinance, no. 01/05, dated 23 March 2020.

Further, the Ministry of Industry, Entrepreneurship and Trade, through Ordinance No. 01/05, dated 23 March 2020, on the conduct of economic activities during the public health emergency, ordered economic operators to implement decisions of the Government of the Republic of Kosovo of 13 and 15 March 2020, to the list of operators allowed to exercise their activity, in addition to manufacturers, processors and builders, added a considerable number of activities with an impact on the environment. According to the NACE list (classification of economic activities), among the allowed activities are: crop and animal production, hunting and related services, forestry and logging, coal and lignite mining, metal ore extraction, ores and other quarries, ore support services activities, waste collection, treatment and disposal activities, waste management and remediation activities, construction of buildings, and specialized construction activities.

Despite the executive discretion to decide, the above-mentioned decisions of the Ministry of Industry, Entrepreneurship and Trade, although aimed at not interrupting the functional economic chain, failed to carefully consider the balance of economic and environmental interests. The executive, through these decisions, has not foreseen the function of supervising mechanisms/inspection through policies and measures taken at the national level to manage the situation created by the pandemic.

Through Decision No. 02/06, dated 17 June 2020, the Government of the Republic of Kosovo obliged all public and private institutions to organize the work with their staff (remotely or online), in order to perform their duties and legal responsibilities, under strict control and in accordance with the measures provided for in the Manual for protection against the spread of COVID-19 virus. However, the ministry, as a competent body for environmental protection, did not issue a decision that would adapt the work of the bodies, in accordance with the needs, which would be at the same time in accordance with the principle of legality and proportionality.

Through Article 8 of the Government Decision No. 02/38, dated 31 May 2020, it was repealed point 9 of the Decision No. 01/09, dated 13 March 2020, under which were reduced essential actions and essential staff for each public institution. Further, it is noted that in Article 6 of the Government Decision No. 01/10, dated 5 July 2020, it was ordered that public and private institutions in the country, without any distinction, reduce the number of employees only to the essential staff and to clarify through circulars what the general staff represents, and that at the request of the Sanitary Inspectorate, all other inspectorates make available their capacities to supervise implementation of measures in accordance with the legislation in force. Despite the obligation arising from the decision in question, the ministry failed to prove that it has made efforts that by a special act, through clarifications, to concretize the way of work of the essential staff, especially of the Inspectorate, as a body of special importance for the supervision of the environment.

The Ministry of Economy and Environment through Decision 02/414, dated 21 February 2021, in addition to reconfirming the Government decision on general and specific measures for protection against pandemics, provided other proportionate measures, which would reflect on environmental protection. The analysis of the above-mentioned government decisions shows that measures taken did not manage to integrate provisions that would respect the responsibility

for environmental protection through policies and measures taken at the national level to manage the situation created by the COVID-19 virus. Even the competent ministry, despite full discretion to act, has failed to prove that it has created an action plan, which would clarify how to function in similar situations.

Laws and bylaws planned and adopted during the pandemic period dealing with environmental issues

The situation created by the pandemic, operation with reduced staff and political changes influenced that out of 13 draft laws planned according to the Legislative Program 2020, which affect environmental issues, only one has been approved. The program included draft laws of special importance for environmental protection, such as: Draft Law on Waters of Kosovo, Draft Law on Air Protection from Pollution, Draft Law on Noise Protection, Amending and Supplementing of Law No. 03/L-233 on Nature Protection, Amending and Supplementing of Law No. 04/L-197 on Chemicals, on Waste, on Integrated Pollution Prevention and Control, on Wastes from the Mineral Extraction Industry, etc.

Consequently, out of 44 bylaws planned with the Legislative Program 2020, only 4 of them have been approved by the ministry.

The non-inclusion in the priorities of the field of environment is also noticed in the Decision of the Government of the Republic of Kosovo No. 04/38, dated 30 October 2020, on amending and supplementing the Legislative Program 2020, which Draft Laws on amending and supplementing the Laws on Waters of Kosovo, Air Protection from Pollution and Waste placed in the group of draft laws whose approval deadline has been postponed.

The impact of COVID-19 pandemic on access to information

The Constitution and the environmental legislation of our country have integrated the principles of the Aarhus Convention (although this convention has not been ratified in our country), such as access to environmental information, public participation in decision-making and access to justice.

The principle of access to information, which guarantees everyone access to public documents, is provided by Article 41 of the Constitution.¹⁵⁸ Also, the obligation of public institutions to guarantee everyone the opportunity to influence decisions related to the environment in which they live, automatically means that the prior information of citizens is guaranteed by the Constitution.¹⁵⁹

The Law No. 03/L-025 on Environmental Protection, in its article 6, paragraph 12, precisely provides: "*Principle of Public Access to Information – guaranteeing all natural and legal persons the right to be informed on environmental state and participation on decision making process.*"

Despite the situation created by the pandemic, restriction of freedom of movement and functioning with the essential staff, it can be noticed that the ministry with competences

¹⁵⁸ Constitution of the Republic of Kosovo, Article 41 [*Right of Access to Public Documents*], "*Every person enjoys the right of access to public documents*"

¹⁵⁹ Ibid, Article 52, paragraph 2, [*Responsibility for the Environment*]

regarding environmental protection has not made sufficient efforts to improve the publication of environmental information on its official website.¹⁶⁰ Furthermore, the merger of the ministry with the Ministry of Infrastructure and Economy, the change of names from the Ministry of Environment and Spatial Planning, to the Ministry of Infrastructure and Environment, and since June to the Ministry of Economy and Environment, and finally to the Ministry of Environment, Spatial Planning and Infrastructure, have resulted in information to being published in various websites, creating difficulty in proactive access.¹⁶¹

Despite the positive impact of a clean environment, and in particular clean air in relation to the health of citizens in the situation created, no additional measures were undertaken by the competent authorities to improve public awareness regarding the state of the environment.

Lack of transparency and difficulty in accessing information of the ministry can also be noticed in relation to the OIK. The ministry's responses to the Ombudsperson are generally superficial, unsubstantiated and insufficient, despite the constitutional and legal obligation to respond to the Ombudsperson's requests.

The impact of COVID-19 pandemic on citizens' participation in decision-making

The situation created by the COVID-19 pandemic particularly affected the public's right to decision-making. The government, as well as the operators, were faced with a situation followed by uncertainty between the obligations of social distancing and obligation to ensure effective and inclusive participation, despite the needs arising as a result of the pandemic, which would include interests, needs and expertise. Although according to the ministry: *"Hybrid rules have been adapted containing the recommendations of NIPH and the Ministry of Health and the operator organized meetings at the location near the project site (with physical presence) and the responsible staff of MESPI followed the meeting through a virtual platform providing suggestions and recommendations"*,¹⁶² the same has not managed to prove formalization of the form of organization of public debates through legal acts in accordance with the pandemic measures.

Regarding the uncertainties in the organization of public debates in the process of operationalization of hydropower plants in the country, the Ombudsperson, in the Report No. 365/2018¹⁶³ with *ex-officio* recommendations considered that the organization of public hearings, as the only guarantee of adherence to the right to public participation in decision-making and the only step through which citizens are able to be informed regarding the decisions of institutions that affect the environment where they live or work in and their own rights, has been followed with much ambiguity by the competent bodies. Therefore, the Ombudsperson

¹⁶⁰ Assembly of the Republic of Kosovo, Law no. 03/L-215 on Access to Public Documents, Article 5.

¹⁶¹ Ibid, Article 4 "Basic principles of the right of access to public documents, 2. *Access to public documents is done through proactive publication by public institutions of public documents and through the request of the person for access to public documents.*"

¹⁶² Information received from MESP, Department of Environmental and Water Protection, based on the question submitted by the Ombudsperson, on 25 August 2020.

¹⁶³ Ombudsperson Institution in Kosovo, Report with recommendations Ex-officio 365/2018 against the Ministry of Economy and Environment regarding the issue of legality of procedures related to hydropower plants in the country and access to documents related to hydropower plants, February 2021, (link : <https://oik-rks.org/2021/02/03/raport-me-rekomandime-ex-officio-3652018-kunder-ministrise-se-ekonomise-dhe-ambientit-lidhur-me-ceshtjen-e-ligjshmerise-the-procedures-that-have-to-do-with-hydropower-plants-on-site-and-access-to-document/>)

reiterates the importance of respecting the right of public participation in decision-making on environmental issues.

The impact of COVID-19 pandemic on access to justice for environmental matters

The situation with the pandemic questioned the observance of the principle of access to justice in relation to environmental matters, despite the guarantee given: *“Every natural and legal person has the right to a fair trial within a reasonable timeframe”*; and the right granted to: *“To use legal remedies against judicial and administrative decisions which violate his/her rights or interests in the manner prescribed by law”*¹⁶⁴. This is due to the fact that according to the decisions of the Kosovo Judicial Council (KJC)¹⁶⁵ and Kosovo Prosecutorial Council (KPC)¹⁶⁶ the vast majority of court activities, which included the presence of the public, were temporarily restricted, and public access to court rooms was also restricted to only activities of an urgent nature. This situation further deepened the challenge of observance of the right [Right to a Fair and Impartial Trial] to realize the rights related to environmental issues.¹⁶⁷ The situation also resulted in statute of limitations, dismissal¹⁶⁸ and procrastination of environmental-related case files.

Inspection supervision

The Ministry of Environment, despite the discretion to act, has not shown any interest in drafting an action plan on the manner of how the inspectorate will function during the pandemic. The Inspectorate in question has continued to operate without a concrete action plan, without any special coordination and with a reduced number of staff and rotation, regardless of the situation and needs on the ground. In this regard, no additional protection measures have been provided for the work of inspectors. Apart from disinfectants, masks and gloves, protective uniforms have not provided for the Inspectorate.

While in previous years an inspector has conducted an average of 80-110 inspections with the respective minutes, in 2020 an average of about 20-30 inspections have been conducted. All these have had a sufficient impact in the Inspectorate failing to fulfil its legal obligations as well as the implementation of the work plan for the implementation of inspections for the supervision of all laws in the field of environment, water, nature, construction and spatial planning. Reactions have been largely based on complaints.¹⁶⁹

Although the listed facts are sufficient indicators to prove the failure of the state to observe its responsibility for environmental protection, the lack of organized data of the body in question

¹⁶⁴ Assembly of the Republic of Kosovo, Law no. 06/L - 054 on Courts, in Article 7, paragraph 2.

¹⁶⁵ Decision no. KJC 52/2020, dated 12 March 2020: "Most judicial activities involving the presence of the public have been temporarily restricted, and public access to court premises has also been restricted." KJC Decision 53/20204, dated 15 March 2020: "Ordered a significant reduction in the activities of the KJC and the courts, and limited the work of the courts exclusively to activities of an urgent nature."

¹⁶⁶ Decision No./2020 of the KPC, dated 14 March 2020: "Approved a decision to significantly reduce the activities of this body and those of the State Prosecutor's Office."

¹⁶⁷ Ombudsperson's Report 2020.

¹⁶⁸ A. 198/2015, Criminal report PPN 154/2015, dismissed by the Basic Prosecution in Prishtina on 17 June 2020. The case was initiated on 10 March 2015, filed a criminal report against the Ministry of Environment and Spatial Planning, for violation of procedures in issuing integrated environmental permit.

Request e K.nr. 48/1 of the Environmental Inspectorate of MESP for the initiation of misdemeanour proceedings, initiated against SharCem.

¹⁶⁹ Information received from the Environmental Inspectorate, MESP, on September 8, 2021.

makes the assessment of the situation even more difficult. The Central Inspectorate failed to provide timely information on the number of inspections, the number of complaints or the number of cases.

Operation of mines

Arbitrary impact on the environment by quarries, by not even sparing the cultural heritage¹⁷⁰, has continued during the period March 2020 - March 2021. Among few activities whose activity was not interrupted during the period of public health emergency were the activities of coal and lignite mining, extraction of metal ore, ores and quarries. Although the MEETIESI Ordinance No. 01/05, dated 23 March 2020, for the conduct of economic activities during the public health emergency, according to the NACE list, also allowed the activities of coal and lignite mining, extraction of metal ore, ores and other quarries and activities of ores support services, it did not provide for preventive, supervisory or inspection measures.

From March 2020, the work of the Independent Commission for Mines and Minerals (ICMM), a competent body for the regulation of mining activities in Kosovo, at the beginning of the pandemic was developed with essential staff.¹⁷¹ The ICMM, except for disinfectants, masks and gloves, did not provide protective uniforms for the Inspectorate. It has not drafted an action plan for the development of activities under measures against the pandemic and still continues to lack.

Although the ICMM, within the reporting period, acted in accordance with Government measures and operated with essential staff only,¹⁷² it managed to accomplish 307 inspections, marked an increase in identification of illegal enterprises for the extraction of mineral resources, in initiating criminal proceedings, issuing exploitation licenses, in regular inspections, in orders for prohibition of activity, etc. At the same time, there was a decrease in general inspections, inspections of legal operators, administrative case proceedings, issuance of research licenses and permits for specific activities, identification of violations of the exploitation project, prohibition of bank guarantees for enterprises that have not performed re-cultivation. In 2020, according to the ICMM, there were no cases of non-compliance with the legal infrastructure in relation to the distance of 500 m, and also there were no cases of seizure of coal trucks, while in 2019, 13 trucks have been seized.

The impact of the COVID-19 pandemic on waste management

During 2020, in 8 plants for sterilization of hospital waste, the amount of hospital waste sterilized was 185488.86 kg more than the previous year.¹⁷³ The waste was then transferred to the municipal waste, and the same amount was disposed of in sanitary warehouses. While, 110,680.18 kg of pathological waste and expired drugs, as well as about 32,000 packages with capsules and liquid contents have undergone the disposal process.¹⁷⁴

¹⁷⁰Preportr, "The erosion of cultural heritage", 13 September 2021,(link: http://preportr.cohu.org/sq/hulumtime/Gerryerja-e-trashegimise-kulturore-346?fbclid=IwAR1eqwohKqea-2PsMEZgudFaFRoSRZ88_6_QeOVGow4_caMxqeqGhdDUMhbja).

¹⁷¹ Information Received by ICMM, September 1, 2021.

¹⁷² There, in the period March-June 2020, only 6 inspectors out of 21 worked.

¹⁷³ For 2019, 790245.95 kg of hospital waste were sterilized, while in 2020 they are 975734.81 kg.

¹⁷⁴Information received from MESP, Department of Environmental and Water Protection, based on the question posed by the Ombudsperson on 25 August 2021.

This issue becomes more serious by the fact that the import of medical products will increase in 2020, especially that of disposable protective materials. The number of gloves imported in 2020 was 424,548.18 kg, or 40% higher compared to the previous year; masks 121.868.02 kg, higher by 14138% compared to the previous year; uniforms 58,632.25 kg, higher by 109%. It should be stated here that the amount of alcohol imports has marked an increase by 300%, or 303.803.50 kg; and medications by 4,567,559.76.¹⁷⁵

Despite the negative impact of the generation of large quantities of medical waste on the environment, it is noted that the immediate increase in the amount of hospital waste in the COVID-19 situation did not receive the attention of the competent authorities, as no control was exercised in the treatment of such waste, resulting from the fact that the Environmental Inspectorate, within the MESP, failed to provide answers to questions related to the inspection of landfills,¹⁷⁶ which would document the exercise of their powers in this area, and also the Health Inspectorate within the Ministry called itself incompetent in this matter. While according to the information received from the Sanitary Inspectorate of the Food and Veterinary Agency¹⁷⁷, this body, due to overload, has not managed to oversee the implementation of legal obligations arising from the Law No. 2003/22 on the Sanitary Inspectorate of Kosovo.¹⁷⁸

From the case analysis it results that the ministry, despite the risk that these wastes pose on the environment, failed to perform their preventive and supervisory roles in this regard, in order to fulfil their obligations.

The impact of the COVID-19 pandemic on air quality

Measures taken by the Government in response to the COVID-19 pandemic have resulted in a decline of road traffic, as well as the dynamics of some economic activities, which have been constant factors of air pollution. The data show a reduction in pollution by up to 50% at the national level, compared to the same period last year¹⁷⁹, especially with pollution caused by road transport. According to the data of the Hydrometeorological Institute of Kosovo, it is noticed a decrease in the concentrations of some air pollutants, in particular the concentrations of nitrogen dioxide (NO₂) and dust particles PM_{2.5}.¹⁸⁰

The period autumn-winter 2020-2021 resulted in higher pollution compared to other periods of the year. During this period the highest parameters of dust particles in the air were recorded with PM₁₀/PM_{2.5}, as well as SO₂ and NO_x discharges above the limits by the Kosova A and B power plants.¹⁸¹

¹⁷⁵ Information received from Kosovo Customs, dated 23 August 2021.

¹⁷⁶ Request of the Ombudsperson addressed to MESP, dated 5 August 2021.

¹⁷⁷ Information received from the Head of the Sanitary Sector at the Food and Veterinary Agency, dated 18 August 2021.

¹⁷⁸ The FVA is a specialized executive body, which controls the implementation of sanitary laws and bylaws in the state, public and private sectors, various activities exercised by natural and legal persons, in health facilities, and performs the sanitary supervision of hospital centers and of university clinical centers.

¹⁷⁹ Republic of Kosovo, Kosovo Environmental Protection Agency, "Pandemic and air quality in Kosovo", (link: <https://www.ammk-rks.net/?page=1,7,550>)

¹⁸⁰ Ibid.

¹⁸¹ Ministry of Environment, Spatial Planning and Infrastructure, KEPA, Annual Report on Air Condition 2020

Regarding energy sector, the country was ranked among the six countries of the Western Balkans¹⁸², which in 2020 increased emissions, instead of reducing them. In terms of dust, the absolute highest emitter in the region in 2020 was Kosova B, emitting 6.6 times more dust than permitted. Also, Kosovo is ranked among the countries that have exceeded the emission of nitrogen oxides by twice as much; SO₂ emissions were 1.8 times above the national ceiling in 2020, while the violation of the NO_x ceiling was 1.65 times more than permitted. Although the report shows that Kosova A lacks continuous monitoring equipment and Kosova B monitoring equipment is never functional¹⁸³, MESPI did not clarify whether they reported to operators regarding air emissions on a monthly basis during 2020.¹⁸⁴

Air monitoring, as is provided for by the Law on Air Protection from Pollution¹⁸⁵, is covered throughout the year, including the period March-June 2020.¹⁸⁶ The Environmental Inspectorate did not provide evidence of fulfilment of its legal obligations for inspection supervision.¹⁸⁷ MESPI did not provide information whether during 2020 it has overseen the implementation of the Law on Air Protection from Pollution, how many complaints have been received in terms of air pollution and how many inspections have been conducted.

The impact of COVID-19 pandemic on waters

The issue with waters persisted during the reporting period. The MEETIESI Ordinance No. 01/07, dated 23 March 2020, which prohibited construction activity in water projects, including the construction of waterways, ports, river works, construction of dams, diversions of watercourses, and construction of others that have a direct impact on water and natural resources and river basins, was repealed without a formal decision by the Minister of MEETIESI on 26 June 2020.¹⁸⁸

With the exception of March - June 2020, due to quarantine and failure to find suitable forms for the operation of KHMI staff, there was no continuous oversight of the KHMI water monitoring process. There is no data whether the Environmental Inspectorate of MESPI has supervised the implementation of the Law on Waters of Kosovo during 2020, how many complaints have been received regarding the issue of hydropower plants and how many inspections have been carried out in 2020.

Conclusion

The Ombudsperson, based on the analysis of Government decisions, actions taken by the competent bodies in the country and the situation on the ground, notes that the non-involvement of environmental experts within the Government working groups, who would monitor and

¹⁸² Balkanwatch Network for Central and Eastern Europe, "How do coal-fired power plants in the Western Balkans violate air pollution laws and cause death, and what should governments do about them?", September 2021, (link:<https://www.balkangreenfoundation.org/uploads/files/2021/September/07/AI-PERMBAJU-OSE-MBYLL1631004379.pdf>).

¹⁸³ Ibid, p. 25

¹⁸⁴ Request of the Ombudsperson addressed to MESPI, dated 5 August 2020.

¹⁸⁵ Assembly of the Republic of Kosovo, Law no. 03/L-160 on Air Protection from Pollution: 1. Air quality monitoring is done by the Ministry, which ensures permanent monitoring of air quality and the impact on the environment and the health of the population.

¹⁸⁶ Information received from the Hydrometeorological Institute of Kosovo, on August 25, 2021.

¹⁸⁷ Assembly of the Republic of Kosovo, Law no. 03/L-160 on Air Protection from Pollution

¹⁸⁸ Kosova Press, "Kuçi: There was no decision by any government to stop hydropower plants", September 2020, (link:<https://kosovapress.com/kuci-nuk-ka-pasur-vendim-nga-asnje-qeveri-per-ndaljen-e-hidrocentraleve/>).

advise on compliance with restrictive measures, as feedback to the pandemic with environmental law, has failed to guarantee observance of the principle of legality and proportionality. The lack of environmental expertise has been reflected in the Government's insufficient success to take proportionate measures, which would rightly balance the forms of health protection with the least impact on the environment.

Lack of concrete plans which would contain clear instructions for operation under the conditions of the pandemic, non-engagement of mechanisms in accordance with the instructions of the NIPHK to organize the work of supervisory bodies, as well as lack of evidence that inspectorates and other supervisory bodies have been provided with additional protective equipment to operate on the ground, indicates a lack of commitment to bring this department under control.

Also, in this regard, it is worth mentioning the lack of mechanisms for the assessment of emergency measures, as a guarantee against abuse,¹⁸⁹ which would ensure that the proposed measures would resolve, improve or at least not exacerbate the issues raised and their impact on the environment.

Lack of information for exercising control over the implementation of laws on environmental issues and control by inspectors in the treatment of waste and other health waste is a concern and in the future the public should be informed regarding these issues.

X. Domestic violence during the COVID-19 pandemic in Kosovo

With the undertaking of measures for the prevention of COVID-19, the cases of domestic violence marked an increase. These measures have rendered institutional work in preventing, treating and caring for vulnerable groups, such as victims of domestic violence more difficult. In this regard, the Ombudsperson Institution in Kosovo (OIK) plays an important role in monitoring the actions of the state in protecting victims of domestic violence during the period of the pandemic.

According to the information provided by the Police, it turns out that cases of domestic violence during the pandemic have marked an increase. It is clear that in 2020 there was an increase in the number of cases of domestic violence compared to 2019. During 2019, according to information, there were 1915 registered cases, while in 2020, 2069 cases of domestic violence were registered with the Police. Whereas, until May 2021, 897 cases of domestic violence were registered with the Kosovo Police. These statistics indicate that during 2020, in the pandemic, 154 cases of domestic violence were reported more than in 2019.

Regarding domestic violence, the Ombudsperson addressed questions to the Ministry of Justice, respectively the Office of the National Coordinator for the Prevention of Domestic Violence within this Ministry. The National Coordinator, Nita Shala, stated that in 2020, when the Covid-19 pandemic officially hit Kosovo, the Ministry of Justice did not have a National Strategy for the Prevention of Domestic Violence (since it had expired), as a very important document which aims for the responsible parties to treat all cases of domestic violence with

¹⁸⁹Civil Rights Defenders, Covid-19 and the Impact on Human Rights, Guarantees Against Abuse, p. 159

priority, to provide access to quality integrated services, to guarantee justice and responsibility for victims, to ensure rehabilitation and reintegration of victims/survivors of domestic violence and raise the awareness of our entire society. However, according to the coordinator, the Ministry of Justice is preparing such a document.

From the answers of the Ministry, it can be noted that the institution in question does not have a special program for domestic violence; however, for the activities of the Office of the National Coordinator, the Ministry usually allocates funds from the sub-programs of the Ministry of Justice, whereby the same has done this, where during 2020, for the domestic violence campaign, it has provided support to UN Women and Eulex.

Otherwise, similar to the Police, the data provided by the Ministry of Justice indicate an increase in cases of domestic violence. The statistics for the phenomenon in question, for the years 2019, 2020 and 2021, are listed as follows in tabular form:

| Cases of domestic violence | |
|-----------------------------------|----------------------|
| Month | January-October 2021 |
| January | 169 |
| February | 148 |
| March | 169 |
| April | 206 |
| May | 206 |
| June | 209 |
| July | 243 |
| August | 261 |
| September | 190 |
| October | 173 |
| Total | 1974 |

| No. of victims by LGBTI category | |
|---|---|
| 2019 | 0 |
| 2020 | 3 |
| 2021 | 2 |

| No. of victims by age / Minors | |
|--------------------------------|-----|
| 2019 | 26 |
| 2020 | 121 |
| 2021 | 185 |

| Protection Orders in the Police | Regular Protection Orders in Court |
|---------------------------------|------------------------------------|
| 2021 12 | 292 |

This table is generated from the database for recording cases of domestic violence.

The Ombudsperson Institution, regarding domestic violence has also contacted the Women's Welfare Centres (WWC), where he has received information regarding women sheltered in these centres during the pandemic, as follows:

In the municipality of Peja, from 1 March 2020 to 25 June 2021, in WWC in Peja 98 women and children were sheltered, while from January 2019 to December 2019, the shelter has received and sheltered 94 women and children. The number of cases of violence has increased especially during the months of March-May 2020, where the movement of the population was limited, while the staff of the shelter worked 24 hours without interruption. Also, the financial difficulties during the COVID-19 pandemic were numerous. Contracts with the Ministry of Labour and Social Welfare (MLSW) were not signed for one year but for eight (8) or nine (9) months. During 2021 WWC has signed a contract with MLSW for financing the shelter which has a duration until 15 January 2022. Financial insecurity affects the provision of services and the psychological state of women and children as victims of domestic violence.

Another challenge was the lack of regular coordination of the shelter with other institutions such as the CSW, the Victim Advocate and the courts, due to the reduced working hours during the pandemic.

In the Municipality of Prizren, according to data from WWC in Prizren, in 2020 a total of 53 victims of domestic violence were sheltered, while compared to 2019, when a total of 37 cases were sheltered, we can see that during the pandemic there was an increase in the number of victims sheltered in this centre.

In the Municipality of Prishtina, according to data from the Centre for the Protection of Women and Children (CPWC) in Prishtina, it appears that this centre was under renovation, while services for victims were provided in an inadequate facility for sheltering. According to them, since the beginning of the pandemic, 122 cases have been sheltered in the CPWC in Prishtina, while 22 cases have requested psychological and social counselling through telephones and social networks. While during 2019, 114 cases were sheltered in the shelter of Prishtina.

According to the Centre for Social Work in Prishtina, the number of cases of domestic violence handled in the CSW in Prishtina was as follows: 2019 - a total of 104 cases, 99 women and 5 men, 183 child victims or witnesses of domestic violence; 2020 - a total of 166 cases, 143

women, 23 men, 226 child victims or witnesses of domestic violence; 2021 - January – May, a total of 69 cases, 66 women and 3 men, 103 child victims or witnesses of domestic violence.

In the Municipality of Ferizaj, according to the data of the Centre for the Protection of Women and Children (CPWC) in Ferizaj, it turns out that in this centre the number of cases of domestic violence handled during 2019 is 47, 20 adult women, 27 child victims or witnesses of domestic violence, while from 1 January 2020 to June 2021, 62 cases were sheltered; of these 25 adult females and 37 children.

In the Municipality of South Mitrovica, according to data, in 2019 there were 26 cases of victims of domestic violence sheltered in the shelter of Mitrovica, while in 2020 there were 48 cases.

During this reporting period, the Ombudsperson during 2020 received twelve (12) cases, while in 2021 twenty-one (21) cases related to domestic violence. Some of the received cases were requests for monitoring of cases in the Basic Courts, based on which the representatives of the Ombudsperson monitored the court proceedings for victims of domestic violence.

During 2020, the Ombudsperson, in accordance with its constitutional and legal mandate, has published the legal opinion A.No. 385/2020 in the capacity of *amicus curiae*, addressed to the Basic Court in Prishtina, with which it has ascertained violations of fundamental human rights and freedoms and the failure of the Kosovo Police in positive legal obligations to protect the complainant from the perpetrator of domestic violence.

During 2021, the Ombudsperson has received twenty-one (21) cases related to domestic violence. Also, in this reporting period, some cases have been requests for monitoring court proceedings in the Basic Courts in Kosovo, which have been carried out by the representatives of the Ombudsperson.

During this reporting period, the Ombudsperson has published the Ex-officio Report No. 150/2021, regarding the positive obligations of the state regarding the right to life and protection from domestic violence. In this report, the Ombudsperson found that there was a lack of coordination of actions between the authorities, which raises the need to improve the quality and security of services for cases of domestic violence and to strengthen the control mechanisms of each institution, from the moment the domestic violence case is presented until its end. The Ombudsperson issued concrete recommendations to the relevant authorities regarding the improvement of the situation from the perspective of human rights, for the purpose of building a system in accordance with the principles of the rule of law.

Victims Advocacy and Assistance Office (VAPO)

According to the Victims Advocacy and Assistance Office (VAPO), the staff worked with reduced and only essential staff carried out work; however, victims of domestic violence were treated with priority, and no victim who sought help didn't remain unrepresented although the number of cases of domestic violence was increasing from 1353 in 2019 to 1524 in 2020.

From this situation, the Ombudsperson estimates that the implementation of the legal framework in force, as a basis for protection from domestic violence, would be a guarantee that the state would provide effective protection to victims of domestic violence during the COVID-

19 pandemic. Concrete actions that would be taken by the responsible institutions in the protection of victims of domestic violence, would directly result in observance of the protection order issued by the court against perpetrators of domestic violence, in preventing further acts of violence, and in preventing fatal outcomes in domestic violence cases.

The Ombudsperson, based on the findings presented and the facts gathered, as well as the analysis of relevant laws, which determine the right to provide services to victims of domestic violence during the COVID-19 pandemic in Kosovo, states that there were violations of fundamental human rights and freedoms. Relevant authorities have not fulfilled their constitutional and legal obligations towards citizens and this had direct negative implications for victims of domestic violence.

The Ombudsperson ascertains that among the main challenges during the pandemic period March-September 2020, were the increase of the number of cases of domestic violence, infection of the staff, lack of financial management for domestic violence cases, small number of staff, isolation during the pandemic which has prevented the movement and presentation of cases of domestic violence during the COVID-19 pandemic, and the lack of cooperation between institutions operating during the presentation of cases of domestic violence by victims.

XI. Freedom of gathering, freedom of belief, conscience and religion, as well as restrictions on these rights during the COVID-19 pandemic in Kosovo

Freedom of assembly

As freedom of gathering is one of the fundamental rights of a democratic society, as such, this right is clearly defined in international human rights instruments, which are directly applicable in Kosovo according to the Constitution.¹⁹⁰ The Universal Declaration of Human Rights states: *"Everyone has the right to freedom of peaceful assembly and association."*¹⁹¹ The International Covenant on Civil and Political Rights also recognizes the right to peaceful assembly and the restriction of this right by law, as far as is necessary in a democratic society and in cases in the interest of national security, peace and public order, or to protect public health or morals, or the rights and freedoms of others¹⁹².

The European Convention on Human Rights, in Article 11, stipulates: *"Everyone has the right to freedom of peaceful assembly [...], the exercise of these rights may not be subject to any restrictions other than those provided by law and that are necessary in a democratic society [...]."* The organization and participation in rallies, protests and other events, as defined in Article 11 of the Convention, is closely linked to Article 10 - Freedom of expression, where the purpose of exercising freedom of assembly is the expression of opinions, of public debates and protests.

The European Court of Human Rights has given importance to the fact that those who participate in rallies, not only seek to express their opinion, but to express this opinion together

¹⁹⁰ Constitution of the Republic of Kosovo, Article 22.

¹⁹¹ UN, Universal Declaration of Human Rights, Article 20, paragraph 1.

¹⁹² UN, International Covenant on Civil and Political Rights, Article 2.

with others. This includes the expression of political, philosophical or religious opinions. Thus, freedom of assembly and association is closely linked to Article 9 of the ECHR (Freedom of Thought, Conscience and Religion).

However, similar to the International Covenant on Civil and Political Rights, the ECHR allows restrictions to be imposed on this right in order to protect public health, but these restrictions must be defined by law, have a legitimate purpose and be proportionally¹⁹³. Therefore, the restrictions imposed must be in line with the danger, on one hand, and on the other, these restrictions were applied during the COVID-19 pandemic period. The imposition of restrictive measures is of course necessary in a democratic society; however, the authorities must prove that there was no other way. The imposition of sanctions in case of violation of the imposed restrictions must be proportionate to the violation.

Following the declaration of a state of emergency, some member states of the Council of Europe exercised their right under Article 15 of the ECHR by submitting to the Secretariat of the Council the waiver of part of their rights under the Convention, including freedom of assembly. However, this waiver does not mean that the state should avoid the responsibility of respecting these rights as a whole.

The Law on Public Gatherings regulates the right to public gatherings, protests and manifestations as well as the manner of announcing them, the organization, the rights and responsibilities of the organizers.¹⁹⁴ One of the aspects of regulating public gatherings provided by law is the restriction and prohibition of such gatherings: *“When they endanger order, peace and public security, with regard to freedom and rights of other people, morals and public health.”*¹⁹⁵

According to the Law on Public Gatherings, public gatherings must be announced by the organizer, respecting the conditions and deadline provided by the police. The burden of responsibility for participating and maintaining order falls on the organizer. The announcement is made 72 prior to the rally, while the police is obliged to notify the organizer within 48 hours whether or not the public rally is allowed. If within this time the police do not announce a decision to stop, the rally is considered allowed. To allow a rally, information must be provided regarding the purpose for which it will be held, the time, place and day of the rally; data on the organizer, number of participants; number of guardians etc.

Based on Operational Order: *“For readiness and response to COVID-19”*,¹⁹⁶ Kosovo Police (KP) has started coordinating, planning and implementing in the field the police duties, according to the Law on Prevention and Combating Pandemic COVID-19¹⁹⁷, according to the decisions of the Government as well as according to the decisions and recommendations of the Ministry of Health and NIPHK. The Law on Prevention and Combating COVID-19 Pandemic

¹⁹³ European Convention on Human Rights, Article 11 (2).

¹⁹⁴ Assembly of the Republic of Kosovo, Law no.03 / L-118 on Political Gatherings, Article 2.

¹⁹⁵ Ibid., article 4.

¹⁹⁶ General Directorate of Police, "Standard Operating Procedures", approved on 01.10. 2020, Ref: DDO-04-023 / 2020

¹⁹⁷ The Assembly of the Republic of Kosovo approved Law no. 07 / L-006 on Prevention and Fight against Pandemic COVID-19, dated 25 August 2020. This law defines the responsibilities and role of public, private and public-private health institutions in taking measures to prevent, control, treat, monitor, ensure of funding and sharing of responsibilities during the COVID-19 pandemic.

has provided that the restriction of freedom of assembly must be pursued with abundant and detailed reasoning. These reasons must prove that there is a direct link between the restriction, on the one hand, and the measures taken to combat and prevent the spread of COVID-19, on the other hand.¹⁹⁸ However, even after the measures were imposed and the gathering of more than two persons was prohibited, according to the information provided by the KP, 155 requests for allowing the rally to be held were submitted to the police, of which, 151 requests were approved.

According to the Law on Public Gatherings, the police must be engaged in monitoring public gatherings, in order to maintain public order and safety, as well as to take all measures in case the public gathering threatens to disrupt or destroy the common good. According to statistics provided by the KP, 253 rallies/organizations were monitored by the KP, of which, 4 were political rallies, and all cases where the election rules were not followed were reported to the relevant institutions. According to statistics provided by the KP for the period of restrictions, 71 public rallies, 180 protests and 10 marches were held.

This law also provides for other types of gatherings which can be held without notice, such as: gatherings held in closed premises or in premises provided for similar purposes, such as: tables, meetings, etc.; rallies held in stadiums, theatres, cinemas, etc. and which do not require additional security measures. Public gatherings can be held at any convenient location. 110 such rallies/ events, meaning those without submitting a request to the KP were held.

The police have the right to refuse the holding of the rally under the conditions prescribed by law, 24 hours before the rally. In situations when there is an urgent need to hold a rally, without respecting the deadline of 72 hours, written notice must be made three hours prior to the gathering, explaining the reason for the urgency and of course containing other information, envisaged by this law.¹⁹⁹

*"Gatherings such as: religious, weddings, funerals and other similar gatherings require no notice ", provided in paragraph 1 of Article 20 of the Law on Gatherings, but an exception to paragraph 1, when these rallies "require additional security measures outside of normal engagement by the police", then the notification "must be made not later than 12 hours prior to the gathering. "*²⁰⁰

The law also provides for punitive measures in situations when gathering are not announced in accordance with the law, when they are held, despite being prohibited by the police, etc.²⁰¹

Freedom of belief, conscience and religion

Restrictive measures and the prohibition of gathering have also affected the freedom to practice religion. Freedom of belief, conscience and religion is provided in Article 38 of the Constitution, which stipulates:

- *"Freedom of religion, conscience and religion is guaranteed.*

¹⁹⁸Assembly of the Republic of Kosovo, Law no. 07 / L-006 on Prevention and Combating Pandemic Covid-19 in the Territory of the Republic of Kosovo, Article 4 (1.5).

¹⁹⁹Assembly of the Republic of Kosovo, Law no. 03 / L-118 on Public Assemblies, Article 6, paragraph 4.

²⁰⁰ Ibid., article 20.

²⁰¹ Ibid., article 21.

- *Freedom of belief, conscience and religion includes the right to accept and manifest religion, the right to express personal beliefs and the right to accept or refuse membership in a religious community or group.*
- *No one shall be required to practice or be prevented from practicing religion nor shall anyone be required to make his/her opinions and beliefs public.*
- *Freedom of manifesting religion, beliefs and conscience may be limited by law if it is necessary to protect public safety and order or the health or rights of other persons."*

The Law on Religious Freedom further elaborates: *"Everyone has the right to freedom of thought, conscience and religion. This right includes the freedom to have, not to have, to retain or to change one's religion or belief and the freedom, either alone or in community with others, in public or in private, to manifest one's religion or belief, in worship, teaching, practice and observance."*²⁰²

Although the Law stipulates that no one should be discriminated in any way or prevented from performing religious rituals and ceremonies; however, the situation in which Kosovo and the whole world found themselves, after the outbreak of the COVID-19 pandemic, limited the exercise of this right. Based on the decisions of the Government, which in certain periods, based on the situation and in order to preserve general health, this right was limited and prohibited in certain periods.

On 23 March 2020, the Ministry of Health issued a decision banning the movement of citizens and vehicles for a certain period, as well as banning the movement of more than two people on the road.²⁰³

Freedoms and rights of religious communities that are guaranteed by the Constitution of the Republic of Kosovo²⁰⁴, independently regulate their internal organization, religious activity and rituals. Attempts have been made several times to draft the Law on Religious Freedoms, which could resolve the issue of the legal position of religious communities in an institutional manner. The issuance of this law would contribute to the respect of religious freedoms, religion and conscience, which are guaranteed by the Constitution of the Republic of Kosovo and the European Convention on Human Rights (ECHR)²⁰⁵, would regulate the manner of registration of religious communities as well as the obligation to observe human rights and the constitutional order.

²⁰² Assembly of the Republic of Kosovo, Law No. 02 / L-31 on Religious Freedom in Kosovo, Article 1 (1).

²⁰³ Government of the Republic of Kosovo, Decision no. 01/15, dated 23.03.2020.

²⁰⁴ Constitution of the Republic of Kosovo, Article 39, [Religious Communities]: „1. The Republic of Kosovo ensures and protects the autonomy of all religious communities and monuments within its territory. 2. Religious communities are free to independently regulate their internal organization, religious activity and religious rituals. 3. Religious communities have the right to establish religious schools and humanitarian organizations, in accordance with this Constitution and law. "

²⁰⁵ ECHR, Article 9, [Freedom of Thought, Conscience and Religion]: "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, alone or in community with others to express his or her religion or beliefs through prayer, preaching, practice, and obedience. 2 Freedom to preach religion or belief may be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, the protection of public order, health and morals, or the protection of the rights and freedoms of others. "

In the Republic of Kosovo, although there are no official statistics regarding the religious affiliation of the population, it is considered that the majority of the population is Muslim, with about 90%, while 6% is considered to be Orthodox, 3% Catholic and 1% other religions²⁰⁶.

According to the Presidency of the Islamic Community of Kosovo²⁰⁷, restrictive measures by the Government are welcomed and considered reasonable in terms of preserving public health. The imposed measures have influenced the performance of religious rites, as due to the ban on gathering, mosques have been closed and believers have been deprived of the opportunity to pray in mosques. Restrictions have also resulted in bans on manifestations for Eid, Mawlid, Mirage and the like. As the situation created has been challenging for the entire globe, Muslim believers of all countries have been deprived of the right to go to Hajj. The teaching of faith in mosques and other institutions of the Islamic Community, as well as in public schools, has not been carried out. Restrictions imposed by the Government have mostly hampered the material base of the Islamic Community of Kosovo, as they have not had the opportunity to conduct regular traditional activities.

The response of the Catholic Church states that they have respected all the decisions of the Government and have not had any problems²⁰⁸; and the Serbian Orthodox Church²⁰⁹, Protestant Evangelical Church²¹⁰ and the Jewish Community²¹¹ have not answered our question regarding the extent and the manner of the effects of the pandemic during the time of general limitations.

Lack of legal infrastructure has hampered the work of the KP in performing its duties and imposing penalties, lack of training on the epidemiological/pandemic environment, lack of protective equipment for police officers who have been engaged in overseeing funeral ceremonies and escorting of corpses, have represented a challenge for the KP. Lack of integrated database system of agencies responsible for joint operations management.

During the situation when the conditions for holding gatherings were not respected, the KP issued 107 summonses, according to the Law on Preventing and Combating the COVID-19 Pandemic.

General findings of the Ombudsperson

Based on the above, the Ombudsperson considers that the restriction of human rights and freedoms to gather/organize was necessary, proportionate and based on local and international laws as well as the recommendations arising from the Law on Preventing and Combating the COVID-19 Pandemic; Government Decisions, Decisions and Recommendations of the Ministry of Health and NIPHK.

Decisions restricting freedom of gathering/association, depending on the situation, have been constantly reviewed and measures have been tightened or eased, however, gatherings have been banned altogether.

²⁰⁶ State Portal of the Republic of Kosovo.

²⁰⁷ Answer received via email, dated 16 July 2021.

²⁰⁸ Answer received via email, June 25, 2021, by Don Fran Sopi.

²⁰⁹ Email, dated July 21, 2021;

²¹⁰ Email, dated 3 August 2021;

²¹¹ Email, dated 3 August 2021.

The Ombudsperson noticed that the Government of the Republic of Kosovo has continuously issued decisions with which it has taken measures proportional to the situation, in order to ensure protection against the COVID-19 pandemic.

XII. Freedom of expression, freedom of the media, the right to privacy and suffrage during the COVID-19 pandemic in Kosovo

Freedom of expression and freedom of the media

Measures taken by the Government of the Republic of Kosovo for preventing and combating the spread of the pandemic have exceeded the limits set by international human rights standards during such a period, so that the measures taken by the Government to combat the risks to public health, have generally resulted in the restriction of human rights, including the right to freedom of expression and the media. Restrictions on free expression and information and restrictions on public participation have become increasingly pronounced, as the pandemic has continued to challenge threats to freedom of expression and access to information worldwide.

The COVID-19 Pandemic has also led to an increase in misinformation and disinformation, with the World Health Organization (WHO) defining such a phenomenon as "infodemia", as the level of inaccurate or misleading information in circulation poses a serious risk to public health, and in response to this, many countries have taken steps to combat the spread of disinformation.

Interventions in the right to freedom of expression and the media caused by the measures taken in response to the COVID-19 pandemic, have risked violating the essential functions performed by the media and journalists to ensure the facilitation of the exchange of accurate information during a public health emergency since their capacity to perform these functions is often hampered from lack of effective access to information. Therefore, the measures taken for preventing, controlling and combatting the COVID-19 pandemic have affected a number of aspects of the right to freedom of expression, protected under Article 10 of the European Convention on Human Rights.

Limits and restrictions on freedom of expression without violating human rights

Freedom of expression, as a fundamental right, is a separate right as well as a component of other rights guaranteed by the European Convention on Human Rights (ECHR), which plays an essential role in the protection of these rights. Freedom of expression is one of the main foundations of democratic freedom, thus in the case of *Handyside v. The United Kingdom*, the ECtHR stated: "*Freedom of expression constitutes one of the essential foundations of a [democratic] society, one of the basic conditions for its progress and for the development of every man*" Whereas, in the case of *Castelles v. Spain*, the ECtHR stated: "*The press plays a prominent role in a country governed by the rule of law.*" There is no free country and democracy without a broad guarantee of the right to freedom of expression²¹² and this coincides with the very concept of democracy and equality of all people. Freedom of expression is mainly

²¹² Jochen Abr.Frowein, "Freedom of Expression according to *European Convention on Human rights*", Council of Europe.

realized through the media in a way that a considerable extent it is also identified with the freedom of the media.

Freedom of expression and freedom of the media in democratic countries, in addition to international instruments, are also guaranteed by the Constitution and the law, which determine the limits of the exercise of this right to avoid potential abuse or violation of other rights.

The restriction of rights, including freedom of expression, in order to protect freedoms and other rights, is defined by Article 29 of the UDHR, as follows:

"1. Everyone has duties to the community in which alone the free and full development of his personality is possible. 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations".

A system of restrictions on the exercise of the right to freedom of expression is also defined by the ECHR, which in Article 8, paragraph 2, stipulates:

" The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

Consequently, the ECHR, in Article 18, defines: "*Limitation on use of restrictions on rights* ", defining:

"The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

The Constitution in Article 40, paragraph 2, defines the restriction of the right to freedom of expression, as follows:

" The freedom of expression can be limited by law in cases when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion."

Restrictions on freedom of expression under Kosovo law consist of the intent to avoid hate speech, incitement to violence, discriminatory, insulting and defamatory language. In this regard, incitement to hatred is defined in the Criminal Code of the Republic of Kosovo (CCK), which in its article 147 defines the criminal offense of "*Incitement to hatred, division or intolerance of national, racial, religious or ethnic.*"

According to the Civil Law Against Defamation and Insult, Article 1 stipulates: "*b) rules relating to defamation and insult do not place unreasonable limits on freedom of expression*

*including and the publication and discussion of matters of public interest and importance. and d) "the essential role of media in the democratic process as public watchdogs and transmitters of information to the public."*²¹³

According to the Civil Law Against Defamation and Insult, Article 3 defines: "a) *defamation shall mean the publication of a untrue fact or statement and the publisher knows or should know that the fact or the statement is untrue, the meaning of which injures the reputation of another person. b) insult shall mean the statement, behaviour, or publication of a statement directed at another person that is humiliating*". Article 5 of this law defines "responsibility for defamation and insult", as follows: "5.1. A person is responsible for defamation or insult if he/she made or disseminated the expression of defamation or insult, unless one of the exemptions to liability is established in accordance with this Law. 5.2. *For defamation or insult made through media outlets the following may be held jointly or individually responsible: author, editor or publisher or someone who otherwise exercised control over its contents. 5.3. Where the defamation or insult relates to a matter of public concern or the injured person is or was a public official or is a candidate for public office, there may only be responsibility for defamation or insult if the author knew that the information was false or acted in reckless disregard of its veracity. 5.4. Public authorities are barred from filing a request for compensation of harm for defamation or insult. Public officials may file a request for compensation of harm for defamation or insult privately and exclusively in their personal capacity.*"

As for statements of public interest, this law in Article 7 stipulates: "*No one shall be liable for defamation and insult for a statement on a matter of public concern if they establish that it was reasonable in all the circumstances for a person in their position to have disseminated the material in good faith, taking into account the importance of freedom of expression with respect to matters of public concern to receive timely information relating to such matters.*"

International guidelines for safeguarding freedom of expression during a pandemic

The Office of the United Nations High Commissioner for Human Rights, calling for solidarity and cooperation to stop the spread of COVID-19, and respect for human rights, on 20 April 2020 published the Guidelines for COVID-19 [Human rights at the heart of the answer]. Through this guide, the Office of the United Nations Commissioner for Human Rights, inter alia, calls for accurate information on the COVID-19 pandemic and for participation in decision-making:

" Relevant information on the COVID-19 pandemic and response should reach all people, without exception. This requires making information available in readily understandable formats and languages, including indigenous languages and those of national, ethnic and religious minorities, and adapting information for people with specific needs, including the visually- and hearing-impaired, and reaching those with limited or no ability to read or with no internet access.

²¹³ Assembly of the Republic of Kosovo, Civil Law no. 02 / L-65 Against Defamation and Insult, Article 1.

Internet access is essential to ensuring that information reaches those affected by the virus. Governments should end any existing internet disruptions or shutdowns and keep the internet on. States should also work to ensure the broadest possible access to internet service by taking steps to bridge digital divides, including the gender gap.

People have a right to participate in decision-making that affects their lives. Being open and transparent, and involving those affected in decision-making is key to ensuring people participate in measures designed to protect their own health and that of the wider population.

Medical professionals and relevant experts, must be able to speak freely and share information with each other and the public. Journalists and the media should be able to report on the pandemic, including coverage that is critical of government responses, without fear or censorship. Concerted efforts should be made at the international and national levels to counter false or misleading information that fuels fear and prejudice.

*Incorporating the perspectives, voices and knowledge of women in outbreak preparedness and response is essential, including ensuring their representation and leadership roles in global, regional and national COVID-19 spaces”.*²¹⁴

On 7 April 2020, the Council of Europe issued Information Document No. SG/Inf (2020) 11, as a package for member states, to respect the democracy, the rule of law and human rights in the context of the COVID-19 sanitary crisis, in which it explains the effective exercise of freedom of expression and the permissible restriction of this right in pandemic times:

"Right to private life, freedom of conscience, freedom of expression, freedom of association

Effective enjoyment of all these rights and freedoms guaranteed by Articles 8, 9, 10 and 11 of the Convention is a benchmark of modern democratic societies. Restrictions on them are only permissible if they are established by law and proportionate to the legitimate aim pursued, including the protection of health. The significant restrictions to usual social activities, including access to public places of worship, public gatherings and wedding and funeral ceremonies, may inevitably lead to arguable complaints under the above provisions. It is for the authorities to ensure that any such restriction, whether or not it is based on a derogation, is clearly established by law, in compliance with relevant constitutional guarantees and proportionate to the aim it pursues. While heightened restrictions to the above-mentioned rights may be fully justified in time of crisis, harsh criminal sanctions give rise to concern and must be subject to a strict scrutiny. Exceptional situations should not lead to overstatement of criminal means. A fair balance between the compulsion and prevention is the most appropriate, if not the only way, to comply with the Convention proportionality requirement.

Freedom of expression and information, media freedom, access to official information

The freedom of expression, including free and timely flow of information, is a critical factor for the ability of the media to report on issues related to the pandemic. Media and

²¹⁴Office of the United Nations Commissioner for Human Rights, Guidelines for COVID-19, April 2020, link:https://unmik.unmissions.org/sites/default/files/alb_ohchr_covid-19_guidance.pdf)

professional journalists, in particular public broadcasters, have a key role and special responsibility for providing timely, accurate and reliable information to the public, but also for preventing panic and fostering people's co-operation. They should adhere to the highest professional and ethical standards of responsible journalism, and thus convey authoritative messages regarding the crisis and refrain from publishing or amplifying unverified stories, let alone implausible or sensationalist materials. The exceptional circumstances may compel responsible journalists to refrain from disclosing government-held information intended for restricted use – such as, for example, information on future measures to implement a stricter isolation policy.

The public's access to official information must be managed on the basis of the existing principles set down in the Court's caselaw. Any restriction on access to official information must be exceptional and proportionate to the aim of protecting public health. The Convention on Access to Official Documents ("the Tromsø Convention") underlines the need for transparency and provides that, at its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents to encourage informed participation by the public in matters of general interest.

At the same time, official communications cannot be the only information channel about the pandemic. This would lead to censorship and suppression of legitimate concerns. Journalists, media, medical professionals, civil society activists and public at large must be able to criticise the authorities and scrutinise their response to the crisis. Any prior restrictions on certain topics, closure of media outlets or outright blocking of access to on-line communication platforms call for the most careful scrutiny and are justified only in the most exceptional circumstances²⁵. The pandemic should not be used to silence whistle-blowers (see Recommendation CM/Rec(2014)7 on the protection of whistle-blowers), or political opponents. Malicious spreading of disinformation may be tackled with ex post sanctions, and with governmental information campaigns. States should work together with online platforms and the media to prevent the manipulation of public opinion, as well as to give greater prominence to generally trusted sources of news and information, notably those communicated by public health authorities."

The Secretary-General of the United Nations, in April 2020, published a policy review "COVID-19 and Human Rights - We are all in this together"²¹⁵, which aims to turn calls to act on human rights during the pandemic into concrete action. This publication recommends, among other things, guaranteeing freedom of expression and providing reliable information, as follows:

"Ensure reliable, accurate information reaches all, by making it available in readily understandable formats and languages, including indigenous languages and those of minorities, adapting information for people with specific needs, including the visually and

²¹⁵ United Nations, "COVID-19 and human rights: We are all together", April 2020, (link: https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf).

hearing impaired, and reaching those with limited or no ability to read, or who lack access to the Internet and usual media sources.

Guarantee freedom of expression, including freedom of the press, so that information can be disseminated without suppression. Governments, as well as media and technology companies, need to counter misinformation with accurate, clear and evidence-based information, and avoid overbroad efforts that could result in censorship of protected speech."

Also, the Secretary-General of the United Nations, on 21 April 2020, to assess the critical role that National Institutions for Human Rights (NIHR) can play in responding to exceptional circumstances, published "*Help book: NIHR, Human Rights and COVID-19*", Through which, among other things, assessed the importance of access to information and participation, emphasizing the role of NIHR to monitor and assist in the dissemination of accurate, evidence-based information is essential at all stages of the crisis:

Access to information and participation: NHRIs' role to monitor and assist in the dissemination of accurate, evidence-based, information is crucial at all stages of the crisis. Information on the prevention and early diagnosis of the disease should be accessible and available to everyone, relayed in different languages and adapted to specific needs, including those of persons with disabilities, linguistic minorities, indigenous peoples and migrants. It is also critical for the public to have access to information about preventive measures and support services for victims of gender-based violence and about how to access essential sexual and reproductive health services during the pandemic.

Access to information also facilitates participation: Preparedness measures can allow populations to participate meaningfully in decision-making and establish mechanisms that enable consultations, feedbacks and complaints. Governments and NHRIs should aim to keep civic space as open as possible under the circumstances, as a vibrant civil society that contributes to measures and provides feedback on their effectiveness is essential during the pandemic, including ensuring trust in the health system.

*All public health measures should be implemented without discrimination of any kind, with an emphasis on transparency and information sharing that can empower people to meaningfully participate in protecting health. Accurate, clear and evidencebased information is also important for eradicating stigma, discrimination, racism and xenophobia."*²¹⁶

Developments during this period regarding freedom of expression and freedom of the media

Representatives of the Ombudsperson, on 9 July 2021, held a working meeting with the Deputy Director General of Radio Television of Kosovo (RTK) regarding the impact of the COVID-19 pandemic on media freedom, respectively regarding public information during the health emergency and the COVID-19 pandemic and in general regarding the challenges the public

²¹⁶ Office of the United Nations Commissioner, Aide memoire, (link: <https://www.ohchr.org/Documents/Press/HCCOVID19lettertoNHRIs.pdf>).

broadcaster has faced during this time. He announced that RTK, after a very short period from the appearance of COVID-19, started broadcasting a special show "Infopandemia", which was broadcasted every night from 12:30 to 23:00 on RTK, through which information was provided constantly to citizens regarding the pandemic, including the number of infected cases and direct reports from the on-duty physician at the UCK. In addition to this show, RTK also held debates in the studio regarding the situation of the COVID-19 Pandemic.

According to the Deputy General Director of RTK, since the appearance of the first cases there has been a lack of transparency on the number of tests for COVID-19 and the number of results, and as such they have been published only through the official website of NIPHK on Facebook; thus, denying access to information regarding the origin of the results, especially regarding the potential inclusion of the results by privately licensed laboratories, and others tested abroad. Therefore, according to him, the results were not categorized according to the origin of the tests. He stressed that RTK journalists, who are engaged in addressing topics related to the management of the pandemic, have faced pressure from the public authority. One of them was banned from accessing information and receiving statements from the media at the Ministry of Health (MoH), due to the broadcast of the research show related to the case of the purchase of oxygen cylinders by the latter. He added that journalists worked full time, while the rest of the staff worked in rotations. Regarding the free movement of media workers, he stated that they encountered obstacles from the Kosovo Police during the isolation measures, including guests invited to the studio, until they were provided with official circulation permits. Due to the sensitivity of the situation, he stressed that RTK has shown consideration for the lack of opening various topics in a difficult situation for the population, while adding that in the vaccination process, the media are not included in the category of priority groups, and the same should have been part of that category. Regarding the issue of misinformation and disinformation during the pandemic, he stated that RTK journalists are constantly receiving training against false news, therefore even from the occurrence of the first cases of COVID-19, public broadcast journalists are based on information obtained from official sources, in this case from the NIPHK and the MoH.

On 14 July 2021, OIK representatives held a meeting with the Executive Director of the Press Council of Kosovo²¹⁷ (PCK), with whom they talked about how much the standards of ethics have been respected by the media and by **print media** during reporting on the situation created after the outbreak of the COVID-19 pandemic, as well as for the complaints that the PCK has received and handled in relation to this issue. He announced that in terms of respecting the standards of media ethics and **print media** during the pandemic, the media in general were extremely correct in informing the citizens, because they mainly used the official sources for information (mainly MoH and NIPHK). Exceptions are cases at the beginning of the COVID-19 outbreak, still without confirming any case of infection in Kosovo, it has been identified that some news portals have manipulated reliable sources that were in fact producing panic. There has also been misinformation spread on social networks mainly by unverified sites, but

²¹⁷The Kosovo Press Council is a self-regulatory body formed for and by the print media sector and its mission is based on the convictions of the Kosovo Press Code. Free speech, the right of citizens to be fully informed, timely, and full compliance with the code of ethics of journalism are the basis on which the PCK operates. The purpose of the PCK is to protect the citizen from untrue writings and to protect the journalist from unsubstantiated complaints. (link:<https://presscouncil-ks.org/trreth-nesh/>)

despite this, the reporting of journalists in the country has been considered accurate. He stated that during this time there were also reports with various information translated by the international media, in the capacity of curiosities, but the same were not exaggerated when it was realized that such data, in addition to being unknown, they were not accurate. From the PCK perspective, he stressed that there were no violations of media ethics during the pandemic COVID-19. He also mentioned that the PCK at the beginning of the pandemic situation called on the media to strictly respect the ethical principles of the PCK code. PCK members have also called on all media and **print media** and online to adhere to ethical standards in reporting on the situation created after the outbreak of the pandemic COVID-19, and provided recommendations on how to report about COVID-19, as follows:

1. *"The PCK called for information on the spread of the pandemic to be verified by official sources so as not to spread panic among the population.*
2. *In case of spreading false news, the PCK called on the media to publish denials and materials which denounce the false information as untrue.*
3. *The PCK calls for patient privacy to be strictly protected and for the identity of those infected not to be disclosed under any circumstances.*
4. *In cases where victims wish to make statements, the media should ensure that they cover their identities.*
5. *Photographs and videos illustrating the virus should not expose images of ordinary citizens.*
6. *The PCK called on the media to publish as much information as possible with advice on preventing the spread of the pandemic.*
7. *The PCK requests from the media that the councils be called to credible scientific sources and not to unprofessional staff and not scientifically called."*

Regarding the Index of the Reporters Without Borders for 2021, according to which, for 2021 Kosovo has decreased by 8 places in the Index, compared to 2020, in relation to freedom of expression and media. He stated that in this report the reports of journalists are not evaluated, but the segments are evaluated in relation to the conditions of journalists, their physical and legal security, financial impact, contracts, etc., therefore in this regard the situation with pandemic. He added that the pandemic has also caused a great loss in terms of information as the print media, the 4 daily newspapers of the country, were removed from the market, therefore according to the PCK, this constitutes a violation of the right to information for all citizens who are not able to be informed through electronic means, especially the elderly. According to him, communication with public institutions was not limited, but careful in relation to access to information for journalists. Access to information in relation to the Government was channelled mainly through the NIPHK and the MoH, while other institutions in many cases were reluctant to provide it, due to the uncertainty of the accuracy of the information given the situation with the COVID-19 pandemic was unprecedented and unknown worldwide. In this regard, he emphasizes that the institutions were also challenged, because they were not prepared to approach the media in providing information, and there was a lack of proper organization. He stressed that it is important to note that during the pandemic COVID-19 to a large extent the

media have reported on what is in the public interest, but not on what is in the public interest. Regarding the question regarding the addressing of complaints, he stated that the PCK has received two complaints related to the pandemic situation, but the same do not relate to media reporting regarding COVID-19 or freedom of expression. According to him, the biggest impact of COVID-19 on the media was that in financial terms, affecting the drastic reduction of marketing revenues, while adding that during 2021 this situation has improved, but will leave a big scar in coming years also in terms of media as a business, but also in terms of media that are in the function of informing the public.

On 14 July 2021, the representatives of Ombudsperson met with the head of the Monitoring Division as well as the head of the Complaints and Representation Division at the Independent Media Commission.²¹⁸ (IMC), with whom they generally talked about the evaluation of audio and audio-visual media services, regarding freedom of expression and the right to information during the pandemic. The representatives of the IMC stated that in March 2021 the IMC published a monitoring report, titled: "Monitoring of Central News of the media" (Audio-visual Media Service Providers) for the monitoring period February-March 2020, in order to evaluate and analyse the news content provided to the citizens of Kosovo by the media service providers, including coverage of the pandemic situation in the central news editions. According to this report, it is estimated that the space given in the chronicles that have addressed the topic of COVID-19 has been assessed as significant (with an average above 50%), in which the impact of the pandemic on various social areas are also included. Regarding the addressing of the complaints, they emphasize that the IMC has not received any complaints with the content of the situation regarding the impact of the COVID-19 pandemic.

On 30 July 2021, representatives of the Ombudsperson held a meeting with the director of the board and the executive director of the Association of Journalists of Kosovo²¹⁹ (AJK), with whom they talked regarding the quality and open journalism and the rights of journalists during the COVID-19 pandemic. They stressed that since March 2020, when the first case of COVID-19 appeared in Kosovo, journalists, cameramen and photojournalists, with the permission of government authorities, continued to work regularly in conditions of general isolation, despite the risk of infection with COVID -19, doing professional work and quality journalism, in the service of informing the citizens. According to AJK, the pandemic revealed all the existing structural problems in the field of journalism. According to the monitoring and research conducted by AJK, COVID-19 has negatively affected the media sector in the country, namely the economic situation of private media, the safety of journalists, the decline of the economic situation of media workers, the dismissal of over 20 media workers from the media company "Zeri" was considered one of the most serious cases of the impact of the COVID-19 pandemic on the economy of media workers. In addition to financial pressure, journalists, cameramen and photojournalists, when reporting on the pandemic, often faced a lack of protection against

²¹⁸The Independent Media Commission, according to Article 141 of the Constitution is "[...] an independent body that regulates the spectrum of Transmission Frequencies in the Republic of Kosovo, licenses public and private broadcasters, determines and implements broadcasting policy and exercises other powers by law. While Law no. 04 / L-44 on the Independent Media Commission regulates the rights, obligations and responsibilities of natural and legal persons who provide audio and audiovisual media services.

²¹⁹ The Association of Journalists of Kosovo is a non-governmental organization whose mission is to protect the freedoms and rights of journalists, to promote, encourage and improve quality and open journalism in Kosovo.

COVID-19. They pointed out that the COVID-19 pandemic also changed the dynamics of media work, as many of the shows and contacts for access to information took place through online platforms, in an attempt to respect the required measures of physical distancing. It was further reported that at the beginning of the health emergency, the media were involved in the Emergency Fiscal Package²²⁰ in the business category, but journalists, photojournalists and cameramen, given the ongoing reporting on the pandemic from the front line and in the shadow of the potential risk of infection, did not fall into the category of essential employees in this package and added that a number of media employees did not benefit in any way from the package, due to the lack of proper instructions of the MoH and some of them due to the lack of employment contracts. According to them, media workers were reluctant to report violations of their rights in the workplace due to victimization and fear of being fired. Furthermore, AJK representatives noted that during 2020 the number of threats and attacks on journalists increased. In 2020, 24 cases of threats against journalists and other media workers were registered, of which 4 cases were physical attacks on them. What is seen most positively during this time in the country, precisely in times of pandemics, is the opening of two new media, namely the opening of two televisions, which for a short time have entered the media scheme of Kosovo. While announcing that AJK has registered two detentions of journalists on duty by the Kosovo Police, one in the Quarantine Centre in Prishtina, and the other in North Mitrovica. The latter was reportedly arrested and later released. Regarding the issue of accurate information during the COVID-19 pandemic, they estimated that at a time when the whole world was confronted with the unknown, including the WHO, journalists in Kosovo fought the false news, i.e., in addition to being well-informed, they have at the same time fought the inaccurate news. The biggest pressure, according to them, for journalists was at the time of the overthrow of the Government, in a time of pandemics, as journalists at the same time were obliged to report from both the UCK and the Assembly of the Republic of Kosovo. Regarding access to information, AJK representatives stressed that there are cases when journalists are prevented from accessing information, one of them is the obstacle to access to information regarding the contract with the company "Pfizer" for the purchase of vaccines. In October 2020, AJK announced that it has published a research report, titled: "Impact of the COVID-19 pandemic on the economic situation of journalists, cameramen and photojournalists", which addressed some of the challenges that media workers have faced during COVID-19 pandemic.²²¹

On 4 August 2021, the representatives of the Ombudsperson met with the Executive Director of the non-governmental organization "Youth Ecological and Security Zone-EcoZ", with whom they talked regarding the impact of the COVID-19 pandemic in their work, activities and information for the public interest. She stressed that the staff of the organization during the time in which the isolation measures taken by the Government of the Republic of Kosovo were applied, worked remotely, while some of the activities were adapted to the online system and others were converted into relevant activities. She stressed that the main challenge during the

²²⁰ Government of the Republic of Kosovo, Decision no.01 / 19, dated 30 March 2020, on the approval of the Fiscal Emergency Package.

²²¹ AJK, 'Impact of the COVID-19 Pandemic on the Economic Situation of Journalists, Cameramen and Photojournalists' October 2020.

pandemic for non-governmental organizations was the obstacle to communication and access to information and official documents in public institutions, with the justification of lack of staff and the application of remote work. For more, she stressed that during the application of the isolation measures and for most of 2020, it was impossible for them to carry out advocacy and lobbying activities. According to her, most public institutions have failed to organize public participation in decision-making and there was a lack of information and organization of public hearings. Some institutions have postponed the public hearings to 2021, while some others have organized the public hearings in a virtual form. Furthermore, she stated that the organization she represents has applied information about activities mainly through online platforms and social networks.

In April 2021, “Reporters Without Borders”²²² published the Index for 2021, according to which among 180 countries in the world, Kosovo is ranked 78th, in relation to freedom of expression and media. According to this report, for 2021 Kosovo marked a decrease by 8 places in the Index, compared to 2020. The report shows an increase in media instability in the country, as a result of the coronavirus crisis, emphasizing that the media in Kosovo remains divided into ethnic line; access to certain information is often restricted to one ethnic or political group, and most media outlets tend to cover and focus on issues related to their nationality. Furthermore, the report estimates that journalists and the media in Kosovo are exposed to a hostile environment, including physical and verbal attacks on journalists, cyber-attacks on online media as well as lack of transparency regarding media ownership. The report notes that *financially unstable media are fragile in the face of political influence and that as a result of the pandemic, many newspapers had to stop publishing.*

According to the managing director of “Reporters Without Borders”, Mr. Ch. M., in an interview given to Deutsche Welle, he stated: *“The coronavirus pandemic intensifies and consolidates repressive tendencies all over the world and the situation has worsened on more or less all continents, as can be seen from the analysis of freedom of the press in 2021.”*²²³

Various media in the country have reported as a consequence due to general movement restrictions and financial difficulties, publishers from March 2020 suspended the printing and sale of daily newspapers, while they began to inform the public only through electronic newspapers and portals. According to an article dated 26 May 2020 of the Kosovalive portal: *“The situation created by COVID-19 has made it impossible for four newspapers²²⁴ Kosovo dailies to be published, therefore, they are currently operating online. The leaders of these newspapers have stated that they have been financially damaged due to the termination of the marketing contracts they had with the businesses. This has caused financial damage to these newspapers because businesses have terminated their advertising contracts. On the other hand, revenues have remained minimal even from advertisements on portals. Some of them have*

²²²Reporters Without Borders (RSF), based in Paris, is an independent non-governmental organization with consultative status with the United Nations, UNESCO, the Council of Europe and the International Organization of La Francophonie (OIF).

²²³Deutsche Welle, April 20, 2021, (link: <https://www.dw.com/sq/korona-murtaj%C3%AB-edhe-p%C3%ABr-lirin%C3%AB-e-shtypit/a-57263988>).

²²⁴ Koha Ditore, Zëri, Bota Sot and Epoka e Re.

laid off some workers, while some have reduced their salaries."²²⁵

Freedom to receive and provide information and ideas

Freedom to receive and provide information and ideas is of particular importance, especially for the political life and democratic structure of a country, as a full exercise of freedom to provide information and ideas gives way to free criticism of the Government, which is the main indicator of a free and democratic government. The ECtHR, in the case of *Lingens v. Austria*, 1986, stated the following: *"To provide information and ideas on political issues as well as on those in other areas of public interest. "Not only has the press had a duty to provide such information and ideas: the public also has a right to receive it."*

Freedom to provide information and ideas is complementary to freedom to receive information and ideas, especially as regards print and broadcast media. In relation to the latter, the ECtHR, in the case of *Groppera Radio v. Switzerland*, 1990, and *Casado Coca v. Spain*, 1994, has stated that States should not interfere between the broadcaster and the recipient, as they have the right to enter into direct contact with each other at their own discretion.

As the freedom we are discussing refers to the provision of both information and ideas, the distinction made by the ECtHR at an early stage becomes important. Making a clear distinction between information (facts) and opinions (judgments on values), the ECtHR, in the case of *Lingens v. Austria*, 1986, stated: *"The existence of facts can be demonstrated, but the truth of values is not tangible as evidence ... With regard to judgments on values, this requirement is impossible to meet and violates the freedom of opinion itself, which is a fundamental part of the right guaranteed by Article 10 of the Convention."*

Freedom of expression and the right to receive and provide information are also restricted. However, in setting these restrictions, the specific importance of the right to information in a pandemic situation where everyone's health is endangered must be taken into account. Many states have taken a number of measures to combat the spread of "false" or "harmful" information, or information that could cause panic and social unrest during the pandemic. Taking measures to stop the dissemination of information that misinforms the public takes on great importance during a pandemic, but it is so important that these measures are proportionate. Otherwise, states risk undermining the essential functions of the journalistic service during a public health emergency, including ensuring Government accountability and facilitating the exchange of useful information²²⁶

Electronic communications activities in the Republic of Kosovo are regulated by Law No. 04/L-109 on Electronic Communications, which aims to regulate electronic communications activities based on the principle of technological neutrality and the EU regulatory framework for electronic communications, promoting competition and efficient electronic communications infrastructure, as well as guaranteeing of proper and appropriate services in the territory of the Republic of Kosovo (Article 1). Given the development of electronic

²²⁵ Kosova Live, "Consequences of the pandemic in the print media", July 2021, (link: <https://kosovalive.org/2020/05/26/pasojat-e-pandemise-ne-mediat-e-shkruara/>).

²²⁶ COVID-19 and Impact on Human Rights, The Aire Center, Advice on Individual Rights in Europe, 28 April 2020. <https://www.rolplatform.org/wp-content/uploads/2020/05/Covid-19%20and%20the%20WB%20-%20ALB.pdf>

technology in terms of information exchange and communication, even during the pandemic, access to and use of communication services through electronic platforms and social networks has been exploited without hindrance. During the pandemic, no attempt was made by state authorities to restrict access to the Internet or to block or filter content published on the Internet.²²⁷

Since the spread of the health crisis in late 2019 and its subsequent expansion to most countries of the world, states have been challenged and faced with the rapid growth of COVID-19-related misinformation. The WHO described this increase in misinformation as an "*infodem*", the concept of which is defined as a "*surplus of information, some accurate and some incorrect, that makes it difficult for people to find reliable sources or guidance when they need.*" Almost all countries of the world have taken measures and published guidelines and recommendations for combating misinformation and misinformation, calling for the protection of freedom of expression during the COVID-19 pandemic.

International organization "Access Now"²²⁸, in April 2020 published the guideline: "*Combating misinformation and protecting free expression during COVID-19: recommendations for states*", through which it ascertained the damage that disinformation and misinformation can cause, emphasizing the power they have to strengthen existing divisions and inspire unwarranted fear and panic within societies. According to the conclusions drawn from this report, during the COVID-19 health crisis, inadequate access to objective data related to COVID-19 has created room for misleading and inaccurate information for some governments to abuse and push further the objectives, their political and pushing repressive measures, deepening the social stigma of vulnerable groups and also to suppress objective journalism and scientific information. This guide provides a set of specific and general recommendations for countries to combat misinformation and protect free expression during the COVID-19 pandemic.²²⁹

Given that in some countries of the world, journalists who have covered information about the pandemic have faced a series of legal sanctions for spreading "false information", in Kosovo it is estimated that in this regard journalists have largely respected the principles of journalistic ethics relying only on reliable official sources, with the exception of a few cases at the onset of the pandemic for which they were not prepared. According to the PCK, at the beginning of the appearance of COVID-19, before any case of infection was confirmed in Kosovo, it was evident that some news portals manipulated reliable sources that were in fact causing panic. There has also been disinformation spread on social networks mainly by unverified websites, but despite this, the reporting of journalists in the country has been considered accurate. On this occasion, in addition to international mechanisms, also local mechanisms of the media

²²⁷ Association of Journalists of Kosovo "Indicators of the level of media freedom and security of journalists", 2020.

²²⁸ Access Now is a New York-based international organization that protects and promotes the digital rights of endangered users worldwide, as well as the right to freedom of expression, the press and human rights. (link: <https://www.accessnow.org/>)

²²⁹ Access Now, "Combating misinformation and protecting free speech during Covid-19: recommendations for states", 2020, (link: <https://www.accessnow.org/cms/assets/uploads/2020/04/Fighting-misinformation-and-defending-free-expression-during-COVID-19-recommendations-for-states-1.pdf>)

sector, have called on the media in Kosovo to respect the principles of journalistic ethics by relying only on reliable official sources.

The Independent Media Commission (IMC), in its annual report for 2019, mentioned that 19 stations operated in Kosovo during 2019, functional television, 86 radio stations, 41 distribution operators and 97 audio-visual media service providers. The IMC had assessed that Audio-visual media service providers in the country have provided considerable media space for information about the COVID-19 pandemic, which also includes the impact of the pandemic on various social areas. The IMC has also stated that it has not received any substantive complaints regarding the impact of the COVID-19 pandemic. During 2020, two providers of audio-visual services were added, which for a short time have entered the media scheme of Kosovo.

Various media actors have estimated that journalists and other media workers, since the outbreak of the COVID-19 pandemic, have reported consistently and qualitatively to keep citizens informed of developments in the pandemic situation, given the conditions in which they worked during the pandemic and general conditions in the media sector in Kosovo, which still leaves much to be desired.

Among the negative impacts of the COVID-19 pandemic on the right to freedom of the media is the interruption of the print of daily newspaper.²³⁰ in the country. "Reporters Without Borders" 2021 report states: *"The media in Kosovo are financially unstable and fragile in the face of political influence, and as a result of the pandemic, many newspapers had to stop publishing."* Kosovo is the first country in the region and beyond where the publication of the only daily press has been stopped following the measures taken by the Government to prevent the spread of COVID-19 and their recurrence is not being considered as a consequence of the financial impact, namely the higher cost of publishing newspapers compared to those generated by the sale. The Ombudsperson estimates that the lack of print media in the country marks a decline in the right to information, given that not everyone can use online media, and that according to official data, 93% of citizens have access to the Internet. Despite the development of technology and the use of the Internet to a large extent, a part of the citizens have stated that they miss the traditional daily press.²³¹ Therefore the Ombudsperson considers that it would be in the interest of the state to assess the possibility of providing support to return them.

The COVID-19 pandemic negatively affected the economic situation of the private media, which directly affected the decline in the economic situation of media workers, therefore a significant number of media workers faced reductions and delays in salaries as well as dismissal. Exclusion of journalists, photojournalists and cameramen in the category of essential employees in the Emergency Fiscal Package²³², given the ongoing and dangerous reporting in the pandemic, further deepened their declining economic situation. Some of them did not benefit in any way from this package, due to the lack of employment contracts. As mentioned

²³⁰ "Koha Ditore", "Epoka e Re", "Zëri" and "Bota Sot".

²³¹ Epoka e Re, "Kosovo without any printed newspaper", July 2021, (link: <https://www.epokaere.com/kosova-pa-asnje-gazete-te-shtypur/>)

²³² Government of the Republic of Kosovo, Decision no.01 / 19, dated 30 March 2020, on the approval of the Fiscal Emergency Package.

above, the most serious case during the pandemic was the dismissal of 20 media workers from the company "Zeri". According to AJK, some of them are still using legal remedies.

The complete restriction of the movement of citizens in the first months of the pandemic, in some cases created obstacles to the freedom of movement of journalists, photojournalists and cameramen, until they were provided with official circulation permits. A number of journalists reported being detained by the Kosovo Police while on the move to obtain information and report on the situation with the COVID-19 pandemic. "Reporters Without Borders" in the 2021 index reported that the police used the curfew, one of the measures to prevent COVID-19, as a reason for the arrest of the editor of the online newspaper "KoSSev", T.L.

Obstructing journalists from accessing information, as well as performing their duties, as well as barriers to participating in public events (as reported in some cases during the pandemic) put pressure not only on their work, but also have a direct impact on freedom of expression and freedom of the media, in particular the right to receive and provide information. Obstruction of journalists in their work is in direct conflict with local and international instruments and international guidelines for safeguarding freedom of expression during the COVID-19 pandemic.

Regarding the obligations of this nature, in order to create a safe environment for the work of journalists, the Ombudsperson recalls in particular the obligations of the state, to have the safety of journalists in the priorities of his work, as a fundamental basis for development of democracy and the implementation of human rights in the country. Therefore, the state in this way, among other things, would fulfil the obligations to citizens to be informed, guaranteeing freedom of expression and the safety of journalists.

From the above, the international guidelines on the right to freedom of expression and the media during the COVID-19 pandemic reveal the standards that must be respected by states in terms of preventing violations of freedom of expression and the media with a special emphasis on time crisis. They provide clear guidelines for actions to be taken by states on these rights guaranteed by local and international standards.

Safety of journalists

As one of the specific preconditions for freedom of expression is to guarantee the safety of journalists from threats and attacks against them as well as to obstruction in their free exercise of their profession, therefore this guarantee is a fundamental basis for the development of democracy and the realization of the human rights in the country.

"Reporters Without Borders" in its 2021 index reported that journalists and media in Kosovo are exposed to a hostile environment, including physical and verbal attacks on journalists, cyber-attacks on online media, and a lack of transparency regarding media ownership.

The Ombudsperson considers disturbing the increase in the number of threats and attacks against journalists, which were reported during 2020, and draws attention to the need to increase the efficiency in the investigation and detection of perpetrators of criminal offenses against journalists, such cases to be treated with priority, efficiency and concrete results. As these offenses are committed with motives of obstructing the freedom of expression and information of the public, therefore they should be considered with aggravating circumstances,

and the provisions of the Criminal Code should be applied to the perpetrators regarding the aggravation of punishment.

On this basis, the Ombudsperson recalls that the agenda of the Government of the Republic of Kosovo in the process of EU membership is closely related to meeting the standards for freedom of expression and safety of journalists. Furthermore, the Ombudsperson also recalls the Recommendation (2016) 4 of the Committee of Ministers of the Council of Europe on the protection of journalism and the safety of journalists and other media actors, stressing the great importance of journalists being able to work in safe conditions, without fear of harassment or attacks against them.

Journalists, cameramen and photojournalists, while reporting during the period of the occurrence of the pandemic, in some cases they even faced with the absence of protective equipment against COVID-19, during their reporting in general, as well as in particular, during reporting from the UCK. The lack of protective equipment from COVID-19 made them more exposed to the virus, which endangered their health, as well as that of their family and their surroundings. The Ombudsperson draws attention to the intent and in the function of ensuring the most accurate information to the public and the smooth performance of the mission of journalists, it is up to the institutions of Kosovo to create a suitable and safe environment for this purpose.

Ombudsperson's general assessments

The Ombudsperson, based on the findings presented in this report, as well as the analysis of relevant laws, draws attention to the importance of freedom of expression as a fundamental human right and as a basic pillar of democracy and observance for other human rights, with particular emphasis on the importance and the role that the freedom of expression and media even in emergency situations has, as is the case with the COVID-19 pandemic, where the right to information as well as independent and professional journalism was deemed essential and vital in combating the spread of COVID-19.

The Ombudsperson considers positive the provision of considerable media space for information on the state of the pandemic, as well as the positive assessment of the management and combating of disinformation and misinformation by journalists in pandemic times, however, manipulation of reliable sources by some portals remains of a great concern which create confusion and panic among citizens, as well as the dissemination of information and news on social networks from unverified websites.

On this occasion, the Ombudsperson calls for the regulation of the appropriate legal and effective infrastructure on the use of social networks in the country in order to combat disinformation and dissemination of unverified news and the construction of a standard that guarantees freedom of expression in a balanced way, setting the necessary boundaries for the protection of freedoms and other human rights.

The Ombudsperson ascertains that obstruction of journalists from accessing public information and free exercise of their profession, constitutes a violation of the right to freedom of expression and freedom of the media. The Ombudsperson draws attention to the state of emergency declared by the Government of the Republic of Kosovo as a consequence of the COVID-19

pandemic should not be presented as an obstacle in terms of providing information to the media and the public.

The Ombudsperson ascertains that threats, attacks and violations of the safety of journalists, as well as obstruction of the free exercise of their profession, is one of the main problems of violation of freedom of expression and freedom of the media in the country.

The Ombudsperson ascertains that the implementation of the right of access to public documents, as one of the preconditions for the realization of the right to freedom of expression, still remains a challenge for public institutions in the country, deteriorating further since the outbreak of the COVID-19 pandemic.

The Ombudsperson considers that there is a need for a general commitment in providing information in the appropriate language or in their mother tongue also for the categories of persons with disabilities related to all relevant information regarding the situation of the COVID-19 pandemic. On this occasion, the Ombudsperson recalls the instructions of the Office of the United Nations Commissioner for Human Rights to stop the spread of COVID-19, in which case, among other things, calls: *"... information to be available ... easily understood ... and information to be tailored for people with disabilities, including those with visual and hearing impairments, and accessible to those with little or no reading ability or access to the Internet."*

The right to privacy during COVID-19 pandemic

Among the consequences caused by anti-pandemic measures have been also the violation of human rights, which were often considered both reasonable and necessary to prevent the spread of the virus. One of these rights affected by anti-COVID-19 measures has been the right to privacy, which in Kosovo enjoys the status of constitutional right. Radical changes in the practice of commercial activities, corporate governance and the organization of events through online platforms have also increased the risk to the right to privacy. Kosovo, despite its limited access to global integration, has not been an exception to the rapid radical changes that have characterized the world since the beginning of the pandemic.

To prevent and minimize the violation of privacy, the EU adopted Regulation (EU) 2016/679 of the European Parliament and of the Council (known as: General Data Protection Regulation / GDPR),²³³ through which data protection was revolutionized. This regulation has been materialized in Kosovo through the Law no. 06 / L-082 on Personal Data Protection.²³⁴ However, the implementation of this law has remained a challenge due to the long absence of the Commissioner of the Information and Privacy Agency.

Another challenge is the non-issuance of acts that envisage protective measures for the collection, processing, transfer and destruction of data, which in this context the pandemic has caused a worsening of the situation, this due to the publication of personal data of diagnosed patients and subsidizing patients who have been diagnosed with the virus.

²³³ European Union, "General Regulation on Data Protection / GDPR", (link:<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>)

²³⁴ Assembly of the Republic of Kosovo, Law on Personal Data Protection.

Violation of privacy has been and continues to be a concern for every society. Since the pandemic started on 30 March 2020, the Chair of the Committee of Convention 108²³⁵ and the Council of Europe Commissioner for Data Protection had issued the Joint Statement on the right to data protection in the context of the COVID-19 pandemic. The statement said: *"It is important to recall that data protection can in no manner be an obstacle to saving lives and that the applicable principles always allow for a balancing of the interests at stake."* Furthermore, this statement states: *"In accordance with Convention 108+ it is crucial, that even in particularly difficult situations, data protection principles are respected and therefore it is ensured that data subjects are made aware of the processing of personal data related to them; processing of personal data is carried out only if necessary and proportionate to the explicit, specified and legitimate purpose pursued; an impact assessment is carried out before the processing is started; privacy by design is ensured and appropriate measures are adopted to protect the security of data, in particular when related to special categories of data such as health related data; data subjects are entitled to exercise their rights."*

Furthermore, the Council of Europe, in Information Document SG/Inf (2020) 11, dated 7 April 2020: *"Respecting Democracy, rule of law and human rights in framework of the COVID-19 sanitary crisis"*, provides to the governments a toolkit to address the current unprecedented and massive sanitary crisis in a way that respects the fundamental values of democracy, the rule of law and human rights²³⁶. This document, among others, addresses the right to privacy, freedom of conscience, freedom of expression, freedom of organization. Regarding the right to privacy and these freedoms, it states: *"The effective exercise of all these rights and freedoms guaranteed by Articles 8, 9, 10 and 11 of the Convention constitutes a basic standard of modern democratic societies. Their restriction is permissible only if established by law and if it is in direct proportion to the legitimate purpose for which this restriction was imposed, including the protection of health. Significant restrictions on routine social activities, including access to public places of worship, public events, and wedding or funeral ceremonies, may inevitably lead to grievances argued under the above provisions. It is up to the authorities to ensure that any such restriction, whether based on derogation or not, is clearly defined by law, in accordance with the relevant constitutional guarantees and in direct proportion to the purpose for which it was taken."*²³⁷

The Council of Europe also has access to COVID-19 data protection resources, including relevant instruments as well as other related data protection documents during the pandemic period.²³⁸

In addition to the Council of Europe, relevant human rights documents during the pandemic were issued by the United Nations and the Office of the United Nations High Commissioner

²³⁵ The text of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, dated 28.1.1982, available at the following link <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680078b37>

²³⁶ Council of Europe, "Information Document SG / Inf (2020) 1", dated 7 April 2020, page 1, (link: <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1d91>)

²³⁷ Ibid, page 6.

²³⁸ Council of Europe, "COVID-19 and Data Protection" (link: <https://www.coe.int/en/web/data-protection/covid-19-data-protection-resources>)

for Human Rights, which published the COVID-19 Guideline. Among the issues covered in these guidelines is privacy. The United Nations High Commissioner for Privacy Guideline states: *“Health monitoring includes a range of tools that track and monitor the behaviour and movements of individuals. Such observation and monitoring should in particular relate to and be used for specific public health purposes, and should be limited in duration and scope as required in the given situation. Strict safeguards should be put in place to ensure that such measures are not misused by governments or companies in collecting confidential private information for purposes unrelated to the public health crisis.”*²³⁹

In this context, the United Nations document "COVID-19 and Human Rights", which was published since the beginning of the outbreak of the pandemic, in April 2020, was of particular importance. This document addresses a number of rights and freedoms, while recommendations are given regarding them. One of these recommendations concerns privacy and data protection and recommends: *“Ensure that safeguards are in place where new technologies are used for surveillance in response to COVID-19, including limitations of purpose and appropriate protection of privacy and data.”*²⁴⁰

From the measures taken to combat the pandemic, which have been undertaken by most countries in the world and Europe, many rights and freedoms have potentially been violated, including the right to privacy. However, from the above documents, states are recommended and instructed those potential violations be consistent with the intent to protect a public good, i.e., public health, and not to exceed the measures for which they were undertaken, including non-infringement of the law on privacy, for which there is a special Convention of the Council of Europe.

Developments during this period regarding the right to privacy

Representatives of the Ombudsperson on May 17, 2021 held a working meeting with the head of the Legal Department at the Information and Privacy Agency (IPA), with whom they discussed the protection of privacy and protection of personal data during the COVID-19 pandemic. He informed that since the outbreak of the COVID-19 pandemic, IPA has not received any complaints regarding the publication, processing or management of personal data, also claimed that such cases have not been addressed to the court either. He stated that regarding the impact and consequences of the processing of personal data in pandemic conditions, the NIPHK has consulted with the IPA on the management of personal data protection, which in a synthesized way has presented some orientations in the right and reasonable direction of the legislation on personal data protection within the measures for the prevention and management of COVID-19. According to him, so far, no institution has issued an internal act, as required by law, to manage the processing and management of data (including data transfer and the procedure of destruction of data received after the intention to their collection ceases to exist). He asserted that the IPA had issued a Legal Opinion as required

²³⁹ Office of the United Nations Commissioner for Guidance, COVID-19, 13 May 2020, page 6 (link: https://www.ohchr.org/Documents/Events/COVID-19_Guidance.pdf)

²⁴⁰ United Nations, "COVID-19 and Human Rights: We Are All Together", April 2020, (link: https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf)

by the Ministry of Health and other health institutions regarding data processing, through which all the details were explained as provided by law. According to him, the most serious case occurred with the release of 4 persons from quarantine, due to their mental health problems, whose names were put in a single decision, which should have provided their individual decisions to protect personal data of each.

The Ombudsperson has ascertained that on 28 October 2020, the information portal "KosovaLive" published an article titled: "*Kosovo fails to protect the identity of those tested with COVID-19*"²⁴¹, through which it reveals several cases when various media, since the occurrence of the first cases with COVID-19, have published a list of names of persons who have undergone testing for COVID-19, as well as have published the identity of persons who tested positive for COVID-19.

The Constitutional Court, in Judgment in case KO 54/20, stated that although apart from the Ombudsperson, neither of the parties has mentioned the fact that the challenged Decision also "interferes" in the right to privacy guaranteed by Article 36 of the Constitution, the Constitutional Court has noted that such an intervention has occurred as far related to this right.²⁴² According to the Constitutional Court, the restriction of this right in question was made by the Government in point 4 of the challenged decision, where it was specifically stated that rallies are prohibited in all "private" environments, whether "open and closed", except when it is necessary to perform work tasks for "prevention and fighting the pandemic" as well as where a distance of two meters with others is allowed.²⁴³ The court further stated: "... *A literal reading of this restriction implies that the government, through the challenged decision has banned all gatherings in the private premises, respectively in families and private houses or dwellings of citizens of the Republic of Kosovo, unless those gatherings in private premises are necessary to perform the work tasks of preventing and combating pandemic ...* "According to this judgment, the Constitutional Court stressed that such a restriction is not provided for by the laws of the Assembly which the Government has cited in the challenged decision as a basis for issuing it, because nowhere in those provisions the law does not mention restrictions that may be imposed on "private premises".²⁴⁴ Given that the circumstances created by the pandemic had created a new reality in the legislative field, with the two new laws approved by the Assembly of the Republic of Kosovo for combating and preventing the pandemic, it is noticed that the legal basis has already been created by authorizing the MoH- in restricting the constitutional right to privacy, in the framework of measures undertaken to combat and prevent the spread of COVID-19.

Based on paragraph 4 of Article 36 of the Constitution, which guarantees the right of every person to enjoy the right to protection of personal data, their collection, storage, access, correction and use, is regulated by law. Law No. 06/L-082 on Protection of Personal Data defines the rights, responsibilities, principles and measures related to the protection of personal data and privacy of the individual. This law defines the responsibilities of the institution

²⁴¹ Kosovalive, "Kosovo fails to protect the identity of COVID-19 test takers", October 2020, (link: <https://kosovalive.org/2020/10/28/kosova-deshton-per-mbrojtjen-e-identitetit-te-testuarve-me-covid-19/>)

²⁴² Constitutional Court of Kosovo, Judgment no. KO 54/20, April 6, 2020.

²⁴³ Ibid., paragraph 266.

²⁴⁴ Ibid., paragraph 267.

responsible for overseeing the legitimacy of personal data processing. This law stipulates that the IPA is responsible for overseeing the legitimacy of data processing and defines the right to compensation of any person who has suffered material or non-pecuniary damage, as a result of a violation of this law by the controller or processor of personal data.

Given that the unprecedented situation created at the national and international level, as a result of the outbreak of the COVID-19 pandemic, necessary additional guidelines have been created towards a fair and reasonable interpretation of the legislative side regarding protection of personal data in the context of health treatment as well as measures to prevent and control further spread of COVID-19. In this regard, IPA has announced that based on the relevant legislation, it has provided advice and guidance to the MoH and NIPHK on the protection of personal data during the exercise of their mandate and responsibilities regarding the relevant procedures for handling cases with COVID-19, however these guidelines have not been made public.

Given that during 2020 and until June 2021, the IPA operated in the absence of the commissioner, the absence of the commissioner during the above period in addition to presenting obstacles to the realization of the right to personal data protection, it also affected the non-issuance of bylaws for the internal organization of IPA, these acts which are necessary for the functioning of IPA, which according to the Law on Personal Data Protection, must be issued 6 months after the entry into force of this law .

In addition to IPA, Law no. 06 / L-082 on Personal Data Protection obliges all controllers and data processors²⁴⁵ to be cautious that the data are protected and processed in the manner prescribed by this law and also the same are obliged to describe, in their internal acts, the procedures and measures established for the security of personal data. This legal obligation is guaranteed by Article 40 of this law [Obligation to issue internal acts], which expressly stipulates the following:

“1. Data controllers and processors must take care, at all times that data is protected and processed in the manner prescribed by this law. 2. Data controllers and data processors must describe, in their internal acts, the procedures and measures established for the security of personal data and must appoint, in writing, the competent persons who are responsible to apply the rules according to this law”.

In this regard, IPA has announced that as far as it is aware, no public institution in the Republic of Kosovo has defined in its internal acts the procedures and measures established for the security of personal data, except that some institutions have appointed competent persons responsible for applying the rules under the relevant law.

²⁴⁵Law No. 06 / L-082 on Personal Data Protection, in Article 3, paragraph 1.2, defines: “Processing - any action or series of actions performed on personal data by automatic means or not, such as: collection, registration, organization, structuring , preservation, adaptation or modification, withdrawal, consultation, use, publication through transmission, distribution or offering, unification or combination, limitation, deletion or destruction. ” In paragraph 1.11. defines: "Data controller - any natural or legal person from the public or private sector who individually or together with others determines the purposes and ways of processing personal data." While in paragraph 1.14. defines: “Data processor - any natural or legal person, from the public or private sector, which processes personal data for and on behalf of the data controller. ”

The Ombudsperson estimates that the lack of regulation of bylaws for controllers and data processors, in addition to continuing to present a challenge in the effective implementation of Law no. 06 / L-082 on Personal Data Protection, it has deepened the negative impact regarding the effective implementation of this law in the current pandemic situation, especially within the implementation of measures to prevent and control the further spread of COVID-19. In this regard, the Ombudsperson deems it necessary that the IPA, for all controllers and data processors, should issue guidelines for the protection of personal data in the framework of measures against COVID-19. Such a guide would be necessary, especially for sectors such as: employment, telecommunications, health and education.

Regarding the findings of the OIK regarding the publication of personal data from various print media, about the persons who have undergone testing for COVID-19, as well as about the disclosure of the identity of persons who have tested positive for COVID-19, the Ombudsperson reiterates that such omissions by the media are unacceptable, as they are contrary to Article 36 of the Constitution, Article 8 of the ECHR, the Law on Personal Data Protection and with the Press Code of Kosovo. The Ombudsperson recalls the recommendations of the Press Media Council of Kosovo on the way of reporting regarding COVID-19, where, among other things, it is recommended to all media and **print media** and those online, as follows: *“Journalists in their reporting should aim not to infringe and interfere with the privacy of the persons for whom we report on. In attempting to cover as many details of cases as possible, journalists are not allowed to disclose detailed health information about the persons for whom we report to, except when they themselves expose detailed medical information and for the cases in which there is a public interest to be informed, thus taking into account the public profile of the person.”*

Furthermore, we recall that on April 4, 2020, the Ombudsperson, through a public communiqué, reacted by considering the publication of some news from portals as disturbing, which they have published lists with tables containing personal data on persons who were obliged to be isolated in quarantine for the prevention of COVID-19. The Ombudsperson stressed that such publications are in conflict with local and international instruments as well as with the regulations dedicated to media self-regulation. On this occasion, the Ombudsperson has called on the media to accurately protect the personal data of persons in self-isolation, quarantine, diagnosed with COVID-19, and hospitalized, except when they are provided with the consent of the person.

Ombudsperson’s general assessments

The Ombudsperson, based on the findings presented in this report, as well as the analysis of relevant laws, draws attention to the importance of protecting, respecting and fulfilling the right to privacy, as a fundamental human right guaranteed by local and international instruments.

The Ombudsperson considers it as an important step the issuance of the Law on Prevention and Combating the COVID-19 Pandemic in the Territory of the Republic of Kosovo by the Assembly of the Republic of Kosovo, which aims to create a legal basis for state institutions of the Republic of Kosovo to prevent and combat the COVID-19 pandemic, including the legal basis for the reasonable restriction of the constitutional right to privacy.

At the same time, the Ombudsperson considers that it is necessary that the Government of the Republic of Kosovo, in addition to implementing the recommendations given in the internal reports, to respect the implementation of international guidelines for the protection of the right to privacy during the COVID-19 pandemic, which reveal the standards that must be respected by states in terms of preventing the violation of this right.

Also, the Ombudsperson considers extremely disturbing any publication of personal data, without the consent and knowledge of the relevant person, given that such an action constitutes a violation of human rights, in this case, a violation of the right to privacy, which is guaranteed by local and international instruments.

The Ombudsperson considers that according to the legal obligation (Law no. 06 / L-082 on Personal Data Protection), every controller and processor of data must act with care so that the data be protected and processed in the manner prescribed by this law, and also, the same are obliged to describe in their internal acts the procedures and measures established for the security of personal data.

Finally, the Ombudsperson considers relevant to the current situation with the pandemic, the publication of a guide for the protection of personal data in the framework of measures against COVID-19, which is deemed necessary especially for the processing of personal data within the measures against COVID19, for sectors such as: employment, telecommunications, health and education.

Electoral rights during the COVID-19 pandemic

The situation created by the COVID-19 pandemic has had reflections in all parts of life, including voting and participation rights. The Ombudsperson has followed with special care the process of early central elections held on February 14, 2021. In this regard, the Ombudsperson has taken certain actions before the electoral process, and has also supervised this electoral process.

On 13 January 2021, the Ombudsperson issued a statement calling on all citizens of the Republic of Kosovo and political parties to take into account the situation created by the COVID-19 pandemic, and during the activities related to the early elections for the Assembly of the Republic of Kosovo, which was expected to be held on February 14, 2021, to strictly respect the recommendations of the NIPHK and the measures set by the Government and the Ministry of Health for the prevention of the COVID-19 pandemic.

On 8 February 2021, the Ombudsperson published the second statement through which it expressed its concern regarding the selective implementation of the Government measures for the prevention of the COVID-19 pandemic, during the election campaign for the General Elections 2021. The Ombudsperson noted that since the beginning of the election campaign the anti-COVID measures have not been observed by political parties, while on the other hand the institutions that are obliged to implement these measures have not reacted. The Ombudsperson considered these actions as double standards that cannot be tolerated and ones that violate the equality of citizens before the law. In addition, the Ombudsperson expresses its concern about endangering the lives of citizens due to non-compliance with the measures.

The Ombudsperson reminded them of the obligation of all institutions and political parties to observe to the measures for the prevention of the pandemic, while inviting the competent authorities to take concrete actions for the observance of these measures by political entities. In the pre-election period, the Ombudsperson received many complaints from citizens, including verification of applications abroad, difficulties in downloading ballot forms from the website of the Central Election Commission (CEC), non-inclusion in the voter list of citizens with the right to vote, as well as the rejection by e-mail of complaints by the Election Complaints and Appeals Panel (ECAP). Regarding this issue, the Ombudsperson has instructed the parties to address the ECAP for such cases.

Knowing the great importance of the general elections for the country, the Ombudsperson has closely observed the early elections for the Assembly of the Republic of Kosovo, held on 14 February 2021, always keeping in mind that the right to vote is essential to democracy based on the will of the people. In this regard, the Ombudsperson through representatives of the Institution of the Ombudsperson has monitored the election process in all municipalities of the Republic of Kosovo. From what has been reported from the field, the Ombudsperson considers that in its entirety, the electoral process has taken place in a safe, peaceful, free and democratic atmosphere. The maturity of the citizens on the one hand, the maximum commitment that the CEC has shown in its entirety in the preparation and organization of these elections, have marked an extremely important moment for the respect of the free will of the citizens and the level of democracy in the country. Therefore, from the perspective of respecting and exercising this political right, the Ombudsperson expresses his maximum consideration and appreciation. The Ombudsperson also praises the Kosovo Police for the professional support it has provided throughout the day of the elections throughout the territory of the Republic of Kosovo, guaranteeing security and the smooth running of the electoral process.

However, given the difficulty of an electoral process, there have been specific segments from a human rights perspective that have caught the attention of Ombudsperson's observers. The Ombudsperson estimates that the conduct of elections in a pandemic situation has imposed specific requirements regarding antiCOVID measures. Possibilities of implementing distance between voters did not exist in each polling station, in the first place, but neither did the administrators of the process. This problem has appeared separately in large polling stations (mainly in cities), where the influx of voters has been greater. However there has been respect regarding the wearing of masks and the use of disinfectants.

On the other hand, most of the schools that served as polling stations did not provide adequate infrastructural conditions (lack of slopes, elevators, etc.) for people with walking disabilities and the elderly. Most of the time, the polling stations were on the second or third floor and this presented difficulties in exercising their right to vote. Meanwhile, almost all polling stations were equipped with ballots in the Braille alphabet, in cases there were blind voters.

Also, based on the specific mandate of the Ombudsperson, it has closely monitored the institutions where persons deprived of their liberty are held, such as: detention centres, correctional centres and the High Security Prison. OIK observers during the monitoring noticed that due to the transfers that occurred with the (pre) detainees, after sending the data regarding those who have the right to vote, there were cases when persons deprived of liberty did not

have opportunity to vote, because their name was not on the lists of the mobile team, and they were not immediately verified with the general list of voters.

Also, under the monitoring of observers from the OIK were the homes for the elderly and without family care, community integration homes, the Centre for Integration and Rehabilitation of Chronic Psychiatric Patients (CIRCPP) and the Hospital and University Clinical Service of Kosova (HUCSK). In these institutions, the administration of voting was done by the mobile teams of the CEC. In the end, the Ombudsperson estimates that the election process held on 14 February 2021 has had a normal course and no serious obstacles have been identified which would be reflected in the violation of the right to vote or to participate. Thus, apart from some problems of a technical nature, in general the electoral process can be considered well-ordered and successful.

XIII. Children's rights, the impact of a health emergency on the lives of children, including children with disabilities, and the difficulties encountered during the COVID-19 pandemic in Kosovo

The COVID 19 pandemic and prevention measures have had a direct impact on the lives and rights of children. The greatest impact has been observed on children with disabilities and vulnerable groups of children in ethnic, socio-economic and cultural terms.

Based on the situation, the Ombudsperson has opened ex-officio investigations regarding the impact of COVID-19 on human rights in the Republic of Kosovo. This investigation, of course, also includes the rights of the child, to understand how health emergencies have affected the lives of children, with particular emphasis on children with disabilities and the difficulties encountered during the pandemic. Although it is currently difficult to accurately assess the level and extent of this impact on the rights of the child, this investigation and report is an appropriate step in this direction. In addition to analysing the impact of the pandemic, this chapter also analyses whether the measures and decisions taken during the pandemic are in proportion to the restriction of the fundamental rights and freedoms of the child.

Protection of children's rights

As stated in the Ombudsperson's annual report for 2020, children's rights are an integral part of human rights. Thus, children and young people have the same general human rights as adults and also specific rights that suit their special needs as children. Children are considered as bearers of rights and active participants in their realization; therefore, the realization of these rights enables children to develop and reach their full potential, recognizing their basic human dignity and the urgency to ensure their well-being. Undoubtedly, the life, health, education and protection of the child are the foundations on which the future of our society and state depends. As children are dependent on the treatment and supervision of their parents or guardians, any changes that affect the latter affect the children at the same time. Therefore, the actions or inactions of parents, the community and institutions can affect children more than any other social group. Consequently, it is important that these actions take into account the best interests of the child when drafting policies and legislation.

In Kosovo about 40% of the population is under the age of 25, while about 30% are children under the age of 18.²⁴⁶ Seeing the importance of young people and children in the future of Kosovo, as well as the need to define and protect their interests, the state of Kosovo has taken care to regulate this issue in political and legal terms, including the rights of children in level of the Constitution and the issuance of other relevant laws.

The Convention on the Rights of the Child (CRC), as the most important international instrument in the field of children's rights, is directly applicable in Kosovo. In the event of a conflict, the provisions of the CRC shall take precedence over domestic law.²⁴⁷ The Constitution also provides for a special article on the protection of children and the care necessary for their well-being. Furthermore, all actions taken by private and public institutions should take into account the best interests of the child.²⁴⁸ This principle is one of the main principles set out in the Law on Child Protection (LCP). The LCP is the first law in Kosovo that specifically addresses the rights of children and entered into force in July 2020²⁴⁹, several months after the onset of the pandemic. As such, this law is one of the most important laws on the rights of the child and constitutes the main legal pillar in Kosovo. However, there are other laws in force in Kosovo, which also regulate aspects of the rights of the child and their protection related to the rights to: life, survival and development, education, health, social welfare, and protection.

The situation created by COVID-19 as never before has affected and influenced the realization or non-realization of children's rights guaranteed by the Constitution, conventions, international instruments and legislation in force. The OIK has previously noted that the pandemic has deepened existing inequalities in Kosovo and exacerbated social and institutional shortcomings in the realization of children's rights. The pandemic as well as the measures taken for its management and prevention have had socio-economic effects and consequently impacted the wellbeing of children, their health, safety and education. The OIK has emphasized that these socio-economic effects can potentially also affect the risk of poverty. Throughout the analysis, the OIK pays special attention to the various factors that interact in the realization of children's rights, such as: gender, ethnicity, and/or disability. In a concrete example, during the pandemic, the OIK noticed that in the transition from school to online learning, many children did not have access to technological equipment and the Internet. However, Ashkali, Roma, Egyptian and children with disabilities in particular were affected by this process. Moreover, learning and access was more difficult for children with disabilities, where at the beginning of the pandemic there were no online curricula suitable for their needs.²⁵⁰

At the global level, the Committee on the Rights of the Child, as the interpreting authority of the CRC, and at the same time one of the most influential bodies in this field, from the outset warned states parties of the serious physical, emotional and psychological effects on children caused by the COVID-19 pandemic and called on States parties to take measures to protect the

²⁴⁶ Kosovo Agency of Statistics: Latest Population and Household Census 2011.

²⁴⁷ Constitution of the Republic of Kosovo, Article 22.

²⁴⁸ Ibid, article 50.

²⁴⁹ Republic of Kosovo, Law no. 06/L-084 on Child Protection, Article 66.

²⁵⁰ OIK, Annual Report 2020, p. 55.

rights of the child.²⁵¹ The Committee in this statement with 11 recommendations, among others, expresses its concern about the situation of children globally, especially for children who are in vulnerable situations, due to the pandemic and the decisions of governments to declare a state of emergency and mandatory closure.

From the analysis of Government decisions and the issuance of the Law on Preventing and Combating COVID-19 Pandemic in the Territory of the Republic of Kosovo, despite the positive purpose and specific articles that define the actions of state institutions to prevent and combat the pandemic, it is missing references and the correct instruction, or the best interests of the child have not been duly taken into account when drafting decisions or determining legal provisions.

As a result of these provisions, the subsequent decisions that are based on this law, have had an impact on the realization of the rights of the child in general, with special emphasis on children in need and those with disabilities, which are associated with full closure for certain periods, restrictions on freedom of movement, restrictions on regular school attendance and school closures, suspension of basic health services, social services, and minimum protection services. The impact of these measures has created multidimensional consequences which will be present for a long time, depending on the degree of violation of rights and institutional and social response to eliminate or minimize these consequences.

Children with disabilities, who even before the pandemic were vulnerable and with many obstacles in terms of exercising their rights, the pandemic has made even more difficult and disabled those few opportunities and rights they enjoyed. Children with disabilities, due to specific needs and failure to provide certain services, are faced with difficulties and risks of abuse, ill-treatment, increased stigma, risk to health and life, deepening social differences due to poverty and difficulty in rehabilitation and life skills.

Regardless of the impact that an action or inaction of the authorities and institutions may have had on a right or group of certain rights of the child, as well as the alleged violation or violation of that right, the responsible authorities and institutions, the impact of pandemic should be understood and addressed from the comprehensive approach, due to the fact that the rights of the child are inseparable and interrelated rights, the violation or violation of a right has an impact and is related to the realization of one or more other rights.

Given the fact that the rights of the child have been violated or infringed, the responsible authorities and institutions must without delay plan and act towards the elimination of the consequences caused by the pandemic. Planning and action need to be comprehensive beyond the current approach focusing only on economic recovery. These measures should include, but are not limited to, ensuring the well-being, adequate treatment and rehabilitation of the consequences caused by the pandemic.

²⁵¹ Committee on the Rights of the Child. The Committee on the Rights of the Child warns of the severe physical, emotional and psychological effects of the COVID-19 pandemic on children and calls on States to protect the rights of the child, Declaration of 20 April 2020.

The right to life, survival and development

The right to life, survival and development is one of the main rights of children on the basis of which other rights are built and derived. Children have the right to be immunized, to have a healthy diet and in sufficient quantity, to be registered, to be named, to have citizenship, and to be cared for by their parents and not separated from their families. These and other rights guaranteed by the Convention and applicable laws must be protected by the responsible authorities and institutions through the provision of basic services to ensure the life and development of the child.

Article 6 of the Convention on the Rights of the Child states: “*every child has the inherent right to life*” and that “*States shall ensure to the maximum extent possible the survival and development of the child.*” Commenting and providing the necessary clarifications regarding this article, the United Nations Committee on the Rights of the Child states: “*Article 6 defines that every child has the inherent right to life and the obligation of the state to ensure to the maximum extent possible the survival and development of the child.*” States Parties should hasten to take all necessary measures to improve antenatal care for mothers and babies, reduce infant and child mortality, and create conditions that promote the well-being of children throughout this critical phase of their lives. ²⁵²Malnutrition and preventive diseases continue to be the biggest obstacles to the realization of the rights of the child during early childhood. Ensuring survival and physical health are priorities, but States Parties are informed that Article 6 covers all aspects of development, because the health and psycho-social well-being of the newborn child are in many respects interrelated. Both of these can be put at risk by unfavourable living conditions, neglect, neglectful and abusive treatment and limitations to achieve the realization of human potential. Young children growing up in specific conditions require special attention. The Committee reminds States Parties (and others concerned) that the right to survival and development can only be exercised in a comprehensive manner, through the application of all other provisions of the Convention, including the right to life, adequate nutrition, social security, adequate standard of living, safe and healthy environment, education and play (articles 24, 27, 28, 29 and 31), as well as through respect for parental responsibilities and provision of assistance for quality services (articles 5 and 18) ²⁵³. From an early age, the child should be involved in activities that promote good nutrition as well as a healthy lifestyle and disease prevention.

The Constitution of the Republic of Kosovo also defines the right to life:

"Every individual enjoys the right to life."

The Law on Child Protection has included and regulated at the level of the principles of the law the right to life and development of the child, ²⁵⁴ as well as has defined special instructive and mandatory provisions throughout the Law on Child Protection.

²⁵²United Nation Committee on the Rights of the Child - GENERAL COMMENT No. 7 (2005) 'Implementing child rights in early childhood' CRC / C / GC / 7 / Rev.1 20 September 2006.

²⁵³United Nation Committee on the Rights of the Child - GENERAL COMMENT No. 7 (2005) 'Implementing child rights in early childhood' CRC / C / GC / 7 / Rev.1 20 September 2006.

²⁵⁴ Law on Child Protection, Article 4.

The Ministry of Health, on March 16, 2020, has decided to suspend all non-emergency services in all public and private health institutions, focusing and concentrating all human and infrastructural resources in preventing and combating COVID-19 and its consequences. From the pandemic. Undoubtedly, service interruptions have had an impact on children and their parents in providing these services. This is due to the fact that delays and delays in planned surgical interventions, routine check-ups, or the provision of therapeutic health services could worsen the health condition of children and in extreme cases endanger their lives. The worst situation has been in the group of children with disabilities, whose direct ban on health services has made it impossible for them to receive prescribed therapies and without which their health condition regresses and the consequences are in some cases even irreparable,

The state of care and services for pregnant mothers and new-borns, despite the fact that it has continued uninterruptedly, where the interviewed pregnant women stated that the level of fear and stress from the possibility of infection with the virus and the fatal consequences that would come from such an infection had increased, and as a result the regular scheduled visits sometimes delayed or did not take place at all.

The cessation of economic activities has damaged and affected the overall income of families, and this has inevitably affected the ability to provide quality nutrition to the level that children had before the pandemic. According to a rapid economic impact assessment conducted by UNDP, UN Women and UNFPA, due to the pandemic, 56% of the 202 Kosovar businesses interviewed had to close, while half or 49% of the 1412 households respondents, have experienced declining revenues. In this respect the situation is aggravated even more by children with disabilities, who due to their needs, need another level of food quality and nutritional values. In addition to food, the dire economic situation has also affected the provision of basic services of care, treatment, therapy, as well as the provision of hygienic preventive tools and special equipment.

Representatives of organizations of people with disabilities have emphasized that the COVID-19 pandemic has directly affected people with disabilities and in particular their families. This is because a significant part of the parents, as a result of COVID-19, have lost their jobs and consequently the access of children to services has become more difficult.²⁵⁵

The lack of essential medicines, which children and their families receive free of charge from public health institutions, has also contributed to the violation of children for the realization of the right to life, survival and development, during the pandemic and in significant periods of time. The most serious case has been with the lack of insulin and drugs for the treatment of cystic fibrosis, as well as the surfactant drug. In addition to the fact that these drugs have a direct impact on the health and lives of children, parents of children are forced to provide these drugs in illegal forms only so that their children are not exposed to the risks of lack of these drugs.

A potential risk to life and healthy development was the temporary suspension for two months (March-April) of the vaccination program for children in Kosovo. Some of the interviewed

²⁵⁵ Ekonomia Online, Pandemic has aggravated the mental health of children with special needs, February 15, 2021, in: <https://ekonomiaonline.com/nacionale/pandemia-ka-renduar-shendetin-mendor-te-femijeve-me-nevoja-te-vecanta/>.

parents stated that for fear of being infected with the virus they did not send their children to be vaccinated according to the regular vaccination program, and even when they started the vaccination, they did not perform it according to the deadlines provided in the vaccination program.

In addition to the challenges with the regular pediatric immunization program, another challenge relates to COVID-19 vaccination. Although there is still no vaccine approved for children aged by the state health authorities or the World Health Organization (WHO), the general belief and perception of children in the age group about the vaccine is not promising, due to the fact that a lot of information is circulating that is for or against vaccination. In this regard, the UNICEF Office in Kosovo, together with the National Institute of Public Health of Kosovo (NIPHK), within the U-REPORT platform, have launched an online survey on the perception of age groups (15- 24 years old) about vaccination and vaccination. From the 1,454 respondents who participated in this survey and the various questions formulated, 43% consider the vaccine safe, 62% think the vaccine is effective in preventing the disease. As for the aspect of getting the vaccine, 40% of respondents would get the vaccine if it were possible, 25% would not get it, and 35% were undecided. The main reasons given for not getting the vaccine are related to lack of information or safety concerns.

In addition to the cases when the right to development has not been realized, there are also cases of success that have influenced the realization of this right, such as the case of developing the online platform for Early Childhood Development and Education for children aged 0-6 years, which was designed and launched by the Ministry of Education and Science together with UNICEF in Kosovo and Save the Children. This platform aims to enable the realization of the right to child development and to ensure the continuity of learning and increase the involvement of parents in activities with children. Following the launch of this online platform, it has reached around 2.7 million views and 220,000 users during the months of April-November 2020.

One of the decisions²⁵⁶ which has had a positive impact on the realization of the right to life, survival and development, has been the dismissal of one parent from work to care for children at home. This decision, although welcome, did not create equality and equal opportunity for parents working in the private sector, so the children of the latter did not have the same benefit.

The right to health and social services

The right to health and social services is an important right on which depends the realization of other rights, the sustainable development of children and the elimination of situations that affect their well-being. To fulfil these rights, the Government and other institutions have taken action by completing the legal and political framework to guarantee the child and enable him to grow, survive and develop; have an adequate standard of living; have the minimum possible level of health and health services; for special care even when he/she is disabled, which ensures dignity and facilitates active participation in the family, society and community; for social services that help children and families in need.

²⁵⁶ Decision no.01 / 07 of the Government of the Republic of Kosovo, dated 11.3.2020.

The importance of these rights is foreseen by the Constitution of the Republic of Kosovo, which defines the obligation of the state to regulate by law health care and social security. It also provides for the regulation of basic social insurance for the unemployed, the sick, the disabled and the elderly.²⁵⁷

The CRC requires States parties to: *"recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health"*.²⁵⁸ Among other things, states shall strive to ensure that no child is deprived of his or her right of access to such health care services, to take measures to reduce infant and child mortality, to ensure safety, before and after birth, as well as provide appropriate information, advice and education.²⁵⁹

This article is also reflected in the LCP, where the measures provided in the CRC are elaborated in more detail and the child is guaranteed the right to free health care.²⁶⁰ This right is regulated by a number of other laws, such as: Law on Health,²⁶¹ Law for Prevention and Fighting Against Infectious Diseases,²⁶² For the Rights and Responsibilities of the Kosovo Residents in the Health Care,²⁶³ Law on Family and the Law on Social and Family Services.²⁶⁴

Health Services

Child health services should be provided free of charge, fast, easily accessible and tailored to the needs of children. Although children are generally less affected by COVID-19, there is a risk that children with disabilities as well as those with chronic illnesses (asthma or cystic fibrosis), or those with weakened immune systems may be affected and consequently seek health services for their treatment and cure.

The decision to declare a public health emergency and subsequent decisions have undoubtedly had a significant impact on the provision of health services for children in general and children with disabilities in particular. In particular, the Government's decisions to close some public and private health services have prevented children with disabilities from continuing certain physiotherapeutic therapies, psycho-social counselling, taking certain medications, rehabilitation and other services. Organizations and associations that provide services for children with disabilities have stressed that the situation is very alarming, because even the few health and rehabilitation services they received before the pandemic, have been banned by the decisions that were made after the announcement of the pandemic.

²⁵⁷ Constitution of the Republic of Kosovo, Article 51.

²⁵⁸ Convention on the Rights of the Child, Article 24.

²⁵⁹ Ibid.,

²⁶⁰ LMF, Article 42.

²⁶¹ Law no. 02 / I-78 on Public Health, among others, regulates the identification and solution of all community problems from every health aspects, prevention of diseases, research on the etiology of the diseases, health promotion, rehabilitation and re-adaptation of the handicapped, health education and social issues. This law aims to provide the legal basis for maintaining and promoting the health of the citizens of the Republic of Kosovo through the promotion of health, preventive activities, and the provision of comprehensive and quality health care services.

²⁶² Law no. 02 / I-109 on Prevention and Control of Infectious Diseases aims to identify infectious diseases and to regulate activities for timely detection, evidence of occurrence, prevention, prevention of spread and treatment.

²⁶³ Law no. 2004/38 For the Rights and Responsibilities of the Kosovo Residents in the Health Care, among others, defines the rights and responsibilities of the residents in health care and the mechanisms of protection and provision of these rights and responsibilities.

²⁶⁴ Law no. 2004/32 of the Family and Law no. 04 / L-081 on Social and Family Services, inter alia, regulates aspects of child protection and the provision of social and family services.

The burden of providing public health services that had been banned by decision, but which until then were provided free of charge, has now fallen on the parents of children with disabilities, to whom it has greatly hampered their ability to finance these services. An additional concern of parents was the quality of services organized through the online system, where quality affects the training and long-term rehabilitation of children.

Throughout the research it was noticed that there is a lack of adequate information about the virus, as well as information guided by conspiracy theories have greatly influenced the reluctance of parents to seek help and health services for their children. Improper and timely addressing of health concerns, as well as proper sampling in health institutions can endanger the health and life of children.

Visits and interviews conducted by the OIK

Seeing the situation aggravated by the global pandemic, in order to monitor the rights of children and to see more closely the work and the difficulties encountered by institutions and organizations, the OIK conducted field visits and sent them written questions.

On 18 March 2021, the representatives of the OIK visited the day care centre "Pema" in Prishtina, where they were closely acquainted with the work of this centre, especially during the pandemic. The representatives of the Centre informed the representatives of the OI, among others, that they provide: Psycho-social and rehabilitation services for children with disabilities, through Day Care Centres; psychological counselling for parents / guardians of children in need; continuous capacity building of the staff of the Day Care Centres, through training and clinical supervision; raising awareness and empowering parents to advocate for the rights of children with disabilities; monitoring the implementation of national laws and policies addressing children's rights; organizing seminars and conferences addressing the needs and rights of children from the most vulnerable categories. A number of 254 children with disabilities were receiving services in this centre, organized through the head office in Prishtina and four other centres (Peja, Prizren, Ferizaj and Gjilan). The pandemic has greatly affected the work of this centre for the provision of planned services. In addition to the difficulties during closure, one of its main challenges remains financial sustainability. Since most support for community-based organizations is 6-month, 8-month to 1-year, or 1-year contracts, this situation does not guarantee sustainability to social and family service providers for vulnerable groups of the population.

While in the answers sent, the Association "Down Syndrome Kosova" presented its work and the challenges it faced during the pandemic. The association has informed the OIK that within its scope of activity: provides therapeutic services for children with Down syndrome, including the services of psychologist, speech therapist, occupational therapy and physiotherapy. Representatives of the association stressed that these, as well as organizations covering the field of disability, have faced similar challenges. She pointed out that the main challenges are: "Of a financial nature, due to the lack of continuous support from public institutions for the provision of services, services provided by the association are within the four regional centres. From the information from the field the difficulties that have been identified are the financial costs for the therapy that children and adults with Down syndrome had to buy (cases which

have been affected by COVID-19.²⁶⁵ Representatives have raised concerns about vaccinating people over the age of 16 with Down syndrome, who have been identified by international experts as a high-risk group of complications in the event of COVID-19 infection. This is because they have much weaker immunity than the rest of the population and that in most cases the syndrome is associated with cardiovascular disease, respiratory disease, endocrine disease, obesity, etc. According to the association, most European countries have designated people with Down syndrome in the first group for vaccination.²⁶⁶ The association said that so far it has sent two requests to the relevant institutions for people with Down syndrome to be placed in the first group for vaccination, but unfortunately have not received any response.

Since the opening of the COVID-19 Ward at the beginning of the pandemic until the end of 2020, 64 cases have been hospitalized at the Pediatric Clinic. While from January-June 2021 67 cases have been hospitalized²⁶⁷. The condition of these patients has been moderate, but for some of them it has been more severe because they have been accompanied by chronic diseases. The handling of these cases was done in accordance with WHO protocols and the recommendations of the NIPHK. According to the Clinic, there were no obstacles in providing health services for the treatment of these children. The COVID-19 ward has 9 beds that have been enough to treat these children. Initially, the difficulties encountered were related to the diagnosis of cases in the absence of PCR swabs, lack of consumables (disinfectants, masks, gloves, etc.). Later the difficulties had to do with the lack of nurses, as 51 of the 128 nurses of the Pediatric Clinic had served in the COVID-19 clinics on the recommendation of the HUCSK management. In general, the representatives of the Clinic were estimating that COVID-19 disease had no impact on the health life of children.

Mental health

Mental health is very important and equivalent to physical and biological health in the development of the child, especially during early childhood and throughout the life of the child. Improper mental health development will cost children the ability to cope with problems and difficulties related to their educational, behavioural, and emotional control skills.

The main problems that children face throughout the pandemic include: grief, fear, insecurity, social isolation, increased time in front of the screen, and the fatigue of parents and family members to address needs and spend time with children.

Government Decisions on lockdown, isolation at home, transition to the online education system, lack of interaction with society, long stay near television screens, excessive use of the Internet and video games, obtaining various information about the risk of COVID-19, uncensored information about the manner of death and a lot of fake news about the pandemic, all of which inevitably have a direct or indirect impact on the mental health of children. From the various reports and information circulating on the Internet globally, there is an increasing trend of cases of children with mental health problems with pronounced symptoms of anxiety, depression and a tendency to self-harm and suicide.

²⁶⁵ Down Syndrome Kosova Association, Answers to OIK questions, April 21, 2021.

²⁶⁶ Ibid.,

²⁶⁷ Pediatrics Clinic, Answers to OIK questions, June 22, 2021.

The impact of the pandemic on mental health is expected to be long-term and wide-ranging, and difficulties have been noted especially in children and young people.²⁶⁸ This finding is also supported by the response policy of the Organization for Economic Cooperation and Development (OECD), which states that the mental health of young people aged 15-24 has seriously deteriorated during the two years of the pandemic. Furthermore, representatives of organizations of persons with disabilities point out that the emotional state or mental health of children with disabilities during the pandemic has been severely aggravated and has had a direct impact on their health.²⁶⁹ Isolation at home is considered one of the most influential factors in the deterioration of the mental health of people with disabilities.

Social services

The aggravated financial situation and the countless difficulties faced by organizations / associations in terms of providing social services for children with disabilities, is evidenced in the report published by KOMF, which states: *"Based on data monitoring, the situation created by COVID-19 has greatly aggravated especially vulnerable groups and this has affected the increase in the number of cases in need of social services. Many services provided by the institutions of the Republic of Kosovo and non-governmental organizations for vulnerable groups have been limited during this period due to the establishment of measures to prevent the spread of the COVID-19 virus. Central and municipal governments this year have focused on managing the COVID-19 pandemic, leaving out social services".* Related to the financial challenge and the instability of providing social services for vulnerable groups, including children with disabilities, the same report highlights the fact: *"The Ministry of Labour and Social Welfare and the municipalities again this year failed to creating a sustainable scheme of purchasing social services. They continued to support them through subsidizing social service providers, which is not considered a sustainable form of financing. Most of the licensed organizations in the field of social services remained without funding throughout 2020 by the Ministry of Labour and Social Welfare. This is due to the delayed announcement of the regular annual call of MLSW for subsidizing social service providers".*

The pandemic, in addition to having a direct impact on the realization of the rights of the child, also had an indirect impact because many processes in the adoption of relevant laws were interrupted. Failure to approve these laws will have an impact on the provision of necessary social services to children and families in need, especially children with disabilities.²⁷⁰

Another challenge identified in terms of providing social services for children with disabilities and families in need was the decision of the Government to authorize the Centres for Social Work to implement the Fiscal Emergency Package. This authorization created an extraordinary

²⁶⁸ High level meeting – Summit on Mental Health Summit, held in Athens from 22-23 July 2021.

²⁶⁹ Ekonomia Online, Pandemic has aggravated the mental health of children with special needs, February 15, 2021, in: <https://ekonomiaonline.com/nacionale/pandemia-ka-renduar-shendetin-mendor-te-femijeve-me-nevoja-te-vecanta/>.

²⁷⁰ This reality is also emphasized in the above-mentioned report of KOMF, where: "During 2020 there was no progress regarding the decentralization of the budget for social services. The Draft Law on Local Government Finance, although drafted in 2019, failed to be sent for approval to the Government and the Assembly and as a result did not create a Specific Grant for Social Services, which would enable sustainable financing of social services. The funding formula for social services, which began to be drafted in 2019, failed to be finalized. The same thing happened with the Draft Law on Social and Family Services, which despite the forecasts and the work of the working group to finalize it during 2020, continues to remain in the drafting process."

burden for the CSWs already overloaded with work arising from the legal mandate, and as a result the CSWs did not have the necessary space to cover all the tasks related to social services.

The right to protection from violence

Children have the right to live a life free from violence, guaranteed by the Constitution²⁷¹, whereas the Government and responsible institutions have a duty to take action to protect children from any kind of violence and harm. Harm must be understood and includes: violence, abuse, exploitation and neglect, both psychologically, physically and socio-economically. Protection is an obligation for everyone and includes all levels, from the district and the family environment, the community to the government level instances. The CRC also sets out in detail the provisions calling on States parties: “...shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. ...These protection measures include, where appropriate, effective procedures for designing social programs for the necessary support of the child and those caring for him or her, as well as for other forms of prevention and identification, reporting, referral, investigation, treatment and the prosecution of child abuse cases described above, including, where appropriate, judicial intervention procedures.”²⁷²

This right is included and regulated in the LC

P, which among other things aims to: “*protect the child from all forms of physical and mental violence, abuse, misuse, exploitation, neglect or any other form that endangers the life, safety, health, education, and child development.*”²⁷³

Lockdown of adults and children at home or in the apartment for a temporary period of time has increased the chances of increasing violence, whether physical, emotional or mental. Therefore, the responsible authorities and institutions should take into account the need to increase activities and actions that protect the child from all forms of violence. If the violence is not properly addressed or if the implementation of a coordinated response is delayed, the suffering of children may increase, irreversible harm may be done to them, and they may recover late.

Deprivation of liberty

Children deprived of their liberty constitute a vulnerable group of children who require special protection. The responsible authorities and institutions must ensure that the rights of every child deprived of their liberty are respected, protected and fully complied with. This includes providing appropriate care, protection from harm, taking measures to reduce overcrowding in all areas where they can be kept indoors, returning them to complete safety with families, or through any alternative form of supervision. It is also important that the responsible authorities and institutions take into account that for all decisions related to the deprivation of liberty of

²⁷¹ Constitution of the Republic of Kosovo, Article 50 (3).

²⁷² KDF, article 19.

²⁷³ LCP, Article 1 (1).

the child, be guided by the principle of best interests, the right of the child to life, survival and development, the principle of fair and timely trial as well as the right to be heard.²⁷⁴

To facilitate the implementation of the right to child protection in terms of deprivation of liberty, UNICEF has published a guide on actions to be taken by the authorities and institutions responsible for children who have been deprived of their liberty or those who for legal reasons could be subject to decisions on deprivation of liberty. According to this guideline, the responsible authorities and institutions had to take action to: impose a moratorium on new entrants to juvenile detention facilities; the release of all those minors who can be released in complete safety; and protecting the health and well-being of all those juveniles who need to remain in prison.

Based on this global guideline and the situation created by the pandemic, the Ombudsperson Institution (OIK), together with the UNICEF Office in Kosovo and the Coalition of Non-Governmental Organizations for the Protection of Children (KOMF), have sent a joint statement on the protection of the health and life of convicted juveniles, addressed to: the President, the Speaker, the Parliamentary Committee on Legislation, Mandates, Immunities, the Rules of Procedure of the Assembly and the Oversight of the Anti-Corruption Agency, the Judicial Council, the Prosecutorial Council and the Ministry of Justice.²⁷⁵ The statement calls on the institutions to consider the possibilities that are within the laws in force, as soon as possible, where the legal conditions are met, to take decisions, either for replacement or for review of institutional educational measures, the substitution of punishment, early release, conditional release or even pardon of sentences. This statement was based on global guidance and included a detailed rationale. This is because taking into account the possibilities within the applicable laws and being aware that the initiatives to make legal changes are difficult and extremely protracted at this time, as well as the fact that any delay in this regard may affect the health and general safety of juveniles in detention on remand or any of the institutional educational measures or imprisonment, has been requested as soon as possible, where the legal conditions are met, decisions should be taken, whether for replacement or review of institutional educational measures, the substitution of punishment, early release, conditional release or even pardon of sentences. In all these circumstances, the immediate taking of such action is in accordance with and in accordance with the requirements of the United Nations Convention on the Rights of the Child for the observance of the principle of the best interests of the child and the principle of safety of life, survival and development. From the information gathered and the interviews conducted, it is clear that the situation of children in this regard has not changed. Added to this concern is the need to understand the level of juvenile detention decisions during the pandemic as well as the general conditions for juveniles in detention centres.

According to a study conducted by EULEX, there is a decrease in the number of prisoners, including juveniles, where the number was reduced from 44 to 39. However, the fact that the legal framework does not allow the postponement, suspension or termination of due to

²⁷⁴ Ibid., Chapter II.

²⁷⁵ See: Joint Statement of the Ombudsperson, UNICEF and KOMF (Coalition of NGOs for the Protection of Children) - Call for Action "To give a chance to minors", 2020, at: <https://www.oikrks.org/2020/05/22/deklarate-e-perbashket-e-avokatit-te-popullit-unicef-dhe-komf/>.

pandemic-related reasons, remains an issue that deserves attention, because the risks of COVID-19 infection in correctional facilities are higher and that pre-existing health conditions or lack of immunity in certain prisoners may lead to more severe symptoms.

Protecting the child without parental care

Children have the right to be raised with the care and protection provided by their parents. This right is universal and is guaranteed to every child by the Convention on the Rights of the Child and the Law on the Protection of the Child. In cases where this right cannot be exercised, the child should be offered protection through alternative forms of care by placing the child in a similar environment to the child's family and relatives. In cases where placement is not possible with relatives, or in any of the forms of alternative care, then as an exception, the child should be placed in institutional care, provided that this placement is as short as possible and according to a strict program of controlled to avoid stigma, violence or various forms of child abuse.

The pandemic has had a significant impact on the protection of the interests of children without parental care in two aspects: on the one hand it has hampered the realization of the rights of children who are parental care, while on the other hand it has increased the cases of children without parental care, due to the fact of death of parents, or even health restrictions to exercise parental rights for certain periods. As in other protection groups, the situation is even worse and with greater consequences in groups of children with disabilities placed in any of the forms of alternative care.

In addition to the many challenges that were present before the pandemic, such as: not recognizing the work experience of foster families, not continuing to support children and families after reaching the age of 18, lack of support with specialized services, children and providers alternative care services throughout the pandemic have also faced challenges which have had a direct impact on their lives and development. In children in general, and in children with disabilities in particular, placed in any of the forms of alternative care, the pandemic, respectively the measures taken by the Government, have greatly affected the realization of their rights to life, development, health, education and protection. This is due to the fact that these children, like other children, during the pandemic in certain periods have been forced to remain isolated, have had a lack of interaction with peers, their services have been suspended or interrupted from time to time, the solution of their legal status or transition to some other form of protection, etc.

These and other challenges were identified during interviews with professionals in this field, who among other things stressed that the pandemic has greatly affected the deterioration of the situation of children without parental care and placed in any of the forms of alternative care. Professionals in this field have listed a number of challenges they have faced during their work, such as: *"Interruption of activities with physical presence and online transition to some of these activities has affected the quality of service delivery defined in the work plans, in this regard has had a very large impact the lack of equipment (computers or telephones) and lack or poor internet network"*. They further added: *"Children and families have also suffered due to the impossibility of continuing financial assistance for children and foster families. This includes*

cases of children over the age of 18, whose assistance was terminated immediately. This has affected and further aggravated the financial burden of foster care for these children. During the pandemic period, there have been several cases where the foster family with its financial resources has continued to support and protect children, especially those with disabilities with the sole purpose that these children are not placed in the Special Institution in Shtime". Another impact is related to the health aspect of children without parental care, where "Children who have had chronic health problems (the case of a child with heart problems) have been delayed by almost 1 year in terms of overseas transfer for surgery."

The pandemic has also had an impact on the legal procedural aspects of resolving the formal legal status of children without parental care, especially the cases of transition from one form of care to other forms (from family housing to adoption), due to the fact that courts in certain periods did not work and in some cases the processing of cases processed for adoption was delayed, or there was even removal, recognition of parental rights.

Visits and interviews conducted by the OI

On March 12, 2021, the representatives of the OIK visited the Day Care Centre for Children in Prishtina, where they were more closely acquainted with the services provided to children at risk, especially for children in street situations. Representatives of the OIK were informed about the educational process of these children, the provision of psychological services, health, etc. They were also informed that in terms of health they have a very good cooperation with the Family Medicine Centre (FMC), where they refer cases in terms of health.

While in the questions sent by the OIK to the organization "SOS", she on April 20, 2021, through the answers presented her work and the challenges she faced during the pandemic. They stated, among other things: *"Normally the pandemic has affected the emotions, behaviours and thoughts of children where the support of psycho-pedagogical staff is needed continuously in order to maintain psychological balance. "Since last year, we have drafted an internal response protocol where every month SOS families are supplied with adequate vitamins, masks, disinfectants and other preventive preparations to protect against the virus."* Moreover, they have highlighted the fact that for the isolation period March-April 2020, chronic patients have had challenges in receiving prompt services.

While in the questions sent by the OIK to the organization " Shpresa dhe Shtëpi" (Hope and Home), where on 21 April 2021, through the answers it presented its work and the challenges faced during the pandemic. The representative of "Shpresa dhe Shtëpi" informed the OIK representative: (...) *the Shelter Shpresa & Shtëpitë e Fëmijëve (Hope & Orphanages) Kosovo, provides temporary social and residential services for children in need of protection. The services that are included in the package of services are: housing, food, clothing, hygiene kits, organization of health services and medicines, psycho-social programs, community education, recreational and sports activities, etc. Health services are not provided by the shelter but in cases when there is a need for children for such services, the shelter organizes these services and the staff accompanies the children to the doctor (Public Institutions). Fortunately, the children enjoyed good health and there was no need for frequent health services, but even in cases when there was a need, we went to the Family Medicine Centres. During December 2020,*

we made a request to the NIPHK for tests for COVID-19 for all children and staff and they answered us very correctly. (...) "

While in the questions sent by the OIK to the organization "Terre des Hommes" (TDH), on 22 April 2021, through the answers it presented its work and the challenges faced during the pandemic. The TDH representative informed the OIK representative that among the services provided during the COVID-19 pandemic, are: *Supportive Lessons for Day Centre children include: lessons based on the child's needs, basic learning starting with letters and numbers, reading, writing, and basic English language. Psychosocial activities-games. Psychological counselling - individual and group. Parenting Support Program. Family visits to assess the situation of the child and their family members. Awareness campaign activities. Monitoring and identification of children in street situation. Referral of cases to adequate institutions. Health services for children depending on the need and evaluation of the Social Worker. Emergency support with food, hygienic and didactic packages. Internet connection support for families of children to enable and facilitate involvement in online activities. Support with technological tools to facilitate connection to online activities. Administrative support in opening accounts and completing applications to benefit from the government emergency package for COVID-19. Referral and support to health services as needed in close cooperation with FMC Prishtina, Fushe Kosova and UCKK; Medication support as well as for receiving services: - Medical examinations - Laboratory analysis, - CT - Dentist examinations - Ophthalmologist examinations and purchase of glasses (...).*

"Regarding the challenges and difficulties, the representative of "TDh" informs about these challenges: (...) "Frequent challenges are due to the discriminatory and exclusionary approach of the persons faced by the children of the day care centre (ie also in receiving health services). Lack of information about the real situation and the rights that belong to each child without any distinction. It is noteworthy the change in approach to these children when they are accompanied by the staff of the centre (..) "

Conclusions

The Ombudsperson finds that the decisions of the Government and the relevant institutions have not taken into account the required level of implementation of the principle of best interests of the child. The COVID-19 pandemic and the relevant decisions issued by the Government and other institutions have affected the realization of the rights of the child in the Republic of Kosovo. Although it is difficult to draw the exact conclusion from this report that the extent of violations of the rights of children, especially those with disabilities, violations by the action or inaction of the Government and other institutions have been identified throughout the investigation in many areas and aspects.

There has not been a comprehensive support strategy for children with disabilities, in many cases the support and assistance has been temporary, poorly organized and has not covered all children at once.

The discontinuation and suspension of some health services has worsened the health condition of children, including children with disabilities, and in certain cases could have endangered the lives and development of children.

Discontinuation and temporary suspension of follow-up health services (physiotherapy-rehabilitation therapies, psychological and social counselling therapies, essential medicines, daily support programs) have deprived children with disabilities of basic therapeutic rehabilitation services. In the absence of these services, in some cases it has affected the fading, but also the ruining of all the progress that has been achieved in certain abilities of children with disabilities.

As a result of the interruption and suspension of services, for many children with disabilities the burden of providing these services has fallen on their parents or guardians. This burden, in addition to the financial aspect, has been greatly hampered in finding alternatives, so that children with disabilities are not interrupted by planned services.

Thus far, we are aware of the direct impact of COVID-19 on the health of children, but it is not yet known exactly the level of indirect impact, which according to many experts in the field, this impact will have many consequences. and will be present for a long time in the lives of children.

The pandemic has undoubtedly had an impact on the deterioration of economic status, further deepening the gap of social inequality between families. The economic situation of households is reported to have been further aggravated by the risk of increasing poverty.

A very worrying aspect that has had an impact on the life and health of children, especially those with disabilities, has been the lack for certain periods of essential medicines. And if the lack of these drugs alone was not enough, for many parents the provision of these drugs through illegal means has been a high-risk challenge.

The decisions of the Ministry of Health to suspend, for a certain period, the vaccination program, has affected the postponement and delays for the immunization of new-borns. This process has since been accompanied and has also influenced the disruption of the regular vaccination program.

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

The pandemic has also had a significant impact on delays in implementing the Government and Parliament's legislative agenda. Some of the laws that directly affect the interests of children (the Law on Social Services and the Law on Local Government Finance) were not submitted to the Assembly for approval, although they were drafted.

Although data from the pandemic show a decrease in cases of deprivation of liberty (detention, detention and imprisonment), the risk of infection was still high for juveniles who were undergoing correctional education or imprisonment. This pandemic should serve as an example for policymakers and lawmakers to review policies and legislation so that juveniles in such circumstances are allowed early release or transition to any of the alternative measures or sentences.

The pandemic has affected children without parental care, but also children who have had parental care, due to the health consequences that may temporarily or permanently deprive children of parental care. Children without parental care, like other children, during the time of the pandemic in certain periods have been forced to remain isolated, have lacked interaction with peers, their planned services have been suspended or interrupted from time to time, there have been delays in resolving their legal status or transitioning to some other form of protection.

XIV. The right to education and cultural activities during the pandemic

The right to education is one of the rights guaranteed by the Constitution of the Republic of Kosovo for every child without distinction, and represents one of the fundamental rights and freedoms, which is also guaranteed and protected by conventions and key instruments. international. The constitutional right to education is seen as a right and a duty at the same time, where on the one hand all children enjoy the opportunity to be educated, and on the other hand there are some obligations to implement this right, obligations of which fall on the state, on the parents, but also on the children themselves.

The COVID-19 pandemic has caused a negative effect and has greatly hampered the educational process and also hampered cultural activities in the Republic of Kosovo.

Due to the conditions and circumstances created by the COVID-19 pandemic, MEST has taken measures for the start of the school year 2020/21, drafting documents that will facilitate the work of educational institutions, for this purpose various guidelines have been published, but the most important is the Master Plan for the Development of Learning Conditions during the COVID-19 Pandemic 2020-2021 in the Republic of Kosovo, approved by the Government of the Republic of Kosovo on August 26, 2020.²⁷⁶ The purpose of this document is to reflect the Project for the start of teaching for the school year 2020 - 2021, with a focus on e-learning and teaching in school facilities, including an Action Plan and the projected cost of preparation, implementation and monitoring of e-learning. teaching. The main components of e-learning in Kosovo are:

1. *“Distance Learning (RTK and YouTube) will apply (a) to grades 1-9, (b) to Early Childhood Education (ECHE) and (c) for education for children with special educational needs (SEN)*
2. *Online tuition (with Zoom, Google Meet / Classroom, and Microsoft Office) will be organized (a) entirely in upper secondary schools, and (b) partially for grades 1-9, for ECHE and SEN (in addition to distance learning) .*
3. *Practical learning - professional practice.*
4. *Development of teaching in school facilities. ”*

²⁷⁶Office of the Prime Minister of the Republic of Kosovo, meeting decisions (link: <https://kryeministri.rks-gov.net/wp-content/uploads/2020/08/Vendim-nga-mqipja-e-27-t%C3%AB-e-Qeveris%C3%AB.pdf>)

According to this document, it is foreseen that teaching will take place according to Scenario A: teaching takes place in schools; Scenario B: combined learning (school and distance learning) and Scenario C: online and distance learning.

According to this document, it is foreseen: *“After the calculations, it was concluded that for a certain amount, the volume of teachers' work will increase.... To this must be added the extra breaks that extend the stay at school and the added effort because it works with two groups. However, the workload is not expected to increase by more than about 10 to 20% of the overall teaching rate. To this must be added the amount of work that is added to replace teachers in serious health condition and older teachers with chronic diseases who must also avoid contact with a larger number of people at the same time.”*²⁷⁷

Also, according to this document is provided: *“Compensation²⁷⁸ of commitment above the norm of teachers in the amount of 1000 + 300 norms for the whole of Kosovo, then about 100 norms of technical workers, 50 norms of pedagogues and 100 norms of psychologists.”*²⁷⁹

Also, the Constitution in Article 47 [Right to Education] stipulates: *“1. Every person enjoys the right to free basic education. Mandatory education is regulated by law and funded by public fund. 2. Public institutions shall ensure equal opportunities to education for everyone in accordance with their specific abilities and need”*. At the same time, Article 50 [Rights of the Children] stipulates: *“1. Children enjoy the right to protection and care necessary for their wellbeing. 2. Children born out of wedlock have equal rights to those born in marriage. 3. Every child enjoys the right to be protected from violence, maltreatment and exploitation. 4. All actions undertaken by public or private authorities concerning children shall be in the best interest of the children.”*

Law No. 03/L-068 on Education in the Municipalities of the Republic of Kosovo, in Article 4, defines the extended competencies of municipalities: *“4.1 Municipalities shall have full and exclusive powers, insofar as they concern the local interest, while respecting the standards set forth in applicable legislation with respect to the provisions of public pre-primary, primary and secondary education, including registration and licensing of educational institutions, recruitment, payment of salaries and training of education instructors and administrators.”*

Law No. 04/L-032 on Pre-University Education in the Republic of Kosovo, in Article 1, stipulates: *“The purpose of this law is to regulate pre-university education and training from ISCED levels to 4, including education and training for children and adults taking qualifications at these levels.”*

Article 3, General principles of pre-university education:

“1. No person should be denied the right to education.”

²⁷⁷ Ministry of Education, Science, Technology and Innovation, e-learning platform, (link <https://masht.rks-gov.net/e-mesimi>)

²⁷⁸ According to the knowledge of the OIK representative, the University of Prishtina “Hasan Prishtina” has compensated the academic staff (see Decision No. Prot .: 2/952, dated 27.11.2020), as well as the Government of the Republic of Kosovo, through a support package for the realization of distance learning, has compensated the teachers engaged for distance learning in RTK 4 (see Decision No. 09/21, dated 02.04.2020).

²⁷⁹ Ministry of Education, Science, Technology and Innovation, e-learning platform, (link <https://masht.rks-gov.net/e-mesimi>)

2. *Pre-university education is a joint responsibility shared between parents, educational and training institutions, municipalities and government, according to the respective duties and functions set out in this Law.*

3. *It shall be the general duty of the Ministry, the municipalities, the educational and/or training institutions and all other bodies engaged in the provision of pre-university education, as regulated by this Law and other applicable laws, to plan and deliver an efficient, effective, flexible, inclusive and professional service designed to provide all pupils with equal opportunities in access to education in accordance with their specific abilities and needs and to promote their educational and social development.*

4. *In planning, managing and delivering the system of pre-university education, the Ministry, municipalities and educational and/or training institutions shall have regard to the internationally- accepted norms of Education for All, the rights of the child, the protection of vulnerable groups within society and the promotion of gender equality. ”*

Government decisions regarding the education sector in Kosovo during the pandemic

On 11 March 2020, at the request of the Ministry of Health, in order to prevent the COVID-19 pandemic, the Government of the Republic of Kosovo issued Decision No. 01/07, which according to Article 1, paragraph 1.1, determined: *“Termination of the educational process in public and private educational institutions at all levels until 27 March 2020, with the recommendation to dismiss one parent (this measure does not apply to health workers and workers in the security sector).”*²⁸⁰ Whereas according to paragraph 1.5 it was defined: *“Public and non-public activities can take place closed / without the presence of the public such as: sporting events / gatherings, gatherings, concerts, conferences, round tables until another decision.”*²⁸¹

On 13 March 2020, the Government of the Republic of Kosovo, after confirming the first positive cases with COVID-19, issued Decision No. 01/09, according to which, in paragraph 7, it was determined: *“All cultural and sports activities are suspended.”*²⁸²

On 15 March 2020, the Government of the Republic of Kosovo issued Decision No. 01/11, according to which a health emergency was declared.²⁸³

After this period, in March 2020, based on article 5, points 1.3 and 1.4, of Law no. 04 / L-032 on Pre-University Education in the Republic of Kosovo and pursuant to Decision 01/07, dated 11.3.2020, MEST decided to start implementing online education in all educational institutions of the Republic of Kosovo. In accordance with this decision, from March 30, 2020, MEST decided to include higher vocational secondary schools and centres of competence. The implementation of online learning was aimed at providing educational services and curriculum

²⁸⁰ This measure has been amended by the Government of the Republic of Kosovo, with Decision no. 01/16, dated 26.3.2020, according to which this measure is valid until another decision.

²⁸¹ Office of the Prime Minister of the Republic of Kosovo, meeting decisions (link: <https://kryeministri.rks-gov.net/wp-content/uploads/2020/03/Vendimet-e-Mbijjes-s%C3%AB-7-t%C3%AB-t%C3%AB-Government%C3%AB-s%C3%AB-Republic%C3%ABs-s%C3%AB-Kosovo%C3%ABs-2020.pdf>)

²⁸² *ibid.*

²⁸³ *ibid.*

implementation in accordance with the conditions created in the circumstances of the COVID-19 pandemic.

On 30 March 2020, MEST published information regarding the use of the Zoom platform, as a platform which provided services for distance meetings and could be used to develop the learning process. Also, MEST has issued the Instruction to the Municipal Directorates of Education for the realization of online learning for higher vocational high schools (VHS) and for the centres of competence, as well as has defined the Duties and Responsibilities for the Realization of Distance Learning.

On 4 April 2020, the weekly broadcast schedule was published on RTK 4 for grades 1-9, thus starting distance learning, which through broadcasts has lasted for grades 1-5 from half an hour of teaching, while for grades 6 -9 is held for a period of one hour.

On 14 April 2020, MEST issued Guidelines for the municipal directorates of education (MED) and for resource centres for the implementation of distance learning for children with special needs.

On 24 April 2020, MEST has issued the Guide for Student Assessment in the school year 2020/2021 in the conditions of the COVID-19 pandemic, as well as Decision Ref: 25/01B, dated 24.4.2020, on the procedures for conducting the assessment of students during distance learning, at all levels of pre-university education in Kosovo.

Considering the situation with the pandemic, in accordance with the recommendations of the National Institute of Public Health of Kosovo (NIPHK), in May 2020 MEST issued Information, Instructions and Rules for Candidates (graduates), for the State Matura exam, scheduled for the date 4 July 2020.

Also, in May 2020, the Guide for the organization and administration of the 2020 achievement test was issued, scheduled for 23 June 2020. It is worth mentioning that students with special needs, who were educated with the Plan, were released from this test. Individual Education; and those with areas of activity. While E-learning broadcast through shows on Radio Television of Kosovo has continued until the end of the school calendar.

In June 2020, the NIPHK published the Manual for Protection against the Spread of the COVID-19 Virus, in order to protect citizens from the spread of the virus infection. The manual serves as a temporary guide for the application of safeguards to prevent and combat COVID-19 in public and private institutions.

The Guide contains general information on the spread of COVID-19, how to prevent infection, classification of workers' exposure to COVID-19 as well as safeguards for activities allowed in the second phase of the gradual opening of the economy.

This manual contains guidelines for various areas which have been previously analysed by health professionals.

On 11 September 2020, MEST issued Decision No. 01/B-101 on the start of school in the new school year 2020/2021 in pandemic conditions, according to which the first phase began on 14 September 2020, all children started school of pre-primary class and students of grades 1, 2, 3, 6, 10 in all schools of the Republic of Kosovo. Grades 4 and 5 were taught in school (according

to Scenario A) or as a combined lesson (scenario B - distance learning and online learning), depending on the capacity of the school, in accordance with the assessment of the MED task force and educational institutions.

While the second phase started on 21 September 2020, the lesson was started by the students of 7th, 8th, 9th grades of lower secondary education and of 11th and 12th grades of upper secondary education. Students attended classes two days a week on school premises and three days in the form of online and distance learning or another organization at the discretion of the school manager.

On 20 April 2021, in order to organize supplementary education for students who are stuck in achieving results as a result of the pandemic COVID-19, MEST issued Decision no.01B/22, according to which it was determined that supplementary education would be implemented in level I, II and III of pre-university education.

On 5 April 2021, the Government of the Republic of Kosovo issued Decision No. 01/05, according to which it is foreseen that in public and private institutions at work only staff who perform essential services (paragraph 6), for public and private institutions of pre-university education are obliged to organize teaching according to the instructions of MEST, while preschool and primary institutions continue to operate normally, respecting the measures and recommendations against COVID-19 (paragraph 16).

Also, according to this decision, regarding higher education, it is allowed to hold exams with physical presence, but respecting the measures and physical distance and dividing into groups of 10 people (paragraph 17).

Regarding the subordinate institutions of the Ministry of Culture, Youth and Sports as well as municipalities, theatres, libraries, philharmonics, galleries, ensembles, ballet, cinemas, youth centres, museums, cultural centres, are allowed to work from 5.00 to 21:00 using 20% of the space/surface (paragraph 34). Sports activities for professional purposes were also allowed without the presence of the public (paragraph 35).

On 18 April 2021, the Government of the Republic of Kosovo issued Decision No. 01/07, according to which it is provided that only essential staff (paragraph 4) appear in public and private institutions, while for employees who are not essential staff, employers are obliged to create conditions for the performance of work duties from home (paragraph 6), also, pregnant workers should be released from the obligation to appear at work, giving them the opportunity to work from home (paragraph 7). Educational institutions of all levels of education continue teaching according to the relevant guidelines for the education sector. According to paragraph 35, subordinate institutions of the MCYS are allowed to work using 30% of the space.

On 28 May 2021, the Government of the Republic of Kosovo issued Decision No. 04/14, according to which regarding the educational institutions, there is no change of measures, the only change is that the MCYS subordinate institutions are allowed to work using 30% of the space.

On 22 June 2021, the Government of the Republic of Kosovo issued Decision no. 17/16, according to which, as the epidemiological situation with COVID-19 is stable in Kosovo, there is no change in terms of educational institutions and subordinate institutions of MCYS, the

only difference is in the competitive activities in outdoor sports spaces which are allowed the presence of spectators up to 15% of the capacity of the facility.

The decisions mentioned above have had a great impact on the realization of the right to education. Since the general lockdown in the country and the decision to close schools, a total of 345,540 students have been affected by attending the 2019/2020 academic year.

After the mandatory closure of the entire education system in the Republic of Kosovo, the Ministry of Education, Science and Technology, with the help of local and international partners, managed to develop and offer distance education through distance learning system. These types of distance learning include:

1. E-Learning Platform - the main online platform broadcast by the public channel RTK.
2. Early childhood education platform - distance education - care, development and early childhood education for ages 0 - 6 years.
3. Distance learning platform for children with special needs - Inclusive education.
4. Learning platform E-school - Learning platform for children for grades 1-9.

The first three platforms are offered to children in four languages: Albanian, Serbian, Turkish and Bosnian. Despite the results shown, distance learning offered through online platforms and follow-up activities organized through online applications (Zoom, Teams, Skype, etc.) was accompanied by challenges and difficulties, which were not few and without impact. These challenges from time to time violated the child's right to education, due to the fact that not all children were equally able to attend distance learning, because some of them lacked the Internet, lack of electronic devices (telephone, tablet or Desktop PC), and some of them even lack of physical space in the spaces where they lived (especially in cases of families that had two or more students). The worst situation has certainly been in children with disabilities, due to special needs and restrictions to use or access the platform, as well as children from the communities: Roma, Ashkali and Egyptian.

A quick assessment of the economic impact conducted by UNDP, UN Women and UNFPA shows that 96% of survey participants stated that their children had the opportunity to participate in distance learning, while 4% stated that their children have not been able to attend distance learning. Although a small number (4%) of respondents stated that their children missed distance learning, there may have been one or several reasons for this. In this regard, when asked what were the reasons for missing distance learning, 30% stated that more than one child should use the same device, 21% lacked internet connection, 17% had no device, 13% did not have a TV signal, 3% did not know how to access distance learning, and 3% stated that another family member needed equipment to work from home and thus were unable to borrow equipment for the children. Those 23% who cited other reasons, said the quality of teaching was not good, the teacher did not keep the lesson, the child goes to special school for children with special needs, and, in one case, they simply said no attended distance learning even though they have the necessary technical equipment. However, it should be noted that the overall sample of these responses is very small, so the factors that prevent access to distance learning have to be carefully analysed.

These challenges and inequalities in distance learning are also highlighted in the UNICEF report: *“Access to distance learning throughout the COVID-19 pandemic is far from equal. Deprivation of learning opportunities during COVID-19 requires the use of alternative tools such as digital learning platforms, technology tools, books, and direct engagement with their children in order to support home learning. However, access to technology and materials needed to continue teaching while schools are closed is extremely uneven. Wealthier families are generally better able to maintain their children's learning, as they are more likely to be more easily equipped with technology, internet connections, books, as well as knowledge and time to help their children learn. "Unfortunately, this is not the case for every child."*

In accordance with the above purpose and following the visits of the Ombudsperson and officials from the Ombudsperson Institution, to certain institutions and organizations, they have also made additional visits to other organizations.

Visits and interviews conducted by the OI

On 16 March 2021, OIK representatives visited the Resource Centre (SC) for teaching and counselling "Përparimi" in Pristina. The purpose of the visit was to get acquainted with the work of this centre, especially during the COVID-19 pandemic. The representative of the Central Bank "Përparimi" informed the representatives of the OI, among others, that they offer: Teaching and counselling in inclusive education for children with severe and multiple disabilities, from the special school unit for children with severe and multiple disabilities within the institution, which includes three levels of education; support services unit, which provides support for students with special educational needs in pre-university institutions. It further informed them about the challenges faced by the centre, which are mainly related to the limited budget, the lack of rehabilitation staff such as a speech and language therapist, physiotherapists and occupational therapists.

On 1 June 2021, OIK representatives visited the Resource Centre for teaching and counselling "Xheladin Deda" in Peja. The purpose of the visit was to get acquainted with the work of this centre, especially during the COVID-19 pandemic. The representative of this centre informed the representatives of the OIK that, among others, offer: Special education for blind students; rehabilitation and dormitory of the CBMK; integration and support in regular schools; support and counselling in the family and in preschool institutions; training for teachers, parents and staff working with blind children. Among the challenges that this centre faces are mentioned: full identification of children categorized by the Social-Social Commission of the age group 0-18 years, treatment of blind children with multiple disabilities (their inclusion in the education system, building the professional capacities of the staff in KCMK, improving the infrastructure of their accommodation in the dormitory of the Resource Centre), vocal synthesis which provides access to education for all blind people through information technology, organization of field services for support in integration for students of pre-university education (Braille materials, orientation and mobility, training for staff in regular schools, tiflodidactic equipment, awareness raising for parents, etc.) Cross-sectoral non-coordination between the relevant ministries for the provision of technical and pedagogical tools was also mentioned as a challenge.

On 1 June 2021, the Ombudsperson with the representatives of the regional office of the OIK visited the Resource Centre "Mother Teresa" in Prizren. The purpose of the visit was to get acquainted with the work of this centre, especially during the COVID-19 pandemic. The representative of this centre has sent additional information to the representative of the OIK regarding the work done and is doing so far, especially during the pandemic, and has informed them about the services provided by this centre: Identification, support, counselling, teaching. While the challenges that this centre faces are mentioned: Lack of training in physical form; lack of technology, preparation for use; lack of assistants, infrastructure (gym, etc.).

On 1 June 2021, the Ombudsperson visited the Resource Centre "Lef Nosi" in Prizren. The purpose of the visit was to get acquainted with the work of this centre, especially during the COVID-19 pandemic. The representative of this centre has sent additional information to the representative of the OIK about the work done and is doing so far, especially during the pandemic, and has informed that this centre offers the following services: Teaching and counselling the children with profound intellectual and multiple disabilities. Among them it mentioned that for the centre in question: *"The main challenge is the large number of students with profound intellectual and multiple disabilities compared to the educational staff and the lack of professionals (Psychologist, Speech Therapist, Physiotherapist, Educator) and the number of support assistants for children with special educational needs."*

On 1 June 2021, the representative of the OIK visited the Resource Centre "Mother Teresa" in Mitrovica. The purpose of the visit was to get acquainted with the work of this centre, especially during the COVID-19 pandemic. This centre, among other things, informed the OIK representative about the work done and is doing so far, especially during the pandemic, and also informed about the services offered by this centre: Education of children with profound intellectual and multiple disabilities. It further highlighted the challenges faced by this centre: *"The small number of traveling teachers; Lack of vehicle to go out on the field; The centre has only a psychologist at the moment; Many rehabilitation staff are needed for a proper development of the Centre"*.

The use of technology has greatly facilitated the realization of the right to education for students. But this approach was less effective for students who did not have access to the right digital infrastructure or the right skills to use technological devices.

When a student does not have the computers or the Internet, which are needed to access online or distance learning, or if they lack the knowledge of information technology to participate, this shortens their right to education to such an extent that the right is deprived of any effectiveness.

Therefore, when education is provided mainly through digital platforms, it can have a discriminatory impact on the right of access to education for persons from disadvantaged groups, those who live in rural areas, students who live in a home environment less suitable for home schooling, families with more than one pupil or student, students who are serving sentences in Kosovo correctional centres. These problems are most pronounced in the Western

Balkans region, where students have less access to technology equipment and internet connections.²⁸⁴

The Ombudsperson draws attention to the fact that the Constitution, as the highest legal act of a country, protects and guarantees fundamental human rights and freedoms, therefore the implementation and practical realization of these rights is in the interest of the functioning of the rule of law. Constitutional guarantees serve to protect human dignity and the functioning of the rule of law. The Constitution in Article 21 explicitly defines the obligation of all bodies to respect freedoms and human rights, therefore this principle is a necessity of the time and must be respected by all.

The right to education is guaranteed by the Constitution as a universal human right enjoyed by every person (Article 47, paragraph 1). The Constitution also guarantees every person equal opportunities for education based on individual needs and abilities, which means that there is no discrimination in the realization of the right to education (Article 47, paragraph 2). This constitutional provision is further contained in laws and other bylaws, which provide that in the implementation of their rights and obligations, the government, ministries and municipalities must respect the rights of children, enabling education and learning in accordance with legal provisions and international human rights instruments.

In the sense of the provision of Article 2 of Protocol No. 1 to the European Convention on Human Rights, the Ombudsperson recalls that the right to education provides individuals with the right to have effective access to existing educational institutions, and stipulates that States cannot deny the right to education in educational institutions and that this right benefits children and adults whom the state has an obligation to protect from ill-treatment.

Article 14 of the Convention also stipulates that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

If the student is not provided with support, such an issue may give rise to a violation of Article 14, in conjunction with Article 2 of Protocol No. 1, non-discrimination is a fundamental principle when determining how the State will fulfil its obligations regarding comprehensive access to education, the state has the necessary and necessary organization for the way education is provided, to improve the factual inequalities which are unjustifiable and consequently constitute discrimination.

²⁸⁴ World Bank, “Economic and Social Impact of Covid-19”, 2020. This report finds that on average in the Western Balkans, about 60% of households have high enough internet speeds (defined as 10 Mbps and above) to attend online learning. 10 Mbps is lower than the acceptable standard in the EU (30 Mbps), using the EU metering box, most households in the region are not equipped with high-speed internet. About 22% of students in the Western Balkans report having little or no internet access at home, compared to 1% in the EU27. On average, one in ten households with students at home in the Western Balkans do not have a computer; in Albania this goes up to 28%; in Kosovo, according to the information received from the Government, but also according to the Master Plan of MEST,

Measures taken in the fight against the pandemic, as well as ensuring inclusion and equal access to distance learning opportunities, may raise questions about their potentially discriminatory consequences.²⁸⁵

During the pandemic there were restrictions on the right to education, but these restrictions should not infringe on the right to education at its core or deprive it of effectiveness. Restrictions must be provided for by law and pursue a just cause, although there is no exhaustive count of "just intentions" in the area of Article 2 of Protocol No. 1. 1 (Leyla Şahin v. Turkey, § 154).

The Ombudsperson notes that based on the legal provisions in Kosovo, but also on international instruments, the right to education is not an absolute right and that it can be restricted, however, the fundamental rights and freedoms guaranteed by the Constitution can be restricted only to the extent that it is necessary in an open and democratic society to fulfil the purpose for which the restriction is permitted.

All institutions of public power have a duty to pay attention to the essence of the law being restricted, the importance of the purpose of the restriction, the nature and scope of the restriction, the relationship between the restriction and the purpose intended to be achieved, and to consider the possibility of achieving that goal with less constraint.

The Ombudsperson considers that the protection of the health of pupils, students and staff of educational institutions, as well as citizens in general from the spread of infectious diseases, is a legitimate aim in the aim of which the right to education may be limited to the protection of health.

Pre-university education

In the communications of the Ombudsperson with the leaders of MEDs it is emphasized that the main difficulties that arise are the lack of technological information equipment, but also the insufficient preparation of teachers and students for the use of technology.

Furthermore, the MED has emphasized that the Government with its decisions has done its job and has managed the pandemic in the best possible way compared to the conditions they face. But they did not agree with the decision by which the Government has released pregnant women from the teaching process and they have been replaced by public university students, which has caused the decline of teaching in all schools in the country. The MED also stated that in most municipalities, students lacked technological equipment and therefore lost their education. The Municipality of Gracanica on two occasions provided students with technological equipment, and also received a donation from UNMIK. In the municipality of Gjakova there was also a lack of technological equipment, these deficiencies were especially observed among Roma children, Ashkali and Egyptians, students with difficult social conditions as well as children with special needs. In the municipality of South Mitrovica there were supplies from MEST and donors, despite this there were deficiencies and some students lost their lessons in the periods when the lesson was organized according to Scenario C. In the

²⁸⁵ European Commission, "Survey in schools: ICT in education", (link: <https://ec.europa.eu/digital-single-market/en/news/survey-schools-ict-education>).

municipality of Lipjan there were deficiencies as well, so MED, in collaboration with various businesses, UNMIK and UNICEF, have provided various technological equipment, which have been distributed to students.

The Municipality of Prizren received a response: *“At the beginning of the school year, some students did not have technological equipment, and with the identification of students who did not have equipment, it became possible with the help of MEST, MED and to make it possible for various organizations to supply students through donated donations. Students from vulnerable communities, as well as students with special needs, students from families who are social cases and so on, have been specially supplied with technological equipment.”*

The MED also stated that in terms of teaching there were shortages of students and teachers due to the pandemic, but the lost hours have been replaced. The deficiencies were periodic and that the staff was absent from work in the short term. Whereas according to the municipality of Prizren: *“In all school institutions of the municipality of Prizren for a short period, 175 students did not have access to online learning due to lack of technological equipment, lack of use of technological tools and internet access in certain areas.”* At the same time, the municipalities have emphasized that the teaching hours have been shortened and that this has normally affected the teaching process. While teachers who worked overtime were not compensated.

Regarding the replacement of teachers by volunteer students of the University of Prishtina, MED responded: *“Students are not qualified according to the AI - MESTI norm to hold the teaching process and I believe that this decision of the government has been urgent, because the teachers who were released from the teaching process were not infected (according to the records we have from the school) and it is a notorious fact that a student for as long as he was able to meet the needs for teaching. In some cases, the substitutions were made by the students of the Faculty of Education in cooperation with the respective teachers.”*

Consequently, the decision of the Government of the Republic of Kosovo to release pregnant workers was of particular importance for the protection of maternal and child health, while the replacement of pregnant teachers with students of the Faculty of Education was contrary to legal provisions.²⁸⁶

Also, based on Administrative Instruction No. 10/2018 for the normative on the professional staff of general education, educational institutions are obliged to require staff according to this administrative instruction (article 2), as well as the criteria of candidates who can be accepted as qualified teachers (article 10, paragraph 1).

Based on these provisions, the Ombudsperson notes that the engagement of students for positions in which it was possible to hire qualified candidates, who met the criteria according to the administrative instruction, was contrary to the provisions of the administrative

²⁸⁶Article 35, paragraph 3, of the Law on Pre-University Education stipulates: "Appointing authorities as defined in this Law shall establish fair, open and transparent recruitment procedures based on the qualifications and the needs of the post." Also, according to paragraph 5 of this article, it is provided: "... the qualifications for the post, as well as the needs which the appointment aims to fulfill. If no applicants satisfy the qualification requirements laid down in the present Law, a temporary appointment may be made. Such appointments shall terminate on the last day of the school year in which the appointment was made. ..."

instruction, as only candidates who met the foreseen criteria were considered qualified for the respective subjects, while eventually any position for which a qualified candidate could not be provided according to the administrative instruction, had the opportunity to engage students for a certain period of time, but always exhausting them. requirements for employment of qualified persons.

The MED has also emphasized that supplementary education has been held at all levels of education and has helped to achieve results for students who have stagnation in achieving results as a result of COVID-19, adding that student stagnation were evident due to the circumstances created by COVID-19, the practical work for the development of learning for students of vocational schools has been difficult to accomplish.

Regarding the impact of the pandemic according to the levels of education, the answer was received that the pandemic has affected all levels, but mostly the students of levels 1-5 and 10-12.

Asked if they encountered difficulties in assessing students, the answer was that they had difficulties in assessing students, the main reason being said that some students have developed online learning, some with school attendance, but there is no complaint received regarding student assessment.

Treatment of students with disabilities

The education of children with disabilities under normal conditions is a complex process and requires specialized human resources and adequate materials to respond to the individual needs of children. Added to this complexity is the difficulty of distance learning as it requires, among other things, digital skills on the part of teachers, parents and students.

According to the MED, the treatment of children with disabilities during the pandemic period has been the responsibility of teachers, supporters and assistants of children with special needs, where in addition to providing the tablets, the teachers in question have been quite committed to achieving the best possible quality teaching. Also, students with special needs are treated the same as other students, MEST has distributed technological equipment to them. During the pandemic, MEST issued guidelines on how to organize online learning for children with special needs, sending materials to teachers and students with special needs. Free tablets were also distributed to students with special needs. These have made it easier for students with special needs to develop online learning in pandemic times.

Regarding the treatment of students with disabilities, the OIK has received a response from the Government of the Republic of Kosovo, which stated as follows: “As for the Ministry of Education, Science, Technology and Innovation regarding the situation of persons with disabilities during the COVID pandemic -19 MEST shared the following data:

In the field of education, special guidelines for pandemic management for children with special needs have been prepared. Also, in the guides issued by all educational institutions are given special instructions for students with special needs according to levels.

MESTI during the pandemic period has launched the Platform "inclusive education" - with the support of the organization "Save the children". The platform is designed to provide opportunities for socio-emotional and cognitive development of children with special needs.

The platform provides learning activities for children and support materials for parents / legal guardians, teachers and assistants of children with special needs. In addition to learning activities, the platform provides information and support materials related to access to children with special needs, basic methods, assessment and other information important for the social, emotional and psychophysical development of the child. Platform link <http://arsimigjitheperfskoles.rks-gov.net/>

Engagement of 35 assistants for the period December-March 2021 in the municipalities of Prishtina, Fushe Kosova, Ferizaj, Gjilan, Mitrovica and Ferizaj. Assistants are engaged in municipalities where there is no assistant staff and the needs are great.

Equipping students with technological tools - during 2020-2021. A number of 958 tablets were distributed to children with special needs who have economic problems. Out of these, 632 were provided by UNICEF and 326 by Save the Children. Equipment was also donated to the resource centre for students with visual impairments (Braille - Tetra Point

Laptop lenovo I5 of them, 4 magnifying monitors, magnifying glass for desk, wrist, glasses for determining the diopter and white sticks for the blind. "

According to statistics received from MEST, regarding the total number of students who did not attend distance learning, it turns out that during the school year 2019/2020, in Kosovo 9070 students did not attend classes, out of which number, 7573 were students with teaching in Albanian, while the others were students from other communities. Out of this number, 325 students were students with special needs and 60 students who attend classes in resource centres.

From these answers it is noticed that during the pandemic there was an increased commitment to support students with special needs from public institutions, especially the engagement of assistants, but also the supply of technological tools was of particular importance, but despite this commitment, based on MEST statistics, there is a need for ongoing support for these categories of students.

Treatment of persons serving sentences

According to the information received from the Kosovo Correctional Service (KCS), in KCS in pre-university education attend a total of 56 students, in lower secondary school (grades VI-IX) there are 6 students, while in upper secondary education (grades X -XII) there are 47 students, also in higher education there are 3 students who continue their studies at universities.

In the separate class of ShFMU "Ismajl Luma", the teaching process was conducted according to the school calendar, there were no significant difficulties, teaching was held online, students were equipped with technological tools and there was no student who repeated the year due to lack of technological equipment. While in ShMT "Rudina", separate class of ShMT "Mithat Frashëri", online learning was not held due to lack of computer room and lack of supply of students with technological equipment.

Based on this response, public institutions have failed to provide students with technological equipment, and as a result of this failure, students have been denied access to education and denied the right to equal treatment as other students.

Higher education

Regarding the impact of the pandemic on higher education, a report was received from the Public University "Kadri Zeka" (UKZ) in Gjilan, which was prepared at the request of MEST and describes the organization of online learning from the outbreak of the pandemic to the month of April 2021.

This report states: "As a result of the situation created by the COVID-19 pandemic, the public University "Kadri Zeka", based on decision no. 01/371 dated 20.03.2020, the teaching process in UKZ, in all academic units, organizes it online, in accordance with the Guide for using online platforms. To enable the development of virtual learning, SMU platforms are used in UKZ, meet.google.com; Google Classroom and UKZ's Moodle e-learning platform."

The first period from 20.03. 2020 to 31.05.2020, online teaching was held, the second period from 02.11.2020 to 06.02.2021, the Senate of UKZ, in the XIII meeting held on 12.10.2020, took decision that the lesson be held in the classroom and partly online, based on the Guide for organizing the learning process, approved by the Senate of UKZ respecting the NIPHK Measures for protection against Covid-19 pandemic.

A few days later, based on the decision of the Ministry of Health, dated 31.10.2020, for anti COVID-19 measures, the UKZ Senate decided (no. 01/11703 on 02.11.2020) that teaching in UKZ be organized only in online form, while practical exercises, laboratories, consultations, exams and colloquiums were held in physical presence respecting the recommendations of the MoH.

The third period from 17.03.2021 to 17.04.2021, includes the summer semester of the new academic year 2020/2021, in which the the situation of the COVID-19 pandemic was getting worse. For this reason, the management of UKZ, in accordance with Decision no. 01/63 of the Government of the Republic of Kosovo, dated 11.02.2021, as well as pursuant to the "Manual for protection against the spread of COVID-19", in the meeting of the Collegium of Deans, on 15.03.2021, rendered the following decision: "Lectures in all study programs where there are no conditions for classroom teaching to be organized online. Practical exercises, laboratories, consultations, exams and colloquia should be held in physical presence by respecting the Manual for protection from COVID-19"

Based on this information, as a result of the pandemic, online education was held in higher education, always implementing the decisions of the Government of the Republic of Kosovo and the Manual for protection against the spread of COVID-19.

Culture, youth and sports

Upon the onset of the pandemic, theatre spaces, libraries, orchestras, galleries, ballet, ensembles, cinemas, youth centres, cultural centres, museums, could not use the spaces, both open and closed ones. Cultural and artistic activities affected by the pandemic, switched to digital format. Failure to hold cultural activities has brought many consequences for artists who

still today continue to wait for a resumption of their artistic life in the way they have always practiced.

Upon the closure of cultural institutions, most of the activities that took place within them were suspended. Since 13 March 2020, when according to the decision of the Government of the Republic of Kosovo,²⁸⁷ all cultural and sports activities were suspended, from the complete closure until June, audience were left without performances.

The broadcast of the plays, since June 12, made the audience face a "digital theatre". On 5 April 2021, the Government of the Republic of Kosovo issued Decision No. 01/05, according to which the subordinate institutions of MCYS were allowed to work using 20% of the space / area (paragraph 34). Whereas from 18 April 2021, according to the decision of the Government of the Republic of Kosovo, subordinate institutions of MCYS were allowed to work using 30% of the space, while according to the decision of 28 May 2021, cultural activities are allowed to work using 50% of spaces. Based on these decisions, restrictive measures, depending on the epidemiological situation, have been continuously eased.

The OIK representative visited the Municipal Directorate for Culture, Youth and Sports, in the municipality of Gjilan, who was informed that despite the aggravated circumstances of the pandemic, all activities provided by the directorate were carried out in electronic form.

The OIK also received the Work Report for 2020, from the Directorate of Culture, Youth and Sports, in the municipality of Ferizaj. The report describes all the activities carried out, successes, challenges and difficulties during 2020. After the outbreak of the pandemic, some planned cultural activities were cancelled, some were postponed indefinitely and some activities began to be held online. Of course, because of the pandemic nothing was as it used to be.

XV. Recommendations of the Ombudsperson

The Ombudsperson recommends as follows:

To the Government of the Republic of Kosovo:

1. Increase the budget for the needs of HUCSK and MoH, with aim to improve services at all levels of the health system.
2. Draft bylaws in accordance with Article 20 of the Law No. 07/L-006 on Preventing and Combating the COVID-19 Pandemic in the Territory of the Republic of Kosovo.
3. Government should conduct a study at the national level to correctly understand the damage and consequences caused by the pandemic to the mental health of children.
4. Government should develop and implement a comprehensive plan to support children in general, and those with disabilities in particular, for health services guaranteed by law, focusing also on rehabilitation programs, psycho-social therapies, immunization, quality nutrition and assistance to parents.

²⁸⁷ Government of the Republic of Kosovo, Decision no.01 / 09.

5. Government of the Republic of Kosovo and other responsible institutions should develop support policies for all workers who have lost their jobs, including the provision of financial support to all unemployed.
6. Government of the Republic of Kosovo, ministries and other institutions should ensure adequate access and translation of information related to COVID-19 in a timely manner, into the official languages.

Ministry of Health:

7. Take measures for the adequate treatment of chronically psychiatric patients with psychological and social disabilities, in accordance with the law and human rights standards.
8. Take measures and intensify monitoring of equal access to care for chronically ill psychiatric patients with psycho-social disabilities during the pandemic.
9. Provide access to all information that publishes about the COVID-19 pandemic situation for people with disabilities, in their understandable language.

Ministry of Justice:

10. Decisions on restrictions on the rights of prisoners should have legal support and basis in the provisions of the LEPS and in the Administrative Instruction on House Order in Correctional Institutions.
11. Communication of prisoners through SKYPE and other online means should be regulated by concrete legal acts.
12. Contact and communication with defense counsel should be guaranteed even in pandemic periods and ensure that this contact is maintained in a secure and confidential manner.
13. Develop a National Strategy for the Prevention of Domestic Violence that would serve as a guide for reducing and managing cases of domestic violence.
14. Plan and allocate special financial resources to support campaigns for the prevention of domestic violence and the treatment of cases of victims of domestic violence in the pandemic period.

Ministry of Finance, Labour and Transfers:

15. The Ministry of Finance should take measures and as soon as possible make the remaining payments related to employee subsidies and rent for businesses that have not yet been assisted, or that have not yet received a response to their requests and applications.

Kosovo Prosecutorial Council:

16. Review the Crisis Management Action Plan (May 29, 2020), providing clear guidance on the priority of cases that prosecutors should address during the COVID-19 pandemic

Labour Inspectorate:

17. The Labour Inspectorate, pursuant to the Law on Labour, on safety at work, to increase control over the observance of the rights of employees in the private sector, in particular for employees who have been released from showing up at work according to the decisions of government for protection against the COVID-19 pandemic.

Ministry of Education, Science, Technology and Innovation:

18. The Ministry of Education should develop a strategy to make up for lost learning, the return to school of children who due to anti COVID measures have not participated in the schooling process or have dropped out of school to take preventive measures against COVID-19.
19. Commit to digitizing schools as soon as possible.
20. Increase the number of assistants for children with special needs, always based on the requests of municipalities.

Information and Privacy Agency:

21. The Information and Privacy Agency shall publish guidelines for the protection of personal data in the framework of measures against COVID-19.

Ministry of Environment, Spatial Planning and Infrastructure:

22. The Ministry, in accordance with the recommendations of the NIPHK, shall design an action plan for the functioning of supervisory mechanisms / inspectorates in pandemic circumstances.