



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

ANNUAL REPORT 2018

No. 18

Prishtina, 2019

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Foreword by the Ombudsperson

The Ombudsperson Institution of Kosovo, as a constitutional category, mandated to monitor, protect and promote human rights and fundamental freedoms, has continued to exercise these duties during 2018, becoming the most trusted institution in the country.

The Constitution of the Republic of Kosovo defines the Ombudsperson as an independent institution in exercising his duty and does not accept any instruction or intrusion from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo. In accordance with this right, the Ombudsperson has consistently called on public institutions to respect human rights and freedoms, as set out in the Constitution, by international laws and conventions, directly applicable into local legislation.

The work done during 2018 is best reflected in this Report, i.e. the 18th in a row, which includes compilation of information on the Ombudsperson's actions precisely for the purpose of monitoring, protection and promotion of fundamental rights and freedoms. Also, the report introduces the situation of human rights, equality and the rule of law.

By means of this Report, we introduce the Assembly of the Republic of Kosovo with a comprehensive overview of the human rights situation in the country as an obligation deriving from the Constitution. Simultaneously, the Report aims to draw the institutions attention toward not leaving adherence of human rights in the mercy of free political actions but rather to ensure their implementation through executive instruments.

Through the Report, we have not only created the discourse on respect for human rights in the country by the legislative, executive, and judicial system, but we have also introduced a detailed report on equal treatment and non-discrimination in the country on the situation of the children's rights, as well as a concise report of the National Mechanism of Human Rights.

The Institution's transition from the initial phase of establishing professional departments to the phase of complete functionalization, a reorganization process foreseen under the internal Regulation of the Institution, has caused an effective increase in the work of the Ombudsperson Institution, and capacity building for implementation of mandates vested by the Constitution and the laws.

A detailed analysis for this reporting year shows that this Institution has addressed 263 recommendations for public institutions of the Republic of Kosovo. Special attention has been given to Ex-Officio investigated cases (self-initiated investigations), mainly related to on-going violations of human rights and freedoms, aiming to ensure a larger impact in the improvement of the system for protection of such rights.

During 2018, the Ombudsperson's Institution managed to meet and implement 100 percent of all measures envisaged for this Institution under the National Program for the Implementation of the SAA.

We are convinced that the information, findings and recommendations presented in this Report will receive due attention from the representatives of the Assembly of the Republic of Kosovo, the Government and all other institutions and stakeholders so that this document serves as a guideline for policies regulating the functioning of the state, in accordance with the principle of respect for human rights, equality, rule of law, transparency, and accountability, as values of democracy. Only the institution's orientation toward protection and realization of human rights through effective mechanisms, and by ensuring implementation in practice, serves as the sole path toward overcoming the challenges presented in this report, which is rather a necessity of our times.

The main goal of the Ombudsperson's Institution, as well as the institutions of our country, is the protection of human rights and freedoms. That is why we will continue to implement our constitutional and legal obligations, so that citizens are the centre of our attention and enjoy the rights conferred to them.

Hilmi Jashari

Ombudsperson

Ombudsperson Institution

According to the Constitution of the Republic of Kosovo the Ombudsperson Institution of Kosovo (OIK) is defined as a constitutional category, specifically as an independent constitutional institution.¹ The Ombudsperson monitors, promotes and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.² The function of the Ombudsperson is exercised pursuant to Law no. 05/L-019 on Ombudsperson which aims to establish legal mechanism for protection, supervision and promotion of fundamental rights and freedoms of natural and legal persons from illegal actions or failures to act and improper actions of public authorities, institutions and persons or other bodies and organizations exercising public authorizations in the Republic of Kosovo (further in the text: *public authorities*), and the establishment of the National Preventive Mechanism against torture and other cruel, inhuman and degrading treatments and punishments.³

Additionally, the Ombudsperson represents an equality mechanism for promoting, monitoring and supporting equal treatment without discrimination on grounds recognized by the Law on Gender Equality and the Law on Protection from Discrimination.⁴

According to the Law no. 05/L-019 on Ombudsperson, the OIK is composed of: Ombudsperson, five (5) Deputy Ombudspersons and the staff of the OIK.⁵

Mandate of the Ombudsperson Institution

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

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

Within its activity, the Ombudsperson Institution is an independent institution that is governed by the principles of impartiality, independence, pre-eminence of human rights, confidentiality and professionalism⁶, and enjoys organizational, administrative and

¹ Constitution of the Republic of Kosovo, Chapter XII, Articles 132 – 135.

² Ibid., Article 132.

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

⁴ Ibid., Article 1, paragraph 2.

⁵ Ibid., Article 5.

⁶ Ibid., Article 3, paragraph 1.

financial independence in the implementation of tasks set forth by the Constitution of the Republic of Kosovo and the Law.⁷

In the framework of its powers, the Ombudsperson conducts investigations on complaints received from any natural or legal person related to assertions for violation of human rights envisaged by the Constitution, Laws and other acts, as well as international instruments of Human rights, particularly the European Convention on Human Rights (ECHR)⁸.

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

If during the investigation conducted regarding human rights issues the Ombudsperson observes the presence of criminal offence, he/she can request from respective competent Prosecution initiation of investigation as well as may appear in the capacity of the Court's friend (*amicus curiae*) in judicial proceedings dealing with human rights, equality issues and protection from discrimination. The Ombudsperson does not intervene on cases and other legal procedures, except in the cases related to administration of justice (delays of judicial procedures and failure to execute judicial decisions), but the Ombudsperson may provide general recommendations on the functioning of the judicial system, as well as can initiate matters with the Constitutional Court of Kosovo in accordance with the Constitution and the Law on Constitutional Court.⁹

The National Preventive Mechanism against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (NPMT) functions within OIK.¹⁰

The Ombudsperson, in the framework of responsibilities as NPMT, is obliged to visit regularly and without notice all places where persons deprived of liberty are held (including police custody, detention on remand, stay at medical institutions, customs detention, immigration detention, and any other place when it is suspected that there may be violations of human rights and freedoms); and to establish a special mechanism to perform all NPMT functions. The Ombudsperson cooperates with international and domestic mechanisms in the field of the prevention of torture and other forms of cruel, inhuman, or degrading treatment or punishment. In addition, the Ombudsperson may issue suggestions and recommendations to persons and responsible institutions where

⁷ Ibid., Article 3, paragraph 3.

⁸ Ibid., Article 16.

⁹ Constitution of the Republic of Kosovo, Article 113, paragraph 2, Article 135, paragraph 4, Law no. 05/L-019 on Ombudsperson, Article 16, paragraph 10. Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, Article 29.

¹⁰ Law no. 05/L-019 on Ombudsperson, Article 17.

persons deprived of liberty are held, of whatever kind and in whatever premises and circumstances in which they are being held, with the aim of improving their treatment and conditions.

The Ombudsperson performs other work defined by the Law on protection from discrimination, Law on Gender Equality, and other legislation in force; collects statistical data regarding the issues of discrimination and equality presented to the Ombudsperson, and publishes them; publishes reports and makes recommendations on policies and practices on combating discrimination and promoting equality; cooperates with social partners and non-governmental organizations dealing with issues of equality and non-discrimination, as well as similar international bodies like the Ombudsperson.¹¹

The Ombudsperson also has further legal responsibilities: not only to investigate alleged violations of human rights and acts of discrimination, but to show commitment to eliminate them; to draft and adopt specific procedures for receiving and handling complaints from children, and the creation of a specialized team for children's rights and a permanent program for children to become aware of their rights and the role of Ombudsperson institution in their protection; to inform about human rights and to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination; to publish notifications, opinions, recommendations, proposals and his/her own reports; to recommend promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo; to prepare annual, periodical and other reports on the situation of human rights in the Republic of Kosovo; to recommend to the harmonization of legislation with international standards for human rights and freedoms, equality and discrimination and conduct research on the issue of human rights and fundamental freedoms, equality and discrimination in the Republic of Kosovo; to cooperate, in accordance with the Constitution and legislation in force, with all organizations, local and international institutions dealing with protection of human rights and freedoms; keep-safe the confidentiality of all information and data they receive, paying special attention to safety of complainants, damaged parties and witnesses, in accordance with the Law on personal data protection (obligation imposed to the Ombudsperson, his deputies, and OIK staff which remains valid after the end of the mandate or termination of their employment).¹²

Citizens can file complaints against public administration, according to a simple and free of charge procedure. Complaints addressed to the OIK can refer to actions, inactions or decisions of public administration that applicants may consider unfair or unfavourable. When reviewing such complaints, actions of the OIK's lawyers involve offering legal

¹¹ Ibid., Article 16, paragraph 13 to 16.

¹² Ibid., Article 18.

advice, accompanied by requests for data from the public administration, the courts and other important institutions concerning the complaints filed, as well as by supervision of certain administrative and judicial proceedings.

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

If the requests for intervention and efforts to mediate are not successful, the Ombudsperson may issue a report, ensuring public analysis and exposure for violations of human rights or of applicable laws, along with recommendations for the public institution, to avoid violations. Reports are the last advocacy tool of the institution; the report is addressed to the authority that has committed the violence, while the copy of the report is delivered to the Assembly of Kosovo and to other relevant organisations. Meanwhile the Ombudsperson presents the Annual Report to the Assembly of the Republic of Kosovo until 31 of March of the following year, which is reviewed in the plenary session by the Assembly during the spring session.¹³

The Ombudsperson, within legal liabilities and in order to accomplish efficiently the mandate determined by the Constitution and by the Law on Ombudsperson, in terms of the obligations for issuing internal rules,¹⁴ on 18 January 2017 has approved *Regulation No. 01/2017 on job description and classification of job positions in the Ombudsperson Institution, Regulation No. 02/2017 on the procedure of recruitment, appointment and probationary work of employees in the Ombudsperson Institution, and Regulation No. 03/2017 on career advancement and transfer of employees of the Ombudsperson Institution*, which were published in the Official Gazette of the Republic of Kosovo (OGRK) on 23 January 2017 and entered into force on the same day.

The Ombudsperson's powers to review issues related to protection from discrimination in general, and gender discrimination in particular were provided by two other basic laws on human rights (Law on Protection from Discrimination and Law on Gender Equality).

According to the Law on Gender Equality, the Ombudsperson is a gender equality institution that handles cases related to gender discrimination, in accordance with procedures established by the Law on Ombudsperson.¹⁵

On the other hand, according to the Law on Protection from Discrimination, the Ombudsperson is a state institution for equality, promotion and protection of human

¹³ Ibid., Article 29.

¹⁴ Ibid., Article 37.

¹⁵ Law no. 05/L-020 on Gender Equality, Article 13.

rights and handles cases related to discrimination under the relevant Law on Ombudsperson.¹⁶

The Office for Good Governance (OGG) within the Office of the Prime Minister (OPM), for implementation of the Law on Protection from Discrimination, is responsible to monitor implementation of the Ombudsperson's recommendations.¹⁷

Promotion of Human Rights

Even during 2018, the Ombudsperson Institution (OIK), as the only national institution for human rights in the country, has continued to play an important role in promoting human rights and fundamental freedoms, taking into account the society's circumstances and the divergence of communities with the sole aim of empowering citizens to enjoy and exercise their human rights and respect the rights of others.

The OIK has continued to organize educational activities, training sessions, information campaigns and awareness campaigns to promote respect for human rights and fundamental freedoms as a contribution to building and promoting a universal culture of human rights, as well as to preventing human rights violations or abuses.

The OIK remains committed to the fulfilment of the first objective of the Strategy and Development Plan of the Ombudsperson Institution 2017-2019, namely to increase the citizen's trust on the Ombudsperson Institution in promoting and protecting human rights and fundamental freedoms. In this regard, the OIK continued fulfilling obligations deriving from the international human rights instruments and standards and the Law on the Ombudsperson to promote and encourage respect for human rights and fundamental freedoms for all, without distinction.

During the reporting year, the OI has continued to be the most trusted institution in the country and beyond¹⁸, as a result of commitment and engagement in the protection and promotion of human rights and fundamental freedoms in the country.

The commitment of the Ombudsperson to fulfilling his mandate was highly praised in the European Commission Kosovo Report 2018, published in April 2018, according to which: *"The Ombudsperson has continued to strengthen its capacity to review cases and has become the most trusted institution in Kosovo"*. Moreover, according to the Report on the Implementation of the National Program for Implementation of the SAA published in April 2018, the OIK is considered to be the only institution that has fulfilled, at the

¹⁶ Law no. 05/L-021 on Protection from Discrimination, Article 9.

¹⁷ Ibid., Article 10, paragraph 1, subparagraph 1.2.

¹⁸ *Balkan Barometer 2017, (Regional Cooperation Council (RCC): http://www.rcc.int/seeds/files/RCC_BalkanBarometer_PublicOpinion_2017.pdf, "When asked 'How much trust do you have in certain institutions? (Courts and judiciary; Parliament; Government; Ombudsperson; the Auditor)', for the purpose of the research, 59% of respondents from Kosovo have expressed that they trust the Ombudsperson's Institution, which ranks Kosovo the highest when compared to the institutions listed by countries in the region, in which less than half of the population report to have trust - Public Opinion Survey, p. 124 -125)".*

country level, 100% of all foreseen implementing measures during 2017, regarding the implementation of the National Program for the Implementation of the SAA.

During 2018, in order to fulfil the constitutional and legal mandate for promoting and making human rights and fundamental freedoms known, the OIK has undertaken a number of activities aimed at informing, educating, and raising awareness as regards the human rights. Through training activities, conferences, awareness raising campaigns, roundtables, workshops, media participation etc., the OIK contributed to the awareness raising and information of citizens regarding violations of human rights and fundamental freedoms, including massive or systematic violations of the rights of various groups such as individuals, preschool children, students of different levels, national and international students, workers, civil servants, prosecutors and judges, police officers, pensioners, etc.

The engagement of the Ombudsperson, Deputy Ombudspersons, and all professional staff have influenced the increase of the Institution's performance in terms of promoting the work of the OIK and education on human rights. The special Department for Promotion of Human Rights, the Department for Cooperation, Reporting and Promotion of Human Rights (DCRPHR), and other OIK departments, have committedly continued to work towards meeting the first objective of the Strategy and the development plan of the Ombudsperson Institution 2017-2019, through the organization of various activities of educational and promotional nature, and also through intensification of the cooperation with international organizations, civil society, within the projects developed in partnership.

Taking into consideration the important role and contribution of the media in promoting human rights and providing information to the public, the OIK has strengthened its cooperation with the media, by constantly participating in programs and discussions, but also through publications, sharing opinions and information on the findings regarding the state of human rights and freedoms in Kosovo. Particular attention was paid to promoting and raising awareness on the role and mandate of OIK through social media and media campaigns.

On 22 January, 2018, the OIK signed a Memorandum of Understanding with Radio Television of Kosovo (RTK). The purpose of the cooperation agreement is to keep the public informed on the findings of the Ombudsperson, on the publications and activities carried out by the OIK, and on the cooperation and coordination of actions related to the activities and projects that may be developed with a view to promoting human rights and fundamental freedoms.

Promotional activities by the Ombudsperson Institution

The Ombudsperson Institution (OIK) has continued its cooperation in the field of human rights with local institutions, international organizations in Kosovo and with civil society. During 2018, the Ombudsperson and its associates participated in around 89 (eighty-nine)

roundtables, 29 (twenty-nine) conferences, 37 (thirty-seven) workshops and 15 (fifteen) seminars organized by institutional associates, international organizations in the country, and non-governmental organizations. During these activities, various topics have been dealt with in the area of human rights and fundamental freedoms such as the rights of non-majority communities, women's rights, children's rights, the rights of persons with disabilities, the rights of marginalized communities and others, the right of access to public documents, gender equality, the right to education, environmental issues and the impact on human rights, equality and treatment without discrimination, compensation of crime victims, etc.

Given the irreplaceable importance of education and training as a form of promoting human rights and as the only way of acquiring knowledge for effective realization of all human rights and with the aim of fulfilling the obligation of promoting human rights and fundamental freedoms and the OIK's mandate, the Ombudsperson, during 2018, held around 22 (twenty-two) lectures with students of public and private universities in Kosovo. The students are informed about the human rights situation in the country, about the legal, constitutional, international standards, values, principles and mechanisms for the protection of rights in the country, as well as about the competencies, responsibilities, role, and mission of the OIK

The Ombudsperson has organized 7 (seven) training sessions with human rights officials at the municipal level, and training sessions for appointed prosecutors on duty, which sessions presented the constitutional and legal mandate of the OIK was presented, competencies and responsibilities in the field of defence of the human rights and their promotion, the hitherto achievements of the institution, and the challenges that the country faces regarding the respect and protection of human rights.

In an effort to promote the right to a safe and healthy environment and to discuss environmental problems with various stakeholders of responsible state institutions on 22 November 2018, the OIK, in cooperation with the Kosovo Law Institute (KLI), organized the round table on "Preventing and Combating Environmental Problems". In order to discuss the numerous environmental problems, the roundtable was attended by representatives of the judiciary, representatives of the Kosovo Police, representatives of international organizations, diplomatic missions, civil society, and citizens. The roundtable was organized for the purpose of discussing and addressing environmental problems such as delays in environmental cases in the prosecution office and in the court, reduction of environmental problems, including ineligible constructions, inert waste, and landfills.

Within the framework of activities, with a view to promoting community rights, the OIK, on 17 December 2018, with the support of the OSCE Mission in Kosovo, organized a roundtable discussion on human rights with a specific focus on the rights of the Turkish community in Kosovo. The roundtable was aimed at developing open discussion with

Turkish citizens on human rights and fundamental freedoms, addressing participants' concerns as regards the respect of their rights, and at presenting the role and mandate of the Ombudsperson Institution. With respect to the protection, respect and promotion of human rights and freedoms in Kosovo, during open discussion, participants at the table presented the problems faced by their community, such as: inadequate translation of textbooks into Turkish language and lack of textbooks, use of discriminatory terms in textbooks and restrictions on the use of mother tongue, which will be further addressed by the OIK.

On the occasion of marking the International Human Rights Day on 10 December, the Ombudsperson Institution, for the second time in a row, in cooperation with non-governmental organizations and civil society in Kosovo, organized the joint activity "Stand Up for Human Rights". The activity was aimed at delivering a strong message for increased, inclusive and inter-institutional engagement for promoting and educating human rights and fundamental freedoms. During this event, representatives of civil society, through their speeches, discussed the rights of the children, youth rights, the rights of women, the rights of the elderly, the rights of the Roma, Ashkali and Egyptian communities, LGBTI community rights, rights of people with disabilities, and the returnees' rights in Kosovo. The activity was supported by PSAs (short public service announcements conveying human rights education messages), for all the above mentioned rights, which have been carried out by BIRN. PSAs were broadcasted on TV and in social media. The activity was followed by the traditional march, with a broad participation of civil society, activists and citizens, under the motto "Stand for Human Rights". The activity is supported by GIZ.

Considering the need to strengthen inter-institutional cooperation with the Ombudsperson Institution, in order to address the problems related to the protection and respect of human rights, on 18 December 2018, the Ombudsperson organized the conference "Institutional Cooperation with the Ombudsperson". The conference that was attended by the representatives of central and local level institutions, the Assembly of the Republic of Kosovo, the diplomatic missions and international organizations, included discussions on the OIK achievements and the importance of inter-institutional cooperation with the Ombudsperson Institution, and in particular, emphasized the importance of implementing the Ombudsperson's recommendations in order to increase the level of respect and protection of human rights in our country. During this conference, the 2018 publications were also promoted, such as Principles of Good Administration and Anti-Discrimination Handbook, summaries compiled and published by the Ombudsperson Institution.

Cooperation with international organizations, non-governmental organizations, and civil society through projects

International organizations in the country, such as the European Commission, the Council of Europe, the OSCE, UNICEF, UNMIK, UNDP and other organizations operating in the

country have continued to support the Ombudsperson Institution through projects aiming to building the capacities of the OIK, and throughout the year they have also cooperated with regard to the promotion and education on human rights. The activities from the project had a lasting impact on the improvement of the performance and on the achievement of high results in the implementation of the mandate of the Ombudsperson Institution.

The project “Strengthening the National Preventive Mechanism in Kosovo”, supported by the Council of Europe, the Government of Switzerland and the Government of Norway, has continued its successful implementation during this year as well. The aim of the project is to strengthen and build the capacity of the National Torture Prevention Mechanism (NTPM) for implementation of international standards in the field of prevention of torture and ill-treatment and to awareness raising of relevant stakeholders on the role and mandate of the NTPM.

The engagement of four external legal advisors within this project has continued to yield high results in strengthening the institution’s capacity to implement the mandate outlined in the Human Rights Package of laws.

Within the project "OmbudsWatch - Promotion of Ombudsperson’s Role in Kosovo", implemented by BIRN Kosovo and ACDC (Overseas Culture Democracy Advocacy Centre), in cooperation with the Ombudsperson Institution and supported by the Embassy of the Netherlands in Kosovo, during 2018 were implemented several activities, whose purpose was to raise awareness on human rights. Through the project, the following activities were carried out:

- Implementation and publication of five PASs (short public service announcements conveying human rights educational messages), which addressed various topics such as: assessment of Ombudsperson’s work and activities in fulfilling his mandate as a National Institution for protection and promotion of human rights such as: (Balkan Barometer, Progress Report and National Program for the Implementation of SAA for 2017); PSA for the protection and promotion of the right of access to public documents; protection and promotion of the right to a safe and healthy environment; and the OIK's role, mandate and competences.
- Implementation of three open discussions with civil society and the media on human rights in different cities of Kosovo such as Prizren, Mitrovica and Peja for discussing the role of the Ombudsperson in handling public interest issues.
- Conduct a competition for best journalistic stories on human rights issues with the purpose of encouraging the community of journalists to inform and raise public awareness of the human rights situation and fundamental freedoms through various stories in place.

- Organize training on capacity building of the OIK staff, with regard to the promotion of human rights and OIK work, through social media and media campaigns.
- Organization of the closing ceremony for awarding the prizes to the three best journalistic stories on human rights issues.

As a continuation of activities under the project “Protection and promotion of human rights in Kosovo through active civil society” under the European Instrument for Democracy and Human Rights, implemented by Kosovo Institute for Policy Research and Development (KIPRED) from the Group for Legal and Political Studies (GLPS) and Artpolis, the following activities were held:

- Organization of the workshop with the OIK staff, aimed at supporting the OIK in reviewing the Communication Strategy and Strategy and Development Plan of OIK 2017-2019.
- Organization of the roundtable on June 14, 2018 for launching the "Follow-up mechanism for reported human rights violations in Kosovo", which provides a summary of data on human rights violations reported in Kosovo Police, Prosecution Offices, Courts, and Ombudsperson Institution, regarding domestic violence, trafficking in human beings, violation of LGBT rights and violation of journalists' rights.
- Implementation of the forum theatre "Stigma - Ask for your right", which addresses the stigma within society regarding the fate of survivors of sexual violence in Kosovo, and also promotes the role and mandate of the Ombudsperson Institution in terms of promotion, protection and oversight of human rights and freedoms.

During the reporting year, the support of the Organization for Security and Cooperation in Europe (OSCE) in Kosovo has continued. Activities organized between the Ombudsperson and the OSCE include:

- In the framework of the project "Promotion of legal and law sectors by respecting the right to equality before the law, regardless of gender, ethnicity, religion or other personal characteristics", has supported the Ombudsperson Institution in the development of the institution's website and online platform for NGO reports. In this regard, the new OIK website and the accessible platform on the OIK website have been launched. The platform was designed to provide a comprehensive inter-institutional unrestricted approach which will contain the reports and recommendations of non-governmental organizations and civil society working and contributing to human rights in Kosovo.

- The Ombudsperson, the OSCE, together with a group of non-governmental organizations of various profiles represented by non-majority communities, disabled persons, youth forums, women's community and marginalized groups, in April 2018, held a workshop within which a joint action plan was drafted in 2017, and the priorities for 2018 were set.
- The round table organized in June 2018 with non-governmental organizations, civil society and representatives of public institutions on the right of access to public documents, whereby the OIK representatives presented to the participants the legal framework regulating the field of access to public documents, OIK practice regarding the right to access to public documents, the challenges and constraints faced by citizens during the exercise of this right.
- During the period July-August 2018, the workshop cycle "I am HUMAN and I have RIGHTS", was organised in 10 (ten) municipalities: Prishtina, Prizren, Gjakova, Ferizaj, Mitrovica, including North Mitrovica, Peja, Gjilan, Dragash, and Gracanica. The purpose of the workshops was to expand knowledge and raise awareness on the human rights, the issue of equality and non-discrimination of young people aged 15-25. Special attention has been paid to the inclusion of all young people of the following communities: Serb, Turkish, Roma, Ashkali, Egyptian, Bosnian and Gorani. The invitations for the best photography and poetry competition on human rights "Human Rights through Art" were delivered during the workshop. The purpose of the activity was to present human rights through art, and encourage young people think reflectively via art on human rights and their violations or limitations.
- The final event on 10 December 2018 for marking the International Human Rights Day, the organization of an exhibition with poems and photographs of youth from all over Kosovo, and the awarding of prizes for the best artworks.
- On 17 December 2018, the OIK, supported by the OSCE Mission in Kosovo, organized a roundtable discussion on human rights with a special focus on the rights of the Turkish community in Kosovo. The roundtable was aimed at developing open discussion with Turkish citizens on human rights and fundamental freedoms, addressing participants' concerns on the respect of their rights, and presenting the role and mandate of the Ombudsperson Institution.

In the light of the cooperation with UNICEF, the OIK has conducted joint meetings aimed at raising the level of respect for children's rights. On 23-24 October 2018, two OIK representatives, supported by UNICEF, attended a study visit in Germany. The purpose of this visit was to get acquainted with the work and experiences of German governmental and nongovernmental institutions in the area of juvenile delinquency.

The OIK has also continued co-operation with Terre de Hommes, which during 2018 supported the OIK in carrying out a staff training on child interviewing techniques, and are now in the process of establishing procedures for receiving, treating and addressing complaints related to children's rights issues, which will be very useful to OIK, and in particular to the Department of Children's Rights.

The cooperation and support from UNMIK in the promotion of the OI has continued this year through the financing of a media campaign, media debates (on televisions and radios operating in South Mitrovica and North Mitrovica), publication and distribution of brochures, for the purpose of informing citizens of South Mitrovica and North Mitrovica on human rights, on the role and mandate of the OIK. Increase in the number of complaints to the OIK by the citizens of this part of Kosovo is an indicator of the positive impact of the project.

During the period 20 March - 19 July 2018, the UNDP supported the Ombudsperson Institution by engaging a legal adviser, in order to increase the Institution's capacity to identify systematic cases filed with the courts, to act in the capacity of *amicus curiae* or even to contribute to the Ombudsperson's opinions for addressing the Basic Courts, the Court of Appeal or the Supreme Court.

Similarly, the OIK, in cooperation with UNDP, have initiated a project aimed at promoting human rights guaranteed by the applicable legislation, the international instruments in the country, and the Sustainable Development Goals, deriving from Agenda 2030. The project was supported by the Norwegian Embassy in Kosovo and will be implemented during 2019.

On the occasion of marking the International Human Rights Day on 10 December, the Ombudsperson Institution (OIK), in cooperation with non-governmental organizations and with civil society in Kosovo, organized the joint activity "Stand Up for Human Rights". The activity was supported by GIZ.

Launching of the new website and online platform for NGO reports, video clips and promotional materials

During 2018, the OIK has launched a new web site that contains numerous information on the mandate, actions, as well as publications, and opinions of the OIK. The website also provides an accessible platform that has been set up and designed to provide a comprehensive inter-institutional unrestricted access, which will contain the reports and recommendations of non-governmental organizations and civil society working and contributing to human rights in the country.

During 2018, the OIK, aiming to fulfil its mission on human rights education and information, has developed materials of an educative and informative nature on human rights, such as leaflets and brochures for the mission, powers and mandate of the OIK as

well as for the mandate and competencies of the OIK in relation to the protection of children's rights.

It is worth noting that for the first time, the OIK, during the reporting year, has compiled and published the following documents: Code with the Principles of Good Administration, a summary of principles on the basis of which the state administration should operate; Handbook on Protection from Discrimination; compilation of information for recognition of all forms of discrimination, protection mechanisms against discrimination, and information on international and local legislation for protection against discrimination; a leaflet on the promotion of the right to a safe and healthy environment, followed by relevant information on the applicable legal framework and mechanisms for protection of this right; and a brochure with information on the most important international human rights days related to protection against discrimination, the rights of women, children, persons with special needs, the rights of marginalized groups and others. The brochure also contains a summary of international and local legal instruments in force in the field of human rights as well as relevant information regarding the symbolism of the international days marked.

It is of utmost importance to note that all of the abovementioned materials have been prepared in five languages: Albanian, Serbian, English, Roma and Turkish; with the aim of comprehensiveness and respect for the right to languages, and broader information of all communities in Kosovo on human rights, as well as for the purpose of fulfilling the mission and mandate of the Ombudsperson Institution.

During the reporting period, the OIK has launched two video clips. The video clip of the mobile application "Know your rights" has been launched with the purpose of promoting the platform and informing the public on the ways of using the mobile application, and the video clip for awareness raising and protection from all forms of discrimination, which was broadcasted both in TV and social media. During 2018, two video clips were prepared for the promotion of the right to a safe and healthy environment and awareness raising of young people on the danger of using narcotic substances, especially the state's duty to protect its citizens, to prevent drugs, and treat individuals under drug influence. These video clips will be launched and broadcasted during 2019.

Promotion of children's rights

With the aim of educating and raising awareness on human rights, the Ombudsperson Institution during 2018 continued with information campaigns with pupils and teachers of primary and secondary schools in different regions and municipalities of Kosovo. During this year, about 40 (forty) information campaigns in primary and secondary schools were organized regarding the role of the OIK in promoting and protecting human rights in Kosovo. The main purpose of organizing these campaigns is to inform the children about the role of the Ombudsperson Institution in the protection and promotion of human rights

as well as their about their right to address cases of human rights violations in the OIK through the online platform “Know Your Rights” among other ways.

In order to strengthen cooperation with civil society, on 19 January 2018, the Ombudsperson signed a Memorandum of Understanding with Save the Children for the purpose of mutual cooperation for the promotion of children's rights through the strengthening of the children participation.

Meanwhile, in honour of marking June 1, International Children's Day, the Ombudsperson Institution has organized various activities for children of different ages in 4 (four) municipalities of Kosovo, in: Prishtina, Graçanica, Prizren and Gjilan. On this day, children met with the Ombudsperson, deputies and representatives of the Ombudsperson Institution, where they discussed the rights of children, and through various drawings, quizzes and photographs they were informed about human rights, their own rights, and about the OIK's mission related to the protection of human rights.

On the occasion of the 20th anniversary of the Universal Children's Day, the Ombudsperson hosted children from different schools of Kosovo, and informed them about the mission and mandate of the OIK, human rights, children's rights, as well as on the process of addressing violations or potential violations of their rights at the OIK.

Promotion of the rights of persons with special needs

This year as well, the Ombudsperson has continued his engagement in order to raise the awareness, protection and promotion of the rights of persons with special needs. As a sign of solidarity and support for people with special needs, the Ombudsperson, together with his associates, participated in the protest march under the motto “*Kosovë më Mbështet, Fuqizo të Drejtën Time!*” organized by the Down Syndrome Kosovo Association in order to mark the World Down Syndrome Day. In this regard, the Ombudsperson pledged full support from OIK in improving the situation and in protecting the rights of people with Down syndrome, so that children with disabilities are treated equally in all life processes.

On 20 March 2018, the Ombudsperson, along with his associates, visited the "Down Syndrome Kosova" (DSK), headquartered in Prishtina, where they discussed the most common problems faced by children affected by down syndrome such as: provision of professional health services, inclusion in the education system, and their integration through employment. On this occasion, the Ombudsperson has pledged full support from the OIK to the initiatives and activities aimed at improving the situation and protecting the rights of people with Down syndrome.

On 30 March 2018, on the occasion of marking the World Autism Awareness Day, the Ombudsperson, accompanied by his deputies and associates, visited autistic children at the “Ismail Qemali” Primary School in Prishtina, and they were informed about the difficulties faced by children with autism, such as: lack of school transport, limited

budget, etc. The Ombudsperson emphasizes the need for additional engagement of relevant institutions in order to provide adequate conditions to enable autistic children to attend school in accordance with their specific needs.

Access to the Ombudsperson Institution

Every working day (Monday to Friday) from 8:00 to 16:00, the OIK receives in its offices citizens who allege to being subject to violations of their rights. They are received by OIK's legal counsellors who deal with cases with care, confidentiality and professionalism.

In order to facilitate the access of Kosovo citizens to the OIK, in addition to the Central Office in Prishtina, the OIK has regional offices in Ferizaj, Gjakova, Gjilan, South Mitrovica, North Mitrovica, Peja, Prizren and Gracanica.

OIK offices consist of professional staff serving citizens and responding to their claims and complaints, and defending the rights they consider to have been violated.

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

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

OIK officials make regular visits to all prisons and places where persons with limited freedom are kept in Kosovo. In order to enable direct communication with the prisoners, in cooperation with the authorities of the Kosovo Correctional Service and the responsible prisons in Kosovo, in 2004 the OIK placed mailboxes at visible spots in all prisons and detention centres in the Republic of Kosovo, which are only opened by OIK representatives. This practice has helped many inmates or detainees to establish first contact with the Ombudsperson. Such boxes are also placed in Mental Health Centres and institutions, facilitating patients' access to the OIK. These institutions and centres are regularly visited every month by OIK representatives.

Recently, the OIK has changed the design of the official site where more information about the OIK and its activities can now be found, and has also changed the electronic address from the previous www.ombudspersonkosovo.org and info@ombudspersonkosovo.org to now www.oik-rks.org and info.oik@oik-rks.org, which operate on a regular basis and is available to Kosovo citizens.

Human rights situation in the Republic of Kosovo

Legislative power

Taking into account the mandate of the Ombudsperson and his oversight role over all powers in the state structure regarding the protection and respect of human rights and freedoms, has continuously monitored the process of drafting, reviewing and approving laws.

In the legislative program of the Government of the Republic of Kosovo for this year, approved on 20 December 2017¹⁹, the Ombudsperson has noted that 75 draft laws are foreseen to be reviewed and approved, out of which 52 are new draft laws and 23 are draft laws for amending and supplementing existing laws.

If we compare the legislative program in the last three years, there is a noticeable decrease in the number of draft laws for amending and supplementing existing laws. In 2016, the legislative program contained 50% draft laws for amending and supplementing existing laws, while in 2017 it dropped to 42%, while in 2018 the number of draft laws for amending and supplementing existing laws decreased to 31%.

Furthermore, the Ombudsperson has analysed the list of laws adopted by the Assembly of Republic of Kosovo during the reporting year and noted that the Assembly adopted 80 laws during this year, whereas by the end of December 2018, 71 draft laws have been in the Assembly proceedings. This indicates that the Assembly has exceeded the expectations set out in the Government Legislative Program for 2018. Out of the 80 laws adopted by the Assembly, 16 of them (20%) are laws amending and supplementing existing laws. Despite the fact that this figure has continuously declined, the Ombudsperson considers that the trend of draft laws for amending and amending laws continues to remain high. In order for the newly adopted laws not to be repeatedly supplemented and amended, more attention has to be paid to the quality of law compilation as of the initial phase of the legislative process, by taking into account the principle of security and legal sustainability.

With respect to adopting the laws, the Ombudsperson has noted that during 2018, the Kosovo Assembly was more active than in the past three years. During 2018, the Assembly of the Republic of Kosovo has adopted 80 laws, unlike 2015, when the Assembly passed 56 laws, in 2016, 52 laws, while in 2017, the number of laws adopted in the Assembly was only 21. It should be noted that during 2017, the small number of laws adopted was a result of political events and delays in the establishment of institutions following certification of the results of the 2017 central elections.

¹⁹ 20th Meeting of the Government of the Republic of Kosovo, Decision no. 03/20, dated 20 December 2017.

Similarly to last year, even in 2018, none of the laws passed belongs to the legislation of vital interest²⁰, while some draft laws in this field foreseen by the legislative program for this year have not been approved.

Regarding the requirements for interpretation of the legal provisions that have been submitted to the OIK during 2018 (but not only), the Ombudsperson deems it extremely necessary to emphasize in his annual report that interpretation of laws is not under his competence and mandate.

The only institution that can and should conduct the authentic interpretation of the legal provisions and the spirit of the adopted laws is the Assembly of the Republic of Kosovo as a legislative body. Therefore, the Ombudsperson advises on the establishment of professional staff capacities that provides support to parliamentary committees and the Assembly itself. This would reflect the clarification of the uncertainties or clashes that may arise from the legal provisions, in the implementation of laws.

In annual reports of previous years, the OIK has warned of the obvious omissions in the drafting process of laws and draft laws proposed under existing laws. In order to consolidate the legislation, OIK has recommended the strengthening of the Directorate for Standardization, Approximation and Legal Harmonization of the Assembly of Kosovo. Regarding this issue, the Ombudsperson notes that the Assembly has established the Legal Analysis Unit, which will function within the Directorate concerned, and has recruited a part of the professional staff that will constitute this unit. The Ombudsperson welcomes the establishment and functioning of this unit and hopes that this unit will affect the improvement of the legislative process in the Assembly of the Republic of Kosovo.

The Ombudsperson continues to draw attention to the need for the Government to draft a Legal Approximation Plan, according to which the Assembly of Republic of Kosovo would monitor the process of approximation of domestic legislation with European law. In this regard, it is necessary for this Plan, which is monitored by the Parliamentary Commission for European Integration, to include secondary legislation approved by the Government. In order for the Assembly to be more efficient in implementing this plan, the Ombudsperson considers that the Government and the Assembly should have close cooperation, in order to draft and supervise the approximation of domestic legislation with the European law.

The process of drafting laws is followed by the lack of linguistic and terminological consistency, and the lack of a unique legal terminology. This phenomenon has caused difficulties in implementing the relevant laws. Consequently, it is necessary to

²⁰ Constitution of the Republic of Kosovo, Article 81, Amendments 2 and 3 to the Constitution of the Republic of Kosovo.

standardize terminology as soon as possible, through the drafting of the legal terminology dictionary.

The Ombudsperson has noted that one of the difficulties of implementing laws is due to the method by which the laws are amended and supplemented. In the cases of amending and supplementing the existing laws, after adoption by the Assembly, those amendments are not included in the law that has been amended but remain separate in the format of a law. Such a practice only makes it difficult to use laws because it seeks concentration on two or more laws rather than concentration on the basic law alone with the changes contained in it.

The Ombudsperson considers it necessary for the Law on Legal Acts to include the regulation of the procedure in a separate chapter, based on which, upon the adoption of the law, in terms of amending and supplementing the existing law, those amendments and supplements shall be included in the basic law and exist as a single law. Such an adjustment would make legislation that is subject to amendments and supplementations easier to access and more useful.

Regarding the implementation of the Laws, the Ombudsperson has noted that, more often than not, in our legal system there are cases where a factual situation is covered by two or more normative acts. In order to clarify which normative acts have priority, the Ombudsperson has published the Report with Recommendations no. 441/2018 regarding the three general principles for the interpretation of normative acts and the implementation of these principles in the protection of human rights. The Ombudsperson has recommended the Supreme Court to provide a legal opinion to the regular courts regarding the interpretation and application of normative acts in accordance with three interpretative principles: *lex specialis derogat legi generali*, *lex posterior derogat legi priori* and *lex superior derogat legi inferiori*. Also, the Ombudsperson has recommended the Prime Minister to issue an administrative act, instructing all government institutions and agencies to interpret and enforce normative acts in accordance with the three above mentioned principles and to apply the proposed rules in this Report, for cases of conflict between these principles.

The Ombudsperson considers the codification of the laws very important. Through this process, the summary (collection) of laws, which regulate the same or a related field in a document (Code), would be enabled. In other words, codification enables the compilation of laws from the same domain in a single document. This process would ensure that all the legislation of a field or a resource was found in a document and would also facilitate law enforcement officers to identify and access the laws of the same field. Regarding this issue, the OIK has, over the years, through opinions, recommended to the Assembly of the Republic of Kosovo the commencement of this process.

Although the Government of the Republic of Kosovo, in the Legislative Program for 2018, has foreseen to send the Civil Code to the Assembly of Kosovo on 29 November

2018, this has not happened during the reporting year. The Ombudsperson considers it important to speed up the drafting process of the Draft Civil Code by the Government, and to submit it to the Assembly.

In the last year's Annual Report, the Ombudsperson had carefully analysed the Rules of Procedure of the Assembly of the Republic of Kosovo, finding that it is necessary to make changes to the provision regulating unfinished business (Article 86 of the Rules of Procedure of the Assembly). According to this provision, at the end of the term of the Assembly, there is an obligation to resume any work from scratch. Such a specification presents risks of delaying the work of the Assembly, and of hindering the well-functioning of other institutions pending its decisions. Given this risk, the obligation for the Assembly to address and return all the work in the first step at the beginning of the new legislature could only be justified if there are good reasons for such a thing. In this regard, the OIK addressed recommendations to the Assembly for the regulation of this issue, but from the information provided by the OIK, it was found out that the Assembly of the Republic of Kosovo did not take into account the recommendations of the OIK. The Ombudsperson insists that the disputed provision in the present Regulation requires reconsideration and harmonization in accordance with the spirit of the recommendations addressed by the Ombudsperson in 2017.

In order to fulfil the constitutional and legal competences, regarding the recommendation for issuing new laws or amending and supplementing existing laws or by-laws, the Ombudsperson has published reports with recommendations addressed to the institutions of the Republic of Kosovo as follows:

The Ombudsperson has published the Report with Recommendations no. 129/2018 on 6 March 2018 and recommended the following to the Government of the Republic of Kosovo:

- Taking the legislative initiative to propose a law on the protection of the right to a trial within a reasonable time which would determine effective legal remedies for cases involving the delays in court proceedings, in accordance with international instruments for human rights and freedoms.

On August 30, 2018, the Ombudsperson published the Report with Recommendations no. 687/2017 and recommended to the Assembly of the Republic of Kosovo the:

- Amendment/Supplementation of the Law on General Elections in Article 106, paragraph 4, which would also determine the publication of the final results of votes abroad;
- Amendment/Supplementation of the Electoral Rule 03/2013 article 4, which would determine the location of the ballot boxes and the role of consular offices/embassies in the electoral process.

- Amendment/Supplementation of the Law on General Elections, Article 96, which, in addition to the voting by mail, would enable the voting in-person through the consular offices or embassies of the respective state in the territory of the foreign country.

Similarly, on 28 September 2018, the Ombudsperson published a Report with Recommendations no. 441/2018 and has recommended the:

- The Supreme Court, pursuant to the Law No. 03/L-199 on Courts, Article 22, par. 1, sub-par. 3 (“Supreme Court . . . defines principled attitudes and legal remedies for issues that have importance for unique application of Laws by the courts in the territory of Kosovo”) to provide a legal remedy whereby instructing all regular courts to interpret and apply normative acts in compliance with three interpreting principles (*lex specialis derogat legi generali*, *lex posterior derogat legi priori* and *lex superior derogat legi inferiori*) and apply rules proposed in this Report for cases of conflict between these principles; and
- Prime Minister, pursuant to the Constitution, Article 94, par. 3 (“Prime Minister ... ensures implementation of laws”), should issue an administrative acts whereby instructing all government institutions and agencies to interpret and apply normative acts in compliance with three abovementioned principles and apply rules proposed in Report no. 441/2018, for cases of conflict between these principles.

On 5 October 2018, the Ombudsperson has published the Report with Recommendations no. 376/2018 and has recommended to the Assembly of the Republic of Kosovo to:

- Amend Law no. 05/L-132 on Vehicles, namely, to remove Article 43 paragraph 2 thereof;
- To analyse whether Law no. 05/L-087 on Minor Offenses, Article 30, paragraph 4 (“If the perpetrator pays partially or does not pay the fine in entirety within the defined time period, against him/her shall be applied forced execution in accordance with the provisions of the Law on Enforcement Procedure. Minor offence order through which there is imposed the fine shall be deemed as an enforcement document in compliance with the provisions of the Law on Enforcement Procedure”), is functioning in such a way so as to ensure, at a sufficient level, the payment of unpaid fines for offenses in road traffic
- To consider, in case Article 30, paragraph 4 of the Law on Minor Offenses is not sufficient, whether there is another less severe measure than Article 43, paragraph 2 of the Law on Vehicles which could provide a way to achieve the purpose of the payment of unpaid fines for offenses in road traffic.

On 29 November 2018, the Ombudsperson published a Report with Recommendations no. 445/2018 and recommended the Kosovo Judicial Council (KJC):

- To address this issue to the Assembly of the Republic of Kosovo so that the Assembly, through the legislation, specifies the time period for a court proceeding, whereby specifying the maximum time period tolerated since the institution of the claim up to the first-instance decision, but also time periods of review in other instance.
- Until promulgation of an Act from the Assembly of Republic of Kosovo, the KJC to issue an internal Act that will regulate the deadlines for the duration of a judicial procedure, by specifying the maximum deadline that is tolerated from the initiation of the lawsuit up to the first instance decision, but also the review deadlines in other instances.
- Cases returned for re-adjudication to be handled with priority compared to new claims, to be determined by the internal Act as well.

The Ombudsperson estimates that during 2018 there have been progress regarding the proposal and adoption of laws. However, it is necessary to work continuously not only on quantitative growth, but also on the qualitative development of legislation at all levels.

Judicial system

After the declaration of independence by the Republic of Kosovo in February 2008, EULEX judges were also part of the judicial system of the Republic of Kosovo, with functions and competencies determined by international laws/agreements. With the Law²¹ adopted by the Assembly of the Republic of Kosovo in June 2016, the international support from the European Union Rule of Law Mission in Kosovo has been completed and the country's judicial system is fully independent upon assumption of reserved legal responsibilities.

Based on the law on ending the international support, the judiciary has been transferred powers and responsibilities to fight serious crimes such as organized crime and corruption. All criminal investigations and trials will now be conducted by court with composed of Kosovo judges.

Also, the new law on courts²², has strengthened the Kosovo Judicial Council in the field of court management and administration, since this law, in the transitional provisions, has abolished Article 10 of the Law on Amending and Supplementing Laws Concerning the Completion of International Oversight of Kosovo's Independence.²³

²¹ Law No. 05/L-102 on the Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo, Article 2, Official Gazette of the Republic of Kosovo No. 21 / 29.06.2016.

²² Law No. 06/L-054 on Courts, Official Gazette of the Republic of Kosovo No. 22, dated 18.12.2018.

²³ Law No. 04/L-115 on Amending and Supplementing Laws Concerning the Completion of the International Supervision of Kosovo's Independence, Article 10.

The strengthening of justice/judiciary institutions is a result of the permanent increase in the work performance of the judiciary in terms of the professionalism of judges and prosecutors in fighting all types of crime and rendering fair decisions. This good performance of the judiciary has also received positive assessments from the international mission in the area of rule of law, which for several years has consistently supported the judiciary in building professional capacities.

Strategic Judicial Plan 2014-2019²⁴, which has contained objectives that related to the acceleration of court cases resolution, proper management and accountability, so that the judicial system is as functional and in the service of the citizens. According to the annual work report of the Kosovo Judicial Council, at the beginning of 2018²⁵, 36,798 old cases are found in court drawers, while 21,666 old cases were solved in the reporting year, which implies the positive effects of the strategy for lowering the number of old cases.

According to the Kosovo Judicial Council, all cases that have passed 24 months after their submission without being resolved by the courts are treated as all old cases.

Based on the number of complaints submitted to the Ombudsperson Institution against the judiciary, during this reporting year, from the analysis of their content, it is ascertained that some of the citizens still have dissatisfaction in the national judicial system because they face delays on the judicial proceedings and for the placement of their cases for which they wait for years, non-execution of final court decisions, ineffective decisions and doubts on the objectivity of judges in their case placement.

For the Ombudsperson, it is very worrisome that citizens have no effective legal remedy for complaints regarding the length of court proceedings, which has caused the violation of the right to a trial within a reasonable time, and there isn't any effective legal remedy with regard to these complaints, which would provide some relief in the form of preventing the offense or in the form of compensation.

In order to establish a legal protection mechanism for citizens' rights in relation to the judiciary, the Ombudsperson has recommended to the ²⁶ Government of the Republic of Kosovo and the Ministry of Justice as follows: *“to undertake a legislative initiative to propose a law on the protection of the right to a trial within a reasonable time to determine effective remedies for cases involving delays in court proceedings in accordance with international instruments for human rights and freedoms.”*

The Ombudsperson notes in the decisions of the courts that the judges in very few cases refer to the ECtHR practice and, in those cases when they occur, they are generalized and not specific in relation to the circumstances of the case in question. It is worth re-

²⁴ Kosovo Judicial Council, Kosovo Judicial Strategy Plan 2014-2019, pages 14, 19, 22 and 26 www.kgjk-ks.org.

²⁵ Kosovo Judicial Council, Annual Work Report 2017, page 36.

²⁶ Ex officio No. 129/2019 Report with recommendations to the Government of the Republic of Kosovo and the Ministry of Justice.

emphasizing that, according to Article 53 of the Constitution of the Republic of Kosovo²⁷, human rights shall be interpreted in accordance with ECtHR practice.

With regard to protection of human rights and freedoms, in the field of judiciary, the Ombudsperson has a limited mandate, which defined by the Law on the Ombudsperson, whereby the Ombudsperson may make general recommendations on the functioning of the judicial system, without interfering in legal cases and legal proceedings being conducted before the courts, apart from cases related to allegations on the administration of justice, namely delays in court proceedings in filing complaints and delays in the execution of judicial decisions.²⁸

Delay of judicial proceedings

For the Ombudsperson, there is also a concern in this reporting year, the high number of citizens filing complaints against the courts, which mainly concern the delay of court proceedings in the settlement of their cases.

Complaints mainly deal with procedural delays regarding the civil nature disputes, such as property, obligational, labour and social disputes as well as penal disputes²⁹, but most of the cases are property disputes. This comes as a result of a huge number of old cases which, despite their reduction, have not yet been fully resolved and the presentation of new cases.

The Kosovo Judicial Council in the statistical report of courts for the second trimester of 2018 reported that the number of cases remaining unresolved is 264193.³⁰ According to this report, courts have had a total of 30,689 judicial cases, while they resolved 42615, while during this period; citizens filed 27,597 new judicial cases.

Ombudsperson observed that when it comes to procedural delays, especially for cases which go from one instance to another during the review process or in situations when

²⁷ Constitution of the Republic of Kosovo, Article 53 [Interpretation of Human Rights Provisions] “Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”.

²⁸ Law No. 05/L-019 on the Ombudsperson, Article 16.

²⁹ A.No.185/2016 Report with recommendations,, A.No.716/2017 Report with recommendations to the Court of Appeals, A.No.462/2015 Report with recommendations to the Court of Appeals, A.No.796/2016 Report with recommendations to the Court of Appeals, A.No.794/2016 Report with recommendations to the Court of Appeals, A.No.463/2017 Report with recommendations to the Court of Appeals, A.No.492/2017 Report with recommendations for the Basic Court in Prishtina, A.No.388/2014 Report with recommendations to the Court of Appeals, A.No.362/2016 Report with recommendations to the Court of Appeals, A.No.561/2015 Report with recommendations for the Basic Court in Prishtina, A.No.648/2016 Report with recommendations to the Court of Appeals, A.No.721/2016 Report with recommendations to the Court of Appeals, A.No.357/2017 Report with recommendations for the Basic Court in Prishtina, A.No.705/2016 Report with recommendations to the Court of Appeals, A.No.55/2016 Report with recommendations to the Court of Appeals, A.No.375/2016 Report with recommendations to the Court of Appeals, A.No.473/2016 Report with recommendations for the Basic Court in Prishtina, Report with recommendations to the Court of Appeals, A.No.722/2017 Report with recommendations for the Basic Court in Prishtina, A.No.235/2017 Report with recommendations to the Court of Appeals.

³⁰ Kosovo Judicial Council, Statistical Report of Courts, TRIMESTER II-2018, page 3

cases are returned for retrial, the tendency of courts is to calculate the period of the deliberation of the case from the day when the case was transferred to that court, while according to ECtHR case law, the calculation period for the resolution of a judicial case commences from the day when citizens have filed the claim with the competent court.

Therefore, in order to eliminate future violations, the Ombudsperson has submitted a Report with Recommendation³¹, for the purpose of legal regulation of the case regarding the registration with a new number of cases, which are returned to retrial by the highest court. Also through the legislation, specify deadlines for the duration of a court procedure, specifying the maximum deadline that is tolerated from initiating the lawsuit to the first instance decision, as well as the review deadlines in other instances.

Furthermore, the Ombudsperson observed that courts do not treat with emergency the disputes stemming from employment relationship³² as is required under the Law on Contested Procedure³³.

Courts continue to face with a considerable number of old cases that continue to be unresolved and the total number of civil cases have not been reduced but are constantly increasing. As a result of the large number of civil cases in basic courts, citizens are obliged to wait for long periods of time to review and finalize their cases.

The lack of an internal legal mechanism through which, citizens whose right to a trial within a reasonable time, provided under Article 6 of the ECHR has been violated, could claim compensation for the violation of this right also contributes to the difficult situation regarding delays on court proceedings.

Special Chamber of the Supreme Court

During the reporting year, the Ombudsperson has received a total of 35 complaints against the Special Chamber of the Supreme Court of Kosovo (SCSC). Complaints are related to procedural delays in dealing with cases by the SCSC. On 31 January 2017, the Ombudsperson has forwarded to the responsible authorities the *ex officio report No.44/2017 with recommendations* regarding human rights violations caused by procedural delays in dealing with cases by the SCSC. The Report finds that the case load for the SCSC is a result of the number of judges being limited by law, the frequent replacement of judges, in particular of international judges and the lack of legal advisors and translators.

The Ombudsperson has requested measures to be taken by the relevant authorities of the Republic of Kosovo, namely amending the Law on the Special Chamber, respectively the

³¹ A.No.445/2018 Report with Recommendations for the Kosovo Judicial Council

³² A.nr.410/2017 Report with recommendations to the Court of Appeals, A.No.206/2017 Report with recommendations to the Court of Appeals, A.No.31/2018 - Rexhepi - Court of Appeal, A.No. 520/2018 - Behrami - Court of Appeals

³³ Law No. 03/L-006 on Contested Procedure, Article 475.

legal provision that limits the number of judges to the SCSCCK as an urgent measure to increase the efficiency of the SCSCCK.

On 12 July 2018, the Assembly of the Republic of Kosovo has in principle approved the Draft Law No. 06/L-086 on the Special Chamber, whereby in Article 4 [Composition, Organization and Appointment] removes the limitation on the number of judges, which will pave the way for increasing the number of judges. However, in June 2018, the mandate of EULEX judges was completed, which resulted in a much lower number of judges, while the Assembly, since 12 July 2018, did not take any further action in approving the Draft Law on the Special Chamber. This has caused that the violations identified in the *Ex officio Report No. 44/2017* to also continue during this reporting year, adding here the cases that the Ombudsperson has received during the reporting period.

Non execution of court decision

In this reporting year, the Ombudsperson has received complaints against the judiciary regarding the delays in execution, and in some cases also for the non-execution of final judicial decisions by state authorities.

In some cases of investigation of complaints, it has been noted that the state authorities did not execute the final court decisions and that the citizens for the realization of their rights according to judicial decisions had to continue with the execution procedure in the courts, especially with cases of retirement of education and health employees due to the non-payment of the three retirement salaries and the jubilee salary.

This has contributed to increased expenses regarding on the issue, as well as to the waste of time, both by the judiciary, citizens and state institutions themselves, despite the existence of clear legal regulation and case law established by the court³⁴.

The Ombudsperson remains concerned about the low level of execution of court decisions at the state level, as evidenced by the Statistical Report of the Courts for the II quarter of 2018 of the Kosovo Judicial Council,³⁵ whereby as far as civil cases are concerned, it notes that the courts had concluded 3696 cases, out of which 892 were executed, while 2804 have not been executed.

In this case, the Ombudsperson would like to draw the attention of relevant authorities to the case law of ECHR and the ECtHR, i.e. execution of final decisions is part of the right to a fair and impartial trial, which obliges them to take the necessary measures for the realization of this right.

Private enforcement agents

The right to a fair and impartial trial, which includes the issue of final decisions in administrative and judicial procedures, have been enforced by private enforcement

³⁴ A.No.132/2018 against the Basic Court in Prishtina.

³⁵ Kosovo Judicial Council, Statistical Report of Courts, TRIMESTER II, 2018, page,38 www.kgjk-ks.org.

agents, improving the level of execution of administrative and judicial decisions³⁶ and the citizens have been offered more efficient and effective ways to realize their rights. But in some cases private enforcement agents have exceeded legal norms, which set limits and exemptions regarding the execution of decisions³⁷, by issuing executive orders for the execution of decisions in commercial banks, in which case they blocked the complainants' bank accounts.

The Ombudsperson during the investigation noted that the bank accounts were frozen by the private enforcement agents due to non-payment of debts, while they were pension beneficiaries and these funds were blocked in the execution process which is in violation of the law which foresees legal limits for funds that cannot be subject to execution³⁸. After mediation of the Ombudsperson with the private enforcement agent/bank for debt reprogramming, a solution was found to resolve the complainants' issues so that their bank accounts are unblocked and defaults are resolved in accordance with the law.

In cases when a complaint was filed against a private enforcement agent regarding the non-execution of a court decision on property/inheritance³⁹, we have concluded that, despite executive actions by the private enforcement agent, the municipality did not act according to the enforcement order and only after the Ombudsperson's representatives contacted the municipal authorities the case was resolved pursuant to the request of the party.

In a complaint filed regarding the freezing of a bank account by the private enforcement agent and the violation of the right to receive the pension of 75 Euros⁴⁰, such freezing of accounts is in violation of the law, and despite the request of the Ombudsperson's Legal Advisor for a meeting with the Private Enforcement Agent, we are still unable to verify the facts of the case due to the persistent delay by the Private enforcement agent.

In some of the cases lodged by Social Assistance Scheme beneficiaries against private enforcement agents regarding the freezing of accounts due to debts to the public electricity company, after the mediation by the representative of the Ombudsperson with the company, this case has been resolved as requested by the party.⁴¹

Furthermore, in some complaints against private enforcement agents for delays and non-execution of judicial decisions, it was noted that, despite undertaking executive actions, they were unable to be executed by private enforcement agents, because the ruling on the

³⁶ Law No. 04/L-139 on Execution Procedure, Article 22, Execution Document.

³⁷ Law No. 04/L-139 on Execution Procedure, Article 111, Exclusion from Execution and Article 112 Limitation of Enforcement.

³⁸ A. No.437/2018 Gashi against Private enforcement agent in Prishtina and the Private Bank TEB.

³⁹ A. No.347/2018 Loshaj against Private enforcement agent.

⁴⁰ A. No.460/2018 Mehani against Private enforcement agent.

⁴¹ A. No.860/2018 Haxhija against Private enforcement agent in Peja.

execution of the court contained errors in the formulation and this made it impossible to be executed⁴².

But in many cases the citizens addressed the Ombudsperson with a request to consult regarding the private enforcement agent's execution orders and in these cases the parties were advised of their rights to use legal remedies.

But in all cases investigated there were violations of Law No. 04/L-139 on Execution Procedure, Article 112, regarding enforcement limitation, and the Ombudsperson recommended the private enforcement agents to change execution orders in accordance with the law, which they have applied.

Legal representation of citizens

Citizens have, more than in one occasion, as a result of their trust in the Ombudsperson Institution, requested the Ombudsperson to prepare various submissions in administrative and judicial matters, requested to be represented in court, and in some cases even requested interpretation of court decisions, as well as counselling with regard to their cases.

A significant number of the requests were related to the drafting of submissions in administrative matters concerning cases of pension rejections for different categories, up to cases for initiation of court procedures⁴³.

In some of the complaints, citizens have requested the Ombudsperson to represent them in court proceedings, such as civil and criminal⁴⁴ cases, as well as matters/cases at private enforcement agents.

In all complaints submitted, citizens were informed of the legal limitations in the mandate of the Ombudsperson determined by law⁴⁵, and the parties were instructed to present before Free Legal Aid Agency, as a public and legal authority for providing such services.

As a result of doubts regarding the objectivity of treating cases by the court, citizens have filed a request with the Ombudsperson requesting their cases to be monitored by the Ombudspersons representative, both in criminal and civil disputes⁴⁶. Since the number of

⁴² A. No.714/2018 Nikqi against Private enforcement agent in Peja.

⁴³ A.Dullovi.S against the Ministry of Labour and Social Welfare (MLSW) A., Galica.B against the Department of Pensions MLSW, A. Zeqiri A. against the Department of MLSW.

⁴⁴ A.nr. Zenuni against the Private Enforcement Agent, A. Ramadani against the Basic Court in Pristina, A.Halitaj against the Basic Court in Peja

⁴⁵ Law No. 05/L-019 on the Ombudsperson, Article 16.

⁴⁶ A.No. Muli, Basic Court in Prishtina, A.No. Shabani, Basic Court in Gjilan, A.No. Toska, Basic Court in Peja, A.No.Bilalli, Basic Court in Prishtina, A.No. Veseli, Basic Court in Ferizaj.

requests was quite high, the Ombudsperson only monitored the court sessions in sensitive cases and according to the nature of the case⁴⁷.

Free legal aid is a constitutional category and enables citizens who do not have sufficient financial means and if such assistance is necessary to ensure effective access to justice.

But as a challenge to provide free legal aid in relation to the demands of citizens remains the lack of budgetary means, which prevents the provision of legal aid to citizens throughout the territory of the Republic of Kosovo in accordance with the Law on Free Legal Aid.

In some cases, the Ombudsperson has received complaints from citizens concerning their inadequate representation by defence attorneys, failure to obtain case files, financial claims for services by attorneys beyond the fees of the Kosovo Bar Association (KBA)⁴⁸. This hampers the full realization of the right to protection of human rights in court proceedings. In some cases, the complainants have also submitted requests for advice on addressing their concerns in relation to their defence attorneys, regarding allegations of non-dignified representation, and fraud⁴⁹.

In all these cases, the complainants were informed of their right to change the attorneys, withdrawing the authorization for representation and the possibility of filing complaints to the KBA.

The KBA does have a normative framework regarding the work standards and the Code of Ethics for attorneys, but has not managed to establish a system that would efficiently supervise and monitor compliance of such standards.

Implementation of the Ombudsperson's recommendation to establish a legal mechanism for protection of citizens' rights

Regarding the judicial protection of citizens' rights, the Ombudsperson simultaneously reiterates the request for the implementation of the recommendation⁵⁰ by the Government of the Republic of Kosovo and the Ministry of Justice, on the need to establish an internal legal mechanism, within the meaning of Article 13 of the ECHR, which would guarantee citizens the right to effective legal remedies in cases of a violation of the right on resolving their cases within a reasonable time limit and the non-execution of the final judicial decisions, rights defined under Article 6 of the ECHR and guaranteed by the Constitution of the Republic of Kosovo.

⁴⁷ A.153/2018 Thaqi against Basic Court in Prizren, A.593/2018 - Krasniqi, Basic Court in Prishtina.

⁴⁸ A.Regjepi.T. against the defence attorney, the Kosovo Bar Association, A. Smajli A. against the defence attorney, the Kosovo Bar Association A., Bublaku A. against the defence attorney, the Kosovo Bar Association.

⁴⁹ Sahiti against the defence attorney, the Kosovo Bar Association.

⁵⁰ Ex officio.No.129/2019, Report with Recommendations for the Government of the Republic of Kosovo and the Ministry of Justice.

Executive power

The Ombudsperson Institution (OI), as a control mechanism, has an important role in strengthening the accountability of the state administration. It can also contribute to improving the quality of administration by detecting cases of "mismanagement" to raising the awareness of civil servants, in public expectations, with regard to good governance and good administration. This makes the administrative system more transparent and accessible to all citizens. Good governance, good administration and human rights are interwoven in such a way that they are inseparable and empower each other. Human rights should guide the work of the highest state authorities and influence the quality of laws, policies and other means to enhance the quality of life.

These rights could not be respected without the good organization of the administration, prepared for the respect of human rights and freedoms and the creation of the possibility of exercising these rights.

The public administration determines the entirety of the activities carried out and those that should be carried out in such a way as to respond to the needs and general interest of the citizens. Therefore, the administration is closely related to human rights and freedoms and is now widely recognized as a standard of democratic governance.

The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, other international agreements and instruments for the protection of human rights, which are guaranteed by the Constitution of the Republic of Kosovo, have priority in their application before the domestic legislation.

During the reporting year, the Ombudsperson has received a total of 529 complaints against governmental authorities at central and local level, out of which 229 were opened for investigation. Meanwhile, 325 complaints were received against municipalities, out of which 156 were opened for investigation. Most complaints concern the lack of proper response of authorities to citizens' claims, including non-response to claims and delays in addressing raised issues. A significant number of complaints relate to the rejection or not treating of claims for access to public documents.

In addition to not responding to citizens' claims, the respective executive authorities have low accountability to Ombudsperson's requests and recommendations. Implementation of the Ombudsperson's recommendations by the relevant authorities stands at 36%. It should be recalled that public authorities have a constitutional and legal obligation to respond to the Ombudsperson's requests.

In order to contribute to the increase of administration's work ethics and the increase of the administrative culture in general, the Ombudsperson has also launched a summary called "Principles of Good Administration-Summary by the Ombudsperson" for the purpose of better informing the citizens during the reporting year. This summary contains

the provisions of applicable laws, which should be applied by the administration authorities when addressing the requests of citizens of the Republic of Kosovo.

A rather problematic issue that follows the work of the executive bodies has to do with the limitations against citizens by the authorities both at local and central level of the government. These limitations have been recently practiced, unjustly, by municipal public enterprises.

As a concrete case we should mention the limitation of the citizens to pay the property tax in order for them to register their vehicles. Then, the other case concerns the collection of fines for minor offences, which must be paid by the citizens on the occasion of the registration of the vehicle. The Ombudsperson considers that the cases of compulsory collection of property tax, fines for minor offenses and obligations to municipal public utilities should be subject to a court proceeding, at the will and request of the affected parties.

Limitations in various forms to reach a rapid collection, not only present a tendency to bypass the authorities of the justice system, but do not coincide either with the constitutional values of the country.

Privatisation Agency of Kosovo (PAK)

The Ombudsperson has continued to receive complaints against PAK. During the reporting year there were 30 complaints in total, out of which 16 were subject to investigation. The nature of the complaints does not differ from previous years, meaning that they are related to situations when the PAK recognizes the employees' right to 20% of the proceeds from privatization of socially-owned enterprises or the right to compensation of unpaid salaries and contributions due to the liquidation of socially-owned enterprises. These decisions take time to be implemented as they are subject to a trial in the SCSC. The judicial process with the SCSC may not be directly related to individual decisions, but any complaint concerning the privatization or liquidation of a certain socially-owned enterprise addressed to the SCSC suspends the enforcement of the decisions issued by PAK. Therefore, the process of allocating funds remains hindered by the completion of the processes under review by the SCSC. It implies that this is a procedure established by the Law on the Privatization Agency of Kosovo, but for this procedure the former employees of socially-owned enterprises, who are entitled to compensation, are not adequately informed, which implies that the decisions for recognition of the right do not contain information that funds cannot be distributed until the privatization or final liquidation of the socially-owned enterprise, which is determined by a final decision of the SCSC. Lacking information and uncertain of when the Decisions on compensation will be enforced, the parties often address the OIK with complaints about non-enforcement of PAK decisions.

The Ombudsperson has received information from the PAK that the total number of beneficiaries from the 20% of proceeds from the privatization of socially-owned enterprises is 47,480. The PAK has announced that 80-90 socially owned enterprises are undergoing privatization processes in the SCSC, and the actual number of beneficiaries is expected to increase. Moreover, there are also some socially-owned enterprises, out of which some have about 500 employees, which will be subject to privatization process and will increase the number of beneficiaries.

Regarding the liquidation procedures and decisions on the right to compensation of unpaid salaries and contributions, the PAK has announced that the Liquidation Authority of PAK has until now received 91 031 decisions. These decisions are of different nature: 1. decisions approving the compensation claim; 2. decisions partially approving the claim for compensation; and 3. decisions refusing a claim for compensation. The ACA has announced that an exact division of the number of claims is impossible to be presented by the PAK, because the PAK is not informed of the exact number of complaints filed with the SCSC.

The OIK considers that PAK is one of the authorities that is most cooperative with the Ombudsperson.

However, the Ombudsperson considers that the main problem that has followed the work of PAK is the lack of information from citizens involved in the proceedings with the PAK, in particular failure to inform parties when issuing decisions entitling the parties the right to compensation. Therefore, it is necessary to notify parties that the allocation of funds will be made after completion of the privatization or liquidation process of the socially-owned enterprise with final decisions issued by the SCSC. Because the delays in allocation of funds are caused due to extraordinary delays in dealing with cases by the SCSC, for which the Ombudsperson has continuously raised his concerns.

Expropriations of immovable property of socially-owned enterprises

During 2018, the Ombudsperson has investigated a case based on an individual complaint relating to expropriation of immovable property of former SOE Agricultural Cooperative "Liria" in Bardhosh for the purpose of building the highway Vermica - Merdare.

The complaint filed with the Ombudsperson Institution raises the issue of compensation from the expropriation of the land of AO "Liria" in Bardhosh. In this regard, the Ombudsperson has initially communicated with the PAK, as the management of the socially-owned enterprise properties, and with the Government of the Republic of Kosovo as the expropriation body.

The PAK has expressed the view that, in accordance with the Law on Expropriation of Immovable Property, employees are entitled to 20% of proceeds from the expropriation of socially owned property. PAK insisted that the Government shall carry out the

compensation for the expropriated property, but has not received any payment on behalf of compensation for the expropriation of the lands of AC "Liria" in Bardhosh.

Despite PAK's claims to not have receive compensation for the concerned expropriation, the Ombudsperson has received a response by the Office of the Prime Minister (OPM) stating that the immovable property of SOE Agricultural Cooperative "Liria" has been expropriated according to Final Decision No. 03/100, dated 12.11.2012, for the needs of construction of the highway Vermica - Merdare, Sector 9. Further, in the response of the OPM it is stated that the Department of Expropriation, on 24 June 2014, through a submission with protocol number 3358/14, has informed the PAK that the parcels No. 308-0, 304-2, 383-0, 384-0, 382-0, 381-5, 386-3, 386-4, CZ Bardhosh, were compensated according to Final Decision No. 03/100, dated 12 November 2014.

This case continues to be open to the OIK and is expected to be closed after the investigation into the case is completed in its entirety.

Conditioning vehicles registration

Regarding the conditionality of the municipalities on the registration of vehicles with the payment of property tax, the Ombudsperson notes that, on 1 October 2018, Law No. 06/L-005 on Immovable Property Tax, whereby Article 29 [Suspension of Municipal Services] stipulates that if the debtor does not pay outstanding tax liabilities on the due date for payment, the Municipality shall, within three (3) business days after the expiry of the deadline for payment, suspend certain municipal services to that debtor, until the full payment of outstanding tax liabilities.

Unlike the Law No. 03/L-204 on Immovable Property Tax, which was in force until 1 October 2018, and which did not determine the suspension of municipal services but has made the conditionality through administrative instructions, the applicable law contains provisions with which municipalities are allowed to suspend municipal services, which is likely to be a form of conditionality in order to reach a rapid collection.

Regarding complaints of such nature, the Ombudsperson had published the Report with Recommendations No. 347/2015, requesting from the Ministry of Finance and the Ministry of Internal Affairs to repeal the provisions set out in two Administrative Instructions, on which the municipalities were based when the citizens were conditioned. In the same report, the Ombudsperson had requested from the Ministry of Local Government Administration to change its official position expressed in the Explanatory Memorandum dated 20 June 2012 addressed to the mayors of the municipalities of the Republic of Kosovo and the chairpersons of municipal assemblies and to bring new conclusions that the conditionality on the provision on providing services to the citizens by the municipalities with the payment of property tax has no legal basis and are contrary to human rights and as such cannot be applied.

Recommendations from Report No. 347/2015 have not been implemented by the responsible authorities, moreover, the Law No. 06/L-005 on Immovable Property Tax, which entered into force in October 2018, foresees provisions contrary to the recommendations in question.

To make matters worse, it has been noted that, apart from conditionality with the payment of property tax, the citizens continue to be conditioned on the payment of debts to the Municipal Public Utilities, which is also a separate violation.

During the reporting year, the Ombudsperson issued an Ex officio Report No. 376/2018, regarding the conditionality of vehicle registration and change of ownership with the repayment of unpaid fines for minor offenses in road traffic, according to Law No. 05/L-132 on Vehicles. The Ombudsperson, based on the assessment of the circumstances, has ascertained that Law No. 05/L-132 on Vehicles, Article 43, paragraph 2 ("The owner of the vehicle cannot do the registration or extension of the registration of motor vehicle, as well as cannot change the owner without paying off the fines for minor offences in the road traffic."), constitutes a violation of the right to property, guaranteed by Article 46, paragraph 1 of the Constitution of the Republic of Kosovo ("The right to property is guaranteed"). The report addressed the Assembly and the Government and the Ombudsperson has received information that the law is in the procedure of amendment in accordance with the recommendations of the Ombudsperson.

Regarding conditionality in general, the Ombudsperson notes the executive's tendency to interfere with other powers, in this case the judiciary or the authorities of the justice system within the state. This is because the executive power, by putting this conditionality into operation, uses shortcuts to collecting funds. The Ombudsperson considers that this is in conflict with the rule of law in the country, namely the division of powers and that such actions affect the fundamental rights and freedoms of citizens.

Suspension of activities of NGOs by the Department for the Registration of NGOs

The Ombudsperson has received complaints from several NGOs for suspension of their activity by the Department for the Registration of NGOs of the Ministry of Public Administration.

The Constitution of the state, in Article 44, paragraph 1, guarantees the freedom of association, which is further regulated by the Law No. 04/L-57 on Freedom of Association in Non-Governmental Organizations. This law does not foresee the possibility of suspending the activities of NGOs, but the suspension of the activity of an NGO is determined by a sub-legal act, respectively with Administrative Instruction No. 02/2014 on the Registration and Functioning of Non-Governmental Organizations (Article 18, paragraph 1). According to AI 02/2014, the competent Department of the Ministry of Public Administration may suspend the activity of the NGO, at the request of the authorized security institutions. In this regard, if we start from the ECtHR case law,

the principle of legality is valid, according to which the limitation of human rights, in this case the freedom of association, can only be established by law. Consequently, two things can be noticed here: 1) the suspension of the activity of NGOs is foreseen only by the AI, which according to the ECtHR does not have sufficient legal power to make such limitations of the freedom of association; and 2) in the context of Kosovo, the suspension is regulated by the AI, which, as such, is not foreseen and not defined by the Law on Freedom of Association in Non-Governmental Organizations.

The Ombudsperson, without prejudice to whether state authorities had reasons to suspend or terminate the NGO's activity, would like to draw attention to the fact that whenever it can be alleged that there are circumstances for suspending or terminating the activity of a non-governmental organization, such termination process should adhere to the mandates and functions of prosecution bodies and courts. The practice so far has shown that a number of NGOs have been suspended or terminated due to suspicious terrorist activity,⁵¹ by administrative decisions, respectively the decisions of the Department for Registration of NGOs of MPA, and there is no information as to whether any of the suspended or terminated NGOs have been prosecuted or indicted, considering that the funding of terrorism constitutes a serious criminal offense and should be dealt with in accordance with the criminal procedure.

Moreover, the Ombudsperson raises the concern that the effective implementation of AI No. 02/2014 on the Registration and Functioning of Non-Governmental Organizations leaves room for state intervention in the work of NGOs. The state's obligations to the freedom of association are negative obligations, which imply the creation of favourable conditions, but non-interference with the freedom of citizens in this right. However, the Ombudsperson states that Article 44 of the Constitution of the Republic of Kosovo, in paragraph 3, specifies: *"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."*

The Ombudsperson notes that the Draft Law on Freedom of Association in Non-Governmental Organizations is under procedure in the Assembly of the Republic of Kosovo and he is hopeful that, unlike the law in force, the new law, in accordance with the spirit and constitutional provisions, along with the procedures of registration and functioning of NGOs, will clearly define the rules when and in what circumstances an activity of a non-governmental organization in Kosovo may be suspended or prohibited.

Interventions of the Minister of Internal Affairs for cancellation of recruitment procedures at the Police Inspectorate of Kosovo

⁵¹ US State Department Report 2017, Country Reports on Terrorism 2016
<https://www.state.gov/documents/organization/272488.pdf> (qasur më 15 janar 2018)

On January 29, 2018, the Ombudsperson issued the Report with Recommendations No. 731/2017, regarding the Decision of the Kosovo Police Inspectorate, dated 29 December 2017, for the rejection of the recruitment process for Inspector/Investigator, announced on 24 July 2017. The Ombudsperson has evaluated that the decision of the former minister of the Ministry of Internal Affairs to cancel the signing of the contracts with the successful candidates and the request of the Minister of MIA for issuing the decision by the Chief Executive of PIK for the cancellation of the recruitment process, dated 29 December 2017, constitute acts that violate the right of candidates to work, the right to a fair and impartial trial, and the right to effective legal remedies. The Ombudsperson noted that in the competition for Inspector/Investigator in the Police Inspectorate of Kosovo, the Minister of Internal Affairs has intervened in the recruitment procedures by taking the decision to suspend the signing of the contracts with the candidates selected according to the competition, although for this issue had no legal competence. The Minister had requested the cancellation of the competition, which has occurred on 29 December 2017. The Ombudsperson has estimated that in this concrete case the minister has interfered in the competencies of the Chief Executive of the Police Inspectorate of Kosovo by violating the Law No. 03/L-231 on the Police Inspectorate of Kosovo, which is a basic law defining the mission, organization, functioning, duties and responsibilities of the Police Inspectorate of Kosovo, as well as violating the Administrative Instruction No. 01/2017 on procedures related to employment and working conditions for employees of PIK. The Ombudsperson has estimated that such interventions create legal uncertainty of the norms that determine the competences of the leading entities of institutions, and also creates uncertainty in the norms governing the recruitment issues and recruitment procedures for employees in the institutions of the Republic of Kosovo.

The Ombudsperson has recommended to the Minister of Internal Affairs and the Chief executive of Police Inspectorate to take concrete action in avoiding the identified violations, but the Ombudsperson's recommendations were not followed.

However, the candidates for Inspector/Investigator in the Police Inspectorate of Kosovo had filed a case with the Basic Court in Prishtina, whereby the court had given them the right; consequently the candidates for inspectors signed the contracts and started working on the Police Inspectorate. It is noted that the Basic Court in Prishtina has also administered the Report with Recommendations No. 731/2017 of the Ombudsperson.

Failure to fulfil 15 year criterion for benefiting the contributor pension

During the years, the Ombudsperson has received complaints from the citizens, who have failed to fulfil one of the criteria for recognition of the contributor pension, namely the pensioners' contribution pension, which is at least 15 years.

The Ombudsperson, on 6 April 2018, published the Report with Ex officio Recommendations, No. 235/2018 and forwarded it to the Government, the Ministry of Labour and Social Welfare and the Ministry of Finance regarding the category of citizens

who worked prior to 1999 and did not benefit from the age contribution pension because they did not meet the internship criteria pension of 15 years as a result of dismissal from work.

The purpose of this report is to draw attention to the need for positive adjustment of the contributory pension for the category of citizens of the Republic of Kosovo who worked prior to 1999 and not for their fault, they have not reached the time of 15 years pension, due to the discriminatory dismissal at the time of the violent measures imposed in Kosovo.

From the analysis of the facts and events that occurred after 1989, respectively the practice of dismissal at the time of violent measures, the Ombudsperson found that this process was discriminatory. The Ombudsperson's research suggests that dismissal in the 1990s after the imposition of violent measures in Kosovo was based on arbitrary and discriminatory practice implemented by "interim bodies". Therefore, the Ombudsperson has recommended the responsible authorities to start amending the legal basis and propose to the Assembly of the Republic of Kosovo a draft law on state-funded pension schemes so that the category of citizens who worked prior to 1999 and have been dismissed on discriminatory grounds, benefit from the employer's pension contribution.

The Ombudsperson has not received any response from the responsible authorities within the deadline. On 27 December 2018, after persistent insistence on obtaining information from the responsible authorities regarding the actions they plan to undertake in relation to the recommendations, the Ombudsperson has received a response stating that the Ombudsperson's recommendation were reviewed by the Ministry of Finance and that the recommendation shall be included as comprehensive and complex recommendation and will be part of future policies of the MLSW and the Government, in coordination with the Ministry of Finance, and shall be implemented, in general, with legal amendments, within budgetary possibilities. The responsible authorities have not given any date or plan when the first developments about the Ombudsperson's recommendations can be expected, leaving the issue of citizens, who were and still are victims of discrimination, pending.

The pensioner's right to pension contributions, as well as the right to use other pensions applicable in Kosovo

The Ombudsperson has received individual complaints regarding the right to age contributor pension and the right to use other pensions applicable in Kosovo. According to the complaints received, and information from the Ministry of Labour and Social Welfare (MLSW), and information from the field, it is understood that MLSW has terminated one of pension schemes that the citizens had so far enjoyed, including therein the contributor-payer pension. The Ombudsperson, in February 2018, published the Report with Recommendations - Case No. 890/2016, which addressed the matter in question, focusing on the termination of the contributor-payer pension, in which case it found that the conditionality under the law in the exercise of the right on the pensioner's

contribution pension, with the exercise over other pension causes a violation of Article 1 of Protocol No. 1 to the ECHR. Therefore, the Ombudsperson has recommended to the Government and MLSW to undertake initiatives to amend the laws regulating the pension issue, so that the pensioner's pension rights are not affected. The Ombudsperson's recommendations, besides not receiving any response, either from the Government or from the MLSW, have remained not implemented.

The civil rights of Albanian citizens from Preshevo, Medvegja and Bujanoc

A number of citizens from Preshevo, Medvegja and Bujanoc have been displaced in Kosovo during the years for security, social, economic and other reasons. Some of them, in the absence of personal documents, for a long time have been facing the issue of lack of legal status, statelessness and personal identification documents within the territory of the Republic of Kosovo.

Regarding this issue, the Ombudsperson has published the Report with Ex Officio Recommendations No. 355/2016, in which case he expressed concern about their way of life and their lives, because in the absence of legal status for staying in the Republic of Kosovo, it is inevitable to face the difficulties in realizing a normal life based on the enjoyment of basic rights guaranteed by the Constitution of the Republic of Kosovo and international human rights standards.

Through the recommendations addressed to the Government of the Republic of Kosovo, respectively the Ministry of Internal Affairs, the Report in question requires profiling the exact number of these displaced citizens in Kosovo and taking the necessary measures to regulate the legal framework, which enables them to enjoy the basic human rights.

Based on the communication that the IO had with the Department of Citizenship, Asylum and Migration, it is understood that this Department is drafting an administrative instruction for the treatment of persons from Presheva, Bujanoc and Medvegja and by the end of this year it will be ready and will enter into force thus enabling these citizens to obtain personal documentation in Kosovo.

The Ombudsperson has received a response from the MIA that in the Law on Foreigners the necessary legal amendments have been made to address this category of persons and that MIA is in the process of drafting the administrative instruction. According to the MIA's assertions, the working group has started fieldwork in order to identify the number of citizens from Presheva, Medvegja and Bujanoc, who are staying in the territory of Kosovo without any defined status.

Matters related to the Ministry of Education, Science and Technology

During the reporting year, the Ombudsperson addressed a number of issues related to the Ministry of Education, Science and Technology (MEST).

One of them relates to the Decision on the payment of Matura Exam dated May 16, 2017, issued by MEST, respectively from the State Matura Commission, which according to the Ombudsperson's assessment violates the rights and freedoms for the fact that it is in infringement of the basic principles of functioning of a democratic state, such as the principle of legality, the constitutional principle, the rule of law, and the principle of legal certainty.

In this regard, the Ombudsperson has published the Report with Ex Officio Recommendations No. 412/2017, in which case has recommended to MEST that, in accordance with the competencies and responsibilities of the relevant legislation in force, to declare invalid the Decision for payment of the State Matura Exam dated 16.5.2017, with procurement No. 2-1843, issued by the State Matura Commission. MEST, following the recommendations of the Ombudsperson, has issued a new decision by which the students are exempted from paying the Matura Exam.

Another issue addressed by the Ombudsperson relates to an individual complaint regarding the non-recognition of the Master's Degree for qualifications obtained under the five-year university system according to Bologna system. After handling the complaint, the Ombudsperson has assessed that there is a limitation on interests and rights of a significant number of persons graduated in the technical field, according to the five-year system of studies applied under the Bologna system. Therefore, the Ombudsperson has published the Report with Recommendations No. 533/2017, whereby it recommended to MEST to undertake the necessary actions and steps for the purpose of supplementing and reformulating Article 5 of Administrative Instruction No. 11 for the Comparability and Equivalence of Diplomas and Study Programs, prior to and according to Bologna system, with the aim of enabling the Master's degree for graduates in the five-year system of technical studies prior to the Bologna system. Regarding this issue, the Ombudsperson has received a response from MEST, confirming that MEST initiated the handling of the case and the necessary legal procedures regarding the supplementation of legal provisions for the case in question.

Implementation of laws in practice by law enforcers

The Ombudsperson during his work has encountered cases where a factual situation is covered by two or more normative acts. In these situations, it should be decided which normative act should be prioritized. The Ombudsperson has noted that the way in which normative acts are prioritized has important implications for human rights. This is inevitably reflected in the work of the OIK in order to fulfil its mission and its mandate.

The Ombudsperson has received information that some municipalities refuse to exempt blind persons from the payment of property tax who, according to Law No. 04/L-192 on Blind Persons (Article 6) are exempted from the obligation to pay property tax based solely on the Law on Immovable Property Tax. The Ombudsperson, among other things,

has expressed his position on this in the Report with Ex Officio Recommendations No. 441/2018 regarding the three general principles for the interpretation of normative acts and the application of these principles in the protection of human rights, stating that the *lex specialis* principle prioritizes the provision of the Law on Blind Persons in accordance with the provision of the Law on Immovable Property Tax. Specifically, Article 6 of the Law on Blind People deals only with a certain tax category, while the Law on Immovable Property Tax addresses all taxpayers, including blind persons.

Consequently, by applying the *lex specialis* principle, the exemption provided for in the Law on Blind People should take precedence over the general rule laid down in the Law on Immovable Property Tax.

Management and maintenance of cemeteries by municipal authorities

Considering that the management and maintenance of the cemetery is a municipal activity of general interest, based on the information gathered about the poor state of the cemetery maintenance, the Ombudsperson initiated investigations (*ex officio*) for the assessment of the situation of the cemeteries in the municipalities of the Republic of Kosovo.

The Ombudsperson has concluded that the situation of the cemeteries in some municipalities of the Republic of Kosovo, in terms of management and maintenance of the cemeteries, constitutes a violation of human dignity, guaranteed by Article 23 of the Constitution of the Republic of Kosovo, respectively the dignity of the family members of the deceased persons. Inadequate management and inadequate maintenance of the cemetery is also the non-exercise of competencies by the municipal authorities foreseen by the Law No. 03/L-040 on Local Self-Government and failure to fulfil the obligations foreseen by the Municipal Regulations approved by the Municipal Assemblies, clearly defining the responsibilities and obligations of the municipalities in the area of management and maintenance of the cemeteries.

In this regard, the Ombudsperson has published the Ex officio Report with Recommendations No. 401/2018, addressed to all municipalities, requiring them to fulfil their respective legal obligations.

There has been a high accountability from most municipalities, except municipalities in the northern part of the country, which have pledged that their budgets for next year will foresee costs for the maintenance and management of cemeteries in order to implement the recommendations of the Ombudsperson.

The issue of billing the electricity spent in the north

An issue that followed the work of the Ombudsperson Institution during 2018, which has broadened the public's and the media's interest is the issue of billing the electricity spent in the north.

The Ombudsperson in 2017 has published a report with the findings that none of the laws regulating the electricity sector gives the Energy Regulatory Office (ERO) the right to bill the citizens for the electricity spent in another part of the country. Taking into account the fact that the Ombudsperson's recommendations were not followed by ERO, the Ombudsperson filed a lawsuit with the Basic Court of Prishtina, namely the Department of Administrative Affairs, on 15 August 2017, in which case he requested the annulment of ERO Decision V_399_2012, dated February 6, 2012, and the compensation of consumers who are billed for the electricity consumption in the four northern municipalities. Along with the lawsuit it was also requested the postponement of the execution of the ERO Decision V_399_2012. The Basic Court in Prishtina, on 11 September 2017, approved the request for the postponement of the execution of the decision, pending a judgment on the statement of claim.

The Basic Court in Prishtina still did not decide on the Ombudsperson's request for the main issue, namely the compensation of consumers, who until December 2017 were billed for the electricity consumption in the four northern municipalities.

Issue of water billing /WSRA

In 2017, the Ombudsperson had raised concerns about the lump sum billing of water costs by water companies. In this regard, the Ombudsperson has recommended that the water billing to be carried out on the basis of real consumer consumption and real expenditures, as foreseen by Law No. 04/L-121 on Consumer Protection, and has requested from the Water Services Regulatory Authority (WSRA) regular monitoring of Service Providers. From the response that the Ombudsperson has received from WSRA, it is noticed that the issue of billing and the issue of monitoring of licensed operators is well regulated by WSRA with the Regulation on Minimum Standards of Water Services in Kosovo. Also, from a report that the Ombudsperson has received from WSRA, it is reported that WSRA also conducts regular inspections on the field, and undertakes measures in cases of non-compliance with minimum standards for water services. The Ombudsperson has very constructive cooperation with WSRA, which has informed the Ombudsperson that, wherever possible, has undertaken all measures for the water to be billed in accordance with the law. WSRA has announced that for this exact purpose has drafted the Regulation No. 08/2018 on Amending and Supplementing Regulation No. 02/2016 on the minimum standards of water services in Kosovo, which regulates the issues raised by the Ombudsperson in the Report with Ex officio Recommendations 1/2017 dated 11 January 2017.

Independent Oversight Board for Civil Service in Kosovo

As in the previous year, the Independent Oversight Board for Civil Service in Kosovo (IOBCSK) continued to cancel all recruitment procedures in the OIK, for which a complaint was filed to the IOBCSK, in addition to complaints submitted after the deadline. During the reporting year, the IOBCSK has cancelled four recruitment

procedures for which the Ombudsperson has filed a lawsuit for initiating administrative conflict and at the same time has requested postponement of the execution of the decisions of the IOBCSK. The Basic Court in Prishtina (BCP) has approved all the requests of the Ombudsperson, which are in total 4, for postponing the execution of the decisions of the IOBCSK, whereas in the review at the BCP are a total of six lawsuits filed by the OIK .

Furthermore, the Ombudsperson advises the Assembly of the Republic of Kosovo that on 26 October 2018 has filed a claim with the Constitutional Court for the constitutional review of the Law No. 06/L-048 on the Independent Oversight Board for Civil Service of Kosovo, which grants IOBCSK the authority to issue instructions and interfere not only in the institutions of the Government but also in other institutions, including the Ombudsperson Institution.

The Ombudsperson, without prejudice to the outcome of the claims for administrative conflict presented in the BCP and without prejudice to the decision of the Constitutional Court regarding the request of the Ombudsperson for the constitutional review of Law No. 06/L-048 on the Independent Oversight Board for the Kosovo Civil Service, requests from the Assembly of the Republic of Kosovo that through the laws governing the public administration, respectively the civil service in the Republic of Kosovo, to clarify the position of independent institutions, defined by Chapter XII of the Constitution, in accordance with the constitutional order in the state, and in accordance with the spirit of the Judgment of the Constitutional Court KO73/2016 dated 8 December 2016.

Responsibility toward the living environment

The constitution of the state guarantees everyone the right to a healthy living environment, while guaranteeing the possibility of informing and participating for each person to influence decisions that are related to the environment⁵².

The Ombudsperson Institution (OI), based on the information received from different sources and from individual complaints during the reporting year, did not notice any concrete institutional actions that would significantly affect the respect of the citizens' right for a safe and healthy environment. There has been no improvement in the state of the air, water and soil. The degradation of agricultural land and the destruction of forest areas has continued almost at the same pace. Involvement of the public in decision-making, as a constitutional right, has continued to be followed with uncertainty. Access to environmental information remains challenging, and there has also been no change in the prosecutorial and judicial system, which would have an impact on the acceleration of the examination of environmental matters.

⁵² Constitution of the Republic of Kosovo, Article 52, paragraph 2, Responsibility for the Living Environment, *"Everyone should be provided an opportunity to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live"*.

Although the citizens of the state, for years, are faced with restrictions on the right to privacy and enjoyment of the home, the new law has not been passed, which would effectively protect the citizens from the noise. While the lack of any action in terms of waste management and landfilling has already become a serious problem with human rights with long-term consequences. The chain of environmental improper irregularities can be added to the construction of roads without environmental protection criteria. No improvements have been made to respect the basic spatial planning norms, which would reflect on the quality of life.

The budget allocated to the Ministry of Environment and Spatial Planning continues to be low compared to the need for immediate measures to improve the state of the environment in the country, and given the fact that the environment has clearly started to affect the citizens' health. The request of the Kosovo Assembly resolution dated 1 February 2018 on the establishment of environmental protection in the priorities of the Government has been overlooked. While, although defined by the Law on Road and Ecological Taxes of Vehicles⁵³, the ecological tax continues not to be used for environmental protection purposes. Inter-institutional cooperation for the effective resolution of environmental problems in environmental protection issues has not improved.

During the reporting year, there have been few activities of competent institutions, especially MESP, and promoting the right of citizens to a safe and healthy environment. Despite the risk of environmental impact on citizens' health, educational activities have not been noticed by health institutions, health professionals, etc., through which citizens would be informed about the opportunities to avoid risk factors and eliminating them by using tools and methods that protect their health⁵⁴. Notable initiatives by civil society and non-governmental organizations have been noted, which would affect the processes related to the protection and improvement of the state of the environment in the country, nor the emphasized promotional activities that would affect the public's awareness of the right to a safe and healthy environment. Information campaigns through the media remain slim, which would affect the awareness and education of citizens about environmental protection.

State institutions have not yet begun to take serious action to join the Global Initiative on Sustainable Development Objectives such as: access to clean water and sanitation; Providing access to affordable, reliable, sustainable and modern energy for everyone; making cities and settlements lived by people, inclusive, appropriate and sustainable; taking urgent action to combat climate change and its impacts; water protection; protection, restoration and sustainable promotion of the earth ecosystem, sustainable

⁵³ Law No. 04/L-117 on Road and Ecological Taxes of Vehicles, Article 1, paragraph 2. This law also regulates the establishment of the ecological tax on vehicles registered in Kosovo and for foreign vehicles. The ecological tax aims to increase the quality of environmental protection.

⁵⁴ Law No. 02/L-78 for Public Health, Article 27, "Health improvement".

forest management, combating desertification, stopping land degradation and halting biodiversity loss.

The Ombudsperson in the reporting year has published the leaflet "*Responsibility for the Environment*"⁵⁵, a document aimed at educating citizens on their right to a safe and healthy environment and informing the responsible institutions that ensure the respect of this right.

On March 21, 2018, the Ombudsperson, on the occasion of the World Water Day, published a press release requesting the responsible institutions to respect the legal provisions for improving the water status and enable all citizens to have access to clean, drinking water, according to international standards.

Ombudsperson at the meeting of the Mediterranean Ombudsmen Association – MOA "The Ombudsperson as a protector of social, cultural and environmental rights", held on 30 and 31 May 2018 in Skopje, presented to the audience the general state of law in the country and the discourse of the Ombudsperson Institution of the Republic of Kosovo in the direction of the protection and promotion of the right to a safe and healthy environment. The Ombudsperson pledged that the OI will continue to exercise its mandate with a view to improving the quality of life of citizens and the protection of the environment for future generations, and in particular, to strengthen the capacities of the institution for protection of the right to a safe and healthy environment so that the interpretation of the right is done in compliance with the decisions of ECtHR.

On 5 June, 2018, on the occasion of the World Environment Day, the Ombudsperson through the press release⁵⁶, bringing to the attention of everyone the state of the environment in the country, invited the responsible institutions to undertake concrete steps for the ceasing of environmental impacts and setting the environment as a priority for the Government.

On November 22, 2018, the OIK, in cooperation with the Kosovo Justice Institute, organized the round table "*Preventing and Combating Environmental Problems*". The purpose of organizing the roundtable was to discuss the reason for the delays of environmental cases in the prosecution and in the court. At the roundtable were representatives of competent local and central environmental protection institutions, representatives of the justice authorities, Kosovo Police, representatives of international organizations, embassies, civil society and citizens.

Air

⁵⁵ <https://www.oik-rks.org/2018/11/01/e-drejta-per-mjedis-te-sigurt-dhe-te-shendetshem/>

⁵⁶ <https://www.oik-rks.org/2018/06/05/deklarate-e-avokatit-te-popullit-me-rastin-e-dites-boterore-te-mjedisit/>

Air pollution continued to be affected by KEC as the biggest polluter in the country⁵⁷, followed by the pollution of non-hazardous fuels and old cars⁵⁸, as well as the heating system with non-ecological materials. The draft law on air protection from pollution could not be approved.

The State's obligation to establish energy efficiency measures has remained at the will of the individual without any institutional control and without any form of subsidy from the state. Also, no visible change has been noted in the expansion of the cogeneration network⁵⁹; the expansion of green spaces;⁶⁰ in providing facilitations for citizens to replace harmful methods of heating with clean alternative ecological methods;⁶¹ in improving public transport⁶²; in technical control of vehicles, or in urban and industrial waste management. Construction of buildings and roads without criteria for protecting the environment also has serious impact on air pollution.

Municipalities most vulnerable to air pollution are the municipalities of Prishtina, Mitrovica, Obiliq, Hani i Elezit and Gjilan.⁶³ The right of life and the right of citizens to a safe and healthy environment have continued to be affected by the exceedance over permissible norms with PM10, PM2.5 pollutants⁶⁴, with the maximum allowed value (MAV), which were more stressed in January-March, February, October-November and December.

The level of air pollution in the municipality of Prishtina in 2018, compared to 2017, has recorded a deterioration from the exceedances of PM10 and PM 2,5⁶⁵, which has exceeded the limit values, which reached the alarming threshold⁶⁶ and seriously jeopardized the health of citizens⁶⁷, were also repeated during the reporting year, in the

⁵⁷ Kosovo Environmental Protection Agency, KEPA "Annual Report on the state of the environment, 2017", p. 18.

⁵⁸ Law no. 05 / L-132 on Vehicles, Article 44, "Vehicles older than ten (10) years can not be imported in Kosovo".

⁵⁹ Resolution, Article 7, "To increase capital investments for the heating plant" Termokos ", providing additional funding for doubling the co-generation capacity from 140 megawatts to 280 megawatts of thermal energy in order to expedite the district heating network in all neighborhoods of the capital city, where possible through the co-generation project. Also create opportunities for other cities to connect to this project. This should be done within the 2 year term."

⁶⁰ Ibid, Article, 8.

⁶¹ Ibid, Article 9.

⁶² Ibid, Article 9.

⁶³ National Audit Office, Performance Audit Report "Institutional Mechanisms for Legal Regulation, Monitoring and Reporting on Air Quality", p.12.

⁶⁴ Kosovo Environmental Protection Agency, KEPA "Annual Report on the state of the environment, 2017", p. 8 and 9.

⁶⁵ Kosovo Environmental Protection Agency, Air Quality Analysis in Prishtina during January 2018, "January 2018 had the highest level of air pollution compared to January 2017".

⁶⁶ Law No. 03/L-160 on Air Protection from Pollution, neni 24 "Measures for excess of alert threshold and smog condition.

⁶⁷ Work document of the Commission staff , Report on Kosovo * 2018, following the document, Communication from the Commission to the European Parliament, the Council, the European Economic

municipality of Prishtina and its district, in January-February-November and December, without any preventive measures by the Government, the Ministry and the Municipality⁶⁸. Although according to Administrative Instruction 02/2011 on Air Quality Standards, 35 days are allowed to exceed the PM10 within one year. Only in January 2018, at the Rilindja monitoring station, 21 days were exceeded with PM10, while exceedance of PM 2.5 was recorded for 30 days. On December 1, 2018, the KHMI station recorded exceedances over the allowed PM10 rates, and the highest recorded daily average value was 150.1µg/m³, although the daily limit value allowed for human health protection is only 50µg/m³⁶⁹.

Finding the country without any additional protective measures during the winter, a period of deteriorating air quality is an indication of the failure of the competent bodies to respect constitutional responsibility for environmental protection and to fulfil the obligations set out in Law No. 03/L-160 on Air Protection from Pollution, which would guarantee citizens the right to live in a clean and healthy air environment.

The Ombudsperson, on 31 January 2018, at the meeting of the Committee on Agriculture, Forestry, Rural Development, Environment and Spatial Planning of the Assembly of Kosovo, where was discussed about the alarming air condition in the winter of 2017-2018 in the municipality of Prishtina and its district area, stated that the competent institutions are not implementing the Law on Air Protection from Pollution, and that monitoring and oversight of inspections is not being carried out in accordance with the law.

The resolution adopted by the Assembly of Kosovo on 1 February 2018, after the two-day session on air pollution, although considered an important step, was an ineffective initiative and measure to improve the situation, as no change was noted in improving the air condition in November and December 2018. None of the three objectives of the "Autumn-Winter Air Quality Improvement Plan 2017-2018", for improving the quality of air, increasing the level of implementation of legislation and institutional responsibilities, and raising the level of education and awareness of air protection from pollution, was not implemented. Also, there was no effect on the work of the Inter-Ministerial Task Force on Air Pollution Protection.

and Social Committee and the Committee of the Regions Communication on 2018 EU Enlargement Policy "Air quality, especially in urban areas, continues to pose a major threat to public health".

⁶⁸ Law No. 03/L-160 on Air Protection from Pollution, Article. 24, 2. In order to predict and warn on smog state, the Government by special act upon proposal of Ministry shall establish the measures of warning regulatory special systems. 3. In emergency cases, in order to normalize the situation, measures should be taken by the Ministry, Government and local authorities-municipalities. 4. The Ministry determines measures to control, restrict and limit discharges of pollution sources into the air 5. Local authorities, in cooperation with the Ministry, should undertake emergent measures to normalize the smog situation. 6. Local authorities will determine the measures to control, restrict and limit discharges of polluters into the air.

⁶⁹ KEPA, Hydrometeorological Institute of Kosovo, "Air Quality Report by KHMI Monitoring 2018"

Although legally established, no significant improvement in systematization of public information has been noted, which would at the same time be a preventive measure of the impact of air pollution on human health and life. Although the Law on Air Pollution Protection stipulates the obligation of the Ministry to inform the Government, the relevant local authorities and the public when the alert threshold is exceeded and poor air quality is determined, supports a very serious situation in the period November - December 2018⁷⁰, only one such information has been evidenced, and not through accessible means⁷¹. Citizens have continued to be notified through the official website of the US Embassy in Kosovo.

Information provided by competent bodies through non-accessible means relies on information received from monitoring stations and reports received by operators whose accuracy is considered to be indicative and unrealistic⁷². The monitoring day, which is selected by the operator itself, may not present the actual state of charges by the operator. Monitoring stations are followed by various problems⁷³, and data coming from these stations report the overall air quality status that is the result of all air emissions without identifying the source of discharges (energy, transport, household, heating, etc.). Operator reports that are made through the metering tools of companies and contractors contracted by the operator are not verified by the inspectorates but are only reviewed⁷⁴.

The fact that some of these parameters may not be functional for a certain period of time as a result of damage, breakdown or simply lack of servicing⁷⁵, questions the relevance of information regarding the non-overcoming and slight upsurge of SO₂ (Sulphur Dioxide), CO (carbon monoxide), NO₂ (Nitrogen Dioxide), O₃ (Ozone)⁷⁶.

The Ombudsperson, through the Report with Recommendations⁷⁷, published on 21 December 2018, where it considered the issue of air pollution in the municipality of Obiliq and surrounding areas, expressed scepticism regarding the relevance and quality of

⁷⁰ Official website of KEPA, on Facebook, the latest air condition report on November 29 and 1 December 2018, on 2 December 2018. Read more: http://ammk-rks.net/.../Raportet_per_cilesin_e_ajrit_IHMK_RI..., according to the report on 29 November and 1 December, 2018, exceeded PM₁₀, PM_{2.5}, in Drenas, Prishtina (KHMI), Obiliq and Gjilan.

⁷¹ The information titled "Information threshold for air pollution" on the official website of KEPA, on the social network - Facebook, remained the only one, despite the overcrowding noted during the winter months of 2018.

⁷² National Audit Office, "Institutional Mechanisms for Legal Regulation, Monitoring and Reporting of Air Quality", p. 19

⁷³ Ibid, p. 26. "Only 17% of the stations have been operational over most of the year, while 33% of stations have been out of service for more than 7 months during 2017.

⁷⁴ Ibid, p.19.

⁷⁵ Ibid, p.27.

⁷⁶ Kosovo Environmental Protection Agency/KEPA, Annual Report on the state of the Environment, 2017, Air, p.6.

⁷⁷ Report with Ex officio Recommendations 280/2016 regarding the continued violation of the right to a safe and healthy environment, the right to life and privacy, the right to use effective remedies, property rights, freedom of movement of the inhabitants of the municipality of Obiliq and the nearby municipalities affected by the same problem.

data related to the air condition, and found that the Ministry of Environment and Spatial Planning has failed to provide a secure system for monitoring the operator's activities (KEC), and especially emissions, which can be elements that pose a risk to the lives of residents.

Scepticism regarding the relevance and quality of the data regarding the air condition in the municipality of Hani i Elezit was presented by the mayor of Hani i Elezit⁷⁸.

Despite the information received from various sources to increase the number of people affected by respiratory, cardiovascular and malignant diseases, skin diseases, the National Institute of Public Health, although it is competent for analysing and assessing air pollution⁷⁹, has failed to come up with research, which would be indicative of the impact of air pollution on the health of citizens.

Water

The competent institutions continued to fail in fulfilling their responsibilities for protection against water resources contamination as a general asset, exploitation and misuse. Even during the reporting year it has not been possible to ensure the sustainable development and use of water resources. Preventive measures, measures to minimize use and obstruct water pollution, the principle the polluter and the user pays continued to remain unimplemented. Although prohibited by law, sand extraction, gravel, stones, soil deposition, waste disposal, solid materials and discharge of liquid substances into water streams, lakes, reservoirs and on their shores has continued.

About 94% of Kosovo's population exercises the right to drinkable water through public systems managed by Regional Water Companies, while coverage of wastewater-sewage services reaches 74%⁸⁰.

The country's water resources continue to be exploited by operators as well as by industry. The biggest water users continue to be KEC, Feronikel and Sharrcem. The same, they also cause contamination with heavy metals, such as lead and cadmium.⁸¹

The right of citizens to a safe, healthy environment, the right to property, has been affected by floods, not only as a result of precipitation, but also of unsound urban constructions in the last two decades, which have not respected the basic principles of the construction code⁸², leaving no room for natural drainage.

⁷⁸ Discussion of the Mayor of Elez Han, Mr. Refki Suma, at the roundtable organized by the Ombudsperson Institution in cooperation with the Kosovo Justice Institute, "Prevention and Fighting of Environmental Problems", dated 22 November 2018.

⁷⁹ Law No. 02/L-78 "Law on Public Health", Article 4, paragraph. I.

⁸⁰ Kosovo Environmental Protection Agency/KEPA, "Annual Report on the state of the Environment, 2017, p. 58.

⁸¹ World Bank, June 2018, "Water Security Outlook for Kosovo", p. 49

⁸² World Bank, June 2018, "Water Security Outlook for Kosovo"

The exploitation and arbitrary invasions on river banks, without any criteria, and with irrevocable consequences in the ecosystem, exceeding the capacity of river beds, has continued almost throughout the entire territory of the country. The pressurization of the river substrate continued by the operation of heavy machinery within the river beds; excavation of deep holes, sometimes over 10 meters, near the rivers, as well as within rivers; excavation in catchments where small branches join the main rivers; construction of roads in the middle of rivers; disruption and change of the natural flow of rivers; soil erosion; reduction of the stability of the river substrate, especially in cases of floods; as well as the natural alteration of the river, flora and fauna ecosystem. The most degraded rivers and which are still degrading are: Drini i Bardhe, Lumebardhi of Peja, Ereniku, Desivojci, Krivareka and Ibri⁸³.

Neither municipalities nor the competent authority have managed to find effective solutions to control illegal activities that, without any criteria, continued to intervene in river beds. No investments were made by the municipalities and the authority to regulate and maintain the infrastructure in the river beds⁸⁴. Retention and management of acceptable ecological water feeds has not yet been achieved.

The discharge of untreated wastewater into river streams is considered to be one of the main pollutants of surface water. The uncontrolled flow of waters from the Mirash landfill and the ash dump in Obiliq, and penetration into groundwater⁸⁵ is considered to be alarming. The number of plants remains very limited, while their installation still remains in the planning stage. Untreated black waters of Prishtina, Fushe Kosova, Prizren etc., have continued to discharge into rivers. Sitnica River is the most polluted river in Kosovo⁸⁶.

The operation of small hydropower plants in the country remains to be carefully assessed, given the low capacity of energy production in relation to the environmental impact that can be severe, as they cause interruption in water flows and aggravate habitats⁸⁷.

The Ombudsperson, in the *Ex officio Report 280/2016* published on 21 December 2018, besides the issue of contamination of the river Sitnica by unloaded releases by KEC, raised the issue of water use, in particular the river Llap, as well as the non-implementation of the *polluter and user pays* principle. The report also raised the issue of lack of accountability of MESP regarding measures taken with regard to hydraulic discharges from the Power Plants Kosovo A and Kosovo B in the Sitnica River without any treatment.

⁸³ Kosovo Environmental Protection Agency, "Water Status in Kosovo 2015", p 42.

⁸⁴ Law No. 04/L-147 on Waters of Kosovo, Article 46, paragraph 3.

⁸⁵ Hydrogeochemical analyses of the ground water in the Mirash landfill area and problem analysis Control report, GIZ 2016, M. Sc. Eng. Evelina Rathje and the show "Life in Kosovo", 24 May 2018.

⁸⁶<https://kallxo.com/gjnk/lumenjte-e-kanalizimit-të>

[kosoves/?fbclid=IwAR16LoY6JoIfJnTkOOXuS5i10bpQS3MWM_nrikF-zaPOLiJcDwzWf-7kQI](https://kallxo.com/gjnk/lumenjte-e-kanalizimit-të)

⁸⁷ Water Security Outlook for Kosovo, p.59.

Soil

Soil degradation has continued with the same steps due to pollution caused by uncontrolled discharges of polluted waters, pollution from household waste, industrial and hazardous waste, agricultural discharges, transport, construction waste, etc. Degradation and pollution in areas around heavy industries, such as Obiliq, Mitrovica, Drenas and Hani i Elezit⁸⁸, even this year this could not be put under control, or repaired. Areas surrounding former industrial facilities at the location near TPP "Kosova A" continued to contain toxic waste (phenolic wastes), disposal of ash of "Kosova A", as well as residues of underground mining works. Improper intervention of mining activities, especially by illegal operators continues to be concerning. Rehabilitation or reclamation of areas where mining activities are performed is rarely observed.

The trend of changing the destination of agricultural land and green spaces to construction land has continued without any control and criteria, and the Ministry of Agriculture, Forestry and Rural Development and the municipalities do not have accurate information, although according to unofficial information, the destination of about 500 hectares of agricultural land⁸⁹ has been now changed. There is no program or regular monitoring of soil/land quality⁹⁰.

The pollution/damage/occupation of agricultural land with inert waste, not excluding hazardous waste, throughout the country, although prohibited by law⁹¹, now is considered⁹² as a serious concern for the environment and human health. All types of waste continue to be present in urban areas and in green areas along the highways. From the investigations conducted in the *Ex Officio 12/2018 case*,⁹³ regarding the non-fulfilment of the positive obligations by the competent bodies for the management of asbestos waste, it was understood that no municipality, with the exception of the Municipality of Mitrovica, did not carry out any action in terms of waste management under the legislation in force and did not specify the waste disposal sites in question, they continue to spread in the environment without treatment and without being obstructed.

The authorities' negligence to implement the principle *polluter pays*, and rehabilitation and the punitive measures envisaged in the legislation in force, has only contributed to the deterioration of the situation.

⁸⁸ Kosovo Environmental Protection Agency, Annual Report on the state of the Environment, 2017, Earth (Soil), p. 36.

⁸⁹ <https://ndertimi.info/tkurret-toka-bujqesore-ne-kosove-krijohen-zona-industriale-dhe-urbane/>

⁹⁰ Kosovo Environmental Protection Agency, Annual Report on the state of the Environment, 2017, Land (Soil), p. 71

⁹¹ Law No. 02/L-26 on Agricultural Land, Article 20, paragraph 20.3 "It is forbidden to issue dangerous and hazardous substances".

⁹² Kosovo Environmental Protection Agency, Annual Report on the state of the Environment, 2017, "Waste" p. 71. "Only 60% of the waste is deposited in the landfill".

⁹³ <https://www.oik-rks.org/2018/11/07/ex-officio-nr-122018-raport-lidhur-me-mosnderrmarrjen-e-obligimeve-positive-nga-organet-kompetente-per-menaxhimin-e-mbeturinave-me-permbajtje-asbestit/>

Although the trend of improper intervention on forested areas has slowed down the inclusion of forest areas within protected areas, damage to forest areas has continued this year, such as: lodging, fires, illegal construction and road construction. Reforestation is not achieved in proportion to the degradation of forest areas.

In the *Ex officio Report 280/2016*, published on 21 December 2018, the Ombudsperson, regarding the continuing violation of the right to a safe and healthy environment, the right to life and privacy, the right to use effective remedies, property rights, freedom of movement of the inhabitants of the municipality of Obiliq and neighbouring municipalities affected by the same problem, has highlighted the issue of soil pollution in the area of former industrial facilities at the location near PP "Kosovo A", the storage of toxic waste (phenolic wastes), the ash disposal of "Kosovo A", the waste from the underground mining works and the pollution from the wild landfills..

Waste

The right to a safe and healthy environment and the right to life of citizens are being severely restricted by the persistent contamination of areas filled with waste. No improvements have been noted in the waste management system, in preventing illegal dumping, and no attempt at partitioning and recycling of waste. The fact that only 60%⁹⁴ of the waste is deposited in the regional landfill is sufficient indicator that 40% of the waste is thrown into the soil and rivers. According to information, about 1572 illegal landfills exist in the territory of the country⁹⁵.

Regional waste landfills Mirash (Prishtina), Dumnica (Podujeva), Velekinca (Gjilan), and Landovica (Prizren), despite the obligations deriving from Law No. 02/L-30 on Waste, for proper waste management, creating conditions for reducing the risk of waste, in order to protect the environment and the health of citizens, continue to operate with problems such as: malfunction of wastewater pumping systems; poor compression of stored waste and insufficient waste coverage; discharge of untreated waters from landfills, into rivers and their penetration into groundwater.

The condition of the Mirash landfill has continued to be serious, given that the waste of 7 municipalities, the municipalities of Prishtina, Drenas, Podujeva, Gracanica, Obiliq and Fushe Kosova are discharged in it. The same problems continued, such as: unhindered distribution of waste into the air by inappropriate obstruction; the release of gases and the constant smell from the lack of proper management of waste, especially organic ones; non-functional drainage and exhaust system. Lack of waste recycling, inert, special and hazardous, medicinal, organic waste, etc., continued during the reporting year. The lack of proper management of methane and the deposition of coal at the ends of the landfill

⁹⁴ Kosovo Environmental Protection Agency, Annual Report on the state of the Environment, 2017, "Waste", p. 71.

⁹⁵ Kosovo Environmental Protection Agency "Municipal Waste Management in Kosovo, Status Report", p. 85.

represents a particular risk of permanent burns and a risk to the lives and safety of citizens. Drainage of untreated waste from the landfill in the Sitnica River and in groundwater, due to the lack of a functional drainage system (the pumps system has been out of operation since 2007) constitutes a serious threat to water pollution in the country, that 40% of the waste disposed in the landfill is organic waste, as well as disposed of untreated medicinal and hazardous waste⁹⁶.

The Ombudsperson, in the Report with Recommendations *Ex officio* 280/2016⁹⁷, raised concerns over the state of Mirash landfill and the impact on human rights. The Ombudsperson considered that the state of the landfill is constantly violating the citizens' right to life, the right to privacy, the enjoyment of the home, and the right to a safe and healthy environment, and the right to drinkable water. The Report also examines the issue of ash dump and its impact on human rights.

The failure of the competent bodies to manage the Velekinca landfill in Gjilan also continues to be of concern, which, in addition to the problems mentioned above, faces the failure to keep the landfill under control from the entrance of unauthorized persons. Failure to secure the enclosure of the landfill which would prevent entrance to the landfill of unauthorized persons resulted in the limitation of the right to life.

Serious concern affecting the right to life and the right to a safe and healthy environment is the failure of competent bodies to manage asbestos-containing materials in the country. The Ombudsperson, based on the investigations initiated Ex Officio A. 12/2018, ascertained that the competent bodies have failed to fulfil their legal obligations for the management of asbestos-containing materials within the territory of the country. In addition to the Municipality of Mitrovica, none of other municipalities have designated locations for the disposal of asbestos-containing materials nor have undertaken awareness raising campaigns with citizens regarding the impact of asbestos on the life and health of citizens⁹⁸. The Ombudsperson ascertained that, despite the risk of asbestos-containing materials for the life and health of citizens, and their impact on the environment, the material in various forms continues to be quite present in the open spaces, uncontrolled,

⁹⁶ Hydrogeochemical analyses of the ground water in the Mirash landfill area and problem analysis Control report, GIZ 2016, M. Sc. Eng. Evelina Rathje dhe emisioni "Teta në Kosovë", 24 maj 2018.

⁹⁷ The Ombudsperson, on 21 December 2018, published the Ex officio Report with Recommendations 280/2016 regarding the continuous violation of the right to a safe and healthy environment, the right to life and privacy, the right to use effective remedies, the right to property, the freedom of movement of the inhabitants of Obiliq and neighbouring municipalities affected by the same problem.

⁹⁸ Report on Ex-Officio 12/2018, regarding the non taking the positive obligations by the competent bodies for waste management with asbestos content: "The Ombudsperson finds that according to the document of the World Health Organization (WHO) and the International Labor Organization (ILO), published in 2007, related to the development of national programs for the elimination of asbestos-related diseases: "Exposure to asbestos causes asbestosis, pleural plaques, obesity and efusions, lung cancer, mesothelioma, laryngeal and possibly other cancers with different latent periods. " According to the document of World Health Organization published in 2014 "Elimination of asbestos-related diseases", which examines the negative effects in health if exposed to asbestos, it is estimated that at least 107,000 people die each year from lung cancer as a result of exposure to asbestos during exercise of their duties".

unmanaged, without preventative measures, that would avoid the negative impact on the environment.

Project initiated by MESP for the removal of asbestos materials in the municipality of Hani i Elezit, ended worsening the situation and increasing the possibility of environmental impact and the health of citizens, as the materials that were placed under the surface of the earth, were thrown over the surface, leaving them open and without any protective measures.⁹⁹

Also, the process of classification and recycling of waste has not started any locations for the disposal of inert and hazardous wastes have been assigned. C&D waste dumps¹⁰⁰, which account of 46% of the 1572 landfills, pose a serious threat to the environment. This year, the action "Let's Clean up Kosovo" helped the partial cleaning of illegal dumps

Noise

The new law on noise protection, which would guarantee to the citizens a peaceful environment, without annoyance, was not approved in 2018. The impact of noise on privacy and the enjoyment of the citizens' home continued without reaching to be brought under control by the competent authorities not only as a result of the failure to implement the law, but also the lack of noise equipment. Concerning remains the lack of placement of noise protection panels in settlements near highways. In its Recommendation 280/2016, the Ombudsperson concluded that the lack of qualitative noise monitoring represents an interference with human rights.

Area of special economic interest "Fusha e Mihjes së Re" [New Mining Field]

One of the major environmental impacts on human rights is estimated to be the situation of non-displaced/non-expropriated residents of the area of special economic interest "New Mining Field". Although the state of the environment is far from desirable standards and pollutant rates, according to existing reports, often exceed the allowed limits established by local legislation, despite the positive obligation of the state, displacement, expropriation or movement of a significant number of residents from the area, as a proportionate and effective measure to resolve the issue, has not been completed since 2004.

The decision to divert the mining line by surpassing the rest of the Hade village left the citizens in a limbo situation by restricting their right to a safe and healthy environment, the right to life, privacy and the enjoyment of the home/property and freedom of movement. In addition, the document called the Administrative Contract between the

⁹⁹ Information received by the Mayor of Elez Han, 22 November 2018, Round Table "Prevention and Fighting of Environmental Problems", organized by the Ombudsperson Institution in cooperation with the Kosovo Justice Institute "Prevention and Fighting of Problems of the environment".

¹⁰⁰ Kosovo Environmental Protection Agency "Municipal Waste Management in Kosovo, Status Report", p. 85, "N & D waste is the most represented part of waste for which a separate collection system is missing. In most cases, this type of waste ends up mixed with the municipal waste stream or is illegally disposed".

Ministry of Environment and Spatial Planning and the Municipality of Obiliq, whereby "Hade e Re" location in the village of Shkabaj is given to management of the Municipality of Obiliq, results in an unequal position between the non-displaced residents of Hade and those who were displaced earlier, leaving only the possibility of land acquisition in the village of Shkabaj.

The Ombudsperson, at the meeting of 4 July 2018, held at the Commission for Human Rights, Gender Equality, Missing Persons and Petitions of the Assembly of Kosovo, raised the issue of human rights for residents of the area of Shipitulla and Hade, assessing that the state should balance the economic development interests with respect for human rights and that any decision to resolve the issue of displacement or expropriation should be based only on the law.

The Ombudsperson, in the Report with recommendations 280/2016, regarding the situation of residents of the "New Mining Field" area, has estimated that the state has failed to fulfil its positive obligation foreseen by the Constitution and laws, to respect the right to a safe and healthy environment, the right to life, privacy and enjoyment of home/property and freedom of movement. The Ombudsperson has considered that the residents in question have been placed in an unequal position with other citizens of Kosovo and that the state, without seeking to find concrete solutions for residents, has failed to fulfil the positive obligation to harmonize economic development and social welfare with basic principles for environmental protection under the concept of sustainable development.

Other issues

The citizens of the country have continued to face the lack of sustainable space regulation that would provide equal treatment, free movement, adequate access to public services to citizens, and high quality of life. Detailed regulatory plans have continued to exclude the needs of all citizens, the needs of people with disabilities, the elderly, children and youth¹⁰¹. There has been no improvement in the status of sidewalks/pedestrian paths, roads, or the addition of bicycle paths.

Construction of objects continued without respecting the following principles: the permissible height in relation to the distance from the boundary of the cadastral parcel along the public road; the percentage of the total usable surface area of the building in relation to the surface of the cadastral parcel; percentage of total green area for absorption of atmospheric rainfall in relation to the surface of the cadastral parcel; minimum requirements for parking places; the right to natural lighting; conditions of adequate access to public roads and technical infrastructure; restrictions of environmental and

¹⁰¹ Administrative Instruction MESP No. 01/2018 on Elements and Basic Requirements for the Design, Implementation and Monitoring of Detailed Regulatory Plans.

noise¹⁰² pollution, protection requirements from fire, floods, earthquakes, etc. There has been no improvement in inspection supervision and final inspection.

Failure to build objects according to the criteria set forth in the Administrative Instruction No. 33/2007 on Technical Conditions of Construction Facilities for Access of Persons with Disabilities and failure to take action to correct the situation is an indicator of the state's failure to respect human rights and ensure equal treatment without discrimination of persons with disabilities¹⁰³.

No action has been taken to improve the pavement situation, which would allow the free and unimpeded movement of citizens, in particular, of persons with disabilities, as well as the respect of the right to a safe and healthy environment. Citizens have continued to face insufficient sidewalk width compared to the number of residents; altitude outside defined norms; lack of access elements and ramps, which would enable uninterrupted connection between the different sidewalk levels; connection to public spaces without barriers and access to mainstream roads; irregularities in vertical lift platforms, etc.

Actions for the timely resolution of the repair of holes and damaged pits remain pale. No effective solution has been implemented concerning the issue of sidewalks occupied by vehicles, the removal of hotel inventory, goods and construction material placed without any protective measures or warning signs. Concerning is the lack of measures to improve infrastructure at schools and kindergartens, which would guarantee the right to life, health and safety of children.

In particular, the right to a safe and healthy environment and the free movement of the citizens of the municipality of Prishtina continued to be restricted even during 2018 due to the failure of competent bodies to undertake actions to improve the situation on the sidewalks.

The same trend has continued with regards to problems of connections through underpasses and overpasses in settlements, preventing easy, safe, fast movement on the main and regional roads. Such situation is also affected by the non-inclusion of citizens in public hearings as a form of decision-making in road construction processes.

The Ombudsperson, in its Report with Recommendations 280/2016, raised concerns regarding the restriction of the free movement of property in the Morina family property in the Palaj village of Obiliq, whose property is located within the enclosed space of KEK. Considering that access to property was restricted to all family members and their visitors by the establishment of a security control lair, 40-50 meters in front of their home, the Ombudsperson found that, in addition to the restriction of the free movement

¹⁰² Law No. 04/L-174 on Spatial Planning, Article 21, "Terms of Construction".

¹⁰³ Administrative Instruction No. 33/2007 on Technical Conditions of Construction Facilities for Access of Persons with Disabilities.

of this family and their visitors, their right to privacy is also restricted due to persistent annoying public checks.

A serious problem in the public safety of traffic participants and environmental pollution has remained not only the unhindered circulation of heavy motor vehicles/working equipment, which, as a result of overload, cause uncontrolled spillage of building materials, soil etc. on the road, as well as locking them off the site without any preventive measures to prevent the spread of mud in the highway.¹⁰⁴ The spread of mud or impurity in the road which affects the reduction of friction conditions, causing progressive loss of contact between the rubber and asphalt, contributes to increased braking time, always increasing the risk of accidents.

Cemeteries that fall into the category of public and social infrastructure continue to fall short of the defined criteria.¹⁰⁵ On 25 October 2018, the Ombudsperson published a Report with Recommendations on the Management and Maintenance of Cemetery in the Municipalities of the Republic of Kosovo. The report identifies the basic criteria that must be met to make the cemeteries accessible, dignified and meet the demands of citizens, and which should be addressed by the competent municipal authorities on the basis of their legal competencies, for the purpose of regulation and improvement of the situation in the management of the cemeteries.

Three principles of the Aarhus Convention¹⁰⁶: public participation in decision-making; access to environmental information; and access to justice, which are integrated in environmental legislation, continue to be a challenge for citizens.

Public participation in decision-making, although guaranteed by the Constitution¹⁰⁷, still continues to be hampered. There are ambiguities in terms of inviting the public. The invitation is made through means not very accessible. The form applied during 2018 to involve the public in decision-making on the municipal development plan through the electronic questionnaire is considered a successful step towards the integration of the citizens' interests. The debate over the issue of construction of hazardous waste landfill in the village of Harilaq, Fushe Kosova, has been accompanied by a lot of ambiguity, lack of information, which caused insecurity among the residents.

¹⁰⁴ Law No. 02 L-70 on Road Traffic Safety "45.1. Driver who with vehicle connects from the soil road on modern road (asphalt) must stop the vehicle and remove the dirt from the wheels."

¹⁰⁵ Administrative Instruction MESP No. 01/2018 on Elements and Basic Requirements for the Compilation, Implementation and Monitoring of Detailed Regulatory Plans, Article 1.6.

¹⁰⁶ Aarhus Convention was adopted at the Ministerial Conference IV held on 23-25 June 1998, Kosovo is not yet a party to the Convention, the three principles of the Convention are integrated into all environmental legislation.

¹⁰⁷ Constitution of the Republic of Kosovo, Article 52.2, 2. "Everyone should be provided an opportunity to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live."

Although the principle of public access to environmental information guarantees every natural or legal person the right to be informed about the state of the environment, public information has not improved. MESP and the municipalities, in particular the Municipality of Prishtina, although required by law, have again failed to ensure the information of citizens on a regular basis, at all times, in a complete and objective manner, about the state of the environment as well as about the warning measures or the extent of pollution that may pose a risk to the environment, health and human life. The manner of public information through the KEPA's official web site on air condition "How can you access air quality data?" is considered ineffective and not easily accessible.¹⁰⁸ The latest annual report on the environmental situation published on the KEPA's website is that of 2016.

In addition, MESP and the municipalities, although obliged by the Constitution of the Republic of Kosovo to respond to the requests of the Ombudsperson and to submit to him/her all the requested documents and information, rarely provide full and qualitative information on various environmental issues. Inadequate institutions' responses not only hinder investigations, but they also give the impression that such lack of transparency serves to conceal their actions or lack thereof concerning a violation. The MESP, without any reasoning, did not provide the Ombudsperson with information on the research report of the NGO "Pro Vitae" concerning the presence of asbestos in all public buildings in the municipality of Peja and in the municipality of Istog, and did not make it public as recommended by the Ombudsperson through the Report with Recommendations *Ex Officio* 12/2018.

The Ombudsperson, in the *Ex Officio* Report with Recommendations 280/2016, concluded that improving access to environmental information would have an impact on improving public participation in decision-making, enhancing the quality and implementation of decisions, contributing to raising citizens' awareness of environmental issues and giving citizens the opportunity to express their concerns. The Law on Access to Public Documents, in Article 12, includes environmental information among the reasons on which the right of access to public documents may be restricted.

The environmental cases initiated before the prosecution and the court both by individuals and institutions continue to be treated without any priority, in most cases by being prescribed and dismissed. The justice system, despite the aggravating environmental situation, has no statistics on environmental matters that would be indicative of their number and type of offenses. The capacities of prosecutors and judges and the Kosovo Police have to be strengthened with training related to the handling of cases arising from Chapter XXVIII of the Criminal Code. The Kosovo Prosecutorial Council and the Kosovo Judicial Council have not yet managed to build a database on the handling of cases against the environment. In order to discuss the reason for the delay of

¹⁰⁸ The link '<http://ihmk-rks.com/t/?page=1,5>' at the time of drafting the report was out of use.

environmental cases in the prosecutor's office and the court, the Ombudsperson, in cooperation with the Kosovo Judicial Institute, organized the round table "Preventing and Combating Environmental Problems".

The National Institute of Public Health of Kosovo (NIPHK), in light of the alarming air¹⁰⁹, water and soil¹¹⁰ pollution, has again failed to fulfil its legal obligation¹¹¹ to come up with a research on the relevant database (Health Information System – HIS is not functional), which would elaborate the impact of environmental pollution on citizens' lives and health and on diseases as a result of pollution while proposing preventive measures for overcoming the shortcomings.

The non-application of the *polluter pays* principle and the non-implementation of other provisions deriving from environmental laws to environmental damages in a way encourages individuals and operators to engage in actions leading to environmental degradation.

Even this year, there has been no improvement regarding the cooperation of competent bodies in environmental protection. Despite with the alarming situation in the environment, there is no significant step in the coordination of actions between the inspectorates - Kosovo Police - prosecutions and courts. There has been a continuing lack of action by both central and local level institutions in resolving challenging environmental issues, with justification for negative competence.

Right of access to public documents

The right of access to public documents is guaranteed by the Universal Declaration of Human Rights (UDHR)¹¹², the European Convention on Human Rights (ECHR)¹¹³, the Constitution of the Republic of Kosovo¹¹⁴ and the Law on Access to Public Documents (LAPD). Transparency and accountability are recognized among the most important principles in the democratic world, which are in the function of responsible and functional governance. In terms of transparency, the most important tool is information and access to public documents. According to international standards and applicable legislation, all information possessed by institutions, as well as the documents that are created, collected, processed, stored or maintained by public authorities, shall be publicly available and accessible to all, with the exception of restrictions set by law. Access to

¹⁰⁹ Ibid, Article 8, "NIPHK investigates the causes and consequences of airborne damage to public health and proposes protective measures".

¹¹⁰ Ibid, Article 9, "NIPHK investigates the extent of soil contamination, from the aspect of public health threats directly or indirectly".

¹¹¹ Law No. 02/L-78, Law on Public Health, Chapter III Environmental Health and Housing, Article 6.

¹¹² UDHR, Art. 19: "Everyone has the right to freedom of thought and expression; this right includes freedom of thought without interference, as well as the freedom to search, receive and disseminate information and ideas by whatever means, regardless of the boundaries."

¹¹³ Freedom to receive and provide information also foresees Article 10, paragraph 1 of the ECHR: "Everyone has the right to freedom of expression. This right includes freedom of opinion and the freedom to receive or to provide information and ideas without the intervention of public authorities and regardless of the boundaries ...".

¹¹⁴ Constitution of the Republic of Kosovo, Article 41.

public documents is a guaranteed right, while the restriction thereof should be an exception.

The right of access to public documents means the right of every person to know the content of documents possessed by public authorities and the right of access to public information, with the exception of restrictions established by law. This right defines and sets rules for the well-functioning and transparency of public administration in relation to the public regarding its daily activity.

The majority of complaints received by the OIK during the reporting year related to access to public documents are mainly against public institutions at central level (Figure 1).

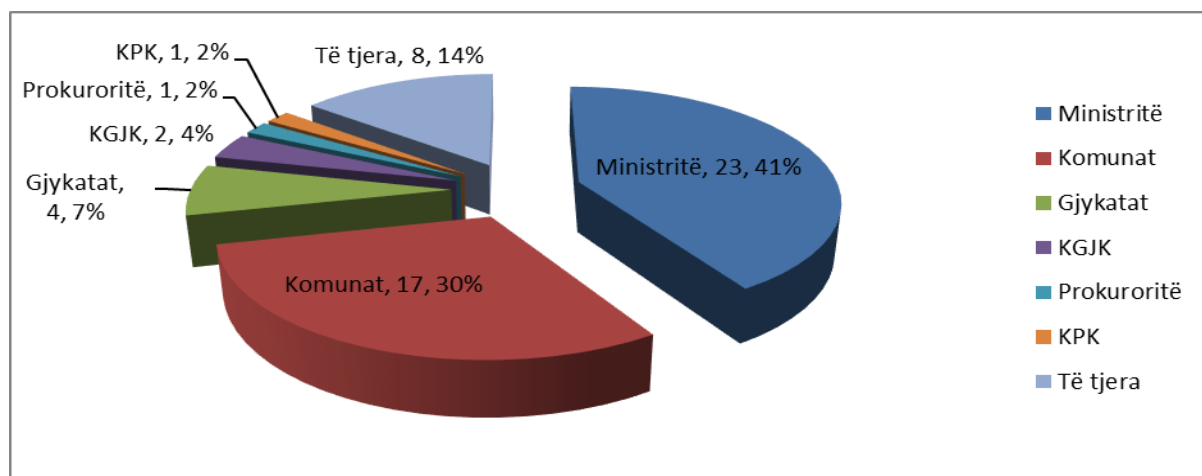


Figure 1. Responsible parties in claims related to APD

Our investigations on these complaints revealed that there is a lack of classification of documents, lack of capacities of responsible officials in addressing requests for access to public documents, and lack of will of law enforcement institutions, which results in the violation of the right of access to public documents. Furthermore, the “walking around” of document requestors from one department to another remains an issue, as does the promise of responsible officials for delivering a document and not doing so.

Although the response of the institutions confirming the receipt of the request is often quick and within the legal deadlines, the decision to grant or refuse the request is often not taken within the deadlines set by law, despite the importance of prompt delivery of information/documents. Furthermore, public institutions often fail to provide a law-based justification for not allowing/restricting access.

Moreover, it is concerning that there are cases when the Ombudsperson, acting upon the received complaints, addresses the responsible authorities with recommendations¹¹⁵, but

¹¹⁵ Complaints no. 823/2017 and no. 58/2018 against the Ministry of Infrastructure, Appeal no. 310/2018 against the Ministry of Foreign Affairs.

even after receiving the response from them, expressing readiness to act upon the recommendation of the Ombudsperson, access to required documents is not realized.¹¹⁶

Free circulation of information is an important tool that contributes to building confidence between institutions and citizens and to ensuring transparency of actions and efficiency and effectiveness of public administration. The Law on Access to Public Documents (LAPD) envisages a comprehensive procedure of access to public documents and the implementation of this law is important in raising the awareness of the administration of its obligation to provide services to citizens and of citizens of the services it expects from the administration.

As stated above, the implementation of LAPD in Kosovo in practice is accompanied with difficulties of different nature. During 2018, 61 complaints were submitted to the OIK claiming denial of access to public documents. Compared with the previous year, there is an almost doubled increase in complaints referring to the violation of Article 41 of the country's constitution. While in 2017 complaints regarding access to public documents accounted for 2% of all handled complaints¹¹⁷, complaints filed in 2018 account for 5% of them. In the period from 1 January 2018 to 31 December, out of 61 complaints filed in relation to the APD, 56 were opened for investigation.

In the 12 cases where even after the Ombudsperson's actions the access was not allowed or was restricted, the OIK addressed the responsible authorities with recommendations. Of the complaints received, 11 complaints were from NGOs, 6 complaints were from journalists/media and the remaining are individual complaints. Of 6 complaints from journalists/media, after the intervention of the Ombudsperson, 3 were allowed access to the requested document. Out of 11 complaints from NGOs, 6 were allowed access after the OIK's intervention, while 4 of them were not and 1 is still pending. Out of the total number of complaints, no violations were found in 7 of them, i.e., they complied with the legal provisions.

The OIK's findings during the investigation of lodged complaints pertaining to access to public documents revealed that difficulties in implementing access to public documents are mostly encountered in relation to public contracts for large projects. Non-governmental organizations and the media had lodged such requests, while citizens' complaints were mainly related to requests for recruitment procedures.

As a constitutional right, the right of access to public documents, however, is not an absolute right. It must be protected proportionally and balanced with other rights. The investigations conducted for complaints received during 2018 regarding the restriction of the right of access to public documents uncovered that the situation remains the same as

¹¹⁶ Until the drafting of this report, despite the recommendations of the AP, the complainants' access to the required documents was not realized.

¹¹⁷ Annual Report 2017 no.17 of the Ombudsperson Institution, page 230, figure 7.

in the previous year. It is noted that in most cases state institutions possessing, drafting or receiving information have not classified the documents in time or have not classified them at all as provided by Law No. 03/L-178 on the Classification of Information and Security Verification and Law No. 03/L-172 on the Protection of Personal Data. Lack of classification of documents, consequently, leads to arbitrary decisions on whether or not to grant access to the requested documents. Moreover, this also affects compliance with the deadlines set by law.¹¹⁸ The Ombudsperson reminds the authorities of the necessity, in accordance with applicable legal provisions, to classify the documents as soon as the information is produced, as this is the only manner for avoiding immediate decisions on restriction or denial of access and would facilitate the process of handling requests for access to public documents addressed to institutions.

The Ombudsperson notes that the Draft Law on Access to Public Documents was adopted in principle on 23 July 2018 and expects to be further processed following the procedures of the Assembly of the Republic of Kosovo.

¹¹⁸ Complaint no. 86/2018 against MLSW; Complaint 542/2018 against MEST; Complaint 554/2018 against MTI; Complaint 569/2018 against MI; Complaint 678/2018 against MIA; Complaint 747/2018 against MEI.

Rights of the child

Current status of the rights of the child

The protection and respect of children's rights continues to be a challenge in Kosovo. In recent years, numerous steps have been taken in advancing the legal and policy framework for child protection. However, implementation in practice continues to be inadequate and slow.

Children and their well-being should be prioritized by institutions through enforcement of legislation and allocation financial resources to enable this. In particular, it is necessary to continue providing financial support to day care centres so that children with disabilities receive the necessary treatment, rehabilitation and reintegration services. In addition, issues related to children in street situation, living in bad social conditions, do not go to school, and are often subject to various forms of violence, abuse and exploitation.

Kosovo still does not provide adequate services to child addicts of narcotics and their families. State institutions should develop preventive programs and provide quality services for the protection and assistance of child users of narcotic substances to ensure their rehabilitation and reintegration. These programs should be drafted after consultations with key stakeholders, incorporating the voice of children and always keeping in mind the best interest of the child. Addressing, coordination of work and undertaking the relevant actions are legal obligations of Kosovar institutions to ensure that children's rights are respected, protected and enforced.

Legal framework and children's rights

The first positive step has been the establishment of a genuine legal framework as the basis for protecting children's rights. To a large extent, this framework is in line with international standards and strongly supports the Convention on the Rights of the Child (CRC) as the most important international and comprehensive instrument in this field. However, this area is regulated by laws, bylaws and different policies. Fragmentation of laws in this area leads to legal ambiguity and insecurity. To address this legal loophole, the process of drafting the Draft Law on Child Protection began in 2013.

To date, the draft law has gone through detailed consultations with local, international institutions and civil society. The Ombudsperson, together with COMF, UNICEF and the European Union Office in Kosovo, has sent his recommendations to the Commission on Human Rights, Gender Equality, Missing Persons and Petitions. During this reporting period, in addition to being part of the review of this draft law at several meetings, on 29 October 2018, the OIK attended a public hearing about it. However, the draft law continues to remain in the Assembly in review procedure and the legal framework is still incomplete. However, in addition to drafting and adopting the law, proper and complete implementation is more than necessary. The Kosovo Assembly should take the necessary

actions to approve the draft law without further delay. It should also allocate the proper budget for the implementation and functioning of the law.

Claims related to children's rights

During this reporting year, the OIK has reviewed 46 complaints, 35 of which have been opened as cases for investigation, while 11 were declared inadmissible as the issues they related to fell outside the jurisdiction of the OIK, there were no violations of human rights or the complainants were able to or were using legal remedies. The Ombudsperson initiated investigations ex officio for 18 cases.

Children's right to education

The cases related to the right to education which were investigated by the OIK, including cases initiated ex officio, consisted of lack of basic learning conditions in schools¹¹⁹; difficulties and obstacles to inclusion of children with disabilities in the education system; ensuring transportation of girls and boys to attend school¹²⁰; realization of the right to university education for juvenile and adult persons serving a sentence¹²¹; difficulties in transferring students from one school to another; conditioning the issue of a graduate diploma with a fee presumably to be used for repairing the school; the obligation for students who take to the State Matura Exam to make the necessary payment for continuing education¹²²; failure to respond to a complaint¹²³; security and use of violence against children¹²⁴; education of youth in line with the labour market needs and demands; issues of fusion and transfer of students from one school to another; and failure to enrol students in schools.

Out of 29 received cases, 19 were related to children's rights, of which 11 have been resolved at the request of the complainants, while the others are under investigation. Four cases transferred from the previous year, which related to the need for transportation to attend school, poor economic conditions and good progress in the learning process, have been successfully completed.

One of these cases concerned the State Matura Exam. The State Matura Commission, based on Articles 8 and 9 of Law No. 05/L-018 on 16 May 2017 issued a decision setting out as an additional criterion and obliging all students to pay a fee of EUR 5 in the bank to undergo the Matura Exam. Examination failed to translate into an inability to undergo the exam. Case no. 412/2017 was opened on 21 June 2017, ex officio by the Ombudsperson, in order to assess whether this decision is in accordance with the rule of law rule and legality. In this case, the Ombudsperson noted that Law no. 05/L-018,

¹¹⁹ OIK, ex officio case no.127/2018 and no. 315/2018.

¹²⁰ OIK, ex officio case no. 234/2018.

¹²¹ OIK, complaint no. 493/2018 and no. 694/2018.

¹²² OIK, ex officio case no.427/2017.

¹²³ OIK, complaint no. 484/2017.

¹²⁴ OIK, ex officio case no. 279/2018.

specifically Article 16, has defined an exhaustive list which leaves room for adding additional criteria, as is done with the abovementioned decision.

After the evaluation, the Ombudsperson found that the decision to pay Matura Exam violates human rights and freedoms. The decision was in contradiction with the basic principles of the functioning of the democratic state: the principle of legality, the constitutional rule of law principle and the principle of legal certainty, because there is no legal basis in Law No. 05/L-018, for the issuance of such a decision. Based on the analysis, assessments and findings, the Ombudsperson has recommended to the Ministry of Education, Science and Technology (MEST) that, in accordance with the competences and responsibilities of the relevant legislation in force, declare invalid the decision on the payment of the Matura Exam State, dated 16 May 2017, with procurement no. 2-1843, issued by the State Matura Commission. MEST has respected the Ombudsperson's recommendation, and on 4 May 2018, the OI was informed that a new decision on payment waiver was issued.

Children in Kosovo still face the lack of basic conditions in schools while renovation and maintenance of school facilities remains problematic. The OIK, ex officio, started investigations in the municipality of Deçan based on the information provided by the newspaper Koha Ditore, titled *“Maznik School of 17 years without any investment”*. The OI representative visited the school building where he noted that the school in question did not provide adequate conditions for the development of the teaching process, drifting roofs into classes when it rained and snowed. Developing lessons in such conditions, apart from the violation of the right to education, the students also endangered the right to life, health and social welfare. The OIK recommended to the Municipality of Deçan to urgently undertake the relevant actions for the renovation of the school building. The IO has not yet received any responses to this issue.

In addition, regarding the lack of basic learning conditions, the OIK conducted ex officio investigations based on the information provided by the newspaper Koha Ditore titled *“The damaged building risks the students and the educational staff”* in the village of Bellopoje. The OIK representative, during the visit on the occasion, noted that the school facility did not provide elementary learning conditions due to landslide and damage to classroom and toilet walls, which posed a risk to health and the lives of children. After the OIK mediation, Podujeva Municipality renovated the school. Also, following the mediation of the OIK, in another open case also ex officio, based on the information provided by the portal “Kallxo.com”, titled: *“In school with old boats”*, students of a school in the village of Orllan, the municipal authorities in Podujevo have provided transportation to travel from home to school and vice versa.

Violence and the security situation in schools

During this reporting period, the OIK has conducted investigations on four cases initiated ex officio.¹²⁵ One of these cases related to claims of primary school students for sexual harassment, physical violence, and abuse. Upon completion of the investigations, the OIK was informed that the school authorities took the necessary actions to handle with the case, where regarding the students' allegations of physical violence and insults, some teachers received oral and written reprimands in accordance with the applicable legislation, while in terms of the suspicion of sexual harassment, the case was proceeded to the investigation bodies.

In another case regarding allegations of physical violence exercised by a teacher against a student, after the conducted investigations, it turned out that the municipal and police authorities took the necessary actions and that the case was being investigated at the State Prosecution, while the student who is involved in this case has returned to school and is attending regular classes.

Also, another case was related to a student's claim of abuse and humiliating treatment by a teacher and for the failure of the Municipal Education Directorate and the Education Inspectorate to respond to their complaints.¹²⁶ The OIK found that the relevant institutions had taken the necessary actions to handle the case, i.e., the teacher's school was changed. The case was resolved positively according to the complainant's request.

In relation to the need of respecting and promoting the rights of children and the right to protection from violence, the OIK during this reporting period continued with the information campaign "*Meet with the Ombudsperson Institution*". The campaign was implemented in 26 schools in different regions of Kosovo for pupils and teachers of primary and secondary schools¹²⁷, which aimed to raise awareness among teachers and students about the necessity of preventing corporal punishment in schools. With regard to security in schools, the OIK conducted investigations ex officio based on the information provided by the newspaper Koha Ditore, titled "*Parents complain about traffic safety issues near schools*". The Ombudsperson sent a letter to the Municipality of Peja, asking for information about the case. The OIK was informed that the Municipality of Peja is assessing the issue and that by September 2018 speed bumps will be placed in the vicinity of the three locations, from the primary school "Xhemail Kada" to the Secondary School of Economics. Following the continuous communication with the municipal authorities of Peja, the OIK was informed on 29 October 2018 that the economic operator had been selected and the same would soon place the speed bumps in the locations in question.

¹²⁵ OIK, cases: ex officio no. 128 /2018, 279/2018 and 762/2018.

¹²⁶ OIK, Com. no. 905/2017.

¹²⁷ About the comparing see the section on DPDV activities.

Based on the information provided in the media and during the meeting with students, it turns out that much more work is needed to prevent violence in schools. In this regard, state institutions should undertake appropriate measures, including the drafting of concrete plans, *inter alia*, to prevent and address violence in schools.

Children with disabilities

Children with disabilities in Kosovo continue to face many difficulties in all areas of life. This year, the OIK has opened four new cases, out of which two *ex officio*, with regard to this issue. One of the cases initiated *ex officio* has to do with the difficulties of involving children with disabilities in the education system, respectively due to the lack of individual learning plans and the lack of proper diagnosis of disability due to the lack of consent of the parents. While the other case relates to the investigation of information that the representatives of MEST, MLSW and the Ministry of Justice have decided to demolish the Centre for Education and Counselling for Blind and Partially Sighted Children in Peja in order to build the Court building instead.

In another case, initiated upon complaints filed by parents/NGO representatives, the OIK mediated with the municipal authorities and instructed the mother for the actions she had to take in order for her child to be admitted at the preschool institution. In another case of the previous year, regarding the non-provision of a personal assistant for school attendance for a child, as well as the provision of transport, the OIK continued mediating with representatives of the Municipality of Prishtina who had provided transportation. As for the engagement of the personal assistant for learning, they have stated that first a professional assessment of the child should be made for special education needs, which is made upon request or in cooperation with and, upon the consent of the parents, when the request is made by the institution. According to the Law No. 04/L-032 on Pre-University Education in the Republic of Kosovo, the evaluation procedure by the professional team¹²⁸ can be initiated at the request of any parent or educational institution or trainer with the consent of the parent.

After assessing the circumstances and the information provided it resulted that the difficulties to provide adequate child support for inclusive education, the failure to implement and adequately implement individual plans are also caused by the parents' reluctance to give consent or seek professional assessment of their children, when this is done by the institution. Certainly, such a thing does not relieve the relevant institutions from the obligation to act, so that such cases find the best ways to convince the parents that the assessments required are in the best interest of the children for comprehensive education. Engagement and payment of professionals/assistants to assist their children in learning continues to be an economic burden to households. However, not all families

¹²⁸ The information provided by the Ministry of Education, Science and Technology shows that so far assessment teams have been established and functionalized in 24 municipalities.

have this opportunity; so many children remain without the necessary teaching assistance, which reduces their opportunities of adequate teaching. Certainly, this also affects and makes learning difficult for other students and for the teachers as well. Moreover, in many schools there is no adequate school infrastructure, which would allow them easy and unobstructed access. These issues remain concerning and require addressing and priority from state institutions, in compliance with legal obligations. However, the OIK positively assesses the statements of MEST representatives that for the year 2019 will, within the specific grant MEST, employ 100 personal assistants for children with disabilities, which will help improve the situation for inclusive education.¹²⁹

In the field of health care, children with disabilities face difficulties in realizing the right to quality and free health services.¹³⁰ Health institutions do not always provide free medicines and other facilitations that will enable them to improve health and live with dignity. Inclusion and provision of social services in the community for children with disabilities needs sustained support. Relevant educational, health and social welfare authorities should undertake appropriate actions, including material support, adequate budget allocation to improve the situation of children with disabilities, ensure their inclusion in the education process, regular provision drugs, equipment and materials as well as providing adequate treatment, rehabilitation and reintegration services.

Children in street situation

Children in street situation make up the group of the most vulnerable children, who are also faced on the streets of Kosovo. We see these children on the street alone or in groups cleaning the windows of vehicles, selling small things, searching in containers or begging, among other things. Their involvement in these activities harms their health, development and well-being, and endangers their exposure to violence, exploitation and trafficking, which is worrying and requires adequate addressing by state institutions. Despite their presence in Kosovo, there is no complete official data regarding the number of girls and boys in street situation. This lack of data makes these children invisible, without the possibility of enjoying the rights guaranteed by the legislation in force and hindering the work of state institutions in developing adequate and effective policies for their protection. The Ombudsperson is conducting investigations into this issue and is in the process of providing the necessary further information.

Youth/children addicted to narcotics

In Kosovo, until recently, there were no comprehensive studies on drug use, although partial studies and various preventive and rehabilitation services were provided by various non-governmental organizations. Based on provided information that the number

¹²⁹ Information provided at the conference organized by KOMF on 18 October 2018, among others.

¹³⁰ OIK, case no. 504/2018.

of users of narcotic substances is increasing, with increased number of young users, the OIK has initiated investigations *ex officio*.¹³¹ From the meetings with some of the representatives of the institutions and organizations working on the protection of children as well as in the provision of services to users of narcotics, it turned out that much remains to be done from the entire society in order to address the issue properly. In Kosovo there is a lack of specialized centres for the treatment of narcotics users, especially for young people. Relevant treatment, rehabilitation and reintegration services for narcotics users are essential to address this problem. Also, appropriate programs for youth awareness should be created. The problem should be addressed in essence and not just its symptoms, it is also necessary to consult the young people themselves about the situation created and the reasons that lead them to use drugs.

Children's rights in proceedings before court and administrative bodies

During this reporting period, a number of complaints against the courts have been received by the OIK, related to lengthy court proceedings to decide on the trust of children in custody and education, failure to realize the personal contacts of the child with the parent¹³², the administrative disputes for support for family with children with disabilities. Regarding the non-realization of contacts or the inability to carry out regular contacts with children, the IOK has also received complaints against centres for social work.¹³³ In the case of appeals against the courts, the OIK has addressed courts from which it has requested the necessary actions to be taken so that the children can realize their rights guaranteed by the CRC as well.

Courts should take all necessary actions to ensure that child-related cases or affecting children's rights are settled without delay within the legally established deadlines so as not to harm or endanger children's health, their well-being or even their life. They should also take all actions to ensure that the best interest of children is paramount in their child-related work, including respect for the right of children to be heard under Articles 3 and 12 of the CRC. While in the case of complaints against the Centres for Social Work, the OIK, after their investigation, has concluded that the centres for social work have taken relevant actions.

Social and health protection of children

In the area of social protection and health care, during this reporting period the OIK has initiated and investigated 3 new cases, including *ex officio* cases¹³⁴, which refer to children's rights. It also investigated and completed 9 cases received in 2017. The cases

¹³¹ OIK, case *Ex officio* no.489/2018.

¹³² OIK, cases: Com.no. 700/2018, Com.no. 810/2018, Com.no. 776/2018, Com.no. 457/2018.

¹³³ OIK, cases: Com.no. 834/2018, Com.no. 626/2018, Com.no. 725/2018, Com.no. 96/2018.

¹³⁴ OIK, *Ex officio* no. 400/2018.

concerned, inter alia: non-payment of social assistance¹³⁵; a serious economic and social situation¹³⁶; no financial support for health care¹³⁷; the inability of children with disabilities to receive social and family services in some of the day care centres because of their closure¹³⁸; and no healthcare compensation. A number of them have been resolved to the benefit of the complainants, including 5 cases received in 2017.

One of the complaints investigated ex officio in the area of social protection relates to the allocation of social assistance to families who have children less than five years of age.¹³⁹ The Ombudsperson notes that the implementation of Article 4 of Law No. 04/L-096 on amending and supplementing Law No. 2003/15 on Social Assistance Scheme in Kosovo has caused many families in serious material condition to remain without the social assistance they enjoyed until the child was five years old. Despite the fact that changes have been made to Article 4 of Law no. 2003/15, this in fact did not improve the situation of poorer households due to the fact of limiting the age of children. Moreover, the conditions for social assistance, with the legal provisions in force, have contributed to the deteriorating economic situation of many families, causing barriers and difficulties in child welfare and the well-being of families in general. These conditions in particular make it difficult for families in difficult socio-economic circumstances, especially for marginalized communities.

The Ombudsperson notes that Article 4 of the Law, beyond all doubt, violates the best interest of the child, and the lack of social assistance for children and families in need conditions and affects the physical and mental health of the child as well as his/her education and development. In accordance with the findings stated in the report, the Ombudsperson finds that Article 4 of the Law is in violation of the Constitution of the Republic of Kosovo and international standards, in particular the CRC, which is directly applicable in the Republic of Kosovo.

Based on the analysis, the assessments and the findings, the Ombudsperson recommended to the Assembly of the Republic of Kosovo to amend Article 4, paragraph 5, of Law No. 04/L-096 on amending and supplementing Law No. 2003/15 on Social Assistance Scheme in Kosovo, so that the age limit of five years of the child be raised to eighteen (18) years, in accordance with the notion of the term "child" and in order to fulfil constitutional obligations. Based on the data provided by the Committee on Health, Labour and Social Welfare of the Assembly of the Republic of Kosovo, this issue has been addressed to the Minister of Labour and Social Welfare, according to which the

¹³⁵ OIK, Complaint no. 483/2017.

¹³⁶ OIK, Ex-officio no. 272/2017.

¹³⁷ OIK, Ex-officio no. 479/2017.

¹³⁸ OIK, Ex-officio no. 43/2017.

¹³⁹ OIK, Ex-officio no. 385/2016.

social schemes will be reformed in 2019 and issue recommended by the Ombudsperson will be addressed thereunder.

The Ombudsperson, based on the information collected during the visits performed in some of the day care centres, has conducted ex officio investigations regarding the inability of children with disabilities to receive social and family services in these centres because of their closure. In January 2017, the Ombudsperson sent a letter with recommendations to the Minister of Labour and Social Welfare regarding the inability of children with disabilities to receive social and family services in these centres because of their closure. On 19 March 2018, the Ombudsperson received a response from the Minister of Labour and Welfare with detailed information on the actions taken by the Ministry in question so that day care centres could provide appropriate services for children with disabilities. The Ombudsperson was also informed through such response that day care centres are developing their activities in providing social services to children in social need. The relevant authorities should ensure sustainable and adequate funding for social and health services in Kosovo.

Juvenile justice

The Constitution of the Republic of Kosovo guarantees the education as a general human right enjoyed by every person, which, as such, represents an important precondition for enjoying other human rights. Thus, education is seen as the main factor for sustainable human development, through which the improvement of the quality of life at an individual, family, social and global level increases. Even children who are subject to the justice system, i.e. juveniles who have been in conflict with the law, should have access to appropriate education care services. The education of minors who are convicted and residing in correctional institutions is one of the main obligations of the competent institutions of the Republic of Kosovo deriving from the Constitution of the Republic of Kosovo, applicable laws and international legal instruments. As such, this obligation of institutions to provide opportunities for education for young people also applies to minors staying in correctional facilities. The OIK has investigated two complaints of two juvenile serving their sentence at the Correctional Centre in Lipjan¹⁴⁰ regarding their inability to continue university studies. The Ombudsperson recalls that the right to education of juveniles and adults who are convicted and who are staying in correctional institutions should be realized. The Ombudsperson warns that this right for the convicts should be possible within the Correctional Centre or outside in regular public schools.

On 23 November 2018, the Ombudsperson sent a report with recommendations to MEST and the Ministry of Justice for issuing a sub-legal act in accordance with Law No. 04/L-032 on Pre-University Education in the Republic of Kosovo and Law No. 04/L-149 on

¹⁴⁰ OIK, complaint no. 493/2018 and 694/2018.

Execution of Penal Sanctions, which would prescribe the manner of realization of the right to pre-university education of juvenile and adult persons who are serving their sentence, but no response was received in this regard by the date of the publication of this report.

Equality before the law

The Republic of Kosovo has built a legal framework for the prevention and combating of discrimination based on international standards. The Constitution of the Republic of Kosovo in particular chapters deals with fundamental human rights and freedoms, affirming general principles, and various kinds of rights, of which two separate articles address equality before the law, and incorporating international instruments for the protection of human rights, which are implemented directly and have precedence in the applicable legislation.

The Law on Protection from Discrimination in the normative sense establishes the basis of the legal rules of the legislation on protection against discrimination in Kosovo. The term “discrimination” implies the differences that exist in the treatment of individuals or the denial of the rights guaranteed in all areas of life because of their nationality or connection with any community, national or social origin, race, ethnicity, colour, birth, sex, gender, gender identity, sexual orientation, language, nationality, religion and belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, disability, genetic heritage or any other basis.

Moreover, Article 9 of the Law on Protection from Discrimination defines the Ombudsperson as a state institution that promotes and protects human rights and treats cases related to discrimination under the relevant Law on Ombudsperson.

In the period from 1 January 2018 to 31 December 2018, the Ombudsperson received 189 complaints based on discrimination, out of which 98 were opened for investigation, while 70 complaints were considered unacceptable. In addition to complaints filed by citizens, the Ombudsperson has also initiated investigations on 21 cases on an *ex officio* basis.

During this reporting period, the Ombudsperson, with findings of discrimination, published 7 Judicial Reports with Recommendations in the capacity of *Amicus Curiae* with Legal Opinion referred to the judiciary in 5 cases, while in 2 cases it presented Opinions.¹⁴¹

In accordance with the competencies deriving from the Law on Protection from Discrimination, the Ombudsperson has drafted a manual on protection against discrimination, which aims to provide a clear definition of discrimination in relation to other illegal behaviour by providing basic knowledge of recognition and response to this phenomenon. Based on the national legislation on protection against discrimination, this manual contains a summary of all legal terms, definitions and responses to complex

¹⁴¹ See Summary of Reports with Recommendations for 2018.

issues related to discrimination and protection against it. This manual also provides to readers a summary of international legislation on protection against discrimination.¹⁴²

As part of monitoring the implementation of the Law on Protection from Discrimination, the Ombudsperson, together with his associates, held meetings with the Parliamentary Commission on Human Rights, Gender Equality, Missing Persons and Petitions regarding the implementation of the Law on Protection from Discrimination and the Law on Gender Equality. Also, representatives of the Ombudsperson participated in the presentation of the *ex post* draft Law No. 05/L-020 on Gender Equality, which was organized by the Agency for Gender Equality.

In addition, during this reporting year, the Ombudsperson and his representatives gave their declarations to the media about discrimination issues. They participated and engaged as panellists in conferences, debates, roundtables, workshops, both inside and outside the Republic of Kosovo, on topics related to discrimination. They held meetings with Roma, Egyptian, Ashkali, and NGO communities that protect the interests of these communities. The Ombudsperson and his representatives held regular meetings with the civil society as well. They met with NGOs that protect the interests of LGBTI communities and were also engaged as panellists at events organized by this community.

The Ombudsperson and his representatives also held meetings with the Women's Network, Kosovo Disability Forum, NGO Handikos, NGO Syndrome Down Kosova, ECMI Kosovo, etc. On 25 September 2018, as part of work experience exchanges, the DPD held a meeting with the Commissioner for Protection from Discrimination of the Republic of Albania, while on 30 October 2018, the Ombudsperson of the Republic of Kosovo and the Commissioner for Protection from Discrimination of the Republic of Albania signed cooperation agreements in the field of protection against discrimination. From 19 to 23 November 2018, as part of work experience exchanges, two representatives of the Ombudsperson of the Federation of Bosnia and Herzegovina came to the DPD for a visit.

Persons with disabilities

Everyone enjoys the universal rights that are recognized in the United Nations Declaration of Human Rights. The rights of all persons with disabilities are guaranteed by the domestic legislation as well as the United Nations Convention on the Rights of Persons with Disabilities¹⁴³.

¹⁴² Manual on Protection from Discrimination, published at the conference organized by the OIK on 18 December 2018.

¹⁴³ United Nations Convention on the Rights of Persons with Disabilities is incorporated into the National Strategy on Rights of Persons with Disabilities in the Republic of Kosovo 2013-2013. See

The state has the legal obligation to provide persons with disabilities with guarantees and opportunities to contribute to the development of the country, and to ensure their inclusion and integration into the various social processes without any discrimination.

According to estimates made by the World Health Organization, around 10 and 15 percent of the world's population is considered to have a disability. However, there are still no official statistics on the total number of persons with disabilities in Kosovo. Consequently, the Ombudsperson considers that the lack of a database for this category prevents proper addressing by policy making institutions.

The legal framework¹⁴⁴ regulating the rights of persons with disabilities in the Republic of Kosovo is quite wide¹⁴⁵ and distributed in several laws. In early 2018, the MLSW stated that a concept document has been drafted for a comprehensive law on the legal protection of persons with disabilities. Consequently, the Ombudsperson considers that there is a clear need to supplement and amend the current legislation on persons with disabilities.

People with disabilities are still at the margins of society and policy programs. Therefore, despite the many positive changes, Kosovo continues to lag behind developed countries, trying to harmonize domestic legislation with European Union legislation and practices without first creating the necessary preconditions within our system.

As in previous years, during this reporting period, people with disabilities continue to face the same problems in all areas of life.¹⁴⁶ The employment rate of this category continues to remain low, although this is a fundamental prerequisite for these people to enjoy equal treatment. Also, the lack of access to public spaces, public institutions, public

http://www.kryeministris.net/repository/docs/STRATEGJIA_NACIONALE_PER_TE_DREJTAT_E_PER_SONAVE_ME_AFTESI_TE..._Shq+Ser+Ang.pdf.

¹⁴⁴ Law No. 05/L-067 on the Status and Rights of Persons with Paraplegia and Tetraplegia, Law No. 04/L-092 on Blind Persons, Law No. 03/L-019 on Vocational Training, Retraining and Employment of Persons with Disabilities, as amended and supplemented by Law No. 05/L-078, Law No. 05/L-025 on Mental Health, Law on Material Support to Families of Children with Permanent Disabilities, Law No. 04/L-131 on State-Funded Pension Schemes (relevant provisions for persons with disabilities), Law No. 02/L-17 on Social and Family Services, as amended and supplemented by Law No. 04/L-081, Law No. 02/L-52 on Preschool Education, Law No. 03/L-068 on Education in the Municipalities of the Republic of Kosovo, Law No. 04/L-032 on Pre-university Education in the Republic of Kosovo, Law No. 04/L-037 on Higher Education in the Republic of Kosovo, Law No. 05/L-018 on State Matura Exam (Relevant Provisions for Persons with Disabilities), Law No. 04/L-125 on Health, Law No. 04/L-249 on Health Insurance (relevant provisions for persons with disabilities), Law No. 04/L-110 on Construction / Administrative Instruction No. 33/2007 on the Technical Conditions of Construction Facilities for Access of Persons with Disabilities.

¹⁴⁵ Annual Report for 2017, in the section "People with special needs", see: <https://www.oik-rks.org/raports/annual-reports>.

¹⁴⁶ Annual Reports for the years 2016 and 2017 - The disability section, see: <https://www.oik-rks.org/raportes/raport-specs/>

transport, problems in the supply of orthopaedic equipment, poverty, the realization of rights to benefits under legislation, etc. make their lives even harder.

Despite the fact that Kosovo has many years ago put in place a legal framework that foresees the construction of infrastructure¹⁴⁷ that is accessible to all, little has been done to ensure the independent movement of citizens with disabilities.

Blind and partially visually impaired people in Kosovo continue to face problems. The lack of tangible trails, which would help them pass the road safely, loud traffic lights, inscriptions with the Braille alphabet in the institutions, are just some of the barriers. Members of the Kosovo Blind Association are dissatisfied with the implementation of the Law on Blind Persons¹⁴⁸ and the Law on Vocational Training, Recruitment and Employment of Persons with Disabilities, as amended and supplemented by Law No. 05/L-078¹⁴⁹, which results in poor quality of their life and makes their social integration difficult.

Regarding the implementation of the Law on Blind Persons, Kosovo Assembly has provided clear recommendations to Kosovo institutions, but there is still no indication that institutions have taken steps to implement them. In addition to Articles 6 and 7 of this Law¹⁵⁰, other articles are not applied. In addition, in order to realize their legal rights to benefits, blind persons are conditioned to join the Kosovo Blind Association, because Article 21 of the Law determines: *“For implementation of this law and without denying the rights of individuals or other groups, shall be recognized the right of representation of blind persons and benefits of special services of Kosovo Association of Blind Persons, depending on fulfilment of the following conditions [...]”*

The Ombudsperson has received complaints from blind persons who express their concern at the misinterpretation of this article by institutions where blind persons are directed to seek benefits guaranteed by the Law on Blind Persons, as they seek that representations be made by the Kosovo Association of the Blind or to be presented with blindness cards by the same association, while on the other hand, the association in question is preconditioning blinds with membership fees, in cases when they request to

¹⁴⁷ Law on Construction no. 04 / L-110, and the Administrative Instruction on the Technical Conditions of Construction Facilities for the Access of Disabled Persons.

¹⁴⁸ Law No. 04/L-092 on Blind Persons, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2837>

¹⁴⁹ Law no. 03/L-019 on vocational ability, rehabilitation and employment of people with disabilities amended and supplemented by the Law nr. 05/L-078, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2620>

¹⁵⁰ LAW No. 04/L-092 FOR BLIND PERSONS Article 6 “Blind persons shall be exempted from any tax and direct taxes. In case of self-employment they shall be exempted from any fiscal obligation, while if they carry out an activity as legal entities, they shall enjoy tax facilitation realized by laws in force...” Article 7, “Incomes and benefit, 1. Blind persons shall enjoy all rights and benefits according to the laws in force. 2. Blind persons determined by this law, shall receive compensation from the state budget in a certain scale based on the minimum salary in Kosovo but not less than one hundred (100) Euro monthly and it shall be determined by sub-legal act issued by the Government. (...)”

be provided with cards proving their status. These cases are under investigation by the OIK.¹⁵¹

During the reporting period, the Committee on Human Rights, Gender Equality, Missing Persons and Petitions¹⁵² of the Assembly of Kosovo reported on the implementation of the Law on Blind Persons, as well as the problems of persons with other disabilities in all spheres of life, including the issue of employment. According to the Committee, employment of persons with disabilities is not satisfactory, not only in the private sector but also in the public sector.

During 2018, the OIK has reviewed a case, upon the individual complaint of a complainant regarding the allegation of discrimination against blind persons. To this end, exercising its legal powers¹⁵³, the Ombudsperson submitted to the Basic Court in Prishtina - Department for Administrative Affairs a legal opinion in his capacity as a friend of the court for the conclusions regarding the allegations of the Blind Association in Gjakova for violations of the right of blind persons to being exempt from property tax.

The Ombudsperson emphasized that Law No. 03/L-204 on Immovable Property Tax is a general law (*legi generali*), the purpose of which is to introduce immovable property tax and define standards and procedures to be observed by municipalities when administering the tax property. On the other hand, Law No. 04/L-092 on Blind Persons is a special law (*lex specialis*) whose purpose is to regulate the statutory status of blind persons. This law also lays down their rights and benefits and expressly states in Article 6 that: “*Blind persons shall be exempted from any tax and direct taxes.*” Law No. 03/L-204 on Immovable Property Tax does not prohibit in any of its provisions the exemption of other categories from the immovable property tax. Article 8 of this law lists some of the exempted categories, but neither this law nor any other law prohibits the legislator from adopting a special law for the exemption of certain groups from financial obligations.

Based on the arguments presented above, the Ombudsperson concluded that the principle of *lex specialis derogat legi generali* is applicable in the constitutional and legal system of the Republic of Kosovo, as part of the right to a fair and impartial process guaranteed under Article 31 of the Constitution and Article 6 of the Convention. The principle of the rule of law is severely violated if a public authority does not enforce the applicable law and individuals have legitimate expectations of the effect of the law.

¹⁵¹ Case A.56/2018 and Case A.57/2018.

¹⁵² The Committee on Human Rights, Gender Equality, Missing Persons and Petitions held its meeting on 2 May 2018. https://www.kuvendikosoves.org/common/docs/proc/proc_2018_05_02_10_7402_sr.pdf

¹⁵³ Law on Protection from Discrimination, Article 9, paragraph 2.13. “Ombudsperson may be presented in the quality of a friend of the court (*amicus curiae*) in proceedings related to issues of equality and protection from discrimination;”.

Regarding the statistics on the employment of persons with disabilities in the civil service, there are no disaggregated statistics, but according to some information, 103 persons with disabilities are employed in this service.

Another issue being addressed by the OIK relates to the violation of the right to benefits and discrimination against persons with disabilities in terms of exemption from import duties for the category of persons with special needs, namely blind persons and persons with paraplegia and tetraplegia¹⁵⁴. The entitlement of persons with disabilities to exemption from import duties is guaranteed by the provisions of Article 182 in conjunction with Articles 76 to 81 of Annex A of the 03/L-109 Customs and Excise Code of Kosovo; Article 10 of Law No. 05/L-067 on the Status and Rights of Persons with Paraplegia and Tetraplegia, Article 6 of Law No. 04/L-092 on Blind Persons; and point 1.12 of Article 30 of Law No. 05/L-037 on Value Added Tax.

The Ombudsperson considers that the applicable customs legislation does not provide the adequate legal basis under which persons with disabilities and persons with paraplegia and tetraplegia as well as blind persons could benefit from the exemption of payment of import duties for travel vehicles for their needs.

According to information received from the Kosovo Customs regarding the exemption of vehicles from the payment of import duties, which is related to the Law on the Status and Rights of Persons with Paraplegia and Tetraplegia, whose Article 10 provides that for beneficiaries of this law the provisions of the applicable legislation in the sense of the Customs Code referred to paragraph 1 of Article 10 of Law No. 05/L-067 shall apply regarding exemption from import duties in cases of import.

Such exemption from customs duties continues to be recognized only to persons who have previously been provided with a driving license and on condition that the vehicle is designed or adapted for use by persons with disabilities. Meanwhile, none of these acts foresee the exemption from custom duties of vehicles for persons of this category who, for objective reasons, do not have a vehicle adapted to their disability and are unable to have a driver's license to drive the vehicle. Such a benefit from customs facilities in the import of vehicles for the category of persons with disabilities by imposing other conditions that cannot be met by all categories of persons with disabilities constitutes inequality and discrimination in obtaining benefits even from persons with the same disability.

The legislative program for 2018 adopted on 20 December 2017 at the 20th meeting of the Government of the Republic of Kosovo¹⁵⁵ foresees a draft law on amending and supplementing the Customs and Excise Code. During the review of the provisions of this

¹⁵⁴ A.822/2017 and A 864/2018.

¹⁵⁵ http://www.kryeministri-ks.net/repository/docs/PROGRAMI_LEGJISLATIV_PER_VITIN_2018...pdf

Code, the committee responsible for drafting the original draft has planned, among other things, amendments to the provisions relating to customs privileges for persons of all categories with special needs. However, this issue has not yet been regulated.

Also, the lack of legislative regulation to classify and categorize the full range of people with disabilities and their full inclusion in legislation and the establishment of tariffs and services that are appropriate for all in unequal position persons with disabilities belonging to the type that is not categorized, such as persons who do not have the capacity to live independently and the right to pensions for disability is regulated by the Law on Pension Scheme. Persons with disabilities who receive monetary support from the Law on Pension Scheme do not enjoy any benefits as people with disabilities whose rights and benefits are regulated by special laws.

During the reporting period, the Ministry of Labour and Social Welfare approved the Administrative Instruction No. 05/2018 on the method and procedures for assessing the ability of persons with disabilities to work.¹⁵⁶ This Instruction regulates the method and procedures for assessing the reduction of the working capacity of persons with disabilities in determining the recognition of rights for training, rehabilitation and employment. During the reporting period, the Ombudsperson opened an investigation for several individual cases as well as for ex officio cases, referring to the discrimination of persons with disabilities whose consideration is ongoing.¹⁵⁷

Discrimination at work

The notion of the right to work implies the equal right to equal conditions for dignified work and respect for the relevant legal provisions, thus excluding any form of discrimination.

Constitutional guarantees for the right to work and the right to free choice of professions create the obligation of the state to protect these rights equally and to ensure full respect and enforcement of the relevant legislation.¹⁵⁸

Under current legal provisions, it is forbidden to violate the principle of equal treatment in employment and occupation in relation to the recruitment, vocational training, promotion, employment conditions or other matters in the field of work regulated by

¹⁵⁶ file:///C:/Users/drodic/Downloads/Udh%C3%ABzimi%20Administrativ%20(MPMS)%20nr.%2005-2018.pdf

¹⁵⁷ A.100/2018, A.610/2018A.864/2018, Ex officio br.340/2017 , Ex officio br.451/2018, Ex officio br.262/2018.

¹⁵⁸ Constitution of the Republic of Kosovo, Article 24, Equality before the Law, and Article 49, Right to Work and Exercise Profession. The Decent Work Agenda program was approved by the International Labour Organization in 1999 in order to promote decent work as one of the member states, but also non-member states. a key component of development policies and at the same time targeting the state policy of governments and social partners.

applicable laws, in any activity and at all levels of the professional hierarchy. Provisions of the Law on Protection from Discrimination are directly applicable when it comes to working relationships between employees and employers, both in the private and public sectors.

The Ombudsperson emphasizes that, according to the approaches of the definition of dignified work¹⁵⁹ as a common standpoint, it is noted that dignified work, seen through the aspiration of the individual in the realization of labour rights, represents the possibility of productive work, a regular and fair relationship between the employer and employees, a safe and healthy workplace, protection of the social rights of employees and their family members, as well as better conditions for the employee's personal prosperity and social integration, the freedom of employees to express their needs, to organize and to participate actively in the decisions directly related to their work.

At the same time, the Ombudsperson recalls the existence of problems resulting from disrespect of legal obligations by the system's relevant institutions in the field of labour rights.

The main institutions entrusted with the implementation and oversight of labour legislation implementation are the Ministry of Labour and Social Welfare whose role is to create labour and social protection policies and establishment and implementation of laws in this field, safety and health standards in the decision-making of employees and supervision of their implementation; the Labour Inspectorate as an institution of special importance for protection of labour rights in the area of inspecting supervision and then other relevant institutions of the system.

Within the institutional framework, the Labour Inspectorate is the only body overseeing the implementation of employment, safety and health provisions. The Ombudsperson sees the decisive preventive role of the Labour Inspectorate in the implementation of the Labour Law and ensuring decent work, safety and health at work, prevention of abuse of work, implementation of general acts and combating irregularities in the area of implementation of the provisions of the Labour Law, the establishment and duration of the employment relationship and the obligation to have a contract of employment for each worker. In all of this, it is of particular importance to emphasize the role of inspection not only as an advisory and consultative body, but also as a controlling body.

During 2018, the Government of the Republic of Kosovo has taken steps to create legislation aimed at reforming the state administration. However, the employment

¹⁵⁹ The Decent Work Agenda program was approved by the International Labor Organization in 1999 in order to promote decent work as one of the member states, but also non-member states. a key component of development policies and at the same time targeting the state policy of governments and social partners.

relationship during the reporting period has continued to be regulated by the Law on Civil Service.¹⁶⁰

The Independent Oversight Board for the Kosovo Civil Service is an independent body that deals with civil servants' complaints regarding violation of the right to work. The legal basis for the independent oversight of the civil service of Kosovo is the Constitution of the Republic of Kosovo¹⁶¹, the Law on the Independent Council of Kosovo¹⁶², and the Law on Civil Service¹⁶³. However, during this reporting year, regarding the functioning of the Independent Oversight Board, the Government of Kosovo has issued a new law, which has been approved and is in effect since 2018.¹⁶⁴

Complaints against the decisions of the Labour Inspectorate and the Independent Oversight Board for Civil Service of Kosovo are handled by the Basic Court, namely the Department for Administrative Affairs. However, during this reporting year, as well as in reports on individual complaints, the Ombudsperson has raised his concern about the delays in court proceedings in solving labour-related cases, which also pose a major problem in law enforcement. Prolonged procedures and the absence of specialized courts, which would only deal with employment cases, is still an obstacle to the implementation of labour legislation¹⁶⁵. The Ombudsperson draws attention to the fact that, during this reporting year, no commitment of the aforementioned competent mechanisms has been noted that, referring to the Law on Protection from Discrimination, they have decided in cases where there is alleged discrimination.

In Kosovo, the high unemployment rate among young people continues to be a challenge. Even today, there is no government commitment to creating new jobs. Moreover, the Government has failed to have a proper analysis of labour market needs. Therefore, in order to have a direct impact on the reduction of unemployment in the country, the Ombudspersons considers that the Government of the Republic of Kosovo should prioritize and take action in creating policies for the orientation of young people in adequate education according to the labour market demands.

During this reporting year, the Ombudsperson expresses his concern that because of the high unemployment rate, cases of discrimination in the workplace are reported very rarely, as employees are afraid of the revenge of their employers. Very often, as stressed by the Union of Independent Trade Unions, employees solved their work issues internally and informally with their employers. Based on this, the Ombudsperson considers it

¹⁶⁰ Law No. 04/L-149 on Civil Service of Kosovo

¹⁶¹ Article 101, paragraph 2, Constitution of the Republic of Kosovo

¹⁶² Law No. 03/L-192 Independent Oversight Board of Kosovo Civil Service

¹⁶³ Law No. 04/L-149 on Civil Service of Kosovo

¹⁶⁴ Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo, https://kpmshc.rks-gov.net/repository/docs/15_873621.pdf

¹⁶⁵ See the section of the Summary of Reports, Annual Report 2018.

necessary to establish policies in the protection of workers in cases of discrimination in the workplace.

The overall picture of the labour market in the Republic of Kosovo, according to the results of the Kosovo Statistics Agency's publications in the Workforce Survey (AFP) ¹⁶⁶ for the third quarter (Q3) in 2018, shows that two-thirds of the population in Kosovo is capable of working. People in the age group of 15-64 years are included in the working population. Within the labour-intensive population, the rate of participation in the workforce is 42.0%. The employment rate is 29.1%. Employment is higher in males (45.6%); while in women it is 12.6%. As far as employees with employment contracts are concerned, 28.4% of employees have a permanent employment contract, while 71.6% have a temporary employment contract. According to the VET results in Q3 2018, the unemployment rate was 30.7%.

Economic sectors with the highest employment rates are still: trade, construction and industry. While the high unemployment rate in the Republic of Kosovo, which accounts for the highest unemployment rate in Europe, remains a constant concern. ¹⁶⁷

Based on the complaints filed to the OIK during this reporting year, the Ombudsperson considers that there has been no significant progress and improvement of the situation regarding respect for the rights of workers and working conditions. Employees' rights violations remain a challenge. The position of employees continues to be particularly severe in the private sector, where there are generally no trade union organizations that would protect employees' rights.

Discrimination of employees is more pronounced in the construction, trade, hotel and industry sectors. The problem of informal work without a work contract is still highlighted, leading to exclusion of legal certainty for people who work without a contract, since they formally and legally do not exist with the designated employer, and for them the only opportunity to practice their labour relations rights are the initiation of relevant court procedures.

The Ombudsperson emphasizes in particular that, when it comes to proving informal work in the relevant court proceedings, namely that this person was in a factual work to the employer in question, he should provide a lot of evidence to prove the real existence of his work. Evidence and documentation that would testify the presence of the employee is often avoided or does not exist in order to leave no trace of the actual engagement of the employee to the employer and is very difficult to prove because, for example, informal work is not taken the calculation of the monthly salary, because the wage is given in cash and not through the bank account, for this type of work there is no official

¹⁶⁶ <http://ask.rks-gov.net/sr/agencia-za-statistiku-kosova/socijalne/trziste-rada>, 14.01.2019.

¹⁶⁷ <http://ask.rks-gov.net/sr/agencia-za-statistiku-kosova/socijalne/trziste-rada>, 14.01.2019

evidence of presence in the workplace, and it is also likely that he will not be able to provide evidence of his colleagues as a means of proof, because they are afraid of the consequences that could cause their testimony to the employer. In such situations, for employees without a contract of employment it is very difficult and sometimes impossible to prove and realize the rights from the employment relationship. The burden of proof and the delay of proceedings in our courts complicates even more the situation of an already existing risk worker.

The level of safety at work in the private sector remains concerning, often lacking even basic protection, and therefore it turns out that due to the lack and failure to take appropriate security measures at work, there are a large number of deaths workers and cases of serious injuries to workers at the workplace. Of particular concern is the position of women in the labour market, which is reported in more detail in this part of this annual report on gender equality.

By monitoring the field of implementation of labour legislation, the Ombudsperson has so far not noticed that the relevant authorities for oversight, promotion and protection of labour rights have taken any more effective measures to combat strategic informal work, are needed to improve standards in this area.

From a social point of view, the current labour law is considered a law that guarantees the minimum rights of employees and to a large extent regulates the general aspects of the social rights of employees. In order to achieve certain goals in the area of social rights, the Ombudsperson appeals to the state to increase its activities in the following areas: improvement of working conditions; protection of employees in case of termination of employment; improving the working environment in the field of health and safety at work; equal treatment for men and women employed; the inclusion of the most disadvantaged people, etc.

Also, in spite of Article 51 of the Constitution (Health and Social Protection), which provides for basic social security related to unemployment, illness, disability and deferred age, the social security system in Kosovo is not yet fully regulated. In the absence of this system, the Social Insurance Fund is missing. In Kosovo this system currently applies only to pension contributions for employees after 2002. In addition, health insurance has not yet started to apply, although the Law on Health Insurance¹⁶⁸, which was adopted in April 2014, is already in effect.

As a consequence, the Ombudsperson considers that the main problems identified as shortcomings in the field of labour legislation should be regulated as soon as possible through the legislative process and continue with their harmonization with the relevant European Union legislation, in order to accelerate the process of legal approximation.

¹⁶⁸ Law No. 04/L-249 on Health Insurance

This also means increasing the capacity of oversight institutions, strengthening the judiciary, and undertaking other appropriate measures that will contribute effectively and effectively to the implementation of legislation. Otherwise, the process of internal harmonization in the area of labour legislation with the relevant EU legislation began in 2013, but after a long period of time, it has not yet been concluded.

In accordance with its competences and on the grounds of suspicion that there is discrimination in the public sector, during the reporting period, the Ombudsperson reviewed cases related to discrimination at work in the public sector.

On 12 February 2018, the Ombudsperson forwarded to the Rectorate of the University of Prishtina and the Ministry of Education, Science and Technology an Ex-officio Report with Recommendations regarding the discriminatory condition in job vacancies at the University of Prishtina, published during the year 2016 and 2017, more specifically on the condition that “At the University of Prishtina will not be allowed recruitment/engagement of candidates who have close working and family relationships within departments/departments or programs”. Moreover, with regard to this issue, the Ombudsperson emphasizes that he specifically understands the problem of nepotism as a special form of conflict of interest, which is extremely common in the case of employment in the public sector. However, fighting nepotism does not mean full reliance on relatives, but it means stopping the misuse of the position of civil servants to provide work for family members. The purpose is not to prevent family members from working together, but to prevent the possibility of a civil servant being biased, favouring or using his influence and position for family members in the exercise of discretionary powers to hire an employee qualified civilians.

The Ombudsperson, following a legal analysis of the aforementioned controversial condition in the UP vacancies announced during 2016 and 2017, which does not allow the submission to the announcement and the recruitment of candidates within the same department on the basis of close relations as well as Article 7, paragraph 11, of the Internal Rules on Evaluation Procedures for the Engagement of Foreign Associates in UP “Hasan Prishtina”, dated 8 September 2017, which reads: “*The recruitment/engagement of candidates within any of the basic organizational structures (department/branch or program) shall not be permitted at the University of Prishtina, if within those same structures they have regular working relationships or engaged close family members (parent-child relationship, sibling, sister brother, and vice versa),*” concluded that, in the context of the principle of equality, constitutes discriminatory condition and is in contradiction with the applicable legal provisions.¹⁶⁹

¹⁶⁹ For more see the section of Annual Report 2018, Ex officio Report No. 853/2016 and Ex officio Opinion No. 853/2016 Summary of reports.

On the occasion of this report, on 16 March 2018, the Ombudsperson also sent to the same parties his Opinion on the Prevention of nepotism at the University of Prishtina.

During the reporting period, the Ombudsperson also reviewed individual complaints about discrimination in the employment process.¹⁷⁰ By completing the investigation on individual complaints, the Ombudsperson on 16 April 2018 sent to the Ministry of Justice and Kosovo Correctional Service (ADK) a Report with recommendations regarding the discriminatory condition in the Employment Announcement in the Kosovo Correctional Service with reference number MJ/KCS/132-09-02-2018, dated 12 February 2018, for 70 /seventy/ vacancies for “Correctional Officers”. In the aforementioned announcement, the section “Qualifications, Skills and Personal Characteristics” as a criterion states “*The average age for men is up to 30 years, for women up to 35 years.*” The essence of this case lies in the fact that all facts and circumstances, in accordance with the imperative regulations for the prohibition of discrimination, to consider the question of whether the equal opportunities for establishing employment relations in KCS have been violated by placing age of the as a restriction for employment.

Pursuant to the provisions of the Law on Protection from Discrimination, to determine whether discrimination was committed by limiting the age of potential candidates, the Ombudsperson did not analyse whether in the present case the age of up to 30 years for men or 35 years for women is the real and decisive condition for carrying out this work, given the nature and particularity of this work, and if the purpose intended is reasonable, but has exclusively considered and analysed the question whether the imposition of a restriction condition during employment in the KCS announcement is based on a separate relevant legal act in accordance with the Law on Protection from Discrimination and international standards.¹⁷¹

Concerning the issue in question, the Ombudsperson found that the Constitution and the relevant legal regulations prohibit arbitrary distinction or unequal actions when determining the conditions for employment and the selection of candidates for the performance of a particular job on the basis of their age. Thus, exceptions to this rule in a very restrictive manner should be interpreted and accepted as justified only by the existence of special regulations and in situations where age represents a real and decisive factor for the possibility, namely the impossibility of carrying out a particular job , given the nature and particularity of this work.

The Ombudsperson found that by establishing the age as a restriction for employment in the KSC announcement, without the existence of a separate legal act that would

¹⁷⁰Form the OIK database, Com. no 114/2018; Com. no. 122/2018 and Com. no. 182/2018.

¹⁷¹ See the Annual Report 2018, section of Summary of Reports. Regarding this issue, the Ombudsperson sent to the Ministry of Justice and the Kosovo Correctional Service relevant recommendations through the Report Com. no. 114/2018; Com. no. 122/2018 and Com. no. 182/2018.

determine these conditions, there was a violation of equal opportunities in the case of employment in relation to persons older than 30/35 years, with direct discrimination based on age in the field of work, prohibited by the relevant provisions of the Law on Protection from Discrimination. Such behaviour is unlawful and constitutes a violation of imperative rules prohibiting discrimination, which are binding on all legal persons.

By utilizing its legal powers,¹⁷² the Ombudsperson, in the capacity of a friend of the court (*amicus curiae*), also sent legal remedies to the competent courts in order to review the cases and to inform them about the findings and its conclusions on the issues under consideration¹⁷³.

On 31 January 2018, the Ombudsperson sent a legal opinion to the Supreme Court, the Court of Appeals and the Basic Courts of Kosovo, and the Ministry of Public Administration, in order to provide legal aid to create a fair interpretation of the concept of “work experience” in the context of job vacancies in public institutions.

Regarding this issue, the Ombudsperson thinks that there is no exact formula that can be applied to the entire civil service, indicating how close are the duties of a workplace with those with which the candidate had experience. This is an issue that should be left to the discretion of each institution that announces the competition and each evaluation committee, not only because there is no exact formula that can indicate the “approximation” of the job duties, but also because the institution and the evaluation committee can be assumed to be experts and professionals in the field to which the workplace it is seeking to be completed. Therefore, those who announce the competition and the members of the commission are those who are in the best position to evaluate if each candidate's experience is sufficiently “close” to the task for which the candidate has competed.

Although there is no exact formula for assessing the work experience that could be applied to the entire civil service, the Ombudsperson believes that this does not prevent the institution from including in the announced competition the detailed criteria in accordance with European practice.¹⁷⁴

The Ombudsperson, in the capacity of a friend of the court (*amicus curiae*), sent a Judicial Opinion to the Basic Court in Prishtina, which is focused on clarifying legal procedures regarding the age limit as a criterion for employing the complainant, in the position of teachers, in the competition announced by the Public University of Prishtina “Hasan Prishtina”, namely from the Faculty of Agriculture and Veterinary.

¹⁷² Law on Protection from Discrimination, Article 9, paragraph 2.13. “Ombudsperson may be presented in the quality of a friend of the court (*amicus curiae*) in proceedings related to issues of equality and protection from discrimination;”.

¹⁷³ See the Annual Report 2018, section of Summary of Reports, Com. no. 903/2017.

The Ombudsperson recalls that in 2010 he had opened a similar case ex officio and sent a letter to the Rector of the UP, recommending a review of Decision no. 1/499, dated 25 May 2010, of the UP Senate, regarding the actions taken in response to this recommendation. However, within the specified deadline, the Ombudsperson did not respond to the recommendations given. Due to the fact that the Ombudsperson did not respond to the recommendations given to the Rectorate of the UP, the same, based on the relevant articles of the Constitution of the Republic of Kosovo, the Law on Administrative Disputes and the Law on Ombudsperson which were in force at the time, in December 2010 filed a petition with the Supreme Court of Kosovo on the legality of the decision not to recruit teachers who reached the age of 50. Based on the evidence and after reviewing the Ombudsperson's request regarding the legality of Decision no. 1/499 of the UP Senate, dated 25 May 2010, to not recruit teachers who reached the age of 50, the Basic Court in Pristina approved the indictment of the Ombudsperson as grounded and according to Judgment A. No.1242 / 2010, dated 9 December 2013, requested the annulment of the Senate decision. On the basis of the complaint of the complainant A.no.903/2017, the Ombudsperson notes that the Rectorate of the UP continues to not implement Judgment A.no.1242/2010, dated 9 December 2013, and an action such constitutes a violation of Article 6, paragraph 2 of Law 03/L-199 on Courts, according to which "Court decisions are binding on all natural and legal persons".

Pursuant to the Law on Labour, Article 7, par. 1, and Article 67, paragraph 1.1, the age limitation in the concrete case, foreseen by the UP Statute and UP Senate Decision, constitutes a discriminatory act and is in full contravention of the legal norms foreseen by domestic and international legislation. This UP practice is in contradiction with the principle of legality and the principle of legal certainty. During the reporting period, the Ombudsperson also registered other cases ex officio and individual cases related to discrimination at work. Investigations are ongoing and the Ombudsperson's explanations for these cases are expected in the next period.

The right to pension

Not all pension schemes or compensation schemes are currently ¹⁷⁵ regulated by a separate law. There are eight different laws that regulate pension schemes and often conflict with one another. Therefore their implementation is generally difficult.

During the reporting period, the OI received a considerable number of complaints, in which the complainants' claims were related to the benefits of the rights to pensions from

¹⁷⁵ Among others, Law No. 04/L-131 on Pension Schemes Financed by the State, Article 2 "the Basic Age Pension Scheme, Age Contribution-Payer pension Scheme, Disability Pension Scheme and Early Pension Scheme" (...) family and work disability, in cases when the contributors are injured in work or gain professional illness <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=9517> Law No. 04 / L-054 on the Status and Rights of the Martyrs, Invalids, Veterans, Members of Kosova Liberation Army, Civilian Victims and their Families and Law No. 04 / L-261 on Kosovo Liberation Army War Veterans.

two pension scheme. Moreover, in their complaints, the complainants claim that the Ministry of Labour and Social Welfare, namely the Pension Department, without warning, excluded them from one pension scheme, a right they had acquired years ago. With regard to this issue, on 27 February 2018, the Ombudsperson forwarded to the Ministry of Labour and Social Welfare (MLSW) the Report with Recommendations regarding the right to age contribution-payer pension, and the right to use other applicable pensions in the Republic of Kosovo.¹⁷⁶

The purpose of the Ombudsperson was to draw the relevant body's attention so they grant the citizens the right guaranteed by law for the use of contribution-payer pensions, as defined by Law No. 04/L-131 on Pension Schemes Financed by the State, with the right to pensions pursuant to Law No. 04/L-054 on the Status and Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families and Law No. 04/L-261 on Kosovo Liberation Army Veterans. Regarding this issue, the Ombudsperson ascertained that despite the fact that a person meets the conditions provided by law for the use of the right to age contribution-payer pension, or any other pension financed by the state, the same shall not be deprived of the right to enjoy the pensions guaranteed by law. This derives from legal provisions (Article 8, paragraph 3 of the Law on Pension Schemes Financed by the State),¹⁷⁷ because the legal framework allows the exercise of the right only for a pension. It should be noted that the legal provisions do not clarify who chooses the pension he will continue to enjoy. The Law on War Values clearly gives this right to the person who meets the conditions for the exercise of the right for one of the pensions provided by this law. However, this is not reflected in the Law on Pension Schemes.

The Ombudsperson considered that such a definition of the right to use the old age contribution-payer pension or any other pension financed by the state, despite the fact that the conditions provided by law are met, constitutes a violation of the right to property. The Ombudsperson considered that the right to enjoy the pension, in particular the old age contribution-payer pension, and that this acquired right that represents a legal doctrine, according to which, a right acquired under certain legal norms, cannot be restricted by laws or regulations issued later. The doctrine of acquired right is closely related to the principle of legal certainty. Therefore, the restriction of the right to enjoy the contribution-payer pension pursuant to Article 8 of Law No. 04/L-131 on Pension Schemes Financed by the State violates the principle of legal certainty, because this right

¹⁷⁶ The report is based on Case A. 890/2016 and relies on the allegations, facts and evidence submitted by the complainant to the OI, regarding the termination of the contribution-payer pension. In addition to the complaint in question, the Ombudsperson also accepted other complaints of the same nature. The purpose of the Report is to draw the attention of the Ministry of Labor and Social Welfare to provide citizens with guaranteed legal and constitutional rights in the exercise of the right to contribution-payer pension as a property right.

¹⁷⁷ "Persons who meet the conditions and criteria for age contribution-payer pension may not be beneficiaries of any other pension scheme as defined by this law."

was acquired under previous laws on pension and it cannot be changed by any other law.¹⁷⁸

In addition to the abovementioned cases, during the reporting period, the Ombudsperson opened a case *ex officio* 235/2018, regarding the category of citizens who worked before 1999, who do not exercise the right to age contribution-payer pension, because they do not meet the criteria of 15 years work experience, as a result of discriminatory dismissal from work.

This report deals with the right to age contribution-payer pension, concretely the inability to use this right from the category of citizens who worked before 1999, but because they have been forced away from work during the time of imposing violent measures in Kosovo, they failed to meet 15 years of pension service, as a legal criterion for the use age contribution-payer pension.

The right of citizens belonging to this category, to exercise the right to a contribution-payer pension for the period prior to 1999 (who failed to meet 15 years of pension service) consists in a collision between the law that has defined the criterion of the benefit of this type of pension (15 years of pension work experience, as stated in current legislation) with principles related to fundamental human rights (namely the right of protection of human dignity, the right not to be discriminated against) and positive obligations of the state in relation to the rights of its citizens.

The Ombudsperson, after analysing the legislation that was in force before the 1990s, the right to contribution-payer pension, notes that the law (Law No. 011-24/83 of SAPK related to the Federal Law) at that time, as a criterion for obtaining the right to contribution-payer pension, among others, has determined achieving the work experience for at least 15 years. The same criterion is also accepted with post-war legislation, including the LSPFS currently in force.

For these reasons, and based on the constitutional obligations and the positive obligations the state has in relation to the citizens, the Ombudsperson finds it necessary for the Government of the Republic of Kosovo, to take measures for all citizens who worked before 1999 and have been forced away from work on a discriminatory basis, to benefit from age contribution-payer pension. For this purpose, it is necessary to change the LSPFS, respectively Article 8 thereof¹⁷⁹.

Regarding the right to age pension, on 17 May 2018, the Ombudsperson initiated an *ex officio* investigation¹⁸⁰ based on information received from citizens of ethnic Serbs in the municipalities of Gracanica, Prizren, Mitrovica and Klllokot, on the difficulties they face when applying for old age pension to the competent body of the Ministry of Labour and

¹⁷⁸ For more, see Annual Report 2018, the summary section of reports with recommendations.

¹⁷⁹ For more details see the Annual Report 2018, the section summarizing the reports with recommendations

¹⁸⁰ Ex Officio 324/2018

Social Welfare, and for the additional documentation that is arbitrarily requested of them by certain officials of the respective office of the pension administration. With regard to this issue, the Ombudsperson was informed that this problem is not unique across all the offices of the pension administration, but is evident in the aforementioned offices.

Based on the information provided by the Ombudsperson, the Government has already taken some steps in reforming the pension system and benefits. The Government's plan is to draft a unique law on pension, which in one country will include and handle all the rights to pensions, and the establishment of a Social Insurance Fund and it will define the organizational structure, management form, contribution rate and disability pension, in order to approximate with European practices. The government has worked on the Concept Document of the Pension Reform,¹⁸¹ which, besides the creation of a genuine system for younger generations, also foresees the recognition of the work experience of employees who have been forced away from work during the period 1990-1999. However, until the reporting period, the pension scheme situation remains unchanged. Therefore, the Ombudsperson considers that the Government of Kosovo must accelerate the steps towards reform of the pension system.

Health and Social Protection

The International Covenant on Economic, Social and Cultural Rights continues to be out of the list of legal instruments in the Constitution of the Republic of Kosovo, which are directly applicable in Kosovo¹⁸². The Ombudsperson has raised this issue even in the previous annual reports, which is of particular importance because it would further complete the list of international instruments directly applicable in Kosovo and at the same time, would have an impact on the advancement of the protection of economic and social rights in the country.

Based on the complaints received in the OI and site visits, the Ombudsperson considers that the main factors affecting the difficult economic and social life in Kosovo are unemployment as a key factor, lack of legislation on health insurance which is making it difficult to obtain adequate medical services to citizens, and the legislation regulating the issue of the Social Assistance Scheme in Kosovo. Based on the cases received in the OI, during this reporting year, the socio-economic situation in Kosovo remains a challenge and concern to the Ombudsperson.¹⁸³

During this reporting year, from the category Health and Social Protection, the OI received a total of 374 complaints of which 108 were opened for investigation. Given the

¹⁸¹<https://mpms.rks-gov.net/en/recica-hap-konsultimet-publike-per-koncept-dokumentin-e-reformes-pensionale/lajme/>

¹⁸² See <https://www.oik-rks.org/en/2017/03/31/annual-report-2016/>, Annual Report of the Ombudsperson, 2016, p.64.

¹⁸³ See [https://www.oik-rks.org/en/2017/03/31/annual-report-Previous Annual Reports of the Ombudsperson](https://www.oik-rks.org/en/2017/03/31/annual-report-Previous%20Annual%20Reports%20of%20the%20Ombudsperson).

high number of complaints in this category, during this reporting year, the Ombudsperson considers that the Government of the Republic of Kosovo and other institutions in Kosovo should increase their efforts in undertaking measures for the improvement and development of some vital sectors that enable the social and economic development of the country.

For years, the Ombudsperson voiced concern over the established criteria for social assistance benefits, namely the limitation for social assistance benefits for children under the age of five, which is continuing to deepen the difficult situation, because these families have a child every 5 years in a planned way so they will still get social assistance. The Ombudsperson has also raised this concern in the previous annual reports.

According to statistical data sent by representatives of the Ministry of Labour and Social Welfare to the Ombudsperson Institution, only for December 2018, a total of 25,345 families are eligible for social assistance, with a total of 103,437 members, out of which 19,602 families with a total of 82,586 members are from the Albanian community, 2,422 families with a total of 6,176 members are from the Serbian community, 1,414 families with a total of 6,836 members are from the Ashkali community, 965 families with a total of 4,312 members are from the Roma community, 354 families with a total of 1,712 members are from the Egyptian community, 262 families with a total of 856 members are from the Bosnian community, 168 families with a total of 463 members are from the Gorani community, 74 families with a total of 213 members are from the Turkish community, 16 families with a total of 41 members are from the Croatian community, 4 families with a total of 9 members are from the Montenegrin community and 64 families with a total of 244 members are others.¹⁸⁴

On 13 July 2018, the Ombudsperson published the Report with recommendations regarding the amendment and supplement of Article 4 of Law No. 04/L-96 on Amending and Supplementing the Law No. 2003/15 on the Social Assistance Scheme in Kosovo. The report also justifies the necessity of amending Article 4 of the Law in relation to international standards for the protection of human rights, with a special focus on the protection of children's rights, as by this limitation, the lives and well-being of citizens who are in a difficult economic situation are getting even worse.

Furthermore, the conditions set for benefiting social assistance under the applicable legal provisions caused the deterioration of the economic situation of many families, causing obstacles and difficulties in the adequate growth of children and the well-being of families in general, especially citizens from Roma, Ashkali and Egyptian communities. Other information regarding this case can be found in the section on the report that refers to children's rights.

¹⁸⁴ This information was received by a Deputy Minister at the Ministry of Labor and Social Welfare on 16 January 2019.

The Law on Health Insurance¹⁸⁵, which aims to ensure the universal access of citizens and residents of the Republic of Kosovo to quality services of basic health care, although established in 2004 and approved in 2007, so far it has not been implemented. Even after frequent commitments by the Government of the Republic of Kosovo that from January 2017 the Health Insurance Fund will be operational and will start fundraising for the same, this has not yet happened. The Ombudsperson raised his concern regarding this issue also in the previous annual Reports. Non-implementation of this law is directly affecting citizens with regard to the lack of appropriate medical service conditions. The Ombudsperson recommends that the Government of Kosovo prioritize actions that would enable the implementation of this law.

Social Housing

The right to housing is a very important issue for social stability, health and quality human well-being development. Social housing projects are very important for the well-being of citizens with severe economic conditions. The right to reside in international human rights instruments is being assessed as an integral part of economic, social and cultural rights, at the same level as civil and political rights. The Universal Declaration of Human Rights provides that all people have the right to a standard of living that is appropriate for their health and well-being. This is a global-scale standard and is included in many international instruments. Law on Housing Financing Specific Programs in Kosovo obliges the Government of the Republic of Kosovo and the municipalities in providing and creating suitable housing conditions for citizens.

Compared to previous years, in this reporting year, positive movements have been observed in the implementation of social housing projects, but the demands of the citizens in need continue to be high.

The municipality of Prishtina, during February 2018, published the list of 50 beneficiary households for war categories, including families of martyrs, veterans and KLA invalids. Categories of families which could benefit from the specific housing programs, in accordance with the Law, were those families that the commission assessed and verified that they do not own apartment or house in own property; families living in the homes or apartments dangerous and unsuitable for housing; families that are homeless as a result of house destruction during the last conflict in Kosovo; and families living in foreign facilities with or without rent. Also, the Ministry of Labour and Social Welfare, in cooperation with the Municipality of Podujeva, built this year 70 houses for families living in poor social conditions¹⁸⁶. In the village of Stanterg of the municipality of Mitrovica, a facility of social housing for 17 families living in poor social conditions was inaugurated this year. This facility was funded by the Ministry of Labour and Social

¹⁸⁵ Law No. 04/L-249 on Health Insurance, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12880>.

¹⁸⁶ <https://kk.rks-gov.net/podujeve/news/kryetari-veliu-dorezoi-celesat-e-shtepive-te-reja-per-20-familje-ne-lagjen-e-deshmoreve/>.

Welfare, while the property was provided by the Municipality of Mitrovica. In November 2018, in cooperation with a non-governmental organization, the municipality of Prizren awarded 28 houses for 28 families with poor social conditions.¹⁸⁷

However, based on the complaints filed by the OI, even today, social housing remains a challenge, both for citizens with a poor economic situation and for institutions, and both at the central and local level in Kosovo. The Ombudsperson, during this reporting period, received complaints about the lack of suitable living conditions.¹⁸⁸ Regarding these cases, in 2017, the Ombudsperson addressed the letter with recommendations to the municipalities of Istog and Podujevo. However, these recommendations have not yet been implemented by these two municipalities and the situation of these families continues to remain the same.

Based on complaints in OI,¹⁸⁹ there are some families who live in improvised houses which are publicly owned near the railway, such as in Podujeva, Istog, Fushe Kosova, Gracanica, etc., and they are on the priority list. However, municipalities have failed to provide social housing. Various donor organizations offered housing assistance for these families. However, lack of property has been the reason for not supporting these families. Some municipalities offered only food aid, firewood etc., to these families.

Also, during this period, the Ombudsperson received complaints from the Roma community who live in the municipality of Gracanica regarding the lack of housing conditions. The Municipality of Gracanica is considering the possibility of building a house for one of the open cases in the OI,¹⁹⁰ and it provided an apartment to the other case.¹⁹¹

Based on information from the media, during this reporting year, the Ombudsperson has *ex officio* investigated the issue of the non-signing of the Agreement of Understanding between the Ministry of Labour and Social Welfare and the Municipality of Lipjan regarding the support of projects for non-majority communities.¹⁹² The signing of this agreement was part of the capital project "Support for non-majority communities" for the Turkish, Bosnian, Roma, Ashkali, Egyptian, Gorani communities. After investigating this case, the Ombudsperson has found out that the Ministry of Labour and Social Welfare and the Municipality of Lipjan agreed in the disputed points and signed the Memorandum of Understanding. Based on the official information received by the Ombudsperson, the implementation of this agreement in the beneficiary municipalities started on 19 November 2018.

¹⁸⁷ <https://gazetaeprizrenit.net/28-banesa-do-te-ndahen-per-familjet-me-gjendje-sociale-ne-prizren-e-sharr/>

¹⁸⁸ Cases registered at the OI database: A.No.913/2018, A.No.643/2018, 759/2018, A.No.380/2018, A.No.331/2018.

¹⁸⁹ Cases registered at the OI database: A. No. 927/2016 OI - Municipality of Gracanica, A.No.312/2017

¹⁹⁰ Case registered at the OI database: A.No. 927/2016.

¹⁹¹ Case registered at the OI database :A.No.526/2016.

¹⁹² Case registered at the OI database:A. No.528/2018.

The Ombudsperson Institution opened another case ex officio regarding the return of some Roma families from Macedonia to the municipality of Obiliq¹⁹³. This case is still under investigation and after analysing the situation in question; it is expected to act in accordance with the mandate and competences of the OI.

LGBTI community

The LGBTI community, as part of Kosovo society, is considered to be a marginalized category despite the fact that there is a legal framework that protects their rights. It is evident that homophobic attitudes are still prevalent in Kosovo society. LGBTI people still are afraid of expressing their sexual orientation because of the approach and homophobia of society to them, and that is why they are discriminated against in everyday life.

Regarding the legislation regulating the rights of LGBT persons, it is evident that there is no gap in the existing legislation requiring supplementing in relation to the further protection of human rights based on sexual orientation and gender identity. However, the problem is that the relevant legislation in this field is not adequately implemented. The Ombudsperson reminds that the principle of the rule of law, as a fundamental principle of the Constitution and the Convention, obliges state bodies to respect/apply the legislation approved by the country's legislature. Constitutional guarantees for human rights are fundamental values of a democratic society that serve to protect human dignity, freedom and equality, because these values are the fundamental basis for the functioning of the state and of the law, and they are a prerequisite for respecting the principle of separation of powers.

The Ombudsperson reminds that the Law No. 05/L-021 on Protection from Discrimination establishes a general framework for prevention and combating discrimination, concretizing anti-discrimination provisions foreseen by international instruments and by the Constitution. The scope of this law, within the meaning of Article 1, provides for prevention and combating discrimination, including gender identity and sexual orientation.

As defined by the legislation in force, data such as name, surname, gender marking etc., are marked at birth in the civil status records. The Administrative Instruction (MIA) No. 19/2015 on the Conditions and Procedures for Personal Name Change and Correction defines and regulates criteria and procedures on personal name change and correction for citizens of the Republic of Kosovo. However, even today, there is no legal basis which would enable citizens, on the basis of the right to a gender identity guaranteed by the Law on Protection from Discrimination, to have the opportunity to seek the change of the gender marking. The Ombudsperson concludes that the mismatch of legal status with the personal gender identity has an extremely serious impact on a number of frequent

¹⁹³ Case registered at the OI database: A.No.453/2018.

situations in everyday life. Therefore, he recommends that the Government of Kosovo should undertake concrete actions to provide, through its own legal system, additional guarantees to individuals to enjoy their rights effectively against arbitrariness¹⁹⁴.

The Family Law of Kosovo, in Article 14, regulates the issue of marriage and specifies female and male sex as a condition of marriage.¹⁹⁵ The Ombudsperson draws attention to the right to gender identity, which is protected by the Law on Protection from Discrimination. Consequently, he considers that the Government of Kosovo should take concrete actions in harmonizing legislation, as only in this form would provide an additional guarantee for the individual to enjoy guaranteed rights.

However, even though unsatisfactory, it can be said that our society started the first steps for positive changes regarding the approach to LGBTI community. In 2018, The Pride Parade “In the name of love” was held during the International Day against Homophobia, organized by NGOs that protect the interests of LGBTI community citizens, and there were no incidents as it was in the supervision of the Kosovo Police.

Besides organizers, the representatives of public institutions, representatives of the European Union, personalities from civil society as well as citizens also participated in the parade. The representatives of Ombudsperson Institution were also present in this parade.¹⁹⁶

During this reporting year, the Ombudsperson reviewed a complaint regarding the rejection of the Civil Status Office on changing gender in identity documents from “female” to “male”.

The complaint was lodged against the Civil Status Office in the Municipality of Gjakova for changing the name and gender. The progress regarding this case reached the Constitutional Court of Kosovo. Therefore, with regard to this issue, the Ombudsperson in the capacity as a Friend of the Court (*amicus curiae*), addressed a legal opinion to the court.

The purpose of the Ombudsperson's appearance in the capacity of *amicus curiae* is to support the complainant's request in seeking to release the complainant from the obligation of exhausting all legal remedies, because the circumstances of the case make

¹⁹⁴ Legal opinion of the Ombudsperson of the Republic of Kosovo in the capacity as a Friend of the Court (*amicus curiae*) for the Constitutional Court of the Republic of Kosovo A. No.252/2018.

¹⁹⁵ Law No. 2004/32, Family Law of Kosovo, in Article 14, regulates the issue of marriage, which is defined as a "legally registered community of two persons of different sexes, through which they freely decide to live together with the goal of creating a family. Moreover, this law stipulates that men and women, without any limitation due to race, nationality or religion, have the right to marry and found a family as well as they are equal to marriage, during marriage and at its dissolution" <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12880>

¹⁹⁶ The Parade of Pride, featured in the motto "In the name of love", held in Pristina Square, October 10, 2018.

waiting for the processing of the lawsuit by regular courts as an ineffective and inadequate legal remedy.¹⁹⁷

The Ombudsperson, based on the practice of the European Court of Human Rights (ECHR), pointed out that the rule of exhaustion of remedies should be implemented with a degree of flexibility and without excessive formalism, clarifying that the rule of exhaustion of remedies is not absolute and should not be applied automatically, but it is important to take into account the special circumstances of each individual case.

The Ombudsperson pointed out also the practice of the Constitutional Court itself in cases when this court had ascertained that the applicants did not have access to effective remedies and allowed the use of this jurisdiction without exhaustion of remedies. Therefore, these findings could be applied *mutatis mutandis* in the case of the complainant in question.

During the reporting period, the Ombudsperson and his collaborators have been engaged in protecting the rights of LGBTI community, through participation in conferences at home and abroad, on TV shows, roundtables and debates as well as at the National Advisory and Coordination Group meetings in the Republic of Kosovo on LGBT Rights, organized by the Office of Good Governance within the Office for Gender Equality.

Gender equality

Gender equality implies equal opportunities for all women, men and persons of different gender identities in society, contributing to economic, social, cultural and political progress, providing equal opportunities to exploit all the benefits of the progress of a democratic society.

Guaranteed under the Constitution of the Republic of Kosovo, gender equality implies the fundamental value in a society aimed at the development of democracy and the protection of the equal rights of women and men. The Ombudsperson Institution, with the Law on Gender Equality, is defined as an institution of equality, which deals with cases of gender discrimination in accordance with the procedures foreseen by the Law on the Ombudsperson.

The Law on Gender Equality is the basic institutional and legislative framework for achieving and promoting gender equality in the Republic of Kosovo.¹⁹⁸ This law protects and promotes gender equality, the basis of which is the Constitution of Kosovo and the norms of international law, which guarantee the right to gender equality. The focus of the law is mainly the closest definition of equal opportunities policy in important human rights areas (work, employment, education, culture, family, political life), protection of

¹⁹⁷ Legal opinion of the Ombudsperson of the Republic of Kosovo in the capacity as a friend of the court (*amicus curiae*) for the Constitutional Court of the Republic of Kosovo A. No.252/2018.

¹⁹⁸ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923>, Law on Gender Equality No. 05/L-020.

the rights of gender equality and, in particular as protection instruments, the measures taken to eliminate factual inequality.

Gender Equality, according to this law, means equal participation of women and men in all areas of public and private life and policies of equal opportunities for equal participation of women in all phases of planning, adopting and enforcing decisions affecting the position of women and men. The equal opportunities policy requires from the state to establish a social and political environment in which each individual has the same opportunity to exercise his rights.

However, for the reporting period, the Ombudsperson noticed that there has been no significant movement for gender equality in the Republic of Kosovo. The Law on Gender Equality has not found adequate implementation in practice. It is, therefore, necessary for the legislature, the judiciary and the executive to act in law enforcement and to ensure that the principle of equality does not only remain *de jure* but also *de facto* guaranteed value. Moreover, the Ombudsperson reminds that the principle of the rule of law, as a fundamental principle of the Constitution and the Convention, obliges state bodies to respect/apply the legislation adopted by the country's legislature.

Based on the complaints filed at the OI, women are in a less favourable position than men in the field of employment, career development, especially women with disabilities, older women, Roma women, young women, pregnant women and mothers with minor children.

Gender equality related to the issue of the right to work

High level of unemployment, traditional gender roles and economic factors are the key elements that hinder the position of women in the labour market. Even in 2018, multi-year experience have been repeated, which shows that a significant number of women complain about problems related to the right of work and economic, social issue and parental protection or the violation of rights during pregnancy and maternity leave.

Based on complaints received by OI regarding the right to work during the reporting period, it has been noted that the complainants do not always make the distinction between breaches of rights on the basis of gender and discrimination against the violation of the rights to work, or social, health rights. Consequently, the problems in society in general are not perceived by a gender perspective. Other aspects of discrimination in the field of work also include illegal dismissals of women from work, lack of vocational training opportunities at work and obstructions related to advancement in work.

The women continued responsibility to work, care for family members and lack of social services, cause repeated inequality in the labour market. Equal treatment of women and men in the labour market also depends on providing enough institutions care services for children and older family members depending on them. Therefore, the Ombudsperson considers it necessary to undertake concrete actions from the central and local level

regarding the increase of the number of kindergartens for children, as well as the increase of the number of the medical staff for the elderly care.

Also, the Law on Gender Equality foresees equal gender representation, which should be in all legislative, executive and judicial bodies and other public institutions of fifty per cent (50%) for each gender, including leading and decision-making bodies. However, even today, this law does not apply, namely the provision requiring fifty per cent (50%) representation for each gender is not enforced and as such remains a continuing problem requiring a more serious institutional approach.¹⁹⁹

In this reporting period, among others, a complaint has been received where the complainant claims to have been discriminated against on a gender basis, in the process of internal competition for filling vacancies.²⁰⁰

According to the complainant's assertions, since 2008 she has exercised the leadership role but in the internal recruitment process, after the evaluation of the recruitment committee, she has not been selected. The complainant claims to have been discriminated against on the basis of gender during the selection process for the candidate for this position. The complainant's case is still in the investigation phase.

During this reporting period, the OI is in the investigation procedure also in a case where the complainant alleges a violation of the right to work and discrimination, with regard to not raising the salary coefficient²⁰¹.

According to the complainant's assertions, based on the Regulation on job descriptions, her position was not treated same as job positions with the same coefficient. Furthermore, in this case, the complainant alleges that under this regulation, the equivalent positions for all staff are advanced, while she is the only one who has been discriminated and degraded for one degree. The Ombudsperson addressed to the responsible institution by letter to request information on the complainant's allegations.

The right to property and inheritance

The right to property is a fundamental right guaranteed by the Constitution of the Republic of Kosovo, as the highest legal act of the country. Also, the right to property is regulated by other applicable laws such as: Law on Gender Equality²⁰², Family Law²⁰³,

¹⁹⁹ Law No. 05/L-019 on Gender Equality, Article 3, paragraph 1.15. Unequal representation - is when the participation or representation of one gender is less than fifty percent (50%) at any level of decision making body in political and public life; Article 6, paragraph 8 Equal gender representation in all legislative, executive and judiciary bodies and other public institutions is achieved when ensured a minimum representation of fifty percent (50%) for each gender, including their governing and decision making bodies, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923>.

²⁰⁰ Case registered at the OI database:A.No.637/2018

²⁰¹ Case registered at the OI database:A.No.399/2018.

²⁰² <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923>, Law No. 05/L-019 on Gender Equality

²⁰³ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2410>, Law No. 2004/32 Family Law of Kosovo and Law No. 06/L-077 on Amending and Supplementing the Law No. 2004/32 the Family Law of Kosovo.

The Law of Inheritance²⁰⁴, Law on Property and Other Real Rights²⁰⁵ and the Law on Protection from Discrimination²⁰⁶, where it is foreseen that all children of the decedent, under the same conditions, are equal in inheritance.

In the annual report of the previous year, the Ombudsperson emphasized that following the amendment of the Administrative Instruction on the registration of joint property on behalf of both spouses and its replacement with the Administrative Instruction, the time period for implementing this instruction has been extended from one year period to two years period²⁰⁷. The Ombudsperson considers that the Government of Kosovo has made a positive step with this affirmative measure to encourage spouses to register joint property in the cadastral register. The Administrative Instruction on the registration of joint property on behalf of both spouses obliged all institutions of the Republic of Kosovo, as well as public bodies²⁰⁸ to implement special temporary measures in order to increase the number of registered women as joint owners. Therefore, the Ombudsperson recommends that the extension of the implementation period of this instruction should be extended. The Ombudsperson raises his concern regarding property transaction fees and also considers that the transaction tax should be paid only once for each transaction, and not for each buyer. The Ombudsperson states that all municipal regulations on taxes and tariffs should be harmonized throughout Kosovo.

Also, according to the legislation in force, women and men set out to have equal rights to inheritance. However, appealing to our traditional society, even today the practice of denying property inheritance to women and the preference of masculine members to inherit the property continues.

Based on the complaints filed in the OI, this phenomenon is mostly expressed in rural areas, but the situation is not very different in urban areas as well. In most cases, only men are subject to the right to inheritance, while women in most cases renounce this right. The reason why women are giving up on inheritance are numerous and varied, among which, it is worth emphasizing the tradition and the customary right with which women are banned from inheritance. In many cases, they renounce their inheritance, due to their desire to preserve their bonds with their families of origin.

The Ombudsperson emphasizes that the current legislative inheritance framework is insufficient to deal with traditional practices. Given this, there is a need for clearer and

²⁰⁴ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2407>, Law No. 2004/26 on Inheritance in Kosovo and Law No. 06/L-008 on Amending and Supplementing the Law No. 2004/26 on Inheritance in Kosovo.

²⁰⁵ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2643>, Law No. 03/L-154 on Property and Other Real Rights.

²⁰⁶ <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=10924>, Law No. 05/L-021 on Protection from Discrimination.

²⁰⁷ Administrative Instruction No. 03/2017 on the registration of joint immovable property on behalf of both spouses and its replacement with the Administrative Instruction No. 04/2017.

²⁰⁸ Administrative Instruction No. 03/2017 on the registration of joint immovable property on behalf of both spouses and its replacement with the Administrative Instruction No. 04/2017, Article 2 and Article 4.

more precise legislation and procedural rules on the one hand, while on the other hand more work should be done to raise awareness among women and men regarding their hereditary rights.

Domestic violence

Domestic violence is a reality in Kosovo society, however, only a small number of them are reported to the competent authorities. Domestic violence is a violation of human rights; it is the basis of discrimination against women and continues to be a major problem of all communities in Kosovo.

The Ombudsperson recommended in the previous annual reports²⁰⁹, the inclusion of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) in the Constitution of the Republic of Kosovo. This recommendation was made in the framework of the European Commission's Enlargement Strategy; however, it has not been implemented yet.

After field investigations, the Ombudsperson received statistics from the Kosovo Police regarding cases of domestic violence reported, according to which in Prishtina region, there are 332 cases, in Prizren region there are 178 cases, in Gjilan region there are 146 cases, in Ferizaj region 140 cases and in Peja region 150 such cases.

The Ombudsperson noticed that in the cases reported, the reactions and actions of the competent bodies (Police, Prosecution and Court) continue to be inadequate. This is documented by the complaints received in the OI regarding the delays in court proceedings concerning cases of domestic violence.²¹⁰

But there are also cases where victims of domestic violence are reluctant to report cases for various reasons, and among them because of the emotional ties with the person who practices the violence or even because society continues to conceive domestic violence as a private matter which should not be presented outside the family circle.

However, the Ombudsperson regards as a positive step in the fight against domestic violence the inclusion of this phenomenon within the Criminal Code, in which domestic violence is treated as a criminal offense so that anyone who exerts physical, psychological or economic violence or ill-treatment for the purpose of violating the dignity of another person, within a family relationship, be sentenced to a fine and up to three years of imprisonment.²¹¹

In Kosovo there are eight shelters for victims of domestic violence, seven are functional, while the eighth shelter in Novo Brdo is still in the licensing procedure. There are also two other shelters where one of them is dedicated to children subjected to domestic

²⁰⁹ <https://www.oik-rks.org/en/reports/annual-reports/>

²¹⁰ Cases registered at IO: A.No.459/2018, A. 665/2018, A.698/2018, A.748/2018

²¹¹ Criminal Code of Kosovo, Article 248

violence and other ill-treatment, while the other shelter is in the service of victims of trafficking in human beings. Shelters play an important role in rehabilitating and reintegrating victims of domestic violence. However, for the Ombudsperson, the issue of their functioning is worrisome. During the reporting period, the main challenges faced by shelters include: sustainable funding, licensing, staff training and transparent auditing of their work.

Lack of sustainable funding for shelters is the main challenge of their work in providing services to victims of domestic violence. Although the Department of Social Welfare within MLSW is responsible for them, it funds only half of the budget needed, while other funds are provided by international donors. The Ombudsperson emphasizes the importance of allocating funds for shelters in time for each year, as well as estimating the exact cost that the state should allocate for each victim of domestic violence.

Different social, economic and cultural factors have influenced the level of violence in Kosovo to remain unchanged. Unemployment and poverty do not justify domestic violence. However, based on the complaints of the complainants submitted to the OI, one of the main problems that hamper the position of the victims appears to be the economic dependence.

Although there is a solid legal basis for protection against domestic violence, it should be noted that law enforcement is not at the right level. It is worth pointing out that delays in court proceedings in dealing with cases involving domestic violence are quite discouraging for such cases to appear. In most cases, women remain victims not only of the violence exercised by the spouses, but also of the inaction and neglect of the institutions that have the mandate to provide protection and assistance to them. At the request of the complainants, the OI has in many cases monitored the judicial proceedings for victims of domestic violence.

Law No. 05/L-003 on the Electronic Supervision of Persons Whose Movement is Limited by the Decision of the Court²¹² is in force since July 1, 2015, and aims to regulate the use of electronic supervision in the criminal justice process in order to enhance public safety and ensure effective execution of decisions of the court, even in cases of victims of domestic violence. For the implementation of this law in the conduct of electronic supervision and reporting by the Kosovo Police of persons whose movement is limited, the Ministry of Internal Affairs has issued the Administrative Instruction.²¹³ However, this law is still not applicable today. The Ombudsperson during the reporting period has opened ex officio investigations regarding the non-implementation of this law, which would directly affect the protection of victims of domestic violence, because during this

²¹² Law No. 05/L -003 on the Electronic Supervision of Persons Whose Movement is Limited by the Decision of the Court, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12880>

²¹³ MIA Administrative Instruction No. 11/2016, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12880>

reporting year from offenders of protection orders are identified cases which have also ended with fatality. This case is in the OI investigation procedure.²¹⁴

During this reporting period, the OI has also received a request for monitoring the session at the Kosovo Court of Appeal, based on the complaint of the victim's mother, according to which her daughter was deprived of life, while the accused, by the first-instance ruling, was acquitted of charges of criminal offense. The OI monitored the court session after which the Court of Appeal annulled the judgment of the Basic Court and the case returned to the same court for retrial and resettlement.²¹⁵

Women who survived sexual violence during the war

The application for recognition of the status of victims of sexual violence during the war started on 2 February 2018. During this reporting year the Ombudsperson received complaints where the complainants claim that the right of the victim was not recognized by the Government Commission on the Recognition and Verification of the Status of Violent Persons during the Kosovo Liberation War.

Also, during 2018, the Ombudsperson received a complaint regarding the form of the decision of the Government Commission on the Recognition and Verification of the Status of Violent Persons during the Kosovo Liberation War, respectively due to the lack of part of the reasoning in the decision of the Commission, which recognizes or refuses the status of the victim of sexual violence.

At present, the decision of the Commission consists of a slide that, in the context of confidentiality, contains only the recognition or rejection of the status of the victim of sexual violence, and legal advice, where in case of refusal the parties are instructed for the right to file a request for reconsideration of the decision. Meanwhile, the decisions do not contain the reasoning part. From the Government Commission on the Recognition and Verification of the Status of Violent Persons during the Kosovo Liberation War, the Ombudsperson received information that this practice has been implemented for the purpose of preserving the confidentiality of the proceedings, the identity of the parties in the procedure and the information. On the other hand, the parties to the proceedings raised their concern that the lack of reasoning in the decision hampers the appeal process in the second instance and the use of the complaint as an effective remedy, as reasoning as an integral part of the decisions in the administrative procedure contains the legal basis and summary of the facts and evidence that were crucial in recognizing or rejecting any right of the victim of sexual violence during the war in Kosovo.

According to Regulation No. 22/2015 on defining the procedures for recognition and verification of the status of sexual violence victims in Kosovo, the party, in case of refusal, has the right to file a request for a review of the decision to the same commission.

²¹⁴ Case registered at the OI: Ex officio No. 621/2018

²¹⁵ Case registered at the OI: A.No. 619/2018

In this regard, another issue raised for review consists of respecting the process of two-dimensionality in the administrative procedure, since in this case the same body acts in the first instance and second instance according to the complaint procedure.

The Ombudsperson is concerned that the complaints submitted by the complainants to the Government Commission on the Recognition and Verification of the Status of Violent Persons during the Kosovo Liberation War are again dealt with by the same body of this commission, and therefore raises the concern that in these cases the right to appeal does not constitute an effective remedy. Complaints filed with OI regarding these issues continue to be in the investigation procedure.²¹⁶

Minority Communities

The situation of ethnic minority rights is an indicator of the democratic values of a society. In countries where ethnic disagreements and friction lead to separation in society, respect for minority rights can contribute to achieving political, social, and peace-keeping. This in no way means that the purpose is to segregate and divide, but rather to ensure social integration, and that the rights granted to minority communities by the Constitution and laws in the Republic of Kosovo²¹⁷, are respected and enforced, if we want to build a prosperous multi-ethnic society.

Different ethnic, religious and linguistic communities living in Kosovo must also understand that solutions depend on them as well. Consequently, joint efforts are needed to overcome the challenges. It is also necessary to have the political will to reach fair and sustainable solutions within the whole society and within all communities in the Republic of Kosovo.

The political will to respect the rights and to respect the contributions of all is of primary importance for the establishment and functioning of a prosperous and inclusive society, for the purpose of joint decision-making and the elimination of prejudices and obstacles, no matter how large they are. At the same time, specific, social and political situations impose on Kosovo a number of difficulties in the proper functioning and effectiveness of the mechanisms available for the protection of rights, thus access to and realization of the guaranteed rights are subject to a major examination.

²¹⁶ Among others, the case registered at the OI database: A. 695/2018.

²¹⁷ Constitution of the Republic of Kosovo (Chapter III Rights of communities and their members.); Article 22 of the Constitution of the Republic of Kosovo (Direct applicability of international agreements and instruments) defines that, inter alia, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the Framework Convention of the Council of Europe for the Protection of National Minorities, the Convention on the Elimination of All Forms of Discrimination, etc, directly apply; Law no. 03 / 1-47 on the Protection and Promotion of the Rights of Communities and their Members; Law No. 05 /L-021 on Protection from Discrimination, Law no. 03 / 1-068 on Education in the municipalities of the Republic of Kosovo; Law no. 02 /L-037 on the use of languages; Law no. 03 /L-040 Local self-government; Law no. 03 /L-041 on administrative boundaries of municipalities; Law no. 02 /L-088 on Cultural heritage and Law no. 03 / L-039 on Special protected areas.

This year, similar to other reporting periods, the Ombudsperson points out the problems faced by citizens, members of minority communities, on a daily basis, aiming at their systematic and efficient resolution in the following period.

In general, the problems faced by communities, such as Serbs, Roma, Ashkali, Egyptians, Bosnians, Turks, Croats, Montenegrins and Gorani, during 2018, remain close to the findings presented in the previous OI Annual Report²¹⁸, with less or more successes in improving their situation.

Return and security

Given the situation when it comes to return, it is necessary to work harder for the conditions and sustainability of return of displaced persons. It is imperative that all institutions in Kosovo, as well as society as a whole, have to make more efforts to build mutual trust in order to improve the results.

The majority of displaced persons and refugees are members of the Serb community, followed by Roma, Montenegrin, Croat, Bosnian and other members of minority communities. Also, a number are members of the Albanian community from the north of Kosovo.

Based on the United Nations High Commissioner for Refugees (UNHCR) data, in the past 19 years, a total of 28.111 persons returned to Kosovo (which is about 13% of the total number of displaced persons in countries in the region registered by the UNHCR)²¹⁹, of which 26,830 were members of minority communities.²²⁰ According to the data collected by UNHCR, in 2015, 726 persons of minority communities returned, in 2016 returned 356, in 2017 returned 417 persons, while by the end of December 2018 284 community members returned.²²¹

Providing permanent housing for those who have been accommodated in collective centres for 20 years continues to be a problem that needs to be addressed within the resources and projects of the Ministry of Communities and Return (MCR).

There are 423 people in collective centres throughout Kosovo, which results to be only 41 persons less than in the previous reporting period, which can be concluded that the resolution of their permanent housing was not taken with due care because many still live in very difficult and inhuman conditions. The Ombudsperson recalls that the largest

²¹⁸ See OI Annual Report 2017.

²¹⁹ According to UNHCR statistics, 226 418 persons have been left Kosovo since June 1999 and moved to Serbia, Montenegro and Macedonia. The data are obtained from the official web site of the Ministry for Communities and Returns of the Republic of Kosovo. <http://mzp-rks.org>

²²⁰ According to UNHCR's January 2018 statistical data, it is said that from 2000 to the end of 2018, 11945 Serbs, 7577 Ashkali and Egyptians, 1875 Bosnians, 4 Croats, 1464 Gorani, 21 Montenegrins, 3925 Roma and 19 Turks returned.

²²¹ Based on UNHCR statistics, from January to the end of December 2018, 133 Kosovo Serbs, 96 Ashkali and Egyptians, 10 Bosnians, 5 Gorani, 35 Roma, 4 Montenegrins and 1 Croat returned.

number of persons accommodated in collective centres is still in the municipality of Shterpca (247 persons). Although by the end of December 2017, the OI received positive information from the MCR²²², indicating that by mid-2018, the collective centres in Shterpca should be closed and the housing issue of the persons accommodated in these centres should be resolved permanently, this did not happen until the end of the reporting period.

Same as the previous reporting period, according to the statement provided by the MCR, for 2019, the MCR has also planned the same thing which is to close all the collective centres. According to the MCR's planning, the collective centres in the territory of the municipality of Shterpca are foreseen to be closed in the first phase, which is realized through the OI project, and to complete the construction of 5 residential buildings. According to information received from the MCR, it is planned for these buildings, which would provide permanent housing solutions for about 80 families, to be ready for housing by the first half of 2019, while for 4 families, the houses were built on parcels which they themselves provided. In the second phase of the same project, 11 collective centres in the municipalities of Gracanica, Leposavic and Zvecan are planned to be closed and the implementation of this project will begin in September or October 2019, while the implementing partner of the project will be the Danish Refugee Council (DRC)²²³. Although the information received from the MCR is the same as in the previous reporting period, the Ombudsperson remains concerned about the delays in planning and providing a durable solution for returnees. The IO will continue to follow the MCR's engagement on this issue during 2019.

When it comes to the new Regulation of the Government of the Republic of Kosovo on the return of displaced persons and durable solutions²²⁴, the Regulation in question was positively assessed by both the competent institutions dealing with the issue of return, as well as the returnees themselves, evaluating the improvement of access to institutions and the implementation of the rights of returnees. In addition, this Regulation opens the possibility for the municipality to allocate land for housing construction and return to places that were not formerly settlements of returnees as well as return to places that were not former settlements of returnees. Given that the implementation of the aforementioned Regulation started in 2018, it is currently not possible to surely estimate the success of its implementation on the ground.

When it comes to the safety of minority communities, it can be said that there is no significant difference from the previous reporting periods, given several incidents, such

²²² See Annual Report of the Ombudsperson Institution for 2017, minority communities part - Return and Security.

²²³ Information received from the MCR, via e-mail on 14 January 2019.

²²⁴ Regulation No. 01/2018 of the Government of the Republic of Kosovo on the return of displaced persons and durable solutions, which was approved at the Government meeting by Decision No. 63/23 of 4 January 2018 and Instruction No. 2/2018 for the implementation of this regulation, issued in June 2018.

as damaging the monument to the Orthodox cemetery in Lipjan, graffiti writing in the elementary school in which the pupils of the Serbian community in Lipjan are attending, burning the house of a returnee in the village of Bellopoja near Peja, theft and destruction of construction materials during the construction of 6 houses for returnees in the village of Lubozhde in the municipality of Istog, the stoning of returnee houses in the Peja region.

In January and August 2018, local residents protested against the visits by members of the Serbian community in the cemeteries and religious facilities in Gjakova. Although the visits did not take place, the Ombudsperson reminds the state's obligation to provide safety, both for protesters and for visitors, in order to avoid ethnically motivated incidents. Particularly worrying remain interethnic incidents in north Kosovo.

After finding an explosive device in the village of Osojan, the MCR funded the installation of 13 surveillance cameras in an ethnically mixed village, while the Municipality of Istog will be responsible for the maintenance of cameras. Setting up cameras aims to reduce the level of crime in the Peja region, which is particularly high for returning families.²²⁵ As noted above, it can be concluded that the largest number of incidents, as in previous years, occur in west Kosovo, in the returnee areas in Peja, Klina and Istog.

The number of incidents against returnees and their property has gradually decreased. Last year there were 65 incidents, while in this year, until November, there were 58 cases. When it comes to incidents, they are of legal-property nature, theft, illegal logging and illegal usurpation of property. In addition, there were physical threats and attacks on returnees.²²⁶ Regarding allegations of inciting national, racial and religious hatred, riot or intolerance, pursuant to Article 147 of the Criminal Code of Kosovo,²²⁷ in the period from 1 January to 21 December 2018, only 10 cases have been reported to the Kosovo Police.

Incidents directed at returnees from the minority community and the impact of frequent politicization of issues from external factors prevent the full integration of Serbian citizens into Kosovo's public and economic life and slow down the building of mutual trust and safety.

Also, there has been an evident problem for so long in the Albanian community in the north, in the municipalities Leposavic, Zvecan, North Mitrovica and Zubin Potok, who due to completely political reasons of the authorities in the north, can only obtain property documents (cadastral records) bearing the seal of parallel bodies, which are not

²²⁵ Incident information is obtained from the MCR, which they have presented in the framework of the "Skopje Process"

²²⁶ Ibid.

²²⁷ Criminal Code of Kosovo No. 04/L-129, Article 147.

recognized as documents by the bodies of the Republic of Kosovo, thus rendering citizens unable to realize their rights.

The Ombudsperson notices that the MCR, in accordance with its mandate, built 94 houses for returnees (for 592 persons) during 2018, while 4 houses were renovated (for 24 persons). In addition, 23 infrastructure projects were implemented in different municipalities throughout Kosovo.²²⁸ It should also be mentioned that in mid-2018, the MCR built 6 houses for 13 returnees who returned voluntarily to the village of Lubizhda in the Istog municipality. Thus, the issue of housing for all spontaneous returnees in this village has been solved by mid-2018.²²⁹

Although, in principle, the recommendation of Ombudsperson in the previous Annual Report on the promulgation of the Law on Displaced Persons and Refugees has been accepted, which was supposed to be issued during 2018, by the end of this reporting period this has not been done. The topic given special attention in the preliminary reporting period is also the Inter-institutional initiative for Displaced Persons from Kosovo, known as the "Skopje process"²³⁰, the MCR at the beginning of 2018 together with the Ministry of Internal Affairs (MIA) and the Ministry of Local Government Administration, within the framework of the "Skopje Process" and durable solutions, working group for security, dialogue and reintegration of displaced persons has drafted and sent to the municipalities a Guidelines for responding to incidents affecting communities.²³¹ After a number of relevant trainings for municipal officials regarding the above guideline, the positive effects of their impact have been noticed; this is reflected through public reactions to security incidents in Novo Brdo, Mitrovica, Kamenica, Ferizaj, Istog and Vushtrri.

The activities of the Working Group on Personal Documentation within the "Skopje Process" are also considered positively. In reality, the Decision of the MIA with No. 296/2018 of 5 July 2018, applicable from 27 August 2018, addresses the issue of displaced persons in terms of recognition of civil status registered in parallel offices and municipal services of the Republic of Serbia in Kosovo and/or the Republic of Serbia. Although the MCR published that this decision of the Ministry of Internal Affairs of Kosovo was supported by relevant information campaigns, on this occasion, the Ombudsperson welcomes the approved recommendation to the MCR for the transparency and accessibility of documentation related to the "Skopje Process", which is available on the official website of MCR. Now, information on concrete conclusions about this initiative can be found on this site, in order to better inform the public and displaced

²²⁸ Information received from the MCR, via e-mail, on 14 January 2019.

²²⁹ Information that OI regarding returnees in the village of Lubizhda, Istog municipality has been confirmed by the MCR on 14 January 2019, via email.

²³⁰ See Annual Report of the Ombudsperson Institution for 2017, minority communities part - Return and Security.

²³¹ <http://mzp-rks.org/sr-l/dokumenti/skopski-proces.html>

persons.²³² Also, in cooperation with Serbian Commissariat for Refugees and Migration, Danish Refugee Council (DRC) and UNHCR, the MCR compiled and published a report on "Profiling of Internally Displaced Persons and in and out of Kosovo - Assessing the Route to Durable Solutions for Internally Displaced Persons in Kosovo"²³³, a very concise and statistically useful and accurate document, which in the period ahead should serve as a guide on taking further steps, projects and plans for the return of displaced persons.

However, on the official website of MCR, there is still a lack of information and returns related reports, there is a lack of documentation on the policy of this Ministry and on the projects initiated.²³⁴ The section dealing with relevant laws of MCR and with returns does not contain laws, but only some internal regulations, regulations and guidelines that need to be corrected and regulated in accordance with the principle of transparency of the work of this Ministry.

Citizenship and civil registration

In accordance with the constitutional mandate, principles and protection of human rights of all citizens in the Republic of Kosovo, the Ombudsperson continues to be consistent in monitoring the situation regarding citizenship and civil registration, which is detailed in the two preliminary annual reports.²³⁵ Based on the complaints that the Ombudsperson Institution received, mainly in the north of Kosovo, it can be said that this issue mainly affected the Serb community and the Roma community. These are mainly persons living in Kosovo, but also displaced persons, who so far have not yet regulated their civil status in the Republic of Kosovo.

The acquisition of citizenship of the Republic of Kosovo is regulated by the Law on Citizenship²³⁶ and persons who meet one or more legal criteria can obtain citizenship. In addition, persons who have lived in Kosovo (whether permanently or temporarily) by January 1, 1998 have the right to acquire citizenship of the Republic of Kosovo,²³⁷ as well as persons whose parents have Kosovo citizenship. Viewed from the perspective of legislation, the law is relatively broad in terms of determining eligibility for granting citizenship. However, viewed from the aspect of implementation of laws and regulations and based on submitted complaints and investigative actions undertaken by the OI, it can

²³² <http://mzp-rks.org/sr-l/dokumenti/skopski-proces.html>

²³³ <http://mzp-rks.org/sr-l/dokumenti/2015-12-01-19-13-00.html> posted in the website of MCR, 10 September 2018.

²³⁴ <http://mzp-rks.org/sr-l/izvestaji.html>; <http://mzp-rks.org/sr-l/dokumentacija-o-politici-mzp.html>; <http://mzp-rks.org/sr-l/izvestaji-i-ankete.html>;

²³⁵ See Annual Report of the Ombudsperson Institution for 2017, Minority Communities part - Return and Security.

²³⁶ Law No. 04/L-215 on Citizenship of Kosovo.

²³⁷ Administrative Instruction (MIA) of the Republic of Kosovo No. 05/2017 about the criteria that contain evidence about the citizenship of the Federal Republic of Yugoslavia on 01.01.1998, issued in June 2017.

be concluded that the legal framework in this field has not been applied consistently and accurately.

As a result, a large number of minority communities citizens, especially Serbs and Roma, do not have Kosovo identification documents, either due to administrative difficulties and misapplication of sub-legal acts, or due to hesitation by a number of citizens to apply for a Kosovo identification document, because as they have documents of the Republic of Serbia. However, the problem arises when the question of the status of these citizens, their rights and obligations is raised, since they, legally viewed, are invisible to the system. Also, the exact number of persons in this situation is unknown, of which the largest number is in the north of Kosovo. Therefore, the Ombudsperson, either based on the complaints filed, or based on its own research, initiated an ex officio investigation into the issue of citizenship and civil registration, related to members of minority communities in Kosovo, namely citizens living in north Kosovo.²³⁸ In addition to the case being held in the Ombudsperson Institution, the Ombudsperson also received individual complaints ex officio, and after the intervention of the OI, a number of them were solved positively, while a number of them are still in procedure.

The Ombudsperson in 2018, received the largest number of complaints against the work of registration and civil registry offices in south Mitrovica, as well as the offices in the Peja region, mainly by displaced persons.²³⁹ The displaced registration and civil registry offices pose a particular problem, which are still located for the municipality of Zubin Potok in the village of Çaber, for Zvečan in the village Lipa, while for Leposavic in the village of Banja.²⁴⁰ These villages are very remote from urban areas and are unavailable to citizens. These offices have been displaced due to previous non-functioning of municipalities in north Kosovo, however, although the north municipalities over the past two years are fully functional, these offices remained where they were, and this is an obstacle for citizens to regulate their civic status, register or make any kind of change in accordance with the legal framework. Bearing in mind the foregoing, the Ombudsperson considers that the main municipal registration and civil status offices in the north of Kosovo should be returned to their municipalities, i.e. in North Mitrovica, Zvecan, Zubin Potok and Leposavic, while for citizens of remote villages should be established some sub-offices for registration and civil status, as needed.

The lack of personal documents among members of the Roma, Ashkali and Egyptian communities remains significant. In the concerned communities, the problem is the lack

²³⁸ Ex officio No.323 / 2018, in which the parties responsible for the civil status are the offices in south Mitrovica, Zvecan, Zubin Potok and Leposavic, the case was opened on 17 May 2018 and is still in progress.

²³⁹ Complaints No. 285/2018, No.339/18, No.393/2018, No.417/2018, No.482/2018, No. 509/2018 etc.

²⁴⁰ See Annual Report of the Ombudsperson Institution for 2017, Minority Communities part - Citizenship and Civil Registration.

of updating and lack of awareness for the necessity of reporting any change in the civil status to before the competent offices. In this regard, they have the full support of local civil society organizations, which consistently assist in the registration of the most marginalized groups of citizens, birth, death and change of civil status of which are not registered in the Central Civil Register.²⁴¹

The Ombudsperson positively evaluates the affirmative decision of MIA No. 296/2018²⁴², which permits all citizens of the Republic of Kosovo who have registered or presented facts regarding the civil status in the parallel structures of the Republic of Serbia, in the period from 10 June 1999 to 14 September 2016, submit a copy and registration request to the Central Civil Status Register of Kosovo. The Regulation is valid until the end of June 2019. With the issuance and entry into force of the Decision in question of the MIA, registration in the Central Register will be greatly facilitated and thus obtaining personal documents for citizens who have so far been unable to arrange the same document. This is especially true for members of Roma, Ashkali and Egyptian communities who are still on the list of citizens without personal documentation in a high percentage. However, in this case it should be noted the failure of the Registration and Civil Registry Offices in the municipalities, especially those in which members of minority communities live, that there was no transparency in the implementation of this decision and that most citizens do not even know that this decision exists. It is therefore imperative that the competent offices in question, at least in their municipalities, make announcements in the municipal advertisement boards, but it is also imperative that municipalities and the MCR, on their official website, publish a notice for all citizens who are obliged to regulate their citizenship status.²⁴³

All these problems related to the issue of citizenship, civil registration and personal documents create a very uncertain situation for citizens who are not officially registered as citizens of Kosovo, because they are in an unstable situation. Such a situation is not only about the problem of civil status, but it causes negative consequences on freedom of movement, the right to work, health and social protection, the right to choose and to participate in elections, but also in their obligations to their civil status towards the country in which they live.

²⁴¹ This problem was specifically addressed by the NGO "Civil Rights Project Kosovo" from Prishtina, which has been assisting Roma, Ashkali and Egyptian community members for several years to obtain their personal documents.

²⁴² Decision MIA No.296 / 2018, which took place on 5 July 2018, while the implementation of the same was started by the end of August 2018.

²⁴³ During the collection of information on the annual report, from September to the end of December, the official web pages of the MCR, which are populated with members of minority communities in Kosovo, as well as information boards of some populated municipalities with members of minority communities, but no web site or information table has been posted informing citizens about Decision No.296/2018 of 5 July 2018, for regulating the civil status of citizens, who have submitted all changes to the local offices of services in the Republic of Kosovo.

Property rights

The right to property as a fundamental human right is important and influence all other rights and, as such, requires special attention and commitment in regulating and ensuring the enjoyment of this right to the owners, either under the Constitution and the laws in force, or on the basis of human rights standard in general.²⁴⁴

Actually, the Ombudsperson reported in all his annual reports the problem of usurpation and re-usurpation of immovable property in the territory of the Republic of Kosovo, but he paid special attention to this issue in the last three annual reports, which according to the law in force, were given for consideration to the Assembly of the Republic of Kosovo.²⁴⁵ In addition, the Organization for Security and Cooperation in Europe (OSCE) Mission in Kosovo reported on the same problem in 2015, in the report named "Review of illegal re-occupation cases in Kosovo"²⁴⁶, and since then the situation in this area has improved in relation to the damaged parties, or the owners of usurped property.

The improvements in terms of the property rights of persons whose property has been usurped cannot be denied, as there have been positive movements toward solving this problem, but there are still a number of essential problems in terms of freehold possession and availability of private immovable property faced by a large number of citizens. The continuous illegal usurpation of private property of members of minority communities in Kosovo but also members of the Albanian community in north Kosovo is still worrying.

In addition, it should be noted that there is a number of complaints that the OI has received and registered, relating to the usurpation and/or re-usurpation of immovable property, which are under proceedings before the judicial bodies, either as criminal cases (criminal cases for re-usurpation of immovable property, criminal charges against persons NN for usurpation of land etc.) or as civil cases (e.g. lawsuit for annulment of forged real estate sales' contracts, obstruction of possession, lawsuit for removal of persons and property from real estate, lawsuit for confirmation of immovable property rights, lawsuit for confirmation of immovable property rights, despite the fact that previous competent ad-hoc bodies, HPD and KPA, have already resolved these issues for

²⁴⁴ The right to private property is defined in the Constitution of the Republic of Kosovo (Article 46), Law No. 03 / L-154 on Property and Other Real Rights, but is also mentioned in many other laws, such as Law No. 04/L-077 on Obligations Relationships, Law No. 2004/26 on Inheritance, Law No.03/L-007 on Out Contentious Procedure, Law No. 2009/03-L-006 on Civil Procedure (Law No.201/04-L-118 on Amending the Law on Civil Procedure) and Law No. 2002/5 on the Establishment of the Immoveable Property Rights Register (Law No. 2011/04-L-009 on Amendments and Supplements to this Law). The Law on Property and Other Real Rights defines ownership as a property right authorizing the owner to freely use the property, dispose of it and exclude it from any interference with it (Article 18).

²⁴⁵ See Annual Reports of the Obudsperson Institution for 2015, 2016 and 2017.

²⁴⁶ The OSCE Mission in Kosovo, the report "Case review of illegal usurpation of property in kosovo": <https://www.osce.org/sr/kosovo/141151?download=true>.

which they had exclusive jurisdiction etc.) but which have not yet been resolved within a reasonable time, as required by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).²⁴⁷ In accordance with the abovementioned and analysing the various complaints filed with the OI, the Ombudsperson initiated an *ex officio* investigation into this matter, in which as responsible parties are the courts and prosecution offices in the entire territory of the Republic of Kosovo and court of Appeals.²⁴⁸ During the investigation, the Ombudsperson requested from the Basic Courts and Prosecutors and the Court of Appeal data on the usurpation and/or re-usurpation of immovable property including civil lawsuits relating to cancellation of counterfeit contracts of sale of immovable property, obstruction of possession, removal of persons and property from immovable property, confirmation of the right to immovable property etc. which can be classified as subjects related to the illegal possession of immovable property by third parties. After collecting data from all responsible parties in this case and analysing them, the possibility of giving relevant recommendations will be considered.

In this regard, the current approach of the prosecution should be positively assessed when it comes to filing indictments in cases of usurpation of property which are now also demanding the expulsion of usurpers from illegally occupied property, which in previous periods was not so.²⁴⁹

Also, progress has been made in the area of property rights during the reporting period, which relates to the release of the owner from immovable property tax for the period during which the property was occupied by third parties, pursuant to the Law on Immovable Property Tax, which was completed with this provision by mid-February 2018.²⁵⁰ On this occasion, the Office of the Prime Minister together with the MCR sent circulars to all municipal public enterprises, reminding them of their legal obligation to settle the outstanding debts of municipal services on behalf of these persons for the period in which they did not own their property.²⁵¹

Education

In all previous reporting periods, the Ombudsperson reported on the polarization of the minority education system in Kosovo. As for the mentioned polarization, two educational

²⁴⁷ Article 6 of the ECHR states: Everyone, when making decisions for his civil rights and obligations or criminal charges against him, is entitled to a fair and public hearing within a reasonable time before an independent and impartial tribunal established by law ".

²⁴⁸ Ex officio No.322 / 2018, opened on 17 May 2018, is still in progress.

²⁴⁹ See Annual Reports of the Ombudsperson Institution for 2015, 2016 and 2017, Part for Minority Communities - Property Rights, as well as the OSCE report "Review of illegal re-occupation cases in Kosovo".

²⁵⁰ Law No. 06 / L-005 on Immovable Property Tax, Article 39.

²⁵¹ <http://mzp-rks.org>.

systems continue to function, one according to the curriculum of the Ministry of Education, Science and Technology of the Republic of Kosovo (MEST), and the second according to the curriculum of the Ministry of Education, Science and Technological Development (MEST) of the Republic of Serbia.²⁵² Members of minority communities in Kosovo follow two educational systems, depending on their language and the geographical area in which they live. Ashkali, Egyptian and part of the Roma community attend education based on the curriculum of MEST in Albanian language, while members of the Turkish community²⁵³ and most of the Bosnian community²⁵⁴ attend primary and secondary education according to the curriculum of MEST, but in their mother tongue. On the other hand, members of the Serb, Montenegrin, Croat,²⁵⁵ Gorani, a small part of the Bosnian community²⁵⁶ and a part of the Roma community attend primary and secondary schools in Serbian language and according to the curriculum of the MESTD of Republic of Serbia. In accordance with the foregoing, the situation regarding education, in essence, has not changed in relation to the situation described in the preliminary annual report of Ombudsperson.

The Ombudsperson has drawn attention to the poor quality of textbooks in Turkish and Bosnian language during the last few years, but so far there have been no results in terms of improving this problem. This problem is still present, both in primary, secondary and university education.²⁵⁷ School textbooks for higher grades of primary education are not available, but even those available are poorly translated from Albanian language in Turkish language²⁵⁸ and Bosnian language. So pupils and teachers are obliged to use photocopied books, or books they obtain from Turkey and Bosnia and Herzegovina. Books obtained from other countries for the needs of students in Kosovo are, however, not adequate because they are not tailored to the curriculum of MEST. Turkish community members also complain about poor quality in Albanian language course, which primary and secondary school students follow within the curriculum. Complaints concern the poor qualifications of teachers who develop this subject, as well as the fact that students do not even acquire elementary knowledge of Albanian language during their education. They also stressed the problem of the lack of historical texts in Turkish,

²⁵² See previous annual reports of OI.

²⁵³ It is enabled in five out of six municipalities where the Turkish community is represented.

²⁵⁴ It was enabled in seven of the nine municipalities where the Bosnian community was represented.

²⁵⁵ In the elementary school in Janjevë, the lessons are attended by 35 students, in high school 13, while 10 students are attending the University of North Mitrovica, members of the Croatian community (about 200 Croats live in the Janjevo, municipality of Lipjan, and about 35 mostly deceased persons live in the village of Letnicë, municipality of Vitia).

²⁵⁶ In north Mitrovica, Leposavic and Obiliq.

²⁵⁷ See previous annual reports of OI.

²⁵⁸ This problem was highlighted by members of the Turkish community in the meeting with the Ombudsperson in Prizren in mid-December 2018.

but also the lack of driving test exams and the requirements for obtaining different work licenses.²⁵⁹

Members of the Gorani community, who mostly inhabit the municipality of Dragash, continue expressing their concern that children from this community attend school in very poor and inadequate conditions. Polarization in the selection of education is also present in this community. A number of children from the Gorani community attend elementary and high-school according to the curriculum of MESTD in Serbian language, while the other part attends the lesson according to the curriculum of MEST in Bosnian language. The problems faced during previous reporting period have been overcome, and were related to the joint use of school facilities for both education systems and the difficulty of accessing school premises during official and school holidays, which were defined by the MEST of the Republic of Kosovo, which did not match official and school holidays and annual holidays of pupils attending classes according to the curriculum of MESTD of the Republic of Serbia.

The percentage of Roma, Ashkali and Egyptian children attending compulsory education is increased. Thus, the trend that is consistent with the official data of 2014/15 continued, according to which the children of the members of the communities in question, in 85% of cases attend elementary school from the 1st to the 5th grade, while 65% of children from these communities attend school regularly from 6 to 9 grade according to the curriculum of MEST of the Republic of Kosovo.²⁶⁰ It is commended the fact that MEST in cooperation with NGO "VoRAE" and Kosovo Education Centre (KEC), during this school year awarded 600 scholarships for high-school pupils belonging to the Roma, Ashkali and Egyptian communities, which is 100 more scholarships than last year. In fact, the general fund for scholarships was EUR 180,000 of which MEST awarded EUR 60,000 from its own resources, while EUR 120,000 is funds received from international donations.²⁶¹ With the help of local non-governmental organizations and international donors, more than 80 learning and support centres have been opened in Kosovo, providing teaching assistance to more than 5000 children.²⁶²

One of the issues related to education, highlighted by the Serbian community and the communities that attend Serbian language lessons, is the ban on obtaining textbooks from the Republic of Serbia dating back from 2015. Regarding this ban, this was included as a measure of reciprocity for the Republic of Serbia, which did not allow MEST texts to be

²⁵⁹ Ibid.

²⁶⁰ Informacin was taken at the meeting with the director of the NGO "VoRAE", held on 18 December 2018, at the premises of OI in Gracanica.

²⁶¹ Ibid.

²⁶² <https://masht.rks-gov.net/uploads/2018/12/ua-nr-19-masht-për-themelimin-dhe-funksionimin-e-qendrave-mesimore-x.pdf>, the data on the number of centers and the number of pupils who are direct beneficiaries of these centers were received by the NGO "VoRAE".

sent to three municipalities of the Republic of Serbia, inhabited by a large number of ethnic Albanians in the municipalities of Presheva, Medvegja and Bujanoc.

In addition to primary and secondary education, members of the Turkish and Bosnian communities can attend university education in their languages at State University "Ukshin Hoti" in Prizren, in Bosnian language at the State University "Haxhi Zeka" in Peja, as well as at the Higher Education Institution for Business and Administration within which the Bachelor and the Master program of studies is provided. Although there is Turkish and Bosnian language education in higher vocational education schools, after their completion, there are not many opportunities for hiring young people who finish their studies at the mentioned universities. When it comes to the state University in Prishtina, the lesson is still organized only in Albanian language.²⁶³

On this occasion, attention should be drawn again to the lack of organization of the teaching of Albanian language as an official language for pupils who attend Serbian language classes, as well as teaching Serbian language as the second official language for primary and high school pupils who attend classes in Albanian language, but also in Turkish language.²⁶⁴ It should also be noted that there are still no institutional initiatives with the aim of intercultural interaction, general interpersonal interactions, and language learning by children who attend classes in these two separate education systems. So far, apart from some organizations from the civil sector and some international organizations, there have been no initiatives for socialization, joint activities and cooperation between pupils, members of the Albanian and Serbian communities. Unfortunately, such a situation only deepens further language barriers and other barriers which, as a result of everyday stereotypes and prejudices, are imposed between the Albanian and Serbian communities. To overcome this problem, more and more work needs to be done on a continuous basis, if any progress is to be made in future relations between these communities.

When it comes to verification of diplomas obtained at the university located in North Mitrovica, following the approval of the Government Regulation in 2015,²⁶⁵ this process is being successfully implemented for the third consecutive year. However, this issue in itself has not been a subject of the Brussels Agreement between the Republic of Kosovo and the Republic of Serbia. However, the subject of the agreement in question, initially in

²⁶³ See Annual Report of OI for 2017.

²⁶⁴ See the research report of the NGO "Center for Social Initiative", supported by the Language Commissioner entitled "Communication between the members of Albanian and Serbian community - the issue of language" from December 2018,

http://www.kosovo.iom.int/sites/default/files/SI%20Language%20Report_SRB.pdf

http://www.kosovo.iom.int/sites/default/files/SI%20Language%20Report_ALB.pdf

²⁶⁵ Regulation No.21/2015 of the Government of the Republic of Kosovo on the procedures and the criteria for the issuance of certificates to the citizens of Kosovo who have received diplomas from the University of North Mitrovica for the purpose of applications for jobs, obtaining professional licenses and taking professional examinations with public institutions.

2011, was the mutual recognition of university diplomas, which expanded in 2016 and included primary school, high school and vocational school diplomas, according to the curriculum of MEST of the Republic of Serbia, as well as the diplomas of high-profile vocational schools acquired in the Republic of Serbia as well as the University of North Mitrovica. The implementation of the aforementioned agreement was supposed to start in March 2016, but so far this has not been done²⁶⁶, which so far to a large extent has negatively affected the employment opportunities and further education of those citizens who have completed their primary, secondary and higher education in Serbian language.

Regarding the single inter-institutional cooperation between these two educational systems, it should be positively noted and evaluated the fact that in the past, a growing number of municipalities have started to provide some sort of support in the work of schools who are teaching in Serbian language. The assistance provided to these schools is in the form of repair of school facilities, purchase of school equipment, payment of service bills, fuel supply for heating during winter and provision of free transportation for students traveling from remote areas to come to the school where they attend lessons, which is a little but nevertheless represents some beginning in the cooperation between the two educational systems in question.

Use of language

The Constitution of the Republic of Kosovo and the Law on the Use Languages²⁶⁷ define the multilingual character of society in Kosovo, while Albanian and Serbian languages enjoy equal status of official languages in all state institutions.²⁶⁸ However, the use of the Serbian language in the communication of citizens with state bodies, as well as the bodies themselves to the public and within the institutions, as one of the official languages of the Republic of Kosovo, remains a challenge to be addressed continuously. In addition to the bilingualism guaranteed by the Constitution, the Law on the Use Languages more specifically regulates the official use of languages, whether at central or municipal level and depending on the percentage of the population, other languages may also have the status of official language.²⁶⁹

In monitoring the implementation of language rights²⁷⁰, during the reporting period, the Ombudsperson is of the opinion that in this case the situation has not changed significantly compared to previous reporting periods.²⁷¹ Thus, despite the modern legal

²⁶⁶ See OSCE report "Communities Access to Pre-University Education in Kosovo", published in December 2018.

²⁶⁷ Constitution of the Republic of Kosovo, Articles 5, 57, 58 and 59 and Law No. 02/L-037 on the Use Languages

²⁶⁸ Article 5, paragraph 1 of the Constitution of the Republic of Kosovo and Article 2 of the Law on the Use Languages.

²⁶⁹ Article 2 of the Law on the Use Languages.

²⁷⁰ The data collected during the meetings at the end of 2018 with representatives of the OSCE Mission in Kosovo, NGO "CSD", citizens, complaints filed, reading of laws and bylaws etc.

²⁷¹ See the annual reports of Ombudsperson from 2012 to 2017, the section on the use of languages.

framework, bilingualism has not been implemented in accordance with it and most of the problems of the previous period are still present. The process of respecting the implementation of the Law on the Use Languages, despite some positive changes, is being done very slowly, which itself imposes the finding that existing mechanisms for the protection of language rights are not effective in ensuring a full responsibility and consistency in the implementation of the aforementioned legislative framework.

Same as in previous reporting periods, the Ombudsperson also wants to draw attention to the violation of the right to equal use of Serbian language in the administrative procedures of citizens with state bodies, disrespect of official languages on the official websites of a large number of institutions at all levels of government, and the existence of major deviations when updating a Serbian language website, it is evident that discrepancy not only of information in both languages, but there are noticeable delays in the information posted, while the quality of translation is particularly questionable. Also, there is still inadequate or incorrect translation of toponyms names in Serbian language.

Except for aforementioned issues, the problem with the quality of translations of laws in Serbian language remains an issue that the Ombudsperson cites in its annual reports for years. However, in spite of this, it has not been done much yet for the linguistic revision of texts of laws in Serbian language. However, on this occasion it should be said that the quality of translation of laws adopted during 2018 is better than in previous years.²⁷² It should also be recalled that, despite the fact that there is an Administrative Instruction on standards for the drafting of normative acts²⁷³, the purpose of which is to define and unify standards for the drafting of normative acts, it is evident that it is not being implemented because the differences between the versions in Albanian and Serbian languages in terms of terminology and essence are great, despite the fact that both versions are equally authentic and when it comes to interpretation none of these versions have any superiority over the other. Given this, there are still no guidelines for standardization of translations that relate to legal terminology or certain standards that would ensure the accuracy of translation of laws from draft to final version, which is voted in the Assembly.²⁷⁴

In this regard, the Ombudsperson welcomes the adoption of a draft law on legal acts,²⁷⁵ which foresees an easier approach to correcting mistakes in the laws in force. The corrective mechanism would create the legal basis for correcting a large number of materials, as well as lexical and spelling mistakes, while laws in Serbian language would

²⁷² Ibid.

²⁷³ Administrative Instruction No. 03/2013 on standards for the drafting of normative acts, of 17 June 2013.

²⁷⁴ Also see the report published by ERAC in October 2018 "Meeting the Equal Quality of Albanian and Serbian Legislation - A Step in Meeting Bugs in Implementing the Law on the Use of Languages", as well as the OSCE Mission in Kosovo "Bilateral Legislation in Kosovo", September 2018.

²⁷⁵ Draft Law on legal acts, adopted at the session of the Government of the Republic of Kosovo, in December 2017.

be supplemented with missing words and sentences in some laws. The Ombudsperson reminds that it is necessary for the abovementioned law to be adopted as soon as possible.

In the Annual Report of 2017, the Ombudsperson welcomed the decision and initiative of the Government to form a working group that would draft a concept document for the establishment of the Central Translation Unit.²⁷⁶ During 2018, the abovementioned working group held three meetings and it remains for the forthcoming period to come up with recommendations for establishing the legal grounds in 2019 for creation of the Central Translation Unit at the Office of the Prime Minister of the Republic of Kosovo. On this occasion, the Ombudsperson supports the initiative and values it as a positive move to the concrete solution of the problem when it comes to standardizing the translation of official documents, laws and bylaws in Serbian language.

However, here should be noted that contributions on the quality of translations of laws in Serbian language can also be provided by the deputies of the Assembly of the Republic of Kosovo, whose mother tongue is Serbian language. This is, in fact, important, because their commitment and dedication to solving this problem is of great importance, because in this way minority communities will be guaranteed equal access to the laws in force, respectively in the judiciary. In addition, a greater commitment of the Office of the Commissioner for Languages (OLC)²⁷⁷ is needed during the legislative process in accordance with its mandate, which so far has not happened.

During the reporting period, the Ombudsperson received several complaints regarding the violation of the right to use the language. The complainants were advised to refer the OLC as a central mechanism for the protection of language rights, while the OI registered two complaints relating to language rights. A complaint was resolved positively, while the procedure for the second complaint is still ongoing.²⁷⁸

Also, the Ombudsperson points out the violation of the right to use Albanian language in state institutions in north Kosovo, with the exception of the Municipality of North Mitrovica, while other municipalities use Albanian language in a minimal level. Lack of qualified translators remains one of the major challenges in terms of poor or inadequate translation. The lack of a faculty or an organized professional training for translators, results in the current state.

²⁷⁶ See Government Decision No. 05/12 of 3 November 2017. <http://kryeministri-ks.net/sr/dokumenti/?kategoria=odluke-sa-sednice-vlade&viti=2017>

²⁷⁷ Regulation 07/2012 on the Office for the Language Commissioner, mandate of the OLC (Article 16).

²⁷⁸ Complaint No.111 / 2018 S.G. against the Kosovo Correctional Service, the complaint concerned the delivery of official documentation to the convicted person only in Albanian language, after interventions of the OI, the disputed documentation was translated into Serbian language and was submitted to the complainant; and Appeal No. 699/2018 B.M. against the Chamber of Private Bailiffs of Kosovo and the Private Bailiff in Prizren, the complaint relates to the payment of translation service of official documentation from Albanian language to Serbian language, which is related to the procedure for the execution of the judgment, the case is still pending in the OI.

We are aware of the challenges that many languages bring to Kosovo's legislation, although this seems so, the problem is not insurmountable, because it can be overcome only with a continuous engagement and serious approach.

Freedom of religion in Kosovo

The most important issue in the sphere of protection of religious rights and freedoms in Kosovo is the inadequate legal regulation for regulating the legal position of religious communities. Existing law does not adequately regulate the position of religious communities. Existence of such a need to bring a new law that would regulate this area has been made known, now and many years ago, by all religious communities. The Assembly of Kosovo has in principle adopted the Draft Law on amending and supplementing of the Law no. 02/L-31 on Freedom of Religion in Kosovo, on 29 November 2017, by Assembly's Decision no. 06-V 014, the law was processed to Assembly committees for review. Although at first glance the resolution of this issue and adoption of the law was about to happen, even in 2018 this law was not adopted. At present, after the draft law has been submitted to the Assembly commissions and after the deliberations by the respective commissions, there has been a delay in the further proceeding of this law and the resolution of this issue.

Adoption of the law through which the legal position of religious communities would be regulated is of great importance in terms of respecting the rights and freedoms of religious communities guaranteed by the Constitution of the Republic of Kosovo and international conventions. The adoption of the new law presents a challenge for the state to find the measures between the freedoms of religious communities so that in their own way regulate its functioning and to maintain, on the one hand, the guaranteed independence and to harmonize their regulation with the legal norms of modern society. Throughout the past years, all religious communities have emphasized that with the adoption of the new law and regulation of this field, it would be possible to overcome the various existing administrative barriers. The specifics that exist in regulating each religious community separately and the sensitivity of religious communities in interfering with their internal organization, through which eventually their rights and freedoms may be violated, necessitating the need for this matter deal with the greatest diligence and sensitivity, so that all religious communities that represent the tradition of Kosovo society are in compliance with international standards regarding freedom of religion. The adoption of the new law would enable the respect of the autonomy of religious communities and the resolution of the legal position and the overcoming of various legal and administrative barriers faced by religious communities today, and would enable the respect and enforcement of the rights and freedoms guaranteed.

Apart from respect for the traditional rights of religious communities that have a long tradition and a large number of believers, one of the challenges of modern states when it comes to respecting religious rights and freedoms is to regulate the legal status of

religious communities which have fewer believers or of those religious communities that in the future could express the desire and intent to be legally registered and recognized.

In order to avoid future possible discrimination of any religious community, which is not included in the traditional one, the Draft Law on amending and supplementing of Law no. 02 / L-31 on Freedom of Religion in the Republic of Kosovo, in principle has foreseen a very acceptable option by setting conditions for the registration of a religious community with only 50 members of citizens of the Republic of Kosovo. With such a legal solution, the possibility is created that if such a need arises in the future, these religious communities and believers should be enabled to manifest and practice the belief and respect the freedom of religion and rights in accordance with the legal framework. Such a legal solution to this issue, whose tree is forbidden to condition with a small number of believers, is also recommended in Opinion no. 743-2013 of the Venice Commission.²⁷⁹

The Draft Law on Freedom of religion, in principle was adopted in November 2017 and envisaged solutions that could have made great progress in regulating the legal position, but after reviewing the law in the Assembly commissions has come to the delay in adopting this law. For this reason, there are still many problems in regulating cemetery issues for religious communities, as well as the financial stability issues of religious communities, for which, with the new draft law, it is foreseen to have certain tax and customs privileges, which would ease their position because the state does not finance religious communities.

Issues that have been common for the Islamic religious community in previous years continue to be present even today. One of them is the treatment and wearing of religious headscarves in schools, for which the Ombudsperson Institution has reported in previous annual reports.

The Serbian Orthodox Church during 2018 expressed its concern regarding the construction of the highway Peja-Plave, claiming that the route of this road passes through the protected area of Deçan Monastery and this would endanger it, by insisting that the route of this road shall not have access to the protected area. According to information from the Ministry of Infrastructure, works are not taking place in this part contested by the church.

During May 2018, a group of residents of the village Poterq i Epërm in Klina municipality have protested by opposing the visit of a group of Serbian community citizens who aimed at practising religious rituals in the "Trinity Saints" church in this countryside. On this occasion, Kosovo Police has continuously monitored this rally and no incident has been recorded.

The Catholic Church in Kosovo has undergone changes in hierarchical status. Namely, until September 5, 2018, the Catholic Church in Kosovo has functioned and has had the

²⁷⁹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)012-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)012-e)

status of Apostolic Administration of Prizren, when by Pope's decree it was raised at the level of the special Diocese Prizren-Pristina²⁸⁰, under the direct administration of the Holy See / Vatican. This act is of special importance for Catholic believers in Kosovo.

The Protestant Church in Kosovo has emphasized that failure to adopt the law which would regulate their legal position to be as one of the biggest problem.

The Jewish community in Kosovo is a religious community with a historical tradition, which does not have a large number of members. Their request to the Municipality of Prishtina for the allocation of a parcel, on which a synagogue could be built where the members of this community could pray, has not yet been realized.

With the new Draft Law, which has not yet been adopted, the Kosovo Tarikat Community is a religious community with a long and rich history in Kosovo and as such is included among traditional religious communities in Kosovo. In this way their rights are respected for the freedom of religion, the exercise and empowerment of religion and tradition.

Activities of the Department for Protection from Discrimination (DPD)

Department for Protection from Discrimination (DPD) within the OIK, apart from reviewing the complaints filed with the OIK, has undertaken other activities in terms of promoting the mandate of the Ombudsperson based on the competencies given by Law no. 05 / L-021 on the Protection from Discrimination.

The Ombudsperson and his representatives, regarding non-discrimination issues, have conducted regular meetings with NGOs, which represent the interests of LGBT people (lesbian, gay, bisexual and transgender), have participated in panels organized at roundtables, dealing with LGBTI cases from the justice system in Kosovo, health care, etc., and are also participants of Advisory and Coordination Group in national level in Republic of Kosovo for the rights of LGBT.

Regular meetings have also been held with NGOs that protect the interests of disabled people as well as with NGOs that protect the interests of non-majority communities in Kosovo. Also regular meetings regarding the issue of gender equality were also held with the Women's Network of Kosovo.

On 26 January 2018, the DPD has responded to the Centre for Social Group Development (CSGD) questionnaire on issues related to the LGBT community.

On 7 February 2018, on behalf of the Ombudsperson, the DPD Director participated in the capacity of panellist at a conference organized by the Centre for Social Groups Development (CSGD), where the focus was on the main developments during 2017, as well as the recommendations and steps to be taken in the future. Also on this occasion

²⁸⁰ <http://press.vatican.va/content/salastampa/it/bollettino/pubblico/2018/09/05/0613/01317.html> , qasur me, 26.12.2018.

CSGD also published the annual report for 2017 "Review: LGBTI community and their rights in Kosovo".

On 09 March 2018, the DPD Director participated in the meeting of the LGBT (Lesbian, Gay, Bisexual and Transgender) Advisory and Coordination Group, for the rights of LGBT community, held in the Government of Kosovo.

On 17 May 2018, the deputy Ombudsperson from the Department for Protection from Discrimination participated in the "Qe Pse" Exhibition, held in Mother Theresa Square in Prishtina, which is organized by CSGD for International Day Against Homophobia and Transphobia, which also featured photographs of homophobic comments that were written on social media during the Pride Week that was held in October 2017. On the same date, the DPD Director was present at the Talent Show "Diversity – the new flavour" at the Oda Theatre in Prishtina, where LGBTI organizations held the Talent Show for the International Day Against Homophobia and Transphobia, with the aim of empowering LGBTI people to express their talents by singing, dancing, poetry and drag performance.

On 28 May 2018, the DPD Director was present in the TV debate organized by KTV, the "Rubicon" show, where the topic of discussion was the rights of the LGBTI community in Kosovo.

On 1 February 2018, the Ombudsperson participated in the conference, which was held within the framework of the "Equal Rights for All Coalition" (ECMI Kosovo), where was presented the report "Njerëzit në mes" (People in the midst) the future of citizens and freedom of movement of Kosovo Serbs and other minority communities".

On 2 February 2018, the DPD director gave an interview in a chronicle conducted by Radio Television of Kosovo on the registration of common properties on behalf of both spouses.

On 15 February 2018, in the Ombudsperson Institution, the DPD Director and the Senior Legal Advisor met with the representatives of the USAID's Property Rights Program (PRP) in Kosovo, starting from 2014.

On 20 February 2018, the DPD Senior Legal Adviser was present at the roundtable organized by the Academy of Justice, where the topic was about gender equality in court proceedings in general and in cases of violence in particular.

On 16 March 2018, the DPD Director participated in the conference on the presentation of the key findings of the Situation Analysis of Social Services Delivery in Kosovo, organized by *Save the Children*, within the Project "Supporting Better Social Services for the Most Vulnerable Groups" funded by the European Union and co-funded by the Swedish International Development Agency (SIDA).

On 19 March 2018, the Ombudsperson along with his two deputies and other associates, visited the Down Syndrome Kosova (DSK) Association, headquartered in Pristina.

On 21 March 2018, the Ombudsperson along with his deputies and DPD, participated in the Awareness Day with the aim of addressing the requests for the realization of the rights of persons with disabilities, organized by NGO "Down Syndrome Kosova".

The DPD Legal Advisor was a participant in the Rule of Law Forum, held in Skopje on 16 and 17 March 2018, organized by the Civil Rights Defenders organization.

On 8 and 9 March 2018, the DMD Legal Advisers conducted visits to neighbourhoods inhabited by Roma, Ashkali and Egyptian communities (Fushe Kosovo, Obiliq and Gracanica).

On 14 March 2018, the DMD Senior Legal Advisor participated in the Working Group on Security, Dialogue and Reintegration in the framework of the implementation of the "Skopje Process" and with the aim to securing communities and responding to local mechanisms in incidents, which have an impact on communities, organized by the OSCE.

On 22 and 23 March 2018, the DPD Senior Legal Advisor participated in the workshop on drafting the Kosovo Program on Gender Equality, organized by the Agency for Gender Equality.

On March 23, 2018, the DPD Director, DPD Legal Advisers and the Department for Protection of Children's Rights, visited Primary School "Qamil Batalli" in Prishtina in the framework of the "Know Your Rights" which aims to promote the Ombudsperson Institution, children's rights and protection from discrimination.

On March 30, 2018, the Deputy Ombudsperson to the Anti-Discrimination Sector was part of the panel at a working meeting on: "'Strengthening and Implementation of the Action Plan against Domestic Violence", organized in the Municipality of Gjakova by the Coordination Mechanism for Protection against Domestic Violence (CMPDV). The purpose of this meeting, according to the organizer, was the disclosure of the CMPDV achievements and the opportunity to discuss challenges, needs and cooperation between the local and central level as well as external associates.

On 30 March 2018, the DPD Senior Legal Advisor participated in the information campaign "Gender Equality in the Civil Code", organized by the Ministry of Justice, with the support of the European Union Office.

On 10 April 2018, the Ombudsperson accompanied by DPD representatives, visited the Roma neighbourhood in Gracanica. Initially, they met with representatives of the NGO Voice of Roma, Ashkali and Egyptians (VoRAE) and then with families of the Roma community, where they were informed about their problems. Also, a visit was made to some other Roma families who, with the help of the OIK and NGO VoRAE, have positively solved their complaints.

On 19 April 2018, the Deputy Ombudsperson and DPD Director jointly participated in the roundtable organized by UNHCR, the Office of the UN Commissariat for Refugees, the Ministry for Communities and Return and the Danish Council for Refugees, on the topic: "Displaced Persons from Kosovo in the Region - Reassessment of interest for return and Profiling of Internally Displaced Persons in Kosovo".

On 23 April 2018, the DPM Senior Legal Adviser participated in the workshop regarding the support and development of the civil society platform for monitoring and reporting on hate crime, organized by the OSCE.

On 26 April 2018, the DPD Senior Legal Advisor participated in the next meeting in the working group of women for land ownership, organized by USAID.

On 30 April 2018, the DPD Senior Legal Advisor participated in the presentation of the Ex-post Evaluation Draft of the Law 05 /L-020 on Gender Equality, organized by the Agency for Gender Equality.

On 3 May 2018, the DPD Director participated in the roundtable on "Gender Equality in Judicial Procedure", which was organized by GIZ.

On 2 May 2018, with the delegation from the Ombudsperson, the Deputy Ombudsperson and the DPD Director participated in the meeting on the Human Rights Commission.

On 4 May 2018, the DPD Director, together with the Senior Legal Advisor, participated in the Workshop on Improving the Gender Equality Adjustment Processes and Practices in IPA Projects, organized by the Ministry of European Integration.

On 4 May 2018, the Senior Legal Advisor participated in the conference "Multilingualism: Value and /or Obligation", organized by the Language Commissioner.

On 7 May 2018, the DPD Senior Legal Advisor participated in the presentation of the report on women's property rights in Viti, Kaçanik and Shterpce, organized by UNDP.

On 17 May 2018, the two DPD Senior Legal Advisers participated in the "Domestic Violence Workshop" organized by the OSCE.

On 31 May 2018, the DPD Director was part of the panel at the workshop organized for seventeen (17) legal assistants of ERAC project, on the topic "Protection of Human Rights and Freedoms through the prism of OIK cooperation with media (first session) and the functioning of OIK Regional offices, what are the opportunities / ways to access these offices (second session)".

On 31 May 2018, the DPD Senior Legal Advisor participated in the presentation of the Ex-post Draft of the Law 05 /L-020 on Gender Equality, organized by the Agency for Gender Equality.

On 1 June 2018, in honour of June 1 as the International Children's Day, the Ombudsperson Institution (OIK) organized various activities for children in Prishtina,

Gračanica, Prizren and Gjilan with the aim of obtaining basic knowledge of human rights. The children, during these activities and through paintings and drawings, were informed about children's rights. Part of this activity was also the DPD.

On 20 June 2018, two DPD Senior Legal Advisors participated in a conference organized by the Freedom and Equality Centre (FEC), on the topic: "Institutional engagement with regard to the LGBT community".

On 25 June 2018, two DPD Senior Legal Advisors participated in the "Roundtable on Sustainable Financing and Organizational Issues Related to Domestic Violence Shelters in Kosovo" organized by the OSCE.

On 13 July 2018, the DPD Director participated in the meeting of the advocacy group, organized by the Women's Network, on the topic "Enhancing the legal framework".

On 14 September 2018, the DPD Director made statement for media about the functioning of DPD.

On 25 September 2018, the DPD held a meeting with the Commissioner for Protection from Discrimination of the Republic of Albania in exchange for work experience.

On 26 September 2018, DPD responded to the questions posed by the "indexonline" electronic media regarding the right to work.

On 26 September 2018, the Deputy Ombudsperson held a lecture on new prosecutors regarding the functioning of the DPD.

On 27 September 2018, the DPD Senior Legal Adviser was present at the meeting with the LGBTI Coordination Council.

On 5 October 2018, the Ombudsperson, his Deputies and the DPD Director held a meeting with the Parliamentary Committee on Human Rights, Gender Equality, Missing Persons and Petitions, regarding the implementation of the Law on Gender Equality.

On 5 October 2018, the DPD was involved in LGBTI-related activities organized by NGOs representing the interests of LGBT community.

On 8 October 2018, the Ombudsperson, his Deputies and the DPD Director held a meeting with the Parliamentary Committee on Human Rights, Gender Equality, Missing Persons and Petitions regarding recommendations in implementing the Law on Protection from Discrimination.

On 8 October 2018, the Ombudsperson was part of the panel at the conference on improving LGBTI rights.

On 9 October 2018, DPD Legal Advisers participated in the workshop "LGBT Youth Mobilization + Examples of Good Practices of the Volunteer Team from *Da se zna*, held at the Orion Conference Centre in Pristina.

On 13 October 2018, the DPD Director was part of the panel at the conference "Health Professionals, Patient and Their Rights"

On 4 October 2018, the DPD Legal Adviser participated in the roundtable "Inclusion of Girls and Persons with Disabilities from Roma, Ashkali and Egyptian Communities in Education and Employment in Kosovo" organized by NGO Voice of Roma, Ashkali and Egyptians.

On October 17, 2018, the Director of DPD participated in the open debate on the topic: "Obligation of institutions in providing services in the cases of education and education for blind persons and other rights belonging to the legal framework in force in Kosovo" organized by the NGO "Independent Initiative of the Blind People in Kosovo", within the framework of events of *international week of persons with white cane*.

On 14 and 15 November 2018, the Ombudsperson participated in the Regional Conference on "Tolerant and Inclusive Societies in the Western Balkans" in Montenegro.

On 26 October 2018, the DPD Director participated in the meeting held by the National Coordinator for the Protection of Domestic Violence, concerning the regional conference "Access to justice for victims of domestic violence and gender-based violence".

On 28-30 October 2018, the DPD Senior Legal Advisor participated in the two-day workshop "Gender Integration - Social Services Integration" held in Shkodra, Albania.

On 30 October 2018, the DPD Director participated in the conference, which presented the report "Gender Training Programs for Public Administration of Kosovo", organized by the "Equal Rights for All Coalition (ERAC)".

On 7 and 8 November 2018, DPD Legal Adviser participated in the conference "Inclusion of Roma after the Decade of Roma Inclusion has ended" held in Skopje, Macedonia, organized by the Ombudsperson Institution of Macedonia.

On 15 November 2018, the DPD Director was part of the TV show "Rubikon", debate topics "Victims of violence during the war, their status, pensions".

On 19-23 November 2018, in exchange of experiences, two Bosnian Ombudsperson's representatives conducted study visit at DPD.

On 20 November 2018, the DPD Senior Legal Advisor participated in the workshop on "Women's inheritance rights", organized by the Forum of Kosovo Judges and Prosecutors.

On 21 November 2018, the DPD Director participated in an open discussion on the draft proposal document for the inclusion of the specifics / needs of children with disabilities in the *Standard Action Procedures for Protection from Domestic Violence*, organized by NGO Hendikos.

On 26 November 2018, the DPD Director participated at the Roundtable on Roma, Ashkali and Egyptian Communities, Plemetin/Obiliq, Roma Mahala /Mitrovica, Brekoc-Ali Ibra / Gjarkova, Dubrava / Ferizaj and Gjilan, organized by UNHCR.

On 2 December 2018, the DPD Director was on the TV show "My Family", where the topic of debate was "The Rights of Persons with Disabilities".

On 3 December 2018, the DPD Director was present at the Parliamentary Committee on Human Rights, Gender Equality, Missing Persons and Petitions, in honour of the "December 3rd - International Day of Persons with Disabilities "

On 4 December 2018, the Deputy Ombudsperson to the Sector for Protection from Discrimination, as well as the DPD Director participated at the Parliamentary Commission on Human Rights, Gender Equality, Missing Persons and Petitions, for the campaign of Activism Against Gender-Based Violence.

On 3 and 4 December 2018, the DPD Legal Adviser attended a two-day workshop in Prishtina, on the topic: "Hate crimes", organized by the OSCE Mission in Kosovo.

On 11 December 2018, the DPD Legal Adviser attended the roundtable "Creating a database of NGOs dealing with hate crime incidents" organized by the OSCE Mission in Kosovo.

Reports published by the Ombudsperson related to discrimination

On 12 February 2018, the Ombudsperson published a Report with Recommendations in the Ex officio case no. 853/2016, related to *Discriminatory criteria in job vacancies of UP*. The purpose of this report is to draw attention to the need for protection from discrimination as well as equal treatment in the criteria set for vacancies announced for recruitment of candidates at the University of Prishtina "Hasana Prishtina" during 2016 and 2017.

On 27 February 2018, the Ombudsperson published a Report with Recommendations in case A. no. 890/2016, regarding the retirement age of pensioners and the right to use other pensions applicable in Kosovo. The report is based on Case A.890 / 2016 and relies on the allegations, facts and allegations of the complainant submitted to the OIK, regarding the cessation of the contribution-payer pension. In addition to the complaint in question, the Ombudsperson has also received complaints of the same nature. The report aims to draw the attention of the Ministry of Labour and Social Welfare to give the citizens the guaranteed legal and constitutional rights in the use of Contribution-payer pension as a right to property.

On 16 March 2018, the Ombudsperson published a Report with Recommendations in case A. no. 355/2016, regarding the civil rights of Albanians from Presheva, Medvegja and Bujanovc, displaced in the Republic of Kosovo, addressed to the Ministry of Internal Affairs and the Prime Minister of the Republic of Kosovo, who aims at attracting the

attention of the responsible state authorities of the Republic of Kosovo regarding civil rights status and legal position and providing personal documentation of Albanians from Presheva, Medvegja and Bujanovc, displaced to Kosovo.

On 6 April 2018, the Ombudsperson published a Report with Recommendations Ex 235/2018 for the Government of the Republic of Kosovo and relevant ministries in order to draw attention to the need for positive regulation of the contribution-payer pension for the category of citizens of the Republic of Kosovo, who worked before 1999 and have not reached retirement age of 15 years without their fault because of the discriminatory dismissal at the time of the violent measures imposed in Kosovo.

On 10 April 2018, the Ombudsperson published a Report with Recommendations in the case A.no. 885/2016 Zlatibor Kostić against the Kosovo Property Comparison and Verification Agency (KPCVA), regarding the non-execution of the KSIZ-HPCC/D/197/2005A & C decision, dated 18.6.2005, issued under cases DS 000641 and DS004997, Ex 235/2018. The purpose of this report is to review the issue of the length of the procedure by the KPCVA regarding the non-payment of compensation to the Applicant on the basis of the final decision as well as the inequality before the law in the sense of the execution of final decisions for the Applicants of category AC and the peaceful enjoyment of property rights as confirmed by the decision.

On 16 April 2018, the Ombudsperson published the Report with Recommendations in cases A.no.114/2018; A.no.122/2018 and A.no.182/2018, against the Ministry of Justice - Kosovo Correctional Service (KCS), regarding the discriminatory condition in the job vacancy in KCS. The purpose of the report is to draw attention to the need for protection from discrimination and ensure observance of values such as transparency of the recruitment process and equal treatment of all candidates in the KCS. In this regard, the Ombudsperson analysed the harmonization of the disputed criterion, which KCS published on 12 February 2018, in the job vacancy under reference number MJ/KCS/132-09-02-2018, for 70 (seventy) vacancies for Correction Officers, pursuant to local legislation and international instruments that specifically relate to the aspect of protection from discrimination.

On 17 July 2018, the Ombudsperson published a Report with Recommendations in the case of the complainant Mr. Fran Marniku, regarding the property disputes that are unduly prolonged by the Court of Appeal.

On 20 July 2018, the Ombudsperson forwarded to the Ministry of Education, Science and Technology, the Rector of the University of Prishtina "Hasan Prishtina" and the Faculty of Electrical and Computer Engineering, Report A. no. 533/2017, through which it is recommended to supplement and reformulate Article 5 of Administrative Instruction no. 11 on the Comparability and Equivalence of Diplomas and Study Programs before and

under the Bologna system, with the aim of enabling the Master's degree for graduates in the five-year system of studies in the technical field prior to the Bologna system. The Ombudsperson, after a detailed analysis of the case, found that the discrepancy between the Law on Higher Education and Administrative Instruction no. 11, which regulates the issue of Equalization of Diplomas and Study Programs before the Bologna System and the Bologna System, which does not explicitly clarify the equivalence of titles in relation to ECTS credits obtained during the study programs of the technical field, with a duration of five years, has resulted in an unequal treatment in employment and salary compensation for a significant number of graduates in this system who are engaged in teaching compared to others.

On 2 November 2018, the Ombudsperson published a Report with Recommendations on the Complainant's Case, Arben Hajrullahu, regarding his claims for unequal treatment of candidates in the public vacancies of 24 November 2016, announced by the University of Prishtina "Hasan Prishtina" for the selection of academic staff for teachers at the Faculty of Philosophy, recommending to the Rector of the University of Prishtina "Hasan Prishtina" and the Faculty of Philosophy, to undertake immediate actions based on the legal powers, for reviewing the complainant's allegations on discrimination, as well as in accordance with Article 20, paragraph 2 of the Law on Protection from Discrimination, to provide sufficient evidence to show that there has been no violation of the principle of equal treatment in the public vacancy of 24 November 2016, advertised by the University of Prishtina for the selection of academic staff; and the Education Inspectorate of the Ministry of Education, Science and Technology, to take immediate action, based on legal powers, to respond to the complainant in his complaint with no. 213, filed on 13 April 2017, alleging that the Council of the Faculty of Philosophy had committed discriminatory actions against him.

Amicus curiae and opinions

On 1 February 2018, the Ombudsperson, as Amicus Curiae, forwarded to the Supreme Court of Kosovo, the Court of Appeal, the Basic Courts and the Ministry of Public Administration *the Opinion* on the interpretation of the concept of "Work experience" in the context of job vacancies in public institutions.

On 21 February 2018, the Ombudsperson, as Amicus Curiae, forwarded to the Basic Court in Prishtina *the Legal Opinion* on the treatment of seriously ill persons who are deprived of liberty in the case of Driton Hajdari.

On March 16, 2018, the Ombudsperson, in implementation of his constitutional and legal functions, forwarded to the Rector of the University of Prishtina and the Ministry of Education Science and Technology *the Opinion* on the prevention of nepotism at the University of Prishtina. The main purpose of this Opinion is:

- 1) To clarify that this finding does not prevent Pristina University from fighting the problem of nepotism on the basis of the procedures provided for by the Statute of the University of Prishtina;
- 2) To emphasize that fighting nepotism is absolutely necessary for the full respect of the human rights of all candidates for employment at the University of Prishtina; and;
- 3) To propose some measures to further strengthen the prevention of nepotism, based on the policies of both universally recognized universities for high academic standards: Harvard University of the United States, and the University of Cambridge of the United Kingdom.

On 21 June 2018, the Ombudsperson, as Amicus Curiae, forwarded to the Basic Court in Prishtina *the Legal Opinion* regarding the complaint no. 499/2017 of Xhafer Kadrija, regarding the violation of the rights of blind persons, respectively the disrespect of legal provisions for the release of property tax, according to the complaint of the Blind Association in Gjakova. During the handling of the case, the Ombudsperson noticed that the Municipality of Gjakova is not implementing the provisions of Law no. 04 / L-092 For Blind Persons, according to which blind persons are exempted from immovable property tax. The Ombudsperson further notes that, in some municipalities, blind persons are exempted from immovable property tax under the provisions of the Law for Blind Persons.

On 2 July 2018, the Ombudsperson, as Amicus Curiae, forwarded to the Basic Court in Prishtina *the Legal Opinion* regarding the complaint no A.no.903/2017 of Mufail Salihaj, regarding the Complainant's claim against the Public University of Prishtina "Hasan Prishtina", which focuses on clarifying the legal procedures regarding the age limit as a criterion for employing the complainant in the position of the teacher, in the vacancy announced by the UP, Faculty of Agriculture and Veterinary.

On 23 August 2018, the Ombudsperson, pursuant to his constitutional and legal functions, regarding the case filed by Nita Shala, Complaint no. 421/2018 of 17 August 2018 has issued *the Opinion* regarding the criterion for submitting Decision on Nostrification for applying on relevant vacancy position for Academic staff jobs at University of Prishtina "Hasan Prishtina".

On 26 September 2018, the Ombudsperson, as Amicus Curiae, referred to the Constitutional Court of Kosovo *its Legal Opinion* regarding the case of Blert Morina.

National Preventive Mechanism against Torture (NPM)

The Republic of Kosovo is not a signatory party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since it is not yet a member of the United Nations. However, Article 22 of the Constitution of the Republic of Kosovo determines that human rights and fundamental freedoms guaranteed by international agreements and instruments are guaranteed by this Constitution. These international agreements and instruments are directly applicable in the Republic of Kosovo and, in case of conflict, have priority over the provisions of laws and other acts of public institutions. One of the conventions foreseen in this Article is also the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted on 10 December 1984 and entered into force on 26 June 1987.²⁸¹

On 18 December 2002, the United Nations General Assembly, at its fifty-seventh (57) session, with the Resolution A/RES/57/199, adopted the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This protocol entered into force on 22 June 2006.²⁸² The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhumane or degrading treatment or punishment.²⁸³

Further, the Optional Protocol defines the obligation of each signatory state to establish one or more visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. The Protocol stipulates that these visiting bodies are designated as National Preventive Mechanisms.²⁸⁴

Law No. 05/L-019 on Ombudsperson, which entered into force on 26 June 2015, stipulates, in Article 17, paragraph 1, that the Ombudsperson acts as National Preventive Mechanism against Torture and other Cruel, Inhuman and Degrading Treatments or Punishments. The Law foresees that a specialized branch shall be set up at the Ombudsperson's Institution that will be tasked with functions of the National Preventive Mechanism against Torture (hereinafter 'NPM').²⁸⁵ Further, this law stipulates that the staff of this branch, in addition to jurists, shall include a variety of professionals of different fields.

²⁸¹ Office of the United Nations High Commissioner for Human Rights, at: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

²⁸² Office of the United Nations High Commissioner for Human Rights, at: <https://www.ohchr.org/en/professionalinterest/pages/opcat.aspx>.

²⁸³ Article 1 of Optional Protocol to the Convention against Torture.

²⁸⁴ Article 3 of Optional Protocol to the Convention against Torture.

²⁸⁵ Law No. 05/L-019, Article 17, paragraph 2.2.

Regular and unannounced visits to places of deprivation of liberty, including police detention, detention on remand, stay at health institutions, customs detention, prohibition of emigration and every other place when it is suspected that there are violations of human rights and freedom are NPM tasks defined by the Law.²⁸⁶

Law on Ombudsperson gives NPM the right to visit places of deprivation of liberty and with the right to take pictures and make sound and video recording, guarantees protection against external interference in the work of its personnel, as well as the right of NPM staff not to give evidence and explanations on facts that were disclosed to them in the process of exercising their functions.²⁸⁷ When exercising functions of the National Preventive Mechanisms, the Ombudsperson and his/ her representatives shall have the right to access information about the health status of any person held in places of deprivation of liberty, including access to relevant medical records, as well as, with consent of the person, they shall be entitled to access to his/her personal data.²⁸⁸

NPM was officially established by the decision of the Ombudsperson, Hilmi Jashari, on 16 January 2016. Immediately after this decision, the European Council launched a project to strengthen NPM's monitoring capacities for monitoring all countries where persons deprived of liberty are held. The purpose of this project is to strengthen NPM's monitoring capacities. The project in question will last until April 2019.

NPM's methodology and organization during 2018

NPM's methodology

NPM has a visits' methodology consisting of: preparation of the visit, type of the visit (announced or unannounced visit), actions taken upon arrival at the institution being visited, division into groups upon arrival, conversations with the head of the institution, the monitoring team pays a visit to all premises of the institution, interviews with persons deprived of liberty, contacts with correctional officers, contacts with health personnel, a meeting of the monitoring team before the final meeting with the director, and the final conversation with the director.

Visit preparation phase means gathering relevant information for the institution being visited, the objective of the visit, determination of the number of NPM members which will be part of the visit, division into subgroups and concrete assignment of tasks. Article 17 of the Law on Ombudsperson stipulates that NPM conducts unannounced visits to places where persons deprived of their liberty are held.

Initial conversation with the head of the visited institution means presentation of NPM mandate in an effective and professional manner, presentation of the monitoring team

²⁸⁶ Law No. 05/L-019, Article 17, paragraph 2.

²⁸⁷ Law No. 05/L-019, Article 17, paragraph 3.

²⁸⁸ Law No. 05/L-019, Article 17, paragraph 4.

members, the visit purpose etc. After the initial conversation with the director, the monitoring team conducts a visit to all premises of the institution.

After that, interviews are made with persons deprived of liberty and with institution officials. The monitoring team decides who to interview and where to conduct the interview. The monitoring team assures the interviewee that the conversation will be confidential and without the presence of the officials of the institution interviewed.

Also, the monitoring team pays a visits to the health unit of any correctional or detention centre in order to verify whether prisoners receive initial health controls upon the admission, whether the correctional officers are present when providing medical services to prisoners, whether health unit protocols keep accurate records of all relevant aspects of providing medical services, especially the cases of bodily harm, attempted suicides, self-injuries etc.

Following these actions, monitoring team holds a meeting attended by the monitoring team members only and conducts a provisional assessment of the findings so far, takes decisions for further action if necessary, and decides which issues will be presented to the head of the institution.

The final conversation with the head of the institution focuses on the most important concerns, such as: relations between personnel and the prisoners, incidents amongst prisoners, poor accommodation conditions, inadequate health care, and failure to apply the procedural safeguards (access to an attorney, contacts with family, etc.). During the final conversation with the director, the monitoring team uses constructive language and respects the work of the institution's officials. The monitoring team requires a constructive dialogue and not a confrontation with the institution's officials.

NPM's composition

NPM's current composition in terms of the personnel has been completed pursuant to the Law on Ombudsperson and the Regulation No. 01/2016 on Internal Organization and Systematization of Job Positions in the Ombudsperson Institution, which include:

1. Deputy Ombudsperson, in charge of the NPM;
2. NMP Director;
3. Senior Legal Advisor on Prevention of Torture;
4. Advisor on Prevention of Torture;
5. Advisor-medical doctor;
6. Advisor-psychologist;
7. Advisor-social worker;

The European Council, in the framework of the NPM empowerment project, engaged a psychiatrist within the NPM team for the purpose of conducting monitoring visits to mental health institutions.

During the reporting year, NPM paid visits to places where persons deprived of liberty are held, as well as to other institutions where persons may be deprived of liberty or cannot leave these institutions by their own will, due to a decision of competent authorities. During the reporting year, the NPM has also visited a large number of police stations, detention centres, correctional centres, mental health institutions, social care centres, the Asylum Seekers Centre and the Detention Centre for Foreigners.

Trainings for the NPM personnel

During the reporting period, within the framework of the European Council project, the trainings on strengthening NPM capacity continued. During this period, a combined training of theory and practical exercise was delivered at the High Security Prison, at the Correctional Centre in Dubrava and at the Educational-Correctional Centre in Lipjan. In addition to this, several trainings were organized combined with practical visits to police stations, mental health institutions and social care institutions. Also, the NPM personnel participated in the four-day training organized by the European Border and Coast Guard Agency FRONTEX, held in Belgrade. The current and previous experts of the European Committee for the Prevention of Torture lectured and closely supervised in all the trainings organized within the framework of the European Council project.

NPM's activities

In the framework of the EC project, the NPM, in cooperation with the EC Office in Prishtina, organized several activities such as one-day roundtables aimed at raising the awareness of the representatives of Kosovo institutions (justice, prison system, prosecutors) and of the OI personnel on the NPM's mandate; a one-day conference regarding the accomplished results during the project and regarding the modes of cooperation between the NPM and other Kosovo institutions.

Also, was held the Labour Forum on Inter-Institutional Cooperation with the topic "Prevention of Ill-treatment in Mental Health Services and Social Care". The Forum's purpose was the discussion of NPM findings, identified problems on the field and finding opportunities on problem solving by the participants themselves. As a result of the Forum, participants provided twenty valid recommendations to effectively address gaps and shortcomings jointly identified. Those recommendations have been integrated into the reports with recommendations compiled by NMP.

In order to mark the World Mental Health Day (10 October), the NPM, in cooperation with the EC Office in Prishtina, organized a one-day regional Conference regarding the challenges of the functioning of NPM in the Western Balkans. The conference aimed the exchange of experiences and discussion of challenges facing national mechanisms on the prevention of torture in the regional countries, regarding monitoring of the treatment of persons with mental disorders in correctional institutions, psychiatric hospitals and social care institutions. The conference concluded with a series of recommendations on the

manner of how to further strengthen cooperation between national preventive mechanisms, international monitoring bodies, civil society and relevant authorities, for a better protection of the rights of persons with mental disorders and intellectual disabilities, in places of deprivation of liberty. It is worth mentioning that the NPM constructive cooperation with other institutions in the country, as well as with NGOs was a good example for the regional countries.

NPM has, in addition to organizing the activities in the framework of the European Council project, also participated in various activities organized by the Prison Health Department/Ministry of Health and Non-Governmental Organizations.

International cooperation

During the reporting period, NPM continued its international cooperation by attending the meetings organized by the South East Europe NPM Network, the working groups of the European Network of National Human Rights Institutions (ENNHRI) such as the Working Group on Migration and Asylum and the Working Group on the Role of the Ombudsperson in post-conflict situations. In the framework of the European Council project on NPM capacity-building, the NPM participated in the four-day study visit to Poland. In the framework of this visit, Kosovo's NPM and Poland's NPM conducted together several visits to places where persons deprived of liberty were held in Poland and also visited several non-governmental institutions and organizations such as ODIHR, the Helsinki Committee in Poland etc. During this year, FRONTEX and IOM organized training for the Kosovo Police in Montenegro regarding the forced return of migrants. On this occasion, the NPM's representative held a lecture on the mandate of the Ombudsperson and of the NPM.

Also, NPM continued the cooperation with the relevant international organizations by responding to the questionnaires sent regarding the condition of persons deprived of liberty and issues related to asylum and migration.

Fulfilment of the NPM's mandate during 2018

Visits conducted

During the reporting period, NPM has conducted 60 (comprehensive, ad-hoc and follow-up visits) visits to various institutions such as: Correctional Centre in Dubrava, Detention Centre for Foreigners, Asylum Seekers Centre, Detention Centre in Gjiilan, Detention Centre in Peja, Detention Centre in Prizren, Educational-Correctional Centre in Lipjan, Correctional Centre for Women and Juveniles in Lipjan, Detention Centre in Lipjan, High Security Prison, "Adem Jashari" Prishtina International Airport, police stations in Lipjan, Podujeva, Mitrovica, Vushtrria, Prizren, Suhareka, Dragash, Klina, Istog, Deçan, Peja, Viti, Kaçanik, Shtërpca, Ferizaj, Gjiilan, Novobërda, Kamenica, Graçanica, Ranilluk, Shtime, Centre for Integration and Rehabilitation of the Chronic and Psychiatric Patients in Shtime, Psychiatric Clinic, the Institute of Kosovo Forensic

Psychiatry, the Home of Children with Mental Disorders, the Special Institute in Shtime, the Home for Elderly People Without Family in Prishtina.

Reports with recommendations published during 2018

During the reporting period, NPM published a report with recommendations for the visits to the Detention Centre in Prizren, Correctional Centre in Dubrava²⁸⁹, Detention Centre in Gjilan, Detention Centre in Prizren, Detention Centre in Peja, the Asylum Seekers Centre, the Detention Centre for Foreigners in Vranidoll²⁹⁰.

During 2018, NPM published the report with recommendations for the visits to police stations in Mitrovica, Podujeva, Vushtrri, Dragash, Prizren, Suhareka, Regional Police Custody Centre in Prishtina; the report with recommendations for the visits to the police stations in Klina, Istog, Deçan, Peja; the report with recommendations for the visits to police stations in Viti, Gjilan, Graçanica, Kaçanik, Ferizaj, Novobërda, Kamenica, Shtërpca, Ranilluk and Shtime.

In addition, NPM also visited the mental health and social care institutions and published a report with recommendations for the visit to the Psychiatric Clinic in Prishtina, a report with recommendations for the visit to the Institute of Forensic Psychiatry, a report on the visit to the Centre for Integration and Rehabilitation of the Chronic and Psychiatric Patients in Shtime, a report with recommendations for the visit to the Home for Elderly People Without Family in Prishtina.

During this year, NPM also published the *ex officio* report regarding the arrest and forced deportation from the territory of the Republic of Kosovo of six Turkish nationals.²⁹¹ The main purpose of this report is to draw the attention of the competent authorities of the Republic of Kosovo on respecting the rights of the detained persons and persons subject to forced deportation or extradition from the territory of the Republic of Kosovo pursuant to the Constitution of Kosovo, applicable laws, as well as international human rights standards.

The report refers to the arrest and forced deportation of six Turkish nationals from the territory of the Republic of Kosovo on 29 March 2018, based on the claims that they pose a threat to national security.

²⁸⁹ Report with recommendations for the visit to the Correctional Centre in Dubrava, published on 24 August 2018. See at: <https://www.oik-rks.org/en/2018/08/27/ombudsperson-institution-report-with-recommendations-of-the-national-preventive-mechanism-against-torture-on-the-visit-conducted-to-the-dubrava-correctional-centre/>.

²⁹⁰ Report with recommendations for the visit to the Detention Centre for Foreigners in Vranidoll, published on 2 May 2018. See at: <https://www.oik-rks.org/en/2019/05/02/report-with-recommendations-the-detention-centre-for-foreigners-in-vranidoll-1/>.

²⁹¹ See at: <https://www.oik-rks.org/en/2018/04/27/report-with-recommendations-of-the-ombudsperson-of-the-republic-of-kosovo-related-to-the-arrest-and-forcible-removal-of-six-turkish-citizens-from-the-territory-of-republic-of-kosovo-ex-officio-no-214/>.

In addition, NPM also published the Report with recommendations regarding the right for university studies for minors deprived of liberty.²⁹²

Cooperation of visited institutions with NPM

During NPM's visits to the institutions where persons deprived of liberty are held, officers of the institutions visited generally offered to the monitoring team full cooperation and immediate access, except in one case involving the Kosovo Police. The team immediately had access to all visited premises. The team was provided with all information necessary to carry out the task and was given the opportunity to have interviews with detained, detained on remand and convicted persons, without the presence of correctional officers, police officers or other personnel. In addition, NPM team, pursuant to the Law on Ombudsperson, was allowed to use the devices for taking photos as well as the devices for measuring spaces, temperature and humidity.

Nevertheless, the NPM team was denied access to the premises of the "Adem Jashari" Prishtina International Airport while investigating the case of forced deportation of six Turkish nationals from the territory of the Republic of Kosovo. Such actions of public authorities are in contradiction to the Constitution of the Republic of Kosovo, the Code of Criminal Procedure of the Republic of Kosovo and the Law on Ombudsperson.

In this regard, the Ombudsperson, through the *Ex Officio* report 214/2018 on the arrest and forced deportation of six Turkish nationals from the territory of the Republic of Kosovo, recommended, among others, the Ministry of Internal Affairs that they explicitly notify the personnel of this Ministry about the Ombudsperson's constitutional and legal competencies regarding unannounced access at any time and to any place where the persons deprived of liberty are held.

Also, Article 25 of the Law on Ombudsperson clearly defines the obligations of all authorities to respond to the Ombudsperson requests as well as to provide adequate support according to his/her request. On the other hand, Article 25, paragraph 3 of the Law on Ombudsperson explicitly defines that: *"In case when the institution refuses to cooperate or interferes in the investigation process, the Ombudsperson shall have the right to require from the competent prosecution office to initiate the legal procedure, on obstruction of performance of official duty."*

Findings during visits and recommendations sent to competent authorities

Police stations

Physical ill-treatment

²⁹² <https://www.oik-rks.org/en/2018/11/23/recommendation-report-no-4932018-esat-beqiri-versus-ministry-of-education-science-and-technology-kosovo-correctional-service/> .

During the reporting period, the NPM visited 22 police stations and published 3 reports with recommendations. In general, the NPM has sent 13 recommendations to the competent authorities.

During visits, the NPM did not receive complaints from detained persons for experiencing physical ill-treatment while they were in police custody, except during the visit to the police station in Peja, where the NPM interviewed detainees who claimed to have been physically ill-treated at the time of arrest. NPM reviewed the files of the detained persons, where it was evidenced that the detainees were visited by a doctor who wrote in the medical report the measurement of vital signs, with only one case of a person being prescribed therapy against pains.

Through the Report with recommendations, published on 17 October 2018²⁹³, the NPM recommended that it should be made clear to all Kosovo Police officers that all forms of physical ill-treatment against detained persons are unacceptable and that officials who undertake such actions will be subjected to legal sanctions.

During visits to detention centres and correctional centres, the NPM received 4 complaints for physical ill-treatment during the arrest, stay at police custody, and interrogation by Kosovo Police officers.

During the NPM's visit to the Correctional Centre in Dubrava, the NPM received 2 complaints from two prisoners, claiming that they were physically ill-treated by Kosovo Police officers at the time they were arrested and transported to the police stations where they were questioned. In the case of the complainant B.D, he claimed that he was physically ill-treated by being punched by police officers while being questioned and transported to the police station in Prizren. According to complainant's claims, he informed the pre-trial judge of this, but no actions were taken. Also, the complainant claimed that he never filed a complaint with the Kosovo Police or Kosovo Police Inspectorate (KPI). The prisoner was informed by NPM of the competent bodies he may file a complaint with. Meanwhile, in the other case, the complainant R.S. claimed that he was physically ill-treated in the police station in Ferizaj and that for this he filed a complaint with the Kosovo Police Inspectorate a month ago. As far as this claim is concerned, the NPM addressed KPI via official e-mail and required them information about the complainant's complaint. KPI informed the NPM that the Kosovo Police Inspectorate, namely the Department for Review and Management of Complaints, on 13 February 2018, received a complaint filed by the citizen R.S from the Prison of Dubrava. After analysing his complaint, the case was forwarded to the Department of Investigation (KPI) for criminal investigation.

²⁹³ Report with recommendations on the visits to the police stations in Klina, Istog, Deçan, Peja. For more information, see: <https://www.oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>.

During the visit to the Detention Centre in Peja, the NPM received a complaint filed by the detainee E.A.²⁹⁴, who claimed to have been physically ill-treated by the Kosovo Police at the time of arrest. According to the complainant's claim, he was detained on 13 September 2018 and then transported to police station in Prizren. The complainant claimed that he was tied to the radiator, punched and kicked. On 14 November 2018, after preliminary analysis of medical documentation and complainant's claims, the NPM informed, via official e-mail, the Kosovo Police Inspectorate (KPI) regarding these claims and required the KPI to investigate and inform the NPM of the investigation results. The NPM is awaiting the finalization of investigations by KPI.

During the visit to the Detention Centre in Lipjan (DCL), the NPM received a complaint filed by K.B., who complained that he was physically ill-treated while being arrested by Kosovo Police on 7 October 2018. According the complainant's claim, this occurred during the phase of arrest and interview by police investigators in the police station "Centre". Regarding these claims, the NPM visited the Regional Police Custody Centre in Prishtina, where the complainant's file and medical report were checked. In addition, Prison Health Department sent to the NPM the complainant's medical file, which is opened upon each admission to the detention centre or correctional centre. After analysing relevant documentation and complainant's claims, the NPM requested the KPI to investigate the case in accordance with its mandate and inform the NPM of the investigation results.

During the reporting period, 36 complaints were received for physical ill-treatment by Kosovo Police officers. After the preliminary assessment, 19 cases were opened for investigation, while 3 cases were opened for *ex officio* investigation. In some cases, the NPM requested relevant Kosovo Police and KPI bodies to conduct effective investigations regarding these complaints and notify the NPM about the results of the investigations in question. The NPM had full cooperation with KPI and other Kosovo Police authorities during the investigation of the above-mentioned complaints.

During visits to various police stations conducted this year, the NPM noted a practice which it considers inappropriate and which should be avoided immediately. More specifically, during a visit to the police stations in Shtërpca, three hard objects inside an interviewing room were found, while such objects were, according to police officers, seized from persons arrested at the scene and are kept there as evidence. However, the NPM noticed that no case number was labelled on these objects.²⁹⁵ After submitting a report with recommendations, NPM was informed that the Kosovo Police has established a team consisted of police officers, who will visit all police stations and will require that these objects be kept in the right place and not in the interviewing rooms.

²⁹⁴ Registered case in the Ombudsperson Institution, as case A. no. 770/2018.

²⁹⁵ The objects found can be described as follows: three sticks, two of these sticks appear to be electric cable wrapped out-and-out with insulating tape and another stick longer and wrapped only on the top, good enough to be grabbed by hand.

Even during visits to the police stations in Kaçanik and Kamenica, the NPM noticed wooden sticks inside the interviewing rooms, but they were labelled with the case number. According to police officials, these objects have been seized from the detainees and are kept there as evidence for cases under investigation. The NPM recommended police officers that such objects should be immediately removed from the rooms where the detainees are questioned.

In addition, the CPT, in the report on the visit to Spain, published in 2011, states that the delegation found unlabelled wooden sticks and baseball bats inside interviewing rooms in some police stations. CPT further states in the report that such a situation, apart from inviting speculation about improper conduct on the part of police officers, objects of this kind are a potential source of danger to police officers themselves but also to criminal suspects. Such items or belongings seized during criminal investigations must be entered in a separate register, properly labelled (also identifying the case to which they refer) and stored in a dedicated location for storing such items. Through this report, CPT recommended the Spanish authorities that all such unauthorized items be removed from the premises where persons may be held or questioned.²⁹⁶

Based on the visits conducted this year and earlier visits, the reviewing of complaints received, as well as ex-officio investigations, the NPM considers that there is no systematic physical ill-treatment or physical ill-treatment widely spread by the Kosovo Police.

Safeguards against ill-treatment

The European Committee for the Prevention of Torture (hereinafter referred to as '*CPT*'), in its 2nd general report, published in 1992, attaches the importance to three rights for persons detained by the police, such as: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities).²⁹⁷

These rights should be enforced not only in the case of detained persons but also in other cases when citizens are obliged to stay in the police stations or with the police even for other reasons (for instance: for identification purposes).

According to CPT, these rights are a fundamental safeguard against physical ill-treatment and shall be implemented from the first moment of deprivation of liberty, no matter how they are described in the legal system. Also, these fundamental rights are foreseen with

²⁹⁶ CPT report on the visit to Spain, published in 2011, paragraph 34, on: <https://rm.coe.int/16806cb01c>.

²⁹⁷ See: <https://rm.coe.int/16806cea2f>.

the Constitution of the Republic of Kosovo, the Criminal Procedure Code and the Law on Kosovo Police.²⁹⁸

Article 13 of the Criminal Procedure Code: “Any person deprived of liberty shall be informed promptly, in a language which he or she understands, of the right to legal assistance of his or her own choice, of the right to notify or to have notified a family member or another appropriate person of his or her choice about the arrest.”²⁹⁹

Having regard to the notification of arrest, Article 168 of the Code of Criminal Procedure further defines that, an arrested person has the right to notify a family member or another appropriate person of his or her choice about the arrest and the place of detention, immediately after the arrest; notification of a family member or another appropriate person regarding his arrest may be delayed for up to twenty-four (24) hours where the state prosecutor determines that the delay is required by the exceptional needs of the investigation of the case. There shall be no delay in case of minors.³⁰⁰

According to the Law on Police,³⁰¹ the right to notify the family member or other person about the arrest also applies to persons who are in "temporary police custody" for the purposes of identification or because of their protection and protection of others.

During the visits, NPM was informed by police officers that no audio and video recording of interviews is practised while interviewing the detainees. NPM considers that audio and video recording of interviews of detainees would be an additional safeguard against physical ill-treatment. The NPM notes that the CPT also considers that electronic recording (audio and/or video) of police interviews constitutes an important additional safeguard against the ill-treatment of detainees³⁰². NPM notes that the possibility of making audio and video recording of interviews of detainees is also left open by the Criminal Procedure Code.³⁰³

During the visits, NPM concludes that Kosovo Police respects three fundamental rights of the detainees. Kosovo Police has standard forms through which the detainees are informed of their rights and by signing them they confirm that they have been notified of these rights. NPM has also noticed that Kosovo Police generally keeps sufficient evidence and documentation for each case related to persons in police custody. These standard forms are compiled in Albanian, Serbian and English.

²⁹⁸ Constitution of the Republic of Kosovo, Articles 29 and 30. Criminal Code of the Republic of Kosovo, Article 13. Law No. 04/L-076 on the Kosovo Police.

²⁹⁹ See also Articles 29 and 30 of the Constitution.

³⁰⁰ Criminal Procedure Code of the Republic of Kosovo, Article 168, paragraphs 1, 2, 3, 4.

³⁰¹ Law on Kosovo Police, Article 20.

³⁰² European Committee for the Prevention of Torture, Extract from the 12th General Report, paragraph 36. For more information, see: <https://rm.coe.int/16806cd1ed>.

³⁰³ Criminal Procedure Code, Article 205, paragraph 5.

In addition, NPM has noticed that, in each cell where detained persons are held, there is information regarding their rights in Albanian, Serbian and English. During the visits and interviewing of the detainees, NPM did not receive complaints regarding the fulfilment of these rights.

Physical condition of the police stations visited

NPM considers that, despite the duration in police custody, the conditions in the cell must meet some basic requirements regarding accommodation conditions anyway. The CPT, in its 2nd General Report, published on 13 April 1992 in Strasbourg, has defined the standard regarding the conditions in the cells where the detainees are held: *“All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation and be equipped with a fixed chair or bench). Further, persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.”*³⁰⁴

Having regard to the accommodation conditions in the places where detained persons are held, NPM has noticed that most of the visited police stations meet the necessary conditions for accommodation of detainees, except the police stations in Deçan, Peja, Ferizaj and Shtime.

Regional Police Custody Centre in Prishtina³⁰⁵

During the visit to this centre, NPM has noticed that the cells were clean, the space per person in cells was in accordance with the standards established by CPT,³⁰⁶ each cell had mattresses and clean sheets, but cells had little natural light and were not equipped with a call system. The ventilation system was functional inside the Centre. The toilets and showers were in good condition and there was warm water. The Centre was renovated during 2016.

Working conditions of police officers who were working at the Centre are not good and have undergone no change since previous visits. Through the report with recommendations after the visit to this centre, the NPM recommended the MIA to take the necessary steps to provide more natural light. In its response sent on 31 November 2018, MIA underlined that there is no possibility of changing window dimensions to the existing facility, given the fact that the detention facilities are located in the basement. According to them, this year's planning foresees that the grills of the existing windows will be changed, and that the project is undergoing procurement procedures.

³⁰⁴ European Committee for the Prevention of Torture, 2nd General Report, paragraph 42. For more information, see: <https://rm.coe.int/1680696a3f>.

³⁰⁵ All reports with recommendations for visits to police stations can be found at: <https://www.oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>.

³⁰⁶ See: <https://rm.coe.int/16806cea2f>.

Police Station in Prizren

During the visit, NPM noticed that the cells accommodating the detainees are in poor condition and should be lime-plastered (coloured) and supplied with clean sheets and blankets, since the existing ones are old and do not meet the conditions for accommodating detainees in accordance with international standards at all. Through the report with recommendations, published on 25 January 2018, NPM recommended the competent authorities to take the necessary actions so that necessary renovations and supplies are made at this station. In its response to this recommendation, the Ministry of Internal Affairs (MIA) informed NPM that *"during this year (2018), the entire detention centres in Prizren were plastered and coloured. Also, the project that was initiated for this year has foreseen the replacement of mattresses."*

Police Station in Peja

NPM has noticed that cells were in a very bad condition, there were no natural light, and artificial light was poor. NPM also noted that the building has humidity and mouldy odour, hygiene was not at the right level. In the cells where the detained persons are held there is a lack of sheets, pillows, and hygienic means. This station needs renovations in the premises where the detainees are held and in the premises where the police officers work. The CPT, in the report on the visit to Kosovo in 2015, published in 2016, regarding the Police Station in Peja, concluded that artificial lighting in the detention zone at this station was not sufficient.³⁰⁷

Police Station in Deçan

NPM has noticed that the cells where the detainees are held are in a very bad condition and need immediate renovation since they have no natural or artificial light. As a result of this, NPM interviewed a detainee in full dark. The monitoring team has also noticed, during the visit to the cells where the detainees are held, the presence of insects. Such a situation at the Police Station in Deçan can be compared to degrading, humiliating and inhuman treatment. The CPT, in its report on the visit to Kosovo in 2007, published in 2009, expresses particular concern regarding the accommodation conditions at the Police Station in Deçan.³⁰⁸

Police Station in Ferizaj

Accommodation conditions are in poor condition, cells did not have enough natural light, while artificial light was weak. Also, NPM noticed that the building has humidity and mouldy odour, the hygiene was not at the right level. In the cells where the detained persons are held there is a lack of sheets, pillows and hygienic items. On the other hand,

³⁰⁷ CPT Report on its visit to Kosovo, paragraph 25. For more information, see: <https://rm.coe.int/16806a1efc>.

³⁰⁸ CPT report on its visit to Kosovo in 2007, published in 2009, paragraph 35. For more information see in: <https://rm.coe.int/168069727c>.

NPM noticed that the minor interviewing room is a comfortable room. NPM considers that the station in question needs renovation in the premises where the detainees are held and in the premises where the police officers work.

NPM noticed that physical conditions and accommodation at the police stations in Gracanica, Gjilan, Ranilug, Viti, Klina, Istog, Lipjan, Mitrovica, Podujeva, Suhareka and Dragash generally meet the standards for accommodation of detainees.

Having regard of food, the Criminal Procedure Code of the Republic of Kosovo defines that a person detained for more than 12 hours shall be provided with three meals daily.³⁰⁹ Arrested persons, who are sent to custody, are provided three portions of food within 24 hours. NPM has not received complaints from detainees regarding this right.

In all the stations visited, NPM noticed that the detainees are not supplied with personal hygienic items. NPM considers that the relevant authorities should take concrete steps to equip the hygiene maintenance centres. None of the stations visited has a call system. The CPT, in its report on the visit to Kosovo in 2015, has recommended the competent authorities in Kosovo that the cells at the police stations be equipped with a call system, which would enable the detainees to make easier contact with police officers when needed.

With regard to the regime, in the 12th general report published in 2002, the European Committee for the Prevention of Torture stresses that persons who are detained in police custody for more than 24 hours must be provided with daily fresh air.³¹⁰

NPM has noticed that most of the police stations visited do not provide the detainees who stay more than 24 hours in detention with the opportunity to go out and take some fresh air (going outside, going outside in the yard), as they do not have adequate space. An exception is the Police Station in Vitia, where the detainee is allowed to spent time outdoors in the presence of police officers. However, none of the stations visited have special fresh air areas.

With regard to medical services, as a fundamental right of persons detained by the police, these services are provided by public institutions such as the Family Medicine Centre and the University Clinical Centre, depending on the treatment needs. NPM did not receive complaints from the persons interviewed regarding this right. Also, the reviewed documentation shows that the police have recorded in their personal files the notice of the right to have medical services.

With regard to the right to file a complaint regarding their treatment by the Kosovo Police, the detainees have the right to file a complaint with the police station where they are being held as well as with the Kosovo Police Inspectorate. In addition, the detainees

³⁰⁹ Criminal Procedure Code of the Republic of Kosovo, Article 170, paragraph 3.

³¹⁰ 12th General Report of the CPT, paragraph 47, at: <https://rm.coe.int/16806cd1ed>.

can file a complaint with the Ombudsperson. In order to provide easier access to the services of this institution and to enable the detainees to file a complaint in confidence, the Ombudsperson has installed complaint boxes at police stations where there are detention cells.

The Ombudsperson has regional offices in each city of Kosovo and regional officials visit police stations, open complaint boxes and handle individual complaints. If regional officials accept claims of ill-treatment, they shall promptly notify NPM.

Also, NPM noticed that the Kosovo Police Inspectorate has placed a complaint box at the entrance of the Police Station in Kaçanik. NPM considers that this is a good practice, which provides citizens with direct access to the competent body for filing a complaint regarding the treatment done by police officers.

During the visit to the Police Station in Kamenica, the NPM noted that the station maintains a comprehensive book (register) of data on citizens' complaints, wherein all complaints of citizens are recorded and accordingly forwarded to the competent authorities within the Kosovo Police or the Kosovo Police Inspectorate. The NPM considers that this is a very good practice satisfying the requirements of international standards for the protection of the rights of persons deprived of liberty.

Recommendations of the Ombudsperson's NPM to the authorities responsible for visits in police stations during 2018:

- Take the necessary steps to provide more natural light to the Regional Detention Centre in Prishtina. (Pending implementation)
- Create better working conditions for police officers in the Regional Detention Centre in Prishtina. (Implemented)
- Conduct renovations and supplies at the Detention Centre in Prizren. (Implemented)
- Install the call system in all cells of police stations with detention rooms. (Not implemented)
- Functionalize security cameras at the Police Station in Lipjan (Implemented).
- Make the necessary renovation at the Detention Centre in Deçan as soon as possible. (Pending implementation)
- Make necessary renovations at the Detention Centre in Peja and supply the station with necessary materials. (Pending implementation)
- Make necessary renovations at the Detention Centre in Ferizaj. (Pending implementation).
- In all the detention centres of police stations visited, the toilets of the cells where the detainees are kept must be provided with a compartment that respects privacy. (Pending implementation).

- Remove hard objects from the offices where the arrested or detained persons are interviewed or detained in all police stations, which are alleged to be seized in evidence. (Pending implementation).
- Inform the NPM of the date of functionalization of the Police Station in Shtime. (Pending implementation)
- Provide detainees with personal hygiene items (Pending implementation).

Correctional and detention centres

During the reporting period, the NPM, together with two Council of Europe experts (in the capacity of observers) and the Chief Inspector of the Ministry of Justice (as an observer), visited the Correctional Centre in Dubrava (hereinafter ‘CCD’). The purpose of this visit was to conduct a general assessment of the respect of prisoners’ rights. During this period, the NPM also visited the High Security Prison (hereinafter HSP), the Correctional Centre for Women and Juveniles in Lipjan, the Correctional Centre in Lipjan, the Detention Centre in Lipjan, the Detention Centre in Prizren, the Detention Centre in Mitrovica and the Detention Centre in Peja. Most of these visits were of an *ad-hoc* and follow-up nature.

Ill-treatment

During the visit at the CCD, the NPM did not receive any complaints from prisoners on physical abuse or excessive use of physical force by correctional officers. During the reporting period, the NPM received two complaints from two prisoners serving their sentence at the HSP claiming they were physically abused, one at the HSP and the other while serving the sentence at the CCD. Regarding these complaints, in addition to the complainants’ allegations, the NPM also analysed relevant medical documentation and requested from the Kosovo Correctional Service (KCS) to investigate the allegations of the complainants and to notify the NPM of the outcome of the investigation. KCS has conducted internal investigations upon the request of the NPM and has notified the latter that it has not found any breaches of procedure or violations of prisoners’ rights by its officials.

During the visit to the Detention Centre in Lipjan (DCL), the NPM received a complaint by detainee S. H. against the correctional officers of this Centre. According to the complainant, he was physically abused by correctional officers in the premises of the Basic Court in Ferizaj, as well as during transport to the DCL. The NPM, in addition to the complainant’s allegations, also reviewed the relevant medical documentation and protocols of bodily injuries. The Directorate provided the relevant documentation regarding the investigation of the case by the Internal Commission established by the Directorate to investigate this allegation. The Internal Investigation Commission did not find evidence supporting the complainant’s allegation.

The NPM requested from the Directorate General of KCS to establish an Investigation Commission independent from the DCL Directorate. The KCS implemented this recommendation of the NPM, establishing the Investigation Commission and thereafter notifying the NPM that it had not found any evidence in support of the complainant's allegation. In general, the NPM has received assertions in favour of good and dignified treatment by correctional officers at the visited correctional and detention centres. Moreover, it has been noted that generally correctional and prison officials have correct communication.

Inter-prisoner violence

During the reporting period, no serious or considerable incidents between prisoners have been reported (except at the HSP). During the visits, the NPM noted that any such incidents were recorded in the relevant forms as well as in adequate protocols of the healthcare units. In general, the NPM during the visit noted that the relations between the prisoners are good and there is no negative climate between them in any of the blocks.

However, at the end of the year, two incidents between prisoners were recorded at the High Security Prison, in which prisoners also suffered serious bodily injury. The NPM, through this report as well, reminds the relevant authorities of the obligation to prevent violence between the prisoners under their responsibility. This responsibility includes the obligation to take care and to adopt preventive measures to reduce the risk of violence, as well as to protect the most vulnerable prisoners.

Staff of correctional and detention centres

As far as staff is concerned, during the reporting period, the NPM received concerns by the CCD Directorate related to the lack of correctional staff, social workers and psychologists. According to the Directorate, the CCD is short of approximately 100 correctional officers, as currently CCD has engaged about 60 correctional officers in the care of persons with chronic diseases hospitalized in healthcare institutions and a number of correctional officers are in training at the Academy for Public Safety in Vushtrri. Further, the Directorate has expressed concern over the average age of correctional staff, which is 49 years old. According to the Directorate, it plans to increase the number of correctional staff for 50 officials.

The NPM has received complaints about the lack of correctional staff and social workers in other correctional and detention centres as well. Through recommendation reports, the NPM has recommended to the competent authorities to employ additional correctional personnel, psychologists and social workers as needed. The KCS is in the process of testing and recruiting 120 new correctional officers who will be assigned to DCGj and HSP. According to the latest announcement of the Director of the CCD, they also plan to hire 5 social workers. The NPM will follow up the implementation of these recommendations.

Accommodation conditions in correctional and detention centres

During the visit to the Correctional Centre in Dubrava (20-22 March 2018), the NPM noted that the accommodation conditions differ across blocks. The NPM noted that block 1 was renovated, toilets and showers were in good condition, the cells had no moisture and were whitewashed and clean. The cells were generally warm with sufficient lighting and ventilation.

During the visit, the NPM paid particular attention to prisoners who had been subjected to solitary confinement because of disciplinary violations and were held in separate cells. In the case of prisoner R. B., in the cell where the detainee was placed, the toilet was blocked, the mattress on the bed where the prisoner slept had no sheets at all, but the cell had sufficient light and no moisture. The same conditions of accommodation were also found in the case of prisoner G. A., who was also punished with the disciplinary measure of solitary confinement.

The NPM considers that such cells must meet the criteria foreseen by the Law on Execution of Criminal Sanctions, which stipulates that the room for the execution of the disciplinary measure of solitary confinement should have a space of at least ten (10) cubic meters, sanitary facilities, natural light, drinking water, bedding with sheets, table, chair and heating.

Likewise, regarding the accommodation conditions in prison cells where the disciplinary measure of solitary confinement is imposed, the CPT states that such cells must meet the same minimum standards as those applicable to the accommodation of other prisoners. They should be of adequate size and have natural light, adequate heating and ventilation. The CPT further states that such cells should be at least equipped with a table, adequate chairs, and adequate bedding and sheets.³¹¹

During the visit, the NPM noted that renovations were needed in block 2, as there were cells and dining halls that contained moisture, while showers and toilets were also in poor condition. During the visit it was noted that prisoners use improvised electrical appliances for water heating, which could seriously risk their lives.

The NPM visited block 8 in which new prisoners are accommodated and undergo a basic regime, which lasts up to 28 days. During the visit it was noted that the accommodation conditions in this block were very bad and could be easily compared with degrading, humiliating and inhuman treatment. The NPM expresses serious concern over the fact that part of the block 8 is used as a hospital wing and does not meet the minimum accommodation standards foreseen by the Law on Execution of Penal Sanctions, the Law on Mental Health, the standards set by the Committee European Convention for the

³¹¹ European Committee for the Prevention of Torture, excerpts from 21st General Report published in 2011, for more see: <https://rm.coe.int/16806cccc6>.

Prevention of Torture and other international conventions for the protection of the rights of persons deprived of liberty.

At the High Security Prison (HSP), accommodation conditions are very good, prisoners are placed in cells by themselves, each cell has TV, cells have sufficient natural and artificial light, there is no moisture, and they are equipped with bed, sheet, desk, chair and call system. During the visits of the reporting period, the NPM noticed that floor damages in blocks 1, 2 and at the HSP stationary have not been repaired yet.³¹²

During the visit to Correctional Educational Centre in Lipjan, the NPM concluded that this centre meets all conditions for the accommodation of juveniles. The NPM noted that the rooms where the juveniles stay are large and have sufficient lighting, TV and personal closets. Each room had toilets which were in regular condition, convenient and had warm water without interruption. Moreover, rooms and toilets that were dedicated to people with special needs satisfied the accommodation conditions.

At the Correctional Centre for Women and Juveniles, the NPM during ad-hoc visits noted that there were no renovations in the area where the juveniles are accommodated in order to improve the accommodation conditions. The NPM has recommended to the competent authorities to take action to improve the accommodation conditions at this centre, in the part where juveniles are accommodated.³¹³ During December 2018, the NPM received responses from the competent authorities regarding the improvement of conditions at the Correctional Centre for Women and Juveniles in Lipjan. During the *ad-hoc* visits conducted during November-December 2018, these improvements were also noticed by the NPM team. Blocks A and B now had solar water and were both painted.

The NPM has conducted a general visit (full assessment) at the Detention Centre in Gjilan (DCGj), while the report with recommendations regarding this visit was published on 27 March 2018. The official capacity of the DCGj is 300 persons, but due to technical conditions, lack of inventory and correctional staff, the current operational capacity is 80 people. On the day of the visit, 49 detainees and 25 convicts were accommodated at the DCGj.

During the visit, the NPM noted that part of the road to the DCGj, namely the road to the main gate, is unpaved and in bad condition and can present serious difficulties in the development of the daily activities of this institution. The NPM visited a number of cells and verified whether the accommodation space is in compliance with the standards set by

³¹² Report with recommendation on the visit to the High Security Prison, published on 19 June 2017. For more, see: <https://www.oik-rks.org/en/2017/06/09/report-of-npm-related-to-the-visit-in-high-security-prison/>

³¹³ Report with recommendations on the visit to the Correctional Centre for Women and Juveniles, published on 20 December 2016, see: <https://www.oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>

the European Committee for the Prevention of Torture.³¹⁴ Also, Law No. 04/L-149 on the Execution of Penal Sanctions provides that each prisoner should have 4m² of living space per person in every multi-occupancy cell.³¹⁵ During the visit, the NPM noted that the cells in which detainees and prisoners are accommodated, in terms of size, go beyond the minimum standard and are in compliance with the standards established by the European Committee for the Prevention of Torture.

The cells accommodating prisoners have sufficient lighting, no moisture, and also have adequate heat and cleanliness. Each cell accommodates one or two prisoners. Each cell is equipped with TV.

During the reporting period, the NPM published the report with recommendations on the visit to the Detention Centre in Prizren. The official capacity of this institution is 92 persons, while during the NPM's visit there were 100 prisoners, of whom 22 were convicted. During the visit to the Detention Centre in Prizren (DCP), the monitoring team was informed that the construction of a new detention centre in Prizren is planned, but the procedures have stagnated and no progress has been made in this regard. Concerning this, the NPM was officially informed by the Ministry of Justice on 27 February 2018 that it has applied for the construction of detention centres in Prizren and Peja under the Western Balkans Investment Framework in the social sector. According to this announcement, the Ministry of Justice will continue to seek funds from the Government or donors for the implementation of this project.

The NPM visited a number of cells to verify whether the accommodation space is in accordance with the standards set by the European Committee for the Prevention of Torture³¹⁶ and the Law on Execution of Criminal Sanctions.³¹⁷ During the visit, the NPM noted that in some cells, due to lack of space, some detainees and convicts slept on the floor in old mattresses and without adequate sheets.

On this occasion, the NPM concluded that the DCP faces overcrowding, which should be addressed as soon as possible so that it can provide accommodation space in accordance with the standards set by the European Committee for the Prevention of Torture and by Law No. 04/L-149 on Execution of Criminal Sanctions. Regarding this situation, the NPM recommended to the Ministry of Justice that actions be taken so that the number of prisoners is in accordance with the official capacity of the DCP.

³¹⁴European Committee for the Prevention of Torture, Living space per prisoner, see: <https://rm.coe.int/16806cc449>.

³¹⁵Law No. 05/L-129, Article 3 of Law on Amending and Supplementing Law No. 04/L-149 on Execution of Criminal Sanctions.

³¹⁶European Committee for the Prevention of Torture, Living space per prisoner, see: <https://rm.coe.int/16806cc449>.

³¹⁷Law No. 05/L-129, Article 3 of Law on Amending and Supplementing Law No. 04/L-149 on Execution of Penal Sanctions.

The Ministry of Justice informed the Ombudsperson that the Kosovo Correctional Service (KCS) has accepted the new facility of the Detention Centre in Prishtina, which will soon begin to function and will affect the reduction of overcrowding and will provide accommodation space to the prisoners in accordance with the standards outlined above. However, the NPM notes that until now the Detention Centre in Prishtina has not yet been functionalized.

In addition, in the two cells where the detainees were accommodated at the DCP, the toilets had no door and thus the privacy of detainees was not respected at all.³¹⁸ Rule 15 of the Mandela Rules, adopted by the General Assembly of the United Nations on 29 September 2015, stipulates: “*The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner*”. Regarding this issue, the People's Advocate recommended that appropriate measures be taken to respect the detainees. On 30 December 2018, the DCP Directorate informed the NPM that there was no overcrowding and that the two cells described above are designed for only one person. They now accommodate only one prisoner.

While the cells were generally warm, they had sufficient lighting, there was generally no moisture, and the showers were in good shape. In addition, the rooms accommodating the prisoners were clean, had natural light and ventilation. However, the NPM concluded that cells generally need to be whitewashed. The DCP Directorate informed the NPM that this recommendation was implemented and that the whitewashing of the cells is almost complete. The NPM, through follow-up visits, will verify the implementation of the recommendations. During the visits to the correctional and detention centres, the NPM noted that the detainees lack space for the storage of necessary personal items. The NPM, through recommendations reports, recommended to the competent authorities to improve this gap and provide prisoners with adequate space to store their personal belongings. So far, the NPM has not seen any improvements in this regard.

At the Detention Centre in Lipjan, the NPM noted that block B was completely renovated, while in other parts of the Centre, regarding accommodation conditions, the situation remains the same as noted in the NPM's report on the visit to Detention Centre in Lipjan, published on 21 December 2016.³¹⁹ The NPM considers that the competent authorities have partially implemented the recommendation regarding the accommodation conditions. However, it should be noted that the closure of this centre is expected for a long time and the detainees will be transferred to the Detention Centre in Prishtina.

³¹⁸European Prison Rules, Article 18.1.

³¹⁹ Report with recommendation on the visit to the Detention Centre in Lipjan published on 21 December 2016, for more, see: <https://www.oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>.

Regarding the accommodation conditions at the Detention Centre in Peja, the NPM visited a number of cells and found that the accommodation, lighting and ventilation areas were not in compliance with the standards set by the CPT and with the Law on Execution of Penal Sanctions. The NPM noted that in Block B, shared baths are damaged, walls have moisture, smell of mold, sanitary facilities are damaged. During the visit, the NPM noted that in some cells, due to lack of space, some detainees and convicted persons slept on the floor in an out-dated and moldy mattress without adequate cover. The DCP was visited twice by the CPT. As far as accommodation conditions are concerned, the CPT, in the report on Kosovo's visit in 2007, describes these conditions as very bad and concludes that the size of the cells is not in line with the standards set by this committee. In addition, the report states that cells do not have proper ventilation and illumination.³²⁰

Further, the CPT in the report on Kosovo's visit in 2015 found that accommodation conditions did not improve and generally remain as noted in the 2007 visit report. Moreover, during this visit, CPT was announced by the relevant authorities of the Republic of Kosovo that the closure of this centre is planned. The CPT, in the report in question, encouraged the authorities of the Republic of Kosovo to close the Detention Centre in Peja as soon as possible.

The CPT emphasizes in the report: *“For as long as the existing premises remain in use, efforts should be made to ensure that sanitary facilities are kept in an acceptable state of repair and that prisoners are offered at least 4 m2 of living space per person in all multi-occupancy cells.”*³²¹

The European Prison Rules 18.1 and 18.2 require authorities to provide to prisoners accommodation conditions which respect human dignity, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and to floor space, cubic content of air, lighting, heating and ventilation.

In addition, Rule 13 of the Mandela Rules endorsed by the United Nations, requires that: *“All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”*

The Detention Centre in Mitrovica (DCM), in addition to a detention centre, also serves to accommodate long-term prisoners. During the reporting period, the new facility was functional and used as office space, for free activities in printing, woodworking and machinist workshops, and for visits. The printing shop is new and functional, used for printing shirts and other items.

³²⁰ CPT Report on its visit to Kosovo in 2007, published in 2009, at: <https://rm.coe.int/168069727c>.

³²¹ CPT Report on its visit to Kosovo in 2015, paragraph 41. For more, see: <https://rm.coe.int/16806a1efc>.

The accommodation conditions in the DCM are generally good; the facility has been renovated during the previous years, so there are no significant shortcomings regarding accommodation conditions. Showers are allowed to prisoners every other day, while in special situations they can shower even more often, hot water supply is regular and prisoners' rooms have cable TV.

Food

Regarding the quality and quantity of food, the NPM has received complaints from prisoners at CCD. Complaints related to this matter refer in many cases to the quality and quantity of food served to prisoners at breakfast and dinner. During the visit to Correctional Educational Centre Lipjan, the NPM received complaints from minors regarding the quality and quantity of food. The UN Standards for the Protection of Juveniles Deprived of their Liberty stress that every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

The NPM notes that Law No. 04/L-149 on Execution of Criminal Sanctions stipulates that a convicted person has the right to food suitable for him or her to maintain good health and strength in three (3) meals each day, which must be varied and nutritious.

The food provided to a convicted person shall take into account his or her age and health, the nature of his or her work, the season and climatic conditions and, as far as possible, his or her religious and cultural requirements. Likewise, this law stipulates the obligation to provide a convicted person with food ordered by a physician.³²² During the visits to other correctional and detention centres, the NPM did not receive complaints from prisoners regarding the quality and quantity of food. During its visits, the NPM has noted that from time to time they lack dietary food ordered by the competent physician for certain prisoners.

Through reports with recommendations, the NPM reminded the competent authorities of the obligation to provide dietary packages for prisoners and detainees for whom this is necessary for health reasons³²³. In their reply, the competent authorities have noted that from time to time they lack adequate food due to tendering and contract award procedures with the economic operator.

Regime

Regarding the regime, the NPM has noted that in the CCD, according to the Directorate, there are about 350 convicts engaged at work. The engagement at work is greater during

³²² Law on Execution of Penal Sanctions, Article 39, paragraphs 1 and 2.

³²³ Mandela Rules, Article 22. European Prison Rules, Article 22.2. Law on Execution of Penal Sanctions, Article 39.1.

the summer season. Convicted persons are usually engaged at work in the kitchen, cleaning and the centre's farms. The convicted persons may move freely within the establishments where they are accommodated and are entitled to 3 hours of walking per day during summer season, while 2 hours per day during winter season³²⁴. In addition, within the correctional centre, function 3 workplaces, which in fact are also vocational training centres, where training on welding, construction, machinery, carpeting, technical maintenance, water and electricity installation are organised. Courses whose duration is 3 months are organised in these workshops.

There is a gym, basketball and football court within CCD establishment. The basketball court at the moment is not used since it needs changing damaged windows and install window meshes, which would prevent damaging the windows caused as a result of thrown balls. A part of the hall, such as toilets and showers were renovated and are in very good condition, while in the other part, works were stopped since the work executor did not comply with technical conditions. The sports hall is dysfunctional. Therefore, the situation in these facilities remains the same as during the visit in November 2016.

Moreover, the NPM considers that the establishment of the economic units would increase the activities and engagements of a larger number of prisoners. The establishment of economic units is also foreseen by the Law on Execution of Penal Sanctions³²⁵. Despite the efforts of the CCD's Directorate, the NPM thinks that in order to achieve the proper re-socialization and rehabilitation of prisoners, genuine activities should be stepped up and as many rehabilitation programs as possible available to a large number of prisoners.

In the HSP, the prisoners can move freely within the blocks where they are located during the specified time, e.g. the door is left open until 16:00 in the afternoon to prisoners under basic and standard regime, until 18:00 to prisoners under advanced regime, and economic units until 19:00 to protected witnesses. Prisoners also go out for a walk 2 hours a day. For the development of sports activities and walks, walls and terrains for sporting and walking activities, which are constructed of white-coloured concrete, remain a concern and cause a blinding reflection of the sun, especially during the summer season. The competent authorities have claimed that such a situation is a problem for the development of sports activities and hiking, but no solution has yet been found. Regarding physical exercise, the NPM visited the facility where prisoners can exercise fitness three times a week. The facility provides good conditions and sufficient equipment for physical exercise. Fitness equipment is also available in every block.

Prisoners engage in work related to maintenance of premises and work in the kitchen. Engagement at work is greater during the summer season. During the NPM's visit in

³²⁴ According to Article 37 of the Law on Execution of Penal Sanctions, the convicts are entitled to at least two hours daily outside closed premises.

³²⁵ Law on Execution of Penal Sanctions, Articles 212-214.

March 2017, 80 prisoners were employed, while during the NPM's visit on 14 February 2018, there were 68 prisoners employed, two workshops were still inoperative. Workshops and professional training could be organized in these workshops.

Regarding the regime for detainees, it remains poor because the detainees' activities are subject to permission from the competent court. Even through this report, the NPM encourages competent authorities to increase out-of-cell activities at the HSP for detainees to the extent possible. The CPT, in the reports on visits to different states, considers that the longer the period of detention, the more developed the regime should be.³²⁶

During the visit to the Correctional Educational Centre for Juveniles in Lipjan (CECJL), the NPM was informed by juveniles that they moved freely in the premises of the facility and were allowed at least 3 hours of walking, which is in accordance with Article 139 of the Juvenile Justice Code.³²⁷ The NPM has not received any complaints regarding observance of this right. The CECJL possesses a computerized computer cabinet, a library that is enriched with various titles, the novel, the printing house's cabinet, and also equipped with appropriate printing machines for shirts, t-shirts; the dressmaking and hairdresser salon, which are also equipped with adequate working tools. All machinery and equipment are donations from various donors, such as: German HELP, UNICEF, etc.

The NPM was informed that the information cabinet was functional. An instructor for vocational training, who is licensed, is engaged. Juveniles attending the course are provided with certificates from the National Centre for Vocational Training. The monitoring team was informed by CECJL's managers that the courses started in April 2018, totalling 6 application-level levels, while the course lasts 5 to 6 months. In December 2018, the deputy director of the CECJL announced to the NPM that the hairdressing course has started, where they have engaged the competent person to take a course once a week for the juveniles.

The CECJL has a sports hall and fitness room, which is also equipped with all the necessary tools. The NPM, during the visit, found that sports and fitness halls are used by juveniles, but they do not have a coach engaged in these sports activities. Also, the tailoring and printing cabinet are not in place, as they do not have engaged instructors in these areas. The NPM encourages the authorities to enable CECJL to engage professional

³²⁶ Report of the European Committee for the Prevention of Torture on its visit to Kosovo from 15 to 22 April 2015, published in 2016, see: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a1efc>. Report of the European Committee for the Prevention of Torture on its visit to Georgia in 2014, published in 2015 at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806961f8>.

³²⁷ Article 139, paragraph 1, of the Juvenile Justice Code emphasizes that a minor has the right to spend at least three (3) hours daily in open environment within the institution.

and adequate instructors for tailoring, printing, and fitness. The NPM was informed that 12 juveniles attended secondary school at the Correctional Centre in Lipjan (CCL).

According to the announcement of social workers, the majority of juveniles at the CECJL are engaged in paid work. From the controlled documentation, it emerges that out of the 20 juveniles accommodated at the CECJL, 19 of them are engaged in cleaning and kitchen work.

In the Correctional Centre for Women and Juveniles in Lipjan, high schools and lower secondary schools operate within the public education system. In 2016, the NPM conducted a full evaluation visit and, on 20 December 2016, published the report with recommendations. In the past, the school in this centre faced difficulties in ensuring the progress of teaching in the absence of teachers. In addition, there were difficulties in providing adequate MEST certificates for education completion.

As regards the educational problems of the juveniles and teaching progress at this Centre, the Ombudsperson published a recommendation report which emphasised the importance of respecting the right to education, provided by the Constitution of the Republic of Kosovo and other international conventions on protecting the rights of prisoners. During the visits carried out in 2018, NPM was informed that education is developed normally and certificates for completion of education are issued regularly.

As regards the prisoners' right to education, during the reporting period, NPM published a recommendation report on the prisoners' right to university education.³²⁸ Pursuant to the concerned report, NPM recommended the competent authorities to issue a sub-legal act in line with the Law on Pre-University Education and Law on Execution of Penal Sanctions, which would specify the method of enforcing the right to university education for minor and adult persons serving a sentence. All categories of convicted and detained persons in this Centre shall enjoy the right to walk twice a day for a period of one hour, while juveniles are entitled to such right three times a day.

This Centre provides vocational training sessions on hydro-installers, electric-installers, and construction services. From the statistics submitted by the directorate, it is indicated that programs, courses, and various training sessions such as EQUIP program, and sport and cultural activities are organized. While, in the case of accommodated women, NPM has noted that they are mostly engaged in cooking and cleaning.

Juveniles may engage at work only under the permission of the competent court, therefore activities for detained juveniles are limited. Similar to previous reports, NPM encourages authorities to perform more activities, as far as this is possible, outside the cell also for detainees. Furthermore, the longer the detention period is, the richer the

³²⁸ Report with recommendations, C.no. 493/2018 E.B against the Ministry of Education, Science and Technology and Kosovo Correctional Service, published on 23 November 2018. See at: <https://www.oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>.

regime should be. During this year, a theatre therapy through painting was organized in the Centre in cooperation with CARITAS Kosovo, and such activities are organized once a week. CARITAS Kosovo at CCL has organized vocational training sessions on tailoring and hairdressing, for which has also granted certificates.

During the visit to the Detention Centre in Prizren (DCP), NPM noted that detainees can go on open space (for a walk) twice a day for a period of one hour.³²⁹ The convicted persons can go on an open space all the time. According to the Directorate, 4 detainees are engaged at work. The detainees, besides going on an open space, spend the rest of the day in their cells, which are equipped with TV. There are no halls and equipment for sports and gym activities. The prisoners' ability to move is limited, as space in the DCP does not provide such an environment. Within the DCP there is also a library, which needs more books with scientific and novel titles.

During the concerned visit, NPM noted that the detainees' regime remains poor, despite the effort of the Directorate to provide more activities for the detainees. The NPM considers that the longer the period of detention is, the richer the regime should be.

At the Detention Centre in Gjilan (DCGj), the NPM was informed that around 16 prisoners were engaged in work at the time of the visit. The detained and convicted persons can go on an open space (for a walk) twice a day for a period of an hour. Generally, the prisoners may engage at works such as cleaning, cooking, laundry and carry out certain temporary duties. Otherwise, for NPM remains concerning the fact that DCGj has no recreational, cultural, sports or rehabilitation and re-socialization program for the prisoners. NPM has also noted that sport areas are not equipped with the necessary equipment for exercising sports and recreational activities. Law No. 04/L-149 on Execution of Penal Sanctions and other international acts relevant to the protection of the rights of prisoners determine the obligations of the authorities to provide genuine activities and rehabilitation programs for prisoners.³³⁰

The DCGj also possesses a library with different books in Albanian and Serbian but, according to the Directorate, it was not equipped with new book titles and those available belong to the pre-war period.

³²⁹ Mandela Rules, Article 23. European Prison Rules, Article 27.1. Standards of the European Committee for the Prevention of Torture, paragraph 48, published in 2015. According to Article 37 of the Law on Execution of Criminal Sanctions, the convicted persons are entitled to spend two hours daily outside.

³³⁰ Article 88.1 of the Law on Execution of Penal Sanctions: "*Cultural, recreational and sport activities, as well as other activities aimed at the development of the convicted person's personality, shall be organized inside correctional facilities with the assistance of public and private entities interested in reintegrating convicted persons in the community.*" Mandela Rules, Rule 104. European Committee for the Prevention of Torture, 11th General Report, paragraph 32, published in 2000: "*The activities provided to the prisoners should be as diverse as possible (education, sport, work of vocational value, etc.).*" European Committee for the Prevention of Torture, part of the 3rd General Report, paragraph 43 [CPT / Inf (93) 12]. European Prison Rules, 25.1: "*The regime provided for all prisoners shall offer balanced programme rehabilitation activities.*"

In Detention Centre in Lipjan (DCL), the detainees are engaged in cleaning works for maintaining the facility and in kitchen works. They are allowed an hour walk in the morning and in the afternoon during summer, whereas in winter this schedule is reduced to 45 minutes. During this period, the detained and convicted persons are allowed to engage in sports activities, such as basketball, football, and jogging, while the gym hall is active only in winter. However, the engagement of the detainees in other activities may depend on the permission of the competent court. Article 199 of the Criminal Procedure Code stipulates: *“Detainees on remand may perform work that is necessary to maintain order and cleanliness in their area. To the extent that the institution has the facilities and on condition that it is not harmful to the conduct of criminal proceedings, detainees on remand shall be allowed to work in activities which suit their mental and physical abilities. The pre-trial judge, single trial judge or presiding trial judge shall decide on this in agreement with the management of the detention facility.”*

DCL’s Directorate informed the NPM that 10 convicted persons and 5 detained persons are currently engaged in work.

As regards the detainees' activities and engagement in work in the Detention Centre in Peja, during its general visit on 4 October 2018, the NPM noted that 8 detainees and 3 convicted persons are currently engaged in work in this Centre. The detainees may go on an open space (walking) twice a day for a period of 1 hour. Detention Centre in Peja has a small space for walking, where the only thing placed there is a table tennis table. DCP cannot provide the detained and convicted persons with other activities besides walking and watching TV in the cell. Thus, the detained and convicted persons spend most of the time in their cells. Furthermore, in the case of detainees, the permission of the competent court is often needed in order to engage them in work or in another specific activity.

Regarding the regime at the Detention Centre in Mitrovica (DCM), the prisoners are engaged in kitchen and laundry works. As for activities, the gym hall is available to prisoners, while gym tools and football accessories are located in the yard. During this period, there was an activity of external psychologist support in DCM, led by the Council of Europe. Nevertheless, there were no courses or trainings in the DCM during this reporting period.

Contact with the outside world

Applicable legislation³³¹, in the case of convicted persons, stipulates that convicted prisoners have unlimited right of correspondence (subject to certain exceptions), are entitled to a visit per month, which lasts for at least one hour, as well as a visit from children and their spouses at least once every three (3) months, for minimum of three (3) hours. In addition, they have the right to place telephone calls.

³³¹ Law on Execution of Penal Sanctions, Articles 62-65.

Regarding phone calls, the Administrative Instruction on House Rules in Correctional Institutions³³² stipulates that the convicted persons may place phone calls to close family members and other persons. Under this Instruction, convicted person's or detainee's phone call may not last be more than fifteen (15) minutes. During the visits in correctional and detention centres, NPM has not received complaints by the detained and convicted persons with regard to this right.

In the case of detainees, Article 200 of the Criminal Procedure Code of Kosovo stipulates that the detainees may receive visits "*within the limits of the detention centre rules,*" based on the permission of the pre-trial judge and upon his/her supervision. Further, the Code stipulates that the correspondence and other visits shall be subject to the decision of the pre-trial judge.

The Ombudsperson or his/her representative may visit detainees on remand and may correspond with them without prior notification and without the supervision of the pre-trial judge, single trial judge or presiding trial judge or other persons appointed by such judge. Letters from detainees on remand to the Institution of the Ombudsperson of Kosovo may not be examined. The Ombudsperson and his/her representative may communicate confidentially with detainees on remand orally and in writing.

In the case of a foreign national, he/she shall be provided with the opportunity to contact a representative of the liaison office or diplomatic mission of his/her State of nationality in writing or by telephone.³³³ During the reporting period, NPM did not receive complaints from the convicted and detained persons regarding the right to contact with the outside world.

Health care in correctional and detention centres

Health services in correctional and detention centres are provided by the Ministry of Health, namely Prison Health Department (PHD). Since 2003, this service has been divided from the Ministry of Justice (MoJ), fulfilling an important international standard on the rights of the prisoners, which requires that health services in prisons be part of public health services. In addition to this, PHD, in a close cooperation with Council of Europe experts, drafted the Standard Operating Procedure approved by the Ministry of Health. This document is a concrete guideline for health workers upon the admission of the prisoner.

Health services in prisons and detention centres remain at a good level and meet the minimum international standards on the rights of prisoners. Certain health units of PHD encounter difficulties due to the lack of adequate working conditions, and due to the lack of infrastructure at some correctional and detention centres.

³³² Administrative Instruction on House Rules in Correctional Institutions, Article 54.

³³³ Law on Execution of Penal Sanctions, Article 33, paragraph 1.

During the visit at the Detention Centre in Prizren, NPM noted that there is a lack of space for health services, which does not meet even the minimum needs. There is a room available, which can be used for primary health care by the prison physician, nurses, and psychologist whenever there are cases to be treated, as there is a permanent space for the health workers to stay there.

Lack of a particular space for the psychologist, who provides psychological services in cases with various problems such as: suicide attempt, self-injuries, emotional problems, and tobacco, alcohol and drug users, makes it difficult for the psychologist to work as well as does not provide a comfort environment for the prisoners in need for psychological services.

In the Correctional Centre in Dubrava, there is a functional prison hospital which provides health services to prisoners. The NPM, in report to CCD³³⁴, published on 26 January 2017, recommended the Ministry of Health (MoH) to engage one more psychologist, since it is impossible to cover the entire centre with just one psychologist, and also to engage a regular dentist and psychiatrist. During the last monitoring visit, it was ascertained that CCD has engaged only one full-time psychologist. Recommendations on engaging a regular dentist and psychiatrist have been implemented since a dentist and psychiatrist started a full-time job in CCD during December 2018.

NPM is concerned regarding the fact that in the Correctional Centre in Dubrava, a part of the block number 8 is used as annex to the hospital. NPM ascertains that the block number 8 does not meet the minimum accommodation standards foreseen by Law on Execution of Penal Sanctions, Law on Mental Health, standards determined by the European Committee for the Prevention of Torture and other international Conventions on protecting the rights of persons deprived of liberty.

During this visit, NPM also noticed that the hospital still has no elevator through which the convicted persons would have access to the second floor. NPM noticed that the hygiene in the hospital rooms, in the part where patients are being held for psychiatric treatment, was not at a proper level. Likewise, the beds in the hospital rooms and the blankets are out-dated and unclean. On 29 May 2018, the Prison Health Department informed the NPM that they were equipped with a new ambulance.

Although the prison hospital was earlier renovated, the NPM noted that the infrastructure was significantly damaged (floor tiles and inventory in the hallway where the patients eat), while the space designated as a kitchen for feeding patients hospitalized is not used. The NPM considers that the renovations of the prison hospital are necessary.

The hospital is equipped with modern equipment and can provide adequate medical services for prisoners. In general, NPM finds that the staff and equipment available at the

³³⁴ <https://www.oik-rks.org/en/2017/08/15/first-annual-report-of-national-preventive-mechanism-against-torture/>; <https://www.oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>.

prison hospital meets the standards for providing adequate medical services, but space where persons with mental health problems as well as those with organic illnesses are accommodated is not suitable.

During the visit to Detention Centre in Gjilan, the NPM has ascertained that the premises visited where medical services are provided are in general of a high standard. The available health care personnel are sufficient. During the visit, the NPM did not receive any complaints from prisoners regarding the health treatment at this detention centre.

During the visit to the Detention Centre in Peja (DCP), the NPM did not receive complaints from detained and convicted persons related to health care. The NPM has noted that medical services in the Detention Centre in Peja are provided in accordance with the requirements and the needs of the detainees. However, the infrastructure where the medical services are provided does not meet the minimum requirements; there is no natural light, no special room for patient visit or application of therapy. Hygiene was maintained by the nurses themselves. The transport of prisoners to receive medical services to other health institutions outside the DCP is carried out by Correction Service vehicle.

With regard to medical services in Detention Centre in Mitrovica (DCM), two nurses are available 24 hours for the prisoners, while general physicians, psychiatrists, and psychologists are available twice a week and ready as the call may be. DCM is encountering difficulties when it comes to the hospitalization of prisoners. In such cases, Serbian and non-Albanian prisoners do not welcome the hospitalization at UCCK and are therefore hospitalized at the North Mitrovica Clinical Centre. In such cases, there is a constant issue regarding the formal part of their accommodation related to health insurance, cost payment, etc. This problem has been overcome since the North Mitrovica hospital expressed an understanding in the interest of prisoners' health protection. So far, this hospital has not rejected the hospitalization of prisoners and the provision of treatment.

The importance of medical examinations upon the admission of prisoners

The European Committee for the Prevention of Torture, in the report on its visit to Kosovo in 2015, emphasized the essential importance of medical examinations, especially in cases of newly-arrived prisoners or detainees not only for identifying communicable diseases and preventing suicides but also for the contribution that is given in terms of preventing torture through proper identification of injuries.

The newly-arrived prisoner shall, in accordance with the Standard Operating Procedure of the PHD, be initially examined by the nurse and then by the physician of the correctional or detention centre, within 24 hours upon the admission. Moreover, Law No. 04/L-149 on Execution of Penal Sanctions stipulates the obligation to provide newly-received prisoners with a medical examination within 24 hours upon the admission.

Medical confidentiality

In general, the NPM has noted that health services in the correctional and detention centres are provided without the presence of correctional officers, except in cases where the physician considers that the presence of correctional officers is necessary. The European Committee for the Prevention of Torture constantly stresses out the importance of the non-presence of custodial officers when prisoners receive medical services, as this would undermine the physician-patient relationship.³³⁵ The medical service confidentiality is also foreseen in Article 25 of the Administrative Instruction on House Rules in Correctional Institutions and Standard Operating Procedure.

Mental health at correctional and detention centres

During the visits to the correctional and detention centres, the NPM team encountered some prisoners with chronic psychiatric disorders. They interviewed several prisoners at CCD in the block 8, where two of them were with chronic psychiatric disorders and one of them was in solitary confinement for a period of three years. This situation is in violation of Article 6, paragraph 1.10 of Law No. 05/L-025 on Mental Health³³⁶.

Article 43, paragraph 2 of the Law No. 04/L-149 on Execution of Penal Sanctions states “*a convicted person who cannot be offered appropriate medical treatment in the correctional facility shall be sent to a prison hospital, psychiatric institution or another health care institution.*”

Article 174, paragraph 1 of the Law on Execution of Penal Sanctions determines: “*The measure of mandatory psychiatric treatment upon detention is executed in the health institution or in another special institution, that is located in the permanent residence or temporary location of the defendant, or if such a location is not located in that place, in the closest one with the place where the defendant has his permanent residence or his/her temporary location or in the place where the criminal proceedings took place.*”

Article 175, paragraph 1 of the Law on Execution of Criminal Sanctions states: “*If the person towards whom the measure of mandatory psychiatric treatment in detention is rendered, is in freedom, the court orders its transfer in the institution of health care,*” while paragraph 3 of the same article states that the person towards him this measure is applied has the same rights and obligations as the person that is serving an imprisonment sentence, unless the treatment needs foresee differently.³³⁷

Also, Article 509, paragraph 3 of the Criminal Procedure Code stipulates that: “*If the defendant is already in detention on remand and is subsequently determined to have been*

³³⁵ European Committee for the Prevention of Torture, report on its visit to Kosovo in 2015, published in September 2016, paragraph 65. For more, see: <https://rm.coe.int/16806a1efc>.

³³⁶ Article 6, paragraph 1.10 of Law No. 05/L-025 on Mental Health stipulates “the right to provide appropriate living, hygienic, nutritional and security conditions.”

³³⁷ Law No. 04/L-149 on Execution of Penal Sanctions, Article 175, paragraphs 1 and 3.

in a state of mental incompetence at the time of the commission of the criminal offence, the court shall order the defendant to serve the detention on remand in a health care institution if he or she currently has a mental disorder.”

Pursuant to the Law on Mental Health, the Institute of Forensic Psychiatry is an organizational unit of the Hospital and University Clinical Service in Kosovo (HUČSK). Under the applicable law, it provides tertiary services throughout the country (the only one in Kosovo)³³⁸. The KIFP accommodates perpetrators who have committed a criminal offense while in a state of mental incompetence or substantially diminished mental capacity, who are subject of a competent court's order for a mandatory psychiatric treatment³³⁹, as well as persons who are subject to a court order for psychiatric assessment for a ruling on custody in a health care institution.³⁴⁰ NPM ascertains that the number of beds in KIFP is not sufficient, while the C Department with 12 beds is not sufficient for the treatment of prisoners. Such a concern has been expressed also by the PHD and KIFP Director.

During the visits to the Correctional Centre for Women and Juveniles, the NPM has also encountered cases of mental disorders, where, according to the medical staff, it is difficult to manage the acute phase cases. This poses a problem as there is no space for the treatment of juveniles with mental disorders. KIFP has no specific spaces for the treatment of women and juveniles.

CPT emphasizes that a mentally ill prisoner should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system³⁴¹.

According to the PHD director, safe rooms in the Psychiatry Clinic should be functionalized to treat cases with mental disorders and, according to them, they are working on this. During the visit to the Psychiatric Clinic³⁴², the NPM ascertained that there is no specific department on treating the elderly, children and adolescents. However, treatment of juveniles and elderly people is a common practice as they are somehow forced to do that due to the fact that juveniles are not accepted in the paediatric department and the elderly do not have any other hospitalization spaces. Regulation No. 127/2015, dated 21.12.2015, on the admission and treatment of persons with mental disorders at HUČSK (Article 11), allows the hospitalization of a 16-year-old person.

³³⁸ Law No. 05/L-025 on Mental Health, Article 13, paragraph 1.2.

³³⁹ Criminal Code of Kosovo, Article 89.

³⁴⁰ Criminal Procedure Code of Kosovo, Article 508, paragraph 4.

³⁴¹ CPT norms, part from the 3rd General Report. [CPT/Inf (93) 12], paragraph 43.

³⁴² <https://www.oik-rks.org/en/2018/10/26/report-with-recommendations-psychiatric-clinic-of-the-university-clinical-center-of-kosovo/>.

Law No. 05/L-025 on Mental Health entered into force in December 2015 and aims to protect and promote mental health, prevent the problems associated with it, guaranteeing the rights and improving the quality of life for persons with mental disorders. This law defines the obligation of competent ministries to issue relevant sub-legal acts. Pursuant to Article 28, paragraph 4 of the Law on Mental Health: *“The Ministry of Health in cooperation with the Ministry of Justice shall propose to the Government for adoption the sub-legal act, where they define the rules of organization and functioning of mental health services in institutions for the execution of penal decisions.”* The lack of sub-legal acts is another problem to the treatment of cases. During the reporting period, the Ombudsperson’s NPM recommended the competent authorities to issue sub-legal acts as foreseen by the Law on Mental Health.

Complaint procedures in the correctional and detention centres

The effective complaint filing system is a fundamental safeguard against mistreatment in prisons and detention centres. Persons placed in such centres must have the opportunity to file a complaint within the prison or detention centre where they are accommodated and confidentially access the relevant authority.

Article 91 of Law No. 04/L-149 on Execution of Penal Sanctions specifies in detail the procedure according to which the detained and convicted persons shall be entitled to address a complaint or petition to the director of a certain institution of KCS. The procedure includes the deadlines for receiving a response by the director and the opportunity to address a complaint to a higher authority, which is the General Directorate of KCS and the Minister of Justice.³⁴³

NPM has noted that the complaint boxes placed by Kosovo Correctional Service and boxes placed by Prison Health Department are available to the prisoners. Each institution has also placed the complaint boxes of the Ombudsperson Institution, which can be opened only by the staff of this institution, thus ensuring confidentiality in filing a complaint.

During the reporting period, the European Council and KCS held joint workshops on drafting the procedures and forms for filing a complaint, which will be drafted under the direct supervision of Council of Europe experts.

During the reporting period, the NPM has received complaints filed by the prisoners of CCD, claiming that the Directorate does not respond to their complaints and requests. These claims were rejected by the Directorate. NPM has not received complaints by the detained and convicted persons in other correctional and detention centres regarding the

³⁴³ Article 91, paragraph 4 of the Law on Execution of Penal Sanctions stipulates that: The director of the correctional facility will respond to the complaint filed in a time period of fifteen (15) days, whereas the Head Office of the Correctional Service in a time period of thirty (30) days. In a written complaint a response in the written form will be issued.

issue of filing a complaint or delays to review their complaints within the legal deadline. Through the recommendation report on the visit to CCD and the direct contacts, NPM reminded the competent authorities of their obligation to respond to the complaints and requests of prisoners. It is important to respond to the filed complaints of prisoners regardless of the nature of the request. This obligation of authorities is determined by Law No. 04/L-149.

Recommendations issued to the competent authorities after visits to correctional and detention centres

Recommendations for the Correctional Centre in Dubrava addressed to the Ministry of Justice:

- Notify Ombudsperson's NPM if the secondary legislation on fighting corruption has been adopted (Not implemented).
- Improve food quality and quantity (Implemented).
- Provide dietary food to the prisoners under the competent physician recommendation (Implemented).
- Every cell in which prisoners are placed, against whom the solitary confinement as a disciplinary measure has been imposed, shall be in accordance with the Law on Execution of Penal Sanctions and the recommendations of the European Committee for the Prevention of Torture. (Implemented).
- Conduct the necessary renovations based on conclusions of this report, in particular, at block 8 (Implemented).
- Provide kitchen with adequate equipment, according to the relevant assessment (Implemented).
- Undertake specific steps in order to stop using the improvised electrical equipment (Pending implementation).
- NPM reiterates the recommendation that the prisoners be supplied with lockers for placing their items (see report with recommendations, 26 January 2017) (Pending implementation).
- NPM reiterates the recommendation that the sports hall be functionalized. (see report with recommendations, 26 January 2017) (Pending implementation).
- Functionalize the economic unit (Pending implementation).
- NPM reiterates the recommendation that an elevator is installed in the prison hospital, which would enable prisoners with disabilities the access to its second floor (see report with recommendations, 26 January 2017) (Not implemented).
- Make necessary renovations at the hospital (see paragraph 40 of this report) (Pending implementation).
- Engage the necessary correctional staff according to needs assessment (Pending implementation).

- NPM reiterates the recommendation to install the missing security cameras, and the technical possibility of storing data for a longer period (report with recommendations, 26 January 2017) (Pending implementation).
- NPM reiterates the recommendation to amend/supplement the LEPS and Administrative Instruction on House Rules in Correctional Institutions, where it is foreseen the request for a written opinion of the physician, prior to imposing the disciplinary measure to a person (see report with recommendations, 26 January 2017) (Pending implementation).
- Increase the number of social workers based on the number of prisoners in CCD (Pending implementation).
- Provide CCD with all equipment and materials necessary for everyday work (Pending implementation).
- Address the needs of correctional officers as regards work conditions and equipment (Pending implementation).
- Notify NPM regarding the issue of using pepper spray and its expiry date (see paragraph 67 of this report) (Implemented).

Recommendations for the Correctional Centre in Dubrava addressed to the Ministry of Health:

- NPM reiterates the recommendation to the Ministry of Health to hire a dentist on regular basis (see report with recommendations, 26 January 2017). (Implemented).
- NPM reiterates the recommendation to the Ministry of Health to hire a psychologist on regular basis (see report with recommendations, 26 January 2017). (Implemented).

Recommendations for the Educational-Correctional Centre in Lipjan addressed to the Ministry of Justice and Kosovo Correctional Service:

- Provide ample and appropriate food to juveniles in accordance with calories required for juveniles' growth and development (Pending implementation).
- Conduct mandatory renovations in the kitchen as well as equip it with necessary kitchen appliances (Pending implementation).
- Increase activities for juveniles as well as functionalize existing cabinets and engage appropriate instructors. (Partially implemented).

Recommendations for the Detention Centre in Prizren addressed to the Ministry of Justice:

- The Ministry of Justice shall notify the Ombudsperson about the planning for the construction of the new Detention Centre in Prizren (Implemented).
- Provide adequate working conditions for medical personnel (Pending implementation).

- The number of detainees accommodated should be in accordance with the official capacity of the DCP, and the issue of overcrowding should be resolved as soon as possible (Implemented).
- Take appropriate measures to ensure that the privacy of detainees is observed (Implemented).
- Paint the cells as needed (Implemented).
- Improve the working conditions of correctional officers (Partially implemented).

Recommendations for the Detention Centre in Gjilan addressed to the Ministry of Justice:

- The Ministry of Justice shall notify the Ombudsperson's NPM regarding the planning for the use of non-residential space in DCGj (Pending implementation).
- Notify the Ombudsperson about the delays in creating a dental chair fitting space (Pending implementation).
- Provide cultural, sport and recreational activities for rehabilitation and re-socialization of prisoners (Pending implementation).
- Pave the unpaved road, which can present serious difficulties to the DCGj to perform its work, in accordance with LEPS, during the winter and precipitation (Pending implementation).
- Supply the DCGj with necessary materials for work (Pending implementation).
- Install security cameras covering the outside part of blocks and the DCGj yard (Pending implementation).
- Functionalize the elevator in the part where the medical services are provided (Pending implementation).

Recommendations for the Detention Centre in Peja addressed to the Ministry of Justice:

- The Ministry of Justice shall notify the Ombudsperson about the claims of the DCP employees that this Centre will be closed down.³⁴⁴ (Pending implementation).
- Create adequate conditions and working space for the medical staff (Not implemented).
- The number of detainees accommodated should be in accordance with the official capacity of the DCP and resolve as soon as possible the issue of overpopulation. (Pending implementation).
- Accommodation conditions, as long as this Centre is in use, shall be in compliance with the minimum standards provided for by the Law on Execution of Penal Sanctions; with the CPT standards and other international standards for the protection of prisoners' rights. (Pending implementation).

³⁴⁴ On October 2018, the Ombudsperson received a complaint from the staff working at the Detention Centre in Peja, claiming that this Centre will be closed down, and staff will be transferred to the Correctional Centre in Dubrava.

Asylum Seekers Centre and Detention Centre for Foreigners

During the reporting period, the NPM visited the Asylum Seekers Centre and Detention Centre for Foreigners and published reports with recommendations. During the visits in these centres, the NPM did not receive any complaints about physical ill-treatment or behaviour of centre officials, including security staff, that would be against the respect of the dignity of asylum seekers and foreigners in detention.

Safeguards against ill-treatment

Article 5 of the Regulation on the Functioning of Asylum Centre³⁴⁵ (hereinafter referred to as the *Regulation*) determines: “*It is prohibited for the Centre staff to discriminate or offend the dignity of asylum seekers based on their race, religion, sex, nationality, membership in a particular social group or political affiliation.*”

Also Article 5, paragraph 2 of the Regulation determines: “*Asylum seekers shall not be subjected to torture and inhuman or degrading treatment*”. Article 6.3 of the Regulation sets out the obligation of the Centre official to inform the asylum seeker about his/her rights and obligations, as well as the asylum procedure, including the possibility of obtaining free legal aid, and the possibility of contacting representatives of UNHCR, or other organizations that deal with the protection of refugee rights, in their language or in a language that they understand.

NPM noted that asylum seekers are informed of their rights in different languages, through leaflets and brochures. Available for the Centre is also the list of MIA translators. Free legal aid, and in many cases the translation is provided by CRPK, a non-governmental organization (Civil Rights Program Kosovo). NPM did not receive any complaints regarding the disrespect of the abovementioned rights. Also, NPM noticed that in all hallways of the Centre are installed security cameras, which constitutes an additional safeguard against ill-treatment.

Whereas, in the case of foreign detainees who are accommodated in the Detention Centre for Foreigners (DCF), the NPM notes that the standards established by the CPT stipulate that detained irregular migrants should, from the very outset of their deprivation of liberty, enjoy three basic rights, in the same way as other categories of detained persons. These rights are: (1) to have access to a lawyer, (2) to have access to a medical doctor, and (3) to be able to inform a relative or third party of one’s choice about the detention measure.³⁴⁶ Based on the provisions of Law No. 04/L-219 on Foreigners of the Republic of Kosovo, a foreigner shall be notified in written form, in one of the official languages and in English, for his/her detainment at the DCF, which shall contain the reasons for the

³⁴⁵ Regulation (MIA) No. 03/2018 on the Functioning of Asylum Centre. Official Gazette of the Republic of Kosovo. See at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18328>.

³⁴⁶ European Committee for the Prevention of Torture, 19th General Report of the European Committee for the Prevention of Torture, paragraph 81, at: <http://hudoc.cpt.coe.int/eng#%7B%22CPTSectionID%22:%5B%22p-standards-inf-2009-27-part-en-3%22%5D%7D>.

detention, the detention period, the right to provide him/her with legal protection, as well as to contact his/her relatives.³⁴⁷

According to the Regulation and the Law on Foreigners, the foreigner placed in the DCF has the following rights: information concerning the right of filing a complaint for the detention in the DCF; the right to free legal aid; the right to an interpreter of his/her language or in a language he/she understands; the right to communicate with relevant local authorities and international and non-governmental organizations.³⁴⁸ NPM noticed that in all hallways of the DCF are installed security cameras, which are continuously functional. According to officials, security camera footages are saved for up to two months. In the report of the visit to Ireland in 2010, the CPT considered the existence of security cameras as one of the safeguards against physical ill-treatment in the where persons deprived of their liberty are being held.³⁴⁹

Regarding the right to be informed in their own language or in the language in which they understand and the right to have the services of an interpreter, NPM was informed by DCF that the MIA, besides services in English, possess a list of interpreters who provide translation services in other languages of foreigners. During the visit, NPM noticed that foreigners in the DCF are informed on their rights through printed brochures in most frequent languages, but the DCF does not possess any document in which these rights are written and in which detained foreigners prove that they have been informed on their rights in a language they understand.

Regarding free legal aid, UNHCR and NGO CRPK provide free legal aid only to foreigners in detention who are potential asylum seekers, and not to others. According to the Law on Free Legal Aid, the Agency may provide free legal aid to all persons with provisional residence in the Republic of Kosovo, but so far there have been no cases of providing legal aid to foreigners in detention. NPM notes that Article 9, paragraph 1.2 of the Regulation foresees the right to free legal aid to foreigners who are in detention in DCF. In the case of asylum seekers, free legal aid, and in many cases translation services, are provided by the non-governmental organization CRPK (Civil Rights Program Kosovo). NPM did not receive any complaint from the complainants regarding the disrespect of the abovementioned rights.

Accommodation conditions

In both centres, accommodation conditions are very good and in line with international standards. During the visit to the Asylum Centre, the NPM noted that all rooms provided good accommodation, heating, cleanliness, and sufficient natural lighting. The Centre

³⁴⁷ Law No. 04/L-219 on Foreigners, Article 108.

³⁴⁸ Article 9 of the Regulation (MIA) No. 03/2014 on Operation of the Detention Centre for Foreigners. Standards of the European Committee for the Prevention of Torture in: <https://rm.coe.int/16806fbf12>.

³⁴⁹ CPT Report on the visit to Ireland in 2010, paragraph 18, published in 2011, at: <https://rm.coe.int/1680696c98>.

provides convenient baths and uninterrupted hot water, where accommodated asylum seekers can take a shower whenever they want. Also in the courtyard of the Centre is located a playground for children. In general, the NPM considers that the Centre meets all conditions for accommodation of asylum seekers.

During the visit to DCF, the MPMT visited two facilities where foreigners were held, including all spaces such as interview rooms, isolation rooms, bedrooms, family rooms, adult activity rooms, which were equipped with TV, cards for games, chessboard, and a library with a small number of books. Also, DCF possesses children playrooms, which are equipped with toys and are designed according to standards, a room where the religious activities are carried out, which was completed with furnishings, as well as an equipped lavatory sufficient for the Centre's capacity. All rooms provided good accommodation, warmth and ample natural lighting. The NPM considers that the Centre meets all conditions for accommodation of foreign persons.

Article 24, paragraph 1 of the Regulation stipulates that each detained foreigner in the Centre has the right to walk at least (2) hours a day in the outdoors environments of the Centre. For health purposes, the Head of the Centre may extend the time of airing. Further, Article 24, paragraph 3 that during the airing time cultural and sports activities can be developed by detained foreigners. The NPM noted that the Centre has a small sports field, which is not equipped with the accompanying elements where foreigners could be engaged in specific sports activities. The NPM, in the Recommendation Report, published after the visit to the DCF in 2017³⁵⁰, encourages relevant authorities to increase their efforts to provide opportunities for specific sports activities and other activities for foreigners in this Centre.

CPT, in the standards set forth in March 2017 on detention of foreigners due to immigration, emphasizes the importance of a regime that contains as many activities as possible. According to the CPT, the longer the period for which persons are held, the more developed should be the activities which are offered to them.³⁵¹ During the meeting with the director of DCAI, the NPM was informed that tendering procedures for supplying accompanying equipment have been opened, so that more activities are offered to foreigners detained in DCF. The NPM, during the next visits, will request up-to-date information on these plans.

Regarding the DCF staff, NPM was informed that security staff is well trained to carry out physical and property defence tasks but are not trained to work with foreign persons deprived of their liberty, who, according to the Law on Foreigners, are subject to forced return. In this regard, the NPM, on 23 March 2018, held an official meeting with the

³⁵⁰ Report with recommendations for the visit to the Detention Centre for Foreigners, published on 17 February 2017. For more, see at: <https://www.oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>.

³⁵¹ For more, see at: <https://rm.coe.int/16806fbf12>.

Director of the Department of Citizenship, Asylum and Immigration, where it was announced that security staff did not attend adequate training to work with this category. NPM recommended to the Ministry of Internal Affairs that the security staff at the DCF shall undergo adequate training to work with this category.

Healthcare

Medical services to foreigners in both centres are provided by the Family Medicine Centre and the University Clinical Centre of Kosovo. The NPM, through the report with recommendations, published during the reporting period, has recommended competent authorities that DCF shall have at least one nurse available to carry out medical examinations of newly-arrived detainees, distribute the therapy and take care of medical files of foreigners in the DCF; and a psychologist as provided for in the Regulation.

Regarding the importance of medical screenings, the CPT³⁵² emphasizes that all newly-arrived detainees should benefit from comprehensive medical screening (including screening for transmissible diseases) by a doctor or a fully-qualified nurse reporting to a doctor as soon as possible after their admission. Moreover, the DCF in the reports on visits to member states and the general reports has repeatedly paid particular attention to the medical screening, especially in cases of newly-arrived prisoners not only for detecting transmissible diseases and preventing suicides, but also for contributing to the prevention of ill-treatment through the proper recording of injuries.³⁵³

NPM, during the last visit on 7 March 2018, was informed that newly-arrived prisoners in this Centre are not subject to general medical screenings unless they require, although this is expressly provided for in Article 10 of the Regulation. In cases where a foreign person is prescribed a medication therapy, the therapy is provided by incompetent officials (security staff and other officials) as there are no medical staff at the Centre.

The NPM has noted that all data related to the provided medical services to a foreigner are kept in his/her personal file, in which Centre officials have access. CPT³⁵⁴ emphasizes that medical confidentiality should be observed in the same way as in the outside community; in particular, irregular migrants' medical files should not be accessible to non-medical staff but, on the contrary, should be kept under lock and key by the nurse or doctor.

Therefore, the NPM considers that DCF shall have at least one qualified nurse who will conduct the initial medical examination of the newly-arrived prisoners, receive the necessary requirements for a visit from the doctor, distribute therapy, supervises medical

³⁵² CPT, Immigration Detention [CPT/Inf(2017)3], paragraph 9, at: <https://rm.coe.int/16806fbf12>.

³⁵³ European Committee for the Prevention of Torture, report on the visit to Kosovo in 2015, published in 2016, paragraph 62, at: <https://rm.coe.int/16806a1efc>. European Committee for the Prevention of Torture, 26th overall report, paragraph 72, at: <https://rm.coe.int/168070d0c8>.

³⁵⁴ CPT, Immigration Detention [CPT/Inf(2017)3], see link <http://hudoc.cpt.coe.int/eng?i=p-standards-inf-2009-27-part-en-5>, (13.3.2018)

files and supervises the general hygiene conditions. Foreign detained persons should also be provided with psychological assistance and psychiatric care in case of need.

Regarding disciplinary measures, according to the Regulation, the disciplinary measures that can be imposed on a foreigner are: verbal or written warning; obligation for maintaining and cleaning the Centre, deprivation of the right to free activity, recreation, TV, internet, sports or cultural in duration of 5 days; isolation up to 48 hours.

The NPM notes that the Regulation does not contain provisions obliging the DCF to hand over a copy of the decision on the disciplinary measure of isolation to the foreigner in detention, but only foresees that the decision shall be attached to the foreigner's file. The NPM, in accordance with CPT recommendations for its visit to Ukraine, Bulgaria and France³⁵⁵, recommended to the competent authorities that the Regulation on Operation of DCF shall contain a special provision, which provides that a foreigner to whom a disciplinary measure is imposed, shall receive a copy of the decision in a language he/she understands. This NPM recommendation was implemented with the amendment of the Regulation which entered into force on 28 December 2018.

Complaint procedures

The effective complaint filing system is a fundamental safeguard against ill-treatment in places where persons deprived of their liberty are held. Persons accommodated in these centres should have the opportunity to file a complaint within the centres and have confidential access to the appropriate authority.

Foreigners in both centres have the right to file a complaint with the head of the centre regarding the terms of admission to the centre and the staff behaviour. The complaint is submitted to the Department for Citizenship, Asylum and immigration (DCAI) within 7 days. Further, the Regulation stipulates that inside the Centre shall be located a complaint box which shall be administered by the Centre. A complaint box shall also be placed and administered by the Ombudsperson Institution³⁵⁶. The NPM noted that a complaint box is available to foreigners at both centres, i.e. the Asylum Centre and the Detention Centre for Foreigners.

Contact with the outside world

The CPT considers that detained irregular migrants should have every opportunity to remain in meaningful contact with the outside world (including access to a telephone or

³⁵⁵ For more details, see the 19th CPT General Report, paragraph 88, at: <http://hudoc.cpt.coe.int/eng#%7B%22CPTSectionID%22:%5B%22p-standards-inf-2009-27-part-en-4%22%5D%7D>}, CPT Report on the visit to Ukraine in 2009, paragraph 71, at: <http://hudoc.cpt.coe.int/eng#%7B%22CPTSectionID%22:%5B%22p-ukr-20090909-en-17%22%5D%7D>}, CPT Report on the visit to Bulgaria in 2008, paragraph 44, at <http://hudoc.cpt.coe.int/eng#%7B%22CPTSectionID%22:%5B%22p-bgr-20081215-en-12%22%5D%7D>}, CPT Report on the visit to France in 2006, paragraph 76, at: <http://hudoc.cpt.coe.int/eng#%7B%22CPTSectionID%22:%5B%22p-fra-20060927-fr-14%22%5D%7D>}.

³⁵⁶ Article 19, paragraphs 2 and 3 of the Regulation on Operation of the Detention Centre for Foreigners.

accept visits) and their freedom of movement as little as possible.³⁵⁷ Regulation on Operation of DCF stipulates that a foreigner in this centre has the right to hold correspondence, accept packages and other items.

Also, the Regulation stipulates that the foreigner has the right to make calls as needed, for a period of 5 minutes, starting from 09:00 until 16:00. According to the Regulation, foreigners are allowed to receive calls from abroad. Also, visits for foreigners detained in the Centre are allowed. During the visit, the NPM did not receive complaints regarding the right to contacts with the outside world.

Regime

The CPT, in the standards set forth in March 2017, for the detention of foreigners due to immigration, emphasizes the importance of a regime that contains as many activities as possible. According to the CPT, the longer the period for which persons are held, the more developed should be the activities which are offered to them.³⁵⁸

During the visit to the Asylum Centre, the NPM received complaints from an asylum seeker regarding the stagnation in keeping the Albanian language course as part of the integration into Kosovo society.

Recommendations for the Asylum Centre addressed to the Ministry of Internal Affairs:

- Adjust the food timetable according to the needs of asylum seekers, especially the time when dinners are served. (Implemented).
- Notify the Ombudsperson's NPM of the situation regarding the provision of social assistance, in accordance with the Law on Asylum. (Implemented).
- Notify the Ombudsperson's NPM of the progress of the Albanian language course and other aspects of integration into society in the Republic of Kosovo. (Implemented).

Recommendations for the Detention Centre for Foreigners addressed to the Ministry of Internal Affairs:

- The DCF shall have available at least one nurse who would carry out the newly-arrived prisoners medical screenings, distribute therapy, and take care of the medical files of the foreigners in the DCF; and also a psychologist as provided for in the Regulation (Pending Implementation).
- The Centre shall maintain protocols as follows: Protocols for loneliness, body injury, self-injury, attempted suicide, sexual abuse, and deaths. (Pending Implementation).
- Security staff shall undergo adequate training to work with this category (Pending Implementation).

³⁵⁷ European Committee for the Prevention of Torture, see at: <https://rm.coe.int/16806fbf12>.

³⁵⁸ For more, see at: <https://rm.coe.int/16806fbf12>.

- For all their rights and obligations, foreigners shall be notified through a special document in the language they understand and in which they prove that they have understood their rights and obligations. (Implemented).
- The Regulation shall contain a special provision, which provides that a foreigner, against whom a disciplinary measure is imposed, shall receive a copy of the decision in a language he/she understands. (Implemented).
- Foreigners detained shall be provided with free legal aid in accordance with Regulation. (Implemented).

Mental Health Institutions

During the visits to mental health institutions, the NPM did not receive any complaints and did not encounter ill-treatment of patients by the staff of the institutions concerned. In all the institutions visited, the general atmosphere was relaxed, while the relations between staff and patients were good.

Forensic Psychiatric Institute of Kosovo

The relevant legal basis is contained in the Criminal Code³⁵⁹ of the Republic of Kosovo, the Criminal Procedure Code³⁶⁰, the Law on Execution of Criminal Sanctions³⁶¹ and the Law on Mental Health. The Regulation on the Admission and Treatment of Persons with Mental Disorders in Public Health Institutions, including the Institute of Forensic Psychiatry, was adopted on 21 December 2015. For the IKFP staff, the issue seems to be the non-definition of the IKFP legal status.

IKFP accommodates persons who have committed a criminal offence in a state of mental disability or substantially reduced mental capacity, subject to the mandate of a competent court for mandatory psychiatric treatment³⁶², as well as persons who are subject to a court order for psychiatric assessment and custody in a health care institution.³⁶³ Patients brought by the Kosovo Correctional Service who, when the court asks for mental state assessment (psychiatric expertise) are either detained, or sentenced person brought by the prison for treatment, are accommodated in ward C of the IKFP.

Patients' accommodation conditions at IKFP are generally very good. The rooms contain two beds, patients have access to natural light, ventilation. The rooms have alarms, small desks, mattress beds, hygienic tools and accessories. Patients' rooms also have lockers, but are damaged and cannot be closed.

Rooms' walls contain pictures or writings of patients. There is also room for day-care equipped with chairs, television, games (chess) as well as suitable kitchen space. IKFP

³⁵⁹ Criminal Code of the Republic of Kosovo, Article 18 and Articles 87-90.

³⁶⁰ Criminal Procedure Code of Kosovo, Articles 506-508.

³⁶¹ Law on Execution of Criminal Sanctions, Articles 174-180.

³⁶² Criminal Code of Kosovo, Article 89.

³⁶³ Criminal Procedure Code of Kosovo, Article 508, paragraph 4.

has noticed that bathrooms are located inside the rooms, but they have no curtains, which would provide privacy to patients. IKFP considers that in such a situation, the privacy of the patient is violated and that IKFP shall consider the privacy issues of patients.

IKFP, in addition to assessment, provides treatment with medication and psychosocial treatment. Supply with medication is not good and family members are often obliged to buy them by their own. Patient dossiers are located in an open space, in the day-care room. Patient histories are completed, but not so detailed with accompanying health records. There is also a book of therapies, a book of injuries/incidents, a form of isolation monitoring and a form of incident review.

Psychosocial treatment consists of activities such as games, watching television, drawings, daily going out of the institution (in the IKFP promenade), individual sessions with a psychologist, etc. Schedule of daily activities is placed in visible locations, and it is a uniform one, and there are no individual plans of listed activities for patients.

The decision for a therapeutic weekend is taken by the Multidisciplinary committee. Daily going out (in the promenade) within the institutions, for patients of ward B is possible all day, while for patients of ward D - twice a day, in morning and evening.

The NPM, despite the finding of the existence of some psycho-social activities, expresses concern that they are faint and routine. As stated in the CPT report on Kosovo's visit in 2015, IKFP does not have an individualized patient treatment plan, and no wide range of therapeutic, rehabilitative and recreational activities.³⁶⁴

The IKFP does not have any specific preventive plan related to suicides. The NPM considers that, despite the fact that there have been no cases of suicide, it is necessary to draw up a clear guide that will effectively help identify cases with suicidal tendencies and draft a special observation scheme with the immediate support of psychological/psychiatric.

Through the report with recommendations,³⁶⁵ after the visit of the IKFP, the NPM expressed concern that security personnel (including KCS security personnel), did not have adequate training to work with this category of patients. This was noted during the interviews with private security officials and KCS in the report of Kosovo's visits in 2015 to the competent authorities has recommended the following:

"The European Committee for the Prevention of Torture considers it of crucial importance that staff assigned to security-related tasks in psychiatric institutions be carefully selected and that before being assigned to such duties, they undergo

³⁶⁴ Report of the European Committee for the Prevention of Torture on the Kosovo Visit in 2015, published in September 2016. See at: <https://rm.coe.int/16806a1efc>.

³⁶⁵ Report with Recommendations on Visit to the Institute of Forensic Psychiatry, published on August 28, 2018, see: <https://www.oik-rks.org/en/2018/08/28/report-with-recommendations-of-the-npm-concerning-the-visit-conducted-to-the-institute-of-kosovo-forensic-psychiatry/>.

appropriate training. Moreover, in the course of their tasks, they should be supervised closely and under the authority of qualified medical personnel.” The NPM considers that the IKFP shall act in accordance with the aforementioned recommendation.

In addition, performing security-related tasks, such as body and cell searches continue to be performed by nursing staff, although they had received no training for such activities. This violates the relationship between patients and medical staff. The NPM considers that the IKFP must put an end to such a practice, as medical staff, among others, is not trained to perform such tasks. Such a recommendation was also provided by the CPT in the report on the visit to Kosovo.³⁶⁶

Contact with the outside world

Patients in the Ward B have phone contact with their family members, as well, they may have visits by family members 1-2 times a week for 30 minutes.

Regarding the right to file a complaint, the NPM noted that IKFP has placed a complaint box which is opened by a certain authority within the Ministry of Health. However, the NPM considers that patients shall be allowed to file a complaint to the IKFP management in a confidential manner by placing a complaint box which may be opened only by the certain staff. The Ombudsperson or his/ her representatives may visit the accommodated persons at IKFP and correspond to them without prior notice. Likewise, patients can also address the NPM through the phone. In addition, the Ombudsperson has placed a complaint box which is opened only by him/her.

Means of restraint

In the mandatory treatment ward (B), there are two isolation rooms which are of solid walls and have only one bed. Staff has direct visual access to the patients. The unit has a shirt for mechanical fastening, but it has never been used. According to the documentation, the NPM found that one patient stayed 3 days in isolation, while one another stated in the interview that he/she stayed 6 days in isolation. According to patient and staff statements, the reason for the six-day isolation was the deteriorating health situation and the threats to the staff. The IKFP possesses the monitoring form, where, after monitoring, the staff signs the form in question every 15 to 30 minutes.

The NPM noted that the use of isolation rooms is excessive and of a non-justified duration. CPT standards stipulate that means of restraint should never be used as a punishment³⁶⁷. Use of means of restraint shall be as short and as reasonable. The NPM, during the check of the documentation, noted that the decision and reasoning for placement in the isolation room were not given by the doctor in the patient's file but only in the book and in the isolation form.

³⁶⁶ For more see the European Committee on the Prevention of Torture in Kosovo in 2015 at: <https://rm.coe.int/16806a1efc>.

³⁶⁷ CPT Standards, published on March 21, 2017, see in: <https://rm.coe.int/16807001c3>.

Further, the CPT recommends that every element of any kind of restraint shall be clearly recorded in the specific register, but also in the patient's file. Such records include the time of initiation and termination of the restraint, circumstances, reasons, the name of the doctor, injury, etc.

The NPM noted that the IKFP has a basic guide for placing in isolation rooms (Rules of Work Organization and Functioning in Ward B). This document is very simple and contains only one paragraph. There is no guideline for other restriction methods. The NPM noted that the CPT in its report on the visit to Kosovo in 2015, in the section mentioning the visit in KFIP, has given specific recommendations as to what this guide shall contain.³⁶⁸

Review of decisions by competent courts

The NPM notes that Article 89, paragraph 2 of the Criminal Code of the Republic of Kosovo expressly stipulates that the court will cease the measure of mandatory psychiatric treatment after it has confirmed that the need for treatment in the health care institution has ceased.

Whereas Article 176 of the Law No. 04/L-149 on Execution of Criminal Sanctions, stipulates that at least once every six month, each involuntary admission must be reviewed by the court, based on a report drawn up by the management of the health institution and the opinion of an independent expert, who is not employed in the health institution.

Based on the analysis of the relevant documentation, the NPM found that the IKFP, on regular basis and in compliance with the provision of the aforementioned legislation, has sent relevant medical reports on which the patient's health status was assessed based on the requirements of the competent court. According to the IKFP management assertions, there are problems with involuntary placement of patients by court orders due to mental disorder, despite the fact that the medical condition of the patient is reviewed by the medical staff and the court is notified in writing that the mental state of patients has improved and that measures need to be amended appropriately, in some cases the courts are not up to date and do not respond.

Regarding the right of treatment, it is evident that in most cases patients are informed, but not given the possibility of giving written consent or the right to refuse treatment. The same situation was also noted in the CPT report on Kosovo's visit in 2015.³⁶⁹

In the report in question, the CPT states that the admission of a person to a psychiatric establishment on an involuntary basis, including under a court-ordered “*measure of*

³⁶⁸ European Committee for the Prevention of Torture, report on the visit to Kosovo in 2015, published in 2016, part C, paragraphs 96-98, for more see in: <https://rm.coe.int/16806a1efc>.

³⁶⁹ European Committee for the Prevention of Torture, report on the visit to Kosovo in 2015, published in 2016, paragraph 101. For more: <https://rm.coe.int/16806a1efc>.

mandatory psychiatric treatment in custody”, should not preclude seeking informed consent to treatment. Every patient should be informed about the intended treatment. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

Also, there is no evidence that a written explanation of the reasons for involuntary treatment was provided, as foreseen in Article 21, paragraph 1.4 of the Law on Mental Health, which expressly states that a patient, who is subject to involuntary treatment, is entitled to explain in writing within 48 hours reasons for involuntary treatment. Also the NPM recommends that this situation shall be urgently regulated by the institution.

Medical confidentiality

The NPM, during the visit, has noted that medical services to patients in IKFP are provided without the presence of security officers, unless the medical staff expressly requests such a thing in certain cases.

Recommendation regarding the IKFP visit addressed to the Ministry of Health:

- Notify Ombudsperson’s NPM related to the IKFP legal status (Pending implementation).

Recommendation regarding the visit to IKFP addressed to Hospital and University Clinical Service of Kosovo:

- Regularly supply the IKPF with medicines and other necessary things for carrying out the work (Pending implementation).
- Implement the recommendation of the European Committee for the Prevention of Torture, as regards the content of the Guide to the use of means of restraint (Pending implementation).
- Increase psycho-social activities (Pending implementation).
- Install the IKPF system (a complaint box) which makes it possible for the complaints of patients to be addressed by the management in a confidential manner, and only the assigned staff should have access to the complaint box (Pending implementation).
- Medical staff should not perform security-related tasks (see paragraph 45 of this Report) (Pending implementation).
- IKFP security staff shall be assigned carefully and shall undergo adequate training before undertaking such security-related tasks (Pending implementation).

Psychiatric Clinic

Pursuant to the Law on Health, Article 13 of the Law on Mental Health of the Republic of Kosovo and Article 6 of the Statute of HUCSK, the Psychiatric Clinic is the organizational unit of HUCSK. According to the law in force, it provides tertiary services throughout the country (the only clinic in Kosovo) but is also obliged to provide

secondary level services to the region of Prishtina in the absence of a general hospital. All wards (except the Emergency and Psychiatric Intensive Care Ward) are open and treat patients in their own will, and in certain cases without their will, based on the decision of the competent court.

During the visit, the NPM noted that patient rooms were generally large, with two and three beds, with enough light, while the windows can be open and are breakable. Furnishings (lockers for clothes) were all almost damaged, while walls were painted but out-dated because there was no renovation for almost 6 years, whereas, hot water was occasionally available. The NPM noted that there are no paintings on walls, no side tables for personal stuff, and the toilet door cannot be closed.

The NPM considers that measures shall be undertaken to create a family and therapeutic environment. Painting, repairing damaged furniture, decorating, placing personal side tables, shall be a priority. The NPM notes that the European Committee for the Prevention of Torture (CPT) during its visit to Kosovo in 2010 also visited the Psychiatric Clinic. Concerning the living conditions of patients, the CPT, in the report on the visit to Kosovo, describes the living conditions of the patients in this clinic as bad and severe, in which the creation of a therapeutic environment cannot be expected.³⁷⁰ Therefore, the NPM considers that renovations should be made in the Psychiatric Clinic as soon as possible.

Emergency and Psychiatric Intensive Care Ward

Emergency and Psychiatric Intensive Care Ward (hereinafter referred to as *EPICW*) is a closed unit and operates within the Psychiatric Clinic. Cases of various psychotic disorders, bipolar disorders and personality disorders that cannot be treated in other wards are treated in this ward. This ward is the only one in the entire territory of Kosovo. Special rooms for dealing with urgent cases are not functional in psychiatric wards of other regional hospitals. Such cases, from all over Kosovo, are brought to the *EPICW* within the Psychiatric Clinic in Prishtina.

NPM considers that psychiatric wards in other regional hospitals need to activate special rooms for dealing with urgent cases. Such a conclusion came from the conference organized by the Ombudsperson and the Council of Europe, regarding the involuntary treatment of cases in mental health institutions, held in Budva (Montenegro) on 19 September 2018. The NPM has not received complaints from patients interviewed for ill-treatment or violence, as well as behaviours by the personnel of this department that would insult the dignity of patients. During the interviews, the NPM has not received complaints or reports from patients about the violence between the patients accommodated in this department.

³⁷⁰CPT Report on visit to Kosovo, 2010, paragraph 79, see on: <https://rm.coe.int/16806972c7>.

The NPM was informed that the patients in general are brought here by their family or the police and they are accommodated here without their will. There are also cases when patients are brought here by a court decision. According to the Directorate, after receiving the patient, his/her health condition will be assessed the next day by the relevant medical commission.

The NPM noticed that the competent court is not informed about the admission of patients for involuntary treatment. The NPM notices that the Articles of the Law on Mental Health fix the issue of admission of involuntary patients, without the decision of the competent court. Article 22, paragraph 4 defines: *“The doctor in the service of mental health care specialized with beds, who decides on involuntary treatment, describes in detail in the medical card all procedures followed and provides notification of the chief of the service for involuntary hospitalization, within twenty-four (24) hours.”*

The NPM notices that this requirement is respected by the head of the EPICW and the relevant information is sent to the director of the clinic. According to the Directorate, the notice for admission of the patient for involuntary treatment is then sent to the legal office of HUCSK, but not to the competent court, as provided in the Law on Mental Health. According to the Directorate, this happens due to the lack of inter-institutional communication, respectively the communication between the HUCSK and the competent court.

However, the NPM notices that Article 23, paragraph 4 of the Law on Mental Health defines: *“If, after reassessment, the head of service determines that there are reasons to hold the person under conditions of involuntary treatment, the same person continues to receive involuntary treatment in the service. Following this decision, within forty-eight (48) hours, the head of the institution where the service is provided by mental health services specialized with beds, referred by the chief of service addresses to the basic court to assess the performed procedure. A copy of the application is available to patient, a close family member and/or his legal representative.”* The NPM notices that this provision clearly obliges the health institution to inform the competent court on further proceedings in cases of admission of the patient for involuntary treatment.

Regarding the issue on involuntary treatment and other aspects related to this, all the relevant stakeholders from competent courts, prosecution offices and mental health institutions, were invited by the NPM of Ombudsperson and the Council of Europe to the workshop held in Budva, Montenegro. All participants agreed that in order to achieve effective implementation of the laws in force and to respect the human rights of this category guaranteed by local legislation and international conventions for the protection of human rights, the level of inter-institutional communication needs to be increased.

Living conditions in the EPICW

The NPM assesses that the living conditions, in general, are good. The building is new, warm and has natural light. The rooms consist of two beds; they have adequate space and ventilation. The NPM noticed that the walls have not been painted for a while, some windows are cracked and they have iron railings, and the bathrooms have moisture. Small tables and locker keys are removed because they have been broken and damaged by the patients. The rooms are not decorated; some pictures hang in the walls of the living rooms and in the dining room.

Treatment and activities in the EPICW

Psycho-pharmacological treatment is the main treatment in this ward. The supply with medicines occasionally is not adequate, there are times when there are no needles and syringes and the family members of patients are obliged to buy them. But there are also times when supplies are regular and at a satisfactory level. The NPM considers that it is the responsibility of the competent authorities to uninterruptedly supply this ward with the necessary medicines for the treatment of patients.

The NPM noticed that there are not enough psycho-social activities. Also, there is a lack of multidisciplinary team such as: psychologist, social worker, occupational therapist, and there is no individual treatment plan. The NPM considers that authorities and institutions should provide a necessary diversity of psycho-social professionals, as a precondition for adequate treatment of patients. As for the security personnel in this department, they should have adequate training to work with this category of patients.

Regime in the ward

During a random day, patients in the ward are subject to a daily routine, which consists of activities, such as: taking a break for some fresh air (two hours a day, but they may stay longer), watching TV, eating, going out in the garden.

Contacts with the outside world

Family visits are carried out at the entrance of the ward, where a table and some chairs are placed. They have the right to accept visits daily from 12:00 to 15:00. The duration of the visit is 30 minutes, which is carried out with the permission of the doctor. No phone communication is allowed. And the family members from outside can call the doctor of the ward, but they cannot call the patient.

Concerning involuntary treatment, European Committee for the Prevention of Torture points out that the maintenance of contact with the outside world is essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint. Patients should be able to send and receive correspondence, have access to the telephone, and receive visits from their family and friends.³⁷¹

³⁷¹See: <https://rm.coe.int/16806cd43e>.

Means of restraint

There is no mechanical restraint in the ward, however, there is a pharmacological one. The EPICW has four isolation rooms, there are a mattress and a blanket, there are no toilets, there is enough space, and the rooms are dim, while the monitoring team noticed moisture in one of them. The NPM noticed that these rooms are far from health personnel, while the ring for calling the medical personnel is out of function.

The NPM considers that, while the ward uses the measure of isolation, this means of restraint should be subject to a detailed policy for patients accommodated in isolation rooms, which should contain information on situations when isolation can be used, the intended objectives, the duration and the need for regular review of the decision for isolation, the existence of genuine human contacts, the need for the personnel to be particularly vigilant.

Any case of using physical restraint of the patient (the use of physical restraint instruments, isolation) must be registered in a specific register created on this purpose (as well as in the patient's file). The data should contain the time when the measure started and ended, the circumstances, the reasons for the application of this measure, the name of the physician who approves such measure, as well as records of any injury caused to the patient or the personnel. The NPM noticed that the department does not have a special register for persons who are held in isolation.

Complaint procedures

NPM considers that as in any other place of deprivation of liberty, an effective complaint is a fundamental safeguard against physical ill-treatment in psychiatric institutions. Therefore, specific arrangements should be made to enable patients to file complaints with the competent body established for this purpose and to communicate confidentially with the appropriate authority outside the psychiatric institution.

In the ward, there is a complaint box of the Psychiatric Clinic, which, according to the Directorate, is opened by a responsible office within UCCK. However, the procedure for submitting a patient's complaint remained unclear to the NPM. Therefore, a written notice on this issue was requested from HUCSK through the report with recommendations.

Recommendations regarding the Psychiatric Clinic addressed to the Hospital and University Clinical Service in Kosovo (HUCSK):

- Make the necessary renovations at the Psychiatric Clinic (Pending implementation).
- Increase the number of genuine psycho-social activities (Pending implementation).
- Functionalize the multidisciplinary team in the Psychiatric Clinic wards (Pending implementation).

- Provide uninterrupted supply of medicine to the Psychiatric Clinic (Pending implementation).
- Compile Guidelines for the Prevention of Suicide (Pending implementation).
- Provide adequate training for personnel (Pending implementation).
- Increase the number of personnel according to assessment and need (Pending implementation).
- Obtain informed approval for treatment from the patient in accordance with the Law on Mental Health (Pending implementation).
- Inform patients about their rights in written form (Pending implementation).
- Compile and use a special register for patients who are subject to isolation measures (Pending implementation).
- Psychiatric Departments in other regional hospitals should activate special rooms for the treatment of urgent psychiatric cases (Pending implementation).

Centre for Integration and Rehabilitation of the Chronic and Psychiatric Patients in Shtime

Centre for Integration and Rehabilitation of the Chronic and Psychiatric Patients in Shtime (CIRCPP) operates within the Hospital and University Clinical Service in Kosovo (HUCSK) and provides services 24 hours a day. CIRCPP is an open-type institution; residents of this centre are mainly diagnosed with psychotic disorders such as *Schizophrenia*. During the visit of NPM, there were 61 residents in this institution, out of which 32 were men, 29 women; the average age was around 54. The official capacity of the institution is 65 people.

Conditions of accommodation

NPM assesses that living conditions in CIRCPP are average. However, renovations such as painting, regulating toilets elements, putting paintings on the walls and personal cupboards are needed. NPM considers that there is a lack of privacy in toilets that have no curtains and this issue needs to be solved urgently.

The kitchen was renovated and was put into use in July 2018 and is equipped with all modern equipment. Through the report with recommendations, published on March 6, 2017, the NPM of Ombudsperson recommended taking measures for the renovation of the kitchen. Through this report, the NPM of Ombudsperson welcomes the implementation of this recommendation.

Health care

NPM was informed that regular psychiatric services are provided in CIRCPP, and these services are carried out by the Director of the Centre, as he is a psychiatrist by profession, while in case of need, other health and specialist services are provided by Family

Medicine Centre in Shtime, Regional Hospital in Ferizaj and University Clinical Centre in Prishtina.

By examining several medical files, the use of antipsychotic, antidepressant and anxiolytic medicines appears to be reasonable and evidence-based. According to staff, the use of medicines is much reduced and they are more rational in prescribing them. They usually have the preparations from the essential list such as: haloperidol, fluphenazine, risperidone, olanzapine etc. (10 patients were being treated with haloperidol deaconate, and 15 others with fluphenazine deaconate. According to the information received, there are cases when CIRCPP faces lack of medicines. NPM considers that it is a responsibility of the competent authorities to regularly supply this institution with the necessary medicines.

Treatment and activities

During the visit, NPM noticed a close and friendly approach by the personnel towards the patients; therefore, a positive climate within the institution was noticed. Patients look good in terms of dressing and hygiene. NPM has not encountered signs of injury. No complaints for any form of ill-treatment or personnel behaviour that violates the dignity of residents were received during the interviews with patients.

The psycho-social activities usually performed are: painting, music, excursions. The institution has a desk for activities, TV in A2 department did not work, and there are no games or books since they were damaged. Family visits are allowed whenever they want. The CPT emphasized that keeping in contact with the outside world is essential not only for preventing ill-treatment but also from a therapeutic point of view.³⁷² NPM notices that the activity plan is not written, nor individual plans exist, while the budget for psycho-social activities is low. Therapeutic weekends are very rare because families do not express interest.

NPM expresses concern about the fact that the number and quality of psycho-social and recreational activities is very deficient. Also, there is no individualized treatment plan with patient involvement. NPM, in its report of recommendations published on 26 October 2018³⁷³, has recommended focusing on planning the construction of a vocational unit, but this has not been done so far. The institution should prioritize the increase of psycho-social activities and the involvement of all patients in an optimal manner in these activities.

According to the CPT, psychiatric treatment should be based on an individualised approach, which implies compiling a treatment plan for each patient, which involves a

³⁷² European Committee for the Prevention of Torture, 8th General Report, paragraph 54.

³⁷³ Report with recommendations for visiting the Centre for Integration and Rehabilitation of the Chronic and Psychiatric Patients in Shtime, published on 26 October 2018. See: <https://www.oik-rks.org/en/2018/10/26/-1report-with-recommendations-on-the-visit-to-center-for-integration-and-rehabilitation-of-the-chronic-psychiatric-patients-in-shtime/>.

wide range of rehabilitative and therapeutic activities, including access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Patients should have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise.³⁷⁴

NPM highlighted 4 persons against whom the court has imposed the measure of compulsory psychiatric treatment with detention in CIRCPP, despite the fact that the institution cannot manage them. NPM considers that CIRCPP has neither legal base nor capacity to continue handling such cases. NPM encourages CIRCPP staff to regularly inform the courts about the health condition of these patients.

Concerning the issue of effective review of such cases, cases of compulsory psychiatric treatment and other treatments in mental health institutions by competent courts and other institutions, which at a certain stage may face people with mental disorders, the Ombudsperson Institution, in cooperation with the Council of Europe Office in Prishtina, held a workshop where all representatives of relevant institutions, including psychiatrists, judges, prosecutors were invited in order to discuss and improve the situation in this regard.

During this workshop, it was concluded that the Ministry of Health should compile the list of mental health institutions where the mandatory psychiatric treatment should be provided. Handling of cases that are not in the capacity of an institution constitutes a prerequisite for ill-treatment or neglect.

Preventing suicides

According to the Directorate, there two suicides committed after the war, while attempts for committing suicide are frequent. During 2018, there were two cases of death in this institution. CIRCPP does not have any specific plan for preventing suicide. NPM considers it necessary to draw up a clear guide which will effectively help identify cases with suicidal tendencies, drawing up a special observation scheme with immediate psychological/psychiatric support.

CIRCPP staff

The CIRCPP staff consists of 39 employees, 1 psychiatrist, who is also the director of the institution, 9 nurses, 16 medical assistants, 7 administrative workers and 7 technical service workers. The NPM considers that the number of the staff is not adequate. There is also a lack of professionals such as: psychologists, occupational therapists etc. In the report with recommendations published on 6 March 2017, NPM has recommended hiring an additional clinical psychologist and social worker. During ad-hoc visits, the NPM was informed that the institution has begun recruiting procedures for the clinical psychologist

³⁷⁴ Standards of the European Committee for the Prevention of Torture, Part of the 8th General Report [CPT/Inf (98) 12].

and the social worker. The NPM will monitor the implementation of the recommendations during the follow-up visits.

Means of restraint

Regarding the means of restraint, Article 27 of Law No. 05/L-025 on Mental Health, defines that the physical limitation of persons with mental disorders applies to specialized mental health institutions with beds and according to the relevant protocol, includes the following elements: keeping the person with force, forceful use of medicines, immobilization, insulation.

Based on the statements of the Directorate of CIRCPP and resident files, mechanical means of physical isolation are not used in this institution, but only chemical ones, psychotherapy, and pharmaco-therapeutic interventions, while isolation measures are not used because there are no conditions to apply such a measure.

Regarding the consent for treatment and residence, the consent is given by the resident's family member or legal guardian, in cases where the competent body abolishes resident's ability to act.

In the ward, no card of patients' rights or flyers is placed for this purpose; the card for the patients' right is placed only in the ambulanta. The NPM considers that information regarding patients' rights should be placed appropriately, visible, supported by flyers, and be explained to the patients in the best possible way. Family visits are allowed at any time. According to the CIRCPP staff, there are some cases where the legal guardian who is appointed by a decision of the competent body does not fulfil his duties towards the resident.

The CIRCPP and other social care institutions (MLSW, Centres for Social Work) should review and utilize all the mechanisms and legal possibilities to improve this issue, as defined in Article 16, paragraph 3 of the Law on Mental Health. The Ministry of Health shall issue sub-legal acts, as defined in Article 9, paragraph 4 of the Law on Mental Health.

The Ombudsperson Institution has placed complaint boxes in the CIRCPP, which can only be opened by the staff of this institution, as this provides confidentiality to the complainants in submitting the complaints. The NPM has never received any complaint from residents or their family members. The NPM encourages staff to inform residents' family members about the possibility of submitting complaints through the complaint box placed at CIRCPP.

Deinstitutionalization has stagnated, which is one of the preoccupations and duties foreseen for CIRCPP. According to staff's information, there are only 3 cases of residents returning to their community. The NPM considers that the Ministry of Health should develop a clear deinstitutionalization policy by building effective community services.

MLSW and Centres for Social Work should be involved in providing the necessary effective resources to support such a policy.

Recommendations regarding the CIRCPP addressed to the Ministry of Health:

- The Ombudsperson's NPM reiterates the recommendation for issuing sub-legal acts in accordance with the Law on Mental Health (Pending implementation).
- The Ministry of Health should take a decision announcing the list of mental health institutions where the measure of compulsory psychiatric treatment must be provided (Pending implementation).

Recommendations regarding the CIRCPP addressed to the Hospital and University Clinical Service in Kosovo (HUCSK):

- The NPM reiterates the recommendation for building vocational unit within CIRCPP (Pending implementation).
- Ensure adequate number of medical staff as a prerequisite for an adequate treatment, such as: psychiatrists, clinical psychologists, occupational therapists (Implemented)
- Provide adequate training for staff (Implemented)
- Regularly supply CIRCPP with the necessary medicines (Implemented)
- Functionalize the computerized identification system (database) (Not implemented).
- Develop a Suicide Prevention Guide (Strategy) (Pending implementation).

Social care institutions

During the reporting period, the NPM visited the following social care institutions: Home for Elderly People Without Family³⁷⁵, Special Institute in Shtime³⁷⁶ and Home of Children with Mental Disorders.

Home for Elderly People without Family Care (HEPWFC)

HEPWFC is a socially-owned institution and operates within the Ministry of Labour and Social Welfare (MLSW). 110 persons is the official capacity of this institution. At the time the NPT visited it was 63 residents, of whom 27 men and 36 women, where 3 persons were under 65.

During the visit, the NPM interviewed a number of residents and did not receive any complaints about physical or verbal abuse or behaviours that would violate the human dignity of residents in the HEPWFC. Regarding accommodation conditions, the NPM noticed, during the visit, that the building needs a lot of investments, especially in the part

³⁷⁵ Report with recommendations on the visit to the Home for Elderly People Without Family Care, published in: <https://www.oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>.

³⁷⁶ Report on the visit to the Special Institute in Shtime, in: <https://www.oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>.

where the medical services are placed because water penetration often causes serious inventory damages.

The NPM, regarding this situation, has recommended the MLSW, through a report with recommendations on a visit to the HEPWFC, to urgently make investments according to needs assessment in the old building and premises where the medical and dental service operate. According to the latest announcement by MLSW, investments have been made in the building, the facility has been insulated, and also dental services are no longer in the ground floor. The NPM will, through follow-up and ad hoc visits, verify the implementation of the recommendation in question.

Recommendations regarding the CIRCPP addressed to the MLSW:

- Urgently make investment according to needs assessment in the old building and premises where the medical and the dental service operate (Implemented).
- Supply the residents with adequate inventory in their rooms (Implemented).
- Provide the facility with an ambulance (Pending implementation).
- Medical service should use protocols for self-restraint, bodily injuries, hunger strikes, sexual abuse, suicide, and deaths in the institution (Implemented).
- Organize specific staff training, in accordance with the needs for treatment of residents (Implemented).
- Increase the number of staff according to needs assessment by the health service (Implemented).

Special Institute in Shtime (SISH)

The NPM, during August 2018, has conducted a general visit to the SISH with experts from the Council of Europe (as observers). This institution is managed by the Ministry of Labour and Social Welfare (MLSW) and is an open-type institution that provides 24-hour services such as: food, footwear, health care, educational and training work therapy, and social treatment.

The official capacity of the institution is 65 beds. During the visit, it was found that there are 67 accommodated residents (43 men and 24 women) aged over 18, while the average age is about 46.5 years of age. Categorization of residents is done according to gender and health status. All persons accommodated are diagnosed with Intellectual Disability (mental retardation).

The Administrative Instruction No. 11/2014 for Works and Placement of Residents, persons with mental disabilities - delay in mental development at the Special Institute in Shtime and in homes with community based foresees the treatment of persons whose ability to act was abolished by the basic court. During ad-hoc visits to the SISH, the NPM

was informed that in 98% of cases, the ability to act was abolished and a legal guardian was appointed.

During the visit, the NPM noticed a friendly approach of staff towards residents. Residents looked good in terms of clothing and hygiene, and their relation with the staff was friendly. The NPM has not seen signs of bodily injury on residents.

Residence conditions

Residence conditions in general are very good. Residents moved to newer buildings and were placed in smaller dormitories. Residential premises have enough natural lighting, heating, ventilation as well as cleanliness is at a satisfactory level. The accommodating resident rooms mostly are with two to three beds in one room, there are commodities for putting clothes and personal belongings, also there are decorations for visual stimulation, for example: various paintings, which were painted by some residents in cooperation with the instructors. During the visit to the SISH, the NPM team has also visited the kitchen, where the food is prepared and served. The kitchen had proper lighting and ventilation, cleanliness was at proper level, and the food was adequate.

Medical treatment and activities

SISH, at the time of the NPM's visit, did not have a general physician. Dentistry services are provided by the Home for Elderly People in Prishtina. Other health and specialist services are provided when needed by Family Medicine Centre in Shtime, the Regional Hospital in Ferizaj and the University Clinical Centre in Prishtina. Ambulanta where the healthcare staff stands does not meet the conditions, and due to the small and inadequate spaces, there is not enough lighting. This situation was also highlighted in the report with recommendations on the visit to this institution in 2016.³⁷⁷

The psychiatric service is provided by a contracted psychiatrist, who visits the patients once a week, four hours and whenever there is a call, which means that sometimes he/she is obliged to prescribe the therapy without visiting the patient. The NPM noticed that patients who suffer from epilepsy do not undergo regular neurological checks and the psychiatrist in most cases manages the neurological therapy. By examining some medical files, the use of antipsychotic, antidepressant and anxiolytic medicaments seems reasonable and evidence-based. Medicaments are provided by MLSW and there were no complaints since the supplies were delivered on time. The NPM has noticed that there is no evidence that white blood cells of the residents who use Clozapina have been measured according to recommendations based on evidence.

The psycho-social activities that are usually performed are various. The institution has three treatment rooms: the art, carpentry and handicrafts workshop. Everyone who is

³⁷⁷ See more at: <https://www.oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>.

capable of these activities can participate. There is also a hall for other recreational sports activities (table tennis, chess, dominoes, cards etc.). Other activities include engagement in greenhouse work and activities outside the institution (outdoor camping, food preparation, various games). Residents get to walk in small towns and cities and they even visit the coffee shops in the town of Shtime.

The activity plan is not written and no individual plans exist. Residents are allowed on family weekends for 3-5 days, when families express an interest to get them home. The NPM considers that the number and quality of psycho-social and recreational activities is solid but there is no individualized treatment plan according to residents' needs and abilities.

Means of restraint

According to the Directorate, SISH does not have insulation rooms and no forms of physical limitation are used except in a case where a resident is permanently fixed (24 hours), his hands are tied back with a tie, loosely, to prevent self-injury. The personnel has expressed ruth for the management of this case this way but, according to personnel assertions, they have tried all possible forms to manage this case without using means of restraint, but without success.

The NPM finds that the managing, psychiatric and medical staff should address this case to other specialized psychiatric institutions (Psychiatric Clinic, etc.) to find ways and approaches of a more appropriate and dignified treatment, creating an external evaluation committee.

Home for Children with Mental Disability

During the reporting period, the NPM together with the CoE experts (as observers), in August 2018, conducted a general visit to the Children's Home in Shtime. This institution is managed by MLSW and is the only open-type institution that accommodates children with special need (intellectual disability-mental retardation) and provides 24-hour services such as: food, clothing, healthcare, therapies of education and training, social treatment.

During the visit, the NPM noticed that there are persons of different ages (as much as the institution's capacity is): four of them are under the age of 18, two have just reached the age of 18, two are around the twenties and two around the thirties.

Based on the fact that this institution is designated as a Home for Children, it is unacceptable to accommodate adult residents in the home. They should be placed in the existing adult facilities in our country.

The NPM noticed a close, warm and friendly approach by staff towards residents. The NPM did not encounter persons with signs of injury and has not received complaints

from residents of this institution for physical ill-treatment or staff behaviour that would violate their dignity.

Accommodation conditions

During the visit, the NPM noticed that the material conditions for the residents in general were very poor. The rooms of the residents had enough space and were not overcrowded, but they were damaged. In addition, the institution faces shortage of suitable clothing and coverings. The NPM has ascertained that urgent renovation is needed inside and outside the Home. The Head of the Home informed the NPM that the entire facility will undergo a major renovation that will include for about 90% of the Home. The NPM, immediately after the visit in August 2018, met with representatives from MLSW where they expressed concern about the findings.

During the follow-up visit in January 2019, the NPM found that the facility in question was greatly renovated and that the situation regarding accommodation conditions has changed significantly in a positive direction.

Health Services

The health and psychiatric service is within the Special Institute in Shtime. Psychiatrist pays a visit once a week, and sometimes, some cases are sent to the ambulanta of the Special Institute in Shtime. If needed, other health and specialist services are provided by the Family Medicine Centre in Shtime, the Regional Hospital in Ferizaj and the University Clinical Centre in Prishtina. Laboratory analyses are conducted at the Family Medicine Centre in Shtime every 6 months on a regular basis.

The health personnel have a TA measuring device but do not have an oxygen device. The physiotherapy room is damaged.

The supply of medicaments is done by MLSW and is regular. The NPM has noticed that there is no evidence that white blood cells of the residents who use Clozapina have been measured according to recommendations based on evidence. The NPM emphasizes that it is the responsibility of the institution to provide certain medicaments according to the known evidence, including the application of monitoring their possible side effects according to accepted clinical practices (follow-up analysis of Clozapine's application).

Regarding the means of restraint, there are no rooms for insulation in the Children's Home and no means of restraint are used. The NMP noticed that there was a register for the use of means of restraint.

Regarding psycho-social activities, the NPM was informed that residents usually listen to music and go out in nature and in the city, though rarely. In addition, eight of the residents attend the special school. The NPM finds that the number and quality of psycho-social and recreational activities is very poor and there is no individualized treatment plan according to the needs and capacities of residents.

The staff consists of nine employees and the head of the Home (4 nurses and 5 medical assistants). Services are provided 24 hours a day. The personnel of the Home were insufficient to provide the required multidisciplinary care. Personnel feel overloaded, stressed by job specifications and insufficiently remunerated for the nature of the work they do. There is no adequate training for Home's personnel. *The NPM considers it very important to provide professional training for staff within and outside the institution as well as adequate remuneration based on job specifications.*

Summary of Report with recommendations

Pursuant to the authority given to the Ombudsperson under Article 135, paragraph 3 of the Constitution of the Republic of Kosovo, as well as Article 16 of the Law no. 05 / L-019 on Ombudsperson, during 2018, the Ombudsperson issued reports and opinions to the court in capacity of *Amicus Curiae* and filed a motion for preliminary injunction, summarized as follows:

Ex officio Reports

Ex officio Reports for case no. 731/2017, regarding the decision of the Police Inspectorate of Kosovo, dated 29 December 2017, for annulment of the recruitment process for Inspector / Investigator, announced on 24 July 2017.

On 29 January 2018, the Ombudsperson had published the *Ex officio* report for case no. 731/2017, which was intended to assess the decision of the Minister of Internal Affairs, Flamur Sefaj, dated 6 November 2017, for suspension of signing contracts with successful candidates in the competition of the Kosovo Police Inspectorate for Inspector/ Investigator, with reference number PIK/DO/01, announced on 24 July 2017; to evaluate the decision of the Chief Executive of the Kosovo Police Inspectorate of 29 December 2017, for annulment of recruitment procedure for positions Inspector/Investigator; to assess whether, the decision of the Minister of Internal Affairs for the suspension of the signing of contracts with the successful candidates and the request for the complete cancellation of the recruitment procedure, constitutes a violation of human rights and freedoms and recommending the Kosovo Police Inspectorate to regulate this issue based on the arguments mentioned in this report.

The report is the result of the Ombudsperson's (ex officio) investigations, based on the MIA press release no. 97/2017, dated 6 November 2017, entitled "*Minister Sefaj suspends the signing of contracts in the vacancy announced by PIK for Inspector/ Investigator*".

On 24 July 2017, the Kosovo Police Inspectorate has published the announcement for filling vacancies for seventeen (17) positions on the posts of Inspector/Investigator and all the competition procedures were conducted based on the provisions of the Administrative Instruction 1/2017 on procedures related to employment and working conditions for PIK employees. Candidates who have met the criteria required in the competition have been subjected to written and interview examinations, physical and mental health examinations, determined according to the provisions of AI No.1/2017.

On 20 October 2017, PIK published a list of candidates' written and interview examination results, where candidates who continued recruitment procedures were notified, while the candidates dissatisfied with the published result were notified of the possibility of filing complaint within five (5) business days after results are published. On 3 November 2017, PIK had published the final list of selected candidates who, on 6

November 2017, at 10:00h were invited to sign contracts with the employer. On the same day, the MIA issued a press release no. 97/2017, by which it was announced that the Minister of Internal Affairs issued a decision not to sign the contracts with the candidates selected in the vacancy announced on 24 July 2017 for positions Inspector/Investigator. Whereas, on 29 December 2017, the Chief Executive of PIK upon the request of the Minister of Internal Affairs, issued Decision no. 01/112/2754/1, whereby he annulled the recruitment procedure, announced on 24 July 2017 for filling vacancies for the position of Inspector/Investigator.

At the request of the Ombudsperson to be informed about the case, on 19 December 2017, the Minister of Internal Affairs had responded by notifying that the reason for decision to suspend the signing of the contracts was because Minister and the Prime Minister received lots of complaints from candidates who were not selected in this recruitment process. Further, the Minister has informed that the decision was based on Article 10 of Law no. 03 /L-128 on Internal Audit, Article 9, paragraph 1, sub-paragraphs 1.4, and 1.5, and Article 16 of Regulation no. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries. The Minister of Internal Affairs did not provide any clarification regarding the implementation or non-implementation of AI No. 1/2017 on procedures related to employment and working conditions for PIK employees based on which a competition was announced.

The Ombudsperson having analysed the reasoning given by the Minister of Internal Affairs, he estimated that this reasoning was irrelevant to the concrete case. According to the reasoning, the decision to suspend the signing of the contracts was based on Article 10 of Law no. 03 / L-128 on Internal Audit, which defines the establishment and functioning of internal audit units, while audit units do not seem to have any role in this.

Also, supporting this decision in Article 9, paragraph 1, sub-paragraphs 1.4, and 1.5, as well as in Article 16 of Regulation no. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries, these provisions are completely irrelevant to this recruitment process, because Article 9 paragraph 1 sub-paragraph 1.4 defines the role of ministers in providing reliable, transparent, accountable and non-discriminatory services ; while paragraph 1.5 defines the role of ministers to create and implement measures against fraud and corruption and promote fraud awareness. Also, Article 16 of this Regulation, referred to by the Minister, speaks about the functions of the Office of the Prime Minister, which was also irrelevant to the recruitment process.

The Ombudsperson and his representatives had held two separate meetings with the minister of the Ministry of Interior and the representatives of the Ministry of Interior, to express concerns about the minister's actions, which could be in conflict with the law and would violate human rights.

Based on the provisions of the Law on PIK, the Ombudsperson estimates that PIK is an executive institution within the MIA, independent of the Police that functions under the authority of the Minister and under the control and supervision of the Chief Executive of PIK. The Law on PIK has made a clear division between the competences of the Minister and the Chief Executive Officer of PIK and that the latter is responsible for organizing and hiring staff, issuing administrative instructions and making decisions on matters belonging to PIK functions (Article 12, paragraph 2, sub-paragraph 2.2). Consequently, the Chief Executive is the responsible entity, who should make the organization of staff employment. In this regard, the Ombudsperson notes that, until the decision to cancel the recruitment procedure has been issued, the Chief Executive has exercised his competences and responsibilities in accordance with the law and AI no.1/2017, which resulted in the announcement of the final list of successful candidates, who were invited to sign employment contracts on 6 November 2017.

The Ombudsperson considers that the request of the Minister for the cancellation of the finalized procedure constitutes an overrun of his legal powers. Also, the decision of the Chief Executive for the cancellation of the procedure, upon the request of the Minister, constitutes overrunning of the legal powers also by the Chief Executive. Undertaking such actions at the final stage of a process, in this case the recruitment procedure, and following the announcement of successful candidates, in addition to dealing with the overcoming of competencies, raises a number of constitutional and legal issues, disturbing from the standpoint of human rights and rule of law. The decision to annul the recruitment procedure is an unjustified decision. The right to a reasoned decision is embedded as a general principle in the ECHR, which protects individuals from arbitrariness. The decision must contain sufficient justification in order to respond to the procedural and material arguments of the parties (*Ruiz Torija v. Spain*, §§ 29-30). The decision which cancelled recruitment process, even if it was meant to solve complaints of unsatisfied candidates, the same does not deal with the procedural and substantive aspects of the complaints raised by the unsatisfied candidates.

Such unjustified and arbitrary actions, deviating from norms that regulate certain procedures create legal uncertainty. Legal uncertainty implies a situation where an individual is created the impression that his / her right may depend on any other act, but not by law.

The Ombudsperson considers that the decision of the Minister of MIA to cancel the signing of contracts with the successful candidates and the request of the Minister for Internal Affairs on issuing the decision by the Chief Executive of PIK for the cancellation of the recruitment process of 29 December 2017, constitute acts that violate the right of candidates at work and in the exercise of their profession; violate the right to a fair and impartial trial and violate the right to an effective remedy. Based on these findings, the Ombudsperson recommended to the Minister of Internal Affairs to withdraw the request

by which he requested the cancellation of the PIK's recruitment process; he requested from Chief Executive of the Kosovo Police Inspectorate, in accordance with his responsibilities defined by the Law on Police Inspectorate of Kosovo and in accordance with the Law on General Administrative Procedure, to take action for annulment of Decision no. 01/112/2754/1, dated 29 December 2017; he requested from the Minister of Internal Affairs to refrain from intervening in organizing and hiring staff and making decisions on issues pertaining to the functions of PIK.

Ex officio Report for case no. 853/2016, regarding the discriminatory criteria established by the University of Prishtina

According to information received from various sources, as well as some meetings held with the UP representative, it became known that on 30 September 2016, the University Senate announced a public vacancy for staffing fee based on the needs of academic units. However, one of the conditions for the engagement of staff, as set out more precisely in Article 5, provides that: *"At the University of Prishtina will not be allowed recruitment / engagement of candidates who have close family or working relationships, within departments or programs."*

The purpose of this report is to draw attention to the need for protection from discrimination and equal treatment in the criteria set for vacancies advertised for the recruitment of candidates at the University of Prishtina "Hasana Prishtina" (hereinafter UP) during 2016 and 2017. In this regard, the Ombudsperson analyses the compliance of Regulation no. 2/475 on Evaluation Procedures for the Engagement of Foreign Associates in the UP (hereinafter referred to as the Regulation) of 8 September 2017, with domestic legislation and international instruments on a particular aspect of protection against discrimination.

In meetings with the UP representative during 2016, the Ombudsperson was informed that the contested criterion was included in the recruitment process in order to prevent close working or family relationships, namely nepotism in case of *employment within the same department/branch or program at the UP*. At the time of the vacancy announcement, UP did not have any internal regulations that regulate the issue under the applicable laws, but it was said that the UP is drafting the Regulation on Evaluation Procedures for the External Engagement Associate at UP "Hasan Prishtina" which will include regulating the issues of close family relationships and that the whole process regarding the issuance of the abovementioned regulation will be completed as soon as possible and the UP will inform the Ombudsperson Institution.

On 8 September 2017, the UP approved the *"Rules of Evaluation Procedures for the External Engagement Associates in UP"*. It was also stated that on 19 September 2017, the UP has announced a new vacancy for the engagement of external associate for holding lectures and exercises based on the needs of academic units and that the same condition, as in the previously mentioned competitions, is also foreseen in this

competition, being called upon *the internal regulation of evaluation procedures for the engagement of external associates in UP "Hasan Prishtina"*, in which the same condition is foreseen under Article 7, paragraph 11, which states: *"At the University of Prishtina, recruitment/ engagement of candidates within any of the basic organizational structures (department / branch or program) will not be allowed if within those structures they are in employment relationship or in a close family relationship, such as: parent-child, brother-sister, sister-sister brother-brother and vice-versa"*.

The Ombudsperson states that, according to the decisions of the European Court of Human Rights (ECtHR): "The right to non-discrimination is violated when states treat people unequally [...] without giving them objective justification and reasonable. In order for such justification to be "objective and reasonable", it must pass two steps: First, there must be a *"legitimate aim"* for the inequality in question; and secondly, there must be a *"reasonable ratio of proportionality between the means used and the objective to be achieved."*

The Ombudsperson emphasizes that discrimination in the field of employment is also prohibited by the Labour Law, while the umbrella Law on the Prohibition of Discrimination it has been created a comprehensive framework for protection from discrimination, which prohibits direct and indirect discrimination of employment in any ground for all actors who have violated, violate or may violate each person's rights, in particular when it comes to conditions for access to employment, including employment conditions and selection criteria.

The Ombudsperson emphasizes that with the notion of the right to work and the free choice of profession, the equitable rights are understood under equal conditions, which means that everyone, on an equal conditions, is accessible to any place of work, thereby excluding any form of discrimination. Prohibition of employment on the basis of close family relationships in the public sector is contrary to the right to work and constitutes discrimination. The Ombudsperson specifically understands the problem of nepotism as a special form of conflict of interest, which is extremely common in the case of employment in the public sector. However, the suppression of nepotism does not imply full reliance on relatives, but implies the ban on misusing the position of civil servants to provide work for family members. The purpose is not to prevent family members from working together, but to prevent the possibility for a civil servant to be biased, to favour or use his influence and position for family members in the exercise of discretionary powers to hire skilled civil servants.

The Ombudsperson considers that the purpose of the public vacancy is reflected in the principle of equal access of all citizens who, under the same conditions, apply equally to any job in the public sector. Equality in employment is a basic condition of equality before the law. Therefore a person may not be deprived of the right to employment due to some of his or her personal characteristics, or in the case of close family relationships and

work reports within the UP's department or program, and cannot be deprived of the right to employment, which is accessible to others and is fully recognized because of this the person is put in an unfavourable position compared to the other candidates and the same is not allowed under equal employment opportunities to participate in the recruitment procedure, but it is important to note that, in such cases, the recruitment procedure requires full transparency.

The Ombudsperson considers that the only condition for employment in vacancy position is when possessing the best and most appropriate qualification whereby the candidate shall have particular job skills for that position, whereas the candidates having family, marital or similar relationship with any of the employees of the UP and its constituent units, must not have preferential treatment, but neither must be placed in a more unfavourable position in the case of employment or advancement. The Ombudsperson will never support the employment of close family members in the UP, but this type of employment should not be restricted, it should be allowed through transparent procedures and by meeting the legal criteria for vacancies and with restrictions as to who are the members of the academic communities that may issue or participate in making decisions on the admission of candidates to employment relationships and such decisions must be in accordance with the public interest and the integrity of the institution.

If there is a suspicion of conflict of interest on the basis of close family relationships in the case of employment, in each individual case in the UP, a legal mechanism based on the *Law on Prevention of Conflict of Interest shall be available in the exercise of public function*.

The Ombudsperson, following a legal analysis of the above-mentioned controversial condition in the UP job vacancies announced in 2016 and 2017, which does not allow the submission of candidates and the recruitment of candidates within the same department on the basis of close family relationships, as well as based on Article 7, *paragraph 11 of the internal regulation of evaluation procedures for the External Engagement Associate in UP "Hasan Prishtina"*, dated 8 September 2017, which states as follows: “*At the University of Prishtina, recruitment/ engagement of candidates within any of the basic organizational structures (department /branch or program) will not be allowed if within those structures they are in employment relationship or in a close family relationship, such as: parent-child, brother-sister, sister-sister brother-brother and vice-versa*”, concluding that in the context of the principle of equality this constitutes a discriminatory condition and is in contravention of the legal provisions in force.

The Ombudsperson finds that the full protection of employment rights implies the full implementation of the principle of professional capacity and the right to participate in an open competition in the recruitment process of all interested candidates, without violating the general procedure and general conditions for employment in public institutions, in the

manner in which all candidates, without exception, on equal terms become accessible to all jobs in the UP.

Based on these findings and in accordance with Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 16, paragraph 4 of the Law no. 05 / L-019 on the Ombudsperson, recommends: The UP in job vacancies in the future will not repeat the controversial condition, which does not allow the submission to the competition and the recruitment of candidates within the same department on the basis of close family relationships; the UP should delete Article 7, *paragraph 11 of the internal regulation of evaluation procedures for the External Engagement Associate in UP "Hasan Prishtina"*, no. 2/475 dated 8 September 2017; the UP, in accordance with the applicable legal regulations, with a special regulation, more precisely shall regulate unacceptable employment practices as well as other issues related to the prevention of nepotism in UP

Ex officio Report for case no. 129/2018, regarding the effective resolution for the delays in court proceedings - violations of the right to trial within a reasonable time

On 6 March 2018, the Ombudsperson published the Report with a recommendation on the effective resolution for delays in court proceedings - a violation of the right to a trial within a reasonable time. The main purpose of this Report is the Ombudsperson's request to the relevant authorities to establish a mechanism that will provide citizens of the Republic of Kosovo with judicial protection of the right to a trial within a reasonable time.

Starting from the European Convention on Human Rights (hereinafter ECHR) as well as the practice of the European Court on Human Rights (hereinafter ECtHR) in harmony of which the ECHR is interpreted, according to the Constitution of Republic of Kosovo (hereinafter Constitution), this Report will analyze the possibility of damage compensation for the victims of violation of the right to trial within reasonable time and the room that the domestic legislation leaves so that provisions of ECHR and practice of the ECtHR are better implemented in the Republic of Kosovo.

The number of complaints lodged with the Ombudsperson Institution (hereinafter OI) concerning lengthy judicial proceedings is extremely high. Only during 2017, approximately 26% of the complaints filed with the OI are related with allegations on delays of judicial proceedings. Main reason of raising this issue by the Ombudsperson is the lack of legal mechanisms on prevention of the violation of the right on trial within reasonable time or citizen's compensation who might be victims of such violation. Thus this Report aims to analyze the notion of "effective solutions", in compliance with ECtHR practice.

The right to a fair and impartial trial within a reasonable timeframe is guaranteed by the Constitution. According to Article 31, par. 2 of the Constitution: "Everyone is entitled to

a fair and impartial public hearing (...)as to the determination of one's rights and obligations or as to any criminal charges *within a reasonable*" (emphasis added). Likewise, Article 6, paragraph 1 of the ECHR provides: "everyone is entitled to a fair and public hearing (...) *within a reasonable time* (...) for disputes regarding his civil rights and obligations, as well as on the merits of any criminal charge against him/her" (emphasis added). Similarly, Article 14, paragraph 3, sub-paragraph c of the International Covenant on Civil and Political Rights provides: Everyone charged with a criminal offense is entitled to [...] fully (...) be tried *without undue delay*" (emphasis added). The right conferred by these provisions, just as in all the rights provided for in the ECHR or the International Covenant on Civil and Political Rights, "guarantee this Constitution" (Constitution, Article 22).

In determination of the constitutional rights of the right to a trial within a reasonable time, including the possibility of effective solution of violations of this right, Article 53 of the Constitution should be taken into account, which guides that: *Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights*. Since the rendering of the case law judgment Kudła v. Poland (Application No. 30210/96, 26 October 2000), ECtHR jointly with the Committee of Ministers of the Council of Europe, which is vested with the power to supervise enforcement of ECtHR judgments (see ECHR, Article 46, par. 2), has set strict standards, which requires from each States establishment of mechanisms for effective solution of delayed cases and injuries caused as a result of violation of the right on trial within a reasonable time. These standards are based on Article 13 of the ECHR which reads that: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority" (see also Constitution, Article 54 ("Everyone enjoys the right ...to an effective legal remedy if found that such right [guaranteed by this Constitution or the law] has been violated").

However, in order to analyse the specific ECtHR requirements regarding the effective resolution of a violation of the right to a trial within a reasonable time, various types of violations of this right ought to be taken in consideration. In general, there are two main forms of violating the right to a trial within a reasonable time, which interlink with the relevant phases of a court case. Firstly, this right may be violated due to the delay of judicial proceedings until the final decision is taken in a particular case and, secondly, it may be violated due to the delay in the enforcement of the final, binding decision after such decision is taken. ECHR requirements concerning effective solution of these two types of violations, even though similar, are not entirely equal.

Effective resolution of delays in court proceeding until the final decision is issued regarding a particular case.

. In cases of delays of judicial proceedings, ECHR has initially ascertained that, in order

to be “effective” as foreseen with Article 13 of the ECHR, an effective solution ought to “prevent alleged violation [of the right to trial within a reasonable timeframe] or its continuation, or to foresee a compensation for each violation that has occurred” (Kudla, ECtHR, op. cit., par. 158).

General standards for effective solution of the delay of judicial proceedings until final decision of a certain case is taken

The Committee of Ministers has thoroughly explained the standards for the effective solution of the delay of the proceedings, referring as well to the best practices of different countries of the European Union. Approximately four years after the verdict in the Kudla case, the Committee of Ministers, in its 114th Session on 12 May 2004, issued Recommendation Rec (2004) 6 on "on the improvement of domestic remedies". As part of this Recommendation, the Committee cited several possible resolutions of delays in court proceeding, which had been implemented by various member states of the Council of Europe. In this regard, three types of solutions were highlighted.

Firstly, in the laws of some Member States, a maximum duration is envisaged for each stage of criminal, civil and administrative proceedings (see Ibid, paragraph 21).

Secondly, if these maximum time limits are not respected, especially in criminal cases, or if the duration of the proceedings in some cases is considered unreasonable, the national laws of many Member States provide that the affected individual may file a request for speeding up the procedure. Upon the approval of the request, a date shall be determined by which the court or the competent prosecutor shall complete a procedure step or to complete the procedure as a whole (see Ibid, paragraph 22).

Thirdly, in most member states there are mechanisms for granting compensation for unreasonable delays in the procedure even in those cases where the procedure is not yet completed. This compensation is often financial compensation; or, if the competent authority does not issue a decision on a claim by the deadline, the claim is deemed to have been approved automatically. In criminal cases, the delay in court proceedings may result in a reduction of the sentence (see Ibid, paragraph 23).

Six years later, the Committee of Ministers issued another recommendation on effective solutions to the unreasonable delays in court proceedings (see CM / Rec (2010) 3 Recommendation, adopted on 24 February 2010 at the 1077th meeting of the Deputy Ministers). This document includes more concrete and specific recommendations than in 2004 regarding this matter.

Among other things, the Committee has recommended that the government of each member state provide mechanisms for identifying procedures that are likely delayed longer than necessary and to identify the causes of such delays in order to avoid, in the future, violations of (ibid., Recommendation No. 2) as well as to ensure speeding up identified cases (ibid., Recommendation No. 4).

Likewise, the Committee of Ministers has recommended that each state should discover whether the problem of procedural delay is the result of a systematic problem, ie. not just casual and, if it is a systematic problem, take measures to resolve this problem (ibid, recommendation No. 3).

The Committee recommends that Member States take all the necessary steps to ensure that national authorities establish mechanisms that can effectively address the claims of parties that have been violated the right to a trial within a reasonable time (therein, Recommendation No. 5) with respect to each step of the procedure in cases involving the determination of civil rights and obligations and criminal charges (Ibid, Recommendation No. 6)

In those specific cases in which, due to delays, a violation of the right to a trial is brought within a reasonable time, the Committee of Ministers recommends: (a) that the procedure be accelerated; or (b) that compensation be given to victims for any disadvantages they may have suffered; or (c) to undertake both of these solutions. It is noted that the last option is the most preferred one (Ibid, Recommendation No. 7).

Member States are also recommended to rapidly address requests for speeding up or compensation and for these solutions to be effective, adequate and accessible (Ibid, Recommendation No. 8).

In those cases where compensation is granted, Member States must ensure that the amount / value of compensation is reasonable and recognize that, in this context, there is a strong assumption, even though it is controversial because procedures that are more than needed will cause intangible damage (Ibid, Recommendation No. 9) and, considering this fact, consider the possibility of providing certain forms of non-material compensation, such as reduction of sanctions or cancellation of criminal or administrative proceedings (Ibid, Recommendation No. 10).

Since more than 17 years have passed since the ECtHR issued a judgment in the *Kudla* case, there is a wealth of decision-making fund in this court, in which various mechanisms for resolving the delays in court proceedings have been judged as effective or ineffective. These examples can serve as a guide to the implementation and observance of the general standards mentioned in the preceding paragraphs.

Except in cases of delays in court proceedings before a final decision is taken in a particular case, the ECtHR has concluded that the delay in executing such a decision after it has been issued may also lead to a violation of the right to a trial within reasonable time. For example, the ECtHR has ascertained: *"The right to a trial guaranteed by Article 6 would be illusory if the national legal system of a Contracting State would allow a final judicial decision to remain ineffective, to the detriment of one party "and that" the effective approach to the court includes the right to execute a court decision without unreasonable delay "* (shih Yuriy Nikolayevich Ivanov v. Ukraine, ECtHR, Application

no. 40450/04, of 15 October 2009, par. 51, citing *Hornsby v. Greece*, ECtHR, Application no. 18357/91, of 19 March 1997, par. 40 and *Immobiliare Saffi v. Italy*, Application no. 22774/93, par. 66).

General Standards for effective resolution of delays in execution of final decision

As noted above, the constitutional principles for the effective resolution of unjustified delays in the enforcement of court decisions are similar but not identical with the principles for effective delays in solving before the final decision is made.

Based on the above assessment, the Ombudsperson finds that the right to a trial within a reasonable time obligates the state to primarily protect this right through its legal system by providing guarantees to citizens in the exercise of rights in the most effective way. If viewed from this perspective, an individual's right to a trial within a reasonable time will not be effective if there is no possibility of filing complaints before a state authority for possible violations of the right to trial within a reasonable time.

The Ombudsperson has consistently, through reports on cases, *ex officio* reports and annual reports, has raised the issue of a violation of the right to trial within the reasonable time before competent authorities. However, for any complaint regarding the delays in court proceedings, which has affected a violation of the right to a trial within a reasonable time, there was no effective legal remedy against these complaints, which as a result could have had some relief in the form of preventing a violation or in a form of compensation.

In this case, the Ombudsperson recommended undertaking a legislative initiative to propose a law on the protection of the right to a trial within a reasonable time, by which effective remedies would be determined for cases involving delays in court proceedings, in accordance with international instruments on human rights and freedoms.

Ex officio Report for case no. 355/2016, regarding the Civil rights of Albanians from Presheva, Medvegja and Bujanoc, displaced in the Republic of Kosovo

On 16 March 2018, the Ombudsperson published the Report with recommendations regarding the civil rights of Albanians from Presheva, Medvegja and Bujanovac, displaced to the Republic of Kosovo. This Report aims to draw attention of responsible state authorities of Republic of Kosovo regarding the civil rights for the status and lawful residence as well as supply with personal documents of Albanians from Presheva, Medvegja and Bujanoc, displaced in Kosovo.

Based on the information received by the Civic Movement "Vatra", followed by supplementary information from the articles of daily newspapers: *Koha Ditore*, dated 10 January 2017, entitled: *"Displaced persons from the Presheva Valley, pending registration"*; newspaper *Zëri*, dated January 28, 2017: *"Serbia tantalizes the graduates*

in Kosovo" and the same on 19 January 2017, entitled: "Serbia does not accept, Kosovo denies their citizenship". The Ombudspersons opened an ex officio investigation.

Since 2001, a significant number of Albanians from Presheva, Medvegja and Bujanoc, due to various reasons, have been displaced in the territory of the Republic of Kosovo, residing mainly in the cities of Gjilan, Fushe Kosovo and Pristina, while a small number of them resided in other cities in Kosovo. In 2011, the Government of Serbia adopted the Law on Permanent and Temporary Residence in Serbia, published in the Official Gazette of RS No.87 / 2011, which entered into force on 29.11.2011. This law regulates the registration and de-registration of permanent residence and registration and de-registration of temporary residence abroad, jurisdiction and manner of keeping proper records.³⁷⁸ In the meaning of this law, the right to permanent residence in the Republic of Serbia is owned by all citizens of the Republic of Serbia who live permanently in the territory of the Republic of Serbia.³⁷⁹ The entry into force of this law negatively affected and created complications for Albanian citizens of these areas regarding recognition of their right to identity before the law, namely the provision of personal documents such as identity cards and passports issued by the Ministry of Internal Affairs of Serbia. Consequently, this law provides citizens with the issuance of personal documents, requesting evidence and carrying out inspections under Article 18 if they continue to live in their registered residence or address.

This issue has revived the most complex problems in the Republic of Serbia. European Commission report for Serbia of 2015³⁸⁰, refers to the issue about the inaccurate figures of the population that resulted from the boycott of the Albanian census in 2011. So, it is about a large number of citizens of the municipalities of Presheva, Medvegja and Bujanovac, against whom is undertaken or expected to be undertaken an action of de-registration through a broad action by the Serbian police, who, according to them, it has been confirmed that they no longer live in the same addresses even though they are persons who possess the citizenship of the Republic of Serbia, and have real estate in those municipalities and are taxpayers in this state. Persons de-registered for the reasons stated above have been denied of the right to be equipped with personal documentation, as result they are deprived of their basic rights.

According to the statements of citizens who have been affected by this Law, actually of Albanians from Presheva, Medvegja and Bujanoc, the legal provision of Article 18 of the Law on Permanent and Temporary Residence in Serbia, which regulates the procedures

³⁷⁸ Law on Permanent and Temporary Residence in Serbia, (*the original title: O Prebivalištu i Boravištu Gradana*), No. 87/2011, article 1,

http://www.paragraf.rs/propisi/zakon_o_prebivalistu_i_boravistu_gradjana.html

³⁷⁹ Ibid, article 2.

³⁸⁰ European Commission, "Commission Staff Working Document, Serbia 2015 Report", Page 58, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_serbia.pdf.

for permanent and temporary registration and deregistration of residence, is being implemented only towards Albanian population who currently lives in Kosovo. The Albanians of Presheva, Medvegja and Bujanovac consider this action of the Republic of Serbia as a clearly discriminatory act. A large number of citizens of the concerned municipalities who have been displaced in Kosovo for reasons of security or social and economic aspects being without personal documents for a long time they faced with issues of lacking the status and legal stay and without effective citizenship and personal identification documents within the territory of the Republic of Kosovo.

Based on the information available with the Ombudsperson, there are still no official statistics or any form of registration about the exact number of Albanians displaced from Serbia to Kosovo, while, if we refer to unofficial information, it is alleged that there are some 3500 persons who have no documents of the Republic of Kosovo. According to information from the Civic Movement "Vatra" addressed to the Ombudsperson, these members who have not been able to obtain identification documents of the Republic of Kosovo for 17 years and have not obtained the right of citizenship this is because they do not have any relevant documentation from the state they come.

Consequently, albeit a number of them do not have valid personal documents for the reasons mentioned above, they have been unable to follow the procedures for obtaining the citizenship of the Republic of Kosovo, regardless of the residence of over 15 years. Generally, these citizens are faced with the lack of status of legal residence, either of Serbia or of Kosovo, of the two states which legally recognize dual citizenship.

On 6 June 2013, the Assembly of the Republic of Kosovo adopted Resolution no. 04-R-011, regarding the rights of the Albanians, through which it requests from the Government of the Republic of Kosovo to have more care and better treatment for the Albanian citizens of Presheva, Bujanovac and Medvegja who have been displaced in Kosovo, while guaranteeing full and equal rights for them. In addition, paragraph 4 of this resolution expressly provides for the creation of facilities for this community: *"To create facilities for mobility, education, cultural affiliation, equipment with relevant documents and other facilities, including suspension of discriminatory fees"*.

The European Court of Human Rights (ECtHR) in the case of Kurić and Others v. Slovenia found a violation of the right to respect for "private or family life" or both (Article 8 of the Convention), the right to an effective remedy (Article 13) and the prohibition of discrimination (Article 14, read in conjunction with Article 8) with respect to the deletion from the register of permanent residents by the Slovenian authorities, which resulted in the loss of the applicants' legal status z. Kurić, Ms. Mezga, z. Ristanovic, Berisha, Mr. Ademi and Mr. Minić. Consequently, not only the investigators in the matter, but also a large number of other persons were affected and are still affected by that measure. The ECtHR found that the breach essentially started with the protracted failure of the Slovenian authorities to regulate the status of applicants' residence after their

"deletion" from the permanent resident register and to provide them with an appropriate solution. The Court also states that the applicants may claim to be "victims" under Article 34 of the Convention for the alleged violations of their rights under the Convention.³⁸¹

The spirit of applying the human rights standards is that these are not enjoyed by only a limited part of the citizens of a state. They are valid for any individual, regardless of nationality or citizenship, such as asylum seekers, refugees, emigrant workers and other persons who are in the territory of another state or are under its jurisdiction.

Based on these findings, the Ombudsperson recommended to the Government of the Republic of Kosovo, respectively the Ministry of Internal Affairs, to count the exact number of citizens from Presheva, Medvegja and Bujanovac, who are staying without a defined legal status in the territory of the Republic of Kosovo, and to take the necessary measures to regulate the legal framework, which enables these citizens to enjoy basic human rights.

***Ex officio* Report for case no. 412/2017, regarding the decision for payment of the State Matura Exam, dated 16.5.2017, with no. 2-1843.**

On 5 April 2018, the Ombudsperson published the *Ex officio* report no. 412/2017, regarding the Decision for payment of the State Matura Exam, dated 16.5.2017, with no. 2-1843. The report aims to evaluate the decision for payment of the Matura Exam, dated 16.05.2017, with no. 2-1843 and whether this decision is in accordance with the rule of law and principle of legality.

In December 2008, Law no. 03/L-018 *on Final Exam and State Matura Exam* (Official Gazette of the Republic of Kosovo / Prishtina: year III / no. 44/22 December 2008) ((hereinafter referred to as the LFESME). Based on this law, the state Matura exam was held from 2008 until January 2016. In January 2016, this Law was repealed by Law no. 05 / L-018 *on the State Matura Exam* (Official Gazette of the Republic of Kosovo / No.2 / 8 January 2016, Prishtina) (*hereinafter the LSME*). In June 2017, the State Matura Exam was conducted based on the LSME and the Decision of the Central State Commission of Matura for the payment of the State Matura Exam.

Despite the fact that the request for payment no longer exists under the new law in Article 16, paragraph 3 of the LSME, the Ministry of Education, Science and Technology (MEST), respectively Central State Commission of Matura, has issued a decision where in item 1 and 2 is defined as follows: “1. *All students who have a high school and are subject to the State Matura Exam must bring evidence from the bank for the payment in the amount of 5 euros.* 2. *The payment form is used as evidence for participation in the State Matura Exam. (...).*”

³⁸¹ GjEDNj, Decision, Kurić et al vs Slovenia, (Case no. 26828/06), Stranbourg, 12.3.2014.

The Ombudsperson notes that the new law of 8 January 2016 on the State Matura Exam is silent regarding the issue of payment. Unlike Article 17, paragraph 3, sub-paragraph 3.3 of the previous Law on the Final Exam and State Matura Exam, dated 22 December 2008, which explicitly mentions that, together with the submission sheet, the candidate **presents also the pay bill from the bank**. It is clear that drafters of the law during the changes they have made have chosen to delete paragraph 3.3 in order to avoid the obligation to pay the exam from the system provided for in Article 17, paragraph 3, sub-paragraph 3.3 of the previous Law on Final Exam and State Matura Exam, dated 22 December 2008.

However, in spite of the criteria set out in the law, MEST, respectively the State Matura Commission, issues a decision specifying it as an additional criterion and obliging all students to make a payment to the bank for Matura Exam based in Article 8 and 9 of the LFESME.

Ombudsperson notes that the MEST, respectively Central State Commission of Matura, based on the abovementioned provisions, bypasses the legal basis for determining this additional payment criterion to enter the state Matura exam, which criterion is not mentioned in the LSME and at all does not give the MEST, respectively the Central State Commission of Matura, powers to set additional criteria.

The criterion for passing the Matura Exam are set out in Article 16 of the LSME and is an exhaustive list that leaves no room to add additional criteria as it was done by MEST, namely the Central State Commission of Matura, by issuing a decision and adding additional criteria obligating all students to pay for the Matura Exam.

For these reasons, in accordance with the abovementioned findings, the Ombudsperson finds that the decision for payment of the Matura Exam, dated 16.5.2017, with no. 2-1843, issued by the MEST, respectively the Central State Commission of Matura, violates human rights and freedoms, for the fact that it is in contradiction with the basic principles of functioning of the democratic state, such as the principle of legality, the constitutional principle of the rule of law and the principle of legal certainty, because there is no legal basis in the LSME for issuing such a decision.

For this reason the MEST is recommended, in accordance with the competences and responsibilities of the relevant legislation in force, to declare invalidated the decision on the payment of the State Matura Exam, dated 16.05.2017, with no. 2-1843, issued by the State Matura Commission.

***Ex officio* Report for Case no. 235/2018 regarding the category of citizens who worked before 1999 and did not benefit from the age contribution-payer pension, because they did not meet the eligibility criteria of 15 years of pension experience as a consequence of discriminatory dismissal from work.**

On 6 April 2018, the Ombudsperson published the Report with recommendations regarding the category of citizens who worked before 1999 and did not benefit from the

age contribution-payer pension because they did not meet the 15 years of pension experience due to their discriminatory dismissal from work. The purpose of this report sets out the need to regulate the contribution-payer pension for the category of citizens of the Republic of Kosovo, who worked before 1999 and did not meet the eligibility criteria of 15 years of pension experience as a consequence of discriminatory dismissal from work as result of violent measures imposed in Kosovo. The report draws attention to the need for legal regulation of the issue of benefiting from the contribution-payer pension for the citizens of the Republic of Kosovo, who worked before 1999 and did not meet the eligibility criteria of 15 years of working experience due to discriminatory dismissal from work in the 90s; to present the factual situation regarding the circumstances or reasons of dismissal for a part of the citizens at the time of the imposition of violent measures in Kosovo as a result of failure to meet the criterion of a 15-years of experience; to analyse the legislation that was in force prior to 1999, making a deliberate interpretation of the provision that defines 15 years of experience. Also will be analysed the current legislation of the Republic of Kosovo for this purpose: to emphasize the fundamental principles of human rights, especially with regard to non-discrimination and the positive obligations that the state should have in relation to citizens, deriving from the Constitution of the Republic of Kosovo and other international standards. Finally, pointing out these obligations, the Ombudsperson intends to make concrete recommendations based on his constitutional and legal powers.

Regarding the rights and treatment of pensioners in Kosovo, the Ombudsperson reiterates that the category of citizens who worked before 1999 and did not meet the eligibility criteria of 15 years of pension experience as a consequence of discriminatory dismissal from work due to violent measures imposed in Kosovo, represent the main challenge for treatment by the state of Kosovo.

The right to benefit age contribution-payer pension for this category of Kosovo citizens is a special issue (*sui generis*) and complex. This has to do with the fact that with the law of that time (before 1999), as a criterion for the benefit of this type of pension is defined a 15 years of experience, but due to exceptional circumstances, namely the imposition of violent measures in Kosovo, a part of Kosovo's citizens did not meet this criterion, without their fault, because of the discriminatory dismissal from work. On the other hand, the complexity of this issue is expressed by the necessity of amending the legislation affirmatively, due to the new and exceptional circumstances that have taken place, despite the criteria established by the law in force at the time these citizens have established working relationship. On the other hand, the current legislation of Kosovo has also regulated the right to benefit age contribution-payer pension based on the same criterion as the laws of that time, which right to benefit have only the workers who have reached (15) years of pension experience.

The Ombudsperson also reminds that, in addition to the legal aspect, this issue for the state of Kosovo may be challenging in relation to the budgetary possibilities for covering the costs for the provision of pensions for the category in question. This problem has been inherited from the pre-war period and from the circumstances that have arisen in Kosovo. As is well known in terms of legislation, Kosovo has inherited the laws of the former Socialist Autonomous Province of Kosovo (SAPK) and the federal laws of the former Socialist Federal Republic of Yugoslavia (former SFRY), including issues in the field of pensions. The right to contribution pension before 1999 is regulated by Law no. 011-24 / 83 on Pension and Disability Insurance, published in the Official Gazette of SAPK no. 26/83 (hereinafter referred to as *Law No. 011-24 / 83 of SAPK*) and the Federal Law of the former SFRY, where is defined the aforementioned criterion of 15 years of pension experience to acquire the right to benefit the contribution-payer pension. As such, these laws are not considered to have discriminatory character and of course for the time when they were approved there was no such content.

However, the Ombudsperson reiterates that the dismissal from work, at the time of violent measures for a category of Kosovo citizens, has been the main reason as to why they have not reached 15 years of pension experience. Therefore this fact constitutes a new and extraordinary circumstance beyond the provisions of the law, which has been in force and has defined the eligibility criteria for the right to contribution-payer pension. On this basis, the Ombudsperson estimates that the right to a contribution-payer pension for citizens of this category should be determined not only in relation to the criterion prescribed by the law of that time (the 15 years of pension experience) but also considering that the dismissal from work has been discriminatory act at the time of violent measures.

The Ombudsperson considers that three categories of persons who worked before 1999 could not be identified and did not meet the eligibility criteria of 15 years of pension experience: a) Employees employed before 1989, who were dismissed at the time of violent measures; b) Employees employed before 1989 and who have continued to work until 1999; and c) Employees employed after 1989, following the imposition of violent measures in Kosovo.

This classification is made so that the Ministry of Labour and Social Welfare (MLSW), respectively the Government of the Republic of Kosovo, shall take into consideration the categorization of persons who can benefit from the age-contribution-payer pension scheme for the work performed before 1999.

Based on the analysis of the legal and factual basis and the findings ascertained, the Ombudsperson recommended to the institutions of the Republic of Kosovo to take the necessary measures in order to guarantee the right to pension age-contribution-payer pension for the citizens who worked before 1999 and have been dismissed on a discriminatory basis; The Government of the Republic of Kosovo was recommended that

within its constitutional and legal competencies, to take the necessary measures to initiate the amendment of the legal basis as soon as possible to propose to the Assembly of the Republic of Kosovo a Draft Law on state-funded pension schemes, so that the category of citizens who worked before 1999 and were dismissed from work on a discriminatory basis would benefit from the employer's contribution-payer pension. For this purpose, it is necessary to determine the relevant tasks also for the line ministries, regarding the preparation of legal amendments and budget planning, and if necessary, to establish an inter-ministerial working group, and MLSW to prepare the draft and to initiate the amendment of the Law on State Pension Funds (LSPFs), respectively Article 8 thereof, so that the persons who worked before 1999 and who did not meet the eligibility criteria of 15 years of pension experience as a consequence of discriminatory dismissal from work shall be recognized of their right to benefit from the contribution-payer pension; to identify and classify this category of Kosovo citizens on the basis of relevant evidence; that after amending the law also modify the Administrative Instruction no. 09/2015 on the categorization of contribution-payer pension users according to the qualifying structure and the length of the pension contribution payment. The Ministry of Finance was recommended to take the appropriate measures that, apart from the financial means from the Pension Fund, if necessary, to provide additional financial resources to the State Budget plan, for the purpose of granting pensions to this category of citizens. Pursuant to legal competences and authorizations, in the shortest possible time, it is proposed to make categorization of these pensioners in accordance with the budget capacity of the Republic of Kosovo.

Ex officio Report for case no. 214/2018 regarding the arrest and forcible removal of six Turkish citizens from the territory of Republic of Kosovo

On 27 April 2018, the Ombudsperson published the Report with recommendations regarding the arrest and forcible removal of six Turkish citizens from the territory of the Republic of Kosovo. The main purpose of this report is to draw the attention of the competent authorities of the Republic of Kosovo on respect of the rights of the arrested persons and persons who were the subject of forcible removal or extradition from the territory of the Republic of Kosovo, in accordance with the Constitution of the Republic of Kosovo, applicable laws in the Republic of Kosovo, as well as international human rights standards.

The Ombudsperson's investigations began after the information published by the public media RTK, RTV 21 and other Medias on 29 March 2018, on the arrest and forced removal from the Republic of Kosovo of six Turkish citizens.

The deported person, Mr. Mustafa Erdem's residence permit was revoked by the Department for Citizenship, Asylum and Migration (hereinafter DCAM), on 23 March 2018, based on Article 91, paragraph 1, sub-paragraph 1.4, paragraphs 2, 3 and 4 of Law no. 04/L-219 on Foreigners and Article 26 of the Administrative Instruction (MIA) no.

01/2014 on the Procedure for Issuance of a Residence Permit for Foreigners and the Certificate of Notification of Work. Residence permit in the case of Mr. Erdem was valid until 23 February 2021. On 29 March, the Department for Migration and Foreigners within the Kosovo Police, based on Article 6, 97 and 99, paragraph 2 of the Law No. 04/L219 and the Article 8, paragraph 1 of the Administrative Instruction (MIA) No. 09/2014 on Returning of Foreigners with Illegal Residence in the Republic of Kosovo, issued an Order on forcible removal of Mr. Erden, which was enforced the same day.

The deported person's Mr. Hasan Huseyin Demir's residence permit was revoked by DCAM, on March 23, 2018, based on Article 66, paragraph 1, subparagraph 1.1 and Article 48, paragraph 1, sub-paragraph 1.6 of Law no. 04/L-219 on Foreigners, Article 23 of the Administrative Instruction (MIA) no. 01/2014 on the Procedure for Issuance of a Residence Permit for Foreigners and the Certificate of Notification of Work.

The Residence Permit in the case of Mr. Demir was valid until 21 June 2018. On 29 March, 2018, Kosovo Police Department for Migration and Foreigners, based on Article 6, 97 and 99, paragraph 2 of Law no. 04/L219 and Article 8, paragraph 1 of the Administrative Instruction (MIA) no. 09/2014 on the Return of Foreigners with Illegal Residence in the Republic of Kosovo, issued a Forced Removal Order for Mr. Demir, which was enforced the same day.

The deported person's, Mr. Yusuf Karabina's residence permit was revoked by DCAM, on 23 March 2018, based on Article 91, paragraph 1, sub-paragraph 1.4, paragraphs 2, 3 and 4 of Law no. 04/L-219 on Foreigners and Article 26 of the Administrative Instruction (MIA) no. 01/2014 on the Procedure for Issuance of a Residence Permit for Foreigners and the Certificate of Notification of Work. Residence permit in the case of Mr. Karbina was valid until August 3, 2022.

On 29 March 2018, the Kosovo Police Department for Migration and Foreigners, pursuant to Articles 6, 97 and 99, paragraph 2 of Law no. 04/L219 and Article 8, paragraph 1 of the Administrative Instruction (MIA) no. 09/2014 on the Return of Foreigners with Illegal Residence in the Republic of Kosovo, issued an Order on forcible removal of Mr. Karabina, which was enforced on the same day.

The deported person's, Mr. Cihan Özkan's residence permit was revoked by DCAM on 23 March 2018, based on Article 66, paragraph 1, sub-paragraph 1.1 and Article 48, paragraph 1, subparagraph 1.6 of Law no. 04/L-219 on Foreigners and Article 23 of the Administrative Instruction (MIA) no. 01/2014 on the Procedure for Issuance of a Residence Permit for Foreigners and the Certificate of Notification of Work. Residence permit in the case of Mr. Cihan was valid until September 21, 2018. On March 29, 2018, the Kosovo Police Department for Migration and Foreigners, pursuant to Articles 6, 97 and 99, paragraph 2 of Law no. 04 / L219 and Article 8, paragraph 1 of the Administrative Instruction (MIA) no. 09/2014 on the Return of Foreigners with Illegal Residence in the

Republic of Kosovo, issued an Order on forcible removal for Mr. Özkan, which was enforced on the same day.

The deported person's, Mr. Kahraman Demirez's residence permit was revoked by DCAM on 23 March 2018, on the basis of Article 91, paragraph 1, subparagraphs 2, 3 and 4 of Law no. 04/L-219 on Foreigners and Article 26 of the Administrative Instruction (MIA) no. 01/2014 on the Procedure for Issuance of a Residence Permit for Foreigners and the Certificate of Notification of Work. Residence permit in the case of Mr. Demirez was valid until 23 February 2021. On March 29, 2018, The Kosovo Police Department for Migration and Foreigners, pursuant to Articles 6, 97 and 99, paragraph 2 of Law no. 04/L219 and Article 8, paragraph 1 of the Administrative Instruction (MIA) no. 09/2014 on the Return of Foreigners with Illegal Residence in the Republic of Kosovo, issued an Order on forcible removal for Mr. Demirez, which was enforced on the same day.

The deported person's, Mr. Osman Karakaya's residence permit expired two months earlier, according to DCAM and the request for extension was not approved, as the assessment of the competent authority was that he posed a threat to national security. On March 29, 2018, Kosovo Police Department for Migration and Foreigners, based on Article 6, 97 and 99, paragraph 2 of Law no. 04 / L219 and Article 8, paragraph 1 of the Administrative Instruction (MIA) no. 09/2014 on the Return of Foreigners with Illegal Residence in the Republic of Kosovo, issued an Order on forcible removal for Mr. Karakaya's, which was enforced on the same day.

On the same day, the media published a communication from the DCAM of the MIA, which stated: *"... we as a competent body, during evidence administration have ascertained that, as per persons in question, there is sufficient legal basis to undertake measures for revocation of their residence permit in the territory of the Republic of Kosovo for the reasons determined by the Law on Foreigners, specifically by Article 6 of the law on rejection or revocation of residence permit for national security circumstances."*

On 30 March 2018, Department for International Legal Cooperation in Penal Matters of the Ministry of Justice informed the Ombudsperson that no procedures have been developed in this Department for extradition of arrested persons and forcible removal of the same from the territory of Republic of Kosovo.

The Ombudsperson's National Mechanism for Prevention of Torture (hereinafter NMPT) on 29 March 2018 requested information from the Detention Centre for Foreigners (hereinafter DCF) on whether the arrested foreigners are located at the centre. The competent DCF officer informed the NMPT that the persons in question were not brought to the DCF at all.

On 29 March 2018, the Ombudsperson, through official e-mail, requested from the Kosovo Police and DCAM to be informed in regards to the case in question. On the same

day, NMPT visited the Regional Detention Centre in Pristina (RDC) where it was informed that the detainees in question were not at the centre.

On 29 March 2018, Kosovo media published an article referring to the newspaper "Hurriyet" which revealed the fact that, Kosovo Intelligence Agency, in cooperation with the Turkish Intelligence Agency, have successfully carried out the arrest operation referring to the apprehension and expelling of persons from the territory of the Republic of Kosovo. The same media also published photographs of arrested persons.

On 30 March 2018, the NPM visited the Regional Detention Centre in Prishtine (RDC), in the course of which the monitoring team conducted a detailed inspection to verify whether the persons in question are located in this centre or have been located there a day before. The monitoring team also reviewed all official records at the Detention Centre and found that the apprehended persons were not in the centre and have not even been brought there.

On 30 March 2018, the NMPT had an official meeting with DCAM director, where copies of DCAM's decisions for the revocation of residence permits to the Republic of Kosovo for those persons were obtained from this department. On this occasion, the NMPT requested DCAM to submit copies of the files of each arrested person to the NMPT.

On 30 March 2018, the NMPT requested through the official electronic mail, to obtain from the Kosovo Police Department for Migration and Foreigners the relevant documents regarding the arrest and deportation of six Turkish citizens from the territory of the Republic of Kosovo.

On the same day in the morning, the NMPT requested a meeting with competent authorities from the General Directorate of Kosovo Police in order to obtain the relevant documentation and to be informed regarding the procedures applied in the case of arrest, deportation and the whereabouts of these persons. The meeting did not take place, but the NMPT was asked to schedule the meeting by a written request.

On March 30, 2018, at 14:00h, the Department for Migration and Foreigners sent NMPT through official e-mail, the "Forced Removable Orders" from the territory of the Republic of Kosovo of six Turkish citizens. On this occasion, the NMPT was also informed that the persons in question were immediately escorted, and, on the same day were deported to their country of origin by this Department.

On 30 March 2018, the Ombudsperson issued a statement, inter alia, stating that: *"The Ombudsperson is deeply concerned with the situation created from the moment he obtained the information on apprehension of six Turkish citizens, who were legally residing in our country. Ongoing efforts have been made to ensure official information on their location and situation, the way how they have been arrested and the manner of their deportation to Turkey, but obtaining such information was not possible during yesterday*

and today's morning. Following the ongoing persistence of the Ombudsperson, the Kosovo Police (KP), actually the Directorate for Migration and Foreign National (DMF), today, on 30 March, 2018, at 14:00, has notified that DMF of KP, on 29 March 2018, has issued six orders for forced deportation of given citizens from the territory of the Republic of Kosovo to Turkey. Issuance of these force deportation orders was applied based on the Decisions of the Department for Citizenship, Asylum and Migration (DCAM) of MIA, which hold the date 23 March 2018, forwarded to the DMF on 28 March 2018. According to the KP's announcement, the citizens were apprehended on 29 March 2018 and were accompanied to the Pristina International Airport at the same day, from where they have been deported to their country of origin. During yesterday the Ombudsperson also contacted DCAM at the Ministry of Internal Affairs and requested to be informed whether the persons in question were briefly detained at the Detention Centre for foreigners but was informed that they were not brought there. While, during the day, from the same Department he has been notified on the fact that there were Decisions for the revocation of the residence permit for each person separately and copies of these Decisions were forwarded to him. Given the sensitivity and complexity of the case and the confusion of the authorities over responsibility line, the Ombudsperson has decided to initiate Ex officio case, to investigate thoroughly actions undertaken by public authorities. However, at this phase, the Ombudsperson claims that actions undertaken by public authorities are opposite with the international standards on human rights and fundamental freedoms, applicable national legal system of the Republic of Kosovo. The European Convention on Human Rights and Fundamental Freedoms and its Protocols explicitly stipulates procedural guarantees regarding the deportation of foreign citizens. Within the meaning of Article 3, Article 6, Article 8 and Article 13 of the ECHR, the same as well as the Basic Non Refoulement Principle under the Refugee Convention of 1951, the responsibility rests with the competent state authorities regarding the situation created. Supremely, the guarantees of Article 3 (prohibition of torture and inhuman and degrading treatment) and Article 6 (right to a fair and regular trial) of the ECHR in democratic societies cannot be derogated even in extraordinary circumstances.

On 30 March 2018 the Ombudsperson, via an official e-mail, requested from Kosovo Intelligence Agency (KIA) submission of the evaluation report and recommendations of this Agency related to the given persons. After meeting with the KIA representative, the Ombudsperson was informed that the requested information is regarded as classified according to Article 4, paragraph 1.3.1 of Law no. 03/L-178 on Classification of Information and Security Clearances. According to Article 22, paragraph 2 of this law: *"Only the President of the Republic of Kosovo, the President of the Assembly of Kosovo and the Prime Minister are authorized to have access to classified information."*

On March 30, 2018, upon the request of the defence counsel and suspicions of the family that they were still being held in the airport premises, the NPMT monitoring team

conducted a visit to Pristina International Airport in order to verify whether the arrested persons were still being held there. Regardless of the persistence of the monitoring team to have access to all premises and documentation, the team was not granted access, thus making it impossible to perform the official duty in accordance with the Constitution of the Republic of Kosovo and the Law on Ombudsperson. On March 31, 2018, *Gazeta Express* published an article referring to the statement of the prosecutor Reshat Millaku from the Special Prosecution of the Republic of Kosovo, who stated that they had received a request for extradition from the Ministry of Justice of Kosovo several days ago. Further on in this article, the prosecutor in question said: *"We have not initiated any investigation on this issue. But there was a request for extradition; but we did not act. The request went through the Ministry of Justice of Turkey, addressed to our Ministry of Justice. We have not acted as we found no reason to act."*

On 3 April 2018, the defence attorney of the arrested and deported persons from the territory of the Republic of Kosovo informed the Ombudsperson that the Kosovo Police Deportation Order and the Decision on Revocation of Residence Permit of DCAM has not been handed to their clients or their defence attorneys.

On 6 April 2018, the representative of the Ombudsperson, together with the officials of The Office of the United Nations High Commissioner for Human Rights, met with family members of Turkish nationals deported from the territory of the Republic of Kosovo.

Based on the received documents, the Ombudsperson notes that the General Directorate of the Kosovo Police, on 29 March 2018, issued a deportation order based on Articles 6, 97 and 99, paragraph 2 of the Law on Foreigners no. 04/L-2019 and Article 8, paragraph 1 of the Administrative Instruction (MIA) no. 09/2014 on the Return of Foreigners with Illegal Residence in the Republic of Kosovo. The reasoning of each Deportation Order is the same. Each decision states: ... [further stay of this person in the Republic of Kosovo poses threat for security and public order of the state...]. In the same decisions it is emphasized that this act can be challenged by appeal to the Commission for the Review of Foreigners Complaints within 8 (eight) days from the day of its receipt. The complaint is filed in person or through an authorized person. The decision also states expressly that the complaint does not hinder execution of this decision.

The Ombudsperson notes that in the present case, the competent authorities took action to deport the foreigners concerned without coordination between institutions on the basis of their mandates, lacking transparency, which (transparency) is the main principle of good governance in a country. From the information gathered so far it is clear that the persons in question were deported from the territory of the Republic of Kosovo to hand those over to the Turkish police authorities, which were immediately arrested and accused of committing the criminal offense of terrorism.

In accordance with Article 3.1.26 of Law no. 04/L-219 on Foreigners, Removal is defined as *"the enforcement of the obligation to return, namely the physical*

transportation out of the Republic of Kosovo ". Also, from the meeting of representatives of the Ombudsperson with the Chief Prosecutor of the Special Prosecution of the Republic of Kosovo, the Special Prosecution has received from the Basic Court of Pristina two requests of the Ministry of Justice of Turkey for the extradition of two persons who were extradited together with others, which requests were forwarded through the Ministry of Justice of Kosovo with a cover letter, on 26 February 2018.

Further, according to the Chief Prosecutor, the Ministry of Justice of Turkey through its embassy in Prishtina forwarded to the Ministry of Justice of Kosovo a request for extradition of two Turkish citizens (Mr. Kahraman Demirez and Mr. Yusuf Karabina), residing in Kosovo, in connection to commission of criminal offence of terrorism.

The Ombudsperson estimates that in such cases shall be applied extradition procedures stipulated by the Law No. 04/L-213 on International Legal Cooperation in Criminal Matters. This law stipulates clearly procedures, obligations and actions to be followed by the competent authorities until the final decision on extradition of a person upon the request of another State. This way, the deported persons were denied the right to be heard and tried by the competent public authority. This right is also guaranteed by the Constitution of the Republic of Kosovo, the Universal Declaration of Human Rights, the European Convention on Human Rights and Fundamental Freedoms, its Additional Protocols, the Covenant on Civil and Political Rights, and the ECHR case law itself. All of these international instruments are part of the constitutional and legal system of the Republic of Kosovo and prevail over local provisions and laws in case of a conflict.

On the day of the arrest, the Kosovo Police, as a competent authority, mandated to deprive persons of liberty, was unable or unwilling to provide concrete information about the whereabouts of the persons reported by the press and electronic media to have been arrested. Moreover, such information was denied even to the Ombudsperson, whose mandate is the protection of fundamental rights and freedoms, especially of arrested persons, which are considered vulnerable categories, since, as of the arrest they are fully under the control of authorities.

On the day of the arrest, the expelled persons were completely denied the fundamental rights guaranteed by the Constitution of the Republic of Kosovo, the Law on Police, and all international standards for the protection of the rights of the arrested persons. These rights are: the right to have a lawyer, the right to have a doctor, and the right to notify the family or the person, as they wish, regarding the fact that they are deprived of their liberty. These rights are considered fundamental safeguards against physical ill-treatment.

The full denial of these rights puts the arrested person at risk from the exercise of torture or physical ill-treatment. On the day of the arrest, neither the defence lawyers nor the family of the arrested persons were informed of the whereabouts of the arrested persons.

The decisions on deportation from the territory of the Republic of Kosovo and revocation of residence permits were not provided to the deported persons neither to their defence counsels. The Ombudsperson reiterates, as in other cases, that the denial of the right to exercise legal remedies is a serious violation of human rights guaranteed by the Constitution of the Republic of Kosovo, with the laws in force and with all standards international standards on protection of human rights and fundamental freedoms.

The ECHR has explicitly and clearly stated that states under no circumstances can expel a foreigner in the territory of another state where he may be exposed to the risk of being physically tortured and physically ill-treated. The Court emphasized that this prohibition in Article 3 of the Convention is of absolute nature and shall be applied in *"time of war or other public emergencies threatening the nation"*.

In case *Chahal vs. The United Kingdom*, in which the deporting State claimed that the deported posed a threat to national security and that he had to be deported to India, the ECtHR assessed that the state's security interests could not be taken in consideration in determining whether the State signing party has violated the convention. 13 The Court found that the prohibition in Article 3 against torture, inhuman or degrading treatment or punishment, compared with other articles, is of absolute character. Moreover, the prohibition in Article 3, according to ECHR, applies *"in time of war or other public emergency threatening the life of the nation"*.

The Ombudsperson considers that the authorities of the Republic of Kosovo, by expelling the Turkish citizens, exposed them to a real risk of being subjected to torture, physical ill-treatment and real danger for serious violations of other rights guaranteed by international instruments for the protection of human rights. As a result, the Ombudsperson finds that the competent authorities in the present case have violated: Article 29, paragraph 2, 3 and 4 of the Constitution of the Republic of Kosovo [Right to Liberty and Security], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] Article 14, Paragraph 1, Article 15, Article 16, Paragraph 1 and 2, Article 17, Paragraphs 2 and 6 of Law no. 04/L-2013 Articles 8 and 10 of the Universal Declaration of Human Rights, Article 9, paragraphs 1 and 2, Article 13 of the International Covenant on Civil and Political Rights, Articles 5, 6 and 3 of the European Convention on Human Rights and Fundamental Freedoms, Article 1, paragraph 1 of Protocol no. 7 of the European Convention on Human Rights and Fundamental Freedoms, Article 3, paragraph 1 and paragraph 2 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Based on these findings, the Ombudsperson recommended to the Ministry of Internal Affairs and the Ministry of Justice that, when evaluating the status of foreigners in our country, to carefully apply all guarantees and procedures guaranteed by the Constitution of the Republic of Kosovo and International Conventions, whether for issuing a residence permit, removal or extradition permit; The Ministry of Internal Affairs shall expressly

notify its staff regarding the constitutional and legal powers of the Ombudsperson with regard to unannounced access to any place and time in locations where persons deprived of their liberty are held or may be held; The Government of the Republic of Kosovo to accord adequate non-material compensation as an expression of goodwill and recognition of human rights violations in accordance with Article 41 of the ECHR.

Ex officio Report for case no. 358/2016 regarding the amending and supplementing of Article 4 of Law no. 04/L-096 on Amending and Supplementing of the Law no. 2003/15 on the Social Assistance Scheme in Kosovo

On 13 July 2018, the Ombudsperson published the Report with recommendations regarding the amending and supplementing of Article 4 of Law no. 04/L-096 on Amending and Supplementing of the Law no. 2003/15 on the Social Assistance Scheme in Kosovo.

The purpose of this report is to recommend to the Assembly of the Republic of Kosovo the amendment and supplementing of Article 4 of Law no. 04/L-096 on Amending and Supplementing of the Law no. 2003/15 on Social Assistance Scheme in Kosovo, published in the Official Gazette of the Republic of Kosovo/no. 15/13 June 2012, Prishtina (hereinafter: Law No. 04/L-096), which limits social assistance to families with children under the age of five (5). This report justifies the necessity of amending Law no. 04/L-096 in relation to international standards for protection of human rights, with special focus on the protection of children's rights, as this limitation aggravates the life and welfare of citizens who are in severe economic hardship.

The report provides specific and concrete recommendations regarding the amendment and supplementing of Article 4, respectively paragraph 4.5 of Law no. 04/L-096, in order for the limitation of child's age of five (5) to be raised to 18, in accordance with the notion of the term "child" and in order to accomplish the obligations provided under the Constitution.

In August 2007, the Law no. 2003/15 on the Social Assistance Scheme in Kosovo was issued, published in the Official Gazette of the Provisional Institutions of Self Government in Kosovo/Prishtina: year ii / no. 15/01 August 2007 (hereinafter: *Law No. 2003/15*). The Law no. 2003/15 regulates the social assistance scheme for the purpose of protecting and caring for socially vulnerable families.

In January 2016, the Law no. 04/L-096 on Amending and Supplementing the Law no. 2003/15 on the Social Assistance Scheme in Kosovo was issued, published in the Official Gazette of the Republic of Kosovo/no. 15/13 June 2012, Pristina. Based on this law, the social assistance scheme in Kosovo is regulated in order to support and provide temporary financial assistance to families in severe economic hardship.

With this restrictive provision, the citizens from Roma, Ashkali and Egyptian communities have been affected in particular. According to the cases presented to the

OIK and the allegations of the families affected by this limitation, there are estimates that such a restriction worsens the situation even more, because these families make birth plans to have yet another baby every five years, so that the social assistance would not be interrupted.

Despite the fact that changes to Article 4 of Law No. 2003/15 have been done, this in fact did not improve the situation of poorer families due to the fact of limiting the age of children. Furthermore, paragraph 4.6 of Article 4 of the Law No. 04/L-096 foresees that the provisions of Article 4.5 be modified in time so that the age limit of the child is gradually increased in order to change this criterion, which will depend on the necessary budgetary funds made available, and will be subject to fiscal constraints.

In this regard, on 16 June 2016, an article was published in the daily newspaper “Kosova Sot”, where several families from Gjakova and the surrounding area were mentioned, who complained to be in the most difficult financial situation now that they have been left without social assistance. Given the poor economic situation in Kosovo and the difficulties related to employment, many families depend on social assistance. The conditions laid down for social assistance by the applicable legal provisions have affected the deterioration of the economic situation of many families, causing barriers and difficulties in the welfare and well-being of families in general.

Given the above, Law no. 04/L-096, specifically Article 4, paragraph 4.5, item a) beyond any doubt violates the best interest of the child: “Children enjoy the right to protection and essential care to their well-being”. At the same time, the Constitutional provisions are fully in line with the international standards foreseen in the Convention on the protection of the children’s rights. Although the same article of the Constitution refers to the obligation of state authorities to act in accordance with the best interest of the child, this is neglected through Law no. 04/L-09. If the child is defined as being under the age of 18, then the social assistance that he or she needs, cannot be stopped when reaching the age of five.

Lawmakers in Law no. 04/L-096 have implicated the acceptance of constitutional violations and the best interest of the child, foreseen in Article 4, paragraph 4.6, that such a condition will be modified in time, so that the age limit gradually increases, being dependent on budgetary funds, which in fact will be subject to fiscal constraints. It results that the production of such a provision has been the result of a lack of budget that would potentially be defined under the legitimate chapter of the ECtHR's practice.

Article 26 of this Convention on the Rights of the Child, which refers to social assistance, expressly states: *“Children - directly or through their legal guardian– shall enjoy the right of government assistance if they are poor or in need of such assistance ”.*

The subsequent article is also in this regard, referring to a proper living standard of a child. Article 27 states that children need to have the right to a standard of living that is

sufficient to meet their physical and mental needs and that governments should help families and guardians who cannot fulfil these the need, in particular with regard to food, clothing and dwelling.

The emphasis must be on the children by all means and the fact that the same notion refers to all those who have not reached the age of 18. The conditions set out in the Convention on Protection of the Rights of the Child with regard to the achievement of an adequate standard of living apply also to children over the age of five, in this case accomplished through the allocation of assistance to their parents or legal guardians.

Lack of social assistance for children and families in need, conditions them and affects the physical and mental health of the child as well as their education and further development. In this regard, and taking into account the fact that the child ceases to receive assistance needed for them to grow up in accordance with the appropriate standard, for which he/she meets the age-related conditions up to the age of 18, the question is whether social assistance can be considered, namely the withdrawal of the same assistance after the child has reached five years of age, a violation of the right to property, especially considering that the ECHR practice does not recognize the right to property that can be earned in the future.

Pension rights and other social benefits are foreseen by the ECtHR practice as part of the property or segments that are attached to Article 1 of Protocol No. 1 to the ECHR. As is apparent from *Müller v Austria*, the right to property, to receive a benefit from a compulsory or voluntary social scheme may exist, if the applicant fulfils the conditions laid down in the second paragraph of Article 1 of Protocol No. 1. However, this right does not give the applicant the right to request a certain amount of pension. The second paragraph referred to here, invokes for hindrance to the right to property in the case of public interest and in accordance with the conditions laid down by law or the general principles of international public law.

With regard to the above, the interference with the right to property should not only have a legitimate objective. It should also be proportional. In *Sporrong and Lönnroth v Sweden*, the ECtHR has come to the conclusion about the justification of the interference: the Court must determine the existence of a fair balance between the general interest of the community and the requirements for the protection of fundamental rights of the individual. Therefore, it is most important to determine the balance between limitation of rights, and requirements of general interest. Fair balance cannot exist when the holder of the property has to endure “excessive individual burden”.

Consequently, the conditionality of social assistance provided by the state to the families that should enjoy that right for the purpose of raising their children, which is in full compliance with the best interests of the child (the person who has reached five (5) years of age), but under the Convention on Child Protection and Local Law is still a child, as he/she has not reached eighteen (18) years). This assistance can be considered as a

property, as the family in this case enjoys every right and does not count on something that may belong to it in the future, it cannot be considered a non-violation of the right to property, based on the practice of ECHR. Having said this, we should refer to the legitimate general interest that the state may have in limiting elementary rights. Keeping families in extreme poverty, which constrains the child to enjoy basic things for better growth, due to the lack of budget funds, cannot be considered legitimate. Also, regardless of the fact that the provisions of the Law are clear in this regard, they are arbitrary, in complete contradiction with international standards and at the same time with Constitution as the highest legal act in the country.

For these reasons, the Ombudsperson, in accordance with the findings mentioned above, concludes: Article 4 of Law no. 2003/15 on the Social Assistance Scheme in Kosovo is in violation of the Convention on the Protection of the Rights of the Child, which is directly applicable in the Republic of Kosovo and recommended the amendment of Article 4, paragraph 5 of Law no. 04/L-096 on Amending and Supplementing the Law no. 2003/15 on the Social Assistance Scheme in Kosovo, so that the age limit of five (5) years of the child be raised to eighteen (18) years, in accordance with the notion of the term "child" and in order to fulfil the Constitutional obligations.

Ex officio Report for case no. 687/2017 related to organizing of out of country voting for parliamentary and local elections

Prishtina, 30 August 2018 - The Ombudsperson published a report with recommendations with the intention to raise the issue of organizing of Parliamentary and Local Elections. The report aims to draw the attention of the authorities responsible for the voting of citizens residing abroad and of those who temporarily live abroad, in order for this voting to be organized in accordance with international standards, and the voting right to be protected.

The Ombudsperson inquiries were initiated based on an article of newspaper "Zëri", dated 19 October 2017. The report is based on an analysis of local legislation regarding the organization and conduct of parliamentary and local election processes, focusing on the organization of voting abroad and addresses three issues of interest to organize the voting abroad.

The first issue is about publishing the final results of the votes from abroad. In this regard, the Ombudsperson finds that the legal framework of the Republic of Kosovo foresees the exercise of the right to vote abroad. Given the case law of the European Court of Human Rights (ECtHR) when the state enables elections abroad and guarantees them with the legal framework in force, it is the obligation of the state to organize the elections in a genuine and transparent manner.

However, the Law on General Elections does not foresee publication of the final results of the votes from abroad. Therefore, the Ombudsperson has recommended amending/supplementing the Law on General Elections in Article 106 paragraph 4, which will also include the publication of the final results of votes from abroad.

The second issue concerns the electoral rule of the CEC for voting abroad, which foresees the method of voting through postal boxes set by the CEC, but does not provide clarification regarding the location of these postal boxes. Based on international standards, voting abroad through post is considered as an insecure, fragile and non-transparent method. Therefore, the Ombudsperson has recommended amending/supplementing the Electoral Rule 03/2013, Article 4, which should include determining the location of the ballot boxes and the role of consular offices/embassies in the electoral process.

In the essence of the second issue, the Ombudsperson has also recommended amending/supplementing the Law on General Elections, Article 96, which would allow, besides voting by mail, physical voting through consular offices or embassies where the boxes would be placed for voting.

Ex officio Report for case no. 441/2018 concerning three general principles for the interpretation of normative acts and the implementation of these principles regarding the protection of human rights

On 28 September 2018, the Ombudsperson published the Report on the three general principles for the interpretation of normative acts and the application of these principles in the protection of human rights. The Ombudsperson, within the exercise of his legal powers and responsibilities, inter alia, examines and analyses the implementation of the legislation. During the work of the Ombudsperson Institution, several cases have been encountered where a factual situation is covered by two or more normative acts. The Ombudsperson has found that the way priority is set among normative acts, incorporates important implications for human rights.

The Ombudsperson's report aims to present three general principles: the special normative act derogates the general normative act; the subsequent normative act derogates the previous normative act, and the highest normative act derogates the lower normative act (*lex specialis derogat legi generale, lex posterior derogat legi priori* and *lex superior derogat legi inferiori*). The report also aims at guiding as to which normative acts should be given priority in a factual situation covered by two or more such acts and at explaining the importance of these principles for the protection of human rights, for the rule of law and democracy, presenting thus concrete examples from the Ombudsperson's experience and explaining how these three interpretative principles solve these cases.

On this occasion, the Ombudsperson has recommended: The Supreme Court, pursuant to Law no. 03/L-199 on Courts, Article 22, par. 1, subpar. 3 ("The Supreme Court (...) defines the principled positions and legal opinions on matters of importance for the uniform application of the laws by the courts in the territory of Kosovo") to announce a legal opinion by instructing that all regular courts to interpret and enforce normative acts in accordance with the three interpretative principles (*lex specialis derogat legi generali*, *lex posterior derogat legi priori* and *lex superior derogat legi inferiori*) and to apply the proposed rules in this Report on conflicting circumstances between these principles; The Prime Minister, in accordance with Constitution, Article 94, par. 3 ("The Prime Minister (...) ensures the implementation of laws"), shall issue an administrative act, guiding all institutions and government agencies to interpret and enforce normative acts in accordance with the three above principles and apply the proposed rules in this Report on cases of conflict between these principles; Institutions and independent agencies shall interpret and enforce normative acts in accordance with the three above mentioned principles and apply the proposed rules in this Report on conflicting situations between these principles.

Ex officio Report for case no. 376/2018 regarding the conditioning of vehicle registration and change of the ownership upon payment of outstanding fines for traffic offenses, pursuant to Law no. 05/L-132 on Vehicles

On 5 October 2018, the Ombudsperson published the Report with recommendations regarding the conditioning of vehicle registration and change of the ownership upon payment of outstanding fines for traffic offenses, pursuant to Law no. 05/L-132 on Vehicles.

The report has three main purposes: to explain in detail Article 46, par. 1 of the Constitution of the Republic of Kosovo ("The right of property is guaranteed") and the manner in which this provision should be applied in the legal system of the Republic of Kosovo; to analyse, based on this explanation, whether Article 43, par. 2 of the Law on Vehicles constitutes a violation of the right to property; to send concrete and specific recommendations to the competent institutions to amend the Law on Vehicles to become in full compliance with the constitutional right on property.

During the handling of the case in question, the Ombudsperson has ascertained that the Law no. 05/L-132 on Vehicles, Article 43, par. 2, which provides: "The owner of the vehicle cannot do the registration or extension of the registration of motor vehicle, as well as cannot change the owner without paying off the fines for minor offences in the road traffic", constitutes a violation of the property right, guaranteed by Article 46, par. 1 of the Constitution of the Republic of Kosovo.

Therefore, the Ombudsperson has recommended the Assembly, in cooperation with the Ministry of Infrastructure: to amend Law no. 05/L-132 on Vehicles, respectively, remove

it's Article 43, par. 2 of; to analyse whether Law no. 05/L-087 on Minor Offenses, Article 30, par. ("If the perpetrator pays partially or does not pay the fine in entirety within the defined time period, against him/her shall be applied forced execution in accordance with the provisions of the Law on Enforcement Procedure. Minor offence order through which there is imposed the fine shall be deemed as an enforcement document in compliance with the provisions of the Law on Enforcement Procedure."), is functioning in such a way as to ensure the payment of outstanding fines for offenses in road traffic at sufficient level; and if Article 30, par. 4 of the Law on Minor Offenses is not sufficient, it should be considered whether there is another less severe measure than Article 43, parag. 2 of the Law on Vehicles, which would make it possible to reach the repayment goal of traffic offenses outstanding fines.

Ex officio Report for case no. 401/2018 regarding the management and maintenance of the cemetery

On October 25, 2018, the Ombudsperson published the Report with recommendations regarding the lack of proper administration and maintenance of cemeteries in different municipalities of Kosovo. Considering that the management and maintenance of the cemetery is a municipal activity of general interest and based on the information gathered about the poor condition of cemetery maintenance, the Ombudsperson, based on Law no. 05/L-019 on Ombudsperson, initiated an (*ex officio*) investigation to assess the situation of the cemeteries in the municipalities of the Republic of Kosovo.

The report aims to provide an objective description of the cemetery condition, taking into account the fulfilment of the most basic criteria as to make the cemeteries accessible, dignified and meet citizens' requirements. The report identifies issues needed to be addressed by the competent municipal authorities on the basis of their legal competencies, in order to regulate and improve the conditions in the management of the cemetery.

Lack of adequate actions by local authorities in the area of cemetery administration and maintenance and the current unsatisfactory condition of the cemeteries directly results in the violation of the dignity of all persons visiting the graves of their relatives, especially considering their sensitivity and emotional state during such visits.

In almost all municipal regulations for the management and maintenance of cemeteries, among other things, the responsibilities of municipalities are clearly defined in the maintenance and management of the cemeteries, especially considering: cemetery fences and their maintenance, maintenance of entry and exit, maintenance of pedestrian paths, maintenance of greenery in the cemetery, cleanliness and order in the cemetery, appropriate location, maintenance of infrastructure, of parking lots for vehicles, etc.

According to international practices, depending on specific cemetery locations, the maintenance of cemeteries includes, inter alia, the following: care and cleaning of roads

for access of pedestrians and means of transport, maintenance of cemetery boundaries, gates and internal walls, waste disposal, maintenance of signs and notices, levelling of terrain as needed, maintenance of greenery, planting and preserving of flowering areas, cutting and care of trees and shrubs, maintenance of accompanying facilities in cemeteries, etc.

Regarding the legislative aspect, some states regulate this area with a special law, such as the Republic of Croatia. The Croatian Law on Cemetery³ regulates the issue of construction, use and administration of cemeteries which, according to this law, are municipal facilities owned by the local self-government unit in the territory of which they are located. The law also defines the obligations of local self-government units in ensuring cemetery administration and maintenance by fulfilling the criteria and rules established by law, as well as the deadlines for issuing bylaws related to the administration and maintenance of cemetery.

The Ombudsperson has recommended to the responsible authorities through this Report about the measures to be taken, in order to improve this situation in the respective municipalities where the situation of the cemeteries needs improvement.

Ex officio Report for case no. 12/2018 regarding the failure of competent bodies to implement positive obligations to manage waste containing asbestos

On 7 November 2018, the Ombudsperson published the Report with recommendations regarding the failure of the competent authorities to fulfil the obligations for the management of asbestos-containing materials within the territory of the country.

The report aims to draw attention of competent authorities, Ministry of Environment and Spatial Planning (MESP) and municipalities on the need to undertake immediate preventive measures in order to reduce the negative effects to the environment and human health.

According to the World Health Organization-WHO and the International Labour Organization-ILO document published in 2007, relating to the development of National Programs for the Elimination of Asbestos: "*Exposure to asbestos causes asbestosis, pleural plaques, thickening and effusions, lung cancer, mesothelioma, laryngeal and possibly other cancers with different latent periods.*" While according to the WHO document, published in 2014 "Elimination of asbestos-related diseases", which examines the adverse effects on health from the exposure to asbestos, estimates that at least 107,000 people die annually from lung cancer, as a result of exposure to asbestos during the course of their occupation .

The Ombudsperson, after analysing the case, although no response was received from the Ministry of Environment and Spatial Planning, based on the information received from the Municipality of Prishtina, Ferizaj, Mitrovica, Gjilan, Gjakova, Peja and Prizren, considers that, despite the sufficient legal basis provided by Law no. 04/L-060 on Waste

and Administrative Instruction no. 22/2015 on Asbestos Waste Management, the Ministry of Environment and Spatial Planning and municipalities, with the exception of the Municipality of Mitrovica – although they have competences to enforce the law and are responsible for the protection of the environment, nature and biodiversity – have not taken actions to ensure a safe and healthy environment for the citizens of Kosovo as a positive obligation under Article 25 [Right to life] and Article 52 [Environmental Responsibility] of the Constitution.

The Ombudsperson found in the Report that the lack of any awareness-raising activities regarding the public awareness of the hazards posed by asbestos-containing materials, indicate failure and negligence of the competent authorities to protect human health and life, and at the same time, limitation of the right to a safe and healthy environment and the right to life.

Whereas, the failure of the Ministry of Environment and Spatial Planning to deal with treatment of asbestos-containing materials within the territory of the Republic of Kosovo, as provided for in the Law and Administrative Instruction, the Ombudsperson considers the failure to comply with the obligations arising from Article 92 of the Constitution, on the exercise of executive power in accordance with the Constitution and law, and the implementation of the laws approved by the Assembly of Kosovo.

Based on the investigations, the Ombudsperson, pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo, as well as with Article 18, Paragraphs 1.5 and 1.7 of the Law on Ombudsperson, recommended: The Government should take prompt actions for waste management with asbestos content, as foreseen in Law no. 04/L-060 on Waste; Ministry of Environment and Spatial Planning should undertake additional measures for waste management with asbestos content; Municipalities, in cooperation with the Ministry of Environment and Spatial Planning, should undertake accelerated steps to implement the obligations deriving from Law no. 04/L-060 on Waste and Administrative Instruction no. 22/2015 on Waste Management Containing Asbestos; Ministry of Environment and Spatial Planning should start the informing and awareness rising through various forms regarding the asbestos impact on human health and the environment, as well as ways of its management; The Ministry of Environment and Spatial Planning should make public the report on the asbestos research in all public buildings in the Municipality of Peja and Istog, from the NGO "Pro Vitae", with the exception of the information limited by law; The Committee on Agriculture, Forestry, Rural Development, Environment and Spatial Planning of the Assembly of Kosovo should seek responsibility from the Minister of MESP due to not undertaking the measures provided for in Law no. 04/L-060 on waste, as well as in Administrative Instruction no. 22/2015 on Waste Management Containing Asbestos.

Ex officio Report for case no. 280/2016 regarding the continued violation of the right to a safe and healthy environment in the Municipality of Obiliq and neighbouring municipalities affected by the same problem

On 21 December 2018, the Ombudsperson published the Report with recommendations for the *Ex officio case no. 280/2016*, which deals with the continuous violation of the right to a safe and healthy environment, the right to life and privacy, the right to use effective legal remedies, property rights, freedom of the movement of the inhabitants of the municipality of Obiliq and the neighbouring municipalities affected by the same problem.

The report was initiated *ex officio* due to continued violation of the right to a safe and healthy environment, the right to life and privacy, the right to use effective remedies, property, and freedom of movement of the inhabitants of the municipality of Obiliq and of the surrounding municipalities. Although case investigations were completed in November 2016, the Ombudsperson during the two-year monitoring period of the issues identified in the report did not notice any change aiming at improvement.

The problems identified in the Report are: Water, air and land pollution, lack of quality environmental monitoring, lack of access to environmental and health information, increased number of respiratory, cardiovascular and malignant diseases, lack of health statistics, lack of research on the impact of pollution on the health of citizens, mismanagement of the landfill in Mirash and other landfills, ash dump, restriction of rights to the family situated within the enclosed part of KEK in the village Palaj, impact on citizens' rights of surface mining, problems with expropriation of residents in the area of interest, construction of houses/objects for the purpose of obtaining expropriation, lack of cooperativeness of competent authorities to find effective solutions to environmental problems, and delays of cases initiated in court.

The report aims to draw the attention of state institutions, the Assembly of the Republic of Kosovo, the Parliamentary Committee on Agriculture, Forestry, Environment and Spatial Planning, the Ministry of Environment and Spatial Planning, Ministry of Economic Development, Ministry of Health, the Kosovo Police, the Kosova Environmental Protection Agency, the National Institute of Public Health of Kosova, the Municipality of Obiliq and the Municipality of Prishtina, for continuous violations of human rights and freedoms through environmental pollution and the environmental impacts of various factors in the areas of the municipality of Obiliq and other surrounding cities, affected by the abovementioned problems.

Based on the facts and arguments presented in this report, the Ombudsperson concludes that the rights and freedoms of citizens residing in the territory near KEK and in the surrounding cities have been constantly violated by failure of the state to fulfil the

positive obligation for a righteous balance between economic development and social welfare with the basic principles for environmental protection under the concept of sustainable development.

The Ombudsperson with this Report finds that citizens are denied the right to a safe and healthy environment, human dignity, the right to life, the right to fair and impartial trial, the right to legal remedies, freedom of movement, the right to privacy, the right to access to public documents and the right to property; and recommends the competent authorities to undertake actions to fulfil their obligations.

For this reason, the Ombudsperson has recommended: MESP/Hydro meteorological Institute of Kosovo, to improve the air monitoring process with accelerated steps; MESP to undertake educational activities so that citizens are aware of the negative impact of polluted air on health and how to take preventive measures; MESP/Kosovo Environmental Protection Agency to start with updated information on air quality; MESP to improve the water monitoring system, find a solution for water treatment and invest in plants; MESP to allocate additional funds for the rehabilitation of surfaces with an excessive pollution rate and assess the displacement of residents from areas where there are large crossings with a potential impact on human health; MESP to continue to undertake measures for the removal of illegal landfills and waste treatment as foreseen by the legislation in force; MESP to undertake activities in the development of policies for classification of waste according to their content; KEK to undertake actions towards the rehabilitation and greening of degraded space in order to minimize the spread of dust into the air; as well as the Municipal Inspectorate of Obiliq Municipality and the inspectorate of MESP to continuously monitor the situation in these areas; Municipality of Obiliq to ask KEK to resolve the issue of the Morina family (to require KEK to stop unauthorized family control, or the expulsion or expropriation of the Morina family property); Kosovo Prosecutorial Counsel - Prosecutors without delay to proceed with all complaints of citizens and institutions for criminal offenses related to the environmental pollution by individuals, public and private companies; Kosovo Judicial Council - courts to review all cases related to environmental pollution, treat them within legal deadlines, without delay, and to prevent them from reaching statutory limitation; The National Institute of Public Health of Kosovo to come up with research on the impact of air pollution on the health of population, not only in the municipality of Obiliq but also beyond.

Reports based on complaints

Report on the Case A.no. 890/2016 in relation right to age contribution-payer pension as well as the right on use of other pensions applicable in Kosovo

On 27 February 2018, the Ombudsperson published the Report with recommendations in relation to the right to age contribution-payer pension and the right to use other pensions applicable in Kosovo. This Report is based on the case C.890/2016, and relies on

complainant's allegations, facts and proves filed with the OI regarding termination of contribution-payer pensions. Apart this aforementioned complaint, the Ombudsperson has also received other complaints of similar nature. The Report aims to draw attention of the Ministry of Laboru and Social Welfare that citizens are provided with the guaranteed legal and constitutional rights to use contribution-payer pensions as the right to property.

The Report analyses legal framework in terms of exercising the right to age contribution-payer pension, in relation with the right in exercising other pensions according to the Law No. No.04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families as well as the Law No.04/L-261 on Kosovo Liberation Army War Veterans.

This Report also reasons that exercising of the right to age contribution-payer pension represents exercising of the right to property, based on Article 1 of Protocol No.1 of the European Convention on Human Rights (hereinafter ECHR) in relation to conditioning of exercising of the right on this pension, based on the Article 8 of the Law No. 04/L-131 on Pension Schemes Financed by the State (hereinafter the Law on Pension Schemes).

Upon the establishment of special pension schemes, many complainants have applied and have acquired rights and benefits from these schemes and for a long time they have benefited from two pension schemes, both from age contribution-payer pension as well as other pensions determined by specific laws.

As of 2016, without any prior notice or consultation for voluntary waiver of one pension right, MLSW issued decisions to abolish the rights of complainants for age contribution-payer pensions and ceased the payment of these pensions. The complainants allege to have filed complaints before the Complaints Commission within MLSW, but received no response.

The Ombudsperson addressed MLSW with several requests for information in relation to the legal ground for terminating the contribution-payer pension and reasons for not responding to citizens' complaints addressed to the Complaints Commission within MLSW. However, the Ombudsperson received no response for any of the documents. In the meeting with the representatives of MLSW held on 6 February 2018 it was discussed, among others, about the issues raised by the Ombudsperson in the abovementioned requests. During this meeting, the representatives of the Ombudsperson were informed that MLSW terminated pensions based on the Article 16 of the Law on Pension Schemes.

The Ombudsperson points out that the right to age contribution-payer pension or any other pension financed by the state is governed with the Law on War Value and Law on KLA Veterans. However, despite the fact that the person meets the conditions set forth by the Law to be entitled for age contribution-payer pension, or any other pension financed by the state, he/she may be deprived of the right to pensions guaranteed by law. This is set forth in legal provisions, whereby "*Persons who meet the conditions and criteria for*

the age contribution-payer pension may not be users of any other pension scheme established by this Law” (Article 8, paragraph 3 of the Law on Pension Schemes Financed by the State).

In this regard, it may be concluded that the use of a pension excludes the right to use any other pension. This means that the KLA veteran cannot exercise the right to pension entitled to base on the contribution provided during the war, as set out in the Law on War Values, if the same uses the right to age contribution-payer pension. In this case, the individual has to choose between using the pension for which he/she has contributed pursuant to the applicable law or using the pension entitled to according to the law and contribution provided in the KLA war.

In this case, the focus should be on the age contribution-payer pension for two reasons:

Firstly, pursuant to the Law on Pension Schemes, the person who provides valid proofs on the payment of contributions according to the provisions of the Law no. 011-24/83 on Pension and Disability Insurance (Official Gazette of SAPK No. 26/83) before 01.01.1999 is entitled to this pension. Secondly, contributions paid as mentioned in the previous statement are considered as the right to property based on the European Court of Human Rights.

Consequently, the conditioning based on the law for the use of the right to age contribution-payer pension with the use of the right to another pension constitutes a violation of Article 1 of the Protocol No. 1 of ECHR. The Ombudsperson considers that such a restriction of the right to use the age contribution-payer pension or any other pension from the state, despite meeting conditions established by the law, constitutes the violation of the **right to property**. ECtHR found that by contributing to a pension fund, a person may create a property right. As an analogy, the same applies in case of payment of contributions of voluntary nature. The abovementioned statements are substantiated even in the Case *Gaygusuz v Austria*³⁸², making a link between the contribution and pension; therefore, the person who has paid pension contributions cannot be deprived of the right to use that pension. Also, based on the Case *Van Raalte v Netherlands*³⁸³, Article 1 of the Protocol No. 1 shall be applied when it comes to the payment of pension contributions, in

³⁸² Gaygusuz v Austria, Decision of 16 September 1996, found at: [http://hudoc.echr.coe.int/eng#{\"fulltext\":\[\"gaygusuz v austria\"\],\"documentcollectionid2\":\[\"GRANDCHAMBER\",\"CHAMBER\"\],\"itemid\":\[\"001-58060\"\]}](http://hudoc.echr.coe.int/eng#{\) In the Decision on the Case *Azinas v Cyprus* of 20 June 2002, ECtHR confirmed that while the right to pension is not as such included in ECHR, based on the practice of ECtHR, the right to pension based on employment may be considered as “the right to property”. This is applied in case of payment of contributions, where based on the ECtHR practice: “such happens due to the fact that the employer pays pension contributions, which may be considered to fall under the work contract conditions”.

³⁸³ Van Raalte v Netherlands, Decision of 21 February 1997, found at: [http://hudoc.echr.coe.int/eng#{\"fulltext\":\[\"van raalte v the netherlands\"\],\"documentcollectionid2\":\[\"GRANDCHAMBER\",\"CHAMBER\"\],\"itemid\":\[\"001-58031\"\]}](http://hudoc.echr.coe.int/eng#{\)

particular as such obligation for payment of contributions and taxes is imposed by the state.

The Ombudsperson highlights that the shortcomings in laws affect the rule of law, namely legal certainty. Legal certainty requires that legal rules are clear and precise and aim at ensuring that situations remain foreseeable, ambiguous laws are not approved by the Parliament and actions or premises held out by the state to individuals (*legitimate expectations*) are undertaken. Also, the legal certainty means that the law is implemented in practice and the law is implementable.³⁸⁴

Hence, the Ombudsperson recommends the MLSW to propose, in compliance with its competencies and authorizations, to the Government of the Republic of Kosovo to amend the Law No. 04/L-131 on Pension Schemes Financed by the State, namely deleting: a) paragraph 3 of Article 8 of this Law, which establishes: “*Persons who meet the conditions and criteria for the age contribution-payer pension may not be users of any other pension scheme established by this Law*”; and b) Article 16 of this Law, which establishes: “*The persons who are beneficiaries of any pension of pension Schemes defined with this Law, in no circumstance, can be the beneficiaries of any pension from special pension schemes that are managed and administrated by the Ministry*”. It also recommends the amendment of the Law No. 04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families, namely deleting paragraph 1.4 of Article 5 of the Law, which establishes: “*the beneficiaries of pensions under paragraph 1.1, 1.2 and 1.3 of this Article, may not be the beneficiaries of any other pension from other pensional scheme applicable in Kosovo, unless otherwise defined in this Law*”; as well as Law No. 04/L-261 on Kosovo Liberation Army War Veterans, namely deleting paragraph 2 of the Law, which establishes: “*KLA Fighter Veteran may not benefit any pension from other pension schemes funded by the state. If the Fighter Veteran benefits from any other pension scheme funded by the state in the Republic of Kosovo, he/she shall decide on one of the pensions he/she will receive.*”

Report on the Case A.no. 245/2016 in relation to positive obligations for effective investigations and right to life

On 21 March 2018, the Ombudsperson published the Report with recommendations in relation to the positive obligations for effective investigations and the right to life, which derive from the Constitution of the Republic of Kosovo and Article 2 of the European Convention for Protection of Human Rights and Fundamental Freedoms. The Report aims to shed light on the conduct of effective investigation actions by Kosovo Police in

³⁸⁴ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)
REPORT ON THE RULE OF LAW Adopted by the Venice Commission at its 86th plenary session
(Venice, 25-26 March 2011) (44-51)

the case of disappearance of the Complainants' family member I.K. (*national of Montenegro, of Bosnian ethnicity, who disappeared on 21 January 2016*).

The Complainants state that on 21 January 2016, around 01:00, I.K. was walking in the neighbourhood Bresje, together with his cousin E.M. from Fushe Kosova (to whom he was paying a visit) and stopped in one of the neighbourhood stores, and I.K. stood outside, whereas E.M. entered into the store to buy something and when he came out (after 2-3 minutes), I.K. was not there. According to them, later on they found that the police patrol arrested I.K. and sent him to the Police Station and legitimated his identity and then released him and brought with the police car 1 kilometre away from the house of his cousin E.I. and after leaving the police car, I.K. disappeared in an unknown direction without any trace.

On 22 February 2016, E.M. reported to Police Station of Fushe Kosovo the case of the disappearance of his cousin, and this police station initiated the *Case No. 2016/AE0093 "Missing Person"*.

Given the jurisprudence of the European Court, the phenomenon of disappearance of persons has given rise to an interesting issue to be discussed in relation to possible violations of Article 3. According to this practice, a person is disappeared when sent to a detention facility by persons acting on behalf of authorities, highlighting that detention facilities often allege the death of the disappeared person, or remain totally silent on the fate of disappeared person, making the relatives and friends believe that the person is dead. This situation gives rise to two questions: *how much the dignity of a detained person is affected; what is the impact of the family and relatives on missing person?* The European Court decided to not address the phenomenon of disappearance as *inhuman or degrading treatment*, but consider it according to Article 5 (*Deprivation of liberty of the individual*). The European Court recognizes the fact that in some cases there are facts that persons have been abused before the "*disappearance*". The Court recognized the fact that there is an obligation to review the impact of disappearance on relatives of missing person.

The European Court, when handling the case *Tas v. Turkey*, considering the indifference and insensitivity of authorities towards concerns of the claimant and severe anxiety and insecurity he suffered, he concluded that the claimant was victim of the conduct of authorities to the extent violating Article 3 of the Convention, whereas when handling the case *Timurtas and Cicek* concluded that claimants were parents of the missing person who suffered from the indifference and insensitivity of authorities. Therefore, the court found that the essence of such violations does not rely so much on the fact of disappearance of the family member, but on the concerns caused by the responses of authorities and their stances on the situation when handling it. In particular, based on the latter, a relative may directly allege to be victim of the conduct of authorities, as in the case *Cakici v. Turkey*, Judgment of 8 July 1999.

The Ombudsperson, based on the evidences provided and facts collected, as well as relevant laws, which set out the right to life, concludes that the complaint of the complainants is grounded and lawful. In the specific case, the Ombudsperson concludes that *the human rights and fundamental freedoms* have been violated, as police officers, by sending the person, now missing, to the police station without any justified reason, did not inform his relatives of his detention and did not send him back to his relatives, finding that I.K. lost the way, acted in contradiction with the constitutional principles and applicable legislation, exceeding the police authorizations and undertaking actions that are in contradiction with the Constitution, European Convention, Law on Police, Code of Ethics of Police. In this case, the Ombudsperson recommended the Kosovo Police to continue, in compliance with all competencies and authorizations deriving from the law, and in cooperation with all other security agencies, to undertake measures for finding the missing person, and to enhance professional capacities of Kosovo Police in relation to the right to life and procedural aspects for effective investigations of cases of this nature.

Report on the Case A.no. 885/2016 in relation to the non-execution of the Decision KSIZ- HPCC/D/197/2005A&C, dated 18/06/2005, issued according to the cases DS 000641 and DS004997

On 10 April 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 885/2016 in relation to the non-execution of the Decision KSIZ-HPCC/D/197/2005A&C, dated 18/06/2005, issued according to the cases DS 000641 and DS004997. The purpose of this Report is to review the issues of the procedure length by KPCVA in relation to the non-payment of the compensation to the claimant based on the final decision and inequality before the law, in terms of executing final decisions for claimants lodging Category AC claims, and quiet enjoyment of property right upheld with the decision.

This Report is based on the individual complaint and relies on the facts and evidences collected by the complainant and documents submitted to the Institution of Ombudsperson, as well as facts collected during the investigation by the responsible party in relation to the handled cases.

According to allegations of the complainant, after the war of 1999 he left Kosovo and obtained temporary residence permit in the Republic of Serbia. Thereafter, his apartment in Prishtina, address Ulpiana E-32, apartment 21, presented to the Housing and Property Directorate (hereinafter *HPD*) under the claim DS 000641, has been usurped by the third party. With the concerned claim, the complainant requested from HPD the right to possess the apartment in dispute. In an unspecified date, the third party lodged the claim DS 000641 to HPD, whereby requesting the confirmation of the right to reside in the apartment in dispute, which right was denied due to the discrimination during the period from 23 March 1989 to 24 March 1999. HPD referred both concerned claims to the Housing and Property Claims Commission (HPCC) for further resolution of this matter.

On 18 June 2005, HPCC issued a group decision HPCC/D/197/200S/A & C, whereby including these two abovementioned claims (DS 000641 and DS 000641). In its decision, HPCC recognized the right of the claimant DS 000641 (namely third party) to possess the apartment, on which occasion he acquired all rights as claimant of Category A based on Article 4.2 of the UNMIK Regulation 2000/60.

With the same decision, the right of the complainant against the claim DS 000641 for possession of the apartment in dispute was denied, and thus his right to compensation with market price for the property in dispute was upheld, as a claimant of category C based on Article 4.2 of the UNMIK Regulation 2000/60.

On 28 February 2018, representatives of the Ombudsperson met with the Acting Executive Director of KVPCA. On this occasion, they were informed that KVPCA, as legal successor of HPD, has 143 cases, including the decision of the complainant. A total of EUR 3.200.000 are necessary to ensure compensation according to these decisions. Even though KVPCA requires from the Government of Kosovo the total amount for compensation of persons of this category, the Government of Kosovo has so far provided the amount of EUR 300.000 for 2017 and the same amount for 2018, totalling to EUR 600.000.

The Ombudsperson states that the delay and inefficiency of the procedure for executing the final decisions of competent authorities result in situations which are in contradiction with the principle of the rule of law and create legal uncertainty and suspicion for persons affected due to the non-implementation of the rights. The right to property is of absolute character and may be restricted only with law, in terms of the Article 46 of the Constitution and Article 1 of the Protocol No. 1 of the Convention.

By implementing the principles of the property right in the context of return of property, the ECtHR tends to provide each state with a wide margin of appreciation to define the criteria and conditions to acquire the right for return. See for instance, *Gratzinger and Gratzingerova vs The Czech Republic (Application no. 39794/98, ECtHR, 10 July 2002)*, paragraph 68/77.

However, ECtHR also supports another principle: each state, after defining the legal criteria for acquiring the right for return of property, is obliged to fully apply these criteria. In the context of this Report, this may be interpreted that the state is obliged to take necessary measures to protect the right to property and ensure adequate and sufficient resources to ensure the fulfilment of positive obligations for protection of property rights until the execution of final decisions of the competent authority issued before the establishment of legal criteria.

Based on the facts provided for this case, the Ombudsperson is of the opinion that KVCPA, as legal successor of HPD in terms of the rights and obligations assumed, is the competent body for execution of KCVPA final decisions, together with the Government

of Kosovo, which is obliged to ensure as a total one-off amount the means for payment of total property claims from the compensation scheme for claimants lodging Category AC claims.

The Ombudsperson concludes that the failure of competent bodies of the Republic of Kosovo to ensure the execution of the final decision HPCC/D/197/2005A & C, dated 18.6.2005, of HPCC, as well as all other decisions for claimants lodging Category AC claims, constitutes a violation of the rights guaranteed with Article 31 of the Constitution in relation to Article 6.1 of the Convention.

Due to the non-execution of the abovementioned decision and all other final decisions for claimants lodging Category C claims, the complainants and other persons included in these decisions, their right to property and quiet possession of the property provided for in Article 46 of the Constitution and Article 1 of the Protocol 1 of ECHR, has been violated.

The Ombudsperson highlights that the state has positive obligation to ensure an efficient system for execution of final decisions of the competent bodies within a reasonable time period and without unnecessary or unjustified delays. Therefore, it recommends the Government of Kosovo to ensure and allocate, without further delays, to the relevant fund of KVPKA the total remaining amount necessary for compensation under final decisions of HPCC for claimants lodging Category C claims; KVPKA, within the shortest time possible, should issue bylaws in relation to the procedures for execution of property claims under final decisions of HPCC for claimants lodging Category AC claims.

Report on the Case A.no. 114/2018, A.no. 122/2018 and A.n. 182/2018 in relation to the discriminatory criterion in the vacancy for employment in Correctional Service

On 16 April 2018, the Ombudsperson published the Report with recommendations in relation to the discriminatory criterion in the vacancy for employment in the Kosovo Correctional Service (hereinafter *KCS*), based on three separate complaints: A. no. 114/2018 filed on 22.2.2018 by Mr. Remzi Hoxha, A. no. 122/2018 filed on 27.2.2018 by Kosovo Centre for Transparency, Accountability and Anti-Corruption (hereinafter *KUND*) and Mr. Fisnik Bllaca and others (15), in relation to the discriminatory criterion included in the vacancy for employment in KCS, dated 12.2.2018, with reference number MJ/KCS/132-09-02-2018.

The purpose of the Report is to draw attention on the need for protection from discrimination, and equal treatment in employment, in the case of the criterion foreseen in the vacancy for employment in KCS. In this regard, the Ombudsperson will analyse the harmonization of the contested criterion, which was published by KCS on 12.2.2018 in the vacancy, with reference number MJ/KCS/132-09-02-2018, for 70 vacant positions for Correctional Officers (hereinafter *the vacancy*) with national legislation and

international instruments, which in particular relate to the aspect of protection from discrimination.

In the KCS vacancy with reference number MJ/KCS/132-09-02-2018, announced for 70 vacant positions for “Correctional Officers”, the section “Qualifications, skills and personal characteristics” contains the eligibility criterion “*the average age for men is up to 30 years, whereas for women up to 35 years*”.

In compliance with the provisions of the Law on Protection from Discrimination, the Ombudsperson, in order to determine whether there has been discrimination by excluding the opportunity for establishing the employment relationship for the position Correctional Officer by limiting the age of potential candidates, will not analyse whether in the specific case the age up to 30 years for men and up to 35 years for women constitutes a real and decisive condition for exercising this task, given the nature and specificity of this task, and if the purpose aimed to be achieved is reasonable, but it will exclusively review and analyse the issue on whether the inclusion of the limiting criterion in the KCS vacancy is grounded on a special legal act in compliance with the Law on Protection from Discrimination and international standards.

The Ombudsperson considers that the purpose of the public vacancy is reflected in the principle of equal access for all citizens who, under the same circumstances, pursuant to the law, equally compete for each vacant position in public sector. Equality in employment is the basic condition for equality before the law. Therefore, a person, due to his/her personal characteristics, namely in the specific case the age, without objective and reasonable justification and having a legitimate purpose, cannot be unreasonably denied of the right to employment, which right is accessible and fully recognized for others.

The Ombudsperson, according to the guidelines of the Council of Europe and Directive for prevention of age discrimination³⁸⁵, warns that the prohibition of age discrimination constitutes an important part for fulfilling the purposes set out in the employment guidelines, as well as stimulation for diversity of labour force. Based on these guidelines, it is evident that a specific regulation should be in place for each criterion of eliminating nature, which could be treated as “otherwise justified action”.

The Ombudsperson states the purpose of having in place such an special legal act, whereby determining job positions based on the age of the employee, as a personal characteristic, constitutes a special condition for performance of the work, if there is a reasonable need, and observing imperative legal rules, necessity, as it constitutes the relevant legal ground and provides the opportunity for imposing the concerned limiting criterion. Therefore, according to the guidelines of the Council of Europe and Directive

³⁸⁵ See Council Directive 2000/78/EC of 27.11. 2000 establishing a general framework for equal treatment in employment and occupation, point 25.

for prevention of age discrimination, it is important to distinguish between justifiable different treatment, in particular that based on justified objectives of employment policy, labour market and training objectives and discrimination which should be prevented.

In this regard, the Ombudsperson concludes that the Constitution and relevant legal regulations prohibit the arbitrary difference and unequal actions when determining the conditions for employment and age-based selection of candidates for performing a certain work. Thus, exemptions from this regulation should be interpreted in a very restrictive way and accepted as justified only when special regulations are in place and in situations when the age is the real and decisive factor for the ability, namely inability to perform a certain work, considering the nature and specificity of this work. Based on the abovementioned, the Ombudsperson recommends: Ministry of Justice (MoJ) – Kosovo Correctional Service (KCS) should, without delay, terminate the recruitment procedure and cancel the vacancy MJ/KCS/132-09-02-2018, dated 12.2.2018, due to the lack of a relevant legal regulation and unjustified imposition of the age-restricting criteria; MoJ – KCS should, without delays, issue a general act for systematization of job positions for which the age, as a personal characteristic, constitutes a special condition for performing the work, in case of a justified need, thus observing the imperative legal rules, according to which the age, and any other personal characteristic, should constitute a real and decisive condition for performing the work within the job position, considering the nature and specificity of the work and conditions under which that work is performed; MoJ – KCS, when announcing vacant positions, should include only those conditions for work performance that are set out in a general act for systematization of job positions; MoJ – KCS should take all necessary measures to prevent violation of equal opportunities when announcing the vacant positions and selecting the candidate, namely to prevent unjustified differences.

Report on the Case A.no. 185/2016 in relation to the prolongation of the procedure in the Court of Appeals in the Case AC. no. 29/2015

On 29 May 2018, the Ombudsperson published the Report with recommendations in relation to the prolongation of the procedure in the Court of Appeals in the Case AC. no. 29/2015. The purpose of this Report is to draw attention of the Court of Appeals in relation to the need for undertaking relevant actions for reviewing and adjudicating the Case AC.nr.29/2015, without further delays. The Report is based on the individual complaint of Mr. Musa Musliu (hereinafter *the complainant*) and relies on the facts and evidences provided by the complainant, and case files available at the Institution of the Ombudsperson (IO).

On 27 January 2011, the Municipal Court in Gjilan (now Basic Court in Gjilan), deciding on the matter, issued the Judgment C.nr.191/2007, whereby approving the statement of claim of the claimant. On 8 May 2018, the District Court in Gjilan, deciding on the complaint, issued the Decision Ac.nr. 95/11, whereby quashing the judgment issued in

the first instance court (C.nr.191/2007) and the case is returned for retrial. On 5 November 2014, the Basic Court in Gjilan decided on the matter and issued the Judgement C.nr.385/2012, whereby approving the statement of claim of the claimant. On 2 December 2014, the respondent party filed an appeal before the Court of Appeals and the case, according to the appeal, is being re-adjudicated in the Court of Appeals (Ac.nr. 29/2015). The case was initiated on 6 April 2007 before the Municipal Court in Gjilan (now Basic Court in Gjilan) with compensation claim, in which the complainant is in the capacity of the claimant, whereas the respondent is the Municipality of Gjilan – Technical High School in Gjilan. The complainant is waiting for 11 years now the final decision on his matter.

The Ombudsperson recalls that based on the ECtHR practice, the time of procedure normally begins to run from the moment of court procedure initiation (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

The Ombudsperson observes that ECtHR stated that one of the factors to be considered is the conduct of competent judicial and administrative authorities and the court is responsible to organize its work in order for individuals to be informed on the progress and results of their case within a reasonable time period (see Judgment *Zimmerman and Steiner v. Switzerland*, 13 July 1983).

As to applicability of Article 13, the Ombudsperson recalls that ECtHR has several times stated that large delays in administration of justice, in cases when parties in procedure have no effective remedies to complain in cases of prolongation of court procedures, constitute a threaten to the rule of law within the national legal order (see Judgment in the Case *Bottazi v. Italy*, on 28 July 1999, and Judgment in Case *Di Mauro v. Italy*, on 28 July 1999).

Article 13 of ECHR directly reflects the obligation of the state to initially protect human rights through its legal system, imposing in this case an additional guarantee for an individual, enabling him to enjoy the rights effectively. Considered from this perspective, the right of an individual for regular process within a reasonable time period will be less efficient if there is no opportunity to firstly lodge this complaint before a national authority. Requirements contained in Article 13 support requirements contained in Article 6 (see Judgment *Kudla v. Poland*). Thus, Article 13 guarantees an effective appealing remedy in a national authority for an alleged violation of requirements contained in Article 6 within a reasonable time period. As the concerned case is related to the complaints for the procedure length, Article 13 of the Convention shall apply.

In relation to the requirements contained in Article 13, the Ombudsperson recalls that the effect of this Article is the existence of a national legal remedy addressing the substance of a “challengeable complaint” according to the Convention and enabling relevant

facilitation (see e.g. Judgment in the Case *Kaya v. Turkey*, on 19 February 1998). Any such remedy should be effective in practice and law (see e.g. Judgment in the Case *Ilhan v. Turkey*, on 27 June 2000).

The Ombudsperson recommended the Court of Appeals to undertake, without further delays, all relevant actions to review and adjudicate the Case AC. no. 29/2015.

Report on the Case A.no. 716/2017 in relation to the prolongation of procedure in the Court of Appeals for the Case AC. no. 1995/2015

On 29 May 2018, the Ombudsperson published the Report with recommendations for the case A.no. 716/2017 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 1995/2015. The purpose of this Report is to draw attention of the Court of Appeals for the need to take relevant actions to review and adjudicate the Case AC.nr.1995/2015, without further delays. This Report is based on the individual complaint of Ms. Nazlije Thaqi (hereinafter *the complainant*) and relies on the facts and evidences provided by the complainant, as well as the case file available at the Institution of the Ombudsperson (IO).

On 21 January 2011, the complainant filed a claim for compensation of material and immaterial damages before the Municipal Court in Prizren. On 25 February 2015, the Basic Court rendered the Judgment C.nr.49/11, in favour of the complainant. On 15 April 2015, the opposing party, unsatisfied with the Judgment C.nr.49/11 of the Basic Court in Prizren, files an appeal before the Court of Appeals, for which the court has not issued any decision yet. On 31 October 2017, the complainant filed a complaint to IO in relation to the prolongation of the court procedure for handling the Case C.nr.49/11. On 16 November 2017, the Ombudsperson sent a letter to the President of the Court of Appeals whereby requesting information in relation to the actions taken and planned to be taken by the court for reviewing the matter of the complainant. On 29 November 2017, IO received a response from the President of the Court of Appeals via email, which reads: “*This case was received by the court on 28 May 2015. This case has been allocated and is awaiting decision-making.*”

The Ombudsperson draws attention on the practice of the European Court of Human Rights (ECtHR) in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR.

In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial. ECtHR has confirmed that the time of the procedure normally begins to run from the moment of court procedure initiation (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the

completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

The Ombudsperson observes that ECtHR stated that one of the factors to be considered is the conduct of competent judicial and administrative authorities and the court is responsible to organize its work in order for individuals to be informed on the progress and results of their case within a reasonable time (see Judgment *Zimmerman and Steiner v. Switzerland*, 13 July 1983).

According to ECtHR practice (see *Poiss v. Austria*, § 50; *Bock v. Germany*, §35), the running of time for handling a court case starts from the moment when the claim is instituted before the competent court, which in the concrete case starts running from 21 January 2011, when the claimant filed the claim before the Municipal Court in Prizren. No final decision has been taken in relation to the matter of the complainant until the publication day of this Report.

As to applicability of Article 13, the Ombudsperson recalls that ECtHR has several times stated that large delays in administration of justice, in cases when parties in procedure have no effective remedies to complain in cases of prolongation of court procedures, constitute a threaten to the rule of law within the national legal order (see Judgment in the Case *Bottazi v. Italy*, on 28 July 1999, and Judgment in Case *Di Mauro v. Italy*, on 28 July 1999).

In relation to the requirements contained in Article 13, the Ombudsperson recalls that the effect of this Article is the existence of a national legal remedy addressing the substance of a “challengeable complaint” according to the Convention and enabling relevant facilitation (see e.g. Judgment in the Case *Kaya v. Turkey*, on 19 February 1998). Any such remedy should be effective in practice and law (see e.g. Judgment in the Case *Ilhan v. Turkey*, on 27 June 2000).

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation.

The Ombudsperson recommends the Court of Appeals to take, without further delays, all relevant actions to review and adjudicate the Case AC. no. 1995/2015.

Report on the Case A.no. 462/2017 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC.nr. 4643/2015

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 462/2017 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 4643/2015. The purpose of this Report is to draw attention of the Court of Appeals in relation to the need to take relevant actions to review and adjudicate the Case AC.nr.4643/2015, according to the Judgment C.nr.133/2011, without further delays.

The Ombudsperson draws attention on the practice of the European Court of Human Rights (ECtHR) in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR. In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial.

The Ombudsperson recalls that based on the ECtHR practice, the time of procedure normally begins to run from the moment of court procedure initiation (see, inter alia, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

The Ombudsperson observes that ECtHR stated that one of the factors to be considered is the conduct of competent judicial and administrative authorities and the court is responsible to organize its work in order for individuals to be informed on the progress and results of their case within a reasonable time (see Judgment *Zimmerman and Steiner v. Switzerland*, 13 July 1983).

According to ECtHR practice (see *Poiss v. Austria*, § 50; *Bock v. Germany*, §35), the running of time for handling a court case starts from the moment when the claim is instituted before the competent court, which in the concrete case starts running from 2011, when the complainant filed the claim before the Municipal Court in Prizren. No final decision has been taken in relation to the matter of the complainant until the publication day of this Report.

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson

recommended the Court of Appeals to undertake, without further delays, all relevant legal actions to review and adjudicate the Case AC. no. 4643/2015.

Report on the Case A.no. 796/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC.nr. 3703/2015

On 29 May 2018, the Ombudsperson published the Report with recommendation for the Case A.no. 796/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 3703/2015. The purpose of the Report is to draw attention of the Court of Appeals in relation to the need for undertaking the relevant actions to review and adjudicate the Case AC. no.3703/2015, according to the Judgment C. Nr. 518/13, without further delays.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR.

In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial. The Ombudsperson recalls that based on ECtHR practice, the time of the procedure normally begins to run from the moment of court procedure initiation (see, inter alia, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

ECtHR stated that one of the factors to be considered is the conduct of competent judicial and administrative authorities and the court is responsible to organize its work in order for individuals to be informed on the progress and results of their case within a reasonable time (see Judgment *Zimmerman and Steiner v. Switzerland*, 13 July 1983). According to ECtHR practice (see *Poiss v. Austria*, § 50; *Bock v. Germany*, §35), the running of time for handling a court case starts from the moment when the claim is instituted before the competent court, which in the concrete case starts running from 2013, when the claimant filed the claim before the Municipal Court in Prizren. No final decision has been taken in relation to the matter of the complainant until the publication day of this Report.

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*).

The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. The Ombudsperson

recommended the Court of Appeals to undertake, without further delays, all relevant legal actions for review and decision for the Case AC. no.3703/2015.

Report on the Case A.no. 794/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 3200/2015

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 794/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 3200/2015. The purpose of the Report is to draw attention for the need to undertake relevant actions to review and adjudicate the Case AC.nr.3200/2015, without further delays.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR.

In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial. ECtHR has confirmed that the time of the procedure normally begins to run from the moment of court procedure initiation (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

According to ECtHR practice (see *Poiss v. Austria*, § 50; *Bock v. Germany*, §35), the running of time for handling a court case starts from the moment when the claim is instituted before the competent court, which in the concrete case starts running from 21 February 2013, when the claimant filed the claim before the Basic Court in Prizren. No final decision has been taken in relation to the matter of the complainant until the publication day of this Report.

At the same time, lack of effective remedies for the violation of the right for regular process within a reasonable time, as guaranteed with Article 6 of the European Convention on Human Rights, constitutes a violation of Article 13 of the Convention. As to applicability of Article 13, the Ombudsperson recalls that ECtHR has several times stated that large delays in administration of justice, in cases when parties in procedure have no effective remedies to complain in cases of prolongation of court procedures, constitute a threaten to the rule of law within the national legal order (see Judgment in the Case *Bottazi v. Italy*, on 28 July 1999, and Judgment in Case *Di Mauro v. Italy*, on 28 July 1999).

In relation to the requirements contained in Article 13, the Ombudsperson recalls that the effect of this Article is the existence of a national legal remedy addressing the substance of a “challengeable complaint” according to the Convention and enabling relevant

facilitation (see e.g. Judgment in the Case *Kaya v. Turkey*, on 19 February 1998). Any such remedy should be effective in practice and law (see e.g. Judgment in the Case *Ilhan v. Turkey*, on 27 June 2000).

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. Given that, the Ombudsperson recommended the Court of Appeals to undertake, without further delays, all relevant legal actions to review and adjudicate the Case AC. no. 3200/2015.

Report on the Case A.no. 463/2017 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 1763/2015

On 29 May 2018, the Ombudsperson published the Report with recommendations for A.no. 463/2017 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 1763/2015. The purpose of this Report is to draw attention of the Court of Appeals in relation to the need for undertaking the relevant actions to review and adjudicate the Case AC. no. 1763/2015, according to the Judgment C. no. 481/13, without further delays.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR. In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time limit is an essential element of the right for fair and impartial trial.

The Ombudsperson recalls that based on the ECtHR practice, the time of procedure normally begins to run from the moment of court procedure initiation (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

ECtHR stated that one of the factors to be considered is the conduct of competent judicial and administrative authorities and the court is responsible to organize its work in order for individuals to be informed on the progress and results of their case within a reasonable time (see Judgment *Zimmerman and Steiner v. Switzerland*, 13 July 1983).

According to ECtHR practice (see *Poiss v. Austria*, § 50; *Bock v. Germany*, §35), the running of time for handling a court case starts from the moment when the claim is instituted before the competent court, which in the concrete case starts running from 13

January 2009, when the claimant filed the claim before the Municipal Court in Prizren. No final decision has been taken in relation to the matter of the complainant until the publication day of this Report.

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*).

The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson recommended the Court of Appeals to undertake, without further delays, all relevant legal actions to review and adjudicate the Case AC. no.1763/2015.

Report on the Case A.no. 206/2017 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 863/2014

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 206/2017 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 863/2014. The purpose of the Report is to draw attention of the Court of Appeals in relation to the need for undertaking relevant actions to review and adjudicate the Case AC. no. 863/2014, according to the Judgment C. no. 19/13, without further delays.

In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial.

The Ombudsperson recalls that based on the ECtHR practice, the time of procedure normally begins to run from the moment of court procedure initiation (see, inter alia, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

ECtHR, in the case *Zimmerman and Steiner v. Switzerland*, stated that one of the factors to be considered is the conduct of competent judicial and administrative authorities and the court is responsible to organize its work in order for individuals to be informed on the progress and results of their case within a reasonable time (see Judgment *Zimmerman and Steiner v. Switzerland*, 13 July 1983).

According to ECtHR practice (see *Poiss v. Austria*, § 50; *Bock v. Germany*, §35), the running of time for handling a court case starts from the moment when the claim is instituted before the competent court, which in the concrete case starts running from January 2013, when the claimant filed the claim before the Basic Court in Prizren. No

final decision has been taken in relation to the matter of the complainant until the publication day of this Report.

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*).

The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson recommends the Court of Appeals to undertake all relevant legal actions to review and adjudicate the Case AC. no. 863/2014, without further delays.

Report on the Case A.no. 429/2017 in relation to the prolongation of the procedure in the Basic Court in Prishtina for the Case C.nr.3109/12

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 429/2017 in relation to the prolongation of the procedure in the Basic Court in Prishtina for the Case C.no.3109/12. The purpose of the Report is to draw attention of the Basic Court in Prishtina (BCP) for the need to undertake relevant actions to review and adjudicate the Case C.no. 3109/12, without further delays.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR.

In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial. Based on ECtHR practice, the time of the procedure normally begins to run from the moment of court procedure initiation (see, inter alia, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

The Ombudsperson observes that ECtHR, in the case *Zimmerman and Steiner v. Switzerland*, stated that one of the factors to be considered is the conduct of competent judicial and administrative authorities and the court is responsible to organize its work in order for individuals to be informed on the progress and results of their case within a reasonable time (see Judgment *Zimmerman and Steiner v. Switzerland*, 13 July 1983).

In relation to the requirements contained in Article 13, the Ombudsperson recalls that the effect of this Article is the existence of a national legal remedy addressing the substance of a “challengeable complaint” according to the Convention and enabling relevant

facilitation (see e.g. Judgment in the Case *Kaya v. Turkey*, on 19 February 1998). Any such remedy should be effective in practice and law (see e.g. Judgment in the Case *Ilhan v. Turkey*, on 27 June 2000). In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson recommended the BCP to undertake, without further delays, all relevant actions to review and adjudicate the Case C.No. 3109/12.

Report on the Case A.no. 388/2014 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 239/2013

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 388/2014 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 239/2013. The purpose of the Report is to draw attention of the Court of Appeals in relation to the need for undertaking relevant actions to review and adjudicate the Case AC. no. 239/2013 without further delay.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR.

ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial. Based on ECtHR practice, the time of the procedure normally begins to run from the moment of court procedure initiation (see, inter alia, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

The Ombudsperson observes that ECtHR, in the case *Zimmerman and Steiner v. Switzerland*, stated that one of the factors to be considered is the conduct of competent judicial and administrative authorities and the court is responsible to organize its work in order for individuals to be informed on the progress and results of their case within a reasonable time period (see Judgment *Zimmerman and Steiner v. Switzerland*, 13 July 1983).

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation

that has already happened (see the abovementioned Judgment *Kudla v. Poland*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson recommended the Court of Appeals to undertake, without further delays, all relevant actions to review and adjudicate the AC. no. 239/2013.

Report on the Case A.no. 362/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC.no. 430/2015

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 362/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 430/2015. The purpose of the Report is to draw attention of the Court of Appeals in relation to the need for undertaking relevant actions to review and adjudicate the Case AC.no.430/2015, without further delays.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR. In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial.

The Ombudsperson observes that ECtHR stated that one of the factors to be considered is the conduct of competent judicial and administrative authorities and the court is responsible to organize its work in order for individuals to be informed on the progress and results of their case within a reasonable time period (see Judgment *Zimmerman and Steiner v. Switzerland*, 13 July 1983).

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson recommended the Court of Appeals to undertake, without further delays, all relevant actions to review and adjudicate the Case AC. no. 430/2015.

Report on the Case A.no. 561/2015 in relation to the prolongation of the procedure in the Basic Court in Prishtina – Department for Commercial Matters for the Case C.no. 649/2014

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 561/2015 in relation to the prolongation of the procedure in the Basic Court in

Prishtina – Department for Commercial Matters in relation to the need for undertaking relevant actions to review and adjudicate the Case C. no. 649/2014, without further delays.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR. In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial.

Based on ECtHR practice, the time of the procedure normally begins to run from the moment of court procedure initiation (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson recommended the Basic Court in Prishtina to undertake, without further delays, all relevant actions to review and adjudicate the C. Nr. 649/2014.

Report on the Case A.no. 648/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case CA no. 374/2014

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 648/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case CA no. 374/2014. The purpose of the Report is to draw attention of the Court of Appeals in relation to the need for undertaking relevant actions to review and adjudicate the Case CA 374/2014, without further delays.

The case has been initially initiated with the claim filed on 10 June 2001 before the Municipal Court in Prishtina (now Basic Court in Prishtina), being subject to all court instances and returning for retrial. The complainant for 16 years now is waiting for the decision, as no final decision has been made for his matter so far.

Based on ECtHR case law, the time of the procedure normally begins to run from the moment of court procedure initiation (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier*

v. France, on 8 November 2005). In the case of the complainant, the court procedure has been initiated on 10 June 2001. ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial.

Also, the Ombudsperson observes that, according to the ECtHR case law, “reasonableness of the length of proceedings must be assessed with reference to the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute” (ECtHR [Grand Chamber], *Frydlender v. France*, Application No. 30979/96 (2000), par. 43, citing ECtHR [Grand Chamber], *Comingersoll S.A. v. Portugal*, Application No. 35382/97, par. 19 (2000), par. 19).

In the specific case, the Ombudsperson observes that the case of the complainant may be considered as complex case given that the initial claim for annulling the contract on purchase of the apartments has been initiated in the Municipal Court in Prishtina on 10 June 2001, but as at that time the property and housing claims for the period 23 March 1989 to 24 March 1999 were under the exclusive competence of the Property and Housing Directorate (UNMIK Regulation 1999/23 and 2000/60), the complainant, on 28 June 2001, filed a claim to the Property and Housing Directorate (PHD)³⁸⁶. On 12 December 2003, the Property and Housing Claims Commission issued a decision³⁸⁷ whereby rejecting the claim of the complainant. Even after the review, the Property and Housing Claims Commission, on 31 March 2006, rejected the claim of the complainant and advised him to address the competent court³⁸⁸. Thus, the complainant, on 11 May 2007, submitted a request for extension of the statement of claim in the Municipal Court in Prishtina.

Therefore, based on the ECtHR case law, the Ombudsperson observes that the procedural prolongation for the period running from the initiation of the claim, on 10 June 2001, to 11 May 2007, may be justified due to circumstances. However, the period from 11 May 2007, when the complainant submitted the request for extension of the claim and up to date, namely 11 years later, constitutes violation of the Article 6 of ECHR. In this case, the Ombudsperson recommended the Court of Appeals to undertake, without further delays, all relevant legal actions to review and adjudicate the Case CA no.374/2014.

Report on the Case A.no. 721/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case CA. no. 4667/2014

On 29 May 2018, the Ombudsperson published the report with recommendations for the Case A.no. 721/2016 in relation to the prolongation of the procedure in the Court of

³⁸⁶ UNMIK Regulation 1999/23 and 2000/60, property claims were under the exclusive competence of PHD to receive and resolve claims for the period 23 March 1989 - 24 March 1999.

³⁸⁷ Decision HPCC/D102/2003/A&C, dated 12 December 2003.

³⁸⁸ Decision HPCC/REC/60/2006, dated 31 March 2006.

Appeals for the Case CA. no. 4667/2014. The purpose of the report is to draw attention in relation to the need for undertaking relevant actions to review and adjudicate the Case CA. no. 4667/2014, without further delay.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR. In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial.

The Ombudsperson recalls that based on the ECtHR practice, the time of the procedure normally begins to run from the moment of court procedure initiation (see, inter alia, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson recommended the BCP to undertake, without further delays, all relevant actions to review and adjudicate the Case CA. no.4667/2014.

Report on the Case A.no. 357/2017 in relation to the prolongation of the procedure in the Basic Court in Prishtina for the Case C.no. 2210/07

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 357/2017 in relation to the prolongation of the procedure in the Basic Court in Prishtina for the Case C.no.2210/07. The purpose of the Report is to draw attention on the need to undertake relevant actions to review and adjudicate the Case C.no.2210/07 for annulling the contract for purchasing the immovable property and motion for preliminary injunction, without further delays.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR. In a number of cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time limit is an essential element of the right for fair and impartial trial.

According to ECtHR practice (see *Poiss v. Austria*, § 50; *Bock v. Germany*, §35), the running of time for handling a court case starts from the moment when the claim is instituted before the competent court, which in the concrete case starts running from 16 October 2007, when the claimant filed the claim before the Basic Court in Prishtina. No final decision has been taken in relation to the matter of the complainant until the publication day of this Report.

In relation to the requirements contained in Article 13, the Ombudsperson recalls that the effect of this Article is the existence of a national legal remedy addressing the substance of a “challengeable complaint” according to the Convention and enabling relevant facilitation (see e.g. Judgment in the *Case Kaya v. Turkey*, on 19 February 1998). Any such remedy should be effective in practice and law (see e.g. Judgment in the *Case Ilhan v. Turkey*, on 27 June 2000).

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation.

In this case, the Ombudsperson recommended the Basic Court in Prishtina to undertake, without further delays, all relevant actions to review and adjudicate the Case C.no.2210/07.

Report on the Case A.no. 57/2017 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC.no. 3297/2015

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 57/2017 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 3297/2015/. The purpose of the Report is to draw attention in relation to the need for undertaking relevant actions to review and adjudicate the Case AC. no. 3297/2015, without further delays.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR. In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial.

The Ombudsperson recalls that based on the ECtHR practice, the time of the procedure normally begins to run from the moment of court procedure initiation (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz*

v. Poland, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson recommended the Court of Appeals to undertake, without further delays, all relevant legal actions to review and adjudicate the case AC. Nr. 3297/2015.

Report on the Case A.no. 705/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC.no. 3181/2015

On 29 May 2018, the Ombudsperson published the Report with recommendation for the Case A.no. 705/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. No. 3181/2015. The purpose of the Report is to draw attention in relation to the need for undertaking relevant actions to review and adjudicate the Case AC. no. 3181/2015, according to the Judgment C. no. 56/13, without further delays.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR. In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time limit is an essential element of the right for fair and impartial trial.

The Ombudsperson recalls that based on the ECtHR practice, the time of the procedure normally begins to run from the moment of court procedure initiation (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson recommended the Court of Appeals to undertake, without further delays, all relevant actions to review and adjudicate the Case AC. no. 3181/2015.

Report on the Case A.no. 55/ 2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC.no. 3488/2015

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 55/ 2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC.no. 3488/2015. The purpose of the Report is to draw attention in relation to the need for undertaking relevant actions to review and adjudicate the Case AC.no.3488/2015.

The case of the complainant is being proceeded in courts since 1992 and up to date. The complainant is waiting for a decision for 26 years now, as no meritorious decision has been made for his case. For this case, since 1992 and up to date, 82 court sessions (53 before 1999 and 29 after 1999 and up to date) have been conducted in the former Municipal Court in Vushtrria, former District Court in Mitrovica, Basic Court in Mitrovica and Supreme Court of Kosovo. The former District Court has several times returned the case for retrial, and the case has been revised twice. Currently, the case is in the Court of Appeals in Prishtina and the concerned report focuses on the time when the case has been reactivated in the Basic Court in Mitrovica – Branch in Vushtrria (the then Municipal Court in Vushtrri).

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR. In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time limit is an essential element of the right for fair and impartial trial.

The Ombudsperson recalls that based on the ECtHR practice, the time of the procedure normally begins to run from the moment of court procedure initiation (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

In relation to the requirements contained in Article 13, the Ombudsperson recalls that the effect of this Article is the existence of a national legal remedy addressing the substance of a “challengeable complaint” according to the Convention and enabling relevant facilitation (see e.g. Judgment in the Case *Kaya v. Turkey*, on 19 February 1998). Any such remedy should be effective in practice and law (see e.g. Judgment in the Case *Ilhan v. Turkey*, on 27 June 2000).

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The

Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson recommended the Court of Appeals to undertake, without further delays, all relevant actions to review and adjudicate the Case AC.no. 3488/ 2015.

Report on the Case A.no. 864/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC no.292/2016

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 864/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC no.292/2016. The purpose of the Report is to draw attention of the Court of Appeals in Prishtina in relation to the need for undertaking the relevant actions to review and adjudicate the Case AC no.292/2016, without further delays.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR. In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial.

The Ombudsperson recalls that based on the ECtHR practice, the time of the procedure normally begins to run from the moment of court procedure initiation (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson recommended the Court of Appeals to undertake, without further delays, all relevant actions to review and adjudicate the Case AC 292/2016.

Report on the Case A.no. 375/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case AC. no. 1865/2014

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 375/2016 in relation to the prolongation of the procedure in the Court of Appeals for the Case 1865/2014. The purpose of the Report is to draw attention in

relation to the need for undertaking relevant actions to review and adjudicate the Case AC. no. 1865/2014, according to Judgment C. no. 638/13, without further delays.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR. In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time limit is an essential element of the right for fair and impartial trial.

The Ombudsperson recalls that based on the ECtHR practice, the time of the procedure normally begins to run from the moment of court procedure initiation (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

In relation to the requirements contained in Article 13, the Ombudsperson recalls that the effect of this Article is the existence of a national legal remedy addressing the substance of a “challengeable complaint” according to the Convention and enabling relevant facilitation (see e.g. Judgment in the Case *Kaya v. Turkey*, on 19 February 1998). Any such remedy should be effective in practice and law (see e.g. Judgment in the Case *Ilhan v. Turkey*, on 27 June 2000).

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson recommended the Court of Appeals to undertake, without further delays, all relevant actions to review and adjudicate the Case AC. Nr.1865/2014.

Report on the Case A.no. 910/2016 in relation to the prolongation of the procedure in the Basic Court in Prishtina for the case A.no. 2263/2015

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 910/2016 in relation to the prolongation of the procedure in the Basic Court in Prishtina for the Case A.no.2263/2015. The purpose of the Report is to draw attention in relation to the need for undertaking relevant actions to review and adjudicate the Case A.no.2263/2015, without further delay.

The complainant filed a complaint for the prolongation of the procedure in the Basic Court in Prishtina – Department for Administrative Matters and alleges that this court did not undertake any procedural actions within a reasonable time and that this may

constitute violation of his right for fair trial within a reasonable time, as guaranteed in paragraph 1 of Article 6 of ECHR.

In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time limit is an essential element of the right for fair and impartial trial.

The Ombudsperson recalls that based on the ECtHR case law, the time of the procedure normally begins to run from the moment of court procedure initiation (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005). However, the Ombudsperson recalls that Article 6 of the Convention provides for no absolute deadline for determining the reasonable procedure length, but its decision depends on certain case circumstances.

Also, the Ombudsperson observes that the “reasonableness” of the length of proceeding according to the ECtHR case law must be assessed based on the following criteria: complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in dispute “(ECtHR [Grand Chamber], *Frydlender v. France*, application 30 979/ 6 (2000), paragraph 43, based on ECtHR [Grand Chamber], *Comingersoll S.A. v. Portugal*, application no. 35382/97, paragraph 19 (2000), paragraph 19). The Ombudsperson observes that the case of the complainant was not complex and relates to procedural aspects of correcting the name in the registration of absolute rights to property and the conduct of the complainant did not contribute to the procedure prolongation.

As to applicability of Article 13, the Ombudsperson recalls that ECtHR has several times stated that the large delay in administration of justice, as long as the party has no legal remedy, constitutes a threaten to the rule of law within the national legal order (see Judgment in the Case *Bottazzi v. Italy*, on 28 July 1999, and Judgment in Case *Di Mauro v. Italy*, on 28 July 1999).

With regards to the provisions contained in Article 13, the Ombudsperson recalls that the effect of this article is to request the provision of legal remedy to address the substance of a “challengeable complaint” according to the Convention and allocate proper material compensation (see e.g. Judgment in the Case *Kaya v. Turkey*, on 19 February 1998). Any such legal remedy should be effective in practice and law (see e.g. Judgment in the Case *Ilhan v. Turkey*, on 27 June 2000).

With regards to the complaint for procedure length, the Ombudsperson recalls that the “effective legal remedy” in terms of Article 13 of the Convention should be able to prevent the alleged violation and its continuation, or ensure proper compensation for any violation that has happened (see above mentioned Judgment *Kudla*). The Ombudsperson observes that there is no legal approach whereby the complainant in the concerned case

can complain in relation to the procedure length, with the possibility of obtaining preventive assistance or compensation. In this case, the Ombudsperson recommended the Basic Court in Prishtina to undertake, without further prolongations, all relevant actions to review and adjudicate the Case A.no.2263/2015.

Report on the Case A.no. 473/2016 in relation to the prolongation in the Basic Court in Prishtina for the Case C.no.1874/11

On 29 May 2018, the Ombudsperson published the Report with recommendations for the Case A.no. 473/2016 in relation to the prolongation of the procedure in the Basic Court in Prishtina for the case. The purpose of the Report is to draw attention in relation to the need to undertake the relevant actions to review and adjudicate the Case C.no.1874/11, without further delays.

The Ombudsperson draws attention on the practice of ECtHR in relation to the Article 53 of the Constitution of the Republic of Kosovo, whereby human rights and fundamental freedoms guaranteed with this Constitution are interpreted consistent with court decisions of ECtHR. In many cases, ECtHR has stated that the right of the party for having its case tried within a reasonable time is an essential element of the right for fair and impartial trial.

The Ombudsperson recalls that based on the ECtHR practice, the time of the procedure normally begins to run from the moment of court procedure initiation (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, on 12 July 2005 and Judgment *Sienkiewicz v. Poland*, on 30 September 2003) until the completion of the case, and/or execution of the Judgment (see Judgment *Poitier v. France*, on 8 November 2005).

In relation to the requirements contained in Article 13, the Ombudsperson recalls that the effect of this Article is the existence of a national legal remedy addressing the substance of a “challengeable complaint” according to the Convention and enabling relevant facilitation (see e.g. Judgment in the *Case Kaya v. Turkey*, on 19 February 1998). Any such remedy should be effective in practice and law (see e.g. Judgment in the *Case Ilhan v. Turkey*, on 27 June 2000).

In relation to the complaint for prolongation of the procedure, the Ombudsperson recalls that “effective remedies” contained in Article 13 would have to be able to prevent the alleged violation, or its continuation, or to provide the adequate remedy for any violation that has already happened (see the abovementioned Judgment *Kudla*). The Ombudsperson observes that our internal system has no legal mechanism whereby the complainant could complain for the prolongation of the procedure in order to achieve any facilitation in the form of prevention or compensation. In this case, the Ombudsperson recommended the Basic Court in Prishtina to undertake, without further delays, all relevant actions to review and adjudicate the Case C.no.1874/11.

Report on the case A.no. 410/2017 regarding the prolongation of proceedings at the Court of Appeal in the case AC. No. 3451/2015

On 29 May 2018, the Ombudsperson published the Report with recommendations related to the case A.No. 410/2017 regarding the prolongation of proceedings in the Court of Appeals in the case AC. Nr. 3451. The report aims to draw attention to the need to undertake relevant actions for review and adjudication of the case AC.no.3451 / 2015, without further delay.

The Ombudsperson draws attention to the case law of the ECtHR in conjunction with Article 53 of the Constitution of the Republic of Kosovo, stipulating that Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted in compliance with the decisions of the European Court of Human Rights. In many cases, the ECtHR has emphasized that the right of a party to settle his/her case in a timely manner is an essential element of the right to a fair and impartial trial.

The Ombudsperson recalls that the ECtHR case law has established that the length of proceedings is normally calculated from the time of initiating court proceedings (see, inter alia, the judgment of *Moldova and Others v. Romania* of 12 July 2005 and the judgment of *Sienkiewicz v Poland*, on 30 September 2003) until the time when the case had been finalized and/or the judgment was executed (see judgment *Poitier v France*, 8 November 2005).

Regarding the requirements of Article 13, the Ombudsperson recalls that the effects of this Article is the existence of a domestic legal remedy addressing the core of a “challengeable appeal” under the Convention and provide the relevant relief (see, for example, the Judgment in the case *Kaya v. Turkey*, 19 February 1998). Any such legal remedy should be effective both in practice and in law (see, for example, the Judgment *Ilhan v. Turkey*, 27 June 2000).

Regarding the complaint for delay of the proceedings, the Ombudsperson recalls that “effective remedies” within the meaning of Article 13 should have prevented the alleged violation or its continuation, or provides an adequate remedy for any violation that had already been committed (see the aforementioned Kudla Judgment). In our system, there is no legal mechanism through which the complainant could complain about the prolongation of the proceedings and achieve any relief in the form of prevention or compensation. In this case, the Ombudsperson recommended to the Court of Appeals to take all relevant legal actions for review and adjudication of the case AC. No. 3451/2015 without further delays.

Report on case A.no. 722/2017 regarding the length of proceedings in the Basic Court in Prishtina in case C.no. 3077/13

On 29 May 2018, the Ombudsperson published the Report with recommendations related to the case A.no.722/2017, regarding the length of proceedings in the Basic Court of

Prishtina in the case C.no.3077/13. The report aims to draw attention to the need to undertake relevant actions for review and adjudication of the case C.Nr.3077/13, without further delays.

The Ombudsperson draws attention to the case law of the ECHR in conjunction with Article 53 of the Constitution of the Republic of Kosovo, stipulating that Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights. In many cases, the ECHR has emphasized that the right of a party to settle his/her case in a timely manner is an essential element of the right to a fair and impartial trial.

The Ombudsperson recalls that the ECHR case law has established that the length of proceedings is normally calculated from the time of initiating court proceedings (see, inter alia, the judgment of *Moldova and Others v. Romania* of 12 July 2005 and the judgment of *Sienkiewicz v Poland*, on 30 September 2003) until the time when the case had been finalized and / or the judgment was executed (see judgment *Poitier v France*, 8 November 2005).

Regarding the complaint of delays in the proceedings, the Ombudsperson recalls that "effective remedies" within the meaning of Article 13 should be able to prevent the alleged violation or its continuation, or to provide an adequate remedy for any violation that had already been committed (see the aforementioned *Kudla Judgment*). In our internal system, there is no legal mechanism through which the complainant could complain about the length of the proceedings to achieve any relief in the form of prevention or compensation. In this case, the Ombudsperson recommended to the Basic Court in Prishtina to take all relevant legal actions for review and adjudication of the case C. no. 3077/13, without further delays.

Report on case A.no. 235/2017 regarding the delay of the court proceedings on deciding upon the case AC.no.724/2014 in the Court of Appeals

On 17 July 2018, the Ombudsperson published the Report with recommendations related to the case A.no.235/2017, regarding the length of proceedings in the Court of Appeals in the case AC.no.724/2014. The report aims to draw attention on the need on undertaking relevant actions as per review and adjudicate upon the case AC.no.724 / 2014, without further delay.

The case has been initially initiated by the complainant through the lawsuit submitted on 13 July 2011, in the Basic Court in Peja. Subsequently, the respondent, on 3 February 2014, filed a complaint with the Court of Appeal in Prishtina. The complainant is waiting for seven years court's decision, which has not yet been decided finally.

The Ombudsperson recalls that the case law of the ECtHR has ascertained that the duration of the proceedings is calculated from the time of the initiation of the judicial proceedings (see the judgment of *Moldova and others versus Romania*, 12 July 2005, and

the judgment, *Sienkiewicz v. Poland*, of 30 September 2003), until the case has become final and / or the judgment is executed (see judgment of *Poitier vs. France*, 8 November 2005). In the complainant's case, the court proceedings were initiated on 13 July 2011 at the Basic Court in Peja. In many cases, the European Court of Human Rights (ECtHR) pointed out that the party's right to have his/her case settled within a reasonable timeframe represents crucial element of the right to a fair and impartial trial.

According to the ECtHR practice (see *Poiss v. Austria*, § 50, *Bock v. Germany*, § 35), calculation of the time for judicial case review starts from the moment when the lawsuit is filed with the competent court, and that at the current case, based on case circumstances, the date of 13 July 2011 can be taken in consideration, the day when the complainant filed a lawsuit with the Basic Court in Peja. On 3 February 2014, the respondent filed a complaint with the Courts of Appeal in Prishtina. Thus, the complainant for seven years is waiting for the decision by the court, and until the date of publication of this Report, no final decision has been taken regarding the complainant's case.

The Ombudsperson observes that Article 13 of the ECHR directly reflects the obligation of the state to initially and primarily protect human rights through its legal system, thereby establishing an additional guarantee to ensure that the individual enjoys rights effectively. If observed from this perspective, the right of an individual to a fair trial within a reasonable time will be less effective if there is no opportunity to firstly submit the complaint to a local authority. The requirements of Article 13 support those of Article 6 (see, judgment *Kudla vs. Poland*). Thus, Article 13 guarantees an effective remedy in front of local authority for an alleged breach of the requirements of Article 6 to review a case within a reasonable time.

As to the applicability of Article 13, the Ombudsperson reiterates that the European Court of Human Rights has repeatedly emphasized that inordinate delays in administration of justice over disputed parties, without remedies at disposal, poses a threat to the rule of law within the domestic legal order (see the judgment in the case of *Bottazi v. Italy*, 28 July 1999, and the judgment in the case of *Di Mauro v. Italy*, 28 July 1999). In the complainant's case, the case is pending in front of Court of Appeals, since 3 February 2014, and no hearing was held until now. In this case, the Ombudsperson recommended to the Court of Appeals to undertake of all appropriate legal actions, for reviewing and deciding upon the case AC. No. 724/2014 without further delays.

Report on the case A.no. 533/2017 regarding the failure to recognize Master Degree, for qualifications acquired, according to five year university study system, based on before Bologna system

On 19 July 2018, the Ombudsperson published the Report with recommendations related to the case A. no. 533/2017, the failure to recognize Master Degree, for qualifications acquired, according to five year university study system, based on before Bologna

system. This Report with Recommendations is based on the complaint received from Mr. Ahmet Murati filed against the Ministry of Education, Science and Technology (MEST) and the University of Prishtina "Hasan Prishtina" (UP) and is related to the non-recognition of the right to master's degree for graduates who graduated in the five-years education system in the technical field, according to the pre-Bologna system; and aims at drawing the attention to the need to undertake actions for the harmonization of primary and secondary legislation that regulates the comparability and equivalence of diplomas and study programs, pre-Bologna system and the Bologna system.

The case is related to Mr. Ahmet Murati's complaint filed against MEST, related to Article 5 of the Administrative Instruction (MEST) no. 11 Comparability and Equivalence of Diplomas and Study Programs Before the Bologna System and of the Bologna System, respectively regarding the non-recognition of Master's degree of Mr. Murati, he also filed a complaint against UP, for the reason of failing to issue the diploma for equivalence of qualifications earned in the five-years studies system, according to the applicable studies system before the Bologna system with Master's degree.

According to the information obtained by the complainant, it resulted that Mr. Murati, completed his undergraduate studies in 1988, at the Faculty of Electrical and Computer Engineering, Electronics Department, of the University of Prishtina and gained the qualification- Graduated Engineer of Electrotechnology. From the diploma annex, of date 20 September 2013, issued by the Faculty of Electrical and Computer Engineering of UP, it can be seen that Mr. Murati had completed the undergraduate studies according to before Bologna system, in the duration of 5 (five) years and 10 (ten) semesters. Based on the duration of the studies, the complainant accumulated a total of 300 ECTS credits. According to point 5.1 of the Diploma Addendum, 300 ECTS credits have granted the right to submit application for Master and / or Doctorate studies.

Bearing in mind that the complainants and others who graduated before the Bologna system, according to Administrative Instruction no. 11/2015 'Comparability and Equivalence of Diplomas and Study Programs before the Bologna System' do not have their title of Master recognized, although studies they have attended equate to 300 ECTS credits, may be considered that the non-recognition of the Master's degree qualification contains elements of unequal and discriminatory treatment to him and others, graduated in the same system and employed in educational institutions. Unequal treatment reflects on the employment conditions and the difference in the amount of salary compensation by Master's degree.

Taking into account the analysis conducted, the unequal position of graduates in the five-year education before Bologna system, compared with those graduated under the Bologna system, both in terms of employment conditions as well as at the level of salary compensation, the Ombudsperson, brings to your attention the Article 4, paragraph 1, subparagraph 1.1 of the Law on Protection from Discrimination, which specifies that: „

Direct discrimination shall be taken to have occurred where one person is treated less favourably than another is, has been or would be treated in a comparable situation based on one or more grounds such as those stated in Article 1 of the Law.”

The Ombudsperson, upon case analyses, observes that even though the Law no. 04 / L-037 on Higher Education in the Republic of Kosovo, specifies exactly the credits for obtaining the Master's Degree, Article 5 of the Administrative Instruction (MEST) no. 11, Comparability and Equivalence of Diplomas and Study Programs before the Bologna and Bologna System, which predicts that: “Diplomas of university studies 4.5 (four and a half years) and 5 (five years) years, who have completed with public protection of the topic in the technical system areas before Bologna are equivalent with 300 ECTS”, leaves legal gap, by failing to plainly clarify the equivalence of the credits obtained during the studies with the respective qualification degree.

The Ombudsperson is of the opinion that the abovementioned Article, by failing to be understandable and predictable, is positioned opposite to the principle of legal certainty, as an important element of the rule of law. The gap has caused restriction of rights and legal expectations, which should have been produced by the provision in question.

Moreover, the abovementioned Article positions the complainant, as well as others, in an unequal position, who have accomplished the undergraduate studies in the technical fields according to before Bologna system, within the period of 5 (five) years, 10 (ten) semesters, and have obtained a total of 300 ECTS, equally with graduates according to Bologna system. In this case, the Ombudsperson recommended to MEST to undertake necessary steps and actions with the purpose of amending and rephrasing of Article 5 of the Administrative Instruction no. 11 for Comparability and Equivalence of Diplomas and Study Programs before and under the Bologna system, in order to enable recognition of the Master's degree for all those graduated in the five-year system of studies in the technical field before the Bologna system; while recommended to UP to undertake the necessary preparatory actions, upon the approval of the Administrative Instruction, with the aim of issuing the diplomas for recognition of the Master's qualification.

Report on case A.no. 186/2017 regarding the complainant's allegations for unequal treatment of candidates in the public call, dated 24 November 2016, announced by the University of Prishtina "Hasan Prishtina" for the selection of academic staff for teachers at the Faculty of Philosophy

On 2 November 2018, the Ombudsperson published the Report with recommendations for the case A. no. 186/2017, relating to the complainant's allegations for unequal treatment of candidates in the public call of 24 November 2016, announced by the University of Prishtina "Hasan Prishtina", for selection of academic staff for teachers at the Faculty of Philosophy. The report aims to draw the attention of the Rectorate of the University of Prishtina "Hasan Prishtina" (UP) and of the Ministry of Education, Science and Technology (MEST), respectively the Education Inspectorate of this Ministry, regarding

violations and discriminatory actions, alleged by the complainant, made upon the public call announced by the UP on 24 November 2016 for the selection of academic staff. The Ombudsperson Institution (OI), pursuant to Article 15, paragraph 1 of the Law no. 05/L-019 on Ombudsperson, on 16 March 2017, received the complaint by Mr. Arben Hajrullahu (complainant) against the Faculty of Philosophy and UP Rectorate related to the employment issue.

On 24 November 2016, according to the complainant's allegations, the UP announced a public call for appointment of academic staff. The complainant also applied in this call for re-appointment, respectively for promotion in the position in which he was elected by the UP Senate, first as Assistant Professor, in 2006, and then in Associate Professor position in 2011. According to him, at the meeting of the Council of Faculty of Philosophy, on 9 February 2017, the issue of the complainant's application was discussed as well. The Chairman of the Evaluation Committee and a member of this committee signed the *"Evaluation Committee's Report on the appointment of Academic staff"*, proposing his appointment as a regular Professor, while the member delegated by the Dean of the Faculty of Philosophy was of a different opinion. The complainant alleges that, based on the minutes of this meeting, the Dean of this faculty had stated that the diploma of Bachelor's degree (BA) and the recognition - equivalence of Master's degree (MA) from MEST, is missing in the complainant's application file submitted for this competition. Subsequently, the Council of the Faculty of Philosophy voted in favour of the repetition of the call, since none of the candidates has the application file completed as required by the vacancy announcement. The recommendation of this Council was to re-announce this position. This proposal was approved with only one vote against and three abstentions.

According to the complainant, in the above-mentioned minutes, other positions in the call as a teacher, including position number 5 and position number 6, for candidates Z. H. and H. I., are proposed by the Council for regular professor, respectively for associate professor. With regard to this issue, the complainant claims that he was discriminated by the respective Council because, in his case, was requested the re-announcement of the call, whereas in the same call for the other two candidates (Z.H and H.I), it is not recommended to re-announce the call, although, both of them, upon application, according to the complainant, did not have a MA nostrified by the MEST.

Based on the complainant's allegations and the documentation submitted to the OIK, the Ombudsperson considers the allegations of one of the members of the evaluation committee A.H. with concern, who, according to the minutes of the Council meeting of the Faculty of Philosophy, dated 30 March 2017, stated that he was also a member of the Evaluation Committee with the other candidate Z.H and the latter provided the diploma nostrification after the call was closed. The Ombudsperson draws the attention that such a situation constitutes unequal treatment. Therefore, in accordance with Article 20,

paragraph 2 of the Law on Protection from Discrimination, the UP Rectorate and the Faculty of Philosophy *must prove that there has been no violation of the principle of equal treatment*.

The Ombudsperson draws attention that the Faculty of Philosophy should respond to the complainant and provide the minutes of the Council meeting of the Faculty of Philosophy held on 9 February 2017, in accordance with the Law on Access to Public Documents. Referring to the aforementioned arguments, the Ombudsperson recommends to the UP Rectorate and the Council of Faculty of Philosophy to undertake immediate actions based on the legal powers to review the complainant's allegations of discrimination and in accordance with Article 20, paragraph 2 of the Law on Protection from Discrimination provide sufficient evidence to prove that there has been no violation of the principle of equal treatment in the public call of 24 November 2016, announced by the University of Prishtina, for the election of academic staff. Whereas, it recommended to the Education Inspectorate within MEST to take immediate actions, based on the legal competencies, to respond to the complainant's complaint prot.no. 213, filed on 13 April 2017, alleging that the Council of the Faculty of Philosophy had committed discriminatory acts against him.

Report on case A.no. 432/2018 regarding the restriction of the right of access to public documents

On 20 November 2018, the Ombudsperson published the Report with recommendations related to the case A.no. 432/2018 regarding the restriction of right of access to public documents. The report aims at drawing the attention of the Municipality of Ferizaj for access to public documents, analysing the Law on Access to Public Documents (LAPD), as well as the duties and responsibilities of the respective institutions in relation to the implementation of this law in the cases of receiving requests for access to public documents.

From the evidence and information available to the Ombudsperson Institution (OI) provided by the complainant and recorded after the investigation conducted related to the case, it is noted that on 4 June, 2018, the Executive Director of NGO "Initiative for Progress - INPO ", addressed to the mayor of the Municipality of Ferizaj, to provide access to the list of construction permits for the period 1 January - 31 December 2017 and 1 January - 31 May 2018.

Since she did not receive a response to her claim, on 26 June 2018, the complainant addressed the Ombudsperson with a submission requesting, within legal responsibilities, to protect the right of access to public documents of this NGO because, although almost one month from then, she had not received any response at all.

On 26 July 2018, the Ombudsperson sent a letter to the Director of Directorate of Urbanism and Environment (DUE) of the Municipality of Ferizaj, whereby requested to be informed on the reason of restriction of access to public documents for the NGO

“Initiative for Progress – INPO”, whereas on 9 August 2018, received a response from the director of DUE of the Municipality of Ferizaj according to which “.....the information requested are transparent and public on the official website of the Municipality of Ferizaj”.

On 31 August 2018, the complainant informed the Ombudsperson that the Municipality of Ferizaj did not respond at all to the request of 4 June 2018. Moreover, the Municipality of Ferizaj, on 3 August 2018, published on its website only the report of the construction permits for the period January - July 2018. So fully three months after INPO's request was filed, and the list of construction permits was not published for the period 1 January - 31 December 2017, which was requested by INPO.

The Ombudsperson noted that, regarding the request submitted by the party, the Municipality has not issued a decision according to the requirements of the law. The LAPD in Article 7, paragraph 8 expressly provides: “*The public authority shall, within seven (7) days from registration of the application, be obliged to issue a decision, either granting full or partly access to the document requested..*”. The Ombudsperson, taking into account that “*only the law has the authority to determine the rights and obligations of legal and natural persons*”, as well as, based on the facts provided, ascertains that failure of the Municipality of Ferizaj to respond to the request of NGO “Initiative for Progress – INPO”, fully contradicts the provisions of LAPD no. 03/L-215. It also considers that the response of the Director of DUE from the Municipality of Ferizaj, dated 9 August 2018, that: “.... *information requested are transparent in the municipal webpage*”, does not coincide with the complainant's request for access to the list of construction permits for the period from 1 January 2017 to 31 December 2017.

The Ombudsperson draws attention to the ECHR case law, which, according to Article 53 of the Constitution, is the basis for the interpretation of the human rights guaranteed by the Constitution. The ECHR notes that delays in the provision of information can permanently remove all the value of information and interest of it because news is a service that quickly disappears and the delay of its publication for a short period of time may deny the whole value and interest to this news (see the case *The SundayTimes v. The United Kingdom*³⁸⁹).

Therefore, in order to improve the respect of the right of access to public documents as a constitutional and legal right, and to increase transparency and accountability for the citizens to exercise this right as a powerful tool for controlling the work of the governing bodies, The Ombudsperson recommended to the Municipality of Ferizaj to consider the request of Ms. Albulena Nrecaj from the NGO "Initiative for Progress - INPO", dated 4 June 2018, for access to public documents and to respond in accordance with the law; as

³⁸⁹ *Case Of The Sunday Times V. The United Kingdom*, (Application no. 6538/74, 26 April 1979)

well as to undertake steps to increase the capacities of public officials regarding the implementation of the Law on Access to Public Documents.

Report on case A.no. 445/2018 regarding registration with a new number of cases returned for retrial by a higher-instance court

On 29 November 2018, the Ombudsperson published the Report with recommendations for the case A.no. 445/2018, related to the registration of cases with new numbers, which are returned for retrial by the highest court. The report aims to inform the Kosovo Judicial Council of potential violations of human rights in cases of registration of cases with new numbers, which are returned for retrial and send to the competent institutions specific and concrete recommendations to specify deadlines for the duration of a court proceeding, through the legislation.

The Ombudsperson observes that first-instance courts have a practice whereby registering cases returned for retrial and re-adjudication under new numbers. Such practice is applied even in higher-instance courts, not considering the fact that the legal case may date back earlier than the date of its filing before the court, both in cases of referring the case to the second-instance court and in situations when the case is returned for retrial.

Article 31 of the Constitutions of the Republic of Kosovo and Article 6 of ECHR determine the right to a fair and impartial trial, where the right to a trial within a reasonable time period is one of the components of this right. Similarly to domestic legislation, the ECHR does not specify what is the reasonable timeframe within which a court case should be finalized. However, there is an ECtHR already established practice that interprets the issues concerning time periods within which a matter in Main Trial is to be solved.

In this regard: “In requiring cases to be heard within a “reasonable time”, ECHR underlines the importance of administering justice without delays which may jeopardise its effectiveness and credibility (H. v. France, § 58; Katte Klitsche de la Grange v. Italy, § 61). Article 6 § 1 obliges contracting states to organise courts in such a way as to comply with the requirements deriving from this provision. Furthermore, ECtHR has established a standard, whereby “As regards the starting-point of the relevant period, time normally begins to run from the moment the action was instituted before the competent court (Poiss v. Austria, § 50 ; Bock v. Germany § 35), unless an application to an administrative authority is a prerequisite for bringing court proceedings, in which case the period may include the mandatory preliminary administrative procedure (König v. Germany § 98 ; X v. France, § 31; Kress v. France [GC], § 90).

As to when the period ends, it normally covers the whole of the proceedings in question, including appeal proceedings (*König v. Germany, § 98*). It extends right up to the decision which disposes of the dispute (*Poiss v. Austria, § 50*). Hence, the reasonable time requirement applies to all stages of the legal proceedings aimed at settling the

dispute, not excluding stages subsequent to judgment on the merits (*Robins v. United Kingdom* §28).

The ECHR also states: "*It is for the Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (ibidem; Scordino v. Italy, [GC], § 183).*" In fact, since it is for the member States to organise their legal systems in such a way as to guarantee the right to obtain a judicial decision within a reasonable time, an excessive workload cannot be taken into consideration (*Vocaturo v. Italy, § 17; Cappello v. Italy, § 17*). The fact that such backlog situations have become commonplace does not justify the excessive length of proceedings (*Unión Alimentaria Sanders S.A. v. Spain, § 40*)."

Firstly, it should be stated that the registration under a new ordinal number is not foreseen in the applicable laws. It is reasonable that the lawmaker has not provided for such a thing, because it would result in the creation ex-lege of a basis for shifting the case from the initial ranking to the ranking with claims initiated much later. And secondly, the registration with a new ordinal number cannot be compared with any of objective criteria for calculating delays in procedures because the registration with a new number creates the impression that the case has been initiated much later, whereas the real date of case initiation appears when examining the case file.

According to the practice of ECtHR, the time begins to run out from the moment the claim has been instituted before the competent court, whereas for administrative cases even earlier. It is a notorious fact that court proceedings for a claims submitted with the court are handled by the first instance courts several years after its submission. . It is true that the judiciary has backlog of cases, but, according to ECtHR, this is not a justification. It is for the state to organize a legal system that handles cases efficiently. Also, the initiation of proceedings to reform the legal system, which reform would accelerate case handling, is not a justification.

The Ombudsperson ascertains that: registration with new ordinal number of cases returned for retrial and re-adjudication comprises a violation of the right for a court decision within an objective time period, as a component of the right for fair and impartial trial and for this purpose recommended to the Kosovo Judicial Council to address this issue to the Assembly of the Republic of Kosovo so that the Assembly, through the legislation, specifies the time period for a court proceeding, whereby specifying the maximum time period tolerated since the institution of the claim up to the first-instance decision, but also time periods of review in other instances; Until promulgation of an Act from the Assembly of Republic of Kosovo, the KJC to issue an internal Act that will regulate the deadlines for the duration of a judicial procedure, by specifying the maximum deadline that is tolerated from the initiation of the lawsuit up to the first instance decision, but also the review deadlines in other instances.; Cases

returned for re-adjudication to be handled with priority compared to new claims, to be determined by the internal Act as well.

Report on case A.no. 493/2018 regarding the rights of convicts to University Education

On 23 November 2018, the Ombudsperson published the Report for the case A.no. 493/2018, related to the right of convicts to university education. The report aims at drawing the attention of the competent authorities of the Republic of Kosovo for the respect of the rights of convicted persons for education and training, in accordance with the Constitution of the Republic of Kosovo, the Law on Execution of Penal Sanctions, as well as with international standards about the rights of prisoners.

The case was initiated by the Ombudsperson Institution based on complaint by Mr. E.B against the Kosovo Correctional Service (KCS), who complains on behalf of his son, V.B, serving the imprisonment sentence at the Lipjan Correctional Centre (hereinafter referred to as LCC) because of not being able to continue university studies.

Upon investigating the complaint, the Ombudsperson was informed by official electronic mail from the LCC Directorate that: *“The minor V.B. is in the CC. Lipjan since 07/12/2016, where he completed the higher secondary education. As far as university education is concerned under Article 83 and 84 of LEPS, MEST and MoJ have issued an administrative instruction for secondary education but not for university education.”*

On 19 July 2018, the National Preventive Mechanism against Torture (hereinafter referred to as "NPMT") visited the CCL and discussed the complaint in the Directorate of this establishment. Additionally, administrative file of the given convicted person has been analysed by the NPMT in the course of the visit. The NPMT was informed by CCL Director that the Ministry of Education, Science and Technology (hereinafter "MEST") has not yet adopted any Administrative Instruction that would clarify the issue of university education of convicted persons.

The Ombudsperson reminds at the outset that the education of convicted juveniles and adults, residing in Correctional Institutions, is one of the main liabilities of the competent Institutions of the Republic of Kosovo deriving from the Constitution, the laws at force, and the international legal instruments. As such, this institutions' liability to accomplish one of the fundamental human rights, such as providing access to education for young people, cannot be over passed either for minors who are in Correctional Centres, as is the case of CCL. In addition, the Ombudsperson draws attention that this right for prisoners should be provided within CCL facilities or even outside the institution, actually in regular public schools.

UN and European level International Acts which regulate the rights of convicted persons, setting of education possibilities determine as an obligation of the State with specific emphases on young people who are deprived of liberty. The right of all persons on

education is enshrined in Article 26, paragraph 1 of the Universal Declaration on Human Rights³⁹⁰: “Everyone has the right to education...”. While paragraph 2 of this Declaration stipulates that: “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace”.

. In this direction, “United Nations Rules for the Protection of Juveniles Deprived of Liberty” adopted in 1990 (Rules),³⁹¹ stipulates that: “Every juvenile of compulsory school age has the right to education appropriate to the needs and skills and determined for his or her preparation for return to society. Whenever possible, such education should be provided outside the premises of deprivation of liberty, community schools and, in any case, with qualified teachers through integrated programs in the country's education system so that after release, the juvenile can, without being hindered, continue their education...”(Article 38).

On the same spirit are also “European Prison Rules” adopted by Committee of Ministers of Council of Europe in 2006 (EPR), which pay special attention to the right to education, stipulating that: “Every prison shall seek to provide all prisoners with access to educational programs which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.”(28.1), as well as determining that: “A systematic program of education, including skills training, with the objective of improving prisoners’ overall level of education as well as their prospects of leading a responsible and crime-free life, shall be a key part of regimes for sentenced prisoner.”

The ECHR has ascertained that imprisoned persons continue to lawfully enjoy all fundamental rights and freedoms guaranteed by the Convention, apart the right to liberty. Thus their right to education is guaranteed by Article 2 of Protocol No. 1. Refusal to enrol a prisoner at a prison school constitutes a violation of this provision (Velyo Velevarov versus Bulgaria, 27 May 2014). Certainly, the right to education does not imply the obligation of the state to organize ad hoc classes solely on individual’s requests and the inability to meet these requirements does not constitute a violation of Article 2 of Protocol no. 1 of the ECHR (Epistatu versus Romania, 24 September 2013).

Law on Execution of Penal Sanctions determines the right of the convicted person on university education and obliges that the juveniles deprived of liberty enjoy accomplishment of this right. In this case, the Ombudsperson recommended to the Ministry of Education, Science and Technology and the Ministry of Justice to issue sub-

³⁹⁰Universal Declaration of Human Rights in: https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations//aln.pdf, (15.8.2018)

³⁹¹ See <http://www.un.org/documents/ga/res/45/a45r113.htm>.

legal act pursuant with the Law on Pre-University Education and the Law on Execution of Penal Sanctions which would stipulate the form of accomplishment of the right to university education for sentenced juveniles and adults.

Reports of the National Mechanism for the Prevention of Torture and other cruel, inhumane and degrading treatment

Report of the National Mechanism for the Prevention of Torture on the visit to the Detention Centre in Prizren

Pursuant to Article 17 of Law No. 05/L-019 on the Ombudsperson, the National Mechanism for the Prevention of Torture (hereinafter referred to as "the NPM") of the Ombudsperson on 31 October 2017 visited the Detention Centre in Prizren (hereinafter referred to as "DCP"). The monitoring group consisted of two lawyers, one doctor and one psychologist.

The building of the DCP was built in 1964; initially it operated under UNMIK administration until February 2005 where full management competencies were taken over by local staff. The DCP is dedicated for the detainees of the regions nearby Prizren, as well as it receives persons for serving the sentence imposed by the Basic Court for up to three months. This Institution has the capacity for 92 detainees, it has a total of four wings, in three wings are placed remand prisoners and in one wing are placed the sentenced prisoners with short sentences.³⁹²

The prisoners are placed in wings A, B, C, D. The total capacity is for 92 persons. At the time of the NPM visit to DCP, there were 100 prisoners accommodated, of whom 22 were sentenced prisoners. The European Committee for the Prevention of Torture visited DCP in 2010.³⁹³

During the visit to DCP, the monitoring team was informed that a new detention centre in Prizren is planned to be built, but the procedures have stagnated and no progress has been made in this regard. The Correctional Service staff and the Prison Health Department staff provided the monitoring team with full co-operation. The team without delay had access to all areas of the DCP. The team was provided with all the information needed to carry out its task and was able to speak in private with remand and sentenced prisoners, without the presence of correctional officers or other personnel.

During the visits in the DCP, the NPMT interviewed a considerable number of detainees and sentenced prisoners and did not receive any complaints about ill-treatment or excessive use of physical force by correctional officer.

The official capacity of the DCP is 92 people. During the visit to the DCP holding cells, the NPMT noted that currently the number of prisoners had reached 100 people. The

³⁹² Data from website of Kosovo Correctional Service, in: <http://shkk.rks-gov.net> (31.10.2017)

³⁹³ View: <https://rm.coe.int/16806972c7> (14.11.2017)

NMPT has visited a number of cells and verified whether the living space was in compliance with the standards set forth by the European Committee for the Prevention of Torture.³⁹⁴ Based on this standard, the living space for remand or sentenced prisoners in cells should be at least 4m² per prisoner for a multiple occupancy cell, excluding the annex of toilets.

The Law on Execution of Criminal Sanctions also stipulates that each prisoner should have 4m² of space in a common cell.³⁹⁵ During the visit, the NMPT noted that in some cells due to the lack of space, some remand and sentenced prisoners were sleeping on the floor in an old mattress and without adequate covers. Therefore, the NMPT concludes:

- The DCP faces overcrowding, which should be avoided as soon as possible, and cannot provide accommodation space in accordance with the standards established by the European Committee for the Prevention of Torture and the Law on Execution of Criminal Sanctions. During the visit in some cells, the NMPT noticed that prisoners lack the storage space for placing necessary personal belongings. In addition, in the two cells where the remand prisoners were accommodated, the toilets did not have doors and thus the privacy of the remand prisoners was not observed.³⁹⁶ Rule 15 of the Mandela Rules, adopted by the General Assembly of the United Nations on 29 September 2015, stipulates that: *“Sanitary installations shall be adequate and enable every prisoner to comply with the needs of nature necessary and in a clean and decent manner”*
- During the visit, the NMPT noted that the cells were generally warm, had enough lighting, generally there was no humidity (except for cell A3 where there was little humidity), while the showers were in good condition. Also the prisoners dining halls were clean, had natural light and ventilation. The NPM has concluded that cells generally need to be painted.
- Regarding the supplies, the NPM was informed that there was a lack of toilet papers, lack of bed sheets, blankets, where according to the directorate they were not supplied for a long time. Usually the prisoners are allowed to receive the bed sheets from their family members. During the conversation with the prisoners, the NPM has received complaints about the lack of hygienic kits, while regarding water, this problem was fixed. Authorities should provide the detainees with

³⁹⁴ European Committee for Prevention of Torture, Inhabitation Space for one prisoner, view: <https://rm.coe.int/16806cc449> (14.11.2017)

³⁹⁵ Law nr. 05/L0-129, article 3 of the Law on Amending and Supplementing Law nr. 04/L-149 for Execution of Penal Sanctions.

³⁹⁶ European Regulations on Prisons, article 18.1.

hygienic products that enable them to clean the cells and maintain the hygiene adequately.³⁹⁷

- The NMPT was informed that detainees can take a shower twice a week, which is in accordance with the European Prison Rules.³⁹⁸ The NMPT did not receive complaints from detainees and convicts regarding this right.

Based on the findings and ascertainment made during the visit, the recommendation to the Ministry of Justice was to notify the Ombudsperson about the planning for construction of the new Detention Centre in Prizren; to provide adequate working conditions for medical personnel; the number of detainees accommodated should be in accordance with the official capacity of the DCP and resolve the issue of overcrowding as soon as possible; take appropriate measures to ensure that detainees privacy are respected (see paragraph 9 of this report); to lime cells as needed (see paragraph 10); improve working conditions for correctional officers.

Report of the National Mechanism for the Prevention of Torture Related to the Visit to Elderly and People without Family Care Home

Pursuant to Article 17 of the Law 05/L-019 on Ombudsperson, National Preventive Mechanism on Torture (hereinafter “NPM”) of the Ombudsperson, on 2 and 30 November 2017 visited the Elderly and People without Family Care Home (hereinafter “EPWFCH”). The monitoring team was composed by a legal adviser, a physician and a psychologist. During the visit, the team received very good co-operation by the staff, it had access to all facilities without delay, was provided with all the information needed to carry out its task and was able to speak in private with residents.

EPWFCH is an institution of social character and functions within the Ministry of Labour and Social Welfare (hereinafter referred to as “MLSW”). Official capacity of this institution is 110 residents. At the time of the visit, the number of residents was 63, 27 of which were men and 36 women. Out of them, 3 residents are under the age of 65. In the Regulation No. 09/2008 on Internal Organization of Work in Elderly and People without family care (hereinafter in the text “Regulation”) is regulated the issue of residents’ admission criteria, organizing of life and work with residents as well as house rules and activities. Similarly, criteria for residents’ placement in this institution are regulated in more detailed manner by Administrative Instruction no. 10/2014 on activities and requirements of placement of Residents in House of Elderly Persons without Family Care and Community Based Houses.

³⁹⁷ Law on Execution of Penal Sanctions, article 38.2 provides that: “In order to ensure the hygiene of convicted persons and the hygiene of premises, convicted persons shall be provided with sufficient cold and hot water, and appropriate toilet and cleaning articles. Installations and devices for personal hygiene shall assure sufficient privacy and shall be well-maintained and clean”.

³⁹⁸ European Regulations for Prisons, paragraph 19.4.

Legislation of the Republic of Kosovo does not impose involuntary placement in social care institutions. All residents residing in this institution are placed based on a signed contract with abovementioned institution. Therefore, it is considered that all residents are placed here on the basis of their free will.

At the HEFC are settled the following categories of dependent persons: dependent persons who cannot meet their daily needs independently, but should always be assisted by others. They also receive special medical care; the category of semi-dependent residents is residents whose health status has been diminished and receive special care; the other category are residents who are independent and who, although old, meet their daily needs without the help of others.³⁹⁹ During the visit, the NMPT was informed that 13 residents are dependent and 5 are semi-dependent, while 4 residents suffer from dementia.

Article 7 of Administrative Instruction 07/2011 defines the basic criteria for the placement of a resident in the HEFC. According to this Article, the following criteria must be met: a person should be a permanent resident of the Republic of Kosovo, be over 65 years of age, not have a biological-child-heir or adoptive child, be in good psychic condition and do not have infectious diseases. However, during the visit and control of the relevant documents, the NMPT has noted that in this institution are also persons accommodated with different psychiatric diagnoses, persons with mental disabilities or mental development impairments. According to the information from the social worker, 7 of the residents have had their legal ability to act removed, and the legal guardians from the Centres for Social Work of their respective municipalities do not take interest on their cases, with the exception of the CSW from Gjilan, which with its official appointed as legal guardian does fulfil its legal obligations.

Further, NPM has observed that in this institution 3 persons under the age of 65 are accommodated. Accommodation of these persons in this institution is in contradiction with Administrative Instruction 07/2011 and the Regulation on Internal Organization of Work in Elderly and People without Family Care Home.

During the visit, the NPM interviewed a number of residents and no complaints have been served as per physical abuse or verbal abuse, as well as conduct that would impair the human dignity of residents in the EPWFCH. The NPM highly evaluates the commitment of the staff to care for the elderly people, especially towards those that are immovable. The NPM gained the impression that relations between the staff and residents are good and friendly.

PM has observed that outer premises of the institution are under CCTV surveillance.

³⁹⁹ Article 10 of the Regulation nr. 09/2008 on Internal Organization of the Work for the Elderly Persons and with No Family Care.

The building was built in 1960s. During the visit the NPMT observed that the yard and sidewalks of the institution were fixed and access for elderly people and persons with disabilities was significantly easier. They also have day-to-day access to the institution's garden which is vast and has sufficient green area. According to the Management, the elevator is functional but very often is out of order due to the fact that it is very old. There are no problems with water supply, although the boilers are old and damaged. Management's main concern are old boilers and laundry machines, which are small and do not fulfil residents' needs to clean their bed sheets, clothes, blankets as well as other linens, the fact that hampers the work of medical assistants. The NMPT has noted that the building needs serious investments, especially in the part where the medical service is located, where water leakage often causes serious inventory damage.

During the visit, the management presented to NPMT the requests which have been addressed to the MLSW regarding the investments needed, for which no answer has been given by this Ministry.

Rooms where residents are located have sufficient lighting, generally they do not have moisture, but the inventory is outdated and much damaged. Residents are accommodated in rooms by 3, 2 and 1 person. According to the management, central heating is in function at certain times and not 24 hours due to insufficient heating fuel. Some residents complained at cold night, some reported to the monitoring team that they use electric heaters when there is no central heating.

Based on the findings made during the visit, it was recommended to the Ministry of Labour and Social Welfare to urgently make investments according to assessment of needs in the old building and the premises where health and dentistry service functions; residents should be supplied with adequate inventory in their rooms; supply the facility with an ambulance; the medical service should apply protocols for self-injuries, bodily injury, hunger strike, sexual abuse, suicide, and deaths in the institution; organize specific staff training in accordance with the needs for treatment of residents; increase the number of staff according to needs assessment by the health service.

Report of the National Mechanism for the Prevention of Torture on Visits to Police Stations

Pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 17 of Law No. 05 / L-019 on the Ombudsperson, the National Mechanism for the Prevention of Torture (NPMT) of the Ombudsperson visited the following police stations: Regional Police Detention Unit in Prishtina, station "Centre", October 30, 2017; Police Station in Lipjan, 9 October 2017; Police Station in Podujeva, 18 October 2017; Police Station in Mitrovica, 19 October 2017; Police Station in Vushtrri, 19 October 2017; Police Station in Prizren, 27 October 2017; Police Station in Suhareka, 27 October 2017; Police Station in Dragash, October 27, 2017. The monitoring group consisted of a lawyer, a psychologist and a doctor.

During the visit conducted in the abovementioned stations, Kosovo Police provided the NPM with full co-operation. Without any delay, the team had access to all the premises. The team was provided with all the information needed to carry out its task and access to all requested documents and was able to speak in private with persons deprived of their liberty.

Pursuant to the applicable legislation in the Republic of Kosovo, the persons suspected of having committed a criminal offence may be detained by the police up to 48 hours before being before a pre-trial judge. The police may keep and collect information from persons found at the scene of a criminal offence that may provide relevant information (maximum time period: six hours)⁴⁰⁰.

European Committee for the Prevention of Torture (hereinafter CPT), in its 2nd General Report published in 1992, highlighted the importance of three fundamental right: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer and the right to medical examination by a doctor of his choice (in addition to a medical examination carried out by a doctor called by the police authorities).⁴⁰¹

These rights should be implemented not only in case of detained persons, but also in other cases when the citizens are obliged to stay in the station or with the police for other reasons (for example, for identification purposes). According to CPT, these rights are fundamental safeguards against physical ill-treatment and should be implemented from the very first moment of deprivation of freedom, notwithstanding how it is described within the legal system. Similarly, these fundamental rights are also provided for in the Constitution of the Republic of Kosovo, Criminal Procedure Code and Law on Police.⁴⁰²

Article 13 of the Criminal Procedure Code stipulates that any person deprived of freedom shall be informed promptly, in a language which he or she understands, of the right to legal assistance of his or her own choice, the right to notify a family members or another appropriate person of his or her choice about the detention and these rights shall be applied during the whole time of his/her deprivation of freedom. . Regarding the notification about the detention, Article 168 of the Criminal Procedure Code, further stipulates that the detained person has the right to notify the family member or another appropriate person of his or her choice about the detention and the place of detention immediately after the detention; notification of a family member or another appropriate person may be delayed for up to 24 hours when the state prosecutor determines that the

⁴⁰⁰ Articles 162, 163, 164 of the Criminal Procedure Code of the Republic of Kosovo.

⁴⁰¹ See: <https://rm.coe.int/16806cea2f> (15.11.2017).

⁴⁰² Constitution of the Republic of Kosovo, Articles 29 and 30. Criminal Code of the Republic of Kosovo, Article 13. Law no. 04/L-076 on Kosovo Police, ²⁴³ See also Articles 29 and 30 of the Constitution.

delay is required by the exceptional needs of the investigation case. This delay shall not apply in case of juvenile persons.

Pursuant to the Law on Police⁴⁰³, the right to notify the family or another person about the detention applies to persons, who are under “temporary custody”, with the purpose of identification or their protection and protection of others.

During the visits, NMPT was notified by the police officers that audio-video recording of interviews is not applied during the interviewing of the detained persons. The European Committee on Prevention of Torture (CPT) considers that:

*“Electronic recording (audio and/or video) of police interviews represents another important safeguard against the ill-treatment of detainees. CPT is pleased to note that the introduction of such systems is under consideration in an increasing number of countries. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions.”*⁴⁰⁴

In the report on the visit to Ireland, in 2006, CPT highlights:

“The findings during the 2006 visit suggest that audio-video recording in the interrogation rooms of Garda stations may have been a significant contributing factor to reducing the amount of ill-treatment alleged by persons detained under the abovementioned legislation.”

The Ombudsperson’s NPM encourages the Kosovo Police to review the possibility of implementation of such audio and video recording system, in compliance to CPT conclusions and to notify the Ombudsperson about it.

NPM has noticed that in the visited police stations, the security cameras are functional, in station premises and cells where the detainees are held, except in the police station in Lipjan.

NPM did not receive complaints by the detainees found in the Regional Detention Centre in Prishtina, in relation to these rights. Similarly, according to the documents reviewed it is found that Kosovo Police respects these rights, in all the visited stations. During the visits, NPM has noticed that in each cell there were written information related to the

⁴⁰³ Law on Police, Article 20.

⁴⁰⁴ European Committee for Prevention of Torture, extract from the 12th General Report, paragraph 36. For more, view: <https://rm.coe.int/16806cd1ed> (24.11.2017).

rights of persons detained in Albanian, Serbian and English Language. During the visits, NPM did not encounter any detained juveniles.

Based on the findings during the visit, NPM recommends to the relevant authorities the following: take the necessary steps to provide more natural light in the Regional Police Detention Unit in Prishtina; create better working conditions for the police officers in the Regional Police Detention Unit in Prishtina; to renovations and supplies specified in the paragraph 20 of this report shall be made in the Police Detention Unit in Prizren; in all cells of police stations, where there are holding rooms, to install call systems; to make functional the security cameras at Lipjan Police Station.

Report of the National Mechanism for Prevention of Torture regarding the visit to the Detention Centre in Gjilan

Pursuant to Article 17 of Law No. 05/L-019 on the Ombudsperson, the National Mechanism for the Prevention of Torture (NMPT) of the Ombudsperson, on 31 October 2017, visited the Detention Centre in Gjilan (DCG). The monitoring team consisted of two lawyers (one of them the Ombudsperson's deputy), a doctor and a psychologist.

During the NMPT visit to the DCG, the staff of the Correctional Service and Health Department provided the monitoring team with full co-operation. The team was provided with all the information needed to carry out the task and secured interviews with convicted and detained persons, without the presence of correctional officers or other personnel.

The DCG building was opened in 2016. The official capacity of the DCG is 300, but due to technical conditions, lack of inventory and correctional staff, the current operational capacity is for 80 people. In this centre are accommodated prisoners and detainees. During the visit, the NMPT noted that a part of the road to the DCG, namely the road to the main gateway is unpaved and subject to poor weather conditions, which can present serious difficulties for the development of daily activities in this institution.

At the time when the NMPT visited this centre, 49 detainees and 25 convicts were placed. The NMPT noted that detainees and convicts are divided in accordance with the Law on Execution of Criminal Sanctions.⁴⁰⁵

The NMPT during a visit to the DCG interviewed a significant number of detainees and convicts and received no complaints of physical abuse or excessive use of physical force by correctional officers.

The NMPT has visited a number of holding cells and verified that accommodation facilities are in compliance with the standards set by the European Committee for the

⁴⁰⁵ Law on Execution of Penal Sanctions, article 33 paragraph 7. Mandela's Rules, Rule number 11, item b). European Regulations on Prisons, Rule 18.8. Covenant on Civil and Political Rights, article 10.2, item b).

Prevention of Torture.⁴⁰⁶ Based on these standards, the space for detainees or convicts in cells should be at least 4m² per person in a common space, excluding the annex of toilets, and 6m² in single cells (a cell for only one prisoner).

Also, the Law on Execution of Penal Sanctions provides that each prisoner should have 4m² of space in a joint cell.⁴⁰⁷

During the visit, the NMPT has noticed that the cells where people are accommodated have enough lighting, no moisture, adequate heat and are clean. The DCG does not face overcrowding. The DCG has a large vacant space. The NMPT considered that the competent authorities should take concrete steps to make this space operational.

Otherwise, the NMPT noted only one concern that there was no cultural, sporting or social rehabilitation and entertainment program for prisoners in the DCG.

As for the kitchen and the facility used by detainees for eating, the NMPT noted that they were generally in good condition. The showers were also in good condition and the prisoners were entitled to a shower twice a week, which is in accordance with the European Prison Rules.⁴⁰⁸

The NMPT visited the Health Service at the DCG and noted that the areas where medical services are generally provided are of a good standard. The staff at this centre was of an adequate level. Also, the NPMT during the visit did not receive any complaints from prisoners regarding health care in the DCG.

However, regarding persons with disabilities in the premises of the DCG, the NPMT has noted that in the part of the DCG where the medical services are provided, currently the elevator is out of order.

The NPM during the visit was informed that the DCG staff consists of 16 civilian personnel and 68 correctional officers. The working conditions of KCS staff were at a satisfactory level. However, the NPMT was informed that currently the Centre faces various office-related shortages.

Based on the findings and judgements made during the visit, it was recommended to the Ministry of Justice to: Inform the Ombudsperson about the planning for use of unused space in the DCG; Provide cultural, sports and recreational activities for rehabilitation and re-socialization of prisoners; to lay asphalt on the unpaved part of the road which can present serious difficulties during the winter season and under the conditions of atmospheric rainfall for carrying out the work of the DCG in accordance with the ERP; to make the elevator operational in the part where medical services are provided.

⁴⁰⁶ European Committee for Prevention of Torture, Inhabitation Space for a Prisoner, view in: <https://rm.coe.int/16806cc449>

⁴⁰⁷ Law nr. 05/L0-129, article 3 of the Law for Ammending and Supplementing Law nr. 04/L-149 for Execution of Penal Sanctions.

⁴⁰⁸ European Regulations on Prisons, paragraph 19.4.

Report of the National Torture Prevention Mechanism regarding the visit to the Detention Centre for Foreigners in Vranidoll

Pursuant to Article 17 of Law No. 05 / L-019 on the Ombudsperson, the National Preventive Mechanism for the Prevention of Torture (NPMT) of the Ombudsperson, on 7 March 2018, visited the Detention Centre for Foreigners (hereinafter "DCF") in Vranidoll. The monitoring group consisted of a lawyer, a doctor and a psychologist..

The DCF functions within the Department of Citizenship, Asylum and Migration (DCAM) of the Ministry of Internal Affairs (MIA). According to Article 2 of Regulation (MIA) No. 03/2014 on Operation of the Detention Centre For Foreigners (hereinafter "Regulation"), the foreigners who are subject to forced removal and those found in violation of public security are held at this centre, in order to verify their identity or for other reasons. The centre was opened in 2010. The capacity of this centre is 76 persons.

During the visit to the DCF, the staff of the centre consisted of the leaders, two officers for admission and registration foreigners, and the security personnel, offered to the NMPT with full co-operation. The monitoring team had access to all areas of the Centre without delays. The team was provided with all the information needed to carry out the task.

Based on the provisions of the Law No. 04/L-219 on the Foreigners of the Republic of Kosovo, a detainee accommodated at the Centre shall be notified in written form, in one of the official languages and in English, for his/her detainment at the detention centre, which shall contain the reasons for the detention, the detention period, the right to provide him/her with legal protection and the right to contact his/her relatives.⁴⁰⁹

During the NPM visits there were 5 foreign detained persons present at the centre. NPM has checked their files and conducted interviews at the rooms where detainees were accommodated without the presence of DCF officials and security personnel. NPM has not received any complaint by the interviewed persons of physical ill-treatment, excessive use of force or violent behaviour by DCF officials and security officials. Regarding material conditions, the NMPT considers that the Centre meets all conditions for accommodation of foreign persons.

The NMPT during the visit was informed that UNHCR provides free legal assistance to foreigners who are potential asylum seekers, but not to others. Also, the NMPT contacted the Agency for Free Legal Aid to verify if the agency has been involved in the provision of legal aid to foreign detainees who are subject to forced return and was informed that FLA- may provide free legal assistance to foreigners with temporary residence permits in the Republic of Kosovo, but so far there have been no cases of providing legal assistance to foreign detainees.

⁴⁰⁹ 04/L-219 Law on Foreigners.

During the visit, the NMPT was informed that medical services to foreigners at this centre are provided by the Family Medicine Centre in Pristina and the University Clinical Centre. However, in cases where a foreigner is assigned therapy with medicaments, therapy is provided by incompetent officials (security personnel and other officials) as there is no medical staff within the Centre. The NMPT considers that CHF should have at least one qualified nurse.

Report of the National Mechanism for Prevention of Torture regarding the visit to the Centre for Asylum Seekers

Pursuant to Article 17 of Law No. 05 / L-019 on the Ombudsperson, the National Preventive Mechanism against Torture (hereinafter “NPMT”) of the Ombudsperson, on 12 March 2018 visited the Centre for Asylum Seeker in Magura village of Lipjan Municipality, hereinafter referred to as the Centre). The monitoring team consisted of a deputy of the Ombudsperson, a lawyer and a doctor.

The Centre in Magura was inaugurated in 2012 and operates within the Ministry of Internal Affairs (MIA). Regulation (MIA) No. 02/2014 on Functioning of the Asylum-Seekers Centre (hereinafter “Regulation”) determines the functioning of the Asylum-Seekers Centre and its management, including the procedure of admission, registration, accommodation and movement of asylum seekers within respectively outside the Centre⁴¹⁰. This Regulation also regulates sanitation and hygiene conditions, nutrition, medical assistance, maintenance of order and discipline, as well as other important issues regarding its work.⁴¹¹

During the visit, the Centre staff offered full co-operation to the NMPT so that the team had access to all areas of the Centre. The team was provided with all the information needed to carry out the task, as well as the opportunity to interview asylum seekers without the presence of officials of the Centre.

Article 26 of Law no. 06/L-026 on Asylum has defined the rights of asylum seekers: to stay in the Republic of Kosovo; have basic living conditions; health care; basic social assistance; free legal aid; the right to education for asylum seekers; the right to freedom of thought and religion; the right to employment; and the right to vocational training.

During the visit, NNMPT has evidenced that 21 people were accommodated in this centre, while 11 others were in private residence in Lipjan. The NMPT did not receive complaints of ill-treatment in this Centre. However, they received a complaint from a family accommodated in this centre with regard to benefiting from social assistance.

During the visit, the NMPT visited the premises in which asylum seekers were accommodated. The NMPT considers that the Centre meets all conditions for

⁴¹⁰ Regulation (MIA) no. 02/2014 for the Functioning of the Centre for Asylum Seekers, Article 1

⁴¹¹ Regulation (MIA) no. 02/2014 for the Functioning of the Centre for Asylum Seekers, Article 1, paragraph 2.

accommodation of asylum seekers. As for the food, the NMPT was informed that three meals are provided at this centre. However, the monitoring team received several complaints from asylum seekers regarding food service.

The NMPT during the visit was informed that the health services of foreigners in this centre are provided by the Family Medicine Centre and the University Clinical Centre.

The NMPT from the findings and ascertainment's during the visit to this Centre has recommended to the Ministry of Internal Affairs: To adapt the food timetable according to the needs of asylum seekers, especially the time of dinner; to notify the NMPT on the condition regarding the provision of social assistance in accordance with the Law on Asylum; to notify the NPM for the progress of the course of Albanian language and other aspects of integration in society in the Republic of Kosovo.

Report of the National Mechanism for Prevention of Torture regarding the Visit to the Institute of Kosovo Forensic Psychiatry

Pursuant to Article 17 of Law No. 05/L-019 on the Ombudsperson, the National Preventive Mechanism for the Prevention of Torture (NMPT) of the Ombudsperson visited the Forensic Psychiatry Institute (IKFP). The monitoring team consisted of the deputy of Ombudsperson (NMPT president), the Head of NPMT, a legal advisor, a medical physician, a psychologist, a psychiatrist adviser (an expert commissioned by the Council of Europe), and two experts of the Council of Europe as observers.

During NPMT visit to the KFPI the monitoring team has been provided with full cooperation by IKFP and Kosovo Correctional Service staff (hereinafter KCS).

The Institute of Kosovo Forensic Psychiatry was opened in August 2014. It is currently under the management of HUCSK (Hospital and University Clinical Service of Kosovo). IKFP accommodates persons who have committed a criminal offense in the state of mental disability or significantly diminished mental capacity who are subject to the mandate of the competent court for compulsory psychiatric treatment⁴¹², as well as persons who are subject to a court order for psychiatric assessment to be held in a health institution⁴¹³. IKFP is composed of Ward A (Admission / outpatient Service), Ward B (Compulsory Psychiatric Treatment), Ward C (Psychiatric Assessment), and Ward D (of Resocialization). The capacity of this institution is 36 beds (12 beds in each ward).

IPPC operates on the relevant legal basis contained in the Criminal Code⁴¹⁴ of the Republic of Kosovo, on the Criminal Procedure Code,⁴¹⁵ on the Law on Execution of Penal Sanctions⁴¹⁶ and on the Law on Mental Health. On 21 December 2015, the

⁴¹² Criminal Code of Kosovo, Article 89.

⁴¹³ Criminal Procedure Code of Kosovo, Article 508 paragraph 4.

⁴¹⁴ Criminal Code of the Republic of Kosovo, article 18 and 87-90.

⁴¹⁵ Criminal Procedure Code of Kosovo, articles 506-508.

⁴¹⁶ Law on Execution of Penal Sanctions, articles 174-180.

Regulation on Admission and Treatment of Persons with Mental Disorders in Public Health Establishments, including the Institute of Forensic Psychiatry was adopted.

As for the conditions of accommodation of patients in IFK, the NMPT considers that the conditions in general are good. The NMPT has also noted a positive report and close approach by staff to patients. The NMPT interviewed a number of patients and did not receive any complaints about any form of ill-treatment.

The NMPT during the visit was informed about the training and activities for patients, where IFP, in addition to the evaluation, is offered a medical and psychosocial training. Regarding the supply of medicines at IFP is not good, family members are often forced to buy them. While psycho-social treatment consists of activities such as games, watching television, drawings, daily walking within the institution, individual sessions with a psychologist etc.

The NMPT was informed by management that the main obstacle to the functioning of IFP is the legal status of the institution, because this institution to the least extent belongs to HSUCK. For this reason, IFP does not have the possibility of managing the budget and the planning depends solely on the management of HSUCK.

There are 4 general psychiatrists, 2 forensic psychiatrists, 1 social worker, 2 psychologists and 23 nurses (including 15 women and 8 men) and 3 persons (except for the director (neuropsychiatrist) as administrative staff, 2 cooks, a warehouse worker. According to management this staff does not suffice, especially there is a need for additional 1 or 2 psychiatrists.

During the visit, the NMPT was informed that security personnel (including KCS security personnel) at IFP did not have adequate training to work with this category of patients.

It should be noted that IFP in 2015 has been visited by the European Committee for the Prevention of Torture, in which case in its report it has given concrete recommendations regarding the functioning of IFP.⁴¹⁷

Based on findings, the NMPT has recommended to the Ministry of Health: To notify the NMPT regarding the legal status of IFP and HSUCK; to regularly supply the IFP with medicines and other things necessary for carrying out work; to implement the recommendations of the European Committee for the Prevention of Torture; to increase psycho-social activities; to install a grievances system at the IFP (a complaint box); the medical personnel not to perform security duties; IFP security personnel should be carefully selected and undergo adequate training before taking such security duties.

⁴¹⁷ For more view Report of the European Committee for Prevention of Torture in Kosovo in 2015 in: <https://rm.coe.int/16806a1efc>.

Report from the National Mechanism for Prevention of Torture on the visit to the Educational – Correctional Centre in Lipjan

National Mechanism for Prevention of Torture (NMPT) of Ombudsperson, pursuant to the Law no. 05/L-019 for Ombudsperson, on 5 of July 2018, visited the Educational – Correctional Centre in Lipjan (ECCL).

ECCL was opened in May 2017 and functions as provided in the United Nations Regulations for Protection of Juveniles.⁴¹⁸ ECCL functions on the relevant legal basis as specified in the Criminal Code⁴¹⁹ and Criminal Procedure Code⁴²⁰, on the Law on Execution of Penal Sanctions⁴²¹ and the Juveniles Code.⁴²² The ECCL capacity is 36 beds. During the visit 20 juveniles were placed under the educational measure.

During the NMPT visit to ECCL, the Correctional Service staff and the Prison Health Department staff provided to the monitoring team full cooperation.

The NMPT has interviewed a number of juveniles and did not receive any complaints from juveniles about physical ill-treatment or excessive use of force.

Regarding the material conditions of accommodation, in general, the NMPT considers that the ECCL meets all conditions for accommodating minors. The NMPT has received several complaints regarding the quantity and quality of food.

The NMPT during the visit noted that the kitchen where the juveniles are provided food is in poor condition with regard to the dishwashing and hygienic conditions. This concern was expressed by the staff and the Directorate of ECCL, who stated that the kitchen renovation is planned.

During the visit, the NMPT was informed that with respect to the regime and activities, the ECCL allows juveniles to get fresh air for a period not less than three hours a day, which is in accordance with the juvenile justice code, as well, it possesses the sports hall and a fitness room. However, the downside at this centre is that there is no trainer engaged in these sports activities.

As far as health care is concerned, in general, the NMPT concludes that the health unit at ECCL meets the required standards and provides the appropriate medical services for the minors accommodated there.

The NPMT during the visit found that Correctional Training Centre in Lipjan provides adequate opportunities for filing complaints and requests, as well as they reviews and responds to them within the legal deadline.

⁴¹⁸ United Nations Regulations for the Protection of Juveniles who were deprived of Liberty.

⁴¹⁹ Criminal Code of the Republic of Kosovo, articles 18 and 87-90.

⁴²⁰ Criminal Procedure Code, articles 506-508.

⁴²¹ Law on Execution of Penal Sanctions, articles 174-180.

⁴²² Juveniles Justice Code nr. 03/L-193

From the findings, the NMPT has sent to the competent authorities the following recommendations: provide ample and appropriate food to juveniles in accordance with calories required for juveniles' growth and development; conduct mandatory renovations in the kitchen as well as equip it with necessary kitchen appliances; increase activities for juveniles as well as to put in function existing cabinets and engage appropriate instructors.

Report of the National Mechanism for the Prevention of Torture on the visit to the Correctional Centre in Dubrava

The National Mechanism for the Prevention of Torture (NMPT) of the Ombudsperson, pursuant to the Article 17 of Law no. 05 / L-019 on the Ombudsperson, on March 20-22, 2018, visited the Correctional Centre in Dubrava (CCD).

During the visit, the CCD staff provided the NMPT team with full co-operation, so that the team had no delays to access all areas of the Centre.

During the visit, the NMPT interviewed a number of prisoners. However, the NMPT has not received complaints of any physical ill-treatment or excessive use of force by correctional officers. The monitoring team has received a considerable number of allegations from inmates for corruption and showing favours not only from the correctional personnel but also from health personnel. The NMPT considers that the CCD Directorate and competent Kosovo Correctional Service (KCA) bodies should conduct comprehensive and independent investigations whenever there are allegations of corruption and exhibition of favouritism in the CCD.

Regarding the conditions of accommodation, the NMPT noted that the accommodation conditions differ in from one ward to the other. The NPM has noted that some cells do not meet the minimum standards established by the Law on Execution of Penal Sanctions and the standards set by the European Committee for the Prevention of Torture regarding the size of the cell and the number of accommodated prisoners. However, NMPT finds that the cells in general were warm, had enough lighting and ventilation. The NMPT paid special attention to prisoners who had been subjected to solitary confinement because of disciplinary violations and who were held in separate cells. The NMPT considers that such cells must meet the criteria provided by the Law on Execution of Criminal Sanctions.⁴²³

As far as food is concerned, the NPMT received a large number of complaints regarding the quality and quantity of food served to prisoners. The prisoners claimed that the food served for breakfast and dinner is of poor quality and insufficient quantity.

Within the CCD, there is also a fitness room, basketball and football field. However, in addition to this, the NMPT considers that the establishment of the economic units would

⁴²³ Law on Execution of Penal Sanctions

increase the activities and engagements of a larger number of convicts. The establishment of entities is also foreseen by the Law on Execution of Penal Sanctions.

As far as health care is concerned, the Prison Hospital operates with the Prison Hospital, which provides medical services to prisoners, where 6 regular doctors (one doctor is available 24 hours), 26 nurses, who work in 12 hours shifts.

While as external consultants working once a week are engaged: the psychiatrist, cardiologist, orthopaedist, neurologist, radiologist and the radiology technician, physiatrist, ophthalmologist, otorhino-laryngologist.

As for the CCD staff, there are 60 correctional officers. The NMPT during the visit received many complaints from correctional staff regarding the small number of correctional officers in relation to prisoners and for other working related conditions.

Through the report, the NMPT has recommended to the following competent institutions: To notify the NMPT if secondary legislation on combating corruption has been approved; improve the quality and quantity of food; all cells in which prisoners are placed, who are subject to disciplinary measures of solitary confinement to comply with the Law on Execution of Penal Sanctions and the recommendations of the European Committee for the Prevention of Torture; to make the necessary renovations in certain pavilions; functionalize the units; to engage the necessary correctional personnel according to needs assessment.

Report of the National Mechanism for the Prevention of Torture on the visits to Police Stations

Pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 17 of Law No. 05 / L-019 on the Ombudsperson, the National Mechanism for the Prevention of Torture (NMPT) of the Ombudsperson visited the following police stations: Police Station in Klina, July 11, 2018; Police Station in Istog, July 11, 2018; Police Station in Deçan, 12 July 2018; Police Station in Peja, July 12, 2018.

The monitoring team consisted of a legal adviser for torture prevention, a psychologist-counsellor, a doctor-counsellor, two members of the Kosovar Centre for Rehabilitation of Torture (KCRT), two experts from the Council of Europe (as observers).

During the visit to the aforementioned stations, Kosovo Police offered the NMPT full co-operation. The team had access to all areas with no delays. The team was provided with all the information needed to carry out the task and access to all the required documents, as well as enabled the interviewing of the arrested individuals without the presence of police officers.

The European Committee for the Prevention of Torture (ECPT), in its 2nd General Report, published in 1992, highlighted the importance of three fundamental rights of police arrested persons: the right to be informed of the rights his; to notify the third

person according to his or her choice of arrest (family member, friend, consulate of the country from which he comes if he is a foreign citizen); the right to have a lawyer; the right to be examined by the physician as he/she wishes (except medical examination by a physician called by the police authorities). These fundamental rights are also foreseen with the Constitution of the Republic of Kosovo, the Criminal Procedure Code and the Law on Police.⁴²⁴

According to the legislation in force in the Republic of Kosovo, persons suspected of committing a criminal offense can be held by the police up to 48 hours before being sent to the pre-trial judge. The police can keep and collect information from persons who are in the crime scene where they can provide relevant information (the maximum time period is six hours)⁴²⁵.

During the visit to the Klina and Istog police stations, the NMPT did not encounter arrested persons. The NMPT has encountered persons arrested at the police station in Deçan and in Peja, who interviewed them and did not receive any complaints regarding these rights. Also, based on the documentation reviewed, it appears that Kosovo Police has respected these rights. During the visits, the NMPT noted that in each cell of the aforementioned stations there was written information regarding the rights of the arrested persons. During the visits, the NMPT did not encounter arrested juveniles.

During the visit to the Peja police station, NMPT team encountered five arrested individuals, two of whom were in the interviewing process by the investigator and three others were interviewed by the team. During the interview there were allegations of physical ill-treatment by police officers at the moment of arrest. The NMPT has reviewed the files of the arrestees where it was evidenced that the arrestees were visited by the doctor and in the medical check sheet was recorded the measurement of vital signs and in only one case was instructed therapy against pain..

In this regard, Law no. 04 / L-076 on Kosovo Police provides: "*The police officer is authorized to use force only when it is necessary and only to the extent required achieving the legitimate police objectives.*"

As far as the conditions of the accommodation are concerned, the Istog and Klina police stations generally meet the minimum standards for accommodation of arrested individuals, the cells comply with the standards set by the CPT. While at the police station in Peja and Deçan, the NPMT noted that the accommodation conditions were in very bad condition, there was no natural light, and the artificial light was weak, the cells in these two stations did not meet the minimum accommodation standards for arrested persons.

⁴²⁴ Constitution of the Republic of Kosovo, articles 29 and 30. Criminal Code of Kosovo, article 13. Law nr. 04/L-076 on Kosovo Police,

⁴²⁵ Articles 162, 163, 164 of the Criminal Procedure Code of the Republic of Kosovo.

As far as healthcare is concerned, the NMPT was informed that the arrested persons receive medical services from public institutions such as the nearest Family Medical Centres and the University Clinical Centre, depending on the needs of the treatment.

Therefore, based on the findings during the visit, the NMPT recommends to the Ministry of Internal Affairs and Kosovo Police: To make the necessary renovation at the Detention Centre in Deçan as soon as possible; to make the necessary renovations at the Police Station Holding Centre in Peja, and to supply the station with the necessary materials (see paragraph 23 of the Report); to install in all cells of the police stations where the holding rooms the call systems.

Report of the National Mechanism for the Prevention of Torture on the visit to the Psychiatric Clinic of the University Clinical Centre of Kosovo

Pursuant to Article 135, paragraph 3, of the Constitution of the Republic of Kosovo, and Article 17 of the Law 05/L-019 on Ombudsperson, the National Mechanism for the Prevention of Torture of the Ombudsperson on 17 May 2018 visited the Psychiatric Clinic of the University Clinical Centre of Kosovo (hereinafter referred to as Psychiatric Clinic). The monitoring group consisted of a jurist, a doctor, a psychiatrist and two experts from the Council of Europe (as observers).

During the NMPT's visit, the Psychiatric Clinic staff cooperated fully with the monitoring team.

The Psychiatric Clinic in Prishtina is located within the Kosovo Hospital and University Clinic Services (KHUCS), with a surface area of 3860 m². Its capacity consists of 68 beds and according to authorities their use is 60% within one year. The Psychiatric Clinic consists of 4 wards.

Pursuant to the Law on Health, Article 13 of the Law on Mental Health of the Republic of Kosovo and Article 6 of the Statute of KHUCS, the Psychiatric Clinic is a constituent unit of KHUCS. According to the applicable law, it provides tertiary services throughout the country (the only clinic in Kosovo).

During the visit, the NMPT noted that the general atmosphere in the institution is relaxed and relations between staff and patients are positive. The NMPT did not accept from patients any complaint of physical ill-treatment or staff conduct that would insult the patients' dignity.

Regarding accommodation conditions at KHUCS, the NMPT noted that accommodation conditions in general are poor and that immediate renovation measures should be taken. Also, regarding the patients' living conditions, the CPT in the report on the visit in

Kosovo describes the living conditions of patients in this clinic as bad and severe, in which it is not possible to expect the creation of a therapeutic environment.⁴²⁶

Regarding food in the WAD, three abundant meals are served daily. However, the NMPT has received complaints about the food quality, due to which patients are forced to eat outside the Clinic on their personal budget.

Although psycho-social activities were performed, the NMPT expresses concern that they are faint and routine. There is no individualized treatment plan with patient involvement and there is no involvement in a more optimum range of therapeutic, rehabilitative and recreational activities. Regarding patient information about their rights, the NMPT noticed that the Charter of Patient Rights was posted in the kitchen. Information brochures have been spent, and patients are usually informed verbally about their rights.

As for the supply with medicines, it is often the case that the patients themselves provide the medicines because there is a lack in the supply.

The staff of the Psychiatric Clinic consists of 20 psychiatrists, 40 nurses, 5 psychologists, and 2 pedagogues. The Directorate states that the number of nurses is small.

The Ombudsperson, based on the findings and conclusions reached during the visit, pursuant to Article 135, paragraph 3, of the Constitution of the Republic of Kosovo and Article 16, paragraph 4, of the Law No. 05/L-019 on Ombudsperson, hereby issues the following recommendations: Make the necessary renovations at the Psychiatric Clinic; increase the number of meaningful psycho-social activities; Functionalize the multidisciplinary team in the Psychiatric Clinic wards; Ensure uninterrupted supply of the Psychiatric Clinic with medicines; Develop Suicide Prevention Guidelines; Provide adequate training for staff; Increase the number of staff according to the assessment and as needed; Obtain patients' informed consent in writing for treatment in accordance with the Law on Mental Health (see paragraph 32.33 of this Report). Patients should be informed about their rights in written form; Create and use a special register for patients subjected to the isolation measure; Psychiatric wards in other regional hospitals should activate special rooms for the treatment of emergency psychiatric cases

Report of the National Preventive Mechanism against Torture related to the visit to the Centre for Integration and Rehabilitation of Chronic Psychiatric Patients in Shtime

Pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 17 of Law No. 05 / L-019 on Ombudsperson, on 16 May 2018 the National Preventive Mechanism against Torture (NPMT) under the Ombudsperson visited the Centre for Integration and Rehabilitation of Chronic Psychiatric Patients in Shtime

⁴²⁶ Report of the European Committee on the visit in Kosovo, 2010, paragraph 79, in: <https://rm.coe.int/16806972c7>, (8.8.2018).

(CIRCPP). The monitoring team was composed of the deputy of the Ombudsperson, one lawyer, one doctor, one psychologist and two experts of Council of Europe (in the capacity of observers).

During the NPMT's visit, CIRCPP staff extended their full cooperation to the monitoring team.

CIRCPP functions within the KHUCS and provides 24 hours services. CIRCPP is an open type institution and residents of this centre are mainly diagnosed with psychotic disorders such as Schizophrenia.

According to Article 12 of the Law on Mental Health, CIRCPP is an organizational unit under KHUCS and provides secondary level services. The Law on Mental Health aims to protect and promote mental health, preventing the problems related to it, guaranteeing rights and improving the quality of life for persons with mental disorders.⁴²⁷

During the visit, the NPMT noted a close and friendly approach from the staff to the patients. Thus, a positive climate dominated within the institution. Patients seemed fine in terms of being dressed and in terms of hygiene. We did not encounter any signs of injuries. From the interviews with patients no complaint was reported about any form of maltreatment.

Regarding the living conditions at the Centre, the NPMT considers them to be on an average level. However, renovations, such as painting, mending toilet fixtures, placing paintings on the walls and personal closets are needed. The NPMT considers that there is a lack of privacy in toilets as a result of no curtains and this issue needs to be solved urgently.

The NPMT was informed that CIRCPP provides regular psychiatric services, where these services are performed by the director of the Centre, as he is a psychiatrist by profession, and when needed other health and specialist services are provided by the Family Medicine Centre in Shtime, the Regional Hospital in Ferizaj and from the University Clinical Centre in Prishtina.

Regarding the regime and activities, the NPMT expresses its concern about the fact that the number and quality of psycho-social and recreational activities are very scarce. There is also no individualized treatment plan with patient involvement. The institution should prioritize the increase of psycho-social activities and the inclusion of all patients optimally in these activities.

As far as patients' rights are concerned, there are no Charter of Patients' Rights and no leaflets for this purpose, this Charter is only placed in the health clinic. The NPMT considers that patient-related information should be placed in suitable manner, in visible locations, supported by leaflets and explained to patients as appropriate.

⁴²⁷ Law No. 05 / L-025 on Mental Health

The NPMC was informed that the CIRCPP staff has 39 employees, one psychiatrist, who is also the director of the institution, nine nurses, 16 medical assistants, 7 administrative staff and 7 technical service workers. The NMPT considers that the number of staff is not adequate. Also, there are no professionals, such as psychologists, occupational therapists etc.

Therefore, based on the findings and conclusions made during the visit, through this Report, the NMPT has sent to the competent authorities the following recommendations: Ensure an adequate number of medical personnel, such as psychiatrists, nurses, clinical psychologists, occupational therapists, as a prerequisite for an adequate treatment; provide adequate training to staff; develop a Roadmap (strategy) for Suicide Prevention; The Ministry of Health will take a notifying decision which will list the mental health institutions which will be required to perform the mandatory psychiatric treatment; regularly supply of the CIRCPP with the necessary medications; functionalize the computerized identification system (database). The NMPT also reiterates recommendations such as issuing sub-legal acts in accordance with the Law on Mental Health and building a vocational unit within the CIRCPP.

Report of the National Preventive Mechanism against Torture related to the visit to the Detention Centre in Peja

Pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 17 of Law No. 05 / L-019 on Ombudsperson, on 4 October 2018 the National Preventive Mechanism against Torture (NPMT) under the Ombudsperson visited the Detention Centre in Peja (DCP). The monitoring team was composed of two lawyers, one doctor, and a psychologist.

The DCP building was built between 1960 and 1961. It originally operated under the administration of UNMIK and KFOR until February 2005, where full management competencies were taken over by the local staff. This Institution has the official capacity of 86 prisoners. The European Committee for the Prevention of Torture visited the DCP in 2007 and 2015.⁴²⁸

During the visit, the NMPT was informed by the Directorate that they were verbally informed that the preparations for closing the DCP should commence, as the European Committee for the Prevention of Torture recommends that this Centre be closed because of non-compliance with the standards for accommodation conditions.

During the visit to the DCP cells, the NPMT noted that currently the number of prisoners had reached 89 people. The NMPT has visited a number of cells and verified that the accommodation space, lighting and ventilation is not in compliance with the standards

⁴²⁸ Shih: <https://rm.coe.int/16806972c7> (14.11.2017), CPT Report for Kosovo Visit in 2007, published in 2009. For more information see: <https://rm.coe.int/168069727c> (15.10.2018).

established by the European Committee for the Prevention of Torture (CPT) and the Law on Execution of Criminal Sanctions.

During the visits to the DCP, the NPMT interviewed a large number of detainees and convicts and did not receive any complaints about physical abuse or excessive use of physical force by correctional officers.

Also, the NPMT considers that the kitchen does not meet even the basic requirements, as its spaces are very small, without natural light, the work tools are out-dated, damaged and improvised by the workers themselves. The food was placed in a special room for a long-term use

As far as healthcare is concerned, the NPMT has not received complaints from detainees and convicts. The NPMT has noted that medical services in the DCP are provided in accordance with the demands and needs of detainees.

The NPMT has noticed the complaints boxes in DCP established by the Kosovo Correctional Service and the complaints boxes established by the Ombudsperson Institution.

Based on the findings and conclusions made during the visit, pursuant to Article 135, paragraph 3, of the Constitution of the Republic of Kosovo and Article 16, paragraph 4, of the Law No. 05/L-019 on Ombudsperson, the Ombudsperson recommended to the Ministry of Justice as following: notify the Ombudsperson regarding the claims of DCP employees that this Centre will be closed; create conditions and adequate working space for medical staff; the number of accommodated detainees should be in accordance with the official capacity of the DCP and the issue of overcrowding needs to be resolved as soon as possible; the accommodation conditions, while this Centre is in use, shall comply with the minimum standards established by the Law on Execution of Criminal Sanctions, the CPT standards and other international standards for the protection of prisoners' rights.

Report of the National Preventive Mechanism against Torture related to visits to Police Stations

Pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 17 of Law No. 05 / L-019 on Ombudsperson, on 30 October 2018 the National Preventive Mechanism against Torture (NPMT) under the Ombudsperson visited the police stations as follows : Police Station in Shtime, on October 30, 2018; Police Station in Ferizaj, on 30 October 2018; Police Station in Graçanica, on 30 October 2018; Police Station in Kaçanik, on 30 October 2018; Police Station in Shterpce, on 30 October 2018; Police Station in Gjilan, on 31 October 2018; Police Station in Ranillug, on 31 October 2018; Police Station in Kamenica, 31 October 2018; Police Station in Novo Brdo, on 31 October 2018. The monitoring team was composed of two lawyers, a doctor, and a psychologist.

The monitoring team was composed of the head of NPMT, two legal advisers for torture prevention, a psychologist-counsellor, a doctor-counsellor, a social worker-counsellor, two experts of Council of Europe (in the capacity of observers).

During the visit to the aforementioned stations, Kosovo Police extended their full co-operation to the NPMT. The team was duly granted access to all areas.

The European Committee for the Prevention of Torture (CPT), in the 2nd General Report, published in 1992, highlighted the importance of three fundamental rights of arrested persons by police: the right to be informed of his rights the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities).⁴²⁹

Also, these fundamental rights are foreseen with the Constitution of the Republic of Kosovo, with the Criminal Procedure Code and the Law on Police.⁴³⁰

During the visit to police stations in Shtime, Ferizaj, Graçanica, Ranillug, Kaçanik, Shtepce, Novo Brdo and Kamenica, the NPMT did not encounter persons in custody. The NPMT has encountered persons in custody at the police station in Gjilan and in Viti, whom it interviewed and did not receive complaints regarding these rights. Also, based on the reviewed documentation it appears that Kosovo Police has observed these rights.

Regarding the accommodation conditions at police stations Graçanica, Gjilan, Ranillug, Viti, Shterpce, Novo Brdo, Kamenica, generally the conditions are good and meet the minimum standards for accommodation of persons in custody. Also, the size of cells is consistent with CPT standards⁴³¹.

While in the police stations Ferizaj and Shtime the accommodation conditions are evaluated as being poor. The NPMT considers that the Police Station in Ferizaj needs renovation in the premises where the detainees are kept and in the areas where the police officers work. As for the Police Station in Shtime, the NPMT was informed that a facility was built for this station, which is expected to become operational by December of this year or by January next year.

However, it is concerning that during the visit to this station by NPMT team, they found three strong objects in one interview room, which, according to police officers, were confiscated objects from persons arrested on the scene and were held there as evidence⁴³².

⁴²⁹ See: <https://rm.coe.int/16806cea2f> (2.11.2015).

⁴³⁰ Constitution of the Republic of Kosovo, Articles 29 and 30. Criminal Code of the Republic of Kosovo, Article 13. Law no. 04 / L-076 on the Kosovo Police,

⁴³¹ See: <https://rm.coe.int/16806cea2f>.

⁴³² The objects found can be described as follows: three sticks, whereby two of these sticks appear to be electric cables wrapped end-to-end with tape and a longer stick wrapped with tape only on a part of it that would fit to the size of the palm

The NMPT has recommended to police officers that such objects must be immediately removed from the office where the detainees are interviewed.

Likewise, the NMPT has noticed that all the police stations visited, have the standard document (the file of the arrested person), which records all the data regarding the person in custody, in accordance with Article 172 of the Criminal Procedure Code of the Republic of Kosovo.

As far as the relevant health service is concerned, the NMPT was informed that the medical services of the persons in custody at all the stations visited are provided at the nearest family medicine centres and other public institutions as needed. The NMPT has noticed that all data related to the provided medical services to the persons in custody are kept in his / her personal file.

While regarding the complaints of the persons in custody, the NMPT was informed that the persons in custody have the right to file a complaint at the police station where they are detained and in the Police Inspectorate of Kosovo. In addition, the persons in custody can file a complaint with the Ombudsperson.

Therefore, based on the findings during the visit, the NMPT recommends to the Kosovo Police: To make the necessary renovations at the Police Station Holding Centre in Ferizaj Uroševac; in all the police holding centres visited, the toilets of the cells where the detainees are kept must be provided with a compartment to ensure privacy; to remove strong means from the offices where the persons in custody are interviewed or detained in all police stations that are supposed to be confiscated items for evidence; to inform the NPMT about the date of functionalization of the Police Station in Shtime/Štimlje; to supply detainees with personal hygienic means.

Recommendation Letters

Recommendation Letter - Ex officio no. 23/2018

Pursuant to Article 16.1 of the Law no. 05 / L-019 on the Ombudsperson, on 17 January 2018, the Ombudsperson instituted ex officio investigations regarding the article of 12 January 2018, entitled: "The Court finds that MED has violated the Constitution and the law in the privatization process of KEDS and tender for "Kosova e re", published on the portal "Telegrafi.

From the investigations conducted, the Institute for Advanced Studies GAP, addressed to the MED on 23 March 2013 with a request for access to public documents in documents related to the privatization process of KEDS and the bidding of the project "Kosova e Re". The MED has responded to the request by granting access, but read-only. They were not provided with copies of the required documents on the grounds that they "are in the form of a final draft". At the same request, on April 26, 2013, GAP addressed KEK but no access was granted.

From the abovementioned article it is understood that GAP, on behalf of the Kosovo Civil Society Consortium for Sustainable Development (KOSID), on June 3, 2013 filed a lawsuit against the MED for failing to grant access to public documents. The Basic Court in Pristina - Department of Administrative Affairs, on 12 December 2017, issued a judgment (A.no.750 / 13), which obligates the MED that, within 30 days from the day of the receipt of the judgment, GAP shall be granted access to the requested documents. According to the information provided by the OIK, the case on the appeal has been assigned to the Court of Appeals.

Article 4, paragraph 1 of the Law on Access to Public Documents (LAPD) defines: *"Any applicant of document shall have the right of access to documents of the public institutions, complying with principles, conditions and limitations established under the Law"*, while paragraph 4 defines that: *"Public documents received from the applicant cannot be used for denigration, propagandistic and commercial purposes."*

Article 7, paragraph 8 of LAPD defines that: *"The public authority shall, within seven (7) days from registration of the application, be obliged to issue a decision, either granting access to the document requested, or provide a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make an application for review. Refusal of the request is done with a decision in writing for its refusal."*

Also, Law no. 05 / L-031 on the General Administrative Procedure, addressing the principle of open administration in Article 9, paragraph 1, provides: *"Public organs shall act with transparency."*

The right to be informed is a right guaranteed by the Universal Declaration of Human Rights, which guarantees everyone the "freedom to seek, receive and impart information and ideas through any media and regardless of frontiers" (Article 19 and UDHR).

Freedom to receive and provide information is also foreseen in Article 10, paragraph 1 of the European Convention on Human Rights (ECHR) "Freedom of Expression": *"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers..."*.

The importance of media and civil society, as well as the report of measures undertaken by the state in relation to civil society, was assessed by the ECtHR in the case of *Österreichische v. Austria*. The ECtHR in this case considers: *"Media and civil society are characterized as" supervisors "of the society, and that national authorities should be vigilant in taking measures, as they may potentially impair their participation in public debates with matters of legitimate public interest"*.

Having in mind that "only the law has the authority to determine the rights and obligations for legal and natural persons", and based on the facts provided above, the Ombudsperson finds that the incomplete response to the GAP request, and the refusal of the request by KEK, are in violation of the provisions of Law no. 03 / L-215 on Access to Public Documents.

Moreover, while not prejudicing the handling of the case by the court, the Ombudsperson considers that the purpose of good administration of public administration bodies, among other things, should be the creation of good practices, by promoting to citizens a harmonized and focused administrative culture, which learns from interaction with citizens and civil society.

Therefore, in order to improve the respect of the right of access to public documents, as a constitutional and legal right, so that citizens can exercise this right as a powerful tool for controlling the work of the government bodies, which will to improve the work of state bodies and increase transparency and accountability, the Ombudsperson recommended that the Institute for Advanced Studies GAP be granted full access to the requested documents.

Recommendation Letter - Ex officio no. 127/2018

Pursuant to Article 16, paragraph 4 of the Law no. 05 / L-019 on the Ombudsperson on 5 March 2018, the Ombudsperson instituted an ex officio investigation, following the article in Newspaper "Koha Ditore", dated 22 February 2018, titled: "No investments in Maznik School for 17 years ". The principal of this school claims to have problems with the roof, which is constantly leaking inside the school whenever it rains and snows. Also, according to the newspaper, the principal of this school claims that the municipality has

been constantly aware of the problems that this school has with the roof, but has not yet intervened to fix them.

On 8 October 2018, based on the information provided, the Ombudsperson's representative visited the school building "Esad Mekuli" in village Maznik. He had noticed that the school in question did not provide suitable conditions for the development of the learning process, where besides the violation of the right to education, the pupils' right to life, health and social welfare was also endangered.

Article 3, paragraph 3 of the Law on Pre-University Education (LPE) in the Republic of Kosovo (promulgated in the Official Gazette of the Republic of Kosovo / No.17 / 16 September 2011, Prishtina): *"It shall be the general duty of the Ministry, the municipalities, the educational and/or training institutions and all other bodies engaged in the provision of pre-university education, as regulated by this Law and other applicable laws, to plan and deliver an efficient, effective, flexible, inclusive and professional service designed to provide all pupils with equal opportunities in access to education in accordance with their specific abilities and needs and to promote their educational and social development."*

Additionally, Article 3, paragraph 8 of LPE defines: *"The Ministry, municipalities, educational and training institutions and the community shall make the institutions attractive and safe for pupils, teachers and parents, through their respective responsibilities for the curriculum, standards of construction and maintenance of educational buildings, health and safety, protection of the environment and dealing with behavioural and disciplinary issues."*

Whereas, Article 7, paragraph 3 of the LPE (Competencies of municipalities) defines the additional competencies of municipalities as follows: *"3.1. construction of education and training facilities; 3.2. maintaining and repairing the premises and equipment of educational and training institutions."*

Based on this, pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 18, paragraph 1, subparagraph 1.2 of the Law on Ombudsperson, the Ombudsperson recommended to the Municipality of Deçan to undertake urgently the respective actions for renovation of the school building "Esad Mekuli", in village Maznik.

Recommendation Letter - Complaint no. 784/2018

Pursuant to Article 16, paragraph 1 of the Law no. 05 / L-019 on the Ombudsperson on 17 October 2018, the Ombudsperson has received a complaint from Mr. Imer Abdyli, owner of Fam Gas LLC, filed against TAK.

According to the information received by Mr. Abdyli, it was made clear that TAK rejected him the VAT deductible from the Unified Customs Declaration (UCD).

Regarding this issue he informs that the undertaking he leads has signed an agreement (certified by the notary) with Mazrek Comerc NTP and agreed that UCD No. 14464, dated 11 September 2013 and UCD no. 14451 dated September 16, 2013, be recorded as purchase costs at Fam Gas LLC and VAT be credited, as Fam Gas LLC has previously made a sale and has not credited the VAT on purchase with clearance procedure IM 7 in IM4. The complainant alleges that TAK is violating his rights with such actions because he is denying the verified agreement before the notary, with which he has acquired the above mentioned UCD.

In the correspondence of the Ombudsperson with TAK it is reported that they are based on Article 37, paragraph 2, sub-paragraph 2.1 of Law no. 03 / L-146 on Value Added Tax. Based on the circumstances of the case, the Ombudsperson finds that the conclusion of the contract under which the property right over DUD was transferred to Fam Gas LLC is valid for the fact that this contract was concluded in accordance with the provisions of the Law for Obligational Relationships and the Law on Notary and was certified by the Notary. Therefore the same should be taken into account by TAK. This finding is reinforced even more when it is taken into account that from the control procedures it has resulted that in the present case there is no tax and customs evasion.

The Ombudsperson considers that the non-acceptance of such contract by TAK constitutes a breach of the right of property, which is guaranteed by the Constitution and the ECHR, and is also not in compliance with the provisions of the Law on Obligational Relationships and Law on Notary and for this it recommends to the Tax Administration of Kosovo to review the request of the Fam Gas Company LLC and to decide on this issue in accordance with the provisions of the Constitution of the Republic of Kosovo, with the ECHR, by Law no. 04 / L-077 on Obligational Relationships, by Law no. 03 / L-010 on Notary and Law no. 03 / L-146 on Value Added Tax.

Recommendation Letter - Complaint no. 747/2018

The Ombudsperson Institution (OI), based on Article 16, paragraph 1 of the Law No. 05/L-019 on the Ombudsperson, and Article 10 of the Law No. 03/L-125 on Access to Public Documents (LAPD), on 6 August 2018, has received a complaint by the NGO "Initiative for Progress - INPO" lodged against the Ministry of European Integration for not responding to the request for access to public documents.

Based on information available to the Ombudsperson Institution, the INPO on 27 August 2018 addressed the Ministry of European Integration (MEI) via email requesting access to the public contract "International Consulting Services for the needs of MEI". On 12th of September 2018, the INPO received MEI's response via email, whereby access to the requested document was refused. On 19 September 2018, the INPO submitted a request for review by the MIE, but until the time of submitting the complaint with OI has not yet received a response.

On 6 November 2018, the OI's representative met with the Acting Head of Division of Public Communication, Mr. Dushi, whereby he was informed that MEI is working in processing the data of concerned contract and upon completion of this process shall notify the complainant. On 20 November 2018, the OI was informed that the INPO representatives can go to the MEI offices to access the requested document. On 22 November 2018, the INPO has informed the IO that the access to the requested document was limited.

The Ombudsperson notes that more than 50 percent of the contract's content was redacted under the justification that such information is confidential, but without legally justifying such a restriction.

On 3rd of December 2018, the OI's representative met with acting Head of the Division for Public Communication and the concerned document was presented to her in the same form as to the INPO, while the request for a copy of the document in question was not granted under the justification that she should talk with the MEI's legal office for this issue. The OI's representative informed Mr. Dushi with the content of Article 18, paragraph 6 of Law No. 05/L-019 on the Ombudsperson according to which the Ombudsperson has access to files and documents of any authority in the Republic of Kosovo, and can therefore review such documents for the purpose of cases under its review, and may request from any authority of the Republic of Kosovo and their staff to cooperate with the Ombudsperson, by providing relevant information, including a full or partial file copy of the dossier and documents as requested by the Ombudsperson.

The purpose of good administration of public administration bodies, among other things, should be the creation of good practices, by promoting to citizens a harmonized and focused administrative culture, which learns from interaction with citizens and civil society. In order to improve the respect for the right of access to public documents, as a constitutional and legal right, so that citizens can exercise this right as a powerful tool for controlling the work of the executive bodies, which would affect in improving the work of state bodies and increasing transparency and accountability, the Ombudsperson recommended in this case to the Ministry of European Integration to deal with the NGO "Initiative for Progress - INPO" request and respond in accordance with the Law for Access to Public Documents and Relevant Legislation in Force; and to respond to the requests of the Ombudsperson, in accordance with the legal provisions in force.

Recommendation Letter - Complaint no. 115 / 2018

Pursuant to Article 16, paragraph 1 of the Law no. 05 / L-019 on the Ombudsperson, on 21 February 2018, the Ombudsperson received a complaint from the NGO BIRN, against Kosovo Telecom (KT), for not responding to the request for access to public documents.

NGO BIRN had filed a request on 4 September 2017 and 2 February 2018 for access to public documents, respectively access to all contracts that KT has concluded with

businesses / media and other entities for advertising / marketing purposes, including placement of panes and billboards but KT did not respond.

At the request of the Ombudsperson regarding this issue, Kosovo Telcom announced that they could find complainant's request at KT. Further, KT has informed that the complainant can again address to KT on the same request and that it will be answered in the optimal term.

The complainant was notified with the reply of KT and in this case they contacted the responsible official at KT, at BIRN's request, regarding access to public documents. After contacting BIRN representative and KT representative, OIK representative on 29 August 2018 sent an e-mail to the responsible officer at KT, which was repeated on 4, 10, 14 and 28 September 2018, to request information about KT's actions with regard to BIRN's request, but did not receive an answer.

Although the complainant has repeated the same request for access to public documents, and despite the fact that Article 7, paragraph 8 and Article 8, paragraph 1, of Law no. 03 / L-215 on Access to Public Documents (hereinafter referred to as the *LAPD*), stipulates the deadlines within which the response should be answered, the respondent has never received a response.

Regarding this issue, the Ombudsperson recalls that the Constitution of the Republic of Kosovo (hereinafter referred to as the Constitution), in Article 41, paragraph 1, provides for the Right of Access to Public Documents, according to which: *"Every person enjoys the right of access to public documents"*. While paragraph 2 of the same Article stipulates: *"Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification"*.

The spirit of Article 41 of the Constitution is also transposed in Article 1 of the LAPD, which stipulate: *"This Law shall guarantee the right of every natural and legal person to have access, without discrimination on any grounds, following a prior application, to official documents maintained, drawn or received by the public institutions"*.

The Ombudsperson concluded that the non-response of the KT to the request for access to public documents denies BIRN's right of access to public documents, which is guaranteed by the Constitution and by law and in order to restore this violated right it is recommended to Kosovo Telecom to review BIRN's request for access to public documents in the shortest possible time and to respond in accordance with the Law on Access to Public Documents.

Recommendation Letter - Complaint no. 484/2017

On 8 June 2016, the complainant had filed a complaint with the Municipal Education Directorate (MED) in Prizren, against the Principal of the "Loyola Gymnasium" School

for psychological abuse and offenses against his daughter (schoolgirl) and his wife (a teacher in this school). The Education Inspection Sector (EIS) in the Municipality of Prizren, on 20 July 2016 (Ref.10 / 1-4, No.274), assessed the complainant's appeal as ungrounded, but the complainant's case had returned to re-examination by the Education Inspectorate within MEST. On 7 September 2016, EIS in Prizren (Ref.10 / 1-4 Decision No. 337) considered the complainant's case again as ungrounded. On 23 December 2016 (Complaint No. prot.725), the complainant appealed to the Department of Inspectorate at MEST, which rejected the complaint through Decision No. 10/19 dated 18 January 2017. On 1 February 2017, the complainant addressed a complaint (No. 500) to the Secretary General at MEST but had never received an answer.

On 18 October 2017, the Ombudsperson sent a letter asking the Secretary General of MEST to inform him of actions taken or expected to be taken, in order to proceed within a reasonable time, in accordance with the law.

On 2 November 2017, the Secretary informed the Ombudsperson that: *"The case has been returned to the first instance body for review by the fact that the inspectorate of education, when reviewing the case, was not based on Regulation QRK-NR. 21/2013 on the Protocol for the Prevention and Reference of Violence in Institutions of Pre-University Education."*

On December 1, 2017, the OIK representative had a discussion with the Secretary and asked him to inform, among other things, when the case was returned for review and whether the complainant was informed. The Secretary asserted that: *"The case was delayed in reconsideration on 1 November 2017 and it is not my case to decide and deal with this issue. As for informing the complainant regarding his complaint, we did not inform the complainant about the fact that the party has no address but we have informed the principal of this school."* The OIK representative requested evidence that could prove that attempt was made to inform the complainant, but for this the Secretary said: *"We have no evidence and this case for us is a minor case to deal with and if I was to deal with answering each student or teacher , I would end up without doing other things that are of a higher priority"*

Law no. 02 / L-28 on Administrative Procedure, Article 11 explicitly defines the obligation for decision-making: *"Public administration bodies within their competencies are obliged to decide on any request submitted by natural and legal persons."* Also Article 38 of this law clearly provides for the obligation of an administrative body to act upon the receipt of the parties' requests and for their written notification of the decision of the body. In the present case, the body did not act in accordance with Article 38 of the Law on Administrative Procedure, since the party did not receive a written response.

Whereas Article 90, paragraph 1 of the same law expressly regulates the way of submitting administrative acts: *"Individual and collective administrative acts are sent to*

interested parties within a period of 30 days." In the complainant's case we observe that although they have passed a few months, he did not receive any response to his request. .

Based on the evidence and submissions provided by the complainant, the Ombudsperson finds that MEST has failed to implement the law since the complainant in his submission on 1 February 2017 did not receive a response from MEST, despite the legal obligation to review the complainant's complaint under the applicable law; and therefore recommended MEST to urgently decide on the complainant's submission of 1 February 2017, addressing it in accordance with the legal provisions.

Recommendation Letter - Complaint no. 290/2017

Pursuant to Law no. 05 / L-019 on the Ombudsperson, the Ombudsperson has received the complaint of Mr. Florent Spahija, representative of the Kosovo Democratic Institute (KDI) against the Central Election Commission (CEC) regarding the restriction of the right of access to public documents. On January 13, 2017, KDI addressed the political Party Registration and Certification at CEC with a request *"for access to financial reports and expenditure reports of some political parties for 2015 as following: Democratic Party of Kosovo PDK; Democratic League of Kosovo LDK; Vetevendosje Movement LVV; List Srbska (Serbian List); Alliance for the Future of Kosova AAK; and the Initiative for Kosovo NISMA."*

Although, on 24 January 2017, the complainant repeated the same request for access to public documents he had not received an answer.

On 17 May 2017, the Ombudsperson's officials asked the CEC to notify them about the failure to respond to KDI's request and the reason for limiting the right of access to public documents. But they never answered.

The spirit of Article 41 of the Constitution is also transposed in Article 1 of the LAPD, which stipulate: *"This Law shall guarantee the right of every natural and legal person to have access, without discrimination on any grounds, following a prior application, to official documents maintained, drawn or received by the public institutions"*

The Ombudsperson understands that the LAPD, Article 12, paragraph 1, foresees the reasons for excluding the right of access to public documents, while paragraph 2 of this article provides: *"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."*

However, the Ombudsperson notes that, in addition to the failure to reply within the deadlines set by law (see Article 7, paragraph 8 and Article 8 paragraph 1 of the LAPD), the CEC has failed to provide at least any information if the required data are limited by law and that their disclosure damages or is likely to harm the interests set forth in paragraph 1 of Article 12 of the LAPD.

The Ombudsperson draws attention to the practice of the European Court of Human Rights (ECtHR) which, under Article 53 of the Constitution, provides a basis for the interpretation of human rights. In the case of *Observer and Guardian vs The United Kingdom*, the ECtHR assessed: *"To deprive the public of information on the functioning of State organs is to violate a fundamental democratic right."*⁴³³

The importance of the media and civil society, as well as the report of the measures taken by the state in relation to civil society, was assessed by the ECtHR in the *Österreichische (...) V* case. Austria. The ECtHR in this case considers: *"Media and civil society are characterized as" supervisors "of the society, and that national authorities should be vigilant in taking measures, as they may potentially impair their participation in public debates with matters of legitimate public interest"*.⁴³⁴

The Ombudsperson also brings to the attention the case law of the Kosovo judicial system, which justifies the public's interest in being informed about public spending. Regarding access to public documents, similar to the case of KDI, Basic Court in Prishtina with its Judgment A.no.1335 / 12, dated 26.05.2015, in the administrative dispute of the claimant "Balkan Investigative Reporting Network - BIRN "Against the Respondent The Office of the Prime Minister of the Republic of Kosovo has decided positively by approving the petition of the claimant, by which the court obliged the Respondent The Office of the Prime Minister of the Republic of Kosovo, within 30 (thirty) days to render a ruling which will grant access to the Claimant on all documents and information requested regarding the expenses incurred by the former prime minister and former deputy prime ministers in the period from 15 February 2011 to 31 August 2012. One of the findings of the court determines: *"...the expenditures made by public officials, especially senior officials of the state, are the money collected from the taxes paid by the citizens of the Republic of Kosovo, and in this respect they have a reasonable interest to be informed of every cent, as to where public officials who are entrusted with public authorizations spend them, and by this fact they should be held responsible for those expenses."*⁴³⁵

The Ombudsperson considers that special attention should be paid to the European Commission's Kosovo 2016 Report, which has since evaluated: *"The Central Election Commission has also not provided the timely publication of reports on the finances of*

⁴³³Case of *Observer And Guardian V. The United Kingdom*, (Application no. 13585/88, 26 November 1991)

⁴³⁴Case of *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria*, (Application no. 39534/07), §33.

⁴³⁵ Judgment A. no. 1335/2012, on 26 May 2015, of the Basic Court in Prishtina, by which it was decided that the Office of the Prime Minister would grant access to the Claimant Balkan Investigative Reporting Network "Birn" in all documents and information regarding the expenses made by the former prime minister and former deputy prime ministers ... in the period 15.2.2011 deri më 31.8.2012.

political parties . Transparency and accountability of political party financing and campaign funding remains to be ensured.”⁴³⁶

Despite the importance of the role of civil society in the well-functioning of the state, given that the fundamental rights and freedoms guaranteed by the Constitution can only be limited to the extent necessary to ensure that an open and democratic society fulfils the purpose for which the restriction is allowed, in the present case this right is limited without any reasonable grounds, permitted by law.

Therefore, the Ombudsperson, commending the commitment and engagement of civil society in building an open and democratic society, and considering the issue of financing political parties as a matter of high public interest, recommended to the CEC that, in accordance with the Constitution of the Republic of Kosovo and with the Law on Access to Public Documents, to provide KDI with access to financial reports and expenditure reports of political parties.

Recommendation Letter - Complaint no. 28/2018

Pursuant to Law no. 05 / L-019 on the Ombudsperson, on 18 January 2018, the Ombudsperson has received the complaint of Mr. Enis Velju, deputy editor in chief of the daily newspaper "Zëri" filed against the Ministry of Economic Development (MED), regarding the lack of response to the request for access to public documents. According to the information received by the complainant, it is understood that on 21 December 2017, Mr. Velju addressed the Secretary-General in MED with a request for access to the contract for the construction of the power plant "Kosova e Re".

Although the complainant, on 15 January 2018, repeated the same request for access to public documents, although Article 7, paragraph 8 and Article 8, paragraph 1 of Law no. 03 / L-215 on Access to Public Documents (LAPDs) defines the deadlines within which to reply should be sent no answer was received by him.

On 19 January 2018, the MED has made public the construction contract for the "Kosovo e re" power plant and has given the reason for the delay of its publication. However, the Ombudsperson notes that the MED did not provide an answer to Mr. Velju within the deadline set by LAPD. On the other hand, the Ombudsperson notes that the published contract is only in English and that in this regard there have been reactions from interested citizens.

The Ombudsperson draws attention to Article 5, paragraph 1 of the Constitution, according to which: "The official languages in the Republic of Kosovo are Albanian and Serbian". Similarly, the Law no. 02/L-37 on the use languages, in Article 2, paragraph 2.1, stipulates the following: "Albanian and Serbian and their alphabets are official languages of Kosovo and have equal status in Kosovo institutions...."

⁴³⁶ http://www.mei-ks.net/repository/docs/raporti_i_progresit_2016_shqip.pdf

Despite the fact that the MED, although with delay, has published the contract for the construction of the "Kosovo e re" power plant, we consider that the full access to this contract has remained limited to a large part of the public because of the lack of its translation in any or all of the official languages of the Republic of Kosovo.

Given the role of the media and the public in a democratic society and given that the fundamental rights and freedoms guaranteed by the Constitution can only be limited to the extent necessary to ensure that an open and democratic society fulfils the purpose for which the restriction is allowed, in the present case this right is limited without any reasonable grounds, permitted by law. This is because, initially, the publication of the contract for the construction of the "Kosovo e re" power plant has been delayed; and secondly, because the translation of the contract into official languages in the Republic of Kosovo is missing. Therefore, the Ombudsperson recommends to the MED that the contract for the construction of Kosova e Re power plant is published in the official languages of the Republic of Kosovo.

Recommendation Letter - Complaint no. 120/2017

Pursuant to Article 16, paragraph 1 of Law no. 05 / L-019 on the Ombudsperson, the Ombudsperson Institution (OIK) on 8 February 2017, has received the complaint of Mr. Kushtrim Latifaj filed against the Municipality of Prishtina, due to the non-enforcement of decision no. 41/16, of the Kosovo Competition Authority (ACA), dated 6 December 2016. In his complaint, Latifaj has emphasized that he deals with payment services and is the owner of the company "Pro Paid" L.L.C. He exercised his activity in the premises of the Municipality of Prishtina for a long time, but on 3 April 2015, the Municipality of Prishtina and Post of Kosova (Post Office) have signed a cooperation agreement that foresees the placement of postal branches within Prishtina Municipality facility thus eliminating other economic operators.

On 6 December 2016, ex officio and based on the complaint of the company "Pro Paid" LLC, ACA took a Decision and found that *"the cooperation agreement between the Municipality of Prishtina and Post, with no. protocol 01-031-75225 signed on 3 April 2015"*, is illegal and that the presence of Post Office in institutions damages competition and contradicts the Law on Protection of Competition and requested from the Municipality of Prishtina to abolish the above-mentioned agreement. Also, in this Decision, ACA recommended to the Municipality of Prishtina to provide equal conditions for all economic operators, placing them in a suitable competitive position through legal mechanisms thereby respecting the market economy with free competition, defined in Article 119, paragraph 1 and 3 of the Constitution of the Republic of Kosovo and Article 1 and 4 of the Law on Protection of Competition. Based on Law no. 03 / L-229 on Protection of Competition, it is envisaged that the rules and measures for the protection of free and effective competition in the market will be defined through the ACA.

On 29 July 2015, among other things, the complainant filed a request for the lease of a 20 m2 space within the premises of the Municipality of Prishtina, but never received an answer. Based on Decision no. 41/16, dated 6 December 2016, as well as the finding of ACA the presence of the Post Office in the institutions damages the competition determined by the Law on Protection of Competition, the Ombudsperson finds that the Municipality of Prishtina was supposed to implement the mentioned Decision of ACA within the legal deadline.

Therefore, the Ombudsperson recommended to the Municipality of Prishtina to implement to implement the AKM Decision no. 41/16 of 6 December 2016 as soon as possible in accordance with Article 119, paragraphs 1 and 3 of the Constitution of the Republic of Kosovo and Article 1 and 4 of the Law on Protection of Competition so that all economic operators, whether private or state-owned companies, are in equal and favourable competitive position through legal mechanisms in respect of market economy and free competition.

Recommendation Letter - Complaint no. 171/2018

Pursuant to Article 16, paragraph 1 of the Law no. 05/L-019 on the Ombudsperson and pursuant to Article 10 of the Law no. 03/L-125 on Access to Public Documents, on 19th of March 2018, the Ombudsperson received the complaint of Commando L.L.C. (hereinafter: Complainant), against the RRA, due to the rejection of the request for access to public documents.

Pursuant to the Complainant's allegations and the documents received, it is noted that on 13 February 2018 the latter has addressed the RRA through electronic mail to request for access to the public document, respectively access to the contract "Physical security of the RRA", signed in March of 2015 (procurement no. 31400-15-001-221) with the economic operator N.T.SH. "SFK", as well as the business certificate and the reference issued for the work carried out. According to the complainant's allegations, the said contract had expired two years ago and its amount was public on the website of the Public Procurement Regulatory Commission of Kosovo (PPRC).

On 16 March 2018, the Complainant received a response via e-mail rejecting its request for access. Nevertheless, in addition to the response on the rejection of the request for access, the RRA did not provide reasoning or issue a Decision pursuant to the Article 7, paragraph 8 of the Law Nr. 03/L-215 on Access to Public Documents (LAPD).

The Ombudsperson notes that the failure to handle the complaint by the RRA, in addition to being in violation with the Law on Access to Public Documents, it is also in violation with the Law no. 05/L-031 on General Administrative Procedure, respectively with the Principle of open administration, set forth in Article 9, paragraph 1, according to which: "*Public organs shall act with transparency*". Moreover, the absence of a decision in the

form set forth by the Law entails the failure to notify the party on the right to complaint, which represents violation of the right to use legal remedies.

Law No. 04/L-042 on Public Procurement, in Article 10 [Means to promote transparency], paragraph 2, stipulates: *"the records for each procurement activity shall contain (i) all documents related to, developed or acquired in the course of, or used to initiate, conduct or conclude, a procurement activity, regardless of whether such activity results in a contract or design award, (ii) if the procurement activity has resulted in a contract or design award, all documents related to such award, and (iii) if the procurement activity has resulted in the execution of a public contract, a copy of the public contract and all documents relating to that contract and/or its performance.[...]."*

While, paragraph 3,⁴³⁷ determines the access to data as in paragraph 2, and in paragraph 5, it is stipulated that: *"A contracting authority shall, upon the request of an interested party, make and provide to interested party a copy of any material that such interested party may access pursuant to paragraph 3 of this Article."*

Moreover, the Ombudsperson deems that the purpose of good administration of public administration bodies should, inter alia, be the creation of good practices, by promoting an aligned administrative culture and focused on the citizens, which learns by interacting with the citizens and civil society. In order to improve the respect for the right of access to public documents, as a constitutional and legal right, so that citizens can exercise this right as a powerful tool for controlling the work of the executive bodies, which would affect in improving the work of state bodies and increasing transparency and accountability, the Ombudsperson recommended to the Railway Regulatory Authority to address the complainant's request in accordance with the LAPD and relevant legislation in force.

Recommendation Letter - Complaint no. 499/2017

Pursuant to Article 16, paragraph 1 of the Law no. 05/L-019 on Ombudsperson, on 11 July 2017, the Ombudsperson received the complaint of Mr. Xhafer Kadrija, Executive Director of the Association for the blind in Gjakova, against the Municipality of Gjakova, in connection to the allegations for the violation of the rights of the blind persons in the Municipality of Gjakova, respectively failure to observe the legal provisions for the release from property tax.

On 19 January 2017, Association for the blind in Gjakova had submitted a complaint for billing of immovable property tax for the blind and requested from the municipal authorities to observe Article 6 of the Law no. 04/L- 092 for blind persons, by presenting evidence that this law is being implemented in the Municipality of Prishtina, with the later already having adopted the Regulation on immovable property tax 01 no. 110-

⁴³⁷ Law No.05/L-068 on amending and supplementing the Law no. 04/L-042 on public procurement of the Republic of Kosovo, amended and supplemented with the Law no.04/L-237.

246609, dated 3 October 2016, which in Article 7 (7.2) stipulates the following: *“The exemption from immovable property tax for the visually impaired will be made in accordance with the provisions of Article 6 of the Law No.04/L-092, for blind persons and comes into effect from 1 January 2017.”*

On 5 July 2017, Association for the blind in Gjakova had received a response from the Municipal board for the review of complaints on immovable property tax in the Municipality of Gjakova, notifying the Association for the blind in Gjakova that the complaint is rejected as ungrounded, with the following reasoning: *“According to the official letter 09/58011, dated 14 March 2017 from Naim Baftiu-Secretary General to the MoF for Mr Teki Shala Director for budget and finance in the Municipality of Gjakova, who gave the following legal clarification “Ministry of Finance and the Municipalities of the Republic of Kosovo are obliged to implement the Law on taxes on immovable property No.03/L-204, amended and supplemented by the Law No.04/L-100.”*

Article 1 of the Law no. 04/L-092 for blind persons stipulates: *“This law regulates the legal status of blind persons in the Republic of Kosovo”*, while Article 2 stipulates: *“This law regulates the rights and benefits and determines the criteria for categorizing the blind persons”*, while Article 6 of the Law no. 04/L-092 for blind persons stipulates the following: *“Blind persons shall be exempted from any tax and direct taxes. In case of self-employment they shall be exempted from any fiscal obligation, while if they carry out an activity as legal entities, they shall enjoy tax facilitation realized by laws in force.”*

In the light of the provision of Article 14 of the European Convention on Human Rights, the Ombudsperson recalls that the Convention stipulates that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. In the complainant's case, it is openly noted that the complaints have been initiated by blind persons, who have sought nothing more than the implementation of their legal rights, respectively the law, which regulates the rights and benefits of blind persons, while the response of the Municipal Board for the review of the complaints on property tax is in violation of the Law for blind persons, as well as the legal principle: *“Lex specialis lex generali derogat”* (Special law derogates from the general law), because the denial of the use of this right based on general laws can be considered a violation of human rights, respectively the legal rights of blind persons and violates the principle of legal certainty as a general principle of the right to human's rights. The Ombudsperson insists that the law applies to all and that no one is excluded from the law or is above the law.

Based on the above, the Ombudsperson recommends to the Ministry of local government administration that, in accordance with the powers and authorizations deriving from the law, to issue a circular requesting all the Municipalities of the Republic of Kosovo

exemption of immovable property tax for blind persons, in accordance with the provisions of Article 6 of the Law no.04/L-092 for blind persons, indiscriminately.

Recommendation Letter - Complaint no. 683/2016

Pursuant to Article 16, paragraph 1 of the Law no. 05/L019 on Ombudsperson, on 7 November 2016, the Ombudsperson received a complaint by Milka and Marko Petković submitted against the Office on civil status in Ferizaj. The submitted complaint deals with the failure to obtain the extract of the birth certificate, which contains the citizenship of the Republic of Kosovo on behalf of both the complainants. The complainants claim that in July 2016 they filed a request with the Office on civil status and registration in Ferizaj, for the issuance of the birth extracts on behalf of Malinka Petković, maiden name Marković and Marko Petković. On 20 July 2016, the said service on civil status issued certificates from the civil register of births, which didn't contain the citizenship of the Republic of Kosovo and personal number of the citizen. Nevertheless, in the birth certificate belonging to Marko Petković, in the column for mother's name and her citizenship, it is written the name of Malinka Petković and the *Kosovar* citizenship, while in the complainant's certificate, in the column for citizenship a line was placed above the citizenship. In the complaint, among other things, the complainants emphasise that the aforementioned office had explained to them that if they wish to obtain the extract of the birth certificate and citizenship, it is necessary to have a registered place of residence in the territory of the Republic of Kosovo, irrespective of the fact that the complainants are displaced persons and regardless of whether both complainants are born in Kosovo and that their address until June 1999 was in Ferizaj. On that occasion, the respondent has been presented with evidence proving their residence in Ferizaj until June 1999, but the complainants were subsequently instructed in the procedure for filing a petition for citizenship of the Republic of Kosovo, with respect to the foreigners.

Following the adoption of the new Administrative Instruction of the MIA of the Republic of Kosovo, on the criteria containing evidence of the citizenship of the former SFRY, on 1 January 1998, no. 05/2017, the legal adviser of the OI had several meetings with the officers of the Office on civil status and registration in Ferizaj, but the response he got was that the complainants have to apply for the citizenship of the Republic of Kosovo with the MIA of the Republic of Kosovo, respectively the Department for citizenship, asylum and migration, regardless of the Law on citizenship, which is in force, and the AI no. 05/2017, defining the criteria for the recognition of citizenship and regulation of the civil status for all the citizens.

Based on the abovementioned, the Ombudsperson recalls the legal obligations of the Office for civil state and registration in Ferizaj in relation to the submission of the request for recognition of citizenship and issuance of the birth and citizenship extracts, seen forth with Articles 5 and 32 of the Law on citizenship of the Republic of Kosovo, as well as the AI no. 05/2017 of the Ministry of Internal Affairs of Kosovo, and recommends to the

Office for civil status and registration in Ferizaj to act in compliance with the complainant's request, in accordance with the legal provisions.

Recommendation Letter - Complaint no. 499/2015 and no. 759/2017

Pursuant to Article 16, paragraph 1 of the Law no. 05/L-019 on Ombudsperson, on 22 September 2015, the Ombudsperson received the complaint of Mrs Ismete Kurtalani, legal representative of her father Maliq Sahiti, and on 14 November 2017, it received the complaint of Mrs Fatmire Arifi, legal representative of her father Hysen Ali Ademi, complaining against the Ministry of Justice - Government Commission for Recognition of Status and ex-convicts and former political prisoners (hereinafter *Government Commission*), due to the delay in the review of applications submitted to the Association of Former Political Prisoners.

According to the allegations of complainants, their late parents were political prisoners. Their spouses, respectively the complainants' mothers, have also passed away. Therefore, the complainants have applied on behalf of their parents, former political prisoners, for the recognition of the status of ex-convicts and former political prisoners with the Association of former political prisoners in Gjilan. However their applications were not yet reviewed by the Government Commission.

On 28 January 2016, the Ombudsperson's representative met with Mr Shefik Sadiku, Secretary of the Government Commission, who ascertained that the category to which the complainant belongs, is a category where the applicant and his spouse have passed away and these applications are reviewed later. On 17 January 2017, the Ombudsperson's representative, through electronic mail, requested to inform Mr Sadiku regarding the review of the complainant's application.

On 18 January 2017, the OI's representative received the following response, according to which: *"The applications of former convicts, whose spouses have passed away shall be reviewed after the compensation of (former convicts) applicants who are still alive, respectively (former convicts) the applicants who have passed away, but whose spouses are still alive."* Similarly, on 23 January 2018, the OI's representative was notified that: *"the second instance commission (Appeals Commission) has been established by the Government, however it is not functional! One of the first cases to be reviewed, when the Appeals Commission starts its work, will be the application of Maliq Sahiti, respectively the complaint of Mr. Kurtalani!"*

Even though the Law no. 03/L-95 on the rights of former politically convicted and persecuted defines that the Government, respectively the relevant ministries were obliged to establish the commissions set forth in Article 19 in a period within six months from the issuance of the law, the Ministry of Justice failed to implement the Article 10 of the Regulation no. 07/2013 on Procedures and Compensation Criteria of Former Politically Convicted. Failure to publish the registers of beneficiaries for the status of former

political convicts or former political prisoners affects the right of citizens to file complaints about the persons who are in the register (beneficiaries).

As per the above, the Ombudsperson recommended to the Ministry of Justice to publish the registers of the beneficiaries of the status of former political convicts and former political prisoners, while to the Government Commission for Recognition of Status and ex-convicts and former political prisoners to review the applications of Mrs Kurtalani and Mrs Arifi without undue delay.

Recommendation Letter - Complaint no. 275/2018

Pursuant to Article 16, paragraph 1 of the Law no. 05/L-019 on Ombudsperson, on 24 April 2018, the Ombudsperson received the complaint of Mr Zlatko Nekić, who filed a complaint on behalf of his father Mr Živorad Nekić, for delays in proceedings regarding criminal charges due to the adverse possession of immovable property, as well as due to the failure of the Basic Prosecution in Prizren to inform about the actions taken, which relate to the abovementioned criminal charges KTN/II no.2954/15.

The applicant claimed to have submitted the criminal charges with the Basic Prosecution in Prizren, on 29 October 2015, against the person NN, due to illegal adverse possession of the immovable property and damage to the property (Article 332 and 333 of the CCK) in the village Lubizhda, municipality of Prizren. According to the complainant's allegations and submitted documentation regarding his complaint filed with the Ombudsperson Institution, it turns out that his legal representative has several times gone to the Basic Prosecution in Prizren to receive information regarding the criminal charge in question and the actions taken by this Prosecution, but without any success.

In the correspondence of the Ombudsperson with the Basic Prosecution in Prizren it is understood that the only action taken is the request which the Prosecutor's Office has sent to the Cadastral Office in the Municipality of Prizren and from which it received an answer that the parcel is on the complainant's name, who has also filed criminal charges. Further, in the answer, it is noted that with regard to this criminal case, the Basic Prosecution in Prizren cannot act further, without giving any explanation for taking concrete procedural actions.

Based on the documents submitted by the complainant and the Prosecutor's response to the case, the Ombudsperson concludes that as of 29 October 2015, when the criminal charges for adverse possession of immovable property or damage to property were filed, the Basic Prosecution Office in Prizren has undertaken only one investigative action. Based on the legal provisions, the state prosecutor is obliged to act without delay in compliance with these legal provisions. Therefore, it has been recommended to the Basic Prosecution in Prizren to apply the relevant provisions of the Code no. 04/L-123 on Criminal Procedure in connection to the case in question.

Recommendation Letter - Complaint no. 479/2018

Pursuant to Article 16, paragraph 1 of the Law no. 05/L-019 on Ombudsperson and Article 10 of the Law no. 03/L-125 on Access to public documents (LAPD), on 16 July 2018, the Ombudsperson received the complaint of Mrs Vera Remshkar, Executive Director of the Foundation Together Kosova, submitted against the Ministry of Health (MoH), due to the lack of access to public documents.

The complainant alleges that on 2 July 2018 she addressed the Complaint's Commission for public funding of the NGOs within the MoH with a complaint, for the failure to allocate funds. Apart from this complaint, the complainant had filed a request for access to public documents. On 13 July 2018, the complainant had received the decision from the complaints commission, whereby her complaint is rejected as ungrounded. On the other hand, she did not receive a response to the request for access to public documents. Furthermore, the complainant claims that on 6 and 17 August 2018, the officials of the Foundation Together Kosova met with the representatives of the MoH, whereby they were granted partial access to evaluation forms for the project of this Foundation.

On 13 August 2018, the Ombudsperson sent a letter to the Secretary General asking for information in relation to the actions taken or scheduled to be taken, in relation to the request for access to the requested document and, on 17 and 28 August 2018, the Ombudsperson received a response from the MoH, whereby being notified on the actions taken in connection to the matter in question, inter alia, with the notification that the applicant of the request for document was granted access to the list of beneficiary NGOs and to the supported financial amounts for their projects, as well as to the application with the rating of the 5 members of the Commission for the proposal of Together Kosova, however their names were hidden. Nevertheless, the representatives of the Foundation Together Kosova claim that they were only granted access to the list of beneficiary NGOs, but not to the financial amounts for the projects. In the response of the MoH, dated 17 August 2018, received through electronic mail, inter alia, additional opinion/assistance was also requested from the Ombudsperson Institution in connection to the meeting of legal obligations of the MoH, in relation to the complainant's request for access to public documents.

Regarding the partial access to the application with the ratings of the 5 members of the Commission for the Proposal of the Foundation Together Kosova, whereby the names of the members of this Commission were hidden, the Ombudsperson notes that this matter is regulated by Article 8, paragraph 5 of Regulation no.04/2017 on criteria, standards and procedures on public funding of NGOs, which stipulates the following: “[...]...*The Evaluation Committee is established during the period when the public call is open and the names of the members of the Evaluation Committee become public within seven (7) days after the establishment of Committee....[...]*”.

Whereas, regarding access to the application files of the beneficiary NGOs and their rating score by the Commission, it is necessary to act in accordance with the principles of data processing as set out in Article 3, paragraph 1 and paragraph 3 of The Law on the Protection of Personal Data, which states that personal data shall be processed lawfully without violating the dignity of data subjects and that the personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed.

Moreover, the Ombudsperson considers that the purpose of good administration of public administration bodies, among others, should be the creation of good practices, promoting an aligned administrative culture in co-operation with citizens and civil society. The Ombudsperson recommended to the Ministry of Health to handle the request of the Foundation Together Kosova and to respond, in accordance with the Law on Access to Public Documents and relevant legislation in force.

Recommendation Letter - Complaint no. 666/2017

Pursuant to Article 16, paragraph 1 of the Law no. 05/L-019 on Ombudsperson, on 9 October 2017, the Ombudsperson received the request of Mr Murat Limani, through his authorised representative Mr. Hamdi Jashari, filed against the Basic Court in Prishtina (BCP), for the failure to enforce the Decision E.no.812/09, dated 4.6.2015.

According to the complainant's allegations and the documents that he has submitted with the Ombudsperson Institution, it can be noted that, in 2001, the complainant filed a claim with the Basic Court in Prishtina for confirmation of ownership, on which the court had decided with the judgement (C.no.178/2001, dated 5.6.2007). Similarly, with the Judgement AC.no.405/08, dated 5.2.2009, the District Court in Prishtina confirmed the Judgement of the Municipal court in Prishtina. While the Supreme Court of Kosovo rejected the revision of the respondent/debtor with the Judgement Rev.no. 226/2009, dated 16.7.2012, submitted against the Judgment of the District Court in Prishtina.

On 30 September 2009, the Complainant, now in the capacity of the creditor, submitted a request with the Municipal Court in Prishtina for violent enforcement. BCP decided on the matter with the Decision E.no.812/09, dated 4.6.2015, and granted the proposed enforcement. BCP rejected the debtor's objection with the Decision no. E.no.812/09, dated 21.1.2016. The Court of Appeals issued the Decision Ac.no.2071/2016, dated 11.5.2017, confirming the Decision of the BCP E.no.812/09, dated 21.1.2016.

On 15 November 2017, the Ombudsperson sent a letter to the Head of the BCP, through which it requested to be notified on the decisions taken or planned to be taken, so that this case is processed in accordance with the legislation in force and Article 6 of the European Convention on Human Rights and its protocols.

On 29 November 2017, the Ombudsperson received a response from the BCP, through which it is notified that the court plans to notify the parties in the proceeding in

connection to the day of enforcement on the first week of December. On 5 February 2018, the complainant/creditor notified the OI that on 18 December 2017, the court paid a visit on site, with the aim of enforcement, however the court postponed the enforcement with the ascertainment that there was a lack of work force and accompanying tools; and that the debtor's son stated that they did not accept the conclusion dated 4 December 2017. On 6 February 2018, the complainant, through the authorised representative, submitted a request with the court for case update and according to his allegations, no action was taken in terms of enforcement of the final decision.

On 25 May 2018, the Ombudsperson wrote again to the Head of the BCP, through which he requested to be notified on the decisions to be taken in connection to the complainant's matter. Nevertheless, the Ombudsperson did not receive a response to this letter. According to the allegations of the complainant, the BCP did not take any action in connection to the enforcement E.no.812/09 since 18 December 2017.

The Ombudsperson notes that ECtHR had highlighted that one of the factors to be taken into account is the behaviour of competent court and administrative authorities and it is a responsibility of the court to organise its work so that the individuals are informed on the progress and results of their matters within a reasonable time (see Judgment *Zimmerman and Steiner v Switzerland*, 13 July 1983).

Similarly, in the Judgment for the case *Hornsby v Greece*, no. 18357/91, dated 19 March 1999, paragraph 40, the ECtHR highlights that the enforcement of final court decisions is an integral part of the adjudication procedure and the implementation of decisions guarantees law enforcement. In the case in question, the Ombudsperson reiterates that the respective period for the review of the complainant's case starts from 2001, when the complainant filed the claim with the Municipal Court in Prishtina for confirmation of ownership, while the enforcement procedure was initiated on 30 September 2009, whereas the Decision E.no.812/09, dated 4.6.2015, became final on 11.05.2017. As per the above, it can now be seen that there are more than 16 years since Mr Limani initiated the court proceeding, and up to date the Decision E.no.812/09, dated 4.6.2015, has not been enforced yet.

Article 13 of the ECHR directly reflects the obligation of the state to initially protect the human rights through its legal system, by establishing hereby an extra guarantee, for an individual, making everything possible for him to enjoy his rights effectively. The right of an individual for a regular process within a reasonable time will be less efficient, if there is no possibility to initially submit this complaint with a local authority. The requirements of Article 13 support the requests of Article 6 (see Judgment *Kudla v Poland*). Therefore, Article 13 guarantees an effective appeal remedy before a local authority for alleged violation of the requirements of Article 6, in order to review a court case within a reasonable time.

Since the case in question deals with the complaint, related to the length of the procedure for enforcing the final decision, the Article 13 of the Convention shall apply. Therefore, the effect of this Article is the existence of a local legal remedy, which deals with the substance of “a disputed complaint” according to the Convention and grant respective facilitation (see e.g. Judgment in the case *Kaya v Turkey*, on 19 February 1998). Any such remedy should be effective both in practice and in the law (see e.g. Judgment in the case *Ilhan v Turkey*, on 27 June 2000). With regard to the case in question, the complainant addressed the court continuously with submissions, as foreseen with legal provisions, nevertheless the Decision E.no.812/09 was not enforced.

Based on the abovementioned, the Ombudsperson, in compliance with Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 16, paragraph 8 of the Law on Ombudsperson, recommended to the Basic Court in Prishtina to undertake the legal actions for the enforcement of the Decision E.no.812/09, dated 4.6.2015.

Recommendation Letter - Complaint no. 310/2018

Pursuant to Article 16, paragraph 1 of the Law no. 05/L-019 on Ombudsperson and pursuant to Article 10 of the Law no. 03/L-125 on Access to public documents (LAPD), on 14 May 2018, the Ombudsperson received the complaint of Mr Zekirja Shabani (editor in “Infokusi”), submitted against the Ministry of Foreign Affairs (MFA) due to lack of access to public documents.

Based on information with the Ombudsperson Institution (OI), on 27 March 2018, Mr Shabani sent an e-mail to the Secretary General of the MFA with a request for access to all the expenses of the office of Minister, Deputy Minister, Advisers to Minister and Deputy Ministers and accompanying staff for the period from 1 October 2017 until 26 March 2018. Since the complainant did not receive a response within the period foreseen in the LAPD, on 6 April 2018 he submitted a request for a review, but without receiving any response.

On 12 July and 12 September 2018, the Ombudsperson wrote letters to the Secretary General of the MFA, whereby requesting to be notified on the actions which this Ministry has taken or plans to take in order to respond to the request of the complainant for access to public documents. However, the Ombudsperson did not receive a response to these letters.

The Ombudsperson recalls the Article 41, paragraph 1 of the Constitution of the Republic of Kosovo which stipulates the following: “*Every person enjoys the right of access to public documents*”. While, paragraph 2 of the same Article stipulates the following: “*Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification.*”

The Ombudsperson notes that the failure to address the complainant's request by the MFA, apart from being in contradiction with the LAPD, is also in contradiction with the Law no. 05/L-031 on General administrative procedure, respectively the principle of open administration, set forth in Article 9 paragraph 1 which stipulates: "*Public organs shall act with transparency.*"

The Ombudsperson recalls that the court case law of the European Court of Human Rights (ECtHR), according to Article 53 of the Constitution, presents a basis for the interpretation of human rights. In the case *Observer and Guardian V. The United Kingdom*, the ECtHR concluded the following: "*The denial of the public information on the functioning of state bodies implies to violate the fundamental right to democracy.*"

The Ombudsperson notes that in the complainant's case, the MFA has failed to meet the positive obligations regarding the granting of access to public documents in accordance with the complainant's request, which is sanctioned in domestic law as well as with international instruments.

In order to improve the respect for the right for access to public documents, as a constitutional and legal right, so that the citizens exercise this right as a powerful tool for controlling the work of the authority bodies, which would affect the improvement of the work of state bodies and increase transparency and accountability, the Ombudsperson recommended to the Ministry of Foreign Affairs to address the complainant's request and to respond to it, in accordance with the LAPD and the relevant legislation in force.

Recommendation Letter - Complaint no.58/2018

Pursuant to Article 16, paragraph 1 of the Law no. 05/L-019 on Ombudsperson and pursuant to Article 10 of the Law no. 03/L-125 on Access to public documents (LAPD), on 7 February 2018, the Ombudsperson received the complaint of Mr. Armend Gollubovci submitted against the Ministry of Infrastructure (MI), for failure to respond to the request for access to public documents.

Based on the complainant's allegations and the documents received, it can be seen that on 19 October 2017, the complainant submitted a request (prot no. 8031) with the MI for access to the project for the construction of the new road Kroi i Mbretit-Drenas-Skenderaj-Kroi i Mbretit, but never received a response.

On 7 March and 17 April 2018, the Ombudsperson sent letters to the Minister and the Secretary General of the MI, whereby requesting information in connection to the actions that this Ministry has taken in relation to Mr. Armend Gollubovci's matter. On 26 June 2018, the OI representative met the Secretary General of the MI, however despite his claim that they would respond to the letters of the complainant and the Ombudsperson, the latter never received any response.

The Ombudsperson notes that the failure to address the complainant's request by the MI, apart from being in violation with the LAPD, it is also in violation with the Law no. 05/L-031 on General administrative procedure, respectively the principle of open administration, set forth in Article 9, paragraph 1, according to which: *"Public organs shall act with transparency."*

Moreover, the absence of a decision in the form set forth with the Law entails the failure to inform the party on the right to complaint, which represents violation of the right on the use of legal remedies.

The Ombudsperson ascertains that apart from failing to meet the obligations deriving from the Constitution of the Republic of Kosovo (Article 41) and from the LAPD, the MI also failed to meet the legal obligations deriving from the Constitution (Article 132, paragraph 3), as well as from the Law on Ombudsperson (Article 25), pursuant to which, all authorities are obliged to respond to the Ombudsperson on his requests on conducting investigations, as well as provide adequate support according to his/her request.

Moreover, the Ombudsperson considers that the purpose of good administration of public administration bodies, among others, should be the creation of good practices, promoting an aligned administrative culture and focused on the citizens, which learns from the interaction with citizens and civil society. The Ombudsperson recommended to the Ministry of Infrastructure to handle the complainant's request and to respond to him in compliance with the LAPD and the legislation in force, as well as to respond to the requests of the Ombudsperson in compliance with the legal provisions in force.

Recommendation Letter - Complaint no. 823/2017

The Ombudsperson, pursuant to Article 16, paragraph 1 of the Law no. 05 / L-019 on the Ombudsperson, as well as pursuant to Article 10 of Law no. 03 / L-125 on Access to Public Documents (LAPD), on 29 November 2017, has received the complaint of Mr. Naim Sallahu filed against the Ministry of Infrastructure (MI), due to the partial permission of access to public documents.

Based on information provided by the Ombudsperson, the complainant, on 23 November 2017, filed a request to MI for access to the public document, respectively access to the files of eight (8) economic operators recommended for contract (procurement no 205 / 17/2586 / 5-1-1 and internal number MI / 17/046/511). On the same day, Mr. Sallahu received a response stating that the request for access to public documents was approved and is invited to MI offices on 24 November 2017 at 14:00. However, Mr. Sallahu claims that all other operators were allowed access by the MI from 23 November to 24 November 2018, while he was left with only 2 hours available for access. As a result, Sallahu, through e-mail, had requested the extension of the period for access, but although it was verbally promised extension of access time for November 27, 2017,

access was denied to him on this day. Referring to Article 10 of the LAPD, the complainant, addressed to the Ombudsperson Institution (OI) on 29 November 2017.

On 18th January, 7th March and 17th April 2018, the Ombudsperson sent a letter to the Minister, respectively the Permanent Secretary in the MI, requesting information on the actions that this Minister has undertaken with regards to the case of Mr. Naim Sallahut. On 26 June 2018, the OI representative met with the Permanent Secretary in MI, and despite his assertion that the complainant and the Ombudsperson will get responses to the sent memos, to date the Ombudsperson has not received any response. The Ombudsperson notes that the failure of the MI to deal with the claim of the complainant, except that it is in contravention of the LAPD, it also violates Law no. 05 / L-031 on the General Administrative Procedure, respectively on the principle of open administration, as defined by Article 9, paragraph 1, according to which: "Public bodies must act transparently." Moreover, the absence of a decision in the form prescribed by law, draws on itself the lack of notice of the party regarding the right to appeal, which is also a violation of the right to use legal remedies.

The Ombudsperson finds that MI, besides failing to fulfil the obligations deriving from the Constitution of the Republic of Kosovo [Article 41], the LAPD and the Law on Public Procurement, this Ministry has also failed to fulfil the obligations deriving from the Law on the Ombudsperson [Article 25], under which all the authorities are obliged to respond to the Ombudsperson in his inquiries for the conduct of investigations and to provide adequate assistance according to his request. While the refusal to cooperate with the Ombudsperson by a civil servant, official or public authority is a cause for the Ombudsperson to request from the competent body the initiation of administrative proceedings, including the taking of disciplinary measures, dismissal from work or civil service. In cases when the institution refuses to cooperate or intervenes in the investigation process, the Ombudsperson has the right to request from the competent prosecution the initiation of the legal procedure for obstructing the performance of official duty.

Moreover, the Ombudsperson estimates that the purpose of good administration of public administration bodies, among other things, should be the creation of good practices by promoting a harmonized and focused administrative culture of citizens, which learns from interaction with citizens and civil society. The Ombudsperson recommended to the MI to address the complainant's request and to respond to it, in accordance with the LAPD and relevant legislation in force, as well as to respond to the requests of the Ombudsperson pursuant to legal provisions in force.

Recommendation Letter - Complaint no. 519/2018

The Ombudsperson, based on Article 16, paragraph 1 of the Law no. 05 / L-019 on the Ombudsperson, on 24 July 2018, has received the complaint of Mr. Miftar Gashi against

the Municipality of Ferizaj, due to the refusal of the request for access to public documents.

Based on the complainant's statement and the documents we have, by the ruling dated 9 July 2018, he was denied access to public documents regarding the procedures for his removal from the dental technician position at the Main Family Medicine Centre in Ferizaj, which request is fully based on the Law on Access to Public Documents no. 03 / L-215.

On August 13, 2018, the Public Access Documents Officer in Ferizaj Municipality informed the Ombudsperson that the request of Mr. Gashi for access to public documents no. 68663/18 of 2 July 2018 was rejected because the same documentation he received in January 2018. Also, the party regarding his request was issued a ruling on refusal of access to public documents on 9 July 2018. The Ombudsperson notes that in the complainant's case, the Municipality failed to meet the positive obligations regarding the granting of access to public documents in accordance with the claim of the complainant, which is sanctioned by national and international acts and instruments.

The Ombudsperson understands that the LAPD, Article 12, paragraph 1, foresees the reasons for excluding the right of access to public documents, while paragraph 2 of this article stipulates that: *"Access to information contained in a document may be refused if such disclosure harms or is likely to harm any of the interests referred to in paragraph 1 of this article unless there is a higher public interest in disclosure."*

The Ombudsperson notes that, LAPD no. 03 / L-215, in no case contains any restrictions regarding the repetition of the request for access to public documents. Therefore, the ruling dated 9 July 2018 rejecting the request of the party for access to public documents, with the justification that this request was repeated, is in full contradiction with Article 11, paragraph 3 of this Law, where it is stated specifically "Whether the full or partial document has been requested one or more times by the same applicant, if the institution has evidence that the public information or official document has previously been misused by the applicant ... the access to information or document could be challenged, respectively it could be refused partially or as a whole".

The Ombudsperson draws attention to the practice of the European Court of Human Rights (ECHR), which under Article 53 of the Constitution provides a basis for the interpretation of human rights.

In the case of *Observer and Guardian V. The United Kingdom*, the ECHR held that: *"To deny to the public the information on the functioning of state organs, it means to violate the fundamental right to democracy."*

The Ombudsperson finds that the complainant's request for access to public documents regarding the procedures for his removal from the "dental technician" position in the Main Family Medicine Centre in Ferizaj as such has full grounds on LQDP no. 03 / L-

215, where Article 1 expressly states: *"This law guarantees the right of every natural and legal person, without discrimination on any grounds, to have access, upon request, to documents kept, drafted or received from public institutions "*. Moreover, such a request is particularly justifiable, because in the complainant's case we have to deal with the claim related to the documentation that relates mainly to the issue of termination of his employment.

The Ombudsperson finds that the Ruling of 9 July 2018, which rejected the applicant's request for access to public documents, was not compiled in accordance with Article 11, paragraph 3 of the LAPD, which states: *"... if the institution has evidence that the public information or official document has previously been misused by the applicant, ... the access to information or document could be challenged, respectively it could be refused partially or as a whole."* However, in the reasoning of the ruling in question there is no description of the misuse of this documentation by the complainant in any case. Rather, the decision maker has not even compiled a reasoning of the decision, which should have been done by referring to paragraph 3 of Article 11 of the LAPD, to justify the rejection of the complainant's claim.

Therefore, in order to improve the compliance of the right of access to public documents, as a constitutional and legal right, and to increase the transparency and accountability of institutions in relation to the demands of citizens, so that they can exercise this right more efficiently, the Ombudsperson has recommended to the Municipality of Ferizaj that in accordance with the Constitution of the Republic of Kosovo and the Law on Access to Public Documents, provide the complainant with access to public documents as per his request filed on 2 July 2018 and to take steps to increase the capacity of public officials to implement the Law on Access to Public Documents

Legal opinions of the Ombudsperson as a friend of the court (*amicus curiae*)

Legal opinion of the Ombudsperson regarding the issue of interpretation of the concept of "work experience" in the context of job vacancies in public institutions

The Ombudsperson, on 31st of January, published the Legal Opinion regarding the issue of interpreting the concept "work experience" in the context of job vacancies in public institutions. This Legal Opinion of the Ombudsperson, as a friend of the court, intends to provide legal aid for a fair interpretation of the concept of "work experience" in the context of job vacancies in public institutions, which sometimes appears to be quite challenging for the implementation of law, with the premise of possible human rights violations.

Regarding the issue of whether work experience gained prior to graduation shall be considered as part of the minimum required employment experience, the Independent Oversight Board of Kosovo (hereinafter referred to as IOBK) and the Department for Administrative Matters of the Basic Court in Prishtina (hereinafter referred to as the *Court*) have expressed the view that "work experience" does **not** include the experience gained prior to graduation.

With the Decision on the case no. 02/471/2014, issued on 12 December 2014, the IOBK filed a complaint against the Ministry of Internal Affairs regarding two vacancies: "Senior Officer for Data Validation of Identity Cards" and "Senior Officer of digitization of books" (see *Ibid*, p. 1). Among qualifying criteria for the first mentioned position "Senior Officer for Data Validation of Identity Cards" were "university degree in economics, law or management" and "three (3) years of work experience in data processing" (*Ibid*, p. 3).

IOBK decided that the winning candidate has not met the requirement of the three-year working experience, because "the experience gained prior to graduation is not considered as a work experience required for a job of superior qualification, and based on this, this candidate has not fulfilled the job vacancy criteria of the working experience after graduation" (*Ibid*, p. 4). However, regarding the claim that the work experience gained before graduation cannot be considered as work experience, the IOBK does not provide any arguments.

The court, in its Judgment in case no. 2276/2014 issued on 24 May 2016, reached the same conclusion as the IOBK. This case dealt with "job vacancy - data entry operator in the property tax program, at the Directorate of Finance and Property of the Municipality of Prishtina" (*Ibid*, p.2). According to the Court, "the Selection Committee (...) did not correctly assess the work experience of the candidates, since based on the evidence found in the case files, they did not meet the requirement of the "three years of work

experience" (*Ibid*, p. 2). The reasoning of the Court was the same as that of the IOBK "The court assesses that the work experience shall include the period after the graduation of the candidate, rather than (...) calculating the work experience prior their graduation" (*Ibid*, p. 3).

Unlike the IOBK, the Court has provided an argument for its position. According to the Court, the calculation of work experience gained prior to graduation "is in contravention of the principles of the Law on Civil Service of the Republic of Kosovo, respectively Article 11.1 thereof, which stipulates that "Admission to the Civil Service of Kosovo shall be done in compliance with principles of merit, professional capacity, impartiality, equal opportunities, non-discrimination and equal representation, on the basis of public competition and upon verification of eligibility of the candidates to act." (Judgment, 3, quoting the Law No. 03 /L- 149 on Civil Service of the Republic of Kosovo). According to the Court, "from the correct interpretation of this legal provision, the 'professional capacity' of candidates cannot be obtained before their graduation in that profession, because only after their graduation they can be considered as professional and experienced in the profession" (Judgment, p. 3).

However, this argument of the Court is not convincing, for two reasons. First, the Law on Civil Service states: "Civil Servants are employed on the basis of merit upon passing the selection procedures as established by this law and *specific sub-legal acts*." (*ibid*, Article 3, paragraph 2; emphasize added). Also, Law no. 03/L-147 on Salaries of Civil Servants determines: "The general classification of work posts in the Civil Service, the standards and procedures for classifying each post to the appropriate grade based on a job description, and the salary steps shall be *established by the Government with sub-legal acts*, after proposal from the ministry responsible for public administration and the ministry responsible for finance" (*ibid*, Article 6, paragraph 10, emphasis added).

As these provisions make it clear, it is the Government's competence, by issuing sub-legal acts, to determine the minimum criteria of each job, within the classification of all jobs. This determination of the criteria was carried out by the Government by issuing the Regulation no. 05/2012 on Classification of Jobs in Civil Service. Jobs in civil service are classified in one of the fourteen (14) salary grades (*ibid*, Article 6, paragraph 1). Minimal requirements for job positions under each grade shall be determined, including a university degree and an amount of work experience. However, in no case and for any grade, it is not determined that work experience must have been acquired after graduation. See, for example. Article 13 "Managerial level two (2) – salary grade six (6)", which requires university diploma and at least five (5) years working experience" (*ibid*. Article 13, paragraph 2, sub-paragraph 7). Therefore, the position of the IOBK and Basic Court on this issue has no basis in the text of the Regulation.

Secondly, the Court's claim that the "professional ability" of candidates cannot be obtained before their graduation in that profession "(Judgment, 3) is erroneous. It is true

that the Law on Civil Service stipulates that: "Admission to the Civil Service of Kosovo shall be done in compliance with principles of (...), professional capacity" (*ibid*, Article 11, paragraph 1), but it does not explicitly states that "professional capacity" is proven only by the work experience after graduation, and not before graduation.

It is worth mentioning here that, for all job positions in the civil service, the requirement that candidates shall have completed a certain period of work experience is an **exclusive** condition, in the sense that candidates who do not have the appropriate experience are not entitled to apply. Therefore, in order for the assessment body to be able to consider as many candidates as possible, it is necessary to interpret the concept of "work experience" in the widest possible way.

However, at the same time, such a liberal interpretation does not mean that the assessment body has a duty to evaluate the experiences of all candidates alike. It is quite normal for the assessment body, while comparing all candidates who exceed the minimum threshold of work experience, to take into account the *nature and the quality* of experience that each candidate submits in the application. This detailed comparison process is by no means hampered by the broad interpretation of the concept of "work experience".

The European Union example confirms that, at least at the most general level (i.e. at the level of grades), is not international practice to set specific criteria for assessing the work experience, except to be noted, as in Regulation 5/2012 of the Republic of Kosovo, that the experience should be "relevant". For example, the European Personnel Selection Office website shows:

*"An administrator career ranges from grades AD 5 to AD 16, with AD 5 being the entry level grade for university graduates. Selection and recruitment may also be offered at higher grades AD 6 or AD 7 in more specialist roles, where the applicant will have to demonstrate several years' **relevant** experience. AD 9-AD 12 is middle management level. Selection/recruitment at these grades requires previous management experience"* (emphasize added).⁴³⁸

Although there is no exact formula for assessing the work experience that may apply to the entire civil service, it may be noted that this does not hamper the announcement of vacancies to include detailed criteria in the way that is practiced in other states.

Legal Opinion of the Ombudsperson in the capacity of the friend of the court for the case A.no.252/2018 regarding the request for Constitutional Review in case KI-108/18

The Ombudsperson, on September 26, sent a Legal Opinion in the capacity of the friend of the Court (*amicus curiae*) to the Constitutional Court, which aims to substantiate the

⁴³⁸https://epso.europa.eu/how-to-apply_en.

legal basis and to provide a legal analysis regarding the case KI-108/2018, of the applicant Mr. Rina Kika, an attorney authorized by Mr. Blert Morina to examine the admissibility of this issue by the Constitutional Court. The Ombudsperson refers to the Applicant in the male gender, because this is the gender with which he is identified, without prejudice to the Constitutional Court's decision regarding the Request. The purpose of this Legal Opinion is to support the request for exemption from the exhaustion of all legal remedies, because the circumstances of the case make the proceeding of the lawsuit by the Basic Court in Prishtina/ Department for Administrative Matters, an ineffective and inadequate legal remedy.

The procedural guarantees of the right to a fair and impartial trial are applicable to administrative proceedings, which are subject to judicial review - considering it as part of the trial as a whole. The principle of the rule of law, as a fundamental principle of the Constitution and the Convention, obliges state bodies to respect/enforce the legislation approved by the legislature of the country. Constitutional guarantees for human rights are fundamental values of a democratic society that serve to protect human dignity, freedom and equality, because these values are the fundamental basis for the functioning of the state and the law and are a prerequisite for respecting the principle of separation of the powers.

The European Court of Human Rights (ECtHR) in its case states: *"It would be contrary to the rule of law for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion and the manner of its exercise with sufficient clarity, to give the individual adequate protection against arbitrariness"* (See ECtHR Decision in the case of *Malone v. The United Kingdom*, of 2 August 1984 § 68).

As an integral part of the principle of legal certainty, the principle of legitimate expectations is also guaranteed. *"According to the legitimate expectation doctrine, those who act in good faith on the basis of law as it is, should not be frustrated in their legitimate expectations. This doctrine applies not only to legislation but also to individual decisions by public authorities"* (See ECHR Decision *Anhaeuser-Busch Inc. v. Portugal*, 73049/01 of 11 January 2007 § 65). Likewise, legal certainty implies that the law is clear and applicable and that it is implemented in practice.

According to the ECtHR case law (see cases *Kopecky v. Slovakia*, Judgment of 28 September 2004, para 45-52, *Gratzinger and Gratzingerova v. The Czech Republic* (Dec.), No 39794/98, para 73, ECtHR 2002- VII), "legitimate expectation" should be of a specific nature and should be based on legal provisions or sub-legal acts. In the specific case, the legitimate expectation for changing the name and gender was based on Article 3, paragraph 1.9 of Law no. 05/L-020 on Gender Equality, in Articles 12 and 17 of Law no. 02/L-18 on Personal Names and in the Administrative Instruction (MIA) no.19/2015 on the Conditions and Procedures for Personal Name Change and Correction.

The Ombudsperson finds that according to the ECtHR, regarding the exhaustion, the Applicant must exhaust all legal remedies to their availability before submitting a complaint with the Constitutional Court but they must guarantee effectiveness and efficiency. According to the ECtHR, the rule of exhaustion of remedies should be applied with some degree of flexibility and without excessive formalism by explaining that the exhaustion rule is not absolute and should not be applied automatically, but it is important to deal with taking into account the special circumstances of each individual case. The ECtHR clarifies that it is necessary to consider not only the existence of legal remedies in the legal system of the country in question, but also the overall legal context in which it is acted, as well as the personal circumstances of the applicant (see ECtHR Judgment in the case *Akdivar v. Turkey*, of 16 September 1996.)

The Applicant's request to be relieved of the obligation to exhaust all remedies based on the lack of an effective and efficient remedy as an inadequate and ineffective remedy in relation to the case under review is based also on the Council's Annual General Report 2017 Kosovo Judicial Council (KJC) at the Basic Court in Prishtina - Department for Administrative Matters, where statistics show a total of 5,304 unsolved cases, whereas according to the First Quarter Report of 2018, there are reported that there are a total of 5,297 unsolved administrative cases. The calculated time of solving administrative cases in 2017, according to this data, for one case, according to Ms. Kika is estimated to be approximately 853 days in the first instance, while in the second instance, the time of solving administrative cases, for one case, is estimated to be approximately 412 days. Consequently, Ms. Kika considers that the average time calculated for solving an administrative case filed with the Basic Court and the Court of Appeal is 3 years and 4 months.

Given this extended delay, the case proceeding in the regular courts cannot be regarded as an effective remedy, in the context of the request that the Applicant exhausts all legal remedies before submitting the case to the Constitutional Court. The practice of this Court confirms this finding. Namely, in cases no. KI99/14 and KI100/14, the Applicant Mr. Shyqyri Sylja and Ms. Laura Pula, Constitutional Review of Kosovo Prosecutorial Council decisions regarding the procedure of electing the Chief State Prosecutor, Constitutional Court of the Republic of Kosovo (2014), this Court, addressed the Request to cancel the selection procedure of the Chief State Prosecutor. In the Judgment of this case, the Court found that the Applicants' Request was admissible, stating that: *However, the Court notes that even if there are legal remedies, in the Applicants' case they are not proved to be efficient. Moreover, taking into consideration the specificity of the election procedure for the position of Chief State Prosecutor and the necessity this to be done in a timely fashion, the Court is of the opinion that there is no legal remedy to be exhausted.* (ibid, § 50, emphasize added).

The case of Ms. Kika is similar to this case, in both aspects. First, as in the case of the election of the Chief Prosecutor, in the case of Ms. Kika, *“even if there are legal remedies, in the Applicant's case were not proven to be effective”*. On the contrary, according to the above mentioned statistics, the Ombudsperson not only finds that the remedies *“have not been proven to be effective”*, but also those remedies have proved positively ineffective. Secondly, in the case of the Chief Prosecutor's election, this Court emphasized *“the necessity for [the selection procedure] to take place in due time”*. Due to this urgency, the Court was *“of the opinion that there is no legal remedy for exhaustion”*. Also, the Ombudsperson considers the case of Mr. Morina as urgent and, therefore, considers it necessary for the case to be resolved *“in due time”* and as soon as possible.

In this regard, the Ombudsperson draws attention to the case of the ECtHR cited above *Christine Goodwin v. The United Kingdom* [Grand Chamber], ECtHR, Application no. 28957/95 (2002). In this case, the European Court has emphasized: *Serious interference with private life could arise where the state of domestic law conflicted with an important aspect of personal identity (ibid. § 77). This is because: “Stress and alienation, resulting from a discrepancy between the position in society adopted by a transsexual after the operation and the status imposed by law that refuses to recognize gender change, cannot (...) be seen as an insignificant concern stemming from a formality” (ibid., emphasis added). On the contrary, “[a] conflict between social reality and law puts transsexuals in a disorderly position in which he or she may experience feelings of vulnerability, humiliation and anxiety” (ibid, Emphasis added).*

The Ombudsperson finds that Ms. Kika has based the lack of an effective and effective remedy on the real possibilities that the Basic Court does not decide the case on merit, but only to return it to an administrative procedure that makes the duration of the proceedings at least twice as long, pointing out that the Ombudsperson Report ex officio no. 425/2015 and in the case *A.no.72/2015*, regarding the lack of effective legal remedies addressed to the Ministry of Labour and Social Welfare and Basic Court in Prishtina, has ascertained that in administrative disputes the courts in either of the relevant procedures have not been issued in examining the merits of the case but only finding procedural violations and having decided that the cases are returned to review to the body that initially took the decision and he again decides the same and the party again files a lawsuit. Among other things, the Ombudsperson found that in these cases there has been a violation of human rights that the claims brought by the complainants in the capacity of an effective remedy were ineffective and did not ensure the realization of the law that was foreseen by the law.

The Ombudsperson finds that, based on the practice of the Constitutional Court of the Republic of Kosovo, regarding the addressing of cases without exhaustion of remedies in the cases of *Tomë Krasniqi against the Radio Television of Kosovo and the Kosovo*

Energy Corporation, Case No. KI 11/09, dated 16 October 2009, as well as in the case of Valon Bislimi against the Ministry of Internal Affairs, the Kosovo Judicial Council and the Ministry of Justice, Case No. KI 06/10 of 30 October 2010, had a flexible approach to exhaustion of remedies, where the Applicants had requested the constitutional review of legal acts without exhaustion of legal remedies in the regular judiciary, the Constitutional Court found that the Applicants did not have access to an effective remedy and allowed the use of this jurisdiction without exhaustion of remedies, it can be ascertained that we have the same situation in the case of the Applicant.

The Ombudsperson takes into account the fact that the Constitutional Court has an Ex post jurisdiction because the mechanism of constitutional control in an alleged individual offense is activated after the Applicant has suffered any consequences of eventual violations of constitutional law but in certain cases can be flexible, as there are situations where the use of this jurisdiction is allowed without exhaustion of remedies provided that the applicant's direct interest is assessed as it must be proved to be the victim of a violation by the public authority of the state (see case *Scordino against Italy No.36813 / 97*), so it is appropriate that this situation is also proclaimed in the case under consideration.

The Ombudsperson finds that the complainant has provided sufficient evidence to examine the case by the Constitutional Court, seeking to be exempted from the exhaustion of all remedies, because the circumstances of the case make the prosecution of the lawsuit proceed by the Basic Court, an ineffective and inadequate remedy. The Ombudsperson has issued several reports with recommendations, stating that in many cases the reception of the proceeding to review the claim by the Basic Court has proved to be ineffective and inadequate, given the delays in the court proceedings until the examination of the cases. Therefore, from the background of previous cases, we found that even when the case was examined, no court decision was issued, but the case was returned to the first instance body, which in the reconsideration did not act on the recommendations of the court, but again refused the request and so the situation came into a vicious circle, which in many cases lasted for many years.

Also, the Ombudsperson finds that, based on the practice of the Constitutional Court of the Republic of Kosovo, regarding the handling of cases without exhaustion of remedies in cases where the Applicants had requested the constitutional review of legal acts even without exhaustion of remedies in the judiciary the Constitutional Court had a flexible approach and found that the Applicants did not have access to an effective remedy, thus allowing the use of this jurisdiction without exhaustion of legal remedies.

Legal Opinion of the Ombudsperson in the capacity of the friend of the court for the case A.no.215/2018 regarding the initiation of the Constitutional Court of the Law no. 03/ L-179 on the Red Cross of the Republic of Kosovo and assessing compliance with constitutional provisions

The Ombudsperson, on July 4, addressed a Legal Opinion to the Court of Appeal in the capacity of a friend of the court for the case A.no.215/2018, regarding the initiation of the Constitutional Court of the Law no. 03/ L-179 on the Red Cross of the Republic of Kosovo and assessing compliance with constitutional provisions. The purpose of this Opinion given by the Ombudsperson is to notify the Court of Appeal of the possibility for this court to initiate the procedure for assessing compliance with Law no. 03/L-179 on the Red Cross of the Republic of Kosovo.

On 22 March 2018, the Ombudsperson has received a complaint from Mr. Sami Mazreku, representative of eight (8) insurance companies, regarding the contestation of Article 14, paragraph 1, sub-paragraph 1.7 of Law no. 03/L-179 on the Red Cross of the Republic of Kosovo. Similarly, on March 30, 2018, the Ombudsperson has received a complaint from Ms Vjosa Misini - Qehaja and Mr Ardian Rexha, representatives of the insurance company "Illyria" regarding the objection to Article 14, paragraph 1, sub-paragraph 1.7 of the Law no. 03/L-179 on the Red Cross of the Republic of Kosovo.

The Ombudsperson, inter alia, notes that the case Misini - Qehaja and Rexha is at the Court of Appeal, which is reviewing the complainants' appeal objecting the Judgment of the Basic Court in Prishtina, C. no. 546/13, which obliged complainants to fulfil the obligations for the Red Cross of Kosovo, deriving from the provisions of Law no. 03/L179 on the Red Cross of the Republic of Kosovo, namely Article 14, paragraph 1, subparagraph 1.7.

Under the legal provisions of the Law on the Red Cross of the Republic of Kosovo, the Red Cross provides financial means from obligatory insurance of the vehicles, respectively 1% of the gross premium of the value of vehicle insurance.

The Ombudsperson notes that in a completely similar case, the Constitutional Court of Croatia has issued the decision no. U-I-2441, U-I-1107/2002 of 12 February 2003, pursuant to which Article 12, paragraph 3 and Article 24, paragraph 1, item 1 of the Law on the Red Cross of Croatia have been repealed. The provisions repealed by the Constitutional Court of Croatia have an entirely similar content to Article 14, paragraph 1, subparagraph 1.7 of the Law on the Red Cross of the Republic of Kosovo. The Constitutional Court of Croatia had stated that in case the lawmaker considered that it is in the interest of the society to improve the conditions of the Red Cross of Croatia, then the obligation to support the Red Cross should be fulfilled by all economic entities, in accordance with their capabilities. Constitutional Court of Croatia hereby makes reference to Article 52 of the Constitution of Croatia according to which; *"Everyone shall*

participate in the defrayment of public expenses in accordance with his or her economic capabilities”

Prior to providing an explanation of the eligibility criteria of such a request before the Constitutional Court, the Ombudsperson shall remind the Court of Appeals that the constitutional practice recognizes the right of the party, that during proceedings, before the case is resolved on the merits, to require the Court to refer the request for constitutional review.

Consequently, in accordance with the eligibility criteria set forth in the Decision of the Constitutional Court of the Republic of Kosovo KO126/16 dated 27 March 2017, published on 1 June 2017, the Court of Appeal should be reminded that the term "Referring Court" in the sense of Article 113, paragraph 8 of the Constitution of Kosovo implies a judge or a panel of judges who is competent to decide on the case at the court in question. In addition, in order to prevent the request from being declared as procedurally inadmissible, the panel of judges must process the request for referral as a judicial body and not simply as a presiding judge. For this reason the Ombudsperson proposes to the Court of Appeals to issue a Decision which: Approves the Applicant's request for referral of the case to the Constitutional Court for the assessment of compliance with Article 14, paragraph 1, subparagraph 1.7 of the Law on the Red Cross of Kosovo, with the Constitution of the Republic of Kosovo; Suspends the decision-making procedure in the concrete case until the decision of the Constitutional Court of the Republic of Kosovo is taken; Informs the Constitutional Court that the decision of the Court of Appeal in the present case depends on the direct application of the disputed legal norm and that the latter cannot decide on the case by not applying other legal norm; Decides that the original case file be transferred to the Constitutional Court in order for the latter to have evidence that there is a concrete case before the Court of Appeal and that its decision depends on the decision of the Constitutional Court regarding the compliance of the legal norm with the Constitution.

Further, the Court (in the light of Article 113, paragraph 8 of the Constitution, i.e. the Panel of Judges) must clarify to the Constitutional Court that the eligibility criteria have been met as follow: the case at the referring court must be under review; the disputed law must be implemented directly by the referring court in the case under review; compliance with the Constitution of the contested law is a prerequisite for the decision on the pending case; and the referring court should specify which provisions of the contested law are considered incompatible with the Constitution.

Specifically, the Court of Appeals must inform the Constitutional Court that the case, the file of which was submitted together with the request for constitutional review (the aforementioned decision) is related to a case on which the Court has not taken a decision yet. Secondly, that the panel of judges referring the case is competent to take a decision on the case. Thirdly, the decision of the referring court depends precisely on the

application or non-application of Article 14, paragraph 1, sub-paragraph 1.7 of the Law on the Red Cross of Kosovo.

The justification for the direct application of the contested legal norm in the present case should serve as evidence to the Constitutional Court that the decision of the Court of Appeal is related only to the application of the specific article. There is no provision in any of the other laws in the Republic of Kosovo that would resolve the dispute between the parties. Therefore, there is a need to interpret the compliance of the legal norm with the Constitution.

The Ombudsperson Institution, upon reviewing the Applicant's complaint, notes the presence of substantial justifications which raise serious doubts that the legal norm that depends on the decision-making of the Court of Appeal in the present case may be incompatible with the Constitution of the Republic of Kosovo.

The Ombudsperson Institution recalls that the principle of the rule of law obliges public authorities, including the courts, to pay particular attention and care to the supremacy of the Constitution to the laws and to the protection of human rights and freedoms, in procedures that take place in the relevant court. Consequently, given that serious doubts have been raised, which are also based on the constitutional court practice of the Constitutional Court of the Republic of Croatia, given that the legal norm may be incompatible with the Constitution, and aiming to prevent the implementation of an invalid norm at a constitutional level, the Court of Appeal of the Republic of Kosovo should refer the case to the Constitutional Court of the Republic of Kosovo pursuant to Article 113, paragraph 8 of the Constitution of Kosovo.

Furthermore, Article 113, paragraph 8 serves as a guarantee for protection of the individual's fundamental freedoms and rights, and in democratic societies is included as a mechanism of individual protection by arbitrary court proceedings, which would be such if a norm that is not in accordance with the country's constitution was applied.

Legal Opinion of the Ombudsperson in the capacity of the friend of the court for the case A.no.903/2017 regarding the complaint of the complainant Mr. Mufail Salihaj, against the Public University of Prishtina "Hasan Prishtina"

The Ombudsperson, on July 4, addressed a Legal Opinion to the Court of Appeal in the capacity of a friend of the court for the case A.no.903/2017 regarding the complaint of the complainant Mr. Mufail Salihaj, against the Public University of Prishtina "Hasan Prishtina".

The Legal Opinion focuses on clarifying the legal procedure regarding the age limit as a criterion for employing the complainant in the position of the teacher in the vacancy announced by the Public University of Prishtina "Hasan Prishtina", respectively Faculty of Agriculture and Veterinary.

The Faculty of Agriculture and Veterinary, on November 24, 2016, had announced the vacancy for Assistant Professor position in subjects: *Phytopathology, Epidemiology and Plant Diseases, Abiotic Diseases, PhytoBacteriology and Virusology*.

The Ombudsperson, on December 13, 2017, received the complaint of Mr. Mufail Salihaj (hereafter the appellant) filed against the University of Prishtina "Hasan Prishtina" in Prishtina (UP), regarding the Senate Decision of UP, with no. 2/885 of 11 October 2017 concerning the age limit as a criterion for his employment in this position, whereas on April 6, 2018, on the same case the complainant filed a lawsuit at the Basic Court of Prishtina with case no C.no.875 / 2018.

Given the above facts, the Ombudsperson submits this Legal Opinion to the Basic Court in Prishtina, in the capacity of the friend of the court (*amicus curiae*), to inform about findings and ascertainment.

The complainant alleges that from the Evaluation Commission, in Report No. 06-321 of 28 February 2016, he is selected as a candidate who meets all the conditions of the vacancy for the aforementioned position. Consequently, it is proposed that the Council of the Faculty of Agriculture and Veterinary approve this report, as well as the complainant, be elected as Assistant Professor for the subjects announced in the vacancy. The review report has been approved by the Council of the Faculty of Agriculture and Veterinary. However, the Senate of UP, in its meeting held on 31 January 2017, received Decision no. Prot. 1/ 501, dated 1 June 2017, according to which the complainant cannot be elected at the abovementioned position, because, according to the Senate, his election is in violation with Article 177, point 1.6 of the UP Statute, which states "*The candidate who is elected for the first time must not be older than 50 years*". The complainant alleges that this legal provision is discriminatory, unreasonable and contrary to the Constitution of the Republic of Kosovo and international standards.

Against the UP Senate Decision, dated on June 1, 2017, the complainant filed a complaint to the UP Senate Appeals and Complaints Commission, which among other said that he is the only phytopathologist in Kosovo who has 8 years of experience. The UP Senate Appeals and Complaints Commission rejected as ungrounded the complainant's complaint.

On 7 September 2017, the UP Senate held the meeting in which it received the Decision with protocol no. 2/885, dated on 11 October 2017, according to which, in the first point (I) is said that the proposal of the Appeals and Complaints Commission of 29 June 2017 was approved for refusing to elect the candidate Mr. Salihaj, in the position of *teacher at the Faculty of Agriculture and Veterinary*. In the second point (II) of this decision is stated that the UP Senate Appeals and Complaints Commission has reviewed the complaint of the candidate Mr. Salihaj, of 13 June 2017, filed against the Senate Decision of 1 June 2017 for refusal of election as a teacher. While in the third point (III) of the decision is stated that the decision is final for the bodies of the university. Furthermore, in the Senate

Decision of the UP, it is noted that, after reviewing the report of the Complaints and Appeals Commission, dated 29 June 2017, in which the complaint of the candidate Mr. Salihaj, of 13 June 2017, it is ascertained that the aforementioned Commission has carefully considered the complaint of the candidate in question. Also, based on the arguments of this report, it is emphasized that the candidate does not have the scientific work according to the platform of UP and the age of the candidate Mr. Salihaj is not in compliance with the UP Statute.

The complainant, against the UP Senate Decision, also filed a complaint to the Labour Inspectorate (LI). On January 22, 2018, the LI issued the official report no. 01/37-142/17, regarding the case of inspection at the academic unit at the Faculty of Agriculture and Veterinary. Among other things, the LI concludes that the procedure concerning the complainant's case has been conducted in contravention of the provision of Article 173, par. 2 of the UP Statute, according to which the provision, if the proposal is rejected, is returned for reconsideration to the Council of the academic unit, which in the present case was not complied with. Whereas, according to the provision of paragraph 3 of Article 173, if the Council of the academic unit even after the reconsideration brings the same proposal in this case, the Senate issues a final decision.

According to the LI assessment, the decision rejecting the candidate's election cannot be considered final by UP bodies if it has not previously been returned to the Council of the respective unit.

Mr. Salihaj, considering the statutory provision in the UP Statute, which sets the age limit as a criterion for employment in the position of teacher in UP, is discriminatory and as such is unlawful, filed a lawsuit with the Basic Court in Prishtina, which was evidenced by the figure C.no.875/ 2018.

The Ombudsperson, in 2010, dealt with an approximately equal issue, considering the provision that decides as age criterion in the UP Statute and recommended UP to reconsider the then decision no. 1/499, dated on 25 May 2010, of the UP Senate.

Since no response to the recommendations given had been received, a lawsuit was filed to the court with the legality of the decision not to recruit teachers who reached the age of 50.

Based on the evidence and after reviewing the OPI's request, dated on 21 December 2010, regarding the legality of Decision no. 1/499, dated on 25 May 2010, of the UP Senate, not to recruit teachers who reached the age of 50, the Basic Court in Prishtina approved the OPI's claim under Judgment A.no.1242/ 2010, dated on 9 December 2013, as grounded and requested the annulment of the decision of the Senate of the University of Prishtina, no. 1/499 of 25 May 2010.

On the basis of the complaint, it is noted that the Rectorate of the UP continues to not implement Judgment A.no.1242/2010, dated on 9 December 2013. Therefore, the

Ombudsperson considers that such action constitutes a violation of Article 6, paragraph 2 of Law 03 / L-199 on Courts, according to which "*Court decisions are binding on all natural and legal persons*".

The Ombudsperson considers that the principle of legal certainty is the basis of the rule of law and ensures citizens' credibility to the state and the immutability of the law through the actions of administrative bodies, a principle which, inter alia, consists in the accuracy, clarity, and sustainability of the entire legal order of a state. So not just special norms, but all the legal order is required to be understandable and predictable and not controversial. Consequently, it is ascertained that Decision no. 2/885, dated on 11 October 2017, of the Senate of UP is not only unlawful but also contrary to the concept of legal certainty.

Based on the above conclusions, the Ombudsperson, as a friend of the court, suggests that the Basic Court in Prishtina, in its assessment of this case, shall be based on Judgment A.no.1242 / 2010, dated on 9 December 2013, and shall annul the Decision no. 2/885, dated on 11 October 2017 of the Senate in UP and determine it as unlawful and discriminatory.

Legal Opinion of the Ombudsperson in the capacity of the friend of the court for the case A.no.499 / 2017 regarding the complainant's lawsuit Mr. Xhafer Kadrija, Executive Director of the Association of the Blind in Gjakova, against the Municipality of Gjakova

The Ombudsperson, on June 21, 2018, forwarded the Basic Court in Prishtina, respectively the Department for Administrative Matters, a Legal Opinion in the capacity of a friend of the court for the case A.no.499/2017 regarding the lawsuit of Mr. Xhafer Kadrija, Executive Director of the Association of the Blind in Gjakova. The Ombudsperson's Legal Opinion focuses on clarifying the legal basis regarding the release from the obligation to pay property tax for blind people.

The Association of the Blind in Gjakova (ABGj), on January 19, 2017, filed a complaint on billing of immovable property tax for blind persons and requested from municipal authorities to respect Article 6 of Law no. 04/L-092 for Blind Persons, presenting evidence that this law was being implemented in the Municipality of Prishtina, which had approved the Regulation on Immovable Property Tax 01 no. 110-246609, dated on 3 October 2016, which in Article 7, point 7.2, stipulated: "*The immovable property tax exemption for blind persons will be in conformity with the provisions of Article 6 of Law No. 04/L-092, for Blind Persons and begins to be implemented from 1 January 2017.*" The Municipal Board for the Review of Complaints for Immovable Property Tax of the Municipality of Gjakova had rejected the appeal as unfounded, with the reasoning of the Secretary General at the Ministry of Finance who had addressed the Director of Budget and Finance in the Municipality of Gjakova, according to which The Ministry of Finance and the municipalities of the Republic of Kosovo are obliged to implement the Law on

Immovable Property Tax no. 03/L-204, as amended and supplemented by Law no. 04/L-100.

The ABGj, on August 1, 2017, initiated an administrative dispute against the decision of the Municipal Board for the Review of Complaints for Immovable Property Tax of the Municipality of Gjakova filing a lawsuit in the Basic Court of Prishtina, respectively in the Department for Administrative Matters - Fiscal Division, and the case is being held to this court registered with the number A.no.1306/2017.

The Ombudsperson states that Law no. 03/L-2014 on Taxes on Immovable Property is a general law, which aims to establish a tax on immovable property in Kosovo by setting forth the standards and procedures that municipalities must follow in administering of the property tax. On the other hand, Law no. 04/L-092 for Blind Persons is a special law (*lex specialis*) aimed at regulating the legal status of blind persons. This law also defines their rights and benefits.

Law 04/L-092 for Blind Persons entered into force two (2) years after the Law No. 03/L-204 on Taxes on Immovable Property, as a special law guaranteeing dignified treatment of this category of persons in Republic of Kosovo. Law no. 04/L-092 shall apply as a special law (*lex specialis*) to all other laws that have been in force or have been approved after it. Exceptions to this rule are made only by laws which expressly exclude the application of the provisions of this law.

Moreover, the Ombudsperson notes that the aforementioned laws do not contradict each other. The general law foresaw certain categories of institutions that are exempt from property tax. On the other hand, the special law has regulated the benefits of a certain category and expressly states in Article 6: "*Blind persons shall be exempted from any tax and direct taxes...*" Law no. 03/L-2014 on Taxes on Immovable Property, in no provision thereof prohibits the exemption from the immovable property tax of other categories. Article 8 of this Law lists some of the exempted categories, but neither this law nor any other law prohibits the legislature from enacting a special law through which certain groups are exempted from financial obligations.

The Ombudsperson considers that the complainant had a legitimate expectation from Law no. 04/ L-092 for Blind Persons. The principle of legal certainty guarantees to the individual the predictability of the effect of the law, according to its wording. In the present case, the Law is clear on the content and expressly grants blind persons the exemption from any kind of tax and direct tax.

Legal Opinion of the Ombudsperson in the capacity of the friend of the court, to the Basic Court in Prishtina regarding the case of Driton Hajdari, no. ED.no. 155/18.

The Ombudsperson, on February 21, 2018, addressed a Legal Opinion to the Basic Court in Prishtina in the capacity of a friend of the court for the case of Driton Hajdari,

no.ED.no. 155/18 regarding the violation of the right of persons deprived of their liberty for appropriate medical treatment, guaranteed by Article 27 of the Constitution of the Republic of Kosovo, Article 43 of the Law on Execution of Penal Sanctions, Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Prison Rules, the Standards of the European Committee for the Prevention of Torture and other international conventions that clearly state the obligation of the state for the treatment of sick people deprived of their liberty.

The purpose of this Legal Opinion in the capacity of the friend of the court is to draw attention to the need for adequate health care for persons deprived of their liberty in correctional facilities and detention centres, in accordance with international standards on the rights of prisoners and other relevant acts of the Republic of Kosovo and is based on the individual complaint of Ms. Teuta Hajdari , who complains on behalf of her husband, Mr. Driton Hajdari , who is serving his punishment at Dubrava Correctional Centre.

Ms. Hajdari complains against the Ministry of Health and the Ministry of Justice regarding the health treatment and accommodation offered to her husband Mr. Driton Hajdari, who is a person deprived of liberty and sues the sentence at the Dubrava Correctional Centre. According to the documents received by the complainant and the Prison Health Department (hereinafter referred to as PHD) the convicted person suffers from a serious progressive illness, and as a result he was several times in the hospital due to deteriorating health status. Through this report, the PHD informed the Ombudsperson that the convicted person could not be provided with adequate health care based on the nature of his illness.

Ombudsperson's representatives visited the Neurology Clinic on 2 February 2018, in the course of which they met medical staff and visited the patient. In the occasion of this visit, representatives of the Ombudsperson were informed on health condition of the convicted Driton Hajdari and the actions undertaken by them till present as well as actions planned to be undertaken in the future. According to medical staff, convicted person will not remain long in this Clinic and will return very soon to the Dubrava Prison health facility.

With great concern the Ombudsperson has received notification from the Prison Health Department (Ministry of Health) for the given convicted person which points out: *“Based on the relevant documents in our possession and the patient’s health condition, the prognosis and evolution of the disease according to the recent scientific data, as well as based on the professional, architectonic and functional conditions of the Prison Health Units, please be informed as follows: We still lack institutions for treatment of persons with special needs; We lack the possibility of treating people incapable of self-care as well as with companion, but solely 24 hour nursing care can be provided: We lack neurologist who would be in charge for ongoing treatment according to the recommendations of the Neurology Clinic and health indications; Our essential medical list does not contain*

medications for treatment of such advanced illnesses, which is specific and of tertiary level, and supplying with it causes great difficulties for UCKK.”

Based on this Report, the competent body acting on behalf of the State, points out that this institution cannot offer to the convicted person the medical services and treatment in accordance with international standards on the rights of prisoners, in compliance with the Constitution of the Republic of Kosovo and the Law on the Execution of Criminal Sanctions.

The Constitution, as the highest legal act of a country, safeguards and guarantees human rights and fundamental freedoms, thus enforcement and practical accomplishment of these rights are in the interest of rule of law and functioning of the State. Constitutional guarantees serve to the protection of human dignity as well as functioning of the rule of law. The Constitution, in Article 27, explicitly stipulates that *"No one shall be subject to torture, cruel, inhuman or degrading treatment or punishment"*.

Furthermore, the Constitution of Republic of Kosovo guarantees that no one shall be subject to torture, cruel, inhuman or degrading treatment or punishment. More over the Constitution of Republic of Kosovo determines that *"Human dignity is inviolable and is the basis of all human rights and fundamental freedoms"*.

European Convention on Human Rights and Fundamental Freedoms, which is among international conventions encompassed in Article 22 of the Constitution of Republic of Kosovo that are directly applicable in the Republic of Kosovo and, in the case of conflict, prevail over provisions and laws and other acts of public institutions, determines positive obligations of the State based on Article 3 of this Convention. Furthermore, Article 53 of the Constitution of Republic of Kosovo stipulates that human rights and fundamental freedoms guaranteed by the Constitution of Republic of Kosovo are interpreted in compliance with judicial decision of the European Court on Human Rights.

Article 3 of the European Convention on Human Rights explicitly stipulates: *"No one shall be subject to torture, cruel, inhuman or degrading treatment or punishment"*. Within the meaning of Article 3 (Prohibition of Torture and Degraded treatment) of the European Convention on Human Rights the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance.

In the case *Mouisel versus France*, European Court on Human Rights found violation of Article 3 of the European Convention on Human Rights and Fundamental Freedoms regarding medical treatment of the incarcerated person in terminal illness. The Court pointed out State's positive obligation in providing adequate medical treatment. In the case

Tekin Yildiz versus Turkey, European Court on Human Rights found violation of Article 3 of the European Convention on Human Rights, particularly pointing out that applicant's health condition was judged to be incompatible with detention and that there was nothing to cast doubt on those medical findings. Local authorities who have decided to return the applicant to the prison and re-imprison him for approximately eight months, regardless the lack of changes in his health condition, could not be considered to have acted in accordance with requirements of Article 3 of the European Convention on Human Rights Protection. The suffering thereby caused to the applicant went beyond that inevitably associated with detention and the treatment of conditions such as *Wernicke-Korsakoff Syndrome*, comprised inhuman and degraded treatment. The Court also found that there would be a violation of Article 3 if the applicant was re-imprisoned without there being a marked improvement in his medical fitness to withstand such a measure.

European Committee on the Prevention of Torture (hereinafter "CPT") in the Report on conducted visit to Spain in April of 1994, related to the finding as per the treatment of convicted persons with serious illnesses or those in terminal stage of life, recommended to the Spanish authorities: *"The CPT underlines that all patients, however serious their condition may be, including those who are terminally ill, ought to be treated in a manner which respects human dignity."*

Rule 43 of the European Prison Rules determines State's obligations in giving due concern to the detainees who become seriously ill, which leads to terminal stage of life.

UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) 6 in Rule 1 stipulates: *"All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification"*.

Further, the Rule 24 (health-care treatment) of Mandela Rules determines the responsibility of the State to provide health care treatment for the detainees. While, Rule 25 points out authorities' liability to provide due medical concern to detainees with special needs health requirements.

If referring to the domestic legislation, respectively the Law on Execution of Penal Sanctions, Article 5 explicitly stipulates that penal sanctions shall be executed in such a way as to assure humanity of treatment and respect for the dignity of each individual. The convicted person shall not be subject to torture or to inhuman or degrading treatment or punishment.

The Ombudsperson considers that the lack of adequate medical care as well as any other essential care combined with physical suffering amounts to the degrading treatment provided for in Article 3 of the European Convention for the Protection of Human Rights and breaches all international standards for the protection of human rights of persons

deprived of their liberty. Therefore, further detention of the prisoner concerned under the conditions and care, specified in the report submitted by Prison Health Department, would constitute violation of Article 3 of the European Convention for the Protection of Human Rights and other international aforementioned Human Rights instruments.

Opinion of the Ombudsperson

Opinion of the Ombudsperson for the case A. no. 421/2018 with regard to Criteria of issuing nostrification decision for applying in vacancy competitions for academic personnel in the Faculties of the University of Prishtina “Hasan Prishtina”

The Ombudsperson, on August 17, 2018, published the Opinion on the criteria of issuing nostrification decision for applying in vacancy competitions for academic personnel in the Faculties of the University of Prishtina “Hasan Prishtina”.

Taking into consideration the criteria stipulated in the competition for selection of academic personnel in the Faculties of University of Prishtina “Hasan Prishtina” (hereinafter: UP), dated 27th of April 2018, with Protocol Non. 1/173, in Item II (f) it is stated that *“candidates who have completed studies abroad should also provide the Decision on Nostrification (recognition) of relevant diploma (bachelor, masters, PhD). The evidence of applying for nostrification shall not be considered”*, the Ombudsperson therefore presents this Opinion.

The opinion aims to draw the UP attention to the fact that the aforementioned criteria (point II (f) in the competition for selection of academic personnel in the faculties of UP, dated 27th of April 2018, prot no. 1/173), is in contradiction to the applicable legislation, violates the principle of equality and other rights in accordance with the academic personnel recruitment procedure in UP, and as such this criteria is discriminatory to candidates who have attended studies abroad, thus preventing them from applying, i.e. participating in the competition.

According to the complainant's allegations, she has been studying and working for years outside Kosovo, as in Hague, Geneva and Tirana. Currently Ms. Shala works as a Counsellor at the Ministry of Interior in the Republic of Albania. She has completed her studies in the Faculty of Law of the University of Prishtina and has subsequently pursued her Master's degree in International Cooperation in the Fight against Organized Crime at the University of Teramo, Italy, and then obtained a Master's Degree in Criminology and Criminal Justice at the University of Oxford in England, and holds a Doctorate in International Law from the Graduate Institute of International and Development Studies in Switzerland, where he defended the thesis titled: “Guarantees for non-repetition of human rights violations” in the area of international criminal law, but she had, and still has, the desire to return and contribute in Kosovo”.

According to the complainant, the UP has advertised the competition for selection of academic staff at faculties of UP, with protocol no.1/173, on 27 of April 2018. This competition requires Kosovo citizens graduated abroad to submit the document for recognition of studies abroad (nostrification) upon applying. The complainant alleges that the inclusion of such a criterion in the process of recruitment for academic staff in UP is

unlawful and discriminatory to people who have graduated abroad, whereas according to the same announcement, the PhD candidates from UP are allowed to apply with only a graduation certificate, which is defined as such under point II (c) of the Competition, dated 27th of April 2018, with protocol no.1/173, which stipulates that “*candidates who completed their PhD studies in the UP and for whom no solemn promotion has been done and who have not been equipped with a diploma, can apply with the original certificate of PhD graduation*”. Additionally, the requirement of submitting, upon application, the document proving the nostrification of diplomas earned abroad (*differently from the condition for establishing an employment relationship*) is not grounded on basic documents, i.e. the Law on Higher Education, sub-legal acts of the Ministry of Education, Science and Technology, the UP Statute and other acts that regulate selection procedures for appointment of academic staff in UP. Simultaneously, this is clear discrimination against Kosovar students who have proven to be successful outside of Kosovo, such as the complainant's case.

On 29th of June 2018, the representatives of the Ombudsperson held a meeting with the Rector and Secretary of the University of Prishtina, where inter alia they discussed the complainant's allegations submitted in her complaint to the OI. The Secretary of the Rectorate of the University of Prishtina stated that all vacancies advertisements for academic staff in the faculties of UP, require citizens of Kosovo graduated abroad to submit the document of recognition of studies abroad during the application procedure, because according to him, it may happen that their diplomas may not be recognized by the MEST.

The Ombudsperson would like to draw attention to the fact that the Constitution, as the highest legal act of the country, protects and guarantees fundamental human rights and freedoms, and therefore the implementation and practical application of these rights is to the best the interest of the rule of law. The Constitutional guarantees serve to the protection of human dignity, and the functioning of the state. Article 21 of the Constitution, expressly determines the obligation of all bodies to respect human rights and freedoms, and therefore this principle is an imperative and must as such be adhered by everyone, including the UP in this specific case.

In the view of Article 14 of the European Convention on Human Rights, the Ombudsperson would like to remind that the convention determines that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, The Ombudsperson considers that the criterion of submitting evidence for recognition of studies abroad upon application is not supported by the basic documents regulating the selection procedures for the appointment of academic personnel in the UP, and therefore is a discriminatory practice because the recognition criterion is in fact a condition only

for the establishment of the employment relationship (*or the signing of the contract between the UP and the respective candidate*), and should not serve to create inequality among competing candidates with the same level of education during the selection procedure. The Ombudsperson considers that the criteria contained in the competition announcement of UP with protocol no. 1/173, dated 27th of April 2018 for the appointment of academic personnel that requires the submission of documents proving the recognition of studies abroad at the time of application is illegal and in contradiction to the provisions of the Law on Higher Education, Administrative Instruction (MEST) No. 16/2016 on Principles and Procedures of Recognition of Vocational High-School Diplomas and University Degrees earned outside the Republic of Kosovo, the UP's statute and Regulation No. 465 dated 2nd of March 2018 for the selection procedures regarding the appointment, reappointment and advancement of academic personnel in UP for all faculties with the exception of the Faculty of Arts.

Furthermore, the aforementioned competition specifies that “*General Conditions for appointment of academic personnel have been determined by the provisions of UP's statute, Regulation No. 465 for the selection procedures regarding the appointment, reappointment and advancement of academic personnel in UP for all faculties with the exception of the Faculty of Arts dated 2nd of March 2018, and Regulation 990 for the selection procedures for the appointment, reappointment and advancement of academic personnel in the Faculty of Arts (page 15) dated 19th of April 2018*”, but none of these documents has foreseen the obligation of providing the nostrification evidence as foreseen in the aforementioned vacancy competition (point II (f)). Furthermore, Article 178 of the UP Statute, which determines the conditions that a candidate must fulfil for the title of *University Assistant* does not contain any such criteria (as the one under point II (f) of the competition), whereas the Law No. 04/L-037 on Higher-Education in Kosovo, namely Article 26, paragraph 10 determines the “*Criteria for each of the titles should not discourage applications outside the Institutions*”. Consequently, the Ombudsperson considers that the aforementioned competition contains an additional requirement for persons who graduated abroad and is therefore in contradiction to these documents.

The Ombudsperson has noted that the Administrative Instruction No. 16/2016 on Principles and Procedures of Recognition of Vocational High-School Diplomas and University Degrees earned outside the Republic of Kosovo, does not stipulate that candidates, for the purpose of applying in a public competition, must have nostrified the diplomas earned outside the country. On the contrary, Article 2, paragraph 1, point 1.1 states that the term/expression “*Recognition - shall mean an official recognition by MEST of a diploma earned outside the country, which confirms its accuracy and authenticity, and serves for employment purposes in RKS*”. According to the Ombudsperson, this is a clear indicator that the recognition of diplomas earned outside the country should serve as a condition for establishing the employment relationship (signing the employment contract) and cannot under any circumstance serve as a *condition to acquire the right to*

apply or the right to be selected for a specific working position. Therefore, the Ombudsperson considers that, in a hypothetical situation, it would be completely legitimate and in accordance with the Law on Higher Education and other bylaws for the UP to request the submission of evidences for recognition of diploma earned outside the country as a condition for establishment of the employment relationship (i.e. the signing of the work contract) prior to carrying out the final act of employment (signing of the contract).

Additionally, the Ombudsperson would like to emphasise that Article 3, paragraph 1 stipulates that *all diplomas of Vocational High Schools and University ones earned outside the country for employment purposes shall be subject to recognition/equivalence procedures in MEST.* In this regard, one can understand that this Administrative Instruction does not require nostrification of diplomas earned abroad for the purpose of applying for a position. Furthermore, the fact that the Administrative Instruction contains the sentence “*shall be subject to recognition*” gives candidates the rights, including herein the complainant, to apply in a vacancy competition without having their diplomas recognized or nostrified. In this regard, the UP should recognize the complainants rights to not be discriminated against while applying, or in the recruitment procedures under the competition for selection of academic personnel in the UP faculties, dated 27th of April 2018, with Protocol No. 1/173 based on the nostrification of diploma prior to the closure of the vacancy competition (as foreseen under point II (f) of the aforementioned competition), and considering as reasonable only the obligation that the candidate should provide the nostrification evidence prior to the final act of employment, i.e. the signing of the contract

The Ombudsperson, inter alia, raises the concern with regard to the deadlines for submission of documents. The competition advertisement states that “*this vacancy competition shall remain open for 15 calendar days, namely from 27th of April to 14th of May 2018*”. According to the Administrative Instruction (MEST) No. 16/2016, particularly the part related to the principles and procedures for recognition of diplomas and qualifications of vocational schools and universities earned outside the Republic of Kosovo, it takes a 1 month for the National Council for Recognition to assess the request for nostrification and 4 months for concluding the recognition procedure. Therefore, such deadline for application, and the criterion placed against candidates who have earned diplomas abroad of submitting the nostrified diplomas, taking due account of the fact that these candidates could not have known when the vacancy competition would be opened, the period of 2 weeks for submitting the documentation, as is requested by the advertisement, is not sufficient time for MEST to conduct the recognition process, which consequently deprives the candidates educated abroad of their right to be treated equally compared to candidates who hold diplomas obtained in the Republic of Kosovo.

Based on the above analysis, the Ombudsperson shall, in accordance with Article 135, paragraph 3 of the Constitution of the Republic of Kosovo, and Article 18, paragraph 1.6 of the Law No. 05/L-019 on the Ombudsperson, and based on the assessment of the complaint, i.e. the assessment of the factual situation, issue the following: The basic documents regulating the selection process regarding the appointment of academic personnel in UP, including therein the Statute of UP, Law No. 04/L-037 on Higher Education in the Republic of Kosovo, Regulation No. 465 for the selection procedures regarding the appointment, reappointment and advancement of academic personnel in UP dated 2nd of March 2018 do not state that candidates are obliged, for the purpose of applying and participating in the selection procedure in the competition advertised by the UP, to submit the document of recognition/nostrification of diplomas earned outside the country. Furthermore, the Statute of UP, with regard to employment and academic titles only requires the candidates to have completed studies, i.e. that the candidate *“has the grade of doctor of science (for the faculty of arts, its equivalent)”* (Article 177, paragraph 1, point 1.1.); *“Have successfully completed Master studies...”*, *“if he or she has the grade of doctor of science”* (Article 178, paragraph 1, point 1.1 and 1.3). All these criteria shall be understood as mandatory when it comes to establishing the employment relationship. Therefore, none of the documents contain criteria that would prohibit application or participation in the competition, as determined by the criteria under Point II (f) of the competition advertised on 27th of April 2018. Administrative Instruction (MEST) -No.16/2016, Principles and Procedures of Recognition of Vocational High School Diplomas and University Degrees earned outside the Republic of Kosovo, does not stipulate that candidates are obliged, for the purpose of applying and participating in selection procedures for positions advertised in the competition, submit the document for recognition/nostrification of acquired abroad upon application, nor does it prohibit participation in the competition on the grounds of this criterion. On the contrary, this instruction determines that diplomas earned outside the country must be nostrified for the purpose of employment in the Republic of Kosovo, which means only the establishment of employment relationship (signing the Employment Contract or the Appointment Act). This applies to competitions advertised by the UP as well. Based on the normative grounds mentioned above and referring to the Constitution, the applicable Law on Protection from Discrimination and other legal provisions against discrimination and violation of the principle of equality, it is ascertained that the criterion set out in the competition for the selection of academic staff in faculties of the University of Pristina "Hasan Prishtina" of 27 April 2018, with no.1/173, point II (f) which stipulates that *“candidates who have completed their studies abroad must also provide the decision on nostrification (bachelor, master, doctorate) ...”*, is discriminatory and violates the principle of equality for candidates who have completed their studies abroad. Such discrimination and unequal treatment lies in the fact that this criterion prevents the candidates who have completed the studies abroad and who have acquired the diplomas,

but have been unable to nostrify them before closure of the competition. Pursuant to the applicable normative acts that have been analysed within this Opinion, the Ombudsperson reminds that the UP can condition these candidates to provide the evidence of the recognition/nostrification of their diplomas before establishing the employment relationship (Signing of the Employment Contract), if such candidates are selected by the respective bodies of the UP. Consequently, only this would be within the legitimate requirements set forth in the Law on Higher Education and Administrative Instruction no. 16/2016 for recognition of diplomas obtained abroad; The UP should allow all candidates who have completed their studies abroad to participate in the competition for selection of academic personnel dated 27 April 2018, with Protocol No. 1/173, and to undergo the selection process by professional assessment committees and other decision-making bodies without any obstacles, and not be discriminated based on nostrification (equivalence) of diplomas, thereby *withdrawing the criterion set out in point II (f) of this competition*. Pursuant to the applicable legislation and with the purpose of confirming the accuracy and authenticity of diplomas obtained abroad, the UP may condition candidates to provide the nostrification (equivalence) evidence before the final employment act, i.e. signing the employment contract; This criterion (*as set out under Point II (f) of the competition dated 27th of April 2018*), should not be part of future competition that may be advertised, so that candidates who completed their studies abroad are not prevented from participating in competitions and selection procedures for academic personnel in the UP solely because they have not nostrified (equivalent) diplomas prior to the closing of the competition; MEST should make sure that the UP and other educational institutions in the Republic of Kosovo accurately apply the principle of non-discrimination and equality in relation to candidates who completed their studies abroad, with regard to nostrification of diplomas for employment purposes, so that the same are not discriminated against during the recruitment/selection procedures in the jobs they apply; MEST should supplement the legal grounds regarding the nostrification/equivalence of diplomas obtained abroad, in full compliance with the principle of non-discrimination in relation to employment procedures in the Republic of Kosovo, including employment in education institutions; MEST shall address with priority the applications for nostrification (equivalence) of diplomas obtained abroad for candidates in the process of competing in public competitions and establishing an employment relationship.

Opinion of the Ombudsperson with regard to invoicing of water expenses for customers with common water meters

The Ombudsperson, on January 11, 2017, addressed the Report with Recommendations, through which was recommended that invoicing of water expenses shall be made on the basis of real consumption, as well as was recommended that WSRA shall carry out regular monitoring of the service providers of water. Based on the exchange of letters and meetings between OPI and WSRA, WSRA's commitments in monitoring service

providers were evaluated as well as technical issues that prevent water invoicing, according to real consumption in a number of collective housing. On this occasion, WSRA has requested from the Ombudsperson the cooperation in finding a more appropriate and fair solution for the invoicing of customers, where there are no technical and practical options for the installation of water meters, or where the self-consumers are reluctant to install them.

In this regard, the Ombudsperson primarily refers to Law no. 04 / L-121 on Consumer Protection, which should be applied with regard to invoicing of water.⁴³⁹ This Law does not foresee any exemption from the obligation for invoicing to be made on the basis of real consumption.

The Ombudsperson considers that a possible solution for invoicing of common water meters could be found in Law no.04/ L-134 on Condominium in cooperation with water service providers, respective municipalities, and the Ministry of Environment and Spatial Planning (MESP). In this case, the Ombudsperson suggests that WSRA, in cooperation with MESP, shall assess whether the law in question, practically, provides such opportunities.

However, the Ombudsperson, realizing the fact that the WSRA has taken the recommendations of the Ombudsperson with seriousness regarding the invoicing of water and considering that WSRA seeks to find a reasonable and fair solution for invoicing customers with common water meters, draws attention to Law no. 04/L-077 on Obligational Relationships.⁴⁴⁰ The Law on Obligational Relationships provides the divisible obligations, presumption of solidarity of debtors, etc., which could be implemented by water service providers.

The Ombudsperson welcomes the WSRA initiative and efforts to find a fairer solution and encourages any proposed solution to be in accordance with the law and/or best practices, whether regional or international.

Opinion of the Ombudsperson regarding the prevention of nepotism at the University of Prishtina

The Ombudsperson, on March, 16, 2018 published the Opinion on the prevention of nepotism at the University of Prishtina. In a Report of Recommendations, issued on February 12, 2018, the Ombudsperson considered the prohibition of recruitment/engagement of candidates within any of the basic organizational structures (department / branch or program) as discriminatory if, within those structures, the same have regular working relationships or are engaged in close family relationships" (Regulation no. 2/475 of Evaluation Procedures for the Engagement of Foreign Associates at the University of Prishtina "Hasan Prishtina", issued on September 7, 2017,

⁴³⁹ Article 29, paragraph 1

⁴⁴⁰ Chapter 3, Divisible Obligations

Article 7, paragraph 11). This Opinion has two main aims: To clarify that this finding does not prevent the University of Prishtina from fighting the problem of nepotism on the basis of the procedures provided by the Statute of the University of Prishtina; to emphasize that fighting nepotism is indispensable for the full respect of the human rights of all candidates for employment at the University of Prishtina; and to propose some measures to further strengthen nepotism prevention, based on the policies of both universally recognized universities for high academic standards: Harvard University, United States of America, and the University of Cambridge of the Kingdom United.

In a Report with Recommendations, issued on February 12, 2018 (hereinafter referred to as the *Report*), the Ombudsperson reviewed Regulation no. 2/475 of Evaluation Procedures for the Engagement of Foreign Associates at the University of Prishtina "Hasan Prishtina", issued on September 7, 2017 (hereinafter referred to as the *Regulation*).

Article 7, paragraph 11 of this Regulation provides: "In the University of Prishtina, recruitment/ engagement of candidates within any of the basic organizational structures (department/ branch or program) shall not be permitted, if, within those structures, they are in regular employment or engaged close relatives (in the parent-child, brother-sister, sister-sister, brother-brother relations, and vice versa)". In the Report, the Ombudsperson found that this provision is discriminatory, according to the Constitution and laws of the Republic of Kosovo.

For example, the Constitution of the Republic of Kosovo, Article 24, paragraph 2, states: No one shall be discriminated against on grounds of race, colour, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status". As explained in paragraph 10 of Report: "The Constitution explicitly guarantees the equality of all persons before the Constitution and the law, the right of everyone to equal legal protection without discrimination and prohibits any discrimination on any base listed but **also adds to any other personal status that is not explicitly mentioned in this article**"(emphasis added). Hence the report continues in paragraph 17: "A person, due to some of his/her personal characteristics or, in the present case, close family relationships, as well as work reports within the department or UP program, cannot be deprived from the right to employment, which is accessible to others and is fully recognized because of this, because the person is situated in an unfavourable position compared to other candidates and the same is not allowed on equal conditions of the competition to participate in the competition during the recruitment procedure".

For this reason, the Ombudsperson considered as discriminatory the prohibition of recruitment or engagement of candidates who have close family members employed or engaged within the branch or department where these candidates are competing. The Ombudsperson stands behind this statement. However, as noted in paragraph 16 of the

Report: "The Ombudsperson specifically understands the issue of nepotism as a special form of conflict of interest, which is extremely common in the case of employment in the public sector".

Moreover, the Ombudsperson considers the prohibition of discrimination, prescribed by the Constitution and by law, makes it necessary to combat the phenomenon of nepotism. According to the judgments of the ECHR, "[the right (...) to not be discriminated (...) is violated when the states treat persons in similar situations unequally without giving an objective and reasonable justification]" (Thlimmenos v. Greece, Application No. 34369/97, ECtHR, 6 April 2000, par. 44, emphasis added).

From this point of view, the issue of nepotism has the consequence that candidates for employment are **not** treated equally due to family ties. It is obvious that the family ties that candidates have (or lacking) cannot serve as "objective and reasonable justification" to treat them unequally. For this reason, nepotism can be described as a form of discrimination. As such, it is imperative that the UP, as well as all public institutions, fight nepotism in the most effective way possible, in accordance with the Constitution and the laws of the country.

However, it may seem that the Ombudsperson at this point has plunged UP into an inevitable dilemma: on the one hand, the phenomenon of nepotism is discriminatory, as it results in discrimination of those candidates who **lack** a family relation within department or branch where they are applying; but on the other hand, according to the recent Ombudsperson's report, the strict measure imposed by the University of Prishtina discriminates those candidates who **have** family relations within the department or branch they are applying for. The question is therefore how does the UP operate so that it does not discriminate even those who lack family relations and those who have these relations without their fault?

Understanding these concerns, the Ombudsperson proposes some other measures that the UP may undertake against the issue of nepotism, beyond the abovementioned measure already included in the Statute. The following proposed measures are based on the policies of two world-renowned universities: Harvard University, United States of America, and University of Cambridge, United Kingdom. Both universities rank among the top five universities in the world, according to a recent assessment (see QS World University Rankings 2018 at: <https://www.topuniversities.com/university-rankings/world-university-rankings/2018>). Both are universally respected for the implementation of the highest academic standards. Therefore, these universities can serve as models for regulating academic issues, including the prevention of nepotism in academic staff.

First, the Ombudsperson notes that the policies of both universities for preventing nepotism cover relationships even beyond the close family. As we have seen above, the Regulation of the University of Prishtina uses the term "close family", which includes

only "parent-child, brother-sister, sister-sister, brother-brother relations, and vice-versa" (*ibid*, Article 7, paragraph 11). Harvard University includes the following relationships in the list: marital relationship; stepfather (stepmother) – stepson (stepdaughter); grandfather (grandmother) - [nephew/ niece]; husband's brothers; mother-in-law - [groom/bride]; and stepbrother/stepsister (see Harvard University Staff Personnel Manual, Work Relationships, Section 1). In addition, Harvard treats similarly the conjugal relationship (*see also there*).

The University of Cambridge has more comprehensive criteria, adding: extramarital partners; former spouses; the relationship [daughters / uncles / aunts] - [nephew / niece]; cousins; and close friends (*see* University of Cambridge Human Resources Policies and Procedures, Employing and Working with Relatives and Related Matters). Cambridge also points out that the list is not exhaustive and "it is responsibility of staff members to take any necessary measures based on logic and reasonableness" to avoid nepotism in the case of other links that are not explicitly included in the list (*ibid*).

In addition to specific policies against nepotism, the Ombudsperson considers important to note that these policies aim not only to treat all the candidates for employment but also all the employees equally. These policies also aim at ensuring that the ***public knows and feels secure about this equal treatment***. As the country's largest and most important university, the University of Prishtina, respectively the leaders and its entire staff, has the responsibility to improve the image of the University in the eyes of the public.

In this regard, Cambridge policy also states that "staff members should not be appointed by others, nor put themselves in a situation where others ***would have reason to believe*** there is or may be a conflict of interest or improper behaviour "and should ensure that" the University is not discredited and that its reputation is not damaged due to irregular behaviour by its staff "(University of Cambridge Human Resources Policies and Procedures, Employing and Working with Relatives and Related Matters; emphasis added). The Ombudsperson considers that the same principles apply to the staff of the University of Prishtina.

A recent issue remains to clarify: What is the competent body to incorporate these proposed reforms into the policies of the University of Prishtina against nepotism? Here are two options. First of all, these reforms can be directly introduced into the Statute of the University, which would require the amendment of the Statute by the Assembly of the Republic of Kosovo. Secondly, the authorities of the University of Prishtina, without changing the Statute, may adopt these reforms in the form of a regulation. Such a step would be in full compliance with the current Statute, which gives the Senate of the University the carte blanche right to regulate the evaluation processes of the candidates, at least when it does not contradict other parts of the Statute. On this point, see the Statute of the University of Prishtina, Article 173, par. 8 ("Other matters for evaluation procedures are defined by rules issued by the Senate in accordance with this Statute").

And, in general, the University enjoys autonomy to regulate all aspects of its functioning (see *ibid* Article 12 "Rights and Duties").

The Ombudsperson considers that both of these opportunities should be used at the same time. The most ideal solution would be for the Assembly to change the Statute to include reforms directly on it. This would ensure that reforms are sustainable and not easily amended by future university leaders who change relatively frequently. However, changing the Statute requires more time, since all the changes have to go through the legislative process of the Assembly. Therefore, until the Statute is amended, the Ombudsperson proposes that the University authorities immediately take measures to approve these reforms, exercising their powers to regulate all aspects of the functioning of the University. Based on the above assessment, the Ombudsperson considers that the adoption of reforms in the University's anti-nepotism policies is necessary as follows: (1) Policies of the University of Pristina against nepotism should cover not only the relations of "close family members "(Parent-child, brother-sister, sister-sister, brother-brother and vice versa), but also the relations of other relatives, as follows: spouses; stepfather (stepmother) – stepson (stepdaughter); grandfather (grandmother) - [nephew/ niece]; husband's brothers; mother-in-law - [groom/bride]; and stepbrother/sister; conjugal relationship; extramarital partners relationship; former spouses; [Uncles/ Aunts] - [nephew/ niece]; cousins; and the close relationship of friends. It should also be noted that this list is not exhaustive and that it is the responsibility of staff members to take any necessary measures based on logic and reasonableness to avoid nepotism in the case of other links that are not explicitly included in the list; (2) University staff members should be prohibited not only from attending as members of the Evaluation Council when a relative is a candidate for employment but also prohibited to participate in any other process which may bring some benefit to his/her relative, including (but not limited to) employment, income and income generation, job promotion and duties. (3) Staff members should be required to declare whether they are engaged in a recruiting process or any other process that may bring benefits to a relative. Failure to declare such a connection should result in punitive measures.

Request for interim measures

The Ombudsperson addressed a request to the Constitutional Court regarding the repeal of several articles of the Law No.06/L-048 on the Independent Oversight Board for the Civil Service of Kosovo, as well as for the immediate suspension of these provisions until a final decision by this Court

On 2 November 2018, the Ombudsperson filed a request with the Constitutional Court for (1) repealing Articles 2, 3 (paragraph 1, sub-paragraphs 2, 3 and 4), 4 (paragraph 1), 6, 7 (paragraph 1, sub-paragraphs 2, 3 and 4), 11 (paragraph 3) 18, 19 (sub-paragraphs 5, 6, 7 and 8), 20 (paragraph 5), 21, 22, 23, 24 and 25 (paragraph 2 and 3) of the Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo (hereinafter: “Law on the Board” or “the Law”), and (2) imposing an interim measure for the immediate suspension of such provisions until a final decision by the Court.

The Ombudsperson's request to repeal the aforementioned provisions, and impose an interim measure, is well within the subject matter jurisdiction of the Constitutional Court. The Constitution of the Republic of Kosovo (hereinafter referred to as the Constitution), in the relevant part, defines as follows: *“The Ombudsperson may refer matters to the Constitutional Court in accordance with the provisions of this Constitution”* (ibid, Article 135, paragraph 4); and in particular, the Ombudsperson: *“are authorized to refer (...) the question of the compatibility with the Constitution of laws”* (ibid, Article 113, paragraph 2, sub-paragraph 1).

With regard to the request for an interim measure, the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo provides that: *“The Court, upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest”* (ibid, Article 27, paragraph 1).

The Ombudsperson's request is also filed within the Court's deadline: *“The request filed pursuant to Article 113, paragraph 2 of the Constitution shall be filed by the Ombudsperson (...) within six (6) months after the entry into force of the act of contested”* (Law on the Constitutional Court, Article 29, paragraph 1 and Article 30). The law contested through this Referral has entered into force on 25th of August 2018, namely fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo (see Law on the Board, Article 32). Therefore, the Referral of the Ombudsperson is submitted within the time limit of six month determined by the Law on the Constitutional Court.

The manner how the scope of the Law on the Oversight Board is determined clearly indicates that the Ombudsperson Institution is included within the scope. Pursuant to

Article 2 of the Law: *“The scope of this law includes Board and all institutions of the public administration employing Civil Servants”*. The term “civil servant”, as used in this law, “means a civil servant as defined in the Law on Civil Service” (*ibid.*, Article 3, paragraph 1, sub-paragraph 2).

Consequently, the scope of the Law on the Board is directly dependent on the definition of the term “civil servant” in the Law No.03/L-149 on Civil Service of the Republic of Kosovo, which stipulates as follows: *“This law regulates the status of Civil Servants and their employment relationship with the **institutions of the central and municipal administrations**”*; and: *“For the purposes of this law, the institutions of the central and municipal administrations that are subject to this law include: the administration of Assembly, the administration of the Office of the President, the Office of the Prime Minister and ministries, executive agencies, **independent and regulatory agencies** and municipal administrations”* (here, Article 1, par. 1 and 2; *emphasis added*).

Consequently, the Law on the Board gives the Board competences to supervise not only Government institutions but rather all types of institutions mentioned above. This includes the Ombudsperson Institution, as an independent institution.

The functions and competences that the law grants the Board for overseeing the Ombudsperson Institution, among other institutions, seriously breach this Institution’s constitutional independence. This constitutional independence is guaranteed under Article 132, par. 2 of the Constitution of the Republic of Kosovo, which stipulates as follows: *“The Ombudsperson independently exercises her/his duty and does not accept any instructions or intrusions from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo”*.

This Court, in its Judgment in the Case KO73/16, Constitutional Review of Administrative Circular No.01/2016, issued by the Ministry of Public Administration of the Republic of Kosovo on January 21, 2016, stressed: *“The Court notes that the Office of Ombudsperson is an independent institution which was created to ensure accountability from the public authorities vis-a.-vis the rights and freedoms of individuals. In fulfilling this role, the Institution independently exercises its mandate **without accepting any instructions or intrusions from any other state authority**”* (*ibid.*, par. 69; *emphasis added*).

By authorizing direct guidance and intervention to the Ombudsperson Institution, the law gives the Council the following right: *“to review and determine appeals filed by civil servants and candidates for admission to the civil service”* (Article 6, par. 1, sub-par. 1); *“supervises the selection procedure and determines whether the appointments of civil servants of high executive and management level have been conducted in accordance with the rules and principles of civil service legislation* (Article 6, par. 1, sub-par. 2); *“monitors public administration institutions employing civil servants regarding the implementation of the rules and principles of civil service legislation”* (Article 6, par. 1,

sub-par. 3); “*obtain access and examine files and any document regarding the implementation of the rules and principles of the civil service legislation*” (Article 7, par. 1, sub-par. 2); “*interview any civil servant who may possess information of direct relevance to the carrying out of the Board’s functions*” (Article 7, par. 1, sub-par. 3); “*requires and obtains from institutions any information necessary for the performance of its duties*” (Article 7, par. 1, sub-par. 4); “*decides (...)on repealing or annulling the administrative act*” (Article 18, par. 1, sub-par. 2); “*decides (...) on changing the administrative act*” (Article 18, par. 1, sub-par. 3); “*to annul the election procedure, when it determines that it was developed in violation of the rules and principles of legislation for Civil Service*” (Article 19, par. 5, sub-par. 2); and “*to monitor public administration institutions with Civil Servants employed every year (...)through regular monitoring made based on the annual plan for monitoring, and through extraordinary monitoring carried out in special cases related to serious breaches of the Civil Service legislation*” (Article 20, par. 1 and 2).

Likewise, according to the Law, all of these instructions and interferences of the Board are considered **mandatory** for the Ombudsperson. For example, after monitoring, “Relevant institution of the public administration is obliged to implement the recommendations of the Board, within the deadline set with the Board decision” (Article 20, par. 5; emphasis added).

Regarding Council decisions, the Law stipulates the following: “*Board’s decision is a final administrative decision and is implemented by the senior management level official or the responsible person from the institution that made the first decision towards the party*”; and: “*Non-implementation of the Board decision by the responsible person from the institution, constitutes **serious breach** of the work duties*” (Article 21, par. 1 and 3; emphasis added).

Finally, the Law stipulates: “*Public administration institutions with Civil Servants employed, as well as all other public officials or Civil Servants, that have competencies in administration of the civil service, or are informed about this field, are **obliged** to cooperate with the Board*” (Article 25, par. 2; emphasis added).

These provisions make it clear that the Ombudsperson cannot handle other decisions and actions of the Board merely as **recommendations** or **suggestions**. Rather, the law aims to force the Ombudsperson to comply with these decisions and actions.

In this regard, the law also stipulates sanctions for non-enforcement of decisions and for non-cooperation: “*If the responsible person from the institution does not implement the Board decision within the deadline foreseen in Article 21 of this Law, in all such cases, Chairperson of the Board should inform in written the President of the Assembly, relevant Committee on Public Administration and the immediate supervisor of the person responsible for non-implementation, within fifteen (15) days from the day of expiry of the execution deadline*” (Article 23, par. 1). Also: “*In cases when the person responsible for*

implementation of the Board decision is the Mayor of the Municipality, the relevant minister for local government and the Prime Minister of the Republic of Kosovo should be informed in written about the non-implementation of the decision” (Article 25, par. 3).

Moreover, non-implementation of decisions has financial implications: *“In cases of non-implementation of the Board decision (...), Chairperson of the Board issues a decision for withholding fifty percent (50%) of the monthly salary of the responsible person, until the implementation of the Board decision” (Article 24, par. 1).*

All of the provisions of the Law on the Oversight Board have both the ***purpose*** and the ***effects*** of forcing the Ombudsperson accept instructions and intrusions from the Oversight Board. Thus, the Law constitutes a direct violation of Article 132, par. 2 of the Constitution, which provides that the Ombudsperson shall specifically *“not accept instructions and interference from other bodies, institutions or authorities”*.

The Ombudsperson emphasizes that instructions and intrusions provided by the Law on the Oversight Board are not insignificant, but rather affect the very essence of independence of the Ombudsperson’s Institution, thus seriously breaching the ***organizational*** independence of this Institution.

According to Decision V-19-07 of the Constitutional Court of Albania in the case No. 43/13 (2007) (quoted by this Court in its Judgment in Case KO73/16, cited above), the organizational independence of the Ombudsperson includes the right to select the employees of the Institution without interference from other institutions: *“In addition to matters pertaining to the election, appointment or dismissal of senior executives or other senior officials (...), organizational independence is also expressed in their right to, in accordance with certain criteria, design and designate themselves their structure and organization, including the right to appoint directors and advisors, to determine the number and composition of cabinet high officials, the appointment of lower level high officials, the recruitment of staff at various levels, etc.”*

By giving the Board rights to interfere in all aspects of the recruitment process within the Ombudsperson Institution, in “election, appointment or dismissal of managers and other high officials” and in “appointing officials at lower positions”, the Law on the Board obliges the Ombudsperson to unconstitutionally “accept instructions and intrusions” by another organ, and also demises the organizational independence of this Institution.

Moreover, the Law on the Oversight Board has the same deficiencies as the Administrative Circular, which the Court annulled in the Case KO73/16 as unconstitutional. The deficiency was that the “the challenged Administrative Circular does not provide for the necessary distinction between the independent institutions and the other organs of the state” (*ibidem*, par. 95). According to the Court “the Government cannot suffice by applying identical criteria to those applied to the governmental agencies to be applied in the same manner to the independent institutions defined in the

Constitution” (*ibidem*, par. 74). On the contrary “a technical and a unifying approach disregards their constitutionally defined role and authority [Ombudsperson and Constitutional Court] and thus touches upon their independence accorded to them by the Constitution and further developed by their organic Laws and Rules of Procedure” (*ibidem*, par. 87).

The Law on Oversight Board is deficient as it imposes this “technical and unifying” approach against the Ombudsperson, granting the Board same competences over all institutions without making the necessary distinction “between independent institutions and other state organs”. Moreover, this “technical and unifying” approach differs for example when compared to the Law no. 03/L-149 on the Civil Service which expressly provides that: “During the implementation of this law, the constitutional autonomy of the institutions independent from the executive shall be respected” (*ibidem*, Article 3, par. 7). There are no such provisions in this Law that would emphasise that during the implementation of the Law on the Oversight Board, the “constitutional independence of the institutions independent from the Board shall be respected”. Without inclusion of such differentiation, the Law on the Oversight Board constitutes a violation of the constitutional independence, not only of the Ombudsperson, but rather for all independent institutions.

However, the Ombudsperson wishes to emphasize that, although according to the Constitution, it cannot be **obliged** to accept instructions and intrusions by the Board, or any other body, the Board may however play an advisory role to the Ombudsperson, regarding issues within the scope of the Board, e.g. carrying out employment competition. However, it should be the Ombudsperson Institution who ultimately decides on whether the Boards suggestions will be implemented or not. In other words, for the purpose of complying with the constitution, these suggestions should simply remain **suggestions**, and not mandatory instructions, as they are currently presented in the existing law.

This differentiation, between non-obligatory and obligatory suggestions, is important for assessing the constitutionality of the different provisions of the Law. For example, the Ombudsperson has no criticism or objection to Article 25, par. 1 of the Law, which defines: “*The Board cooperates with public administration institutions in order to conduct its functions in accordance with the law*”. On the contrary, the Ombudsperson welcomes such cooperation, on voluntary basis. However, paragraphs 2 and 3 of this Article, which **oblige** the Ombudsperson to cooperate with the Oversight Board constitute a violation of the Ombudsperson independence, and should therefore be repealed as unconstitutional

As noted above, the Law grants the Board with powers to oversee any institution considered to be part of the civil service, pursuant to the definition provided under the Law on Civil Services, including “the Administration of the Assembly, the Administration of the Office of the President, the Office of the Prime Minister and the Ministries,

executive agencies, independent and regulatory agencies and municipal administrations” (Law on the Civil Service, Article 1, par. 2).

However, this extraordinarily broad scope of the Board is in direct contradiction to its narrow scope envisaged within the Constitution.

The Council is mentioned only once in the entire Constitution, i.e. Chapter VI (“the Government of the Republic of Kosovo”), respectively in Article 101 (“Civil Service”) of this Chapter. According to Article 101, par. 2: *“An independent oversight board for civil service shall ensure the respect of the rules and principles governing the civil service, and shall itself reflect the diversity of the people of the Republic of Kosovo”*.

The Constitution does not explicitly define the term “civil service” nor does it stipulate employees of which institution are considered part of this “civil service”. However, even in the absence of such a definition, the fact that Article 101 is included within Chapter VI clearly shows that, **at the constitutional level**, the civil service is considered part of the **Government**.

Not only in this case, but rather throughout the entire structure of the Constitution, the classification of institution based on the Chapter they are included in constitutes an important principle of interpretation. For example, the constitution does not, in any of its provisions, expressly stipulate that the Auditor General has the status of an independent institution (*see* Constitution, Articles 136-138). However, the fact itself that Article 136 (“Auditor General in Kosovo”) is included under Chapter XII (“Independent Institutions”) suffices to confirm the status of this institution as an Independent Institution, although there is no such explicit determination.

Based on the same rationale, the fact that Article 101 (“Civil Service”) is included under Chapter VI (“Government of the Republic of Kosovo”) suffices to confirm the status of civil service as part of the Government of the Republic of Kosovo.

Consequently, when the Constitution grants the Board competences to supervise the “*civil service*”, the latter should be construed as **part of the Government**. The Constitution does not grant the Board any legal basis to supervise “*civil service*” in the broad meaning used by the Law on Civil Service. Therefore, when the Law on the Oversight Board defines that the scope of the Board includes not only Government Institutions but other institutions as well, including therein the Ombudsperson Institution, it makes the Board exceed its constitutional competency, which is to **exclusively** supervise civil service within the Government.

Furthermore, considering the fact evidenced above, the Constitution forces the Ombudsperson not to accept “instructions and intrusions from other bodies, institutions or authorities”, and it is very important not to interpret the Constitution in a way that would grant the Board competences to supervise the Ombudsperson Institution. Otherwise, there would be a direct contradiction between Article 101 of the Constitution, which would

grant the Board rights to instruct and intrude in the Ombudsperson Institution, and Article 132 which prohibits that very same thing. For the purpose of avoiding this contradiction, it is necessary for the term “civil service” to be interpreted in a limited manner, thus not including the personnel of the Ombudsperson Institution.

This narrow interpretation is also confirmed by Enver Hasani and Ivan Cukalovic in their guide, *Constitution of the Republic of Kosovo: Commentary*. In this Commentary, they state that the civil service “is institutionally dependent on the **government**” and that it “exercises (...) the function of administrative implementation of **government** administrative tasks” (ibid, p. 470; emphasis added). This interpretation once again confirms that the only constitutional competence of the Board is to oversee the Government institutions, and no other institutions outside it, such as the Ombudsperson Institution.

Furthermore, it must be stated that this interpretation is not at all hindered by the fact that the Law on Civil Service provides a broader understanding of the term “civil service”. One of the important principles of interpretation is that constitutional terms have an **autonomous** meaning not depended of lower legal acts.

This principle has been applied within the verdicts rendered by the Court. We can use the example of the interpretation of the term “criminal charges” under Article 31, par. 2 of the Constitution which stipulates that: “Everyone is entitled to a fair and impartial public hearing ... as to any **criminal charges** against him or her” (added emphasis). While interpreting this provision, the Court has affirmed that classification of an act as “criminal, or not criminal” at **the level of law**, shall not be crucial to the case, if such act is considered “criminal” at **constitutional** level. In other words, state authorities cannot deny the right granted under Article 31 of the Constitution simply by reclassifying and redefining a criminal offence as a minor offence (see the Judgement of this Court in the Case KO12/17, *Assessment of the Compatibility with the Constitution of Articles 55 (paragraphs 4 and 5), 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, and 68 of the Law No. 05/L-087 on Minor Offences (2017)* par. 61-62). Similarly, and pursuant to the same rationale, the term “civil service” has an autonomous constitutional meaning, which includes solely the staff of Government institutions. This narrow constitutional understanding cannot be circumvented by giving the term a broader meaning in a law.

For this reason, by giving the Board powers to supervise institutions falling outside the Government, the Law directly contradicts Chapter VI of the Constitution of the Republic of Kosovo, which clearly defines civil service as part of the Government.

Article 11, par. 3 of the Law defines: “*Regarding the decision-making within the constitutional and legal functions of the Board, the Chairperson and members of the Board enjoy immunity from prosecution, civil lawsuit or discharge*”.

Such broad immunity is not grounded in the Constitutions. The Constitution expresses clearly and in detail the state officials that enjoy immunity and the extent of such immunity in any case. In this regard, according to the constitution, only deputies of the Assembly (Article 75), the President (Article 89), members of the Government (Article 98), judges and lay-judges (Article 107), judges of the Constitutional Court (Article 117) and the Ombudsperson (Article 134) enjoy immunity. On the contrary, the Independent Oversight Board is not granted any type of immunity in the text of the Constitution. For this reason, according to the practice of this Court, they should not enjoy any sort of immunity.

In the Judgement rendered on the Case No KO 98/1 *concerning the immunities of Deputies of the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo and Members of the Government of the Republic of Kosovo*, this Court has found that, inter alia, the issue of whether Article 22 (3) of the Regulation on the Rules and Procedures of the Assembly, which provides that “A member of the assembly shall enjoy immunity from ... prosecution until the Assembly takes a decision on waiving his/her immunity”, was in compliance with the Constitution or not. The Constitutional Court noted that this provision, concerning prosecution, is null and void as **there is no such immunity** against criminal prosecution for the deputies in the Constitution. (*ibidem*, par.70; added emphasis);.

Such Conclusion of the Court is based on a key principle: ***Immunity cannot be granted with other legal acts, unless so foreseen by the Constitution itself***. The Constitution is the sole legal act that determines officials who enjoy immunity and the extent of such immunity as well. In other words, the Constitution has the first and final say with regard to the issue of state officials’ immunity.

Based on the abovementioned arguments, the Ombudsperson of the Republic of Kosovo, by means of this submission, requests that the Court imposes an interim measure for the immediate suspension of contested provisions, respectively Articles 2, 3 (paragraph 1, subparagraphs 2, 3 and 4), 6, 7 (paragraph 1, subparagraph 2, 3 and 4) Article 11 (paragraph 3) 18, 19 (subparagraph 5, 6, 7 and 8), 20 (paragraph 1), 21, 23, 24 and 25 (paragraph 2 and 3) of the Law No. 06/L-048 on the Independent Oversight Board for the Civil Service of Kosovo, ***or at least suspension of the implementation of these provisions in relation to the Ombudsperson.***

The Ombudsperson considers that the arguments provided within this referral provide more than *prima facie* grounds for repealing the challenged provisions.

In the absence of an interim measure, the functioning of the Ombudsperson Institution would be severely impaired by the continuous intrusions of the Oversight Board in this institution. So far, the Oversight Board has annulled the outcomes of four vacancy competition announced by the Ombudsperson. The lack of sufficient staff to handle citizens’ complaints addressed to the institutions will render impossible for the current

staff to pay due attention to such requests, including therein urgencies. Furthermore, the consistent intrusions of the Oversight Board will cause unrecoverable damages for the citizens of the Republic of Kosovo, particularly in cases of urgencies. For the purpose of avoiding these damages, the Ombudsperson considers to be, with all due respect, more than necessary for the Court to immediately suspend the contested provisions, which is hindering the efficient work of the Ombudsperson and its employees.

The Ombudsperson often serves as the last thread of hope for victims of human rights violations to address such violations and find a solution. The inability to operate normally and exercise the Ombudsperson mandate, as the sole national institution for human rights, would render impossible the protection of human rights and fundamental freedoms of the citizens of the Republic of Kosovo. For this reason, the Ombudsperson considers that the approval of the interim measure, with the purpose of ensuring faster staffing of the Institution is clearly to the public's best interest.

Due to the abovementioned reasons, the Ombudsperson proposes that Articles 2, 3 (paragraph 1, sub-paragraphs 2, 3 and 4), 4 (paragraph 1) 6, 7 (paragraph 1, sub-paragraphs 2, 3 and 4), 11 (paragraph 3), 18, 19 (sub-paragraphs 5, 6, 7 and 8), 20 (paragraph 5), 21, 23, 24 and 25 (paragraphs 2 and 3) of Law no. 06/L-048 on the Independent Oversight Board for Civil Service of Kosovo, shall be repealed and immediately suspended until the final decision of this Court.

International cooperation

The National Human Rights Institutions (NHRIs), established in accordance with the standards set out in the Paris Principles⁴⁴¹, play an essential role in overseeing and promoting the effective implementation of international human rights standards at national level, which is being increasingly appreciated by the international human rights system.

The relationship between the NHRI and the international human rights system is a mutual and very important relationship. On one hand, the international human rights system assists and promotes NHRIs and has adopted the Paris Principles as key normative standards for their functioning, while on the other hand, the NHRIs contribute to the international human rights system by participating at sessions of the United Nations Human Rights Council, using the appeal procedure to bring to the attention of the Council serious human rights violations, or by cooperating with other United Nations organs.

The Council of Europe's Commissioner for Human Rights, Ms. Dunja Mijatović also emphasized the importance of NHRI in the international system and in her statement on the 25th anniversary of the adoption of the Paris Principles regarding the importance of emphasized as follows: *“Independent and effective NHRIs are a jewel of the human rights system. They bring international human rights obligations home to make them a reality in people’s daily lives, and act as checks and balances to guard democracy and the rule of law. We need to protect NHRIs so that they can be strong and protect us all.”*⁴⁴²

The Ombudsperson Institution, as an independent constitutional human rights institution in Kosovo, is committed to act as a bridge in the exchange of best international human rights practices. Therefore, one of its priorities has continued to be cooperation with peer institutions and other international organizations for the protection and promotion of human rights.

However, as the Republic of Kosovo has not yet joined the United Nations, the Ombudsperson Institution has limited opportunities to contribute to the international human rights system due to political barriers. However, as an independent constitutional institution, it is committed to cooperating and contributing wherever it is possible, but also to prepare its capacities to be able, in the future, whenever membership occurs, to take over its obligations under the international human rights system.

⁴⁴¹ Paris Principles are the minimum criteria that a National Human Rights Institution has to fulfil in order to be considered credible, independent and effective in the international arena

⁴⁴² Paris Principles at 25: Strong National Human Rights Institutions Needed More than Ever, <https://www.coe.int/en/web/commissioner/-/paris-principles-at-25-strong-national-human-rights-institutions-needed-more-than-ever>, (25.01.2019)

Knowing the importance of international cooperation and interaction with various international human rights organizations and networks, the Ombudsperson Institution has participated in a series of meetings, which are presented in the following table.

No.	Description of activity	Date
1.	ENNHRI meeting on the project “NHRIs in conflict and post-conflict situations” Brussels, Belgium	30-31 January 2018
2.	Training on the Charter of Fundamental Rights of the European Union Agency for Fundamental Rights Vienna, Austria	6-7 February 2018
3.	Regional Workshop: Addressing Discrimination and Anti-Gypsyism Berlin, Germany	13-14 February 2018
4.	Scientific Conference on “The role of the National Human Rights Institutions in administrative and judicial procedures”, Sarajevo, Bosnia	15-16 February 2018
5.	Workshop on the Role of National Human Rights Institutions in Promoting and Protecting the Human Rights of Internally Displaced Persons Geneva, Switzerland	20 February 2018
6.	Annual Meeting of the Global Alliance of National Human Rights Institutions (GANHRI) Geneva, Switzerland	21-23 February 2018
7.	Workshop on monitoring and reporting on human rights Chişinău, Moldova	5-7 March 2018
8.	International Conference on “Monitoring of Retirement Homes” Trier, Germany	12-13 March 2018
9.	Workshop on strategy development Belgrade, Serbia	12-13 March 2018
10.	Fifth Regional Forum on Rule of Law for South Eastern Europe Skopje, Macedonia	16-17 March 2018
11.	Regional Training on Monitoring of Forced Return Belgrade, Serbia	9-13 April 2018
12.	“Training of Escorts in the migrants return process” (OI in the capacity of the trainer) Danilovgrad, Montenegro	18-19 April 2018

13.	National Preventive Mechanisms Forum Astana, Kazakhstan	23-26 April 2018
14.	Meeting of South Eastern Europe NPMs on: "Prevention of suicides and overdoses at detention centres as well as the status of NPM staff in EU member states" Podgorica, Montenegro	29-30 May 2018
15.	Meeting of the CoE-FRA-ENNHRI-EQUINET Platform on social and economic rights Belfast, Northern Ireland.	15-16 May 2018
16.	Meeting on the 20th anniversary of the establishment of the Macedonian Ombudsperson and the Meeting of the Association of Mediterranean Ombudsmen on the topic: "Ombudsperson as a Protector of Social, Cultural and Environmental Rights" Skopje, Macedonia	30-31 May 2018
17.	Workshop on the review of the Family Law regarding special forms for the protection of children without parental care Tirana, Albania	24-28 June 2018
18.	Study visit for the staff of the National Preventive Mechanism Warsaw, Poland	24-29 June 2018
19.	Study visit Tirana, Albania	20-22 June 2018
20.	Swedish Institute Summer Academy for Young Professionals Western Balkans 2018	3-16 August 2018
21.	International Visitor Leadership Program related to "Human Rights and Civil Rights of Marginalized Communities" United States of America	6-24 August 2018
22.	Training "Collective redress procedures through orders" Bratislava, Slovakia	3-6 September 2018
23.	Study visit within the project with the civil society "Together for social inclusion in Kosovo" Prague, Czech Republic	9-14 September 2018
24.	Work Forum on Inter-Institutional Cooperation: Preventing mistreatment in mental health and social care institutions Bečići, Montenegro	17 – 19 September 2018
25.	The 22nd annual conference of the European Network of Ombudspersons for Children and the Annual Conference on Children's Mental Health Paris, France	19-21 September 2018

26.	The General Assembly of the International Ombudsperson Institute Brussels, Belgium	1-3 October 2018
27.	ENNHRI Working Group Meeting on the Convention on the Rights of Persons with Disabilities Riga, Latvia	2-4 October 2018
28.	Annual Conference on “We seek the future despite opportunities” Skopje, Macedonia	4-8 October 2018
29.	Meeting of the OSCE General Council Vienna, Austria	9 – 11 October 2018
30.	Face-to-face meeting within the framework of the joint EU/Council of Europe's Project against Economic Corruption risk (PECKII) Strasbourg, France	11-12 October 2018
31.	Meeting on self-initiated cases Belfast, Northern Ireland	22-23 October 2018
32.	ENNHRI General Assembly and Annual Conference 2018 Athens, Greece	24-25 October 2018
33.	Study visit on best German practices on the independent monitoring of the condition of juveniles in correctional facilities and provision of community services that have an impact on the lives of children through the development and delivery of prevention, protection and reintegration services Berlin, Germany	22-26 October 2018
34.	The Third Joint Conference of Equality Bodies Tirana, Albania	29 October 2018
35.	Regional Conference “Roma Inclusion After the Decade of Roma Inclusion: Current situation and future challenges” Skopje, Macedonia	7-8 November 2018
36.	Meeting of the ENNHRI Asylum and Migration Working Group Brussels, Belgium	13-14 November 2018
37.	The Regional Conference “Tolerant and Inclusive Societies in the Western Balkans” Podgorica, Montenegro	14-15 November 2018
38.	Balkan Ombudsmen Forum, on “Human Rights Protection: Cooperation Challenges in the Balkans” Sofia, Bulgaria	19 November 2018

39.	Meeting of the CoE-FRA-ENNHRI-EQUINET Platform on social and economic rights Strasbourg, France	27-28 November 2018
40.	International Conference on Freedom of Expression Budapest, Hungary	26-27 November 2018
41.	Regional Conference “Advocacy for Human Rights and Non-Discrimination by National Human Rights Institutions in the Western Balkans” Sarajevo, Bosnia	29-30 November 2018
42.	Community of Practice Meeting on engagement of National Human Rights Institutions in rights to sexual and reproductive health Istanbul, Turkey	5-6 December 2018
43.	Regional roundtable “Preventing migration and effective alternatives” Podgorica, Montenegro	12 December 2018
44.	Workshop on finalizing the SAA Program - Political Criteria and Rule of Law Tirana, Albania	9-12 December 2018
45.	Workshop on “Functional Review of the Justice Sector as the forerunner of the process towards European Integration” Durrës, Albania	14-16 December 2018

Table: Participation in international training

Cooperation with counterparts and other international organisations

Cooperation with counterparts and other international organisations in Kosovo is very important for the work of Ombudsperson Institution (OIK). We have the pleasure to report that cooperation with counterparts from different places, with network and international organisations abroad and those which are with mission in Kosovo, is extremely well. Within this cooperation, a number of activities were realised which are elaborated below.

In the previous session it was reported, that OIK during 2018 participated in 45 different international activities. Participation in these activities was also a good opportunity to exchange information and best practices in order to start to implement the same in Kosovo.

Below are some of the most important international meetings:

On 13 and 14 February 2018, the Ombudsperson participated in the Scientific Conference on “The role of the National Human Rights Institutions in administrative and judicial procedures”, organized by the Ombudsperson of Bosnia and Herzegovina in cooperation with the Council of Europe, the Faculty of Law of the University of Sarajevo and the

Faculty of Law of the University of Banja Luka. The conference was held in the Assembly in Sarajevo, Bosnia and Herzegovina. This conference aimed at exchanging scientific, professional and practical knowledge of the position of the Ombudsperson and the equality bodies in administrative and judicial procedures.

The Ombudsperson, Mr. Hilmi Jashari, in this conference contributed with a scientific article on "The role of the National Human Rights Institutions in administrative and judicial procedures" the case of the Republic of Kosovo. Through this article, the Ombudsperson argues that NHRI *must enjoy at least four specific competencies in relation to judicial authorities: 1) the competence to refer laws and other normative acts to the Constitutional Court for abstract review; 2) the competence to demand the repealing of administrative acts; 3) the competence to present amicus curiae information in unresolved cases before the courts; and 4) the competence to participate in monitoring the execution of court decisions. He also argues that in countries with relatively new or less developed democratic traditions, it is even more important that NHRIs be given these powers.*

It is also worth mentioning the meeting of the Association of Mediterranean Ombudsmen with the topic "The Ombudsperson as a Protector of Social, Cultural and Environmental Rights", organized for the purpose of marking the 10th anniversary of the establishment of the Association of Mediterranean Ombudsmen (AOM) and the 20th anniversary of the establishment of the Ombudsperson of the Republic of Macedonia held on 30 and 31 May 2018 in Skopje, Macedonia.

During this meeting, the Ombudsperson Mr. Hilmi Jashari brought the discourse of the Ombudsperson Institution of the Republic of Kosovo regarding the protection and promotion of the right to a safe and healthy environment and briefly presented the general state of realization of this right in the Republic of Kosovo. He committed that the Ombudsperson Institution will continue to exercise its mandate with devotion regarding improvement of the quality of life of citizens and protection of the environment for future generations, and in particular to strengthen the capacities of the institution for the protection of the right to a safe and healthy environment, so that the interpretation of the right is done in harmony with ECtHR decisions.

As planned, the Association of Mediterranean Ombudsmen, during the meeting of the General Assembly put the letter of the Ombudsperson, addressed on 14 November 2017 to the Ombudsmen networks and Human Rights Institutions, in the agenda, requesting and proposing to jointly undertake steps towards the development of a set of unified standards and best practices for NHRIs around the world, which can serve as a source of useful and non-mandatory advice to guide NHRI work. These proposals were discussed in detail and were highly praised by all members of AOM, who proposed to explore opportunities for identifying actions by the Association of Mediterranean Ombudsmen (AOMs) in order to accomplish these proposals.

The Ombudsperson, as a voting member of the International Ombudsmen Institute (IOI)⁴⁴³ participated in the Conference "The Ombudsperson in an Open and Participating Society" and at the General Assembly of Europe of the International Ombudsmen Institution (IOI), organized by the Ombudsperson of Belgium and the International Ombudsmen Institution, which took part on 1-3 October 201 at the Parliament of Belgium, in Brussels.

While praising the Ombudsperson's support, this year, ERA - LGBTI Equal Rights Association for Western Balkans and Turkey, invited the Ombudsperson to contribute to the Annual Conference on "We seek the future despite opportunities", which took place on October 4-6, 2018 in Skopje, Macedonia. At this conference, the Ombudsperson participated, together with his deputy, Marija Radulovic.

In the capacity of the panellist, the Ombudsperson spoke of the role of the National Human Rights Institutions in promoting the LGBTI community involvement, namely the importance of the role of the Ombudsperson Institution of the Republic of Kosovo in protecting the rights of LGBTI persons. Further, he presented two main goals:

- *how the National Human Rights Institutions (NHRI), such as the Ombudsperson Institution of the Republic of Kosovo, can play a vital role in protecting the rights of LGBTI people in order to promote their full involvement in the society; and*
- *how the work of this Kosovo institution has progressively expanded to address the specific needs and interests of transgender people that may differ from those of lesbians, gays and bisexuals.*

The two points were reflected in a series of examples from the work of the Ombudsperson Institution.

While he concluded that there are three important tools available to National Human Rights Institutions to promote full social inclusion of LGBTI persons:

- *they can get a strong public stance, including through the media, in protecting the rights of LGBTI persons and promoting their involvement;*
- *they may use their monitoring authority over other state institutions to ensure full respect for the human rights of LGBTI persons, particularly by police and other investigative bodies;*
- *at least in the case of Kosovo, the Ombudsperson is able to submit information regarding amicus curiae in the courts to support the legal rights of the LGBTI community.*

These actions constitute a powerful force in combating discrimination and promoting full equality and the involvement of the LGBTI community.

⁴⁴³ The Ombudsperson Institution is an institutional member with voting right since 7 December 2012. For more information about the International Ombudsmen Institute, visit the following website: www.theioi.org

This presentation and analysis of the Ombudsperson was welcomed and highly praised by all participants of this conference.

The Ombudsperson continued his participation and contributed to several other international meetings. It is worth mentioning that, inter alia, at the invitation of the Council of Europe, the Ombudsperson, together with his deputy, Edona Hajrullahu, attended the Regional Conference "Tolerant and Inclusive Societies in the Western Balkans", held on 14 and 15 November 2018 in Podgorica, Montenegro. Establishing standards, monitoring and cooperation in the field of anti-discrimination, fighting hate speech and the protection of minority rights were the topics of discussion of the meeting. Among other things, the Ombudsperson, in the framework of the panel "Successful initiatives for the protection of minorities in the Western Balkans" presented the legal framework in force as well as the institutional mechanisms for the protection of minorities in the Republic of Kosovo.

Furthermore, it should be noted that with the support of the Council of Europe a study visit to the Polish Ombudsperson was carried out, focusing on the exchange of good international practices referring to the additional mandate of the Ombudsperson as a National Mechanism for the Prevention of Torture. This visit was carried out within the framework of the project "Strengthening of the National Mechanism for the Prevention of Torture in Kosovo", with the support of the Council of Europe, the Government of Switzerland and the Government of Norway.

There is good cooperation with other peer institutions in the region and beyond, with which the Ombudsperson Institution of the Republic of Kosovo is in permanent communication regarding issues of common interest.

Projects with the support of international organisations

During 2018, the OIK continued to co-operate with the European Commission, the Council of Europe, the OSCE, UNICEF, UNMIK, UNDP and many other organizations operating in the country, for the purpose of implementing various projects related to the promotion, protection and education regarding human rights, who have provided unsparing assistance for strengthening the institution, developing its capacities and promoting mandates.

One of these organizations is the Council of Europe, which, for many years, has helped the institution regarding strengthening of its role and mandate, as well as capacity building. The project "Strengthening the National Preventive Mechanism in Kosovo", supported by the Council of Europe, the Government of Switzerland and the Government of Norway, which started in July, has continued successfully this year. This project will be completed in April 2019. This project aims at developing the capacities of the National Mechanism for the Prevention of Torture (NMPT), established within the Ombudsperson Institution, for the implementation of international and European

standards in the field of the prevention of torture and ill-treatment and to raise awareness of relevant stakeholders on the role and mandate of the NMPT.

Also, the engagement of 4 external legal advisers within this project has given a high result in capacity building of the institution to face a broad mandate, as is the mandate of the Ombudsperson Institution, after the entry into force of the Human Rights Legal Package.⁴⁴⁴ All of these activities have had a lasting impact on improving performance and achieving the mandate of the Ombudsperson Institution.

This year, the Organization for Security and Co-operation in Europe (OSCE), as in the past, provided support to the OIK with several activities. Within this cooperation, these following activities were carried out:

- The Ombudsperson, together with a group of non-governmental organizations, of various profiles, represented by non-majority communities, people with disabilities, youth forums, women's community and marginalized groups, in April 2018, held a workshop within which the joint action plan drafted in 2017 was reviewed, and the priorities for 2018 were set.
- During June, a joint roundtable was held with non-governmental organizations, civil society and representatives of public institutions on the right of access to public documents, whereby the legal framework in force regulating this field, the OIK practice in implementation of the Law on Access to Public Documents as well as the challenges and constraints faced by citizens in exercising this right were discussed.
- During July - August 2018, it held a series of workshops with the name "I am HUMAN and I have RIGHTS" in 10 (ten) municipalities of Kosovo, respectively in Pristina, Prizren, Gjakova, Ferizaj, Mitrovica - including the northern part - as well as Peja, Gjilan, Dragash and Gracanica. The purpose of these workshops was to expand knowledge and raise awareness on human rights, equality and non-discrimination issues among young people aged 15-25. Workshops were held in different regions of Kosovo, with particular attention paid to the inclusion of young people of all communities in the country, such as Serbs, Turks, Roma, Ashkali, Egyptians, Bosnian and Gorani. The workshop was also aimed at promoting the "Human Rights through Art" competition, for the best poem and photography on human rights, organized by the OSCE. The activity aimed at presenting human rights through art, and encouraging young people to think through art, human rights and their violations or limitations. The activity was completed on 10 December 2018, on the International Human Rights Day, with a

⁴⁴⁴ For more information on the legal framework based on which the OIK fulfills its mandate, see the following link: <https://www.oik-rks.org/legjislacioni/ligjet/>

poetry exhibition and photographs of young people from all over Kosovo, whereby awards were given for the best works of art.

- During 2018, the OSCE Mission in Kosovo, in the framework of the project "Promoting legal and judicial sectors by respecting the right to equality before the law, regardless of gender, ethnicity, religion or other personal characteristics", has supported the Ombudsperson in the development of the new institution web site and online platform for NGO reports. In this regard, the new OIK website and the accessible platform on the OIK web site have been launched. The webpage is designed to provide a comprehensive and non-limiting inter-institutional access to the platform. This platform will display the reports and recommendations of civil society organizations that work and contribute to human rights in Kosovo.

In the framework of cooperation with UNICEF, joint meetings were continuously organized with the aim of increasing the level of respecting of children's rights. Meanwhile, with the support of UNICEF, two OIK representatives participated in a study visit, which took place on 23-24 October 2018 in Germany. The purpose of this visit was to get acquainted with the work and experiences of German governmental and nongovernmental institutions in the area of juvenile delinquency.

The cooperation with Terre De Hommes has continued during 2018, whereby they provided support to the OIK regarding staff training on children interviewing techniques. They are also in the process of establishing procedures regarding admission, handling and addressing of complaints related to children's rights cases which will be very useful to the OIK Department of Children's Rights.

UNMIK has continued its cooperation and support for the OIK this year by financing a media campaign through media debates (on TV channels and radios operating in the South and North Mitrovica), publication and distribution of brochures with the aim of informing citizens of South and North Mitrovica about human rights as well as the role and mandate of the OIK. This support has had a positive effect contributing to the information of citizens, whereby it was noted that this was one of the reasons we have evidenced an increase in the number of complaints to OIK from the citizens of this region.

While during this year (20 March - 19 July 2018), UNDP has provided support to the Ombudsperson Institution through engagement of a legal adviser in order to increase the institution's capacity to identify systematic cases filed with the courts to act according to the amicus curiae mandate or even by contributing to the Ombudsperson's opinions for to be addressed to Basic Courts, the Court of Appeals or the Supreme Court.

Membership in international organisations

Membership in mechanisms dealing with human rights is known as a very important tool in the work of national human rights institutions, and it has extraordinary impact on the advancement of international cooperation. It also provides opportunities to improve knowledge regarding human rights through the exchange of best practices which are unveiled at meetings and joint activities organized throughout the year.

In addition to this, as was reported in the report of previous year, the OIK has also joined the following international mechanisms:

- International Ombudsmen Institute (IOI)⁴⁴⁵
- European Ombudsmen Institute (EOI)⁴⁴⁶
- European Network of National Human Rights Institutions (ENNHRI)⁴⁴⁷
- South East Europe Children's Rights Ombudsperson's Network (CRONSEE)
- Association of Ombudsmen & Mediators of the Francophonie (AOMF)⁴⁴⁸
- Association of Mediterranean Ombudsmen (AOM)⁴⁴⁹
- Accession to the Sarajevo Declaration for Cooperation⁴⁵⁰
 - Network of Ombudsmen for Environmental and Human Rights⁴⁵¹

The OIK is also invited to participate in activities of other mechanisms and networks mentioned below where, due to political barriers, it is only an observer member:

- Global Alliance of National Human Rights Institutions - GANHRI (which reviews the compliance of NHRIs with the Paris Principles)
- European Network of Ombudspersons for Children - ENOC
- South Eastern Europe Network of National Mechanisms for the Prevention of Torture (in the framework of which the OIK participates in various meetings aimed at cooperation, promotion and exchange of experience in the field of protection of the rights of persons deprived of their liberty)

⁴⁴⁵ For more information about the International Ombudsmen Institute, visit the following web site: www.theioi.org

⁴⁴⁶ For more information about the European Ombudsmen Institute, visit the following web site: www.eoi.at

⁴⁴⁷ For more information about the European Network of National Human Rights Institutions, visit the following web site: www.ennhri.org

⁴⁴⁸ For more information about the European Ombudsmen Institute, visit the following web site: <http://www.aomf-ombudsmans-francophonie.org/>

⁴⁴⁹ For more information about the Association of Mediterranean Ombudsmen, visit the following web site: www.ombudsman-med.org

⁴⁵⁰ This statement has formalized the cooperation and activities of all Ombudsman institutions of the region. The Ombudsperson Institution in Kosovo has signed this Declaration on 4 April 2014.

⁴⁵¹ This network was established in 2017 with the following signatory countries: Bosnia, Croatia, Kosovo, Montenegro, Macedonia, Serbia and Slovenia

Reporting to international mechanisms

The OIK annually receives questionnaires of different topics from international organizations to report on the human rights situation in Kosovo. This year, five questionnaires were submitted, as listed in the table below.

Date	Topic of report/survey	Organization/institution receiving the report
17 January 2018	NHRIs and their role in promoting and protecting the rights of displaced persons	OHCHR
19 January 2018	Role of NHRIs in promoting gender equality and empowering women in rural areas	GANHRI
7 March 2018	Rights of the elderly	ENNHRI
30 March 2018	Rights of persons with disabilities and establishment of higher accessible health standards	United Nations Special Rapporteur on Rights of People with Disabilities
17 August 2018	Rights of persons with disabilities	ENNHRI

Table: List of reports submitted to international organizations

Communication with the public and the media

The Ombudsperson, in view of fulfilling the mission as a protector and guarantor of human rights and freedoms in the country, highly appreciates the work and role of the media and sees them as an important ally in the realization of its mission.

Public appearances of the Ombudsperson, his deputies, as well as other associates of the institution, have been numerous and occasional.

Apart from the press conferences held in the institution, documents and recommendations were also presented through press releases to the respective institutions and bodies of different levels, in order to have proper feedback in the function of good administration.

In promoting the work and activities of the institution, social communication networks - Facebook - were used as an alternative means of communication. The importance of social media cannot be overlooked as a very good and quick opportunity to be as close and as direct to the public as possible. The OIK has an official website as an alternative to communicating with citizens via Facebook.

In addition, the direct contacts of the Office as well as the Ombudsperson and his associates with journalists have played an important role in creating an atmosphere of cooperation and correctness with the media.

The OIK's credibility climate was also created through the integrity and accuracy of information made public by the institution.

The promotion of OIK's work and activities in the protection of human rights was made through press conferences, press releases and notices on the work of the institution, pronouncements and interviews of the Ombudsperson and his staff provided in the print media, participation in various debates on public and private radio and television programs related to human rights. The OIK has also promoted the work of the institution through the publication of various brochures aimed at awareness raising of citizens and relevant human rights institutions.

The "Platform for NGO Reports" on the institution's website has been conceived as a good opportunity to increase the level of democratic involvement of citizens, that is, relevant NGOs and various reports of NGOs regarding the protection and the state of human rights are published therein.

During the reporting year, the Office of Public Communication, in accordance with the obligations and objectives set out in the Strategy of the Office of Public Relations and Media 2016 - 2018, has focused on increasing the continuous and proactive information of the citizens, awareness raising regarding the rights and freedoms guaranteed in the Republic of Kosovo, and the role and mandate of the Ombudsperson.

In this regard, electronic reports, opinions, announcements and communications in electronic format, officials of public authorities, central and local level, relevant NGOs are distributed as separate publications:

- Annual Report 2018
- NMP Report
- Summary of reports of 2018

Total 61 reports were published, of which 33 reports on cases, 14 ex-officio reports, and 14 reports of the National Mechanism for the Prevention of Torture (NMP). Their publication reflected in monthly statistics is presented in Table 1.

Table 1: 46 Report/ opinions/Amicus Curiae published on the official website by month

2018	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	Total
Case reports	-	1	1	2	23	-	2	-	-	-	4	-	33
Ex-officio reports	1	1	2	3	-	-	1	1	1	2	1	1	14
NMP reports	3	-	1	-	1	1	-	1	1	4	2	-	14

These reports were published on the official OIK website accompanied by summary information. Further, reports and information were forwarded to the media and also distributed via the official website and the OIK profile on Facebook.

In addition, in the reporting period from 1 January to 31 December 2018, information and other related announcements related to the Ombudsperson's activities and engagements were distributed through the OIK's official website, electronic mail and the OIK profile page on Facebook. Their total number reaches 79. Disaggregated in numbers by month, they appear as in Table 2.

Table 2: 79 Information/statements/notices published on the website, by month

	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
2018	5	4	11	6	10	5	4	3	7	8	9	7
TOTAL	79											

Having the information of the public at large as a priority, the Ombudsperson and his associates have appeared in 168 media presentations, on radio and television, online portals and written media (this number does not include the further distribution or posting

of the same, nor cases where the media, both traditional and new, referred to the Ombudsperson's views and recommendations).

Table 3 lists the distribution of media coverage by media, based on requests by the media and journalists for pronouncements, interviews, open shows with citizens' questions, debates, etc. It should be noted that the growing presence of the Ombudsperson in the media is mostly due to the proactive interaction of the OIK with the media and its effect on the public interest, mainly for cases handled by the OIK or activities where the Ombudsperson has presented his attitudes.

Table 3: Different news published and transmitted on the media, by medium

OIK on the media-news			
Kosovapress News Agency	4	Portali Arberesha.com	2
BIRN/Kalxo.com	6	Periskopi	1
Ekonomia Online	1	Telegrafi	7
Bota Sot Newspaper	6	Insajderi	3
Epoka e Re Newspaper	5	Indeksonline	8
Koha Ditore Newspaper	2	Koha.net	3
Kosova Sot Newspaper	2	Kosova.info	2
Zeri Newspaper	2	Zeri.info	4
Express Newspaper	2	Bota sot	1
Metro Newspaper	1	Faks.mk	3
RTK 1	6	Lajmi.net	3
RTK 2	2	Zhurnal.mk	1
KTV	5	Time Ballkan	2
TV 21	1	Albakos	1
Klan Tv	2	Tribuna Newspaper	1
TV Dukagjini	1	Faks.al	1
TV 7	2	Kosova Today	1
RTV Lira	1	Kosova e Lire	1
RTV Gracanica	1	Kosovo24sata	1
TV Plus	1		

The requests of the media for pronouncements/interviews of the Ombudsperson, his deputies and heads of departments have changed depending on the published reports and on the basis of events - social developments with allegations of human rights violations.

In most cases, the Ombudsperson's pronouncements/interviews focused on issues raised by the Ombudsperson through published reports or implemented activities. The total number of requests for pronouncements/interviews was 58. The table below disaggregates requests for pronouncements/interviews by the Ombudsperson by months.

Table 4: Requests of the media of OIK pronouncements, in numbers, by month

	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
2018	-	-	2	-	5	7	4	1	8	11	13	7
TOTAL	58											

In the direct function of partnership with the media and in order to discuss common issues related to the nature of the mutual work, various meetings took place, as has already become a tradition.

At the end of the year, at a special press conference, the Ombudsperson presented the preliminary statistics and work done during 2018.

The Office for Public Communication and Media also manages the process of receiving requests for access to public documents (APD) addressed to the OIK, and forwards the institution's responses to the parties.

During 2018, the OIK received 21 requests for APD, which, compared to the previous year, represents an increase of close to one hundred percent. Regarding the applications positively resolved, the requested documents were submitted to the parties, in accordance with the requirements (in physical format, in electronic format, but sometimes in both formats). Most requests were directed to more than one document and sometimes different parties requested the same documents.

Financing

The OIK is an independent constitutional institution, which is funded by the Budget of the Republic of Kosovo. According to the Law on Ombudsperson: “*The Ombudsperson Institution prepares its annual budget proposal and submits it for approval to the Assembly of the Republic of Kosovo, which cannot be shorter than previous year approved budget.*”⁴⁵² Further, according to the legal provisions of the Law on Ombudsperson, the OIK is provided with a necessary additional budget in case of the increase of obligations and competences under this Law and other laws, namely additional relevant and adequate financial and human resources.⁴⁵³

OIK’s financing by the Budget of the Republic of Kosovo

Based on the legal process for preparing and submitting a regular budget request, the Ombudsperson filed his 2018 Budget Request to the Assembly of the Republic of Kosovo.

The budget request of the Ombudsperson for 2018 was prepared on the basis of the work plan and activities planned for implementation during 2018. The OIK budget for 2018 was allocated in the monetary amount of € 1,373,167.00, destined for the following budget categories:

- a) Wages and salaries, in the amount of € 957.313.99;
- b) Goods and services, in the amount of € 324.353.00;
- c) Utilities, in the amount of € 25.500.00;
- d) Capital expenditure, in the amount of € 66.000.00.

The OIK budget review for 2018, according to the budget request, the initial budget, budget expenditures and budget savings, will be presented in tabular form on the basis of general data by budget economic categories. On the other hand, detailed financial reporting for the budget year 2018 for all budget economic categories and special sub-categories has been drafted separately and will be sent to the Assembly of the Republic of Kosovo using the unique financial reporting form for independent institutions in Kosovo, as requested by the Budget and Finance Committee of the Assembly of the Republic of Kosovo.⁴⁵⁴

The table below shows the OIK’s budget situation for 2018.

Table 1: OIK budget according to budget request, Budget Law, Budget Statement by OIK and budget cuts by Government decision and final budget for 2018.

⁴⁵² Law No. 05/L-019 on Ombudsperson, Article 35, paragraph 3.

⁴⁵³ *Ibid.*

⁴⁵⁴ The detailed financial report for the OIK’s budget will be submitted to the Assembly of the Republic of Kosovo using the unique financial reporting form.

<i>Economic category</i>	Budget request	Budget allocated for 2018	Statement of savings by the OIK	Budget cut with Government decision	Final budget 2018
Wages and salaries	1.053825.87	957.314.00	110.000.00	14.627.31	832.686.68
Goods and services	384.353.00	324.353.00	80.000.00	0.00	244.353.00
Utilities	25.500.00	25.500.00	10.000.00	0.00	15.500.00
Capital expenditure	66.000.00	66.000.00	3.000.00	18.181.00	44.819.00
Total budget	1.529.678.87	1.373.167.00	203.000.00	32.808.31	1.137.358.68

Budget planning, budget spending, and budget savings statement for 2018 were carried out according to the planned needs and the intended destination for meeting the needs and work activities of the OIK, which were of interest to ensure the exercise of the mandate, the performance of the work and the functioning of the OIK. While there has been no monitoring and internal control over the economical and efficient use of the budget.

In observance of legal procedures, the OIK also made a statement of budget savings for 2018 in October 2018, which amounted to € 203,000.00. However, with the proposal of the Ministry of Finance (MoF) and the decision of the Government of the Republic of Kosovo, in December 2018 the OIK budget was reduced in the different budget categories in the amount of € 32,808.31.

Final budget and actual expenditures for 2018

The OIK budget for the 2018 budget year was realized at the level of 96.80% in relation to the final budget of the year end. The table below presents the final budget situation in relation to the budget expenditures for 2018. The budget data is expressed in this table by economic category and according to expenditures expressed in percentage.

Table 2: Final budget and actual budget spending in 2018

No.	Economic category	Final budget for 2018	Budget spending	Free means	Implementation in %
1.	Wages and	832.686.68	832.686.68	0.00	100.00

	salaries				
2.	Goods and services	244.353.00	211.055.62	33.297.38	86.37
3.	Utilities	15.500.00	12.472.93	3.027.07	80.47
4.	Capital expenditure	44.819.00	44.816.32	2.68	99.99
Total		1.137.358.68	1.101.031.55	36.327.13	96.80

OIK's donor financing

On 10 July 2018, the OIK signed a Grant Agreement with the Council of Europe for the period 11 July 2018 to 11 April 2019 in the amount of € 40,500.00. This agreement was signed for the purpose of financing the activity supported by the Council of Europe for the engagement of 4 external legal advisors for the Ombudsperson Institution. This activity has highly contributed to capacity building of the institution for handling a broad mandate after the entry into force of the Human Rights Legal Package.⁴⁵⁵

⁴⁵⁵ For more information on the legal framework on which the OIK implements its mandate, see the link <https://www.oik-rks.org/legislacioni/ligjet/>

Statistics

Statistics summary of complaints and cases for 2018

From 1 January to 31 December 2018, 1986 complaints and requests were filed in the OIK headquarters in Prishtina and the regional offices from Kosovo citizens for advice or legal assistance.

The largest number of cases investigated by the OIK during the reporting period were mainly related to the *right to impartial and fair trial; the right to legal remedies; the right to work and practice the profession; health and social protection; property protection, etc.*

The following tables show in detail the total number of complaints filed and cases investigated, the number of cases investigated ex officio, the complainants' ethnicity, the complainants' gender, the number of cases solved, the authorities responsible, the number of reports with recommendations and letters of recommendation for the cases investigated, etc.

Table 1: Complaints filed with the OIK during 2018

	Total number of complaints filed with the OIK	1986
	Numbers of persons involved in the filed complaints	5554
Ethnicity of complainants		
	Albanian	1767
	Serbian	112
	Roma	28
	Bosnian	28
	Ashkali	17
	Egyptian	14
	Turkish	11
	Other	9
Gender of complainant filing with the OIK		
	Male	1459
	Female	527
The responsible authorities to which the complaints are addressed (one complaint may have more than one responsible party).		

	Courts	562
	Ministries	529
	Municipalities	325
	Police	138
	State prosecution offices	85
	Private persons	80
	Public enterprises	56
	Private companies	57
	Privatization Agency of Kosovo	30
	Foreign authorities	30
	Kosovo Property Agency	6
	Other	220

Table 2: Rejected complaints during 2018

	Number of rejected complaints	1131
Legal grounds for rejection of complaints based on Law on Ombudsperson		
	Non-exhaustion of legal remedies – Article 22, point 1.4	505
	There is no violation or maladministration – Article 22, point 1.1	305
	Outside the jurisdiction - Article 21, point 1.3.1	187
	Use of legal remedial ongoing - Article 22, point 1.3	73
	Lack of interest, failure of the party - Article 22, point 1.2	49
	Filed after the legal deadline - Article 21, point 1.3.2	6
	Anonymous complaint - Article 21, point 1.3.3	6

Table 3: Cases investigated by the OIK during 2018

	Initiated investigations upon complaints filed by citizens	855
	Initiated investigations according to official duty (Ex Officio)	72
<i>Ethnicity of citizens in the investigated cases</i>		

	Albanian	743
	Serbian	71
	Bosnian	15
	Roma	10
	Ashkali	5
	Gorani	3
	Egyptian	2
	Turkish	2
	Other	4
Gender of complainants in the cases investigated by the Ombudsperson Institution		
	Male	621
	Female	234
The responsible authorities in cases investigated by the OIK (a case may have more than responsible party)		
	Courts	311
	Ministries	228
	Municipalities	156
	Police	66
	State prosecution offices	51
	Public enterprises	20
	Privatization Agency of Kosovo	16
	Private companies	12
	Private persons	10
	Kosovo Property Agency	2
	Foreign authorities	2
	Other	98

Table 4: Subject of investigated cases based on the rights guaranteed by the Constitution (a case may involve violations of more than one guaranteed right)

	Right to impartial and fair trial	317
	Right to legal remedies	169
	Right to work and exercise of profession	134
	Health and social protection	108
	Property protection	103
	Right of access to public documents	55
	Equality before the law	52
	Rights of the accused	40
	Rights of the child	35
	Right to education	29
	Prohibition of torture, cruel, inhuman or degrading treatment	29
	Responsibility to living environment	16
	Right to marriage and family	14
	Right to life	9
	Freedom of movement	8
	Human dignity	7
	Right of freedom and security	6
	Right of privacy	5
	Intermediation cases	4
	Judicial protection of rights	3
	Right of personal integrity	3
	Freedom of expression	2
	Right to election and participation	2
	Interpretation of human rights provisions	2
	Freedom of belief, conscience and religion	1

Table 5: General number of cases closed by the OIK during 2018 (not only cases of 2018, but also of cases registered previously but closed during this year)

	General number of closed cases	1301
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Legal basis for closure of cases based on Law on Ombudsperson		
	Resolved positively, upon the complainant's request - Article 21, point 1.5.	463
	Inadmissible, there is no violation or maladministration - Article 22, point 1.1	229
	Inadmissible, non-exhaustion of legal remedies - Article 22, point 1.3	220
	Closed with report – Article 24.3	201
	Inadmissible, non-exhaustion of legal remedies - Article 22, point 1.4	104
	Closed due to complainant's lack of interest or failure - Article 22, point 1.2	76
	Inadmissible, outside jurisdiction - Article 21, point 1.3.1	8

Table 6: Reports with recommendations from the OIK

	Reports on investigated cases (upon citizens' complaints)	33
	Reports on cases investigated <i>ex officio</i>	14
	NPM reports	14
	Letters with recommendations	20
	<i>Recommendations in reports and letters with recommendations</i>	263
	Amicus Curiae	6
	Opinions	3
	Requests for temporary measure	1

Table 7: Implementation of recommendations provided in reports and letters with recommendations for cases investigated by the OIK during 2018

Responsible authority	<i>Implemented recommendations</i>	<i>Non-implemented recommendations</i>	<i>Pending implementation</i>
Ministry of Justice	19	3	20
Ministry of Health	3	0	3
Ministry of Labour and Social	5	3	4

Welfare			
Ministry of Internal Affairs	12	1	12
Ministry of Education, Science and Technology	2	0	3
Ministry of Infrastructure	2	0	2
Ministry of Finance	0	1	0
Ministry of Economic Development	1	1	0
Ministry of Local Government Administration	1	0	0
Ministry of Environment and Spatial Planning	0	0	11
Ministry of Foreign Affairs	0	1	0
Ministry of European Integration	0	0	2
National Institute of Public Health	0	0	1
Government of Kosovo	1	1	3
Kosovo Correctional Service	0	0	3
Kosovo Hospital and University Clinical Service	3	1	19
Tax Administration of Kosovo	0	0	1
Assembly of Kosovo	0	0	8
Court of Appeals	2	9	7
Basic Court in Prishtina	2	3	2
Supreme Court of Kosovo	0	0	1
Basic Prosecution Office in Prizren	0	0	1
Kosovo Judicial Council	0	0	4
Kosovo Prosecutorial Council	0	0	1
Kosovo Police	3	0	4

Kosovo Telekom	0	0	1
KEK	0	0	1
Central Election Commission	1	0	0
University of Prishtina	4	0	1
Kosovo Property Comparison and Verification Agency	0	0	1
Railway Regulatory Authority	1	0	0
Municipality of Ferizaj	3	4	0
Municipality of Prishtina	3	1	0
Municipality of Shtime	0	0	2
Municipality of Istog	3	0	0
Municipality of Podujeva	2	0	0
Municipality of Peja	2	0	0
Municipality of Lipjan	1	0	0
Municipality of Zveçan	0	0	1
Municipality of Novo Brdo	0	0	2
Municipality of Skenderaj	0	0	2
Municipality of South Mitrovica	1	0	0
Municipality of Deçan	1	0	1
Municipality of Drenas	2	0	0
Municipality of Klina	3	0	0
Municipality of Kamenica	0	0	2
Municipality of Obiliq	2	0	1
Municipality of Suhareka	2	0	0
Municipality of Viti	3	0	0
Municipality of Gjilan	2	0	0
Municipality of Fushe Kosova	2	0	0
Municipality of Rahovec	3	0	0
Municipality of Malisheva	2	0	0

Municipality of Kaçanik	0	0	2
Municipality of Hani i Elezit	0	0	2
Municipality of Dragash	0	0	2
Municipality of North Mitrovica	0	0	1
Municipality of Gjakova	0	0	1
Total	99	29	135

Graphic presentation of statistics for 2018

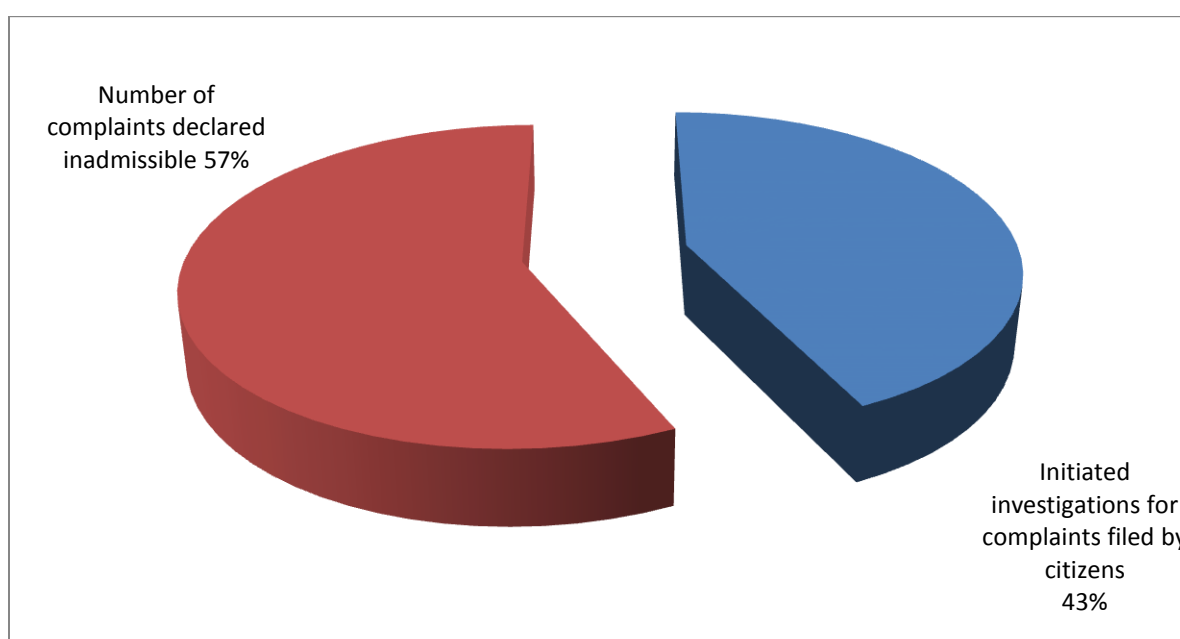


Figure 1: Review of complaints filed with the OIK during 2018

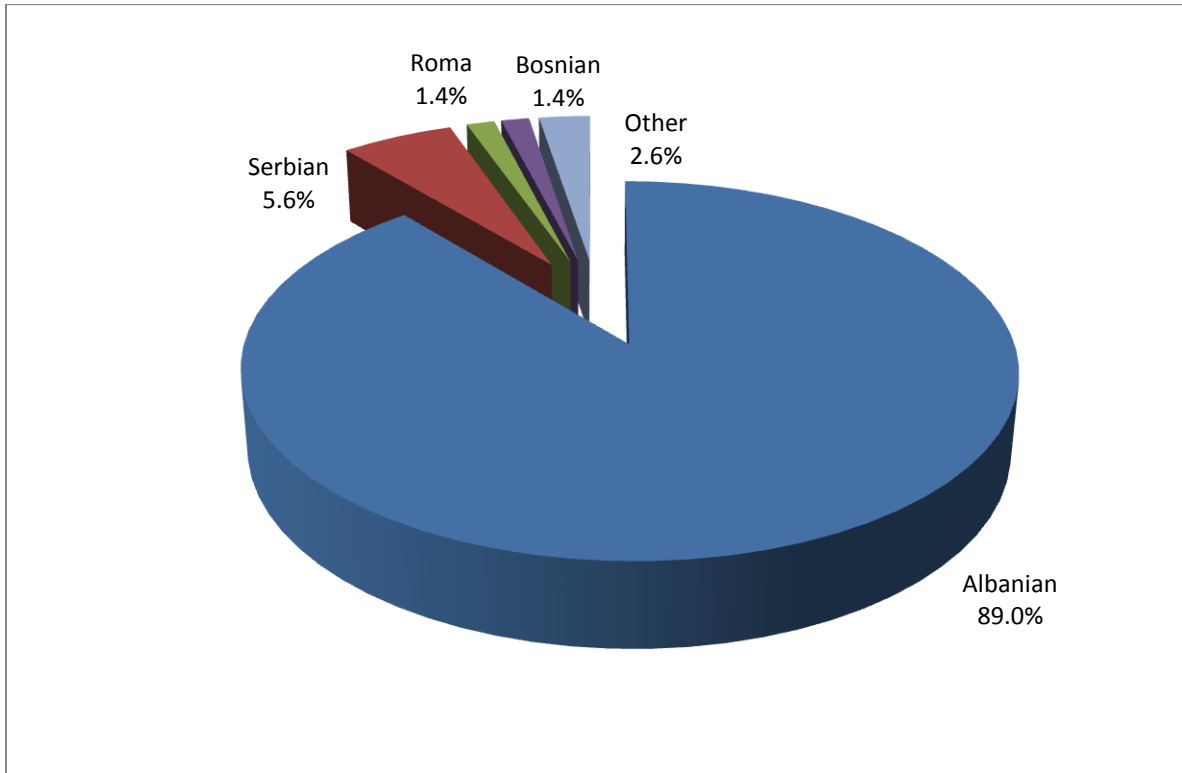


Figure 2: Ethnicity of citizens filing complaints with the OIK

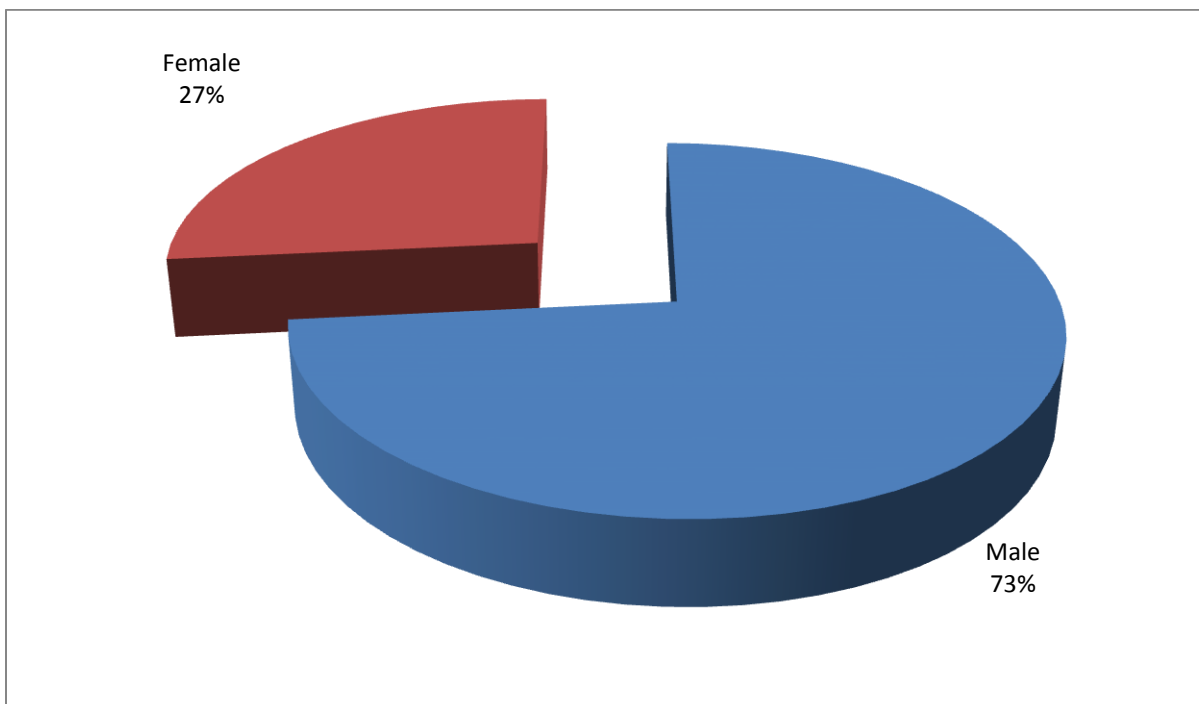


Figure 3: Gender of citizens filing complaints with the OIK

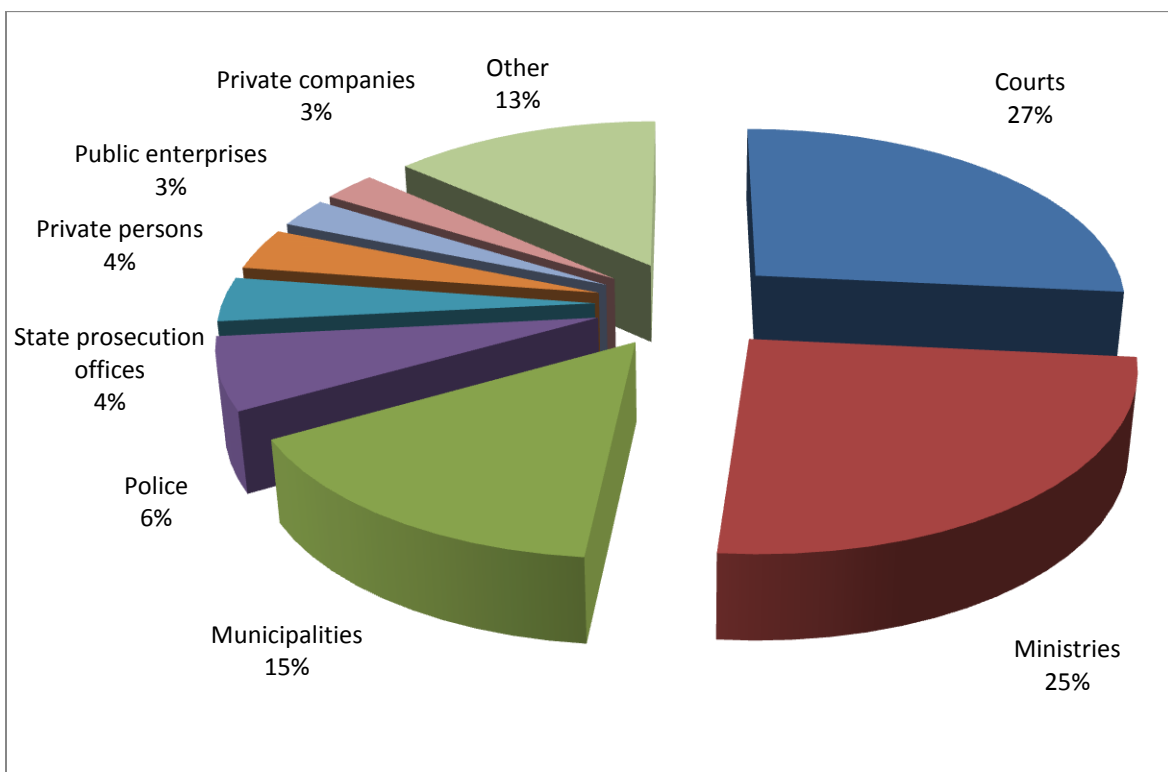


Figure 4: Responsible authorities for complaints filed with the OIK during 2018

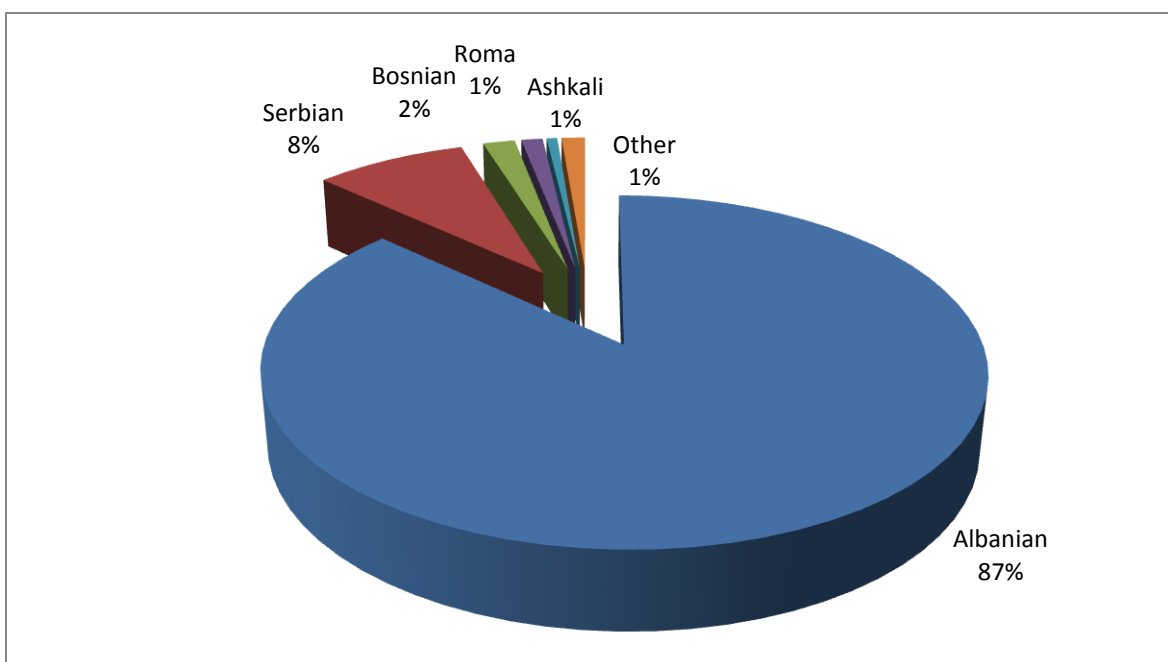


Figure 5: Ethnicity of citizens of cases subject to investigations

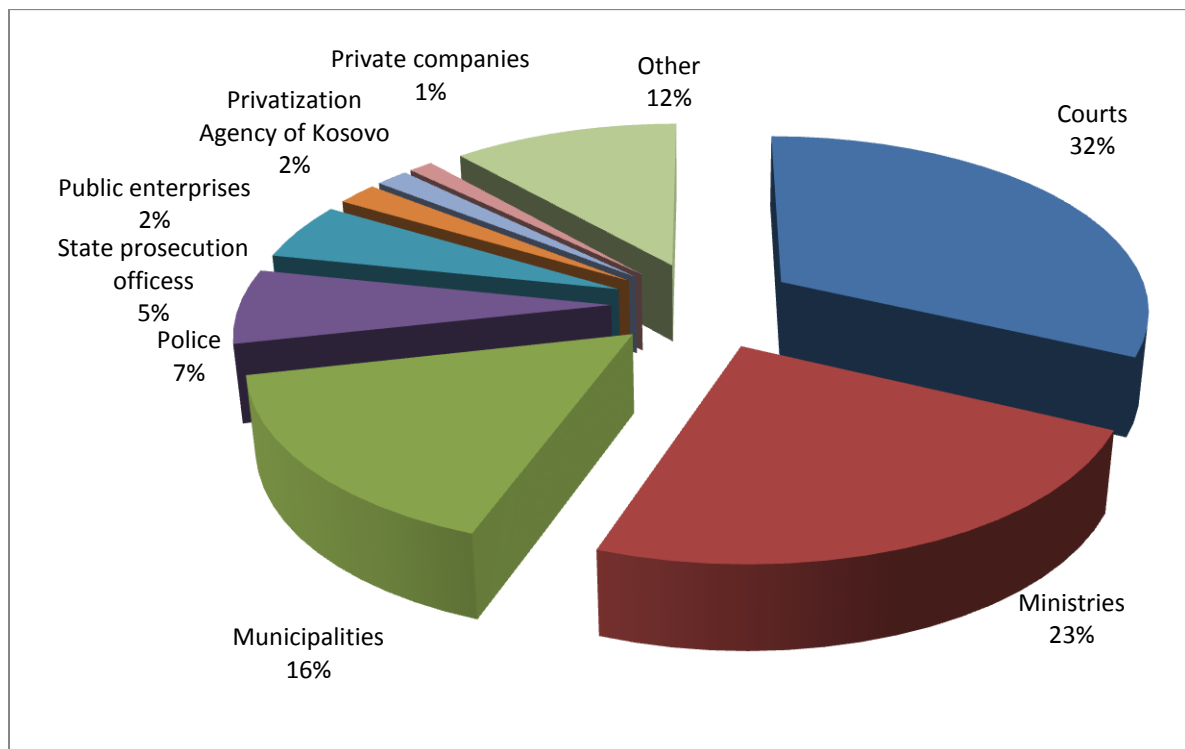


Figure 6: Responsible authorities of cases investigated by the OIK

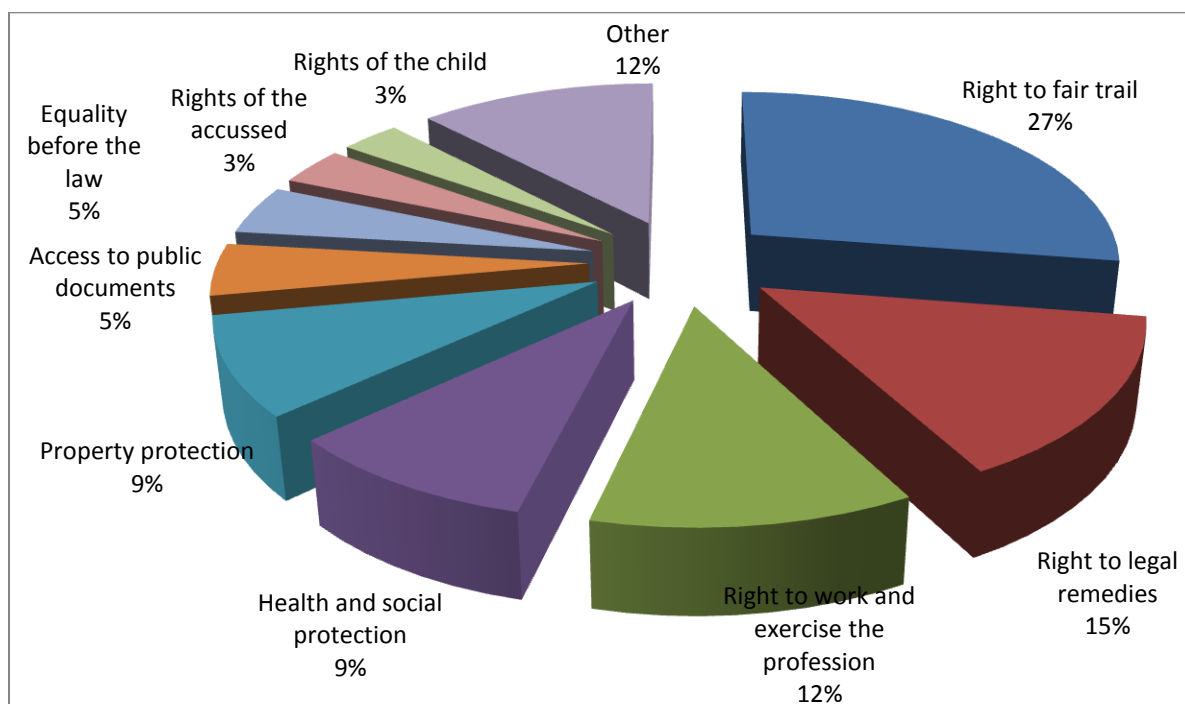


Figure 7: Subject of investigated cases based on rights guaranteed by the Constitution

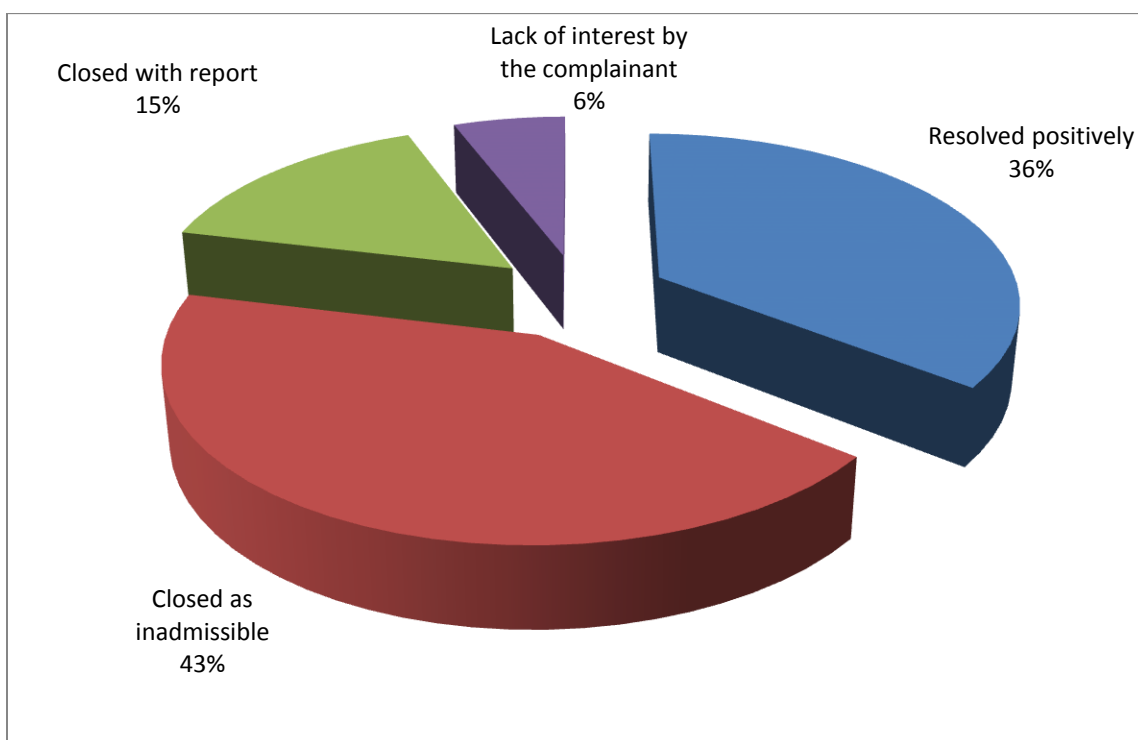


Figure 8: Cases closed by the OIK during 2018 (*not only cases of 2018, but also cases registered previously and closed during this year*)

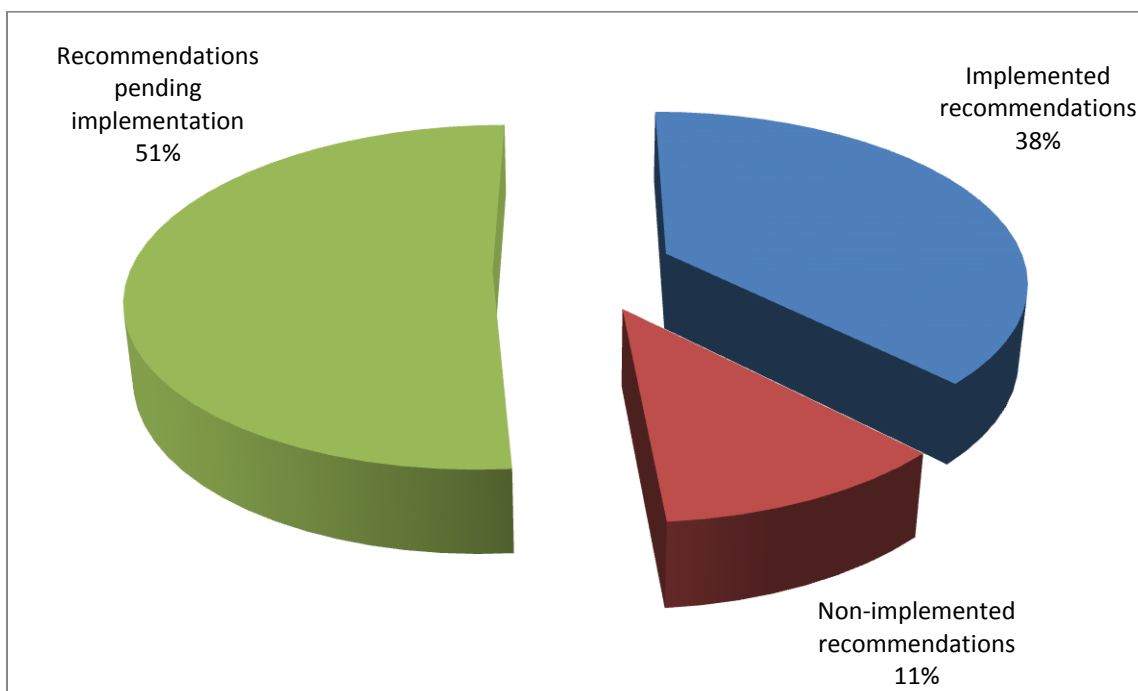


Figure 9: Implementation of recommendations provided in reports and letters with recommendations on cases investigated by the Ombudsman Institution

Statistics on Indicator No. 7 of the Sector Reform Contract for the Public Administration Reform⁴⁵⁶

On 7 December 2017, the Financial Agreement between Kosovo and the European Union on Instrument for Pre-Accession Assistance - IPA 2016, Part Two, for the Reform of Public Administration was signed. The maximum contribution of the European Union under this agreement amounts to € 25,000,000.00.

The overall objective of this agreement is “*to support the administration reform process in Kosovo in order to increase the accountability, transparency and effectiveness of public administration, with a greater focus on the needs of citizens and businesses. This program aims to assist the Government of Kosovo in implementing the strategic package of public administration reform adopted in 2015, specifically focused on improving administration accountability, harmonizing policy development and coordination, introducing modern human resource management, and modernization of consumer-oriented public services. The program will also strengthen the administrative capacity needed to develop and implement the EU acquis.*”⁴⁵⁷

It is noteworthy that in order to increase the level of implementation of the Ombudsperson's recommendations, this issue is included under this agreement through Indicator No. 7, which stipulates that by 2020, the implementation of the Ombudsperson's recommendations by the central level institutions will reach no less than 60%. In 2016, the implementation rate of recommendations addressed to the central level institutions was 16%. This agreement entered into force on 15 December 2017.

Below we will present the achievements related to the implementation of Indicators No. 7.1.1 and 7.1.2 for 2018 through statistics:

Indicator No. 7.1.1 requires that at least 70% of central level institutions addressed by the Ombudsperson with recommendations between 1 January and 30 November have responded with a letter within the legal deadline of 30 days.

During the period from 1 January to 30 November 2018, the Ombudsperson addressed 141 recommendations to central level institutions⁴⁵⁸, of which only 50 recommendations received a response within the 30-day legal deadline set out under Articles 25 and 28 of the Law No. 05/L-019 on Ombudsperson.⁴⁵⁹ Therefore, it is concluded that the implementation rate for Indicator No. 7.1.1 is quite low as during this period the Ombudsperson has received a response within the 30-day legal deadline for only 35% of

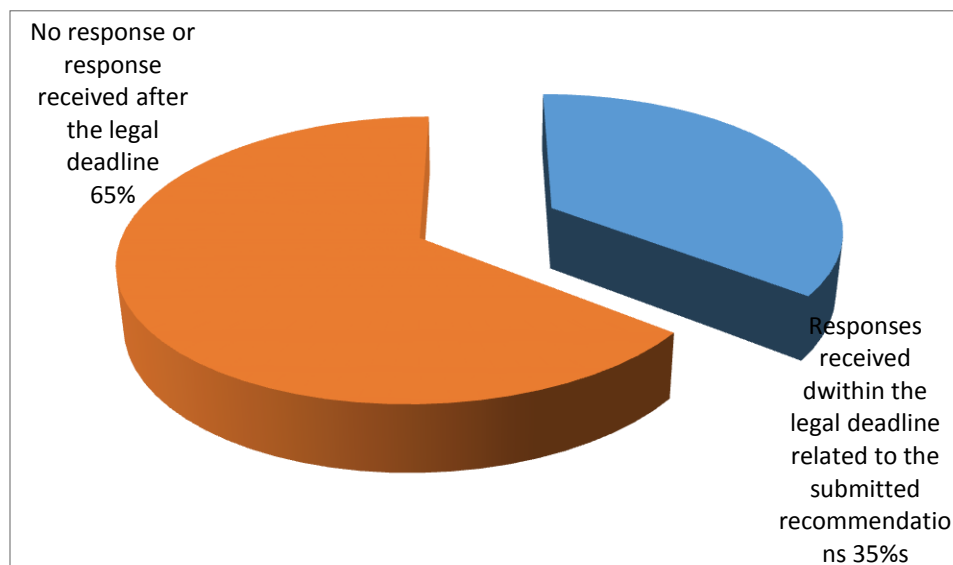
⁴⁵⁶ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=15707>

⁴⁵⁷ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=15707> p. 18; accessed on 13/02/2019

⁴⁵⁸ Central level institutions defined by Indicator 7 of the Financial Agreement between Kosovo and the European Union; This agreement can be found in the official newsletter at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=15707>

⁴⁵⁹ <https://www.oik-rks.org/2018/08/20/ligji-per-avokatin-e-popullit-nr-051-019/> accessed on 13/02/2019

the recommendations addressed to the central level institutions. As such Indicator No. 7.1.1 has not been met.⁴⁶⁰



Indicator No. 7.1.2 requires that at least 40% of the recommendations addressed to central level institutions in 2017 and 2018, to which central level institutions responded positively, have been implemented.

During the period from 1 January 2017 to 30 November 2018, the Ombudsperson addressed 212 recommendations to central level institutions⁴⁶¹, of which only 79 recommendations were implemented. On the other hand, in terms of recommendations addressed during the same period and concerning which we received positive responses or positive intention to implement the recommendations, we have 135 recommendations, out of which 70 have been implemented or, in other words, the implementation rate of the Ombudsperson's recommendations under Indicator No. 7.1.2 is 52%.⁴⁶²

⁴⁶⁰ The calculation method for the indicator 7.1.1 is done according to the formula:

$$X = \frac{\text{number of recommendations concerning which responses were sent from central level institutions to the Ombudsperson within the legal deadline}}{\text{total number of the Ombudsperson's recommendations addressed to central level institutions during the specified period}} \times 100$$

⁴⁶¹ Central level institutions as defined by the list under the methodology for Indicator No. 7 (7.1.1 and 7.1.2) of the Financial Agreement between Kosovo and the European Union; This agreement can be found in the official newsletter at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=15707>

⁴⁶² The calculation method is done according to the formula defined under Indicator No. 7.1.2:

$$X = \frac{\text{number of recommendations addressed to central level institutions during the defined period for which the responsible institutions have responded with a positive aim on the implementation of the recommendations, which have been implemented}}{\text{total number of recommendations addressed to central level institutions during the defined period for which responsible institutions have responded with a positive intention to implement the recommendations}} \times 100$$

