



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

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# Annual Report 2013

## No. 13

31 March 2014  
Prishtina

Mr. Jakup Krasniqi  
President of the Assembly of the Republic of Kosovo  
Prishtina

Honoured President of the Assembly,

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

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

Sincerely,  
Sami Kurteshi



The Ombudsperson of the Republic of Kosovo

Prishtina, 31 March 2014

## **OMBUDSPERSON'S REMARKS<sup>1</sup>**

Co-existence in a democratic society necessarily requires an open, sincere and continuous inter-human communication. In the modern state, such communication is necessary between citizens and the state. The state, among others, is the entirety of human relations expressed in all possible forms: person to person, person to group, group to group, person to institution, group to institution, and institution to institution, etc.

Sound communication as basis of action, relies on inter-human trust which must be rebuilt constantly. Trust between citizens and the state, which includes all possible forms of communication, is pursuant to the codified social norms observance of the laws. This trust is directly proportional with state officials - public authorities' integrity. It is related to respecting the laws and with the establishment of internal effective and operative mechanisms of public authorities for resolving citizens' complaints.

Expectations and requirements of citizens towards public authorities are to solve the problems they have. The problems are numerous, whereas requirements may be reasonable and unreasonable. The state has to cope with the problems and requirements of citizens and must inform them on the opportunities, remedies and legal ways they have for submitting their requests and respond to their requirements based on the law.

The Ombudsperson is an integral part of this institutional and inter-human communication. It is a part of the complex node of relations between citizens - public authorities. On one hand, he must transmit citizens' complaints to authorities, by seeking solutions for them. On the other hand, he must consider remedies and limited possibilities of the authorities for completion and solving of all claims. However, the Ombudsperson also defends public authorities by rejecting criticism, unlawful complaints or claims against them.

Failure on any of these links will be very risky for everyone: for public authorities, they will lose the citizens trust; consequently for the citizens, because they will seek other solutions outside of state institutions; necessarily for Ombudsperson, because it would lead to deterioration of relations with public authorities, when the Ombudsperson addresses them upon failure to comply with the law, which in turn will be detrimental to the citizens. This is the most risky scenario for the citizen.

Citizen-public authorities trust is built on these relations. The commitment of public authorities in establishing and improving standards of action including standards of ethics as well, by simplifying the complexity of citizen's access procedures to public authorities; establishment and operationalization of simplified internal procedures for access of citizens with complaints; increases citizen's trust in public authorities - the state. In this sense, the Ombudsperson role and intention is to promote and observe ethical standards in public administration. Establishment, operationalization, simplification of internal procedures by

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<sup>1</sup> Please refer to the basic text in Albanian language in case of any ambiguity, uncertainty and discrepancy in English translation.

public administration regarding citizens' complaints, the Ombudsperson does not consider as a dangerous competition for itself, however welcomes it as a necessary ethical action of authorities.

Simplification of procedures, transparency, responsibility and integrity of public administration in relation to the citizen, constitutes the foundation of trust in a modern democratic society. Actions and inactions, decisions and lack of decisions of public authorities are integral part of public decision making. If citizens believe and are convinced that public authorities act fairly towards them, treat public wealth, serve the public interest as the common good and not as private, take right decisions, decisions are based on laws and consequently predictable, and upon complaints the citizens have simple and clear means and ways to address their dissatisfaction, therefore, trust in public authorities is a necessary process and has no alternative. Only this way of acting of public authorities should be cultivated on daily basis, in each individual contact with citizens.

Public authorities are the state itself. They are established and operate based on laws. However, public authorities' operate, other than the normative definition, must be led by the principle of ethical actions as well. Violation of fundamental human rights and freedoms, violation of fundamental principles of modern public administration (such as; non-discrimination and proportionality) constitute severe violations of the ethical action. Violation of the law by public authorities and especially their unethical action, even if in a sole individual case, which remains unsanctioned, are actions that completely lose any trust in the state, and constitute the key evidence of mismanagement and failure of the administration system.

Under the Constitution of the Republic of Kosovo every person is entitled to a range of legal remedies to seek justice in case of such violations. However, these remedies must initially be clear and effective; secondly, the mechanisms for their implementation must be efficient and prepared to cope with such cases.

Currently, public administration, including the judiciary in the Republic of Kosovo, is not always able to cope with such cases, especially within a reasonable timeframe. Besides unlimited delays in handling cases, such cases cannot always be easily proved and argued. Therefore, this makes it even more necessary the existence and operation of extrajudicial independent institutions, which, within a short period of time can handle these cases effectively, impartially and professionally. In cases of violation of fundamental human rights and freedoms, discrimination and mismanagement, the Ombudsperson's role is crucial.

Handling and solution of individual cases of different violations should be the task of public authorities itself, rather than being a task of the Ombudsperson's. Because, public authorities themselves are the law in action, i.e. apply laws in practice, which essentially comprise the stated willingness of each and everyone through their vote.

The Ombudsperson as an independent institution, with no executive and sanctioning powers, and has a specific institutional role. Except monitoring, protection and promotion of fundamental human rights and freedoms, the Ombudsperson mission is to strengthen the rule of law and consolidate public authorities in being responsible towards citizens. As a moral

mediator between the citizen and public authorities, through its constructive recommendations, seeks positive changes only through moral authority and persuasion.

Therefore, the Ombudsperson should focus more on proactive action regarding law and public authorities' improvement, jointly committed to create a climate in which public authorities understand and embody their legal obligations as ethical action principles as well as gradual transformation of these ethical principles into moral category of general social action.

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## **PREFACE**

Report of 2013 summarizes OI performance from 1 January to 31 December 2013, and is structured based on the constitutional mission of the Ombudsperson: protection, monitoring and promotion of human rights and freedoms.

Fundamental human rights and freedom constitute the basis for the rule of law in the Republic of Kosovo. Legal justice, admissible and applicable in practice, for all persons, without any distinction, throughout the territory of the Republic of Kosovo - constitutes the basis of the rule of law state.

This report is disaggregated into five different chapters, arranged in functional and substantive sense. The first chapter presents an overview of competencies, responsibilities and the mandate of OI. In the second chapter, the state of fundamental human rights and freedom in Kosovo is thoroughly presented and listed based on the Constitution of the Republic of Kosovo. Cooperation and activity of OI during the reporting period is reflected in the third chapter, while in the fourth chapter is presented the current situation and developments during the reporting year of the budget and personnel in OI. A statistical summary of all cases and findings of OI, for this reporting period, is provided in the fifth chapter.

The OI has made significant steps towards service provision for persons, legal and natural, in need. OI has made efforts to provide all opportunities for filing complaints by all forms of communication at any time and circumstance: directly at the Ombudsperson offices every working day, Open Days, to the OI headquarter or regional offices as well as in all municipalities of Kosovo, through mail and electronic mail, through family or defence counsel, by phone or other forms.

Although this opening is followed by a significantly greater burden on the institution, the Ombudsperson hears the concerns of persons in need, submitted to the institution without any distinction. Everyone is welcomed, carefully heard and assisted where possible, or is advised where necessary. In order to increase transparency and accountability towards legal and natural persons, the Ombudsperson, responds in writing upon any request addressed to.

From 1 January 2013 to 31 December 2013, OI received 2047 cases or 23% more in comparison to 2012, for submitting complaints or seeking advices and assistance. Out of them, in 377 cases, Ombudsman or his Deputies met personally with claimants, during the "Open Days" in this reporting period.

During this reporting period, the Ombudsperson Institution has increased efficiency in its work by addressing all complaints received from citizens for violation of their rights, in the shortest time possible. Ongoing engagement has increased confidence in the Ombudsperson as a supporter and defender of the human rights and freedoms. Due to the ongoing work of the Ombudsperson, for the first time most of the complaints handled, were resolved positively, meaning in favour of the citizen, which is also one of the main goals of this institution.

Violations reported to the Ombudsperson, during 2013, are related to achieving, respectively not achieving special rights, presented below.

**The Right to life.** From complaints handled by the Ombudsperson Institution, in 2013, numerous shortcomings are noticed in handling death cases by competent authorities. Lack of investigation on filed cases, unjustified delays of prosecution and justice authorities, not proceedings of criminal cases and their unjustified closure, constitutes a reasonable concern for the citizens. In this regard, the Ombudsperson has recommended Kosovo Police to be more effective on detecting criminal offenders, particularly in homicides, whereas, recommended the prosecutions to conduct timely investigations, in order to precede cases in court within legally provided timeframe.

**Equality before the law.** The right to be free of any type of discrimination is one of the fundamental principles of human rights, and is a principal guaranteed by the Constitution and all international instruments applicable in Kosovo.

We are grateful to the fact that there is a good movement in this field, no matter how limited, and we encourage all institutions to enhance their efforts in this regard. However, it should be noted that there are still institutions that are distinguished by their discriminatory actions, especially the Privatization Agency of Kosovo and the Kosovo Property Agency. There are also certain social groups that face institutional and structural discrimination, such as: persons with disabilities, persons from LGBTI, Ashkali, Egyptian, Roma community, women, etc.

The proposal and actions undertaken on amending the Anti-discrimination Law and Law on Gender Equality, in order to have these laws applicable in practice, are considered as a positive action by the Ombudsperson.

Important steps in terms of normative gender equality have been made. However the practical implementation still is lacking. Therefore, the Ombudsperson has made recommendations relating to the harmonization of Kosovo's legislation with international contemporary legislation; enforcement of quota for women's participation in decision-making at the central and local public institutions and the implementation of the training program for those dealing with gender equality, etc.

The Ombudsperson considers that there are noted major improvements regarding torture prevention, in the Republic Kosovo. However further improvements are necessary.

Public authorities in the Republic of Kosovo, in general have respected the freedom of movement. Kosovo police, same as in previous years, continue to assess the security situation as stable but fragile. The Serb community members remain partially within their settlements or travel to areas where their groups constitute the majority.

Road barricades placed this year by individuals or groups of Serbian community, in the northern part of Kosovo, limited free movement and in some cases have stopped access to numerous rights for Albanian residents.

Despite the joint commitment of the EU, KFOR and the Kosovo Government, the security situation in the north has been unpredictable. Kosovo police reported on incidents such as; explosions, burning of vehicles and fire arms shooting. In relation to this, the Ombudsperson has recommended competent and responsible institutions to take all actions, according to legal obligations to guarantee the life, property, health and freedom of movement for all citizens of the Republic of Kosovo and throughout the territory of the Republic Kosovo, particularly in

north Mitrovica. Also, the Ombudsperson has recommended that all actions envisaged by the law should be taken for fighting crime and organized criminal groups throughout the territory of the Republic of Kosovo without hesitation and reluctance of political nature.

Regarding the right to elect and to be elected, based on field observations and received complaints, the Ombudsperson has provided concrete and general range of recommendations, considering that despite the progress made, one cannot say that we are satisfied with the level of Constitution and the law observance. Electoral reform in Kosovo, initiated years ago, is still pending.

A major concern, not only for the Ombudsperson, presents the violence in schools, the situation of children with disabilities, as well as harmful child labour, also, students in a school in Prishtina stated that narcotic substances are being used in their school.

Violence remains a concerning phenomenon in Kosovo's public schools. During this year, from information provided by students of lower secondary schools, it is clear that many of the children are dissatisfied with the situation in their schools.

Many children think that schools are no longer safe place because students carry different weapons and violence is present both inside and outside of school premises.

Regarding the right to education, the Ombudsperson recommended school violence prevention. Also, the Ombudsperson recommended the revision of educational quality, removing games of chance premises nearby educational institutions, as well as fund raising for children with special needs and their inclusion in education.

Furthermore, high unemployment rate remains the most serious social issue that Kosovo citizens are faced with. Violation of labour rights and the right on practising the occupation, despite legal mechanisms engagement, continues to be a concern.

The Ombudsperson concludes that during the reporting period, children of young age doing different jobs that harm their health and dignity were noticed. They are seen begging, selling cigarettes, working with wheelbarrow or heavy construction work.

Although children enjoy legal protection by domestic and international legislation applicable in the Republic of Kosovo, as well as by the Convention on the Rights of the Child, this phenomenon continues without any change. Practical realization, protection and observance of child rights, remains a serious challenge. In order to implement the Law on Labour, and measures to prevent child labour phenomena, it is required more responsibility from Institutions of the Republic of Kosovo, particularly; MIA, MEST, MLSW and especially from the Labour Inspectorate.

Responsible institutions should intensify their efforts and actions for observance, protecting and appropriate implementation of children's rights, including allocation of sufficient budget for protection and promotion of their rights. The Government should prioritise Child rights in its agenda. Children should enjoy their full rights. The Ombudsperson considers that psychologists and pedagogues should be part of school staff; communication between teachers and parents should be increased in order to better address students concerns and problems; the provisions of the Juvenile Justice Code, related to the detention of juveniles

shall be enforced; a database, at the national level, aiming at data integration of relevant institutions working in the field of juvenile delinquency, shall be established.

Although, environmental protection is listed as one of the values on which is based the constitutional order of the Republic of Kosovo, protection and ensuring a quality and safe environment for citizens' health, is still far from legal determination and real situation. Despite the efforts and positive steps of the Ministry of Environment and Spatial Planning, the Republic of Kosovo is still facing soil, water, air, noise pollution, destruction of biodiversity, illegal construction, destruction of water flows, conversion of agricultural land into construction land, waste mismanagement, etc. Either due to the continued deterioration of the environment, or due to awareness of a large number of citizens on intolerable environmental situation, we have a more frequent reaction of aware and courageous citizens.

Kosovo continues to face serious socio-economic conditions and poverty. Unfortunately, according to the high number of complaints lodged with the OI, one cannot conclude that there are significant improvements in health care and social welfare in Kosovo.

The judicial system of the Republic of Kosovo, in 2013, has undergone several legal reforms as well as structural reorganization, pursuant to new laws on the judiciary. These reforms, in several areas, brought new qualities in terms of observance of human rights and freedoms by the judiciary. However, in some other areas, are noted opposite effects and reaction of citizens. Nevertheless, despite progress in this area, one cannot talk about proper and comprehensive judicial protection of rights due to the insufficient outcomes.

Also, in this reporting year, large number of citizens' complaints filed within OI is related to the judiciary as the responsible party. This is an indicator of severe situation of judicial system, which has not yet managed to fulfil legal obligations in relation to claims and guaranteed rights of citizens.

Despite sincere efforts of many judges, prosecutors and judicial system associates, execution of several judicial cases, insufficient number of associates, lack of material and technical conditions for efficient work, the Ombudsperson finds no justification for court proceedings delays. Due to these deficiencies, problems and failures, citizens have created a perception of a overall doubt regarding the judiciary performance. This directly affects the loss of public trust in the institutions of justice, and, in rule of law state.

Furthermore, due to non-functioning of the judicial system, in the north of the country, citizens who have had court cases, in courts in the north of Mitrovica, were denied the right to justice, guaranteed by the Constitution.

Unfortunately, citizens of Kosovo have no legal mechanism for protection of the right to trial within a reasonable time frame, when this right is violated by their local judiciary, as is common in democratic countries with a proper rule of law state. Duration of civil proceedings and other new procedures in the judiciary for many years, results with impaired access to judicial protection of human rights by the courts.

Statutory limitation of a large number of court cases, this year, has marked a significant increase, and presents one of the most serious violations of citizen's rights and freedoms

guaranteed by the Constitution. Citizens have no appropriate remedies for protection from such violations and injustice. This cannot and should not happen in a rule of law state!

The Ombudsperson Institution has consistently reported cases of violation of the right to a fair and impartial trial. In previous annual reports, the Ombudsperson has repeatedly expressed its concerns regarding the violation of this right in sense of Article 31 of the Constitution of the Republic of Kosovo, and Article 6 of the ECHR: no observance of deadlines for resolving cases, failure to respond regarding information requests. A number of complaints is related to unfair decisions, elements of corruption and forgery, which implies injustice by those who are expected to enforce justice in the country, either by state administration or judiciary. Despite the actions for fighting this phenomenon, by the judiciary itself, based on the OI data, in general, no significant improvement has been noticed in this regard.

Complaints followed by serious consequences for inter-human relations, where most serious failure of the justice system is noticed, either due to large delays, or due to non-implementation of court final decisions, or even of proved falsifications, are violations of property rights. In these cases, when state justice causes injustice to people, they take justice into their own hands.

The Ombudsperson has made recommendations regarding judiciary state, considering that measures and legal actions should be taken urgently in order to reduce the number of backlog. This can only be achieved through the adoption of a backlog reduction plan, increasing the number of judges, legal professional associates, and other administrative staff, to increase the efficiency of judges' performance.

The Ombudsperson has received complaints against defence counsels as well. Their engagement, whether private or ex officio, in many cases is deficient and against the ethics of advocacy. Therefore, the Ombudsperson recommends that Kosovo Chamber of Advocates provides quality and greater efficiency of the legal aid in cases ex officio representation and clearly and unambiguously adjusts provision of defendants' rights observance, and in case of injury in relation to counsel duty performance ensures investigation and disciplinary measures.

As for the judiciary and judicial protection of the rights, engagement of the Ombudsperson, during the year, consisted in three directions: a) identification of violations and problems associated with the implementation of this right; b) prevention of causes that affect the violation of this right, and c) cooperation with judicial authorities and other relevant state institutions responsible for handling complaints and taking preventive measures.

Regarding the communities' rights, it is noted a positive progress, however, leaves much to be desired, especially the state of play of Roma Ashkali, and Egyptian communities is still a concern. A particular concern is considered the economic situation and high unemployment rate among minority communities, with emphasis on the Roma, Ashkali and Egyptian communities.

Free movement of people is improving, except in the northern part of Kosovo. Freedom of movement in the northern part of Mitrovica, and in the municipalities of Leposaviç, Zubin Potok and Zveçan remains almost entirely limited for citizens, especially for people of non-



Serb communities, public authorities of the Republic of Kosovo as well as for international institutions and the same goes for physical security.

In other parts of Kosovo there were no restrictions on freedom of movement, but there were isolated incidents and damage to property in the municipality of Istog, damages to Serbian Orthodox cemetery inscriptions in Klllokot and Fushe Kosova, and individual threats. It is worth mentioning that in all cases of ethnical motivated incidents, Kosovo police has responded promptly.

A severe situation regarding the free movement is noted in the road traffic. There is an irresponsible and intolerable chaos in driving the vehicles both in urban centres as well as in open roads. In urban centres, due to the irresponsible vehicles parking, also due to lack or inadequacy of traffic signs, free movement of pedestrians is often limited, especially children, elderly and people with disabilities.

The security situation has been improving, however, the increasing number of firearm murders and the large number of illegal weapons in possession of individuals, remains another concern of Ombudsperson.

The Ombudsperson has made several recommendations on human rights issues related to privacy; freedom of belief and religion; access to public documents, dignity; use of language; pensions, social housing, health services, people with disabilities, etc..

The Ombudsperson pursuant legal responsibilities, has made recommendations, proposals and suggestions on several laws and normative acts in order to harmonize them with the Constitution and international legal instruments.

During this period, OI has conducted a large number of meetings, trainings, joint actions with civil society and various international partners. OI has joined main international and Ombudsman organizations. There is a good cooperation especially with European and regional counterparts.

Lack of institutional awareness for law enforcement is being associated with a shock that is affecting all the pores of the legal system in the Republic of Kosovo. As a consequence of increasingly lose of trust of citizens in Kosovo justice mechanisms, it is noted a growing deterioration of inter-human relations.

The Ombudsperson has consistently given and gives recommendations for improving the omissions and deficiencies identified. However, although this year, significant progress has been noted in this regard, unfortunately, the lack of implementation and recommendations' impact of the Ombudsperson in state bodies is still evident.

Ombudsperson, upon findings of various violations and recommendations for their elimination, efforts for uninterrupted communication with relevant institutions and mediation between them and the citizens, is continuously engaged to improve this situation. OI will continue to do so, in order to create a better climate for human rights and freedoms.

The severe economic situation in the country, affects most of the citizens of the Republic of Kosovo, by directly affecting their quality of life. In this regard, lack of youth perspective, as well pensioners state of play, remains a concern. Therefore, the Ombudsperson, again, seeks

from the Assembly of the Republic of Kosovo the adoption of the Law on Health Insurance, and the Law on Pension and Disability Insurance. Also reiterates its request for inclusion of the Convention on Economic, Social and Cultural Rights in the Constitution of the Republic of Kosovo, as one of the international instruments for protection of human rights and freedoms directly applicable in Kosovo.

Of particular concern to the Ombudsperson also remain the structural isolation from public life and consequently the social self-isolation of Ashkali, Egyptian and Roma community.

Current efforts of public authorities in the Republic of Kosovo have marked some modest improvements in the area of housing, and education, however, it remains much to be done regarding social, structural and institutional integration.

The Ombudsperson, in order to improve the situation of human rights and freedoms, on all special cases, if violations of rights were found, has made recommendations to all public authorities - ministries, municipalities and other responsible public agencies, through its annual and special reports.

During the reporting period, the Ombudsperson for the first time received information or notifications, from several institutions, on implementation of its systemic recommendations. I want to explicitly stress the fact that in this regard there is a positive move, although this is not sufficient.

Since law enforcement is the main premise for the functioning of the rule of law in Kosovo, except some modest efforts, lack of law enforcement is the most serious institutional problem.

The Ombudsperson will continue to identify and highlight irregular and illegal actions or inactions of public authorities to strengthen their role in building a society based on the principle of justice and equality.

The Ombudsperson will continue to enlighten cases when citizens are deprived of any rights, and criticise institutions when they express negligence to their legal obligations.

The Ombudsperson requires increase of commitment and legal institutional liability of public authorities, on their actions or inactions. Also, seeks increase of individual and social commitment and responsibility.

Observance of fundamental human rights and freedoms, and good governance, is an obligation of public authorities.

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

Since the constitutional mandate of the Ombudsperson ends this year, this is the last Annual Report which I present to the Assembly of Kosovo. For all cooperation, disagreements and critical and constructive confrontations, I thank all persons, public institutions, international partners and civil society.

# CHAPTER I

## INTRODUCTION

### 1.1. Ombudsperson Institution

Constitution of the Republic of Kosovo determines the Ombudsperson Institution (OI) as constitutional category.<sup>2</sup> Ombudsperson Institution protects, supervises and promotes fundamental rights and freedoms of natural and legal persons from illegal actions or failures to act and improper actions of public authorities,<sup>3</sup> and other bodies and organizations exercising public authorizations for their account.<sup>4</sup> According to the Constitution the Ombudsperson has one or more deputies.<sup>5</sup>

Ever since commencing its work, OI has dedicated and continues to dedicate special importance to the multi-ethnic composition and gender structure of the employees.

### 1.2. The mandate of the Ombudsperson Institution

The Constitution of the Republic of Kosovo and the Law on Ombudsperson have determined the mandate of the Ombudsperson, to receive and investigate complaints from any person within and out of Kosovo territory, who claims that his/her rights and freedoms have been violated by Kosovo public authorities.

OI is independent in exercising its duties and does not permit any instructions or intrusions from other bodies, institutions and authorities that exercise state power in the Republic of Kosovo. All institutions, bodies or other authorities exercising legitimate power within the Republic of Kosovo are bound to respond to the requests of the Ombudsperson and shall present all requested information and documents in conformity with the law.

The principles on which OI bases its work are impartiality, confidentiality and professionalism.

In the scope of its constitutional<sup>6</sup> and legal competences,<sup>7</sup> the Ombudsperson undertakes investigations for the complaints lodged by any natural or legal person regarding claims on human rights violation foreseen with the constitution, laws and other legal acts as well as other international standards on human rights and international conventions, specifically with European Convention on Human Rights (ECHR). The Ombudsperson can conduct investigation on its own initiative (*ex-officio*) if proves, facts, evidences and indications (*ex officio*) obtained offer sufficient base for human rights violation. It is worth mentioning that

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<sup>2</sup> *Constitution of the Republic of Kosovo*, Articles 132-135. All official documents in this report Constitution, international agreements, codes, laws, administrative instructions, decisions, opinions and regulations are quoted according to official texts published in the Official Gazette of the Republic of Kosovo, in: <http://gzk.rks-gov.net/>

<sup>3</sup> *Ibidem*, Article 132.

<sup>4</sup> *Law No. 03/L-195 on Ombudsperson*, Article 1.

<sup>5</sup> *Constitution of the Republic of Kosovo*, Article 133, paragraph 2.

<sup>6</sup> *Ibidem*, Article 132.

<sup>7</sup> *Law no. 03/L-195 on Ombudsperson*, Article 15.

Ombudsperson exercises mediation and reconciliation and can offer good services to Kosovo citizens residing abroad.

OI does not intervene in cases that are ongoing in courts, except in case of unreasonable delays or obvious misuse of power. OI also is not involved in investigation of cases which deal with disputes between private persons.

On the other hand OI can initiate issues with the Constitutional Court of Kosovo in compliance with the constitution and Law on Constitutional Court.<sup>8</sup>

OI has significant legal responsibilities as well: not solely to investigate alleged human rights violation, but also to get involved for their resolution; to disclose the human rights and to inform the Government, the Parliament as well as other responsible institution of the Republic of Kosovo on issues related to protection and promotion of human rights and freedoms; to publish information, notifications, opinions, recommendations, proposals and its reports; to recommend promulgation of new laws by the Parliament, amendments and supplements of laws as well as promulgation, amendments and supplements of sub-legal and administrative acts by institutions of Republic of Kosovo; to compile annual, periodic and other reports on human rights and freedoms situation in Republic of Kosovo; to recommend harmonization of national legislation with international standards on human rights and freedoms as well as their efficient enforcement; to cooperate, in compliance with Constitution and legislation in force, with all organizations as well as national and international institutions that deal with protection of human rights and freedoms.<sup>9</sup>

Establishment and development of a good governance and administration culture that requires professional, efficient and effective administration, transparency, accountability and responsibility of public administration towards citizens and rule of law enforcement, are the main objectives of Ombudsperson.

Ombudsperson is committed to improve citizens' trust in the public administration, judicial system as well as of other state institutions.

Citizens may submit complaints against public administration through simple and free of charge procedure. Complaints addressed to OI may refer to actions or inactions or decisions of public administration, which are considered unfair or unfavourable by the claimants. When reviewing such claims, actions undertaken by the OI legal professionals consist on provision of legal advices through requesting data from public authorities, courts and other important institutions regarding the claims lodged as well as through monitoring of particular judicial and administrative procedures.

The Ombudsperson is also a defender of public authorities from unsubstantiated and unjustified criticism, from misinformation and intentional or unintentional unlawful actions.

In cases requiring immediate action, the Ombudsperson submits request for interim measures. If the Ombudsperson considers that immediate measures should be taken by the public authorities, it may legally require from the competent administrative body to take or suspend a

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<sup>8</sup> *Constitution of the Republic of Kosovo, Article 113, paragraph 2, and Article 135, paragraph 4; Law no. 03/L-195 on Ombudsperson, Article 15, paragraph 7; Law no. 03/L-121 on the Constitutional Court, Article 29.*

<sup>9</sup> *Law no. 03/L-195 on Ombudsperson, Article 16.*

particular action, as an interim measure to prevent irreparable damage to the claimant or their property.

If letters for intervention and mediation efforts result unsuccessfully, the Ombudsperson can issue reports, ensuring evidence and public presentation on violation of human rights or of applicable laws, jointly with recommendations for the public institutions, in order to avoid violations. The report is the final method of institution for advocacy, while copies of it are submitted to the authority that committed the violation, to Kosovo Assembly and other relevant institutions.

In order to cover fields that involve specific issues of some groups of people, whose rights are considered to be most vulnerable in Kosovo, for many years now the OI, have established Children's Right Team, Gender Equality Unit and Anti- Discrimination Team.

Whereas, following the election of Ombudsperson deputies, other special units are established based on certain areas within the departments led by deputies.

Thus, within ***Anti-discrimination Department*** the following units are functional: children's rights, gender equality including trafficking of human beings and violence, people with special needs, community rights, social issues as well as the unit of human rights of people belonging to LGBT group.

***Legal Department*** comprises of: the Unit for coordination of the work with the Assembly of the Republic of Kosovo, Unit that coordinates and bring up issues to the Kosovo Constitution Court, Unit that assesses compatibility of laws and sub-legal acts, Unit for investigation of complaints for access to public documents and the Unit for periodical and annual reporting.

***Executive Department*** is comprised as follows: investigation of complaints against Presidency, investigation of complaints against the Government, investigation of complaints against independent agencies, investigation of complaints against public enterprises, environment protection and National Mechanism for Torture Prevention, as well as consumer, business and human rights protection unit.

Units within the ***Judicial Department*** are: investigation of complaints against Judiciary, investigation of complaints against Prosecution, investigation of complaints against Judicial Council, investigation of complaints against Prosecutorial Council as well as investigation of complaints against Judicial Institute.

Whereas in ***Public Relation Department*** the following units are functional: cooperation with civil society, cooperation with foreign organizations in Kosovo, cooperation with donors, and materials and publications as well as trainings and conferences.

### **1.3. Access to the Ombudsperson Institution**

The OI receives complaints from the citizens who claim that their rights have been violated every working day. Complaints are received by OI legal advisors who handle the cases professionally, carefully and with confidentiality.

In order to facilitate access of Kosovo`s citizens, apart the Head Office in Prishtina, the OI has established regional offices in Gjilan, Peja, Mitrovica, Prizren and Graçanica, whereas, as of 01 October 2013 the IO has established regional offices in Ferizaj and Gjakova as well. Also, within the Regional Office of OI in Mitrovica operates the sub-office in the northern part of the city. OI offices are equipped with professional staff in order to serve the citizens, responding to their requests and complaints as well as to protect their rights when they claim that those rights are violated.

Citizens can submit complains each working day in OI offices (Monday-Friday) from 8:30 - 16:00h.

For urgent cases, citizens may submit their complaint even after working hours.

Organization of Open Days is another method of easy admittance of citizens by Ombudsperson and his deputies. Open Days are organized in Prishtina (twice per month) as well as in other municipalities of Kosovo (once per month). The citizens of respective area are informed by officials of the Regional Offices on Open Days dates through publishing the schedule in the respective municipalities, through local media as well as in the official OI web-site.

Also, there are other access methods, such as: mail, phone and fax. Whereas, another easy access to OI that is being used constantly from an increasing number of persons is the e-mail, which is mainly used to submit complaints by citizens living abroad. There is free of charge telephone line in the OI head office for reporting urgent as well as ordinary cases.

OI officials perform regular visits in all prisons and detention centres in Kosovo. In order to enable direct communication with detained persons in cooperation with authorities of Kosovo Correctional Service as well as responsible authorities of prisons. OI, in 2004, has placed complaint boxes in visible places in all prisons and detention centres of Republic of Kosovo, which are opened solely by the OI representatives. Such practice has shown that the boxes placed in the prisons and detention centres, have made easier setting the first contact of prisoners and detainees with the Ombudsperson Institution. Such boxes are placed in Centres and Institutions of Mental Health that simplifies patients' access to the Ombudsperson Institution. These Centres and Institutions are visited regularly, on monthly bases by OI representatives.

## CHAPTER II

### HUMAN RIGHTS AND FREEDOMS IN THE REPUBLIC OF KOSOVO

#### 2.1. Direct application of international instruments and arrangements

Constitution of Republic of Kosovo contains the majority of the most important international instruments for fundamental human rights and freedoms that are directly applicable in Kosovo. In cases of disparities they prevail towards legal provisions and other acts of Kosovo public institutions.

Constitution of Republic of Kosovo explicitly guarantees direct application of the following international instruments: *Universal Declaration of Human Rights; European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols, International Convention on Civil and Political Rights and its Protocols; The Council of Europe's Framework Convention for the Protection of National Minorities; Convention on Elimination of all Forms of Racial Discrimination; Convention on Elimination of all Forms of Discrimination Against Women, Convention on the Rights of the Child; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*<sup>10</sup>

Particular importance of the aforementioned international instruments in the field of protection of fundamental human rights and freedoms stand on the fact that they are directly applicable in cases when there are denominated shortcomings or gaps in internal legislation of Kosovo.

The OI has been the witness of severe violation of these instruments in specific cases. It can be stated that majority of complaints lodged with the OI during 2013 can consist on the right to have regular court proceeding.<sup>11</sup> Overload of courts with pending cases and delays in handling new cases as well as non-enforcement of final decisions for years, is hampering the work of the judiciary in Kosovo, therefore, Kosovo citizens are deprived from the right to have fair, impartial and regular court proceeding.

Law on Courts, under which the Kosovo Judicial and Prosecutorial system was reorganized, has begun being implemented since 1 January 2013. Increased number of judges and prosecutors has led to a more efficient and effective work of the judiciary. However, the number of pending cases is still too large. Therefore, the judiciary needs to be further consolidated, so that solving of cases within the determined legal deadlines and international standards. In this regard, the increase of the number of judges, prosecutors and professional associates shall have positive impact in these institutions.

The Ombudsperson reiterates that the implementation of the provisions of the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman and Degrading

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<sup>10</sup> *Constitution of the Republic of Kosovo, Article 22.*

<sup>11</sup> *European Convention on Human Rights and Fundamental Freedom (ECHR), Article 6, paragraph 1. "Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which will decide on disputes regarding the rights and its liabilities of civil nature, as well as on the grounds of each criminal charges against him/her."*

Treatment will enable effective, efficient and full monitoring of institutions, where detained and sentenced people are held. In this regard, Working Group has undertaken activities by which acts as a precursor of the National Mechanism on Torture Prevention<sup>12</sup>, establishment of which is provided by this protocol.<sup>13</sup>

Through this report the Ombudsperson again expresses his concerns for not inclusion of Convention of Economic, Social and Cultural Rights in Kosovo's Constitution. Some of the rights that this Convention contains and which continue to have insufficient legal coverage in Kosovo are as follows: the right to proper shelter, the right to work and those derived from employment, the right in health insurance as well as other social and economic rights. Inclusion of this Convention in the Constitution of the Republic of Kosovo is mandatory and will be an additional guarantee for Kosovo citizens and for their economic and social rights protection.

Based on the experience of the ongoing work on individual and group complaints and requests, the Ombudsperson concludes that the Republic of Kosovo shall take all necessary actions according to international instruments on fundamental human rights and freedoms, directly applicable in the Republic of Kosovo, to include the Convention on the Rights of Persons with Disabilities.

Although, many norms of this Convention are included in other international instruments applicable in the Republic of Kosovo, its inclusion is necessary due to the fact that this Convention is the most inclusive international instrument on human rights, dedicated to this category of people, including around 10% of total population of the country, aiming full integration of persons with disabilities living in Kosovo needs such a contemporary approach.

### **Recommendations:**

- *The Constitution of the Republic of Kosovo to include the Convention on Economic, Social and Cultural Rights.*
- *The Constitution of the Republic of Kosovo to include the Convention on the Rights of Persons with Disabilities.*
- *All institutions in Republic of Kosovo to engage in full observance and implementation of international instruments, as explicitly is required by the Constitution of the Republic of Kosovo.*

## **2.2. Human dignity**

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<sup>12</sup> As a result of OI's cooperation with several local NGO's (Council for the Defence of Human Rights and Freedoms - CDHRF and the Kosovo Rehabilitation Centre for Torture Victims -KRCT), was established the joint working group, with which it was signed the memorandum of cooperation, in May of 2011."

<sup>13</sup> Optional Protocol of the Convention against Torture and Other Cruel, Inhuman and Degrading Punishment, Article 3 "Each state shall set up, designate or maintain at the domestic level, one or several visiting bodies for the prevention of torture and inhuman, cruel or degrading punishment."



Constitution of Republic of Kosovo, Article 23, foresees human dignity protection, determining it as *“intact and the base of entire human rights and fundamental freedoms”*.

Dignity presents the entire moral values of an individual and his/her right to be respected, which stems from the very existence of humans and is treated as a moral, religious, social, political and legal category.

Human dignity is not only a fundamental right in itself but constitutes the real basis of fundamental rights. Universal Declaration of Human Rights has sanctioned this principle in its preamble; *“Inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”*.<sup>14</sup>

In the field of human rights, human dignity is considered to constitute the foundation of all rights and is a necessary precondition for respecting and protecting other rights from public authorities of Kosovo. This conclusion is questioned in a society where the number of unemployed, social cases and those with various health problems, not able to recover at home and abroad due to severe material conditions, is increasing every day, health insurance is lacking, whereas violence against women is widespread.

Starting from general practice, usually a violation of human rights and violation of dignity happens more during unfavourable situations for the individual, especially when one is not able to protect them, to claim them and fight for his/her rights, whether due to serious health condition, or because of age.

In order to prevent the violation of human dignity and human rights in such situations, the Ombudsperson is dedicated to have a more practical and active approach. Therefore, as an integral part of its work, systematic regular visits to mental health centres as well as periodic visits at nursing homes are set. These visits serve to ensure that human dignity is protected and respected in those places according to international standards. Besides monitoring visits to these centres, the Ombudsperson, on 21 September 2013, held a roundtable discussion regarding the living conditions of elderly people, people with mental health problems, working conditions of workers in institutions managed by the Ministry of Labour and Social Welfare (MLSW), as well as increased cooperation between the Department of the Nursing Homes and MLSW.

Regular monthly visits of Ombudsperson to the institutions where people deprived of liberty are placed have continued this year as well. Their treatment in these institutions, protection from abuse, is in the same line with the protection of human dignity.

OI during the reporting period has handled various complaints of alleged human dignity violation. One of these complaints is the case of a prisoner at the Detention Centre in Mitrovica (DCM).<sup>15</sup> The claimant was diagnosed and suffered from cancer. His health condition was quite severe, limiting basic life functions, mobility and its orientation in space. Representative of the Ombudsperson, by constant contact and communication through letters, has requested from Kosovo Judicial Council (KJC), pursuant to the law, to consider the possibility of parole of the claimant, in order to have a dignified health care outside of premises where persons deprived of their liberty are held. From KJC response, it resulted that

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<sup>14</sup> Universal Declaration of Human Rights, preamble

<sup>15</sup> OI, Case A. no. 148/2013.

the case was reviewed and the claimant is under conditional release, and started with health care treatment in Mitrovica Regional Hospital.

A challenge that citizens and institutions of the Republic of Kosovo are still facing is the protection of human dignity of people with disabilities. As in previous reports, the Ombudsperson also recalls that during this reporting period, the situation of this category in the Republic of Kosovo is not at all satisfactorily.<sup>16</sup> The Ombudsperson's particular concern is especially the failure to implement the legal infrastructure, whose primary aim is the mitigation of discrimination against persons of this category.

A particular concern is also the situation of Kosovo pensioners. Financial and material compensation for their social contributions to this society for decades, is not dignified. The funds that Kosovo pensioners, and social beneficiaries receive today in Kosovo, do not provide a dignified life for these categories of Kosovo society.

### **2.3. Equality before the law**

The right to be free from any type of discrimination is one of the fundamental principles of human rights.

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

No one shall be discriminated against on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, association with a community, property, economic and social status, sexual orientation, birth, disability or other personal status.<sup>17</sup>

The rule of law is the basic principle of local institutions. The rule of law initially implies the existence of clear and understandable laws for everyone. However, in Kosovo, a considerable number of adopted laws are not being enforced properly.

#### **2.3.1. Gender Equality**

Achieving gender equality is one of the main objectives and a priority for development of any modern democratic society, in which all its members will be treated equally in all situations, without discrimination.

The concept of discrimination based on gender, includes the difference in treatment, exclusion or restriction based on gender, which thereby jeopardizes or prevents the enjoyment or exercise of fundamental human rights and freedoms in all spheres of social life. Any distinction in treatment is discriminatory, when it has no objective justification.

The Constitution of the Republic of Kosovo emphasizes legal protection without discrimination and equality of all citizens under the law, regardless of gender, language,

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<sup>16</sup> *OI, Annual Report 2010* pg. 28

<sup>17</sup> *The Constitution of the Republic of Kosovo*, article 24.

ethnicity, political, religious, cultural, economic status, sexual orientation or any other status of citizens.<sup>18</sup>

The Republic of Kosovo is not signatory party of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW). However, based on the Constitution this Convention is directly applicable in Kosovo. Protection from discrimination in Kosovo, especially from gender-based discrimination, is regulated by the Law on Gender Equality.

### ***2.3.2. Participation in the labour market and in political decision-making***

The high level of unemployment in the Republic of Kosovo hinders women to compete in the labour market. The position of women in the labour market is very important for gender equality. In today's labour market and current situation, it is more likely for men to be hired, especially for high ranking positions, even when there are female candidates with the same qualifications.

Discrimination often begins upon vacancy announcement, citing gender as criteria for employment. All this speaks very clearly that the system with built defence mechanisms is not strong enough to prevent and stop gender-based discrimination in the field of labour and employment. During 2013, OI has received the complaint which refers to termination of employment of a woman employed in a non-governmental organization (NGO), during pregnancy.<sup>19</sup>

Elimination of inequality between men and women is somewhat achieved by special measures in legislation, namely by determination of the quota for the underrepresented gender, which aims to eliminate discrimination against women.

The representation quota, as an affirmative measure essentially enables creation of women participation trend in decision-making, which should be maintained for a period, until it is replaced with real competition. This affirmative measure for half of the society should continuously increase until achieving gender equality in all areas.

Positive and promising signs are observed at the local level. In 2013 was elected the first female Mayor that will govern a municipality in Kosovo, while in some municipalities, political parties have had females running for municipal Mayor's positions.

### ***2.3.3. Property and inheritance right***

Another area of vital importance, where women are treated unequally, is the area of property rights. The applicable laws provide equal rights to women and men regarding inheritance of property.<sup>20</sup> Denial of property right to women is a typical action for traditional society of Kosovo. In most cases in Kosovo, not to say in all of them, the family property is inherited by

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<sup>18</sup> *The Constitution of the Republic of Kosovo*, Article 3.

<sup>19</sup> *OI, case A. no. 44/2013. After the mediation effort by OI, the claimant was advised to use legal remedies; more specifically it was directed to the competent court in relation to the case. The case is in procedure at the court which is competent to review the case.*

<sup>20</sup> *Law on Heritage no. 2004/26*, Article 3.

males. This is more pronounced in rural areas. However, this does not change much even in urban areas. In many cases where women have requested a part of family property, they were threatened by spouses or other men of the family,<sup>21</sup> and from private companies as well.<sup>22</sup>

Regarding the role of women in our society, there are still significant differences between rural and urban areas. In rural areas, due to traditions and customs, social position of women is subordinate to that of men, and there is very little awareness of the concept of gender equality.

#### ***2.3.4. Right to Education***

The legal grounds in Kosovo, in terms of education and training are same for both genders. However, women drop out is of concern, not only for Kosovo institutions but for the entire Kosovo society. This phenomenon is more reflected in rural areas, but also to the minority Roma, Ashkali, and Egyptian communities. There are many factors that continue to affect women to drop out of school, however, among the most dominant factors are still the socio-economic factors: poverty, lack of transportation for children from remote areas, which is followed by the lack of safety for young children along the way, and early marriages (under the age allowed by law).

An issue which continues to be present in pre-university education, is the issue of wearing religious symbols (headscarf wearing), from a limited number of girls of the Islamic faith. A broader social and cross institutional dialogue is necessary on this issue.<sup>23</sup>

#### ***2.3.5. Domestic violence***

Despite the positive efforts of local and central institutions in Kosovo, domestic violence continues to remain a bitter reality in Kosovo. This not only represents violation of human rights, but constitutes discrimination basis in many cases, primarily of women, children and elderly persons. Domestic violence also continues to affect all communities in nearly the same extent in Kosovo. The fact that only a small number of cases of domestic violence are reported to the competent authorities in order to handle those cases creates even a greater problem.

One of the main reasons that continue to be the source of domestic violence is the difficult socio-economic and cultural status. Unemployment and poverty are the most common factors that affect increasing of domestic violence.

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<sup>21</sup> *OI, case A. no. 316/2011*. The appeal was repeated for judicial monitoring in 2013. The claimant has repeated the same appeal, because her uncle prevented her to become the owner of the house which her father has build in the joint family yard. The procedure is being conducted in the Basic Court in Prishtina.

<sup>22</sup> *OI, case A. no. 238/2013*. The case of the claimant who claims that her case has to do with the issue of non-compliance with an agreement related to her property, which is not being respected by a private company. The claimant has filed a lawsuit at the competent court and the case is being monitored by the OI.

<sup>23</sup> *OI, case A no. 152/2013*.

Economic dependence of the victim endangers her/his position. It is very hard for the victims to report the case, because they are economically depended from the person who abuses with them. Also, a barrier to report the case is the widespread social opinion that domestic violence is a private matter and should not come out of the family circle. Another factor that should not be forgotten, however, is the emotional connection, which cannot be easily diminished between members of the same family.

OI has several times monitored court sessions where the victims of violence have sought cooperation and monitoring on the courts.<sup>24</sup> Unfortunately, in some cases the competent courts, following the request by the victim for restraining orders, do not make a decision on adequate protective measure within the time limit prescribed by law.<sup>25</sup>

According to the report of the Kosovo Police, in 2013 in Prishtina municipality were recorded 251 cases of domestic violence, in Gjilan municipality were 122 cases, in Ferizaj municipality were recorded 139 cases, in Peja municipality 211 cases, in Prizren municipality 194 cases and in Mitrovica municipality were recorded 170 cases. In Kosovo, during 2013, have occurred four murders as a result of domestic violence.<sup>26</sup> According to the police report for 2013, victims by gender are: 869 females and 220 males. Also, according to this report, in 2013 there were 19 violations of restraining orders.

### ***2.3.6. Women and girls, victims of sexual violence during the war***

The category of women and girls, victims of sexual violence during the war, belong to the category, which is not been legally treated by the relevant authorities in the country. In the Republic of Kosovo, in 2013, it was discussed for this category of persons and there is some positive progress, but still insufficient.

In the OI Report 2012, the Ombudsperson has required a legal and institutional arrangement for victims of sexual violence during the war. The initiative on establishing the inter-ministerial group by the Government, upon the initiative of the Ministry of Justice, which will address the issue of recovering from the damages for the victims of sexual violence during the war in Kosovo, is an act that marks a positive progress.<sup>27</sup>

Women and girls, victims of the war in Kosovo, should be provided with institutional support and legal infrastructure, with particular focus on removing prejudices for this part of our society. Also, the Kosovo society needs to be more engaged in their development, education and emancipation with the aim of restoring their dignity. OI supports all initiatives and institutional actions on the legal regulation of victims of sexual violence during the war, to enjoy their rights as civilian victims of war.

### **Recommendations:**

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<sup>24</sup> OI, case A. no. 22/2013.

<sup>25</sup> Report 2013 by the Kosovo Police on cases of domestic violence.

<sup>26</sup> Ibid.

<sup>27</sup> Ministry of Justice-the Agency for Gender Equality, roundtable “Access of justice for women and girls, victims of sexual violence during the war in Kosovo”, 8 March 2013: [www.md-ks.org/?page=1,8,867](http://www.md-ks.org/?page=1,8,867) (16.12.2013).

- *To make efforts in harmonizing the Kosovo legislation with the European Union legislation regarding gender equality.*
- *To implement the quote stipulated by the Law on Gender Equality at all levels, in order to advance the position of women in Kosovo society, especially women's participation in decision making at central and local level.*
- *To implement a training program for employees in institutions dealing with human rights and gender equality, both at central and local level.*
- *To activate the issue of funding safe houses for victims of domestic violence.*
- *To legally regulate the status of women, girls and other persons who are victims of sexual violence during the war.*
- *To analyse the budget of the Republic of Kosovo in relation to gender aspect, integrating the gender statistics in bodies and institutions of the Republic of Kosovo.*

### **2.3.7. Law enforcement**

Anti-Discrimination Law (ADL) was adopted in 2004, in order to provide to the parties the right to equality before the law and equal protection, equal opportunities and enjoyment of their rights, as well as effective protection against any discriminatory behaviour or any behaviour encouraging it.<sup>28</sup> However, this law remained inapplicable due to its ambiguous articles.

ADL currently has a gap in resolving discrimination cases regarding procedures and the lack of a public body which is responsible to handle discrimination cases. It does not meet the requirements to provide effective means for potential victims, presenting a case justified in practice or in the law. The Ombudsperson has reported about lack of implementation of the ADL and recommended changes in the law even in previous annual reports.<sup>29</sup>

Chapter II of this law still remains unclear and dysfunctional. This Chapter includes procedures for initiating cases, the competent body responsible for handling discrimination cases, as well as sanctions.

The Government of Kosovo, during the reporting year, has undertaken actions on amending the ADL. Until its amendment, the law continues to remain not applicable for discrimination victims who seek their rights guaranteed by this law.

Social Economic Council until the reporting time has failed to harmonize the stances in relation to two very important documents in the field of employment: Collective Contract and

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<sup>28</sup> *Anti-Discrimination Law no. 2004/3.*

<sup>29</sup> See Annual Reports of the Ombudsperson Institution 2010, 2011 - Equality before the law. Ombudsperson claims that due to certain gaps, this law further continues to be not applicable in practice. Amendment of the Law Anti-Discrimination would create a possibility that this law should not still remain impracticable in practice: [www.ombudspersonkosovo.org](http://www.ombudspersonkosovo.org) (05.03.2014).

the minimum wage. Ombudsperson considers that lack of authority by the SEC under the Law on Social Economic Council has negative implications on implementation of public and private sector employees' rights.

Law on Social Assistance Scheme in Kosovo no. 2003/15, as discussed many times in previous annual reports of OI for its various gaps, is amended by Law no. 04/L-096, and currently this Law can be considered more inclusive law for persons who depend on social assistance. However, the complaints lodged in OI on social assistance cancellation, demonstrate the opposite in many cases. Lots of persons complain that the social assistance was cancelled due to non-inclusion of their categories by law.

### ***2.3.8. Age based discrimination***

Age based discrimination occurs when a person based on his/her age is treated less favourably than another person of another age group, under the same or similar circumstances.

Despite the fact that the Ombudsperson has published a report on age discrimination, in the case of job advertisement, such phenomenon of discrimination continues to be present on the field of employment. It is even more concerning the fact that such discrimination is encountered even in the agreements signed by public institutions, such as the case of MLSW on employment of social cases.<sup>30</sup>

### ***2.3.9. Complaints against the University of Prishtina***

During this reporting year, several citizens of the Republic of Kosovo have submitted complaints on discrimination from University of Prishtina (UP). The complaint of doctoral candidates was submitted by a group of persons, complaining of alleged injustices in the public competition announced by UP Senate on 26.09.2013, and discrimination in student enrolment in doctoral studies in the academic year 2013/2014. The case is open for investigation by the Ombudsperson.<sup>31</sup>

A significant number of complaints about discrimination are also submitted against the University of Prishtina Rector's Office. Claimants allege that the University of Prishtina does not equally treat the candidates graduated in public and private universities, in order to continue their post-graduate and master studies, despite the fact that the private universities are subject to the same accreditation procedures as public universities.<sup>32</sup>

Students' enrolment in master studies from UP to private universities has no additional criteria, meanwhile UP creates additional criteria for students graduated in private universities. UP require additional criteria such as fulfilment of the number of students with graduates in UP, and if the number of students is not covered, then the private university

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<sup>30</sup> OI, case A. no. 566/2013. Memorandum of Understanding no. 122, on 2 April 2013, between MLSW and KEC. Article V limits the employment age to 40 years (the copy of the memorandum is available in the case file).

<sup>31</sup> OI, case A. no. 613/2013. Ombudsperson has submitted a letter to UP Rector's Office but didn't receive a feedback.

<sup>32</sup> OI, cases A. no. 523/2013 and A. no. 590/2013. Claimants allege that UP has established additional criteria on master studies for students graduated in private universities.

graduates may apply for post graduate studies within the UP, but under different criteria, because regardless of GPA they have to undergo different testing, which does not happen for students graduated in UP. Such discrimination is a burden for students, because in many cases we are dealing with the same subjects taught by the same professors in both, public and private universities.

#### ***2.3.10. The decision of Basic Court in Prishtina in relation to age discrimination***

The Ombudsperson has reported on the discriminatory decision of the UP Senate on not recruiting professors over age of 50.<sup>33</sup>

Regarding this case, the Ombudsperson published a report with recommendations, and has described the decision of the UP Senate as ungrounded and unlawful, in contradiction with the Constitution of the Republic of Kosovo, Article 26 of the International Covenant on Civil and Political Rights, Article 14 of the ECHR, Law on Labour, Anti-Discrimination Law as well as the UP Status.<sup>34</sup>

Based on OI competencies, pursuant to the Law on Administrative Conflicts, the Ombudsperson has initiated the issue on administrative conflict to the competent court to rule out the case.<sup>35</sup>

#### ***2.3.11. Discrimination by the Special Chamber of Supreme Court of Kosovo***

Judiciary system in Kosovo, during the reporting period, continues to face several issues such as; delays on case reviewing and adjudication, and in relation to effective justice. Moreover, this issue is presented in the judiciary section of this report.<sup>36</sup>

During this year, the Special Chamber of the Supreme Court (SCSC) continues to disregard citizens' rights guaranteed by the Constitution and Law, namely Article 5 of the Constitution and Law no. 02/L-37 on the Use of Languages.<sup>37</sup>

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<sup>33</sup> OI, Annual report 2011, in: [www.ombudspersonkosovo.org](http://www.ombudspersonkosovo.org) (05.03 2014).

<sup>34</sup> OI, the report no. 170/2010, with recommendations. Ombudsperson has reported in relation to discriminatory decision of UP Senate not recruiting professors over age of 50. In: [www.ombudspersonkosovo.org](http://www.ombudspersonkosovo.org) (05.03 2014).

<sup>35</sup> Based on OI powers, and pursuant to the Law on Administrative Conflicts, the Ombudsperson has initiated the issue of administrative dispute at Kosovo Supreme Court on the legality of the UP Senate decision, for recruiting new professors in UP. Regarding this case, the Basic Court of Prishtina, after the reform of the judiciary system in Kosovo, pursuant to its real competency has reviewed the request subject to administrative conflict initiated by OI. After the court hearing, held on November 20, 2013 and the session on main case held on December 9, 2013, the Court has decided and accepted the writ of OI, and has cancelled the discriminatory decision of Prishtina University Senate no. 1/499 on 25 May 2010.

<sup>36</sup> OI, see Annual reports of OI 2011, 2012, and also this report: Judiciary protection of human rights: [www.ombudspersonkosovo.org](http://www.ombudspersonkosovo.org) (05.03 2014).

<sup>37</sup> The constitution of the Republic of Kosovo, Article 5; Law on Use of Language no. 02/L-37



Furthermore, Kosovo's citizens are obliged to submit their requests within the SCSC translated into English and therefore, in many cases, due to documents translation costs, citizens are deprived of their right to initiate their case in SCSC.

Ombudsperson, through a report with recommendations, has requested by the Assembly of Kosovo, based on its constitutional powers, to initiate the procedure for amending and supplementing the law on SCSC, i.e. the provisions on translation of documents to English language.<sup>38</sup>

### ***2.3.12. Privatisation Agency of Kosovo***

Privatization in Kosovo is still subject of complaints by many citizens, due to the fact that many former employees in public enterprises have remained jobless and without legal or institutional support. Also, most of them complain on privatisation manner of their companies and that they weren't included in the compensation of 20%. Complaints submitted to OI on this matter are being investigated by the Institution in accordance to the legal competences.<sup>39</sup>

### ***2.3.13. Discrimination of persons with disabilities***

The rights of persons with disabilities in Kosovo are addressed through 26 basic laws of various fields and two bylaws. Some of them are specific laws pertaining specifically to this category.<sup>40</sup> Despite this fact, people with disabilities still remain a vulnerable category of all forms of discrimination, because currently there are no signs of progress regarding the infrastructure for facilitating their everyday struggle.

As noted in the previous reports, road infrastructure for easier movement of persons with disabilities still remains a concern. This issue is not regulated even in the most frequented places such as hospitals, schools, courts, etc. Even the existing infrastructure dedicated to persons with disabilities is built out of standards and in this way is impossible for them to easily move without help of a companion. This influences many persons with disabilities, dependent on wheelchairs, to remain socially isolated and discriminated in institutional terms. In addition, children remain illiterate due to the lack of access to facilities.<sup>41</sup>

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<sup>38</sup> *OI, Report with recommendations.* It was recommended to amend the provisions of Article 25, paragraph 8, paragraph 9 and paragraph 10 of Law no. 04/L-033 on Special Chamber of the Supreme Court on Issues Concerning the Privatization Agency of Kosovo, addressed to the Committee on Legislation of the Assembly of the Republic of Kosovo.

<sup>39</sup> *OI, case A. no. 133/2013.* Group complain in which the claimant claim that they are not included in the compensation of 20% from the privatization of the company, they also claim that they are jobless and are in difficult economic conditions, because of their age and their education is not a labour market requirement and on the other hand they do not meet the age criteria for retirement.

<sup>40</sup> Special laws pertaining to Disability in Kosovo are: *Law on Disability Pensions no. 2003/23, Law on Material Support to Families of Children with Permanent Disabilities no. 03/L-022, Law on Vocational Ability, Rehabilitation and Employment of People with Disabilities no. 03/L-19, Law on Blind Persons 04 / L - 092*, by which regulates the rights and benefits and establishes the criteria for categorization of persons with impaired vision.

<sup>41</sup> Information was received by OI during the regular meetings, in 2013, with NGOs representing the interests of persons with disabilities in Kosovo: - Hendikos NGOs, NGO Handicap Kosovo, and NGO Down Syndrome Kosova.

In this case, the Ombudsperson requests from the Assembly and the Government of the Republic of Kosovo to take all appropriate actions and measures for incorporation of Convention on the Rights of Persons with Disabilities into Kosovo Constitution. Also, it is necessary, pursuant to legal requirements, the engagement for enforcing the law and the establishment of institutional, material and technical infrastructure for integration of persons with disabilities into society, without any discrimination.

#### ***2.3.14. Protection of LGBT community rights***

There is a solid normative basis which is in accordance with international standards on protection of the rights of LGBT community members, but despite the existence of constitutional and legal guarantees, this community falls into the minority communities/groups whose rights are violated. Not only in Kosovo, but in many countries the members of the LGBT community are often victims of violence, which in several cases becomes extremely severe, especially in relation to other types of crimes and violations of human rights motivated by prejudice, since these crimes often are accompanied by a high degree of cruelty and brutality.<sup>42</sup>

Constitution of the Republic of Kosovo ensures equal guarantees and a solid basis for equal observance of human rights of all persons. In fact, in the Constitution envisaged *the equality before the law*<sup>43</sup> and prohibits discrimination based on sexual orientation. The Constitution of the Republic of Kosovo also guarantees the *freedom of expression, freedom of media and freedom of gathering*. Restrictions of these freedoms can be allowed only if such a thing is prescribed by law and if this restriction is in the public interest.

Besides the Constitution, the basis for equal observance of the rights of all citizens is also provided by several laws, primarily by Anti- Discrimination Law,<sup>44</sup> which prohibits discrimination based on sexual orientation. Prohibition of hatred, rioting and intolerance between groups in Kosovo is provided by the Criminal Code of Kosovo. Law on Labour also prohibits all forms of discrimination. Prohibition of any public appearance and performance of each individual in abusive, humiliating and demeaning way in relation to gender or sexual orientation is provided by the Law on Gender Equality.<sup>45</sup>

#### ***2.3.15. Protection and promotion of LGBT community rights***

During 2013, there were some movement towards the promotion of LGBT rights in Kosovo, which are not negligible if we consider the social context. On the occasion of marking the

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42 The annual report of the UN High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary General, 17.11.2011: [http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41\\_English.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf) (12.12.2013).

43 *Constitution of the Republic of Kosovo*, Article 24 paragraph 2: "no one shall be discriminated against on grounds of race, colour, gender,[...] sexual orientation, birth, disability or any other personal status".

44 *Anti-Discrimination Law*, Article 2 "a) the principle of equal treatment shall mean that there shall be no direct or indirect discrimination against any person based on gender, age, marital status, language, mean or physical disability, sexual orientation".

45 *Law on Equal Gender*, article 15, paragraph 3.

International Day against Homophobia, on May 17, 2013 the first conference on LGBT rights in Kosovo, was held.<sup>46</sup>

It is also important the fact that the Kosovo government has made efforts towards establishing the Coordination Advisory Group at national level, in order to protect and promote the LGBT community rights. The purpose of establishing this group is to create unity, partnership and regular cooperation between institutions and local as well as international NGOs, which deal with protection of rights of the LGBT community members, as well as to initiate and undertake common actions in preventing and combating discrimination based on sexual orientation.

During this year, the representatives of NGOs in Kosovo, the European Commission and representative of the Ombudsperson participated in the regional workshop "People 2 People" a program of the European Commission, and in collaboration with the Office for Human and minority Rights in Serbia, as well as international organization "ILGA-Europe".<sup>47</sup> During this workshop, the Ombudsperson representative presented the OI views in relation to monitoring mechanisms and legislative as well as non-legislative measures subject, and views regarding the current situation of the LGBT community in Kosovo as well as Ombudsperson activities in this regard.<sup>48</sup> During this workshop, the following topics such as: discrimination, hate crimes and hate speech as well as freedom of association, gathering and expression were discussed.

A very important event is the conducted research by Youth Initiative for Human Rights (YIHR) on Freedom and Protection of LGBT community members in Kosovo, and the obtained outcomes during research were presented to the public on November 14, 2013.<sup>49</sup> According to the report inputs, one can obtain a general view regarding state of play of LGBT community living in Kosovo as well as perceptions of representatives of various bodies and institutions, but also it can be noticed that there has been progress in the acceptance and understanding of the issues the LGBT community faces.

### ***2.3.16. Main issues and challenges of LGBT community in Kosovo***

However, despite constitutional guarantees and a relatively good legal basis and efforts of governmental institutions, these rights are not respected in reality. Violation of the right of freedom of expression and freedom of gathering, are problems mostly faced by the LGBT community in Kosovo. They are followed by physical and verbal attacks against the members

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<sup>46</sup> *The first conference for the LGBT community in Kosovo*: To promote and protect the rights, 17. 05. 2013. The conference was attended by representatives of the Government of Kosovo, NGOs and the Ombudsperson. The conference was attended by representatives of diplomatic missions in Kosovo as well.

<sup>47</sup> ILGA-Europe is a branch of European Region of the International LGBTI Association.

<sup>48</sup> European Commission, TAIEX, "p2p events", presentation of the representative of Ombudsperson of Kosovo:[http://ec.europa.eu/enlargement/taix/dyn/taix-events/library/detail\\_en.jsp?EventID=53050](http://ec.europa.eu/enlargement/taix/dyn/taix-events/library/detail_en.jsp?EventID=53050) (11.12.2013).

<sup>49</sup> YIHR Report on freedom and protection of the LGBT community members in Kosovo, 14. 11. 2013: <http://ks.yihr.org/rs/article/159/YIHR-KS-publishes-the-report-on-Freedom-and-Protection-for-Lesbians-Gays-Bisexuals-and-Transgender-in-Kosovo> (12.12.2013).

of this community. The Ombudsperson has warned about the existence of this issue and the need to solve it by the competent authorities.<sup>50</sup>

Within OI there is the Unit of protection of the rights of the LGBT community. However, based on the OI statistics, so far no complaints are submitted regarding the rights violations based on sexual orientation, so in terms of statistics, we cannot precisely address this issue.

None reporting of LGBT community rights violation cases causes a lack of records and documentation of violation of LGBT community members' human rights, which directly affects the low level of protection of LGBT community members. Self – reporting of LGBT community members human rights violation cases is particularly difficult, because in most cases these violations are motivated by prejudice and accompanied by hate speech and in general they are well covered and in different ways.

Due to this, if main reason of rights violation or potential commission of a criminal offense is prejudice or hatred toward the particular social group, in this case against the LGBT community, it is essential that the prosecution authorities pay special attention and investigate that it is about a kind of motivation to commit such violations of human rights. It is imperative for it to be acknowledged and recorded by the police, prosecution and judiciary that prejudice against different sexual orientation was the motivation for someone to violate somebody's rights.

Failure to report indicates a low level of confidence of the LGBT community members in state institutions. OI has taken adequate steps to encourage the LGBT community members to freely contact OI, submit a complaint in order to report violations of their rights.

Gaining confidence in the system raises certain prerequisites, and one of it is that court cases, whose background is discrimination based on sexual orientation as a ground for human rights violations, be processed effectively and efficiently.

Also, an important issue is the protection of victims from secondary victimization (post crime victimisation), intimidation and retaliation during the prosecution of the case by the prosecution bodies. There are frequent cases when victims do not have the courage to present cases, because they fear the consequences, revenge etc. If judicial authorities and other competent authorities do not encourage victims and witnesses to report the offense, they will not do this or will do it very rarely. It is also necessary to support NGOs and other civil society organizations, which handle the investigation of violations of LGBT community rights.

In order to improve the situation of the LGBT community, it is necessary to implement a comprehensive process, which would affect the development of tolerance and overcoming prejudices in all spheres of society.

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<sup>50</sup> *OI, Archive.* Ombudsperson Institution (OI) expresses its concern regarding the recent events related to physical assault during the presentation of the "Kosovo 2.0" in the Youth Centre in Prishtina during organization under "Libertas". 19.12.2012: <http://www.ombudspersonkosovo.org/?id=5,0,0,0,s,670> (7.12.2013).

### ***2.3.17. Social based discrimination***

Several families in Kosovo, unable to solve the housing issue, continue to seek from Municipal Assemblies housing for humanitarian purpose.

In most municipalities of Kosovo, lack of shelters for social cases is excruciating. A significant number of families still live in totally inappropriate living conditions since the end of war in 1999 in Kosovo, without hope for a solution in the near future.

Containers on the neighbourhood "Fusha e Pajtimit" in Prishtina are full with people who live in un-dignifying conditions. These cases are reported by the Ombudsperson in previous reports and through the media.

### ***2.3.18. Free utilization of public and private property***

The unlawful abatement of private or public property and obstructing the free utilization of private property, by different persons and groups of persons is another continuous problem.

After several complaints and petitions addressed to the Municipality of Prishtina, for which Prishtina municipality has not provided any feedback, citizens of a neighbourhood in Prishtina (next to the green market) have submitted a request to the OI, claiming that they are unable to have a normal life because of difficulties to freely move and use their property, due to the exercise of commercial activity by vendors in public spaces, specifically on the road, at the entrance and exit of the neighbourhood. They also claim that quite often is difficult to transport diseased persons in case of urgent medical need, as a result of the closure of the road from vendors. According to them, the health of the residents of this neighbourhood is endangered because illegal traders dump their waste on the street, causing an unpleasant odour, thus making the stray dogs stick around.<sup>51</sup>

The Ombudsperson has raised this issue through a letter addressed to the Municipality of Prishtina, but the Municipality declared that it is not competent on this issue, because according to the municipality the market falls under the jurisdiction of the Privatization Agency of Kosovo. Privatisation Agency of Kosovo has stated that after the transition of the Kosovo Trust Agency to Kosovo Privatization Agency, all public companies have remained under the authority of local and central level.

The Ombudsperson is continuing with the procedures related to this case, because the investigations conducted on this issue indicate unwillingness to manage public property and to guarantee to the citizens, to freely, without discrimination and interference use their rights and properties.

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<sup>51</sup> OI, Case A. 494/2013. Claimants claim that they cannot freely use their private property in the green market neighbourhood in the city centre of Prishtina, due to lack of support by the local level competent authorities. Regarding the allegations of the claimants, the Ombudsperson addressed a letter to the Municipality of Prishtina and the complaint is under procedure.

### **2.3.19. Kosovo Property Agency**

As reported in the previous OI reports, Kosovo Property Agency (KPA) continues with double standards in handling and processing of cases for which the decision are taken under their authority.

Further, the properties in North Mitrovica are not freed from illegal occupiers and are not included in the rental scheme by this Agency, as defined by law. This shows a failure of work of this Agency to carry out its mandate. The situation is worsened by their negligence on the work; they collect the rent from individual user and then allocate these funds to illegal persons. This is the case with Albanian inhabitants' properties which are occupied in the northern part of Mitrovica, for which the KPA does not collect rent, but KPA collects rents for utilized apartments in the southern part of Mitrovica, whose owners are from Serbian community, even if their properties are not utilized. This represents an impermissible discrimination with political background.

In OI there are cases recorded where the tenant pays to KPA for the property he uses, while KPA allocates the collected funds to the owner of another property, which is also under KPA administration. In this case, the whole process of complaining by the tenant addressed to the Agency has ended with apologies for the mistake conducted; and without instructions on using legal remedies for restitution of the damage. This case is being investigated by OI.<sup>52</sup>

Discrimination by KPA is also attested by the fact that they still oblige Albanian owners whose properties are occupied in northern Mitrovica and under KPA administration, to pay rent for using the properties of Serbian owners throughout Kosovo, but they do not apply the same procedure to the members of the Serbian community who have occupied the properties of Albanians in northern Mitrovica, by not obliging them to pay rent for properties of Albanians, which are still occupied and utilized.<sup>53</sup>

The continuous justifications from KPA on the abovementioned violations are based on political reasons and lack of support from the Kosovo Police (KP) to fulfil its mandate. However, this is a violation of the Constitution of Kosovo, international instruments on human rights incorporated in the Constitution of the Republic of Kosovo and the Anti-Discrimination Law, which guarantee equal treatment for all citizens of the Republic of Kosovo.<sup>54</sup>

#### **Recommendations:**

- ***The Assembly and the Government of Kosovo shall seriously engage on amending and supplementing the Anti- Discrimination Law in order for the law to be clear and enforceable.***

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<sup>52</sup> OI, case A. no. 506/2013. The claimant claims that they pay rent to Kosovo Property Agency for the property used, while KPA allocates the funds collected to the owner of another property, which is also included in the rental scheme in KPA.

<sup>53</sup> OI, cases A. no. 484/2008 and A. no. 475/2008. The claimants claim that their apartments in southern Mitrovica are under KPA administration, but they do not collect the rent money from their property occupied by Serbians, whose identity is known to KPA and the Police.

<sup>54</sup> *The Constitution of the Republic of Kosovo* Article 3, 24, 22 and 46; *Anti-Discrimination Law no. 2004/3*; *ECHR*, Article 14 and Article 1 of *ECHR Protocol*.

- *Ministry of Labour and Social Welfare shall review the Memorandum no. 122 of April 2, 2013, signed between the MLSW and KEC (KEK), removing restrictive measures for employment of age group up to age of 40.*
- *University of Prishtina shall eliminate the use of double standards for graduate students in public and private universities for enrolment in master and doctorate studies.*
- *Assembly of Kosovo and the Special Chamber of the Supreme Court shall implement the recommendations contained in Ombudsperson's report, of November 1, 2012, on the Law 04/L-033 on the Special Chamber of the Supreme Court of Kosovo.*
- *The Government and Assembly of the Republic of Kosovo shall carefully review the work of the Kosovo Privatization Agency, especially the form and way of enterprises privatization and inclusion of legitimate workers on compensation scheme of 20% from privatization.*
- *Government of Kosovo shall seriously handle the issues arising from lack of implementation of laws which are in force, with particular emphasis on the implementation of Law no. 04/L-092 for blind persons.*
- *Ministry of Labour and Social Welfare shall accelerate the procedure on draft law on the Status and Rights of Paraplegics and Tetraplegics to be submitted as soon as possible for approval to the Assembly of Kosovo.*
- *The Government of Kosovo, namely the Ministry of Education shall create conditions for free access to school premises and other public institutions for persons with disabilities who depend on their assistive devices.*
- *Municipality of Prishtina shall take all actions to release the public property for free utilization by citizens and free access to their private properties, release illegal abatement of public area next to the Green Market in Prishtina.*
- *Kosovo Property Agency shall treat the properties under its management in accordance with the law, while the owners of those properties should be treated equally and without discrimination.*

## **2.4. The right to life**

Human life is protected by law and is guaranteed by the Constitution of the Republic of Kosovo.<sup>55</sup> No one's life shall be taken deliberately. Capital punishment (death) is forbidden.

### **2.4.1. Murders in Kosovo, a concerning phenomenon**

According to the Office of Information and Public Relations of the Kosovo Police, during the period of 1 January 2013 to 30 November 2013 in Kosovo were committed a total of 43 murders and 151 attempted murders.<sup>56</sup>

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<sup>55</sup> *The Constitution of the Republic of Kosovo, Article 25.*

<sup>56</sup> Information received by the Information Office within Kosovo Police, on 3 December 2013.

These statistics show that recently the number of murders and crimes is growing. Frequent murder cases make this phenomenon reflect in increasing the weakness of public security in the country. The murders come as a result of several factors: criminal purposes, the large number of weapons among population, blood feud, etc.

#### ***2.4.2. Excessive delays on investigation procedures***

By the complaints handled by the OI in 2013, there are noted several gaps while handling of death cases from competent authorities. Lack of investigation into reported cases, unjustified delay of prosecution and judiciary bodies,<sup>57</sup> lack of proceeding criminal cases and their unjustified closure constitutes a reasonable concern for citizens.<sup>58</sup>

Injured parties, family members and victim relatives, are often disappointed to negligence, delays on the procedure, lack of information about the case.<sup>59</sup> Family members or relatives of the victim are not included at all in the procedure and their interests are not considered at all during the process. This is in direct contradiction to the decisions of the European Court of Human Rights (ECHR), according to which is conducted the interpreting of the fundamental rights and freedoms in the Republic of Kosovo.<sup>60</sup> ECHR explicitly requires that "*However, the relative of the victim, in all matters, must be involved in the procedure to the extent that they provide his/ her legitimate interests in the process*".<sup>61</sup>

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<sup>57</sup> OI, Case A. no. 529/2009. *Report with Recommendations*. The claimant from Lipjan complained on unjustified delay during investigation of criminal proceedings PP. no. 712-1/2007 from Prishtina District Prosecution on criminal offense on fatal traffic accident /death of his son in 2007. OI has communicated with prosecution officials in order to accelerate and conduct investigations so to complete the investigation, but no success was achieved. A report with several recommendations for the State Prosecution is developed. OI has not received a feedback on the failure of recommendations' implementation by the prosecution in relation to this case.

<sup>58</sup> OI, Case A. no. 597/2012. *Report with Recommendations*. The claimant from Suhareka complained for not beginning, closing, or dismissing prosecution proceedings by Basic Prosecution in Prizren. Ombudsperson upon investigations conducted in regard to this case, has concluded that the Regional Prosecution body in Prizren, has unfairly and unfounded decided not to begin or terminate the criminal proceedings for the criminal offense "Traffic Accident with fatality" causing death, with the code PP. no. 60/2005. In relation to this case, the Ombudsperson has compiled a report with recommendations for the Basic Prosecution and Court in Prizren, for not commencing the criminal proceedings on criminal offence of traffic accident causing the death of a minor. The investigations on this case have been initiated by Basic Prosecution in Prizren. Ombudsperson's recommendation is not considered yet by the responsible bodies.

<sup>59</sup> OI, Case A. no. 349/2013. The party complains regarding investigation procedures of Regional Police of Mitrovica for the death of their son in unknown circumstances. For the case that occurred in March 2013, investigations are still being conducted by the Regional Police in Mitrovica. The case is being monitored by OI.

<sup>60</sup> *The Constitution of the Republic of Kosovo*, Article 53: "Human rights and fundamental rights guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights."

<sup>61</sup> See Manuals of Human Rights, no. 8. A guide to implementation of Article 2 of EHCR, Douwe Korff, *The Right to Life*, p. 44. *Guleç v. Turkey*, decision on 27 July 1998, paragraph 82, where the father of the victim was not notified on the decisions not to proceed legally; *Ogur v. Turkey*, Application no. 21594/93, 20.05.1999, where the victim's family had no access to the investigations and court documents; *Gal v. Turkey*, decision on 14 December 2000, par.93. <http://www.coe.int/t/dghl/cooperation/capacitybuilding/public/materials/1057> (12.03.2014).



According to the ECHR, in order to have more effective benefit of the rights guaranteed by Article 2 of the ECHR,<sup>62</sup> the state authorities should take all appropriate actions, using the available means, in order to provide evidence about the incident, including among others, eyewitnesses and forensic evidence. If necessary, an autopsy must be done to get comprehensive details, which will enable the description of the damages caused, and to determine the cause of death.<sup>63</sup> We shall recognize the fact that there may be obstacles and difficulties which prevent progress in an investigation of a given situation. However, a quick response by authorities to the investigation can generally be regarded as essential in retaining public security.

Besides the obligation to respect the procedural norms, the competent authorities after the investigation on the causes of violent death, aim to initiate the criminal prosecution or mobilizing the mandatory judicial procedures in case of violation of the Convention.

Appropriate legal remedies should be provided for the citizens in order to compensate them for damages caused in cases of failure of public institutions responsible for investigating and solving cases and detection of perpetrators of criminal offences. Therefore, until the creation of such legal mechanisms, the legal system in the Republic of Kosovo continues not to be in compliance with recognized international standards.

Strengthening and controlling of judges and prosecutor's performance and dynamic supervision of the activities of the criminal prosecution bodies' remain as a consequence of all abovementioned issues. By increasing the level of disciplinary and criminal responsibility of persons who violate the laws in this area, will significantly affect the protection of the individuals' rights and will increase the society trust in the justice system in Kosovo.

#### **Recommendations:**

- *Kosovo Police shall be more effective in detecting the perpetrators of criminal offences-murders.*
- *Prosecution shall conduct investigations and complete them on time, precede them to the court within the time frame as foreseen by the law.*
- *Kosovo Judicial Institute shall continue and intensify the trainings for judges and prosecutors in the field of criminal code.*

### **2.5. Right to liberty and security**

The Constitution of the Republic of Kosovo, Article 29 states that "*Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases*

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<sup>62</sup> ECHR, Article 2, paragraph 1: "The right of everyone's life shall be protected by Law.": <http://www.echr.coe.int/Documents/Convention> (12.03.2014).

<sup>63</sup> According to Manuals of Human Rights, no. 8. a guide to implementation of Article 2 of the European Conventions of Human Rights. See about autopsies, for example, *Salman v. Turkey*, decision on 27 June 2000, paragraph 106; in relation to the witnesses, for example, *Tanrikulu v. Turkey*, decision of the Grand Chamber on 8 July 1999, paragraph 109; in relation to forensic evidence, for example, *Gul v. Turkey*, decision on 4 December 2000, paragraph 89.

*foreseen by law [...]* ".<sup>64</sup> This right is in full compliance with international instruments of human rights, such as ECHR<sup>65</sup> and the Convention on Civil and Political Rights.<sup>66</sup>

International and local acts stipulate that this right may be restricted only in cases provided by the law. Criminal Procedure Code of the Republic of Kosovo provides that the court may detain a person only if there is a grounded suspicion that such person has committed a criminal offense and if one of the following conditions is met: there is the risk to flee, the risk that person may change crime evidence and the risk that the person may repeat the criminal offense.<sup>67</sup>

OI during this reporting period has received eight (8) complaints regarding the violation of this right.<sup>68</sup>

Notwithstanding the fact on how short the period of detention is, detention can be imposed only in cases when such measure is necessary. The decision to impose such a measure should be well justified, as it serves to protection of individual liberty and protects individuals from arbitrary deprivations of liberty by the authorities. Detention order by a legally justified decision is necessary and important to the defendant for exercising his/her right to oppose that decision.

In several of its decision, ECHR has emphasized the importance of the right to liberty and security, requiring that any deprivation of liberty is in conformity with the purpose of Article 5, which means the protection of the individual from the risk of arbitrariness.<sup>69</sup>

Regarding the detention duration, the ECHR has also emphasized that regardless to the detention duration, such measure should be convincingly justified by authorities.<sup>70</sup> According to the ECHR, this shall take place due to the fact that well-reasoned decisions serve to show the party that they are heard and give them the opportunity to submit an appeal and ultimately ensure public review of the justice administration.<sup>71</sup>

During this reporting period, OI officials have conducted several visits to prisons, detention centres and detention facilities within the police stations in Kosovo. From interviews conducted with detained persons, in some cases there were allegations of violations of the

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<sup>64</sup> *The Constitution of the Republic of Kosovo*, Article 29.

<sup>65</sup> *European Convention of the Human Rights and Fundamental Rights*, Article 5.

<sup>66</sup> *International Convention on Civil and Political Rights*, Article 9.

<sup>67</sup> *Criminal Procedure Code of the Republic of Kosovo*, Article 187.

<sup>68</sup> *OI, Cases: A. no. 614/2013, A. no.601/2013, A. no.589/2013, A. no.537/2013, A. no.288/2013, A. no.15/2013, A. no.11/2013, A. no.10/2013, A. no.197/2013.*

<sup>69</sup> *European Court on Human Rights, "Fedotov v. Russia", Application no. 5140/02, 25.01.2006, shih: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["fedotov v. russia"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-70756"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{) (12.12.2013).*

<sup>70</sup> *Ibid. "Belchev v. Bulgaria", Application no. 39270/98, 08.07.2004, [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["belchev v. bulgaria"\],"document collection id2":\["GRANDCHAMBER","CHAMBER"\],"item id":\["001-61699"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{) (15.12.2013).*

<sup>71</sup> *Ibid, "Suominen v. Finland", Application no. 37801/97, 24.07.2003, in: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["suominen v. finland"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-61178"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{) (16.12.2013).*

right of freedom, referring to the detention decisions and delay of extrajudicial detention and court proceedings until a decision final.<sup>72</sup>

Taking under consideration the experience and the complaints submitted to OI, the Ombudsperson due to sensitivity and specificity of each individual case has given its recommendations.

**Recommendations:**

- *The competent institutions in the Republic of Kosovo, based on their constitutional and legal competences shall protect the right of every citizen for liberty and security, guaranteed by the Constitution and applicable Laws.*
- *Responsible authorities, respectively prosecution and judiciary, shall impose detention only in those cases when it is in full compliance with legal requirements and international standards on human rights.*

## **2.6. Prohibition of torture**

The Constitution of the Republic of Kosovo guarantees that "*No one shall be subject to torture, cruel, inhuman or degrading treatment or punishment*".<sup>73</sup> Prohibition of torture or inhuman and degrading actions is enshrined in all domestic and international acts on human rights, applicable in the Republic of Kosovo.<sup>74</sup>

The term torture implies any act by which, to a person deliberately is caused great pain or physical or mental torment. Respecting the physical and mental integrity is essential for the protection of human rights and freedoms.

### **2.6.1. Monitoring and visits to the institutions where persons deprived of liberty are held<sup>75</sup>**

In order to prevent the violation of human rights, the Ombudsperson has continued to make unannounced monitoring of the institutions where persons deprived of liberty are held.

During this reporting period, OI has also implemented systematic and regular visits, once a month, in all institutions where detainees are held, to collect information and objectively assess the general situation of human rights of persons detained and deprived of liberty.

OI has placed complaint boxes in all prisons, detention centres, custody centres, Special Institute in Shtime, Integrated Mental Health Centre, Children's House in Shtime and Community House for People with Mental Disabilities in Shtime.

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<sup>72</sup> OI, A. no. 197/2013, A. no. 331/2013, OI's Internal report on the visit to Correctional Centre in Lipjan, on 17.01.2013; OI Internal report on the visit to Detention Centre in Lipjan, on 19.04.2013.

<sup>73</sup> Constitution of Republic of Kosovo, Article 27.

<sup>74</sup> Ibid, Article 22.

<sup>75</sup> The term "*institutions where persons deprived of liberty are held*" includes the space in state institutions such as prisons, detention centres, custody centres, police stations, mental health institutions, where persons deprived of their liberty with a decision of the competent state body are held.

### **2.6.2. Complaints of persons deprived of liberty**

OI has conducted 94 monitoring visits to abovementioned centres and has interviewed 172 persons in these centres during 2013.<sup>76</sup> All persons in the abovementioned institutions can submit complaints through complaint boxes in which only OI representatives have access. Also, the complaints are accepted directly during the interviews, sent directly by mail addressed to OI, through phone calls, family members, lawyers or social workers of the institutions.

From the total number of complaints, 49 complaints received were registered as cases for investigation, meanwhile the other are considered unacceptable. Regarding the alleged violation of this right, the Ombudsperson has initiated an *ex-officio* case against KP for excessive use of force.<sup>77</sup> Regarding the present case, the Ombudsperson received a detailed report from the Kosovo Police Investigation Department through which it was reported that on October 23, 2013, a recommendation was made for suspension of three police officers involved in this case. Also, the Ombudsperson was informed by the Police Inspectorate that a criminal report was initiated against three police officers under suspicion of having committed a criminal offense on "Mistreatment during exercise of official duty" under Article 198 of the KCC and the same is sent to the Basic Prosecution in Prishtina.

Nature of complaints continues to be almost the same from year to year. They continue to be against the court decisions, either for procedural delays or complaints on "unfair decision" because they consider that evidences were not considered by the courts.

At the same time complaints are addressed against the decisions of the Conditional Release Panel (CRP) and against the prison administration since the prisoners have no access to their files. In all these cases, OI representatives inform detainees on their rights and obligations, as well as guide them about the actions they should take towards the implementation of their rights.

### **2.6.3. Probation**

After the entry into force of the Law on Execution of Penal Sanctions (LEPS), CRP has passed under the jurisdiction of the Judicial Council and is foreseen to have a new structure.<sup>78</sup>

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<sup>76</sup> Visits are carried out starting with a meeting with the leader or the deputy of the institution. This meeting takes place with the aim of presenting OI representatives, the purpose of the visit, and obtaining information from them. Under the escort of an officer, the visit continues to the wards and open the boxes placed by the OI and where only the representatives of OI have access. Among other things, the visits are concentrated on understanding the problems associated with medical services, sanitation, nutrition, education, discipline, staff behaviour, etc. OI representatives are provided a special space for conducting interviews without the presence of staff of the institution, as a very important moment during the visit. During these visits are conducted interviews with institution staff that are responsible for various services, such as social workers, doctors, cooks, etc. The meeting is closed with a visit to the leader of the institution, summarising the visit and making recommendations if they are of urgent nature.

<sup>77</sup> OI, case A. no. 537/2013. The case was opened based on information provided by electronic news portal "Telegraf", 21 October 2013.

<sup>78</sup> Law on Execution of Penal Sections, no.04/L-149, Article 122, paragraph.2:" The parole panel is comprised of three (3) members: one (1) judge from Supreme Court delegated by the President of the Supreme Court; one (1) state prosecutor delegated by the Chief State Prosecutor; one (1) representative from MIA/Kosovo Police, with knowledge on relevant professional fields (legal, pedagogy, sociology, psychology) delegated by the General Director of the Kosovo Police. Kosovo Judicial Council appoints also one (1) representative delegated by

After an interruption of work for several months, CRP has held its first session in November 2013. Based on up-to-date working practices of CRP, the Ombudsperson believes that the composition of CRP with a fourth substitute member may create problems, because it was noted that there is the need for two substitute representatives in case of conflict.

During the reporting period, the CRP released 46 people, meanwhile under the supervision of the Probation Service of Kosovo (PSK), 123 people have been conditionally released from prison, which were cases transferred from previous years.<sup>79</sup> In 2013, 96 persons have successfully finished the supervision period, while 27 cases remain under the supervision of PSK. PSK has been monitoring 24 juveniles who have been part of Program on Care after Release.

#### **2.6.4. Health Care**

The initiative for the establishment of Kosovo Forensic Psychiatry Institute (KFPI), which has started since 2002, is being finalized. With the support of the European Union (EU), construction of KFPI facility started and is expected to be completed in March 2014, when the transfer of the already selected staff will take place. KFPI's capacity is for 36 patients. The capacity is expected to increase for twelve (12) in the near future. For a good performance of the Institute, Ministry of Justice (MJ) has appointed twenty (20) correctional officers, who will care and be responsible for security issues.

Ombudsperson has consistently recommended that the prison health care service shall transfer from MoJ to the Ministry of Health (MH), in order to provide a more efficient service, and therefore it welcomes this initiative. In June 2013, MoJ and MoH have signed a cooperation agreement and its operation is expected to start.<sup>80</sup>

In order to implement the Law on Health<sup>81</sup> and based on the aforementioned agreement, during the reporting period, drafting of an Administrative Instruction on Health in Prisons has started, which will determine the functioning, organization and delivery of health care for prisoners, based on Law on Health, the Law on Execution of Penal Sanctions in Kosovo, the European Rules on Prisons and recommendations of the World Health Organization.<sup>82</sup>

A major concern is related to the conditions of civilian hospital rooms or spaces dedicated to prisoners, such as the one in Gjilan, which is out of order and does not meet even the basic requirements for treatment of the prisoners neither for placement of the custodian staff. At the same time, also in Prishtina, although the location is identified, due to procurement procedures, the company that will perform the work is not selected yet.

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Rector's Office/Faculty of Law, as a fourth member with knowledge and experience from respective professional field, which is elected in readiness to decide on cases where with law is foreseen exclusion of the panel member in certain matter or replacement in absence of another member."

<sup>79</sup> *Ibid*, Article 121, paragraph 2: "A convicted person has the right to submit a request for conditional release through the correctional facility in which he or she is serving his or her sentence for conditional release panel established pursuant to the Criminal Code of Kosovo."

<sup>80</sup> Cooperation agreement between MoJ and MoH, No. 05-3527, dated 13.06.2013.

<sup>81</sup> *Law on Health*, no. 04/L-125.

<sup>82</sup> OI is involved in the working group on drafting the sub-legal act – Regulation on functioning of the health services department in Kosovo prisons.

During this period there wasn't any epidemic in prisons or detentions centres, but there were identified and treated 5 cases with *TBC* and 4 cases of *Hepatitis*. Medical supply of prisons has been at a satisfactory level; meanwhile the essential list includes 118 items.<sup>83</sup>

During this reporting period, there were 3 deaths (occurring in civilian hospitals in Peja, Gjilan, and Prishtina), 15 self-injuries, 62 bodily injury, 4 suicide attempts and 45 hunger strikes, including a massive strike, aimed at delaying the process for issuing the Law on Amnesty.

### **2.6.5. Overcrowding**

Overcrowding continues to be a concern during 2013 as well, especially in the winter season. During the reporting period, the situation on these centres is as follows:

- Dubrava Correctional Centre (DCC) has a capacity of 1151 persons with 971 persons placed there;
- Lipjan Correctional Centre (LCC) there were 69 people placed in the ward for minor offences, while its capacity is 60 persons. In the women's ward with a capacity of 60 persons, there were 58 females prisoners placed;
- Smrekovnica Correctional Centre (SCC) has two wards. One of them is for prisoners with certain privileges, and has a capacity for 200 persons, with 200 prisoners placed there, while the admission room has a capacity for 16 persons and only 12 persons are placed there;
- Lipjan Detention Centre (LDC) has a capacity of 170 persons, whereas 179 persons are placed there;
- Mitrovica Detention Centre has a capacity of 55 persons, whereas 26 persons are placed there;
- Prizren Detention Centre has a capacity of 92 persons, whereas 100 persons are placed there;
- Peja Detention Centre has a capacity of 80 persons, plus 6 in isolation, whereas 87 persons are placed there;
- Gjilan Detention Centre has a capacity of 88 persons, whereas 82 persons are placed there;
- Prishtina Detention Centre has a capacity of 65 persons, whereas 68 persons are placed there.<sup>84</sup>

Operationalization of High Security Prison in Gërdoc (Podujeva),<sup>85</sup> commencement of construction of the Detention Centre in Gjilan, and the construction of the Detention Centre in Prishtina, will significantly mitigate overcrowding and also will enable the systematization of the prisoners, as foreseen by law. Also, renovations are being carried out in Dubrava.

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<sup>83</sup> Interview with Mr. Milazim Gjocaj, Director of Health Care System in Prisons, December 2013.

<sup>84</sup> Statistics provided by the Heads of Institutions, situation as of December 20, 2013.

<sup>85</sup> High Security Prison was opened on December 18, 2013 and has the capacity to place over three hundred (300) prisoners who were sentenced more than fifteen (15) years in prison.

Progress has been made toward the renovation of the facility and physical infrastructure in general and supply with beds (with all accompanying linens), provision of clothing, etc, but lack of professional staff and lack of continuous training of staff remains a challenge in Special Institute in Shtime.<sup>86</sup>

#### ***2.6.6. OI cooperation with responsible institutions***

During this period, OI has continued the regular cooperation with Kosovo Correctional Service (KCS), heads of aforementioned institutions and relevant institutions, which are continuously informed about the content of prisoners' complaints and findings from monitoring performed, such as overcrowding, excessive length of detention by the courts, nutrition, health, benefits utilization, parole, transfers from one centre to another, and the extradition of prisoners from one country to another one.<sup>87</sup>

In general, cooperation with these institutions has been correct and satisfactorily since the purpose of monitoring is to assess the execution of human rights, prevention of human rights violations, improvement of services and increase of institutions transparency.

Given the information and findings during multiple visits in all these institutions, the Ombudsperson, in order to improve the general situation in these institutions, considers as necessary to provide some recommendations for the Ministry of Justice, Kosovo Correctional Service, Ministry of Health, Ministry of Labour and Social Welfare.

#### **Recommendations:**

- *Provide staff training in institutions where detainees are held (for social workers and other staff), in order to expand their knowledge on human rights;*
- *Strengthen cooperation of CRP with PSK and KCS staff, to provide better services, by organizing various work meetings, joint meetings and seminars;*
- *To carry out classification of detainees, according to the nature of the offence, risk and age.*
- *To inform the detainees on their rights and liabilities, and the methods how to submit a complaint;*
- *To pay allowances on riskiness, and create better working conditions for medical and other staff;*

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<sup>86</sup> OI has conducted its last visit on December 2013.

<sup>87</sup> Interview with Mr. Arbër Gegaj, Director of the Department for International Legal Cooperation, Ministry of Justice, December 2013. Agreements on extradition are reached between the Republic of Kosovo and: the Republic of Albania, Macedonia, Turkey, Croatia, Italy, Belgium, Switzerland and work is being done in signing cooperation agreements with Hungary, Montenegro and the Federal Republic of Germany.

- *To increase the number of social workers as well as to provide necessary training for the new staff;*
- *To increase the number of professional staff in Special Institute in Shtime;*
- *To allow pocket money for residents, as provided in the Administrative Instruction no. 04/2007.*

#### **2.6.7. Working group on National Mechanism on Torture Prevention<sup>88</sup>**

*The Working Group* has continued its cooperation during this reporting year by organizing joint monitoring, round tables on work promotion, held several meetings with the purpose of work coordination, with the support of OSCE, the Office of the High Commissioner for Human Rights (OHCHR) and the Council of Europe (CE). Meetings are conducted with the aim of determining tasks, raising funds, developing activities, organizing training seminars and conferences, lobbying, advocacy, etc.

With the support of the Centre for Research and Rehabilitation of Torture Victims (RCT) from Denmark and the Open Society Institute, the *Working Group* has drafted a manual of monitoring correctional institutions and detention centres, which has been adapted to the context and practices in Kosovo.<sup>89</sup>

On 26 April and 31 May 2013, within the mandate of the Working Group, visits to DCC, LCC, and LDC were conducted. The visits aim was to assess the observance of human rights and dignity of persons deprived of their liberty by increasing transparency and accountability of places for deprivation of liberty, thus increasing public trust in these institutions.<sup>90</sup>

The Directors of the monitored centres informed the *Working Group* for the work and activities of DCC, LCC, and LDC. Besides the general conditions in which detainees are held, the *Working Group* has conducted individual and group interviews with detainees, to understand how staff treats them.

The monitoring findings were delivered for comments to the Directors of the prisons and to the Ministry of Justice. Also, the same were presented at the conference organized in the Week against Torture.

The *Working Group* has continued and will continue cooperation with OSCE, which has supported the publication of a leaflet for NMPT, and a project with Netherlands Helsinki

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<sup>88</sup> On May 10, 2011, OI has signed cooperation agreement with two local civil society organizations, CDHRF and KRCT, which among others deal with monitoring of places where persons deprived of liberty are held, to establish NMPT.

<sup>89</sup> See: [www.krct.org](http://www.krct.org)

<sup>90</sup> During a visit OI meets with the head of institution or his/her deputy. This meeting aims at presenting *Working Group*, the purpose of the visit, and obtaining information from them. Under the escort of an officer, the visit continues to the wards, hospital, kitchen, school, bathrooms, and warehouse and in all other monitored areas. Inter alia, the visits are focused on understanding the problems associated with medical services, sanitation, nutrition, education, discipline, staff behaviour, etc. The visit end upon meeting once again with the Head of the Institution, summarising the finding upon monitoring, and make recommendations on any case of urgent nature.



Committee is been develop, for a period of two years, to monitor places where juveniles are held.

Preliminary findings on the rights of persons with mental disabilities were published on December 17, 2013 which were presented by CDHRF and *Working Group* findings were also included.

## **2.7. The right to a fair and impartial trial**

Pursuant to Constitution and Law, OI is obliged to follow the situation and to protect the constitutional and legal rights of natural or legal persons, when they are restricted, violated or infringed by other institutions of the Republic of Kosovo.

OI has consistently reported cases of violation of the right to a fair and impartial trial. In previous annual reports, the Ombudsperson has repeatedly expressed its concerns related to the failure of the justice system to handle the cases without delay.

The engagement of the Ombudsperson Institution, regarding this topic, consisted on three pillars: a) identification of violations and the problems associated with the implementation of this right; b) preventing the causes that affect the violation of this right and c) cooperation with judicial authorities and other relevant state institutions responsible for handling complaints and undertaking of preventive measures.

The cases reviewed for violation of the right to a fair trial, have highlighted the problem of law enforcement, namely the violation of this right in sense of Article 31 of the Constitution of the Republic of Kosovo, and Article 6 of the ECHR: failure to observe legal deadlines on solving the cases, and non-responding upon the requests for information, and other complaints.

This brings difficulties and obstacles in the normal and transparent functioning of judiciary system in relations to citizens. These difficulties and obstacles are further enhanced due to the fact that citizen, on the other hand, do not have sufficient knowledge about their rights in court proceedings.

In the judicial field, during this year, similar to previous years, the largest number of complaints filed is related to violation of procedural provisions, namely procedural delays. *Procedural delays* refer to the time period from the commencement until the end of proceedings in a particular case, which exceeds the legal deadline, without any rational justification.

Although there are several legislative and administrative initiatives undertaken to avoid these problems over the years, the situation remains the same, however with the tendency of becoming even worse.

The causes of procedural delays are of different nature, such as the large number of pending cases, insufficient human resources in the courts, problems with management of resources within the courts, ineffective legal proceedings, insufficient or inadequate preparation of cases, late obtaining of witness statements, lack of expertise,<sup>91</sup> lack of legal representation, etc.

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<sup>91</sup> *OI, Case A. no. 259/2013*. During the monitoring of one of the hearings in this case, in the Basic Court in Prishtina, OI noted that due to the absence of legal expert proposed by the claimant (due to negligence) was

At the same time, there are many ways in which the parties themselves contribute to the delays. This happens mainly in the preparatory phase, but may also occur during the review of the case, mainly because no proper information by the courts or institutions, lack of knowledge on procedures, etc.

Although all the parties of the judicial system have acknowledged on time the importance of reducing delays, OI is constantly obliged, by letters, to address to the judiciary institutions requesting information on the procedures on the concerned case, and unfortunately in many cases is forced to conclude that there is an unjustified delay.<sup>92</sup>

Quite often, despite reports, recommendations, additional urgent requests (reminder letters) etc, the institutions do not respond to the Ombudsperson requests, by not sending the requested information, sometimes not even the partial data, which are relevant for the processing and analysing the case.<sup>93</sup> By not responding, not only that they are hampering the work and functioning of OI, but they are causing citizens to lose faith and hope for a rule of law state.

### ***2.7.1. Effects caused by procedural delays***

Effects caused due to procedural delays in judiciary, are accompanied with stress and anxiety by victims of crime, the accused one and their family. This directly affects in loss of trust, not only towards judiciary, but also towards the state in general, in delivery of justice.

Such a loss of trust has as a natural and logical consequence the efforts of affected individuals and groups to take justice into their own hands, which unfortunately is happening, although cases are rare. However, the part of trust remained in the institutional and social justice, which is represented by, and is the key obligation of the judiciary, will fade out over the time. Therefore, in this situation, undertaking immediate measures, without hesitation and without delay, is the highest level imperative. This is the primary responsibility and obligation of a state, and needs no excuses. In addition, according to the sense of ECHR decisions related to the right for fair and impartial trial, accountability for the slowly held procedures falls off utterly onto the judiciary bodies”.<sup>94</sup>

### ***2.7.2. Challenges and recommendations***

Number of complaints investigated in OI on violation of this right, during 2013, was 143. From this figure it can be noticed that exercising of this right remains a concern and makes one of the most serious violations of human rights. Even more concerning remains the fact that for such violations, even when the facts are objective and undeniable and are followed with major consequences for citizens, there are no denunciations and making liable responsible individuals by the competent and responsible institutions. The issue of procedural

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impossible to further conduct the hearing, in which case the court was forced to postpone the session for another day.

<sup>92</sup> OI, Case A. no. 229/2013. The complaint was submitted to the OI on 'procedural delay' against the Special Chamber of the Supreme Court of Kosovo.

<sup>93</sup> OI, Case A. no. 400/2013. The complaint was submitted on procedural delays against the Basic Court of Prishtina. OI, after confirming the breach, although it has sent two successive letters, has not yet received any response.

<sup>94</sup> The case, *Thomas vs. France*,-241-A 27.8.1992, "A European Public Order: Selected Decisions of the European Court of Human Rights". Volume I, (Tirana, 2001), p. 189. The case against Cassation court in France.

delays for the judiciary itself raises the issue of performance, accountability and judicial independence.

Considering the current situation, as well as information, evidence obtained, the direction of current developments, especially in the judiciary, the Ombudsperson makes the following recommendations.

**Recommendations:**

- *Undertake all legal measures and actions in reducing the number of backlog, through the adoption of a backlog reduction program, which should be applicable and easily manageable.*
- *To increase the number of judges and legal professional associates, as well as other administrative staff, in order to increase efficiency and effectiveness of daily performance of judges.*

## **2.8. The rights of the defendant**

Anyone charged with a criminal offense enjoys the minimum rights set forth in the Constitution,<sup>95</sup> the Criminal Procedure Code,<sup>96</sup> as well as in the international instruments directly applicable in Republic of Kosovo.<sup>97</sup>

OI is continuously receiving complaints of different nature addressed against court decisions, whether for procedural delays, or "unjust decisions", due to dissatisfaction with the defence provided, either by ex officio counsels or those of its own choice,<sup>98</sup> impossibility to visit the family, medical treatment, etc.

During this reporting period, OI has received ninety-nine (99) complaints, with allegations that the rights of the defendants are violated, excluding the breach of fair and impartial trial, often interlinked with each-other. Twenty-eight (28) of them are open for investigation in OI, while others are qualified as unacceptable.

Due to delays of decision procedures in criminal cases by the courts, to a lot of persons deprived of freedom, the detention was extended without providing any legally based justification and during monitoring the places where people deprived of their freedom are held, OI representatives noted that in the above centres are recorded cases where the defendants are detained out of statutory deadlines and in not very appropriate conditions.<sup>99</sup>

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<sup>95</sup> *The Constitution of the Republic of Kosovo*, Article 30.

<sup>96</sup> *The Code of Criminal Procedure*, no. 04/L-123

<sup>97</sup> *Ibid*, Article 22.

<sup>98</sup> OI via email, is notified by the Kosovo Bar Association that during 2013, the Disciplinary Commission of Inquiry has received 94 complaints, of which, one is rejected as submitted after deadline; 4 have were of competence; for 11 procedure is ceased; 54 were rejected and for 24 disciplinary procedures are ongoing, December 2013.

<sup>99</sup> OI during the reporting period has realized monthly unannounced visits to the detention centres and prisons performing ninety-four (94) monitoring visits and interviewed one hundred and seventy-two (172) detainees. OI

To avoid this situation, according to the information obtained from Acting KCS Commissioner, the constructions of new facilities or renovation of existing ones for keeping persons deprived of freedom<sup>100</sup> have started. This will enable reducing the number of detained persons into the overcrowded centres, but also their classification according to the nature of offense, age etc.

Ombudsperson, in these cases has published the report and recommendations, cases that are continuously repeated present not only a concern to the Ombudsperson, but first of all, serious violations of human rights.<sup>101</sup>

Due to delays of decision procedures in criminal cases by the courts, to a lot of persons deprived of freedom, the detention was extended without providing any legally based justification and during monitoring of the places where people deprived of their freedom are held, OI representatives noted that in the above centres are recorded cases where the defendant ones are detained out of statutory deadlines and in not very appropriate conditions.<sup>102</sup>

In one of the cases filed in OI during the reporting period, the parties complain about the infringement and limitation of the right for effective legal protection. They consider that in the trial conducted against them, the Kosovo Bar Association (KBA), through the Regulation on Licensing Foreign Lawyers, Article 3, paragraph 3.2, subparagraph (a), violates their rights as accused ones. They claim that the aforementioned provision of the Regulation in question, is in violation with Article 6 of the Law on Bar and severely violates Article 30 - Rights of the Accused and Article 31 - Right to Fair and Impartial Trial, of the Constitution of the Republic of Kosovo, which guarantees the right to chose the defence counsel, in order to have a fair and equal trial. Claimants claim that they are deprived of their right to choose national or international lawyer, as per their choice, which is guaranteed by the Constitution of the Republic of Kosovo and the laws in force.<sup>103</sup>

Ombudsperson on 12.04.2012, regarding the claimants matter, published a statement to the public media, concluding that measure of reciprocity, set by the KBA, on licensing of the

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in these centres has placed complaint boxes to which only the OI have access, where is placed a phone number, which is free of charge.

<sup>100</sup> Interview with KCS Acting Commissioner, Mr. Shemsi Hajrizi December 2013. DC Gjilan and for DC Prishtina. In addition, the construction of the High Security Prison, where is expected to be transferred over three hundred (300) of high-risk convicted, those sentenced over fifteen (15) years of imprisonment. High Security Prison is finished on 18th December, 2013.

<sup>101</sup> OI, case A. no. 305/2013. The party appeal for uninterrupted continuation of detention and delay of proceedings by the Court in Prishtina and duration of detention. The case began to proceed for the criminal offense on 12th of May, 2009, and based on the obligation of the court to decide whether to continue or terminate the detention, from May 2009 until November 2013, was issued twenty-nine (29) decisions to continue detention. The Ombudsperson, on 30th of October, 2013, has published a report with recommendations, recommending Basic Court in Prishtina, to take immediate measures to review and deserved decision, without any further delay; and delivery of the verdict to all parties within a reasonable deadline, in accordance with KPCC and the request in accordance to the meaning of Article 6 of the ECHR.

<sup>102</sup> OI during the reporting period has realized monthly unannounced visits to detention centres and prisons performing ninety-four (94) monitoring visits and interviewed one hundred and seventy-two (172) detainees . OI in these centres has placed complaint boxes to which access have only the OI, where is indicated a phone number, which is free of charge.

<sup>103</sup> OI, case A. no. 12/2013. Claimant claimed that were not equally treated at trial and there was a violation of Article 6 of the Law on the Bar.

foreign lawyers to be hired in the Republic of Kosovo, presents a constitutional and legal violation.<sup>104</sup> This is because the Law on Bar no. 03/L-117, Article 6, on registration of foreign defence lawyers into the Bar Register of the Republic of Kosovo, does not stipulate any limitation. Ombudsperson, based on the legal analysis upon conclusion of the violations of human rights in the detriment of complainants by KBA, based on the legal and constitutional powers, on 11th of February 2013, has submitted a Special Report to the Government of the Republic of Kosovo, with recommendation to amend provisions of the Regulation on licensing of foreign lawyers. In order to eliminate violations of human rights in the future, the Ombudsperson made an explicit request that the Government of the Republic of Kosovo to suspend, for an indefinite term, latest up to the time when will be hired international prosecutors and judges in the judiciary of the Republic of Kosovo, the execution of Article 3, paragraph 3.2, subparagraph (a) of the Regulation on Licensing of Foreign Lawyers, as incompatible with Article 6 of the Law on the Bar, Article 30 and 31 of the Constitution of the Republic of Kosovo and Article 6 paragraph 3, subparagraph C, of ECHR.<sup>105</sup>

### **Recommendations:**

- *Courts to impose other alternative measures, and only when is strictly necessary and legally based, the detention, as a tool to secure the defendant.*
- *Kosovo Bar Association, to provide higher quality of legal aid, in case of ex officio representation and to regulate clearly and without any doubts the clients rights observance, and in case of detriment that is associated with lawyer performance to investigate and imposes disciplinary measures.*

### **2.9. Right not to be tried twice for the same offence**

*Ne bis in idem* principle, namely the principle that no person shall be tried twice for the same offence, is a general and fundamental principle in a rule of law state. This principle is embodied into the Constitution of the Republic of Kosovo<sup>106</sup> and international instruments directly applicable in the Republic of Kosovo.<sup>107</sup>

The purpose of the principle *ne bis in idem* is to protect the individual from the arbitrary power of the state and to prevent the state to punish the same person twice for the same

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<sup>104</sup> *Kosova sot*, 12 April 2012, p. 5.

<sup>105</sup> *OI, case A. no. 12/2013. Special Report No.1* Recommendation addressed to the Government of the Republic of Kosovo, about the case.

<sup>106</sup> *The Constitution of the Republic of Kosovo*, Article 34.

<sup>107</sup> *European Convention on Human Rights and Fundamental Freedoms, Article 4.1 of the Protocol no. 7*: "No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that state". *International Convention on Civil and Political Rights, Article 14.7*: "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

offense. Criterion "*the same offense*" refers to the same action, behaviour, evidence, offense and legal qualification, which form the foundation of that act for which the person is once convicted or acquitted.

During the reporting period, OI did not find any violation of this principle. Therefore, the Ombudsperson is encouraged by the fact that the principle *ne bis in idem* is treated fairly in the legal system and its application in practice.

## **2.10. The right to legal remedy**

The right to use legal remedies against judicial and administrative decisions has every subject of the law. Each individual, if his/her rights and interests as prescribed by law are violated, shall use this right.

The right to legal remedies, to the citizens, is guaranteed by the Constitution of the Republic of Kosovo<sup>108</sup> in the light of Article 6 of the ECHR, as well as by national criminal, civil and administrative legislation.

During 2013, in accordance with judicial and administrative decisions regarding the right to legal remedies, OI has investigated 66 cases. Based on the analysis of complaints filed against the judiciary and prosecution are submitted 28 cases; against ministries 12 cases, municipalities 10 cases, University of Prishtina 4 cases, Kosovo Property Agency 3 cases, Privatization Agency of Kosovo 3 cases, KEK 3 cases, Centre for Social Work 2 cases and against Agency for Free Legal Aid (AFLA) 1 case. Regarding these cases, OI addressed to relevant authorities, from which requested to take appropriate actions, as provided by law.

Complaints regarding legal remedies were mostly filed against the courts of all levels and SCSC, regarding the Privatization Agency of Kosovo. Citizens' complaints are related to excessive delays in judicial proceedings until the proclamation of verdict upon exercise of the legal remedies, for the protection of human rights guaranteed by legal provisions. Citizen complaints addressed to ministries, courts, municipalities for legal remedies include issues of various areas: employment, property issues, housing, disregard of decisions issued by the authority itself, etc.

In order to protect their rights, significant complaints of citizens, claiming that their rights are violated, are claims that OI drafts as complaints, claims and lawsuits. Also, there were claims on their representation in disputes before the competent institutions. This is as a result of non-recognition of the Ombudsperson's powers, but also as a result of citizens' trust towards this institution.

Concerning issue for the Ombudsperson is the citizens' mistrust on the work and justice provided by the competent institutions, especially courts at all levels. Ombudsperson concludes that, in order to avoid violations of human rights and freedoms, and in order for the legal remedies to be efficient and effective is imperative for competent institutions to observe the legal deadlines, regarding the case.

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<sup>108</sup> *The Constitution of the Republic of Kosovo*, Article 32: "Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law."

## Recommendation:

- *All institutions in Republic of Kosovo at all levels, administrative bodies and courts, consistently enforce national laws and international instruments to exercise the legal remedies by public authorities.*

### 2.11. The principle of legality and proportionality in criminal cases

The principle of legality and proportionality in criminal cases is guaranteed by Article 33 of the Constitution of the Republic of Kosovo and the Criminal Code of Kosovo (CCK).<sup>109</sup> In this way, legal security and human right protection are guaranteed to all individuals in the territory of the Republic of Kosovo.

The principle of legality *Nullum crimen sine lege, nulla poena sine lege* requires that the crime to be prescribed by law, guarantees justice and impartiality. No defendant can be punished arbitrarily or retroactively, for an action which has not been defined by law as a criminal offense, with exception of actions, which at the time of their commission, under international law, constitute genocide, war crimes or crimes against humanity. ECHR in Article 7.1 clearly defines that "*There is no punishment without law.*"<sup>110</sup> In full accordance with the spirit of the ECHR, the Kosovo legislation guarantees the same thing.

This principle protects also the perpetrator from getting more severe punishment than what is prescribed by the law. In this regard, Kosovo legislation in force is more favourable for the accused, because in case of a legislation change, in the legal system of the Republic of Kosovo, the most favourable law would apply against the perpetrators of the crime.<sup>111</sup>

The Ombudsperson concludes that the principle of proportionality continued to be violated this year as well, upon punishments imposed by judiciary against those who have abused with the citizens' votes in the local elections in 2009 and parliamentary elections of 2010. Basic courts have continued to issue fines and probation punishments, whereas punishment with effective imprisonment was rarely imposed. Therefore, the Ombudsperson concludes that punishments imposed by the basic courts to Kosovo elections manipulators were low, inadequate and disproportionate compared to the scale and nature of the offense committed.

During the monitoring of local elections of 2013, even though progress has been made throughout the electoral process, the Ombudsperson found violations of electoral process rules. In the report on the observation of local elections in Kosovo no. 510/2013, on 21 November 2013, the Ombudsperson has requested to initiate criminal proceedings and to bring to the court all those who have caused incidents and have hampered the voting process,

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<sup>109</sup> *Criminal Code of the Republic of Kosovo, no. 04/L-082, Article 2: "Criminal offenses, criminal sanctions and measures of mandatory treatment are defined only by law".*

<sup>110</sup> *ECHR, Article 7.1: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed."*

<sup>111</sup> *Criminal Code of the Republic of Kosovo, no. 04/L-082, Article 3: "In case a change in the law applicable to a given case prior to a final decision, the law most favourable to the perpetrator shall apply."*

to get the deserved punishment in relation to the offense<sup>112</sup>, as required by the relevant statutory provisions.<sup>113</sup>

### **Recommendation:**

- *For all the courts in the Republic of Kosovo, in all trials of treated cases, to apply the principle of proportionality when making decisions.*

## **2.12. Freedom of movement**

The Constitution<sup>114</sup> and the laws of Republic of Kosovo prescribe the freedom of movement within the country, travelling abroad, immigration and repatriation.<sup>115</sup> The state guarantees this right to all individuals under its responsibility, throughout the territory of the country without any limitation and illegal interventions. Competent institutions have the obligation, that without any unlawful discrimination and limitations, to undertake all necessary measures so that freedom of movement, in general, is provided to all people in Kosovo.

The Government, in general, during the reporting period has respected this right. However, ethnic tensions, road barricades which are placed by certain groups of Serbian criminals in northern Kosovo, evident danger, incidents of sporadic violence and intimidation have continued to restrict free movement of Serbians and Albanians in certain parts of the country in northern Kosovo. Kosovo police, as it did over the recent years, continues to assess the security situation as stable but fragile. Members of ethnic groups remain largely within or travel in areas where their groups form the majority.

Road barricades which Serbians have placed during the year in northern Kosovo, have limited the freedom in a lot of movement in that area and in some cases have interrupted access in all areas, which has resulted with a common engagement of EU, KFOR and Kosovo Government by setting legal border control in the country's northern border. During the reporting period,

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<sup>112</sup> IO, *ex officio* report no. 510/2013, on observation of local elections Republic of Kosovo on 3 November 2013.

<sup>113</sup> *Criminal Code of the Republic of Kosovo*, no. 04/L-082, Chapter XVIII, Criminal offenses against voting rights.

<sup>114</sup> *The Constitution of the Republic of Kosovo*, Article 35.1. "Citizens of the Republic of Kosovo and foreigners who are legal residents of Kosovo have right to move freely throughout the Republic of Kosovo and choose their location of residence."

2. Each person has the right to leave the country. Limitations on this right may be regulated by law if they are necessary for legal proceedings, enforcement of a court decision or fulfilling the state defence obligation.

3. Citizens of the Republic of Kosovo shall not be deprived the right of entry into Kosovo.

4. Citizens of the Republic of Kosovo shall not be extradited from Kosovo against their will, except for cases when otherwise required by international law and agreements.

5. The right of foreigners to enter the Republic of Kosovo and reside in the country shall be defined by law.

<sup>115</sup> *Law on Citizenship* no.03/L-034, *Law on dwelling and emplacement* no. 02/L-121, *Law on Foreigners* no. 03/L-126, *Law on Travel Documents* no. 03/L-037, in amended version since 19 June 2008 in *Law on Amending and Supplementing the Law no. 03/L-037 on Travel Documents*, of 11 December 2010.



the security situation in the North has been unpredictable and Kosovo Police reported about the incidents involving explosions, burned vehicles and firearms shootings.

In addition, during the reporting period there were some attempted theft of property of the returnees in Istog and Klina municipalities and ethnically motivated gun attacks towards returnees in the municipality of Istog<sup>116</sup>, there were also verbal threats and intimidation to the monk from Zociste Monastery<sup>117</sup>, located near Rahovec.

In these and similar situations, police has intervened and now is involved with investigations. There was ethnically motivated violence in terms of cultural heritage of the Serb community in Kosovo, damage and demolition of cemetery inscriptions in Klllokot and Fushe Kosova<sup>118</sup>. Regarding the safety of the citizens of non-majority communities, Kosovo Police should do more in preventing and stopping such acts, finding the perpetrators and bringing them to justice.

A very important aspect for returning and stabilization process of the entire community, is provision of safe and peaceful environment. Although freedom of movement for the members of non-majority communities is improving, still remains a lot to be done that security and freedom of movement to be fully applicable throughout the territory of Kosovo.

#### ***2.12.1. Implementation of the agreement on free movement***

Agreement on free movement reached in June 2011 between Serbia and Kosovo enables citizens of Kosovo and Serbia to travel freely within and outside the territory of Kosovo and Serbia. By this agreement is set the free movement of people from Kosovo in Serbia and now Kosovo's citizens can enter Serbia by showing ID's issued by the government of Kosovo, but not with passports of the Republic of Kosovo.

However, even during this reporting period remains challenging issuing of the temporary decision for vehicle insurance in Kosovo-Serbia border. Insurance fee for vehicles remains very high, because Kosovo is not yet member of the Green Card Bureau. Kosovo and Serbia reciprocally apply different fees for vehicle insurance at the border. Very high taxes restrict the free movement because many people cannot afford paying such high taxes for the vehicle insurance, which addresses the necessity of taking a decision, as soon as possible, between insurance associations from Kosovo and Serbia, in order to avoid double payments of insurance, with what people are facing while operating a vehicle with Kosovo registration plates.

As an interim measure, the Government of Kosovo, under the agreement has received continuing registration with the KS registration plates initially for a period of 5 years, but with the possibility for further discussion after this period. All vehicle owners who reside in Kosovo will use registration plates of Kosovo either RKS or KS for their vehicles. KS registration plates and ID's still are not being applied in northern Kosovo. There are used

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<sup>116</sup> Information obtained from the Ministry for Community and Return, section-News, on 16.12.2013. p. 1-5; p. 11-15.

<sup>117</sup> *Ibid*, p. 86-90.

<sup>118</sup> *Ibid*, p. 111-115.

Serbian registration plates, and insurance is not paid for those vehicles. Such situation is a violation of the agreement on the freedom of movement, which explicitly states that the arrangement for vehicle registration plates will apply from 11 November 2011.

EULEX officials are present at all border crossings points and the mission plays an active role in work of the Group for the application of the IBM agreement. All border crossings points are now open, and EULEX customs officers and EULEX border police officers are present at all border points.

Regarding the free movement, the governments of both countries should in the future work in establishing of efficient air and rail traffic and remove all mutual obstacles to provide freedom of movement of people, ideas and goods for citizens of both countries.

Regarding travelling outside Kosovo, Kosovo's citizens are facing difficulties of isolation and segregation, regarding freedom of movement. Kosovo is the only country of the Western Balkans, whose citizens wait in line for a visa to move freely across the EU countries.

Important issue for Kosovo Government regarding visa liberalization and EU membership, represent also its policies in the field of migration and reintegration of repatriated persons. EU member states have been the destination of many immigrants from Kosovo. Kosovo Government in this regard, in 2013, drafted a National Strategy for reintegration of repatriated persons.<sup>119</sup> Also, it has undertaken a number of initiatives in order to draft the legal framework for migration management, in accordance with EU legislation. Kosovo has broad basis of legal and by legal acts in the field of reintegration and has established legal institutional mechanisms for the successful management, return and repatriation process, respecting the dignity of citizens, originating from the Republic of Kosovo.<sup>120</sup>

### ***2.12.2. Humanitarian Transportation***

By issuing the Law on Road Transportation no. 04/L-179, the Ministry of Infrastructure (MI), has announced the cessation of humanitarian transportation and transition into a type of subsidized transport.<sup>121</sup> In this regard, is ongoing an Administrative Instruction on subsidized transportation of passengers<sup>122</sup>, which was not completed until the end of the reporting period. Therefore, it remains unclear the MI procedure itself on function and further sustainability of the humanitarian transportation.

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<sup>119</sup> *The national strategy for the reintegration of repatriated persons* October 2013, at: [http://www.mpb-ks.org/repository/docs/strategjia\\_kombetare\\_për\\_reintegrimin\\_e\\_personave\\_të\\_riatdhesuar.pdf](http://www.mpb-ks.org/repository/docs/strategjia_kombetare_për_reintegrimin_e_personave_të_riatdhesuar.pdf) (12.12.2013).

<sup>120</sup> *Ibid.*

<sup>121</sup> Upon the UNHCR establishment in 1999, the humanitarian bus transportation service is conducted by the Civil Administration Unit of Mission for the United Nations Interim Administration Mission in Kosovo (UNMIK) since July 2001. On 31 August 2006, UNMIK and the provisional institutions of self-government have signed an agreement transferring responsibility for humanitarian transportation of minority communities in Kosovo (agreement), whereby the full responsibility lies on the Ministry of Infrastructure and the Ministry of Communities and Returns and has entered into force on 1 January 2007.

<sup>122</sup> Representative of the Ministry of Infrastructure has informed regarding this matter, the Ombudsperson representative, who as observer monitored the work of the Commission for consultation on humanitarian transportation issues and on 29.10.2013, has sent the partial draft AI. Development of a new draft is ongoing.

The Ombudsperson is of the opinion that initially should be done detailed assessment of the situation regarding community needs and assessment of the security situation in certain parts of the country, which should be further supported this type of transportation, because some humanitarian transportation lines represent the only opportunity of transportation for some categories of residents where do not exist public transport, and by its cessation, freedom of movement would be limited.

#### **Recommendations:**

- *The Kosovo Government should take all necessary measures to provide free and unconditional movement of people and goods, without limitations, throughout the Republic of Kosovo.*
- *Kosovo Government, as soon as possible, should take appropriate measures towards reaching agreement between insurance company associations of Kosovo and Serbia, and thus will avoid payment of vehicle liability at the BCP's and double payment of insurance fee for motor vehicles.*
- *Ministry of Internal Affairs should take all appropriate measures that as soon as possible resolve all submitted requests for pre-registration of vehicles and issue the permanent registration plates.*
- *Kosovo Government, after comprehensive evaluation of the situation on the reasonableness, should decides for the best interest of the citizens of Kosovo, for the further development of humanitarian transportation.*

#### **2.12.3. Freedom of movement in northern Mitrovica**

Similarly, in 2013, freedom of movement and safety of citizens in the north of Mitrovica for Albanian residents, and partly for people of other ethnic backgrounds, represents the biggest problem in the entire territory of the Republic of Kosovo.

During 2013, in the northern part of Mitrovica, occurred 30 explosions. These explosions were followed by material damages, among them involved motor vehicles and businesses. There were also numerous firearms shootings by unknown persons, usually by members of organized criminal groups in the northern part, partly known for public institutions of Kosovo and international organizations, which are obliged to monitor the security situation in this part of the country.<sup>123</sup>

Serbian extremist groups, disappointed, driven by government circles of the Republic of Serbia, led by illegal mayors of Serbian authorities have organized protests, in many cases accompanied with the use of firearms. Protests were organized due to the organization of local

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<sup>123</sup> Interview with Mr. Behxhet Bala, Director of the Directorate for Protection and Rescue in Mitrovica Municipality on 16 December, 2013

elections of the Republic of Kosovo in the northern part, with tendency to tense situation in this part of the country, distributing leaflets to boycott the elections in northern Mitrovica.<sup>124</sup>

In 2013, the provocations and obstruction of the work, in the North, by continued individuals and organized groups of ethnic Serbs, for reconstruction of residential buildings of Albanians in their private properties in north Mitrovica neighbourhoods.

Regarding freedom of movement, the security situation has not changed at all compared to previous years. Bridges that connect southern and northern Mitrovica are still present two barricades placed by criminal groups, one at the main bridge of the river Iber and the other one in Bosnian Mahala, towards technical school in northern Mitrovica. Barricades that remained on the streets of the North present a problem for the free movement of citizens and make harder the lives for all residents of northern Kosovo, especially Albanian inhabitants.

Even after several years, several Albanian villages in Leposaviç municipality are still kept blocked. To them is denied the right of free movement, and thus the right to work, health services and administrative services for their livelihood. These people continue to move with great difficulty, in most cases they can do this only through Kosovo police escort. Simply, free movement do not exist for these people, although the situation varies.

Certain criminal groups in the northern part, led and driven by the Serbian government, purely for political reasons, under the guise of non-recognition of the Republic of Kosovo, systematically attack and endanger the life and property of everyone who travels by vehicle with regular registration plates of Republic of Kosovo. The same is situation is for official vehicles of the Kosovo Police or other institutions of Kosovo. In certain situations they do this with any other vehicle that does not carry the registration plates from Serbia, or, the paradox to be even greater, any registration plate but the Serbian ones. Most preferably is to drive vehicles without plates, unidentified. This necessarily creates doubt that we have to deal with a mixture of organized crime with political guise, that endangers the life, property and restricts freedom of movement in the great extent regardless, except for individuals and groups of organized crime.

On 19 September 2013, a Lithuanian officer<sup>125</sup> was murdered in northern Mitrovica. The incident happened when two EULEX vehicles, which were carrying six its members, performing regular shift at Border Gate no.1, were shot by unidentified persons near Zveçan municipality. Despite lots of efforts, the perpetrators are not found yet.

Based on the information and data provided, unfortunately the situation in northern Mitrovica continues to be critical, especially regarding freedom of movement for residents in that part of the country, with special emphasis on Albanian residents.

#### **Recommendations:**

- ***Competent and responsible institutions, the Government of the Republic of Kosovo and the Kosovo Police, should take all actions under legal obligation to guarantee the life, property, health and freedom of movement for all citizens of***

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<sup>124</sup> *OI, Annual report 2013*. See the section about local elections in Kosovo, northern Mitrovica, on 3 November and 1 December 2013

<sup>125</sup> Audrius Senavicius, 35-year-old Lithuanian customs officer, who was killed in north Mitrovica.

*the Republic of Kosovo, in the entire territory of the Republic of Kosovo, with particular emphasis on the northern part of Mitrovica.*

- *Remove all placed barricades and free the roads in northern Kosovo to provide freedom of movement for all people living there, enforcing law and order, creating security and economic development in northern Kosovo.*
- *Undertake all prescribed actions by law for combating crime and organized criminal groups in the entire territory of the Republic of Kosovo, without hesitation and reluctance of political nature.*

## **2.13. The right to privacy**

The right to privacy, family life, housing and correspondence, are rights that are included in the right of privacy that are protected by Article 8 of the ECHR and Article 36 of the Constitution of the Republic of Kosovo. Everyone is entitled to respect for his/her private and family life, his/her housing and his/her correspondence. However, in practice were identified some violations of the right to privacy in Kosovo. In the reporting period, OI has received a number of complaints from citizens, regarding violation of right of privacy.<sup>126</sup>

### **2.13.1. The right to a healthy environment and the right of housing**

ECHR and the Constitution of the Republic of Kosovo, guarantee the right of unimpeded enjoyment of possessions.<sup>127</sup> Among objects which should be given special respect, according to Article 8 is the home, that is the place where the person lives permanently or with what the person is linked sufficiently and continuously. Most serious problems in this regard are due to the closeness of large high buildings to private houses, with deep excavations that are threatening neighbouring houses, opening of the windows in front of the houses, property damage. All these actions hinder the peaceful use of home.<sup>128</sup>

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<sup>126</sup> OI, cases: *ex officio* 551/2013, *ex officio* 345/2013, A. no. 83/2013, A. no. 43/2013.

<sup>127</sup> Protocol 1, Article 1, paragraph 1, ECHR and Article 46, paragraph 1 of the Constitution of the Republic of Kosovo.

<sup>128</sup> OI, A. no. 123/2012. The claimant complains regarding the obstruction of possession of his property, where is not executed order no. 09-356-11048 of 1 October 2012, from the Inspection Department - Prishtina Municipality construction Sector. The claimant has filed the appeal against his neighbour who during construction works, located in "Mat I," Prishtina, adjacent to his/her property, opened the windows with the view to his/her property, without respecting the project, which is certified with the Department of urbanism, construction and environmental protection. From the contact with the OI representative with the chief inspector of the construction inspectorate, we are informed that the order was issued to close the windows. In addition, the director of urbanism informs that opening of windows is inconsistent with construction licence. The constructor failed to obey the abovementioned order. Legal violations are found in this case and on 29 July 2013, the Ombudsperson has published a special report with recommendations, addressed to the Mayor of Prishtina, seeking from, to stop the construction works. However, the Ombudsperson did not receive any response from the

Similarly, during the reporting period for 2013, the right to privacy was infringed from the noise pollution and discomfort caused to citizens in their homes by the noise caused by nearby businesses, from bars and restaurants, from the noisy machinery used late at night, during weekends, etc. Distress of citizens is caused due to the activities carried out that are out of the safety standards.

In the reporting period, the Ombudsperson has received a number of complaints from citizens, for violation of right of privacy, associated with noise pollution, and it has taken action in various cases against noise pollution.<sup>129</sup>

### ***2.13.2. Private life and correspondence***

Control of communications such as phone calls or written correspondence interception, generally is considered as interference in more than one of the rights guaranteed by Article 8, paragraph 1, of the ECHR. Although state interference in this right is allowed to the extent to which the aim of the law is achieved. The Ombudsperson during this reporting period has not received any complaints related to the violation of this right. Private life and correspondence is regulated by the provisions of the Criminal Code, but the Ombudsperson notes that this area is not covered enough and it is necessary to be finalized as soon as possible the law on interception of telecommunications.

#### **Recommendations:**

- *Government and Assembly of the Republic of Kosovo should proceed for approval the Law on interception of telecommunications in the Republic of Kosovo, without further delay.*
- *Municipal inspectorate, urbanism and market, should undertake all legal measures regarding the distance between new construction and the existing buildings.*
- *Municipal inspectorate should undertake all legal actions for compliance and enforcement of the law on noise, especially in relation to the activity of bars and restaurants that cause noise pollution at late-night hours.*

### **2.14. The right to marriage and family**

On the free will basis, everyone is entitled to marry and create family in accordance with the law.<sup>130</sup> Marriage and its arrangement are regulated by law and are based on the equality of spouses.

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municipality of Prishtina, regarding the commencement of procedures for implementation of the recommendations.

<sup>129</sup> *OI, cases: A.no. 530/2013, A.no. 583/2013, A.no. 216/2013.*

<sup>130</sup> *Constitution of the Republic of Kosovo Article 37 paragraph 1.*

Marriage means the union between two persons, registered under the law, who freely decide to live together and create family.<sup>131</sup> The law regulates a wide range of social relations, focusing on the relationships that arise in family, marriage or related to family and marriage.

Aside from the Law on Family, some issues regarding family relationships are also regulated by other laws that regulate the field of right to family, such as the Law on Gender Equality,<sup>132</sup> the Law on Social and Family Services<sup>133</sup> and the Law on Protection from Domestic Violence.<sup>134</sup> In addition, as basis for the regulation of family relations in Kosovo are directly applicable international standards as well, in the field of protection of human rights.<sup>135</sup>

According to Article 8, paragraph 1, of the ECHR "*Everyone has the right to respect for his/her private and family life, his/her settlement and his/her correspondence.* According to this Article the family life is positioned directly in the scope of private life, without arbitrary interference of state. The public authority, in a democratic society, cannot interfere in the exercise of this right except in accordance with the law and when necessary, interests of public safety, protection of public order or protection of human rights and freedoms.<sup>136</sup>

Under Article 2, paragraph 1 of the Family Law of Kosovo (FLK), "*Family is a vital community of parents and their children and other persons of the kin.*" Family, by the mode of its establishment, is marital, extramarital and family of adoption.

*Marital union* represents family founded on marriage, respectively from a man and a woman who have legitimate marriage and children were born from that marriage. *Extramarital union*, established by people who cohabitate, but they do not have legal marriage, and from that marriage children were born from unmarried parents, establishing extramarital family. However, children born in the extramarital family are equal under the law in the exercise of their rights. *The family of adoption* is living community of adopter with the adoptee and his descendants, which is established by the act of adoption with court decision.<sup>137</sup>

#### **2.14.1. Contact of divorced spouses with children**

Based on the analysis of the cases filed within OI, numerous complaints in this field are related to procedural delays in the courts regarding alimony payment, in most cases of husbands, to their divorced wives and their children,<sup>138</sup> or regarding the right to contact one of

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<sup>131</sup> *Family Law no. 2004/32*, Article 14.

<sup>132</sup> *Law on Gender Equality no. 2004/2*. According to Article 1, by this law is protected, treated and established gender equality for men and women in all scopes of life.

<sup>133</sup> *Law on Social and Family Services no. 02/17*. This law is amended by Law no. 04/1-081 on amending and supplementing the Law no. 02/L-17 on social and family services. This law stipulates the rules for the provision of social services individuals and families in need, in Kosovo.

<sup>134</sup> *Law on Protection against Domestic Violence no. 03/L-182*.

<sup>135</sup> *Constitution of the Republic of Kosovo*, Article 22.

<sup>136</sup> *European Convention on Human Rights*, Article 8, paragraph 2.

<sup>137</sup> *Family Law of Kosovo no. 2004/32*, Article 180, paragraph 1.

<sup>138</sup> *OI, case A. no. 512/2013*. The party complained against delays in court proceedings and against repetition of the court procedure by the Basic Court in Prizren, branch in Suhareka. She claims to be tricked by the former spouse to divorce, in order to obtain citizenship papers in Italy. But, something else happened. After the divorce, she with four of their children, after 17 years of marriage, was forced to leave the house and leave without any economic assistance (alimony), from her former spouse. The competent court has not decided yet on this case. The case is being monitored by OI until its completion.

the divorced spouses with minor children.<sup>139</sup> One such case is being monitored by OI, up to realization of regular contacts with children as is stipulated by law.<sup>140</sup>

The issue of obstructing the contacts of children who are under custody of parent, with the other parent, who is separated from family, continues to be a serious problem in Kosovo. In most cases, due to breakup and extreme exacerbation of inter-personal relations between ex-spouses, which in most cases are included their families, to one parent is denied the contact with children by the other parent. Cases where the mothers inhibit and prohibit contact with the father of the children are not something uncommon.<sup>141</sup>

From information obtained from the Department of Social Welfare, turns out that this year, in most cases the custody are given to the female parents-mothers, whereas statistics show that last year males-fathers were those to whom was given custody after divorce.<sup>142</sup>

Centres for Social Work (CSW) and the Department of Social Welfare, which operates within the MLSW, have special significance during the divorce adoption and regular meetings procedures with parents with minor children with whom are not living in the family community. Their professional opinion plays an important role in the court's decision when deemed family issues. However, the crucial role for decision on family matters (divorce, custody, child custody and adoption), have courts. Therefore, it is needed greater and serious commitment in their work in order to avoid unjustified procedural delays.

#### **Recommendations:**

- *Competent courts that decide on cases of family conflicts, especially basic courts in Kosovo, should avoid unjustified procedural delays.*
- *Courts that decide on family issues, especially in cases when children are involved, should establish a good cooperation with CSW, and consider their professional opinion.*

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<sup>139</sup> OI, case A. no. 401/2013. The party has expressed concerns about the proceeding delays in the Basic Court in Prizren, branch in Suhareka and Centre for Social Work in Suhareka, to realize the contacts with the minor children. The claimant, after the death of her husband, is forced by parents of her former husband to be separated from her minor children, who made to her impossible to meet with her own children. Meanwhile, with the help and mediation of OI, an agreement was reached to appoint a temporary custodian of the children, because the claimant at this stage cannot be their custodian, due to the economic situation and establishment of another marriage. However, she requires only regular contacts- meetings with her own children.

<sup>140</sup> Family Law of Kosovo no. 32/2004, Article 125, paragraph 2, "Children have the right to grow up in a family with parents. Children that not live together with parents, have the right to regularly meet the parent they are not living together."

<sup>141</sup> OI, case A. no. 395/2013. The party complained for obstacles towards realizing contacts with minor children upon breakup of extramarital from ex-wife, in Ferizaj municipality. After consulting with OI and contacts with CSW in Ferizaj, the party has managed to establish contacts with minor children. With OI mediation at competent institutions and correct cooperation of the party, the case is positively resolved.

<sup>142</sup> Information from the Department of Social Welfare within MLSW, 2 December 2013. Statistics for the period January-September 2013. Number of divorces is 125, number of children from divorce cases 208, father chosen as custodian 72, and mother chosen as custodian 130 and mixed custody 6.



- *MLSW- Department of Social Welfare, should monitor CSW work, in order to achieve greater effectiveness in cases when courts and other competent institutions seek professional assistance on family issues from CSW.*

## **2.15. Freedom of religion, belief and conscience**

One of the biggest problems towards respecting of the constitutional rights of religion, belief and conscience in Kosovo is the lack of law which would regulate the position of religious communities.<sup>143</sup> For resolving of this problem is necessary to adopt the draft law amending the Law on Religious Communities, this law was forwarded by the Government in 2011 to the Kosovo Assembly, which was recommended by the Ombudsperson since 2011.<sup>144</sup>

Unfortunately, this law is not yet approved by the Kosovo Assembly. Adoption of the law is a need of all religious communities in Kosovo.

Religious communities in Kosovo, same as in previous years, had the same requirements and problems.

This year is marked with number of events and public gatherings that have contributed to the development of the interfaith cooperation.

The period from 20 to 27 May 2013 in Kosovo was marked as Week of Tolerance, which covered numerous activities addressed towards improving interfaith cooperation.<sup>145</sup>

### **2.15.1. Islamic Community of Kosovo**

It is very important for religious communities not to have any problems regarding cooperation and contributing to religious coexistence, religious tolerance and this constitutes an important factor in the stability of the country.

The Islamic community has emphasized the need for the state authorities to regulate by law the return of the property of this religious community, property that was taken during previous periods. Funding of this community is made from own sources revenues, there is no funds from the national budget dedicated to 200 religious officials, whereas 60% of them are highly educated.

Regarding the problem of wearing the headscarf in pre-university education institutions, OI in its previous reports has drawn attention, as is doing now, and appeals to all relevant factors that it should be respected all constitutional and legal obligations and provisions. It must be found the way pursuant to the Constitution and the Law to respect the principle of protecting the best interest of the child, and in this case it is the right to educate. Inter-institutional

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<sup>143</sup> *The Constitution of the Republic of Kosovo*, Article 38: "2. 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."

<sup>144</sup> *OI, Annual Report 2012*, p. 41.

<sup>145</sup> *Ministry of Foreign Affairs*, Interfaith Conference in Kosovo gathers key regional religious and international representatives for vital dialogue and reconciliation, 25.5.2013: <http://www.mfa-ks.net/?page=3,4,1708&offset=13> (24.12.2013).

dialogue and cooperation can serve to find a moderate and acceptable solution for all stakeholders on this issue.

### ***2.15.2. Orthodox Church in Kosovo***

One of the requirements of the Serbian Orthodox Church is the preservation of identity, existence and cultural heritage.

The problem of damage to churches and monasteries during this year has not been as previous years, except for a few minor incidents. In August, close protection of Peja Patriarchate Monastery and 24 other facilities of the Serbian Orthodox Church is transferred under authority of the Kosovo Police, while only Deçan monastery has remained under the protection of KFOR. Monastery is protected by a multi-ethnic unit. Apart from Deçan Monastery, in whose protection are still engaged members of the international military forces, all other religious objects and monuments are under the protection of the Kosovo Police.

During the period June-September restoration of "Serbian" cemetery has begun (in fact it is an Orthodox and Catholic cemetery, while at the same cemetery are found Jewish graves too) in the southern part of Mitrovica, which, after 1999 almost is completely destroyed. In fact, this activity is undertaken by the Office of the Government of Kosovo in the northern part of Mitrovica (OGKM).

The need for reconstruction and protection of the sacred Serbian objects, except from OGKM is also recognized by the Norwegian Embassy in Kosovo through a donation has enabled the partial rehabilitation and reconstruction of the cemetery. OGKM are received 639 requests and each one is properly filed into the protocol register, and each claimant received a copy of the filed request<sup>146</sup>. In addition, under the planned work it is realized the installation of lighting poles and cameras for surveillance and this is done according to the standards. A part of the reconstruction of monuments requires the provision of additional funds which will depend on donors, but this is expected to take place during 2014.

In late September, officially was put into use the bridge in Deçan, which is built as a project of the Kosovo Security Force (KSF), at the request of Deçan Municipality, Deçan Monastery, due to the difficulties and the inability of free movement through the damaged bridge over Drini i Bardhë river.

### ***2.15.3. Other religious communities in Kosovo***

Catholic Church representatives also emphasize that the law on religious communities, except regulating the status of religious communities, would enable the compliance of their regulation with the Constitution of the Republic of Kosovo.

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<sup>146</sup> All information regarding the restoration of the cemetery mentioned above in the text is official information received on 13.12.2013 by the official of the Administrative Office of Mitrovica North, who is in charge of this matter.

Protestant Church representatives have expressed their concern about their demand toward Municipality of Prishtina to build their church, as well as regulation of their status through the law on religious communities.

During this year was held Jewish Week in Kosovo, which was followed by a range of events, among which the most important was the organization of the Jewish heritage panel in Kosovo, as well as the importance of interfaith dialogue, organized on 12 December 2013.

Considering all the requests of Kosovo religious communities, the Ombudsperson has given a recommendation.

#### **Recommendation:**

- *Government and Assembly of the Republic of Kosovo shall undertake all actions for preceding the law on religious communities in Kosovo.*

### **2.16. Freedom of expression**

Constitution of the Republic of Kosovo, in Article 40, guarantees freedom of expression, which is also protected by Article 19 of the Universal Declaration of Human Rights<sup>147</sup> and Article 10 of the European Convention of Human Rights.<sup>148</sup>

Freedom of thoughts without interference, as well as receiving and giving information and ideas regardless of boundaries is the core of freedom of expression.

Accurate determination of the extent of freedom of expression is often controversial, transforming its infringement cases on debated issues. Without freedom of expression cannot be taken in consideration the social and political processes in a free and democratic state. Viewed from this perspective, it is enough for the state not to interfere and not to obstruct in any form.

However, the exercise of freedom of expression is not unlimited. The state has a legitimate right to take action to restrict freedom of expression, when the same are “[...] *in the interest of national security, territorial integrity or public safety, the protection of health or moral, for the protection of dignity or rights of others, for preventing the disclosure of information received in confidence, or for guaranteeing the authority and impartiality of judicial power*”.<sup>149</sup>

Constitution of Kosovo entrusts the power to the state to limit the freedom of expression, when such thing is necessary “[...] *to present encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion*”.<sup>150</sup>

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<sup>147</sup> Universal Declaration of human Rights, in: [http://www.un.org/en/documents/udhr/\(30.01.2104\)](http://www.un.org/en/documents/udhr/(30.01.2104)).

<sup>148</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, in: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf\(30.01.2104\)](http://www.echr.coe.int/Documents/Convention_ENG.pdf(30.01.2104)).

<sup>149</sup> Ibid, Article 10, paragraph 2.

<sup>150</sup> Constitution of the Republic of Kosovo, Article 40, paragraph 2.

The concordance of the right of the freedom of expression with other rights is subject of debates, but at the same time it makes more complex the division of justice. The tendency of favouring other rights (such as privacy) in relation to freedom of expression, or the tendency of the authorities to see the freedom of expression as an issue of their competence and not as a fundamental right, requires increased attention and precision and special care in handling the alleged violation, by assessing cases separately, with the entirety of its specifications.

Freedom of expression means not only thoughts and information that are peacefully obtained but thoughts and information that might be distressing and offending, but in the view of democratic value, including not only the spoken or written word, but images as well, actions or even clothing if the purpose is information, and also, not only the substantive aspect of information but also the form through which they are expressed.

Technology development is increasingly challenging the freedom of expression. While various electronic platforms provide a whole universe of possibilities to realize this right, they also leave many gaps for misuse and abuse of freedom of expression. This makes obligatory the legal definitions in this regard, to clearly identify the limits of freedom of expression and punitive provisions in cases of observance of the rights, in the field of freedom of expression.

4 complaints have been received by OI during 2013 for infringement of freedom of expression. Two of them are closed, one positively<sup>151</sup> and the other one, in accordance with Article 20, paragraph 1.2, of the Law on Ombudsperson, was found inadmissible due to the lack of interest shown by the party.<sup>152</sup> The third case was found inadmissible because it was concluded that the party is utilizing legal remedies.

OI found also inadmissible the fourth case because evidences lodged and circumstances described in complaint did not result in violation of human rights and freedom.

## **2.17. The right of access to public documents**

Right of access to public documents includes the right of everyone to know the content of documents held by public authorities, sets and establishes rules for proper functioning and transparency of public administration in relation with public, regarding its activities.

Free circulation of information is an important instrument in building trust between institutions and citizens, in creating transparency of operations, efficiency and effectiveness of public administration, mutual awareness, of citizens for services expected to receive by the administration, and of administration for its liabilities for providing services to the citizens.

Constitution of the Republic of Kosovo guarantees the right of access to public documents with the exception of restrictions established by Law,<sup>153</sup> whereas Law on Access to Public Documents (LAPD) clearly defines the rights of citizens for access to public documents.<sup>154</sup>

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<sup>151</sup> OI, case A. no. 418/2013.

<sup>152</sup> OI, case A. no. 340/2013.

<sup>153</sup> Constitution of the Republic of Kosovo, Article 41.

<sup>154</sup> Law on Access to Public Documents no. 03/L-215, Article 4.

LAPD seems a generous law in relation to the citizen. It assigns responsibility to the institution that has available the document, not the applicant, because the applicant is not necessarily obliged to give excuses about why is submitting the request, whereas on the other hand, the institutions are obliged to provide explanations for rejection.

However, LAPD contains gaps! The law does not clearly specify which court is competent for handling cases related to the denial of the right of access to public documents. Article 10 of the Law, which handles cases of failure from public institution to respond, only emphasizes that: *“Refusal of the application of the applicant as well as the failure by the public authority to reply within the prescribed period of time shall be considered as a negative reply and shall entitle the applicant to initiate the procedure before the Ombudsperson Institution, other public institutions, competent court, in accordance with the Law in force”*.

Despite that recognizes the right of the applicant *“[...] to initiate the procedure before the Ombudsperson Institution, other public institutions, competent court, in accordance with the Law in force”*, the Law does not explicitly determines the other public institutions with executive powers that can oblige responsible persons within these institutions, to respect and implement the guaranteed right of access to public documents. The orientation of the party in the unspecified direction of *“[...] other public institutions, competent court,[...]”* does not help the applicant to realize his/her guaranteed right. Instead, this orientation is confusing and actually represents an escape from the concrete institutional responsibility.

In such cases, the applicant, in case of rejection of the request for access, except *Ombudsperson Institution*, who in the best case scenario *“[...] assist citizens to have access to the necessary documents being refused to them”*,<sup>155</sup> without executive powers, nothing else remains, except to *“[...] address an appeal even to other public institutions”*,<sup>156</sup> without telling him/her which are those *“[...] other public institutions”*. And, to further complicate the access to public documents, in case of ambiguity or dissatisfaction *“[...] the Procedure of provisions of Law on General Administrative shall apply to the procedure for access to public documents”*,<sup>157</sup> leads the party to a more complicated Law. This represents a further complication of LAPD, as well as of the procedure for exercising the right of the parties and constitutes a avoidance from the concretization of institutional responsibility, in cases of infringement of this right.

The biggest shortcomings of the LAPD are the limitations for the realization of this right in general. The List of Exemptions of the right of access to documents in Article 12 of LAPD constitutes an extremely elastic limit, which leaves unusually large room to the responsible person at the relevant institution<sup>158</sup> for arbitrary interpretation. In this case, the possibility of

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<sup>155</sup> *Law on Access to Public Documents no. 03/L-215*, Article 17, paragraph 1: “1. The Ombudsperson Institution is an independent authority, which shall assist citizens to have access to the necessary documents being refused to them.”

<sup>156</sup> *Ibid*, Article 17, paragraph 4: “The unsatisfied party may, in the procedure of realization of the right in access to public documents, address an appeal even to other public institutions.”

<sup>157</sup> *Ibid*, Article 25: “Unless otherwise provided by this Law, the provisions of Law on General Administrative Procedure shall apply to the procedure for access to public documents.”

<sup>158</sup> *Ibid*: “1. Any applicant shall have the right to access public documents. Limitation of this right shall be exercised proportionally, and only for the purpose of protection of:

- 1.1 national security, defence and international relations;
- 1.2 public security;
- 1.3 prevention, detection and investigation of criminal activities;

arbitrary interpretation is so large that in any request for public documents may be attributed a limitation.

For parties, not that familiar with the law, there are a number of problems, ranging from the identification of public institutions and the competent court. On the other hand, it seems quite discouraging for citizens to address to the court, regarding to this issue. Based on the data and information that the Ombudsperson possesses, yet any court in the Republic of Kosovo has not issued any decision related to any case that has to do with denial of access to public documents.

LAPD during its implementation should be harmonized with other laws, especially the Law on Classification of Information and Security Verification and the Law on Personal Data Protection. Documents classification remains one of the most complex issues in this entire process.

Upon documents classification it would be created a clear division of accessible and non-accessible to the public, and would not leave room for subjective and arbitrary interpretations of what is a classified document. Also, there are still many ambiguities about what is being considered a document which cannot be published. Upon submission of such cases, discussions about this seem to have no end.

While, most of public institutions have assigned officials responsible for receiving and processing requests for access to public documents, it is not their responsibility for decision-making, and often there are confusions even in this regard.

Based on the experience up to now, citizens have little or no knowledge regarding to their right of access to public documents. This is also evidenced by the very small number of complaints that are reported in OI.

The number of reported cases in OI, regarding to denial of access to public documents for 2013, is 31. Out of this number, 14 cases were opened for investigation, about one (1) case was drawn up a report with recommendations, while 17 complains were dismissed as unfounded on one of the legal grounds defined by the Law on Ombudsperson. Based on the number of complains submitted to OI in 2013, it is noted an increase in comparison to the number of complaints submitted in the previous year.

At the end of 2013, OI has published a newsletter,<sup>159</sup> through which aims to raise awareness and encourage citizens and each individual, that through requests for access to public documents, to become part of public life in the country. Only this way the citizens, civil

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1.4 disciplinary investigations;  
1.5 inspection, control and supervision by public institutions;  
1.6 privacy and other private legitimate interests;  
1.7 commercial and other economic interests;  
1.8 state Economic, monetary and exchange policies;  
1.9 equality of parties in court procedure and efficient administration of justice;  
1.10 environment; and  
1.11 the deliberations within or between the public institutions concerning the examination of a matter.  
2. Access to information contained in a document may be refused if disclosure of the information undermines or may undermine any of the interests listed in paragraph 1 of this Article, unless there is an overriding public interest in disclosure.”

<sup>159</sup> IO, Newsletter “The Right of Access to Public Documents”, Prishtina, 2013.

society and the media could be a responsible and conscious part of democracy strengthening, transparency, accountability and building a rule of law state.

Given the overwhelming need that Kosovar society has for responsive and transparent administration, the Ombudsperson considers necessary the issuance of specific recommendations for the competent institutions, primarily for the Government and Assembly of the Republic of Kosovo.

#### **Recommendations:**

- *Kosovo Government shall increase the awareness raising activities for the right of access to public documents through informational campaigns, which would aim primarily responsible officials of institutions, but also citizens regarding this right.*
- *All public institutions shall increase and intensify the ongoing trainings of officials, to create and professionally handle the public documents records and respond to citizens' requests with fairness and in accordance with the law.*
- *Government and Kosovo Assembly shall undertake all necessary actions to start amending the Law on Access to Public Documents, in order to make this law clear, simple and enforceable.*

#### **2.18. Freedom of media**

Observance of freedom of media is fundamental for the functioning of a democracy and for protection of human rights. Freedom of media is also a key matter to ensure that the citizens play an active role in the public life and democratic processes.

Article 42 of the Constitution of the Republic of Kosovo guarantees freedom of media. This Article prohibits media censoring and at the same time specifies in which cases the prevention from circulating information becomes necessary, the right of correcting published information which is incomplete or inaccurate.

The freedom of media is intrinsically linked with the freedom of expression. In this link, media include two roles: they convey the information correctly and professionally, and thus become an advocate of the right for freedom of information, but on the other side, media can be transformed in instruments that harm the grounds of freedom of expression, or in other cases, can become violators of human rights and freedoms.

Economic dependency of media, and cases of legal loopholes, or failure to observe the respective laws, put in a dilemma the freedom and reliability of media, as key source of information. The observance of Law on Labour remains a concern for OI, in particular regarding the all profiles of journalists' labour contracts. This issue requires the attention of the competent institutions to create a more favourable environment for qualitative journalism and in the view of right and accurate information.

The fact that OI did not have any direct appeal by the media or individuals working in the print and electronic journalism makes it difficult for OI to identify and investigate cases dealing with freedom of media in Kosovo.

By assessing as a sensitive and important area and in order to gain a more accurate perceptions in relation to media freedom in the country, OI has drawn up a questionnaire, which was sent to E-mail addresses of reporters, cameramen, photo/reporters and media editorials in Kosovo.<sup>160</sup> From the responses obtained, two cases of infringement of the freedom of the media were identified, including physical and verbal threats against journalists.<sup>161</sup>

However, based on concerns raised publicly, a number of violations that severely violate the freedom of media can be noticed. The explosion in the house of Mr. Mufail Limani, editor in RTK, has aroused reaction in the country but also in international organizations dealing with the protection of human rights and freedoms.

The case of the Mrs. Besiana Xharra, journalist at "Zëri" newspaper, which was threatened by the leaders of the company "BelleAir", as well as the attack, in December 2013, of the journalist and cameraman of "Koha Vision" from a person in Prishtina, while they were performing their duty, recalls the sensitivity and the risk of the work of journalists.

On the other hand, public reaction was caused also from the cases when the media has been in the position of the violator of guaranteed freedom, thereby violating Article 17 of the ECHR,<sup>162</sup> which deals with the prohibition of abuse of rights. Such a case was the placement and display of videos of the verbal assault of a minor student against her peer in October, in Mitrovica. Also, in September 2013, a derogatory picture of the country's president, originally issued by an electronic portal in Kosovo and then displayed by other portals, television and print media, marks the abuse of media freedom and violates other categories of individual rights.

At the end of 2013, OI was informed through a letter to the Assembly of the Republic of Kosovo, from the Kosovo Independent Electronic Media Association (KIEMA), in relation to their concerns because of the efforts of appointment and appointments in IMC of persons involved in politics. Despite the fact that OI has followed the course of the debate on this issue, in respect of independence and IMC specific competencies, considers that this is a stage when OI may play the role of the observer, but cannot interfere.

## **2.19. Freedom of Gathering**

The right of freedom is a basic human right in a democratic society, which guarantees citizens the right of gathering. This right in the Republic of Kosovo is guaranteed with Constitution of

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<sup>160</sup> Drafted by OI, a questionnaire composed of 10 questions and 3 sub-questions was sent by 30 December 2013 to 260 e-mail addresses of reporters, cameramen, (photo) reporters and to editorials regarding to media freedom.

<sup>161</sup> Despite a timeline of more than 10 days, OI has obtained only 1% of questionnaires with responses.

<sup>162</sup> *ECHR*, Article 17: "None of the provisions of this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or limitation to a greater extent than is provided for in the Convention."



the Republic of Kosovo<sup>163</sup> and with international instruments on human rights that are applicable in Kosovo.

This right is also regulated with the Law on Public Gatherings (LPG), under which citizens can exercise this right, whereas the state (competent bodies) should take necessary measures for the protection of the right concerned.

LPG contains the general requirements for a public gathering. However, this law has shortcomings, for which the Ombudsperson has raised concerns in previous annual reports. These concerns are in relation to Article 12 of the LPG (paragraph 2 and 3), which is in contradiction with the principles of Article 11 of the European Convention on Human Rights.<sup>164</sup>

This relates to the role assigned to "*custodians*" assigned by the organizers of protests. They cannot delegate to them the right or the obligation that in case of escalation of the situation from any participant in the public gathering, to take care that "*To apprehend and deliver to the police the participant or the other person circulating nearby the location of the public gathering if he/she disturbs the order, if he/she carries weapons or dangerous objects or prohibited signs*". This is an exclusive duty of state authorities to undertake necessary measures in certain situation.

The Ombudsperson, as in annual reports of the previous year, recommends amending and supplementing of the Article 12, paragraph 3 of LPG, in order to be harmonised with European standards.

Regarding complaints during this reporting period, OI has received only one (1) claim regarding the violation of freedom of gathering.<sup>165</sup> As in previous years, OI during this reporting period has continued to cooperate with the Police of the Republic of Kosovo, as well as monitored two protests, of which have been published reports. From the information obtained from the Kosovo Police, the number of public gatherings, through which citizens expressed their dissent, is three hundred and forty-five (345).<sup>166</sup>

The Ombudsperson, for the purpose of observing fundamental rights and freedoms, has monitored the development of events of 30 March 2013, a protest that was organized by the Lëvizja Vetëvendosje, in Mitrovica.

Within this monitoring, OI also observed entrances of the city to see whether they allowed the protesters who have announced earlier this protest, to enter and gather without any incident.<sup>167</sup> It was not reported any potential incident, therefore there was no violation elements or actions by the Kosovo Police. Authorities also took care that, even when protestors are not involved in acts of violence: "*to indicate a high level of tolerance towards peaceful gatherings if the freedom of gathering guaranteed by Article 11 of the European Convention on Human Rights*

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<sup>163</sup> *Constitution of the Republic of Kosovo*, Article 43: "Every person has the right to organize gatherings, protests and demonstrations and the right to participate in them".

<sup>164</sup> *Law on Public Gatherings no. 03/L-118*, Article 12, paragraph 3: "Duty guards should immediately hand in to the police the participant or any other person violating peace and order, carrying weapons or any other dangerous items or prohibited signs, during the public gathering."

<sup>165</sup> OI, *registered case A.no.604/2013*.

<sup>166</sup> OI through e-mail, has obtained information from the Kosovo Police, December 2013.

<sup>167</sup> OI, *Report of the date 30 March 2013*, from monitoring of the protest organised on 7.3.2013, in Prishtina.

*should not be deprived of its substance."*<sup>168</sup>

The Ombudsperson has opened an *ex officio* investigation related to the events at the protest organized by a significant number of electric energy consumers, who complained through Facebook social network that electricity consumption bills distributed by KEK, for January 2013, are too high. Therefore, OI has closely monitored the course of the protest.

#### **Recommendation:**

- *Government and the Assembly of Kosovo to undertake action on amending and supplementing the Law on Public Gatherings, respectively, Article 12, paragraph 3, in order to be in full compliance with the Article 11 of the ECHR on freedom of gathering and organisation.*

#### **2.20. Freedom of Association**

The freedom of association is a right guaranteed by the Constitution of the Republic of Kosovo (CRK),<sup>169</sup> ECHR<sup>170</sup> and the Law on freedom of Association to Non-Governmental Organizations for citizens to join with others in unions, associations, non-governmental organizations, political parties and various associations.

During this year were noticed improvements toward creation of conditions for building a constructive relationship between civil society and public institutions. It is worth mentioning drafting of the Government Strategy and Action Plan for cooperation with civil society, 2013-2017, by the Office of the Prime Minister for Good Governance and the initiative of civil society organizations CiviKos Platform.<sup>171</sup>

On 5 July 2013, the Government of Republic of Kosovo approved the strategy and action plan, which is the first strategy of the Government and civil society cooperation in Kosovo.<sup>172</sup> The main objective of this strategy is strengthening of civil society for drawing up and implementing legislation policies, setting up the system for contracting public services for civil society organizations, establishing the system for civil society financial support and development of volunteerism.

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<sup>168</sup> ECHR, Article 11.

<sup>169</sup> *Constitution of the Republic of Kosovo*, Article 44: "1. The freedom of association is guaranteed. The freedom of association includes the right of everyone to establish an organization without obtaining any permission, to be or not to be a member of any organization and to participate in the activities of an organization. 2. The freedom to establish unions and to organize with the intent to protect interests is guaranteed. This right may be limited by law for specific categories of employees. 3. Organizations or activities that infringe on the constitutional order violate human rights and freedoms or encourage racial, national, ethnic or religious hatred may be prohibited by a decision of a competent court."

<sup>170</sup> *European Convention for the Protection of the human Rights and Fundamental Freedoms*, Article 11.

<sup>171</sup> *Initiative of civil society organisations in Kosovo*, Civikos Platform, in: <http://www.civikos.net/> (18.02.2014).

<sup>172</sup> *Decision of the Government of Republic of Kosovo*, no. 03/138, 5 July 2013, in: [http://www.kryeministri-ks.net/repository/docs/vendimet\\_e\\_mbl\\_138.pdf](http://www.kryeministri-ks.net/repository/docs/vendimet_e_mbl_138.pdf) (18.02.2014).

A similar initiative was also undertaken by the Assembly of Republic of Kosovo, where it was established a joint working group of the Assembly and civil society organizations, to draft a declaration by which it is expressed the Assembly's commitment to recognize the role of civil society and building cooperation in partnership level. Initially, during these months it is expected the approval of the abovementioned statement in the Assembly, as a first stage of formalization and structuring of cooperation, and during further steps it is expected to draft the strategy and action plan for cooperation between Assembly and civil society.<sup>173</sup>

Also, regarding civil society financial support, OI, during this year, has noticed that positive steps have been undertaken by the state institutions toward NGOs financing and support, for the realization of their projects and initiatives.<sup>174</sup>

The Ombudsperson considers that, beside all undertaken steps in recent years to create the space for civil society to be a part of policy-making processes, it is necessary a greater commitment of the state institutions to create real space for civil society to be an important part of the processes associated with democratic and economic development of the country.

In Progress Report of 2013, Kosovo section, the European Commission, inter alia, stated that the central and local authorities need to improve cooperation with civil society, especially in terms of description and execution of public services.<sup>175</sup>

Regarding the freedom of association, an issue that should be mentioned is the judgment of the Constitutional Court on the request of the Ombudsman for repeal of Articles: 90; 95, paragraph 1.6; Article 110; 111 and 116 of the Law on Banks, Microfinance Institutions and Non Bank Financial Institutions, with the Constitution of the Republic of Kosovo.<sup>176</sup>

Given the improvements achieved in terms of strengthening civil society and the actions undertaken to increase and strengthen the cooperation between state institutions and civil society, the Ombudsperson welcomes all these actions and encourages to intensify the cooperation efforts and further empowerment of the civil society in the Republic of Kosovo in the sphere of independence and strengthening of its social base.

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<sup>173</sup> Interview with, Mr. Driton Selmanaj, Program Manager in Kosovo Democratic Institute member of the working group between Assembly and Civil Society.

<sup>174</sup> Ministry of Culture, Youth and Sports, *media release*: "MCYS allocated over 150 thousand Euros in subsidies for projects of youth organizations", 29 March 2013, in: <http://www.mkrs-ks.org/?page=1,6,528> (18.02.2014).

<sup>175</sup> European Commission, *Kosovo's Progress Report of 2013*, 16 October 2013, in: [http://www.mei-ks.net/repository/docs/1FINAL-ALB\\_MIE-Kosovo\\_Progress\\_Report\\_2013\\_%28alb%29\\_%282%29.pdf](http://www.mei-ks.net/repository/docs/1FINAL-ALB_MIE-Kosovo_Progress_Report_2013_%28alb%29_%282%29.pdf) (18.02.2014).

<sup>176</sup> *Judgment, Constitutional Court of the Republic of Kosovo*, on case KO 97/12, published on 12 April 2012, Constitutional Court initially, in December 2012, approved the request of the Ombudsmen and decided to allow temporary measure to suspend implementation of the abovementioned Articles of the Law on Banks, Microfinance Institutions and Non Bank Financial Institutions, until a meritorious decision of this court. Also, in January 2013, the Constitutional Court continued the interim measure to suspend the law, while on 5 March 2013, at a public hearing, invited the OI and several other institutions to present their stance regarding to the aforementioned issue. After these abovementioned actions, the Constitutional Court on 14 March 2013, issued a judgment whereby approved the request of OI and annulled as inconsistent with the Constitution the Article 90; Article 95, point 1.6; Article 110; Article 111 and Article 116 of the Law on Banks, Microfinance Institutions and Non Bank Financial Institutions, with Constitution of the Republic of Kosovo in: [http://www.gjk-ks.org/repository/docs/gjkk\\_ko\\_97\\_12\\_shq\\_.pdf](http://www.gjk-ks.org/repository/docs/gjkk_ko_97_12_shq_.pdf) (18.02.2014).

## **2.21. The rights for election and participation**

The right to elect and to be elected is one of the fundamental human rights, guaranteed by the Constitution of the Republic of Kosovo,<sup>177</sup> as well as with the most important international legal acts.<sup>178</sup>

Even though the process of electoral reform in Kosovo has started three years ago, it has not been duly completed and neither constitutes a reform. Due to the incompatibility between the major political parties, electoral reform in Kosovo stagnated. Local elections were held in 2013 without completing this reform, while it is uncertain whether the national elections would be held after a reform and amendment of the Law on National General Elections.

### ***2.21.1. Observation of municipal elections in Kosovo***

In November 2013, municipal elections in Republic of Kosovo were organised in all the municipalities. For the first time after the end of the war in Kosovo, elections for the Republic of Kosovo institutions under applicable laws of Kosovo were organized in municipalities with Serbian majority population. These elections were organized in the municipalities of northern Kosovo: Mitrovica, Leposaviç, Zubin Potok and Zveçan.

The first round of local elections was held on 3 November, 2013, and the second round on 1 December, 2013. Besides the repetition of elections on 17 of November in the northern part of Mitrovica and in the second round in Partesh on 15 December, due to attacks by certain groups for political purposes for the damage of the electoral process in Kosovo, in other regions irregularities have not been recorded that will force the Central Election Commission (CEC) to repeat the elections. According to the Law no. 03/L-072 on Local Elections in the Republic of Kosovo,<sup>179</sup> the conduct and administration of municipal elections in Kosovo and the legislation pertaining to elections shall be guided by the following principles:

- Municipal elections shall be held on the basis of free, universal, equal, direct and secret vote pursuant to this law and CEC rules.
- Every citizen of Kosovo has the right to vote and be elected without any discrimination.
- Freedom and privacy in casting the vote is guaranteed. No person has the right to prevent a citizen from voting, force one to vote in a certain way, hold anyone accountable for the vote, or request that anyone reveal his/her vote or state the reasons for failure to vote against his/her will.
- All political entities are free to campaign and have equal opportunity of radio and television air time, public funds and other forms of support.

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<sup>177</sup> *Constitution of Republic of Kosovo*, Article 45.

<sup>178</sup> *Universal Declaration of Human Rights*, Article 21.3; *International Convention on Civil and Political Rights*, Article 25 (b); *Protocol no. 1 of the European Convention on Human Rights and Fundamental Rights (ECHR)*, Article 3.

<sup>179</sup> *Law on Local Elections in the Republic of Kosovo no. 03/L-072*, Article 3.

- The use of public office, resources, or staff of any institution for the purpose of supporting a political entity in an election is strictly prohibited.
- Political entities cannot use civil servants, sources or staff for campaign during elections.
- All political entities, their supporters, and all other institutions are obliged to respect the fundamental principles set forth in this article and take all measures to ensure the conduct of free, fair and well-informed elections within a climate of democratic tolerance, peace and respect for the rule of law.

Pursuant to the Law no. 03/L-072 on Local Elections in the Republic of Kosovo,<sup>180</sup> the first round of local elections for mayors and municipal assemblies was held on 3 November 2013.

The electoral campaign of political parties was conducted during a period from 3 October up to 1 November 2013. In general, the election campaign was conducted in peace and without incidents, except in the northern part of Kosovo where objections for and against holding the elections culminated in threats, physical and verbal attacks and other acts of violence.

During the campaign there were cases of using school premises for election gatherings of political parties during the school schedule and the involvement of children in the campaign, which is a violation of Election Rule no. 13/2013 of the CEC on campaign and notification of political events.<sup>181</sup> Schools can be used for public gatherings only if the CEC and the Government of Kosovo decides on this deal and only after working hours.<sup>182</sup>

OI has monitored the elections process with 12 mobile monitoring teams throughout Kosovo, including the northern part of Mitrovica and Zubin Potok i.e. Çaber village, except municipalities of Leposaviç, Zveçan and Zubin Potok.<sup>183</sup> OI *observer teams have visited 131 Polling Centres (VC) and 407 polling stations (PS)*, total of 798 PC with 2366 polling stations in 38 municipalities of the Republic of Kosovo.

Local elections of 3 November 2013 were, in general, well organized, despite some errors, mostly of a technical nature, but which did not affect the progress of the voting. In general, the Election Day was quiet and without significant incidents, except in the northern part of Mitrovica where during all day, groups of people, who were against the elections and the participation of Serbian citizens, have provoked, insulted and threatened citizens who have gone at PC to vote.

Once again it was proved that with goodwill, determination of all relevant factors of law, security and justice and the right information, it is possible to provide security for all citizens to enjoy their constitutional right to express freely their will through the voting.

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<sup>180</sup> *Ibid*, Article 4.

<sup>181</sup> *Election Rule no. 13/2013*. Electoral campaign and notification for political events, Article 4.1 and Article 5.2.

<sup>182</sup> *Ibid*, Article 4.1.

<sup>183</sup> Due to the risk to life and safety, on 3 November 2013, the Kosovo Police instructed the Ombudsman not to travel to the northern part of Kosovo with his associates. However, after the request to send 1 or 2 mobile teams in that part of Kosovo, the Kosovo Police was not able to guarantee the safety of people and vehicles, and therefore refused to escort any of the OI mobile teams. The travel of a mobile team of OI was conducted without any safeguard, independently and individually.

### 2.21.2. Concrete cases of recorded violations

Number of Police Officers in front of some polling centres in North Mitrovica was inadequate and decreased in the afternoon hours, thus around 15:30 in front of PC 3805B (with 16 polling stations) in Primary School "Sveti Sava" the police presence was hardly noticeable. In the afternoon, precisely after 16:00 voting was disrupted in two biggest PC (3805B and 3805X) with highest number of registered voters when dozens of people broke into the PC and started damaging voting material.

Incidents were present also in PC 3401E in Gračanica. Police have detained four members of the political party "Savez Kosovskih Srba" (League of Kosovo Serbs) on suspicion that they have offered money to people to vote for this political party. All those arrested were detained for 48 hours.

Whereas, in the polling station 3401E/02R, in Gračanica, at the request of the PSC members, police removed from a polling station an observer, who has obstructed the voting process, by insulting voters and pressuring them to tell about who they voted for, meanwhile he also physically attempted to prevent certain voters to go to the voting booths and vote.

An obvious case of discrimination was the in PC 1315E/01D in Lipjan marked with an inscription "Ashkalit", being singled out in a discriminatory manner so as it was the polling station only for this community, even though it was noticed that they voted in other polling stations and there was no particular reason for such distinction.

Shortcomings identified during monitoring:

- *Ultraviolet verification lamps* were functioning, *but not in some cases* due to battery failure or lack of spare bulbs. Such shortcomings were eliminated after remarks of PSC chairpersons and managers.
- In many cases the *ballot handlers* (members of PSC) who were spraying voter's fingers with invisible ink have done so without gloves, *due to lack of gloves, therefore during spraying they also sprayed their own fingers, and this posed a problem for those person if they had to vote in any other centre, rather than the one they were working as PSC members*. PSC members had an opportunity to be the first ones to vote, before the beginning of the election process, based on the provisions of CEC's Election Rule,<sup>184</sup> but they are not always assigned to polling stations in which they vote.
- Some PSC members had *confusion about who has the right to assist voters with disabilities and/or illiterate*, denying family members to help their families in this state. The relevant Election Rule of CEC clearly states that PSC members and accredited observers cannot provide assistance to any voter, but this can be done by family members or one of the voters waiting in queue to vote, and only for a voter.<sup>185</sup> The person, who accepts to assist the voter, should write his / her name in letters in the relevant Voters List, near the name of the voter who is assisted.<sup>186</sup> OI

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<sup>184</sup> *Election Regulation no. 09/2013*. Voting, counting in polling station and management of PC, Article 19.1.

<sup>185</sup> *Ibid*, Article 15.5.

<sup>186</sup> *Ibid*, Article 15.6.

monitoring teams in some cases have found that the same person assisted during the voting for two members of the family (his parents).

- Even on the Election Day, *posters and billboards of political parties, with pictures of mayoral candidates and candidates for municipal assemblies have been placed at a distance shorter than 100 meters from PC's*. This is prohibited by the relevant CEC Election Rule, where is stressed that they should be removed on pre-election silence, thus at least 24 hours before the start of the voting process. Responsible for their removal are the managers of the PC's along with technical staff for the materials in a 100-meters radius from the PC and PSC for the materials inside the polling station.<sup>187</sup>
- *There are still deceased people in the final voters list*. Such cases are present in all municipalities.
- *Persons with disabilities* (in wheelchairs) in many cases could not have unhindered access to polling stations, due to the lack of relevant wheelchair ramps in facilities that have been designated as PC, including the facility where the Administrative Office of Government Kosovo is located, in the Bosnian neighbourhood in north Mitrovica.
- There have been cases when *polling booths have been in such a position that did not guarantee the secrecy of the vote*.
- PC within the Culture Centre in Lipjan used regular pen for voting process list at the beginning, but after OI observer team advice they started using blue pen.
- During monitoring in Ratkoc village, municipality of Rahovec, the PC manager has informed the OI mobile monitoring team that a significant number of voters are complaining because *their polling station was placed at a distance up to 15 km from their settlement*. Relevant CEC Election Rule specifies very clearly that "Preferably no voter should travel more than 3 km to his / her polling station".<sup>188</sup>
- *Several police officers* from Vushtrri, who, in the Election Day, were assigned to serve in Mitrovica, starting from 7:00 to 19:00, *were not able to exercise their right to vote*. They complained about this issue and have sought to find the opportunity of exercising this right even by the police officers who in the Election Day have been in duty, during the voting process. OI has requested information from the CEC in order to be informed on how the voting issue of police officers on duty outside their municipality during voting, is regulated. CEC response: "*The officers that are on duty in the same municipality where they live can vote at any time, but the CEC has not provided the solution for the police officers on duty who are assigned to another municipality*". This was not the only case, when police officers on duty, or even dispatching health personnel (as was the case at the Regional Hospital in Gjakova) could not exercise their right to vote. Indeed, neither CEC Election Rule provided any solution for such cases.

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<sup>187</sup> *Ibid*, Article 12.

<sup>188</sup> *Ibid*, Article 3.2.

Monitoring of voting in correctional centres and detention centres, nursery homes and hospitals in Prishtina:

- In the *Correctional Centre in Dubrava* have voted 85 prisoners (all conditional voting). This polling station was closed at 14.00 with the justification that there were no other people interested to vote and they did not have identification documents.
- In the *Correctional Centre of Smrekonica* were 184 registered voters. At a time when OI mobile monitoring team was in this centre (11:00), voting had not started yet. According to the voting coordinator it was expected the arrival of election materials by the CEC. He later confirmed that the voting process had started at 11:30.
- In the *Correctional Centre in Lipjan* was conditionally voted, whereas lists of candidates of political parties for municipal assemblies lacked. Also, in this centre were not delivered ballots for voters of the municipality of Deçan and Mamush, whereas ballots for the municipality of Fushe Kosova were not sufficient in number.
- In the *Detention Centre in Prishtina* prisoners voted conditionally. From 65 prisoners, only 39 of them voted. Besides the list of candidates for members of the Municipal Assembly of Prishtina, also lacked the list of candidates for other municipalities, so prisoners from other municipalities could only vote for candidates for mayor and political party for municipal assembly.
- In the *Detention Centre in Peja* has been a delay in the opening of the PC due to the lack of a PSC member. Due to lack of identification documents have voted only 35 out of 87 prisoners. The voting place did not meet the necessary conditions for the secrecy of voting, since the CEC has not provided with voting booths.
- In the *Detention Centre in Prizren*, the voting process have started at 9:00 and ended at 13:00. From 89 prisoners, only 8 of them have voted.
- In the Detention Centre in Mitrovica have voted only four detainees (3 from Graçanica and 1 from Fushe Kosova). About 20 other detainees could not vote. Deputy Director of Detention Centre has stated that they have sent, on time, in the Correction Service, the list with the request of detainees and prisoners to enable voting, and this list was signed by the detainees and prisoners.
- In Nursery Homes, in *Prishtina*, voting process started at 10:00h.
- In the *University Clinical Centre of Kosovo (UCCCK)* in Prishtina was not held the voting process. OI mobile monitoring team has visited UCCCK twice on the Election Day. In a telephone conversation with the Director of Election Operations Department of the CEC, we were informed that the UCCCK has not submitted to the CEC list of voters, therefore the voting process was not organized.



- There were no polling stations in the *Regional Hospital in Ferizaj*. According to the hospital director, the reason for this is the fact that the hospital had no disabled patients, while those who wanted to vote have been released from the hospital.
- The voting process was not held in the Regional Hospital in Gjakova. In the absence of mobile team of MEC, a dozen of patients could not vote, nor the health personnel in dispatch.
- In the *Mental Health Institute (MHI)* in Shtime voting process was completed at 11:00h. At a time when OI mobile monitoring team was at this institute, there was no any competent person to give any official information. Later, the director of MHI informed the monitoring team that ballot boxes were sent to the Institute without any notification. He stated that 26 patients voted and almost half of them had no judgment ability.

### **2.21.3. Observation of re-elections in North Mitrovica held on 17 November 2013**

On 17 November 2013, was conducted the re-voting process in three PC (with 29 polling station) in the northern part of Mitrovica. OI monitoring team has monitored the re-voting process in 20 polling stations in these PCs.

In all PCs was noticed a large number of order and security forces. In the immediate vicinity of PC were EULEX police officers and police officers of Kosovo Police, whereas in the distance of 50-100 meters were placed uniformed members with the inscription "Civilna Zaštita". There were no incidents or conflicts that would undermine order and would jeopardize the safety of voters however, a tensed situation was noted.

Ombudsperson expresses gratitude to Kosovo Police teams, under the leadership of Mr. Besim Hoti, Deputy Director of Regional Police Directorate of Kosovo in the northern part, for continuous following and monitoring the safety of OI teams during the process of monitoring.

During monitoring, the following proved violations and errors were identified:

- *The principle of bilingualism*, i.e. language and writings equality was not respected in any PC and polling station. Clarification and guidance materials were only in Serbian Cyrillic alphabet, despite the fact that Albanian and Serbian are official languages throughout the Republic of Kosovo.
- There were difficulties for *people with disabilities and elderly people* to vote because many polling stations have been on the second floor and there were no ramp slopes.
- Also significant *difficulties* were noted in *finding the names of voters in the voter lists*, thus, the number of conditional voters was larger and long queues of voters were created at the polling stations for voting on condition.
- In the most polling stations, in polling booths was only the list with names of candidates for municipal assembly, but *the list with the names of the candidates for mayor lacked*.

- *CEC logos in polling booths were removed, covered or damaged in some polling stations.*

Based on the observed omissions during local election monitoring by OI mobile monitoring teams, the Ombudsman has issued several recommendations.

#### **Recommendations:**

- *Equip the PSC's in time with all appropriate material for the voting process on the Election Day.*
- *Adequate selection of PSC members and their adequate training and testing.*
- *Review the possibility of appointing PSC members in PC or polling stations where they vote or closer to them.*
- *PSC members that perform the role of ballot handlers and also spray the fingers of the voters with invisible ink, shall be equipped with gloves, in order to avoid spraying of their fingers with this ink and vote without problem.*
- *Correct final voter lists by removing all the names of dead persons.*
- *All posters and billboards of political parties, with pictures of candidates for mayor and candidates for municipal assemblies must be removed prior to the pre-election silence, at least 24 hours before the start of the voting process.*
- *Create appropriate conditions for all persons with disabilities (especially those in wheelchairs) to have unhindered access to all PC and polling stations where they vote. In cases when this is not possible or requires more time to be realized, these persons should be enabled to vote in their homes and apartments from relevant mobile teams of CEC and MEC, in accordance with relevant Election Rule of CEC.<sup>189</sup>*
- *Respect the principle of bilingualism in all PCs and polling stations, including election materials in the territory of the Republic of Kosovo.*
- *Under relevant legal provisions, regulate the exercise of voting rights for persons, who on the Election Day, respectively, during the voting process are on duty.*
- *Improve communication with voters abroad, so that they are equipped in time with ballots and can exercise their right to vote, in accordance with the relevant Election Rule of CEC.<sup>190</sup>*
- *Initiate criminal procedures and put to justice all those who have caused incidents and hampered the voting process, especially those who destroyed the election material in the PC of the north Mitrovica, which consequently disrupted the voting process, and the attacked PCs were closed. These cases should be judged with urgency.*

<sup>189</sup> Election Regulation no. 04/2013. Voting of persons with special needs and special circumstances, Article 3.

<sup>190</sup> Election Regulation no. 03/2013. Voting out of Kosovo, Articles 3-5.

## **2.22. The right of property**

The right of property is guaranteed by the Constitution of the Republic of Kosovo, Universal Declaration of Human Rights and with Protocol no. 1 of ECHR, whereas is regulated with the Law on Property.

The right of property is a real right (*ius in re*), which provides its holder the possession, use and disposition of the certain object within limits prescribed by the Law. This right directly affects the economic interests of the subject of the right. The holder of the right in the Republic of Kosovo is guaranteed by the Constitution, International Conventions and Law that he/she may possess and use the object in peace and without impediment.

The holder of a certain rights may authorize other persons to use his/her wealth, but such authorizations (which are considered to be the use, utilization and availability of the object), do not exclude the holder from his/her possession of the object.

In certain cases we encounter restrictions on the right on property and as a general restriction we encounter the prohibition of property right misuse, due to fact that the exercise of a right to harm others is not allowed. Holders of the right of property and other users are obliged to contribute to the general good. In particular restrictions it is included the possibility of expropriation of private property, for the general interest. This is done through the compensation according to the market price. Expropriation, in each case, is conducted based on the Law.

OI during 2013 has received complaints about deprivation or restriction on the use of their property.

About 23% of the total number of complaints investigated in OI during 2013 is related to property rights. Based on OI's statistics, we can conclude that compared with the same period of the last year, we have a concerning increase of 11% on investigated complaints of this kind.

The objects of complaints received and handled in OI during this period, are both for movable and immovable property, against legal and natural persons. In most cases, due to failure to act or negligence by authorities in solving problems of this kind, and also due to disturbances from third parties, they are forced to address the court.

During the reporting period, majority of complaints are lodged against the Municipal Assemblies, Kosovo Property Agency, the courts (due to procedural delays), Kosovo Energy Corporation (now KEDS), Prosecutions, Kosovo Police, some Ministries etc. However, based on the number of claimants, the claims against municipal assemblies, courts at all levels (including the Special Chamber of the Supreme Court), and the Kosovo Property Agency dominate.

Complaints are different in kind, such as: usurpations, expropriations, property damage, property theft, non-execution of judicial decisions, not registering the property in the cadastral records, obstruction of possession, procedural delays, inheritance etc.

Case backlog of courts dealing with property is quite large. According to the Kosovo Judicial Council, for the first three months of 2013 it is indicated that only in the Appeal Court are being conducted procedures for 6,149 civil cases, whereas in the first instance courts in the Republic of Kosovo, are being conducted procedures for 48,609 civil cases, without counting the 4,682 inheritance cases that relate directly to the right of the property.

In police reports are often published facts which show that as a result of various disagreements on legal-property disputes, there are cases when people try to take the law into their own hands. And this should not be tolerated in any way by the state.

The State, despite efforts to activate alternative ways to resolve civil-legal disputes (mediation), still has not managed to discharge courts overloaded with cases.

There are also cases of misleading certain owners upon property transactions, as well as causing of concerns to owners regarding to the peaceful and unhindered possession of their properties, by administration bodies, whether local or central.

The most severe cases of violation of rights of property are those where local or central public institutions (municipality or Government), upon expropriation, do not sufficiently consider, or do not consider at all the Constitution and the Laws.

The issue of expropriation in Kosovo is regulated by the Law on Expropriation of Immovable Property. This law further defines the procedures of expropriation or restriction of ownership, procedures for determining the amount of payment, and terms of payment to the property holder regarding to the conduct of expropriation. The concerned law clarifies that the expropriation or deprivation from the right of property conducted by public institutions (local and national), should be based solely on the law. Otherwise expropriation is unlawful and arbitrary, and such treatment of the property, in case of expropriation, is considered that it basically attacks the constitutional and democratic system of a society.

Regarding the northern part of Mitrovica, the situation remains unchanged compared with the previous year's reports, which means that many citizens of the Republic of Kosovo are deprived from the free and unhindered usage of their property in that part.

An issue that requires serious attention and treatment is the issue of enforcement of final decisions issued by the Kosovo Property Agency. Based on the information that Institution of Ombudsperson possesses, a total of 143 persons were granted the right of compensation related to the property. This matter is transferred from the Housing and Property Directorate and the necessary amount for compensation is 3.2 million Euros (according to PAK). So far, there were no legal and financial solutions, and this represents one of the most serious violations of human rights in regard to property, due to not executing final administrative decisions.

These and many other cases registered in OI are proves that there are quite a few violation of human rights to the rights of the property, rights which are guaranteed by the Constitution and International Conventions.

## **Recommendations:**

- *The Government and municipalities of Kosovo shall conduct all expropriation and compensation of expropriated property based on the law on expropriation.*
- *Courts shall undertake all measures required by law to accelerate procedures for obstruction to possession cases.*

## **2.23. The right to education**

According to the Constitution of the Republic of Kosovo (CRK) the right to education provides that “*Every person enjoys the right to free basic education. Mandatory education is regulated by law and funded by public funds*”.<sup>191</sup> The Constitution determines the obligation of public institutions to ensure equal education opportunities to each person according to his/her abilities and needs.<sup>192</sup> This is also guaranteed by the ECHR and its Protocols.<sup>193</sup>

### **2.23.1. Pre-school Education**

In the annual reports for 2011 and 2012, Ombudsman has recommended to ensure comprehensive and equal approach for all children through upgrading the physical infrastructure and capacities. Although this is an obligation with greater financial implications and requires time, despite these recommendations, few municipalities have small number of pre-school institutions and citizens' needs are not met, whereas in some municipalities there are no pre-school institutions. Indeed, in the meantime it wasn't noticed any significant movement in this direction. In the school year 2012/2013, 5.389 children were included at 42 pre-school institutions.<sup>194</sup>

### **2.23.2. Pre-university Education**

OI, with the purpose of supervision, protection and promotion of children's rights, during November and December of this school year, has visited 27 primary and lower secondary schools in various regions of the Republic of Kosovo, representatives of the OI have held lectures regarding the rights of children and interacted with students, psychologists, teachers and school principals.

From these meetings, the Ombudsman found that most of the schools face problems of different nature. Some schools lack basic sanitary conditions and it is difficult to speak of a healthy natural environment. Some schools lack adequate infrastructure and are not well maintained, and some schools lack the complaints boxes,<sup>195</sup> some municipalities have failed

<sup>191</sup> *Constitution of the Republic of Kosovo*, Article 47 paragraph 1

<sup>192</sup> *Ibid*, Article 47 paragraph 2

<sup>193</sup> *Constitution of the Republic of Kosovo*, Article 22 paragraph 2

<sup>194</sup> MEST, *Education Statistics in Kosovo, 2012/2013*, in: [www.masht-gov.net/](http://www.masht-gov.net/) (24.01.2014).

<sup>195</sup> Municipality of Kamenica, Municipality of Dragash and Municipality of Vitia

to provide in time the heating oil for school buildings,<sup>196</sup> while gambling facilities in many cities are located near schools.<sup>197</sup> Principals of some schools are worried due to reduction of number of students, whereas students, for whom transportation is provided, complain that during transport, they are forced to sit two or more pupils in a chair.

Another shortcoming that is worth mentioning is the content of textbooks provided to students. For example, in the textbook of civics education for grade VIII, according to curriculum, the first lesson for pupils is freedoms and human rights. If you analyse this text, you can see that it does not meet the objectives of a qualitative learning, because human rights are not correctly explained, and there is some incorrect information.<sup>198</sup>

All these phenomena are as a result of failure of the competent institutions of the pre-university education, respectively school directories, municipal education directories but also of education inspectorates as supervisory institutions, delegated by MEST. These phenomena directly affect the quality of education, risk and harm the health of students. Therefore, responsible institutions should take immediate action to eliminate these phenomena, according to legal obligations, without starting the usual bureaucratic justifications.

### ***2.23.3. Pupils with special needs***

In earlier reports, the Ombudsman also recommended provision of better conditions for pupils with special needs, especially for disabled people. All of us, without exception, are witnessing on daily basis that this category of pupils has difficulties to enjoy these rights. In particular, there are difficulties on providing transportation for pupils with special needs. Supporting and improvement of conditions for these pupils should be a priority of MEST and municipalities.<sup>199</sup>

OI received a complaint on behalf of a Bosnian community family, which requested the opening of a class in Bosnian language in the Resource Centre "Mother Teresa" in Mitrovica, for two children with special needs. The appeal is being processed and according to MEST, this issue is expected to be resolved in the second school semester.<sup>200</sup>

### ***2.23.4. Reduction of the number of pupils***

After comparing statistical data of MEST, it is found that in the 2011/2012 school year, the number of pupils has decreased by 6,418 pupils, while in the 2012/2013 school year the number of pupils has decreased by 9,146 pupils. The total number of pupils for two school years is reduced to 15,564.<sup>201</sup> The phenomenon of the pupils' number reduction in schools is quite concerning. According to school principals, this is due to many reasons, such as:

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<sup>196</sup> Municipality of Gjakova

<sup>197</sup> *Law on Games of chance*, no. 04/L-080, Article 66 paragraph 2.4.

<sup>198</sup> Sheribane Bahtiri, Shemsi Krasniqi and Habib Aliu, *Civic Education*, for grade VIII, publishing house "Dukagjini".

<sup>199</sup> *OI*, case A. no. 515/2013

<sup>200</sup> *OI*, case A. no. 483/2013

<sup>201</sup> MEST, *Education Statistics in Kosovo, 2011/12 and 2012/13*, in: [www.masht-gov.net/](http://www.masht-gov.net/) (24.01.2014).

declining of birth rates for economic reasons, the abandonment of compulsory education due to migration, influx of people from rural to urban areas, etc.

Despite this phenomenon, in urban areas continues to be a large number of pupils in a classroom. In most of Kosovo cities we still have schools that work in three shifts, whereas many schools in rural areas continue to face pupil's absence and therefore some schools are at risk of being closed. This phenomenon will continue until a balance of possibilities is reached, thus until a better infrastructure for living in rural areas is created.

#### ***2.23.5. Prevention of violence in schools***

According to the Law on Pre-University Education (LPE), it is prohibited physical punishment or any other form of humiliating punishment in all educational institutions, whether public or private.<sup>202</sup>

However the phenomenon of violence in educational institutions is not yet finally solved. Often, in such cases of conflict, actions are formal and it is thought that with a conversation with the pupil, parent or teacher the case is "solved". In regard to protection of children from all forms of violence, it is noticed a lack of preventive actions, insufficient inter-institutional coordination, and the reluctance of those responsible for reporting and handling the victim, as well as the perpetrator, lack of professional staff, respectively of psychologists in most of the schools, negatively affects in preventing this phenomenon.<sup>203</sup>

To create a safer and more convenient environment in educational institutions, as well as for prevention of this phenomenon, the Government of the Republic of Kosovo has issued the Regulation which establishes procedures for resolving cases of school violence and referral to other responsible institutions.<sup>204</sup>

#### ***2.23.6. Higher education: Challenges and problems***

The opening of public Universities in Gjilan, Mitrovica and Gjakova, besides expansion of public facilities for higher education, it also provided the opportunity to study closer to home, as well as financial costs of families who wish to educate their children are reduced.

In the University of Prishtina "Hasan Prishtina", some professors and assistants have two jobs. The Rectorate of the University has requested the completion of a questionnaire to verify teachers engaged in other jobs, respectively, in two or more jobs. After verification, the professors and assistants had to choose in which job they will be engaged, and a number of

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<sup>202</sup> Law on Pre-University Education in the Republic of Kosovo, no. 042/L-032, Article 4 paragraph 2

<sup>203</sup> Administrative Instruction, no. 26/2013, Article 2. Selection of employees for provision of professional services in pre-university instructive-education institutions

<sup>204</sup> Regulation, GRK no. 21/2013 for protocol for the prevention and reference of violence in institutions of pre-university education, Government of Republic of Kosovo

them have resigned from one job.<sup>205</sup> This action was undertaken to maintain and enhance the quality of teaching in UP.

Students Parliament monitored the process of lectures and exams by professors and claims that working hours are now being better respected than in the past, but there are still problems of this nature.<sup>206</sup>

#### ***2.23.7. Education system for communities***

Relying on the implementation of the Strategy Action Plan of the Government of Kosovo 2009 -2015 on Integration of Roma, Ashkali and Egyptians, and in support of development and education of these communities, the Ministry of Education, Science and Technology (MEST), for this school year has awarded scholarships to pupils of upper secondary schools and students of public universities, belonging to these communities. Even though it could not compensate the long-time neglecting of these communities, certainly will somehow help to integrate these communities in education.

Schools that conduct lessons in Serbian language, continue to work under the curriculum of the Republic of Serbia without any contact with MEST. These schools do not submit statistical data to MEST. Therefore, the lack of data from Serbian schools in the MEST statistical publications affects the complete presentation of the data for pre-university education in Kosovo.<sup>207</sup>

#### ***2.23.8. Cooperation of OI with educational institutions***

During 2013, OI had an intensive collaboration with educational institutions. All educational institutions visited were willing to collaborate. In the framework of the collaboration with MEST, on 17 and 18 September 2013, the representative of the Ombudsman attended the international conference organized by the Ministry of Education with the topic "*Walk on-Education for Economic Development*". The conference was attended by representatives of the Government of Kosovo and countries of the region, representatives of various institutions of the country, leaders of public and private education institutions, civil society representatives, businessmen, education experts from different countries of the world, students, etc. During this conference was debated about relevant academic concepts about the economy of education, with special emphasis on the needs for investments in low levels of education (preschool and elementary education), challenges in the education sector and the labour market were handled, and finally many recommendations came out, which remain to be implemented by public institutions.<sup>208</sup>

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<sup>205</sup> Interview with Mr. Esat Kelmendi, General Secretary, University of Prishtina "Hasan Prishtina"

<sup>206</sup> Interview with Mr. Minir Begaj, Chairman of Students Parliament

<sup>207</sup> MEST, *Education Statistics in Kosovo, 2010/11, 2011/12 and 2012/13*, in: [www.masht-gov.net/](http://www.masht-gov.net/) (24.01.2014).

<sup>208</sup> *Walk on – Education for economic development*, conference documentation, 18.12.2013, p294 and 295, in: [www.education-economics-kosovo.org](http://www.education-economics-kosovo.org) (24.01.2014).



### **2.23.9. Received complaints in OI**

Ombudsman during this reporting year received 21 complaints of violation of the right for education. After reviewing the complaints received, 13 were unacceptable, 8 of them were rejected due to failure to exhaust legal remedies,<sup>209</sup> 2 because they are using legal remedies,<sup>210</sup> 2 because there is no violation of human rights or mismanagement<sup>211</sup> and 1 because it is not in the jurisdiction of OI.<sup>212</sup>

Out of 8 opened cases, after completion of the investigation, 3 cases have been closed,<sup>213</sup> and five others are still being reviewed.<sup>214</sup>

From the complaints received during this reporting year, 9 complaints were against the University of Prishtina "Hasan Prishtina", 6 complaints were against the Municipal Educational Directorates (MEDs), 2 complaints against municipalities, two complaints against the MEST, 1 complaint against Rector of University of Prishtina "Hasan Prishtina" and one complaint against foreign authorities.

### **Recommendations:**

- ***With the purpose of preventing and responding against violence in schools, MEST, MEDs and all pre-university educational institutions shall implement the obligations set under the protocol for the prevention and referral of violence in pre-university educational institutions.***
- ***Municipalities and MEDs shall hire professional psycho-pedagogical staff in the pre-university educational institutions.***
- ***MEST, in cooperation with partners and authors, shall review the quality of civic education textbook for the eighth grade.***

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<sup>209</sup> Law on Ombudsperson no. 03/L-195, Article 20.1.4, "when all regular and extraordinary legal remedies are not exhausted."

<sup>210</sup> *Ibid*, Article 20.1.3 "when procedures for a case are being held in judicial or other competent bodies, except in cases specified by this Law."

<sup>211</sup> *Ibid*, Article 20.1.1 "when from the entries submitted and the circumstances of the case appears that the rights and freedoms are not violated or any mismanagement is performed"

<sup>212</sup> *Ibid*, Article 19.1.3.1 "is not in the jurisdiction of the Ombudsmen according to this Law"

<sup>213</sup> OI, case A. no. 523/2013, the claimant is advised to use the remedies, he has refused to file a complaint and has requested from OI not take action on his complaint, the case is closed pursuant to Article 20.1.2 of the Law on the Ombudsperson no. 03/L-195. OI, case A. no. 136/2013, the claimant complained via email, it was requested from him to appear in OI, but he has refused to appear and requested that his complaint remain anonymous, the case is closed pursuant to Article 20.1.2 of the Law Ombudsperson no. 03/L-195. OI, case A. no. 228/2013, the claimant has completed studies abroad and has requested from MEST the recognition of the diploma, the case is solved positively according to request of the claimant, the case is closed pursuant to Article 19.1.5 of the Law Ombudsperson no. 03/L-195.

<sup>214</sup> OI, case A. no. 379/2013. Complaint against criteria published for children enrolment in pre-school, OI, case A. no. 483/2013, request to open a class for lessons in Bosnian language in the Resource Centre "Mother Teresa" in Mitrovica. OI, case A, No. 515/2013, complaint on the failure to provide transport for pupils with special needs. OI, case A. no. 525/2013, complaint due to failure to provide transport for pupils, due to the risk from vehicles, during the time that pupils travel to school and back. OI, case A. no. 590/2013, complaint for refusal of enrolment to the University regarding Masters Studies.

- *MEST and MEDs, in cooperation with the Kosovo Tax Administration, shall implement the Law on Games of Chances and such premises shall be removed under the legal request by educational institutions.*
- *MEST shall increase funds for children with special needs and shall ensure the inclusion in education of all children with special needs.*
- *Municipalities and MEDs shall place complaints boxes in all educational institutions.*
- *Municipalities and MEDs shall ensure, in timely manner, the heating material for the winter season.*

## 2.24. The Right to Labour and Exercise of Profession

The right to labour and exercise of the profession is guaranteed by the Constitution of the Republic of Kosovo<sup>215</sup> and is in compliance with the international instruments on human rights that are directly applicable in the Republic of Kosovo.<sup>216</sup> This right is also regulated and is protected by the basic laws that determine the rights and obligations deriving from the employment relations.<sup>217</sup>

The Ombudsman notices that the realization of the rights of citizens in the employment area is of special importance for the status of each individual and at the same time is an indicator of how the state conducts its obligations towards its citizens.

The high rates of unemployment in Kosovo continue to be the most serious social issue that Kosovo citizens face.

Even in this reporting period, the number of unemployed in Kosovo continues to be very high. Based on data from the Ministry of Labour and Social Welfare (MLSW), in 2013, the general number of jobseekers registered as unemployed in the employment public services was 266.569 individuals, of them 123.462 were females and 143.107 males.<sup>218</sup> Unfortunately, a significant increase in the number of job seekers in Kosovo is noticed.

In Kosovo there are major violations occurring in the labour market, both in the public and in private sector. The Ombudsman considers that the Labour Inspectorate as a preventive mechanism and responsible for law enforcement, should uniquely and continuously check all workplaces, both in public and in private sector. The inspectorate should control working conditions, protection during the work and health protection of workers in general, especially shall actively act to ban all forms of discrimination. Special attention should be paid to working conditions in the private market, with increased focus on the age of employees, especially due to the employment of minors.

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<sup>215</sup> *Constitution of the Republic of Kosovo*, Article 49.

<sup>216</sup> *Ibid*, Article 22.

<sup>217</sup> *Labour Law no. 03/L-212; Civil Service Law no. 03/L-145; Law on Salaries of Civil Servants no. 03/L-147; Law on Economic and Social Council no. 04/L-008.*

<sup>218</sup> Ministry of Labour and Social Welfare i.e. Department of Labour and Employment: <http://mpms.rks-gov.net/Portals/0/Librat/0913%20Informatat%20ne%20regun%20e%20Punes.pdf> (18.09.2013).

Based on the investigations conducted, the Ombudsman concludes that during this reporting period, the violation of labour rights and the exercise of profession continues. As in the public and in private sector, there are violation of employment relationship right - violation of employment procedures,<sup>219</sup> illegally termination of the employment relationship, duration and compensation for overtime work,<sup>220</sup> failure to use annual leave right, failure to realise of salary right, age discrimination.<sup>221</sup>

#### **2.24.1. Prohibited labour of children**

Based on Labour Law, any person above 18 years old can conclude employment relationship. Whereas, in easy labour, which do not harm their health, may also be employed persons between 15 and 18 years of age.<sup>222</sup>

The Ombudsman concludes that even during these reporting period, underage children are noticed doing different jobs that harm their health and dignity. We find them begging in streets, restaurants, road junctions, selling cigarettes, pushing carts or even hard labour of construction.<sup>223</sup>

Although this is prohibited and children enjoy legal protection by state legislation, and the Convention on Human Rights and Freedoms,<sup>224</sup> this phenomenon continues unchanged. In this regard, the Ombudsman requires from relevant institutions to respect international instruments and local legislation for protection of children rights.

Regarding to the issue of children labour, the Ombudsman reminds that cooperation between the Labour Inspection, MLSW and MIA for the prevention and elimination of various harmful forms of children labour is necessary. Whereas, MEST jointly with the municipal education directorates, should play an important role in this cooperation, through continuous and disciplined monitoring of pupils attendance in pre-university education

#### **2.24.2. Cases of violation of employment right**

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<sup>219</sup> *OI, case A. no. 566/2013*. The party complains that has applied at the Regional Hospital in Mitrovica for the job position Nurse - Midwife and has successfully passed the testing and interviewing process, but was not hired. Even though she complained, she did not receive any response from the Regional Hospital in Mitrovica.

<sup>220</sup> *OI, case A. No. 371/2013*

<sup>221</sup> *OI, case A. no. 5661/2013*

<sup>222</sup> *Labour Law no. 03/L-212*, Article 7, paragraph 2.

<sup>223</sup> *ILO-IPEC report*, "ILO-IPEC steps to eliminate the worst forms of child labour in Kosovo". In: <http://www.ilo.org/budapest/what-we-do/publications/albanian/lang--en/index.htm> (17.11.2011).

<sup>224</sup> *Convention on the Rights of the Child*, Article 32: "State members recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."

During this period, OI has received 287 complaints from citizens in relation to the violation of employment relationship. Of these, 221 complaints were decided as inadmissible,<sup>225</sup> whereas for 61 complaints the decision was taken to open investigation and 5 complaints are awaiting review.

### ***2.24.3. Protection and safety at work***

Even though protection and safety at work, according to Kosovo legislation is regulated by two laws in force: Law on Labour and the Law on Health and Safety at work,<sup>226</sup> death and injury of employees in the workplace represent a very serious concern for the Ombudsman. Especially, non-investigation of these cases by the Labour Inspectorate and investigating bodies, as well as employers impunity due to failure to provide safety to employees and workplaces, and the failure to provide compensation to victims or their families after the fatality.

During the reporting period in Kosovo, in private sector - a numerous cases of death and injury of employees in the workplace<sup>227</sup> occurred in construction. In 2013, 17 people lost their lives in the workplace, while the number of injured could be higher.

#### **Recommendations:**

- *The Government of the Republic of Kosovo, with particular emphasis the Labour Inspectorate, shall require concrete responsibilities from the institutions and responsible persons regarding the non-implementation of Labour Law, both, in the public and private sector.*
- *Ministry of Labour and Social Welfare, jointly with the Labour Inspectorate, shall take measures to prevent the occurrence of child labour, by developing specific programs for identifying employers who violate the law in this area and prosecute them under the laws in force.*
- *Labour Inspectorate shall supervise the provisions implementation of the Labour Law and the Law on Health and Safety at Work and take appropriate legal measures to protect the health of employers in case of violation of the law by employers, by sanctioning them according to the laws in force.*
- *Increase the number of inspectors in the Labour Inspectorate, at all levels, according to objective needs, as requested by the Ombudsman in previous annual reports.*

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<sup>225</sup> Law on Ombudsperson, no. 03/L-195, Article 19 paragraph 1.3.:” The complaint is not in the jurisdiction of the Ombudsperson according to this Law, complaint is submitted after the term foreseen with this Law; complaint is anonymous; complaint represents an abuse of the Law for filing the complaint or; claimant has failed to provide information requested by the Ombudsperson.”

<sup>226</sup> Labour Law no. 03/L-212, Article 42, paragraph 1 and 2; Law for Health and Security at Work no.04/L-161.

<sup>227</sup> Interview with Mr. Basri Ibrahim, Chief Inspector in MLSW in the Republic of Kosovo, conducted on 11 December 2013.

## **2.25. The Rights of Children in Kosovo**

The Government of the Republic of Kosovo on 26 December 2012 approved the legislative program for 2013, setting the list of laws to be drafted and those that will be amended and supplemented to regulate certain social fields.

Within this program it was planned the drafting of the Draft Law for Children Protection, which would be completed on 30 November 2013. Even though this draft law, now called the *Law on Protection of the Rights of the Children*, has already passed several stages in the drafting process, any preliminary analysis of the comprehensive legislation that regulates this area was not conducted by the relevant institutions.

In this regard, the United Nations Children's Fund (UNICEF), after several months evaluative work, on 20 December 2013, presented at a round table the draft report "*The Law and children's rights in Kosovo: Compliance of the legislation in force with the Convention on the rights of the Child*", i.e. preliminary findings and recommendations from the legislation evaluation and review of the Republic of Kosovo for the rights of children. Unfortunately, representatives of the group who had been part of the drafting process of the draft law on the protection of the rights of the children were not present at this meeting.

There is no doubt that the issuance of laws is necessary to regulate certain relations in any society, but it should be done only after assessing the situation and real needs for its regulation. Moreover, it is important to conduct a preliminary assessment and should be considered when the issuance of laws refers to the protection of the rights of children. But the drafting and adoption of laws, including the protection of the rights of the children, is not sufficient if the laws are not adequately implemented, are partially implemented or not enforced at all.

Practical implementation, protection and respect of the rights of the children remain a challenge for Kosovo institutions. Kosovo institutions should coordinate and intensify their efforts and actions in terms of respecting, protecting and appropriate implementation of children's rights, including the allocation of sufficient budget for its protection and promotion. The Government of the Republic of Kosovo should put them at the forefront of its work agenda. Children should fully enjoy their rights.

### **2.25.1. The right of children in education**

Children inclusion in qualitative education, ensuring inclusion of children with special needs within the education process, school infrastructure improvement, as well as prevention and combating of violence in school remain some of the most important objectives in the field of education, which require the continuous engagement of Kosovo institutions in order to be realised.

From the complaints received by OI regarding the right of education, 4 of them are related to children.<sup>228</sup> Two of them refer to the issue of providing transportation for attending lessons at school, while the other two have to do with the right to education in their mother tongue for

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<sup>228</sup> OI, cases: A. no. 515/2013, A. no. 525/2013, A. no. 483/2013, A. no. 379/2013.

two children with disabilities, respectively, for the right of involvement in preschool education. OI has taken necessary actions, respectively is trying to mediate and help to resolve these issues. In order to improve the situation, regarding to right for education, respectively providing comprehensive education for all children, the Ombudsman recommends the institutions of the Republic of Kosovo, that among others:

**Recommendations:**

- *Undertake all necessary measures to ensure appropriate implementation of legislation regulating the field of education, regarding to numerical augmentation and professional capacity building of the staff in the inclusive education;*
- *Undertake all necessary measures for improving and upgrading the physical infrastructure, as well as allocating a special budget to provide transportation for children with disabilities.*

**2.25.2. Violence and security situation in schools**

Violence remains a concerning phenomenon in Kosovo's public schools. During this year, from information provided by pupils of lower secondary schools, it is clearly noticed that many of the children are unhappy with the situation in their schools.

In addition to numerous shortcomings in schools due to the lack of basic hygienic conditions, learning in many shifts and the lack of appropriate space for exercises and games, another problem is that the concerns and complaints of children, including those dealing with violence and security situation, are not being taken seriously.

Many children think that schools are not safe anymore, because pupils carry with them knives and even guns and that the violence is present, both inside and outside the school premises. Furthermore, children of a school in the capital stated that drugs are used in their school.

During this reporting period, OI has investigated the issue of failure to undertake appropriate actions by municipal education authorities in two cases of the use of violence against some children, from two public school teachers in Kosovo.<sup>229</sup> In one case, after OI mediation, the situation has improved, whereas in the other case, the investigation resulted that the relevant authorities had imposed a written warning to the teacher that used violence against the pupil.

Within the obligations for protecting children from all forms of violence, the Government of the Republic of Kosovo, on 06 September 2013, has approved the Regulation GRK - no. 21/20013 and the protocol for the prevention and referral of violence in pre-university educational institutions. This protocol defines the roles and responsibilities of educational institutions and other institutions for the prevention and treatment of cases of violence against children in pre-university institutions. Also, the protocol defines the procedures to address violence against children in pre-university education institutions.

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<sup>229</sup> OI, cases: A. no. 17/2013 and A. no. 490/2013.

Protocol marked a step forward to the children protection from violence. Its appropriate implementation would improve the situation in Kosovo schools. In this regard, OI this year reemphasizes and makes the following recommendations.

**Recommendations:**

- *Psychologists and pedagogues shall be part of school staff.*
- *Master teacher classes should be mandatory included in school programs.*
- *Increase communication between teachers and parents in order to better address the concerns and problems of the pupils.*
- *Undertake relevant actions in order to increase security in the school environments (e.g. placement of cameras).*
- *Inform pupils in regard to the risks and consequences that the usage of narcotic substances brings.*

**2.25.3. Juvenile justice**

Within the activities undertaken to reform the juvenile justice system, Kosovo institutions have continued the work on capacity building of employees engaged in the field of justice for children, in order that juveniles in conflict with the law are treated in accordance with the Convention on the Rights of a Child (CRCH).<sup>230</sup> Also, in accordance with the CRCH, after the judiciary reform in Kosovo, relevant authorities have established departments for juveniles in 7 Basic Courts, in the Court of Appeal and within the Basic Prosecutor Offices in Kosovo, as well as have appointed judges and prosecutors who will work exclusively with juvenile cases. From the complaints received,<sup>231</sup> the information obtained by monitoring of the Correctional Centre in Lipjan,<sup>232</sup> representatives of institutions that work with juveniles who violated the law,<sup>233</sup> it is concluded that there is still a lot to be done in this field.

With the aim of improving the juvenile justice system in the Republic of Kosovo, OI considers as necessary to make the following recommendations.

**Recommendations:**

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<sup>230</sup> *Convention on the rights of the child (CRC)* is the most important instrument of the international right in the field of children's rights, which is implemented directly by the Kosovo institutions, under Article 22 of the Constitution of the Republic of Kosovo.

<sup>231</sup> *OI, cases: A. No. 325/2013, A. no. 330/2013.*

<sup>232</sup> In May 2011, OI together with some local NGOs (Council for Protecting Human Rights and Freedoms - CPHRF and Kosovo Rehabilitation Centre for Torture Victims - KRCT) have signed an agreement of cooperation whereby they have created a joint Working Group. This group for the last time on 31 May 2013 has monitored Lipjan Correctional Centre for Females and Juveniles.

<sup>233</sup> Information received from representatives of the Kosovo Probation Service on 10 June 2013.

- *Respect, and strictly implement the provisions of the Code of Juvenile Justice, dealing with the detention of juveniles, i.e. the duration of detention.*
- *Strengthen cooperation and coordination between institutions involved in the juvenile justice system (Correctional Service, Probation Service, courts, prosecutor offices, lawyers, social work centres, etc.), including civil society.*
- *Apply in a greater extent the diversity and education measures in accordance with the best interests of the child, taking into account the circumstances of each case separately.*
- *Create funds to support juveniles after their release from rehabilitation measures imposed and executed, with the aim of re-integrating them.*
- *Create a database at the national level, with the aim of integrating all data of relevant institutions working in the field of juvenile delinquency.*

#### **2.25.4. Human beings trafficking, child victims**

Despite obvious progress, prevention of child trafficking and the appropriate protection of the rights of children - victims of trafficking human beings - remains a challenge to Kosovo institutions. The majority of trafficking victims during 2013 consists of minor girls, trafficked for purposes of sexual exploitation.<sup>234</sup>

OI has begun *ex-officio* investigations related to the omission of undertaking appropriate actions by institutions working in the identification and protection of victims in cases of human trafficking, for investigation, identification and protection of a child,<sup>235</sup> former trafficking victim, now a victim at risk or potential victim of trafficking of human beings. Starting from the information provided and the circumstances of the case, OI requested from the institutions involved in the case, to review the case and undertake necessary actions in order to provide the child with adequate protection and assistance.

Almost in the same context, OI in cooperation with Save the Children International, last year published a report on the findings from the research conducted on the issue of sexual exploitation of children in Kosovo, including trafficking of human beings.<sup>236</sup>

With the aim of improving child protection system and the prevention of trafficking human beings, the Ombudsman made recommendations to the competent institutions.

#### **Recommendations:**

- *Strengthen the capacities of relevant institutions employees, for effective identification of juvenile victims, treatment and provision of adequate assistance, starting from the needs and circumstances of each case.*

<sup>234</sup> Information provided by representatives of the Division for investigation of trafficking of human beings in the meeting of 20 December 2013.

<sup>235</sup> OI, case A. No. 589/2013

<sup>236</sup> OI, Report "Sexual exploitation of children in Kosovo", published in December of 2012, in Prishtina.



- *Undertake appropriate actions to increase responsibility and accountability of employees working with cases of trafficking of human beings.*
- *Continue with awareness campaigns, especially for children, regarding the trafficking of human beings, about the potential risks and ways of identifying them, as well as for children's rights for protection and assistance.*
- *Establish special funds to finance the urgent needs of victims of human beings trafficking and their full reintegration into society.*

## 2.26. Responsibility for living environment

Even though environmental protection is ranked as one of the values on which the constitutional order of the Republic of Kosovo<sup>237</sup> is based, environmental protection and the provision of a qualitative and safe environment for the health of citizens, still remains a challenge for our country.

During the reporting year, OI has conducted investigation pursuant to citizens' complaints, and also initiated *ex officio* investigations regarding violations of environmental law, due to violation of the right to life, the right to privacy and enjoyment of the house, family right, property right, public health, etc.

Even though Kosovo continues to be outside of many international conventions, protocols and international environmental agreements due to its status, however, the legislation must continue harmonization with climate and environmental standards of the EU. The Ministry of Environment and Spatial Planning (MESP) and the Macedonian counterpart signed the labour regulation for the joint commission in the area of environmental protection and spatial planning, thus moving toward fulfilment of state responsibilities the for trans-boundary environmental protection.<sup>238</sup>

Although under the Constitution of the Republic of Kosovo, environment protection is everyone's responsibility,<sup>239</sup> the Ombudsman noted the continuation of degrading activities in contradiction to the law by both, individuals and institutions. Moreover, inter-institutional cooperation in environmental protection remains a problem for Kosovo.<sup>240</sup>

Continuous environmental pollution, uncontrolled urban expansion, abusive interventions, indiscriminate construction, disregard of regulatory plans and construction rates, loss of agricultural lands, air pollution, water pollution, destruction of forests, damage and the

<sup>237</sup> *Constitution of the Republic of Kosovo*, Article 7: "1. The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, and the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy.

<sup>238</sup> In: <http://mmph-rks.org/sq/Lajmet/Kosova-e-Maqedonia-me-komision-te-perbashket-per-mbrojtjen-e-mjedisit-80> (11.12.2013).

<sup>239</sup> *Constitution of the Republic of Kosovo*, Article 52: "1. Nature and biodiversity, living environment and national inheritance are everyone's responsibility."

<sup>240</sup> *OI, Report with recommendations for the case A. no. 394/2011*. Conclusion of the Ombudsman on disinterest of competent authorities to coordinate activities aiming at solving various environmental problems, see also: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/kosovo\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/kosovo_2013.pdf) (11.12.2013).

extinction of biodiversity, lack of adequate monitoring systems and information systems, problems in waste treatment and noise which exceeds the allowed legal limits, characterized the country this year as well.

Respecting the key principles of the environmental right and legislation, such as: the principle of public participation in decision-making, access to environmental information, principle of integration, principle of prevention as well as the principle of implementation of rights through the courts due to delays as a fundamental right, polluter pays principle, user pays principle, still remain in the initial phase.

### **2.26.1. Air pollution**

Air pollution in urban and industrial environments continues to be a serious problem. Although improvements have been registered by installing filters in Sharrcem and Feronikel, KEK and central heating systems (Prishtina, Mitrovica and Gjakova) have continued to be one of the biggest polluters.

According to the data from the report on the conditions of the environment, published by the Environmental Protection Agency, based on the data of 9 automatic monitoring stations and a mobile station of air quality control, installed in Kosovo, have been recorded exceeding of pollution, especially of PM10 and PM25 pollutants.<sup>241</sup>

The right of citizens for a healthy environment has continued to be violated by air pollution from old transport vehicles, use of low quality fuel, uncontrolled pollution from road building and facilities under construction, exercise of activities in quarries and from mismanagement of urban and industrial waste.

According to a World Bank research, the concentration of PM in the air has led to the increase of the number of premature deaths to 852 cases, mainly from respiratory diseases and lung cancer, whereas 318 new cases with chronic bronchitis were registered.<sup>242</sup>

Ombudsperson, on 5 June 2013, after the complaint of the residents of the neighbourhood near the school "Nazmi Gafurri" in Prishtina, found a violation of the right to a clean and healthy environment, as well as the right to privacy, by the air pollution caused due to the release of gases and waste during the exercise woodworking activity. Through this report was recommended to the mayor of Prishtina to determine a suitable location for the wood market, outside residential areas due to the fact that the state has a legal obligation, to undertake reasonable measures in order to ensure the rights of citizens, arising under Article 8 of the ECHR and maintain a fair balance between the competing interests of the individual and the community as a whole. According to the ECHR, the appeal in economic welfare it is not enough to devalue the rights of others, especially the right for environment as a sensitive right.

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<sup>241</sup> Ministry of Environment and Spatial Planning, Environmental Protection Agency, Report on the state of environment 2011-2012, p. 43.

<sup>242</sup> Kosovo Country Environmental Analysis Cost Assessment of Environmental Degradation, Institutional Review, and Public Environmental Expenditure Review, World Bank, January 2013, p. 19.

### ***2.26.2. Water pollution***

Mismanagement, improper and unequal use of water, increase of water demand due to the increase of urban, industrial and agricultural needs, discharge of wastewater from households, industry and pollution from agriculture, without any prior treatment, are the main causes of the plight of the waters which Kosovo faced during this year. The right of citizens to clean drinking water is being violated by the failure of the population to access drinking water systems, as well as by the fact that wastewater/sewerage are discharged in an uncontrolled manner and without any prior treatment into the rivers.

Whereas, large settlements in the Republic of Kosovo continued to face drinking water shortages as a result of the very long and large reductions, especially during the summer months. This situation was far more aggravated in the municipalities of Prishtina and Gjilan due to the lack of rainfall for a long period of time. This condition requires the commitment of the Government and the municipalities to find solutions and providing drinking water for these two cities.

### ***2.26.3. Damage and Destruction of Agriculture Land and Forests***

Agricultural land fragmentation and the impact of human activities on land degradation have continued with the same intensity in Kosovo. Unplanned constructions and uncontrolled change of land destination from agricultural land to construction land has continued. According to the data of the Ministry of Agriculture, Forestry and Rural Development, it is estimated that in Kosovo, during a year, 400 hectares of agricultural land is changed destination into construction land.

Industrial solid waste, household waste, erosion and uncontrolled gravel exploitation are some of the actions with devastating effects on the land. In Kosovo, there are 28 hot spots with great pollution potential, which are a result of past industrial activity.<sup>243</sup>

Even though during this year were not marked large forest fires as in previous years and human interferences in forests have been smaller, its illegal cutting continued. Significant damages of woody plants were caused to the national park of Sharr, a part managed by parallel institutions of Shterpce. Even though Kosovo Police assisted in the protection of forests, the delay regarding to lawsuits examination represents a problem.<sup>244</sup>

### ***2.26.4. Constructions without criteria and violation of environmental right***

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<sup>243</sup> *Report, environmental hotspots in Kosovo 2011*, Ministry of Environment and Spatial Planning, Kosovo Environmental Protection Agency, p. 13

<sup>244</sup> *Ibid*, p. 79.

Failure to respect the spatial plan and development plans of the municipalities, the absence of a land monitoring system, as well as the lack of, and unreliability of cadastral data followed Kosovo during the reporting year. Late adoption of the Law on Spatial Planning and the forecast of long-term for the secondary legislation,<sup>245</sup> when we consider urban developments, failure to undertake actions for capacity building toward law enforcement, failure to complete the Law on Construction with secondary legislation, especially with the construction code, has led to an environmental chaos caused by constructions without criteria, thus rendering difficulties to the lives of citizens.

The violations of the rights of citizens by higher constructions, failure to respect the spaces between objects, excesses in height and floors, inadequate lighting and ventilation, lack of emergency stairways, and safety measures on life and property from fire, failure to complete the relevant facilities, as well as other dangers attributed to the construction environment, not only that they continued, but they reached at a critical stage, thus creating difficulties in the citizens' lives.

Another concern of the Ombudsman are the excavation for commencing high buildings construction, without undertaking any measures to prevent the risk, thus violating the right to life, safe and healthy environment, the right to property and endangering public safety.

The Ombudsman, during 2013, reacted twice through public statements, regarding two cases of the landslide in the Arbëria neighbourhood and at Muhaxher and Kalabria neighbourhoods.<sup>246</sup> In both cases, the competent municipal institutions have failed to fulfil legal obligations toward its citizens, to undertake preventive measures, and protection of citizens from activities of third persons. After the landslide in the Arbëria neighbourhood, it was noticed a contradictory information by two directories of the municipality of Prishtina, in relation to the legality of the construction. Damages caused to the public and private property until the moment of reporting are not repaired.

A small number of buildings under construction have set the information table, leaving opportunities for doubts as to the legality of the construction, as well as compliance with construction permit.

In a number of cases, constructors do not respect the provisions of the Law on Construction, and Administrative Instruction 60/2005 of MESP, for closing of the building site and the manner of its enclosure by construction inspector.

Based on the complaint of a citizen of the municipality of Prishtina, regarding the failure of the inspectorate to undertake relevant actions in order to terminate the construction of building, which was being constructed by one of his neighbours outside the conditions foreseen in the construction permit, a conclusion which was also made by the inspectorate of the municipality regarding the non-compliance of the conditions of the buildings and the terms foreseen in the permit, and after investigation and analysis of the case, the Ombudsman found that, in this concrete case, was violated the right to privacy and enjoyment of home, the

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<sup>245</sup> *Law on Spatial Planning*, no. 04/L-174, Article 27: "The Government and Ministry shall issue sub-legal acts that are required by this Law and shall harmonize existing sub-legal acts within one (1) year from the date of entry into force of this Law".

<sup>246</sup> See: <http://www.ombudspersonkosovo.org/?id=5,0,0,0,a,777> and <http://www.ombudspersonkosovo.org/?id=5,0,0,0,a,804> (10. 12. 2013).

right of environment with a direct impact on property right. Also, in this case, the Ombudsman considered that addressing the issue to court by the Inspectorate instead of immediately terminating the works, as provided in the Law on Construction, was not a proportional measure to the rate of damage suffered by the citizen. In this case, the Municipality of Prishtina failed to fulfil its obligations to protect the citizen from third persons.<sup>247</sup>

The lack of planning, green spaces and playgrounds for children, lack of parking lots, the lack of safe areas near schools, underpasses and overpasses, problems with impact on mental and physical health, not only that they continued to be present, but no step towards its improvement was noticed. Also, in most of such constructions, whether public or private, no action is undertaken for the access of persons with disabilities to these facilities. Despite the legal obligation of municipal inspectorates of construction not to issue a license for the use of facility, denying the technical assessment due to these shortcomings, there is not noticed any significant progress in this direction.

#### **2.26.5. Road infrastructure - sidewalks**

The unplanned urban expansion with accelerated steps has caused citizens to face numerous problems related to the road infrastructure. Failure to foresee the width and height of sidewalks in proportion to the number of inhabitants and the urban standards, failure to plan according to the Law on Spatial Planning and Law on Construction, not only continued but, as an environmental problem, has aggravated. The Ombudsman considers that such a state is violating the rights of citizens to a safe environment with direct violation of freedom of movement.

Impeding movement of citizens, apart from tight spaces of pedestrian movement - sidewalks, and in some cases their total lack, it is also due to blockage by the cars parked due to parking shortages, blockage from construction materials, distribution of construction waste on sidewalks and streets, placement of goods, arbitrary usurpation of public property, etc.

The absence of proper conditions in sidewalks for people with disabilities represents another serious problem and not fulfilment of the competent authorities' obligations, which should not be neglected, and even requiring accelerated measures for construction.

The Ombudsman, after receiving the information about the lack of an underpass / overpass, after highway construction in Lapushnik village, which has rendered difficulties to the villagers' lives of the village split into two, has initiated proceedings according to official duty, *ex officio*. After raising the issue and inter-institutional communication between OI and the Ministry of Infrastructure, the Ministry had informed the Ombudsman regarding to the measures undertaken for the construction of the underpass, and that the underpass construction procedures had been completed.<sup>248</sup>

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<sup>247</sup> OI, Report with Recommendation, case A. no. 123/2013, addressed to the Municipality of Prishtina.

<sup>248</sup> OI, Report with Recommendations *ex officio*, 11/2013, addressed to Ministry of Infrastructure.

#### **2.26.6. Noise**

Failure of the competent authorities to take responsibility for citizens' protection from the noise continued. It was noticed that Kosovo peoples, especially those of Prishtina, are being faced with problems from the noise of hotel activities, but also from the work conducted in buildings under construction in the neighbourhoods late at night, especially in the summer and weekend days.

Violation of the rights of citizens for peaceful and safe environment and their right to enjoy property was enormously aggravated by the noise and vibration caused by heavy vehicles transporting construction material, and their discharging, especially late at night, continued with high intensity.

Even though the Law on Noise Protection expressly defines that environmental inspectorate is competent for the law enforcement, the Ombudsman has noticed an unwillingness of central and local inspectorates to find a suitable solution to the issue, based on professional criteria and prescribed by law for actions planning and undertaking concrete action in cooperation, until the adoption of a new Law on Noise Protection.

Ombudsman, following the investigation of a complaint received from the residents of the street "Presheva", "Bajram Bahtiri" and spaces around the primary school "Nazim Gafurri", who claimed that their quiet life is affected by the harmful and annoying effects of noise from wood-sellers activity conducted in those areas for 10 years, even late at night, estimated that the municipality of Prishtina in this case did not respect the rights of citizens for noise protection as required under the provisions in force. Due to this reason, I recommend to the Prishtina Municipal Assembly to assign a suitable location for the wood market, outside the residential areas and coordination of municipal authorities for faster resolution of the problem.

Considering as influential issue to human rights, OI, on 18 October 2013, organized the roundtable *"Noise and its Influence on Human Rights"*. The roundtable provided an opportunity to common discussion of problems with law enforcement on noise protection, between all the institutions of central and local government, international organizations and civil society.

#### **2.26.7. Waste management in Kosovo**

The right of citizens to a healthy, clean, and safe environment, as well as property right, continued to be violated by the mismanagement of waste landfills. Waste landfills and sanitary landfills in Peja, Gjilan, Prizren, Mirash, Podujeva and Mitrovica, although constructed according to standards, continued to operate with serious problems. The improper management of landfills can pose problems which can be accompanied by serious environmental and health consequences due to failure to compress and cover the waste, and due to their ongoing burning.

## **Recommendations:**

- *The Government of the Republic of Kosovo should increase the budget and investments toward environmental protection.*
- *The Government of the Republic of Kosovo and Municipal Governments shall take concrete steps to increase the administrative and the inspectorate capacities for better enforcement of environmental laws.*
- *Awareness campaigns shall be undertaken to raise public awareness for their right for healthy environment, ways to realize their rights, as well as the environmental protection.*
- *Inter-institutional cooperation should be improved at national and local level, as well as between the two levels, and with civil society, for issues related to environmental protection.*
- *Municipal governments shall improve public participation in decision making toward environmental issues.*
- *Sanctioning measures shall be undertaken due to inaction on official duty by officials responsible for environmental laws enforcement.*

## **2.27. Health and social care**

Even nowadays Kosovo is being challenged with difficult socio-economic conditions and citizens living in high-poverty. Unfortunately, the number of complaints lodged at OI does not leave enough room to conclude that there are significant improvements in terms of socio-economic situation in Kosovo. Economic and social situation of citizens of the Republic of Kosovo continues to be difficult.

Despite MSLW efforts during this year to raise the level of employment and vocational training of job seekers through agreements with various companies for employment, full implementation of existing legislation in the field of services and social assistance to families in need, supervision of legal provisions, as well as efforts for amending-supplementing the Law on Labour and administrative instructions issuance, the situation remains almost the same as in previous years.

Modest progress was noticed toward the creation of a satisfactory legal infrastructure, taking into account a number of draft laws, which are under discussion, including health insurance draft law and the draft law on the status and rights of persons with paraplegia and tetraplegia.

Law on Social Assistance Scheme in Kosovo 2003/15, discussed many times in previous OI annual reports and in meetings with MLSW regarding shortcomings, is amended by Law no. 04/L-096, amending and supplementing the Law no. 2003/15 on the Social Assistance Scheme in Kosovo. But despite the fact that now is considered as more inclusive for people

who depend on social assistance, still remains incomplete. This is verified by complaints filed at OI regarding termination for social assistance.<sup>249</sup>

The Ombudsman is concerned that some provisions of this Law still remain unfavourable for Kosovo's population living in difficult socio-economic conditions. Specifically, Article 4 of this law, based on non-financial criteria for social assistance two categories is specified from the beneficiaries of social assistance.<sup>250</sup>

### ***2.27.1. Pensions issue in Kosovo***

The pension system in Kosovo remains unchanged, as in previous years. The draft law on pension schemes funded by the state has stagnated in the examination procedure in the Kosovo Assembly since last year. Pensions issue in Kosovo remains unsatisfactory according to the complaints lodged at OI. These pensions, which Kosovo pensioners receive from the State, still resemble as a social assistance and not a right realized from the work and regulated by law, which would allow a dignified<sup>251</sup> life for pensioners.

During the reporting year, OI has received a number of complaints from pensioners' associations and citizens - pensioners about the failure to provide opportunity for realising from the Serbian state the contribution based pension for the period before 1999. Even though the European Court of Human Rights has issued a decision, regarding these issues, which obliges the state of Serbia on pension<sup>252</sup> payments, up to now it is not seen any positive development and the majority of Kosovo citizen's requests were rejected, so this issue needs to be raised in interstate dialogue.

### ***2.27.2. Shelter issue***

The issue of sheltering of families on social assistance, based on complaints filed in OI, remains an evident and disturbing problem in Kosovo. During this year it was not noticed any effort from the local level for providing shelter to families on social assistance.

Repatriation of Kosovo citizens from other states represents a growing problem in Kosovo, ranging from sheltering to other general socio-economic problems, high unemployment,

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<sup>249</sup> OI, cases A. no. 9/2013 and A. no. 581/2013. Claimants have filed an appeal against the decision to terminate the social assistance at the Centre for Social Affairs, but had received no response.

<sup>250</sup> Law no. 04/L-096, for amending – supplementing the law no. 2003/15, social assistance scheme in Kosovo, Article 4.

<sup>251</sup> OI, Report on the Ombudsman meeting with Association of Kosovo Pensioners, held on 17 December 2013. Representatives of Kosovo pensioners have raised their concerns about issues that cause difficulties to their lives. The following issues were raised during this meeting: Pensioners situation in Kosovo after 1999, the Law on Pension and Disability Insurance, which is not yet approved by the Kosovo Assembly, the issue of permanent invalids under the age of 65, family pensions, pension categorization according to contributions and requirements for height pensions acceptable value, according to them 60% of the average wage in the country.

<sup>252</sup> Case *Grudić v. Serbia*, (Application no. 31925/08), in:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110378#{%22itemid%22:\[%22001-110378%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110378#{%22itemid%22:[%22001-110378%22]}) (21.02.2014).



poverty, etc. In most cases, these citizens are transformed into social categories that ensure survival only from social assistance.

Involuntary repatriation of Kosovo citizens after their yearlong stay in Western countries causes trauma to the returnees, as a result of environmental change. They have lived in a relatively good standard and then have come to a new environment for them, and their integration is not easy, despite the Government program for reintegration. This seems to be the primary obstacle for their integration or it is a detachment of the first link from the chain of integration process, which is a very complex process.<sup>253</sup>

Children remain to be victims of the repatriation process, who not only does not bear any guilt for all actions, whether they are actions of their parents or public authorities that decide for their fate without asking them, and besides this, they do not know any of the languages used in Kosovo, including sometimes even their mother tongue.

### **2.27.3. Health services**

The state of the Kosovo health system still remains almost the same. During this year positive efforts have been noticed of the Ministry of Health (MoH) for finalisation of the draft law on health care insurances. However, the health care provision issue remains unfinished as in previous years. In the absence of this law, the situation still remains severe for a part of society, especially for those living in poverty and difficult economic conditions.

Kosovo health is still facing a number of problems, including: poor supply of medicaments from essential list, problems with heating and malfunction of appliances of the University Clinical Centre of Kosovo (UCCCK).

In addition of difficult conditions which patients are facing at the UCCCK clinics for providing medicaments and for using appliances for detailed checks, they still, as during last winter, are being faced with the cold, due to the lack of heat supply of UCCCK by "Termokos".

The Ombudsman reiterates that such a state of UCCCK is a continuation of the inexcusable failure of the central institutions, toward basic conditions provision for the people of Kosovo for effective health care.

The medicaments market in Kosovo still remains unsatisfactory, and sometimes represents risk for citizens. Further, medicaments are being sold in pharmacies without a prescription from a doctor and without instructions for use translated into the Kosovo people language. The Ombudsman raised these issues even in the preliminary report. Their integration seems not to be so easy, despite the existence of the government program. The situation remains to be the same even today and there are not noticed commitment of competent institutions, of MoH, to fix this issue, which represents a risk to the Kosovo population.

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<sup>253</sup> *OI, case A.no. 527/2013*. Claimant claims that he was violently deported from the French state and the state of Kosovo did not fulfil basic living conditions.

#### **2.27.4. Peoples with disabilities**

The Convention on the Rights of Persons with Disabilities is not incorporated in the Constitution of the Republic of Kosovo, which would be a support to the right of persons with disabilities in Kosovo.

Even though the legal infrastructure related to certain rights for persons with disabilities was partly fulfilled, in the absence of sub-legal acts, it is not fully implemented in practice.<sup>254</sup>

This year, the Government of Kosovo is also working on the Draft Law on the Rights and the Status of Persons with Paraplegia and Tetraplegia, which is expected to improve in the future at least the difficult condition of these persons.

Road infrastructure and high constructions still continue to be a concern for the free movement of persons with assistive tools. Despite the existence of administrative instruction on technical requirements of the building for access of persons with disabilities, this phenomenon continues not to be regulated even in frequented places, such as hospitals, schools, courts and other public institutions.

#### **2.27.5. Disability categorization**

The Government of the Republic of Kosovo has approved the National Strategy on the Rights of Persons with Disabilities 2013-2023 and the Action Plan for implementation of the National Strategy on the Rights of Persons with Disabilities 2013-2015 on August 22<sup>nd</sup>, 2013. However, until now the Government of Kosovo has not undertaken any action to promulgate a law which would set the disability categorization to other types of disability, which would be followed with relevant material compensation, with the objective disability degree.

In addition to regulation benefits, as well as financial support, due to the fact that basic living needs change depending on the diagnosis of a person with disabilities, the lack of a legal norm or even an administrative guideline for categorizing disability has caused general confusion, because there are many individuals who befittingly claim that they are persons with disabilities, unless the Commission determines otherwise.

In a better position in this respect, regarding to the regulation of this position by law, are the persons with impaired vision, due to the fact that the Assembly of Republic of Kosovo during the reporting period adopted the Law No. 04 / L - 092 for Blind People, which regulates the rights and benefits, as well as establishes the criteria for blind people categorization. The adoption of this Law is seen as a step toward improving the living conditions for blind persons in Kosovo.

Inclusion in Primary Education, according to the Law on Pre-University Education in Kosovo, is compulsory for all children. Significant improvements have been made in the field

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<sup>254</sup> The rights of persons with disabilities are set in 26 basic laws of different fields and 2 sub-legal acts, and three of them are that pertains specifically to this category: *Law no. 2003/23 on disability pensions in Kosovo*, *Law no. 03/L-022, on Material Support for Families of Children with Permanent Disability*, *Law no.03/L-19, on Vocational Ability, Rehabilitation and Employment of People with Disabilities*.

of inclusive education, i.e. involvement in the educational system of children with special needs.

#### **Recommendations:**

- *Government and the Assembly of the Republic of Kosovo should adopt the necessary legal infrastructure for people with disabilities in Kosovo, in order for all of them to benefit from the disability pensions, according to professional estimation for categorization and without discrimination.*
- *Government should continue to strictly monitor the quality of medical procedures, as well as medical personnel qualifications and thereby minimize the possibility of misuse of profession in the health sector.*
- *Government of Kosovo, through clear normative acts and concrete actions, should create conditions for a dignified life, for citizens of Kosovo after their repatriation.*
- *Government of Kosovo should take actions to issue normative acts for categorization of disability.*
- *The Government and the Assembly of the Republic of Kosovo should be engaged for the incorporation of the Convention on Economic, Social and Cultural Rights in the Constitution of the Republic of Kosovo.*
- *The Government and Assembly of the Republic of Kosovo should be engaged for the incorporation of the Convention on the Rights of Persons with Disabilities in the Constitution of the Republic of Kosovo.*
- *Ministry of Health and the University Clinical Centre of Kosovo should urgently engage for providing medicaments of the essential list.*
- *Ministry of Health and the University Clinical Centre of Kosovo should urgently engage for solving the problem of heating in UCKK.*
- *Ministry of Health should seriously be engaged in regulating the market of pharmaceutical products, as well as in guiding its issuance and usage.*
- *The Government and the Assembly of the Republic of Kosovo should undertake immediate actions for the adoption of the law on pensions.*
- *The Government and the Assembly of the Republic of Kosovo should undertake actions to accelerate the procedures for the adoption of the law on health insurance.*

#### **2.28. Judicial Protection of Rights**

Judicial protection of human rights and freedoms constitutes the foundation of the rule of law. In case of violation or denial of any right set forth by the Constitution<sup>255</sup> or by law for judicial protection of legal rights, citizens require from courts legal justice regarding various contest raised in courts in the Republic of Kosovo.

For the realisation of this legal right in practice, citizens continue to face difficulties of different natures.

### ***2.28.1. Citizens' complaints against regular courts***

A larger number of citizens' complaints submitted to OI, during this reporting year are related to the judiciary, as a responsible party. This is an indicator of the serious situation of the judiciary system that has not yet managed to accomplish its legal obligations in relation to the requests and guaranteed rights of citizen for judicial protection of their rights.

Citizens have filed a total of 577 complaints against courts as the responsible party, whereas in the previous year, in 2012, we have had only 532 complaints. A significant increase has been noted in the number of complainants against the judiciary in comparison to the previous year. Out of the total number of received complaints, 382 were considered as inadmissible pursuant to Article 19.1.3 of the Law on the Ombudsperson, whereas for 195 complaints investigations have been initiated.

The largest number of complaints has been submitted against the Basic Courts, Court of Appeal, as well as against SCSCK for matters related to the Privatisation Agency of Kosovo.

In all cases where the requests or complaints of citizens in relation to the judiciary were not in accordance with the competences of the Ombudsman, they were instructed and referred to competent professional authorities that provide legal service such as the Agency for Free Legal Aid (AFLA) and NGOs, which provide free legal service for the citizens.

Based on an analysis of the nature of the citizens' complaints that were investigated it is concluded that the majority of complaints are in relation to: delays, sometimes for many years of court proceedings; statute of limitations of cases; non-executing of final court decisions; suspicion on the objectivity of the judges in deciding on the case and inappropriate representation by defence counsels. All complaints submitted at OI against judiciary are treated according to Article 15.6 of the Law on Ombudsperson.<sup>256</sup>

The judicial system of the Republic of Kosovo during 2013 went through a series of legal reforms and structural re-organization, based on the new laws on the judiciary. These reforms in some aspects have brought new qualities in relation to the observation of human rights and freedom by the judiciary. But in some fields, these reforms had the opposite effect and

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<sup>255</sup> *Constitution of the Republic of Kosovo*, Article 54: "Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated."

<sup>256</sup> *Law on Ombudsperson, no.03/L-195*, Article 15, paragraph 6: "The Ombudsman will not intervene in the cases and other legal procedures that are taking place before the courts, except in cases of unreasonable delays or apparent abuse of power."

aroused citizens' reaction. However, despite the progresses made in this field, the results are still insufficient for a proper and full judiciary protection of rights.

### ***2.28.2. The lack of judiciary operation in the north of the country***

Although the Constitution guarantees the judicial jurisdiction throughout the territory of the country, institutions of the Republic of Kosovo,<sup>257</sup> respectively the Kosovo Judicial Council (KJC) and the European Union Rule of Law Mission (EULEX), even during this year did not manage to expand the judicial jurisdiction in the northern part of the country, which proved the lack of rule of law in that part of the country and the lack of political will to ensure justice.

The absence of law enforcement to ensure justice and observation of human rights and freedoms is an extraordinary concern for the Ombudsman and an open wound for the Republic of Kosovo.

Ever since Kosovo's independence was proclaimed, the courts do not operate in the northern part of Mitrovica, Zubin Potok, Zvečan and Leposavić.

For citizens of these localities, human rights and freedoms guaranteed by the Constitution, including the right to judicial protection, are severely violated. This applies especially to all those who had judicial cases in the courts in the northern part of Mitrovica, which are out of function for many years, since they were destroyed by Serbian extremists. On that occasion, many documents and judicial cases have remained in the courthouse.

At the annual conference of the Court of Appeal, held on 26 December 2013, regarding the work of the Court in 2013, it was announced that from the former Court of Appeal in Mitrovica during this year were received over 400 court cases, which have expired. The Ombudsman considers this high figure of running statute limitations by a court as one of the most serious violations of human rights. Unfortunately, this simply means that there are no rights, no rule of law or social justice for these peoples.

During this year, many citizens of Mitrovica have submitted complaints to the Ombudsman regarding un-reviewed court cases and cases that have expired in the courts. The Ombudsman in all meetings with the competent local and international authorities, as well as in media, has repeatedly expressed this concern of citizens/claimants, with the aim to functionalise the judiciary in this municipality. All institutions and local and international competent authorities have completely failed in establishing the rule of law in these municipalities in Kosovo. This is the most drastic example of justice denial due to the lack of political will. This is the worst example of political will expression to the detriment of justice and human rights.

### ***2.28.3. European Union Rule of Law Mission in Kosovo - EULEX***

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<sup>257</sup> *Ibid*, Article 102, paragraph 2. "The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts."

During this reporting phase, EULEX continued to support the judicial and prosecutorial system in Kosovo in the rule of law field. 'Executive sector' with judges and prosecutors of EULEX, have the duty to assist the court towards sustainability and accountability, developing and strengthening an independent judiciary, free from political interferences and observing internationally accepted standards.

Judges act in mixed judicial panels with local judges for reserved areas of investigation and trial, such as: war crimes, genocide, terrorism, organized crime, corruption, inter-ethnic crime, grievous murder, economic crimes and other serious crimes, but also for the trial of civil cases of all kinds, pursuant to the law on jurisdiction.<sup>258</sup> KJC has no jurisdiction over EULEX judges and prosecutors, but they respond to EULEX Justice Component bodies.

During the year, OI has received the claim submitted by the claimants on the refusal of their request by the Kosovo Chamber of Advocates (KCA) for engagement and licensing of an international advocate.<sup>259</sup> The Ombudsman submitted a Special Report to the Republic of Kosovo regarding this case, recommending the suspension of the Regulation for licensing of foreign lawyers, respectively to improve the legislation. The Assembly of the Republic of Kosovo, on 2 May 2013, adopted the Law on the Bar, with amendments recommended by the Ombudsperson related to this issue.<sup>260</sup>

During this year, the Ombudsman has also received citizens' complaints against EULEX judges and prosecutors, for delays of court proceedings in case solving. Also, requests for trial monitoring, or even a request to receive notification related to criminal charges for war crimes were addressed to the Ombudsman. In some cases, the parties notify the OI in relation to the complaints submitted to EULEX judges and prosecutors.

In all cases involving complaints from the citizens, the Ombudsman has addressed letters to EULEX judges and prosecutors requesting information in relation to admissible claims and appeals of citizens and in each case the Ombudsperson has received a written response. The Ombudsman has had excellent understanding and cooperation with all judges and prosecutors of the international mission of EULEX in investigating all citizens' claims. The Ombudsman takes this opportunity to express his gratitude to EULEX justice component for mutual cooperation.

#### ***2.28.4. Judicial reform pursuant to the Law on Courts***

Following the adoption of the Law on Courts,<sup>261</sup> KJC has reformed the judicial system based on the law. Since 1 January 2013, Kosovo has a new organizational structure of the courts and court administration. Now the country's judicial system consists of the Basic Courts and their Branches, the Court of Appeal and Supreme Court of Kosovo.

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<sup>258</sup> *Law on Jurisdiction. Case Selection and Allocation of EULEX Judges and Prosecutors in Kosovo no. 03/-053*, Article 5, paragraph 1.

<sup>259</sup> *OI, case A. no. 12/2013*. Report with Recommendations for the Government of the Republic of Kosovo. The claimant has requested the engagement of an international advocate for his/her defence in the penal trial for war crimes, led by EULEX prosecutor. Claimants claimed that this is a violation of their rights guaranteed by the Constitution of the Republic of Kosovo, as the panel was mixed of international and local judges.

<sup>260</sup> *Law on the Bar no. 06/L-193*.

<sup>261</sup> *Law on Courts no. 04/L-199*.

Despite the preparations conducted by KJC for judicial reform, which resulted in the movement of judges and administrative staff, security of facilities, transfer of court cases according to the new jurisdiction, this process was also followed by various difficulties, such as: delays of case transfers from several District Courts to the Court of Appeal and the allocation of cases in the respective departments / judges. All these difficulties had a negative impact, especially in delaying the decision of court cases, as well as uncertainties caused to the parties in relation to their court cases.

OI has received several complaints and claims from citizens who demanded assistance regarding the lack of information about their cases, actually they wanted to be notified about departments where their cases have been transferred for review. In all these cases, the Ombudsman contacted the courts to obtain official information regarding court cases and informed the claimants.

## **2.29. Supreme Court of the Republic of Kosovo**

### ***2.29.1. Legal opinion on cases of expropriation and transfer of authority***

The Supreme Court of Kosovo, based on judicial reform and in the authority of the Basic Courts, under the Article 22 of the Law on Regular Courts, adopted on 15 January 2013 "*the legal opinion*", that all cases, which according to Article 36 of Law on Expropriation were addressed to the Supreme Court and were registered as administrative conflicts, to be transferred to the jurisdiction of the Basic Courts - general department, in whose territory is located the immovable property which is subject of expropriation, in order to establish the right compensation, within the meaning of Article 216 of the Law on Out Contentious Procedure.

Regarding the transfer of cases for decision in Basic Courts, and failure to proceed according to Article 36 paragraph 2 of the Law on Expropriation of Immovable Property,<sup>262</sup> 120 citizens complained at OI for violation of their rights to property and to protect the judicial rights pursuant to the law. The Ombudsman noted that there were delays regarding these cases of judicial procedures in decision of expropriation cases which were unreasonable and illegal. Since the right to property is one of the fundamental human rights, the courts should prioritise the handling of such cases.

### ***2.29.2. Law on Notary in service for citizens***

Functioning of the notary services, based on Law on Notary, has enhanced the quality of legal services to the benefit of citizens. This had direct positive effects on Courts and Municipalities, which were exempted from administrative and out contentious cases. The

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<sup>262</sup> *Law on Expropriation of Immovable Property, article 36, paragraph 2:* "If the Expropriating Authority is the Expropriating Authority of a Municipality, the complaint shall be filed with the concerned municipal court. If the Expropriating Authority is the Government, the complaint shall be filed with the Supreme Court of Kosovo."

judicial system for a long time has been considered as inadequate and inefficient to perform some legal services which are now performed by notaries, who are specialized in this field.<sup>263</sup>

Now citizens receive all notary services more easily and faster. This is a significant progress in the overall system of providing qualitative and faster services for citizens.

### ***2.29.3. Special Chamber of the Supreme Court of Kosovo (SCSCK)***

SCSCK for cases related to the Privatization Agency of Kosovo (PAK), as part of the Supreme Court of Kosovo, pursuant to the law, decides on appeals against the decisions of the former Kosovo Trust Agency (KTA) as predecessor of PAK, and claims against socially-owned enterprises with mixed panels of local and international judges.<sup>264</sup>

SCSCK, according to official notes of the KJC,<sup>265</sup> has a large number of court cases submitted by citizens. According to the 2013 Annual Report, statistics on the work of the courts show that SCSCK had a total of 16,424 cases, and resolved 3,819 cases, whereas as unsolved cases at the end of the year remained 12,605 court cases. Whereas SCSC in the 2012 annual report,<sup>266</sup> according to statistics on the work of the courts, had 10,422 cases, and resolved 1,109 cases, whereas 9,313 court cases remained cases at the end of the year.

From the comparative analysis of statistical reports on the work of courts, we can notice that there is an increase of the number of cases for 6,002, as unsolved cases in 2013. The Ombudsman is concerned about this fact, taking into consideration the current number of unsolved cases of 16,424 from SCSC. This should be considered as an alarming evidence for all competent institutions, especially Assembly of the Republic of Kosovo and the KJC, and that it is the last time for immediate action in this regard to guarantee judicial protection of human rights.

Unfortunately, considering the fact of increase in the number of unsolved cases and complaints filed by citizens for failure to initiate and delay of the judicial procedure, after filing of lawsuits,<sup>267</sup> for a long period of time, the Ombudsman concludes that neither the local judicial institutions nor EULEX competent mission in Kosovo did not undertake appropriate action to ensure trial within a reasonable timeframe, as required by Article 6, paragraph 1 of the ECHR.

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<sup>263</sup> **Notary** is a professional lawyer, public official, appointed by the Ministry of Justice to perform the activities defined by the law. They conduct the following services:

- Legal services for family and inheritance issues;
- Legal services for property issues;
- Legal services for economic and labour issues;
- Legal services for preserving objects and other documents;
- Legal services related to verification, legalization and other certificates.

<sup>264</sup> Law no. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters.

<sup>265</sup> Kosovo Judicial Council, 2013 Annual Report, Statistics on work of the courts, p. 3, in: <http://www.kgjk-ks.org/> (18.3.2014).

<sup>266</sup> Kosovo Judicial Council, 2012 Annual Report, Statistics on the work of regular courts, p. 3, in: <http://www.kgjk-ks.org/> (18.3.2014).

<sup>267</sup> OI has received a total of 26 complaints against SCSC, primarily for property issues, during 2013.



Therefore, on 2 August 2013, the Ombudsman sent a report with recommendations to the Kosovo Judicial Council and EULEX, with the recommendation to undertake necessary measures for the appointment of a sufficient number of judges and/or undertaking other necessary measures, which guarantee the review of cases submitted in SCSC, and delivering of decisions to all parties within a reasonable timeframe. In this report was also requested to undertake all necessary measures to reduce the number of cases, as well as to fasten cases remained as unsolved in SCSC.<sup>268</sup>

#### ***2.29.4. Increase of the number of unsolved cases and procrastination in the judiciary***

The Ombudsman has received many citizens' complaints regarding procrastination of court procedures in their cases, due to the fact that the courts have failed to handle the cases within reasonable timelines.

No significant progress was noticed in the situation of the judiciary due to the large number of unsolved cases remained from previous years, continued increase of the new court cases, insufficient number of judges, insufficient number of judicial assisting staff, and particularly the lack of legal professional co-operators. Certainly, even though it should not be generalized, inefficiency and ineffectiveness of judges and prosecutors, in this regard, should not be neglected, as well as corruptive, non-transparent behaviours of people working in these institutions.

2013 annual report and statistics on the work of the courts show that the courts had in total 885,677 open cases, resolved 419,422 cases, whereas at the end of the year as unsolved court cases remained 466,255 cases.<sup>269</sup> While in 2012, 312,903 cases were ongoing in the courts, 218,748 were unsolved.<sup>270</sup>

From the analysis of statistical data published in the 2013 Annual Report, it is noticed that the courts have resolved 419,422 court cases, whereas citizens have submitted 522,171 new claims at the courts. The Judiciary still receives many more cases than its capacity can handle them. The lack of professional human resources to keep-up and resolve all cases received is a very concerning fact to the Ombudsman. Therefore, Ombudsman requires from Kosovo Judicial Council to urgently engage in finding legal solutions in this regard.

Despite this severe situation in the judiciary, the Ombudsman finds no justification for procrastination of procedures in the decision of complaints for protecting citizens' rights and freedoms, when citizens are forced to wait for court decisions over the years.

#### ***2.29.5. The Basic Court of Prishtina - branch in Graçanica***

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<sup>268</sup> *OI, case ex officio, no. 362/2013*. Report with Recommendations, 2 August 2013, submitted to Kosovo Judicial Council and Special Chamber of Supreme Court of Kosovo.

<sup>269</sup> *Kosovo judicial Council Annual Report 2013*, statistics on the work of courts, p.3.

<sup>270</sup> *Ibid.*

Upon receiving a number of complaints from citizens of Gračanica municipality regarding procedures' procrastination concerning their cases, the OI has opened *ex officio* case against the Kosovo Judicial Council, in the Court Branch in Gračanica in order of complaints' investigation.

On 25 March 2013, the OI professional associate met with the administrator of the Basic Court in Prishtina - Gračanica branch and requested information regarding the causes of delays and the possibility to accelerate the procedure of solving the cases. On that occasion, she was informed that since 31 December 2012, there is no judge in this branch of the Basic Court in Prishtina and that the branch in Gračanica has over 1000 cases, civil judicial disputes awaiting decision, despite the fact that according to the reorganization of the judiciary in Kosovo, two judges have been foreseen for this branch.

After reviewing this case, the Ombudsman concluded that there has been a violation of citizens' right to an adequate judicial procedure within a reasonable timeframe. On 15 May 2013, the Ombudsman sent a report with recommendation to the KJC, demanding to make Basic Court in Prishtina - branch in Gračanica functional by appointment of two judges in this office, in order to start processing the citizens' lawsuits.

KJC, with the requisition dated 23.05.2013, within the legal deadline, notified the Ombudsman about the implementation of the recommendation, respectively the appointment of a judge in the Basic Court in Prishtina- branch in Gračanica.

This is a case of a fair cooperation, based on the law of a public institution with the Ombudsman, which deserves to be noted and greeted.

#### ***2.29.6. Conclusions of the Ombudsman in relation to judicial protection of rights***

The Ombudsman, following the investigation of claims filed against the judiciary, in many cases has found out that there were violations of human rights by the judiciary. Therefore, with the aim to eliminate violations of human rights and restitution of their rights, as well as to improve the legislation in the field of human rights, the Ombudsman sent reports to the judiciary together with recommendations to eliminate these violations.

Despite sincere efforts of many judges, prosecutors and judicial system associates, and despite accomplishment of many court cases, due to the abovementioned gaps, problems and omissions, the citizens are doubtful at the work of the judiciary. This directly causes the loss of the public's trust in the institutions of justice, and in the rule of law.

Due to non-functioning of the judicial system in the northern part of the country, citizens that had court cases in north Mitrovica courts have been denied the right to a fair trial which is guaranteed by the Constitution.

Citizens do not have a legal mechanism for protection of their right to have a trial within a reasonable timeframe, when this right is being violated by their local judiciary, respectively, the legal mechanism exists for financial compensation due to the material damage performed, delays of proceedings, and statutory limitation of judicial cases, as it is common in democratic countries with a genuine rule of law state.

Duration of civil proceedings and other procedures in the judiciary for years, results in impaired access of judicial protection of human rights by the courts.

Courts operate with insufficient human resources and lack of technical-material conditions for efficient work. This is especially emphasized in Basic Court of Prishtina and SCSCK.

This year, large number of statutory limitations of judicial cases presents one of the most serious violations of citizens' rights and freedoms guaranteed by the Constitution for judicial defence. Citizens do not have at their disposal any appropriate legal remedy for protection against these violations and injustice.

It is also noted an increase in the number of claims in which citizens are not satisfied with judicial decisions, due to the doubt in the objectivity of justice. They require undertaking measures by the Ombudsman, therefore, requirements for monitoring hearing sessions on both criminal and civil procedures, is increasing.

### **Recommendations:**

- The Assembly of the Republic of Kosovo, Government and the Kosovo Judicial Council

*- Expansion of the judiciary powers throughout the country, including the northern part of Mitrovica and the municipalities of Leposaviç, Zubin Potok and Zveçan, as foreseen by the Constitution of the Republic of Kosovo.*

- Kosovo Judicial Council and the Ministry of Justice

*- Initiate the development of a legal instrument that would comprise an effective tool in terms of Article 13 of the European Convention on Human Rights, which provides facilitation in the form of prevention or compensation regarding complaints for statutory limitation of judicial cases and excessive delays of judicial proceedings.*

*-Initiate the issuance of a provisional decision to ban the statutory limitation of judicial cases in the Republic of Kosovo, due to the risk of destroying the judicial system as a result of the denial of citizens to address the judiciary for resolving various conflicts.*

-Kosovo's Judicial Council

*- Increase the number of judges and professional associates of the court, so that all court cases are treated within reasonable time limits and without unreasonable delay of their decision.*

*- Increase the efficiency of the implementation of the State Strategy "Backlog Reduction" for reducing the number of pending court cases.*

- Courts

- *Execution and consistent implementation of judicial decisions within the timeframe foreseen by law.*
- *Increasing transparency and notifying all parties, upon they request to be notified on their cases, after reforming the courts according to the law and the case transferring within the legal competence.*

### **2.30. The report of the Ombudsman with the Constitutional Court**

The Constitutional Court is the final authority in Republic of Kosovo for interpretation of the Constitution and the compliance of laws with the Constitution. Its decisions are mandatory for the judiciary and all the other institutions of the Republic of Kosovo. This supremacy is asserted by the Constitution.<sup>271</sup>

The Ombudsman and the Constitutional Court, both are institutions complementary to each other. The Constitution of the Republic of Kosovo legitimizes the Ombudsman to address the Constitutional Court when it considers that human rights and freedoms are diminished, or in the worst case scenario, are violated by issuing a general legal norm.

The court, by defending the constitutionality of the state authorities' actions, simultaneously protects human rights. The Ombudsman continuously monitors the work of the court, and the practice of the ECHR and through its recommendations, opinions and suggestions it refers to the decisions of this two courts.

The Ombudsman is an authorized party to submit cases to the Constitutional Court only based on the Article 113 paragraph 2 of the Constitution, on issues related to the compliance of laws, decrees of the President or the Prime Minister and of the Government's regulations, and the compliance of Municipal Statute with the Constitution.

The Ombudsman, in all cases, after receiving the complaint, examines it from several aspects: First, is the raised issue a matter that falls within the competences of the Ombudsman defined in the Constitution, the Law on the Ombudsman or other laws? If the answer is positive, then the case is subject to a comprehensive internal analysis, following the path case analysis in its entirety and balancing of all the facts, based on the principle of proportionality. Only after such analysis the Ombudsman can make a decision.

Although court decisions are mandatory to all institutions in the Republic of Kosovo, in practice they are not always implemented.

Ombudsman faced with the claim of the independent union of the former employees of the Steel Factory - IMK Ferizaj during 2013, regarding not implementation of the decision of the Constitutional Court dated on December 7, 2010, no. REF.: AGJ 75/10. By considering their concern to be fair, and at the same time a violation of human rights, namely violation of the right to a Fair and Impartial Trial, the Ombudsman, through a report with recommendations, requested from the Government of Republic of Kosovo and Privatisation Agency of Kosovo to implement the decision of the Constitutional Court.

Even though the report contained a clear overview of the whole progress as well as recommendations were clear, the Ombudsman never received a response regarding these

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<sup>271</sup> *Constitution of Republic of Kosovo*, Article 124 [General Principles] and 116 [Legal Effect of Decisions]

recommendations by the Government and the mentioned agency, although the Constitution of the Republic of Kosovo obliges all institutions of the Republic of Kosovo to respond to the Ombudsman and to implement its recommendations.

In late 2012, the Ombudsman received a ruling from the Constitutional Court of Kosovo rejecting the Ombudsman's request for invalidation of some articles of the Law on the Ombudsman, as the demand was considered as submitted after the deadline. The court in this case did not consider the claim merits, arguing that the claim was filed after the six-month deadline set by the Law on the Constitutional Court, although legal violations continued.

Limitation of the deadline to submit cases by the Ombudsman in the Constitutional Court, is a matter that should be open for discussion, since the 6-month period appears to be short to convey such a large number of legal acts that are approved, given the capacity of the institution of the Ombudsman to follow all laws passed by the Assembly of Kosovo. Also, in this regard, as the change of the period of 6 months is proved by the failure to implement the laws in practice. Laws, whose implementation starts as of the date of entry into force, are very rare. On the other hand, only laws that are applied in practice, and face reality, can display their shortcomings, which should be avoided in practice.

It is clear to the Ombudsperson that the six months limitation is intended to serve the legal security and ensure that the evaluation of issues that are presented to the Constitutional Court are examined in a reasonable timeframe, thus avoiding the feeling of insecurity at the authorities. However, experience has shown that it is necessary and imperative for this deadline to be extended, since not always the negative effects of an anti-constitutional legal act are noticed immediately. Regarding this we can see the experience of almost all countries where the Constitutional Court has the same role.

The Ombudsman during this reporting year received 18 citizens' complaints related to the Constitutional Court and with claims that there is a violation of the Constitution.

During 2013, the Ombudsman has examined the constitutionality of two laws: the Law on Tobacco Control and Law no. 04/L-086 on the National Park "Bjeshkët e Nemuna".

The first claim was addressed by Kosovo Chamber of Commerce, with claims that the Law on Tobacco Control harms the business and free trade. They requested the abolishment of the Article 9.2 of the Law which states: *"Tobacco products are not allowed to be set or be visible in any place of sale, except at the time of the sales transaction, and should not be displayed [a] for commercial purposes in any other country"*.

The Ombudsman, after analysing the law and claims of its anti-constitutionality, came to the conclusion that the Assembly of Kosovo, respectively the deputies have carefully taken into consideration smaller restrictions as possible alternatives for achieving the purpose of the Law. During the drafting of this law, the Assembly of Kosovo was based in the instructions of the World Health Organization, which state that *"the effect of an incomplete ban on the advertisement of tobacco consumption is limited"*.<sup>272</sup> These consideration show that the decision of the Assembly to fully and not partially ban tobacco exposure was completely

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<sup>272</sup> Guidelines of World Health Organization regarding Article 13 of Framework Convention of the World Health Organization for tobacco control. In: [http://apps.who.int/iris/bitstream/10665/80510/1/9789241505185\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/80510/1/9789241505185_eng.pdf?ua=1) (18.1.2014).

within the boundaries of its legislative discretion, and the law itself, as regards to the evaluation of the Ombudsman, contained no constitutional violation.

In the second case, a group of residents of the Rugova area, complained to the Ombudsman claiming that the Law no. 04/L-086 on National Park "Bjeshkët e Nemuna", violated their property rights. They asked the Ombudsman to ask the Constitutional Court to abolish this law and to declare it anti-constitutional. After meetings with local residents, and consultations with the Parliamentary Committee on Agriculture, Forestry, Environment and Spatial Planning as well as after analysing the law in question, the Ombudsman was not convinced that this law violated the property rights of the residents and as such rejected the claim as unfounded.

## **Recommendations**

*The 6-month period for submitting claims by the Ombudsman to the Constitutional Court to be removed, or in the best case scenario the right of the Ombudsman to submit claims to the Constitutional Court not to be time limited according to the laws.*

### **2.31. Use of languages**

The Constitution of the Republic of Kosovo,<sup>273</sup> Law on Use of Languages,<sup>274</sup> Law on the Protection and Promotion of the Rights of Communities and their members<sup>275</sup> and the Law on Local Self-Government,<sup>276</sup> obliges all public institutions and service providers to ensure equal use of both official languages, Albanian and Serbian, as well as official languages in municipalities. Other community languages, such as Turkish, Bosnian and Roma language, are in official use at municipal level, based on the fulfilment of the conditions prescribed by law.

The Ombudsman has treated the problem of the use of other languages in its previous annual reports and in its recommendations, which were addressed to the responsible government bodies, has highlighted the violation of legal provisions for the use of official languages. The causes of the problems mentioned above were not removed even during 2013. Law on languages is still not implemented in full as required by the law, both at central and local level. Human and financial resources are still lacking, which represent an obstacle and threatens access to multi-linguistic public services and the participation of minorities in public life.

The matter of translation, for minority communities in municipalities, still presents a problem due to the large volume of work which the translation unit faces, the small number of interpreters, lack of adequate qualified interpreters and funds etc. Inscriptions in the official languages or languages in official use in public buildings and inside them are still incomplete or incorrect. There are still problems and data written incorrectly in citizen's personal documents as well as names of places in road signs throughout Kosovo.

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<sup>273</sup> Constitution of the Republic of Kosovo, Article 5

<sup>274</sup> Law on the use languages no. 02/L-37

<sup>275</sup> Law on the protection and promotion of the rights of communities and their members in Kosovo no. 03/L-047

<sup>276</sup> Law on local self government no.03/L-040.

In the municipalities in the north of Kosovo, the use of official languages is not respected at all. However it should be noted that, at the end of December 2013, by the decision of the Ministry of internal Affairs, biometric identity cards will be issued in Turkish language.

The terms are still not standardized in the official languages and translation guidelines. Due to yearly omissions and abuse of the application of the Law on languages, the Commission for the Rights and Interests of the Communities in the Kosovo Assembly has established a working group for monitoring and implementing the Law on Use of Languages.<sup>277</sup>

During the reporting period there were no visible movement and action of the government regarding Ombudsman's recommendations, given in the last year's annual report, which has to do with awareness and the importance of creating appropriate conditions and surroundings for learning the official language and their inclusion in Kosovo's education system. This now presents a problem, that in the near future will create even greater ones in the implementation of the Law on Use of Languages.

The issue of language is a very crucial issue in protecting and advancing the rights of communities in Kosovo, since it affects many other areas of special importance to communities, such as education, political action, equal employment opportunities and media.

### ***2.31.1. Office of the Language Commissioner***

After the establishment of the Office of the Language Commissioner,<sup>278</sup> within the cabinet of Prime Minister, which started to work late last year, after appointing the Language Commissioner, employment of the staffing office, providing space and resources, creating two support mechanisms for the Language policy Council and Language policy Network, the Government has provided institutional support in the implementation and strengthening of language policy and has shown political willingness and desire to overcome existing problems towards the complete implementation of the Law on Use of Languages.<sup>279</sup> The commissioner's mandate and the function, which he/she performs in Kosovo are considered very powerful compared to other institutions with similar character throughout the world.<sup>280</sup>

During the reporting period, the Network for Language Policy was established, which will ensure that institutions appoint responsible officials through which the Office of the Language Commissioner can contribute with the aim of a better implementation of the Law on the Use of Language.

Since it was mentioned in last year's report of the Ombudsman that communities in Kosovo have a very small chance of learning any official language aside from their own mother language, an initiative is launched on this regard and during the reporting period, the Office of the Language Commissioner in collaboration with the European Centre for Minority Issues (ECMI), with the support of the OSCE's Office for Minority Rights, has initiated a project within which somewhere around 270 official were trained only this year in ten municipalities

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<sup>277</sup> Commission for the rights and interests of the communities and return meeting <http://www.kuvendikosoves.org/?cid=3.128.5538> (01.11.2013).

<sup>278</sup> Regulation no. 07/2012

<sup>279</sup> Ombudsman informed in detail regarding this matter on the annual reports of 2011 and 2012, the part on the Use of Languages.

<sup>280</sup> The statement of Mr. Astrid Tors, OSCE High Commissioner on Minorities: <http://www.komisioneri-ks.org/?page=3,61> (23.12.2013).

throughout Kosovo.<sup>281</sup> This is a very important project since it strengthens capacities and provides opportunities for officials to better understand the language of other communities, and increases the possibility of a better communication between them.

After the publication of the ex-officio report of the Ombudsman, last year, on the use of official languages in official websites of the municipalities of the Republic of Kosovo,<sup>282</sup> the Language Commissioner monitored the official websites of the Ministries and concluded that in many ministries, information is not published in both official languages and that they are not updated regularly or are updated only in one language, mainly in Albanian language.

Furthermore, the problems in relation to the quality of translations of laws and regulations into Serbian language, conducted by the institutions of Kosovo, both at central and local level are not overcome, and neither are the problems about the quality of documents translated into Turkish and Bosnian languages, which are officially used in many municipalities. This is a problem due to the lack of professional translators from these communities, who would translate documents from Albanian and English language, or even from other languages into their own mother language. A quality translation into Serbian language or any other language cannot be expected from people who are not native speakers of the language in which they translate, except in rare cases. The number of professional translators in these languages in the institutions of the Republic of Kosovo is extremely limited.

### ***2.31.2. OI's activity in protecting the right of language use***

Representatives of the Ombudsperson during the reporting period have held two meetings with the language commissioner regarding the complaints submitted by the citizens to the Ombudsperson Institution, which are related to the use of official languages in Kosovo and the implementation of the Law on Languages, as well as the ability to cooperate in this regard. In these meetings, the Commissioner emphasized that, in accordance with the recommendations of the Ombudsman, he will influence to improve the quality of the translation of laws and sub-legal acts and in this regard, will try to provide additional financial assistance through personnel funds for interpreters and qualified lecturers. It was also emphasized that in the near future, in collaboration with UNDP and ECMI, it is planned the standardization of the terminology and development of an adequate vocabulary for translators.<sup>283</sup>

Upon the request of the Committee on Rights, Interests of Communities and Returns, Ombudsperson representatives participated in the public hearing on the monitoring of the Law on Use of Languages, where they reflected their yearly observations on the implementation of this law in practice, since the day of its entry in force.

At the end of this discussion, with the aim of improving the implementation of the Law on Use of Languages, the participants expressed their belief that learning Albanian and Serbian language should start in the primary education, and that they should organize trainings and seminars for translators and complete the standardization of language.<sup>284</sup> Even before the

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<sup>281</sup> Information obtained from the meeting held between representatives of Ombudsperson with the language commissioner, held on 29.11. 2013.

<sup>282</sup> *OI, case A. no. 275/2012*

<sup>283</sup> The representatives of the Ombudsman held meetings with the language commissioner on the date 21.03.2013 and 29.11.2013.

<sup>284</sup> Public hearing on the implementation of the law on the use of language held on 5.06.2013.



debate, the Ombudsman presented these and other recommendations in the Annual Report of 2012.

During the reporting period, OI has received several complaints in relation to the right of using the official languages both at the local and central level. In this regard, the Ombudsman in the investigation phase, has found violations of the law and of the right to use the language and based on this he has sent a report with recommendations to the responsible parties, which have informed the Ombudsman that they have acted in accordance with the provided recommendations.<sup>285</sup>

#### **Recommendations:**

- *The Government of Kosovo should ensure, at the central and local level, the strengthening of the capacity of public institutions in order to observe and in qualitative manner to implement the Law on Use of Languages.*
- *All central institutions in the Republic of Kosovo and all municipalities in Kosovo should ensure the hiring of professional translators of Serbian and other official languages, with the aim of improving the translation of documents into these languages.*
- *The Government of Kosovo, together with other relevant ministries should ensure that Kosovo's education system encourages language approximation and take measures with the aim of ensuring classes in other official language.*
- *All institutions of the Republic of Kosovo should provide proper training for civil servants, in order to ensure the teaching of the two official languages in the territory of the Republic of Kosovo, especially in Serb-majority municipality, with the aim to overcome language barriers.*

#### **2.32. The rights of communities and their members**

In the Republic of Kosovo, there are many different minorities, such as Serbs, Bosnians, Turks, Croats, Montenegrins, Roma, Ashkali and Egyptians. The rights of minority communities are guaranteed by Article 59 of the Constitution of the Republic of Kosovo, which is related to the protection in the field of culture, identity preservation, education, use and writing of the language, access and representation in the media. In addition to Article 59, it is worth mentioning Article 60 which deals with the formation and functioning of the Consultative Council for Communities, as well as Articles 61 and 62 which guarantee the representation of minority communities in Kosovo into state bodies of central and local level. Also, in addition to the abovementioned articles, minority rights in the Constitution are protected by the Framework Convention for the Protection of Minorities,<sup>286</sup> which aims to promote the fully and effective equality of minority communities in all economic, social, political and cultural areas.

During the reporting period there were no major changes in terms of significant improvement of the situation in which minority communities live in Kosovo. In this report, similar to the previous one, the matters regarding the observation of fundamental rights of citizens, members of minority communities, and rights set out in Articles 59, 60, 61 and 62 of the

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<sup>285</sup> OI, case A. no. 340/2013. The liable party - Municipality of Prizren - Department of Cadastre, Geodesy and immovability; OI, case A. no. 499/2013 case. The liable party - Ministry of Internal Affairs; ex-officio A. no. 334/2013. Liable parties: Ministry of Finance and Ministry of Spatial Planning has not responded yet to the recommendations.

<sup>286</sup> The Constitution of the Republic of Kosovo, Article 22, paragraph 4.

Constitution of the Republic of Kosovo will be mentioned. Additionally, the Institution of Ombudsperson (OI) in this part of the annual report will emphasise the successes and failures related to return of displaced persons and refugees in Kosovo, their integration, means of public information, education, employment, representation of minorities in government bodies, as well as the right to peaceful and unhindered enjoyment of property right and other rights emerging from this right.<sup>287</sup>

### ***2.32.1. The return of displaced persons and refugees to Kosovo***

Similar to previous periods, even during 2013, the trend that reflects an ongoing lower number of returnees, members of minority communities still continues. This situation is about people who voluntarily return to countries where they lived until 1999.<sup>288</sup>

The return of displaced persons and refugees during 2013 was significantly lower compared to last year (In 2012 in Kosovo returned 662 people, whereas during 2011, 1,143 members of minority communities returned),<sup>289</sup> which shows that the matter of return, both at local and central level, should be treated more seriously.

Ministry for Communities and Returns (MCR) provides assistance to returnees. Special emphasis should be placed on the project that has to do with the return and re-integration of Roma, Ashkali and Egyptians,<sup>290</sup> and also on the drafting of the MRC's strategy regarding the return of displaced persons and refugees for the 2014-2018 period. The aforementioned MRC strategy foresees also the initiative for proposal of drafting the law for displaced persons,<sup>291</sup> even though MCR has some omissions in its work. In fact, representatives of several municipalities of minority communities in Kosovo, during the meeting with OI's representatives have disclosed certain complaints about the work of this ministry.

In fact, the municipality of Ranilug, since March 2013 has submitted to this ministry 35 requests for assistance to returnees of this municipality which MRC has in principle accepted, however, until December 2013, none of the above requirements is fulfilled. According to the Head of the Office for Return and Communities in the municipality of Ranilug, the only assistance that the municipalities and returnees have is from international organizations (Mercy Corps and the Danish Refugee Council) that help as much as they can.<sup>292</sup>

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<sup>287</sup> OI representatives for the purpose of preparing this report have collected information throughout Kosovo during numerous conversations with local interlocutors (citizens, representatives of municipal that are members of minority communities, local NGOs, etc.), as well as with international organizations (OSCE, UNHCR, ECMI, etc).

<sup>288</sup> Office of the Head of the UNHCR mission in Prishtina, statement of statistical data updated at the end of November 2013. According to UNHCR data of January to the end of November of 2013 in Kosovo have returned 402 people, members of minority communities, namely Serbian community, 19 Roma, 112 Ashkali / Egyptians, 39 Bosnians, 2 Gorani and one member of Turkish community.

<sup>289</sup> Office of the Head of the UNHCR mission in Prishtina, statement of statistical data's for 2011, 2012, 2013.

<sup>290</sup> MCR, in: <http://www.mkk-ks.org/?page=3,12,630> (21.12.2013).

<sup>291</sup> MCR, in: <http://www.mkk-ks.org/?page=3,12,635> (21.12.2013).

<sup>292</sup> On 27 November 2013, OI's legal adviser has held a meeting with the official on human rights and the Head of Returnees Office in the Municipality of Ranilug. In the meeting, it was obtained the information that MCR in March 2013 has received 35 requests of the Office for Communities and Return of Ranilug municipality, 5 requests for the construction of houses, and 30 for construction material, however until December 2013 no claims were realized and MCR gave no explanation why there are delays in the implementation of these requests. Also, in the municipality of Killokot, officials of the Office for Community and Returns complain due to lack of funds and aid which is dedicated to returnees and which is allocated by MCR.

MRC is one of the signatories of the action plan for the return of displaced persons in cities with representatives of the municipality of Prizren, Ferizaj and Shterpce.<sup>293</sup> This is a positive step in the returning process, but before signing such agreements, state authorities must first and foremost protect the returnees and their property, since they as a vulnerable category of population, are target of attacks in several localities where they return.

In fact, in this context, during 2013 several attacks occurred against returnees, members of minority communities and their property in the villages of Grabac, Binçë and Berkovë (the municipality of Klina), Belo Polje (the municipality of Peja), Bablak (the municipality of Ferizaj), Lig and Kosh (municipality of Istog).<sup>294</sup>

Same as in previous years, the return is affected by the fact that a large number of occupied properties of displaced persons and refugees still are registered at the Kosovo Property Agency (KPA) and the competent courts, which are still characterized in delays in the work of cases of proprietary nature. OI is still working on unsolved cases and complaints that citizens have filed due to the duration of proceedings at the KPA and the courts in Kosovo, through which claimants have requested that their property is released of illegal holders and return back to them as the rightful owners.<sup>295</sup>

In this report, as in all previous reports, OI has drawn the attention of competent institutions that still a part of minority communities' who have the status of internally displaced persons live in containers in collective settlements throughout Kosovo. In this case, the OI appeals for an urgent solution for displaced persons, and to take care of them by providing housing, as well as devoted work to return the displaced persons into their homes.

### ***2.32.2. Education of minority communities' members***

As in previous reports, and during this reporting period, the situation in this area did not undergo any major changes. The situation is still complex, since two parallel systems of education are functioning, one pursuant to the curriculum of the Ministry of Education, Science and Technology (MEST) of the Republic of Kosovo and the other one pursuant to the curriculum of the Ministry of Education of Serbia, which operate separately since 1992 and especially after 1999. The schools that conduct teaching in Serbian language according to the curriculum of Serbia do not cooperate at all with MEST in any field.

The Turkish and Bosnian community, a large number of community members of Ashkali and Egyptians, as well as a number of members of the Roma community, attend school according to the MEST curriculum. Members of the Serbian, Croatian,<sup>296</sup> Montenegrin, Gorani (Dragash) and a large part of the Roma community, attend school according to the curriculum of the Republic of Serbia.

Members of the Roma, Ashkali and Egyptians community members still, although in a smaller percentage attend primary and secondary schools, which according to data from

<sup>293</sup> MCR, in: <http://www.mkk-ks.org/?page=3,12,623> (21.12.2013).

<sup>294</sup> *Ibid.*

<sup>295</sup> OI, cases: A. no. 64/2010, A. no. 338/2010, A. no. 532/2012 A. no. 513/2013; A. no. 533/2012 A. no. 226/2012, A. no. 507/2013, A. no. 598/2013. Citizen complaints filed in OI regarding unsolved property claims by the PAK and judicial bodies.

<sup>296</sup> Data and information received from NGO "Zëri i Romëve, Ashkalive dhe Egjiptasve".

MEST is 14%. This data includes only schools that work under MEST's curriculum. There are no such or similar data for Roma who attend schools in facilities where school work according to the curriculum of the Republic of Serbia.<sup>297</sup>

During this reporting period, the civil sector has done everything to involve children as well as members of the Roma, Ashkali and Egyptian communities in education process in a way which will present teaching as pleasure but will be compulsory at the same time. Due to local and international NGOs, 30 centres of education for members of this community were opened, whose primary activity is helping children in preschool and pupils with their homework and to also assist them to apprehend the curriculum which they have passed in school. Such programs generally apply after school hours, while a part of the program is implemented in the school buildings, and the rest in private homes.<sup>298</sup>

In addition to helping students with homework assignments during the lesson, Roma NGOs have initiated an education program (training for writing and reading) of persons belonging to these communities, as well as granting scholarships to high school pupils, thus motivating secondary school pupils not to drop out of school.

Such programs that support education are accomplished only due to donations from international organizations and embassies of the countries of Western Europe in Kosovo. However, the sustainability of programs in the field of education, and motivation of children of Roma, Ashkali and Egyptians community to continue their education also depends on cooperation with local institutions, particularly with MEST, but also with the Office of Government for Community Affairs, but according to the representatives of the civil sector, such cooperation is minimal and almost non-existent.<sup>299</sup>

Given what was said above, it is necessary to engage competent institutions and support such initiatives, so that children, members of Roma, Ashkali and Egyptian communities are encouraged to continue education and to increase parents' and children's awareness about the importance and necessity of education.

Members of the Gorani community of Dragash Municipality attend classes in Serbian language according to the curriculum of the Republic of Serbia, while the number of pupils in primary and secondary schools is about 1.100. Classes are held in two shifts, during the first one, children that are members of the Bosnian community attend classes according to the curriculum of the Republic of Kosovo, while on the second shift children that are part of the Gorani community attend classes according to the curriculum of the Republic of Serbia.

Members of the Turkish and Bosnian communities, attending classes in their native language by the MEST curriculum, continue to face the problem of textbooks in their own language. OI reported this problem also in the previous years. However, the problem is still not resolved. The quality of most textbooks that MEST has developed in the Turkish and Bosnian language is very low, therefore the teaching staff together with students manages to a degree to compensate the lack of learning material (for example textbooks are provided from Republic of Bosnia and Herzegovina). Regarding this problem, the Turkish community has moderately

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<sup>297</sup> Data and information received from NGO “Zëri i Romëve, Ashkalive dhe Egjiptasve”.

<sup>298</sup> *Ibid.* Information obtained by OSCE representatives during the meeting held on 5 December 2013 at the OSCE Office in Graçanica.

<sup>299</sup> Data and information received from NGO „Zëri i Romëve, Ashkalive dhe Egjiptasve“.

solved the problem of textbooks in schools, because the Turkish Embassy has provided textbooks for the school year 2015/16.<sup>300</sup>

Members of the Turkish and Bosnian community are not satisfied with the number of state institutions of higher education in their languages. Turkish community members can attend higher education in their communities' language at the Faculty of Education at the University of Prizren and the department of the Turkish language and literature at the University "Hasan Prishtina". However, a large number of Turkish community students continue their education in Turkey. Members of the Bosnian community can acquire higher education in their own language in the Faculty of Applied Science and Business in Peja, and the Faculty of Education at the Public University of Prizren. Similarly to students of the Turkish community, the Bosnian students continue their education in universities of Bosnia and Herzegovina or Serbia.

Regarding the curriculum of the Ministry of Education of the Republic of Serbia, primary and secondary education is pursued in areas with a majority of members of the Serbian community, Gorani community and a part of the Roma community. Higher education also operates under the curriculum of the Republic of Serbia, while the university centre is located in the north of Mitrovica, while some faculty departments are operating in Gračanica.

Regarding primary and secondary education in the Serbian settlements of Kosovo, which operates under funded education system by the Republic of Serbia; the biggest problem is the poor quality of education. Among teachers there is also a part of the staff who does not meet the criteria in terms of education, experience and expertise. In addition, a big problem is the overcrowding of schools, thus of the buildings where the teaching and learning is conducted. Except primary school several high schools are located in the same building, so pupils attend throughout three shifts, as is the case of schools in Gračanica, Llapnasellë, Shtërpce, etc.<sup>301</sup>

Until drafting of this report, it should be highlighted that there is no existing cooperation between MEST and schools that work in the Serbian language, which do not accept any contact with MEST nor institutions of the Republic of Kosovo.

### ***2.32.3. Consultative Council and the Office of Community Affairs***

The Constitution of the Republic of Kosovo in Article 60 foresees the creation of the Consultative Council for Communities, which is assigned to provide the mechanisms for regular opinion exchange between the government and the members of minority communities, as well as on behalf of minority communities to comment on political and legislative initiatives and give its own proposals during the initial stage, also may require for its opinions to be included in relevant projects and programs. Consultative Council for Communities (CCC) operates within the cabinet of the President of Kosovo and consists of representatives of all communities in Kosovo from civil sector and community associations.<sup>302</sup>

CCC constitutes the main body through which communities submit their stands and problems to the government. Also, CCC, based on its mandate, represents a key body for the presence of minority communities in the process of issuing laws and decision-making in the Republic of Kosovo.

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<sup>300</sup> Report of the NGO "Qendra për integrim të bashkësive etnike" from Prizren, compiled the report on observance in relation to the rights of citizens in municipality of Prizren. The Legal advisor obtained the information, concerning Turkish and Bosnian community, from the civil sector from Prizren.

<sup>301</sup> *Ibid.*

<sup>302</sup> *Constitution of the Republic of Kosovo*, article 60

The Council major problem still is the lack of adequate budget for any fieldwork, drafting of reports and brochures and any other type of initiative that aims to present the problems faced by members of communities in Kosovo.<sup>303</sup>

Considering that only in 2013, the Consultative Council for Communities began to work actively to make sure the problems of communities are heard even among the highest state authorities in the Republic of Kosovo.

Regarding the Office for Communities within the Cabinet of the Prime Minister, this office was established by Government Decision no. 06/34 for the establishment of the office from 3 September 2008. This office is mandated for resolving practical needs of communities.<sup>304</sup>

After a period of none operation of this office, the lack of results and transparency at work, the progress during the years of 2012 and 2013 is visible, while positive results are evident and related to various initiatives, reports and concrete assistance on fieldwork due to the commitment of the Office to the competent authorities in order to help community members. Also, implementation of the action plan 2013 objectives may also be positively assessed, such as; the cooperation with the central state authorities, municipalities, the civil sector, embassies and international organizations and social assistance for residents that are at social risk. On this occasion, OI welcomes the report of this Office which deals with evaluating the recruitment of members of minority communities in public services and enterprises in Kosovo,<sup>305</sup> as well as the beginning of cooperation with the Consultative Council for Communities.<sup>306</sup>

#### ***2. 32.4. The state of Roma, Ashkali and Egyptian communities***

Roma, Ashkali and Egyptian communities, during this reporting period, faced problems in terms of socio-economic conditions, education of children and youth, housing conditions in which they live and the issue of their integration into society. Projects for closing the camps of displaced Roma and Ashkali in northern Kosovo are generally completed.

The strategy for integrating Roma, Ashkali and Egyptians (2009-2015) and its action plan for implementation highlight concrete measures in order to better integrate members of these communities within Kosovo's society. However, the implementation of this strategy continues to lag and shows no proper effects.<sup>307</sup>

To implement the above strategy and action plan during the reporting period there was also a positive move in the sense that there is political will, and the issue of implementation of the strategy is more present in government institutions in general, unlike the past 5 years when almost nothing was done.

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<sup>303</sup> European Council for Minority Issues, Kosovo (ECMI), <http://www.ecmikosovo.org/?p=3121> (22.12.2013).

<sup>304</sup> At: <http://www.kryeministri-ks.net/?page=3.134>, and <http://www.kryeministri-ks.net/zck/?page=3.54> (22.12.2013).

<sup>305</sup> Office of Community Affairs within Prime Minister's Office, at: <http://www.kryeministri-ks.net/zck/?page=3.4.164> (22.12.2013).

<sup>306</sup> Office of Community Affairs within Prime Minister's Office, at: <http://www.kryeministri-ks.net/zck/?page=3.4.165> and at: [http://kryeministri-ks.net/zck/repository/docs/Zajednicki\\_dokument\\_final.pdf](http://kryeministri-ks.net/zck/repository/docs/Zajednicki_dokument_final.pdf) (22.12.2013). On 12 December 2013 Office of Community Affairs within the Office of the Prime Minister organized the promotion of research "Assessing recruitment of members of minority communities in services public and enterprises in Kosovo" which was conducted in collaboration with UNDP and Novus Company which conducted the field research.

<sup>307</sup> For the purposes of this report, OI regarding the strategy and action plan has talked to representatives of the Roma community and Director of NGO "Voice of Roma, Ashkali and Egyptians." The Commission has highlighted as a particular challenge the lack of supervision and report writing capacities in combination with weak institutional cooperation, limited collection of data and the data processing practice.

### **2.32.5. Readmission and repatriation**

When it comes to readmission and repatriation, in 2013, from countries of residence, mainly from Western European countries, a total of 2,061 persons have returned.<sup>308</sup> 64% have been forcibly returned, while 36% have returned voluntarily. Most of them returned from Germany, mainly members of Albanian nationality, then Roma, Ashkali, Egyptian, etc. The largest number of repatriated persons (voluntary or forced) is in the municipalities of Gjilan, Mitrovica and Prishtina.

Reintegration strategy and action plan (2013-2017) is based on the principles of sustainability, identification of gaps and needs, specific strategic goals, aid harmonization and avoidance of positive discrimination. Large number of repatriated and reintegrated persons poses a major challenge for institutions. Also, the process itself presents great financial expense, which is an additional challenge for the Government of the Republic of Kosovo. Provision of assistance and support, despite elementary services, include: housing, renovation/construction of houses destroyed/damaged, funding projects in order for the repatriated persons to be able to generate incomes, and other types of support.

Repatriated Persons that have difficulties to generate incomes within a short period of time, affect the increase of number of persons that depend on social assistance, and burden even more Kosovo's budget. In order to have a successful process of reintegration of repatriated persons it is very important to create opportunities for their professional training, employment opportunities, or provision of opportunities for the establishment of profit-making activities in order to generate income through the establishment of business.

Also, the repatriated persons of Serbian nationality in the municipality of Ranilug face the same challenges that impede their sustainable integration. Nine Serbian families were repatriated, returned to their homes, on this occasion they received food and hygiene packages but also obtained necessary documentation from the Ministry of Internal Affairs (MIA). They face the same problems regarding the need to establish profit-making activities through business plans. A number of people have registered their companies but are awaiting business plans for a longer than needed period, MIA has allegedly lost all the submitted documentation. Therefore, citizens had to resubmit the documentation, but despite this, the overall problem is the lack of efficiency of strategy implementation as a result of political will in the central level, given the fact that only a small percentage of funds reaches repatriated persons.<sup>309</sup>

Many repatriated persons have spent a long time abroad. For young people, especially for children this means that they often do not know any of the official languages in Kosovo, which makes it difficult to access to education, training, social and medical assistance, as well as access to aid that the public offices provide.

### **2.32.6. Media**

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<sup>308</sup> Report of the Ministry of Internal Affairs - "National Strategy for Reintegration of Repatriated Persons", mirrors the updated statistical data updated by the end of October 2013, at: <http://mpb-ks.org> (02.12.2013.). However, according to the statistical data of the Office of the UNHCR Chief of Mission in Prishtina, the date updated by the end of November 2013, the number of repatriated persons is 852.

<sup>309</sup> Report of the Ministry of Internal Affairs, at: <http://mpb-ks.org> (02.12.2013.), and information gathered on the occasion of the OI with the chief of the office for community and return to the municipality of Ranilug.



The Constitution of the Republic of Kosovo ensures access and representation of minority communities in public media,<sup>310</sup> which implies the establishment and use of their media, providing information in their own language, among other also through the daily newspapers and cable services, and use of a number of frequencies for electronic media, all in accordance with international standards.

When it comes to the media, during the reporting period for 2013, OI has noticed positive changes in comparison to previous reporting periods. In April 2012, a new law on Radio Television of Kosovo (RTK) was adopted, which foresees the creation of a second RTK channel only in the Serbian language.<sup>311</sup>

On June 3, 2013, RTK 2 started broadcasting the program. Earlier only the news in Serbian language were broadcasted, whereas as of September 2013 the morning program, news, reportage from the field, documentaries and an evening political show are broadcasted. Ashkali and Egyptian communities also have the opportunity through Kosovo's public television as well as through media, to promote their communities and to present the problems that members of these communities face every day. There is still the need for expansion and recruitment of additional broadcasting staff in languages of other communities, especially in Turkish, Bosnian and Roma.<sup>312</sup>

Kosovo's Public Television, RTK1, based on the law on RTK strictly implements the obligation to at least devote 15% of its program to minority communities in their native languages.<sup>313</sup> In accordance with this, every day (Monday to Friday) they broadcast 10 minute news programs and a program in Roma language which is broadcasted once a week.

#### ***2.32.7. Representation in the central and local government and employment***

Kosovo possesses a sophisticated legislative framework for the general protection of minority groups. The Constitution of the Republic of Kosovo explicitly covers the representation of communities in state institutions and public enterprises.<sup>314</sup> In addition, a number of laws protect the rights of minority communities in Kosovo.<sup>315</sup> Law on Civil Service no. 03/L-149 in Kosovo foresees applicable standards for representation and employment of members of minority communities in Kosovo's civil service, and requires that at least 10% of the positions on central level are reserved for "persons belonging to communities that are not a majority in Kosovo", while the representation on municipal level should be in proportion to the demographic profile of the population in the municipality in question.

The state administration is the backbone of a functional state since it guides government's policy and provides public services to citizens, therefore Kosovo must establish a comprehensive and multi-ethnic state administration. Indeed, the Law on Civil Service

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<sup>310</sup> *Constitution of the Republic of Kosovo, article 59, point 10 and 11.*

<sup>311</sup> *Law No.04/L-046 on Radio Television of Kosovo, April 2012.*

<sup>312</sup> Based on the discussions held with the RTK editors of programs in Turkish, Bosnian, and Roma language

<sup>313</sup> *Law No.04/L-047 on Radio Television of Kosovo, article 6, paragraph 6, also Law No.04/L-046 on Radio Television of Kosovo.*

<sup>314</sup> *Constitution of the Republic of Kosovo, article 61 "communities and their members have the right to fair representation in the case of employment in public bodies and enterprises."*

<sup>315</sup> *Law no. 04/L-020 on the amendment of the Law 03/L-047 to protect and promote the rights of communities and their members in the Republic of Kosovo (2011); 02/L-37 Law on Use of Languages, Law on primary and secondary education in Kosovo, Law on Higher Education in Kosovo; Law on Cultural Heritage.*



obligates all state institutions for a defined quota (at least 10%) for the employment of officials from minority communities in state administration, as well as to fulfil the positive obligation of implementing some active employment measures.

Office of Community Affairs within the Office of the Prime Minister, in April 2013 published a report on assessment of minority communities' representation.<sup>316</sup> Initially, regarding the representation of minority communities, it is found that 7.7% of the state administration officials and institutions at central and local levels (excluding public enterprises) come from minority communities. Ashkali, Egyptian, Gorani and Roma Community members are extremely underrepresented in proportion to the total population of these communities, while the Bosnian, Turk and Serb communities is close to reaching the threshold of representation in state institutions. In terms of gender balance, state officials belonging to minority communities in general are female, which is not the case with other public officials in general.

Independent agencies and municipalities have the highest average representation rate (8.9% and 8.8%, for each separately), while the public enterprises have the lowest (2.2%). State institutions (ministries and representative institutions) and executive agencies have a relatively low rate of representation of minority communities (6.6% i.e. 6.2%). Based on the fact that the central institutions must have at least 10% of state officials from minority communities, whereas local level institutions should have a quota of state officials from minority communities in proportion to the ethnic composition of each municipality in question, we can conclude that few central institutions have met the basic threshold of 10% representation. More political will, resources and coordination between central and local institutions, is needed, for effective integration of minority communities in Kosovo.<sup>317</sup>

Considering job positions, members of other minority communities in general are employed in administrative and professional positions, but are not quite represented in leadership positions in state institutions. Almost all state officials from the members of Ashkali, Egyptian, Gorani and Roma communities are employed in administrative positions.

In terms of education, twice less state officials from minority communities have university degree. However, as highlighted in this report, the reason for this may be the current unrecognized degrees of higher education from the University of Northern Mitrovica, which operates under curriculum of the Republic of Serbia, as well as due to certain problems of regarding recognition of diplomas obtained abroad by the responsible ministry.

Most institutions announce job vacancies in the languages of minority communities, while in the case of employment in most public institutions positive discrimination measures are applied. Also, institutions actively work to approach members of these communities by providing training for professional development. However, a small percentage of institutions have scholarship programs, counselling, in-service training, and workshops on discrimination, joint employment strategies and permanent lists of candidates from minority communities.

In general, central and local institutions in Kosovo employ around 5.6% of state officials from minority communities.<sup>318</sup> Excluding public enterprises, the representation of minority

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<sup>316</sup> The report is based on surveys conducted in 104 state institutions and shows the lack of "proper and right representation of all communities, including women in the leadership of Kosovo".

<sup>317</sup> Office for Community Affairs report of May 2013, as well as information extracted from the OI's research for the purposes of this report.

<sup>318</sup> That number is less than 7.3% which was published by the European Centre for Minority Issues (ECMI) which within its research has included even the public enterprises.

communities increases to 7.7% which is the average value that is similar to the 8.0% rate of OSCE's assessment, in which public enterprises are not included. Public enterprises employ a large number of people, but no person employed in public enterprises is a state official, which means they are not required to meet the quota of 10% of representation of state officials of minority communities.

In this case, the Ombudsperson notes that the number of employees in public institutions is varies between communities. One can freely say that employment opportunity, for community members of Roma, Ashkali and Egyptian, is lower than those of other minority communities.

Although a comprehensive legal framework is set for the protection of minority communities in Kosovo, there is much to be done, namely, to be applied in practice. The will of the people is not only the will of the majority. In order for government to be a representative one, it must respect the guaranteed rights of minority communities, which is in the general interest and aims the prosperity of Kosovo's society as a whole.

## **CHAPTER III**

### **OI COOPERATION AND ACTIVITIES**

OI conducts its activities in collaboration with various institutional and social stakeholders, nationally and internationally. In this chapter are included OI's activities, as well as various specialized OI groups, implemented in the framework of this cooperation.

#### **3.1. Cooperation with national institutions**

Within the ongoing commitment to protect and improve the human rights and fundamental freedoms situation in Kosovo, OI is committed to cooperate with national institutions, civil society and international organizations, aiming the promotion and observance of fundamental human rights and freedoms.

OI during 2013 has collaborated with national institutions such as; the Assembly of the Republic of Kosovo, the Government of the Republic of Kosovo, ministries, municipalities, institutions and independent agencies and the courts.

The OI has cooperated in continuity with the Assembly of the Republic of Kosovo. Throughout the year several meetings were organized, also submitted reports including recommendations. It is important to highlight the very good cooperation of OI with the Parliamentary Committee on Human Rights, Gender Equality, Missing Persons and Petitions, with whom were held several meetings about the human rights situation in Kosovo, for OI reports with recommendations, as well as reviewing the OI annual report. During this year the Parliamentary Commission on Human Rights, Gender Equality, Missing Persons and Petitions held tripartite meetings between OI and the institutions of the Republic of Kosovo in order to verify whether the Ombudsman recommendations on the annual report or other reports are implemented and, if so, how they are implemented. This practice is new and deserves to be highly appreciated.

During this year, OI has cooperated with Government of Republic of Kosovo. Also during this year, the OI submitted reports with recommendations on different cases. Also, numerous meetings were held about them. In most cases, OI was invited to the events organized by the Kosovo government institutions regarding human rights. It is worth mentioning the new experience, which should be further intensified, of submission of draft laws by Kosovo Government for comments to OI, in relation to the human rights.

This year, OI has conducted several roundtables discussing various issues about the cooperation between OI and national authorities, regarding human rights in Kosovo.

On 18 October 2013, the OI organized a round table on the topic "Noise and its impact on human rights." The roundtable provided an opportunity to discuss about cooperation of OI and the authorities responsible for noise pollution.

The OI had close cooperation with municipalities during 2013. There is an increase on accountability regarding various complaints investigations. During 2013, OI has organized several meetings and roundtables in different municipalities.

In October 2013, OI has organized roundtables in OI regional offices in Prishtina, Prizren, Gjiilan, Peja and Mitrovica, in northern and southern parts, on the topic: *"Accomplishment of Ombudsperson's mission"*. These round tables provided the opportunity of joint discussions with OI's representatives, municipal authorities, judiciary, police, non-governmental organizations and the media, on existing challenges in protection of human rights and freedoms and the role of OI in this regard.

Following the reforms in judicial system's organizational structure in Kosovo and needs assessment to be closer to the citizen, the Ombudsman earlier this year has increased the number of OI regional offices by two, in Ferizaj and Gjakova. On 30 September and 1 October 2013, OI upon establishing Regional Offices in Ferizaj and Gjakova and the continuous promotion of human rights and freedoms, held the round table on the topic *"Accomplishment of Ombudsperson's mission"* in two abovementioned cities.

Cooperation with the judiciary system has improved compared with last year. According to OI statistics, also during 2013 the highest numbers of complaints from citizens are addressed to the judiciary, however, there was a greater willingness of judiciary to cooperate with OI. During 2013 OI's legal advisers have consistently held numerous meetings and contacts with the Kosovo Judicial Council and the courts, on handling various topics of common interest. Letters with recommendations regarding the complaints investigation continuously, and OI has been provided with the required information related thereto.

In November 2013, with the support of UNDP, a workshop was organized between OI and the Presidents of the courts in Kosovo regarding the high number of cases submitted to OI against the courts.

The OI had good cooperation with Kosovo Police Inspectorate, Kosovo Police, Correctional Services Inspectorate, Kosovo Correctional Service, the Special Prosecution, on the investigation of complaints from the persons deprived of freedom.

### **3.2. Cooperation with civil society organizations**

Cooperation of OI with civil society is not only foreseen by the law, but it is also important for the effectiveness of OI performance. During 2013, OI had very good cooperation with several NGOs in the Republic of Kosovo.

In April 2013, the NGO "Youth Initiative on Human Rights' (YIHR), during the implementation of the project supported by the Office of the United Nations High Commissioner for the Human Rights, has monitored the work of OI and as a result has published a report on "An insight into the work of the Ombudsperson Institution"<sup>319</sup> in June 2013. The OI has provided all the amenities for a close cooperation during this project implementation. The OI highly appreciates the work of YIHR, as this is the only organization to date that has taken such an initiative on monitoring the concrete work of the OI.

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<sup>319</sup> *Youth Initiative on Human Rights*, Report "An insight into the work of Ombudsperson Institution" at: <http://ks.yihr.org/ks/article/149/YIHR-KS-published-the-report-An-Insight-Into-the-Work-of-the-Ombudsperson-Institution> (10.12.2013).

In period of January-June 2013, the OI in cooperation with the Council for the Protection of Human Rights and Freedoms (CPHRF) and the Kosovo Centre for Rehabilitation of Torture Victims (KCRTV) as a Working Group of the National Mechanism on Torture Prevention (NMTP) has monitored Dubrava Correctional Centre, Correctional Centre and Detention Centre in Lipjan. Regarding the monitoring process, on 1 July 2013 was held a round table on "National Mechanism on Torture Prevention - challenges, opportunities and steps to move forward" which focused on published reports of the NMTP working group from the monitoring of these centres, as well as activities conducted in the time period from January to June 2013.

On 17 June 2013, the Ombudsman, with his collaborators held a meeting with citizens of Roma, Ashkali and Egyptian communities in the municipality of Lipjan. The meeting was attended by the Municipal Education Department Director, representatives from the Forum Syd, Youth Club from Gadime and Magure villages and NGOs "Health for All" and "Zemra e hapur". During the meeting it was discussed on education, employment and law enforcement in everyday life.

In December 2013, the OI regional office in Gjakova, in cooperation with the "Child Protection and Child Right" project by NGO "Syri i Vizionit" in Peja, supported by the NGO "Save the Children" visited the pupils of lower secondary schools "Zakaria Rexha" and "Mustafa Bakija" in Gjakova. The purpose of this visit was to inform students regarding OI's mandate, namely the Child Rights Unit, in protection and promotion of children's rights in the Republic of Kosovo.

The OI had cooperated with other NGOs, such as "Smile" which together produced documentaries on different fields of human rights, and cooperation of OI regional office in Graçanica with the NGO "Voice of Roma, Ashkali and Egyptians" and NGO "Communication for Social Development and Civil Rights".

### **3.3. International cooperation**

The OI, except classical role of an Ombudsman institution, is the only national institution for human rights in Kosovo. As such, it is dedicated to be a bridge for exchange of international professional experiences in terms of human rights, as well as networking of Kosovo in the international arena in the field of human rights.

#### ***3.3.1. Participation in international meetings***

In order to strengthen international cooperation, exchange of experiences with other peer institutions in the field of human rights, the OI took part in several meetings during 2013.

On 11-15 March 2013, the OI attended the United Nations Council for Human Rights meeting, where a range of issues of vital importance of human rights situation in the world were discussed.

On 6-8 May 2013, OI participated in the 26th meeting of the International Coordinating Committee of National Human Rights Institutions (ICC-NHRIs) which is an international organization of national institutions dealing with the human rights. It promotes and empowers these institutions, so they are in compliance with the Paris Principles and acts as a leader in the human rights promotion and protection.

Within the Bureau meeting, one of the issues listed in the meeting agenda, as part of the discussion in the Accreditation Subcommittee, it was also the discussion on accreditation of OI in ICC and further steps to be taken by the ICC regarding requirements for membership of National Human Rights Institutions (NHRI) from countries that are not members of the United Nations (UN). In this case, the right to deliver a speech was given to the Ombudsman, Mr. Sami Kurteshi who presented and justified the formal membership application of Ombudsperson Institution of Kosovo, in this organization, which operates in close cooperation with the Office of the High Commissioner for Human Rights of the United Nations, with headquarters in Geneva. After the discussions, it was recommended to discuss this issue again in this subcommittee and draft a new procedure document that will clearly govern the procedures to be undertaken for ICC membership by national institutions for human rights, which are not UN member countries, in this case Kosovo.

In addition, the Special Rapporteur of the Council of the United Nations for Human Rights Protectors also reported on the implementation of the Statement of Amman, and further it was discussed on *Post 2015 agenda and the role of National Institutions for Human Rights*, the right to participate as well as several other important issues at the international level.

On 20-21 September 2013, the Ombudsman attended the General Assembly of the European Ombudsperson Institute (EOI), in which the new chairman was elected, as well as it was marked the 25th anniversary of the establishment of European Ombudsperson Institutions network, followed by discussions about human rights in Europe and future priorities.

On 29 October - 1 November 2013, the Ombudsman participated in the international conference "*The missing persons - an Agenda for the future*", which was organized by the International Commission on Missing Persons.<sup>320</sup> This conference brought together representatives of countries from the region, where they discussed among other things, the following issues: armed conflicts and human right violations; organized violence and migration; challenges and attempts to urge explanations for the missing persons, and what can be done in the future to address this issue.

The international conference "*Strengthening the protection of fundamental rights in a changing scenario for human rights*" was organized in Vienna from 7-8 October 2013. Among the main objectives of this conference, was gathering of all HRC's, Equality Mechanisms and Ombudsperson Institutions, in order to discuss the impact of the economic situation in human rights, the growth and development of strategic cooperation at local and European level and identify concrete cooperation activities, and creating networking opportunities for participating organizations. This conference was organized by the European Union Fundamental Rights Agency (FRA), the Council of Europe and OSCE. One of the working groups of the conference entitled "*Implementation of international standards for*

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<sup>320</sup> International Commission on Missing Persons at: <http://www.ic-mp.org/>

*human rights*" was led by Kosovo Ombudsman, Mr. Sami Kurteshi, who also reported to the conference panel.

In Budapest, on 13 to 15 November 2013, the European Network of National Institutions for Human Rights organized a meeting on strategic planning where they discussed the work and further development of this network. In this meeting, the Kosovo Ombudsman, Mr. Sami Kurteshi led one of the panels, with the topic "*Cooperation of Ombudsperson with civil society*".

### **3.3.2. Internationally supported projects**

One of the most viable projects offered so far for OI, is a joint project of the European Union and the Council of Europe "*Advancing protection of human rights in Kosovo*". This project, whose main beneficiary was OI, also included civil society organizations and the Office of Good Governance in the Office of the Prime Minister, started to be implemented in June 2012 and finished in February 2014. Its primary goal was to improve implementation of the standards of the European Convention on Human Rights, the standards and findings of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Framework Convention for the Protection of Minorities.

Within this project, there were conducted several useful activities for OI staff, since they were based on the assessment of specific needs. Only during 2013, there were organized several trainings on various topics. In addition, there were developed several professional opinions law package on human rights in Kosovo, which are in the process of amendment, namely the Law on Ombudsperson, Anti-Discrimination Law and the Law on Gender Equality. At the same time, within this project it was prepared a professional proposal on the reform for dynamics of non-judicial institutions for human rights in Kosovo. This was a very valuable work which will have an influence on Kosovo having easily enforceable laws and in favour of Kosovo citizens.

In addition, during this project four study visits abroad, were organized. *The first one* in Strasbourg, France, where five OI representatives had the opportunity to get familiar with the work of the Council of Europe and various committees within it, as well as the work of the European Court of Human Rights.

*The second study visit* was held in Warsaw, Poland, where also five OI representatives participated. During this visit, they visited several institutions and organizations for human rights, such as the Polish Ombudsperson Institution, Helsinki Committee, and Police, etc.

*The third* was held in Belfast, Northern Ireland and was attended by 14 OI officials. During this visit, were organized meetings with all structures of human rights thereof: Commission on Human Rights, Parliamentary Ombudsperson of Northern Ireland, Equality Commission, the Commission for the Rights of Children and Youth, Commission on Elderly People, Prisons Ombudsman, Police Ombudsman etc., where they exchanged the best practices and useful information.

The fourth study visit took place in Denmark's Parliamentary Ombudsman and the National Institute for Human Rights, Denmark. Eleven OI officials attended this study visit. The purpose of this visit was to exchange experiences in handling individual complaints.

Within this project, the international conference on "*Meeting the goal: Ombudsperson Institutions and judiciary in protecting the human rights - European best practices and regional experiences*" was organized, which was attended by many experts and Ombudsperson counterparts from the region and beyond, as well as representatives of the Constitutional Court and Supreme Court from neighbouring countries.

Another project in which OI was a beneficiary is the project "*Advancing gender justice*", focusing on gender equality and women empowerment, which is funded by the Ministry of Foreign Affairs of the Netherlands, and implemented by UNDP in Kosovo. Within this project, several training and a round table was held, and also the project supported participation in an international meeting in Croatia with the topic "*Ombudsman institutions in Southeast Europe: EU membership and General Periodic Review*."

### **3.3.3. Cooperation with other international counterparts and organizations**

The OI pays great importance to the cooperation with peer institutions and other international organizations.

In this context, it is worthy to mention the visit of the United Nations High Commissioner for the Human Rights, Ms. Navi Pillay, who visited OI, on June 20, 2013, to discuss the human rights situation in Kosovo. In her statement to the media she said "*I was impressed by the commitment and competence of the Ombudsperson Institution*"<sup>321</sup> and reiterated her support for OI. Ms. Pillay during her visit met with other institutions in Kosovo, to which she conveyed clear messages for improving the situation of human rights.

In addition, with the support of the French Embassy in Kosovo, on 11-13 December 2013, the Ombudsman and the Deputy Ombudsman of the Republic of Kosovo conducted an official visit in Ombudsperson Institution of France. The purpose of this visit was to get familiar with the mutual work of both institutions on protection of human rights and freedoms. This visit was very successful and was concluded with intentions to intensify cooperation in the future.

Also, during 2013, Albanian and Kosovo Ombudsperson had mutual visits. During these visits they discussed about several concrete issues in order to deepen their cooperation and renewed the memorandum of cooperation signed earlier. Also, they held several meetings with various state institutions.

The OI has good cooperation with all counterparts throughout the region, with whom it collaborates in different areas and had several meetings on different topics.

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<sup>321</sup> Statement of UN High Commissioner for Human Rights, Ms. Navi Pillay, at a press conference, at: <http://www.unkt.org/opening-remarks-by-un-high-commissioner-for-human-rights-navi-pillay-at-a-press-conference/> (03.02.2014).



### **3.3.4. Membership in international organisations**

OI has joined the international mechanisms as follows:

- International Ombudsperson Institute (IOI),<sup>322</sup> where OI is a member with equal rights and obligations. IOI is a global organization for collaboration of more than 155 institutions of Ombudsman from more than 90 countries worldwide. In its efforts focusing on human rights, good governance and capacity building, IOI supports its member institutions in three ways, through:
  - Training,
  - Research, and
  - Assistance on regional projects.
- European Ombudsperson Institute (EOI),<sup>323</sup> where OI is also an institutional member with equal rights and obligations. EOI is a regional European Ombudsperson, which works to achieve these following objectives:
  - Promoting the concept of Ombudsperson as an institution,
  - Promoting the exchange of experiences locally, regionally and internationally,
  - Research on issues related to the protection of human rights and the activities of the Ombudsman.
- The European Network of National Institutions for Human Rights (ENNHRI), which the OI joined in November 2013, but it is also the co-founder of this network. ENNHRI is an organization, whose mission is to support and strengthen the NHRIs, to be in conformity with the Paris Principles<sup>324</sup>. The main objectives of this network are: the establishment of a strong and stable secretariat, strengthening communication between ENNHRI members, increasing collaborations between members and other regional mechanisms.

The OI has formally applied for accreditation by the International Coordinating Committee of National Institutions for Human Rights (ICC), in whose meetings it regularly participates since October 2010 as an observer. Also, OI has applied for membership in the Association of Mediterranean Ombudsman and is awaiting their response.

### **3.3.5. Reporting to various international mechanisms**

OI every year receives questionnaires on various topics from international organizations to report on the situation of human rights in Kosovo. This year were submitted five questionnaires listed in the following table.

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<sup>322</sup> International Ombudsperson Institution, at: [www.theioi.org](http://www.theioi.org)

<sup>323</sup> European Ombudsperson Institution, at: [www.eoi.at](http://www.eoi.at)

<sup>324</sup> Paris Principles, at: <http://www2.ohchr.org/english/law/parisprinciples.htm> (30.01.2014).

**Table 1: The list of reports submitted to the international organizations**

<b>Date</b>	<b>Report topic</b>	<b>Organization/institution to which the report was sent</b>
<b>19 April 2013</b>	Business and human rights	European Coordination Committee of National Institutions for Human Rights
<b>2 May 2013</b>	Implementation of Amman Statement and its Action Plan	European Coordination Committee of National Institutions for Human Rights
<b>22 October 2013</b>	Human rights in post-conflict situations	United Nations Advisory Committee of the Council for Human Rights
<b>5 November 2013</b>	The rights of persons deprived of liberty	Working Group on Arbitrary Detentions-Council for Human Rights of the United Nations
<b>2 December 2013</b>	The impact of fiscal and tax policy on human rights	United Nations Special Rapporteur on extreme poverty and human rights

### **3.4. Capacity building of OI**

During the reporting period, OI has paid great importance to the professional capacity building of its staff. In addition, a special importance, despite unfavourable infrastructure conditions of OI's offices at central and regional centres, OI has paid to the trainings of different persons and organization for internship within OI.

OI has organized training for its staff on the topic "*Communication and behaviour in difficult situations in a working environment - Internal and external exposure*", and the training on "*Drafting of analytical reports - Concept of Proportionality in Constitutional Law*".

The OI staff has participated in various training programs organized by the Kosovo Institute for Public Administration (KIPA), i.e. trainings in the field of information technology and trainings on the drafting of legislation.

Within the joint project of the Council of Europe and the European Union "*Advancing Human Rights*", are organized trainings in various fields of human rights, such as: "*Training of trainers on human rights*", continuation of 2012 training, "*Monitoring of centres where people deprived of their liberty are kept*", "*Public relations and promotion of human rights through media*", "*Methodology of communication*" and "*Drafting of reports in accordance to the standards of Committee for the Prevention of torture (CPT)*".

In this project, are included also study visits of OI staff to Strasbourg, France, and Warsaw, Poland and Belfast in Northern Ireland and in the Danish Ombudsperson Institution, Denmark.

It is worth mentioning the OSCE support in capacity building that continued also this reporting year. OSCE has organized training on the monitoring of detention centres in police stations.

Regarding OI capacity building, we received another support from UNDP, in organizing of training with topics: "*Project Drafting and Management* ", "*The rights of persons deprived of liberty*" and "*Law on Environmental Protection* ".

Also it is worth mentioning the support from the Office of the High Commissioner of Human Rights (OHCHR), for provision of the training "*Referring cases to the Constitutional Court.*"

OI staff has held training on "*Budget planning, execution and auditing*", as well as the training on "*Recording and organization of cases and work in the clerks' office and procedures on access to the public documents.*"

Beside trainings organized for its staff, OI has organized the internship within OI for students, graduates or other interested, mainly lawyers. Internship for these persons was in duration of 6 months. During this period, UNDP has provided a valuable donation for internships within OI. All these persons concluded, with great admiration and pleasure, that they acquired professional from internship within OI.

In addition, OI since the beginning of 2013 has started accepting intern students from different countries for internship within OI. The first internship was conducted from a student in Yale University in USA, and Oxford University in UK. This way of internship of students of various universities around the world, is proved to be an excellent study exchange experiences.

OI in the future will pay importance to the capacity building, depending on the needs of its staff, but also based on needs, which will have impact on the performance of its staff, but also for interested persons for OI's experience. OI is also looking forward to provide very valuable internship for larger number of students interested for training, within OI, in relation to human rights, if permitted.

### **3.5. Activities of the Children's Rights Unit**

The Children's Rights Unit (CRU) functioning under the auspices of the Ombudsperson Institution (OI) was established with the purpose of monitoring, protecting and investigating any violation of the rights of children by the public authorities in Kosovo.

In 2013 the CRU in addition to reviewing complaints filed to OI, undertook several other activities to promote and protect the rights of children and to build the professional capacities.

OI respectively CRU attended the conference for the protection of children's rights organized by the NGO Coalition for Children Protection (NCCP) which was held in Prishtina on 31 January 2013. Amongst others, in the conference was presented the NCCP's report "Who

speaks for me", which provided information on the current situation of children in the field of family care, interstate adoption, child poverty, exploitation of children on street etc.

In the regional project "Prevention of children exploitation in South East Europe", on 22-24 April 2013, in Novi Sad (Serbia), CRU participated in the final conference, upon presenting the results of the survey "How to improve communication between the Ombudsperson and children in Southeast Europe." The research was conducted by Save the Children International in collaboration with the Children's Rights Ombudsman Network for Southeast Europe (CRONSEE).

Participants cited various examples of their communication practices with children. It was emphasized, among other things that the meetings with students, groups of students or student tips are very important not only in making visible the Ombudsperson institution, educating children about their rights, but also taking into account the views and opinions of children as members of society.

On April 26, 2013, in Prishtina, OI in collaboration with Save the Children International organized a conference at which was promoted the report on "Sexual exploitation of children in Kosovo" that was as a result of the research conducted by CRU. Participants in the conference were informed about the research, findings and recommendations in order to improve performance in the protection of children's rights, prevention of emerging and strengthening the fight against sexual exploitation, particularly to improve the situation of children victims of sexual abuse and exploitation. On the same day, OI representative participated in two television shows (in Rrokum TV and KTV), to discuss in relation to this report.

On the occasion of the Children's Day on June 1, 2013, OI representatives in Prishtina and Graçanica, in the stands placed in the local boulevards, talked with children about children's rights and the role of the OI in protection and promotion of human rights, i.e. of children.

On 27-28 June 2013, in Brussels it was held the Conference on Justice for Children, organized by the European Commission, Regional Office of UNICEF for Central and Eastern Europe, as well as independent states of Commonwealth, with participation of representatives of the governments of Central and Eastern Europe countries, representatives of civil society, international organizations and Ombudsman, including Kosovo Ombudsperson. At the conference were held debates on justice for children, the progress made, challenges, obstacles and opportunities for improving the justice for children in Central and Eastern Europe countries. Also, in one of the conference sessions, it was discussed about the Kosovo's experience in the field of justice for children.

On July 8, 2013, CRU attended the inaugural conference of the Third Report, regarding the evaluation of implementation of the Strategy and national action plan for children's rights in the Republic of Kosovo, for 2012. As part of the conference panel, Ombudsman presented the topic "The efforts of the Ombudsperson Institution in promoting and ensuring the highest interest of the Children".

On 30 September 2013 a group of children from Albania, supported by Save the Children in Albania, with the Programme for governing with children's rights, met with the Ombudsman. The purpose of the meeting, among others, was information about the situation of the

children's rights in Kosovo, OI's role in protecting the rights of children, nature, manner and filed complaints regarding alleged violations of the children's rights.

On 17 October 2013 CRU attended the conference for the inauguration of the report "State of the World's Children 2013 - Children with limited abilities", published by UNICEF, held in Prishtina. In this conference were presented the report's findings in relation to the state of World's children with disabilities, and it was stressed the need of taking appropriate actions to improve it in all fields of life.

"Children on the move" was the topic of discussion of CRONSEE, at the eighth annual conference, which was held on 5 November 2013 in Zagreb (Croatia). The Conference concluded as follows: *"Children on the move i.e. children in dangerous migrations constitute a particularly vulnerable group, regardless of whether these children are accompanied by parents or travel alone in search for better living conditions, fleeing from violence, abuse, war, natural disasters or other difficulties that force them to abandon their homes"*. Participants at the conference agreed that due to the state of children, it is necessary to strengthen and improve the defence system on the national level and to strengthen the cross-border cooperation. Also is concluded that participating states, among other things should:

- Establish comprehensive and effective systems for protection of children on the move, providing full protection and realization of their rights guaranteed by the Convention on the Rights of the Child, regardless of their migratory status.
- Establish operational mechanisms for cross sector collaboration as well as develop and implement standard procedures for friendly reception.
- Provide comprehensive and continuous trainings for professionals working with "children on the move."
- Ensure that all protective measures are taken in consultation with children and include children perspective, their experiences, views and expectations, considering ethical principles and methodology of children participation in all decisions.

The findings of the midterm review of the cooperation program between Kosovo institutions and UNICEF 2011-2015, were presented at the workshop held on 14 November 2013, where CRU attended as well. Mid-term review of the cooperation program was conducted during February-May 2013 in order to improve the performance and quality of implementation of this program, and to continue with the new program cycle post 2015.

OI, during this year, upon marking of Universal Children's Day, has conducted many meetings with elementary school pupils in some of the villages in the municipalities of Mitrovica, Prizren, Dragash, Suhareka, Deçan, Graçanica, Gjilan, Vitia and Kamenica. Upon these meetings they have informed the pupils of these schools about OI's mission, i.e. CRU's, in protection and promotion of children's rights in Kosovo. Upon this event is discussed about state of children's rights in all respective schools and the way to address the concerns and problems of pupils in schools.

From discussions resulted that in some of visited schools, students are less informed about children's rights and OI's role in the protection of human rights, while other schools lack adequate learning conditions, therefore proper learning process is hindered.

Also, upon marking of Universal Children's Day, children from a primary schools and kindergarten children of Prishtina municipality visited the OI's Central Office i.e. Ombudsman and were closely informed about the work of this institution, about mission and commitment of OI in the protection and promotion of children's rights.

On 3 December 2013, in Prishtina, the round table on topic "Civil Aspects of International Child Abduction" was held, organized by the Basic Court in Prishtina in cooperation with USAID, where OI representative participated. The purpose of this round table was to improve the knowledge of staff in basic courts, prosecution and other institutions about the Law on the Civil Aspects of the International Child Abduction, no.03/L-238, respectively about the exclusive jurisdiction of the Basic Court in Prishtina, as a court of the first instance to decide on cases dealing with civil aspects of international child abduction.

OI representatives in cooperation with NGO "Syri i Vizionit" from Peja, project "Child Protection and Child Right Governance", met with some school students from lower secondary schools from Mitrovica, Peja, Gjakova and Ferizaj during December 2013. At these meetings it was discussed about children's rights, complaints procedures in case of violation of children's rights and the role of OI in protection and promotion of the human rights.

### **3.6. Activities of the Department against discrimination**

During this reporting year, the Department Against Discrimination (DAD) within OI, has treated individual complaints but also *ex officio* ones, where alleged violation of the rights protected by the laws in force in the Republic of Kosovo, especially by the law against discrimination have occurred. The largest number of complaints is related to discrimination in the social, health, property, and employment areas.

During regular visits with NGOs, which represent the interests of persons with disabilities, OI has received complaints from them about the conditions for free access to the public institutions and legislation for people with disabilities.

This department has conducted, during this reporting period, visits to hospitals, NGOs, settlements inhabited by different communities, nursery homes and institutions, and met with representatives of persons with disabilities, language commissioner within the Office of the Prime Minister, who has participate in various public debates, conferences and trainings.

In addition, DAD held meetings with the Office of Good Governance, coordinators for human rights at local and central level and participated in the public debate on amending-supplementing draft law on anti-discrimination, and draft law health insurance.

During monitoring of human rights of persons who are in nursery homes and institutions, this year were visited several times the nursery home, Special Institution in Shtime, Psychiatric Clinic in UCC, Centres of Mental Health in Community, Prishtina, Integration House Bresje.

During this visit, it was focused on monitoring of living conditions of residents, spaces in residences, working conditions of employees in these institutions, as well as cooperation and the functioning of the chain between the Ministry of Labour and Social Welfare, Ministry of Health and the aforementioned institutions.

In marking of International Day of Elderly People, on 1 October 2013 and international day of mental health, marked on October 10, 2013, the Ombudsperson organized a roundtable on 21 October 2013, during which published the report with recommendations for responsible institutions, findings from the field visits at nursery homes and care institutions.

During this year, DAD has investigated the issue of problems in the functioning of the Social Economic Council and lack of conclusion of the Collective Agreement, for what has drafted an *ex-officio* report with recommendations.

Continuing the joint project between the European Union and the Council for the Advancement and Protection of Human Rights, DAD in 2013, has held trainings and study tours at home and abroad.

Also, DAD representative have participated in public debates in national media, dealing with topics related to the rights of persons with disabilities, rights of elderly persons, and the use of official languages, as well as human rights in Kosovo.

### **3.7. Comments and recommendations on draft laws and bylaws**

One of the responsibilities of the Ombudsperson, prescribed by the Law on Ombudsperson is: *"to recommend promulgation of new Laws in the Assembly, amending the Laws in force and promulgation or amending the administrative and sub-legal acts by the institutions of the Republic of Kosovo "*.<sup>325</sup>

The Ombudsperson received a number of complaints from citizens of Kosovo for rejection of their claims from the Special Chamber of the Supreme Court (SCSC) for issues related to the Privatization Agency of Kosovo (PAK), because they did not submit their claims in English, as well, thus the translation falls onto the parties who address the claim. After analysing these complaints, the Ombudsperson concluded that this SCSC practice is discriminatory for citizens, because in fact they are denied or hindered the right of access to the SCSC.

In this regard, the Ombudsperson has prepared the report with recommendations, which was sent on the 2 November 2012 to the president of SCSC and to the respective chairmen of parliamentary committees (Committee for Human Rights, Gender Equality, Missing Persons and petitions, as well as to the Committee on Legislation), seeking initiation of proceedings to amend article 25, paragraph 8, 9 and 10 of Law no. 04/L-033 on SCSC on issues concerning the Privatization Agency of Kosovo, as well as cessation of denying practices and empowering translation services within the court, so that citizens shall not be conditioned to address to the court in English, as well.

It was discussed with Parliamentary Committee for Human Rights on cessation of the SCSC practise regarding this, on 29 January 2013. Upon this occasion, one of the Ombudsman's Deputies explained that the law provisions are inconsistent with Articles 5 and 24 of the Constitution of the Republic of Kosovo, as well as with Article 6.1 and Article 14 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). Commission

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<sup>325</sup> Law on Ombudsperson no. 03/L-195, Article 16, paragraph 1, point 1.6.

members unanimously supported the OI recommendations and agreed that the Commission would addresses to the Special Chamber of the Supreme Court to ask for termination of these practices, as well as to propose law amending and supplementing.

Meanwhile the OI, in 2013, received a series of draft laws and draft administrative instructions from ministries for the opinion. According to the Rules of Procedure of the Government of the Republic of Kosovo, no. 09/2011, proposing body has an obligation that draft laws and bylaws, beside relevant ministries, consult with OI, for their compliance with "*internationally accepted standards of human rights and freedoms*"<sup>326</sup>. The deadline for submitting comments is 15 working days<sup>327</sup>.

In 2013, besides giving its contribution to a number of normative acts from various public institutions at the central level, the Ombudsperson has sent comments for the following draft laws:

- Draft Law on Protection from Discrimination
- Draft law on salaries of public officials
- Draft law on Final exam and state graduation exam
- Draft law on interception of telecommunications
- Draft law on the status of Albanian education workers of the Republic of Kosovo from academic year 1990/91 until academic year 1998/99
- Draft law on amending and supplementing the Law no. 03/L-195 on Ombudsperson
- Draft law on amending and supplementing the Law no. 04/L-033 on Special Chamber of the Supreme Court on issues concerning the Privatization Agency of Kosovo
- Draft law on amending and supplementing the Law no. 03/L-19 on Civil Service of the Republic of Kosovo.

It is worth noting that during 2013, central state institutions, in many cases, have sent draft proposals of various normative documents for consultation with OI, regarding human rights. This good practice is worth mentioning, though realistically, it is a large professional burden and time consuming for OI.

Although the Ombudsperson is willing to offer help and support to all those cases where it considers that is possible, due to the tremendous load, especially in the professional aspect, recommends all institutions that submit normative acts to OI for comments.

#### **Recommendations:**

- *Institutions shall submit to the OI, for comments and advices, only those normative acts, which any of their part affects the human rights, especially when it comes to defining or restricting the human rights and freedoms.*

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<sup>326</sup> Rules of Procedure of the Government of the Republic of Kosovo, Article 7, paragraph 2.

<sup>327</sup> Ibid, Article 7, paragraph 3.



- *Period for consultations should not be less than 15 days from the date of the Act submitted for comments.*

### **3.8. Communication with the media**

Public identity is extremely important for an institution without executive power. This identity becomes functional in protecting and promoting of human rights, playing an irreplaceable role in fulfilment of the constitutional and legal mission of the OI.

The public profile of the OI necessarily is built by the presence in media, either through placement of materials that present the work and activities of the institution or through responses to the media requests to obtain opinions, statements or even obtain data regarding the cases or certain fields of human rights and freedoms. In addition, organization of open activities to media provide another opportunity for media and public know more about the mission and mandate of the Ombudsperson and its work, through media.

In order to promote human rights and the work of the OI, during 2013, roundtables were held in Ferizaj, Gjilan, Prizren, Peja, south and north Mitrovica and Graçanica, by covering all the centres where OI regional offices are located. Eight roundtables provided opportunity to discuss with governance structures of respective municipalities, non-governmental organizations and local media regarding the fulfilment of the Ombudsperson mission.

Also, holding of four thematic roundtables and marking of the 13th anniversary of OI have served to reflect on the work and role of OI, but also for advocating on issues of human rights and freedoms.

During 2013, were held two public presentations (presentation of the report "Sexual exploitation of children in Kosovo" and the presentation of preliminary data and OI work at the end of the year) through media conferences.

Unlike other years, OI on International Children's Day, among others, met with citizens in an open environment (i.e. "Mother Teresa" boulevard), supplied them with brochures and flyers with various activities and distributed published materials by OI.

During the reporting period, 1 January-31 December 2013, there were 128 public appearances, mostly of Ombudsman, and other OI officials, in response to the request of media and journalists, for statements, interviews, open shows for questions of citizens, debates, etc., through traditional media, electronic portals and printed media<sup>328</sup>. Here are not included public appearances in local media, made during activities, visits or monitoring through regional centres.

Meanwhile, during the same period, through the OI website and OI Facebook account, as well as the media, are published 50 statements, announcements, photo news, feedback, reports etc.

Also, during this year, OI has published in hard copy and in electronic form the following:

- Annual report (*in Albanian, Serbian, English*)

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<sup>328</sup> The figure of 100 media appearances does not include distribution or posting of the same

- Executive summary statistics on cases, media coverage and finances (*in Albanian, Serbian, Turkish, English*)
- Summary of recommendations from the Annual Report 2012 (*in Albanian, Serbian, Turkish, English*)
- Bulletin on the Rights of the Child (*in Albanian, Serbian, Turkish, Roma*)
- Brochure on access to public documents (*in Albanian and Serbian*)
- Leaflet about the Ombudsman's mandate (*in Albanian and Serbian*)

**Table 2: List of appearances on the media**

<b>MEDIA APPEARANCES AS PER SPECIFIC MEDIA</b> <i>(excluding statements to local media, during activities, monitoring or visits in regional centres)</i>	
<b>BIRN / Jeta në Kosovë</b>	<b>9</b>
<b>Epoka e Re</b>	<b>1</b>
<b>MedijaCentar</b>	<b>1</b>
<b>Independent journalists and projects / documentaries</b>	<b>8</b>
<b>Telegraf</b>	<b>1</b>
<b>KIM Radio</b>	<b>1</b>
<b>KLAN Kosova</b>	<b>6</b>
<b>Koha Ditore</b>	<b>11</b>
<b>KosovaLive</b>	<b>1</b>
<b>Kosova Sot</b>	<b>6</b>
<b>KTV</b>	<b>14</b>
<b>Lajmpress</b>	<b>2</b>
<b>Radio Dukagjini</b>	<b>1</b>
<b>Preportr</b>	<b>1</b>
<b>RROKUM</b>	<b>1</b>
<b>RTK 1</b>	<b>17</b>
<b>RTV 21</b>	<b>10</b>
<b>SETimes</b>	<b>2</b>
<b>Tribuna</b>	<b>5</b>

<b>TV Vali</b>	<b>1</b>
<b>Radio Puls</b>	<b>1</b>
<b>VoA</b>	<b>2</b>
<b>Zëri</b>	<b>6</b>
<b>Radio Kosova</b>	<b>7</b>
<b>RTK2</b>	<b>1</b>
<b>Bota sot</b>	<b>2</b>
<b>Infoglobi</b>	<b>1</b>
<b>Radio Free Europe</b>	<b>6</b>
<b>Top Channel</b>	<b>2</b>
<b>Agency albinfo.ch.</b>	<b>1</b>

## CHAPTER IV

### OI BUDGET AND PERSONNEL

OI is an independent public institution that is financed from the budget of the Republic of Kosovo. According to the Law on Ombudsperson "*The OI prepares its annual budget proposal and submits it to the Assembly of the Republic of Kosovo for approval*"<sup>329</sup>. According to the same provision, OI required budget is provided "Regardless of the provisions of other Laws."<sup>330</sup>

#### 4.1. OI funding from the Kosovo Budget

Based on legislation for budget and financial independence of OI and based on the legal process for the drafting and submission of regular budget request, the Ombudsperson has submitted its budget request for 2013, to the Assembly of Kosovo.

The budget request of the Ombudsperson for 2013 is based on the work plan and planned activities of the OI, whereas the approved budget for 2013, by the decision-making bodies, is allowed approximately as per budget request submitted by the OI.

Overview and the flow of OI's budget, for 2013, are presented in the following table. While detailed overview of all flows within the budget of OI, with special economic categories, submitted to the Assembly of the Republic of Kosovo, according to the contents of the unified financial template for reporting drafted by the Committee on Budget and Finance<sup>331</sup>.

**Table 3. OI's budget request, approved budget and final budget for 2013**

No.	Economic categories	Budget request for 2013	Approved budget for 2013	Final budget 2013	Budget for 2012
1.	Salaries and allowances	557,993.61€	526,050.00 €	513,050.00 €	383.778.00 €
2.	Goods and services	389,239.00 €	359,239.00 €	302,239.00 €	260.532.00 €
3.	Utilities	30,000.00 €	30.000.00 €	23,000.00 €	30.000.00 €
4.	Capital expenditures	52,750.00 €	52,750.00 €	52,000.00 €	7.000.00 €
Total		1,029,982.61 €	968,039.00 €	890,289.00 €	681.310.00 €

<sup>329</sup> Law on Ombudsperson, no. 03/L-195, Article 34, paragraph 2.

<sup>330</sup> Ibid

<sup>331</sup> Detailed financial report for the OI's budget will be submitted to the Assembly of Kosovo, according to a unified template for financial reports.

By mid-year budget review, OI has submitted a request for budget review, on 21 June 2013, and has made budget transfer in the amount of 17,000.00 € from the economic category of *goods and services* into the economic category of *capital expenditures* to increase the monetary measures in order to purchase two vehicles.

However, regarding the budget savings for 2013, upon closure of 2013 fiscal year, the OI after the financial analysis of the budget situation in relation to the funds spent and planned for expenditure until 31 December 2013, has returned budgetary funds to the Kosovo budget in amount of € 77,750.00.

#### 4.2. 2013 final OI budget and expenditures

In the following table is shown the situation of the final budget in relation with budgetary expenditures for 2013.

**Table 4: Budget spent for 2013**

No.	Economic categories	Final budget 2013	Budget spent	Non arrears	Free funds	Realisation in %
1.	Salaries and allowances	513,050.00 €	450,248.48 €	-	62,801.52 €	87.76%
2.	Goods and services	302,239.00 €	256,899.05 €	38,412.75 €	6,927.20 €	85.00%
3.	Utilities	23,000.00 €	17,410.43 €	3,852.36 €	1,737.20 €	75.70%
4.	Capital expenditures	52,000.00 €	14,430.00 €	37,570.00 €	-	27.75%
Total		<b>890,289.00 €</b>	<b>738,987.96 €</b>	<b>79,835.11€</b>	<b>71,465.93 €</b>	<b>83.01%</b>

#### 4.3. OI donor funding

During 2013, the OI is financially supported indirectly and directly by the following donors: Council of Europe, the Embassy of Belgium, the Kingdom of Norway, the Republic of Turkey, OSCE, UNDP and the NGO Save the Children. Donations for OI, even for this reporting period were important for achievement of work objectives. 2013 donations were aimed primarily at professional development of the staff and promotion of OI's activities.

Although, for professional building and some activities in promotion of OI's work are directly funded by donors themselves, in many of them OI had no direct access to the funds earmarked for these projects, therefore, the presentation of the situation and financial costs as a whole for donors and donations, in tabular form, by the OI, is not possible to be presented in this report.

#### **4.4. OI personnel for 2013**

In order to meet its constitutional mission, composition and number of employees constitutes the fundamental factor for the OI functioning. Number of allowed jobs for 2013 has been 55 employees.

Number of approved positions of 55 employees, by the officials' category, is divided as follows: six (6) public officials elected by the Assembly of Republic of Kosovo and forty-nine (49) officials - civil servants.

Increased number of complaints, in 2013, additional obligations arising from many passed laws in the Assembly of Kosovo regarding in relation to human rights and freedoms in Kosovo, as well as the adoption of new laws which impose legal obligations and responsibilities for the management and functioning of the administration, assign additional direct responsibility for OI that can be performed only with the additional commitment of human resources.

OI's budget for salaries and allowances was sufficient for approved job positions in 2013.

A positive fact worth mentioning is that the professional staff leaving tendency, in 2013, is significantly lower than in previous years. However, during 2013 there were movements in staff and termination of contract on voluntary basis. This has adversely affected the functioning of some sectors and quality of OI's work, especially when is considered that is about some key positions and people with many years of experience with OI. The main reasons for voluntary termination of contracts, upon long professional training with OI, are: accommodation in other positions, with higher incomes and more favourable working conditions than with OI, or professional reorientation.

## CHAPTER V

### STATISTICAL SUMMARY

#### 5.1. Statistical summary of complaints and cases for 2013

Since 1 January 2013 up to 31 December 2013, are shown up 2,047 people in OI in Prishtina headquarters and regional offices, to file complaints or to seek legal advice and assistance. Out of these, 302 people met personally with the Ombudsman or Deputy Ombudsman, during the *Open Days* held at least once a month in municipalities and twice a month in Prishtina.

The largest number of cases investigated by the OI, during the reporting period, was mainly related to: protection of property, the right to a fair and impartial trial, the right to legal remedies, the right to work and exercise of profession, health and social protection, the rights of the accused, etc.

In the tables below, is presented the total number of complaints filed in OI during 2013. In these tables are presented all types of actions and cases with absolute figures. In addition, here are presented the figures on the number of reports and recommendations published by OI, failures and delays of the responsible authorities to respond to the OI letters, implementation of the OI recommendations by the responsible authorities, etc.

**Table 5: Complaints filed by the citizens to OI (1 January 2013 – 31 December 2013)**

	<b>Total number of filed complaints to OI</b>	<b>2047</b>
<b><i>Ethnicity of claimants</i></b>		
	Albanians	1795
	Serbians	146
	Bosnians	31
	Turks	25
	Roma	21
	Ashkali	11
	Other	18
<b><i>Gender of claimants</i></b>		
	Male	1611
	Female	436
<b><i>Responsible authorities for the complaints filed to OI</i> (one complaint might contain more than one responsible party)</b>		
	Courts	577
	Ministries	433
	Municipalities	298

	Publicly owned enterprises	163
	Privatization Agency of Kosovo	125
	Police	92
	Public prosecution	41
	Privately owned companies	41
	Kosovo Property Agency	28
	Others	312

**Table 6: Complaints found to be inadmissible from complaints filed in 2013**

	<b>Number of complaints found inadmissible</b>	1452
<b><i>Legal basis of inadmissibility of complaints based on the Law on Ombudsperson</i></b>		
	Failure to use legal remedies – Article 20, paragraph 1.4	537
	No violation, misadministration – Article 20, paragraph 1.1	316
	In using legal remedies – Article 20, paragraph 1.3	277
	Out of jurisdiction – Article 19, paragraph 1.3.1	248
	Failure to indicate interest, failure of the party – Article 20, paragraph 1.2	32
	Complaint filed after deadline - Article 19, paragraph 1.3.2	31
	Other	11

**Table 7: Ongoing cases for investigation by OI (1 January 2013 – 31 December 2013)**

	<b>Ongoing cases for investigation from complaints filed by the citizens</b>	595
	<b>Ongoing <i>ex officio</i> cases</b>	21
<b><i>Ethnicity of the citizens based on the investigated cases</i></b>		
	Albanians	474
	Serbians	82
	Bosnians	12
	Turks	10
	Roma	7
	Others	10
<b><i>Gender of the claimants based on the cases investigated by the OI</i></b>		
	Male	453



	Female	142
<b>Responsible authorities in cases investigated by the OI</b> (one case may have more than one responsible party)		
	Courts	195
	Ministries	133
	Municipalities	90
	Publicly owned enterprises	78
	Privatization Agency of Kosovo	35
	Police	21
	Public prosecution	18
	Privately owned companies	11
	Kosovo Property Agency	5
	Others	51

**Table 8: Subject matter of investigated cases based on the rights guaranteed by Constitution**

(one case may involve more than one violation of the guaranteed rights)

	Protection of property	157
	The right to a fair and impartial trial	143
	The right to legal remedies	68
	The right to work and exercise the profession	63
	Health and social care	59
	The rights of the accused	30
	Equality before the law	23
	Preventing torture, cruel, inhuman or humiliating treatment	23
	Judicial protection of the rights	18
	Responsibility for the living environment	17
	The right to access public documents	14
	Freedom of movement	11
	Intermediation cases	10
	Children's rights	10
	The right to education	8
	The right to freedom and security	8

	The right to marriage and family	7
	Human dignity	6
	The right to elect and be elected	5
	The right for privacy	5
	The right for life	4
	Freedom of expression	3
	The right to personal integrity	2
	Prohibition of slavery and forced labour	1
	Freedom of Association	1
	The freedom of gathering	1
	The right not to be tried twice for the same offense	1

**Table 9: Total number of cases closed by the OI in 2013**  
(not only 2013 cases, but also cases registered earlier and closed this year)

	<b>Total number of closed cases</b>	1309
<b><i>Legal basis for closing the cases based on the Law on Ombudsperson</i></b>		
	Solved positively in compliance with the claimant's request – Article 19, paragraph 1.5.	587
	Closed due to lack of interest shown by the claimant, failure of the party – Article 20, paragraph 1.2	195
	Inadmissible, using legal remedies – Article 20, paragraph 1.3	178
	Inadmissible, no violation, misadministration – Article 20, paragraph 1.1	131
	Closed by a report	118
	Inadmissible, failure to use legal remedies – Article 20, paragraph 1.4	80
	Inadmissible, outside of jurisdiction – Article 19, paragraph 1.3.1	10
	Other	10

**Table 10: Individual responsible authorities in cases investigated by the OI**  
(one case may have more than one responsible party)

<b>JUDICIAL AND PROSECUTORIAL SYSTEM</b>		
	Basic Court in Prishtina	52
	Special Chamber of the Supreme Court	26
	Court of Appellate in Prishtina	21
	Basic Court in Gjilan	19
	Basic Court in Prizren	18
	Basic Court in Peja	16
	Basic Court in Mitrovica	10
	Basic Court in Ferizaj	8
	Basic Court in Gjakova	8
	Basic Prosecution in Prishtina	8
	Basic Prosecution in Mitrovica	6
	Supreme Court of Kosovo	6
	Kosovo Judicial Council	5
	Constitutional Court of Kosovo	3
	Basic Prosecution in Prizren	3
	Conditional Release Panel	3
	Basic Prosecution in Ferizaj	2
	Other institutions (one case each)	2
<b>GOVERNMENT AUTHORITIES</b>		
	Kosovo Correctional Service	41
	Ministry of Labour and Social Welfare	23
	Ministry of Internal Affairs	22
	Ministry of Environment and Spatial Planning	11
	Ministry of Justice	7
	Ministry of Health	5
	Ministry of Education Science and Technology	4
	Ministry of Infrastructure	3

	Ministry of Agriculture Forestry and Rural Development	3
	Tax Administration of Kosovo	3
	Office of the Prime Minister	2
	Ministry of Foreign Affairs	2
	Government of Kosovo	2
	Other institutions (one case each)	5
<b>LOCAL GOVERNMENT</b>		
	Municipality of Prizren	12
	Municipality of Peja	11
	Municipality of Prishtina	9
	Municipality of Gjilan	8
	Municipality of Mitrovica	6
	Municipality of Suhareka	6
	Municipality of Graçanica	5
	Municipality of Obiliq	4
	Municipality of Vushtrri	4
	Municipality of Kamenica	3
	Municipality of Kaçanik	3
	Municipality of Skenderaj	3
	Municipality of Gjakova	3
	Municipality of Ferizaj	2
	Municipality of Novobrd	2
	Municipality of Shterpca	2
	Other institutions (one case each)	7
<b>OTHER PUBLIC INSTITUTIONS</b>		
	Kosovo Energy Corporation	71
	Kosovo Police	35
	Privatization Agency of Kosovo	19
	University of Prishtina	12
	Kosovo Property Agency	11
	Foreign Authorities	6

	Central Elections Commission	5
	Assembly of Kosovo	3
	Kosovo Energy Distribution and Supply Company	3
	University Clinical Centre of Kosovo	2
	Kosovo Bar Association	2
	Kosovo Cadastral Agency	2
	Kosovo Art Gallery	2
	Other institutions (one case each)	18
<b>PRIVATE PARTIES</b>		<b>7</b>

*Table 11: Failure of responsible authorities to respond to OI letters*

<b>JUDICIAL AND PROSECUTORIAL SYSTEM</b>		
	Basic Court in Prishtina	25
	Conditional Release Panel	7
	Basic Court in Peja	4
	Basic Court in Gjilan	3
	Kosovo Judicial Council	3
	Court of Appellate	2
	Special Chamber of the Supreme Court	1
	Basic Prosecution in Mitrovica	1
	Appellate Prosecution in Prishtina	1
<b>GOVERNMENT AUTHORITIES</b>		
	Ministry of Environment and Spatial Planning	2
	Ministry of Infrastructure	2
	Ministry of Education Science and Technology	2
	Ministry of Labour and Social Welfare	1
	Ministry of Internal Affairs	1
	Government of Kosovo	1
	Ministry of Agriculture Forestry and Rural Development	1
<b>LOCAL GOVERNMENT</b>		
	Municipality of Prishtina	3

	Municipality of Partesh	2
	Municipality of Vitia	1
	Municipality of Vushtrri	1
	Municipality of Mitrovica	1
	Municipality of Shterpce	1
<b>OTHER PUBLIC INSTITUTIONS</b>		
	Privatization Agency of Kosovo	4
	KEC	4
	University of Prishtina	2
	Regional Water Company Prishtina	1
	RWC "Hidrodrini" Peja	1

*Table 12: Delays of responsible authorities to respond to OI letters*

<b>JUDICIAL AND PROSECUTORIAL SYSTEM</b>		
	Basic Court in Prishtina	11
	Special Chamber of the Supreme Court	3
	Court of Appellate in Prishtina	1
	Basic Court in Prizren	1
	Kosovo Judicial Council	1
	State Prosecution	1
<b>GOVERNMENT AUTHORITIES</b>		
	Ministry of Environment and Spatial Planning	1
	Ministry of Infrastructure	1
	Ministry of Finance	1
<b>LOCAL GOVERNMENT</b>		
	Municipality of Vushtrri	2
	Municipality of Ferizaj	1
	Municipality of Mitrovica	1
<b>OTHER PUBLIC INSTITUTIONS</b>		
	Kosovo Bar Association	2
	University of Prishtina	1

	Kosovo Customs	1
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**Table 13: Reports and recommendations published by the OI**

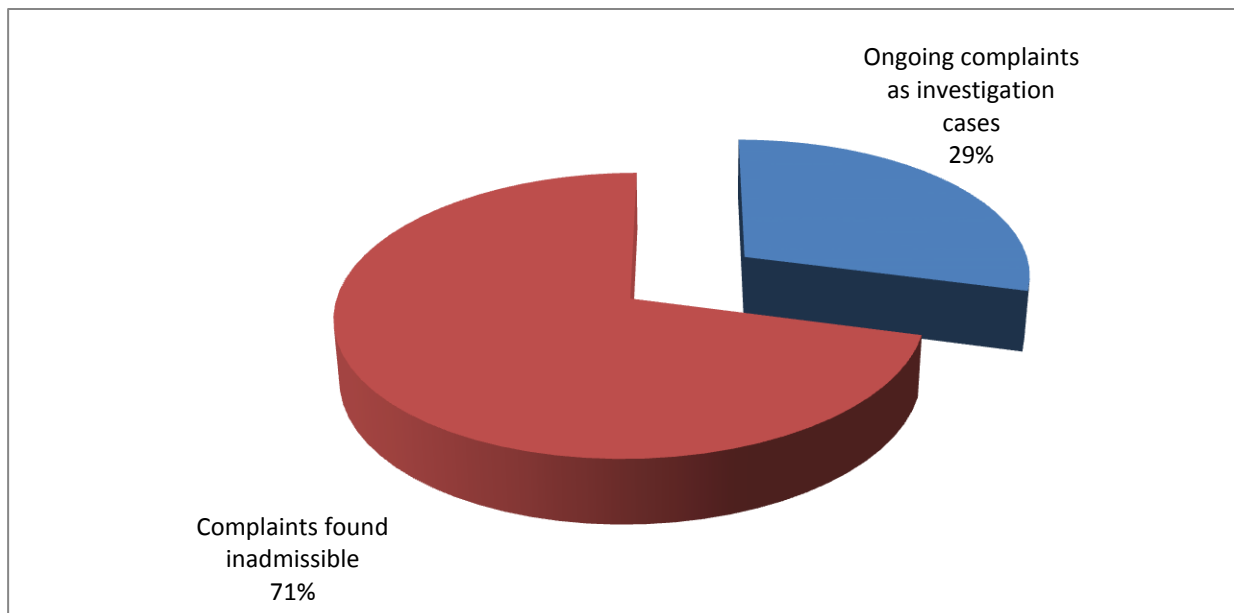
	Case Reports	17
	<i>Ex officio</i> Reports	6
	Recommendations to the issued reports	55

**Table 14: Implementation of recommendations from the reports on investigated cases by OI**

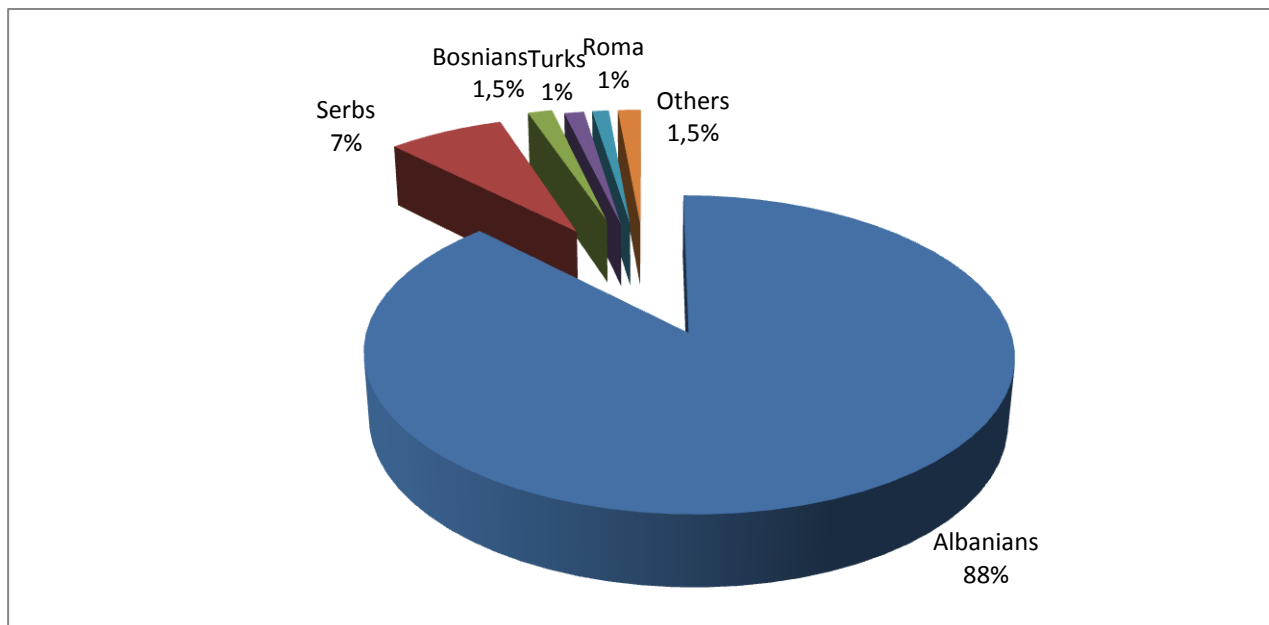
<b>Responsible authority</b>	<i>Implemented recommendations</i>	<i>Not implemented recommendations</i>	<i>Pending</i>
Basic Court in Prishtina	3	5	1
Municipality of Prishtina		5	
MESP		5	
Basic Court in Gjilan		3	
Government of Kosovo		3	
Ministry of Finance			3
Office of the Disciplinary Counsel	3		
KEC	1	2	
Kosovo Judicial Council	2		1
Court of Appellate in Prishtina		2	
Municipality of Vitia		2	
Energy Regulatory Office	1	1	
Privatization Agency of Kosovo		1	1
Ministry of Internal Affairs	2		
Office of the Prime Minister	1		
MEST		1	
Municipality of Mitrovica		1	
Basic Prosecution in Prizren		1	
Basic Court in Prizren		1	
Court of Appellate in Prishtina	1		
Municipality of Prizren	1		
SCSC			1
<b>Total</b>	<b>15</b>	<b>33</b>	<b>7</b>

## 5.2. Chart of Statistics for 1 January 2013 - 31 December 2013

*Figure 1: Review of complaints filed with the OI in 2013*

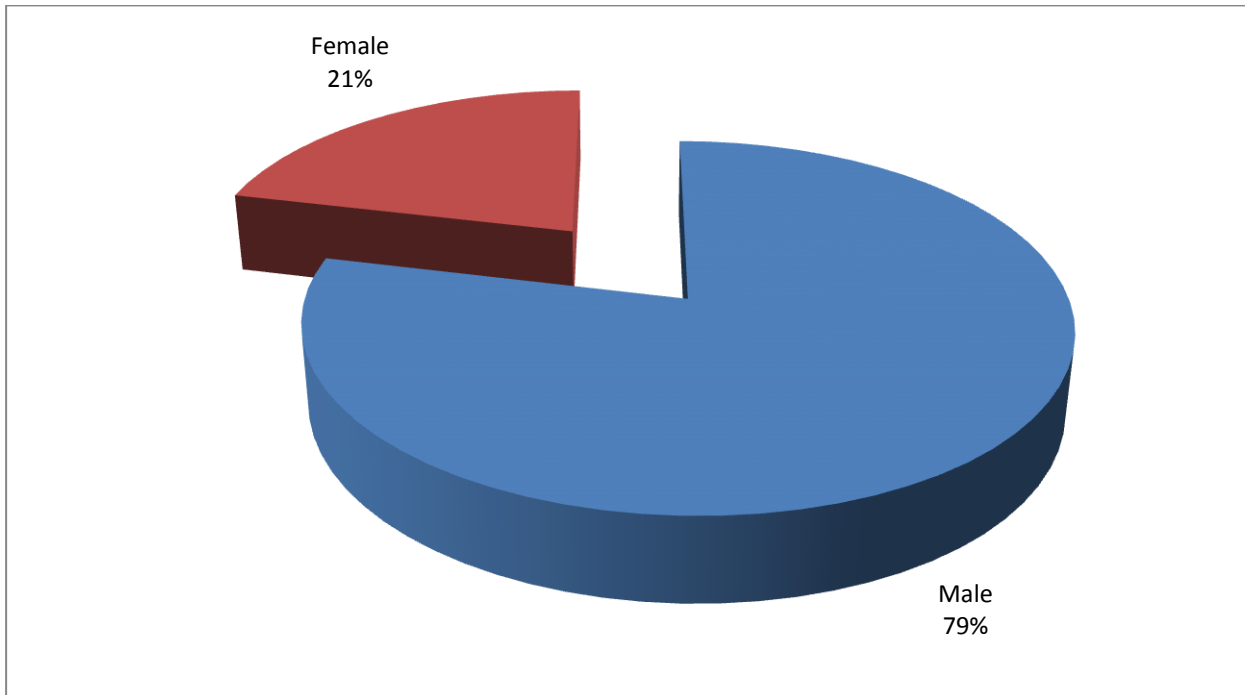


*Figure 2: Ethnicity of citizens based on the complaints filed at OI in 2013*

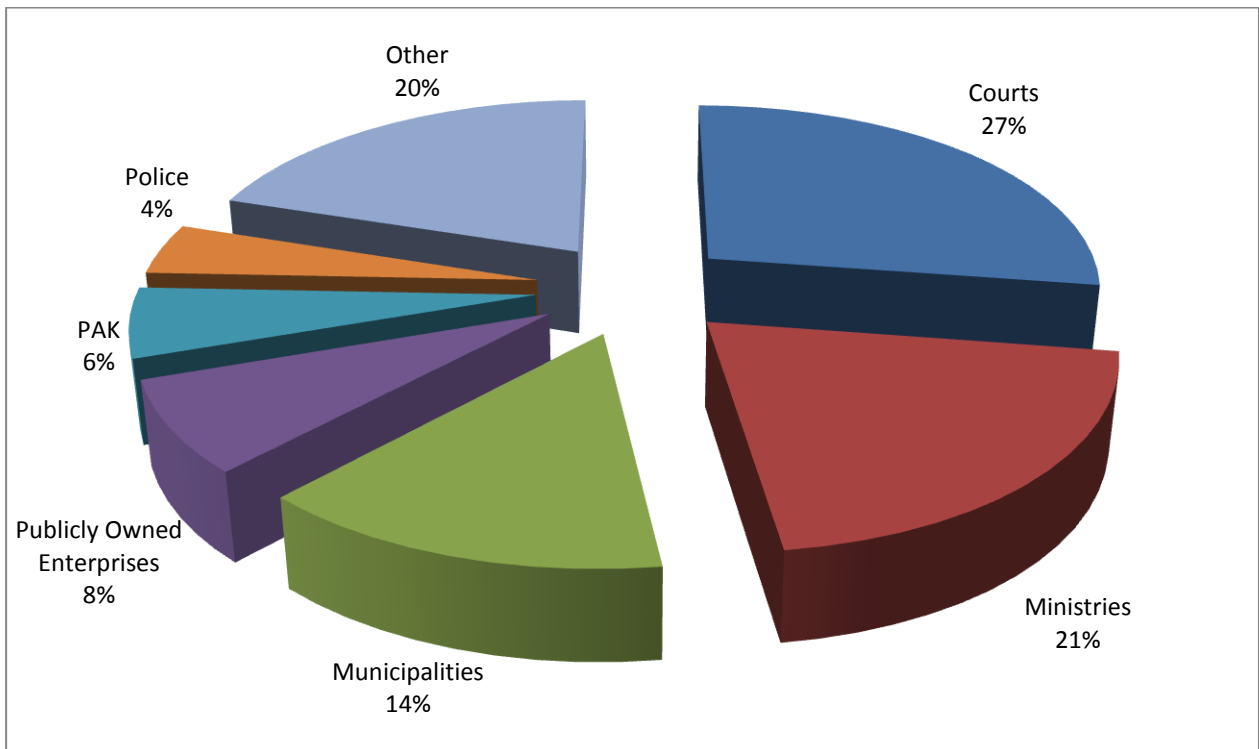




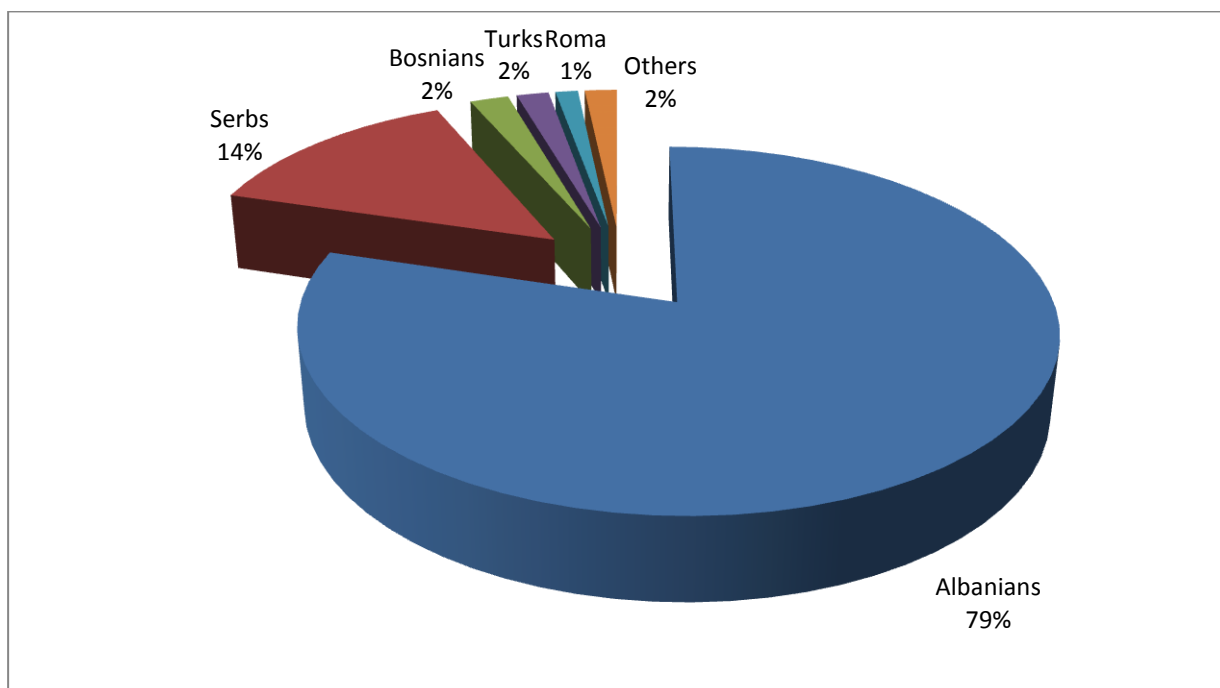
***Figure 3: Gender of citizens based on the complaints filed with the OI in 2013***



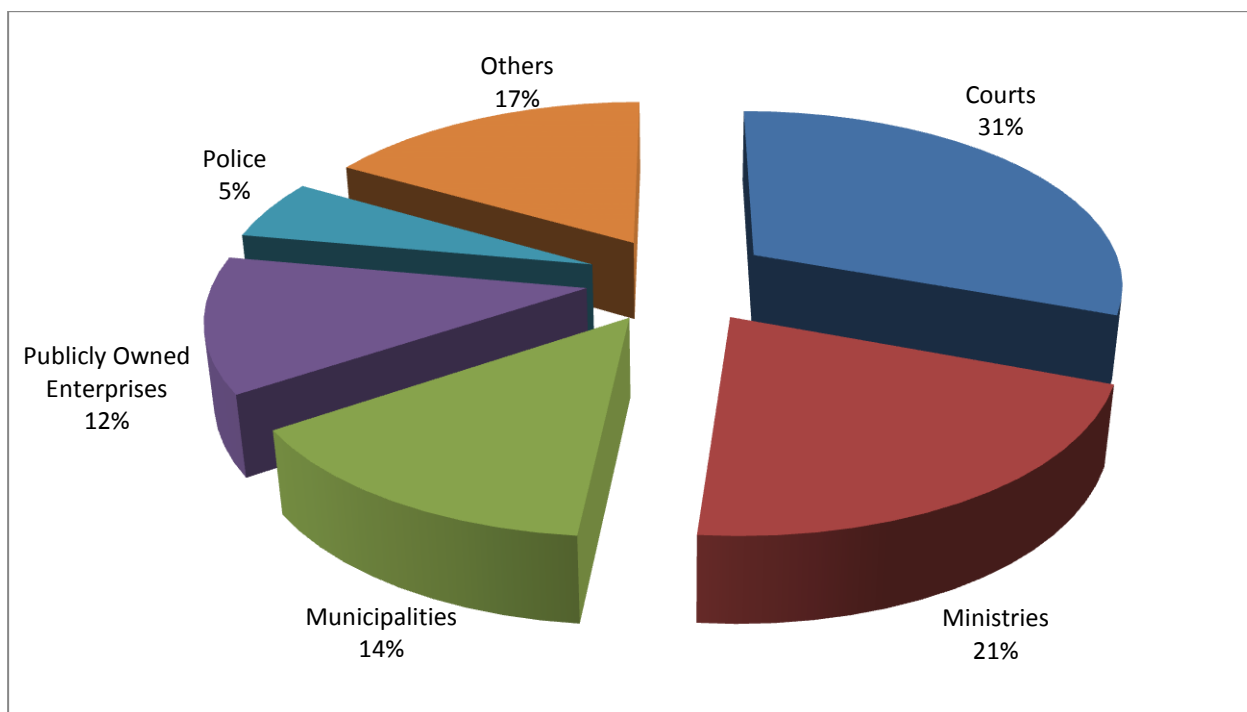
***Figure 4: Responsible authorities of the complaints filed with the OI in 2013***



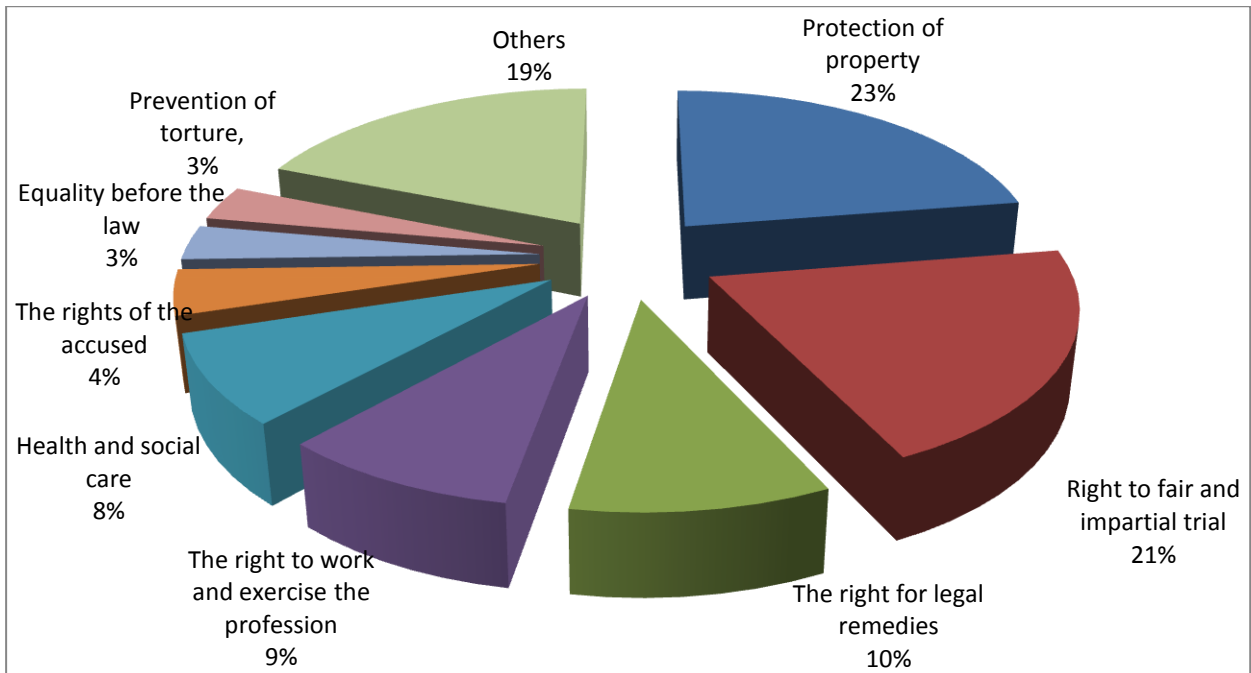
**Figure 5: Ethnicity of citizens based on the open cases during 2013**



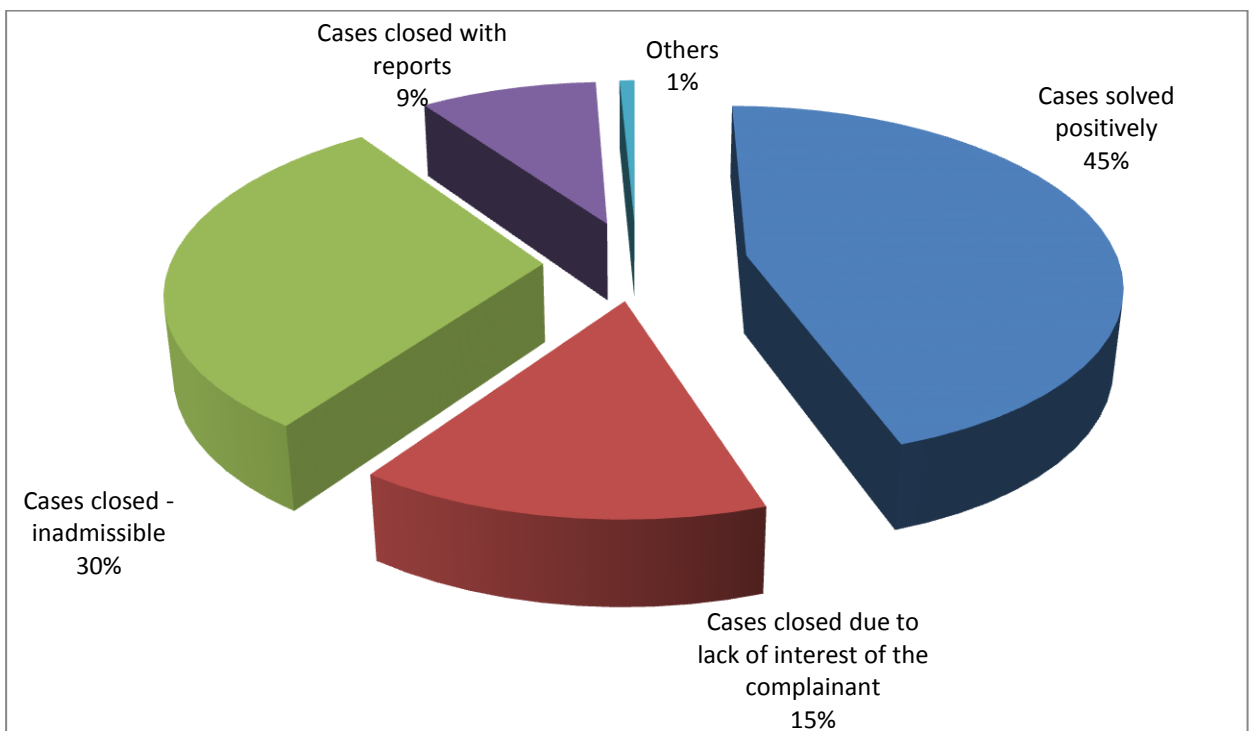
**Figure 6: Responsible authorities of cases investigated by OI**



**Figure 7: Subject matter of investigated cases based on rights guaranteed by Constitution**



**Figure 8: Cases closed by OI in 2013**  
(not only cases in 2013, but also cases registered earlier and closed this year)



## ABBREVIATIONS

<b>AMPEK</b>	Kosovo Association of Independent Electronic Media
<b>AFLA</b>	Agency for Free Legal Aid
<b>EU</b>	European Union
<b>CEDAW</b>	Convention on the Elimination of Discrimination Against Women
<b>CPT</b>	Committee for the Prevention of Torture
<b>CRONSEE</b>	Children's Rights Ombudspersons' Network of South East Europe
<b>SCSC</b>	Special Chamber of the Supreme Court
<b>MDE</b>	Municipal Directorate of Education
<b>DAD</b>	Department against Discrimination
<b>ECMI</b>	European Centre for Minority Issues
<b>ENNHRI</b>	European Network of National Human Rights Institutions
<b>EOI</b>	European Ombudsperson Institution
<b>EULEX</b>	European Union Rule of Law Mission
<b>FRA</b>	European Union Fundamental Rights Agency
<b>KSF</b>	Kosovo Security Force
<b>CRG</b>	Children's Rights Group
<b>ECHR</b>	European Court of Human Rights
<b>OI</b>	Ombudsperson Institution
<b>KIPA</b>	Kosovo Institute for Public Administration
<b>NIHR</b>	National Institutes for Human Rights
<b>IOI</b>	International Ombudsperson Institution
<b>KFPI</b>	Kosovo Forensic Psychiatry Institute
<b>IMH</b>	Institute of Mental Health
<b>CRC</b>	Convention on the Rights of the Child
<b>ECHR</b>	European Convention on Human Rights
<b>KEK</b>	Kosovo Energy Corporation
<b>KJC</b>	Kosovo Judicial Council
<b>ACC</b>	Advisory Council for Communities
<b>MEC</b>	Municipal Election Commission
<b>CPHRF</b>	Council for Protection of Human Rights and Freedoms
<b>NCCR</b>	NGO Coalition of Children's Rights

<b>KPC</b>	Kosovo Prosecutorial Council
<b>IMC</b>	Independent Media Commission
<b>CEC</b>	Central Election Commission
<b>CRK</b>	Constitution of the Republic of Kosovo
<b>PSC</b>	Polling Station Committee
<b>PUL</b>	Pre University Law
<b>LEPS</b>	Law on Execution of Penal Sanctions
<b>FLK</b>	Family Law of Kosovo
<b>LGBT</b>	Lesbian Gay Bisexuals Transsexuals
<b>ADL</b>	Anti-Discriminatory Law
<b>LAPD</b>	Law on Access to Public Documents
<b>LPG</b>	Law on Public Gatherings
<b>MEST</b>	Ministry of Education Science and Technology
<b>MOJ</b>	Ministry of Justice
<b>MI</b>	Ministry of Infrastructure
<b>IBM</b>	Integrated Border Management
<b>MCR</b>	Ministry for Community and Return
<b>NMPT</b>	National Mechanism on Prevention of Torture
<b>MESP</b>	Ministry of Environment and Spatial Planning
<b>MIA</b>	Ministry of Internal Affairs
<b>MLSW</b>	Ministry of Labour and Social Welfare
<b>MOH</b>	Ministry of Health
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>NGO</b>	Non-Governmental Organization
<b>UNO</b>	United Nations Organization
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>KP</b>	Kosovo Police
<b>CRP</b>	Conditional Release Panel
<b>CCD</b>	Correction Centre in Dubrava
<b>CCL</b>	Correction Centre in Lipjan
<b>KCRTV</b>	Kosovo Centre for Rehabilitation of Torture Victims
<b>QKS</b>	Correction Centre in Smrekovnica
<b>KCUC</b>	Kosovo Clinical University Centre

<b>CSA</b>	Centre for Social Affairs
<b>PC</b>	Polling Centres
<b>RCT</b>	Rehabilitation and Research Centre for Torture Victims
<b>RTK</b>	Radio Television of Kosovo
<b>KCS</b>	Kosovo Correctional Service
<b>KPS</b>	Kosovo Probation Service
<b>UNICEF</b>	United Nations International Children's Emergency Fund
<b>UP</b>	University of Prishtina
<b>USAID</b>	United States Agency for International Development
<b>PS</b>	Polling Station
<b>YIHR</b>	Youth Initiative for Human Rights
<b>MNAO</b>	Mitrovica North Administrative Office