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Foreword by the Ombudsperson

Republic of Kosovo was built as a state which guarantees *"the rights of every citizen, civil freedoms and equality of all citizens before the law"*,¹ grounds of which are based on the most advanced democratic values, which places in the center the respect of human rights and freedoms. In the phases of our state establishment, our country has often faced difficult situations, the overcoming of which has required undertaking of measures to strengthen the institutional mechanisms, strengthening of rule of law, democracy and the legal state.

By contributing to this state's voyage, the Ombudsperson Institution has created its own history for 23 years of existence. The Ombudsperson promotes, monitors and protects human rights and freedoms from violations conducted by public authorities, by handling complaints from citizens and other authorities, by undertaking *Ex-Officio* investigations, as well as by addressing recommendations to the responsible authorities, implementation of which reinforces democracy, rule of law and respect for human rights and freedoms.

All our year's commitment is summarized in the Annual Report, which faithfully reflects the issues dealt with during the reporting period, findings and recommendations that emerge from the investigation of the issues raised, reveals the level of recommendation implemented as well as other issues raised by the Ombudsperson that are important for human rights and freedom.

By exercising constitutional and legal mandate in our work, we aim to improve the respect for the rights and freedoms of citizens, which translated into the reward that the citizen acquires, is improvement of his/her well-being.

2022 challenged us with the global crisis as a result of the war in Ukraine and the effects that the COVID-19 pandemic left behind. Besides this, inflation, prices' increase and the energy crisis, strikes in the public sector, the situation in the four municipalities in the northern part of the country upon Institutions' boycott and barricades, floods in some areas of the country were some of the events and situations that required special attention, since in one or another way they affect human rights and freedom.

From the general assessment of human rights and freedoms for this year, I can plainly say that even though there are improvements, the progress is not sufficiently in line with the requirements and standards for respect of human rights, as defined in the Constitution. This is as a result of insufficient measures for full enforcement of the law, lack of accountability and responsibility, lack of efficiency in the legal system, as well as other aspects which have impacted on addressing of 1595 complaints to the Ombudsperson this year as well.

The difficult position of Persons with Disabilities has been followed-up by insufficient policies for improving the respect of their rights in relation to the positive obligations of the state in taking

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measures, which guarantee the rights and freedoms that they enjoy.

Domestic violence and murdering of women continues to be one of the ongoing problems of our society. Additionally, cases of sexual abuse of minor girls which happened this year were of a great concern. Authorities have failed to undertake all measures to protect lives of women- victims of domestic violence, even though we have repetitively drawn their attention on the responsibility and liabilities that they have in taking all necessary measures in protection of lives and protection from domestic violence as well as gender-based violence.

Another issue that I continue to draw attention to is the delay of court proceedings and the lack of a legal mechanism for the protection of the right on a trial within a reasonable time period, which would enable the parties to be compensated for the material damage caused.

The right to non-discrimination continues to be denied to many categories of citizens, particularly to those with severe social and economic status, children, persons with disabilities and many other social groups. Citizens, who do not have a job and do not have any income, continue to live in very difficult conditions and without any support from the state, despite the fact that they are in such situation due to inability to get any job.

The failure to fulfill the liability of respecting children's rights remains a concern, such as: broad inclusion of children with disabilities in education, protection of children from child labor, protection of children from begging in the streets, protection of children from domestic violence, lack of their proper social integration, etc.

Apart addressing issues that we have investigated, this year we had increased engagement within International Organizations as well, we have managed to join the European Network of Ombudspersons for Children (ENOC), which is an Independent Network of Children's Rights Institutions within the Council of Europe member states², additionally this year we are hosting the General Assembly of the Association of Mediterranean Ombudsmen (AOM) where Ombudsmen from 40 countries of the world are expected to participate. This event will also be followed by a Conference on "Integrity and Independence of Ombudsmen Institutions – Sustainability among Challenges", which aims to establish an opportunity to identify the type of threats towards their independence experienced by Ombudsmen Institutions, the best practices and effective responses to them.

The encouraging fact is that the Ombudsperson Institution continues to be the most reliable Institution in the country and region, the citizens' trustworthiness level toward this Institution has reached 68%³ this year.

While during 2023 special attention will be given to the rights related to safety and health at work; fulfillment of state's obligations in relation to war crimes: access to justice for victims, the right to have knowledge and documentation of the past; rights in education, hate speech, the position of women in relation to property rights and many other issues, with the aim on promoting human rights in the Republic of Kosovo.

² European Network of Ombudspersons for Children (ENOC), available at: https://enoc.eu/?page_id=2316

³ Balkan Barometer 2022/Public Opinion Survey, page. 124, 125, 126, 127, accessible at: <https://www.rcc.int/balkanbarometer/publications>

Introduction

The Ombudsperson, pursuant to Article 135 of the Constitution of the Republic of Kosovo as well as Article 29 of the Law No. 05/L-019 on Ombudsperson, on 31 March 2023, presents to the Assembly of the Republic of Kosovo, the Annual Report on the state of human rights during 2022.

The Report encloses an analysis and assessment of the state of protection of human rights and freedoms in the Republic of Kosovo, as well as an analysis and assessment of the situation with respect to certain forms of violation of the rights of individuals or certain social groups.

The Ombudsperson, by reviewing and assessing the situation in the course of handling and investigation of cases, during this year has addressed 646 recommendations to the authorities, which are aimed to remove the deficiencies and irregularities observed that lead to violations of the constitutional and legal rights of citizens, and in this way the Report aims to contribute to the protection of their rights.

Throughout 2022, the Ombudsperson, within the scope of his mandate foreseen by the Constitution of the Republic of Kosovo, the Law on Ombudsperson, the Law on Protection from Discrimination, the Law on Gender Equality, the Law on Child Protection as well as many other laws, has admitted 1595 complaints from citizens and has initiated 42 Ex-Officio cases (on own initiative), while 604 cases have ceased after investigations conducted.

Judging on the number of complaints filed, the most frequent reasons for which citizens lodged their complaints with the Institution in 2022

were complaints against legal bodies, which is at a similar level as in previous years, complaints mainly concerning violation of the right to health care, labor rights, social protection, property rights, suspicions that they have been discriminated against as well as others.

It should be noted on this occasion that unlike Reports of many other Institutions submitted to the Assembly of Republic of Kosovo, which are work reports, the purpose of this Report is to provide an analysis and assessment of the state of protection of human rights and freedoms in the Republic of Kosovo. Therefore, the potential of this Report rests precisely on the fact that it comprehends an analysis of citizens' complaints, on the state of human rights in almost every field, as well as numerous data from institutions of Kosovo Republic, data from civil society, as well as relevant international resources, all this, in one place.

The Ombudsperson, as an Institution which grounds the large part of its work on citizens' complaints, by submitting the Annual Report, has an opportunity to inform parliament representatives in the Assembly of the Republic of Kosovo on hardship and problems that citizens face. The information from these complaints and ongoing monitoring of the state of fundamental rights and freedoms, jointly with many official data that we review, make possible for us to identify systemic problems, provide a picture of the state of human rights and freedoms and we recommend solutions - all on the benefit of improving the rights of citizens in the Republic of Kosovo.

Ombudsperson's Mandate

The mandate of protecting human rights

The Ombudsperson exercises the mandate of protection of the human rights through the mechanism of investigation of cases raised by the complainants, the ex-officio investigation of a potential violation, the mechanism of contesting an administrative act in the capacity of a public interest defender, providing general recommendations on the functioning of the judicial system, providing friend of the court (Amicus Curie) services, providing individual recommendations for cases of delays of court proceedings, conducting mediation and reconciliation proceedings, providing assistance to victims of discrimination, providing recommendations to public institutions for the proper implementation of obligations in the field of prevention from discrimination and equality, referring cases to the Constitutional Court and other mechanisms defined by special laws.

The mandate of monitoring the observance of human rights

The Ombudsperson exercises the mandate of monitoring the observance of human rights through the mechanism of monitoring court cases, where the parties have a status of alleged victim of human rights or according to official duty (Ex-Officio) it is considered that there may be systematic violations of human

rights, through the mechanism of obligation of public authorities to respond to Ombudsperson's requests, monitoring implementation of the recommendations provided by the Ombudsperson, overseeing the standard of drafting legislation regarding the definition of human rights and compliance with the Constitution, monitoring enforcement of laws focusing on human rights, and other mechanisms defined by specific laws.

The mandate of promoting human rights

The Ombudsperson exercises the mandate of promoting human rights throughout awareness raising mechanism among public opinion and public institutions regarding human rights and fundamental freedoms, through education, trainings and lectures, publication of opinions and brochures that outline the stand of the Ombudsperson on a specific issue, statements on implementation of certain measures, organization of open days to discuss human rights, organization of conferences, thematic roundtable discussions, cooperation and coordination of work with social partners, exchange of visits with peer institutions, presentation in the media of Ombudsperson's opinions as well as other mechanisms defined by special laws.

The mandate as a National Preventive Mechanism against Torture

The Ombudsperson exercises the mandate of the National Preventive Mechanism against Torture and other cruel, inhuman and degrading treatments and punishments, through regular and unannounced visits conducted to all places where persons deprived of their liberty are held, including police custody, detention, stay in health institutions, customs detention, detention of immigrants and any other place where there might be suspicions of breach of human rights and freedoms. In accordance with the Law on Ombudsperson, it provides recommendations for the compliance of laws and other acts with the Constitution and international standards on torture prevention. The NPMT cooperates with international and national mechanisms as well as other mechanisms defined by a special law in the field of torture prevention.

The mandate as a mechanism of equality

The Ombudsperson exercises its mandate as an equality mechanism in order to promote, monitor and support equal treatment without discrimination on the grounds protected by the Law on Gender Equality and the Law on Protection from Discrimination as well as in accordance with the Law on Ombudsperson. The Ombudsperson exercises such mandate through investigation of cases of discrimination, by overseeing implementation of the Law on Protection from Discrimination, by pushing forward good practices in promoting equality, by informing the public about cases of discrimination, by handling cases related to gender discrimination and cooperation

with social partners, local and international Non-Governmental Organizations.

Statistical overview of cases and complaints

From 1 January 2022 to 31 December 2022, at the Ombudsperson Institution, Main Office in Prishtine and regional offices: Prizren- Prizren, Gjilan-Gnjilane, Ferizaj-Uroševac, Pejë-Peč, Mitrovicë-Mitrovica, Gjakovë-Đakovica and Graçanicë-Gračanica, 1595 complaints have been submitted by the citizens of the Republic of Kosovo, complaints concerning violations of human rights and freedoms by public authorities in the Republic of Kosovo, but also with requests for legal advice.

From the review of citizens' complaints submitted, in accordance with constitutional categories of human rights and freedoms, it is observed that the vast number of complaints are related to: *the right to a fair and impartial trial, the right to legal remedies, the right to work and exercise of the profession, health and social protection, property protection, equality before the law, the rights of the child, the right to education, etc.*

Following tables present, in more comprehensive manner, the general data of complaints received, reviewed and decided as per the admissibility or inadmissibility for investigation, cases initiated for Ex-Officio investigation by the Ombudsperson's own initiative, ethnicity and gender of the complainants, responsible public authorities to which the complaints have been submitted, the number of cases decided as completed/closed, the number of published reports and recommendations addressed to public authorities and their applicability.

Table 1: Complaints submitted to the Ombudsperson Institution in 2022

Total number of complaints filed	1595
Number of persons involved in complaints	2799
Ethnicity of the complainants	
Albanian	1441
Serbian	77
Bosnian	29
Ashkali	13
Turkish	11
Roma	10
Egyptians	2
Gorani	2
Others	10

Complaints submitted, allocated according to offices of the Ombudsperson Institution	
Main Office -Prishtinë- Priština	790
Regional Office -Gjilan- Gnjilane	165
Regional Office -Prizren- Prizren	144
Regional Office -Ferizaj- Uroševac	130
Regional Office -Pejë- Peč	130
Regional Office -Mitrovicë-Mitrovica south	96
Regional Office -Gjakovë- Đakovica	94
Regional Office -Graçanicë-Gračanoca	28
Regional Office -Mitrovicë- mitrovica north	18
Gender of the complainants	
Male	1123
Female	472
Responsible public authorities to which the complaints are addressed (a complaint may have more than one responsible party).	
Ministries	481
Courts	475
Municipalities	257
Police	80
State Prosecution	63
Private person	54
Private companies	54
Public companies	29
Foreign authorities	13
Privatization Agency of Kosovo	20
Others	188

Table 2: Complaints filed, based on the rights guaranteed by the Constitution (one complaint may include more than one violation of guaranteed rights)

Right to legal remedies	498
The right to a fair and impartial trial	472
Health and social protection	310
The right to work and exercise the profession	279
Protection of property	166
Rights of the accused	96
Equality before the law	88
The rights of the child	57
The right to education	40
Freedom of movement	32
The right to marriage and family	30
Human dignity	23
Prohibition of torture, cruel, inhuman or degrading treatment	21
Environmental responsibility	15
The right to privacy	13
The right of access to public documents	13
The right to life	7
Cases for mediation	7
Freedom of association	6
The right to freedom and security	5
Freedom of expression	5
Restriction of fundamental rights and freedoms	3
Judicial protection of rights	3
The right not to be tried twice for the same offense	3
Religious denominations	1
Freedom of belief, conscience and religion	1
The right to personal integrity	1

Table 3: Complaints decided as inadmissible

Number of inadmissible complaints	910
Inadmissible complaints, according to Articles of the Law on Ombudsperson	
Non-use of legal remedies - Article 22, point 1.4	256
There is no violation, maladministration - Article 22, point 1.1	221
In the use of legal remedies - Article 22, point 1.3	221

Out of jurisdiction - Article 21, point 1.3.1	142
Disinterest, failure of the party to respond - Article 22, point 1.2	56
Misuse of the right to appeal - Article 21, point 1.3.4	6
Publication of the report - Article 24, point 3	3
Anonymous complaint - Article 21, point 1.3.3	3
Submitted after the legal deadline - Article 21, point 1.3.2	2

Table 4: Complaints pending review

Number of complaints pending for consideration	16
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Table 5: Complaints decided as admissible for investigation

Number of complaints deemed to be admissible for investigation	676
The number of investigative cases initiated by the Ombudsperson (Ex-Officio)	42
Ethnicity of complainants based on complaints investigated	
Albanian	593
Serbian	56
Bosnian	14
Roma	4
Ashkali	3
Turkish	2
Goran	1
Others	3
Gender of complainants, based on investigated complaints	
Male	473
Female	203
Public authorities responsible of investigated complaints (a complaint may have more than one responsible party)	
Court	237
Ministries	220
Municipalities	131
Police	42
State Prosecutor's Offices	24
Privatization Agency of Kosovo	14
Private Companies	11
Public Enterprises	9
Private Person	4

Foreign authorities	3
Others	75

Table 6: Complaints admissible for investigation, based on the rights guaranteed by the Constitution (one complaint may involve more than one violation of the rights guaranteed)

The right to a fair and impartial trial	246
Right to legal remedies	218
The right to work and exercise the profession	129
Health and social protection	112
Protection of property	79
Equality before the law	75
The rights of the child	36
The right to education	29
Rights of the accused	26
Prohibition of torture, cruel, inhuman or degrading treatment	15
Freedom of movement	14
Human dignity	13
The right to marriage and family	9
Environmental responsibility	9
The right to privacy	7
The right to life	5
Cases for mediation	5
Freedom of association	5
Restriction of fundamental rights and freedoms	3
The right to freedom and security	3
The right of access to public documents	3
Freedom of expression	2
The right not to be tried twice for the same offense	2
Religious denominations	1

Table 7: Ex officio cases, based on the rights guaranteed by the Constitution (a case may involve more than one violation of the rights guaranteed)

Health and social protection	10
Equality before the law	9
The right to education	8
The right to work and exercise the profession	7
The rights of the child	6
Prohibition of torture, cruel, inhuman or degrading treatment	4
Right to legal remedies	3
Protection of property	3
Rights of the accused	2
The right to a fair and impartial trial	2
The right to life	2
The right to privacy	2
Freedom of movement	1
Human dignity	1
The right to marriage and family	1
Cases for mediation	1
Restriction of fundamental rights and freedoms	1

Table 8: Complaints eligible for investigation, which were closed by the OIK during 2022 (includes eligible complaints from 2022 and previous years)

Total number of complaints eligible for investigation that have been completed/closed	604
Complaints completed/closed, according to Articles of the Law on Ombudsperson	
Resolved in accordance with complainant's request - Article 21, point 1.5	257
Inadmissible, no violation, maladministration - Article 22, point 1.1	122
Inadmissible, in the use of legal remedies - Article 22, point 1.3	92
Closed with report - Article 24, point 3	77
Inadmissible, failure to use legal remedies - Article 22, point 1.4	28
Closed due to lack of complainant's interest, failure to respond - Article 22, point 1.2	18
Inadmissible, out of jurisdiction - Article 21, point 1.3.1	10

Table 9: Reports with recommendations, Recommendations Letter, Ombudsperson in the capacity of Friend of the Court (Amicus Curiae), Opinions and Requests for temporary measure.

Reports on investigated complaints (from citizens' complaints)	13
Reports on cases investigated on Ombudsperson's initiative, Ex officio	7
NPM reports	8
Letter of recommendations for investigated complaints (from citizens' complaints)	4
Recommendations in Reports and Recommendation Letters	646
Ombudsperson in the capacity of Friend of the Court (Amicus Curiae)	2
Request for interim measure	1
Opinions	8

Table 10: The applicability of Ombudsperson's recommendations, by responsible public authorities

Responsible authorities	Implemented	Partly implemented	Not implemented	Pending to be implemented	Total of recommendations
Ministry of Justice	6	5	0	11	22
Ministry of Internal Affairs	2	0	0	2	4
Ministry of Education, Science, Technology and Innovation	0	0	0	12	12
Ministry of Foreign Affairs and Diaspora	1	0	0	1	2
Ministry of Internal Affairs and Ministry of Finance	0	0	0	1	1
Ministry of Health and Ministry of Justice	0	0	0	3	3
Ministry of Healthy	0	0	0	2	2
Ministry of Local Government Administration	0	0	0	3	3
Ministry of Finance, Labor and Transfers	0	0	0	6	6
Ministry of Environment, Spatial Planning and Infrastructure	0	0	1	1	2
Kosovo Police	3	0	0	0	3
Hospital and University Clinical Service of Kosovo	0	0	0	2	2
Tax Administration of Kosovo	0	0	0	1	1
Civil Aviation Authority	0	0	0	3	3
The Senate and the Rectorate	0	0	0	2	2
University of Peja- Peč, "Haxhi Zeka"	0	0	1	0	1
Kosovo Prosecutorial Council	0	0	0	3	3

Court of Appeals	1	0	0	0	1
Basic Court of Pristina	3	0	0	0	3
Special Chamber of the Supreme Court	0	0	0	1	1
Municipality of Prishtina- Priština	0	0	1	1	2
Municipality of Skenderaj- Serbica	0	0	0	1	1
Municipality of Graçanica- Gračanica	1	0	0	0	1
Municipality of Gjakova- Đakovica	2	0	0	0	2
Municipality of Ferizaj- Uroševac	0	0	0	1	1
Municipality of North Mitrovica- Mitrovica	0	0	0	1	1
Municipality of Deçan- Deçane	0	0	0	1	1
Municipality of Rahovec- Orahovac	0	0	0	1	1
Municipality of Lipjan- Ljipljane	1	0	0	0	1
Municipality of Shtime- Štimlje	1	0	0	0	1
Municipality of Kamenica- Kamenica	0	0	0	1	1
The commune of Klllokot- Klokot	0	0	0	1	1
Municipality of Shtërpce- Štrpce	1	0	0	0	1
Municipality of Istog- Istok	0	0	0	1	1
Municipality of Zveçan- Zveçane	1	0	0	0	1
Municipality of Mamusha- Mamuša	0	0	0	1	1
Municipality of Zubin Potok- Zubin Potok	1	0	0	0	1
Municipality of Leposaviq- Leposavić	1	0	0	0	1
Municipality of Ranillugi- Ranilug	0	0	0	1	1
Municipality of Partesh- Parteš	0	0	0	1	1
Municipalities of Kosovo	0	0	0	11	11
Total	25	5	3	77	110
Recommendations of on Ex-Officio Report related to reproductive health, which are within the legal deadline for implementation, addressed to 78 authorities					536 ⁴
Total number of recommendations					646

4 On 30 December 2022, Ex Officio Report no. 577/2021, has been published with regard to the rights in Sexual and Reproductive Health in the Republic of Kosovo, through which authorities have been served with 536 recommendations. Recommendations provided cannot be considered for implementation in 2022 because they were addressed on the last day of the same year, therefore, they will be monitored and assessed for implementation during 2023.

Graphic presentation of statistics of cases filed to Ombudsperson

1 January 2022 - 31 December 2022



FIGURE 1: COMPLAINTS SUBMITTED BY CITIZENS AND REVIEWED BY THE OMBUDSPERSON

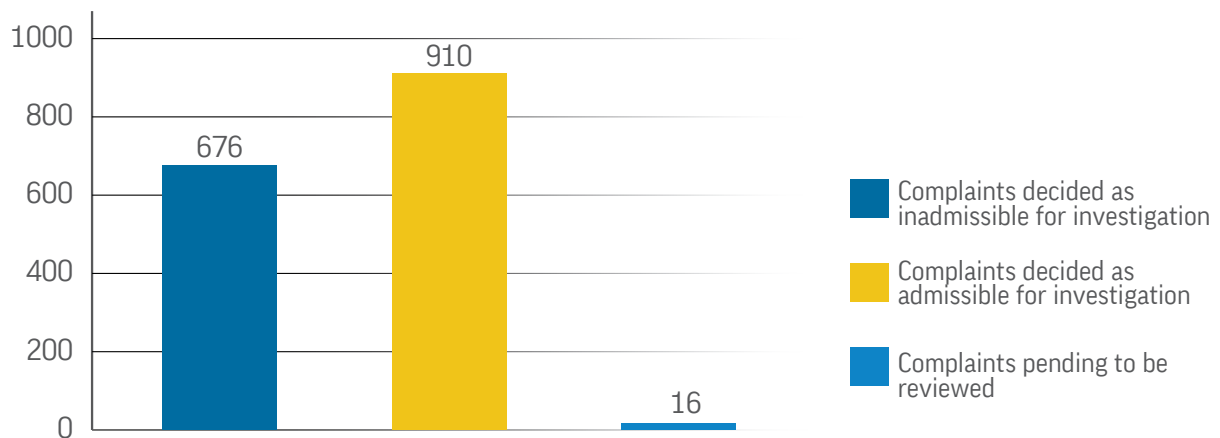


FIGURE 2: SUBMITTED COMPLAINTS ACCORDING TO CITIZENS' ETHNICITY

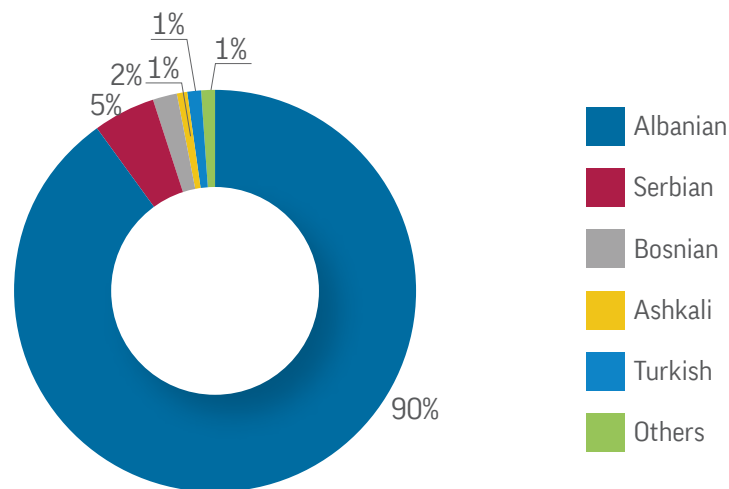




FIGURE 3: THE NUMBER OF COMPLAINTS SUBMITTED BASED ON CITIZENS' GENDER

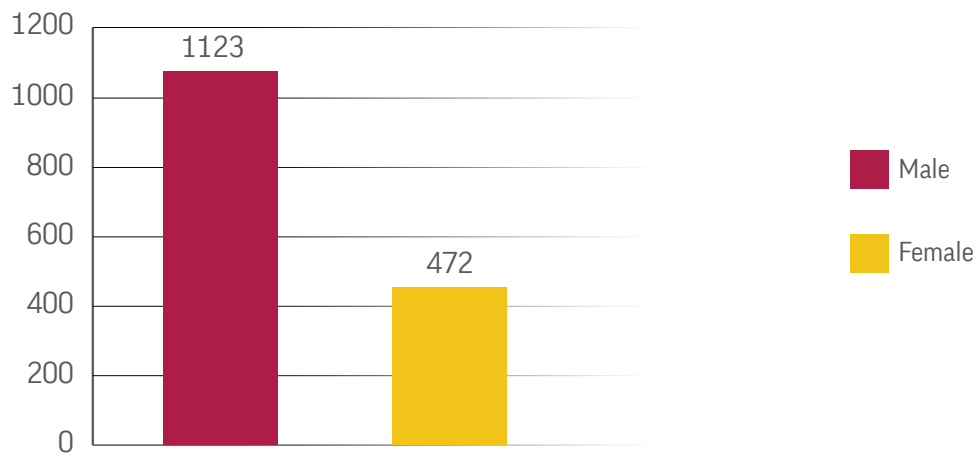


FIGURE 4: PUBLIC RESPONSIBLE AUTHORITIES, ACCORDING TO CITIZENS' SUBMITTED COMPLAINTS

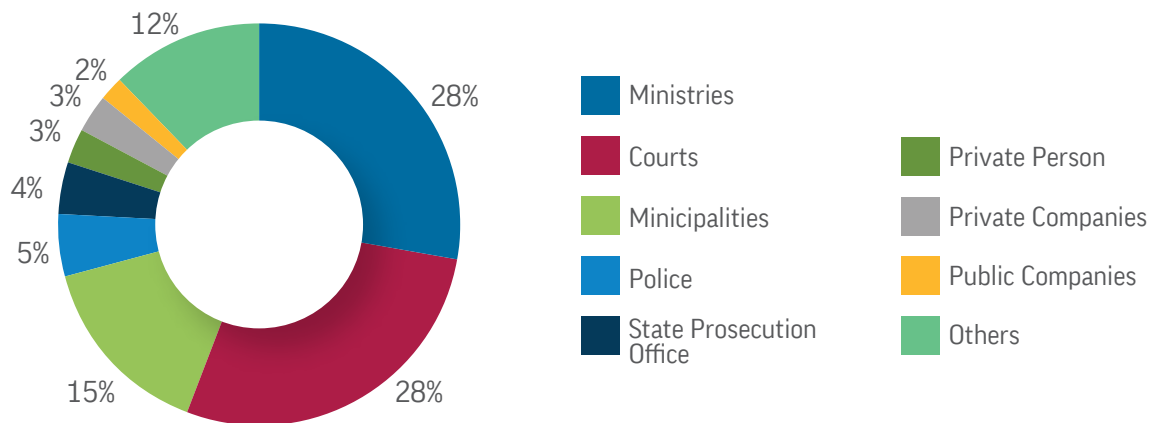


FIGURE 5: COMPLAINTS SUBMITTED, ACCORDING TO CHAPTER II OF THE CONSTITUTION, RIGHTS AND FUNDAMENTAL FREEDOMS

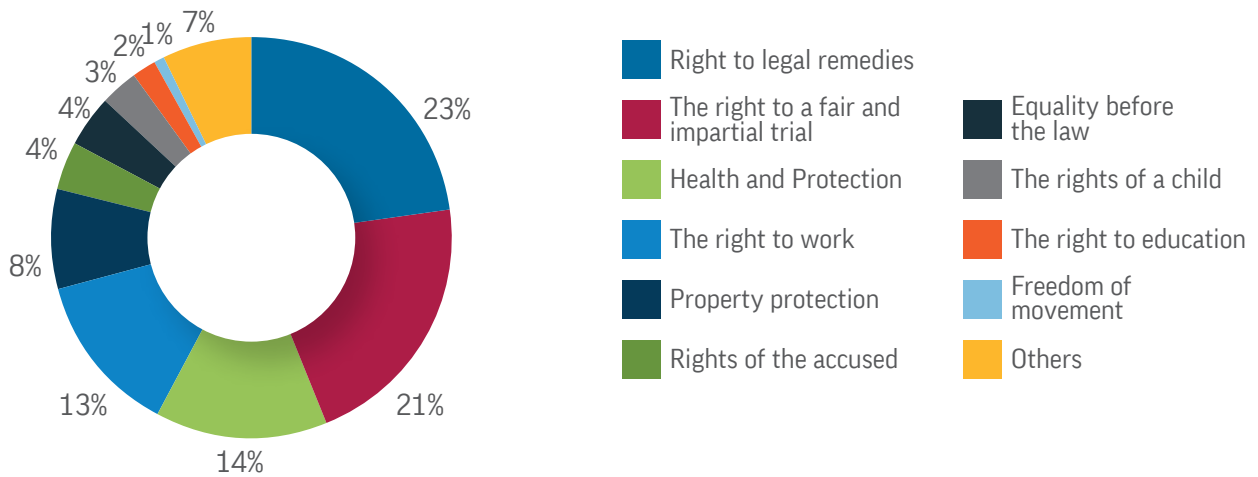


FIGURE 6: COMPLAINTS ADMISSIBLE FOR INVESTIGATION, ACCORDING TO CITIZENS' ETHNICITY

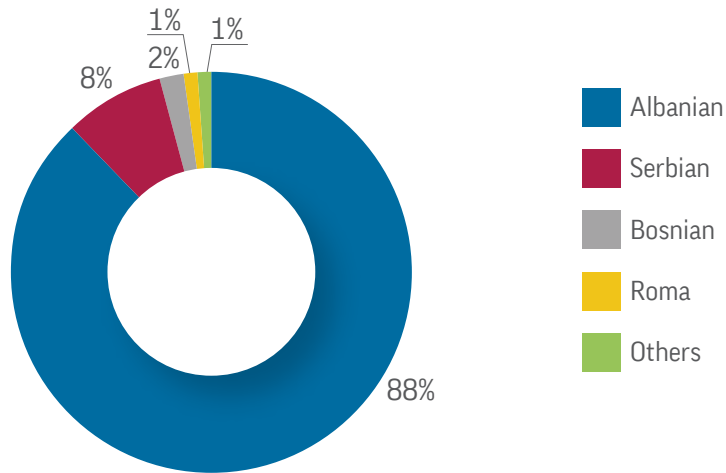


FIGURE 7: RESPONSIBLE PUBLIC AUTHORITIES, ACCORDING TO INVESTIGATED COMPLAINTS

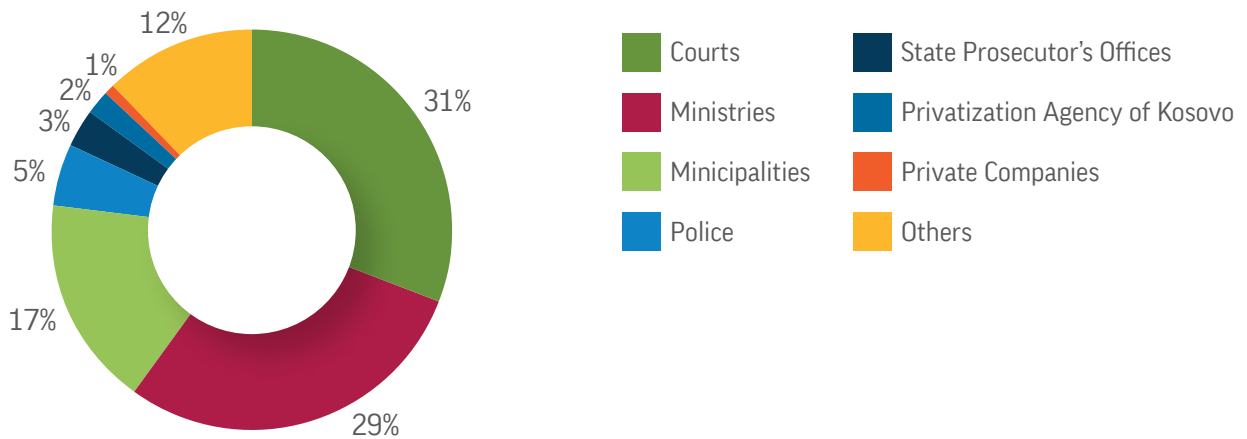


FIGURE 8: COMPLAINTS INVESTIGATED, ACCORDING TO CHAPTER II OF THE CONSTITUTION, HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

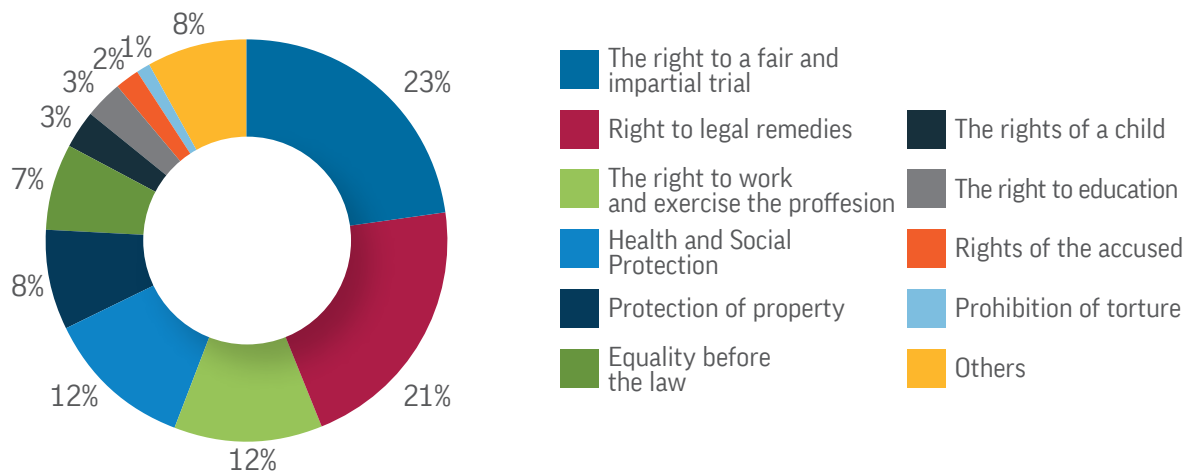


FIGURE 9: COMPLAINTS INVESTIGATED EX-OFFICIO, ACCORDING TO CHAPTER II OF THE CONSTITUTION, HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

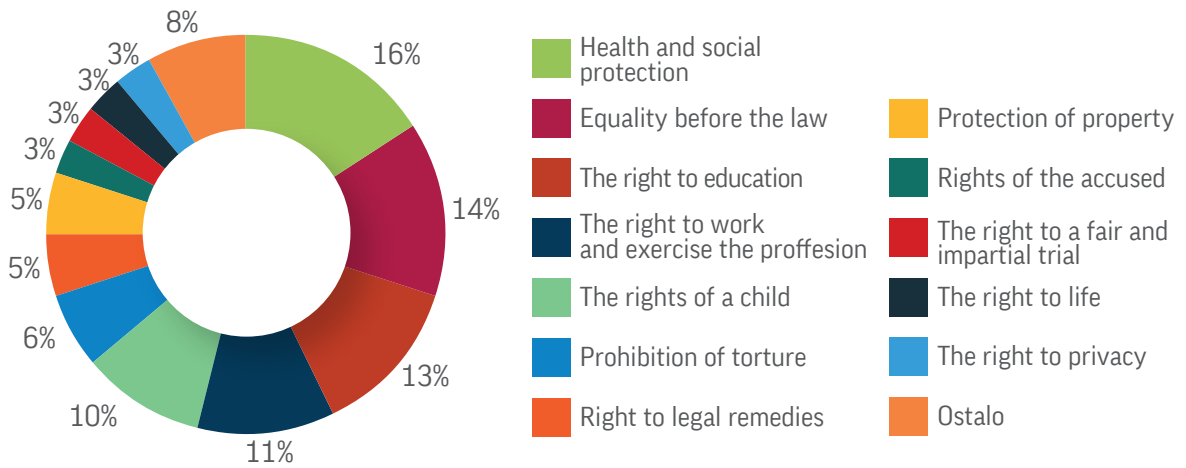


FIGURE 10: COMPLAINTS ADMISSIBLE FOR INVESTIGATION, DECIDED TO BE CLOSED UPON CONDUCTED INVESTIGATIONS

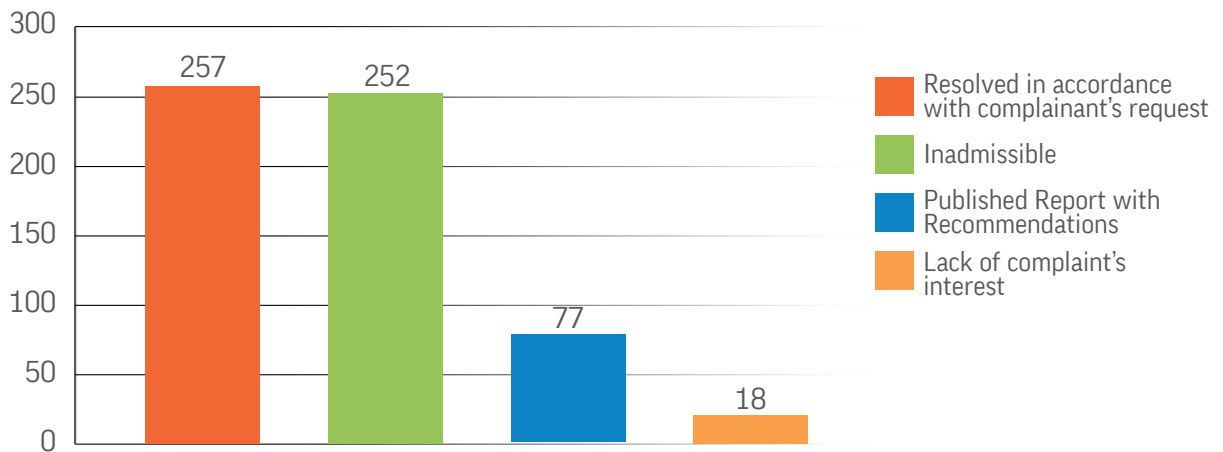


FIGURE 11: THE PERCENTAGE OF OMBUDSPERSON'S RECOMMENDATIONS APPLICABILITY BY THE RESPONSIBLE PUBLIC AUTHORITIES

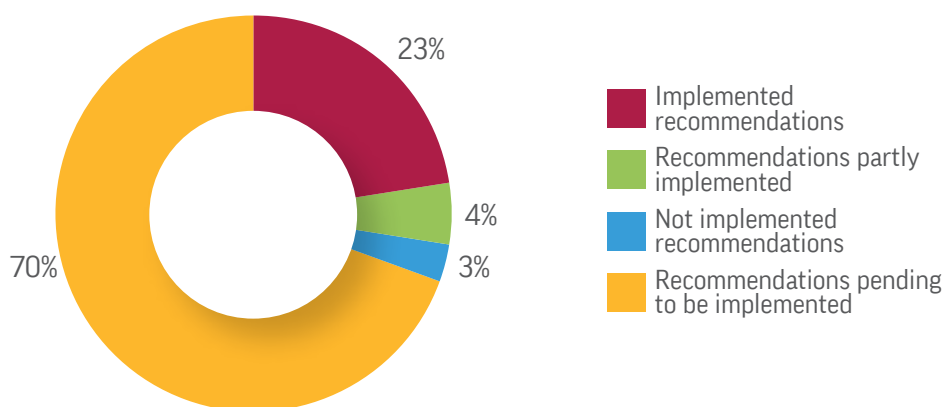


FIGURE 12: PERCENTAGE OF APPLICABILITY OF THE OMBUDSPERSON'S RECOMMENDATIONS, PUBLISHED DURING 2021, ON DECEMBER 31, 2021 AND ON DECEMBER 31, 2022

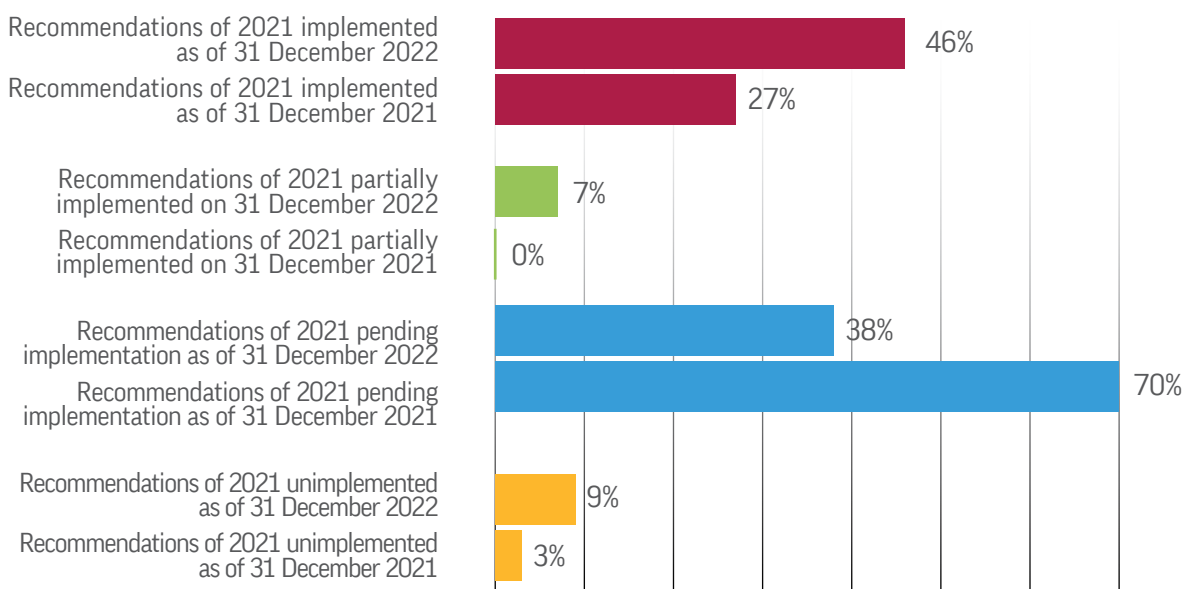
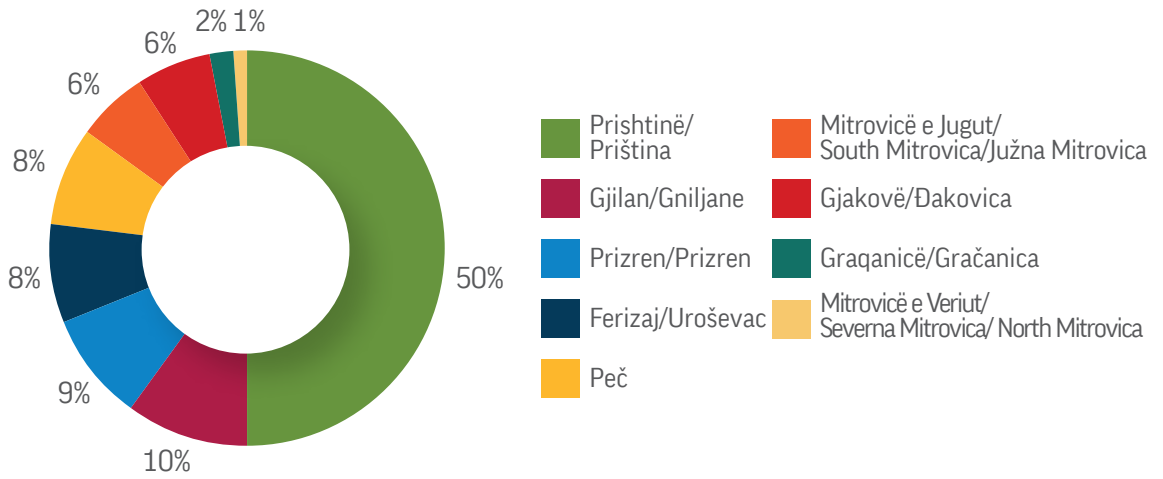


FIGURE 13: PERCENTAGE OF COMPLAINTS SUBMITTED DURING 2022, TO THE MAIN OFFICE AND OMBUDSPERSON'S REGIONAL OFFICES



Protection of Human Rights by the Ombudsperson

Fundamental rights

Human dignity

The Constitution, in Article 23 [Human Dignity], stipulates that “*Human dignity is inviolable and is the basis of all human rights and fundamental freedoms.*” Human dignity is linked with all other human rights and must be taken into account by the state, when implementing the Constitution and laws, as such it can be treated as value of the constitutional system.

Human dignity is also part of Universal Declaration of Human Rights preamble, which directly applies in the Republic of Kosovo. This Declaration, in Article 1, defines that “*all human beings are born free and equal in dignity and rights*”.

In its practice, the European Court of Human Rights treats human dignity as a right, breach of which affects the core of the European Convention on Human Rights⁵, respectively relates to Article 3 of the European Convention on Human Rights. Within the scope of implementation of certain measures, the state must be careful not to violate human dignity and, in this case, consequently to violate the essence of a right that is protected by the European Convention on Human Rights.⁶ Violation of human dignity, in the sense of the European Convention on Human Rights and the practice recognized by the

European Court of Human Rights, is always related to the violation of other right determined by the Convention.⁷

The Ombudsperson, in his practice, in some cases has dealt with the violation of human dignity in the sense of infringement of other rights defined by Chapter II of the Constitution. In Ex Officio Report no. 235/2018 the Ombudsperson emphasizes that the denial of the right to age-contribution-payer pension for this category of citizens, in addition to being a violation of equality before the law and discrimination, also violates their dignity.⁸

Even during 2022, the Ombudsperson received 23 complaints regarding allegations of violation of this right, while 14 complaints were processed for further investigations.

The Ombudsperson, during the visit to the Home for Elderly People without Family Care (HEPWFC), received a complaint from the resident G. S., who is disabled and in a wheelchair. He complained that he had not had access to the yard for three years, because of the small space in the lift. The Ombudsperson, with regard to this complaint, has demanded from responsible bodies to improve the situation as soon as possible, he also required that

5 Guide on Article 3 of the European Convention on Human Rights, Prohibition of torture
First edition – 31 August 2022, f.13.

6 Guide on Article 8 of the European Convention on Human Rights, right to respect for private and family life, home and correspondence Updated on 31 August 2022, f.26.

7 See exam. *ibid.*, p.46.

8 <https://oik-rks.org/en/2018/04/06/ex-officio-no-2352018-recommendation-report-of-the-ombudsperson-of-the-republic-of-kosovo-related-to-the-category-of-citizens-who-worked-before-1999-and-do-not-benefit-from-the-age-contribution/>

residents are treated with dignity, equality and without any discrimination.⁹

The Ombudsperson, upon the visit conducted to the Residential Home for Persons with Mental Disabilities in Prizren, has concluded that there is a lack of basic conditions and deficiencies in running of this center, conditions in this center are not in accordance with the standards for respecting of rights of persons with mental disabilities, which resides in this institution.

The Ombudsperson, during this visit, found that there is a lack of regular supply of clothing, heating, medications for health treatment as well as other needs and, based on the findings, he drew attention of the authorities to their obligation to implement the Law no. 05/L-025 on Mental Health and AI (MLSW) No. 11/2014 For Work and Placement of Residents, Persons with Mental Disabilities - Delay in Mental Development at the Special Institute in Shtime and in Community-Based Homes.

The Ombudsperson, with Ex officio Report no. 577/2021 related to rights in sexual and reproductive health, among other things, has found that *“most women and girls have not been treated with dignity in public health institutions in Kosovo, especially in cases of abortion and post-abortion care.”* Such a conclusion has derived from findings based on conducted investigations which disclosed that patients must wait long to be treated, lack of adequate therapies, lack of dedicated time for the patient, undignified treatment due to the absence of appropriate spaces, the lack of privacy, as well as confidentiality.

The Ombudsperson has assessed in the Report that the undignified treatment and violation of the confidentiality of women, especially those with

disabilities, in health institutions, represents a violation of human rights. Responsible authorities have been reminded of the obligation to take all measures to ensure treatment with dignity, protection of privacy and confidentiality, protection of personal and health data, as guaranteed rights, which must be respected in health institutions, both public and private.

The right to life

The right to life is guaranteed by the Constitution of the Republic of Kosovo, Article 25 of the Constitution [The right to life] determines that: *“Every individual enjoys the right to life”*.

Based on the data on the reported cases of domestic violence, and on the basis of the Reports that the Ombudsperson has published on these cases, it derives that the most frequent violation of the right to life, as a result of the failure to fulfil state's positive obligations, is observed in cases of domestic violence.

According to the Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the Istanbul Convention,¹⁰ the violence against women is considered a violation of human rights and a form of discrimination. This Convention also defines the general positive obligations of the state to protect the right to life, including the obligation of the state to take preventive measures to protect life and prevent violence. Provisions on protection from domestic violence are defined in Law no. 03/L-182 on Protection against Domestic Violence, Criminal Code No. 06/L-074 of the Republic of Kosovo (Article 248) and the document on Standard Operating Procedures for Protection from Domestic Violence

9 <https://oik-rks.org/en/2022/11/24/ombudspersons-national-preventive-mechanisms-report-regarding-the-visit-conducted-to-the-home-for-elderly-people-without-family-care-in-prishtina/>

10 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

in Kosovo. Achievement of gender equality, fighting and eliminating all forms of violence against women and murders are objectives, which are also proclaimed in Objective 5 of the 2030 Agenda.¹¹

The Ombudsperson has been dealing with the violation of the right to life for years, from different aspects, as a result of domestic violence and the state's failure to fulfill its positive obligations. The key factors that have influenced in violation of this right are as follows: the failure of institutional bodies to take adequate and proportional legal measures to protect the right to life and protection from domestic violence; assessment of the risk and measures for protection of the victim, lack of inter-institutional coordination, lack of implementation of the Law on Supervision of Persons Whose Movement is Limited by the Decision of the Court, as well as lack of compliance with the Standard Operating Procedures for Protection from Domestic Violence in Kosovo.

During the reporting year, the Ombudsperson admitted 7 complaints related to the violation of the right to life, of which 5 cases were initiated for investigation.

A great concern remains murdering of women, during the reporting year, four women have been murdered as a result of domestic violence and in connection with these cases the Ombudsperson has initiated Ex Officio investigations related to the violation of the right to life and the state's positive obligations to protect from domestic violence.

The Ombudsperson with Ex Officio Report with Recommendations no. 13/2022, with regard to state's positive obligations to protect the right to life and to ensure protection from domestic violence has concluded that the responsible authorities

have failed to fulfill the positive obligations to protect the right to life, the Standard Operating Procedures for Protection from Domestic Violence have not been respected, there has been a lack of appropriate attentiveness as per treatment of domestic violence cases, coordination of actions between the responsible authorities was missing as well as the absence of appropriate risk assessment has been observed.

The Ombudsperson reiterates that the Institutions must work harder so that the constitutional guarantees, primary legislation as well as the standards defined in the International Instruments and Conventions, which guarantee and protect the right to life, are fully implemented in practice. In this regard, the Ombudsperson demands from responsible authorities to fulfill the positive obligations and responsibility that the state holds, the measures it must take to protect life. The state must take responsibility when it fails to fulfill these obligations and take measures so that such cases are not repeated in the future.

Right to Personal Integrity

The right to personal integrity is a right guaranteed by the Constitution, Article 26 [Right to Personal Integrity] stipulates that: *"Every person enjoys the right to have his/her physical and psychological integrity respected, which includes: (1) the right to make decisions in relation to reproduction in accordance with the rules and procedures set forth by law; (2) the right to have control over her/his body in accordance with law; (3) the right not to undergo medical treatment against his/her will as provided by law; (4) the right not to participate in medical or scientific experiments without her/his prior consent"*.¹²

11 The Assembly of the Republic of Kosovo, on 25 January 2018, expressed its political will through Resolution No. 06-R-001 for the approval of the Sustainable Development Goals (SDGs), thus expressing the readiness to engage in the implementation of the 2030 Agenda.

12 Constitution of Republic of Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>, Article 26

Also, the European Convention on Human Rights interprets the physical and psychological integrity of a person through Article 8 (Right to respect for private and family life).

In the spirit of the Constitution, the right to personal integrity in our country is also protected by a number of laws.¹³

During the reporting period, the Ombudsperson did not admit any complaints from citizens concerning violation of the right to personal integrity. But, in the *Ex Officio* Report no. 577/2021¹⁴, regarding the rights to Sexual and Reproductive Health (SRH) in the Republic of Kosovo, a variety of rights violations have been identified that are also related to the violation of personal integrity, and this has been observed in the cases of disabled women. The Report is based on the narratives of women and girls from focus groups, public hearings, face-to-face interviews and interviews with Non-Governmental Organizations. Among others, the Ombudsperson has ascertained that women and girls with disabilities were not provided with appropriate information about their health status, by not offering them services in a dignified manner and by not enabling conditions for them to receive dignified and appropriate services according to their needs, and with this, if we observe it in a broad interpretation of Article 8 of the ECHR, then we can conclude that their integrity has been violated both in the psychological and physical aspects.

Freedom of movement

Freedom of movement is a fundamental human right that allows people to move freely within the country where they live or to move freely from one country to another.

The Constitution of the Republic of Kosovo in Article 35 guarantees freedom of movement and expressly determines that citizens of the Republic of Kosovo and foreigners who are legal residents of Kosovo have the right to move freely in the Republic of Kosovo as well as to choose their residence location. According to the Constitution, each person has the right to leave the country, furthermore the citizens of the Republic of Kosovo shall not be deprived the right of entry into the country and shall not be extradited from Kosovo against their will, except in cases when it is determined differently by law and international agreements. The limitations of this right are regulated by law, if they are necessary for the legal procedure, enforcement of the court's decision or fulfillment the obligation to protect the state. The right of foreigners to enter the Republic of Kosovo and reside in the country is regulated by law.

Freedom of movement is also guaranteed by the ECHR, Protocol 4, which in Article 2 defines the exercise of citizens' rights to freedom of movement and the way to limit this right in accordance with the law and justified by the public interest in a democratic society.

As per the right of free movement, during the reporting year, OI has received 32 complaints, of

13 Code No.08/L-032 on Criminal Procedure, published in Official Gazette of Republic of Kosovo /No.24/17 August 2022 Article 142 <https://md.rks-gov.net/desk/inc/media/DC62FE67-D24D-4307-932F-38B0B2D4812B.pdf> ; Law No. 02 /L-76 On Reproductive Health, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2506>; Law No.03/L-110 on termination of pregnancy at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2624>; Law No. 2004/38 on the Rights and Responsibilities for the Kosovo Residents in the Health Care <https://gzk.rksgov.net/ActDetail.aspx?ActID=2454>; Law No. 05/L-067 on the Status and Rights of Paraplegic and Tetraplegic Persons <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12554>.

14 <https://oik-rks.org/2023/01/04/raport-ex-officio-nr-5772021-lidhur-me-te-drejtat-ne-shendetin-seksual-dhe-riprodhues-qasja-ne-informata-dhe-sherbime-kontracesioni-ne-abort-dhe-kujdes-pas-abortit-si-dhe-kujdesi-per-shendetin-e/>

which 14 cases were initiated for investigation. Complaints which has been addressed to the OI with respect to the right to freedom of movement mainly relate to the rejection of the request to be equipped with personal documents of the Republic of Kosovo, the rejection of the request to be provided with the citizenship of the Republic of Kosovo despite claims that the complainants meet the specified criteria, due to rejection of the request for acquisition of the citizenship of the Republic of Kosovo by spouse naturalization, and for the impossibility of obtaining the passport of the Republic of Kosovo due to the lack of passport production materials.

The Civil Registration Agency, from October 2022, has notified the public opinion that there is a lack of materials for passport production and has not issued passports to applicants except for urgent cases. Citizens have been notified that due to the lack of material for the production of passports, they cannot be provided with them until January 2023. The Ombudsperson has followed this situation with concern, because the lack of travel documents limits freedom of movement. The Ombudsperson has called upon the responsible institutions to ensure that such institutional failures are not repeated, because they create insecurity among the citizens of the country, and violation of their basic rights.

The Ombudsperson has closely followed the events in the north of the country and has expressed his concern regarding the situation created as a result of the barricades. The Ombudsperson, through a press release, has emphasized that the placement of barricades in Mitrovica north, hinders the free movement of citizens, and has assessed that law and order must be restored throughout the country, by which accomplishment of civil rights are realized as well as protection and full respect of human rights and freedoms guaranteed by the Constitution of the Republic of Kosovo. The Ombudsperson has drawn the attention of each authority that within their scope, with constitutional and legal

responsibility, in a careful manner, harmonize all actions in respect of human rights and freedoms and appreciates the commitment of all local and international mechanisms, to ensure the basic right to security, free movement, the right to work and other rights guaranteed by domestic and international instruments.

Protection of Property

The Constitution of Republic of Kosovo, in Article 46 [Protection of Property], defines that “*The right to own property is guaranteed*”. Moreover, the Constitution also defines the right to use the property, determining that “*Use of property is regulated by law in accordance with the public interest*” and that “*No one shall be arbitrarily deprived of property*”, except in cases where this right is limited in accordance with the law on public interests.

Protection of the property is similarly guaranteed by Article 1 of Protocol 1 of the European Convention on Human Rights.

During the reporting year, the Ombudsperson has received about 130 complaints that in one form or another affect complainants’ property rights. The largest number of complaints are due to the delay of court proceedings, they are related to property disputes, non-execution of court decisions, etc. During the open days, the Ombudsperson received a complaint from a group of citizens with regard to the transfer of private properties to the ownership of the Republic of North Macedonia in the course of demarcation of the border between the Republic of Kosovo and the Republic of North Macedonia. Citizens have complained that some parts of their properties do not figure in the ownership certificates in the Republic of North Macedonia, for which they claim that they have not been expropriated and have not been compensated by either the Republic of Kosovo or North Macedonia, even they claim that they were notified of such situation only

when the ownership certificates were issued. The Ombudsperson has initiated investigation for the cases.

During the reporting year, the Ombudsperson has admitted complaints against the Kosovo Property Comparison and Verification Agency (KPCVA), namely for the part of the mandate inherited from the Kosovo Property Agency (KPA) with regard to the execution of decisions for eviction. Complaints are mainly submitted in relation to category A of requests with regard to property release.

The Ombudsperson has received a number of complaints against KEDS that are related to obstruction to possession, namely placement of electric poles near private properties, thus preventing the quiet and unimpeded use of the property. There are also complaints with claims that KEDS has failed to extend the network through some rural areas, with which, according to the complainants, in the absence of electricity, use of their properties is impossible for them.

During the reporting year, the Ombudsperson published a Report regarding the complaint submitted by some citizens¹⁵ with regard to amendment and supplementing of the *Regulation on Municipal Taxes, Fees and Fines of the Municipality*. The issue concerns the violation of the rights of the owners of real estate in the territory of the Municipality of Prishtina-Priština, who are obliged to pay the tax fee for transactions in real estate, determined by this Regulation. It was obvious that the Regulation has not been based on the law, to which the Ministry of Local Government Administration, which is obliged to evaluate the legality of Municipal Acts, had not reacted. The Ombudsperson has concluded

that the obligation to pay the tax fee for the transaction of immovable property constitutes a violation of the property right, because such an obligation is not defined by law. Therefore, it has recommended to the Municipality of Prishtina the repeal of the Regulation, while to the Ministry of Local Government Administration to undertake measures for initiating court proceedings related to the contestation of Municipal Acts, in cases when Municipalities refuse the request of the Ministry for the review of Municipal Acts.

As for social property and allegations of individuals on the social enterprises properties established in the past by taking private properties, the Special Chamber of the Supreme Court (SChSC) remains responsible. The Ombudsperson has continued to admit complaints against the SChSC regarding procedural delays. From the complaints received and handled, it can be observed that there is no significant improvement in the hasty resolution of the cases presented to this court, which is the only authority to decide on these issues.

Right to Liberty and security

The Constitution of Republic of Kosovo, in Article 29 [Right to Liberty and Security] stipulates that “Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases foreseen by law [...]”.¹⁶ This right is in full harmony with international human rights instruments, such as the ECHR¹⁷ and the Covenant on Civil and Political Rights.¹⁸

During the reporting period, the Ombudsperson, as National Preventive Mechanism from Torture, has carried out a significant number of visits to custody

15 <https://oik-rks.org/en/2022/11/25/ombudspersons-report-case-no-3532021-with-regard-to-the-regulation-01-41304-025353117-of-10-october-2017-for-the-amendment-and-supplementing-of-the-regulation-01-no-110-2782-for-mun/>

16 Constitution of Republic of Kosovo, Article 29

17 European Convention for the Protection of Fundamental Human Rights and Freedoms, Article 5

18 International Covenant on Civil and Political Rights, Article 9.

centers in Police Stations, detention centers and prisons. During these visits, interviews were conducted with persons deprived of their liberty, in some cases there were allegations of violation of the right to liberty, referring to detention decisions and unlawful delay of court proceedings, until a decision becomes final.

In December 2022, the media reported on the arrest of Mr. Dejan Pantić, who was detained by Court's decision and has been held by the police in a location that was not made public due to security and the circumstances created by the situation in the municipalities of the north of Republic of Kosovo. The Ombudsperson, in order to ensure that Mr. Pantić's guaranteed rights are being respected, conducted an online meeting with Mr. Pantić, in the course of which, he claimed that he does not have any complaints regarding the treatment provided by Kosovo Police, that he has a defense attorney, the fact that his family has been notified on his arrest and that has been sentenced to detention, he has been enabled to receive the adequate therapy prescribed by the doctor, he has been provided with accommodation, he has been handed the court decision on the detention measure and that there are no complaints regarding the treatment.

During this reporting year, the Ombudsperson has not received any complaints regarding allegations of violation of this right.

Right to Fair and Impartial Trial

The right to fair and impartial trial is fundamental human right, guaranteed by the Constitution of Republic of Kosovo, Article 31, [Right to fair and Impartial Trial] which determines that *"Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers"*.

This right in itself involves, the right to a trial within a reasonable time, by an independent and impartial court established by law and the right to free legal aid, to those who do not have sufficient financial means, to ensure effective access to justice.

The right to a fair and impartial trial is also guaranteed by Article 6 of the European Convention on Human Rights." [Right to a fair trial]

As for the protection of human rights and freedoms in the field of justice, specifically with regard to the right to a fair and impartial trial, the Ombudsperson has a limited mandate. The Ombudsperson can give general recommendations for the functioning of the judicial system, by not intervening in cases and legal procedures that are taking place before the courts, except for complaints related to the delays in the procedures in trial of judicial cases.¹⁹

This year as well, the highest number of complaints admitted by the Ombudsperson dealt with the violation of the right to a fair and impartial trial, in the sense of delays in the proceedings, actually violation of this right established by Article 31 of the Constitution of the Republic of Kosovo and Article 6 of the ECHR.

The Ombudsperson in all the cases of reviewed complaints, upon ascertaining the violation of this right, through letters and reports with recommendations, has requested from judicial authorities, undertaking of actions to eliminate the violations found.

A round table discussion has been organized on 21.06.2022 by the Ombudsperson regarding the *Effective resolution of delays of court proceedings - violation of the right to a trial within a reasonable time*, from which derived conclusions related to; the need for the joint efforts of all competent institutions on undertaking actions for instituting

¹⁹ Law on Ombudsperson, No. 05/L-019, Article 16.8.

the mechanism for the effective resolution related to the cases of delays in the judicial proceedings and the compensation of the victims of the violation of the right to a fair and impartial trial.²⁰

Despite the fact that the delays in court proceedings are one of the concerns that the Ombudsperson has continuously raised and recommended to the Government and the Assembly of the Republic of Kosovo to create a legal mechanism for compensating violations of this nature, there is still no step in terms of implementing this recommendation. Therefore, citizens, despite the fact that this right is violated, remain without legal protection in terms of compensation for the violation of the right to a fair and impartial trial.

Disciplinary liability of Judges and Prosecutors

The Ombudsperson, by the Law on Disciplinary Liability of Judges and Prosecutors (LDLJP)²¹, has been entrusted with the responsibility for admission of citizens' complaints against the judge or the prosecutor, Article 9.3 of the law which reads: "Natural and legal persons may also submit complaints against a judge or prosecutor to the Ombudsperson".

Based on the competences of this Law, the Ombudsperson, in this reporting year, received 9 complaints from citizens, of which 7 complaints were processed for investigation, while 2 complaints were rejected as inadmissible, since they were not completed eligibility criteria in accordance with the Law of the Ombudsperson and LDLJP.

It is worth noting that the Ombudsperson, in all these cases handled, has admitted the decisions from the competent authorities within the deadline

provided by law and has notified the complainants with the decisions he received.

Right to Legal Remedies

The right to Legal Remedies is guaranteed by the Constitution of Republic of Kosovo, Article 32 [Right to Legal Remedies] stipulates that: "Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law". This right is also guaranteed by Article 13 of the European Convention on Human Rights.

This year, the Ombudsperson has received 498 complaints from citizens claiming that their right to legal remedies has been violated, due to the failure to respond within the deadline to the submitted complaints. From admitted complaints, 218 of them were initiated for investigation, while the others were decided as inadmissible because they did not meet the eligibility criteria according to the Law on Ombudsperson.

Against central level authorities 155 complaints were filed, of which 75 complaints were initiated for investigation, while 78 complaints were filed against the responsible authorities at the local level, from which 53 complaints were initiated for investigation. From the complaints received, it can be observed that most of complaints are related to the non-response of the authorities to the submitted complaints.

To courts of all levels were submitted 76 complaints, of which 32 were initiated for investigation.

The Ombudsperson, referring to the article on the "Nacionale" portal entitled, "*Pay the penalty*

²⁰ <https://oik-rks.org/en/2022/06/21/press-release/>

²¹ Law No. 06/L-057 on Disciplinary Liability of Judges and Prosecutors, Article 9,3,

50% less, but you have no right to appeal - is TAK violating the Constitution?²², has initiated Ex Officio investigations against the Tax Administration of Kosovo, due to deprivation of citizens in exercising the right to legal remedies against minor offence penalties of the Tax Administration of Kosovo. The Ombudsperson, after investigating the case, issued a Report with Recommendations, with the conclusion that Article 12 of the Regulation of Tax Administration of Kosovo, which determines that "If the defendant pays the fine before the judgment on the minor offences is final, it shall be considered that in this way he/she has waived his/her right of an appeal", violates the right to a legal remedy, Article 32, of the Constitution of the Republic of Kosovo, and Article 13, the right to a legal remedy, of the European Convention on Human Rights.

The recommendation was implemented within the deadline by the *Tax Administration of Kosovo*.

Right to privacy

The right to private life, family life, housing and correspondence are rights included in the right to privacy, which are protected by Article 8 of the ECHR and Article 36 of the Constitution of the Republic of Kosovo. Everyone has the right to have their private and family life, residence and correspondence respected. However, in practice, violations of the right to privacy have been identified in Kosovo.

During this year, the Ombudsperson has received 13 complaints for violation of this right, of which seven (7) were initiated for further investigations, in the course of which the Ombudsperson has undertaken the necessary investigative actions, addressing specific recommendations to the competent authorities.

Among the objects that should be given special respect, according to Article 8, is the house, which is the place where the person lives permanently or with which the person has a sufficient and continuous relationship. The Ombudsperson has dealt with complaints regarding the violation of the right to privacy by the disturbances caused to citizens in their homes, by their neighbors, by businesses in the neighborhood, by cafeterias and restaurants, by cars parked in front of their homes, etc. In all these cases, the Ombudsperson has taken action and will continue to deal with them until they are resolved.

In line with the protection of this right, the Ombudsperson has also analyzed the issue of the installation of security cameras in some cells of prisoners in the Correctional Center for Women in Lipjan, in which case it has drawn the attention of the competent authorities to the violation of the rights of persons deprived of their liberty, guaranteed by the Constitution of the Republic of Kosovo, relevant legislation in force, as well as international standards for the protection of human rights.

The Ombudsperson, after case review and collection of information from the field, has been informed that the purpose of installing the cameras was for the safety of some prisoners with mental health problems, and they only covered the beds and the windows of the cell. Despite the good intention of placing these cameras, however, the Ombudsperson has assessed that this action was an arbitrary interference in privacy, and on the other hand, there was no specific legal act that would regulate such an action. The Ombudsperson has addressed the Ministry of Justice with a recommendation that the placement of cameras on this well-reasoned legal basis, which recommendation the Ministry

22 Gazette "Nacionale", link; <https://nacionale.com/sociale/paguaj-denimin-50-me-lire-por-ske-te-drejte-ankese-a-po-e-shkele-atk-jakushtetuten>

of Justice has taken very seriously and has implemented the given recommendation²³.

Right to Marriage and Family

The Constitution defines the right to marriage and family, defining that “Based on free will, everyone enjoys the right to marry and the right to have a family as provided by law”.²⁴ Furthermore the Constitution stipulates that “Marriage and divorce are regulated by law and are based on the equality of spouses.” Family Law of Kosovo, in Article 14 determines that “Marriage is 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”. The law regulates a fairly broad field of social relations, with a focus on relations arising in the family, marriage or related to the family and marriage.

International standards, which are directly applicable in the field of human rights protection, are the basis for the regulation of family relations in Kosovo.²⁵ Pursuant to Article 8 paragraph 1, of the ECHR “everyone has the right to respect for his private and family life, his home and his correspondence”. Based on this Article, family life is positioned directly in the sphere of private life, without the arbitrary intervention of the state. The public authority cannot interfere with the exercise of this right except such as in accordance with the law and when it is necessary in a democratic society, in the interest of public safety, for the protection of public order or for the protection of human rights and freedoms.²⁶

The Ombudsperson in the Opinion on the draft Civil Code²⁷ has concluded that “The Constitution of the Republic of Kosovo, by not explicitly stating that the right to marry is the right of “husband and wife”, does not present any obstacle to conclude that the deprivation of persons of the same sex by the right of marriage, constitutes a violation of the right not to be discriminated against on the basis of sexual orientation”.

The Ombudsperson received 30 complaints this year, 9 of which were processed for further investigations. Based on the analysis of the cases submitted to the OI, the majority of complaints in this area are related to procedural delays in the courts, non-payment of alimony, non-issuance of protection orders, children’s trust when parents live apart, making contact with children when parents live separately, etc.

The issue of hindering the contact of children under the care of one parent, with the parent who has been separated from the family community, continues to be a very serious problem in Kosovo. In most cases, due to unfriendly and extreme irritation of interpersonal relations between ex-spouses, where in most cases their families are also involved, one parent is denied to have contact with the children from other parent.

Freedom of Belief, Conscience and Religion

Freedom of belief, conscience and religion in Kosovo is regulated by Article 38 of the Constitution of the

23 <https://oik-rks.org/en/2022/02/25/ombudsperson-report-ex-officio-no-952022-with-regard-to-security-cameras-installed-in-some-prisoners-cells-in-the-correctional-center-for-women-in-lipjan/>

24 Constitution of Republic of Kosovo, Article 37, para. 1

25 Constitution of Republic of Kosovo, Article 22

26 ECHR, Article 8 paragraph 2

27 <https://oik-rks.org/en/2022/05/27/opinion-of-the-ombudsperson-regarding-the-recognition-of-the-family-relationships-of-people-of-the-same-sex-in-the-draft-civil-code-ex-officio-no-3072022/>

Republic of Kosovo and Article 9 of the European Convention on Human Rights.

The Constitution, in Article 38 [Freedom of Belief, Conscience and Religion], defines that “*Freedom of belief, conscience and religion is guaranteed*”. While the Law No. 02/L-31 on Freedom of Religion in Kosovo is an indication of the intention to legally strengthen these rights and freedoms, but with this law, which is still in force, religious rights, and above all the legal position of religious communities, are not adequately regulated. In previous Annual Reports (2012-2015), the Ombudsperson reported on the concerns of religious communities due to the lack of legal regulations that would regulate their legal position, as well as on the need for a legal solution to the legal position of religious communities.

Efforts to amend the existing law and to fix these issues have existed for almost a decade: The draft Law No. 06/L-001 on the amendment of the Law No. 02/L-31 on Freedom of Religion in Kosovo, which has been submitted to the Assembly of the Republic of Kosovo in September 2017 as well as Draft Law No. 07/L-037 for the amendment of Law No. 02/L-31 on Freedom of Religion in Kosovo, submitted to the Assembly of the Republic of Kosovo in September 2020. The Ombudsperson emphasizes the importance of proceeding with this law without delay in order to be approved by the Assembly. Adoption of this Law will regulate the legal position of religious communities and is a necessary precondition for the respect of other rights related to freedom of belief and religion. On the other hand, the delay in adoption of this Law can be considered as a failure of the state authorities to protect these rights. This issue is of concern to all traditional religious communities in Kosovo and may also be of importance to small religious

communities that may express their intention to register their activities in Kosovo.

During this year, a wide public debate was held, the theme of which was Administrative Instruction (MEST) No. 06/2014, Code of Conduct and Disciplinary Measures for High School Students. Although the Administrative Instruction does not restrict headscarf wearing, the debate is mainly about whether it is allowed or not to carry the headscarf in schools. The Ombudsperson, by analyzing the debate developed in public opinion and the previous reports that the Ombudsperson has issued on this issue, considers that the Administrative Instruction does not regulate this issue. In the reports published in previous years, the Ombudsperson considered that the Administrative Instruction did not represent a sufficient legal basis for restriction of this right, based on the principle that restriction of the rights and freedoms can only be done through the Law approved by the Assembly, when there is a legitimate purpose and the criteria defined by Article 55 of the Constitution are met.

Freedom of Expression

The Constitution of Republic of Kosovo in Article 40 [Freedom of Expression] determines that “*Freedom of expression is guaranteed. Freedom of expression includes the right to express oneself, to disseminate and receive information, opinions and other messages without impediment*”. Freedom of expression is not included in the group of absolute rights, “*can be limited by law in cases when it is necessary to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion*”²⁸.

Freedom of expression, as a fundamental right, is a right in itself as well as a component of other rights

²⁸ Article 40, paragraph 2 of the Constitution of Republic of Kosovo

guaranteed by the European Convention on Human Rights.

During the reporting year, the Ombudsperson received 5 complaints alleging the violation of the right to freedom of expression, 2 of which were initiated for investigation.

The Ombudsperson has continued to monitor implementation of the recommendations provided to public authorities during the previous years, regarding the respect and fulfillment of the right to freedom of expression in the country. On 10 December 2021, the Ombudsperson through the Report on the Impact of Pandemic on Human Rights²⁹, including the impact of the pandemic on freedom of expression, through which has addressed recommendations to public authorities with regard to provision of information in the appropriate language or in the mother tongue for the categories of persons with disabilities: Government of the Republic of Kosovo, Ministries and other Institutions should ensure adequate access and translation of information related to COVID-19 in a timely manner, into the official languages, and the Ministry of Health should ensure access to all information it publishes regarding the situation of the COVID-19 pandemic for persons with disabilities, in their understandable language. In this context, the readiness of the relevant authorities and the undertaking of actions on their part to implement Ombudsperson's recommendations, in the relevant field has been evaluated.

In this direction, the Ombudsperson has spoken on the necessity on regulating of appropriate legal and effective infrastructure on the use of social networks in the country in order to combat misinformation and the distribution of unverified

news, as well as construction of a standard, that in a balanced way guarantees the freedom of expression by setting the necessary limits for the protection of freedoms and other human rights.

Since the growth of hate speech and hate crimes has been highlighted as one of the most alarming phenomena in the European Union³⁰ ongoing work is required in monitoring, prevention and combating hate speech in all its forms, online and in press.

The Ombudsperson has followed with concern the deliberations that took place in the Assembly of the Republic of Kosovo during the session of 16 March 2022, in which the Members of Parliament of the Assembly of Kosovo were requested to vote pro/against the amended document of the Civil Code that deals with, among others, civil unions of the same sex (art. 1138, para. 2 “*Registered unions between persons of the same sex are allowed. Conditions and procedures are regulated by a separate law*”). This Article of this Code, from what has been observed from media and social platforms, has been opposed from a large number of citizens as well as some MP, and finally was rejected. One of the main arguments that MP raised to oppose the proposed draft code was that same-sex civil unions poses a threat to the preservation of the institution of the family. In this parliamentary session, some of the MP in their discussions have used inappropriate language towards LGBTI+ persons. The Ombudsperson stated that the language used in the aforementioned session is contrary to the fundamental values of a democratic society, which serve to protect human dignity, freedom and equality, and that these values are the fundamental basis for the functioning of the rule of law.

29 <https://oik-rks.org/en/2021/12/10/special-report-health-emergency-and-the-impact-of-the-covid-19-pandemic-on-human-rights-in-the-republic-of-kosovo/>

30 KERI, Annual Report on activities undertaken by KERI for 2017, <https://rm.coe.int/annual-report-on-ecri-s-activities-covering-the-period-from-1-january-16808c168b>.

In this context, the Ombudsperson is in the process of drafting a Report on Hate Speech in Public Discourse in Kosovo. This Report intends to prove that the hate speech represents a serious problem for human rights and equality, by causing unnecessary tensions between different social groups, by disrupting public order and peace as well, which needs to be addressed from the responsible institutions. The Report also aims to make the public and institutions aware of the international and local standards of what hate speech is considered and when the limit of freedom of expression is exceeded as well as to provide examples collected from the research regarding the language used in parliamentary deliberations and that used in media discourse, with a special focus on social media, by reasoning the same by international and local judicial practice.

Right to Access Public Documents

The right of access to public documents guarantees every person the right of access to public documents, apart the information limited by law (Article 41 of the Constitution and the Law on Access to Public Documents). This right is not an absolute right, but it is a right that must be balanced with other rights, without harming other interests.

The right of access to public documents, in addition to local legislation, is also guaranteed by the Universal Declaration of Human Rights (Article 19) and the European Convention on Human Rights (Articles 8 and 10).

Ombudsperson Institution, as an independent constitutional institution, assists citizens in accomplishing the right to access public documents based on Law no. 05/L-019 on Ombudsperson and the Law No. 06/L-081 for Access to Public Documents

During 2022, the Ombudsperson has admitted 14 complaints related to access to public documents, 11 of which were declared inadmissible, while the other 3 were initiated for investigation. From the complaints initiated for investigation, one complaint has been admitted by media, and two were individual complaints. Individual complaints were related to the restriction of access to the required documents with regard to the recruitment procedure in two different institutions.

In the case of the complaint filed against the Ministry of Foreign Affairs and Diaspora (MFAD), by online Press Insajder, for request refusing for access to public documents, related to diplomat's expenses, the Ombudsperson, with Recommendation Report delivered, has found that the MFAD has failed to fulfill its obligations with regard to enabling, namely permitting access to public documents in accordance with complainant's submitted request, the guaranteed right. In addition, the Ombudsperson found that the failure to undertake action by the MFAD, despite the decisions that the Agency for Information and Privacy has issued regarding the case, indicates a dismissive approach of the MFAD, by not paying attention and importance to the public's interest in the way of the use of public money.

Freedom of Media

The Constitution of Kosovo, Article 42 [Freedom of the Media] provides guarantees for the freedom and pluralism of the media and prohibits censorship. Journalists' sources are protected by Law No. 04/L-147 for the Protection of Journalism Sources. There are other laws that contain detailed provisions for the implementation of constitutional guarantees, as well as media self-regulation through Codes of Ethics that impose greater responsibility on journalism.

According to the Independent Media Commission, there are 19 television stations in Kosovo³¹ (one public television, 13 TV stations in the Albanian language, and 5 TV stations in the Serbian language), and 89 licensed radio stations. Worth mentioning here that there is no exact number of online newspapers nor the portals. Nevertheless, Press Council of Kosovo (PCK) has 57 members registered in this Council.

Association of Journalists of Kosovo (AJK) has reported on more than 30 cases of attacks and threats against journalists, photojournalists, cameramen and media houses³². Since April 2022, AJK, together with the European Center for Press and Media Freedom (ECPMF), have welcomed 13 journalists from Ukraine and recently four journalists from Afghanistan, as part of the “*Journalists in Residence - Kosovo*” program, which is financially supported by the Government of the Republic of Kosovo and which aims to provide shelter to threatened journalists.

The Ombudsperson considers that freedom of expression and freedom of media constitute the cornerstones of a democratic society. The media should be free to report on any topic considered to be in the public interest. Attacks, threats and pressures against journalists must receive a quick response to guarantee safety and protection for them, to be free to exercise their profession. The Ombudsperson also reiterates that journalists and media houses in general should work jointly to fight fake news and prevent misinformation, as well as hate speech, so that their mission is protected from misappropriation and misuse.

Freedom of Gathering

Freedom of gathering is expressly guaranteed by the Constitution of the Republic of Kosovo, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the Framework Convention for the Protection of National Minorities and the Convention on the Rights of the Child.

In order to establish the legal rules for organizing public gatherings and respecting free speech, the right to public gatherings is regulated by Law no. 03/L-118 on Public Gatherings, which defines the right to free speech in public gatherings, protests, public demonstrations, the time and method of announcement as well as organizers’ duties and responsibilities.

During the reporting year, no complaint has been served to the Ombudsperson Institution regarding the right to Freedom of Gathering, nor has it found a reason to initiate any case for Ex-Officio investigations.

Freedom of Association

The Constitution of Republic of Kosovo in Article 44 determines that: “*The freedom of association is guaranteed*”. The limitation of this right can be done by law for special categories of employees. The European Convention on Human Rights in Article 11 Freedom of assembly and association has determined that: “*1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests*”.

31 <https://bit.ly/3DbLL1a>

32 Association of Journalists of Kosovo, posting on Facebook, on 31 December 2022, link: <https://bit.ly/3Db5iSW>

The Republic of Kosovo has also adopted a number of legal provisions where citizens and certain categories of employees are recognized the right of association in various mechanisms³³.

In 2022, the Ombudsperson received 5 complaints, with allegations that the rights related to Freedom of Association were violated by public authorities. Complaints have been addressed to institutions such as: Ministry of Internal Affairs, Central Bank of Kosovo, Government of Kosovo and Kosovo Radio and Television.

While conducting investigations on received complaints, the Ombudsperson issued a Report with Recommendations³⁴ regarding the violation of the rights to Freedom of Association, regarding the alleged statements for discrimination on the basis of freedom of association of the complainants, respectively the Trade Union Association of Employees of the Civil Aviation Authority of Kosovo.

The Ombudsperson, after the investigation conducted, found a violation of the right to freedom of association, he also found that there was a lack of will expressed by the Civil Aviation Authority for cooperation with the Trade Union Association of Employees of the Civil Aviation Authority of Kosovo.

The Ombudsperson has recommended the Civil Aviation Authority to undertake all measures to respect the right of association and trade union organization.

Also, the Ombudsperson issued the Report with Recommendations³⁵ regarding the violation

of the rights to Freedom of Association, to the complainant: the Institute for Accounting, Auditing and Finance regarding alleged statements for discrimination based on the freedom of association, from Law no. 06/L-032 on Accounting, Financial Reporting and Auditing.

After the investigation, the Ombudsperson found that the provisions of Article 3, paragraph 1, point 1.13, and Article 33, point 3, of the Law no. 06/L-032 on Accounting, Financial Reporting and Auditing are not in accordance with the principle of legality and legal certainty, because they are contrary to the constitutional principles of the rule of law and non-discrimination, defined by Article 7 of the Constitution, with the Freedom of Association, according to Article 44 of the Constitution, with the Right to Exercise the Profession, according to Article 49 of the Constitution, as well as with the principles of Law no. 05/L-021 on Protection from Discrimination.

The Ombudsperson has recommended to the Ministry of Finance, Labor and Transfers (MFLT) to amend and supplement the Law no. 06/L-032 on Accounting, Financial Reporting and Auditing, namely erasing of Article 3, paragraph 1, point 1.13, and Article 33, paragraph 3.

On 27 May 2022 the Ombudsperson was served with the response by MFLT with regard to the given Report, through which it announced that, in coordination with the Legal Department of the Ministry, it will request amendment of the Legislative Program for 2022 in order to include the amendment/supplementing of the Law No. 06/L-032 for Accounting, Financial Reporting and

33 Law no. 06/L-043 on Freedom of Association in Non-Governmental Organizations, namely Article 4 paragraphs 1, 2, 3, 4, 5; Law no. 04/L-011 on the Trade Union Organization in Kosovo, Article 2, paragraph 1.4; Law no. 06/L-114 on Public Officials, namely Article 20; Labor Law no. 03/L-212, namely Article 88.

34 <https://oik-rks.org/en/2022/06/09/report-of-the-ombudsperson-case-no-4742021-arianit-dobroshi-and-others-regarding-complainants-allegations-on-discrimination-based-on-freedom-of-association-as-a-member-of-the-trade-union-associat/>

35 <https://oik-rks.org/en/2022/04/29/report-of-the-ombudsperson-of-republic-of-kosovo-no-4442021-with-regard-to-amendment-and-supplementing-of-the-law-no-06l-032-on-accounting-financial-reporting-and-auditing/>

Auditing, for amendment of Article 3, paragraph 1.13, and Article 33, paragraph 3 and harmonization of these criteria with the constitutional principles and other legal provisions in force.

In the reporting year, the Union of Independent Trade Unions of Kosovo - UITUK had made a decision to commence a strike, with a request addressed to the Government of Kosovo for: salary increase by 100 euros; promulgation of the Law on Salaries in the Public Sector; supplementing of the Laws for Public Officials, for State-Funded Pension Schemes and Health Insurance.

Taking into account the situation created by the strike, in which, among other things, children's right to education has been violated, the Ombudsperson, in order to fulfill the constitutional and legal obligations, on 15 September 2022, held separate meetings with representatives of the Trade Unions and the Government in an effort to assist in resolving the situation that was created with the strike through mediation.

Additionally, on 18 September 2022, the Ombudsperson sent a letter to the parties regarding the discussions and issues raised between the parties during the meetings, by which he asked them to provide him with the response. Through the same letter, parties have been reminded that every stand or action, in the center of each priority, should have the best interest of the child as well as children's right to education and learning, as a right guaranteed by the Constitution. The Ombudsperson reiterated the fact that the principle of the best interest of child should guide each of us in fulfilling of our obligations and responsibilities. He also reminded them of the constitutional and legal responsibility of the government and the positive obligation that the state has to respect the right to education and the respect of human rights and freedoms, as defined in the Constitution.

On the other hand, the Ombudsperson emphasized the importance of respecting the right to union organizing and the right to union actions. However, he raised concern and reminded the parties that the situation created by the strike in education was to the detriment of the children and consequences endured will be irreparable for children for every lost lesson.

Moreover, on 18 September 2022, the Ombudsperson issued a statement for the public, through which he publicly called upon all parties to reflect, to find a solution to get out of the situation that had been created, so that enjoyment of the right to education is made possible for children. Actually, the Ombudsperson has concluded that in the created situation, the right to education, as a constitutional right, has not been respected, since the children were deprived of the right to education and learning, which will have serious consequences for the children and for the country.

On the same day, on 18 September 2022, the Ombudsperson received a response from the Ministry of Education, Science, Technology and Innovation - MESTI with the decision that they are ready to discuss on issues raised by the Ombudsperson while they are waiting for unions' response.

On 3 October 2022, the strike of educational staff was terminated unilaterally by the United Union of Education, Science and Culture of Kosovo (JUESCK) without any agreement between the parties.

Freedom of Election and Participation

Constitution of Republic of Kosovo in Article 45, [Freedom of Election and Participation], paragraph 1, stipulates that: *“Every citizen of the Republic of Kosovo who has reached the age of eighteen, even if on the day of elections, has the right to elect and*

be elected, unless this right is limited by a court decision”.

Also, the European Convention on Human Rights, in Article 3 of Protocol 1, defines the right to free elections, as follows: *“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”*

During the reporting year there were no elections in the Republic of Kosovo, while there were efforts to organize local elections in the northern municipalities of the country, which were suspended.

The Ombudsperson notes that during the reporting year there were no actions in harmonization of the Laws on Elections with the Law on Gender Equality. The Ombudsperson has repeatedly raised the issue of not having equal representation in the lists of candidates who compete in the elections, due to the fact that these lists are contrary to Law no. 05/L-020 on Gender Equality and with Law no. 05/L-021 on Protection from Discrimination, laws that require equal treatment in all spheres. On 27 September 2019, the Ombudsperson submitted a lawsuit with the Basic Court in Prishtina (BCP), namely with the General Department, with a request for a provisional measure regarding the violation of the right to women’s equal electoral treatment and participation by the Central Election Commission (CEC). The lawsuit was filed because the CEC certified the lists with the names of the candidates for deputies proposed by the political entities for the Early Elections for the Assembly of the Republic of Kosovo 2019, by disregarding the constitutional and legal guarantees regarding gender equality, specifically the equal treatment of women in electoral rights and participation.

Regarding electoral and participation rights, in recent years the Ombudsperson has published

several Recommendations Reports as well as an Amicus Curie Opinion regarding the appointment of deputy mayors in municipalities.

The Ombudsperson, with regard to the complaint submitted to the Ombudsperson Institution A. No. 274/2022, in relation to Lawsuit A.No.1046/22, submitted on 29 April 2022 by the State Bar, on behalf of the Ministry of Local Government Administration, on the issue of appointment of the deputy mayor of the municipality for communities in Fushë Kosove- Kosovo Polje, has acted in the capacity of a Friend of the Court (*Amicus Curie*) where he expressed his views from the aforementioned reports that neither Administrative Instruction (of that time) No. 2014/01 nor Administrative Instruction (currently in effect) No. 02/2020 on the Procedure for the Appointment of Deputy Mayors in Municipalities do not convey the spirit of the Constitution and the Law on Local Self-Government. Legally, it is not sustainable to take for granted that the position of vice president for communities must be a member of the largest non-majority community in a given municipality. In this regard, any restraint in the Administrative Instruction, according to which priority would be given to any of the non-majority communities for the proposal of the vice president for communities of the municipality, infringes the right of other non-majority communities, which are not the largest non-majority community, to propose the vice president for communities of the municipality.

**Ombudsperson
Institution as a protective
mechanism against
discrimination**

Ombudsperson Institution as a protective mechanism against discrimination

The Ombudsperson is an Independent Constitutional Institution that supervises and protects the rights and freedoms of individuals from unlawful and irregular actions or inactions of public authorities.

The Law on the Ombudsperson defines that the Ombudsperson, also as an equality mechanism for the promotion, monitoring and support of equal treatment without discrimination on the grounds protected by the Law on Gender Equality and the Law on Protection from Discrimination.

The Law on Protection from Discrimination defines the Ombudsperson as a state institution, which promotes and protects human rights and which deals with cases related to discrimination. The Law on Protection from Discrimination furthermore authorizes the Ombudsperson to provide assistance to victims of discrimination in filing complaints against discrimination and provides the essential information to persons who have filed a complaint for discrimination regarding their rights, obligations and opportunities of the court, as well as for other means of protection; addresses directly to investigation and prosecution bodies with a request to initiate an investigation of criminal offenses and requires to initiate the applicable disciplinary proceedings; monitors implementation of the Law on Protection from Discrimination and initiates the amendments of provisions for implementation and

advancement of protection from discrimination; provides advices, guidance and support to subjects of public and private sector, on best practices in the promotion of equality, adapting to diversity and combating discrimination on the grounds covered by the relevant Law on Gender Equality and this Law, and shall provide recommendations to take measures to promote equality, adapting to diversity and /or combating discrimination.

The Law on Gender Equality defines the Ombudsperson as an equality institution that handles cases related to gender discrimination, in accordance with the procedures set forth in the Law on the Ombudsperson.

It should be taken in consideration that in line with the development and efficient protection of rights and in particular protection against discrimination, the obligation of the state authorities is not limited only to those rights which are expressly protected by the constitutional provisions and the laws whose scope is equality before law, but also with the provisions of any law in force which guarantees any right or benefit for the citizens of the country, taking as an obligation the general protection against discrimination.

Regarding equality bodies, the European Commission approved two proposals for new

obligations Directives³⁶, which will significantly strengthen the equality bodies and their work.

While many of these criteria (Directives) for the functioning of equality bodies are included in local legislation, there are still some challenging issues that the Ombudsperson has identified in the Law on Protection from Discrimination and the Law on Gender Equality, which will be reflected below.

Implementation of the Law on Protection from Discrimination

The Ombudsperson has encountered a number of challenges during the exercise of his mandate with respect to protection from discrimination. From Ombudsperson's point of view, the challenges on implementation of the Law on Protection from Discrimination are as follows:

- Provision of legal assistance to victims of discrimination in drafting complaints, due to the fact that this contradicts the principles and provisions of the Law on Ombudsperson which requires that the Ombudsperson must maintain impartiality and that the Ombudsperson will not interfere in court cases except in cases of delay of court proceedings;
- Lack of full Ombudsperson's powers in the private sector, namely the lack of authorization of the Ombudsperson to directly investigate complaints against private sector entities;
- Lack of sublegal acts for implementation of the Law on Protection from Discrimination but also the Law on Gender Equality;
- The uncertainty with regard to the authority that issues administrative sanctions

according to the minor offence provisions contained in the law;

- Non-harmonization of the Law on Protection from Discrimination with the Law on Contested Procedure/lack of recognition of the fact that the Law on Protection from Discrimination is *lex specialis* for issues related to discrimination.

Regarding the issues, with respect to the Law on Protection from Discrimination, the Ombudsperson held a workshop on 21-23 January 2022 with the Commission on Human Rights, Gender Equality, Victims of Sexual Violence during the War, Missing Persons and Petitions on the occasion of which has notified Commission members, participants of this workshop, on the given issues.

The Ombudsperson considers that despite all the challenges he has managed to exercise his mandate as an equality body quite successfully. However, the Ombudsperson needs the support of authorities in further strengthening and raising the capacities of the Department for Protection from Discrimination as well as amendment of some of the provisions of Human Rights Package of Laws so that the exercise of Ombudsperson's mandate is further strengthened and the victims of discrimination are provided with maximum protection.

Ombudsperson's findings with regard to discrimination in Kosovo

During the reporting year, 75 complaints with allegations on discrimination were addressed to the Ombudsperson, while 6 cases were initiated Ex-Officio by the Ombudsperson.

36 https://commission.europa.eu/system/files/2022-12/1_1_201224_prop_council_dir_eq_bo_en.pdf

The cases initiated based on citizens' complaints mainly concern allegations on discrimination related to social issues, health issues, issues from work relations, education, etc., which are more or less similar to other complaints admitted by the Ombudsperson, but registered complaints (Department for Protection from Discrimination) contain allegations that there was discrimination mainly on the basis of ethnicity, age, gender, political opinion or on any other basis protected by the Law on Protection from Discrimination. Whereas, the cases initiated Ex-Officio are mainly related to situations with regard to assessment of disability by the Commission for the assessment and determination of procedures for recognizing the status and rights of paraplegic and tetraplegic persons, the lack of employment in public institutions of persons with disabilities, the access of Persons with Disabilities in the municipalities of Kosovo and the scholarship program for high school students from Roma, Ashkali and Egyptian communities.

During the reporting year, the Ombudsperson has published five (5) Reports with Recommendations³⁷ by which he identified provisions of laws and other normative acts which are discriminatory and also identified discriminatory practices.

In addition to the published reports, the Ombudsperson has published the Opinion regarding the recognition of same-sex family relationships with the Draft Civil Code.³⁸

Through this Opinion, the Ombudsperson has highlighted the constitutional guarantees provided by the Constitution of the Republic of Kosovo for the respect of private and family life, as well as protection from discrimination based on sexual

orientation for every citizen of the Republic of Kosovo.

The Ombudsperson has expressed his stand that the family relations of persons of the same sex should be recognized and defined by the Civil Code, as guaranteed by the Constitution and in accordance with Law No. 05/L-021 on Protection from Discrimination, without any distinction and in the same way as for persons of the opposite sex.

Furthermore, the Ombudsperson has assessed that the Constitution of the Republic of Kosovo, by not defining specifically that the right to marry is the right of "husband and wife", does not present any obstacle to establish that the deprivation of persons of the same sex from the right to marry, represents a violation of the right not to be discriminated against based on sexual orientation. Moreover, compiling of the Draft Civil Code for permitting registered civil unions between persons of the same sex, without clearly defining what constitutes a registered civil union and determining that the conditions and procedures for the recognition of these unions will be regulated with a special law, does not present a solution and does not reflect the rights guaranteed by the Constitution.

The Ombudsperson has continuously, whether through Annual Reports as well as meetings, informed the Assembly about the judicial process initiated by the Ombudsperson against the Energy Regulatory Office (ERO). On 4 December 2022, the Court of Appeals rejected as unfounded the appeal of the ERO, while has confirmed the Judgment of the Basic Court in Prishtina A.nr.1373/17, of 15 September 2021, which found that there was unequal treatment in the case of billing of electricity spent by four northern municipalities.

37 <https://oik-rks.org/en/reports/case-reports/>

38 <https://oik-rks.org/en/2022/05/27/opinion-of-the-ombudsperson-regarding-the-recognition-of-the-family-relationships-of-people-of-the-same-sex-in-the-draft-civil-code-ex-officio-no-3072022/>

On 13 December 2021, the Energy Regulatory Office (ERO) commenced the extraordinary tariff review. ERO argued that increase of prices in international markets combined with increased domestic energy demand necessitated a review of tariffs. The Ombudsperson has initiated investigations related to ERO Decision on the establishment of the tariff structure and the Regulation of prices through block tariffs. Regarding the case, the Ombudsperson has issued *Ex Officio* Opinion no. 39/2022, for the assessment of the new tariff structure in Kosovo against human rights. The Ombudsperson has assessed that ERO's Decision on selective price increases (up to 800 k and above 800 k) of the price of energy for setting block-tariffs and the decision on selective funding are also contrary to the principles of setting tariffs described in local legislation and contrary to the provisions of the Law on Consumer Protection. The affirmative measures enshrined in ERO decision do not enjoy in the same way all consumers with adjusted prices and not all citizens of the Republic of Kosovo are affected equally by the increase of the price.

Normative acts in relation to the principle of non-discrimination

During the reporting year, the Ombudsperson has published four Reports with Recommendations where it has identified provisions of normative acts that contradict the principle of non-discrimination.

Ombudsperson in the Report 444/2021³⁹, found that the Law no. 06/L-032 on Accounting, Financial Reporting and Auditing contains provisions that are contrary to the principle of non-discrimination.

The Ombudsperson in this Report has assessed that the conditions for licensing and exercising the profession of accountants and auditors should be objective and equal for everyone and should not be related to the nature of mandatory membership in an international organization. Licensing and practicing the profession of accountants and audits should be accessible to all qualified citizens under equal conditions. Therefore, the Ombudsperson requested the amendment of Law no. 06/L-032 on Accounting, Financial Reporting and Auditing.

Ombudsperson in the Report with Recommendations 176/2020⁴⁰, has found that the Administrative Instruction (MLSW) No. 10/2014 for Activities and Requirements of Placement of Residents in Homes for Elderly People Without Family Care and in Community Based, contains discriminatory provisions. Provision of Article 5, point 1.3; point 1.4 and point 1.8, represents an act of direct discrimination because it imposes conditions based on the family status of the applicants for placement in home for elderly people, on the basis of gender and marital status of their descendants or related to the fact that the applicants of the request have sons, daughters, unmarried or married. Consequently, the Ombudsperson has requested the amendment of these provisions.

The Ombudsperson, in the Report with Recommendations 125/2021, has come across practices that contradict the principle of non-discrimination at the University of Prishtina (UP), with regard to amendment of the Regulations of the University of Prishtina that are also in conflict with the Statute of the University of Prishtina. The Ombudsperson has assessed that the Regulation on selection procedures related to the appointment, reappointment and advancement of

39 <https://oik-rks.org/en/2022/04/29/report-of-the-ombudsperson-of-republic-of-kosovo-no-4442021-with-regard-to-amendment-and-supplementing-of-the-law-no-06l-032-on-accounting-financial-reporting-and-auditing/>

40 <https://oik-rks.org/en/2022/03/26/report-of-the-kosovo-republic-ombudsperson-ex-officio-no-1762020-with-regard-to-amendments-to-the-administrative-instruction-mlsw-no-102014-for-activities-and-requirements-of-placement-of-resi/>

academic staff at the University of Pristina “Hasan Prishtina” (prot. No. 886, of 27.04.2022); and the Regulation for selection procedures related to the appointment, reappointment and advancement of academic staff at the University of Prishtina “Hasan Prishtina” (prot. No. 887, of 27.04.2022) contain discriminatory criteria. According to these Regulations, candidates who have completed their PhD studies at UP and who meet the criteria of the UP Statute, have priority over candidates who have completed their PhD studies in other Higher Education Institutions of Kosovo and Kosovo’s neighboring countries, regardless of the points accumulated in the respective categories. This priority does not apply to candidates who are already in a regular employment relationship at UP; and candidates who have completed their Master’s studies at the UP (for certain fields with the Statute, integrated 5, 6-year studies) and who meet the criteria of the UP Statute, have priority over candidates who have completed their studies in other Higher Education Institutions of Kosovo and the neighboring countries of Kosovo, regardless of the points accumulated in the respective categories.

The Ombudsperson has found that such criteria constitute restrictions that are not authorized by the relevant laws that regulate the field of higher education in the Republic of Kosovo, and these constitute discrimination on the basis of the country or institution of public and private higher education where they have accomplished their studies, in the sense of Protocol 12, Article 1, of the European Convention on Human Rights.

General practices which conflict with the principle of non-discrimination

In addition to cases where the Ombudsperson identifies provisions of normative acts that may conflict with the principle of non-discrimination, there are also practices contrary to this principle

where the victims of discrimination are mainly members of vulnerable groups such as the elderly, persons with disabilities, members of communities, in particular the Roma, Ashkali and Egyptian communities. Discriminatory practices are also encountered to a great extent in the private employment sector, especially when it comes to women and girls.

For the Ombudsperson, the fact that the reporting of discrimination cases is still low remains a great concern. Most of the discrimination complaints that are filed with the Ombudsperson do not result in discrimination, while the real cases of discrimination continue not to be disclosed or reported due to ignorance of the concept of discrimination, fear of victimization, but also due to the lack of citizens’ trust in Courts.

As far as the cases of discrimination handled by the Courts is concerned, it is noted that, apart small number of cases, the procedure undertaken as well as decisions issued by the Courts, contains obvious deficiencies. The judgment of the Basic Court in Prishtina C.nr.3663/18, of 18.10.2022 with the plaintiff Mr. Faruk Kukaj and the respondent- Municipality of Prishtina, the case in which the Ombudsperson appeared in a capacity of a friend of the court, even though it approved partially the lawsuit of Mr. Kukaj, of the importance is the fact that discrimination has been proven. Notwithstanding, the procedure developed in this case was not in accordance with the Law on Protection from Discrimination, in terms of the burden of proof, where the Court has demanded from the plaintiff, at the same time a victim of discrimination, to provide evidence on support of the claims on discrimination, while the law stipulates that the burden of proof falls on the defendant, which must prove that there was no violation of the principle of equal treatment. Also, the Judgment is flawed because the Court has rejected as unfounded, among others, the claim of the plaintiff to prohibit the defendant

from committing discriminatory actions. Refusal of the request for banning discriminatory actions is an unacceptable practice and fails to protect the victim from discrimination.

Discrimination appears in different forms and except in cases where discrimination is direct, more easy identifiable form, other forms of discrimination require analysis, research and treatment of situations from case to case. The fact that we have a small number of cases presented to the Court and a small number of court decisions dealing with cases of discrimination, lack of court decisions where discrimination is proven and victims of violation are compensated, has a negative impact on the prevention of discrimination.

On the other hand, it is more important to emphasize that according to Protocol 12 of the European Convention on Human Rights - General Prohibition of Discrimination, it applies to situations that fall within the scope of a substantial right guaranteed by domestic law. In this regard, the lack of implementation of the internal law, which contains substantial rights also negatively affects the prevention of discrimination.

Rights of a Child

Children, in addition to being bearers of rights, are also active participants in realization of their rights. They enjoy general rights as adults but also specific rights which are appropriate to their special needs as children. Since children start their lives dependent on adults, respecting and realizing their rights is essential for them to develop their full potential, to recognize their human dignity and the urgency of the state to ensure their well-being. Consequently, healthy development of children is essential for the future well-being of any country because their contribution to society depends on this development.

The Constitution of the Republic of Kosovo deliberately protects the rights of children and imposes legal obligations to respect, protect and fulfill them, through Article 50 on the Rights of the Child - and the direct implementation of the Convention on the Rights of the Child (CRC). Moreover, in 2019, Kosovo marked an important step towards the realization of these rights by completing the legal framework with the Law on Child Protection (LCP) as the first law that addresses the needs of children in a comprehensive and specific manner. But, the Law remains only a symbolic step if it is not followed by concrete steps and successful implementation. The LCP obliges the Government, the Independent Media Commission and the Judicial Council to issue 18 sub-legal acts according to their areas of responsibility, one year upon entrance into force of the Law. To date,

almost three years later, only six sub-legal acts have been approved: 1. Administrative Instruction (GRK) No. 08/2022 on the Council for the Rights of the child; 2. Administrative Instruction (GRK) No. 07/2022 for Authorities for the rights of the child; 3. Administrative instruction (GRK) No. 06/2022 for Establishment and Functioning of the Team for the rights of the Child; 4. Administrative Instruction (GRK) No. 04/2022 on Measures for the Protection of Children Against Websites with Pornographic Content and those that Harm the Health and Life of the Child; 5. Administrative Instruction (GRK) No. 02/2021 for the Implementation of Child-friendly Justice in the Criminal, Civil and Administrative Proceedings; and 6. Regulation (OI) no. 01/2019 on Special Procedures for Admission, Handling and Addressing Complaints Filed by Children or Complaints Relating to Children's Rights⁴¹.

As stated in the *Ex-Officio* Report with Recommendation No. 381/2020⁴², the intention of which was identification of sub-legal acts defined by the LCP, it has been concluded that these sub-legal acts are of particular importance due to the fact that they enable practical implementation of the law.

41 For more details, see the Official Gazette of the Republic of Kosovo at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20844> [last accessed on 17.01.2023].

42 <https://oik-rks.org/en/2021/08/18/recommendation-report-ex-officio-case-no-3812020-with-regard-to-implementation-of-the-law-on-child-protection/>

Complaints lodged with regard to children's rights

During 2022 the Ombudsperson admitted 77 complaints from citizens, mainly submitted by parents of children. While, based on *Ex-Officio* investigation, the Ombudsperson has initiated 9 cases for investigation, where systematic violations of children's rights were found and addressed in five of them. From this number, 23 complaints were declared inadmissible, because the issues with which they dealt with were out of Ombudsperson's jurisdiction, there were no violations of human rights, or the complainants had the opportunity to use or have been in use of legal remedies. From the complaints received by citizens, 54 complaints have been initiated for investigation and are explained in more detail way throughout the report.

Complaints lodged by individuals	77
Cases initiated for investigation based on complaints submitted by individuals	54
Inadmissible complaints	23
Cases initiated for ex officio investigation	9
Totally	86

During this year, OI addressed 41 recommendations to relevant public authorities and sent 18 Reminding Letters to these authorities regarding the failure to implement recommendations provided.

The right of children to education

The cases related to the right to education, which have been investigated by the Ombudsperson, including those initiated *Ex-Officio*, have dealt with: violence in schools, school attendance as well as learning conditions of Egyptian, Roma and Ashkali students, strikes in education, discrimination against children with disabilities, lack of transportation for children with disabilities, and interruption of education.

Regarding children's right to education, OI has published two Reports with Recommendations: Ex-Officio Report No. 331/2022⁴³ with Regard to Harmonization of the provisions of the General Pre-University Education System of Kosovo with the rights of children in education and the *Ex-Officio* Report with Recommendations No. 411/2021⁴⁴ with Regard to establishment of a Professional Assessment and Support Team for Special Educational Needs for Children With Disabilities (*see the section on the rights of children with disabilities*). In the first Report, the OI assessed the level of implementation of the relevant constitutional and legal provisions that regulate the respect of children's rights in the education sector by authorities and educational institutions in Kosovo. This Report has found that in the last decade Kosovo has made progress in education, but this progress has not been equal in different sub-sectors in terms of participation, inclusion and development of children according to their needs and abilities (*see the general part for the right to education*).

43 <https://oik-rks.org/en/2022/11/10/report-of-the-ombudsperson-ex-officio-no-3312022-with-regard-to-harmonization-of-the-provisions-of-general-pre-university-education-system-of-kosovo-with-the-rights-of-children-in-education/>

44 <https://oik-rks.org/en/2022/04/27/the-report-of-the-ombudsperson-ex-officio-no-4112021-with-regard-to-establishment-of-a-professional-assessment-and-support-team-for-special-educational-needs-for-children-with-disabilities/>

During 2022, the OI also held meetings with children in schools and during discussions with them, various concerns were noted.

The rights of children in judicial proceedings

During this year, the OI has admitted 14 complaints against the Courts, which were mainly related to the custody of children and alimony assignment, the delay of court procedures for material compensation of families with children with disabilities, the consent for the issuance of passports for children, the assignment of detention, release from detention, failure to (realize) the contact with children, the right to a fair trial and non-execution of the court decision. Additionally, at parties' request, the OI has monitored the court hearings related to custody of children, the right to a fair and impartial trial, as well as regarding the evasion from providing for the family. With respect to the given cases, the OI has addressed the relevant courts with letters in order to be informed about the actions taken in terms of respecting the right to a fair and impartial trial as well as the right to legal remedies.

In two of these cases, the OI has delivered specific Recommendations Letters to Basic Courts to handle the cases with priority due to their nature and the impact that they have on children. In the first case, the parent filed the complaint with the OI regarding the delay of the case in the Basic Court for damage compensation for the recognition of the right of his child with limited ability to be included in the kindergarten. Such a situation had made difficult for him and the child's material and emotional situation, affecting their well-being as well. In the second case, similarly, the parent had filed a complaint on behalf of his child for delay of the case in Court for damage compensation for the injuries that the child had suffered. On the other hand, the Court had informed the OI representative that the cases were

not on the Court's agenda because the court was still examining the cases received six years ago and only cases with legal priority are examined outside the agenda. Taking into account the circumstances of the case, the OI reminded the Court that it is the constitutional obligation of the state to guarantee citizens that their cases will be heard fairly by the Court and within a reasonable time, as well as to guarantee them effective legal remedies. Moreover, these rights are guaranteed by Articles 6 and 13 of the European Convention on Human Rights. The Constitution also obliges that all actions related to children, undertaken either by public institutions or by private institutions, must be in the best interest of children. This principle enshrined in the CRC and LCP, according to the Committee for the Rights of the Child, is a triple concept that includes: a substantial right, an interpretative legal principle and a rule of procedure. As a procedural rule, whenever a decision is made that will affect a particular child, an identified group of children, or children in general, the decision-making process should include an assessment of the potential impact (positive or negative) of decision on the child or children in question. Furthermore, Article 46 of the LCP expressly provides for the protection of children with disabilities. In these cases, the Court's decision is very important to ensure that complainants' children will have the opportunity to have access to quality education and health services through this compensation. Further delay of the matter would have negative consequences on the welfare of the children and as such is not in their best interests.

After OI recommendation, the Court addressed the Judicial Ethics Advisory Committee of the Kosovo Judicial Council (KJC) with a request to give an Advisory Opinion asking for instructions on how to act when there are OI recommendations that a case is processed hastily and without delays, while the legal issue is not defined as a priority subject based on KJC strategy. This Committee has established an important standard by issuing Opinion No.

04/2022 where it refers to the recommendations and legal arguments presented by the OI. This Opinion advises the judges of the three levels of the Courts of the Republic of Kosovo that in such cases where parties with the legal status of children (including children with disabilities) are involved in pending cases, they should without hesitation be given priority in treatment as well if there are older cases pending, since the law itself in these cases has determined the priority of their treatment⁴⁵. This opinion is a direct result of the work and activism of the OI and has wide implications for all new decisions that affect children throughout the territory of Kosovo, creating an important precedent for the enjoyment of the right to judicial protection and effective access to legal remedies for cases involving children.

Violence and security in schools

Violence continues to be present in children's lives, as it was repeatedly affirmed during discussions with students, where the use of corporal punishment as a means of discipline by teachers and harassment among peers (bullying) were raised as concerns. The use of violence violates accomplishment of children's rights and has long-term harmful consequences on their health and self-esteem. Children are particularly vulnerable to violence because of their age and because violence against them is often perpetrated at the hands of adults, including people whom children should trust and depend on. Young children especially have a lack of knowledge about their rights and cannot speak up to defend themselves. The LCP provides a detailed and comprehensive definition of violence and defines institutional obligations for the prevention of violence and the protection of children.⁴⁶

During this reporting period, the Ombudsperson has conducted investigations on 5 cases, of which 3 cases were initiated according to complaints and 2 *Ex-Officio*. The cases had to do with handling by the Police of the case of student bullied by a group of his peers, the failure to handle the case of student bullying by the school management and the Prosecution, violence at school by the teacher and sexual violence.

The first case initiated for *Ex-Officio* investigation had to do with the allegations "*Gazetës Express (Express Newspaper)*", with the article with the title: "The teacher in Dragash beats students with a belt". In this article, the students complained that the teacher constantly imposes physical violence on them by beating them with a belt. Later on, one of children's parents reported the violence to the Police and it turned out that the same accusations had been made earlier by other students. The teacher has been suspended from work and the case is being investigated by the Prosecutor's Office. Meanwhile, the second case was initiated on the basis of the article in "Telegraf" portal, entitled: "*The case of the rape of an 11-year-old girl in Prishtina, the Prosecutor's Office says that the same was reported as missing in June of this year*" where the actions taken by the state institutions are being investigated by the OI if they fulfill the positive obligations of the state for the protection of children from sexual violence and trafficking. After the investigations, the Ombudsperson drafted the *Ex-Officio* Recommendations Report No. 468/2022 where he finds that, in this particular case there was a violation of the basic rights and freedoms of a child, namely violation of the state's positive obligations for the protection of children from maltreatment and inhumane treatment according to Article 3 -Prohibition of Torture of the ECHR, Articles 19 and 34 of the CRC, Article 56 of the

45 Kosovo Judicial Council, Judicial Ethics Advisory Committee, Opinion KKEGJ Nr. 04/2022, at: <https://www.gjyqesori-rks.org/komiteti-keshilledhenes-per-etike-gjyqesore/?r=M&tabld=1> [last accessed on 16.01.2023].

46 The Assembly of Republic of Kosovo, Law No. 06/L-084 on Child Protection, 2019.

Istanbul Convention and Articles 5, 11.2, 15 (1.2) and 24 of the LCP as the authorities were aware of the danger threatens to the child and failed to take all reasonable measures to protect her. Referring to the CRC, the Istanbul Convention and the available statistics, the Ombudsperson has examined the gender dimension of violence, where sexual violence and human trafficking are presented as forms of gender-based violence and therefore pose a greater risk to girls and women. Furthermore, the obligations of the state for the protection of children are seen as twofold since we are talking about the group that is vulnerable to violence, i.e. the girl child. Additionally, the Ombudsperson concluded that the authorities did not act in the best interest of the child. In the specific case, the responsible authorities have failed to implement Article 5 of the LCP, namely in ensuring the best interest of the child, which obliges for increased care to the child's background, taking into account the special situations of abuse as well as the risk likely that similar situations will occur in the future. The OI will continue to monitor the course of these processes over the next year to ensure that the child's well-being and his/her interest are the primary consideration.

Children with disabilities

Children with disabilities are still experiencing serious difficulties and face obstacles to the full enjoyment of rights defined by law. Girls and boys with disabilities belong to one of the most vulnerable groups of children, being that they are more sensitive to social exclusion, discrimination and lack of information and/or financial resources, transportation, and physical access to educational facilities and those of health care.

During this reporting period, with regard to the rights of children with limited abilities, the Ombudsperson has developed investigations for six cases, five of which were initiated after complaints filed by children's parents and one Ex-Officio. These complaints had to do with the accomplishment of the right to education, more specifically with the lack of assistant teachers, the lack of school-home transport, the non-engagement of a personal assistant and discrimination for access to education.

In the first case, the complaint was submitted by a group of parents and it has to do with the provision of transportation for compulsory education for which the Law on Pre-University Education (LPUE) clearly foresees the obligation of the municipality as well as the lack of assistant teachers.⁴⁷ While, the other three cases were individual complaints and required provision of transportation to the pre-primary institution, for which the LPUE does not clearly provide an obligation, but provides the possibility to be included as compulsory education with the creation of financial conditions⁴⁸.

However, taking into account the growing importance of pre-primary education in recent years, the importance of inclusiveness and non-discrimination, the principle of the best interest of the child as well as the provisions of the LPUE, the Ministry of Education considers that the municipalities should plan and allocate a budget for the provision of this transport.

The fifth case has to do with not engaging of personal assistant by the municipality, where the parents are forced to cover the financial expenses themselves, otherwise the child will not be able to continue education and integrate into the same class as his peers. Meanwhile, the last case was initiated Ex-Officio based on the information posted by TV Klan Kosova with the title "*Gymnasium, Hivzi*

⁴⁷ The Assembly of Republic of Kosovo, Law No. 04/L-032 on Pre-University Education, 2011, Article 15.

⁴⁸ Ibid, Article 49.

Sylejmani in Fushë Kosove, has rejected involvement of the student in the wheelchair in the learning process". Finally, the student is accommodated and continues his studies regularly in the gymnasium.

These problems are also acknowledged in the Report with regard to harmonization of the provisions of the General Pre-University Education System of Kosovo with the rights of children in education. Initially, the Report notes that participation of children with disabilities in the educational system is low and that the main reasons are the level of social awareness/attitude towards persons with disabilities and the limited capacity of the system to provide educational and rehabilitation services for them.⁴⁹ Further, barriers to inclusion are: lack of funding, expertise and specialized support services, particularly lack of personal assistants, support devices, transport to school and physiotherapy. The lack of accurate data on children within the education system is also considered a challenge, making it difficult to plan services from the municipal directorates and from the schools themselves. On the other hand, schools also have very limited capacities to promote inclusion, since teachers in regular schools have teaching qualifications, but not necessarily adequate training to work with children with disabilities, and this makes it difficult to achieve the right results. The Ombudsperson has recommended municipalities and schools to design and implement awareness campaigns with parents with the aim of inclusion of children with disabilities in school for communities, as well as to undertake all the necessary measures to design individual education plans in accordance with Administrative Instruction no. 18/2013 for the use of the individual educational plan.

In April, the OI published *Ex Officio* Report with Recommendations No. 411/2021 regarding establishment of the Professional Assessment and Support Team for special educational needs for children with disabilities⁵⁰. The Ombudsperson had started investigations as early as last year after receiving five complaints and one initiated *Ex-Officio*, in the course of which was informed that some municipalities had not yet established professional assessment and support teams for special educational needs of children with disabilities, even though the LPUE obliges them. According to Article 47 of the LPUE, this team should consist of specialists in education, social work, psychology and rehabilitation, as an external support for educational and training institutions in providing counseling and guidance to teachers, students and parents. The LPUE obliges institutions involved in the provision of pre-university education to plan and provide efficient, effective, flexible, comprehensive and professional services, designed to provide all children with equal rights to education, in accordance with their abilities and specific needs, as well as to advance their educational and social development. Failure to properly implement these provisions affects children with disabilities experiencing serious difficulties and obstacles to the full enjoyment of the rights established by law, including the right to comprehensive education. OI has determined that the municipalities: Mamushë-Mamuša, Lipjan- Ljipljane, Istog- Istok, Deçan- Deçani, Skenderaj- Serbica, Kamenica- Kamenica, Shtime- Štimlje, Rahovec- Orahovac, Zveçan-Zveçane, Zubin Potok-Zubin Potok, Shtërpçë-Štrpce, Leposaviq- Leposavić, Ranillug- Ranilug, Partesh-Parteš, North Mitrovica, Klllokot- Klokot, Graçanicë-Gračanica have not established

49 <https://oik-rks.org/en/2022/11/10/report-of-the-ombudsperson-ex-officio-no-3312022-with-regard-to-harmonization-of-the-provisions-of-general-pre-university-education-system-of-kosovo-with-the-rights-of-children-in-education/>

50 <https://oik-rks.org/en/2022/04/27/the-report-of-the-ombudsperson-ex-officio-no-4112021-with-regard-to-establishment-of-a-professional-assessment-and-support-team-for-special-educational-needs-for-children-with-disabilities/>

Professional Assessment Teams in accordance with LPUE and Administrative Instruction No. 16/2017 on the pedagogical assessment of children with special educational needs. Therefore, the Ombudsperson has concluded that in this particular case, the failure to establish assessment teams constitutes a violation of children's rights, since these 17 municipalities have not fulfilled their constitutional and legal obligations, nor the applicable international standards in the Republic of Kosovo.

Social and health protection of children

The Assembly has not yet approved the Law on Social Services and the Law on Local Government Finances despite the recommendations of the Ombudsperson in Annual Reports of the last three years as well as in the Report on the assessment of the social service provision system in Kosovo⁵¹. The adoption of these Laws is very important for the well-being of children, especially of the Law on Social and Family Services, through which the mandate, role, competences, responsibilities and structure of the Centers for Social Work would be fully regulated, as was also emphasized in the common declaration with the civil society addressed to the government authorities⁵².

As for social and health protection, 11 complaints were submitted this year, mainly due to the non-payment of child allowance, health of the child in a psychiatric institution, health of the child in the Educational-Correctional Center, provision of housing by the municipality as well as on the work of the Center for Social Work.

51 <https://oik-rks.org/en/2019/12/23/report-with-recommendations-ex-officio-case-no-592019-related-to-assessment-of-the-social-services-provision-system-in-republic-of-kosovo/>

52 OI, KOMF and Association of Centers for Social Work of Kosovo (LQPSK) requested from the government to approve two bills for better social services for children and families, 09.08.2022, at: <https://oik-rks.org/en/2022/08/09/oi-komf-and-laps-asked-the-government-to-approve-the-two-draft-laws-for-better-social-services-for-children-and-families/>

Right to education

The Constitution of the Republic of Kosovo guarantees and regulates the right to education in Article 47, as a right which is based on three main obligations (i) provision of compulsory and free basic education, (ii) establishment of a comprehensive education system that provides equal opportunities and (iii) the creation of an educational system that fulfills the basic and specific needs and abilities of every child⁵³. This right is also defined by the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (ECHR) and the Convention on the Rights of the Child (CRC)⁵⁴. Moreover, the Constitution also guarantees the freedom of artistic and scientific creativity as well as academic freedom⁵⁵.

During 2022, the policy framework in the field of education was completed with the approval of the Education Strategy 2022-2026⁵⁶, and the National Program for Implementation of the Stabilization-Association Agreement (NPISAA) 2022-2026⁵⁷. The strategy as the main document for the development of the education sector foresees five strategic objectives for addressing the key problems in this field: early childhood education; pre-university education; education, vocational

training and adult education; higher education and digitalization of education. Meanwhile, NPISAA has foreseen, as one of its key priorities, achievement of adequate quality standards of institutions and programs in accordance with the objectives of the Bologna process and its Declaration. With this priority, it is intended that through implementation of the accreditation process, among other things, the return of the Kosovo Accreditation Agency to the European Association for Quality Assurance in Higher Education (ENQA) as well as the European Quality Assurance Register for Higher Education will be enabled. (EQAR).

Meanwhile, as per the accomplishment of the legal framework, the Ombudsperson supports the recommendation of the Report of the European Commission on Kosovo for 2022 for the adoption of the new Law on Higher Education with the aim of strengthening the autonomy and academic integrity of higher education institutions and improvement of the quality.⁵⁸ Furthermore, this year as well as, integration of education system within the entire Kosovo territory, the issue of the parallel system of primary and secondary schools and the University of North Mitrovica,

53 Constitution of Republic of Kosovo, Article 47.

54 Protocol No. 1 of the ECHR, Article 2 and the Convention on the Rights of a Child, Article 28.

55 Constitution of Republic of Kosovo, Article 48.

56 MESTI, Strategy of Education 2022-2026, 2022, at: <https://masht.rks-gov.net/strategjia-e-arsimit2022-2026/> [lately accessed on 25.01.2023].

57 Government of Republic of Kosovo, National Program for Implementation of the Stabilization-Association Agreement (NPISAA) 2022-2026, 2022, at: http://mei-ks.net/repository/docs/1%20PKZMSA%202022-2026_shq.pdf [lately accessed on 25.01.2023].

58 The issue of the University of North Mitrovica was also raised by the European Commission, Report on Kosovo for 2022, 2022, in: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Kosovo%20Report%202022.pdf> [lately accessed on 25.01.2023].

which continue to develop activities within Serbia educational system, remains problematic.⁵⁹

Regarding the right to education, OI has published two Reports with Recommendations: Ex-Officio Report no. 331/2022⁶⁰ with regard to harmonization of the provisions of the General Pre-University Education System of Kosovo with the rights of children in education and the Ex Officio Report with Recommendations No. 411/2021⁶¹ with Regard to establishment of a Professional Assessment and Support Team for Special Educational Needs for Children With Disabilities (see the section on the rights of children with disabilities). In the first Report, the OI assessed the level of implementation of the relevant constitutional and legal provisions that regulate respect of children's rights in the education sector by authorities and educational institutions in Kosovo. This Report has found that in the last decade, Kosovo has made progress in education, but this progress has not been equal in different sub-sectors in terms of participation, inclusion and development of children according to their needs and abilities. The results of PISA test (Program for International Student Assessment) have shown that the quality of education is not at the right level to prepare students for life. Moreover, the COVID-19 pandemic has vastly influenced on damaging the process of continuous improvements in the implementation of human rights in education system. All positive trends and processes have either frozen, in the worst case like that for children with disabilities, or have been move backward during the pandemic. This Report found that in terms of participation,

Kosovo has generally achieved almost universal participation in general pre-university education, with the exception of pre-school education, where participation is low, despite some improvements. Nevertheless, the situation is not good when it comes to the participation in education of Egyptian, Roma and Ashkali children as well as the participation of children with disabilities in all levels of pre-university education. In general, the Report estimated that the education system in Kosovo does not enable students to develop their potential according to their needs and abilities, in accordance with the constitutional provisions.

Among other things, the Ombudsperson, through the Report no. 331/2022, has recommended the Ministry of Education, Science, Technology and Innovation (MESTI) to draft and implement policies to improve the quality of education, especially in the field of mathematics, science, and reading; to draft and implement a strategy to improve participation, quality and early recognition of disability in at least two years of pre-school education (ages 3 and 4), including using of school premises to start pre-school education services/groups; as well as to directly engage and coordinate policies and practices with municipalities and schools to improve participation at the preschool education level. Similarly, the Report recommended the Ministry to review the existing formula for the distribution and management of funds in education, to allow the delegation of power to schools and more investment in teaching materials, in new technologies and working conditions directly related to teaching and with learning. Whereas municipalities, as

59 For the academic year 2022/23, 21 accredited institutions of higher education, of which 9 public institutions and 12 private institutions were part of the higher education system in Kosovo. For more see: <https://akreditimi.rks-gov.net/vendime-per-institucione-publike/> dhe https://akreditimi.rks-gov.net/vendime-per-institucione-private_v1/.

60 <https://oik-rks.org/en/2022/11/10/report-of-the-ombudsperson-ex-officio-no-3312022-with-regard-to-harmonization-of-the-provisions-of-general-pre-university-education-system-of-kosovo-with-the-rights-of-children-in-education/>

61 <https://oik-rks.org/en/2022/04/27/the-report-of-the-ombudsperson-ex-officio-no-4112021-with-regard-to-establishment-of-a-professional-assessment-and-support-team-for-special-educational-needs-for-children-with-disabilities/>

bearers of competences in education, were recommended that; to operationalize prevention and response teams at school and municipality level; to increase cooperation and coordination among all stakeholders (including learning centers) to address the issue of school dropout and school violence, especially in lower secondary and upper secondary education; to increase funding for the provision of education and pre-school and pre-primary education in the municipality, to extend pre-school services to rural areas and to delegate full financial planning and management to schools. Furthermore, the other recommendation referred to schools that should plan and implement activities that engage students in school and out of school extracurricular activities, improve cooperation with parents and communities with intention of improving the quality of education, as well as to transform teaching and learning student-oriented by moving away from simply delivering lessons and the mechanical transmission of knowledge.

In this direction, with regard to full inclusion in pre-university education as a precondition for inclusion in higher education as well, the Ombudsperson evaluates as positive the financial support provided to Egyptian, Roma and Ashkali students in order to improve material conditions and access to education⁶², as well as financial support for girl/women students in the fields of science, technology, engineering and mathematics, in which, students from non-majority communities, those with disabilities and rural areas are especially encouraged to apply.⁶³

In 2022, the Ombudsperson received a significant number of complaints related to the right to education, where 7 cases were initiated *Ex-Officio*.

These cases, as well as other cases initiated *Ex-Officio* have dealt with: violence in schools, criteria for obtaining degrees and titles in Universities, attendance at school as well as learning conditions for Egyptian, Roma and Ashkali students, strikes in education, discrimination of children with disabilities, the lack of transportation for children with disabilities and school drop-out. In one of these cases, after concerns raised from the meetings with students, the Ombudsperson initiated *Ex-Officio* investigations against MESTI, related to non-compliance with the Law on Higher Education in the Republic of Kosovo and the statutes of public universities which define the criteria for winning different titles and ranks. After the investigations, it was found that these problems are being addressed and that there have been improvements in this direction after the entry into force of the Regulation on evaluation procedures for the selection and advancement of academic staff.

On 2 December 2021, the Ombudsperson published the Report with Recommendations⁶⁴ against MESTI, for undertaking relevant actions regarding non-recognition/verification of diplomas issued by Higher Education Providers (HEP). This Report has recommended to MESTI: (1) to establish a Commission to deal with the issue and upon accomplishment of the Commission's work, to decide in a meritorious manner the requests submitted by the parties for the recognition/validation of diplomas (2) to ensure that the Inspectorate of Education, as a central executive body, to undertake all actions for the supervision of the implementation of applicable legislation in all educational institutions. During 2022, the Ombudsperson monitored implementation of these recommendations and was notified that an

62 For more info, visit: <https://masht.rks-gov.net/thirrje-per-mbeshitetje-financiare-per-studentet-e-komuniteteve-rom-ashkali-dhe-egjiptian/> [accessible lately on 25.01.2023].

63 For more info: <https://masht.rks-gov.net/thirrje-per-mbeshitetje-financiare-te-studenteve-ne-fushat-e-shkences-teknologjise-inxhinierise-dhe-matematikes-apo-stem-te-arsimit-te-larte-ne-kosove/> [accessible lately on 25.01.2023].

64 <https://oik-rks.org/en/2021/12/23/report-with-recommendations-with-regard-to-the-failure-of-the-ministry-of-education-science-technology-and-innovation-to-exercise-effective-oversight-over-functioning-of-higher-education-holders/>

established Expert Commission has verified/sealed 3874 diplomas and other documents issued by Higher Education Institutions in Kosovo, of which 1828 were Education Public University as well as 2046 of Private Higher Education.⁶⁵ Also, a competition was announced for the engagement of 20 education inspectors with the aim of creating the best conditions for the supervision of the implementation of the law in all educational institutions.⁶⁶ OI will continue monitoring of these recommendations in order to ensure their implementation and full respect of the right to education.

An obstacle to the exercise of the right to education during this year was the strike organized by the Union of Independent Trade Unions of Kosovo (UITUK), which delayed the start of the new school year for one month. With all the importance of respecting the right to union organization and the right to union actions, this right conflicts with children's right to education, since not attending school has harmful consequences for the child's intellectual and emotional development.

65 Information received via electronic address from the National Academic Recognition Information Center (NARIC), on 8.2.2023

66 "Sinjali", MESTI advertises vacancy for 20 Educational Inspectors, 26 November 2022, at: <https://sinjali.com/mashti-shpall-konkurs-per-20-inspektore-te-arsimit/> [lately accessed on 25.01.2023].

Freedom of Art and Science

The freedom of art and science became part of the framework of constitutional and legal rights. In this regard, the Constitution [Article 48] guarantees artistic, scientific and academic freedom. This right is part of the Universal Declaration of Human Rights [Article 27] which guarantees this right as both a collective and an individual right.

The European Convention on Human Rights does not contain such a specific right. But, depending on the context, this right is treated within the framework of other rights. By addressing the freedom of expression, the European Court of Human Rights emphasizes that *“Article 10 also includes artistic right, which gives the opportunity to participate in the public exchange of cultural, political and social information and ideas of all kinds. Consequently, those who create, enhance, distribute or exhibit works of art contribute to the exchange of ideas and opinions that are essential to a democratic society.”*⁶⁷ Thus, the fact that there is no specific right in the ECHR does not mean that the freedom of art and science is out of the scope of the ECHR and ECJ jurisprudence.

Despite the fact that in the Constitution of the Republic of Kosovo and in some other international documents this right is defined as a special right, it cannot function as separate from other rights, such as freedom of expression, the right to property etc. Article 46.5. of the Constitution that protects intellectual property is also related to this right,

in the sense of the right of the artistic creator to generate property rights from his artistic and scientific creativity.

This right is also guaranteed by the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶⁸ and the International Covenant on Civil and Political Rights.⁶⁹ Protection according to ICESCR is considered the most specific protection of this right according to international acts.⁷⁰ Among others, this pact stipulates that *“States party to this Pact undertake to respect the necessary freedom for scientific research and for creative activity”*.⁷¹ Thus, in addition to the guarantee of individual and collective freedom, this Article also defines a type of obligation for the construction of the necessary institutional infrastructure for the implementation and development of this right. The freedom of art and science, in the Constitution of Kosovo, also includes Academic Freedom, which is guaranteed by the current Law on Higher Education in the Republic of Kosovo, actually Article 27.

Thus, Academic Freedom must be closely related to institutional autonomy (such as University autonomy) for the realization of this right, because each statute of the Universities in the Republic of Kosovo defines Academic Freedom as a fundamental right of University academic staff.

No complaints regarding this right has been filed with the Ombudsperson Institution, in this reporting year.

67 Müller and others versus Swiss, par 27; Lindon, Otchakovsky-Laurens and July versus France, par, 47

68 International Covenant on Economic, Social and Cultural Rights, Article 15.

69 International Covenant on Civil and Political Rights, Article 19.

70 *Report of the Special Rapporteur in the field of cultural rights*. United Nations, General Assembly, 2013, p.4

71 International Covenant on Economic, Social and Cultural Rights, Article 15.3.

Right to Work and Exercise Profession

The right to work and exercise of the profession is guaranteed by the Constitution of the Republic of Kosovo⁷² and is in harmony with international human rights instruments directly applicable in the Republic of Kosovo.⁷³ Also, this right is regulated and protected by basic laws, which define the rights and obligations arising from the employment relationship.⁷⁴

The Ombudsperson notes that accomplishment of citizens' rights from the field of labor relations has a special importance for the status of every citizen and at the same time it is an indicator of how the state fulfills its obligations towards its citizens. The constitutional guarantees for the right to work and the right to freely choose a profession create an obligation for institutions to protect these rights equally to everyone and ensure the full respect and implementation of the relevant legislation.

Regarding the right to work and exercise the profession, during 2022, the Ombudsperson received a total of 54 complaints. Some of these cases, which have been investigated by the Ombudsperson, including the case initiated *Ex-officio*, have dealt with: termination of the employment relationship, display of religion in the workplace, non-realization of the right to salary, etc.

The Ombudsperson finds that even during this reporting period, violation of the right to work and the exercise the profession continues. As in the public sector, as well as in the private sector, there are violations of the right from the employment relationship - violation of employment procedures, illegally termination of the employment relationship, duration and non-compensation of overtime, non-use of the right to annual leave, non-realization of the right to salary, worker without employment contract, age discrimination, etc.

The Ombudsperson points out that collective labor agreements are an instrument with the aim on regulating working and employment conditions, a source of labor law, but also any agreement related to working and employment conditions. The provisions of the collective agreement have a general legal effect and they supplement or replace the legal norms. In principle, they are not directly applied, but serve as general acts on the basis of which individual labor contracts are concluded.

The lack of will to reach the general collective agreement which expired in 2018 has influenced the non-accomplishment of some rights from the labor relationship in the public and private sectors. Greater support and applicability has been found in the provision of Article 48, which recognized the

72 Constitution of Republic of Kosovo, Article 49.

73 Ibid, Article 22.

74 Law on Labor, No. 03/L-212; Law on Civil Service No. 03/L-145; Law on Salaries of Civil Servants no. 03/L-147; Law on the Economic and Social Council nr.04/L-008.

right to a supplement over the basic salary for work experience in the amount of 0.5% for each full year of work experience. However, even in this provision implementation, there have been obstacles, either in the private sector, or even in the confusion which experience must be counted, the general one or the current employer. Consequently, as such, this provision has found good application only in the public sector.

Protection and security at work

According to the statistics of the Labor Inspectorate (LI), the number of fatal workplace accidents remains high and quite worrying. From 2004 to 2021, according to LI⁷⁵, 232 people lost their lives in the workplace or related to work. Only during 2022, according to official data in Kosovo, 14 people lost their lives in the workplace. 169 accidents that ended with minor injuries, while 61 accidents have ended up with serious injuries.⁷⁶ These cases occurred as follows: 9 cases of death occurred in the construction sector, 2 cases in the production sector, 1 case from contact with electricity, 1 case related to service provision, and 1 case occurred from being struck by lightning.

The number of accidents resulting in injuries and deaths in the years 2004-2022:

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Injuries	54	15	15	47	21	29	21	31	45	37	63	47	62	50	125	90	160	130	169
Deaths	17	7	7	4	11	9	10	10	17	17	9	9	9	19	22	11	16	9	14

The Ombudsperson emphasizes that the fact of inconsistency of evidence and statistics regarding workplace accidents remains problematic, due to different data from one institution to another because there is still no database in which relevant and descriptive statistics would be found of workplace accidents in all sectors. Therefore, the reliability of these data remains challenging and debatable.

The Law in force on Safety and Health at Work obliges the employer to immediately, as soon as an accident occurs at the workplace, notify the LI. One of the problems that remains evident is the non-reporting of accidents at workplaces, especially accidents that result in injury.

The lack of reports on occupational diseases and those related to workplaces remains worrying, due to the lack of specific legal regulations and the entire system relates to Occupational Health.

The Ombudsperson has undertaken a research related to the issue of safety and health at work, as well as the informality of employment in the private sector, upon investigations and findings become final, they will be summarized in a report that will be forwarded to the relevant institutions.

Whilst the current legislation only regulates the issue of compensation for medical expenses for employees who suffer an accident at the workplace, there is no legal regulation for other benefits. Consequently, in

75 These data were taken from the official website of the Labor Inspectorate as well as from the initial draft of the concept document for the advancement of legislation in the field of safety and health at work, drawn up by the former Ministry of Labor and Social Welfare, within the framework of which was also the Labor Inspectorate.

76 Interview of Mr. Hekuran Nikqi, Chief Inspector in the Ministry of Internal Affairs and Communications of the Republic of Kosovo, on December 31, 2022, (<https://kosovapress.com/rritet-numri-i-punëtorëve-që-humben-jetën-në-vendin-e-punës/>).

the most serious cases, when the employee did not manage to survive the accident at the workplace, his/her family does not enjoy any necessary compensation, which is determined by the legislation in force in the field of Safety and Health at Work. The only way to achieve financial benefits in these cases remains the civil court procedure, which takes a lot of time, money and financial costs for victims' families.

During this period, the Ombudsperson ascertains that in the public sector, and especially in the private sector, there are various violations of the right from the employment relationship, including discrimination, such as: violation of employment procedures, termination of the employment relationship in illegal way, as well as violations related to the duration of working hours, compensation for overtime work, denial of the right to annual leave and maternity leave and non-realization of the right to salary.

Protection of the right to non-discrimination at work

During 2022, the OI received several complaints by citizens that were related to complaints' claims of discrimination. Among them is a complaint, for which investigations are underway regarding claims of discrimination due to ethnicity, where a person claims that a public institution did not select him for a job position, stating that there is sufficient legal basis to guarantee the employment of persons from non-majority communities in public institutions. Likewise, other issues that have been addressed in the form of a complaint to the OI include the lack of proper treatment of some of the staff in public institutions by the management, claims of unequal treatment as well as denial of the right to promotion and career development, etc.

On 9 June 2022, the Ombudsperson published the Report with Recommendations A.nr.474/2021 regarding the claims of the complainants for discrimination on the basis of freedom of association as members of the Trade Union Association of Workers of the Civil Aviation Authority of Kosovo.⁷⁷

The Report aims to draw attention of the Civil Aviation Authority (CAA) regarding the need to create sufficient space for action for the Trade Union Association of Employees of the Civil Aviation Authority of Kosovo, respecting of the freedom of association and finding a common language by creating opportunities for the involvement of this Union in drafting of the Institution's policies without disregarding and discriminating them against.

⁷⁷ <https://oik-rks.org/en/2022/06/09/report-of-the-ombudsperson-case-no-4742021-arianit-dobroshi-and-others-regarding-complainants-allegations-on-discrimination-based-on-freedom-of-association-as-a-member-of-the-trade-union-associat/>

Health and Social Protection

The right to health and social protection is included in the group of social-economic rights, which Kosovo Republic Constitution guarantees with the provision of Article 51 by guaranteeing health protection, (as well as social protection) The Ombudsperson this year has admitted 310 complaints regarding health and social protection, while 112 cases were initiated for investigation.

The nature of handled cases were mainly related to the claims for violation of the right from the employment relationship, with the violation of the right to legal remedies, with claims for the violation of the freedom of expression, with claims for the violation of the right to medical treatment out of public health institutions, with complaints against the amendment-supplementing of the Statute of the University Clinical Center, with complaints of health workers regarding union organization, etc.

Based on the complaints and cases investigated, it has been ascertained that even in 2022 in the Public Health Sector there had still been lack of regular supplies of essential drugs, medical products and equipment as well as consumables materials. Patients' waiting list for undertaking certain types of interventions continues to be very long. Great concern represents the fact that health professionals, either from public or private institutions, are leaving the country.⁷⁸

The Ombudsperson reiterates this year as well that Law no. 04/L-249 on Health Insurance is not implemented, the International Convention on

Economic, Social and Cultural Rights continues not to be part of the Constitution of the Republic of Kosovo, palliative care in the Republic of Kosovo has not been yet functionalized and the Health Information System (HIS), started in 2002, is not functional yet and as a result we have an incomplete and non-functional HIS.

In addition, the Ombudsperson has also expressed concern regarding the risk that existed for the failure of supplying prisons with drugs, due to the failure of the procurement procedures for the supply of these drugs.

The Ombudsperson, on 18 March 2022, organized a round table discussion regarding collection and reporting of data in the health sector. The conclusions that derived from this roundtable revealed the ongoing problems with the collection and reporting of data in the health sector. The given data are not complete, they are insufficient, sometimes partial or even unclear, and some of them are not compatible with the methodology and criteria used by the Statistics Agency of Kosovo, which are necessary to be considered valid, reliable and comparable. Taking into account the data collected and the information received from this meeting, the Ombudsperson started investigations according to his official duties and the findings of this investigation will be published in a summarized Report upon accomplishment of the investigations.

At the end of December 2022, the Ombudsperson addressed to responsible authorities the Report

78 Accessible in the following link: <https://www.epokaere.com/anesteziologet-po-largohen-nga-qkuk/>

initiated *Ex-Officio* regarding the rights to Sexual and Reproductive Health (SRH) in the Republic of Kosovo, with a focus on access to information, to services, in contraception, access to abortion and in post-abortion care, as well as maternal health care. The Report includes data for the period from 2019 and presents the continuation of the country-level assessment of rights in the SRH, addressed to authorities by the Ombudsperson in 2016. The investigation was based on the contextualized methodology and was based on the Guide in support of National Institutions on Human Rights (©UNFPA, 2015) and with the support of the UNFPA Office.

During the investigation, problems with the health system were identified, such as insufficient medical staff and insufficiently prepared to respond to the best standards for dignified and quality services; lack of a sufficient budget for health, including the lack of health insurance, as well as insufficient infrastructure and in disruption with the needs and requirements, especially the needs of the population with characteristics that require sensitivity and special attention, results in the impossibility of fulfilling obligations that the state has for universal health access. The investigation revealed that even though there is a legal basis and the structure as well as the mechanisms in accordance with this legal basis, irregularities in operation and lack of coordination as well as planning are numerous. Moreover, lack of real information and education on SRH, non-proactive approach of health personnel, lack of professionalism and ethics, the ineffectiveness and inefficiency of complaint mechanisms, are burdens that prevent realization of guaranteed rights and a comprehensive approach and without discrimination.

However, despite the all disorders and difficulties in system functioning, the readiness of the medical staff to fulfill the obligations and the title of their profession, are responsibilities that fall directly on the conscience, ethics and individual

professionalism of health workers, of all categories, and are not necessarily related to the lack of budget, insufficient infrastructure or other objective issues, without minimizing their importance.

Pensions

Majority of retired persons in Kosovo live on basic pensions, which are insufficient for living, and they do not even cover the basic life expenses. In general, the situation of pensioners continues to be the same as in previous years.

The government has taken certain steps in reforming the field of pensions and the system of benefits. It plans drafting of a special law on pensions, which will include and address all pension rights in one place, as well as establishing of a Social Security Fund. This Law aims to define the organizational structure, the form of management, the rate of contributions and the disability pension, all this with the aim of harmonizing with European practice. It remains unclear when this reform will be fully implemented.

In January of this year, the Government made a decision to increase the amount of benefits of pension schemes financed by the state, from 70 euros to 100 euros. With this increase, basic-social pensions, disability pensions, family pension and work disability pension are included.

Even this year, the Ombudsperson has received complaints regarding the issue of pensions.

Based on the received complaints, the disruption of the old-age pension due to not appearing physically every six months at the Pension Office, through which fact it is proven that the person is alive, remains disturbing. According to the Ministry of Finance, Labor and Transfers, the disruption of pensions occurs because pensioners who do not show in person within the defined period, are automatically removed from the system of pension beneficiaries. Additionally, based on

information obtained, after three months the pension is terminated definitely since the given program automatically stops such cases when people do not timely appear in person according to Administrative Instruction no. 05/2015.

According to the Ombudsperson, such a practice is unacceptable and represents a violation of the rights of persons who benefit from pension schemes. In this regard, the Ombudsperson has recommended that such practice need to be terminated.

Reiterating his concern that the obligation of pensioners to appear at the Pension Offices according to the Administrative Instruction no. 05/2015 criteria, violates the dignity of pensioners, taking into account their age and health condition, that in most cases is significantly difficult for them to be physically present in pension offices.

In addition, the OI is investigating other cases related to complaints about violations of human rights in the exercise of the right to pensions, including the termination of the pension of disabled persons, rejection of contributory pension requests that are related to the discriminatory criterion of fifteen years of work experience, paid contribution, etc.

With regard to this issue, the Ombudsperson has expressed his stand in Ex Officio Report with Recommendations no. 235/2018, recommendations addressed relate to the amendment of the Law on Pension Schemes financed by the state regarding contributory pensions. In this case, the Ombudsperson found double discrimination due to the non-recognition of contributions for the period of dismissal as a result of violent measures.

Social issues

The Ombudsperson, referring to the complaints received as well as investigations conducted with regard to issues he has dealt with this year, finds that the economic and social situation of

an overwhelming part of the families in Kosovo continues to deteriorate. Unemployment and non-enforcement of laws are the main factors affecting the foundation of such situation. People who do not have a job, the elderly, people with disabilities, children who are forced to work and live in street conditions, are some of the most vulnerable groups, who in the absence of social measures and services for treatment often face conditions unworthy of life.

The neglect of the empowerment of the Centers for Social Work continues to be a concern, in the absence of real policies, the lack of relevant services, insufficient capacities and many other problems that have been identified regarding these Centers.

The Ombudsperson notes that during this year the Government has taken several measures to improve the social situation, such as the Decision (no. 24/2022) on setting the conditions and criteria for the partial implementation of Measure 3.4- food packages for families in need within the framework of The Economic Revival Package.

Despite Government's efforts in taking measures to mitigate the economic crisis that has overwhelmed the country but also the globe, as well as the negative impact of the pandemic caused by Covid-19, the situation on the ground is not good at all for low-income families as well as those without any income. Usually, the measures taken by the executive have had a short-term impact on the improvement of the socio-economic situation for the beneficiary families and individuals.

Responsibility for the Environment

Constitution in Article 52 [Responsibility for the Environment], stipulates that “*Nature and biodiversity, environment and national inheritance are everyone’s responsibility.*”

The Ombudsperson notes that the responsible institutions, even during the reporting year, have not managed to make visible, sustainable changes through multi-sectoral policies at the central and local level, which would affect prevention of pollution and rehabilitation of environmental damages in the country. Despite the importance that protection of environment has for human right, the authorities failed to fulfill their constitutional obligations.

During the reporting year, the Ombudsperson received 15 complaints related to the right to a safe and healthy environment. Nine admissible complaints were related to the issue of untreated water discharging into rivers, the annoyance from noise and odor, the right of public participation in decision-making related to institutional decisions on environmental issues, road infrastructure, etc. Investigations are still ongoing with regard to the cases.

In order to promote the given right, the Ombudsperson marked the international days

related to the environment, through various activities.

Although during the reporting year the new Law on Air Protection from Pollution was approved, the quality of the air and the impact on the citizens’ right to a safe and healthy environment continues to remain a concern. Exceedances of PM10 and PM2.5 concentrations were recorded in the period November - March, and Ozone (O3) exceedances during the summer season. The fact that 32.2% of the time during 2022, air quality was moderate, unhealthy and very unhealthy⁷⁹, is a sufficient indicator of the serious threat to citizens’ health⁸⁰. The greatest pollution with PM10 and PM2.5 comes from small burnings, industry and transport⁸¹. Responsible institutions for air protection continue to fail to meet legal requirements and take adequate measures to reduce air pollution.

Even though Kosovo is among the poorest countries with water resources, no concrete actions have been undertaken that would stop the continuous degradation of rivers in the three-dimensional aspect, water, river beds and banks⁸². Water protection according to the principles of sustainable management continues to be a serious challenge in the public authority-environment relationship. Uncontrolled interventions, without criteria of operators for the exploitation of the sand

79 <https://airqualitykosova.rks-gov.net/>, During the year 2022, the air quality level was 69.8% of the time at the very good and good air quality level, 12.7% of the time moderate and 19.5% at the unhealthy and very good air quality level. unhealthy

80 MCC, Report, 2021 “Air pollution and impact on health in Kosovo”, 12.1% of total mortality, from all causes of natural deaths in Kosovo are attributed to the current level of PM2.5.

81 AMMK, Annual Report on the state of the environment, 2021, pg. 5

82 AMMK, The Impact of sand and gravel users on the environmental condition of rivers report, 2022, “Surfaces degraded by sand and gravel exploitation until 2018 is estimated to be 1421.06 ha”.

and gravel in the different segments of the river beds and their banks have continued, causing an unsafe environment for citizens' lives, as well as lack of water. Failure to comply with the criteria during the implementation of water projects, deforestation of the river banks are now causing a decrease in height and expansion of the river beds, modification of water flow, damage to the flora substrate along the river banks, opening of large pits as a result of inert exploitation⁸³, as well as floods⁸⁴. The vastest damages of this nature evidenced were caused in the river "Drini i Bardhe". Special emphasis should be given on state's failure to undertake positive actions in protecting from degradation of the landscape and vegetation of river "and waterfall "Mirusha, as a natural monument of special importance⁸⁵. Main problems are construction of paths towards the waterfalls from the road axis Klinë - Gjakovë, as well as the use of water. Rehabilitation of intrusions in rivers according to the legislation in force requirements has not marked improvement.

Vagueness as per operation of hydropower plants has continued. Despite the ascertainments on the failure of the state to respect the principles of environmental law, the shortcomings emphasized in the implementation of criteria, evidenced in the licensing process of hydropower plants, which do not ensure efficient use, management and protection of water and the environment⁸⁶, as well as the possibility that the damages are irreparable, the regular Courts and the Constitutional Court of

the Republic of Kosovo have not yet managed to take final decisions, by revealing lack of expertise in the field of environment.⁸⁷ In order to alert the public regarding the importance of water, the Ombudsperson and the National Audit Office, on 27 June 2022, organized the table "Water, a human right - supervision and accountability".

Degradation, pollution, construction and unreasonable change of lands has continued at the same rhythm. The practice of not respecting the criteria set by the Law on Spatial Planning and the Law on Construction is already a matter that requires quick treatment and clear institutional policies for change.

Special emphasis should be given on the failure to control the compliance of objects under construction and those which has been completed, with the construction permit, and the failure to issue permits/certificate of use, is the evidence of the failure to fulfill the positive obligations of the competent bodies for implementation of legislation on construction. Lack of supervision and final certification of the use of facilities represents the immediate need for measures to be taken by the competent institutions to assess the safety of facilities for compliance with the rules defined by construction legislation, and above all, with the rules of safety from natural disasters and from other disasters, as well as with those against environmental pollution and degradation.

83 Ibid

84 <https://kallxo.com/lajm/ihmk-reshjet-do-te-vazhdojne-diteve-ne-vijim-ne-disa-zona-mund-te-kete-vershime/>

85 Coalition 27, Shadow Report on Chapter 27 Environment and Climate Change, September 2022 "11 streams of sewage from the villages of Bellanicë, Temeqinë, Bubël, Panorc, Rud, Turjakë, Mirushë, Lubizhdë, Banjë, Damaneq and Llapqeve".

86 National Audit Office, June 27, 2022, Performance audit report "Licensing system of hydropower plants and their monitoring on the impact on the environment and water"

87 Constitutional Court, KI143/22, Judgment, KI143/22, of December 15, 2022, "The Court found that, the Judgment [AR]. UZVP. no. 51/2022] of July 19, 2022 of the Supreme Court, Decision [AA. no. 386/2022] of May 26, 2022 of the Court of Appeal and Decision [A. no. 3129/2021] of April 12, 2022 of the Basic Court in Pristina, were issued in violation of the procedural guarantees established by Article 31 of the Constitution in relation to Article 6 of the European Convention on Human Rights, due to the lack of a reasoned decision judiciary and arbitrary interpretation and application of the law, returning the case for review to the Basic Court".

The Ombudsperson, deems that non-compliance with the criteria defined in Administrative Instruction no. 01/2018 on Basic Elements and Requirements for the Designing, Implementation and Monitoring of Detailed Regulatory Plans has a serious impact on restriction of free and unhindered movement, privacy, the right to a safe and healthy environment, equal treatment from exclusion of the interests of all citizens, in particular the needs of persons with disabilities.

In addition, the failure to improve the access to collective residents' premises, specifically to premises of public institutions, as foreseen with Administrative Instruction No. 33/2007 on the Technical Conditions of Building Facilities for the Access of Persons with Disabilities according to the Ombudsperson, comprises a serious restriction of freedom of movement and the right to a safe and healthy environment of persons with disabilities.

The issue of intrusion and constructions without any criteria in protected areas should be looked upon with great care. The Ombudsperson estimates that the last actions of the prosecutorial bodies with regard to constructions in the protected area in Brezovica are delayed⁸⁸. A similar situation is continuing in the municipality of Novobërda. The proportion of forested areas remains very low compared to burned forests⁸⁹.

There are still 763 illegal warehouses, 8 sanitary warehouses that are not managed according to standards and criteria, 17 locations with chemicals and hazardous waste, the disposal of industrial waste without criteria and standards, the flow of harmful materials from mines and warehouses of mine waste, used lubricants, pesticides and car waste⁹⁰.

This year as well institutions have not managed to set under control protection of citizens' privacy from the noise and annoyance due to the noise. The new Law on Noise Protection has failed to be approved this year as well. The Ombudsperson, even during the reporting year, has admitted complaints regarding privacy violation due to the noise.

It should be noted as disturbing the lack of a scientific research which would be an indicator of the impact of the state of the environment on citizens' health. The main indicator that would highlight the impact of environmental factors on citizens' health, the Health Information System (HIS), which would derive data related to health problems, has not yet been put in function.

Ombudsperson estimates that the media as well as of Civil Society Organizations (CSOs) should strengthen actions in direction of public awareness concerning environmental problems. The impact on human rights as well as the forms of accomplishing environmental rights are curricula and educational programs.

The Ombudsperson, based on the findings listed above, will continue to intensify activities in the direction of the protection and promotion of the right to a safe and healthy environment.

88 <https://www.koha.net/arberi/351838/gjykata-aprovon-kerkesen-e-prokurorit-urdheron-sekuestrimin-e-erkohshem-te-villave-ne-brezovice/>

89 AMMK, Annual report on the state of the environment, 2021, "në vitin 2021 janë djegur 2653 ha pyje, janë pyllëzuar rreth 309 ha sipërfaqe me pyje"

90 Ibid, page 26,

National Preventive Mechanism against Torture

The National Preventive Mechanism against Torture (hereinafter “the NPM”) of the Ombudsperson, based on Article 17 of Law no. 05/L-019 on Ombudsperson, carries out regular visits at any time, without restriction and without warning, in all places where persons deprived of liberty are kept, including police detention, detention on remand, stay in health institutions, psychiatric hospitals, in asylums, at border points, in detention at immigration centres and in any other place when there is data and it is estimated that there is a possibility of violation of human rights and freedoms.⁹¹

This year, NPM has made sixty-two (62) visits. Of these, twenty (20) are general visits, nineteen (19) are ad-hoc visits, twenty-one (21) are follow-up visits, one (1) thematic visit and one (1) visit to the International Airport of Prishtina, in the framework of the monitoring of operations of forced return from Switzerland, in the framework of cooperation with the Swiss National Commission for the Prevention of Torture.

During this year, the Ombudsperson received two hundred and thirty-four (234) phone calls, as well as nine (9) calls to the toll-free line, from persons deprived of their liberty. While it has conducted two hundred and forty-four (244) individual interviews, not counting group interviews. Requests/complaints received were immediately addressed

to the management of the institution where the inspection was carried out, at the end of the visit or were processed for further investigation. According to claims from the complaints received, ninety-six (96) complaints were registered under the category “rights of the accused”, while twenty-six (26) of them were processed for further investigations. Twenty-one (21) complaints were registered under the “prohibition of torture” category, of which fifteen (15) were opened for further investigation.

Even during this year, the complaints were mainly directed against court decisions, various benefits, parole, pardon of the president, health treatment, etc. All requests/complaints have been handled by the NPM and information has been obtained by the Judicial Council of Kosovo, the Correctional Service of Kosovo, the Health Directorate of Prisons and the Parole Board, for which the parties have been notified.

From the data provided by the Conditional Release Panel, during this year seven hundred and ninety-five (795) requests for conditional release were reviewed, from which for three hundred and twelve (312) it was decided for conditional release, four hundred and thirty-two (432) were rejected, for forty-seven (47) requests the examination procedure was terminated due to the premature release of the applicants by the courts and four (4) requests were dismissed.

91 Law No. 05/L-019 on Ombudsperson, Article 17, paragraph 2.

As it is said above, during this year sixty-two (62) visits were carried out, and eight (8) reports with recommendations were published for: the Correctional Centre in Dubrava; The Educational-Correctional Centre for Juveniles (ECCJ) and the Correctional Centre for Juveniles (CCJ) in Lipjan; Correctional Centre for Women in Lipjan; Detention Centre in Peja; Detention Centre for Foreigners in Vranidoll; Institute of Forensic Psychiatry in Prishtina; Home for the Elderly and without Family Care in Prishtina and Ex-officio Report no. 95/2022 for the Correctional Centre for Women and Juveniles and the Kosovo Correctional Service.

Through these reports, the NPM has addressed thirty-eight (38) recommendations to the competent authorities with the aim of advancing the basic rights of persons deprived of their liberty.⁹²

Competent authorities implemented eight (8) recommendations, five (5) of them were partially implemented, while twenty-five (25) are awaiting implementation. The Ombudsperson will closely monitor their implementation, but at the same time will offer its unconditional assistance to jointly work for their realization.

NPM is a member of the South-East European Network of Mechanisms against Torture. In this capacity, during this year NPM has participated twice in the joint meetings of the Network, held in Vienna (Austria), delivering a presentation on: "Special needs of the elderly and persons with physical disabilities in detention sites" as well as "Accommodation and treatment of children and adolescents with mental health problems and mental and physical disabilities" in the Republic of Kosovo.

Monitoring of detention centres and police stations

Several police stations were visited this year, such as: the Regional Detention Centre in Prishtina; North and South Police Station in Prishtina; Police Station in Fushe Kosove; Police Station in Mitrovica - South; police stations in Gjilan, in Prizren, in Drenas, in Han i Elezit, as well as the Police Station for Border Surveillance - Green Line. These visits were carried out with the aim of the general assessment of respect for the fundamental rights of the arrested, which are guaranteed by the Constitution of the Republic of Kosovo, by Law no. 04/L-076 on the Police, with the Criminal Procedure Code and with international standards for the protection of the fundamental rights of persons deprived of their liberty.

During the visits in the detention centres of the Kosovo Police, we received no complaints from the arrested persons who were in detention at the time of the visit, for physical mistreatment or non-respect of basic rights guaranteed by local and international legal acts.

This year, special importance has been given to arrested minors, and based on the visits made, we have not come across any arrested minors. However, to understand more how the minors are treated by members of the Kosovo Police and the respect of their basic rights from the moment of arrest, we have visited the Correctional Centre for Juveniles in Lipjan, where the detainees accommodated in this centre were interviewed. All juvenile detainees interviewed affirmed that they were treated in a correct and professional manner by members of the Kosovo Police and that their basic rights were respected.⁹³ Likewise, the minors

92 <https://oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>

93 <https://oik-rks.org/en/2022/07/26/report-of-the-ombudspersons-national-preventive-mechanism-against-torture-concerning-the-visit-conducted-to-the-educational-correctional-centre-for-juveniles-and-correctional-centre-for-juve/>

interviewed affirmed that they were not kept in Police Detention for more than 24 hours.

The Ombudsperson, in 2022, received 6 complaints against the Kosovo Police, based on citizens' claims that they were physically mistreated. Of these 6 complaints, 3 were opened for investigation, while 3 complaints were declared inadmissible. Regarding the cases against police officers, we monitored the procedure of the Kosovo Police Inspectorate (KPI). According to the KPI, the cases were referred to the Directorate for Internal Investigation and Background Check in the Kosovo Police for disciplinary treatment, since the investigations did not result in elements of a criminal offense.

Regarding the conditions of the Police Stations, it has been concluded that the conditions are generally acceptable in terms of space, natural and artificial lighting and hygiene and meet the necessary conditions for the accommodation of detained persons.

However, for the Regional Detention Centre in Prishtina (as in the previous visits made to this centre), we found that the working conditions for police officers are not good, since the building is very old and lacks natural light, while winter is very cold and humid. In this centre, the conditions of the detainees are not in line with legal acts or international standards.

Also, the "NORTH" Police Station in Prishtina continues to work in containers with minimal working conditions.

The Police Station in Fushe Kosove faces severe infrastructural conditions and minimal working conditions for police officers.

According to data from the Kosovo Police, the renovation has been completed and the detention centres have been operationalized in these police facilities: in Decan, in Gjakove, in Rahovec, in Lipjan,

in Drenas, in Gjilan, in Peje, in South Mitrovica and in North Mitrovica.

With regard to the right to file a complaint regarding their treatment by the Kosovo Police, the arrested have the right to file a complaint at the police station where they are held, as well as at the KPI. In addition, the arrested can appeal to the Ombudsperson. In order to provide easier access to the services of this institution and to enable the arrested and detained to file complaints confidentially, the Ombudsperson has placed complaint boxes in police stations that have detention centres.

Correctional and Detention Centres

The National Preventive Mechanism against Torture (NPM) conducts visits to places where persons deprived of liberty are held, with the aim to generally assess how persons deprived of liberty are treated, including services provided, regimes, categorization, health treatment, conflicts between prisoners, eventual cases of ill-treatment, as well as other general aspects of treatment.

Treatment - this year, during visits to correctional centres and detention centres, there were no complaints of physical abuse or excessive use of physical force by correctional officers. It has been found that there is good communication between prisoners and correctional officers. The treatment of people with mental health problems, elderly people, people with chronic health problems, people with special needs, addiction, etc., remains worrying. According to official information, this year, 218 cases of mental and personality disorders, as well as with psychiatric therapy, 226 people with chronic diseases, 50 people were over the age of 65, and 4 people with special needs, etc., were treated in correctional and detention centres.

Regime - for the purpose of socialisation and the rehabilitation of convicts, the implementation of four types of treatment is envisaged: admission treatment, basic, standard and advanced treatment.⁹⁴

The Correctional Centre in Dubrava consists of three operational workshops, which are actually also centres for vocational training, where trainings on welding, construction, metal work, carpentry, technical maintenance, plumbing and electricity installation, are organized. The Correctional Centre in Dubrava consists also of a secondary school, where 37 prisoners continue their studies. However, during the visit to this centre, the convicts informed us that some convicts are illiterate. This fact has been confirmed by the leader of programs and education. We have recommended the Ministry of Justice the following: *“Organize special courses for prisoners who are illiterate.”*⁹⁵ Most of the prisoners in the High Security Prison are engaged in various jobs, such as: maintenance, cleaning the wards, working in the kitchen, in the workshop for the production of toilet paper and bags, from which other KCS institutions are also supplied. Most of the convicts in the Correctional Centre for Women are engaged in work: in the bakery, in the kitchen, in tailoring and cleaning, while during the summer season they are engaged in the gardens and in the centre’s greenhouse. Whereas the detainees are very little engaged in work and other activities, as their engagement is subject to the permission of the competent court. However, the convicts, especially those with long-term imprisonment, have had complaints, claiming that the number of activities and engagements in the Correctional Centre for Women is not sufficient. The Ombudsperson

emphasized the same complaints in the Report with recommendations for the Correctional Centre for Women and the Correctional Centre for Juveniles⁹⁶, which was published on 23 December 2021, whereby recommending: *“Increase out-of-cell activities for women prisoners (including detainees), when possible. Pay special attention to prisoners sentenced to long-term sentences.”* Therefore, these recommendations were repeated for the Ministry of Justice in the report published on 25 November 2022.⁹⁷

Regime for the detainees

During this year’s visits, we have found that a poor regime is being applied for the detainees. Most of the detainees spend most of their time locked in their cells due to the infrastructure (the Detention Centre in Prizren and the one in Peja and partially the one in Mitrovica) and because their engagement in out-of-cell activities is subject to the permission of the competent court.

It is worth noting that one of the most important aspects that affects the rehabilitation and resocialization of prisoners is the opportunity to engage in work, which would help a lot in life after serving the sentence. Therefore, the Ministry of Justice and the Correctional Service should treat the establishment of the Economic Unit seriously.

Health care in correctional centres and detention centres

The premises in which medical services are provided in correctional and detention centres are generally

94 Internal regulation for treatments, Article 10, Types of Treatments. <https://shkk.rks-gov.net/assets/cms/uploads/files/Rregullorja%20e%20brendhsme%20per%20tretman.pdf>

95 <https://oik-rks.org/en/2022/04/15/npm-report-regarding-the-visit-conducted-to-the-dubrava-correctional-centre/>

96 <https://oik-rks.org/en/2021/12/24/report-of-the-npm-concerning-the-visit-to-the-correctional-centre-for-women-and-correctional-centre-for-juveniles-in-lipjan/>

97 <https://oik-rks.org/en/2022/11/25/ombudspersons-national-preventive-mechanism-against-torture-report-regarding-the-visit-conducted-to-the-correctional-centre-for-women-in-lipjan/>

at a satisfactory level, except in the Detention Centre in Peja, Prizren and Mitrovica. These 3 centres are not adequate and do not protect the confidentiality of medical services.

Medical checks for newly admitted, according to Standard Operating Practices⁹⁸ of the Health Directorate of Prisons (HDP) and the Law on the Execution of Criminal Sanctions⁹⁹ determine the obligation for the newly admitted prisoner to undergo a medical examination within 24 hours from the moment of admission. During the visits carried out, examination of medical files, as well as the reports sent by the HDP, it was noticed that all newly admitted prisoners undergo medical examinations within 24 hours from the moment of admission. In this regard, this year we have not received any complaints from convicted and admitted detainees. These services are provided under conditions that maintain the confidentiality, namely they are provided without the presence of correctional officers, except in cases where their presence is required by the doctor. Only health personnel have access to the prisoner's medical file. We have received complaints from prisoners regarding medical treatment during visits, phone calls received, family members, social workers, complaint boxes, etc. Some of these complaints have been registered for further investigation and are being processed. For all these cases, the information was obtained by examining the files in the field, as well as from the additional information provided by HDP.

The presence of prisoners with mental problems in correctional centres and detention centres continues to be one of the biggest challenges for the Correctional Service. The solution proves to be the opening of Pavilion D in the Correctional Centre

in Dubrava, a project which is in the final stage and is expected to start work next year.

The NPM will continue with regular visits during 2023, closely monitoring the actions of the authorities and the implementation of the recommendations of the Ombudsperson regarding the treatment of persons with mental problems.

Accommodation conditions in correctional centres and detention centres

During the visit to the Correctional Centre in Dubrava,¹⁰⁰ it has been concluded that the accommodation conditions in general can be considered to be in accordance with the LECS and international standards for the rights of prisoners.

The prisoners complained that there was no hot water and that the water pressure during the summer is low (wards 1, 3, 4 and 5). According to them, hot water is not enough for cleaning and maintaining hygiene. As a result of this, during the visits, it was observed that the prisoners were using improvised electrical equipment for heating water, which could seriously endanger their lives. In this regard, we immediately expressed our concern to the competent officials, who informed the monitoring team that they are making continuous efforts to prevent these devices from being allowed.

Regarding the conditions of accommodation in the Hospital of Dubrava Correctional Centre, we have found that the facility in general does not meet the conditions neither for the hospitalized nor for the health staff, despite the renovations that have been

98 Standard Operating Practice, point 1. See at: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standard-te-Veprimit-n%C3%AB-DShB.pdf>

99 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8867bn>

100 <https://oik-rks.org/en/2022/04/15/npm-report-regarding-the-visit-conducted-to-the-dubrava-correctional-centre/>

done. It should also be noted that the hospital in this centre has two floors and only has stairs, and this poses difficulties due to the lack of access for patients, especially for persons with disabilities.

The Ombudsperson, in the Report with recommendations for the Correctional Centre in Dubrava, has recommended to the Ministry of Justice as follows: “*Create adequate conditions for the hospitalized in the prison hospital.*”¹⁰¹

In the visit made to the Correctional Centre for Women¹⁰², we found that the cells where the prisoners are accommodated have sufficient natural and artificial lighting, as well as they do not have humidity. Regarding the living space for prisoners, the space available is in accordance with the provisions of the LECS and the standards set by the European Committee for the Prevention of Torture (CPT).¹⁰³ Also, there is no overcrowding and most of the prisoners were placed in rooms alone, according to their requests.

The prisoners complained that the showers and machines in the laundry, as a result of the technical condition, are not functional.

The Ombudsperson, in the Report with recommendations addressed to the Ministry of Justice¹⁰⁴, has reiterated the recommendations to make technical adjustments to the showers and machines in the laundry.

During this year, the NPM paid special attention to the operation of the Mother’s House in the Correctional Centre for Women in Lipjan.¹⁰⁵

The Mother’s House does not meet the basic conditions for accommodation in accordance with the Law on the Execution of Criminal Sanctions, nor with international standards for the protection of the rights of prisoners with children. Due to the damage to the building due to its age and lack of renovation, the situation in this building is very serious.

In the report on the visit to the Detention Centre in Peja¹⁰⁶, we found that the conditions of accommodation in this centre, in terms of lighting and ventilation, are not in accordance with the LECS¹⁰⁷ nor with the standards defined by the CPT. During the visit to this centre, we received numerous complaints from detainees and convicts regarding the conditions of accommodation, in which they claim that there is a lot of humidity in the rooms where they are accommodated.

Through the report, after the visit to this centre, we reiterated the recommendation to invest in accommodation conditions that are in accordance with the standards defined in the LECS; with the standards of the CPT and with other international standards for the protection of prisoners’ rights.¹⁰⁸

101 <https://oik-rks.org/en/2022/04/15/npm-report-regarding-the-visit-conducted-to-the-dubrava-correctional-centre/>

102 <https://oik-rks.org/en/2022/11/25/ombudspersons-national-preventive-mechanism-against-torture-report-regarding-the-visit-conducted-to-the-correctional-centre-for-women-in-lipjan/>

103 European Committee for the Prevention of Torture, Living Space for a Prisoner, see: <https://rm.coe.int/16806cc449/>

104 <https://oik-rks.org/en/2022/11/25/ombudspersons-national-preventive-mechanism-against-torture-report-regarding-the-visit-conducted-to-the-correctional-centre-for-women-in-lipjan/>

105 <https://oik-rks.org/en/2022/11/25/ombudspersons-national-preventive-mechanism-against-torture-report-regarding-the-visit-conducted-to-the-correctional-centre-for-women-in-lipjan/>

106 <https://oik-rks.org/en/2022/11/17/report-of-the-national-preventive-mechanism-against-torture-with-regard-to-the-visit-conducted-to-the-pre-detention-centre-in-peje/>

107 Law no. 08/L-132 on the Execution of Criminal Sanctions, article 35, paragraph 3, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8867>

108 <https://oik-rks.org/en/2022/11/17/report-of-the-national-preventive-mechanism-against-torture-with-regard-to-the-visit-conducted-to-the-pre-detention-centre-in-peje/>

During the visit to the High Security Prison, we found that in general the accommodation conditions are at a satisfactory level in terms of space, cleanliness, as well as access to natural and artificial light.

Regarding the conditions of accommodation in the Detention Centre in Prishtina, we emphasize that the cells where the prisoners are accommodated have sufficient natural light, living space, which goes beyond the standard set by the LECS and the standards set by the CPT. Also, the NPM observed that there are adequate cells available for prisoners with disabilities.

Regarding the Detention Centre in Mitrovica and the Detention Centre in Prizren, the accommodation conditions were generally acceptable, except in certain cases, in terms of living space for one prisoner, where the accommodation conditions are not in accordance with the LECS, neither with the international standards for the protection of prisoners' rights, nor with the CPT standards.

While during the visit to the Detention Centre in Gjilan, it was also observed this year that the cells where the prisoners are accommodated are in accordance with the LECS and the CPT standards, have sufficient lighting, do not have humidity and also have adequate heating and cleanliness.

In the Report on the Educational Centre for Juveniles in Lipjan, the NPM observed that the conditions where juvenile boys were kept were very good, the rooms were clean and well-lit, the juveniles' beds had sheets, blankets, in addition to mattresses which were worn out and of poor quality. The rooms where the minors stayed were large and had sufficient lighting, they had TVs, personal closets. Each room had toilets which were

in good condition, adequate and had uninterrupted hot water. Also, the rooms and toilets, which were dedicated to people with special needs, met the conditions for this category. This centre meets all the conditions for the accommodation of minors.¹⁰⁹

As for the accommodation conditions, in the Report on the Correctional Centre for Juveniles¹¹⁰ it was found that there was sufficient natural and artificial light in the rooms; in general, this centre meets the adequate conditions for the accommodation of imprisoned minors.

Personnel of correctional centres and detention centres

In the reporting year, the Ombudsperson received numerous complaints from correctional personnel regarding the working conditions and the small number of correctional officers compared to prisoners. One of the many complaints is the non-supply of uniforms and other necessary equipment to do their job.

The Ombudsperson has recommended the Ministry of Justice to increase the number of social workers and legal officers according to the assessment and need, a situation that continues to remain the same.

Mental Health and Social Care Institutions

The NPM visited the Institute of Forensic Psychiatry of Kosovo (hereinafter "the IFPK"), the Ward of Emergency and Psychiatric Intensive Care of the Psychiatric Clinic (hereinafter "the EPIC"), the Centre for the Integration and Rehabilitation of Chronic Psychiatric Patients in Shtime (CIRCPP),

109 <https://oik-rks.org/en/2022/07/26/report-of-the-ombudspersons-national-preventive-mechanism-against-torture-concerning-the-visit-conducted-to-the-educational-correctional-centre-for-juveniles-and-correctional-centre-for-juve/>

110 <https://oik-rks.org/en/2022/07/26/report-of-the-ombudspersons-national-preventive-mechanism-against-torture-concerning-the-visit-conducted-to-the-educational-correctional-centre-for-juveniles-and-correctional-centre-for-juve/>

the Community Integration House in Bresje and Ferizaj, the Special Institute in Shtime, the Home for Mentally Handicapped Children in Shtime, Community-Based Homes: in Shtime, Ferizaj and Prizren.

During the visits to the mental health institutions, we did not receive any complaints about mistreatment of patients by the staff of the said institutions.

The Institute of Forensic Psychiatry of Kosovo has a capacity of 36 beds, 12 beds in each department. During the visit (September 2022), each department was operating in full capacity, while there are several more cases on the waiting list for these departments.

Treatment and activities - there were no complaints of physical abuse, and no signs of physical violence were observed among the patients. The team interviewed the patients present, who claimed proper treatment by the medical staff. In IFPK, in addition to assessment and medication treatment, psycho-social activities are also offered. The psycho-social treatment consists of activities, such as: games, watching TV, drawing, daily outings within the institution (in the promenade of the IFPK), individual and group sessions with the psychologist, etc.

Accommodation conditions - the inventory is demolished, especially in the premises of the day stay, the two isolation rooms, due to poor conditions, are out of order, the cameras do not work, the glass of the room door was broken. Hygienic conditions are good, patients have access to natural light, ventilation and privacy in showers and toilets was at the right level. The centre does not have a separate ward for female and juvenile patients and when there are female cases, male and female patients stay in common spaces.

Contact with the outside world - family visits are made twice a week for 30 minutes. In addition to

visits, patients also have the right to phone calls. The centre also practices therapeutic weekends, which has been successful so far.

Prevention of suicides - in recent years there have been no cases of death or suicide in IFPK. During the last visit, it was found that the recommendation regarding the protocols has been implemented. The IFPK had recently compiled: Protocol for the assessment and treatment of patients who present a potential risk of suicide; Protocol for the prevention and management of disordered/violent behaviour and Protocol for the evaluation and treatment of patients who exhibit self-injurious behaviour.

Means of restraint - during the visit we found that no mechanical restraint is used, there is a mechanical restraint shirt in the ward, but it was never used, the isolation room is the main and only mean of restraint.

Review of decisions by competent courts - in terms of court decisions, as in previous years, during 2022 it has been established that the problem of not changing the measure by competent courts continues, despite the achievement of the objectives for handling those cases. According to the director of the IFPK, they have made a request for some people to change their measure, but they have not received an answer from the courts.

Psychiatry Clinic in Prishtina – The Ward of Emergency and Psychiatric Intensive Care

The Psychiatric Clinic is an organizational unit of KHUCS, which, according to the law in force, offers tertiary level services for the whole country (the only clinic in Kosovo), but is also obliged to offer secondary level services for the region of Prishtina, in the absence of a general hospital.

Ward of Emergency and Psychiatric Intensive Care (EPIC) - is a closed unit and operates within the Psychiatric Clinic. In this ward, cases of various psychotic disorders, bipolar disorders and personality disorders that cannot be treated in other open wards are treated. This ward is the only one in the entire territory of Kosovo. NPM was informed that patients are generally brought to the EPIC ward by family members or the police and are patients who are accommodated against their will.

Over the years, the Ombudsperson has mentioned it in reports with recommendations¹¹¹ the lack of sub-legal acts of the Law on Mental Health and which are expected to be approved by the Ministry of Health and the Government of Kosovo. The Ombudsperson reiterates the recommendation to issue sub-legal acts of the Law on Mental Health, so that the law is applicable and functional.

Treatment and activities in the EPIC ward - during the visit (August 2022), the NPM checked the register of cases admitted to the EPIC and never noticed overcrowding in this ward, at most 10-12 patients were present. During the visit, four patients were present, who were interviewed and did not have any complaints about physical abuse or bad behaviour of the staff.

During the visits to this ward, it was found that the main treatment is with medications, while the psycho-social activities were not sufficient.

The multidisciplinary team is missing, such as: psychologist, social worker, occupational therapist and the individual treatment plan is missing.

Even this year, it was found that there is no evidence proving that the patients were offered a written explanation for the reasons for the involuntary

treatment, as provided for in Article 21, paragraph 1.4, of the Law on Mental Health, which expressly determines that the patient treated against his/her will, among other things, must be explained in writing, within 48 hours, the reasons for the involuntary treatment.

Means of Restraint in EPIC - no mechanical restraint is used, only isolation and chemical restraint. During the visit, the NPM observed that the patient files contained the assessment of three doctors, the anamnesis, the history of the disease, the form for placement in isolation rooms, the request for admission to the hospital, but there is no consent for treatment and no informed consent. There continues to be no separate register for people who are placed in solitary confinement, even though it is the recommendation to the Ombudsperson with the report with recommendations, published on 26 October 2018.¹¹²

Mental Health Centres and Community Integration Homes

Article 10 of the Law no. 05/L-025 on Mental Health defines mental health care services, and primary, secondary and tertiary health care. Secondary level mental health services (part of KHUCS) include: psychiatry departments within general hospitals; Mental Health Centres and Community Integration Homes; Centre for Integration, Rehabilitation of Chronic Psychiatric Patients in Shtime (hereinafter CIRCPP).

Community and residential service is provided through the professional mental health service and there are a total of nine (9) Mental Health Centres [MHC], with nine [9] Community Integration Homes [CIH], providing mental health services

111 <https://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/>

112 <https://oik-rks.org/en/2018/10/26/report-with-recommendations-psychiatric-clinic-of-the-university-clinical-center-of-kosovo/>

in all regions of Kosovo. During 2022, the NPM visited the Mental Health Centre in Prishtina and the Community Integration Homes in Bresje and Ferizaj. The Community Integration Homes in Bresje and Ferizaj meet all the necessary living conditions. NPM has interviewed the residents without the presence of the staff of the homes and has not received any complaints of physical abuse. The team noticed a relaxed atmosphere between the residents and the health staff.

Centre for Integration and Rehabilitation of Chronic Psychiatric Patients in Shtime (CIRCPP)

CIRCPP operates within the Kosovo Hospital and University Clinical Service (KHUCS) and offers services 24 hours a day. CIRCPP is an open-type institution, residents in this centre are mainly diagnosed with psychotic disorders, such as schizophrenia. The official capacity for accommodation in this institution is 60 residents and during the visit no overcrowding was observed, a total of 60 residents were present.

The staff of this centre offers full cooperation and unhindered access to any space that enables interviews with residents without the presence of health staff. Residents are treated humanely, there is communication and a positive climate between residents and staff. In general, the accommodation conditions in this institution are of a high standard.

The challenge of this centre remains the referral of cases for compulsory psychiatric treatment by the court, as well as the removal of the permanent capacity to act of some patients, one of the issues that the Ombudsperson will handle carefully during the coming year.

Social Care Institutions

Special Institute in Shtime (SIS), Home for Mentally Handicapped Children in Shtime, Community-Based Homes (CBH)

Treatment for people with mental disabilities – mental retardation is provided 24 hours a day at the Special Institute in Shtime and at nine [9] Community-Based Homes.

The Special Institute in Shtime and the Home for Children with Special Needs in Shtime, until the end of 2022, have been managed by the Ministry of Finance, Labour and Transfers (hereinafter “the MFLT”), while it is expected that from January 2023, these institutions will come under management of the Ministry of Health. While the Community-Based Homes, from January 2016, are managed by the municipal directorates for health and social welfare.

Living conditions - in the Special Institute in Shtime, the conditions are generally very good, the living spaces have sufficient natural lighting, heating, ventilation, and cleanliness is at a satisfactory level. The rooms where the residents were accommodated consist mostly of 2 to 3 beds in a room, with cabinets for storing clothes and personal belongings, and decorations for visual stimulation, e.g., different paintings, which were made by some residents in collaboration with the instructors. During the visit to SIS, the NPM team also visited the kitchen, where food is prepared and served. The kitchen had adequate lighting and ventilation, the cleanliness was up to standard, and the food was adequate.

Treatment, staff and activities in SIS - have close access to residents. The residents looked good in terms of dress and hygiene, the relationship with the staff was friendly. NPM has not come across residents with signs of injuries.

As for the means of restraint- according to the staff, the centre has no isolation rooms and no forms of physical restraint are used.

Visit to the Home for Mentally Handicapped Children in Shtime

This centre accommodates 10 people (as per the capacity) of different ages, where only one resident is under the age of 18, the others have reached the age of maturity. Therefore, the Ombudsperson has recommended the authorities to find a solution for persons who continue to stay at home and who have reached the age of maturity in order to free up spaces for children in need. The staff of the centre has a close friendly approach to the residents, while the accommodation conditions are generally good, the residents' rooms have enough space.

The health and psychiatric service is shared with the Special Institute in Shtime. The psychiatrist visits them once a week, the cases are sometimes sent to the ambulance of the Special Institute in Shtime. In case of need, other health and specialist services are offered by the Family Medicine Centre in Shtime and the University Clinical Centre in Prishtina. Laboratory analyses are done regularly at the Family Medicine Centre in Shtime every 6 months, which was verified by the NPM during the last visit. The Children's Home has no isolation rooms and no forms of mechanical restraint are used.

Community-Based Homes (CBH)

There are a total of 10 community-based homes, in the following municipalities: Kamenica, Decan, Ferizaj, Vushtrri, Lipjan, Gracanica, Shtime and Prizren, as well as the Children's Home in Shtime. Each Home has capacity for 10 residents, except CBH in Shtime with a capacity of 12 beds.

During the year 2022, the NPM visited Community-Based Homes in Shtime, Ferizaj and Prizren, which generally meet the necessary conditions for living, except in Prizren, where deficiencies in the operation of this centre have been identified, such as: lack of heating and other conditions.

Health services are provided in Family Medicine Centres, in the Mental Health Centres of the respective municipalities and in the University Clinical Centre of Kosovo.

These centres do not have isolation rooms and no forms of physical restraint are used.

Protection of the rights of non-majority communities

During 2022, the IO received 144 complaints from members of non-majority communities, of which 80 complaints were declared admissible. The complaints received are related to the integration of returnees, property rights, education, the complete non-implementation of regulations on the use of languages, as well as problems related to obtaining personal documentation for persons who lived in Kosovo until 1999, for their spouses and children.

Return and security

Based on the data of the High Commissioner for Refugees (UNHCR), only 204 people from non-majority communities returned to Kosovo in 2022.¹¹³ Most of the collective centres have been closed by 2021, so housing needs to be provided for another 139 people, who still live in collective housing in the north of Kosovo.¹¹⁴ Based on the information, which OIK has received from civil society organizations dealing with the issues of displaced persons and their shelter in partnership with UNHCR¹¹⁵, it was planned the closure of the remaining collective centres and provision of permanent housing for the displaced persons during 2022, as per the plan of the Ministry for Communities and Return (MCR) and the municipalities in the north of Kosovo, but until the end of 2022 this did not happen.

The challenges faced by displaced persons and returnees are: usurpation of property and deprivation of the right to possession; non-implementation of court decisions, which most often relate to immovable properties; lack of access to educational institutions; the economic situation; unemployment; infrastructural problems; bad social situation; stable return; problems with the implementation of language rights, etc.

This year, a commitment has been observed from the Government of the Republic of Kosovo, the Ministry of Communities and Returns (MCR), which this year has also helped and provided support to all returnees in Kosovo, 106 projects for communities have been implemented, of which 79 are individual and 23 for communities and 4 for associations/cooperatives (39 manufacturing, 45 services and 22 agricultural - processing). In addition to what was said above, 11 projects have been implemented in the field of education, culture, sports, health, religious manifestations, as well as assistance to vulnerable communities by providing furniture. During 2022, to ensure sustainable return, the MCR has built 19 houses and provided assistance to 11 families from different communities in the municipalities: Peje, Kline, Istog, Obiliq, Fushe Kosove, Gracanice, Novoberde, Shterpce, Prizren

113 According to UNHCR statistical data, from January to December 2022, 155 Serbs, 25 Ashkali and Egyptians, 1 Bosniak and 17 Roma have returned.

114 According to UNHCR statistical data, until the end of December 2022, 139 people still live in collective centres in the north of Kosovo: 21 in north Mitrovica, 71 in Leposavic, 20 in Zubin Potok and 27 in Zvecan.

115 NGO "FDMC" from Gracanica.

and Gjakova. In addition to what was said above, within the EU and MCR project, called RRK - fifth phase, 35 houses have been built for the users, which are equipped with furniture and electrical equipment. The MCR reported that it is in the stage of preparing a new Strategy for the protection and promotion of the rights of communities and their members, in which regard public consultations with communities have been planned.¹¹⁶

In the annual report for 2021, the Ombudsperson reported on the establishment of a data management system related to displaced persons and returnees, in order to provide assistance to persons interested in returning, displaced persons who live in collective centres and private houses. In this regard, it should be noted that the system in question is not yet functional and, based on the information received by the OIK from the MCR, it will become operational at the beginning of 2023.

The Ombudsperson has continued its engagement within the Inter-institutional Initiative for Displaced Persons and Refugees from Kosovo, which is better known as the "Skopje Initiative"¹¹⁷, has participated in the capacity of observer and exchanged experiences with representatives of the institutions in the working groups involved with personal documents and property matters. During 2022, the working groups did not meet in their full capacity due to the changes of group leaders, so the meetings were of a consultative nature. Consequently, during 2022 there were no concrete developments and substantial progress in certain matters related to personal documents and property matters. A meeting was held with

the leaders of the 5 working groups, where the topic of the meeting was: planning activities in accordance with the topics from the Action Plan, familiarization with the activities implemented and the current state of work of the 5 subgroups. Also, at the end of 2022, a meeting was held with representatives of the institutions of North Macedonia and Kosovo regarding the issue of receiving documents for displaced persons in North Macedonia, with the aim of regulating their status and their eventual return¹¹⁸. The OIK will continue to monitor the work of the aforementioned groups in order to contribute to the monitoring of the situation regarding the respect of the human rights of displaced persons, refugees and returnees in the Republic of Kosovo.¹¹⁹

In this regard, it should be mentioned again the ongoing problem of securing personal documents faced by both displaced persons and refugees from Kosovo, as well as the citizens of the four northern municipalities, for which the OIK has reported in previous annual reports, and last time in the OIK Annual Report for 2021.¹²⁰

Property rights

The Ombudsperson, in accordance with its mandate, has monitored the situation and reported on the rights of non-majority communities and problems related to the property rights in general.¹²¹ The property right is one of the basic human rights guaranteed by the Constitution and laws in force, as well as by numerous international legal instruments in force in Kosovo. It is an indisputable fact that in recent years there has been progress

¹¹⁶ Information received from MCR on 22.12.2022.

¹¹⁷ The "Skopje Initiative" operates in 5 working groups for the implementation of: 1. Property issues, 2. Security, dialogue and integration, 3. Personal documents 4. Data management and 5. Planning sustainable solutions.

¹¹⁸ Information received from the OSCE - mission in Kosovo, and from the MCR, at the end of December 2022.

¹¹⁹ The meeting of the Working Group for personal documents, which was held on 13.6.2022, where representatives of the OIK also participated.

¹²⁰ <https://oik-rks.org/2022/03/31/raporti-vjetor-2021/>, page 76.

¹²¹ See previous OIK annual reports on this topic.

in resolving issues of ownership, usurpation and re-usurpation of property, forged sales contracts, as well as the execution of final and enforceable court decisions related to evictions from illegally occupied apartments. Despite this, the State still needs to deal with this issue continuously, in order for all persons whose properties are usurped can possess their properties in full accordance with the rights they enjoy according to the laws in Kosovo.

The Kosovo Agency for Property Comparison and Verification continues to face difficulties in the execution of decisions on the eviction of persons who have illegally usurped the property of other persons. The largest number of these cases are usurped properties owned by citizens of non-majority communities in the Republic of Kosovo.

Even in 2022, the Ombudsperson has received complaints related to the procrastination of court proceedings in property disputes, the usurpation and re-usurpation of property, as well as the non-execution of final and binding court decisions regarding property rights. The aforementioned complaints are in the investigation phase in accordance with the mandate of the OIK.

Education

The Ombudsperson estimates that, as in all past years, differences in the extent of the education system are still present in Kosovo. The education system is managed by the Government of the Republic of Kosovo in the Albanian, Turkish and Bosnian languages, while outside the education system, education in the Serbian language is still conducted for the Serbian community, as well as for some citizens of the Montenegrin community, partly for members of the Bosnian community (in north of Kosovo), for a certain part of members of

the Goran community and mainly members of the Roma community.

The Ombudsperson reiterates this year that, as a result of this, students who complete their education in the parallel system cannot continue their education according to the education system of the Republic of Kosovo, because these diplomas are not recognized. In the academic year 2021/22, 14 students were registered, while registration was allowed only to those students who have completed secondary school according to the curriculum of the Republic of Serbia in Kosovo until 2008, while all those who have completed the secondary education after 2008 in Kosovo, according to the mentioned education system, they could not be registered due to the non-recognition of high school diplomas.¹²²

During 2022, the process of verifying diplomas obtained at the University of North Mitrovica has been interrupted due to the expiration of the mandate of the commission¹²³; therefore, a large number of students of this university have not been able to seek employment in the labour market in Republic of Kosovo in the previous year. During 2022, an initiative for the establishment of a verification commission was launched with the support of the International Organization for Migration (IOM) and the OSCE mission in Kosovo. It is expected that the Commission will soon be established and become operational in the first half of 2023 and that after a one-year break, the verification process will run smoothly.

The OIK has previously reported on the problem that has affected the Turkish and Bosnian communities for years and refers to the improvement of the quality of textbooks and auxiliary manuals for primary and secondary education in the languages of these communities. In the second half of 2022,

¹²² Information received at the meeting with OSCE representatives in Kosovo, on 5.12.2022.

¹²³ The commission's mandate expired on 31.1.2022 and since that day no meeting has been held.

the mentioned problem was finally solved. In fact, the textbooks in Bosnian and Turkish have been selected and the books have been approved by MESTI for printing. A group of authors (12) submitted a complaint to the OIK regarding the unequal treatment of authors and reviewers of textbooks in the Albanian language in terms of payment of fees for their work. The OIK registered the case and in the second half of 2022 the case was positively resolved in accordance with the demands of the complainants. In the 2021/2022 school year, students who continue their education in Bosnian and Turkish, after two decades, received new and more modern textbooks in their mother tongue.

Use of language

Language rights are guaranteed by the Constitution of the Republic of Kosovo, so that the Albanian and Serbian languages are official languages¹²⁴, while the languages of other non-majority communities in certain municipalities are recognized as languages in official use¹²⁵, which is further regulated by the Law on the Use of Languages.¹²⁶

The Ombudsperson states that due to the lack of capacities, the full implementation of this right will continue to be a problem. This problem is faced in both local and central level institutions. In relation to language rights, the Ombudsperson, in the Report with recommendations¹²⁷, has found that the Municipality of Gjakova has acted contrary to the Law on the Use of Languages and the same has

not been addressed with an official communication-announcement only in the Albanian language.

The practice of some official Government websites to only partially provide basic information in the Serbian language and be only partially accessible and up-to-date still persists. Non-respect of the language rights of non-majority communities, such as the Serbian language and the languages in official use at the municipal level, has been emphasized by members of the Bosnian and Turkish communities.¹²⁸ Citizens from the Goran community in the municipality of Dragash find the same problem.

Regarding the improvement of language rights, the Translation Unit was established in order to improve the translation of official documents in both official languages. The Unit is tasked with the analysis of translations of draft laws, as well as the harmonization of laws in official languages.

This year, the Ombudsperson, examining the complaint of the D.G. against the Municipality of Gjakova, with ex officio Report 700/2021¹²⁹, concluded: *“The official communication of the administration bodies with the complainant is contrary to Article 5 of the Constitution of the Republic of Kosovo and the Law on the Use of Languages.”*

Regarding the monitoring of the situation related to the respect of the language rights of all citizens of the Republic of Kosovo, this year the Ombudsperson has started cooperation with the

124 Constitution of the Republic of Kosovo, Articles 5 and 59.

125 The languages in official use are the Turkish language, in the municipalities of Mamusha and Prizren, and the Roma language in the municipalities of Gracanica and Prizren.

126 Law no. 02/L-037 on the Use of Languages.

127 <https://oik-rks.org/en/2022/09/15/ombudspersons-report-complaint-no-7002021-dragica-gasic-versus-municipality-of-gjakovadakovica/>

128 Information received from representatives of the Bosnian community in Prizren and from representatives of the OSCE mission in Kosovo.

129 <https://oik-rks.org/en/2022/09/15/ombudspersons-report-complaint-no-7002021-dragica-gasic-versus-municipality-of-gjakovadakovica/>

Office of the Language Commissioner, with the aim of ensuring better coordination and promotion of the language rights, as well as faster resolution of filed complaints. In December of this year, a joint workshop of the OIK and the Office of the Language Commissioner was held, with the support of the IOM, in order to identify areas of strategic cooperation aimed at the protection and promotion of language rights in the Republic of Kosovo. In 2023, joint research will be conducted regarding the respect of language rights in the Republic of Kosovo.

Roma, Ashkali and Egyptian communities

The Ombudsperson has continued communications with the representatives of the Roma, Ashkali and Egyptian communities, civil society, as well as with the complainants among these communities, through physical meetings at the offices of the OIK at the headquarters in Prishtina, as well as at the regional offices. In addition, the IO has continued with daily contacts through telephone lines and has provided advice and information to the Roma, Ashkali and Egyptian communities regarding the mandate and powers of the IO, the possibility of submitting complaints to the IO and complaints against other institutions. public.

The Ombudsperson reiterates that returnees among these communities are not aware of the complaint mechanisms and procedures in case of discrimination against them in the provision of public services. Representatives of the Ombudsperson, during their field work, have in some cases informed the returned families of the possibilities of submitting such complaints, such as in Gjakove, Ferizaj, Fushe Kosove, South Mitrovica, etc.

Based on the issues raised in the meetings held, it has been established that the competent mechanisms dealing with return at the local level do not seem to properly consider return policies and there is a lack of sufficient budget related to the creation of suitable housing conditions for the returnees. Also, the people returned to Kosovo face other problems, including the high rate of unemployment, the lack of education and the lack of professional skills that prevent them from regular employment.

The issue of citizenship, civil registration and the provision of personal documents represents a challenge for displaced persons and refugees from Kosovo, as well as members of the Roma community, but also citizens of the four northern municipalities. Although within the framework of the "Skopje Initiative" the opportunity for easier access to administrative procedures and obtaining personal documents has been created, displaced persons continue to face this problem in certain municipalities of Kosovo.

On the basis of the complaints received during 2022, the Ombudsperson observes that the delay in judicial procedures for the validation of property rights continues to be a concern for these communities. Another challenge remains the non-execution of the final judgments of the courts and the decisions of the Commission for the Settlement of Housing Property Claims.

During this year, we have continued holding meetings with representatives of non-governmental organizations regarding some complaints related to scholarships for students from the Roma, Ashkali and Egyptian communities. As in the previous year, this year the right to apply and receive support with scholarships was given to students attending compulsory schooling according to the education system of the Republic of Kosovo, making it impossible to support Roma students attending school according to the education system of Serbia.

In the Report with ex officio recommendations no. 331/2022¹³⁰ regarding the alignment of the provisions of the general pre-university education system of Kosovo with the rights of children in education, the Ombudsperson has observed that the inclusion of Roma, Egyptian and Ashkali students lags significantly behind other communities, especially in preschool education and in the upper secondary one. Although in recent years progress has been noted in the education of Roma, Ashkali and Egyptian children at the primary school level, their participation in other educational levels remains low and in particular it is noted that the participation of girls is lower than of boys in upper secondary school. Also, a division of selected fields in upper secondary school was observed where Roma, Ashkali and Egyptian students are forced to choose vocational schools due to the strict criteria of gymnasiums. The inclusion of students at the vertical level (educational levels), but also at the horizontal level (different fields of study), requires an approach to human rights where both the numbers and the structural problems and discrimination faced by Ashkali, Roma and Egyptians students for realizing the right to education are analysed. According to interviewed officials of MESTI and community activists, reported cases show that children drop out of school due to poverty and welfare problems. The Ombudsperson has recommended MESTI to undertake all the necessary actions to ensure the inclusion, but also the improvement of the educational results of Roma, Ashkali and Egyptian children, at all levels of education.

130 <https://oik-rks.org/en/2022/11/10/report-of-the-ombudsperson-ex-officio-no-3312022-with-regard-to-harmonization-of-the-provisions-of-general-pre-university-education-system-of-kosovo-with-the-rights-of-children-in-education/> p. 33-37

Protection of the rights of persons with disabilities

The Ombudsperson states that the state of the rights of persons with disabilities in this reporting period in Kosovo is almost the same as in the previous year.

Local legislation in Kosovo clearly prohibits discrimination based on disability.¹³¹ Apart from special laws, which regulate the issues of persons with disabilities, Kosovo still does not have a comprehensive harmonized law, which would address all groups of persons with disabilities. Although the line ministry started drafting a comprehensive law document for this area a few years ago, there is no visible progress in this direction.

In March 2022, the Ombudsperson launched the “Equality for all” campaign. This campaign was held in 11 municipalities in Kosovo. The purpose of these roundtables was to promote the mandate of the Ombudsperson, as well as to strengthen cooperation with public institutions, civil society, media and human rights activists.

Regarding the protection and respect of the rights of persons with disabilities, the data collected in the field show that the non-implementation of the Law on Vocational Ability, Rehabilitation and Employment of People with Disabilities still remains

a challenging issue, the cases of violence against children and adults with disabilities, the lack of employment of people with disabilities, the lack of access to infrastructure, especially the facilities of the courts and prosecution offices, as well as the centres for social work in different municipalities, the template decisions of the medical commissions for refusal to recognize the right to pension or suspension of pensions for this group, insufficient support for people with autism and people with delayed mental development, short people are not beneficiaries of pensions, lack of centres for students, for students with disabilities, lack of informational materials in braille, lack of signals in traffic lights for blind people, the small number of assistants, psychologists and pedagogues, non-implementation of the Law on Paraplegic and Tetraplegic Persons, such as: exemption from property tax, as well as from other payments, etc. Likewise, in the meetings held by the OIK with representatives of civil society, it was affirmed that there is a need to increase cooperation with the central level, namely with line ministries, such as Labour and Finance. NGOs emphasize that it is very difficult for them to meet the leaders of the ministries to discuss issues of interest to persons with disabilities. Another concerning issue, which has also been evident in the past, is the procedural delays in the courts for cases related to the

¹³¹ See Article 24 of the Constitution and Article 1 of the Law on Protection from Discrimination. Law no. 03/L-019 on Vocational Ability, Rehabilitation and Employment of People with Disabilities, clearly prohibits discrimination by employers and emphasizes the need for equal opportunities and treatment of persons with disabilities in employment, training and retraining and guarantees their legal protection.

recognition of the right to pension of disabled persons. In many cases, such a problem is not at all encouraging for people with disabilities, who feel discriminated or have any of their guaranteed rights violated, to turn to judicial bodies.

During June and July 2022, separate meetings were held with representatives of HANDIKOS; Kosovo Disability Forum; Association of the Blind of Kosovo; Phoenix NGO; Down Syndrome Kosovo and the NGO "Autizmi".

According to the NGO HANDIKOS, people with disabilities, in particular paraplegics and tetraplegics, face many challenges and problems, because in addition to the disability they have, a significant part also have other diseases that still more affect their health status. It was also emphasized the lack of physical access to public and private spaces for persons with disabilities, including sidewalks, roads, buildings and other public and private facilities, non-implementation of Administrative Instruction No. 33/2007 for Construction Buildings Technical Terms of Accessibility to Disabled Persons, as well as the treatment of persons with disabilities during the assessment and reassessment of disability, by medical commissions.

Kosovo Disability Forum, the Association of the Blind of Kosovo and representatives from the NGO Feniks see among the most disturbing problems the non-implementation of legal obligations by institutions in the employment of blind persons.

Representatives of the NGO Down Syndrome Kosovo emphasized the lack of assistants for children with Down Syndrome in compulsory schooling.

People with autism also face many challenges and problems. Such a conclusion was made from a meeting with the representative of the NGO "Autizmi", where it was stated that the state does not provide any care for autistic persons after

the age of 18 and that the parents of the children themselves must pay for the services provided each month, which represents an additional burden for the family, in addition to the many difficulties they face with these children.

During this reporting period, the Ombudsperson has received complaints submitted by persons with disabilities, but also by non-governmental organizations, which deal with activities related to these persons. It has also opened ex officio cases, such as the ongoing investigations related to the issue of inclusive education of disabled persons that enables them to compete in the labour market, where an analysis is planned of the educational situation of persons with disabilities, focusing on the barriers and difficulties they encounter. It will also be assessed how much the education system is able to prepare disabled people to be independent and ready to compete in the labour market.

The Ombudsperson, in the capacity of friend of the court (*amicus curiae*), on 2 December 2021, sent a legal opinion (*amicus curiae*) to the Basic Court in Prishtina, regarding an individual complaint of the complainant Mr. Faruk Kukaj, regarding claims of discrimination due to disability, i.e., non-compliance with legal provisions related to the creation of appropriate physical conditions for persons with disabilities in public and private spaces in the Municipality of Prishtina.

In its opinion, the Ombudsperson has drawn the conclusion that not providing reasonable accommodation for persons with disabilities, in accordance with their specific needs, constitutes discrimination on the basis of disability, defined in Article 1 of Law no. 05/L021 on Protection from Discrimination and is contrary to international practice, including decisions of the European Court of Human Rights.

On 18 October 2022, the Basic Court in Prishtina rendered the Judgment C.nr. 3663/18, whereby

approving the claim of the plaintiff, Mr. Faruk Kukaj, as partially grounded and the defendant, Municipality of Prishtina, is obliged to compensate the plaintiff, due to the discrimination caused by the inaction – failure to provide physical conditions in public spaces and access to public facilities for persons with disabilities, for the non-material damage caused because of the violation of dignity of the plaintiff.

This is the first court case in Kosovo based on allegations of discrimination against persons with disabilities, regarding access and free movement in public infrastructure.

During this year, the Ombudsperson published the Report with ex officio recommendations No. 331/2022¹³² with regard to the harmonization of the provisions of the general pre-university education system of Kosovo with the rights of children in education. The report aims to assess the level of implementation of the relevant constitutional and legal provisions that regulate the respect of children's rights in the education sector by the authorities and educational institutions of Kosovo. The Ombudsperson considers that the quality of education is not at the right level to prepare students for life and recalls that the Commentary on Article 29 of the Convention on the Rights of the Child underlines the individual and subjective right to a specific quality of education. The Ombudsperson assesses that the education system in Kosovo does not enable students to develop their potential according to their needs and abilities, in accordance with the constitutional provisions.

Also, during this reporting period, the Report with recommendations no. 262/2018¹³³ with regard to the hindrance to physical access of

disabled persons to the premises of the Pension Administration of Republic of Kosovo, the Regional Pension Office in Prishtina. The failure of the public authority to provide access to a part of this facility has the consequence that a certain group of people, who cannot overcome physical barriers, are prevented from using the services of the Pension Administration Branch in Prishtina, under equal conditions and on an equal basis with other citizens. The Ombudsperson observes that the provision of access to facilities and services is a fundamental prerequisite for the independent life of persons with disabilities, as it enables them to participate actively in all areas of life on an equal basis. If only one of the elements of the approach is not adequate, a person with disabilities will find himself/herself in the situation of the so-called "disruption of the movement chain", i.e., he/she will be brought into a situation where he/she cannot function independently. As a result of what was said above, the Ombudsperson draws the conclusion that the failure of public authorities to provide reasonable adaptation/accommodation to persons with disabilities, in accordance with their special needs, constitutes an act of direct discrimination on the basis of disability, which is determined in accordance with Article one 1 and Article 4, paragraph 1, sub-paragraph 1 and sub-paragraph 8 of the Law on Protection from Discrimination. Therefore, the Ombudsperson issued a relevant recommendation to the responsible authorities to ensure unobstructed access for persons with disabilities.

132 <https://oik-rks.org/en/2022/11/10/report-of-the-ombudsperson-ex-officio-no-3312022-with-regard-to-harmonization-of-the-provisions-of-general-pre-university-education-system-of-kosovo-with-the-rights-of-children-in-education/>

133 <https://oik-rks.org/en/2022/12/02/ombudsperson-s-report-ex-officio-no-2622018-with-regard-to-the-hindrance-to-physical-access-of-disabled-persons-to-the-premises-of-pension-administration-of-republic-of-kosovo-the-regio/>

Supervision of human rights in the Kosovo Security Force

The protection of human rights afforded to members of the armed forces exists within a wider context of the position of the military in a democratic state. The constitution of our country regulates the state order in terms of legal structure, accountable mechanisms, review or independent supervision and individual rights. Chapter XI [Security Sector], Article 125, paragraph 4, specifies: “*Civilian and democratic control over security institutions shall be guaranteed.*”

Respect for human rights and fundamental freedoms for all, including personnel of the armed forces, represents a comprehensive concept of security, which links peacekeeping with respect for human rights and fundamental freedoms.¹³⁴ Armed forces personnel have the same rights and protections as all other persons, except for certain limitations imposed by military service.¹³⁵

In view of cooperation and supervision of human rights, in May 2022 a meeting was held with the minister of the Ministry of Defence (MoD). Furthermore, in coordination with the units for Human Rights and Gender Equality in the MoD and KSF, in October of this reporting year, a presentation was made for officers and officials of

the Ministry of Defence, regarding human rights in the armed forces and the role of the Ombudsperson in this context and the chain of democratic control of the security sector. This presentation format is planned to be extended throughout 2023 in the KSF, appropriately in the organizational structure.

During the reporting year, there have been several public cases that have attracted attention in terms of the operation and following the procedures for recruitment in the KSF, treatment within the KSF, as well as (in)ability for advancement. However, only three complaints have been received in the OIK: one complaint against the Ministry of Defence and two complaints against the KSF.

The legislative transformation regarding the Ministry of Defence and the KSF has continued. In 2022, the following acts entered into force: Law No. 08/L-158 on Amending and Supplementing the Law No. 06/L-122 on the Ministry of Defence¹³⁶; Law No. 08/L-157 on Amending and Supplementing the Law No. 06/L-123 on the Kosovo Security Force¹³⁷; Law No. 08/L-156 on Amending and Supplementing the Law No. 06/L-124 on Service in the Kosovo Security Force¹³⁸; Law No. 08/L-133 on

134 For more information, see Code of Conduct on Politico-Military Aspects of Security, Organization for Security and Co-operation in Europe (OSCE) document <https://www.osce.org/files/f/documents/6/a/119812.pdf>

135 For more information, see the Compendium of Standards, Good Practices and Recommendations on Human Rights and Armed Forces Personnel https://www.osce.org/files/f/documents/6/5/480143_1.pdf

136 <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=66946>

137 <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=66945>

138 <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=66944>

the Parliamentary Commissioner for the Security Force.¹³⁹

In view of the supervisory mandate for the KSF as well, the OIK, during 2022, was invited and participated in the proceedings of the 14th International Conference of Ombuds Institutions for the Armed Forces (14th ICOAF). The conference is co-organized by DCAF¹⁴⁰ and the Parliamentary Ombuds Committee for Norwegian Armed Forces, from 2 to 4 October 2022, in Oslo, Norway. Participants were representatives of Ombuds institutions that supervise the armed forces in the respective countries, from nearly 50 countries around the globe. The theme of the Conference for this year was: *“Rights and obligations of armed forces personnel in peacetimes and wartime: between policy and practice.”*

139 <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=61417>

140 DCAF - Geneva Centre for Security Sector Governance is a Swiss Foundation that includes 57 members and the Canton of Geneva. With its programs affecting more than 80 countries, DCAF is internationally recognized as a leader in Security Sector Governance (SSG) and Security Sector Reform (SSR).

The Rights of Foreigners

During this year, the Ombudsperson visited the Asylum Centre in Magure, the Detention Centre for Foreigners in Vranidoll, the Reception Centre for Asylum Seekers and Migrants in Vranidoll.

In cooperation with representatives of the United Nations High Commissariat for Refugees and representatives of the Civil Rights Program Kosovo, visits were made to the Asylum Seekers Centre in Magure and Vranidoll.

During the visits to the Centre for Asylum Seekers in Magure, 27 asylum seekers were accommodated in this centre, while there were 30-40 people in private housing. While in the Centre for Asylum Seekers in Vranidoll, there were no people accommodated. In 2021, the Ombudsperson had recommended that deficiencies in the functioning of the sewage system in the Centre for Asylum Seekers in Vranidoll be avoided. The monitoring group, during the last visit, noticed that renovations were carried out in this centre and the recommendation was implemented.

Based on the Centre's statistics, the number of asylum seekers compared to previous years was decreasing. During 2022, the number of asylum seekers was about 518 people, mainly from Morocco, Syria, Afghanistan, Algeria.

Regarding children asylum seekers, at the Centre for Asylum Seekers in Magure (May 2022), we were informed that there were families with children, but there were no unaccompanied children. While according to the later announcement, dated November 30, 2022, 22 unaccompanied minors were registered.

Informing asylum seekers of basic rights - asylum seekers are informed about their rights and asylum procedures through brochures and documents written in Arabic, English, French, Turkish, Serbian, etc.

Accommodation conditions in Asylum Seeker Centres - accommodation conditions are of a very good standard in terms of living space, lighting, cleanliness and heating. Regarding social and educational activities, the monitoring group considers that the Centre for Asylum Seekers in Magure meets all the conditions for social and educational activities.

Medical care - medical services for foreigners in the Asylum Centre are provided by the nearest Family Medicine Centre and the University Clinical Centre of Kosovo. In addition, the Jesuit Refugee Service (JRS) has engaged a doctor and supplies the centres with medicines and other necessary materials. NPM has not received complaints from asylum seekers about medical services, on the contrary, asylum seekers have claimed that the necessary services are provided to them in time.

Psychological services are provided by the organization Kosovo Rehabilitation Centre for Torture Victims (KRCT). The psychologist is present at the Centre almost every day and offers individual and group treatments.

Contacts with the outside world - according to the Regulation, asylum seekers are allowed to accept visits to the Centre, receive packages and correspondence, use the Centre's telephone to communicate according to the set schedule,

and leave the Centre from 7:00 to 22:00.¹⁴¹ Also, Likewise, the Regulation determines that the UN High Commissariat for Refugees (UNHCR), the International Organization for Migration (IOM), as well as various non-governmental organizations have access to the Centre. The Ombudsperson and his associates have unlimited access and communication with the Centre's applicants.¹⁴²

Complaint submission procedure - the issue of complaint submission is regulated by Article 43 of the Regulation, where it is determined that the asylum seeker has the right to submit a complaint to the leader regarding the conditions of acceptance and treatment by the officials of the Centre. The complaint is then sent to the Department for Citizenship, Asylum and Migration, within the Ministry of Internal Affairs, within 7 days. The NPM has observed that a complaint box set up by the Centre is available to asylum seekers at the Centre.

Detention Centre for Foreigners

Based on the constitutional and legal mandate of the Ombudsperson, as the National Prevention Mechanism, during the reporting year it has visited the Detention Centre for Foreigners in May and June. Foreigners who are subject to forced removal, as well as foreigners who are considered to be a threat to public security, are placed in this centre, in order to prove their identity and for other reasons. The capacity of this centre is 70 people, while 3 foreigners were present during the visit.

During the interviews conducted with the persons accommodated in the centre, no complaint was made in relation to the treatment in the centre and it was found that the conditions of accommodation in this centre are at a very good level. Foreigners who are kept in this centre are provided medical

services by the Emergency Medicine Centre in Prishtina, and if necessary, they are also sent to the University Clinical Centre of Kosovo. The centre still does not have medical personnel, although in earlier reports it was recommended that the centre have at least one nurse available.

Foreigners are allowed to make calls as needed for a duration of 5 minutes; they are also allowed to get calls from abroad. During the visit, the Monitoring Group observed that foreigners could call their families and communicate through online communication through SKYPE or through other communication systems.

The complaint box is located in this centre, which is administered by the centre itself. Foreigners in detention can also address their complaints to the Ombudsperson. During the visit, brochures in English, Serbian, Turkish and Arabic were distributed to the residents, which contain details on how they can contact the Ombudsperson and submit their complaints.

The Ombudsperson, on 25 July 2022, published a report with recommendations for the visit to this centre.

141 Regulation (MIA) no. 03/2018 on the Operation of the Asylum Centre, Articles 38, 39, 42 and 54.

142 Regulation (MIA) no. 03/2018 on the Operation of the Asylum Centre, Article 54.

Rights of persons in the sense of ‘transitional justice’

As in any other country that has emerged from the war where many victims and material damages have been caused, also in the Republic of Kosovo, Transitional Justice mechanisms are necessary in order to address the victims’ needs for justice, recognition and acceptance, compensation for their immaterial and material losses, as well as undertaking legal and other actions, in order to guarantee non-repetition.

There are four main mechanisms that enable the achievement of these objectives of Transitional Justice:

- The right to justice,
- The right to know,
- The right to reparation,
- Guarantee of non-repetition.

In the last two decades, efforts to deal with the past and Transitional Justice in the Republic of Kosovo have been developed without a comprehensive strategy. Dealing has mainly been done in specific sectors through initiatives and institutional and legal ways to deal separately with different issues related to the conflict.

The right to justice

One of the main instruments of Transitional Justice is “the right to justice”, which deals with prosecutions and criminal trials of those responsible for serious violations of international law, which are war crimes, crimes against humanity, torture, violent disappearances and genocide.

The right to justice includes the right of victims to obtain justice through a fair and effective remedy. The right to justice also obliges states to investigate violations and prosecute those responsible for human rights violations and take punitive action if found guilty. Consequently, this implies that the same must be followed by compensation. The primary responsibility to exercise jurisdiction rests with national/local courts; however, international or hybrid criminal courts may simultaneously exercise jurisdiction, such as: International Tribunals, Specialized Chambers of Kosovo and the Office of the Specialized Prosecutor.

In the Republic of Kosovo, the poor performance of both international missions and the local judiciary in the prosecution of those responsible for war crimes and their failure to bring justice to the victims of war crimes and their families is best reflected in statistical data made public by Civil Society Organizations.¹⁴³ From these statistics¹⁴⁴,

143 Kosovo Humanitarian Law Fund.

144 <https://www.hlc-kosovo.org/storage/app/media/Buletini%20per%20Drejtesi%20Tranzicionale%202022/Buletini%20per%20Drejtesi%20Tranzicionale.pdf>

a total of 117 people have been accused of war crimes in Kosovo from 1999 to 2022, and only 45 of them (35 Albanians, 9 Serbs and 1 Roma) have been convicted with final verdicts.

Although the “War Crimes Strategy”¹⁴⁵ of the Kosovo Prosecutorial Council and the State Prosecutor entered into force in 2019, it has not yet yielded the expected results. Perhaps the only element of this strategy that has been realized is the increase in the number of prosecutors and professional associates in the Department for War Crimes, in the Special Prosecutor’s Office of the Republic of Kosovo. Also, this strategy has not been implemented in the part that foresees the establishment of cooperation with the International Residual Mechanism for Tribunals and Prosecution Offices in the countries of the region. Cooperation with the Residual Mechanism would be very important, because this institution manages the database of the Criminal Tribunal for the former Yugoslavia, where there are numerous documents collected by the Prosecution Office of this Tribunal for the crimes committed in Kosovo. On the other hand, eventual cooperation with the Prosecution Office for war crimes from the region, with special emphasis on that of Serbia, would open the possibility for the criminal prosecution of those who have committed war crimes in Kosovo and who live in Serbia. In recent years, it has been observed that all judicial processes for war crimes in Kosovo are conducted against the perpetrators of low-profile crimes, who were not the main ones responsible for those crimes. This is because the prosecuting authorities cannot reach the main perpetrators, most of whom live in Serbia. The idea to overcome these problems through trials in absentia does not seem to be an ideal solution, due

to the difficulties and challenges inherent in trials in absentia.

The right to know

The right to know includes the rights of victims and their families to learn the truth about what happened to them personally or their family members and loved ones. This right is based on the inalienable right of society to know what circumstances resulted in the commission of crimes and violations, so as to prevent their repetition in the future. Furthermore, this right provides an obligation of the state to undertake measures, such as: securing archives and other evidence, preserving and maintaining the collective memory.

The importance of truth in a post-conflict society is closely linked to democratization and transparency. After the end of the atrocities, there is a general consensus that the democratic society, especially the community of the victims, deserves to learn the whole truth about what happened during the period of the war or the dictatorial regime. In particular, the right of the families of disappeared persons to know the truth is guaranteed by the Additional Protocol to the Geneva Conventions¹⁴⁶, in Articles 32, 33 and 34. Also, the right to know the fate of persons disappeared by force is also guaranteed by the International Convention for the Protection of All Persons from Enforced Disappearance, approved by the General Assembly of the United Nations with Resolution.¹⁴⁷

In addition to institutional mechanisms, other actors can also contribute to the realization of the Right to Know, such as: civil society, academia, the

145 https://prokuroria-rks.org/assets/cms/uploads/files/Dokumente%20Publikime/PSH/Dokumente%20Strategjike/2019_03_29_125750_STRATEGJIA_E_KRIMEVE_TE_LUFTES.pdf

146 <https://ckrm.org.mk/wp-content/uploads/2020/05/ZENEVSKI%20KONVENCII%20%20NA%20ALBANSKI%20%2019%2011%202019%20vnatresni%20strani.pdf>

147 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

media, the community of artists, but also other individuals.

State institutions have undertaken initiatives towards the realization of the right of victims and citizens to know the truth about the past, but none of these initiatives have yielded the expected results. It is still a long way from drafting an accurate and comprehensive official narrative on the crimes and serious violations of one's rights that occurred during the war in Kosovo.

Unlike the official initiatives of the country's institutions, civil society has gone further in documenting war crimes, especially the victims of these crimes. Many civil society organizations, including the media and individuals, have undertaken various initiatives toward researching the facts and uncovering the truth about the crimes committed during the war in Kosovo.

One of the most sensitive issues in the field of the right to know is missing persons. Today, in the Republic of Kosovo, the fate of over 1,600 missing persons as a result of the war in Kosovo is still unknown. Of course, the process of tracing the locations of mass graves is very complicated, but at least the institutions of the Kosovo state should be more efficient and at least clarify the identity of the approximately 300 mortal remains found in the morgue of the Institute of Forensic Medicine in Prishtina. If this issue was handled carefully and these bodies were identified, then the total number of missing persons would drop by almost 20%.

Even in collecting facts about the crimes committed during the war, the state of Kosovo has not succeeded. Mechanisms have been created, but have not implemented their mission, as is the case with the Institute for the Investigation of War Crimes and the Department for Transitional Justice. The first mechanism has been dissolved, while the second one has not yet yielded any results and there

is no information that it has started implementing some of its tasks, such as the establishment and maintenance of the database for documenting war crimes and damages and collection of data on war damages from public institutions and citizens.

The right to reparation

The right to reparation includes measures that the state is obliged to apply to victims, their families and communities, so as to contribute to a form of symbolic recognition of their sense of loss, which is necessary as part of healing from the traumas of war and provide justice and compensation for the losses that have been caused.

In Kosovo, immediately after the end of the war, there were efforts to ensure reparations for the communities affected by the war. Although it is difficult to make a map of the material reparations that have been provided for the reconstruction of the houses, it can be said that a very large number of international organizations, institutions and foundations have contributed to the reconstruction of the numerous houses and provided roof over the heads of the citizens of Kosovo. Since, in accordance with international legal standards, relatives of victims, both missing persons and those killed by the armed conflict in Kosovo, have the right to adequate and effective reparations, the Kosovo authorities have begun to draft legal frameworks to fix this issue. In the field of the right to reparations, the authorities in Kosovo, through the approval of laws for the provision of material reparations for most categories of victims of war crimes, have made solid efforts to create mechanisms and undertake measures for victims of war to take material compensations for the sufferings and losses they suffered during the war and this undoubtedly affects the recognition and symbolic acceptance of their sufferings.

Regulation by laws and regulations in the field of symbolic reparations and memorials leaves much

to be desired. The erection of memorials dedicated to the victims of the war of 1998-1999 should be regulated by a special law, but at the same time the agency for memorials should be strengthened. On the other hand, work should also be done on marking public and non-public spaces where there have been massive violations of human rights and war crimes. Although there have been very good initiatives by civil society, few of those initiatives have been supported and institutionalized. It is unacceptable that the state of Kosovo has not yet created a museum dedicated to the war and its civilian victims.

Guarantee of non-repetition

The right to guarantee of non-repetition implies the obligation of the state to ensure good governance and the rule of law so as to ensure that crimes that have occurred in the past are not repeated.

Institutional reforms represent the process of reviewing and restructuring state institutions, so that they respect human rights, preserve the rule of law and be accountable to the public.

In the case of Kosovo, undertaking and implementing institutional reforms in order to guarantee non-repetition has been much easier and simpler than in other countries that have emerged from war or dictatorial/authoritarian regimes. This is because the state administration, which was abusive and discriminatory towards citizens, as well as the security institutions that had committed serious violations of human rights, including war crimes and crimes against humanity, were forced to leave Kosovo by the peace agreement. All state institutions were created from scratch, so there was no need to undertake structural reforms or verification. Also, immediately after the end of the war in Kosovo, the presence of international institutions was very large and for a while Kosovo was administered by UNMIK and its mission, as

well as other international organizations assisted in the establishment of local institutions.

The transformation of legal frameworks, as an element of institutional reforms which guarantee non-repetition, has been done properly in Kosovo. Article 22 of the Constitution of the Republic of Kosovo (Direct Implementation of International Agreements and Instruments) approves the automatic implementation of international instruments and agreements related to human rights and freedoms.

On the other hand, in the pillar of institutional reforms in Kosovo, there are significant delays in the development of training programs for civil officials, especially those at the local level and who are authorized to provide various services to citizens and who do not have sufficient knowledge of international human rights standards.

Based on the research undertaken, it can be concluded that the state of Kosovo has undertaken legal and institutional initiatives to implement the mechanisms of Transitional Justice, but these initiatives have not always been in harmony and coordination with each other and as such have not been able to produce the desired results. Therefore, one of the main failures of the state of Kosovo in the field of implementation of Transitional Justice mechanisms is the fact that they have not been able to design a national strategy for Transitional Justice, which would harmonize all legal and institutional initiatives to realize the right of victims to justice and reparations as well as the right of society to know about the past. On the other hand, due to limited powers and due to political circumstances, the Kosovar authorities have often not been in a position to implement measures from the field of Transitional Justice.

Taking into account the above-mentioned findings and in order for the State of Kosovo to fully and efficiently implement the mechanisms

of Transitional Justice, the Ombudsperson will, during 2023, publish a Report with concrete recommendations for the responsible authorities regarding its findings as to the implementation of Transitional Justice mechanisms in the Republic of Kosovo.

Limitation and derogation of human rights

Regarding derogation, according to Article 56 of the Constitution of the Republic of Kosovo: “*Derogation of the fundamental rights and freedoms protected by this Constitution may only occur following the declaration of a State of Emergency as provided by this Constitution and only to the extent necessary under the relevant circumstances.*”

On the other hand, limitation of human rights is not conditioned by the state of emergency. According to the Constitution of the Republic of Kosovo [Article 55, paragraphs 1 and 2], human rights and fundamental freedoms may be limited only by law and to the extent that it is necessary to fulfil the purpose for which the limitation is allowed. Limitation of human rights cannot be done for other purposes, except those for which the limitation is defined. Also, the Constitution determines that in the case of the limitation of human rights and the interpretation of those limitations, all institutions of public power, especially the courts, have the duty to pay attention to the essence of the right that is limited, the importance of the purpose of the limitation, the nature and volume of the limitation, the relationship between the limitation and the purpose that is intended to be achieved, and to consider the possibility of achieving that goal with less limitation.

The Government of the Republic of Kosovo, at the meeting held on 21 January 2022, issued Decision No. 01/55 for general and specific measures to control, prevent and combat COVID-19 pandemic in the Republic of Kosovo. On this occasion, measures

that, in terms of border policies, limited/prevented the entry of a category of persons into the territory of Kosovo, namely those persons who do not have vaccination certificate with three (3) doses against COVID-19, or at least do not have two doses and a negative PCR test no older than 48 hours before departure, were adopted.

Ombudsperson has undertaken a number of investigative actions and based on the findings, the collected facts, as well as after analysing the relevant laws and the practices of the countries of the region, ascertained that from the point of view of human rights, the limitations imposed to this extent appear to be harsh, disproportionate and as such undoubtedly affect human rights.

As a result, on 31 January 2022, the Ombudsperson published Ex Officio Legal Opinion No. 40/2022, whereby ascertaining that the measures applied by the Government of the Republic of Kosovo were more severe compared to the measures applied by other countries in the region, and in terms of the rate of virus infections, they were no better than our country. There it was said that none of the states of the region, at the entrance of the border points, required three doses of the vaccine from the citizens; therefore, as a result of the decision of the Government of the Republic of Kosovo there were objections, reactions and protests at some border points, therefore, these concerns should be taken into account by the Government of the Republic of Kosovo, in order to revise these measures.

The opinion concluded that the Government should also reconsider the measure of limitation to stop traffic from 10:00 p.m. to 5:00 a.m., specifying that instead it would be more useful to lift the curfew and strengthen the mechanisms of control for the implementation of general measures already known. Moreover, the Opinion specified that in the case of the limitation of human rights and the interpretation of those restrictions, the Government of the Republic of Kosovo should pay attention to the essence of the right that was limited, the importance of the purpose of the limitation, the nature and the volume of the limitation, the relationship between the limitation and the purpose that was intended to be fulfilled, as well as to examine the possibility of fulfilling that purpose with the smallest limitation or to the extent that it was necessary to fulfil the legitimate purpose, measures that would be considered necessary in an open and democratic society.

On 4 February 2022, the Ombudsperson received a response from the general secretary of the Ministry of Health, who, among other things, specified that the opinion in question would be reviewed at the next meeting where the proposal for new measures was expected for the next decision of the Government of the Republic of Kosovo for the new anti-COVID-19 measures.

On the same day, the media reported that the Government of the Republic of Kosovo issued Decision No. 01/59 on general and specific measures to control, prevent and combat the COVID-19 pandemic, dated 4 February 2022. On this occasion, it was decided to mitigate the measures regarding the entry into the Republic of Kosovo, it was decided to lift the obligation to wear a mask in open spaces, the curfew was changed starting from 24:00 to 5:00, the gastronomic activity was allowed to develop until 23:00, some sectors were also allowed to work, such as: cinemas, fitness halls, etc.

On 1 March 2022, the Government, with Decision No. 01/66 on general and specific measures to control, prevent and combat the COVID-19 pandemic, deciding to mitigate the measures, lift the curfew and allow other easements.

Gender equality

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

The Constitution in Article 7 [Values] defines: *“The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life.”*

The Republic of Kosovo is not a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention); however, based on the Constitution, these conventions are directly applicable in Kosovo.¹⁴⁸ Protection from discrimination in Kosovo, especially on the basis of gender, is regulated by Law No. 05/L-021 on Protection from Discrimination, as well as by Law No. 05/L-020 on Gender Equality. The Ombudsperson is the mechanism of equality¹⁴⁹ for promoting, monitoring and supporting equal treatment and non-discrimination on the grounds protected in both these laws.

Gender equality means that all human beings, both women and men, are free to develop their personal capacities and make choices without being constrained by gender stereotypes, rigid gender roles, or prejudice. Gender equality means that the different behaviours, aspirations and needs of women and men are considered, valued and favoured equally. Gender equality does not mean that women and men should become the same, but that their rights, responsibilities and opportunities will not depend on whether they were born female or male.¹⁵⁰ So, equality between women and men constitutes a fundamental right, which cannot be considered fulfilled if it remains simply written on paper.

Gender equality means that women and men are treated fairly, according to their respective needs. This may include equal treatment, or treatment that is different but considered equivalent in terms of rights, benefits, obligations and opportunities. In the development context, goals for gender justice often require the inclusion of measures that compensate for women’s historical and social disadvantages.¹⁵¹

If women and men are not treated equally or in accordance with the affirmative measures provided for in the legal framework of Kosovo, in a comparable situation, it can be implied that they are being discriminated. In this case, it is important to analyse whether this discrimination is only based on

148 Constitution of the Republic of Kosovo, Article 22.

149 Law No. 05/L-019 on Ombudsperson, Article 1.

150 UN Women, 2011.

151 UN Women, 2011.

gender, or even for other reasons related to multiple discrimination, which disproportionately affects women precisely because of their gender and other personal characteristics. Examples of multiple discrimination experienced by women mean less favourable treatment of them, due to pregnancy and maternity, marital status, nationality, race, disability, sexual orientation and gender identity expression, social status, religious belief or faith, age or any other reason prescribed by law or by agreement and international instruments in force.

The Ombudsperson considers that in our society there is still gender inequality in the participation of women in the labour market, in political life and decision-making, in property and inheritance, in the field of education, health, in the division of responsibilities in the family, etc.

Many facts show that women are in a less favourable position than men in the field of employment, career advancement and in particular this applies especially to women with disabilities, women of a certain age, women from minority communities, women of rural areas, pregnant women and mothers of minor children.

Gender equality in the right to work

The high level of unemployment, traditional gender roles and economic factors are the key elements that complicate the position of women in the labour market. Gender stereotypes and the patriarchal mentality still remain the biggest challenges that affect the fact that women are still underrepresented in the field of employment.

Even in 2022, the multiyear experience has been repeated, which shows that a number of women complain about problems related to the right to work and economic issues, social protection,

or related to the violation of their rights during pregnancy.

The majority of employed women also have the responsibility for taking care of their family members and for the smooth running of family life, responsibilities that are often considered as responsibilities that belong to women only, precisely because of the stereotypes of gender roles and the patriarchal mentality that still nurtures such patterns. The responsibility to take care of other family members and the lack of social services and care services for children and the elderly in the family are reflected in the inequality that is evident in the labour market. The imbalance of obligations and responsibilities within the family between women and men, leaving more of these obligations to women, leads to a significant reduction of the time available to women to invest and advance in their professional careers. This, accompanied by fewer opportunities available to women to rely on employment or self-employment, as well as to be elected to leadership and management positions in various sectors, are reflected in the visible gender inequalities in the labour market.

Chapter III of the Law on Gender Equality defines a series of measures and actions that must be taken for protection and equal treatment based on gender in labour relations. Their implementation, intertwined with Article 6, point 8, where the minimum representation quota of 50% for each gender is provided, in all legislative, executive and judicial bodies and in other public institutions, including their management and decision-making bodies, would significantly reduce the inequalities observed today in the labour market. The representation quota, as an affirmative measure, can be applied for a certain period specially to promote the access, participation and employment of women in those sectors where there are significant gender differences, and especially at the management and decision-making levels within these sectors.

In this reporting period, the Ombudsperson has received 9 complaints alleging gender discrimination and the right to work, of which 5 were admissible for investigation. The nature of the complaints according to the claims of the complainants is related to discrimination in the workplace due to gender, harassment in the workplace, violations of the right regarding the use of sick leave and termination of the employment relationship.

Gender equality in the right to property and inheritance

Although Law No. 2004/26 on Inheritance in Kosovo defines in Article 12: *“The decedent shall be inherited, prior to all others, by his children and spouse”*, women and girls in most cases give up the inheritance in favour of the male heirs. This practice is mainly based on customary norms, the prejudices against women and girls when they inherit and the mentality that considers men as the sole heirs of his family’s property in Kosovar society.

Although Law No. 2004/32 on Family defines in Article 47: *“Joint property of spouses is the property acquired through work during the course of the marriage as well as income deriving from such property”*; also, in paragraph 4 defines: *“Spouses are joint owners in equal shares of the joint property unless otherwise agreed on.”*, the data presented by the organizations that research the participation of women and girls in the division of property, point to a low degree. The same situation applies to the division of joint family property.

This situation has not managed to improve even during this reporting year, even though it should be emphasized the efforts that, under the Administrative Instruction (AI) 04/2021, the affirmative measures should be applied for facilities in the case of the registration of joint property of spouses. The purpose of AI 04/2021 is to directly influence the behaviour of spouses regarding the

property acquired during marriage, which cannot be alienated without the consent of both spouses.

AI 04/2021 is important for encouraging young couples from the beginning of property creation to enjoy the right to register that property in the name of both spouses, a right that is guaranteed by the Constitution of the Republic of Kosovo and laws in force and that has a positive impact on progress towards gender equality between men and women in property rights.

Despite this, the Ombudsperson reiterates that the current legislative framework for inheritance is insufficient to deal with traditional practices, such as renouncing inheritance, which women do for various reasons, including the desire to preserve their ties to the family of origin. In addition to the need for clearer legislation, the Ombudsperson also emphasizes that more work should be done in raising awareness of women’s rights in inheritance, as well as fighting patriarchal traditions by working to raise awareness even among men who do not accept to continue such discriminatory practices. We base this finding on the small number of complaints submitted by women to the Ombudsperson regarding inheritance issues, a figure that does not reflect the reality.

Responsibility of public authorities for protection against domestic violence

Domestic violence is a troubling problem in our society. The scale at which the domestic violence is occurring best shows that a general mobilization is needed for the prevention and protection against domestic violence, which continues to take the lives of innocent victims. And in many cases, it is ascertained that this is happening due to the failure of the state to take all the appropriate measures and to fulfil the positive obligations for the protection of the right to life.

The Republic of Kosovo has a solid legal framework for the prevention and protection against gender-based violence and domestic violence; however, the shortcomings in implementation, insufficient capacities, non-implementation of legal measures, lack of institutional coordination and of the authorities that have the obligation to undertake these measures, the inadequate assessment of safety and risk measures, as well as other shortcomings that have also been found in the reports of the Ombudsperson, are indicators of an extremely serious situation, which situation must be changed.

Within the efforts to improve the legal framework, it should be emphasized the measures to align the legislation with the Istanbul Convention, which since September 2020 is part of the Constitution of the Republic of Kosovo. The Convention considers domestic violence and violence against women as a violation of human rights and a form of discrimination.¹⁵² The goals of the Convention, presented through its four main pillars, focus on: protecting women from all forms of violence; prevention; criminal prosecution and bringing perpetrators of these forms of violence to justice; as well as acting through integrated policies, which aim to coordinate actions to empower women, reduce gender stereotypes and harmful practices, progress towards gender equality and to build a society without violence.

The Ombudsperson considers that the harmonization of state legislation with the Istanbul Convention, as an advanced international standard for protection against domestic violence and against all forms of violence against women, remains very slow.

This is confirmed by the fact that the amendment and supplement of Law No. 03/L-182 for Protection against Domestic Violence has not yet been finalized, even though the procedure for amendment has already started in 2016.

The reported cases of domestic violence for 2022, according to the Kosovo Police, amount to 2757 cases of domestic violence, or 301 cases (12%) more than in 2021. This number of cases is an indicator of the presence of disturbing levels of violence in our society. It is also an indicator of the awareness raising of reporting violence and the trust of the population in the authorities responsible for protection against domestic violence. The Ombudsperson notes with concern that the dynamics of cases of violence, recidivism, and especially the number of cases of violence that end in fatality, has increased. Thus, if during 2020 there were 13 cases of murder as a result of domestic violence, during 2022, the data from the Kosovo Police show an increase in these cases by almost 62%, going to 21 cases of murders in the family, 4 victims are women who were killed by their family members.

On 22 July 2022, the Ombudsperson published Ex officio Report No. 13/2022¹⁵³, which was forwarded to the responsible authorities. The report was initiated ex officio, based on media reports that on 5 January 2022, in the village of Llaushe in Skenderaj, a woman was found shot to death. It was reported that it was a case of murder, emphasizing that the victim and the perpetrator were husband and wife. It was further reported that the victim had reported the case of domestic violence on 1 January 2022, but it was suspected that the authorities had not taken the necessary measures and as a result the case had ended tragically. The report states the non-fulfilment of

152 Article 3 of the Istanbul Convention. See: <https://rm.coe.int/168046246b>

153 <https://oik-rks.org/en/2022/07/22/ombudspersons-report-ex-officio-no-132022-with-regard-to-states-positive-obligations-to-protect-the-right-to-life-and-to-ensure-protection-from-domestic-violence/>

positive obligations by the authorities responsible for protecting the right to life; also analyses the actions and inactions of the authorities regarding the protection of the right to life, the implementation of constitutional provisions, international human rights instruments, the practice of the International Court of Human Rights, conventions, laws, policies and strategies against domestic violence. The report also finds that the authorities have not respected the Standard Operating Procedures for Protection from Domestic Violence in Kosovo; they did not treat the case with due attention and did not offer adequate protection to the victim; there was a lack of coordination of actions between the authorities, the prosecutor of the case at the Basic Prosecution Office in Mitrovica, despite the fact that he was made aware of the case, he did not undertake legal actions to assess the risk and safety measures for the victim.

The Ombudsperson has continuously reiterated the concern about the non-implementation of Law No. 05/L-003 on the Electronic Supervision of Persons whose Movement is Limited by the Decision of the Court, despite the recommendations given in the report¹⁵⁴, which recommendations have not been implemented yet. At the end of this year, the Government of the Republic of Kosovo has pledged to allocate a budget for the implementation of this law.

The Government, with Decision No. 11/109, dated 23.11.2022, has approved the "State Protocol for Treatment of Sexual Violence Cases."¹⁵⁵ The main purpose of this Protocol is to standardize the necessary actions for a continuous, comprehensive and responsible response, for the identification, protection, treatment, documentation, referral, sustainable empowerment and reintegration of

victims/survivors of sexual violence, through the immediate and professional interventions of the responsible institutions. The Protocol will apply regardless of whether sexual violence occurs in the context of domestic violence or outside it (such as workplaces, schools, parks, etc.). Institutional responsibility will be discharged in accordance with the obligations and role of each institution, described in the legislation in force on sexual crimes, as well as in all the documents approved in function of the implementation of this legislation.

The State Protocol for Treatment of Sexual Violence Cases is considered a practical tool that guides all institutions responsible for the steps that they should take during the management of these cases, maintaining the basic principles of "victim/survivor at the centre of services", "Do not hurt!" and "Do no harm!", as well as many other principles of working with cases of sexual violence, as well as emphasizes the importance of coordination of actions. The Ombudsperson will keep in mind the implementation of this Protocol during 2023, monitoring the human, financial and infrastructural resources that are expected to be made available by the Government of the Republic of Kosovo for this purpose.

From the preliminary investigations that the Ombudsperson has initiated ex officio for the positive obligations of the state to protect the child from sexual violence, it is evaluating the actions taken by the state institutions in the case of the rape of the minor that was reported in the media in August of this year.¹⁵⁶ The Ombudsperson recalls that sexual violence and human trafficking are presented as forms of gender-based violence and therefore girls are at greater risk from this form of violence. Furthermore, the obligations of the state

154 <https://oik-rks.org/en/2021/03/09/report-with-recommendations-ex-officio-case-no-6212018-in-relation-to-preventive-operational-measures-to-protect-victims-of-domestic-violence-pursuant-to-the-law-no-05l-003-on-the-electronic-su/>

155 See: <https://md.rks-gov.net/desk/inc/media/04F016B5-48F2-4DB3-A595-D320114AC25D.pdf>

156 <https://insajderi.org/dosja-e-rastit-rrefimi-trondites-i-vajzes-se-dhunuar/>

for the protection of children are seen as two-fold since we are talking about a category vulnerable to violence, i.e., the girl. In this particular case, the actions of the authorities are being evaluated in the light of the obligations arising from the ECHR, the KDF and the LCP, Articles 26 and 56 of the Istanbul Convention, since the authorities were aware of the danger posed to the child and failed to take all reasonable measures to protect her.

Women victims/survivors of sexual violence during the war

Although many years have passed since the end of the war in Kosovo, the legal framework has been drafted, many cases of victims of sexual violence during the war continue to hesitate to report these cases and to apply to the Commission for the Recognition and Verification of the Status of Victim of Sexual Violence during the War.

On the other hand, women and victims/survivors of sexual violence during the war are still awaiting decisions on their cases, which have not been completed by the competent bodies.

Women who are victims/survivors of sexual violence during the war in Kosovo must be provided with the necessary institutional and financial support, and in parallel raise society's awareness of removing prejudices against this group. Kosovar society should be more engaged in financing, emancipating and protecting them as best as possible in order to give them more opportunities for dignity and prosperity. Also, importance should be given to the handling of these cases by judges and prosecutors specialized in these crimes. Civil society organizations should also continue to provide legal, health and psychological assistance during court proceedings faced by women victims/survivors of sexual violence during the war.

The Ombudsperson has met civil society organizations, which are licensed to handle cases of victims of sexual violence during the war, and has been informed about the concerns and problems faced by victims of sexual violence during the liberation war in Kosovo, during developing the procedures for recognition and verification of the victim's status. From the information provided, it appears that the most frequent problems that victims of sexual violence have faced and continue to face are: procrastination and exceeding the deadlines set for reviewing applications and making decisions; review of requests and handling of complaints by the same commission; decisions are often unsubstantiated and unclear, similar reasoning for different cases; the difficulties they have during the interview due to their emotional state; dragging out the process in court and meritless review of cases. Finally, a concerning circumstance for the victims of sexual violence, as well as for the non-governmental organizations authorized to support them in the application process, is the limitation of the time limit for the application and the conclusion of the process. According to non-governmental organizations, this process should not be limited in time.

Rights of LGBTI+ persons

Despite the fact that the legal framework that protects the rights of the LGBTI+ community as part of society in Kosovo is in place, this community is considered to be a marginalized category. Even in the preliminary annual reports, the Ombudsperson has concluded that respect for human rights can generally be taken as an indicator of the country's democratic development, either at the legislative level or at the practical level.

Regarding the existing legislation, which regulates the rights of LGBTI+ persons, it is evident that it requires completion regarding the further protection of human rights based on sexual orientation and gender identity expression. The new Civil Code, sent to the Government by the Ministry of Justice, has foreseen several legal changes related to the further protection of human rights based on sexual orientation and gender identity.

On 27 May 2022, regarding this issue, the Ombudsperson published the Opinion¹⁵⁷ and its stance on the recognition of same-sex family relationships.

Through this opinion, the Ombudsperson highlights the constitutional guarantees offered by the Constitution of the Republic of Kosovo for respecting the private and family life, as well as the protection from discrimination based on sexual orientation for every citizen of the Republic of Kosovo.

The Ombudsperson expresses its position that the family relations of persons of the same gender should be recognized and defined by the Civil Code, as guaranteed by the Constitution and in accordance with Law No. 05/L-021 on Protection from Discrimination, without any distinction and in the same way as for persons of the opposite sex.

The Ombudsperson assesses that the Constitution of the Republic of Kosovo, by not explicitly defining that the right to marry is the right of "man and woman", does not present any obstacle to ascertain that depriving same-sex persons of the right to marry represents a violation of the right not to be discriminated against on the basis of sexual orientation.

157 <https://oik-rks.org/en/2022/05/27/opinion-of-the-ombudsperson-regarding-the-recognition-of-the-family-relationships-of-people-of-the-same-sex-in-the-draft-civil-code-ex-officio-no-3072022/>

Cases initiated at the Constitutional Court

The Ombudsperson, in addition to the competence to initiate cases at the Constitutional Court, may send opinions or comments related to the issues that are under review in the Constitutional Court, and for which issues the Court notifies the interested parties for providing comments.

Regarding this issue, during the reporting year, the Ombudsperson has sent opinions or comments to the Constitutional Court for the following cases:

Case KI 10/22 regarding the constitutional review of Judgment ARJ No. 115/2021 of the Supreme Court, which concerns the assessment of the legality of Regulation MoJ - No. 01/2020 on Internal Organization and Systematization of the Institute of Forensic Medicine.

Case KO 100/22 and KO 101/22 regarding the assessment of compliance with the Constitution of the Republic of Kosovo of Law No. 08/L-136 on Amending and Supplementing the Law No 06/L-056 on Kosovo Prosecutorial Council.

KO 147/22 regarding the assessment of compliance with the Constitution of the Republic of Kosovo of Article 17, paragraph 1, of Law No. 04/L-037 on Higher Education in the Republic of Kosovo, which is related to Article 177, point 1.6, of the Statute of the University of Prishtina.

During the reporting year, namely on 4 March 2022, the Ombudsperson sent to the Constitutional Court an opinion regarding the Request KI 10/22 of the Trade Union of the Institute of Forensic Medicine for the constitutional review of the

Judgment ARJ No. 115/2021 of the Supreme Court, which concerns the assessment of the legality of Regulation MoJ - No. 01/2020 on Internal Organization and Systematization of the Institute of Forensic Medicine.

In this case, the Ombudsperson has assessed that it is very important to clarify the responsibility of the competent institution for evaluating the legality of bylaws. This would enable the assessment of the compliance of the bylaws with the law, but also the implementation of the constitutional right, namely Article 54 [Judicial Protection of Rights], as well as Article 32 [Right to Legal Remedies] of the Constitution.

Furthermore, the Ombudsperson has assessed that such situations should be clearly defined in the provisions of the laws (the Law on Normative Acts, which is currently under review in the Assembly of the Republic of Kosovo, and the Law on Administrative Conflicts, which has been distributed to the deputies of the Assembly of the Republic of Kosovo). This would create a clear overview of which are general normative acts, which of these acts are subject to judicial review and which are not, and to determine the competence of the competent body for evaluating the legality/constitutionality of such acts.

In this regard, the Constitutional Court of the Republic of Kosovo, on 15 August 2022, issued Judgment KI 10/22, with which it ascertained: *"The regular courts of the legal system of Kosovo,*

by not performing control of the legality of the IFM Regulation with Article 15 of the Law on Forensic Medicine, denied the Applicant the right of 'access to the court' within the meaning of paragraph 1 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR; and as a result, prevented the case of the Applicants from being examined on the merits of the request." (Paragraph 80).

The Constitutional Court ascertained that there was a violation of Article 31 [Right to a Fair and Impartial Trial] of the Constitution, and Article 6 [Right to a fair trial] of the European Convention on Human Rights, and therefore annulled the Judgment [AR]. No. 115/2021] of 18 November 2021, of the Supreme Court of Kosovo, Decision [AA. No. 651/2021] of 6 August 2021, of the Court of Appeals, as well as Decision [A. No. 1430/21] of 5 July 2021, of the Basic Court in Prishtina, and returned the Decision [A. Nr 1430/21] of 5 July 2021, of the Basic Court in Prishtina for reconsideration, in accordance with the Decision KI 10/22 of the Constitutional Court.

On 29 July 2022, the Ombudsperson sent comments to the Constitutional Court regarding Law No. 08/L-136 on Amending and Supplementing the Law 06/L-056 on the Kosovo Prosecutorial Council, according to the announcement of the Constitutional Court regarding the registration and merger of requests KO 100/22 and KO 101/22.

In relation to this issue, the Ombudsperson has expressed the stance that it is important for the Constitutional Court to evaluate the innovations that have appeared as a result of the adoption of the new Law on the KPC, in terms of their compatibility with the constitutional provisions, because in principle present the dilemma of whether such changes violate the constitutional provisions, specifically whether the independence of the Ombudsperson according to Article 132 of the Constitution is violated, as well as whether the

separation of powers, as provided for in Article 4 of the Constitution, and the independent functioning of the KPC are violated, as guaranteed by Article 110 of the Constitution.

Accordingly, the Ombudsperson has assessed that it is important that the Constitutional Court:

- To assess whether the power of the Ombudsperson to appoint a non-prosecutor member of the KPC contradicts the provisions that guarantee the independence of the Ombudsperson and the provisions that guarantee the independent functioning of the KPC as an independent institution.
- To assess whether the proposed structure of the Kosovo Prosecutorial Council is in accordance with the division of powers defined by the constitutional principles.
- To assess whether qualified majority voting on the expressly designated issues violates the independent functioning of the KPC, in the spirit of Article 110, paragraph 1, of the Constitution of the Republic of Kosovo.

The Constitutional Court, within the reporting period, has not made a decision regarding the merged cases KO 100/22 and KO 101/22, regarding the composition of the Prosecution Council of Kosovo.

On 11 November 2022, the Ombudsperson sent to the Constitutional Court an opinion regarding the request of the Supreme Court sent to the Constitutional Court regarding the assessment of the compatibility with the Constitution of the Republic of Kosovo of Article 17, paragraph 1, of Law No. 04/L-037 on Higher Education in the Republic of Kosovo, which is related to Article 177, point 1.6, of the Statute of the University of Prishtina.

Through the opinion, the Ombudsperson has assessed that the provision of Article 177, point 1.6, of the Statute of the University of Prishtina,

which provides the conditions for the election to the position of assistant professor, is discriminatory and contrary to the Constitution and the legislation in force. This is because the provision in question limits the age for employment in the position of assistant professor at the University of Prishtina to 50 years, even though Law No. 03/L-212 on Labour provides that the employment age in the Republic of Kosovo is 18 to 65 years.

Supervision of legislative policies in accordance with human rights and international standards

The Ombudsperson, as in previous years, also in the reporting year followed the developments of legislative policies from the institutions of the Republic of Kosovo.

In relation to this issue, the Ombudsperson has noted that the Government of the Republic of Kosovo, through the legislative program for 2022, has determined the plan and deadlines for approving and forwarding the draft laws for review and approval in the Assembly of the Republic of Kosovo. In this regard, the Ombudsperson has noted that the Government of the Republic of Kosovo in the 2022 has foreseen in the legislative program the drafting and approval of 150 draft laws.¹⁵⁸

Regarding the activity of the Assembly of the Republic of Kosovo, the Ombudsperson has noted that the Assembly has carried out its work normally and during the reporting year has approved 110 laws.¹⁵⁹

In this regard, within the legislative activity of the Assembly, the Ombudsperson observed that the Assembly of the Republic of Kosovo, among other things, approved Law No. 08/L-117 on

Government of the Republic of Kosovo, which entered into force on 3 December 2022. This law governs the organization and mode of operation of the Government of the Republic of Kosovo (Law No. 08/L-117 on Government of the Republic of Kosovo, Article 1).

The Ombudsperson has noted that during the reporting year, namely on 22 December 2022, the Assembly of the Republic of Kosovo approved Law No. 08/L-197 on Public Officials and Law No. 08/L-196 on Salaries in the Public Sector.

Furthermore, the Ombudsperson has noted that some political subjects, within their constitutional powers, have initiated the procedure in the Constitutional Court for the evaluation of the compatibility with the Constitution of the Republic of Kosovo of some articles of the Law No. 08/L-197 on Public Officials.

Regarding this issue, the Ombudsperson has sent comments to the Constitutional Court and has given an opinion regarding the content of some articles of this law.

¹⁵⁸ The Legislative Program for 2022 was approved at the 56th meeting of the Government of the Republic of Kosovo, with Decision No. 01/56, dated 26 January 2022, amended and supplemented by Decision No. 01/63, dated 24 February 2022, with Decision No. 01/69, dated 13 April 2022, with Decision No. 06/78, dated 16 May 2022 and with Decision No. 01/84, dated 22 June 2022.

¹⁵⁹ Assembly of the Republic of Kosovo - Laws - <https://www.kuvendikosoves.org/shq/projektligjet-dhe-ligjet/>

Regarding Law No. 08/L-196 on Salaries in the Public Sector, the Ombudsperson assesses that the procedure developed until the adoption of this law is indicative of a bad practice of drafting and approving laws. This is due to the fact that the non-publication of the value of the coefficient during the drafting, review and approval period of the law in question has caused uncertainty among the subjects that are affected by the scope of this law.

In addition, the Ombudsperson noted that the Assembly of the Republic of Kosovo, on 14 July 2022, approved in principle the Draft Law on the State Bureau for the Verification and Confiscation of Unjustified Assets.

Regarding this draft law, the Ombudsperson has requested from the Assembly of the Republic of Kosovo to take into account the opinions of the Venice Commission, which has assessed the content of the draft law in question, and has also requested to pay increased attention to the protection of the right to property, judicial protection of rights, as well as the right to a fair and impartial trial.

Moreover, the Ombudsperson has noticed that the draft law in question has determined that a deputy of the Ombudsperson, appointed by the Ombudsperson, should be a member of the Commission for the Supervision of the Bureau.

The Ombudsperson noted that during the reporting year the Assembly of the Republic of Kosovo approved the Rules of Procedure of the Assembly of Kosovo, which were in force since 2010. With the approval of this regulation, the Assembly has advanced to the internal normative level, reflecting in the procedures of reviewing and approving laws, as well as other internal issues of the Assembly.

Regarding the submission of the annual report to the Assembly of the Republic of Kosovo, the

Ombudsperson had asked the Assembly that the annual report of the Ombudsperson be discussed but not voted on. Despite the request, the Assembly, regarding the report of the Ombudsperson for 2021, had discussed and finally voted for report in question, not taking into account the constant request of the Ombudsperson that the annual reports should only be discussed by the Assembly of the Republic of Kosovo.

During the reporting year, within the framework of legislative activities, the Ombudsperson observed a practice of approving laws when two or more existing laws are amended and supplemented with one law. In this regard, prior to the assessment of this practice, the Ombudsperson has observed that at the time of publication of the above-mentioned law, in the Official Gazette that law is not published in the column of each law that amends and supplements it, but it is only published on one page, thus making it very difficult to identify legal amendments.

In this regard, the Ombudsperson observed that Law No. 08/L-063 on Amending and Supplementing the Laws Related to the Rationalization and Establishment of Accountability Lines of the Independent Agencies,¹⁶⁰ was published in the Official Gazette, but its publication was made only in one section and does not appear in the sections of any law that has been amended and supplemented by the law in question.

The non-publication of this law in each section of the laws that are amended makes it difficult for users of the law to identify the approved changes. Such a practice results in ambiguity and at the same time uncertainty among the users of the law.

In relation to this issue, the Ombudsperson requests from the Assembly of the Republic of Kosovo that in cases where a law which has amended and

160 Official Gazette of the Republic of Kosovo - <https://gzk.rks-gov.net/ActDetail.aspx?ActID=62599>

supplemented two or more other laws is sent for publication, the Official Gazette should be notified so that the publication of that law takes place in the section of each law which has been amended and supplemented by the law in question.

During the reporting year, the Assembly of the Republic of Kosovo has approved in principle the Draft Law No. 08/L-107 on Legal Acts and Draft Law No. 08/L-182 on Administrative Conflicts. Regarding these draft laws, the Ombudsperson considers that it is important to include the competent institutions for the evaluation of sub-legal acts (administrative instructions, regulations, etc.), taking into account the Judgment KI 10/22 of the Constitutional Court presented by the Trade Union of the Institute of Forensic Medicine for the constitutional review of Judgment ARJ No. 115/2021 of the Supreme Court, which concerns the assessment of the legality of Regulation MoJ - No. 01/2020 on the Internal Organization and Systematization of the Institute of Forensic Medicine.

**The stances of the
Ombudsperson expressed
through reports on
the cases investigated
during 2022**

Human Dignity, Equality before the Law and Health and Social Protection

Report on ex officio case No. 176/2020, amendment of Administrative Instruction (MLSW) No. 10/2014 for activities and requirements of placement of residents in House of Elderly without Family Care Homes and Community Based

The purpose of this report is to recommend to the Ministry of Finance, Labour and Transfers the amendment of Administrative Instruction No. 10/2014 for activities and requirements of placement of residents in House of Elderly without Family Care Homes and Community Based, in order that the procedures and criteria for the admission of the elderly in the Home for the Elderly without Family Care and in the Community-Based Homes are harmonized with the basic principles and powers arising from the Constitution of the Republic of Kosovo and from Law No. 05/L-021 on Protection from Discrimination, as well as to harmonize the Administrative Instruction (MLSW) No. 10/2014 with the provisions of Law No. 02/L-17 on Social and Family Services and Law No. 06/L-084 on Amending and Supplementing the Law No. 02/L-17 on Social and Family Services, of Law No. 2004/32 on Family, amended and supplemented by Law No. 06/L-077 on Amending and Supplementing the Law No. 2004/32 on Family of Kosovo and Law No. 05/L-031 on General Administrative Procedure.

Provisions of the Administrative Instruction (of MLSW) No. 10/2014 for activities and requirements of placement of residents in Homes for the Elderly without Family Care and in Community-Based Homes apply to the elderly without family care who seek protection from state institutions that provide assistance to people in need.¹⁶¹ Administrative Instruction (MLSW) No. 10/2014 is a bylaw that expressly and in detail regulates this issue.

Article 5 of the Administrative Instruction (MLSW) No. 10/2014 defines the criteria that must be met by the applicants in order to acquire the right to accommodation in the Home for the Elderly without Family Care and in Community-Based Homes. Among other things, Article 5.1.3 provides that the applicant does not have biological or adopted children, while Article 5.1.4, (to which Article 6.1.8 is related) determines that accommodation is not prevented if the client in need has a married daughter. This report examines the compatibility of these criteria with the legislation in force in accordance with the principles of protection against discrimination.

As it has been pointed out, the criterion that the applicant does not have descendants - biological children to fulfil the conditions for accommodation in a home for the elderly without family care and in a community-based home is defined as one of the basic criteria for accommodation, in Article 5, paragraph 1.3, of the Administrative Instruction (MLSW) No. 14/2014, in order to ensure the best interest of the elderly seeking housing in nursing homes and community-based homes, this criterion should be reconsidered.

¹⁶¹ Administrative Instruction (MLSW) No. 14/2014, Article 2.

If we re-examine the criterion given in Article 5, paragraph 1.3, of Administrative Instruction No. 10/2014, in relation to the principle of legality, which according to article 4, paragraph 1, of Law No. 05/L-031 on the General Administrative Procedure requires that public bodies act in accordance with the Constitution, with the laws in force, as well as with the general administrative rules applicable within their powers and in accordance with the purpose for which they are given these powers, it cannot be considered that the criterion in question meets the principle of legality, nor the principle of the rule of law, according to which everyone is equal before the law, for the following reasons:

The Constitution in Article 21, paragraph 1, defines that human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo; while paragraph 2 of this article stipulates that the Republic of Kosovo shall protect and guarantee the basic human rights and freedoms provided for in this Constitution.

According to Law No. 05/L-021 on Protection from Discrimination, Article 1, personal status and family status are provided as a discriminatory basis and protected characteristic. Undoubtedly, the existence of descendants can be presented as a characteristic of personal status and family situation, and any violation of this provision constitutes discrimination.

The criterion that the applicant does not have descendants - biological or adopted children constitutes discrimination, as provided for in Article 4, paragraph 1.2, of Law No. 05/L-021 on Protection from Discrimination, because people without biological or adopted descendants are treated more favourably, in relation to people who have biological or adopted descendants. It can be concluded that this criterion is a restrictive criterion and represents a violation of the principle of equal treatment. Therefore, it cannot be considered that this criterion fulfils the constitutional guarantee of equality, respect for human rights and freedoms, the rule of law and non-discrimination as a fundamental value of society (Article 7, paragraph 1, of the Constitution) or the constitutional provision, whereby everyone is equal before the law and everyone has the right to equal legal protection and the enjoyment of the rights defined by law without discrimination on any basis, including any other status (Article 24 of the Constitution).

The criterion that the applicant does not have descendant - biological or adopted child is contrary to the Law No. 2004/32 on Family of Kosovo, specifically with Article 4 of the Law, which provides that all persons enjoy equal treatment and that there will be no direct or indirect discrimination against any person or persons on any basis. Equal treatment of persons with descendant and persons without descendant cannot be considered if only persons without descendant have the right to be accommodated in a home for the elderly without family care and in a community-based home.

It should be emphasized that parenting is an option, not an obligation, and that it is a matter of free choice of individuals. The fact of having parenthood as a condition should be examined in line with the treatment of legally single but nevertheless socially connected individuals, because it highlights the continued privilege of parenthood and the negative stereotypes to which singles are subjected. Giving priority to persons with descendant may create assumptions about the degree of an individual's needs, the degree of social responsibility and commitment to the family, as well as the right to public benefits and legal protection. This is contrary to Article 1.2 of Law No. 02/L-17 on Social and Family Services, which foresees the state's obligation to provide social and family services to persons who are guaranteed respect for their

dignity as human beings and the basic rights defined by the legislation of Kosovo and with international conventions on human rights.

Personal dignity, protected by the constitutional provision of Article 23, is fundamental to human rights and is inseparably related to the principles of equality and non-discrimination. As a result, respect for the inherent dignity of all must be the basis of all public policies and procedures of state governance. Denial of the right of persons with descendant to be accommodated in a nursing home and community-based home constitutes a violation of their dignity, exclusion and stigmatization and prevents these persons from meeting the conditions imposed by program for people in need.

Special attention should be paid to the scope defined by Article 2 of the Administrative Instruction (MLSW) No. 10/2014. The same applies to the elderly and those without family care and who seek protection from state institutions, which provide assistance to people in need. Both people with descendants and people without descendants are persons in need; therefore, their unequal treatment is not reasonably justified. It can reasonably be assumed that people without descendants have the same needs as people who have descendants, because their descendants cannot or do not want to, for various reasons, take care of them.

The characteristic of whether or not persons have descendants can be implied as another sub-status that is described as a discriminatory basis in Article 14 of the European Convention on Human Rights and in Article 1 of its Protocol 12. It is therefore necessary to examine the case law of the European Court of Human Rights when it comes to the prohibition of discrimination.

The European Court of Human Rights has found in its case law that differences in treatment based on recognized characteristics or "status" can be equated with discrimination within the meaning of Article 14. Moreover, in order for this issue to arise according to Article 14, there must be a difference in the treatment of persons in analogous or relevant similar situations. Such a difference in treatment is discriminatory if there is no objective and reasonable justification; in other words, if there is no legitimate aim or if there is no reasonable proportional relationship between the means used and the aim sought to be achieved. In the present case, there is no objective and reasonable justification, nor any legitimate purpose or proportional ratio for setting the criterion in question.

Protocol 12 of the European Convention on Human Rights defines the general prohibition of discrimination and provides that the scope of protection of Article 1 concerns four categories of cases, in particular, when a person is discriminated against in the enjoyment of any right expressly granted to an individual under national law; the enjoyment of the right which may be determined by the clear obligation of a public authority under national law, namely when a public authority is obliged under national law to act in a particular way; by a public authority in the exercise of discretionary powers (for example, the approval of certain subsidies); by any other action or inaction of a public authority.

In the specific case, it is about the obligation of the public authority under national law, namely the obligation to provide social and family services to persons, for whom the Centre for Social Work and the relevant commission (established on the basis of Article 8 of the Administrative Instruction No. 10/2014) certifies that they meet the conditions for accommodation in homes of elderly without family care and in community-based homes. It cannot be considered that the commission has made a meritorious decision

if it refuses to accept a person with descendants, because it is about the application of a discriminatory criterion contrary to the legislation in force.

The criterion that the applicant has a daughter, who is married, is also given as one of the basic criteria for the accommodation of the applicant in the home for the elderly and in community-based homes, according to Article 5, paragraph 1.4 of Administrative Instruction (MLSW) No. 10/2014 (to which Article 6, paragraph 1.8 is related) and says: "*Housing is not hindered if the client in a state of need has a daughter, who is married.*" It is necessary to examine this criterion from two aspects: in relation to people who have married daughters and in relation to people who have unmarried daughters and sons, regardless of their marital status.

In the concrete case, it is about an unjustified and illegal difference based on the gender and marital status of the descendants of the applicant, which is contrary to the provisions of the Constitution of the Republic of Kosovo, which according to Article 7, paragraph 1, state that equality, respect for basic human rights and freedoms, the rule of law and non-discrimination are among the basic values of Kosovar society.

The criterion given in Article 5, paragraph 1.4, to which Article 6, paragraph 1.8 is related of the Administrative Instruction (MLSW) No. 10/2014, is not in accordance with the principle of legality, which defines the obligations of public administration bodies to work and decide in accordance with the law (Article 4, paragraph 1 of Law No. 05 /L-031 on General Administrative Procedure).

All categories of descendants are equal in rights and obligations in relation to their parents, while the status of persons applying for residential accommodation in a home for the elderly is the same, even if they have married or unmarried daughters, or sons, or are without descendants. Therefore, it can be ascertained that emphasizing the difference between male and female descendants, then daughters who are married in relation to those who are not married, represents unequal treatment of the descendants; therefore, the criterion given in Article 5, paragraph 1.4 of Administrative Instruction (MLSW) No. 10/2014 is contrary to the legislation in force.

The European Court of Human Rights has developed extensive jurisprudence on protection from discrimination. When it comes to gender-based discrimination, the Court has stated many times that the promotion of gender equality is today the main goal in the member states of the Council of Europe. Gender stereotypes, such as the perception of women as primary caregivers and men as primary caregivers, cannot be considered a sufficient justification for differences in treatment. In the concrete case, unmarried girls are considered as persons who have an obligation and are in a better position to take care of their parents, which violates the principle of equal treatment.

The Ombudsperson emphasizes that the state institutions for the accommodation of the elderly, as well as the procedure for their accommodation and stay in them are a sensitive and important social issue. The social protection service with housing for the elderly is often the only solution. It is therefore necessary for the state, in accordance with the needs of these users, to create conditions so that the service of residential accommodation and care for the elderly is enabled and accessible to all citizens who are in the status of social need, without discriminating on any legally protected basis.

The Ombudsperson assesses that the criterion given in Article 5, paragraph 1.3 of the Administrative Instruction (MLSW) No. 10/2014, which defines that the applicant, in order to benefit from the right to accommodation, must not have descendants - biological or adopted children, is contrary to the Constitution, the legislation in force (with Law No. 02/L -17 on Social and Family Services, with Law No. 2004/32 on Family of Kosovo, with Law No. 05/L-021 on Protection from Discrimination, with Law No. 05/L-031 on General Administrative Procedure), with the European Convention on Human Rights and the principle of legality and the rule of law.

The Ombudsperson assesses that the criterion given in Article 5, paragraph 1.4 (which is related to Article 6, paragraph 1.8), of the Administrative Instruction (MLSW) No. 10/2014, whereby applicants for accommodation in homes for the elderly and in community-based homes are not prevented from accommodation if the client in need has a married daughter, is contrary to the Constitution, the laws in force (with Law No. 02/L-17 on Social and Family Services, with Law No. 2004/32 of Kosovo on the Family, with Law No. 05/L-021 on Protection from Discrimination, with the Law on General Administrative Procedure), with the European Convention on Human Rights, the principle of legality and the rule of law.

The Ombudsperson ascertains that the criteria for accommodation in homes for the elderly without family care and in community-based homes, provided for in Article 5, paragraph 1.3 of the Administrative Instruction (MLSW) No. 14/2014, is a discriminatory criterion, which makes differences according to the family status of the applicant, namely on the basis of the fact whether or not the persons have biological or adopted descendants, represents an act of direct discrimination.

The Ombudsperson ascertains that the criteria for accommodation in homes for the elderly without family care and in community-based homes, provided for in Article 5, paragraph 1.4 (which is also related to Article 6, paragraph 1.8) of the Administrative Instruction (MLSW) No. 10/2014, is a discriminatory criterion that differentiates between the applicants based on gender and the marital status of their descendants, or the fact whether the applicants have unmarried or married sons or daughters, represents an act of direct discrimination.

Therefore, the Ombudsperson recommends that the Ministry of Finance, Labour and Transfers amend the Administrative Instruction (MLSW) No. 10/2014 for activities and requirements of placement of residents in Homes for the Elderly without Family Care and in Community-Based Homes, repealing the provisions of Article 5, paragraph 1.3, 1.4, and Article 6, paragraph 1.8, of the Instruction in question.

Report on ex officio case no. 577/2021, rights in Sexual and Reproductive Health in the Republic of Kosovo, with a focus on access to information and services in contraception, access to abortion and post-abortion care, as well as maternal health care

At the end of December 2022, the Ombudsperson, with the support of the United Nations Population Fund (UNFPA), published an ex officio Report no. 577/2021 regarding rights in Sexual and Reproductive Health

(SRH) in the Republic of Kosovo, with focus on access to information and services in contraception, access to abortion and post-abortion care, as well as maternal health care.¹⁶²

The report includes data for the period 2019, 2020, 2021 and presents the continuation of the assessment at the national level of rights in the SRH, addressed to the authorities by the OI in 2016. The implementation of this Investigation is based on the contextualized methodology, which was based on the Guide in support of National Institutions for Human Rights (©UNFPA, 2015) and with the support of the UNFPA Office in Kosovo, which as in the Evaluation addressed in 2016, it had a budgetary and professional supporting role.

The investigation has considered the information and testimonies of women and girls as a primary source of statements and findings, to scan the situation in terms of respect for rights in SSR. It has also evaluated the statements and contribution of civil society organizations of the profile, which extend their activity in the community and are close to women and girls and the difficulties they face, as well as addressed questions to the relevant authorities, which design and implement health policies and those that provide health services, at the central level and at the local level.

Institutions have not given the necessary attention nor the necessary commitment to address the recommendations and to remove the practical barriers that exist, so that women and girls can enjoy comprehensively, fully and without discrimination, rights in SRH. As in the 2016 Assessment, this Inquiry reaffirms that the rights in the SR in Kosovo (enjoyment or violation of them) cannot be seen, nor understood, as disconnected from the socio-economic and cultural-historical complexity in the country. The consequences of decades of damage and neglect of health and the accompanying infrastructure, during a very long period before the war of 1998/1999 in Kosovo, have also had consequences in the dynamics of recovery after the war, but also after citizenship. From a general perspective, it is evident that Kosovo has rebuilt a health system and has a relatively good legal framework in the field of the rights of the SR, which carries within itself the spirit of a series of instruments and international agreements on human rights, and which are directly applicable in our country. However, the dynamics of general changes and the evolution of human rights and freedoms in established concepts make it necessary to supervise the compliance of the normative framework with them and make it necessary to supervise the implementation and respect of the guaranteed rights, beyond the letter of the legislation. While the axis of the Assessment addressed in 2016 was the review of normative guarantees and the standards established with them, the current investigation aimed to delve into the depth of the problem, considering the information and testimonies of women and girls as the primary source of assertions and findings, to scan the situation in terms of respect for rights in SRH. In addition to the voice of women and girls, the Investigation has also evaluated the statements and contribution of civil society organizations of the profile, which extend their activity in the community and are close to women and girls and the difficulties they face. During this investigation, questions were also addressed to the relevant authorities, who design and implement health policies and to those who provide health services, at the central and local level, so that the reflection of the situation is as complete as possible and taking into account all parties. The focus on access to information and services in contraception, access to abortion and post-abortion care and maternal health care has taken

¹⁶² The Institution of the Ombudsperson (OI), reserves all rights related to this Report, which was supported by the United Nations Population Fund (UNFPA), Office in Kosovo. The views expressed in this report are those of the Ombudsperson and do not necessarily represent the views of the UNFPA or any of the respective organizations.

into account the interrelationship and interdependence of these issues, within the framework of the rights of the SR, but also the indivisibility, non-alienation and universality, in the general context of human rights and freedoms.

The findings of this investigation have brought to attention the experiences of women and girls not only within the period it has focused on, but also their statements before 2019. However, it has been very obvious that the confessions and testimonies they have given have not differed over the years in terms of the violation of rights in SRH and access to quality health care and services. This has highlighted the persistent socio-cultural and economic disadvantages of women and girls and has proven that the state has not given them due attention nor the necessary commitment to removing the existing practical barriers, so that women and girls can enjoy them comprehensively, fully and without discrimination the rights in the SRH.

Regarding the rights for SSR, women and girls in Kosovo, especially those with disabilities; with difficult economic status; who live in environments with conservative cultural norms; with marginalized social status; in deeper rural areas, related to these issues, women and girls of the Ashkali, Egyptian and Roma communities, remain more vulnerable and still do not enjoy full, comprehensive and non-discriminatory access to quality health information and services.

During the investigation, the health system's own problems were also identified. Insufficient medical staff and not sufficiently trained to meet the best standards for dignified and quality services; the lack of a sufficient budget for health, including the lack of health insurance, as well as insufficient infrastructure and not in accordance with the needs and requirements, especially the needs of the population with characteristics that require sensitivity and special attention, results in the impossibility of fulfilling obligations that the state has for universal health access.

Despite adequate legal basis and the structure and mechanisms in accordance with this legal basis, anomalies in operation and lack of coordination and planning are numerous. Moreover, the lack of real information and education about SSR, the non-proactive approach of health personnel, the lack of professionalism and ethics, the ineffectiveness and inefficiency of complaint mechanisms are barriers that prevent the realization of guaranteed rights and a comprehensive approach without discrimination.

However, the Report emphasizes that despite all the disorders and difficulties in the functioning of the system, medical behaviour, as well as the readiness of medical personnel to fulfil the obligations and calling of their profession, are responsibilities that fall directly on the conscience, ethics and individual professionalism of health workers, of all categories and are not necessarily related to the lack of budget, insufficient infrastructure or other objective issues, without minimizing their importance.

The report addressed the relevant recommendations to the responsible institutions, as follows:

Assembly of the Republic of Kosovo	(4 recommendations)
Government of the Republic of Kosovo	(2 recommendations)
Statistics Agency of Kosovo	(1 recommendations)
Ministry of Education, Science, Technology and Innovation	(1 recommendation)
Inspectorate of Education	(1 recommendation)
Ministry of Health	(26 recommendations)
Health Inspectorate	(6 recommendations)
Pharmaceutical Inspectorate	(2 recommendations)
Sanitary Inspectorate	(2 recommendations)
National Institute of Public Health in Kosovo	(6 recommendations)
University Hospital and Clinical Service of Kosovo	(15 recommendations)
Relevant Municipal Directories for Health	(38 x 1 recommendation)
Relevant Municipal Directorates for Health (with maternity hospitals)	(14 x 1 recommendation)
MFMC (where there is no MFMC, relevant directorates for Health)	(38x11 recommendations)

Report on ex officio case no. 262/2018 regarding the barrier to physical access of persons with disabilities to the premises of the Kosovo Pension Administration, Regional Pension Office in Prishtina

This report has two main purposes: to show the need to provide disabled pensioners with unimpeded access to the facility and spaces of Regional Office of Pension Administration in Prishtina; and to point out to the relevant public authorities the problems related to access to public facilities for persons with disabilities and the need for them to enjoy their rights and freedoms without any discrimination and without any barriers, but also that the same they are offered the possibility of independent physical access to use all public services which enable them to have an adequate standard of living and to participate equally in public, economic, social and cultural life.

The Regional Office of the Pension Administration in Prishtina, on February 12, 2018, was moved to the new space, namely in the part of the former Bank of Ljubljana (former OSCE) building on "Fehmi Agani" street in Prishtina. This building was built more than 30 years ago and in which no other intervention was made in its structure so that people with disabilities could be provided with unhindered access to this part of the building.

Independent access to the premises of the regional offices of the Pension Administration in Prishtina for persons with disabilities, especially those who use wheelchairs, is practically impossible, because for them there is an insurmountable architectural barrier. It is located at a certain height, to overcome which the stairs are used (six high steep stairs), which is the only way to enter the working spaces. This also presents an obstacle for the elderly, who have difficulty moving.

According to international law, discrimination means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

International law clearly states that there should not be a degree of human rights and dignity, but equality for all. Accordingly: “*The enjoyment of every right provided by law must be ensured without any discrimination based on any basis*”¹⁶³, in such a way that public authorities do not discriminate against anyone in the sense of limiting the enjoyment of legally granted rights.

The European Convention for the Protection of Fundamental Human Rights and Freedoms and its Protocols provide that the enjoyment of the rights and freedoms provided for in the Convention must be ensured, without any distinction. Article 14 imposes positive obligations on states to take measures to prevent and eliminate discrimination, and this includes the need for public authorities to take into account the needs of special groups, in this case persons with disabilities.

The United Nations Convention on the Rights of Persons with Disabilities states that in order to enable persons with disabilities to participate fully in all aspects of life, states shall take appropriate measures to ensure to persons with disabilities access to the physical environment, on an equal basis with others. The basic principles of this Convention are included in the National Strategy for the Rights of Persons with Disabilities 2013-2023, a document that is a guide for the advancement, empowerment and protection of this group of people, as citizens with equal rights.

It is indisputable that persons with disabilities, regardless of their abilities, have rights and needs, which the state has the duty to fulfil based on conventions and international standards but also based on the legislation in force in the Republic of Kosovo. The central institutions as the main goal of all policies should have the improvement of the living conditions of citizens, including the lives of persons with disabilities, achieving sustainable results in their inclusion in society, as citizens who enjoy the right to equal opportunities and enjoy all rights.

The Law on Spatial Planning and the corresponding administrative instructions for the technical norms of spatial planning and for access to construction facilities, among others, regulate the conditions and manner of spatial planning, ensuring free movement and adequate access to public services for all citizens. All facilities that are dedicated to public and business purposes, but also other facilities for public use, must be designed, built and maintained in such a way as to enable all users to access, move and stay unobstructed, respectively use in accordance with the relevant technical regulations,¹⁶⁴ which include standards that define mandatory technical measures and design, planning and construction conditions that ensure unhindered movement and access for disabled people, children and the elderly.¹⁶⁵

The Ombudsperson considers that providing access to facilities and services is a fundamental prerequisite for the independent life of persons with disabilities, because it enables them to participate actively in all

163 Article 1 of Protocol 12 of the European Convention for the Protection of Fundamental Human Rights and Freedoms.

164 MESP administrative instruction - no. 08/2017 for the technical norms of spatial planning.

165 Administrative instruction no. 33/2007 for access to construction facilities for persons with disabilities.

areas of life on an equal basis. If only one of the elements of the approach is not adequate, a person with disabilities will find himself in the situation of the so-called “*disruption of the movement chain*”, i.e., they will find themselves in the situation where he has no possibility to function properly independent.

Failure to take actions that ensure physical access for everyone in the premises of the Regional Office of the Pension Administration in Prishtina leads to the impossibility of the services of the Pension Administration in Prishtina being able to be used under the same and equal conditions by all citizens. It prevents people with special needs to independently use the services offered in this building and in this way realize their rights guaranteed by law, which represents an act of direct discrimination.

For this, the Ombudsperson recommended to the Ministry of Internal Affairs, in coordination with the Ministry of Finance, Labour and Transfers, to ensure independent and unhindered access for all persons to the part of the facility where the Regional Office of Pension Administration is located in Pristina, including providing parking spaces for vehicles of disabled persons or by moving it this office in another suitable space that meets all the conditions for unhindered access for persons with disabilities.

Opinion of the Ombudsperson on ex officio case no. 39/2022, evaluation of the new tariff structure in Kosovo against human rights

On 13 December 2021, the Energy Regulatory Office (ERO) opened the extraordinary tariff review. The ERO argued that the increase in prices in the international markets combined with the increase in domestic energy demand necessitated a review of tariffs. Since local production could not meet the entire demand for electricity, there was a need for import, which would exceed the amounts allowed by ERO during the regular tariff review. The additional import also presented additional costs for the operators, which were not foreseen in the maximum allowed revenues for the relevant tariff year 2021.¹⁶⁶

This Opinion assesses the legality and above all the elements of human rights that may have been violated by the decision of the ERO to determine the tariff structure in coordination with the commitments of the Ministry of Economy and the Government of the Republic of Kosovo (hereinafter: the Government) to subsidize the fee. We have also looked at the practice of European countries and other countries for determining tariffs in regulated and unregulated markets.

Kosovo is a contracting party to the Energy Community Treaty since 2006 and as such must align and implement the legislation of the European Union (EU) listed in Article 10 of the Treaty establishing the Energy Community. Furthermore, the Stabilization and Association Agreement (SAA) of 2016, as far as energy is concerned, places the Energy Community at the basis of Kosovo's integration into the EU energy markets. Article 114 - Energy - states that the cooperation will focus on the priority areas related to the acquis of the Community in the field of energy and will be based on the Treaty with the aim of the gradual integration of Kosovo in the energy markets of Europe. Further the medium-term priorities of the acquis, Chapter 15 – Energy, and Chapter 21.

¹⁶⁶ Office of the Energy Regulator (2021), Media announcement regarding the opening of the extraordinary tariff review, Pristina: ZOrE.

Being a signatory party to the Energy Community Treaty, legislation directly applicable at the Community level has direct application in Kosovo. This legislation also includes provisions for the promotion of fair competition and easy access for different suppliers and the promotion of new electricity production capacities should be of great importance to member states, in order to allow consumers to benefit fully from the possibilities of a liberalized internal electricity market.¹⁶⁷

Kosovo is also facing the context of signing the Declaration of the Sofia Summit for the implementation of the Green Agenda for Kosovo. This statement, among other things, calls for the countries of the Western Balkans, including Kosovo, to inform consumers and implement legislation for their protection. Also, during 2022 and until 2023, Kosovo is expected to finalize the approval of the Energy Strategy and the National Plan for Energy and Climate, documents that will also accelerate reforms in the energy market, including market design and promotion of a perfectly competitive market.

In this opinion, the Ombudsperson concludes that the Republic of Kosovo, as a signatory of the Energy Community Treaty, is committed and has taken obligations for a liberalized energy market, a market that advances competition, transparency and protects the rights of consumers. In order to reach this market, Kosovo has adopted a Market Liberalization Guide, which defines time limits until when groups of consumers, connected in different voltages, should switch to the open market. Kosovo is also obliged by horizontal legislation to guarantee consumer rights, including the right to information and the right to protect the economic interests of consumers.

In Kosovo, there has been a historical process of establishing the tariff structure and price regulation through block tariffs has been a practice present in the past as well. Prior to 2017, the character of the tariff structure with blocks was more social, foreseeing a price scale below the cost of production, which was prohibited by the Law on the Energy Regulator and the Law on Electricity. The tariff structure of 2021 is also unique due to the limit of consumption up to 800 kw and above 800 kw, which was not the case before 2017.

The tariff block in our domestic system is not foreseen by legislation, but on the contrary, the provisions of the Law on Energy, the Law on Electricity and the Law on the Energy Regulator, derived from the third European package of energy legislation, encourage prices unregulated and competition in the market. Moreover, the ERO, although justifying the decision with the need for energy efficiency incentives, article 20 of the Law on Energy Efficiency only defines the obligation for the ERO to take into account incentives for improving the efficiency of the network and that towards the operators of energy market and not to different categories of consumers based on consumption.

The decision on retroactive billing and not reflecting it on the bill, as well as not reflecting the subsidy level on the bill, also constitutes a violation of the consumers' right to information.

The decision of ERO has elements of discrimination and unequal treatment of consumers. Different tariffs based on the level of electricity consumption are contrary to Article 47 of Law no. 05/L-084 for the Energy Regulator, which emphasizes the need for tariffs to be non-discriminatory. The decision of the ERO to

¹⁶⁷ THE ENERGY COMMUNITY LEGAL FRAMEWORK 4.2 Edition – page 69.

exclude the consumers of the north of Kosovo from increasing the price of electricity creates a situation of discrimination against the rest of the consumers. Also, subsidizing between categories of consumers with regulated prices also puts the ERO in a discriminatory position.

Block-tariff is a practice of new energy markets and markets with a central and non-decentralized character. The third package of energy legislation emphasizes the liberalization of the market and the removal of discrimination between consumption categories. Support to vulnerable consumers and other social categories is done through other and non-discriminatory schemes and not through direct tariff subsidy. In none of the EU countries is the block-tariff applied and the character of equal treatment of consumers is preserved.

Billing without a meter and determining a consumption fee for consumption without a meter contradicts the legislation in the field of energy, in the field of consumer protection and with the regulations of the Office of the Energy Regulator. Consumers have problems with the quality of the service, but also with flat billing and with billing that does not correspond to the amount of energy spent. Therefore, monitoring capacities should be strengthened to stop billing without a meter. The Office of the Energy Regulator should ensure that the staff capacities for monitoring and managing citizens' complaints are increased so that flat-rate billing and without calibrated meters that measure the energy spent are not allowed. In the new announced packages of legislation in the field of energy, strengthen the provisions that prohibit the ERO and energy companies from setting tariffs without a meter or applying flat-rate billing

There is no clear definition in our legislation and policy framework regarding energy poverty and who can be considered a vulnerable consumer. One of the main issues that such a radical change in tariff and pricing structure would have to take into account is the issue of affordability. However, without an adequate mechanism, as foreseen by the law, the effects of the increase cannot be mitigated for those who need it the most. Otherwise, it ends up discriminating. Therefore, the Government should urgently establish the Consumers in Need Fund. The announced new package of energy legislation clearly defines the energy poverty line and links it to household income, so that support for vulnerable consumers is sustainable, dynamic and to reflect their socio-economic situation without discriminating others.

The law for Obiliq, in the part of setting lower energy tariffs for end consumers, has not been implemented so far and although the citizens of Obiliq had the expectation that there would be reduced energy prices. The law conflicts with the current legislation in the field of energy and there has been no attempt to harmonize them so far. In the consideration of the next package of energy legislation, the energy laws should be harmonized with the Law on Obiliq or vice versa. It should be understood that the facilities in reducing the regulated price are difficult to implement, as they cause discrimination among consumers, but modalities can be found through the Consumers in Need Fund.

The decision of the ERO on the selective increase in the price of energy for the establishment of block tariffs and the decision on the selective subsidy also contradict the principles of setting tariffs described in local legislation, with the legislation of the Energy Community in Vienna and in opposition with the provisions of the Consumer Protection Law. The affirmative measures established in the decision of the ERO are not enjoyed by all consumers with regulated prices, and not all citizens of the Republic of Kosovo are affected equally by the price increase.

Opinion of the Ombudsperson on the occasion of ex officio no. 307/2022, related to the recognition of family relations of persons of the same sex with the Draft Civil Code

This Opinion is intended to express the views of the Ombudsperson viewed from the perspective of human rights, namely the rights derived from the Constitution of the Republic of Kosovo and related to family relationships for persons of the same sex. The draft Civil Code, in the fourth book, in the second part, regulates family issues, such as: engagement, marriage and cohabitation, definitions that only recognize relationships between people of opposite sexes. The current draft of the Draft Civil Code of the Republic of Kosovo,¹⁶⁸ in the fourth Book it regulates family relations, namely engagement (Article 1133), marriage (Article 1138) and cohabitation (Article 1164).

The Ombudsperson considers that the Constitution defines the right of everyone to have their private and family life respected, and it also guarantees each individual protection from discrimination based on sexual orientation, and it also guarantees everyone the right to get married and start a family.

The Ombudsperson notes that the Draft Civil Code defines engagement, marriage and cohabitation as bilateral relations between persons of different sexes. See respectively article 1138, paragraph 1 (*“Marriage is a legally registered union between two spouses of different sexes, by which they freely decide to live together as husband and wife”*), article 1133 (*“Engagement is a promise of two persons of opposite sex to marry in the future”*), and Article 1164, paragraph 1 (*“Cohabitation of a man and a woman is a de facto relationship between an adult unmarried man and an adult unmarried woman, who openly live together, characterized by joint life and work that presents a character of stability and continuity”*).

The Ombudsperson considers that defining marriage, engagement and cohabitation based on sex represents a violation of the right not to be discriminated against based sexual orientation. The draft Civil Code should define the three relationships in question without referring to the concept of sex. In other words, even two people of the same sex should have the right to have their marriage, engagement or cohabitation legally recognized, in the same way as people of the opposite sex. By defining the three relationships under discussion on the basis of sex or gender, the Draft Civil Code represents a violation of the right not to be discriminated against based on sexual orientation.

Depriving same-sex persons of legal recognition of marriage, engagement and cohabitation clearly meets the legal definition of discrimination. It is undeniable that such an exception: *“Invalidates or infringes the recognition, enjoyment [and] exercise, in the same way as others, of the fundamental rights and freedoms recognized by (...) other applicable laws in the Republic of Kosovo”* (emphasis added). Accordingly, according to the current Draft Code, the right of two people of the same sex to marry, be engaged and live together is expressly not recognized, enjoyed or exercised in the same way as people of the opposite sex. Therefore, according to the criterion defined by the Law on Protection from Discrimination, the definition of the three relationships in question represents a violation of the legal right not to be discriminated on the basis of sexual orientation.

¹⁶⁸ Project - Civil Code of the Republic of Kosovo, <https://md.rks-gov.net/page.aspx?id=1.94>

The Ombudsperson notes that the current draft code, in article 1138, paragraph 2, defines:

“Registered civil unions between persons of the same sex are allowed. Conditions and procedures are regulated by a separate law.”

However, the Ombudsperson considers that the current wording of the Draft Civil Code for allowing registered civil partnerships between persons of the same sex, without clearly defining what constitutes a “*registered civil partnership*” and determining that the conditions and procedures for the recognition of these communities will be regulated by a special law, does not present a solution and does not reflect the rights guaranteed by the Constitution.

The Ombudsperson is aware that according to Article 53 of the Constitution of the Republic of Kosovo: *“Human rights and fundamental freedoms guaranteed by this Constitution are interpreted in harmony with the judicial decisions of the European Court of Human Rights.”*

However, the Ombudsperson considers that the decisions of the European Court of Human Rights (ECHR) regarding the issue of same-sex marriages do not constitute a sufficient basis to conclude that the relevant provisions of the Draft Code are not discriminatory in basis of sexual orientation. This is because the two specific bases for the evaluation of the ECHR on this issue are not applicable in the Republic of Kosovo.

First, the ECHR decided not to recognize the right of same-sex marriage, because Article 12 of the European Convention on Human Rights (ECHR) defines: *“Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”* While the Convention only protects the right to marry between a man and a woman, the court did not feel free to conclude that the non-recognition of same-sex marriages was discriminatory (see Schalk and Kopf, op. cit., § 55).

The issue is a bit more complicated at the constitutional level, because the ECHR has not yet recognized same-sex persons the right to marry, according to the ECHR. In this regard, see, e.g., Schalk and Kopf v. Austria, Application No. 30141/04 (2010), § 108; Chapin and Charpentier v. France, Application No. 40183/07 (2016), § 39; and Orlandi and others v. Italy, Applications No. 26431/12, 26742/12, 44057/12 and 60088/12 (2017), § 192.

However, the Constitution of the Republic of Kosovo differs from the ECHR in this regard. According to Article 37 of the Constitution: *“On the basis of free consent, everyone enjoys the right to marry and the right to found a family in accordance with the law.”* Therefore, unlike the ECHR, the Constitution of the Republic of Kosovo, not expressly defining that the right to marry is the right of “*man and woman*”, does not present any obstacle to establish that depriving persons of the same sex of the right of marriage represents a violation of the right not to be discriminated on the basis of sexual orientation.

The second reason why the ECHR has not yet recognized the right of same-sex persons to marry is that there is still no European consensus to recognize this right. In these circumstances, according to the court, the States Parties enjoy a wide discretion (“*margin of appreciation*”) to decide for or against the recognition of the right to marry between persons of the same sex.

As with the first reason, this reason is not applicable in the Republic of Kosovo. The ECHR has the responsibility to interpret the Convention for all 47 member states of the Council of Europe. For this reason, according to the doctrine of “*margin of appreciation*”, the recognition of new rights, at the regional level of the Council of Europe, is necessarily limited in cases where there is no broad consensus among the states of the Council of Europe to recognize these new rights. However, this does not represent any obstacle for an individual state, such as the Republic of Kosovo, to recognize a right at the national level, based on its own Constitution and its own laws, even though the ECtHR has assessed that there is not a sufficient consensus widely to recognize that right at the regional level.

For these reasons, the aforementioned ECJ decisions in this area are not decisive in the constitutional evaluation of the Draft Code. Instead, in order to ascertain whether the Draft Code, by not allowing same-sex marriages, represents a violation of the constitutional right not to be discriminated against on the basis of sexual orientation, the criteria of non-discrimination defined by the ECHR should be examined at the national level of Kosovo, not at the regional level of the Council of Europe.

According to the criteria of the ECHR: “*The right (...) not to be discriminated (...) is violated when States treat persons in similar situations unequally without providing an objective and reasonable justification*” (Thlimmenos v. Greece, Application No. 34369/97 (2000), § 44). And in order for such a justification to be “*objective and reasonable*”, it must pass two other steps: First, there must be a “*legitimate purpose*” for the inequality in question; and, secondly, there must be a “*reasonable relation of proportionality between the means used and the intended purpose*” (“*Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium*” v. Belgium, Applications No. 1474 /62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64 (1968), § 10; see also X and others v. Austria, Application No. 19010/07 (2013), § 98).

The Ombudsperson notes that it is not clear in the Project Code what legitimate purpose would be served by the non-recognition of same-sex marriages. It is also not clear whether the drafters of the Code took into account these five criteria when they decided to deprive same-sex persons of the legal recognition of the right to marry.

The Ombudsperson notes that in the absence of a legitimate purpose for the exclusion of same-sex couples and in the absence of explicit consideration of the above-mentioned five criteria, the Draft Code represents a violation of the constitutional right not to be discriminated against based on sexual orientation. Therefore, the Ombudsperson considers that the Ministry of Justice should reconsider the recognition of marriages to persons of the same sex during the review phase of the Draft Code.

The ECHR has made it clear that the failure of a state to give same-sex persons the possibility of legal recognition of their relationships, even in non-marital form, represents a violation of this right. For example, in the case of Oliari and others v. Italy, Applications No. 18766/11 and 36030/11 (2015), the court found that the Government of Italy “failed to fulfil its obligation to ensure that the applicants have at their disposal a specific legal framework that grants the recognition and protection of their same-sex relationships” (ibid., § 185; see also Orlandi, op. cit., § 210).

In the same way, the Draft Code “fails to fulfil the obligation of the [Republic of Kosovo] to ensure that [same-sex persons] have available a specific legal framework that provides recognition and protection of their same-sex relationships “.

This failure of the Draft Code cannot be justified by means of Article 1138, par. 2, which defines: “*Other forms of civil communities are regulated by a separate law.*” This is for three reasons:

First, as long as the Fourth Book of the Draft Code claims to regulate family relationships in general, then it should in principle also find a place for the recognition of same-sex relationships, especially considering that the ECtHR has requested such recognition precisely as part of the right to respect family life.

Secondly, the non-inclusion of “other forms of civil unions” in the Draft Code seems even more strange given that the Draft Code, even in its current version, gives legal recognition to another form of non-marital union, namely, the non-marital cohabitation of a man and a woman: “*The cohabitation of a man and a woman is a de facto relationship between an adult unmarried man and an adult unmarried woman who openly live together, characterized by joint life and work that presents a character of stability and continuity*” (ibid., article 1164, par. 1); “The cohabitation of a man and a woman is equal to the status of married spouses in terms of rights and obligations for care, mutual financial support, and property rights as specified in this Code” (ibid., article 1164, par. 2). While there is such a provision in the Draft Code, the Ombudsperson considers it unjustifiable not to include similar provisions that recognize same-sex relationships, even in non-marital form.

Thirdly, the non-recognition of same-sex couples in the Draft Code guarantees that these couples will have to wait even longer until their constitutional right to respect for family life is fully respected. And, of course, the more time that passes, the more the possibility will increase that the “special law”, promised in Article 1138, will not be drafted or approved at all, leaving the Republic of Kosovo in disagreement with the demands of Article 36 of the Constitution and Article 8 of the ECHR.

The Ombudsperson states that according to the Constitution of the Republic of Kosovo, every person has the right to marry and create a family in accordance with the law. While the Fourth Book of the Draft Code aims to regulate family relations in general, it should also include the recognition of same-sex relations, in order to respect the principle of equality before the law in the regulation of family relations. Therefore, the provisions of the Draft Civil Code, which regulate family relations, must expressly determine the recognition of family relations of persons of the same sex.

Report on case A. no. 676/2021 regarding the Amendment and Supplementation to Administrative Instruction No. 02/2020 for the Appointment Procedure of Deputy Mayors in Municipalities

The report was built on the basis of the individual complaint submitted against MLGA, in relation to AI no. 02/2020, namely Article 8, paragraph 3. The purpose of this report is to draw the attention of the Ministry of Local Government Administration (hereinafter: MLGA), regarding the violation of the rights of non-majority communities with the Administrative Instruction (MLG) No. 02/2020 for the Appointment Procedure of Deputy Mayors in Municipalities (hereinafter referred to as: AI no. 02/2020).

UA no. 02/2020, corresponding to Article 8 [Conditions for the appointment of vice presidents], paragraph 3, defines: “*The Deputy Mayor of the Municipality for communities is appointed from the ranks of the non-*

majority community, which in terms of number constitutes the largest non-majority community in the municipality.”

The Ombudsperson emphasized that the Constitution of the Republic of Kosovo guarantees non-majority communities the deputy mayor for communities of the municipal assembly in cases where at least 10% of the citizens belong to non-majority communities and notes that Law no. 03/L-040 on Local Self-Government has recognized the right of communities to have a deputy mayor for communities if at least 10 percent of the citizens of that municipality belong to non-majority communities. According to this definition, the law does not divide non-majority communities, but defines it as a whole, which must be no less than 10 percent of all citizens of a municipality. According to the opinion of the Ombudsperson, the Law on Local Self-Government has carried the constitutional spirit, which has regulated the issue of the deputy mayor for communities of the municipal assembly, because the Constitution has referred the same to citizens of non-majority communities, without making differences among communities.

The spirit of the provisions of Law no. 03/L-040 for Local Self-Government, to some extent, has also been transferred to AI no. 02/2020, on the right of members of non-majority communities to have a deputy mayor for communities, if at least 10 percent of the citizens of that municipality belong to non-majority communities.

Moreover, the Ombudsperson considers that AI no. 02/2020 has advanced in terms of the protection and promotion of the rights of non-majority communities, because it has left the possibility for municipalities, depending on their financial possibilities, to appoint the deputy mayor of the municipality for communities even in cases where the number of citizens is smaller than 10% of the municipality's population.

However, Article 8, paragraph 3, of AI no. 02/2020 it seems that non-majority communities, which do not constitute the largest non-majority community, are denied the opportunity to have the vice-president for communities from among themselves. As a result of this, the Ombudsperson considers that article 8, paragraph 3, of AI no. 02/2020 is not in harmony with Law no. 04/L-040 on Local Self-Government, namely Article 61, paragraph 1, and that the same should be amended.

In this regard, the Ombudsperson finds that any limitation in the Administrative Instruction, according to which priority would be given to any of the non-majority communities for the proposal of the deputy mayor of the municipality for communities, violates the right of other non-majority communities, which are not the largest non-majority community, to propose the deputy mayor of the municipality for communities. Regarding this issue, the Ombudsperson has noticed inconsistencies between the provisions of AI no. 02/2020, namely inconsistency between Article 6, paragraph 1, and Article 8, paragraph 3.

Whereas Article 6, paragraph 1, of AI no. 02/2020 stipulates that the mayor proposes to the municipal assembly the candidate for deputy mayor for communities, in consultation with all representatives of the communities in the municipality (emphasis added), article 8, paragraph 3, this right is granted to the non-majority community which in terms of number constitutes the largest non-majority community.

In this case, the Ombudsperson considers that article 6, paragraph 1, of AI no. 02/2020 has carried the spirit of the Law on Local Self-Government, namely the spirit of Article 61, paragraph 1, which has presented non-majority communities as a whole, because it has expressly determined that their number

must be at least 10 percent of citizens of a municipality, while article 8, paragraph 3, of UA no. 02/2020 contradicts Article 61, paragraph 1, because it stipulates that the candidate must belong to the non-majority community that in terms of size constitutes the largest non-majority community.

For this, the Ombudsperson recommended the Ministry of Local Government Administration to change the Administrative Instruction (MPL) No. 02/2020 for the Procedure for the Appointment of Deputy Mayors in Municipalities, namely to delete paragraph 3 of article 8, as well as to add a new paragraph to article 8, which will be in harmony with article 61, paragraph 1, of Law no. 03/L-040 for Local Self-Government, regarding the conditions for the appointment of deputy mayors of the municipality for non-majority communities.

Report on case A. no. 125/2021 regarding the discriminatory criteria in the Regulation on selection procedures regarding the appointment, reappointment and promotion of academic staff at the University of Pristina “Hasan Prishtina”

The purpose of the report is to identify violations and provide recommendations in order to restore the right violated by the University of Prishtina “Hasan Prishtina” (hereinafter: UP) regarding the criterion established in Appendix IV, point a [quantitative assessment of the activities of candidates, who are appointed for the first time in the call prof.ass.dr.], of the Regulation on selection procedures related to the appointment, reappointment and advancement of academic staff in University of Pristina “Hasan Prishtina”, with no. prot. 886, dated 27.4.2022 (further: Regulation no. prot 886). As well as with the criterion established in Appendix V, point a (footnote 13) [quantitative assessment of candidates, who are appointed for the first time in the call for assistant, lecturer and tutor], of the Regulation on selection procedures related to appointment, reappointment and advancement of the academic staff at the University of Pristina “Hasan Prishtina” (prot. no. 887, dated 27.04.2022) (hereinafter: Regulation no. prot. 887).

The Ombudsperson considers that the criterion defined by footnote 15 of Regulation no. prot. 886 and in footnote 13 of Regulation no. prot.887 regarding the priority of candidates who have completed their studies at UP over those candidates who have completed their studies at other institutions of higher education in Kosovo and in neighbouring countries is not supported in the Statute of UP nor in the Law for Higher Education in the Republic of Kosovo, and that such discriminatory criteria cannot be established by any normative act, either of the UP or of the legislation in general.

The Ombudsperson considers that diplomas obtained in higher education institutions that are issued by public universities in the Republic of Kosovo and in private colleges accredited by the Kosovo Agency for Accreditation are of the same value as diplomas obtained in UP. On the other hand, diplomas obtained abroad are subject to a procedure for recognition and equivalence in relevant institutions according to the laws and by-laws applicable in the country, therefore each diploma that successfully passes this procedure is considered equivalent to a diploma obtained at UP. Therefore, the criterion established through footnotes 15 in Appendix IV of Regulation no. prot.886 and in footnote 13 of Appendix V of Regulation no. prot. 887, present an obstacle for candidates who have not completed their studies at UP.

The Ombudsperson considers that there is no *reasonable relationship of proportionality*, because the establishment of such an exclusionary criterion, in order to evaluate quality education and other relevant

criteria, should be the task of evaluation commissions without prejudice to the place where the education was carried out and not that a priori an obstacle is presented to potential candidates in the procedure for appointment, reappointment or advancement in the respective positions. Based on what was said, the Ombudsperson recommended to the Senate and the rector of the University of Pristina for Senate to delete footnote no. 15 in Appendix IV of the Regulation on selection procedures related to the appointment, reappointment and advancement of academic staff at the University of Pristina "Hasan Prishtina", with no. prot.886, dated 27.4.2022, and also delete footnote no. 13 in Appendix V of the Regulation on selection procedures related to the appointment, reappointment and advancement of academic staff at the University of Pristina "Hasan Prishtina", with no. prot. 887, dated 27.4.2022.

Report on case A. no. 444/2021 regarding the amendments and supplementations to Law no. 06/L-032 for Accounting, Financial Reporting and Auditing

The report is based on an individual complaint submitted by the executive director of the Institute for Accounting, Auditing and Finance (hereinafter: IAAF), according to whose assessment the provisions of article 3, paragraph 1, point 1.13, and article 33, paragraph 3, of Law no. 06-032 on Accounting, Financial Reporting and Auditing are discriminatory provisions and, being such, it is requested that they be changed. The purpose of the report is to recommend to the Government of the Republic of Kosovo and the Ministry of Finance, Labour and Transfers the amendment and completion of Law no. 06/L-032 for Accounting, Reporting and Auditing, harmonization with the Constitution and Law no. 05-L/021 on Protection from Discrimination of the provisions of the article 3, paragraph 1, point 1.13, and Article 33, paragraph 3, which provide for membership in the International Federation of Accountants of professional accounting and auditing associations and the consequences of non-compliance with the requirements for this membership.

In its complaint, IAAF stated that the professional association with the status of non-governmental organizations was founded in 2005 in order to carry out educational activities, namely for the provision of professional education and certification in matters of accounting, auditing and financial reporting. IAAF was licensed in 2013 based on Law no. 04-L/014 for Accounting, Financial Reporting and Auditing, which was valid at that time. IAAF's licensing was done by the competent authority - the Kosovo Council for Financial Reporting (KCFR), after confirming that IAAF has fulfilled all the requirements defined by law and has met the standards, guidelines and recommendations of the International Federation of Accountants (hereinafter: IFA) and that the members of the association act in compliance with the Code of Professional Conduct and the Code of Ethics of the IFA. These conditions were stipulated by the law in force at the time of licensing and identical conditions are provided by the current law in force, Law no. 06/L-032 for Accounting, Reporting and Auditing, in Article 33.

IAAF further emphasizes that the provision of the current law in force, Law no. 06/L-032, article 3, paragraph 1, point 1.13, sets the condition of mandatory membership in the IFA to professional accounting and auditing associations. According to them, the obligation to join IFA, which is an international professional association, cannot be an imperative legal criterion for a professional association, which is licensed by KCFR.

IAAF emphasizes that the professional associations that offer educational activities for professional qualifications in the field of accounting and auditing, must also offer professional education services in

accordance with the International Education Standards provided by the IFA. However, compliance with this condition cannot impose the obligation of membership, considering that it has no legal effect, because the supervision of accountants' and auditors' associations is carried out by KCFR.

In this report, the Ombudsperson considers that anti-discrimination legislation provides for the principle of equality without any discrimination, including discrimination based on association, so it is regulated that everyone is equal and enjoys equal status and equal legal protection, regardless from personal characteristics, therefore everyone is obliged to respect the principle of equality, namely the prohibition of discrimination. Discrimination by association means that third parties are discriminated against even though they do not belong to a particular group, but are third parties associated with those groups.

In this case, associations that are not members of the IFA are treated less favourably than those that are members of the IFA. Compulsory membership and the condition of continued license with IFA membership is a characteristic that discriminates against non-member third parties. By implementing such a practice, associations that are not members of the FNK are discriminated against without objective and reasonable reasons, because they are treated differently due to the fact that they are not members of the IFA, which is a defining characteristic that leads to the treatment of their unequal treatment and the unequal treatment of their members, in relation to the associations that are members of the IFA.

With the obligation for membership and the treatment as regulated by the current law, the licensing of associations that are not members of the IFA leads to the discrimination of their members, who are already licensed or are candidates for licensing and continuing professional education. This means that if those who are not members of the IFA were to have their license revoked by the KCFR, this would automatically result in the revocation of their members' licenses and the inability to work and practice their profession.

In the present case, the professional associations of accountants and auditors are discriminated against without objective and reasonable reasons and are put in a disadvantageous position based on their membership in the IFA. From what was said above, the introduction of this criterion cannot be accepted as justified for the associations of accountants and auditors of Kosovo.

The Ombudsperson states that the Accounting and Auditing Associations can become members of the FNK, but the membership must be on a voluntary basis and in no way should it be imposed as a legal imperative.

The Ombudsperson emphasizes that the conditions for licensing and exercising the profession of accountants and auditors must be objective and equal for everyone and must not be related to the nature of membership in an international organization. Licensing and practicing the profession of accountants and auditors should be accessible to all qualified citizens under equal conditions, and for this the Ombudsperson recommended to the Ministry of Finance, Labour and Transfers, amending and supplementing Law no. 06/L-032 for Accounting, Financial Reporting and Auditing, namely the deletion of Article 3, paragraph 1, point 1.13, and Article 33, paragraph 3.

Opinion of the Ombudsperson on the request of the Supreme Court sent to the Constitutional Court regarding the assessment of compliance with the Constitution of the Republic of Kosovo of Article 17, paragraph 1, of Law no. 04/L-037 for Higher Education in the Republic of Kosovo, which is related to Article 177, point 1.6, of the Statute of the University of Pristina

The Constitutional Court sent the Ombudsperson the notification for registration of case K0147/22, related to the request submitted by the Supreme Court of the Republic of Kosovo, through which this court requested the Constitutional Court to evaluate the compliance with the Constitution of the Republic of Kosovo of Article 17, paragraph 1, of Law no. 04/L-037 on Higher Education in the Republic of Kosovo, which is related to article 177, point 1.6, of the Statute of the University of Pristina, which was approved by the Assembly of the Republic of Kosovo on the basis of article 65 (1) of the Constitution of the Republic of Kosovo.

The issue that the Supreme Court has raised as a question in the Constitutional Court has to do with whether the provision of article 177, point 1.6, of the Statute of the University of Pristina, which provides the conditions for the election in the position of assistant professor where it is stated: *“1.6 The candidate who is elected for the first time, must not be older than 50 years.”*

The Basic Court in Pristina, as a court of first instance, with Judgment C.nr.35/2019, dated December 17, 2020, had fully approved the plaintiff’s claim as well-founded and annulled Decision number 4/472 of the Senate of University of Pristina “Hasan Prishtina”, dated October 5, 2018, as illegal. The court of first instance found that the application of Article 177, point 1.6, of the Statute of the University of Pristina is discriminatory and contrary to the provisions of Articles 22, 24 and 53 of the Constitution, with Article 14 of the European Convention for the Protection of Rights and Fundamental Human Freedoms, with the provisions of Law no. 03/L-212 on Labour, with Law no. 05/L-021 on Protection from Discrimination and with Law no. 04/L-037 on Higher Education in the Republic of Kosovo.

Acting according to the appeal of the respondent, the Court of Appeal of Kosovo, as a court of second instance, with Judgment Ac.nr.1360/2021, dated June 9, 2021, rejected as unfounded the appeal of the respondent University of Pristina “Hasan Prishtina” and confirmed the judgment of the court of first instance.

The Supreme Court of Kosovo, deciding according to the revision of the respondent, has suspended the procedure in the Supreme Court of Kosovo until a decision is issued by the Constitutional Court. The Supreme Court considers that in order to examine the compatibility of Article 177, point 1.6, of the Statute of the University of Pristina, the courts of lower instances have exceeded the competence, because such a task belongs to the Constitutional Court, which, according to the Constitution, is the final authority for the interpretation of the Constitution and the compatibility of legal acts with the Constitution.

According to the caselaw of the European Court of Human Rights, not all differences in treatment, or the failure to treat different persons in different relevant situations, constitute discrimination, but only those

without “an objective and reasonable justification.”¹⁶⁹ When deciding on cases of discrimination, the court will apply the test: *a) Were there differences in the treatment of persons in analogous or similar situations - or failure to treat persons in different relevant situations differently? b) If so, is such a difference or lack of difference objectively justified? In particular, does the treatment pursue a legitimate aim? Are the means used reasonably proportionate to the end pursued?*

Based on the afore mentioned legal provisions, the Ombudsperson emphasizes that age discrimination occurs when, based on his/her age, a person is treated less favourably than a person of another age group, in the same or similar circumstances, without an objective justification that pursues a legitimate aim.

Regarding the operation of the public carrier of higher education, the Ombudsperson notes that Law no. 04/L-037 on Higher Education in the Republic of Kosovo provides in article 17, paragraph 1: “The operation and management of the public carrier of higher education is defined in the statute proposed by the Ministry and approved by the Assembly. “Article 26, paragraph 1, of the same law specifies: “Titles and ranks of personnel, criteria for appointments and reappointments and other issues related to these, are specified in the statute of each institution of higher education. They must be [...] in accordance with the legislation in force on the labour relationship in the Republic of Kosovo.” Hence, the autonomy of higher education providers to select academic staff themselves must be in accordance with Labour Law no. 03/L-212.¹⁷⁰

According to Article 26, paragraph 3, of Law no. 04/L-037 for Higher Education in the Republic of Kosovo, candidates for academic positions “must be able to demonstrate a successful background of teaching, research and professional practice.” This means that only professional qualifications are required by law for election to academic positions, including the position of assistant professor.

The Ombudsperson points out that the Constitution and the applicable law in Kosovo prohibit discrimination or any kind of difference, exclusion, limitation or preference that violates the exercise of the rights guaranteed by the Constitution and the applicable laws. In the specific case, the provision of article 177, point 1.6, of the Statute of the University of Pristina, which provides for the age condition for the election to the position of assistant professor, does not allow the election of candidates older than 50 years and in this way, it discriminates against them by depriving them of the right to work guaranteed by the Constitution.

The protection of the right to work means the full implementation of the criterion of professional capacity and the provision of open and equal competition in the employment process of all interested candidates. Therefore, the obligation to respect this right requires the avoidance of measures that hinder or prevent the enjoyment of the right to work and includes respect for the principle of equality in employment application procedures without discriminatory criteria.

169 See *Molla Sali v. Greece* [GC], 2018, para. 135; *Fabris v. France* [GC], 2013, para. 56; *DH and others against the Czech Republic* [GC], 2007, para. 175.

170 With the entry into force of Law no. 06/L-114 for Public Officials, article 67 [Organization of the competition], paragraph 7: “Professional personnel is the personnel who perform the professional provision of the service, such as, e.g., teaching staff in educational system institutions, medical staff in a health system institution, etc.”

Equality in employment is part of equality before the law. Therefore, a person, due to any of his personal characteristics, namely in the specific case - his age, cannot be deprived of the right to work, without objective and reasonable justification, in cases where there is a legitimate purpose and using proportionate means pursuing this legitimate aim.

The Ombudsperson considers that the provision of article 177, point 1.6, of the Statute of the University of Pristina, which provides the conditions for the election to the position of assistant professor, is discriminatory and contrary to the Constitution and the legislation in force. This is because the provision in question limits the age for employment in the position of assistant professor at the University of Pristina to 50 years, even though Labour Law no. 03/L-212 provides that the employment age in the Republic of Kosovo is 18 to 65 years.

The Supreme Court of Kosovo, on the occasion of reviewing the request for revision, presented by the University of Pristina (Rev. no. 505/2022), has concluded that in order to review the compatibility of Article 177, point 1.6, of the Statute of the University of Pristina with the Constitution, the courts of the lower instance exceeded their competence, because such a task belongs to the Constitutional Court.

In this regard, the Ombudsperson notes that the Constitutional Court, in the Judgment for case no. KI 10/22,¹⁷¹ in the evaluation related to the issue of checking the constitutionality and legality of legal acts and the role of regular courts in the direct implementation of constitutional norms, has reiterated its practice, according to which it results that regular courts have the right and, moreover, obligation to judge, first according to the Constitution, and then according to the law, during the exercise of their functions. Moreover, given the hierarchy of legal norms, regular courts are obliged to interpret legal norms in harmony with constitutional norms. (Judgment for case KI 10/22, paragraph 72).

Also, the Ombudsperson notes that the Constitutional Court, in the Judgment for case no. KI 10/22, has considered that the right and obligation to implement and interpret the Constitution is recognized by all the courts of the Republic of Kosovo, including the Supreme Court, as the highest judicial instance at the level of the republic. Consequently, the Constitution recognizes the authority to interpret the Constitution as well as the authority to interpret laws in accordance with the Constitution to all courts and other public authorities in the Republic of Kosovo. However, the Constitutional Court is the only authority in the Republic of Kosovo with exclusive constitutional authorization to repeal a law or legal norm as well as to make the final interpretation of the Constitution and the compatibility of laws with it (Judgment for the case KI 10/22, paragraph 73).

171 Submitter Syndicate of the Institute of Forensic Medicine - Evaluation of the constitutionality of the Judgment of the Supreme Court of Kosovo, ARJ.nr. 115/2021, of November 18, 2021 (Ref. No.: AGJ 2040/22), August 15, 2022.

Letter of recommendation for case A. no. 675/2021, regarding the amendment of Regulation 01.No. 154 on Municipal Taxes, Fees, Charges and Fines of the Municipality of Ferizaj and its harmonization with the relevant legislation

The Ombudsperson in this case addresses the individual complaint filed against the Municipality of Ferizaj, regarding the obligation to pay in the amount of 50 (fifty) euros in the name of certification for the loss of citizenship. The complainant asserted that this amount is illegal, because citizens of other municipalities could obtain the same certification with a symbolic amount.

According to the data, the Assembly of the Municipality of Ferizaj had approved Municipal Regulation 01 no. 154 for Municipal Taxes, Fees, Charges and Fines¹⁷², on December 30, 2019. The Regulation on Municipal Taxes, Fees, Charges and Fines, approved by the Assembly of the Municipality of Ferizaj on December 30, 2019: "... aims to determine the amount of taxes, fees, charges and fines, for services developed by administrative procedure in the territory of the Municipality of Ferizaj." (Article 1). *"This regulation applies to all natural and legal persons who receive administrative services in the Municipality of Ferizaj."* (Article 2). While according to Article 3 of the regulation in question: *"Taxes, fees, charges and certain fines - imposed according to this regulation, are applied to the issuance of public documents, the compilation of documents and the provision of professional services at the request of the parties and according to the official duty (...)."*

Since according to the requirements of Regulation (QRK) no. 10/2019 for the Administrative Review of Acts of Municipalities, among the acts of municipalities that are subject to mandatory review of legality are the regulations of the municipality and the same was subjected to this control. According to this regulation, the Ministry can establish an interministerial commission for the review of acts that affect the fields of two or more ministries. For this purpose, the general secretary of MLGA, with Decision no. 02-1097, had established the interministerial commission for evaluation. This commission had assessed that the Municipal Regulation on Municipal Taxes, Tariffs, Charges and Fines is contrary to the provisions of the legislation in force. However, despite the findings of the commission in question, the same regulation continues to be implemented by the municipal authorities.

The Ombudsperson states that the regulation in question, apart from containing significant violations of the provisions of the legislation: on competence, discretion, fees, their height, etc., what makes the issue more worrying is the fact that the municipal bodies have not taken actions in the direction of harmonizing the regulation with other by-laws issued by the central level.

Within this period (2019-2022) certain acts have been repealed, issued, amended and completed, among which: Administrative Instruction (MEE) No. 09/2020 for Service Fees for Registration of Real Estate Rights, dated November 12, 2020, which was amended and supplemented by Administrative Instruction (MESPI) No. 05/2021, dated December 8, 2021; Regulation (GRK) No. 06/2021 on the Amendment and Supplementation of the Regulation (GRK) for the Administrative Review of Acts of Municipalities, dated October 23, 2021, etc., which signal the urgent steps to be taken by local government authorities in terms of issuing municipal acts, in any case harmonizing them with the latest legislation.

¹⁷² Municipal Regulation 01. no. 154 on Municipal Taxes, Fees, Charges and Fines, dated December 30, 2019.

Given the fact that the Municipal Regulation 01.No.154 for Municipal Taxes, Fees, Charges and Fines, dated December 30, 2019, of the Municipality of Ferizaj, is not in accordance with the legislation, and with the aim of improving and increasing efficiency of local government authorities, in terms of respecting the principle of legality, as one of the basic premises of legal security, the Ombudsperson recommended the Municipality of Ferizaj to draw up the new Regulation for Municipal Taxes, Fees, Charges and Fines of the Municipality of Ferizaj, taking into account the MLGA letter dated January 29, 2020, Article 13, paragraph 13.1, of the Law on Local Government Finances, as well as the same Regulation bring it up for public discussion, so that citizens' suggestions can be addressed, as is the case discussed above.

The Right to Life and the Right to Personal Integrity

Report on ex officio case no. 13/2022 regarding the positive obligations of the state to protect the right to life and to ensure protection from domestic violence

This case has been initiated for investigation according to the official duty based on the reports of the “Gazeta Express” portal, with the title: “*The murder of the woman in Llaushë of Skënderaj, all that is known so far*”, where it was reported that on January 5, 2022, in in the village of Llaushë in Skenderaj, a woman (with the initials: LQ) was found shot to death. The purpose of the report is to assess the fulfilment of positive obligations by the authorities responsible for protecting the right to life of citizens, to analyse the actions and inactions of the authorities regarding the right to life, the implementation of constitutional provisions, international instruments of the rights of human rights, the practice of the International Court of Human Rights, laws, policies and strategies against domestic violence.

The protection of basic human rights and freedoms is essential and very important for an effective response in the prevention and treatment of cases of domestic violence in the Republic of Kosovo. Despite the fact that progress has been made in the creation of response mechanisms to cases of domestic violence, there are still aspects that require the attention of the responsible authorities, regarding the positive obligations of the state for the right to life. Victims of domestic violence continue to face various challenges, especially from the dysfunction of the bodies responsible for the prevention of this disturbing phenomenon, which in many cases is ending in fatality.

The Constitution, the highest legal act, protects and guarantees basic human rights and freedoms. The implementation and practical realization of these rights is in the interest of the functioning of the rule of law. Constitutional guarantees serve the protection of human rights and the functioning of the rule of law. The Constitution, in Article 21, expressly defines the obligation of all bodies to respect the freedoms and rights of others, therefore this principle is imperative and must be respected.

The state has an obligation to take all measures to protect the citizen, especially when the integrity and life of a person is at risk. The Constitutional Court of the Republic of Kosovo, in Judgment KI 41-12, found that there was a violation of the right to life in cases where competent state bodies did not offer sufficient protection to citizens exposed to domestic violence and when they requested it for this the circumstances of the case. The Constitutional Court, while dealing with this category of rights, has proclaimed that the right to life is the most important right of all human rights, from which all other rights originate, and

has clarified that there are positive obligations for authorities to undertake preventive and operational measures to protect the lives of all those exposed to danger.

According to the Istanbul Convention, combating violence against women should not be understood as a matter of crime control, but requires comprehensive measures to achieve greater equality between women and men. Only true equality between women and men with the same rights and responsibilities, with equal opportunities in all areas of life and when their contribution to society is valued and respected equally together with a change in the dynamics and attitudes of power, can truly eliminate violence against women.

By this report, the Ombudsperson finds, among other things, that the state authorities have failed to fulfil their positive obligations and protect the right to life. Despite the fact that since 2013 the Standard Action Procedure for Protection from Domestic Violence in Kosovo has been approved, in which checklists for the actions that must be taken by the responsible authorities have been defined, in this particular case these procedures have not been respected, and that the authorities did not handle the case with due attention and did not offer appropriate protection to the victim.

There has been a lack of coordination of actions between the authorities, which poses the need to improve the quality and safety of services for cases of domestic violence and to strengthen the control mechanisms of each institution, from the moment the case of domestic violence is presented until the end his. The imposition of disciplinary measures can have an individual effect if it is proportionate to the violation, but it is necessary to aim at building stable institutional policies.

With the increasing number of cases of domestic violence, there continues to be an insufficient number of defenders of the victims and the justification of the responsible authorities that the victim had declared that he has the support of the family does not justify the non-taking of actions by these authorities. Through this report, the Ombudsperson recommended to the Kosovo Police that in cases of domestic violence, all police stations, through responsible officials, act in accordance with the Standard Operating Procedures; in cases of domestic violence, the responsible officials act in accordance with article 24, paragraph 4, of Law no. 03/L-182 on Protection from Domestic Violence and Standard Operating Procedures; in all cases of domestic violence that are reported outside the working hours of the courts, the police, after assessing the risk to act in accordance with Article 22 of Law no. 03/L-182 on Protection from Domestic Violence and Standard Operating Procedures. While he recommended to the Prosecution Council of Kosovo to review the standard procedures of action for cases of domestic violence in order to build clear and stable institutional policies for the real assessment of the dangerousness of the cases and the urgent measures that must be taken for the safety of the victim and prevention of domestic violence; in cooperation with the Academy of Justice, to prepare special training modules for prosecutors to raise the capacities regarding the handling of cases of domestic violence with a focus on risk assessment and measures for the safety of the victim; to increase the number of victims' defenders in relation to the increasing number of cases of domestic violence.

Prohibition of Torture, Cruel, Inhuman or Degrading Treatment

Reports of the Ombudsperson as a National Mechanism for the Prevention of Torture and Other Cruel, Inhuman and Degrading Punishment Treatments

The National Mechanism for the Prevention of Torture (hereinafter referred to as: NPM), based on Article 17 of Law no. 05/L-019 for the Ombudsperson, carries out regular and unannounced visits to all places where persons deprived of liberty are kept, including police detention, detention, stay in health institutions, customs detention, detention in immigration centres and in any other country when there are suspected violations of human rights and freedoms.¹⁷³

The NPM, relying on the legal mandate, has carried out a total of 62 visits this year. Of these, 20 are general visits, 19 ad-hoc visits, 21 follow-up visits, 1 thematic visit and 1 visit to the International Airport of Pristina, within the framework of the monitoring of forced return operations by the Swiss state within the framework of cooperation with the Commission Swiss National for the Prevention of Torture.

Regarding the reports with recommendations published during the reporting period, the NPM has published eight reports with recommendations after the visits made to the monitored institutions. Through these reports, the NPM has addressed 38 recommendations to the competent authorities with the aim of promotion of the fundamental rights of persons deprived of their liberty.¹⁷⁴

Report on the visit to the Correctional Centre in Dubrava

In general, during visits to correctional and detention centres during 2022, we generally did not receive complaints of physical abuse or excessive use of physical force by correctional officers. During the visits to the correctional institutions, the NPM has generally observed a good communication between prisoners and correctional officers.

Despite this, during the visit to the Correctional Centre in Dubrava, carried out on 21 to 23 February 2021, we received a complaint alleging mistreatment by correctional officers. Regarding these assertions,

¹⁷³ Law no. 05/L-019 for the Ombudsperson, article 17, paragraph 2.

¹⁷⁴ <https://oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>

the NPM after the visit talked with the director of the DCC regarding this claim, in which case it was announced that an investigative commission had been formed for this matter and that the report would be sent to the NPM internal investigation.

The Director of the CCD, on 28 February 2022, through an official letter, has informed the NPM that in relation to this case, the commission has not found any evidence or testimony, through which it will be possible to prove the claims of the prisoner for use of force against him by the supervisor or other staff who were on duty. This has been fully proven through the statements of the staff and inmates of the room, who have denied any such thing.¹⁷⁵

During the visit to the Correctional Centre in Dubrava,¹⁷⁶ NPM observes that accommodation conditions can generally be considered to be in compliance with the LESP and international standards for prisoners' rights.

In certain cases, the NPM received some remarks from the prisoners that there was a lack of hot water and that the water pressure during the summer is low (wards 1, 3, 4 and 5). According to them, warm water is not enough for cleaning and maintaining hygiene. The NPM notes that article 37 of the LESP stipulates: "In order to ensure the hygiene of convicted persons and the hygiene of premises, convicted persons must be provided with a sufficient amount of cold and hot water as well as adequate articles for cleaning and toilet. Equipment and tools for personal hygiene ensure sufficient privacy of the convict and they are properly maintained and cleaned."¹⁷⁷

During the monitoring in this centre, the NPM has also received several complaints from the convicts that there is a lack of quality mattresses and pillows (wards 1, 3, 5 and the Semi-Open Pavilion (SOP)). This issue was immediately addressed to the competent officials.

Regarding these assertions, the Ombudsperson, in the report on the visit to the Correctional Centre in Dubrava, published on April 14, 2022, recommended to the Ministry of Justice that the convicts be supplied with warm water and quality mattresses.¹⁷⁸

Regarding the conditions of accommodation in the Dubrava Correctional Centre Hospital, the NPM notes that the facility generally does not meet the conditions neither for the hospitalized nor for the health staff, despite the renovations that have been made. It should also be noted that the CCD hospital has two floors and has only stairs, this presents difficulties for patients, especially for the persons with disabilities.

Regarding this matter, the Ombudsperson, in the report with recommendation for the Correctional Centre in Dubrava, recommended to the Ministry of Justice that appropriate conditions be created for those hospitalized in the prison hospital.¹⁷⁹

175 <https://oik-rks.org/en/2022/04/15/npm-report-regarding-the-visit-conducted-to-the-dubrava-correctional-centre/>

176 <https://oik-rks.org/en/2022/04/15/npm-report-regarding-the-visit-conducted-to-the-dubrava-correctional-centre/>

177 Law no. 04/L-149 on the Execution of Criminal Sanctions, Article 37, <https://gzk.rks-qov.net/ActDetail.aspx?ActID=8867>

178 <https://oik-rks.org/en/2022/04/15/npm-report-regarding-the-visit-conducted-to-the-dubrava-correctional-centre/>

179 <https://oik-rks.org/en/2022/04/15/npm-report-regarding-the-visit-conducted-to-the-dubrava-correctional-centre/>

Ministry of Justice regarding this recommendation answered that in cooperation with the Prison Health Department (PHD) within the Ministry of Health, earlier they agreed on the adaptation of the premises in Pavilion D to accommodate the convicts with mental problems, including the creation of all conditions in terms of adequate infrastructure and personnel for their treatment according to specific needs and international standards in this field. The KCS and the PHD are in the final stage of preparations for the placement of a number of about 60 convicts in these spaces and it is expected that this will be finally realized by the end of this year. While also in Pavilion 7, additional spaces will be created for the placement of a larger number of convicts with special needs.”

During the follow-up visit of the NPM, carried out on December 6, 2022, to the CCD, the NPM team was informed by the management of the Correctional Centre in Dubrava that they are finalizing the adaptation of Pavilion D, where prisoners with mental problems are expected to be placed. Also, the Health Department of Prisons has opened a competition for the recruitment of health staff dedicated to this ward.

During this year, the NPM received complaints from prisoners regarding medical treatment in correctional centres and in detention. The NPM, in all cases except visits, requested from PHD detailed reports on the health treatment of the complainants in question. NPM continues to follow up on these cases in the years to come.

Report on the visit to the Educational-Correctional Centre for Juveniles and the Correctional Centre for Juveniles in Lipjan

On April 20, 2022 and on May 15, 2022, the NPM visited the Juvenile Educational-Correctional Centre (JECC) and the Juvenile Correctional Centre (JCC) in Lipjan. The purpose of these visits was to monitor the respect of the fundamental rights of minors deprived of their liberty, who were in these centres, in accordance with the Juvenile Justice Code, with the laws applicable in the Republic of Kosovo, as well as with the standards international for the protection of the rights of persons deprived of their liberty.

During the visit to the Educational-Correctional Centre for Juveniles, the NPM was informed by the directorate that the capacity of this centre is 36 beds and currently 10 juveniles are placed under educational measures.

While during the visit to the Correctional Centre for Juveniles, the NPM observed that forty-seven (47) juveniles were accommodated, of which twenty-five (25) juveniles were under Correctional Educational Measures, who were located in the Pavilion A, eleven (11) juvenile convicts, who were located on the first floor of Pavilion D, and eleven (11) juvenile detainees, located on the second floor of Pavilion D.

During the visit, the NPM team interviewed a significant number of juveniles in these two centres and received no complaints of physical or psychological abuse or use of excessive force by correctional officers. In addition, the NPM has noted that there is a positive climate of relations between the juveniles of both correctional centres and the correctional officers.

Regarding the accommodation conditions, the NPM notes that the conditions where the male juveniles were kept in the Educational-Correctional Centre for Juveniles were good, the rooms were clean and well-

lit, the juveniles' beds were provided with sheets, blanket. The mattresses are outdated and of poor quality. The rooms where the minors stayed were large and had sufficient lighting, they had TVs, personal closets. Each room had toilets which were in good condition, adequate and had uninterrupted hot water. Also, the rooms and toilets, which were dedicated to people with special needs, met the conditions for this category. The NPM considers that the JECC meets all the conditions for the accommodation of juveniles.¹⁸⁰

As for the conditions of accommodation in the Correctional Centre for Juveniles, the NPM observed that there was sufficient natural and artificial light in the rooms. In general, the NPM considers that the Juvenile Correctional Centre meets the adequate conditions for the accommodation of incarcerated minors.¹⁸¹

Regarding the regime for minors, the NPM has observed that, in addition to daily airing, they are offered a comprehensive regime, including education, training for various fields, work, as well as sports and recreational activities. The NPM was informed by the social worker that in the JCC, in addition to the daily routine, minors have the TOPS rehabilitation program, a program which offers minors 4 modules: anger management, social skills, aspects of decision-making, mutual assistance, which in total lasts 12 weeks.

However, the NPM has been informed by the staff of the JCC and the JECC that the inclusion in education of minors with difficulties in reading and writing (illiterate) from grades 1-5 is a challenge due to the lack of classroom teachers. Regarding this, the responsible persons in the JCC have informed us that several times they have sent official letters to the Directorate for Education in Municipality of Lipjan, but they have never received an answer.

In this regard, Article 83, paragraph 1, of the LESP, defines: "The convicted person has the right to primary and secondary education in accordance with the law on primary and secondary education." The law also emphasizes that the competent ministry for education is responsible for primary and secondary education in the correctional institution.

NPM has noticed that Administrative Instruction (MEST) No. 15/2017 for Planning and Organization of the Learning Process in Pre-university Education for Persons Deprived of Liberty in Correctional Institutions, in article 2, paragraph 1, provides as follows: "Planning and organization of the learning process in institutions correctional education is carried out for all persons deprived of liberty at level I, II and III of pre-university education."

Regarding this matter, the Ombudsperson has recommended to the Ministry of Education, Science, Technology and Innovation: "Organize the learning process for the first level (I) of education for minors, as well as minors with Institutional Educational Measures who have been evaluated from the multi-disciplinary team and do not pose a danger to the community, to enable the learning process at other

180 <https://oik-rks.org/en/2022/07/26/report-of-the-ombudspersons-national-preventive-mechanism-against-torture-concerning-the-visit-conducted-to-the-educational-correctional-centre-for-juveniles-and-correctional-centre-for-juve/>

181 <https://oik-rks.org/en/2022/07/26/report-of-the-ombudspersons-national-preventive-mechanism-against-torture-concerning-the-visit-conducted-to-the-educational-correctional-centre-for-juveniles-and-correctional-centre-for-juve/>

levels in the schools of the respective municipality, according to Administrative Instruction (MEST) No. 15/2017.”¹⁸²

Report on the visit to the Detention Centre in Peja

During the NPM's visit to the Detention Centre in Peja, the personnel of the Kosovo Correctional Service (KCS) and the personnel of the Prison Health Department extended full cooperation to the monitoring team. The team had access to all areas of the CPP and was provided with all the necessary information and was also allowed to conduct interviews with convicted and detained persons, without the presence of correctional officers. The capacity of the CPP is eighty (80) beds and at the time of the visit, a total of seventy-four (74) prisoners were accommodated, of which nine (9) were convicted and sixty-five (65) were detained.

A significant number of detainees and convicts were interviewed during the visit, and we did not receive any complaints of physical abuse or excessive use of physical force by correctional officers. We also did not receive any complaints regarding the behaviour of correctional officers, which would constitute treatment that is inconsistent with respect for the human dignity of prisoners. During the visit, interactive and friendly communication was observed between the correctional staff and the prisoners. Likewise, all the interviewed detainees affirmed that they were treated in a correct and professional manner by members of the Kosovo Police and that their basic rights were respected.

With regard to the conditions of accommodation of persons in this centre, the NPM also this year finds that the conditions of accommodation in this centre are not in accordance with the Law on the Execution of Criminal Sanctions (LECS) nor with the standards of the European Committee for Prevention of Torture (CPT). The lack of space and natural and artificial lighting in the premises of this centre is evident.

Through the report published on November 16, 2022, the Ombudsperson reiterated the recommendation that the accommodation conditions in the QPP, as long as this centre is in use, be in accordance with the standards defined in the LECS; with the standards of the CPT and with other international standards for the protection of prisoners' rights.¹⁸³

Report on the visit to the Correctional Centre for Women in Lipjan

During the visit to the Correctional Centre for Women in Lipjan, the NPM team interviewed a number of prisoners and did not receive any complaints of physical abuse or the way they were treated by correctional staff.

182 <https://oik-rks.org/en/2022/07/26/report-of-the-ombudspersons-national-preventive-mechanism-against-torture-concerning-the-visit-conducted-to-the-educational-correctional-centre-for-juveniles-and-correctional-centre-for-juve/>

183 <https://oik-rks.org/en/2022/11/17/report-of-the-national-preventive-mechanism-against-torture-with-regard-to-the-visit-conducted-to-the-pre-detention-centre-in-peje/>

NPM during the visit to the Correctional Centre for Women¹⁸⁴, carried out on October 13, 2022, observed that the cells where the prisoners are accommodated have sufficient natural and artificial lighting, as well as they do not have humidity. Regarding the living space for female prisoners, the NPM noted that the available space is in accordance with the provisions of the LESP and the standards set by the European Committee for the Prevention of Torture (CPT).¹⁸⁵ Likewise, during the visit, the NPM did not observe overcrowding in the CCF and most of the prisoners were placed only in rooms, according to their requests.

During this year's visit, the NPM again received complaints from the prisoners that the showers and machines in the laundry, as a result of the technical condition, are not functional.

In this regard, the Ombudsperson, through the report with recommendations, published on November 23, 2022¹⁸⁶, has repeated the recommendations to the Ministry of Justice, to make technical adjustments to the showers and machines in the laundry.

During this year, the NPM will pay special attention to the operation of the Mother's House in the Correctional Centre for Women in Lipjan¹⁸⁷. The NPM conducted a visit on July 7, 2022, interviewed the prisoner M.I., who was placed together with her eight-month-old child, and it was evidenced that the Mother's Home did not meet the basic conditions for accommodation in accordance with the Law on the Execution of Criminal Sanctions, nor international standards for the protection of the rights of prisoners with children.

Regarding this matter, the NPM, on July 15, 2022, addressed an official letter to the director of the Kosovo Correctional Service and on the same day it was announced that the Correctional Service has been allocated a budget for the construction of the new Mother's House with Children, for the year 2023. However, until the realization of this project, according to the director, the KCS will urgently undertake the necessary actions for the functionalization and renovation of the Mother's House. The NPM noticed the renovations during the visit that was carried out in October of this year.

In this regard, the NPM, through the report with recommendations, published on November 23, 2022¹⁸⁸, recommended to the Ministry of Justice that the House of Mothers be equipped with new inventory, as long as this house is in use.

184 <https://oik-rks.org/en/2022/11/25/ombudspersons-national-preventive-mechanism-against-torture-report-regarding-the-visit-conducted-to-the-correctional-centre-for-women-in-lipjan/>

185 European Committee for the Prevention of Torture, Living Space for a Prisoner, see: <https://rm.coe.int/16806cc449/>

186 <https://oik-rks.org/en/2022/11/25/ombudspersons-national-preventive-mechanism-against-torture-report-regarding-the-visit-conducted-to-the-correctional-centre-for-women-in-lipjan/>

187 <https://oik-rks.org/en/2022/11/25/ombudspersons-national-preventive-mechanism-against-torture-report-regarding-the-visit-conducted-to-the-correctional-centre-for-women-in-lipjan/>

188 <https://oik-rks.org/en/2022/11/25/ombudspersons-national-preventive-mechanism-against-torture-report-regarding-the-visit-conducted-to-the-correctional-centre-for-women-in-lipjan/>

Report on the visit to the Detention Centre for Foreigners in Vranidoll

Based on the legal mandate, the NPM, on May 19 and June 30, 2022, together with the staff of the Commissioner of the United Nations High Commissioner for Refugees (UNHCR) and the staff of the Civil Rights Program Kosovo (CRPK), visited the Detention Centre for Foreigners (DCF).

The DCF functions within the Department for Citizenship, Asylum and Migration (DCAM) of the Ministry of Internal Affairs (MIA). According to Article 2 of Regulation (MIA) no. 04/2018 on the Operation of the Centre for the Detention of Foreigners (hereinafter: the Regulation), in this centre are placed foreigners who are subject to forced removal, as well as foreigners who are considered to be a threat to public security, in order to prove their identity and for other reasons. The capacity of the DCF is for 70 people, while 3 foreigners were present during the visit made by the NPM.

During the visit made by the NPM to DCF, 3 detained foreign persons were present. The NPM checked their files and conducted group interviews through an Arabic translator. The NPM has not received any complaints from the interviewed persons for physical mistreatment, excessive use of physical force or for behaviour by security officials and DCF officials, which would not be in accordance with respecting their dignity. On the contrary, the foreigners in detention expressed themselves in favour of a very good treatment by the Kosovo Police and by the officials of the Ministry of Internal Affairs.

However, The NPM team, in the visit made on June 30, 2022 in DCF, visited the foreigner E.T., who was accommodated in the DCF together with his son, O.T. During the visit, the NPM interviewed E.T., who had no complaints regarding the conditions and treatment in the DCF. The complainant expressed concern that his son, O.T., during his stay in the Asylum Centre was bullied by another resident of that centre.¹⁸⁹

Regarding this matter, the NPM has reviewed the documentation for the O.T. case, including the health file, the police report and the court decisions. Based on the reviewed documentation, the NPM did not observe any signs of physical abuse. Also, the NPM contacted the authorized lawyer who represented the party in court, who affirmed that during the entire defence in court, the party did not express concern about ill-treatment and no signs of physical ill-treatment were observed.

As for the accommodation conditions, the NPM considers that the accommodation conditions in DCF are at a very good level. All rooms offered decent accommodation, heating, sufficient natural and artificial lighting and showers which were in very good condition. Foreigners at DCF can access the showers whenever they want.

189 Report of the Ombudsperson with Recommendation for the Centre for Foreigners in Vranidoll <https://oik-rks.org/en/2021/04/14/national-preventive-mechanism-report-on-visits-to-the-detention-centre-for-foreigners-in-vranidoll/>

Report on the visit to the Institute of Forensic Psychiatry in Pristina

The NPM, on July 26 and September 28, 2022, visited the Institute of Forensic Psychiatry of Kosovo. The purpose of this visit was to assess the respect for the fundamental rights of persons who have committed a criminal offense in a state of mental incapacity or essentially reduced mental capacity, who are subject to the order of the competent court for compulsory psychiatric treatment; of persons who are subject to a court order for psychiatric evaluation with detention in a health institution; of prisoners who have developed a mental disorder during imprisonment and who have been placed in one of the departments of the IFPK, whose rights are guaranteed by the Constitution of the Republic of Kosovo, by the laws applicable in the Republic of Kosovo, as well as by international standards for the protection of the rights of persons deprived of their liberty.

During the visit, the NPM did not receive any complaints about physical abuse, but neither did it notice any signs of physical violence among the patients. The team interviewed the patients present, who claimed proper treatment by the medical staff.

Accommodation conditions the material conditions in IFPK are somewhat good. It is worth noting that the inventory was demolished, especially in the part of the living room. In Ward B, when the air conditioners are turned on, water drips in the corridors, in one room in Ward B there was humidity, the mattresses are generally not good, the doors of the rooms are not secure and have transparent glass. The two isolation rooms in Ward C, due to poor conditions, are out of order, the cameras were not working, the glass of the room door was broken. Hygienic conditions are in order, patients have access to natural light, ventilation and privacy in showers and toilets was at the right level.

The family visit spaces in all wards are in corridors, without doors, where privacy is not ensured and are harsh, both for the patient and for the family. The area where family visits are carried out in Ward C was a very small room without windows, dark, with a table with two chairs and privacy was not at the right level.

In IFPK, in addition to assessment and medication treatment, psycho-social activities are also offered. The psycho-social treatment consists of activities, such as: games, watching TV, drawing, daily outings within the institution (in the promenade of the IFPK), individual and group sessions with the psychologist, etc. The schedule of daily activities was posted in visible places, but this schedule is uniform.

During the visit, the NPM observed an achievement related to psycho-social activities, which are evidenced in separate registers, such as: Register of Social Activities and Register of Psychological Activities. In addition, the NPM observed that most patients had individual treatment plans. Over the years, the NPM notes that the treatment is basically pharmacotherapy.

In terms of contact with the outside world, people accommodated in IPFK have the right to family visits twice a week for 30 minutes. In addition to visits, patients also have the right to phone calls. IFPK also practices therapeutic weekends, which has been successful so far. The NPM has not received complaints from patients about contact with the outside world.

Regarding the confidentiality of medical services, during the visits carried out in 2022, the NPM observed that medical services are provided to patients in IPFK without the presence of security officials, unless the medical staff in certain cases expressly requests such a thing.

Report on the visit to the Home for the Elderly and without Family Care in Prishtina

The Home for Elderly without Family Care (HEWFC) is an institution with a social character and operates within the Ministry of Finance, Labour and Transfers (hereinafter: MFLT). The official capacity of this institution is for 100 people. During the visit, the NPM noticed that 63 residents were accommodated in the HEWFC, of which 28 were men and 35 were women. Of them, 3 people are under the age of 65.

According to the regulation, the following residents are placed in HEWFC: Dependent users (immobile), who cannot fulfil their life needs independently, but must always be helped by others. The category of semi-dependent residents, whose health condition has declined and they accept special care. The other category is independent users, who, even though they are elderly, meet their living needs without the help of others.¹⁹⁰

During the visit, the NPM interviewed a number of residents and did not receive any complaints of physical abuse or verbal abuse, as well as behaviour that would violate dignity.

Regarding the accommodation conditions, the NPM observed during the visit that the yard and sidewalks of the institution were fixed and the access for the elderly and the disabled was significantly easier. While the rooms where the residents are placed had sufficient lighting, they were generally not humid, but the inventory was outdated and damaged in some rooms. Also, the bathrooms are significantly damaged.

Regarding the conditions in the HEWFC, during the visit, the NPM received a complaint from the resident G.S., who is disabled person in wheelchair and who claimed that for three years he has not had access to the yard, due to the small space of the elevator. Regarding this complaint, the NPM has again asked the competent bodies to improve the situation as soon as possible, making the necessary arrangements so that the resident can enjoy his right, equally with other residents and without any discrimination.

Regarding the medical care at HEWFC, the health personnel consists of: 1 regular doctor, who is undergoing residency and works from 14:00; a full-time dentist; a head nurse and 9 nurses, who work in shifts (12/12); and a full-time assistant for dental services; a full-time pharmacist (8-16), 2 full-time physical therapists, 1 sanitary technician, 1 laundry worker, 2 hygiene maintainers. The medical staff includes 14 medical assistants, who take care of people with physical disabilities and immobile people.

The care of these people is done with constant supervision, where the staff takes care of their personal hygiene, regular food, and other occasional needs.

¹⁹⁰ Report of the Ombudsperson on the Home for Elderly Persons without Family Care <https://oik-rks.org/en/2022/11/24/ombudspersons-national-preventive-mechanisms-report-regarding-the-visit-conducted-to-the-home-for-elderly-people-without-family-care-in-prishtina/>

The Right to a Fair and Impartial Trial and Judicial Protection of Rights

Report on case A. No. 642/2018, delay of the judicial procedure in the Basic Court in Prishtina

The report is based on an individual complaint and is intended to draw the attention of the Basic Court in Prishtina regarding the need to undertake actions for the review and decision on the case C.No.1244/2016, without further delays.

The complainant had filed a claim in the Basic Court in Prishtina against the respondent - the Energy Corporation of Kosovo, for the compensation of the real estate or the expropriation of the house and the case was registered with the number C.No.1244/2016 and until the day of publication of this report, the court has not decided on the case.

The Ombudsperson in this report emphasized that the practice of the ECHR has confirmed that the extension of the procedure is normally calculated from the time of the initiation of the judicial proceedings (see, among others, the *judgment Moldovan and others against Romania*, on 12 July, 2005, and the *judgment Sienkiewicz against Poland*, 30 September 2003) until such time as the case is concluded and/or the judgment is executed (see *Poitier against France* judgment, 8 November 2005). Article 13 of the ECHR directly reflects the state's obligation to first protect human rights through its legal system, establishing in this case an additional guarantee for an individual, which makes it possible for him/her to enjoy the rights effectively. From this perspective, an individual's right to due process within a reasonable time will be less effective if there is no opportunity to first raise this complaint with a local authority. The requirements of Article 13 support the requirements of Article 6 (see *the Kudla against Poland* judgment). Thus, Article 13 guarantees an effective means of appeal to a local authority, for an alleged violation of the requirements of Article 6, to consider a judicial case within a reasonable time. Since the case in question concerns a complaint regarding the duration of the procedure, Article 13 of the Convention is applicable.

The Ombudsperson concluded that in this case, such delay, without a final decision, violates the right to a fair trial, regular process, within a reasonable time limit defined and protected by Article 31 of the Constitution of the Republic of Kosovo and Article 6 of the ECHR; the right to effective legal remedies, protected by Article 32 of the Constitution of the Republic of Kosovo and Article 13 of the ECHR; the right to judicial protection of the rights defined in Article 54 of the Constitution of the Republic of Kosovo and therefore recommended to the Basic Court in Prishtina that without further delay it undertakes all the relevant actions for the review and decision on case C. No. 1244/2016.

Report on case A. No. 469/2020, delay of the judicial procedure in the Court of Appeal

The report is based on the individual appeal of Xh. Sh. (hereinafter: the appellant) and is intended to draw the attention of the Court of Appeal regarding the need to undertake the relevant actions for the review and decision on the case AC. No. 3263/19, without further delays.

The appellant, in the capacity of the claimant, had filed a claim in the Basic Court in Prishtina (BCP), number C.No. 2248/14, for the annulment of the employer's decision to terminate the appellant's employment relationship and for return to the workplace. With Judgment C. No. 2248/14, the BCP had approved the claimant's claim, while the respondent had submitted an appeal to the CA. The last action in court was on 14 June, 2019, when the appellant submitted an answer to the respondent's complaint. While in the communication that the Ombudsperson had with the court, it was only announced that the matter has been divided into works and has not yet been completed.

The Ombudsperson through this report recalls that the ECtHR has emphasized several times that long delays in the administration of justice, in cases where the parties to the proceedings do not have effective means of appeal in cases of protracted court proceedings, constitute a threat to the rule of the law within the domestic legal order (see Judgment in the case of *Bottazi against Italy*, 28 July, 1999, and Judgment in the case of *Di Mauro against Italy*, 28 July, 1999). With this report, the Ombudsperson recommended that the Court of Appeal, without further delay, undertake all relevant actions to decide on the case AC. No. 3263/19.

Report on case A. No. 703/2020, delay of the procedure in the Special Chamber of the Supreme Court of Kosovo

On 25 March, 2022, the Ombudsperson published the report on case A. no. 703/2020 which refers to the individual complaint and concerns the delay of the procedure in the Special Chamber of the Supreme Court of Kosovo in case C-IV-13-0964. The complainant had submitted a complaint to the SCSCCK against Decision No. PRZ006 - 0023 of PAK, protocol No. 123, dated 5 June, 2013, by which her request for compensation of unpaid wages for her late husband, in the gross amount of 1,170.28 euros, was rejected, and since a relatively long period of more than eight years ago, she addressed a complaint to the Ombudsperson.

From the communication of the Ombudsperson with the SCSCCK, it was announced that the Court had terminated the procedure due to the death of the complainant's husband. In the decision, it is specified that the interrupted procedure would be continued when the heirs of the deceased request the continuation, [...], or when the court, based on the proposal of the opposite party, requires the parties to continue the procedure.

From the data of the case, it is understood that the procedure before the SCSCCK was initiated by the complainant, after the death of her husband, while the SCSCCK had not assessed the active legitimacy of the party, in this case the complainant, and that it did so 8 years later through of the aforementioned decision.

The Ombudsperson finds that the delay of the procedure in the SCSCCK constitutes a violation of the right to due process within a reasonable time, guaranteed by paragraph 1 of article 6 of the European Convention

on Human Rights according to which *“In determining civil rights and obligations [...], everyone has the right to a fair and open trial within a reasonable time [...].”* and that as the ECtHR has emphasized, the right of the party to have his case decided within a reasonable time frame is an essential element of the right to a fair and impartial trial. For this and other issues highlighted in the report, *he recommended to the Special Chamber of the Supreme Court of Kosovo that, without further delays, undertake all the necessary actions for the review and decide on the case C-IV-13-0964.*

Letter of recommendation for the case A. No. 585/2021, delay of the judicial procedure in the Basic Court in Prishtina

The Ombudsperson in this case deals with the individual complaint filed against the Basic Court in Prishtina (BCP), regarding the delay of the judicial procedure related to the case C.nr.1070/19. In the appeal, the appellant asserts that since the filing of the lawsuit in 2019, the court had not taken any procedural action in dealing with his case.

In the communication that the Ombudsperson had with the Court, it was announced that since the object of the dispute in this case is the request for compensation for damage, according to the strategy of the KJC for reducing cases, it is not among the priority cases and that the case in question does not it is still in the queue to be processed.

The Ombudsperson estimates that it is the state’s constitutional obligation to guarantee citizens that their cases will be heard fairly, publicly by the court and within a reasonable time, as well as to guarantee them effective legal remedies. These rights are guaranteed by articles 6 and 13 of the ECHR, which define: *“Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal (...).”*(Article 6); and: *“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority (...).”*(Article 13). Thus, the requirements of Article 13 support the requirements of Article 6 (see the judgment: Kudla against Poland).

In this case, the Ombudsperson considered that the further delay of the judicial procedure in this case constitutes a violation of the right to a fair and impartial trial and recommended the Basic Court in Prishtina to undertake the necessary actions and deal with it without further delay Case C. No. 1070/19.

Letter of recommendation for case A. No. 230/2021, for the delay of court procedure at the Basic Court in Prishtina - Branch in Glllogvc

The Ombudsperson in this case has handled the individual complaint filed against the Basic Court in Prishtina - Branch in Glllogvc, which is related to the delay of court procedure.

The complainant filed a claim with the Basic Court in Prishtina - Branch in Glllogvc for the non-implementation of the decision of the Municipal Directorate of Education in Glllogvc (*No. 09-610/01-58205, date 4/10/2019*), as well as the recommendations of the Education Inspectorate, dated 5 March 2020, which recognized his child’s right to be admitted in the day care. With the non-implementation of the decision, according to his claims, he continued to suffer material damages, as he had to enrol his child

in a private day care where the monthly expenses reached up to EUR 150, including EUR 15 payment for the psychologist that he had to provide once a week, as his child is with disabilities. Such situation has complicated the material and emotional situation of the claimant, as well as the child with disabilities, undermining his well-being. Since the filing of the claim, the court had not taken any action to proceed with his case.

In the communication conducted by the Ombudsperson with the Court, was informed that since the subject of the dispute in this case is the claim for compensation of damage, thus as such it is not a case with legal priority, and that the court is still handling cases of 2015-2016.

The Ombudsperson considered that the case in question should be handled as priority, as it deals with a sensitive group of people, in this case children with disabilities, in accordance with the constitutional and legal obligations for the protection of children. Article 50 [Rights of the Child] stipulates that: *“All actions undertaken by public or private authorities concerning children shall be in the best interest of the children.”* This principle is also enshrined in the Convention on the Rights of the Child, which is directly applied to Kosovo [Article 20], as well as in the Law on Child Protection, which in Article 5, paragraph 4, stipulates: *“In order to ensure the best interest of the child, the following principles should be observed: 4.3. Administrative and judicial decisions affecting the child must be taken and enforced promptly and without unreasonable delays.”* According to the Committee on the Rights of the Child, as the main authority in the interpretation of the Convention on the Rights of the Child in its General Comment No. 14, the best interest of the child is a triple concept, which includes: a substantial right, an interpretive legal principle and a rule of procedure. As a rule of procedure, whenever a decision is to be made that will affect a particular child, an identified group of children or in children in general, the decision-making process should include an assessment of the potential impact (positive or negative) of the decision on the child or children in question. Furthermore, Article 46 of the Law on Child Protection expressly provides for the protection of children with disabilities, where all institutions have the obligation: *“[...] shall eliminate all infrastructure, social, environmental, institutional and legal barriers in the areas of education, employment and vocational education, health care, rehabilitation, cultural, recreational and sports activities so that children with disabilities exercise the rights provided for in this law.”*

In this case, the Court's decision regarding the case of damage compensation is very important to ensure that the child with disabilities, who is also the injured party, will have the opportunity through this compensation to have access to qualitative educational and health services. Further delay of the case would have negative consequences to the child's well-being, and as such, it is not in the child's best interest.

The Ombudsperson, without intending to interfere in Court's decision-making or in any way to influence the content of the case, asked the court to take the necessary actions to handle this case without further delay.

Legal Opinion of the Ombudsperson in the capacity of Friend of the Court (Amicus Curiae) addressed to the Basic Court in Prishtina for the case A. No. 30/2022 regarding the proceeding of the court procedure

This opinion of the Ombudsperson, in the capacity of a Friend of the Court, aims to express the views of the Ombudsperson from the perspective of human rights, namely the criteria that must be met according to the Law No. 05/L-085 on Electricity for the dismissal of the member of the Board of Directors of the Transmission System Operator.

According to the complainant's allegations, through the Decision No. 07-V-083, dated 29 October 2020, by the Assembly of the Republic of Kosovo, she was elected as a member of the Board of Directors of the Public Enterprise "Kosovo Electricity Transmission, System and Market Operator (KOSTT)". The complainant has also informed that she is the Director of the Audit Unit at the Air Navigation Service Agency (ANSA). Given the fact that she holds two positions, she addressed to the Anti-Corruption Agency with a request for an assessment of the conflict of interest.

Regarding this issue, the Anti-Corruption Agency had informed the Assembly of the Republic of Kosovo that the complainant could keep the position of the Member of the Board of KOSTT, but could not get the salary according to the provisions of Decision No. 05-V-389 of the Assembly of the Republic of Kosovo.

In relation to this issue, the complainant notified that she had submitted a request to the Parliamentary Committee for Economy, Industry, Entrepreneurship and Trade to examine the issue of her salary as a member of the Board of Directors of KOSTT, and determine the compensation for exercising the function in question. This Committee came to conclusion to ask the complainant to decide which position she wanted to exercise.

Following this, the Assembly of the Republic of Kosovo, in the plenary session held on 12 August 2021, issued the Decision No. 08-V-063, through which the complainant was dismissed from the position of the Member of the Board of Directors of KOSTT.

The complainant considers this decision for dismissal by the Assembly to be illegal, because according to her, the criteria for dismissal according to the Law No. 05/L-085 on Electricity, respectively, the circumstances according to Article 14, paragraph 11 were not met, and for this she filed a claim with the Basic Court in Prishtina.

Regarding this issue, the Ombudsperson notes that the issue of appointment and dismissal of the Members of the Board of Directors of KOSTT is regulated by the Law No. 05/L-085 on Electricity. Article 14, paragraph 11, defines the conditions for the dismissal of members of the Board of Directors of KOSTT, without which they cannot be dismissed, and that the Assembly of the Republic of Kosovo, in the case of issuing Decision No. 08-V-063, dated 12 August 2021, through which the complainant was dismissed from the position of member of the Board of Directors of KOSTT, did not provide clarifications about the existence of circumstances provided for in Article 14, paragraph 11 of the Law on Electricity.

Holding the position of director in ANSA in addition to exercising a public function as a member of the Board of Directors in KOSTT is not contrary to Article 13, paragraph 2 of Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of a Public Function.

The Ombudsperson considers that the issue of the suspension of payment, in the opinion of ACA, should be examined by the Parliamentary Committee for Economy, Industry, Entrepreneurship and Trade and decided in a plenary session by the Assembly of the Republic of Kosovo.

Legal Opinion of the Ombudsperson in the capacity of Friend of the Court (Amicus Curiae) on the case A. No. 274/2022 relating the claim filed by the State Advocacy Office in the case of the appointment of the deputy mayor of the municipality for communities in Fushe Kosova

This opinion of the Ombudsperson, in the capacity of Friend of the Court, aims to justify the legal basis and provide an analysis regarding the case based on the individual complaint of the complainant regarding the actions of the Ministry of Local Government Administration (hereinafter MLGA), related to the issue of appointing the Deputy Mayor for Communities in Fushe Kosova. On 04 February 2022, the Municipality of Fushe Kosova appointed the complainant, a representative of the political entity "Initiative of Fushe Kosova for Egyptian and Ashkali" to the position of Deputy Mayor for Communities.

Following this, MLGA asked the Municipality of Fushe Kosova to review the legality of the decision to appoint the Deputy Mayor for Communities in this municipality, considering that it is contrary to the provisions of the applicable legislation, as in the Administrative Instruction 02/2020 for the Procedure of Appointing Deputy Mayors in Municipalities, it is stipulated that: "*The Deputy Mayor for Communities shall be appointed among the members of minority group, which makes up the largest minority community in the municipality*" (Article 8.3). Given that the Ashkali community constitutes the largest minority community in Fushe Kosova, as well as the fact that the complainant belongs to the Egyptian community and not to the Ashkali community, according to the MLGA, his appointment was contrary to the aforementioned provision of Administrative Instruction 02/2020.

Since the Assembly of the Municipality of Fushe Kosova had not taken action to review this act, the State Advocacy Office of Kosovo, according to the Law on Public Financial Management and Accountability, as well as the Law on the State Advocacy Office, on 29 April 2022, at the Basic Court in Prishtina - The Department for Administrative Affairs, initiated a lawsuit for administrative conflict for the annulment of the decision, by which the complainant was appointed to the position of Deputy Mayor for Communities in municipality of Fushe Kosova.

The Constitution of the Republic of Kosovo in Article 62 provides the rule that the position of Deputy for Communities is reserved for communities in municipalities where at least 10% of inhabitants are from among the minority community, so that these communities, which in those municipalities do not constitute majority, have appropriate representation in public and local bodies. Moreover, the role of Deputy Mayor for Communities is quite important, given that he/she is competent for the advancement of the dialogue

between them and represents the official person who is authorized to solve the problems and interests of communities and its members, which do not constitute the majority¹⁹¹.

The Ombudsperson states that in order for the representatives of minority communities be able to realize and protect their rights guaranteed by the Constitution, it is necessary to provide them with appropriate representation in local public bodies. Thus, *In municipalities where at least ten per cent (10%) of the residents belong to Communities not in the majority in those municipalities, a post of Vice President of the Municipal Assembly for Communities shall be reserved for a representative of these communities* (Article 62, paragraph 1 of the Constitution).

According to the opinion of the Ombudsperson, neither Administrative Instruction (of that time) No. 2014/01 nor Administrative Instruction (which is in force) No. 02/2020 for the Procedure of Appointing Deputy Mayors in Municipalities do not convey the spirit of the Constitution and the Law on Local Self-Government. It is not legally sustainable to apply the position that the Deputy Mayor for Communities must be a member of the largest minority group of the community in a given municipality.

In this regard, the Ombudsperson finds that any restriction in the Administrative Instruction, according to which priority would be given to any of the minority communities for the proposal of the Deputy Mayor for Communities of the municipality, violates the right of other non-majority communities, which are not the largest minority community, to propose the Deputy Mayor for Communities of the municipality¹⁹². Therefore, the Ombudsperson considers that Administrative Instruction No. 02/2020 for the Procedure of Appointing Deputy Mayors in Municipalities is contrary to the Law on Local Self-Government that is in force.

191 Prof. Dr. Enver Hasani / Prof. Dr. Ivan Čukalović, Edition I, December 2013, Prishtina, Commentary on the Constitution, page 251, Article 62.

192 A. no. 676/2021

Right to Legal Remedies

Ex-officio Report No. 412/2022 regarding the Amending and Supplementing the Regulation No. 01/2022 on the Determination of the Procedures for the Functioning of the Offices for Fines and Administrative Penalties of the Tax Administration of Kosovo

The Ombudsperson in this case started investigations according to its official duties based on the article published on the “Nacionale” portal, with the title: “Pay the penalty 50% cheaper, but you have no right to appeal - is TAK violating the Constitution?”¹⁹³, dated 15 July 2022. The Article in question explained that TAK has approved Regulation No. 01/2022 on the Determination of the Procedures for the Functioning of the Offices for Fines and Administrative Penalties (ZGjoNA). Further, the article defines that Regulation No. 01/2022 stipulates: “*In case the taxpayer pays the imposed fine within fifteen (15) days from the date of entry into force of the Decision by the ZGjoNA, the taxpayer is released from the payment of fifty percent (50%) of the amount of the imposed fine and in this case the appeal procedure is abolished and the case is considered closed.*”

The report for this case aims to draw attention of the Tax Administration of Kosovo (hereinafter: TAK) regarding the violation of the right of taxpayers to appeal against the decisions of the Organizational Units for Fines and Administrative Penalties (ZGjoNA), which was made under Regulation No. 01/2022 on the Determination of the Procedures for the Functioning of the Offices for Fines and Administrative Penalties (hereinafter: Regulation No. 01/2022).

On the official website, TAK had published the announcement with the title: “Notice to taxpayers - Fines can only be paid 50%, if paid within 15 days.”¹⁹⁴, where, among others, it was announced the issuance of the new Regulation, which had determined that if the fine was paid within 15 days the appeal procedure is abolished and the case is considered closed.

The Ombudsperson notes that in terms of the constitutional right to legal remedies, the persons against whom the misdemeanour has been pronounced have the right to appeal their sentences. The Law on Minor Offences stipulates in Article 58: “*With regard to minor offences, and imposing minor offence sanction, shall*

193 Pay the penalty 50% cheaper, but you have no right of appeal - is TAK violating the Constitution? -https://nacionale.com/sociale/paguaj-denimin-50-me-lire-por-ske-te-drejte-ankese-a-po-e-shkele-atk-ja-kushtetuten?fbclid=IwAR3Han7k35-vFtQU21M_JhMGPTAgouHsx2GjvHIUR_YqV05-FDC5nN_xeng

194 Notice to taxpayers – Fines can only be paid 50%, if paid within 15 days -<https://www.atk-ks.org/njoftim-per-tatimpagues-gjobat-mund-te-paguhen-vetem-50-nese-paguhen-brenda-15-diteve/>

be the court who decides, respectively the body on minor offence by means of a decision, against which all legal remedies defined under this law, are allowed.”

In addition, Article 54 of the Law on Minor Offences foresees the dual minor offence proceedings instances, stipulating that: *“Against a decision issued in the first instance, it may be submitted an appeal, if not specified otherwise in this law.”* Therefore, the right to appeal the decisions on minor offence is provided by law and the exceptions to this right are determined by law. According to the regulation, the complaint, as a regular legal remedy, which enables the challenging of a decision of the body for a minor offence, is not allowed only if the law expressly provides so. According to Article 63 of the Law on Minor Offences, The body on minor offence shall, upon the development of minor offence proceeding, appropriately implement the provisions of the Law on Administrative Procedure, unless otherwise provided by this Law and the Law by which there is foreseen the minor offence. Law on General Administrative Procedure, in Article 13 foresees the principle of the right to legal remedies. According to this article, the complaint, as a legal remedy in the minor offence proceedings before the minor offence authority, in certain cases can be expressly excluded by law and it is not possible to deny it by a sublegal act, as is the case with Regulation No. 01/2022.

The Ombudsperson considers that it is essential to distinguish judicial procedures and procedures before administrative bodies. In this regard, the Ombudsperson draws attention to the Instruction of the Supreme Court of Kosovo, dated 02 October 2020, according to which the Supreme Court has found that administrative bodies cannot refer to court rules. This is because the Law on Minor Offences regulates payment of fines imposed by the court separately from the provisions of the minor offence order that imposes the fines by the competent minor offences body.

During the handling of this case, but also of similar cases in the past, the Ombudsperson notes that the conditioning of citizens in such forms represents a violation of the separation of powers, defined in Article 4 of the Constitution. From cases handled so far, it can be noticed that by imposing conditions on citizens that are not directly related to the main issue, there is an attempt to bypass the judicial power to achieve quick results, both by the authorities at the municipal level and in the central one. Such an intervention not only violates the separation of powers, but has a direct impact on the rights guaranteed by the Constitution, specifically on the right to legal remedies. Through this report, the Ombudsperson recommended the Tax Administration of Kosovo to change Regulation No. 01/2022 on the Determination of the Procedures for the Functioning of the Offices for Fines and Administrative Penalties s (ZGjoNA), namely Article 12, paragraph 3, to reword it in such a way that the right to appeal is not lost.

Report on case A. No. 700/2020 regarding the allegations of the complainant for non-response to the request and in complaint by the Ministry of Environment, Spatial Planning and Infrastructure

The report is based on an individual complaint and evaluates the actions, respectively inactions of the Ministry of Environment, Spatial Planning and Infrastructure, as the responsible authority, in relation to the handling of the request of the complainant I.M According to the claims of the complainant and documentation presented, from 20 November 2017 until 30 September 2019, worked under a contract for special services in the Public Communication Division of MI. On 6 March 2020, the complainant, through a

request (No. 2684) addressed to the Ministry of Internal Affairs, requested to be provided with a certificate of pension contribution and withholding tax on wages for the period of his employment at the Ministry of Internal Affairs. Since the complainant did not receive a response to this request, repeated the request via e-mail on 24 June 2020.

Following this, on 16 July 2020, the complainant via e-mail received a response from the accounting officer of this ministry, through which it was notified that the officer in question was not competent to issue a certificate of pension contribution and withholding tax on wages, and that other officials in the ministry were competent for this matter. After that he did not receive any other information.

In this report, the Ombudsperson found that the ministry's non-response to the complainant's request is in violation of Law No. 05/L-031 on the General Administrative Procedure. Failure of the competent body to support its actions in the specific case in the principle of legality, in the principle of informality and efficiency, in the principle of information and active assistance, as basic principles that ensure the functioning of the democratic state, is an indication of clear violation of the complainant's rights to ensure an effective administrative process in accordance with the law.

Also, the Ombudsperson considers that the inaction of the ministry to provide certificate of pension contribution and withholding tax on wages, for the period of employment of the complainant at the MI, is also contrary to Law no. 05/L-028 on Personal Income Tax, as well as contrary to Administrative Instruction no. 01/2016 for the implementation of Law No. 05/L-028 on Personal Income Tax. With this report, the Ombudsperson recommended the Ministry of Infrastructure to undertake all necessary actions regarding the complainant's request and respond to him, in accordance with Law no. 05/L-031 on the General Administrative Procedure and Law No. 05/L-028 on Personal Income Tax.

Report on case A. No. 723/2021 regarding the violation of the right to information and exercise of legal remedies

The purpose of this report is to draw attention of the Faculty of Law of the "Haxhi Zeka" University (UHZ) in Peja regarding the violation of the right to information and use of effective legal remedies of the complainant regarding the announcement of the results of Competition No. 2803 for the engagement of external collaborators for lectures and exercises based on the needs of the academic units of the UHZ for the academic year 2021/2022.

The complainant, through online application, had applied in two positions announced in Competition No. 2803 for engagement of external collaborators for lectures and exercises based on the needs of academic units of UHZ for the academic year 2021/2022. Since the results of the competition in question had not been published, he had requested twice in a row to be informed by the Faculty of Law about the results of the competition, but he had not received an answer to his request.

After the inquiry submitted by the Ombudsperson to Rector of UHZ asking to be informed about this matter, he received a response from the Rector and the Dean, through which, among others, it was announced that the Decision of the Council of the Faculty of Law had been made for the selection of external collaborators

and which was announced on the notice board at the Faculty of Law, and that the complainant had not exercised the right to appeal within the 8-day period.

Through this report, the Ombudsperson brings to attention that informing the parties about the progress of an administrative procedure, where it has been decided for any of their rights or obligations, through appropriate means of information, is the only means that enables the exercise of the right to legal remedies, this right is guaranteed by the Constitution and international instruments.

The Ombudsperson considers that the announcement of the decision of the Council of the Faculty of Law on the notice board of this faculty and not on the website of the university, in the form defined by Regulation No. 2327 of the evaluation procedures for the engagement of external collaborators in UHZ, has violated the party's right to information through accessible means of information. As a result, The Ombudsperson reminds the authority that any administrative action that limits or may limit a right or legal interest of a person must be authorized only by law. For this, the Ombudsperson recommended to the Faculty of Law of the "Haxhi Zeka" University in Peja to publish the decision of the Council of the Faculty of Law for the selection of external collaborators in connection with Competition No. 2803, in accordance with Article 8, paragraph 2 of Regulation No. 2327, so that the deadline for the exercise of legal remedies derives from the time of publication of the decision in accordance with the regulation in question.

Report on case A. No. 369/2021 regarding non-implementation of the omnipotent decision of the second instance body of the Ministry of Environment and Spatial Planning

The report is based on an individual complaint related to the non-implementation of the omnipotent Decision A-18/19 of 15 May 2019, issued by the second instance body of the Ministry of Environment and Spatial Planning (MESP), which determines the obligation of The Directorate of Urbanism in the Municipality of Prishtina to act according to the request of the complainant and Regulation 01 No. 110-288305 for the Procedure of Buildings Construction of Temporary Character in Properties of Natural and Legal Persons.

The Ombudsperson estimates that against Decision No. A-18/19, dated 15 May 2019, issued by MESP, as a superior body of the Municipality of Prishtina, a claim for administrative conflict was not initiated with the court. With the passing of the legal term of 30 days, the decision has become omnipotent, and as a result the administration body, respectively DU in the Municipality of Prishtina is obliged to implement it. The DU in the Municipality of Prishtina, instead of acting according to the obligation given by the final and binding decision of the superior body of MESP, in relation to the case of the complainant, continued to issue other decisions (05 No. 350/02-0265139/18, dated 15 September 2020; 05 No. 02-0265139/18, dated 2 October 2019, evaluated by the MESP as illegal; 05 No. 070/01-192404/21, dated 1 October 2021).

The Ombudsperson recalls that competent authorities have a positive obligation to organize a system for the implementation of decisions, which is effective both in terms of legal and practical sense, which ensures their implementation without unnecessary delays.

In this regard, the Ombudsperson emphasizes that it would be senseless that the legal system would allow an omnipotent administrative decision remains ineffective to the detriment of the complainant. Therefore,

the non-implementation of omnipotent administrative decision produces negative effects, which lead to situations that are not in compliance with the principle of the rule of law, a principle which authorities of the Republic of Kosovo are obliged to observe.¹⁹⁵

The non-implementation of the omnipotent decision of the superior body, respectively of the second instance body from the DU in the Municipality of Prishtina, is contrary to the rule of law and legal certainty, and as such constitutes a violation of human rights, violates the right to effective legal remedies, guaranteed by the Constitution of the Republic of Kosovo and international instruments, directly applicable to Kosovo. For this reason, the Ombudsperson recommended the Municipality of Prishtina to take action towards implementation of the omnipotent Decision A-18/19, dated 15 May 2019.

Letter of recommendation for case A. No. 114/2021 regarding violation of the Law on General Administrative Procedure

The Ombudsperson in this case handles the individual complaint filed against the Ministry of Foreign Affairs and Diaspora. The complainant was interviewed for the position of executive assistant at the Consulate of the Republic of Kosovo in Zurich, Switzerland, based on the competition announced by the Ministry of Foreign Affairs to which she had applied. She was not officially notified by the Ministry of Internal Affairs and Communications about her non-selection in the aforementioned position; therefore, she addressed the Consulate of the Republic of Kosovo in Zurich with a request for information, but did not receive an answer. Then the complainant, through her authorized representative, addressed to the Ministry of Foreign Affairs with a request for notification regarding the selection of the candidate for the position of executive assistant at the Consulate of the Republic of Kosovo in Zurich, Switzerland, but the complainant's request was not accepted and was also not registered by the Ministry of Justice. Since the request for notification was not accepted, the complainant also sent the request by mail, but it was also not accepted by the Ministry of Justice and was returned to her.

The Ombudsperson considers that the refusal of acceptance, non-registration and non-response by the Ministry of Foreign Affairs to the request of notification regarding the selection of the candidate for the position of executive assistant at the Consulate of the Republic of Kosovo in Zurich, Switzerland, it is a clear indication of the violation of human rights due to the fact that is contrary to Law no. 05/L-031 on General Administrative Procedure, and also contrary to the basic principles of the democratic state, such as: the principle of legality and the principle of information and active assistance. The Ministry of Foreign Affairs failed to fulfil the legal obligations stemming from Law No. 05/L-031 on General Administrative Procedure, Article 75, paragraph 1, and Article 76, paragraphs 1 and 2.

The purpose of the good administration of the public administrative body, among others, is creation of good practices, promoting an administrative culture, transparent, harmonized and citizen-centred, and for this the Ombudsperson recommended to the Ministry of Foreign Affairs and Diaspora to undertake all the necessary actions regarding the complainant's request and respond to her, in accordance with Law No. 05/L-031 on General Administrative Procedure.

¹⁹⁵ Article 7, paragraph 1 of the Constitution of the Republic of Kosovo

Opinion of the Ombudsperson regarding the referral KI 10/22 of the Trade Union of the Institute of Forensic Medicine for the assessment of the constitutionality of the Decision of the Basic Court in Prishtina, the Decision of the Court of Appeal and the Judgment of the Supreme Court

This Opinion is aimed to express the views of the Ombudsperson from the point of view of the use of legal remedies in general and in relation to the case raised with the Constitutional Court by the Trade Union of the Institute of Forensic Medicine in particular, which requested assessment of the constitutionality of Decision A. No. 1430/21 of the Basic Court in Prishtina, of Decision AA. no. 651/2021 of the Court of Appeal and Judgment ARJ No. 115/2021 of the Supreme Court, relating the assessment of the legality of the IFM Regulation - No. 01/2020 on the Internal Organization and Systematization of the Institute of Forensic Medicine.

The Trade Union of the Institute of Forensic Medicine has raised the case in question in the Supreme Court with the claim of inconsistency with the IFM Regulation - No. 01/2020 on the Internal Organization and Systematization of the Institute of Forensic Medicine with the provisions of Law no. 05/L-060 on Forensic Medicine, respectively Article 15 [Activity of the Institute] of the law.

Since the Supreme Court rendered the Judgment ARJ 115/2021, by which it rejected as ungrounded the request for an extraordinary review of the court decision, the Trade Union of the Institute of Forensic Medicine demanded from the Constitutional Court to assess the constitutionality of Judgment ARJ 115/2021 of the Supreme Court of Kosovo.

As stated above, the Trade Union of the Institute of Forensic Medicine submitted a request for the assessment of the legality of the regulation in regular courts in the Republic of Kosovo. The request for the assessment of the legality of the regulation mentioned above was rejected as ungrounded by the BCP, AC and SC, making it unclear which institution is responsible for the assessment of by-laws or whether the internal regulations are considered general acts, which may be subject to judicial review.

The legal remedies for the assessment of the legality/constitutionality of internal regulations of institutions remain to be decided by the Constitutional Court, while the question of assessing the legality/constitutionality of administrative instructions is not completely clarified by Law No. 03/L-202 on Administrative Conflicts. Moreover, the practice of regular courts, specifically Decision A. No. 2886/2019, dated 11.6.2020, according to which no administrative conflict can occur against the administrative instruction and that judicial protection outside the administrative conflict was provided for the case in question, without providing any clarification as to what judicial protection is provided outside the administrative conflict, creates an unclear legal situation, which requires a solution that would enable citizens to use legal remedies efficiently.

The Ombudsperson considers that it is important to clarify the responsibility of the competent institution for the assessment of the legality of bylaws. This would enable the assessment of the compliance of bylaws with the law, but also implementation of the constitutional right, namely Article 54 [Judicial Protection of Rights], according to which it is determined:

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

Likewise, such an assessment would also contribute to the implementation of Article 32 [Right to Legal Remedies] of the Constitution, according to which:

“Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law”.

The Ombudsperson considers that such situations should be clearly defined in the provisions of the laws (the Law on Normative Acts, which is currently under review in the Assembly of the Republic of Kosovo, and the Law on Administrative Conflicts, which is in the drafting stage in the Ministry of Internal Affairs and Public Administration). This would create a clear picture on what are the general normative acts, which of these acts are subject to judicial review and which are not, and to determine the competence of the competent body for the assessment of legality/constitutionality of such acts. Therefore, the Ombudsperson considers the assessment of the Constitutional Court as necessary regarding issues in question, which directly have an impact on the right to judicial protection and legal remedies.

Right to Privacy

Ex-officio Report No. 95/2022 regarding the installation of cameras in the Correctional Centre for Women and Juveniles

Based on written and electronic media reports published on 7 February 2022, authorities of the Correctional Centre for Women in Lipjan installed security cameras in some prison cells, where prisoners suffering from serious mental health conditions are held.

The NPM team, on 8 February 2022, visited the centre in question and noticed that security cameras have been installed in some cells in which prisoners with serious mental health conditions are placed, who in principle should be treated in adequate health institutions. The team observed that the security cameras only covered the beds and windows of the cells, not the toilets, showers and sinks. The NPM was informed that the reason for the installation of security cameras in these cells was protection of prisoners who pose a risk of self-harm or suicide due to their health condition. During the visit, the NPM team was informed that two officials of the Correctional Centre for Women have been suspended relating this issue.

The Ombudsperson, for the case in question, concluded that there is no concrete normative act that would regulate instalment of security cameras in the prisoner's cell, which would provide appropriate procedural guarantees against arbitrary intervention by the authorities. Therefore, the Ombudsperson issued a report in relation to this issue, through which recommended the Ministry of Justice to adopt a bylaw that would include all procedural guarantees against arbitrary interference in the privacy of prisoners who are subject to surveillance by security cameras in their cells, provided by the legislation applicable in the Republic of Kosovo, by the decisions of the ECHR and by the standards of the KPT, mentioned above.

The Ombudsperson was informed by the Ministry of Justice that the Correctional Service of Kosovo has established a working group to draft an internal Regulation on the procedures and security measures for the protection of personal data.

The Right of Access to Public Documents

Report on case A. No. 418/2022, the right of access to public documents

The purpose of this report is to handle the complaint of L.H., a journalist of the online newspaper “Insajderi” (hereinafter: the complainant), whose request to access public documents was rejected by the Ministry of Foreign Affairs and Diaspora (MFAD).

The complainant addressed to the Ministry of Foreign Affairs with a request for access to public documents, namely for accessing documents related to expenses for derivatives of one of the diplomats, from February 2019 to February 2022. After the rejection of the request for access to public documents, the complainant filed a complaint to the Information and Privacy Agency (IPA), which, after reviewing the complaint, issued the Decision No. A-272/2022, dated 2.6.2022 (protocol No.232) obliging the Ministry of Foreign Affairs to provide access to the complainant. Despite the notification of the IPA on the imposition of administrative fine, dated 1 July 2022, MFAD has not taken any action relating the IPA decision. IPA, on 22.7.2022 issued Decision No. Gj-272/2022 (dated 22.7.2022) for the imposition of a fine against the MFAD, in the amount of EUR 13,000.

The Ombudsperson, with this report reminded the Ministry of Justice that the requests for access to public documents addressed to public institutions by citizens, civil society, the media, etc., are requests that are submitted based on the constitutional and legal guarantees in the country. In addition, Article 11, paragraph 6 of the LAPD expressly stipulates that: *“Requests for access to public documents or reuse of public documents shall be treated rapidly and according to the principle of objectivity and impartiality pursuant to the applicable Law on General Administrative Procedure”*.

Through this report, the Ombudsperson emphasized that accountability is essential in terms of promoting and strengthening democracy and good governance. Citizens, civil society and the media have an important role to play in this aspect. Handling requests for access to public documents is a legal obligation for all entities exercising public authorizations. Consequently, the requests for access to public documents, submitted to institutions that exercise public authorizations, cannot be handled differently except according to the legal provisions in force, which are part of the daily work of the public and state administration. For what was said above, he recommended the Ministry of Foreign Affairs and Diaspora to provide access to the requested documents, in accordance with Law No. 06/L-081 on Access to Public Documents, and in compliance with the relevant legislation in force.

Freedom of Association

Report on case A. No. 474/2021 regarding claims of discrimination on the basis of freedom of association as members of the Civil Aviation Authority Workers' Union of Kosovo

The report aims to draw the attention of the Civil Aviation Authority (hereinafter: CAA) regarding the need to create sufficient space for action for the Civil Aviation Authority Workers' Union of Kosovo (hereinafter referred to as: union association), respecting the freedom of association and finding a common language, creating opportunities for the involvement of this union in the development of institution's policies without ignoring and discriminating them.

The Ombudsperson, after analysing the complaint and communicating with the responsible authority, concluded that even though freedom of association is guaranteed, it is noted that there was a lack of expressed willingness to cooperate with the union association. Non-cooperation creates divergences and problems with chain effects.

Freedom of association includes the right to access the union without discrimination and to act freely in the union. The actions of the CAA management towards the officials who are members of the union association, in addition to having negative effect on the exercise of union activity, create fear and uncertainty among other officials and hinder the freedom of association. Officials of the union association, their representatives engaged in collective negotiations or even the members of the union should not, due to being part of the union, have harmful consequences in the form of dismissal or other measures of exerting pressure. The CAA must provide the union association with unimpeded access within its scope of activity in matters related to the protection of the rights of its members and in the specific case the CAA must support the union association by promoting it as an added value with CAA.

Based on the above, the Ombudsperson recommended the Civil Aviation Authority to take all measures respecting the right of association and union organization without any obstacle or measure that limits or discriminates against members in union organization; to increase the level of cooperation with the Civil Aviation Authority Workers' Union of Kosovo in the full exercise of duties according to the purpose of establishing and successfully fulfilling the function for which it was established; in the framework of drafting internal policies in the Civil Aviation Authority, to enable access to the union association, so that the proposals of the union are also heard in policymaking of this institution.

While to the Ministry of Environment, Spatial Planning and Infrastructure he recommended, within its powers, to exercise oversight over the operation of the Civil Aviation Authority, including the situation created in the relations between the union and the institution's leadership.

Protection of Property

Report on case A. No. 353/2021 regarding the Regulation on Amending and Supplementing of the Regulation 01. No. 110-2782 on Tariffs, Charges and Municipal Fines

This report is based on the individual complaint filed against the Municipality of Prishtina, regarding payment of the immovable property transaction fee. According to the complainant, he and his family members were forced to pay about EUR 14,000 in property transaction fees for the inherited properties. The complainant claims that the Regulation on Tariffs, Charges and Municipal Fines of the Municipality of Prishtina is illegal and unaffordable for the citizens of the Municipality of Prishtina.

The purpose of this report is to draw attention to the Municipality of Prishtina regarding the violation of the rights of immovable property owners in the territory of the municipality of Prishtina, who are forced to pay the tax for transaction of immovable property, as provided for by Regulation 01- 413/04-0253531/17 (dated 10 October 2017) on Amending and Supplementing the Regulation 01 No. 110-2782 on Tariffs, Charges and Municipal Fines (dated 2.12.2011). Article 4 of this Regulation determines the tariffs for property transactions. Whereas Regulation 01 No. 110-2782 on Amending and Supplementing the Regulation on Tariffs, Charges and Municipal Fines, dated 2.12.2011 (2017), in Article 1 amends Article 4 of the basic regulation. According to Article 1, paragraphs 1 and 2, the tax tariff for the transaction of immovable property is determined as follows: One unit is calculated at the value of EUR 150; When a natural/legal person acquires the right of ownership by a legal act, the amount of the tax will be set to the amount of EUR 150 per unit.

The Municipality of Prishtina, on 10 October 2017, approved the Regulation 01-413/04-0253531/17 on Amending and Supplementing the Regulation 01 No. 110-2782 on Tariffs, Charges and Municipal Fines, through which it was determined payment of the tariff for the transaction of immovable property in the territory of the Municipality of Prishtina.

In relation to this issue, the Ministry of Local Government Administration and the Ministry of Finance have assessed the legality of the above-mentioned act and have not approved the decision to amend the aforementioned regulation, repeating their position dated 17 May 2017 that the Municipality of Prishtina charges citizens with double taxation at the time of the property transaction. These two ministers have notified the Municipality of Prishtina of the need to issue a new regulation where payment of a tariff should not be included in the transaction of immovable property, because this is considered as a double taxation at the time of property transaction, but this was not taken into consideration by the Municipality of Prishtina. However, none of these ministries acted in accordance with Article 9, paragraph 6, of Regulation (GRK) No. 10/2019 on the Administrative Review of the Municipal Acts, according to which the

institutions competent for assessing the legality of municipal acts must take concrete actions to initiate court proceedings, in case the municipality refuses the request for review of the act.

The Ombudsperson considered that obligation of citizens of the Municipality of Prishtina to pay a tariff for the transaction of immovable property is in violation with the right to property, a right guaranteed by the Constitution and by the ECHR, and thus recommended Municipality of Prishtina to repeal the Regulation 01-413/04-0253531/17, dated 10 October 2017, on Amending and Supplementing the Regulation 01 No. 110-2782 on Tariffs, Charges and Municipal Fines, dated 2.12.2011; whereas the Ministry of Local Government Administration to take measures for the initiation of court procedures related to the contestation of municipal acts, in cases where a municipality refuses the request of the ministry for review of municipal acts.

Report on case A. No. 700/2021 regarding the obligations of municipal administration bodies for undertaking actions relating the process of return

The report was drafted based on the individual complaint, and aims to analyse the complaints of the complainant and the circumstances of the case in general, in relation to obligations of the municipal administration bodies for undertaking actions relating the process of return of the complainant, and which was displaced from the municipality of Gjakova as a result of war in Kosovo in 1999.

The complainant had submitted a request to the Directorate for Urbanism of the Municipality of Gjakova to allow her renovate the apartment and change the main entrance door, but she never received an answer. In the complaint addressed to the Ombudsperson, she had described the process of return and emphasized that her return as a displaced person, which has legally returned the right to use the apartment, the Municipality of Gjakova on any basis prohibits, prevents or evicts her from the apartment without giving any valid justification.

She had left the apartment in 1999 for safety reasons, as she claimed, because of the war in Kosovo. During the following years, according to the complainant, third parties had repeatedly usurped the immovable property, while the Commission for Residential Property Claims had recognized her the right to possess the apartment in question, while in 2021, the Kosovo Agency for Comparison and Property Verification Protocol on the Delivery of the Keys - Delivery Form was issued, which proved that the complainant had received the keys to the property - object of the request. On the occasion of the complainant's return to the apartment, the UNHCR had drawn up an assessment form for voluntary returnees from minority communities, which stated: *"The lady has returned to the apartment which was occupied, but was vacated by the Kosovo Property Agency (AKP) and the Kosovo Police. The apartment is completely empty; we urgently need furniture and food. She suffers from diabetes, takes insulin, so she needs a refrigerator to keep the insulin from spoiling. The apartment needs renovation as it is in a very bad condition."*

After that, the municipal bodies did not allow the complainant to install the entrance door of the apartment and to renovate the apartment, asking her to follow the administrative procedures. After submitting the request, she received no response, except for the request from the municipality that she prove ownership.

The municipality of Gjakova claimed that this apartment is the property of the municipality, even though it had not taken any action in terms of the management of that apartment until the return of the complainant. For this, they filed a lawsuit in the Basic Court in Gjakova for the annulment of the contract for the rental of the apartment, with a proposal for setting a security measure.

With this report, the Ombudsperson emphasized that the principle of equality is the fundamental principle of the state legal order, the basis on which the legal order is based and built, but also the fundamental right of citizens guaranteed by the Constitution and that the decisions of the administrative bodies affect the realization of the rights of citizens, provided by law. They establish general norms in a wide field of administrative activity, therefore, either from the point of view of human rights or from the point of view of the rule of law, it is important that the decisions of administrative bodies are legal and in accordance with the standards of human rights. The unique application of the law, including administrative law, is undoubtedly an obligation of any legal system.

It is undisputed that the complainant was placed in a municipally owned flat on the basis of a contract for the use of the flat and a rental contract, acquiring the right to use it to meet her family's housing needs. The same agreement determined the rights and obligations of the parties in the use, management and maintenance of the apartment. The right to use the apartment is a right confirmed by the subsequent decisions of the Kosovo Property Agency.

The obligations of local authorities regarding the return of refugees and displaced persons are determined by the Constitution of the Republic of Kosovo, which in Article 156 [Refugees and Internally Displaced Persons] states: "*The Republic of Kosovo shall promote and facilitate the safe and dignified return of refugees and internally displaced persons and assist them in recovering their property and possession*". This defines the obligation of state bodies to work in two directions: "promote" - which means works in the direction of creating a suitable and safe environment for return; and "facilitate" - meaning creation of facilities for persons wishing to return to the country.

From the complaint submitted to the Ombudsperson, the complainant emphasized the failure of the Municipality of Gjakova to respond to her request to obtain consent for the renovation of the apartment and that the responsible party delivered its notices and administrative decisions to her only in Albanian language. The Constitution of the Republic of Kosovo, Article 5 [Languages], paragraph 1, states: "*The official languages in the Republic of Kosovo are Albanian and Serbian*".

In this report, the Ombudsperson noted how the complainant had decided individually and spontaneously to return to the apartment with the already confirmed right of possession. Although the relevant municipal authorities were not notified in advance and the return process was not coordinated through them, it does not mean that those same authorities are separated from the responsibility they have to properly administer the processes that take place in the territory where their competence lies. The return of displaced persons has a complex dimension in itself and the authorities must be aware and responsible for how they fulfil their obligations and role. The standard of good administration means an active and committed attitude of the administration body towards the performance of tasks within its scope and the legal performance of those tasks to achieve the goal for which this body has been given public powers.

Regulation No. 01/2018 on the Return of Displaced Persons and Sustainable Solutions should serve as the basis on which the municipal authorities would exercise their activity in terms of creating a suitable environment for the return of the complainant, and that in this case it seems that its full implementation was missing.

The Ombudsperson finds that long time periods of administrative procedures in Municipality of Gjakova, as well as inefficient communication, has created an unclear situation for the complainant, regarding her possibility to peacefully enjoy guaranteed rights. The municipal bodies failed to ensure the complainant her right to use a right confirmed by an administrative decision.

The Ombudsperson concludes that official communication of administration bodies with the complainant is in violation with Article 5 of the Constitution of the Republic of Kosovo and the Law on the Use of Official Languages.

The right to use the apartment was confirmed by the decisions of the competent body that handles property matters of this nature in Kosovo. No court procedure and no other administrative action to dispute this were undertaken by municipal bodies in relation to this property until the time of the complainant's return. For what was said above, the Ombudsperson recommended the Municipality of Gjakova that Regulation (GRK) No. 01/2018 on the Return of Displaced Persons and Durable Solutions, to allow the complainant to adapt the interior of the property in question, as well as to enable her to use it freely and without other obstacles, as well as that the municipal administration bodies implement the law on the use of languages and that official communication with the complainant is developed according to the requirements of the Law on the Use of Languages.

Request of the Ombudsperson addressed for suspension of the implementation of the decision to release the property and return it to Kosovo Agency for Verification and Comparison of Property

The Ombudsperson has received an individual complaint submitted by a Kosovo citizen against Kosovo Agency for Verification and Comparison of Property (KAVCP). According to the information provided by the complainant, it is understood that in 2001 he had bought an apartment, for the sale of which they had signed a sales contract certified at the Municipal Court in Prishtina. In 2007, he was notified by the Kosovo Property Agency (KPA) that another person claimed ownership of the apartment in question, after he had been forcibly removed from that apartment during the war. The Kosovo Property Claims Commission (KPCC) had decided that the complainant must vacate the apartment in question and that the claimant should settle there.

In this regard, the Ombudsperson, after handling this case notes that the legal work on which the complainant had acquired ownership was not cancelled and was still in force. Also, the party claiming ownership, since the issuance of Decision HPCC/REC/74/2006, dated 19 October 2006, had not registered the ownership of the abovementioned property, nor had it applied for registration of ownership.

The Ombudsperson, through this request for suspension, concluded that it is of substantial importance that the specific case be clarified in the points mentioned above, and for this, according to Article 18,

paragraph 5 of the Law on Ombudsperson, requested the suspension of the implementation of the Notice No.DS004209 on the release of the property and its return to KAVCP, dated 25.5.2021, until the completion of the investigations by the Ombudsperson.

The Ombudsperson considers that the substantial criterion of a request for such a suspension has been clearly fulfilled in this case, because the actions according to the Notice No. DS004209 cause irreparable damage to the rights of the complainant.

Right to Education and Children's Rights

Ex-officio Report no. 331/2022 regarding the approximation of provisions of the general pre-university education system of Kosovo with the rights of children to education

The report aims to assess the level of implementation of the relevant constitutional and legal provisions that regulate the respecting of children's rights in the education sector by the authorities and educational institutions of Kosovo.

The Constitution of the Republic of Kosovo provides for: (i) Free basic public education for children and (ii) equal opportunities to education for everyone in accordance with their specific abilities and needs. These two constitutional provisions contain three basic aspects: (i) The educational system must provide access to education, including mandatory primary education; (ii) education must be inclusive and provide equal education opportunities; and (iii) education should meet the basic and specific needs of every child. While the first aspect refers to access or *participation in education*, as a fundamental and (in this case) constitutional human right, the second and third aspects deal with the comprehensiveness and importance of the education offered in Kosovo for the *development of the full potential* of children according to their specific needs and abilities. The report therefore investigates the participation of children, the inclusiveness of educational institutions and the importance of education offered in Kosovo to determine whether they serve to fulfil the right of children to education, as a basic human right.

Participation in education - is defined as: "*The frequency that a pupil/student attends the same educational activity as other pupils/students combined with the intensity of involvement that a student perceives in the attended activities*".¹⁹⁶ This specific definition is composed of three main components: (i) School attendance; (ii) equality with other students; (iii) active involvement of individual students in an educational environment. Furthermore, this also applies "*if the environment is adapted and accepted by a child, while the intensity is involved or included in an activity*". In order for this environment to be favourable, five

196 M. G. L. A. Gregor R Maxwell, «Inclusion Through Participation: Understanding Participation in the International Classification of Functioning, Disability, and Health as a Methodological Research Tool for Investigating Inclusion, » *Frontiers in Education*, vol. 3, no. June 2018, p. 16 June 2018.

important dimensions must be analysed;¹⁹⁷like: availability;¹⁹⁸accessibility;¹⁹⁹affordability;²⁰⁰possibility of adjustment/adaptation;²⁰¹and acceptability.²⁰²For the purposes of this investigation, these five dimensions were used to facilitate understanding and the learning environment during field visits to schools.

Inclusion in education - a generally accepted and broad definition of inclusion is presented in the Salamanca Statement²⁰³, which states that: *“The fundamental principle of the inclusive school is that all children should learn together, wherever possible, regardless of any difficulties or differences they may have. Inclusive schools must recognize and respond to the diverse needs of their students, accommodating both different styles and rates of learning and ensuring quality education to all through appropriate curricula, organizational arrangements, teaching strategies, resource use and partnerships with their communities”* This statement resulted in a new approach to education, thus promoting integration of children with disabilities into regular schooling. However: *Contrary to intentions, the practising of integration did not eliminate segregation, marginalization, discrimination or devaluation in mainstream school settings. Integration was mostly a system-level reform, taking for granted that changes in placement would affect the teaching and learning processes in class to the best for the ‘integrated students’”*²⁰⁴ Around 15 years after the implementation of the integration concept begun, this investigation briefly examined the possible results and the impact the new approach has had on schooling in Kosovo for children with special educational needs.

Importance of education – in terms of education importance and what purposes it serves and should serve the main researchers of this field are divided into two groups: (i) The first group declares that education should serve the utilitarian purpose of economic, individual and social development. It usually refers to extrinsic values, educational outcomes, contributions to economic development, building human capital, and so on, all of which serve the common social benefits and exclude intrinsic values;²⁰⁵(ii) The second group focuses on pupil/student, emphasizing: *“(…) a full understanding of student motivation and the contextual effects that influence motivation is essential towards the transformation of schools from being perceived intellectual prisons, devoid of personal significance and meaning, in environments that support exploration, learning and creativity in all students.”*²⁰⁶ Therefore, education must not only fulfil the priorities of social authorities, but also improve the academic achievements of students, motivation and continuous passion for learning.²⁰⁷

197 These five dimensions have been found to be important in the evaluation of the school environment during school visits as part of this research. The wording of the description of the five dimensions has been slightly modified to make it easier to understand without changing the substance or meaning.

198 Describes the objective opportunity to engage in education

199 Describes whether you can, or perceive that you can, access the educational context.

200 It covers not only financial constraints, but also whether the effort pays off, both in terms of time and energy spent, to engage in education.

201 Describes whether a situation can be adapted [to the needs of students].

202 Covers people's acceptance of a person's presence in a situation

203 UNESCO, «The Salamanca Statement and Framework, » UNESCO, Paris, 1994.

204 P. Haug, «Understanding inclusive education: ideals and reality, » Scandinavian Journal of Disability Research, vol. of 19, no. 3, pp. 206-217, 2017.

205 M. Gibbons, «Relevance of Higher Education in the 21st Century, » The World Bank, Washington, 1998.

206 EMA Rich Gilman, «Motivation and its relevance to school psychology: An introduction to the special issue, » Journal of School Psychology, vol. i 44, no. 5, pp. 325-329, 2006.

207 J. Dewey, The School and Society, Chicago: The Chicago University Press, 1900.

The last definition gave direction to this report investigation, as it is in line with the legal framework of Kosovo, which focuses on child development according to their specific abilities and needs. The investigation aims to address three main questions: (i) Is equal access to free public education provided to all children in Kosovo, as one of the basic human rights? (ii) Is the education system sufficiently inclusive and do all students feel welcomed and accepted within the system? (iii) Is adequate education provided and does it serve to the development of personality, talent and mental and physical abilities of students for their maximum potential and based on their specific needs and abilities?

After analysing the relevant legislation, international instruments, case documentation, information and data that OIK has, it appears that during the last decade, Kosovo has made progress in implementing the area of human rights to education. There has been uneven progress in different sub-sectors in terms of children's participation, inclusion and development according to their needs and abilities.

However, the worrying part is the PISA score in education in general. The Ombudsperson considers that the quality of education is not at the right level to prepare students for life and recalls the commentary of Article 29 of the Convention on the Rights of the Child, which stipulates the individual and subjective right to a specific quality of education.

Moreover, the COVID-19 pandemic gave a severe blow to the process of continuous improvements in the implementation of human rights in education system of Kosovo. All positive trends and processes have either stalled, in the worst case (such as for children with disabilities), or have gone backwards during the pandemic (March 2020 - March 2022).

Regarding participation on education, children, with some exceptions, attend schooling. In other words, in terms of participation, Kosovo has generally achieved nearly universal pre-university education, with the exception of pre-school education, where data is extremely low, despite some improvements in recent years.

The Ombudsperson considers that the situation is not good when it comes to participation in education of children from the Roma, Ashkali and Egyptian communities, as well as participation of children with disabilities at all levels of pre-university education.

Despite the progress made in improving the participation in education of Roma, Ashkali and Egyptian community children, they still remain significantly behind other communities, especially in pre-school and upper secondary education.

The Ombudsperson considers that participation and integration of children with disabilities and learning difficulties in regular education has marked a progress, however it is still far from the inclusion of at least 50% of these children in the education system, as foreseen by KESP 2017 -2021.

In terms of inclusion in education, despite the substantial lack of resources, schools are generally inclusive and accept all students, as well as friendlier and more open to diversity compared to a decade ago.

The Ombudsperson also considers that much remains to be done in the field of inclusiveness in the educational system, especially in avoiding problems related to the performance of Roma, Ashkali and Egyptian communities. Similarly, the education system has faced the issue of lack of teaching materials in Bosnian and Turkish languages, which has been partially resolved, but there is a need for improvement.

All indicators, from the investigation of the documentation and findings from the empirical research, show that the education system of Kosovo is far from being able to fully develop the potential of children according to their specific needs and abilities. The report in its annex, in tabular form describes in detail the findings of the investigation on the implementation of human rights of children to education in Kosovo: *“Identification of key issues in the (dis)harmonization of educational services with children’s rights in general pre-university education in Kosovo.”*

Through this report, the Ombudsperson recommends the Ministry of Education, Science, Technology and Innovation to design and implement a strategy to improve participation, quality and early recognition of disabilities in at least two years of pre-school education (ages 3 and 4), including using school premises to open pre-school education services/groups; revise the by-laws governing the functioning of municipal assessment and support teams to ensure early assessment of children and a more active role of resource centres and schools in the assessment of children; engage directly and coordinate policies and practices with municipalities and schools to improve participation in preschool education; design and implement new policies regarding the time spent on learning in pre-university education, especially in the pre-primary class; undertake all the necessary actions to ensure the inclusion and improvement of the results of Roma, Ashkali and Egyptian children, at all levels of education; regulate, strengthen and increase support for improving the functioning of learning centres in support of all children who need inclusion and improvement of school results, in order to continue their education and have an easier transition to higher level education; draw up and implement an action plan for supplying schools with technology and new teaching materials; revise the existing formula for the distribution and management of funds in education, enable delegation of power to schools and more investment in teaching materials, in new technologies and working conditions directly related to teaching and learning (including inside the classroom); revise the administrative instruction governing student-teacher ratios and minimum class sizes to improve affirmative action for community education; undertake the necessary measures to fully provide textbooks for learning in Bosnian and Turkish languages in Kosovo schools; take all necessary measures to provide additional funds for the diversification and improvement of education offered in educational institutions by providing quality career counselling, psychological activities and student clubs (for technology, science and art) to improve the inclusion and relevance of education.

The Ombudsperson recommended the municipalities of the Republic of Kosovo to functionalize prevention and response teams at school and municipality level; increase cooperation and coordination among all stakeholders (including learning centres) to address the issue of school dropout and school violence, especially in lower secondary and upper secondary education; prioritize and increase funding for the provision of education and pre-school and pre-primary education in the municipality, to extend pre-school services to rural areas; delegate complete financial planning and management to schools; engage MEDs in monitoring planning and prudential management; extending school schedule, focusing on pre-primary classes and student activities in various clubs (for science, art and technology); design and implement awareness campaigns addressed to communities and parents in the field of inclusion and education of children and young people with disabilities.

Municipalities were recommended to undertake measures, and schools were recommended to plan and implement activities that engage students in additional school and extracurricular activities; schools were recommended to engage in a team approach in addressing the inclusion and education of students with special needs in their schools; to undertake all the necessary measures in order to draft the IEP for children with disabilities; improve cooperation with parents and communities to improve the quality of

education in schools; make teaching and learning more student-oriented and engaging, moving away from simply delivering lessons and imparting knowledge; cooperate with community organizations and parents to improve school inclusion of all communities and student groups

Ex-officio Report no. 411/2021 regarding the establishment of the professional assessment and support team for special educational needs of children with disabilities

Given that Law no. 04/L-032 on Pre-University Education in the Republic of Kosovo (hereinafter: LpueRK) regulates pre-university education and training from ISCED level 0 to 4²⁰⁸, including the education and training of children and adults who receive qualifications at these levels, and requires that each municipality must, by itself or in cooperation with other municipalities, establish an expert assessment and support team for special educational needs, consisting of education, social work, psychology and rehabilitation specialists as external support to educational and training institutions to provide advice and guidance to teachers, students and parents.

In order to assess whether the municipalities meet this legal requirement, and with this, they also provide access to education for children with learning disabilities, the Ombudsperson started an investigation in accordance with ex-officio. For this reason, information was requested from all the municipalities of Kosovo regarding the fact whether they acted in the framework of legal responsibilities for the establishment of expert assessment and support team for the special educational needs of children with disabilities.

The Ombudsperson received no response from the municipalities: Mamusha, Istog, Deçan, Skenderaj, Kamenica, Shtime, Laposavic, Partesh, Northern Mitrovica and Gracanica. In this case, these municipalities have failed to respond to the Ombudsperson's requests, violating relevant constitutional provisions and the Law on Ombudsperson. However, this does not prevent the Ombudsperson from giving conclusions and recommendations related to the case.

Given the importance of the right to education, it was originally announced for the first time in 1948 through the Universal Declaration of Human Rights, later concretized in the Convention on the Rights of the Child. These international instruments state that at least primary education should be compulsory and free, while secondary and higher education will become progressively accessible to all, although not necessarily free. Therefore, education is seen as the main factor of sustainable human development, through which the improvement of the quality of life increases at the individual, family, social and global level.

The prevailing consideration of the best interest of the child is given by the Convention on the Rights of the Child (hereinafter: the Convention), which, according to the Constitution, is directly applicable to Kosovo. Therefore, every action of state authorities must be in full compliance with the purpose of the Convention. Possible violation of the Convention provisions represents a violation of the Constitution. The Convention Committee has identified the best interest of the child as one of the four general principles

²⁰⁸ LPUERK, Article 2, paragraph 1, subsection 1.21.

of the Convention for its interpretation and applying it in relation to all other rights of the child.²⁰⁹ It is a dynamic concept that requires an appropriate assessment for each specific case. This principle is also embodied in the Law on Child Protection (LChP). In the specific case, the right to education for children with disabilities is interpreted in their best interest so as to enable them the easiest and most effective access to the realization of this right.

The LPUERK obliges the institutions involved in the provision of pre-university education, as regulated through this law and other laws, to plan and provide efficient, effective, flexible, comprehensive and professional services, designed to provide all children equal rights to education, in accordance with their specific abilities and needs, as well as to advance their educational and social development. The improper implementation of this provision contributes to the fact that children with disabilities continue to experience serious difficulties and face obstacles to the full enjoyment of the rights established by law, including the right to comprehensive education.

The LPUERK obliges municipalities to register pupils with learning difficulties or with disabilities and then act according to the procedures provided in Article 41 of this law regarding their expert assessment. In the spirit of this, this law obliges each municipality alone or in cooperation with other municipalities shall establish an expert assessment and support team for special educational needs comprised of education, social work, psychology and rehabilitation specialists, as external support to educational and/or training institutions, and to provide counselling and guidance to teachers, pupils and parents. Moreover, this law provides for the expert assessment procedure as well as the aims of assessing the student with disabilities.²¹⁰

Consequently, in accordance with the LChP, LPUERK, the Convention and the Constitution, the establishment of expert assessment and support team represents an important and necessary step for realizing the right to education of children with disabilities, as well as respecting the principle of inclusive education.

The Ombudsperson in this report considers that relevant authorities have not fulfilled constitutional and legal obligations, neither the international standards applicable to the Republic of Kosovo in relation to the establishment of expert assessment and support team for special educational needs of children with disabilities.

The Ombudsperson, based on the documentation received from municipalities, notes that only 21 municipalities have established expert assessment and support teams for special educational needs of children with disabilities. Therefore, the Ombudsperson has recommended to 17 municipalities²¹¹ to establish expert assessment and support team for special educational needs of children with disabilities, according to Article 41 of the LPUERK.

209 Convention Committee, General Comment No. 5, in: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en.

210 LPUERK, Article 41, subsections: 3.1. to assess the abilities, interests and needs of the child; 3.2. to give recommendations on teaching methods, aids, and other accommodations necessary for the child's learning and wellbeing; 3.3. to define needs for special equipment needed in learning; 3.4. to give recommendations on the placement of the pupil.

211 Mamusha, Lipjan, Istog, Decan, Skenderaj, Kamenica, Shtime, Rahovec, Zvecan, Zubin Potok, Shterpece, Laposavic, Ranillug, Partesh, Northern Mitrovica, Kllokot, Gracanica.

The Right to Work and Exercise of Profession

Opinion of the Ombudsperson on cases A. no. 505/2021 and A. no. 712/2021 regarding calculation of annual leave based on work experience, upon entry into force of the Law on Public Officials

The complainants in claims submitted to the Ombudsperson point out that upon the entry into force of Law no. 06/L-114 on Public Officials calculation of annual leave for civil servants is being done in such a way so as they are losing days of annual leave earned under the Law on the Civil Service of the Republic of Kosovo.

This opinion aims to express the views of the Ombudsperson from the perspective of human rights, namely the rights deriving from the employment relationship, namely calculation of annual leave based on work experience, upon the entry into force of Law no. 06/L-114 for Public Officials.

Regarding this issue, the Ombudsperson noticed that the calculation of annual leave until the entry into force of the Law on Public Officials was made according to the provisions of the Law on Civil Service. This law entered into force in July 2010 and since then, civil servants have earned the right to calculate annual leave according to Article 39 of this law.

The Law on Public Officials entered into force in July 2020, therefore the calculation of annual leave must be made from July 2020 onwards, without prejudice to the right (annual leave based on work experience) which was acquired during the period of the implementation of the Law on Civil Service. The Ombudsperson points out that the right earned by the Law on Civil Service cannot be lost by the Law on Public Officials, because this constitutes retroactive application of the law, which is prohibited, unless expressly provided by law. The retroactive application of the law violates the legitimate expectation of civil servants as well as legal certainty.

The concept of legitimate and reasonable expectation in the protection of subjective rights is a comprehensive concept of interpretation in international case law. According to the ECtHR (see cases *Kopecky v. Slovakia*, Judgment of 28 September 2004, § 45-52; *Gratzinger and Gratzingerova v. Czech Republic (dec.)*, no. 39794/98, § 73, ECtHR 2002-VII), "legitimate expectation" must be of a concrete nature and must be based on legal provisions and legal acts. In the present case, the legitimate expectation of civil servants for the realization of the rights deriving from the employment relationship is based on the right earned under provisions of the Law on Civil Service, during the period when this law was in force.

The Ombudsperson considers that the right acquired by the Law on Civil Service is guaranteed and that civil servants have earned the right to annual leave according to work experience during the period when the Law on Civil Service has been in force. Failure to calculate the annual leave earned under this law undermines the legal certainty of civil servants and creates a practice of uncertainty that would generally place civil servants and public officials in a position of uncertainty in terms of the rights acquired by the provisions of the laws in the Republic of Kosovo.

The Ombudsperson points out that, law enforcers must be careful not to hinder the rights acquired by previous laws while implementing and interpreting the laws. Therefore, the law enforcers must always take into account the legal certainty of the norm, from which the entities realize their subjective rights. A later norm cannot deny entities the rights granted by an earlier norm; therefore, a norm can never have retroactive action except in specific cases provided by law and only if it is in the interest of entities.

Therefore, the Ombudsperson concludes that calculation of work experience according to the provisions of the Law on Public Officials should be done starting from the period when this law entered into force and onwards, without prejudice to the number of days of annual leave earned through the Law on Civil Service.

Opinion of the Ombudsperson on case A. no. 473/2021 regarding the issue of interpretation of the concept “professional work experience” in the context of evaluation in competitions for employment in public institutions

This Opinion aims to express the views of the Ombudsperson regarding consideration of professional work experience in case of vacancy announcement for the position of state prosecutor, as well as in other cases related to employment relationship where professional work experience is required.

In the complaint filed against the Prosecutorial Council of Kosovo, the complainant claims that he was discriminated against in the recruitment process for the state prosecutor²¹² and that his professional work experience was not properly evaluated. According to his claim, he was eliminated from the recruitment procedures of the vacancy for state prosecutor, on the grounds that he did not meet the criteria of professional work experience. From the information provided by the complainant, it is understood that he graduated on 8 July 2009, in the short cycle of higher education, which, according to the National Qualifications Framework, is estimated to be level 5 with 180 ECTS, and after completing his studies he obtained the title **Bachelor of Law**, as provided by the Law on Higher Education (Article 4). Further, the complainant notified that in October 2018 he completed his Master’s studies with 120 ECTS.

In the announced vacancy, in addition to the criteria of having a valid diploma in the Republic of Kosovo, work experience was also required, according to which, the candidate must “*have at least three (3) years of work experience in the field of law*”.

212 Vacancy announced by the KPC for state prosecutor in June 2020 and re-announced in May 2021.

After completing the studies and obtaining a diploma with the title Bachelor of Law, the complainant worked in positions that, according to the description of the job duties, constitute duties in the field of law, counted as professional experience, which represents contested issue in the present case.

According to Law no. 04/L-037 on Higher Education in the Republic of Kosovo, namely Article 4 [Objectives and organization of higher education], higher education is organized at three levels. The first level consists of 3 to 4 years of studies by which the student reaches 180, **respectively 240 credits/ECTS**, and obtains Bachelor Diploma. In the case of the complainant, the title obtained after completing the first level studies, with 3 years of studies at the Faculty of Law at the University of Pristina "Hasan Prishtina" is a Bachelor of Law; this title is also obtained after the completion of the first level studies with 4 years of studies. While according to Law no. 03/L-060 on National Qualifications, respectively according to Article 2 – "Diploma" means a document given upon completion of an extensive education program²¹³.

The Ombudsperson notes that according to the Law on Higher Education in the Republic of Kosovo, higher studies are recognized where the student reaches 180 ECTS and in the specific case the complainant achieved these in 2009, when he also earned the title of Bachelor of Law.

The Ombudsperson noted that in job vacancy and in the criteria defined according to Law no. 05/L-034 on Amending and Supplementing the Law no. 03/L-225 on State Prosecutor, it is not required a university degree to be of the 4-year (240 ECTS) program, but it is only required "to have a university degree in Law valid in Kosovo". While the complainant, when applying for the announced vacancy for state prosecutor, presented evidence that on 16 November 2018, he had completed his Master's studies at UP "Hasan Prishtina", with a total of 120 credits/ECTS, earning the title of Master of Science (Ma.SC.) in Criminal Law (level of qualifications according to the NQF 7), while, on 22 May 2019, the complainant passed the bar exam.

Regarding the parallel drawn by the KPC between the Law on State Prosecutor and the Law on Bar Examination, the Ombudsperson notes that these two laws regulate different areas. Law no. 03/L-225 on State Prosecutor and Law no. 05/L-034 on Amending and Supplementing the Law no. 03/L-225 on State Prosecutor regulate the organization, jurisdiction, functioning, powers and duties of the state prosecutor, as well as defined the general conditions for candidates to be appointed as State Prosecutor. Since the Law on State Prosecutor does not have a gap in the norm in regulating the conditions for candidates, then the referral by making analogy to the Law on Bar Examination does not make sense.

The Ombudsperson estimates that in such situations the KPC should assess the criteria of education and professional work experience separately. The Ombudsperson supports this assessment on the fact that a university degree with 180 ECTS is recognized as university education by the Law on Higher Education in the Republic of Kosovo. Also, another fact is the professional work experience, which is gained from the moment when the person has entered into employment relationship where a university degree is required, without specifying the number of ECTS. Therefore, the Ombudsperson considers that people who have entered into employment relationships with a university degree of 180 ECTS and who have performed

213 Program of study leading to a qualification or diploma, awarded by a higher education provider

relevant professional work should be recognized for their professional work experience from the moment of establishing the employment relationship.

The Ombudsperson understands that the vacancy announcement may include detailed criteria as practiced in other states²¹⁴ however, in the case in question, the announced vacancy referred to the relevant provisions of the Law on State Prosecutors that define general conditions for the required positions, therefore the criteria of education and professional work experience, as in the case of the complainant, should to be evaluated separately from each other.

Regarding the complainant's claims of discrimination, the Ombudsperson considers that if the KPC applied the same practice for all cases, even though such a practice, according to the Ombudsperson assessment, is wrong, and taking into account that the complainant has not specified what is the protected characteristic, defined by Article 1 of Law 05/L-021 on Protection from Discrimination, on the basis of which he claims to have been discriminated against, the Ombudsperson estimates that it is not a matter of discrimination, but erroneous application of the law.

The vacancy criteria for the position of state prosecutor are clearly defined in the Law no. 03/L-225 on State Prosecutor and Law no. 05/L-034 on Amending and Supplementing the Law no. 03/L-225 on State Prosecutor.

Reference to other laws that do not regulate the field of prosecution may bring uncertainty and legal ambiguity, which may infringe the rights of candidates in public vacancies, such as the case mentioned above, and the criteria in the vacancy must be decided taking into account the legal provisions that expressly regulated this matter.

The professional work experience of candidates, in similar circumstances as in the present case, should be accounted for from the moment when they entered into an employment relationship, and when the nature of the work is the same as the field in which the candidate completed his/her studies and was awarded a diploma, in accordance with legal provisions in the country, whereas, the criterion of education must be applied as provided for in provisions of Law no. 03/L-225 on State Prosecutor and Law no. 05/L-034 on Amending and Supplementing the Law no. 03/L-225 on State Prosecutor.

Opinion of the Ombudsperson regarding the calculation of professional work experience in the vacancy announced by the National Ballet of Kosova for the position of Director

This opinion aims to express the views of the Ombudsman regarding the calculation of professional work experience in the vacancy announced by the National Ballet of Kosova for the position of Director, as well as other cases related to the employment relationship of ballet dancers at the National Ballet of Kosova.

214 For example, in Great Britain, the announcement of vacancy by Civil Service for the position of Senior Project Manager, Department of Environment, Food and Rural Affairs gives a long and specific list of professional experience required for this job, see: https://www.civilservicejobs.service.gov.uk/csr/jobs.cgi?owner=5070000&ownertype=fair&jcode=1566838&posting_code=0&language=.

The complainant, upon submitting the complaint, notified that calculation of professional work experience of the ballet dancers of the National Ballet of Kosova is not done according to the starting date of their employment relationship, instead it is done after graduation, a criterion which is not required to establish employment relationships in the capacity of ballet dancers.

The Ombudsperson notes that in the Republic of Kosovo, the highest level of education in the field of ballet is secondary education, namely professional upper secondary school, diploma of which school serves as the basis for establishing an employment relationship in the capacity of ballet dancer. In this case, it is noted that ballet dancers who have completed professional upper secondary education are provided with a diploma for completing professional upper secondary school and thus may establish employment relationship and exercise professional activity in the field of ballet. The same was done in the case of the ballet dancers of the National Ballet of Kosova, who possess professional upper secondary education diploma.

According to the vacancy announced by MCYS, candidates for Director of the National Ballet of Kosova must meet the criteria of education and work experience, as follows:

“ - as ballet director shall be appointed a person with university professional background in the field of art and culture, with both experience and leadership skills.

Must have (7) years of work experience, including (4) years of work experience in management positions”.

[...]

Regarding this issue, the Ombudsperson considers that assessment of these criteria should be done separately from each other. First, the criterion of university education, although it is not a criterion set out according to the Law no. 02/L-59 on Philharmonic, Opera and Ballet of Kosova, the Ombudsperson assesses it as reasonable, as it concerns a management position of a national institution, as in this case is the position of the Director of the National Ballet of Kosova. Secondly, the Ombudsperson considers that the criterion of professional work experience should be assessed separately from the criterion of university education, as they are not related to one another. In this regard, the Ombudsperson emphasizes that university education is not a criterion to establish employment relationship at the National Ballet of Kosova, instead it is the professional upper secondary education, and therefore taking into account of professional work experience must be done by calculating the period from the beginning of the employment relationship. In such situations, both criteria highlighted above (university education and work experience) must be met separately from one another.

In this case, the Ombudsperson, given the fact that in the Republic of Kosovo the highest level of education in the field of ballet is secondary education, namely professional upper secondary school, considers that ballet dancers meet the condition to enter into an employment relationship, with the completion of professional upper secondary education and equipment with professional upper secondary education diploma. In this regard, professional work experience for ballet dancers should be calculated from the moment of employment relationship with the National Ballet of Kosova.

Therefore, according to the Ombudsperson, in the vacancy mentioned above, the criterion of university education must be proven by submitting a university diploma, while the work experience criterion must be proven by the relevant documents of work experience, not only calculating the period after completion of university education, but experience from the initial moment of the employment relationship.

Restriction of Fundamental Rights and Freedoms

Restriction of Fundamental Rights and Freedoms

Opinion of the Ombudsperson on ex-officio case no. 40/2022 regarding reasoning of measures taken by the Government of the Republic of Kosovo according to Decision no. 01/55 of 21 January 2022, for general and special measures to control, prevent and combat COVID-19 pandemic in the Republic of Kosovo, in relation to the restriction of fundamental human rights and freedoms

The Government of the Republic of Kosovo, in the meeting held on 21 January 2022, issued the Decision no. 01/55 for general and special measures to control, prevent and combat COVID-19 pandemic in the Republic of Kosovo. The government adopted measures which, in terms of border policies, restrict/prevent entry into the territory of Kosovo for those persons who do not have a proof of three doses of COVID-19 vaccines, or at least two doses and a negative PCR test not older than 48 hours prior to departure.

The purpose of this Opinion is to analyse the reasoning behind measures taken by the Government of Kosovo through the Decision no. 01/55 for general and special measures to control, prevent and combat COVID-19 pandemic in the Republic of Kosovo, in relation to the restriction of fundamental human rights and freedoms. This opinion should not be understood as a contestation of good will, as a contestation of the Government's intention to protect public health in Kosovo, or a contestation of the assessment of health experts. However, viewed from a human rights perspective, the restrictions imposed to this extent seem harsh, disproportionate and, as such, undoubtedly affect human rights. These measures applied now by the Government are even harsher, compared to the measures applied by other countries in the region, where in terms of virus infections rate, they are no better than our country.

The two most discussed points of the measures applied under this Government decision were point B and point D relating entries and exits of foreign citizens to and from the Republic of Kosovo and the restriction of circulation:

“B. [Entries and exits of foreign citizens to and from the Republic of Kosovo]

2. Every person who enters the Republic of Kosovo shall possess one of the following evidence:

2.1 Vaccination certificate with three (3) doses (or with one dose of Janssen vaccine and booster dose) against COVID-19;

2.2 Certificate of vaccination with two doses (or one dose of Janssen vaccine) against COVID-19, together with a negative RT-PCR test for COVID-19, not earlier than 48 hours before departure (for air passengers) or 48 hours before arrival at the border crossing point (for those entering by land).

3. The following persons are released from the request to possess any of the evidence according to point 2.1 to 2.2:

3.1 Persons who enter Kosovo through the airport or through land border crossing points and leave Kosovo (transit) within three (3) hours through the airport or land border points, provided that at the entrance they sign the declaration that they will leave Kosovo within three (3) hours and that the exit at the border point shall be different from the border entrance;

3.2 Persons working as professional transporters (drivers), provided that they comply with the protocol for international transport for protection against COVID-19;

3.3 Citizens of the Republic of Kosovo who have left Kosovo in the last 12 hours;

3.4 Foreign citizens who pass through Kosovo through organized transport by bus or regular international line, transit, provided that a declaration is signed that they will leave the territory of Kosovo within five (5) hours;

3.5 Foreign diplomats accredited in Kosovo and members of KFOR troops;

3.6 Persons under the age of twelve (12) years;

3.7 Citizens of the Republic of Kosovo who do not have two doses of vaccine are obliged to respect home quarantine for a period of seven (7) days from the entry into the territory of the Republic of Kosovo;

3.8 Persons with medical evidence from the specialist doctor of the respective field that they have contraindications and are exempt from vaccination. Such persons must present a negative RT-PCR test for COVID-19, administered not earlier than 48 hours before departure (for passengers entering by air) or 48 hours before arrival at the border crossing point (for those entering the land road).

3.9 Persons from 12 years of age to 16 years of age must have a negative RT-PCR test not older than 48 hours.

[...]

D. [Circulation restriction]

14. Restriction of citizens' movement shall be from 22:00 to 05:00, except:

14.1 Cases of an emergency nature (to seek medical help, purchase medication, provide care or medical assistance, avoid injury, or escape the risk of injury);

14.2. Circulation for health, safety personnel, and operators performing public works and services;

14.3 Night shift personnel of economic operators who ensure the functioning of the supply chain (including transport of goods/services), but provided that they are provided with a special permit from the EDI system of the Tax Administration of Kosovo;

14.4 Persons who provide evidence that they must be at the airport during the restricted traffic hours, because they have to travel by plane;

14.5 Persons to whom a special temporary permit is issued by the Emergency Operational Centre of the Ministry of Internal Affairs, according to point 16, due to the necessity of circulation during curfew.

15. Employers are required to ensure that their employees who are subject to the restriction from point 14 have sufficient time to travel to their homes.

16. The Emergency Operations Centre of the Ministry of Internal Affairs may issue a special permit for persons who provide sufficient evidence of the necessity to temporarily extend the time of circulation limitation”.

With the entry into force of the decision and application of new measures by the border authorities, at the Kosovo border crossings with neighbouring countries, confusion and dissatisfaction was caused to citizens who were not allowed to enter our territory as a result of enforcement of these measures.

The Ombudsperson, based on practices of the countries in the region, observes that none of them requires citizens to receive three doses of vaccine. As a result of this decision of the Government of Kosovo, there were objections, reactions and protests (see paragraphs above). These concerns should be taken into account by the Government of the Republic of Kosovo in order to reconsider these measures, as epidemiological situation of Kosovo and of countries in the region currently does not have any substantial difference. Since the beginning of pandemic, the vast majority of countries have recognised antigen tests at the entrances and exits of their borders. These tests are faster and more affordable for citizens' pockets, despite this they were not recognised for entry and exit at border points of Kosovo, and citizens were required to take the RT-PCR test.

For this reason, the Ombudsperson considered it necessary for the Government to reconsider the measure of restricting traffic from 22:00 to 05:00. Instead, it would be more useful to strengthen sanitary control mechanisms and inspectorates, in order to exercise strict controls, to assess whether general measures are being enforced.

By restricting human rights and interpretation of those restrictions, the Government of the Republic of Kosovo must pay attention to the essence of the right being restricted, importance of the restriction purpose, the nature and volume of the restriction, the relationship between the restriction and the purpose intended to be achieved, as well as to examine the possibility of achieving that goal by a lighter restriction or to the extent necessary for the achievement of the legitimate goal, measures that in an open and democratic society would be considered as necessary.

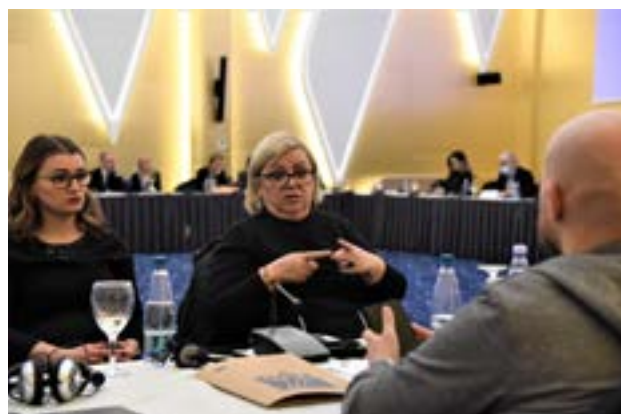
**Promotion of basic
human rights and
freedoms by OIK
during 2022**

Promotion of basic human rights and freedoms by OIK during 2022

OIK, as a promoter of human rights and equality

The Ombudsperson, as a constitutional and legal mechanism for the promotion and protection of human rights and fundamental freedoms, throughout 2022 has been actively engaged in undertaking new initiatives for the effective fulfilment of its mandate in the promotion of and education regarding human rights and raising awareness, for the purpose of creating an environment where human rights are recognized and respected by the citizens of the country.

On the 1st of March, on the occasion of the International Zero Discrimination Day, the Ombudsperson organized a discussion table, with participation of representatives from the legislators, the executive and non-governmental organizations that deal with human rights issues, to discuss the challenges and problems in combating discrimination in the country with particular emphasis on the compliance and protection of the rights of persons with disabilities. On this occasion, the Ombudsperson launched the “Equality for all” campaign.



The purpose of this campaign was to increase public awareness on human rights and fundamental freedoms, inform the public regarding the role and mandate of the OIK, strengthen the cooperation of citizens with the public institutions and identify problems that affect human rights. During the campaign, discussion meetings were held with representatives of the civil society, citizens and human rights activists, members of non-majority communities and representatives of local public institutions. The campaign had a comprehensive

character, which was extended to 11 different municipalities of Kosovo, including municipalities inhabited by citizens of non-majority communities such as: Prishtina, Prizren, Peja, Gjilan, Ferizaj, Mitrovica, Gjakova (two roundtables), Gracanica, Kamenica and Suhareka. One of these meetings was specifically dedicated to meeting with and discussing the challenges and problems the citizens of the Roma, Ashkali and Egyptian communities experience. Also, at a special roundtable, the Ombudsperson met persons with disabilities, whereby, they discussed the challenges and difficulties faced by disabled people in the country. Among the many issues addressed during the campaign, particular importance was paid to citizens' complaints related to the non-compliance with the rights of persons with disabilities. In line with the data collected in the field, it was observed that most frequent problems faced by people with disabilities are: non-implementation of the *Law No. 03/L-019 on Vocational Ability, Rehabilitation and Employment of People with Disabilities*; cases of violence against children and adults with disabilities - lack of shelters; lack of access to infrastructure, especially in the facilities of courts and prosecutor's offices as well as CSWs in different municipalities; identical decisions of medical commissions rejecting the recognition of the right to pension or termination of pensions for this category; insufficient support for people with autism and persons with delayed mental development; people with dwarfism are not beneficiaries of pensions; lack of centres for students with disabilities; lack of informational materials in Braille; lack of signalling at traffic lights for blind people; procedural delays in courts for cases related to the recognition of the right to pension in cases of persons with disabilities, etc.



On the 18th of March, at the premises of Ombudsperson Institution of Kosovo, a panel discussion was held on the topic: “*data collection and reporting in the health sector*”. The roundtable was initiated by the working group for operationalization of the Memorandum of Understanding between the OIK and the Kosovo Agency of Statistics (KAS), with the aim of supporting implementation and measurement of human rights and the 2030 Agenda. This roundtable focused on highlighting inconsistencies in the methodology and standards of data collection within the health sector and their reporting to KAS. The discussions revolved around key issues in the data collection and reporting chain, the necessity for clarifying the institutional roles in line with the responsibilities in this regard and the need for a collaborative and coordinating work in order to ensure complete, accurate, credible and timely data.

On 21 June 2022, the Ombudsperson Institution organized a roundtable where the topic of discussion was the violation of the right to a trial within a reasonable time frame and the effective resolution of delays in the judicial procedure. During the roundtable, the Ombudsperson reiterated the need to undertake a legislative initiative to propose the law on protection of the right to a trial within a reasonable period of time, which would determine effective legal remedies for cases related to the delay of judicial procedures, with these recommendations addressed in the report with *ex-officio* recommendations published on 6 March 2018.²¹⁵ The following conclusions emerged from the table: the need for encouraging the institutions responsible to undertake actions for the establishment of mechanisms for effective resolution related to the cases of delays in the judicial procedure; compensation of victims of violation of the right to a fair and impartial trial; development of court capacities and budget in order to shorten the time period for the completion of cases in the courts; mutual cooperation of the three competences, in order to successfully implement the justice reform.

On 27 June 2022, on the occasion of the World Environment Day, the Ombudsperson Institution and the National Audit Office jointly organized a roundtable with the topic: “*Waters, a human right - supervision and accountability*”. At this roundtable, the state of water in the country, the problems and challenges we face, as well as the actions of public authorities in terms of water protection were discussed, with the aim of protecting the right to a safe and healthy environment for citizens in the country as a basic human right. At the same time, during the roundtable, the findings and positions of the Ombudsperson were reiterated from the report with recommendations of the Ombudsperson regarding the legality of procedures related to hydropower plants in the country and access to documents related to hydropower plants.²¹⁶ At this table, it was concluded that the cooperation, coordination and responsibility regarding the work of the institutions responsible for the management and supervision of the process of licensing and operation of hydropower plants should be increased. The recommendations of the Ombudsperson must be implemented, the public must be informed and their participation in decision-making must be prioritized.



215 <https://oik-rks.org/en/2018/03/06/report-with-recommendations-ex-officio-1292018-effective-solution-of-delays-of-judicial-proceedings-violation-of-the-right-on-trial-within-reasonable-time/>

216 <https://oik-rks.org/en/2021/02/03/report-with-recommendations-ex-officio-3652018-against-ministry-of-economy-and-environment-regarding-the-issue-of-lawfulness-of-the-procedures-concerning-the-hydropower-plants-in-the-country-as-we/>

Also, as a symbol of this day, the OIK building was lit up in green, as a symbolic activity for awareness and protection of the environment.



On July 7, 2022, the Ombudsperson Institution organized a roundtable with the purpose of discussing the challenges in implementing the Law on Protection from Discrimination. During the round table, was discussed about the cases and different forms of discrimination, which the citizens of the country face, emphasizing the need for urgent actions by public institutions, in the implementation of the law and greater promotion of derived obligations from the Law on Protection from Discrimination.

On December 2, 2022, the International Day for Persons with Disabilities, the Ombudsperson and the OSCE Office in Kosovo organized a roundtable discussion on the challenges and problems still faced by persons with disabilities in the country. Among other things, during the roundtable, the findings obtained from the field were presented, which are related to the complaints received by citizens and activists during the “Equality for all” campaign regarding the non-respect of the rights of persons with disabilities. During the discussion with representatives of public institutions, the Ombudsperson asked the Assembly of the Republic of Kosovo to include in the Constitution the Convention on the Rights of Persons with Disabilities,²¹⁷



217 The Government of the Republic of Kosovo, on December 13, 2022, has taken Decision no. 02/112, which proposes to the Assembly of the Republic of Kosovo, the Amendment of the Constitution of the Republic of Kosovo, with the aim of including the Convention on Rights in the Constitution of Persons with Disabilities: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=68240>

Human rights education

Education on human rights is essential in order to promote universal values, mutual respect, non-discrimination and protection of human rights. Bearing in mind the role and importance of education on human rights from a young age, the Ombudsperson this year, as part of the information campaign: “Get to know the Institution of the Ombudsperson”, has conducted 35 visits to primary and lower secondary schools in the country. Numerous visits were carried out with a strong focus on the rural areas of different regions of Kosovo. The main goal of the campaign is to inform students about the role of the OIK in the protection and promotion of human rights and their opportunity to address human rights violations in the OIK. Also, the campaign offered the children the opportunity to be heard by the representatives of the OIK about various problems they face in their daily life. Among other things, the campaign aims to advance the knowledge of teachers about the mandate of the OIK, especially their awareness of the necessity of preventing corporal punishment in schools as well as respecting the right of children to be heard.



On June 1, 2022, on the occasion of the International Children’s Day, the Ombudsperson with his representatives hosted students from the “Ismajl Qemali” elementary school in Prishtina. On this occasion, the children had the opportunity to talk with the Ombudsperson, namely to express their thoughts, attitudes or concerns about various problems they face every day, not only at school, but also in everyday life. On this day, the Ombudsperson with his representatives visited the resource centre for learning and counselling “Progress” in Prishtina. During the visit, the Ombudsperson was informed about the work and challenges in providing education and activities for children with disabilities.

While in honour of marking the Universal Children’s Day, on November 18, 2022, the Institution of the Ombudsperson hosted a group of children led by their teachers, to discuss human rights and their rights. Representatives of the Ombudsperson met the children and discussed with them about human rights in other regions of the country, such as: Peja, Gjilan, Ferizaj and Gjakova.



On November 24, 2022, the Ombudsperson visited the SOS Children’s Villages in Kosovo, where he got to know about their work in the care of children without parental care and also during the visit he talked with the children of the village, regarding the rights of children and the role of the Ombudsperson in their defence.

The Ombudsperson has also supported the social media campaign “Give me a hand, not a slap”, organized by SOS Children’s Villages, giving educational messages, with the aim of contributing to awareness and combating violence against children and young people and encouraging them to report violence and abuse.

Given the irreplaceable importance of education and information on human rights and in order to fulfil the mandate of the Ombudsperson in educating the new generations on human rights, the Ombudsperson during 2022 held 4 lectures with students of public and private universities in Kosovo. During the lectures, students were informed about the local and international legal framework for human rights as well as the powers and mission of the Ombudsperson in the protection, supervision and promotion of human rights and fundamental freedoms.



The Ombudsperson, with the support of the OSCE, during 2022 opened a vacancy and accepted 10 interns graduated from the law faculty, with the aim of benefiting from practical work at the Institution of the Ombudsperson and training them in matters related to human rights, mandate, scope, duties and responsibilities of the Ombudsperson.

Strengthening human rights education and adopting best practices

Within the project supported by the Government of Luxembourg and Norway, implemented by the Office of the Prime Minister of the Republic of Kosovo, the Ombudsperson together with representatives from the Ministry of Education and Culture and the Faculty of Law of the University of Pristina "Hasan Prishtina", have carried out study visit to the Danish Institute for Human Rights in

Copenhagen, Denmark. The focus of the study visit was on the exchange of best practices on human rights education, ranging from primary to university education, as well as the exchange of best practices on the inclusion of human rights in education policies. A visit was also made to the Office of the Ombudsperson of Denmark, whereby were exchanged case information and best practices for the protection and promotion of human rights between the two countries.



After the study visit, a workshop was also held in Kosovo as part of this project, with the aim of strengthening the capacities of the OIK staff in human rights education of different target groups, starting with primary school students, secondary schools, universities, health workers, police officers, civil servants, judges and prosecutors. This workshop has contributed to the agreement on the undertaking of new cooperation initiatives between the MIA and MMESTI during the year 2023, to the strengthening of education on human rights and the adequate inclusion of this concept in the curricula and education policies in all education levels.



Achievements in promoting human rights and equality as well as planning for 2023

Even during the year 2022, the Ombudsperson is committed to fulfilling the legal mandate stemming from Law no. 05/L-019 for the Ombudsperson and from various international acts for the promotion of human rights and fundamental freedoms. In order to promote basic human rights and freedoms, this objective is also foreseen by the Strategy of the Ombudsperson Institution 2021-2025, during 2022 the OIK has undertaken a series of activities with an informative, educational and awareness-raising character for human rights.

During the year 2022, the Institution of the Ombudsperson has organized 6 thematic discussion tables; 11 discussion tables within the

“Equality for all” campaign; 35 visits to primary and lower secondary schools as part of the “Meet the Ombudsperson Institution” campaign; over 20 published statements on various human rights issues; 4 lectures with students; 3 regional meetings within the informal Advocacy Task Force on gender-sensitive Occupational Health and Safety Standards and Decent Work; 3 meetings with civil society within the Forum for Dialogue between the Ombudsperson and CSO as well as numerous field visits to non-governmental organizations that deal with human rights issues and public institutions.

As a result of commitment and dedication to the promotion and protection of basic human rights and freedoms, the OIK continues to be valued as the most trusted institution in the country and beyond. According to the Balkan Barometer Report, published on June 24, 2022 by the Regional Cooperation Council (RCC), which, among other things, is a survey on the perception of public opinion on the credibility and independence of public institutions, 68% of respondents trust the Ombudsperson Institution (39% in 2020, an increase of 29%). Regarding public opinion on the independence of public institutions from political influence, it is noted that 60% of respondents believe that the Ombudsperson Institution is independent from political influence (which in 2020 was 32%). In addition, 63% of the respondents confirm that this institution is capable of supervising the Government and making it accountable to the citizens.²¹⁸

PUBLICATIONS



218 For more about the report see: <https://www.rcc.int/balkanbarometer/publications>

Balkan Barometer Report for 2022

Credibility in public institutions	Independence and political influence in public institutions	Effectiveness of Government supervision by relevant institutions and its accountability to citizens
In Kosovo, 68% of respondents trust the Ombudsperson Institution (39% in 2020, an increase of 29%)	In Kosovo, 60% of respondents believe that the Ombudsperson Institution is independent from political influence (this estimate in 2020 was 32%)	Kosovo leads in this fact, where 63% of the respondents confirm that the Ombudsperson Institution is capable of supervising the Government and making it accountable to the citizens

During 2023, a more pronounced attention will be given to advancement of human rights education, in terms of harmonizing education curricula with human rights education policies. In this regard, the information campaign on human rights and the mission of the OIK will continue during 2023: "Get to know the Ombudsperson Institution", with students and teachers of primary and lower secondary schools. The campaign: "Equality for all" will also continue until its conclusion, within the framework of which several discussion meetings with citizens of non-majority communities are planned during 2023. Also, during 2023, regular meetings with civil society will continue within the framework of the work of the Forum for Dialogue, and also the thematic meetings will continue in different regions of Kosovo within the framework of the informal Advocacy Task Force on Gender Sensitive Safety and Health Standards at Work and Decent Work.

The Institution of the Ombudsperson, based on the Law on Child Protection and the Law on the Ombudsperson, issued Regulation (OIK) No. 01/2019 on special procedures for receiving, handling and addressing complaints submitted by children or complaints related to children's rights. In order for this Regulation to be as understandable and accessible as possible for children, the Ombudsperson Institution plans to finalize the child-friendly document during 2023. The Ombudsperson Institution, based on the Law on the Ombudsperson, is drafting a permanent program to make children aware of their rights and the role of

the Ombudsperson Institution in their protection. This program aims to make children aware of their rights and the role of the Ombudsperson Institution in protecting these rights according to the Constitution, the Convention on the Rights of the Child and the legislation in force in Kosovo. Also, during the year 2023, open days will be held with citizens and children, in order to listen to their complaints and discuss with the Ombudsperson, for further addressing the citizens' concerns about the claims of non-respect or violation of their rights.

Cooperation with civil society

Participation in civil society activities

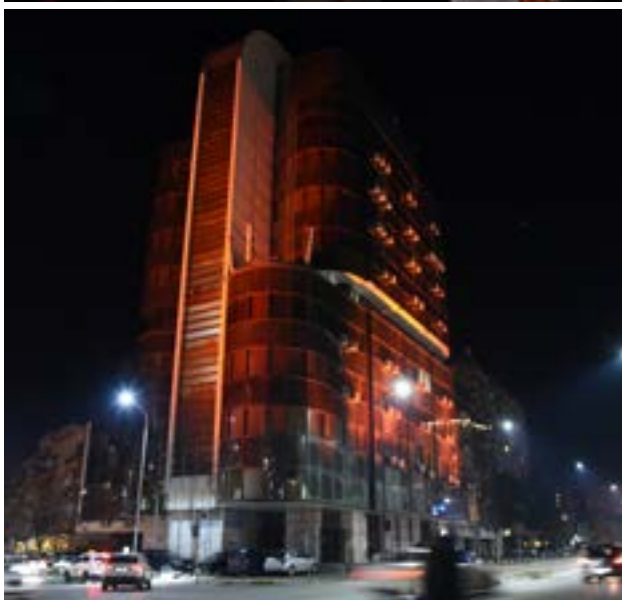
Civil society in our country, as a powerful voice of the citizens, continues to have an important active role in the protection and advocacy of respect for human rights in the country. The cooperation with the civil society in implementation of joint activities for advocacy and protection of human rights has been quite expressed during the year 2022. The Ombudsperson, his deputies and all the staff have participated in about 105 discussion tables, 15 conferences, 8 workshops, trainings, public debates and consultative meetings with different topics on aspects of human rights and fundamental freedoms. In addition, during 2022, 4 new cooperation agreements were signed between the Ombudsperson Institution and civil society organizations that deal with human rights.



On May 17, 2022, on the occasion of the International Day Against Homophobia, Transphobia and Biphobia, the Ombudsperson, through a published statement, drew attention to the discriminatory situations faced by the citizens of the LGBTI+ community, as a result of prejudice, stigmatization and violence against them. The Ombudsperson has appealed to all public authorities on their obligation to protect vulnerable groups from discrimination and to take legal measures to recognize all the rights guaranteed by the constitution. On this day, as a sign of solidarity and marking this day, the OIK building was illuminated with colours that symbolize the rights of this community. Meanwhile, on June 9, 2022, the Ombudsperson, together with the staff, participated in the Pride Week parade held in Pristina, in support of the rights of the LGBTI+ community.



On the occasion of opening the “16 days of activism against gender-based violence” campaign, organized by the Ministry of Justice and supported by the office of “UN Women” in Kosovo, the Ombudsperson has emphasized the need for comprehensive commitment to change social norms, promoting equality, non-discrimination and well-being.



The Ombudsperson, on the occasion of marking the International Day for the Elimination of Gender-Based Violence, in the published statement has expressed concern over the phenomenon of killing women and the need to undertake urgent actions by all state agencies in combating this phenomenon

and taking preventive measures. Also on this day, as a sign of solidarity with the victims of gender-based domestic violence, the OIK building has been lit up in orange, as the colour of the global campaign.

The support of the Ombudsperson for raising public awareness on respect for equality, non-discrimination and combating gender-based violence, has not been absent in media campaigns organized by civil society, through the delivery of educational and awareness-raising messages.

The Ombudsperson within the project “Be My Partner for Welfare”, implemented by the organization Advancing Together, has held four discussion tables with citizens from non-majority communities in: Gjilan, Novoberde, Kline and Gracanice. During these meetings, the citizens of the Roma, Ashkali and Egyptian communities and other communities were introduced to the mandate of the Ombudsperson and his work in terms of promotion, advancement and protection of the rights of the communities in the country. They have also been heard and have expressed concerns about non-respect of their rights, concerns which will be addressed by the Ombudsperson.



The Institution of the Ombudsperson, in cooperation with “UN Women”, in 2021 established the “Informal Advocacy Task Force on Gender-Sensitive Standards of Safety and Health at Work and Decent Work” in Kosovo, which aims to advocate and promote safety and health at work for everyone. Within the framework of the Task Force, during the year 2022, two consultative meetings were held in Peja and Gjakova and a regular working meeting. Together with representatives of the Task Force, representatives of trade unions at the regional level, representatives of the regional offices of the Labour Inspectorate and NGOs, with a focus on the protection and promotion of women’s and labour rights, were discussed the Labour Law, safety and health at work as well as protection from violation of rights arising from the employment relationship.

On August 8, 2022, in cooperation with the Civic Platform, a discussion was organized with representatives of civil society organizations. The topic of the roundtable was: “*The role of the Regional Offices of the Ombudsperson and the possibility of cooperation with local organizations*”, the purpose of which was to promote the work of the regional offices of the Ombudsperson and the possibilities of cooperation between them and local organizations of community-based civil society.

Also, this year, on the occasion of December 10, the International Human Rights Day, the Ombudsperson, together with the civil society, organized the rally with the motto: “*Stand up for Human Rights*”, a tradition already started since 2018, which aims to send a message for increased, comprehensive and inter-institutional engagement for the promotion and protection of human rights and fundamental freedoms. The rally was accompanied by a speech by the Ombudsperson and a representative of civil society.



Forum for Dialogue with Civil Society

The Forum for Dialogue between the Ombudsperson and Civil Society, established in October 2021, is a new initiative undertaken with the aim of creating a common platform for cooperation between the Ombudsperson and Civil Society Organizations, for the advancement of protection of human rights, for the identification of challenges and violations of fundamental rights and freedoms and the development of joint activities on their promotion and protection. The forum for dialogue plays an important role in creating a suitable environment to discuss and address current developments in the field of fundamental human rights and freedoms in the country. This initiative has been joined by a significant number of active civil

society organizations, dealing with human rights in different fields and perspectives. The forum is oriented towards four main objectives: 1. Advancing the respect and protection of human rights and fundamental freedoms in Kosovo; 2. Identifying and addressing cases of human rights violations; 3. Promoting the work of the Ombudsperson Institution and Civil Society Organizations working on human rights issues; and 4. Joint advocacy in the implementation of the recommendations of the OIK and the CSO.

During 2022, the Forum held two regular working meetings and one ad-hoc meeting, according to the request of the civil society. The first regular working meeting for the year 2022 of the Forum was held on May 25, 2022. In this meeting, the Strategic Document on the basis of which this forum was founded and which regulates the way the Forum operates and the working principles was revealed. In this meeting, many issues were addressed such as: *the language used in public discourse, the provisions of the Draft Civil Code regarding the recognition of relationships between persons of the same sex. In addition, failure to approve for years of two very important draft laws such as Local Government Finances and the draft law on Social and Family Services that directly affect the rights of the most vulnerable categories in the country has also been raised as a concern.* For this purpose, on 9 August 2022, the Ombudsperson Institution of Kosovo, the Coalition of Organizations for the Protection of Children (COPCh) and the Association of the Centres for Social Work of Kosovo (LQPSK) presented a joint position, submitting a letter to the Government of Kosovo, with a request for approval of these laws within the specified period on the legislative agenda.



On 23rd June 2022, the Ombudsperson hosted the representatives of civil society organizations in a meeting to discuss the findings and recommendations from the Civil Society Report on Human Rights in Kosovo in 2021 and the modalities of their joint addressing. In this ad-hoc meeting within the Forum, the following were discussed: *the current challenges and needs to be addressed regarding the protection and respect of the rights of persons with disabilities, starting from access to infrastructure, education, health, employment, transport, etc.; equal treatment and non-discrimination; the work of medical commissions for disability assessment; respecting the rights of non-majority communities; their access to education and employment; hate speech in public discourse as well as the advancement of cooperation between public institutions and civil society in the protection and respect of basic human rights and freedoms.*

While on November 16, 2022, the second regular work meeting of the Dialogue Forum was held. This time the meeting was also organized through the zoom platform, with the aim of facilitating the participation of representatives of NGOs, which operate in different cities of Kosovo. During this meeting, the developments and initiatives undertaken after the first regular meeting of the Forum were presented and discussed. The conclusions of the Ombudsperson were also presented and discussed in relation to the findings of the *Report of the civil society on human rights in Kosovo for the year 2021*. Among the many important topics discussed, the members of the Forum raised as issues in need of further addressing: *the impact of corruption on human rights, for which the Ombudsperson has already launched a preliminary investigation; the low number of students with disabilities who enjoy support from personal assistants; protection of the rights and dignity of the elderly and the need for supervision of public and private institutions for the care of the elderly, which the Ombudsperson plans to address through an ex-officio investigation and report in 2023*. The Ombudsperson in the ex-officio report 331/2022, published in 2022, regarding the alignment of the provisions of the general pre-university education system with the rights of children in education, has also referred in the report the ongoing concerns raised by civil society. This report has addressed not only the insufficient number of assistants for students with disabilities, but also the efficiency and effectiveness of their work for the integration and inclusion of children with disabilities in education.²¹⁹

village of Nakull - Municipality of Peja, due to the fouling of the sewage system, which passes near the houses of residents of this village inhabited mainly by citizens from the Roma, Ashkali and Egyptian communities.

After the information received during the discussion in the Forum, the Ombudsperson has initiated ex-officio investigations regarding the assertion of endangering the health of the residents of the

219 <https://oik-rks.org/en/2022/11/10/report-of-the-ombudsperson-ex-officio-no-3312022-with-regard-to-harmonization-of-the-provisions-of-general-pre-university-education-system-of-kosovo-with-the-rights-of-children-in-education/>

International cooperation of OIK

International cooperation is an important part of the mandate of the National Institutions for Human Rights (NIHR), such as the Ombudsperson, and an essential requirement of the *Paris Principles*²²⁰ and the *Venice Principles*.²²¹ International human rights mechanisms attach particular importance to the strengthening of such independent institutions, because they act as a bridge in overseeing the effective implementation of international human rights obligations.

In addition to the previously approved international instruments and those in previous years to strengthen the role of NIHRs, on 27 September 2022, the Committee of Ministers of the Council of Europe adopted a set of guidelines aimed at assisting member states in their efforts to meet their obligations to ensure everyone within their jurisdiction the rights and freedoms set out in the European Convention on Human Rights.²²²

This year, a very important step has been taken to strengthen the role and independence of equality bodies, as the European Commission, on 7 December 2022, approved the proposals for two new directives, which will set the minimum mandatory standards for all member states of the European Union.

The Ombudsperson Institution of Kosovo was also very active in the international sphere during 2022.

Despite the fact that the Republic of Kosovo has not yet joined key international mechanisms and the Ombudsperson Institution of Kosovo has limited opportunities to contribute to the international system for human rights, this is due to the unresolved status of Kosovo.

The Ombudsperson, as an independent constitutional institution, is committed to acting as a bridge for the exchange of best international practices in the field of human rights and to contribute where possible, but also to prepare its capacities, that in the future, whenever the membership happens, it will be able to assume its obligations within the international system for human rights.

In addition, the Association of Mediterranean Ombudsmen (AOM) has evaluated the readiness and draft proposal of the Ombudsperson Institution of Kosovo and on this occasion the 12th Meeting of the Association of Mediterranean Ombudsmen will be held on 24-25 May 2023 in Kosovo. The topic of the conference that will be held on the first day will be: "Integrity and Independence of the Ombudsperson Institution - Resilience in the midst of Challenges", which aims to create an opportunity

220 The Paris Principles are the minimum criteria that a national human rights institution must have in order to be considered credible, independent and effective in the international arena.

221 Venice Principles for the Protection and Promotion of Ombudsperson Institutions (Venice Principles) for Ombudsperson Institutions, Venice Commission, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e)

222 <https://www.coe.int/en/web/human-rights-rule-of-law/-/new-council-of-europe-guidelines-on-preventing-and-remedying-violations-of-the-european-convention-on-human-rights>

to map the type of threats to their independence experienced by Ombudsperson Institutions, best practices and effective response to them.

In order to strengthen cooperation with counterpart institutions and with various international organizations and networks, including those in which it is already a member, it has participated in 40 international meetings, some of which were held virtually, as listed chronologically in the table below.

Table: Participation in international meetings

No.	Description of the activity	Date	Host
1.	Bilateral virtual meeting between the Ombudsperson of the Republic of Kosovo and the Ombudsperson and the Auditor General of the State of Israel	17 January 2022	OIK
	Online		
2.	Webinar of the Council of Europe on Equality Bodies and National Human Rights Institutions related to social rights	2 February 2022	EQUINET
	Online		
3.	Regional Forum for Sustainable Development and the International Convention on Economic, Social and Cultural Affairs	8 February 2022	OHCHR
	Online		
4.	Interregional conference with the topic "Promoting the culture of tolerance and mutual respect between the two regions"	1-3 March 2022	Western Balkans Fund
	Tirana, Albania		
5.	Meeting of the European Organization for Military Associations	8-9 March 2022	EUROMIS
	Online		
6.	Annual meeting of the World Alliance for National Human Rights Institutions (GANHRI)	9-10 March 2022	GANHRI
	Online		
7.	Official visit to Presheva and Bujanovc	10 March 2022	OIK
8.	The roundtable, with the topic: "Rebuilding a fairer Europe after Covid-19 by expanding the protection against discrimination on new bases"	30 March 2022	EQUINET
	Online		

9.	General Assembly of the European Network of National Human Rights Institutions (ENNHRI)	31 March 2022	ENNHRI
	Online		
10.	Forum for gender equality in the Western Balkans	1-2 April 2022	AIRE Centre
	Becici - Montenegro		
11.	The launch of the ENNHRI database related to the rights of human rights defenders and the protection of civil space	11 April 2022	ENNHRI
	Online		
12.	ENNHRI/OHCHR meeting regarding the situation of human rights of refugees from Ukraine: The perspective of NIHR	12 April 2022	ENNHRI/OHCHR
	Online		
13.	Conference on equality plans	19 May 2022	EQUINET
	Online		
14.	General Assembly and Conference of the European region within the International Ombudsperson Institute (IOI)	26-27 May 2022	IOI
	Online		
15.	Meeting of the Network of NCPTs from Southeast Europe	20-22 June 2022	Board of Ombudsmen of Austria
	Vienna, Austria		
16.	Study visit to Denmark	27-28 June 2022	Project KSV/019 Technical Assistance for European Integration
	Copenhagen, Denmark		
17.	Study visit to the Netherlands	1-2 August 2022	IPA project "Support for the Ombudsperson"
	The Hague, Netherlands		
18.	The sixth regional conference of the Network of Equality Bodies from South East Europe	5-7 September 2022	Commission for Protection from Discrimination, of North Macedonia
	Skopje, North Macedonia		
19.	The regional training on the integration of the issue of sexual and gender-based violence in the monitoring of countries deprived of liberty	7-8 September 2022	ODIHR
	Warsaw, Poland.		

20.	Annual Meeting of the Network of Ombudspersons for Children and Annual Conference on “Shaping the Future: Children’s Rights in the Climate Crisis”	19-20 September 2022	ENOC
	Reykjavik, Iceland		
21.	12th Meeting of the COE-FRA-ENNHRI-EQUINET Platform for Social and Economic Rights - Strengthening cooperation with civil society working for social rights	20 September 2022	COE-FRA-ENNHRI-EQUINET
	Bratislava, Slovakia		
22.	High Level Meeting on the human rights situation related to migration from Ukraine	22 September 2022	ENNHRI
	Online		
23.	Matra training program “Human rights and minorities”	26 September – 28 October 2022	The Netherlands Helsinki Committee & The Hague Academy of Local Government & The Leiden School of Law & The Netherlands Ministry of Foreign Affairs
	Online		
24.	International conference on the topic: “The Rights of the Elderly and the Role of Ombudsperson and Mediator Institutions”	27 September 2022	AOM and Ombudsperson of Georgia
	Online		
25.	Closing conference of the “Horizontal Facility for the Western Balkans and Türkiye” project - Phase II	27-28 September 2022	Council of Europe
	Budva, Montenegro		
26.	Official visit to the Ombudsperson in Albania	3 October 2022	OIK
	Tirana, Albania		
27.	14th International Conference of Ombuds Institutions for the Armed Forces: “Rights and duties of armed forces personnel in peacetime and wartime: between policy and practice”	3-4 October 2022	DCAF
	Oslo, Norway		
28.	Equinet Annual General Assembly Meeting	5 October 2022	Equinet
	Brussels, Belgium		

29.	European Conference of NPMs	5-6 October 2022	Council of Europe
30.	Study visit to the Ombudsperson Institution in Croatia Zagreb, Croatia	11-13 October 2022	OSCE
31.	Study visit related to gender integration in Sweden Stockholm, Sweden	18-19 October 2022	Un Woman
32.	Workshop on addressing hate through improving data collection, Strasbourg, France	18-19 October 2022	Council of Europe
33.	Equinet Working Group meeting on equality law and Training on the use of equality data in legal practice on cases. Brussels, Belgium	26-28 October 2022	Equinet
34.	Intensive program related to European law and economics. Riga, Latvia	7 November – 16 December 2022	Riga School of Law, in cooperation with the Ministry of Foreign Affairs of Latvia and the Government of the United Nations
35.	The second meeting of the Network of NMPs from Southeast Europe Vienna, Austria	15-16 November 2022	The Board of Ombudsmen of Austria and the Council of Europe
36.	Training on the topic “Ombudsmen and Mediators Institutions: intervention processes and tools” Rabat, Morocco	22-23 November 2022	AOM & AOMF
37.	The annual meeting of the General Assembly of ENNHRI Brussels, Belgium	22-23 November 2022	ENNHRI
38.	Ninth Regional Forum on the Rule of Law in South East Europe Tirana Albania	25-26 November 2022	Civil Rights Defenders Aire Centre

39. The conference on the 30th anniversary of the establishment of the Ombudsperson Institution in Cyprus, with the topic: “Rule of law, principles and exchange of good experiences in the implementation of the competences of the Ombudsperson Institution as tools for better protection and promotion of human rights” Nicosia, Cyprus	2 December 2022	AOM & Ombudsperson of Cyprus
40. International Symposium on the Role of the Legislature in the Protection of Human Rights. Rize, Türkiye	21-22 December 2022	Human Rights and Equality Institution of Türkiye

Cooperation with counterparts and other international organizations

Regular and constructive interaction with counterpart institutions and other international organizations and networks for human rights is essential and very important for the National Institutions for Human Rights (NIHRC) to effectively implement their mandate, therefore the Ombudsperson Institution this year has also paid special attention to international cooperation and its participation in various international activities, some of which we present below.

On 17 January 2022, the Ombudsperson, Mr. Naim Qelaj and the Auditor General Mrs. Vlora Spanca, held a virtual meeting with Mr. Matanyahu Engelman, Auditor and Ombudsperson of Israel and Mrs. Dr. Esther Ben-Haim, Head of the Office of the Ombudsperson in Israel. During the meeting, they exchanged information regarding the role, mandate and constitutional and legal basis on which they carry out their mission, but also about the challenges they faced and their opportunities and vision to address them in the future. In this meeting, they also discussed the possibilities of undertaking initiatives for the exchange of staff as well as the organization of roundtables with topics on human rights which are of common interest. The Ombudsperson of the Republic of Kosovo thanked his Israeli counterpart for the meeting and welcomed his readiness for cooperation in the future. As countries with a very strong historical connection, which have had similar destinies, opening new paths for cooperation is very important for both countries.

On 1 and 2 April 2022, the Ombudsperson participated in the first Regional Forum on Gender Equality in the Western Balkans, which was organized by the AIRE Centre. The president and vice-president of the European Court of Human Rights, the Commissioner of the Council of Europe for Human Rights, as well as representatives of the judiciary and counterpart institutions from the entire region participated in this forum. In this forum, the main principles and standards defined by the European Court of Human Rights regarding gender equality and discrimination on the basis of sex were discussed, including the main essential and procedural obligations for the protection of women from domestic and gender-based violence.

This year, OIK also participated in a series of meetings within the networks it is a member of, below we will mention some of them.

On 26-27 May 2022, OIK participated in the General Assembly and Conference of the European Group of the International Ombudsmen Institute (IOI), which was organized by the Ombudsperson of Greece. The topic of this conference was “*Ombudsperson reloaded: Mandate and operational framework in a post-modern era*” and it brought together representatives of Ombudsperson institutions from all over Europe. The discussions about current IOI projects, focusing specifically on the Manchester Memorandum regarding peer review took place. The Manchester Memorandum came as a recommendation from the survey carried out by the Parliamentary Ombudsperson for Health Services in Wales entitled “*The Art of the Ombudsperson: leadership through international crisis*”. As conclusions of the works it turned out that the peer review mechanism should be supported by all members, since it will help to have more compact and credible institutions in the future, making the Venice Principles to be applied in practice as a reference basis for the actions of all Ombudsperson institutions. It was also reiterated that it is important to make the most of the new technologies for the implementation of the mandate of the Ombudsperson institutions, but also to react harshly when the undermining of human rights is attempted by them.

A series of activities in which OIK participated this year were also carried out by ENNHRI.

Even this year, ENNHRI published [Report on the State of the Rule of Law in Europe](#)²²³, which presents the perspective of all the member institutions of

this network, for the state of the rule of law in their countries, based on the monitoring and collection of data from the member institutions, including the part for Kosovo, according to the report sent by the Ombudsperson Institution of the Republic of Kosovo. The findings of this report show a further deterioration of the rule of law across Europe compared to last year. The report states that in some countries, National Human Rights Institutions face attacks and threats to their independence, lack cooperation from national authorities, and face insufficient financial and human resources. The report also identified worsening operating conditions for civil society organizations (CSOs) and human rights defenders. It also highlights persistent obstacles to access to justice, related to levels of corruption and inadequate protection of whistle-blowers. NIHRs reported in particular a significant decline in media freedom, pluralism in the media market and safety of journalists.

As for the meetings, several were held during the year, but we are only mentioning the Meeting of the General Assembly of ENNHRI, which this year, for the first time since the beginning of the pandemic, was held with physical participation in Brussels, on 22-23 November 2022. In addition to the internal issues of the network, also, discussion was also made about the impact on human rights that the war in Ukraine has had, as well as the sustainability of NIHRs from three prisms such as: regional standards and their implementation, the environment for the rule of law at the national level and the support of institutional sustainability and NIHRs under threat.²²⁴

The Ombudsperson within the mandate as an equality body, on 5 October 2022, participated in the General Assembly of the European Network of

223 ENNHRI's Report on the Rule of Law in Europe, <https://ennhri.org/wp-content/uploads/2022/07/ENNHRI-Regional-RoL-Report-2022.pdf>

224 ENNHRI, NIHRs gather for the General Assembly of ENNHRI, the first with physical participation since 2019, accessible at: <https://ennhri.org/news-and-blog/nhris-gather-for-ennhri-first-general-assembly-in-person-since-2019/>

Equality Bodies (EQUINET), where, in addition to the internal issues of the network, it was discussed about the standards for the bodies of equality, in which members broke into small groups and discussed together with policy makers from the European Commission and representatives of the current and future EU Council Presidencies about the upcoming legislative proposal on binding standards for equality bodies. As a conclusion of the meeting, it emerged that equality bodies need to have the necessary financial, human and operational resources, which should be included in the new EU directive. Each additional mandate must be accompanied by additional resources, specific budget allocated for interaction with the court (strategic judicial cases), offices provided throughout the territory and the independence of the institution's leader ensured, also after the approval of the Directive each institution should lobby with national parliaments for its transposition to local legislation²²⁵

The OIK has been participating in the annual conference of the Network of Equality Bodies from Southeast Europe for several years, which this year was held in Skopje, Macedonia, on 5-7 September 2022. In this conference, the role of equality bodies was discussed in litigation, including strategic litigation cases and shifting the burden of proof to the court.

Increased international cooperation also extends to the mandate of the OIK as the National Mechanism on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NPM), within the framework of which several meetings were held. OIK participated in two meetings held in Vienna, Austria, organized by the Network of National Mechanisms for the Prevention of Torture of South-Eastern Europe (SEE NPM). *The first meeting* was held on 20-22 June 2022 and

addressed two topics: 1) The special needs of the elderly and people with physical disabilities in places of detention and 2) The relations of the NPM with the public, while the *second meeting* was held on 15-16 November 2022, and addresses the following topics: 1) Accommodation and treatment of children and adolescents with mental health problems and physical disabilities and 2) Applying tight measures for adolescents and people with mental disorders.

In addition, on 5-6 October 2022, OIK participated in the European Conference of NPMs, which was organized by the Council of Europe in Strasbourg, France. The topic of this conference was "Monitoring of special groups of persons deprived of liberty" and focused on the specifics of monitoring conditions of detention and treatment of different categories of vulnerable persons deprived of liberty. The conference participants discussed the special techniques used by NPMs during preventive visits and exchanged views and best practices regarding effective legal remedies aimed at improving the living conditions of vulnerable categories of persons deprived of their liberty. Such persons include children and youth, the elderly, women, migrants and minorities.

On 2-4 October 2022, the OIK participated in the 14th International Conference of Ombuds Institutions for the Armed Forces (14ICOAF), which was held in Oslo, Norway. This year's conference examined the role of Ombuds institutions before and during armed conflicts, the rights and obligations of armed forces personnel in peacetime and the cases when they support law enforcement. Among other things, during the Conference sessions were planned specific to gender equality in the armed forces; post-deployment and health rights, including the mental health of armed forces personnel, as well as the role of Ombuds institutions

225 EQUINET, Equinet General Assembly votes at the Annual General Meeting, accessible at: <https://equineteurope.org/equinet-general-assembly-votes-at-agm-2022/>

in relation to Sustainable Development Goal 16 - Peace, justice and strong institutions. 14ICOAF already presents an important international forum to promote and strengthen the democratic supervision of the Armed Forces, with participants sharing the same aspirations for the prevention of mismanagement and violation of human rights, in which the OIK participate each year.

For the OIK, it is also very important to build the capacities of the staff and exchange information and good practices with other counterpart institutions, therefore this year, with this goal in mind, four study visits were carried out. *First visit*²²⁶ was held in Denmark on 26-29 June 2022, with a focus on the exchange of information related to human rights education and its inclusion in education programs and policies, in the formal and non-formal education system, from primary schools at the university level, in order to create a culture of human rights in our society. In addition to representatives of the OIK, the visit was also attended by the Government of the Republic of Kosovo, the Ministry of Education, Science and Technology and the University of Pristina. During this visit, the Ombudsperson Mr. Naim Qelaj had a working lunch with Mr. Niels Fenger, the Parliamentary Ombudsperson of Denmark, with whom he discussed various issues of mutual cooperation, with a special focus on the agreement on leasing Kosovo prisons to the Danish state. *Second visit*²²⁷ was held in the Netherlands, on 1-2 August 2022, and was aimed at building the capacities of the administration staff, in matters of good administration, management, finance, human resources, etc. The third visit was held in Croatia on 11-12 October 2022 with the support of the OSCE Mission in Kosovo and was aimed at obtaining good practices related to monitoring and responding to

hate crime cases, including ways of collecting and monitoring data on hate crimes and hate speech as well as reporting on them. The fourth visit was held on 17-20 October 2022, in Sweden, with the support of UN Women. The purpose of this visit was to strengthen the role of the Supreme Audit Institutions and Ombudsperson Institutions, in increasing accountability, transparency, monitoring of commitments for gender equality and gender budgeting, in relation to the exchange of experiences and good practices. Representatives of the Ombudsperson Institutions and Supreme Audit Institutions from the three countries of the Western Balkans participated in this study visit: the Republic of Kosovo, the Republic of Albania and the Republic of North Macedonia. The participants had the opportunity to become familiar with the developed methods and good practices of the Swedish state regarding the gender budgeting process, the performance audit process as well as other state instruments that are applied for a more equal society.

OIK prioritizes international cooperation and will continue to be present at various international meetings and forums, which will influence the further strengthening of this cooperation and the creation of new cooperations, through which it will be informed in continuity with new developments in the field of human rights and the work of the international system.

Membership in international organizations

The membership of national institutions for human rights (NIHR) in international mechanisms

226 This visit was organized within the project KSV 019 Technical Assistance in the context of European Integration, with support and financing from the Government of Luxembourg and Norway, implemented by the Office of the Prime Minister of the Republic of Kosovo

227 This visit was organized within the framework of the IPA project "Support for the Ombudsperson", financed by the European Union

and networks serves to advance the dynamic relations that must exist between them and the international system for human rights. As the OIK has already joined the most important international networks and organizations, this year it has taken care to interact with them, holding joint meetings, exchange of information and good practices, which help in the advancement of international cooperation.

After many challenges and efforts, another success for OIK in the international structures for human rights is the membership in the European Network of Ombudspersons for Children (ENOC). This year, OIK finally received confirmation for membership as an associate member, joining this important international network. ENOC is a network of independent institutions for children's rights in the member states of the Council of Europe. Its mandate is to facilitate the protection and promotion of children's rights, as provided for in the United Nations Convention on the Rights of the Child.²²⁸The European Network of Ombudspersons for Children also serves for capacity building and professional support among members, to promote the creation of independent institutions of children's rights and to provide support for such initiatives.

228 European Network of Ombudspersons for Children (ENOC), accessible at: https://enoc.eu/?page_id=2316

Below, we present the international mechanisms where OIK is a member:

No.	Network/Mechanism	Year of membership
1.	European Ombudsman Institute (EOI)	2002
2.	South East European Network of Ombudsmen for Children (CRONSEE)	2009
3.	International Ombudsmen Institute (IOI)	2012
4.	European Network of National Human Rights Institutions (ENNHRI)	2013
5.	Association of Ombudsmen and Intermediaries of the Francophonie (AOMF)	2015
6.	International Conference of Institutions of Ombudsmen for the Armed Forces (ICOAF)	2015
7.	Association of Ombudsmen of the Mediterranean (AOM)	2016
8.	Network of Ombudsmen for the Environment and Human Rights ²²⁹	2017
9.	European Network of Equality Bodies (EQUINET)	2019
10.	European Network of Ombudspersons for Children (ENOC)	2022

The OIK is also invited and participates in the activities of some other mechanisms and networks, in which due to political barriers it is only an observer member, such as:

- World Alliance for National Institutions for Human Rights - GANHRI (from which the compliance of NIHR with the Paris Principles is examined)²³⁰;
- The Network of National Mechanisms for the Prevention of Torture of South-Eastern Europe - SEE NPM (within 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 of deprived of liberty).²³¹

229 This network was established in 2017 and is signed by the following countries: Bosnia, Croatia, Kosovo, Montenegro, Macedonia, Serbia and Slovenia

230 A condition for membership in this organization is Kosovo's membership in the United Nations

231 A condition for membership in this regional network is Kosovo's accession to the Optional Protocol to the Convention against Torture

Reporting to various international mechanisms

Every year, OIK receives questionnaires on different topics from international organizations to report on the state of human rights in Kosovo. Similarly, this year, several requests for reports and questionnaires were sent, which are listed in the table below.

Table: List of reports sent to international organizations

Date	Report/research topic	The organization/institution to which the report was sent
4 February 2022	Report of the Ombudsperson regarding the rights of children with disabilities in Kosovo	Ombudsperson of France
7 February 2022	Digitization of services and the role of the Ombudsperson	International Network of Ombudsmen (IOI)
2 March 2022	Good practices related to working with human rights defenders	European Network of National Human Rights Institutions (ENNHRI)
21 March 2022	Questionnaire regarding the mandate of the Ombudsperson of Kosovo	European Network of Ombudsmen (EOI)
30 March 2022	The role of Ombudsperson and Mediator Institutions in the promotion and protection of human rights, good governance and the rule of law	Office of the United Nations High Commissioner for Human Rights (OHCHR)
22 June 2022	Redress in cases of discrimination: Sanctions and legal remedies	European Network of Equality Bodies (Equinet)
20 October 2022	Positive changes achieved by human rights defenders	United Nations Special Rapporteur on Human Rights Defenders
14 November 2022	Legal infrastructure related to Actio Popularis	European Network of Equality Bodies (Equinet)
15 November 2022	Report on practices in Kosovo regarding the wearing of religious symbols by female lawyers	UNIA - Equality body in Belgium
8 December 2022	Self-assessment report on the mandate for children's rights	Association of Ombudsmen of the Francophonie (AOMF)

Agenda 2030 and Sustainable Development Goals - The Role of the Ombudsperson Institution as a National Human Rights Institution

The eradication of poverty, inequality, the realization of human dignity and the promise to reach those who are left behind and to leave no one behind, are based on the principles of human rights, equality and non-discrimination and constitute the commitment and promise of countries through the 2030 Agenda for Sustainable Development.

This Agenda is based on Resolution A/RES/70/1 of the UN General Assembly, approved on 25 September 2015. In the local context, the Assembly of the Republic of Kosovo, on 25 January 2018, expressed the political will and readiness to engage in the implementation of this global framework, through Resolution No. 06-R-001, for the approval of Sustainable Development Goals (SDGs). Meanwhile, in October 2018, the Assembly established the Council for Sustainable Development, as an inter-institutional mechanism within the Assembly, in the service of coordinating the processes towards the fulfilment of this Agenda.

The 2030 Agenda presents a global level action plan, in line with which states have expressed their commitment and strive to be partners to fulfil 17

objectives, with 169 specific targets, to which 231 indicators correspond²³². This document at its core, as the key pillars of the universal vision it carries, places: *population, prosperity, planet, peace and partnership* (known as the five Ps), on which real and sustainable development relies.

The agenda calls for inclusiveness and partnership in terms of knowledge, expertise, experiences, resources, etc., so that progress towards achieving the objectives occurs globally.

The objectives and goals of the 2030 Agenda reflect the internationally accepted standards of human rights and integrate the cross-cutting principles related to them, in order to realize the commitment to leave no one behind and to influence the enjoyment of these rights by everyone and everywhere.

From a human rights perspective, approximately half of the SDG indicators have the potential to produce data that are directly relevant to monitoring specific human rights instruments, while the rest have indirect relevance or provide contextual and

232 For more, see <https://unstats.un.org/sdgs/indicators/indicators-list/#:~:text=The%20global%20indicator%20framework%20includes%20231%20unique%20indicators>.

analytical information.²³³This connection of the Agenda with human rights is highlighted in the Merida Declaration²³⁴for the role of NIHR in the implementation of the 2030 Agenda.

The agenda strongly embodies the Charter of the United Nations²³⁵, the Universal Declaration of Human Rights²³⁶, treaties and international instruments. A part of these International Agreements and Instruments, in the Republic of Kosovo are integrated in the Constitution (Article 22)²³⁷. However, the fact that our country is not a member state of the UN, results in failure to report to treaty bodies, including the Human Rights Council and the Universal Periodic Review (UPR) process²³⁸. This affects the way of reporting at the level of mechanisms and processes for monitoring and implementing international instruments and progress in this direction.

The Ombudsperson draws attention to the fact that the failure to include the International Convention on Economic, Social and Cultural Rights in the country's Constitution means that Kosovo is without a key instrument in terms of achieving the objectives and goals of the 2030 Agenda. Moreover, both documents (the Convention in

question and Agenda 2030) complement and strengthen each other. This function would also include the Convention on the Rights of Persons with Disabilities, as well as the European Social Charter (revised in 1996).

The inclusion in the Constitution of this Convention, as well as the Convention on the Rights of Persons with Disabilities and the Optional Protocol and the European Social Charter (revised in 1996), have emerged as specific recommendations²³⁹ to the Assembly of the Republic of Kosovo, from ex officio Report no. 577/2021, related to sexual and reproductive health rights - access to information and contraception services, abortion and post-abortion care, as well as maternal health care.

The same Report, addressed to the authority at the end of December 2022, has a close relationship, especially, with Goal 3 - Good health and well-being and Goal 5 - Gender equality, respectively the corresponding relevant indicators (Indicator 3.7.1; 3.7.2; 3.c.1; 3.8; 5.6.1) to these two specific objectives. The large number of recommendations that have come out of it will require special commitment and close cooperation from the

233 For more, see [https://www.humanrights.dk/what-we-do/sustainable-development-goals/sdgs-indicators-data#:~:text=Approximately%20half%20\(49%25\)%20of.enable%20or%20limit%20the%20realization](https://www.humanrights.dk/what-we-do/sustainable-development-goals/sdgs-indicators-data#:~:text=Approximately%20half%20(49%25)%20of.enable%20or%20limit%20the%20realization)

234 The Merida Declaration was adopted by the Global Alliance of Human Rights Institutions (GANHRI) at the 12th Conference of the International Coordinating Committee of National Human Rights Institutions (ICC), held in Merida, Yucatán, Mexico, on 8-10 October 2015. The focus of the Conference was on "Sustainable Development Goals and the role of NIHR in this context. For more information on the role of NIHRs according to this Declaration, please see: <https://ennhri.org/our-work/topics/sustainable-development-goals/#:~:text=The%20M%C3%A9rida%20Declaration%2C%20adopted%20by,human%20rights%20and%20sustainable%20development>.

235 For more, see <https://www.un.org/en/about-us/un-charter>

236 For more, see <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

237 For more, see <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

238 The Universal Periodic Review is a unique process that involves reviewing the human rights records of all UN member states. As a process, it is state-led, under the auspices of the Human Rights Council, which provides the opportunity for each state to state what actions they have taken to improve the human rights situation in their countries and to fulfil their obligations for human rights. As one of the main features of the Council, the UPR is designed to ensure equal treatment for all countries when their human rights situations are assessed. The ultimate goal of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur. Currently, no other universal mechanism of this type exists. (Information accessible at: <https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>)

239 The same Recommendations were addressed to the legislature in 2016 through the Evaluation of Rights in Sexual and Reproductive Health, but they remained unimplemented. For more, see <https://oik-rks.org/2016/12/08/raporti-te-drejtat-ne-shendetin-seksual-dhe-riprudhues-ne-kosove-nje-realitet-tej-lijit/>

responsible institutions that are responsible for their fulfilment.

Based on the principles of establishment and operation, the Ombudsperson Institution is a National Human Rights Institution, in accordance with the *Paris Principles*²⁴⁰. Due to the importance of these institutions at the international level, the agenda has set the existence of these institutions in compliance with the *Paris Principles* (Goal 16, indicator 16.a.1)²⁴¹ as a special indicator. Institutions of this nature, wherever they operate, apply a human rights-based approach throughout their work.²⁴², in the exercise of the functions and powers and responsibilities they have.

The human rights-based approach serves to empower the holders of human rights (individuals, communities) to claim and exercise their rights, as well as to increase the capacities of the bearers of responsibilities to respect, protect and promote guaranteed rights and freedoms and to fulfil the duties and obligations they have.

Based on the Resolution for the 2030 Agenda, it is the responsibility of the respective governments to monitor and evaluate the progress in terms of achieving the SDGs and the target goals.

In order to help in this regard and regarding the service of accountability on the part of governments, the global framework of indicators has been developed.

Disaggregated, qualitative, accessible, reliable and timely data are essential for assessing human rights progress, highlighting inequalities, ensuring accountability and transparency, and providing the necessary information for decision makers²⁴³.

Given the importance of health data and the numerous segments where they can be used and serve (in order to fulfil the 2030 Agenda²⁴⁴), initiated by the Working Group for the operationalization of the Memorandum of Understanding between OIK and KAS²⁴⁵, in March 2022, a roundtable was convened and held on the topic “*Data collection and data reporting in the health sector*”.

With the aim of supporting the implementation and measurement of human rights, the roundtable highlighted the inconsistency in the methodology and data collection standards within the health sector and their reporting to KAS. During the discussions, the key problems in the chain of data collection and reporting, the necessity for clarifying the institutional roles in relation to the responsibilities in this aspect and the need for

240 The Paris Principles relate to the status of national institutions for the promotion and protection of human rights, approved by UN General Assembly Resolution 48/134, dated 20 December 1993.

241 For more, see https://www.ohchr.org/Documents/Issues/HRIndicators/SDG_Indicator_16a1_Metadata.pdf

242 For more, see <https://ennhri.org/about-nhris/human-rights-based-approach/>

243 Moreover, see https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

244 The 2030 Agenda has become mandatory for the country, since the adoption of the Resolution on Sustainable Development Goals, by the Assembly of the Republic of Kosovo, in 2018. This Agenda presents a global level action plan, in line with which the states have expressed their commitment and try to be partners to fulfil 17 objectives, with 169 specific targets, to which 231 indicators correspond. This document at its core, as the key pillars of the universal vision it carries, places: the population, prosperity, the planet, peace and partnership (known as the five Ps), on which real, therefore sustainable development is based (for more [SDG Indicators – SDG Indicators \(un.org\)](#))

245 In fulfilment of the obligations according to the Resolution of the country's Parliament of 2018, IAP and the Statistics Agency of Kosovo (ASK) have signed a bilateral Memorandum of Understanding in January 2020. This Memorandum has been supported by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva, with the mediation of the Office for Human Rights of the United Nations Mission in Kosovo, with which contacts have continued and meetings also during 2021, regarding issues of human rights and freedoms that are in focus of common interest, including the 2030 Agenda. Additionally, see https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E as well as the Annual Report for 2021, page 44 https://oik-rks.org/wp-content/uploads/2022/03/Aip_Raportivjetor_ALB_22.04.pdf

a collaborative and coordinating work, having complete, accurate, credible and timely data were highlighted.

Actors from the responsible institutions of the health sector: Ministry of Health, University Clinical Centre, National Institute of Public Health, Institute of Forensic Medicine, non-governmental organizations (AMC, CDF), representatives from United Nations Agencies, offices in Kosovo (OHCHR, WHO, UNFPA, UNICEF), together with representatives from KAS and OIK, discussed the identified issues on a professional and technical level.

Based on the discussions and conclusions of this panel, the Ombudsperson has started ex officio investigations regarding the collection and reporting of health data in the Republic of Kosovo. The report is expected to be addressed in the first part of 2023. The purpose of this report is to identify the existing problems related to the collection and reporting of data in the health sector and to recommend to the responsible authorities the steps that should be taken, in order to gradually eliminate problems in data collection and reporting in the health sector. Moreover, it concerns the importance of accuracy, completeness and reliability that health data have, as well as to scan the condition, responsibilities as well as to address recommendations in order to find solutions in accordance with the best standards and in accordance with the SDGs, more precisely Objective 3 - Good health and well-being and generally the commitment to meet the 2030 Agenda and the goal of leaving no one behind.

The roundtable that served to discuss and initiate this Report is intended to be followed by several roundtables with specific topics (for data from the CRA, from the educational system, data from the

social aspect) and the collection and reporting of data related to them, in order to fulfil the role of the OIK, as a bridge between rights holders and the state, related to the design and monitoring of policies, strategies and actions. However, in the absence of readiness of KAS to cooperate in this direction, the initiative and insistence of the OIK, through the members it has in the Working Group for the implementation of the Memorandum of Understanding between the two institutions, remained underdeveloped further and as a result unimplemented during the year 2022.

In the annual report of the previous year, the Ombudsperson assessed that the positioning of KAS within the institutional structure of the ministry requires careful and responsible assessment and encourages the Government and the Assembly to place KAS in a direct line of accountability to the Assembly or the Government.²⁴⁶ In this regard, the Government of Kosovo with decision no. 05/84 dated 22 June 2022, decided that the Kosovo Agency of Statistics from the Ministry of Finance, Labour and Transfers will be transferred to the Office of the Prime Minister.

The Merida Declaration defines the role of NIHR in terms of their advisory competence regarding the shaping of contextual indicators and sound data collection systems, as well as the monitoring role in terms of progress in the implementation of the agenda²⁴⁷ and as a logical and functional consequence, the supervision of respect for human rights and freedoms. The identification of relevant indicators, which are based on the guidelines on human rights indicators and access to human rights-based data compiled by the Office of the OHCHR, is inevitable for the implementation of the 2030 Agenda. In this context, the Ombudsperson recalls that the responsible and competent

246 <https://oik-rks.org/en/2022/03/31/annual-report-2021/> page 45

247 For more, see <https://www.theioi.org/ioi-news/current-news/merida-declaration-on-nhris-role-in-implementing-the-2030-agenda-for-sustainable-development>

authority to direct the process for the development of indicators at the country level are the offices for national statistics, such as the Statistics Agency in Kosovo, since they have knowledge of the available data sources and have knowledge of the main obstacles that must be addressed.

In addition to the advisory and monitoring role, NIHRs are also seen as a bridge between rights holders and the state, regarding the design and monitoring of policies, strategies and actions. As such, the Ombudsperson, in accordance with its mandate, continuously addresses issues affecting human rights, focusing on vulnerable and marginalized groups.

Regarding legal measures and policies to eliminate discrimination and further substantial inequalities, OIK can advise and raise issues that require immediate attention or special measures. The Ombudsperson has an advisory and advocating role in relation to human rights obligations, including the SDGs and the loopholes that affect the special and most vulnerable groups of rights holders.

Communication with the public

During 2022, the media in general have shown great interest in the work and activities of the Ombudsperson Institution (OIK), where the Ombudsperson has given dozens of interviews, statements and press releases, both for televisions and portals, and also for radio stations. On the other hand, OIK has initiated 16 *ex officio* cases based on media reports. During this year, the Ombudsperson has prioritized: the protection and promotion of human rights, as the core of the OIK's mission; public strengthening of the role and image of the OIK as a defender and advocate of citizen's rights; providing the necessary information about the competences, responsibilities and work of the OIK.

OIK has communicated through all information channels with the public to present the work and activities of the Ombudsperson. More than 100 information, press releases and announcements have been published on the official website, as well as distributed on its accounts on social networks such as Facebook, Instagram and Twitter. The media have also sought to obtain the opinions and positions of the Ombudsperson, or to obtain data related to certain cases or areas of human rights and freedoms handled by the OIK. The presentation of the work of the OIK to the public, either in the format of summarized information, or in the form of Reports, Opinions or Legal Opinions in the capacity of Friend of the Court (*amicus curiae*) is done continuously, adapting the way and means of communication depending on the situation, message or target group for communication.

Similarly, the holding of ten thematic roundtables, which mainly dealt with persons with disabilities,

have served to reflect on the work and role of the OIK, but also to advocate for issues of human rights and freedoms of this community, meeting civil society organizations, human rights activists and representatives from local institutions, as part of the "Equality for All" campaign. At the roundtables held in the municipalities, the local media, mainly television but also radio stations, have covered these topics, including the event but also interviews with the Ombudsperson on issues related to the respective municipalities. The Ombudsperson has also been part of several campaigns prepared by non-governmental organizations on sensitive topics, such as domestic violence and other topics related to human rights.

The Office for Public Communications also addresses requests for access to public documents. During 2022, 18 requests were addressed, of which there are seven requests from civil society, 3 requests from journalists, five requests were made by individuals and so on. From the total number of requests, this office has allowed full access, two requests have been rejected and one request has been treated with partial access. All requests were submitted via e-mail and responses were also sent via e-mail. The applicants requested access to documents related to OIK competitions, statistics, contracts and decisions.

The Strategy of the Ombudsperson Institution 2021-2025 and Implementation Plan of the Strategy of the Ombudsperson Institution 2021-2023

The Ombudsperson has continued exercising its mandate through the Strategy of the Ombudsperson Institution 2021-2025, which was approved on 18 March 2021. The strategy is implemented through the three-year Strategy Implementation Plan 2021-2023. The strategy has defined the vision, mission, strategic and specific objectives and actions aimed at guiding the work of the OIK in the medium term in the implementation of constitutional responsibilities and powers, the Law on the Ombudsperson, the Law on Gender Equality and the Law for Protection from Discrimination, other legislation in force in Kosovo and international standards.

The strategy of the OIK aims to increase the impact of the Ombudsperson's work in the protection and promotion of human rights and fundamental freedoms, education on human rights, as well as in the prevention of violations by public institutions. The identification and investigation of *ex-officio* cases and systemic violations, increasing the number of individual cases, their effective investigation and review are goals on which institutional capacities will be focused.

All these goals will be realized through four strategic goals:

1. Protection and supervision of basic human rights and freedoms through the increased influence of the Ombudsperson Institution in fulfilling its mandate.
2. Promotion of basic human rights and freedoms and the role of the OIK.
3. Promotion of Sustainable Development Goals.
4. Further development of the institutional capacities and human resources of the OIK.

Despite the challenges in the implementation of OIK plans, in the past years due to the COVI-19 pandemic, the Ombudsperson in 2022 generally managed to achieve the goals and fulfil the activities. In addition to the exercise of the mandate of the protection of human rights, the Ombudsperson has achieved the fulfilment of plans regarding the visible increase in the organization of activities promoting human rights; public perception regarding the role and mandate of the OIK, as well as the awareness and education of different groups about human rights and fundamental freedoms. The strengthening of cooperation with public

institutions, CSOs, international mechanisms has continued in 2022. A special achievement of OIK is the construction of the new IT system, the new case management system, as well as the system for human resources and budget. While, in addition to the mentioned developments, a special place has been given to the development of the institutional capacities and human resources of the OIK.

The OIK Strategy 2021-2025, in addition to being a planning document, also serves as a document which helps evaluate the performance of the institution. The strategy, its 2021-2023 implementation plan and its ongoing monitoring and reporting process should serve as a basis for improving the OIK's strategic decision-making process for the next five years.

The OIK budget

The OIK is an independent institution, which is financed from the budget of the Republic of Kosovo. According to the Law on Ombudsperson: "OIK prepares its annual budget proposal and submits it for approval to the Assembly of the Republic of Kosovo."²⁴⁸ Similarly, according to this legal provision, the necessary additional budget can be allocated to the OIK, in case powers and liabilities of the Ombudsperson Institution increase with this Law and other Laws, it is accompanied with additional, appropriate and specific financial and human resources.²⁴⁹

Funding OIK from the Budget of the Republic of Kosovo

Based on the legal procedures for the preparation and submission of the regular budget request, the OIK has submitted its budget request for 2022 to the Assembly of the Republic of Kosovo and to the Ministry of Finance, Labour and Transfers (MFLT), within the legal deadline.

The budget request for 2022 by the Ombudsperson has been prepared based on the planning of the needs and work activities of the OIK for 2022, based on the legal mandate and the development strategy of the OIK.

The OIK budget for 2022, according to the Budget Law, has been allocated in the amount

of €1.282.766.00, which are intended for the following budget categories:

- a. Salary and wages in the amount of €987.766.00;
- b. Goods and Services in the amount of €259.000.00,;
- c. Municipal expenses in the amount of €6.000.00;
- d. Capital Expenditure in the amount of €30.000.00.

Review of the OIK budget for 2022, according to the budget request and in relation to the budget allocated according to the initial budget law for 2022, of budget expenditures and in relation to the declaration of budget savings by the OIK and other budget cuts by a decision of the Government of the Republic of Kosovo, will be presented in tabular form and data according to budget economic categories. Meanwhile, the OIK will prepare the detailed financial reporting for 2022 budget year separately for the Assembly of the Republic of Kosovo, on the basis of the regular annual reporting and the unified form for financial reporting from independent institutions, as required by the Commission for the Budget and Finance of the Assembly of the Republic of Kosovo.²⁵⁰

More specifically, the following tabular presentation will reflect the budget of the OIK for 2022, starting with the Budget Request, with the initial budget of

²⁴⁸ Law no. 05/L-019 on Ombudsperson, Article 35, paragraph 3.

²⁴⁹ *Ibid.*

²⁵⁰ The detailed financial report for the OIK budget will be sent to the Assembly of the Republic of Kosovo, according to the unique form for financial reports.

the Law on the Budget for 2022, according to the Declarations of budget savings from the OIK, budget cuts by decision of the Government of the Republic of Kosovo and the final budget for 2022.

Table 1: The OIK budget for 2022, according to the following data:

Economic category	OIK budget request for 2022	The budget divided by the Budget Law for 2022	Declaration of savings from OIK 2022	Cuts by decision of the Government 2022	Final Budget 2022
Salary and wages	1.075.900.70	987.766.00	50.000.00	0.00	987.766.00
Goods and services	286.928.00	259.000.00	50.000.00	0.00	209.000.00
Utilities	12.000.00	6.000.00	0.00	0.00	6.000.00
Capital expenditures	30.000.00	30.000.00	12.550.00	0.00	30.000.00
Total budget	1.404.828.70	1.282.766.00	112.550.00	0.00	1.232.766.00

Budget planning, budget expenditure and the declaration of budget savings for 2022 have been carried out according to the planned needs and the destination determined to meet the needs and work activities of the OIK, which were in the interest of ensuring the exercise of the mandate, the smooth running of the work and operation of the OIK. However, the planning and spending of the budget for 2022 have been greatly influenced by the pandemic situation, because a large part of the work activities could not be carried out according to the OIK work plan, in which case the failure to implement these activities of work has directly affected the failure to spend the budget planned for the budget year 2022. There has been no lack of internal monitoring and control in the economic and efficient use of the budget by the OIK.

For 2022, according to legal procedures, the Ministry of Internal Affairs has made the declaration of budget savings for 2022 in the total amount of €112.550.00, while the Ministry of Finance, Labour and Transfers has withdrawn only €50.000.00 from the category of Goods and Services, but not the amount of the declaration of budget savings.

The final budget and realization of expenses for 2022

The OIK budget for the 2022 budget year was realized in the amount of €1.099.281.11 or expressed as a percentage 89.17%, in relation to the final budget of the budget year.

In the following table, we present the state of the final budget in relation to the budget expenditures for 2022, according to the budget data of the economic categories as well as expressed in percentage.

Table 2: The final budget and realization of budget expenditures for 2022

No.	Economic categories	Final budget for 2022	Budget spent	Cheap tools	Realization in %
1.	Salary and wages	987.766.00	916.089.52	71.676.48	92.74
2.	Goods and services	209.000.00	161.568.11	47.431.89	77.31
3.	Utilities	6.000.00	4.173.48	1.826.52	69.56
4.	Capital expenditures	30.000.00	17.450.00	12.550.00	58.17
Total		1.232.766.00	1.099.281.11	133.484.89	89.17

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