



REPUBLIC OF KOSOVO
THE OMBUDSPERSON INSTITUTION

ELEVENTH ANNUAL REPORT
2011

addressing
THE ASSEMBLY OF KOSOVO

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Mr. Jakup Krasniqi
The Speaker of the Assembly of the Republic of Kosovo
Prishtina

Dear Mr. Speaker,

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

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

Sincerely,

Sami Kurteshi



The Ombudsperson of the Republic of Kosovo

Prishtina, 13 July 2012

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OMBUDSPERSON`S REMARKS

The Republic of Kosovo continues to face one of the biggest problems, which simultaneously constitutes the main pillar for development of political, economic and social life, indeed the Republic of Kosovo is facing a problem of lack of legal State. Even 4 (four) years after the independence, this problem remains an extraordinary difficult challenge. A legal justice acceptable and applicable in practical life for all individuals without any distinction in the whole territory of the State constitutes the basis of a legal State. Although, the legal State is necessary, unfortunately in Kosovo setting up a State based on the rule of law leaves much to be desired.



In the Republic of Kosovo, as a consequence of lack of commitment by the State mechanisms, especially in the field of enforcement of justice, loss of confidence on legal State, subsequently loss of confidence in all State institutions as well, it stretches from the poorest and most vulnerable social categories till the individuals, which are on the top of the State. Even when it seems that State`s justice exists, this justice, which is based on the law, is selective. Loss of confidence and lack of commitment by the State`s mechanisms for restoration of such situation, respectively almost total lack of awareness for improvement of such situation still seems to strengthen the positions of the caste that violates human right and fundamental freedoms on the front of powerless citizen.

Lack of awareness on the implementation of law and setting up a State based on the rule of law affected all segments of legal system in the Republic of Kosovo. As a consequence, the increasing loss of citizens` confidence in the justice mechanisms in Kosovo causes other consequences, which are many times greater and more dangerous – increasing attempts of taking the justice in own hands by the citizens. Unfortunately, in Kosovo is being set up a legal anarchy, which has gripped the segments of our society. Deterioration of inter-social and inter-human relations due to lack of functioning of a legal State is increasing continuously.

The Ombudsperson Institution continuously drew attention regarding situation of human rights and fundamental freedoms in Kosovo, respectively regarding dimensions of violation of human rights and fundamental freedoms by the State authorities of the Republic of Kosovo, a part of which even do not putt smallest efforts to improve this situation. The lack of Ombudsperson`s recommendations impact is still obvious at the State authorities, which are called to implement the laws and provide possibility for the citizens to solve their problems, which would also increase their confidence on the State authorities and legal Sate as well.

The Ombudsperson Institution was constantly engaged and it is committed to improve such situation in order to provide a climate in which the citizens would have a possibility to resolve their problems related to their human rights and fundamental freedoms, but unfortunately, despite the achievement of modest results, many issues remains at the level of much to be desired.

During the reporting year 2011, the Ombudsperson Institution registered 1453 proceeded cases. Thus, during this year the OIK handled 220 more cases comparing to the previous year.

The largest number of complaints was lodged against judiciary at all levels. The complaints, usually are related to excessive duration of judicial proceedings—delaying of justice; non-enforcement of final court decisions – State`s inability to establish justice. Unfortunately, a number of complaints were lodged regarding unfair decisions, which pertain elements of corruption and forgery, which implies injustice committed by those who are expected establish the justice. In the context of this, there is no improvement comparing to the previous reporting period. Also during the 2011 was registered a worrying number of complaints lodged by the citizens due to non-enforcement of final decisions of the independent State institutions by the State authorities or due to issuance of illegal decisions by the State authorities. The previous annual reports of the Ombudsperson, together with recommendations were adopted by the MP`s of the Assembly of the Republic of Kosovo. So far, the Ombudsperson received no information or notification by any of the institutions regarding implementation of his recommendations. Such a practice goes on year after year and as such is very worrying.

In the context of this, extremely worrying is the tendency of various segments of the State institutions to minimize the role of the national independent institutions by ignoring their findings or by not implementing their recommendations or by even putting various efforts, be that legal or illegal, to affect the constitutional independency of these institutions.

Given that the implementation of the law is the main premise of functioning of the legal State, in the Republic of Kosovo, despite the positive efforts, the non-implementation of the law is a main indicator of loss of confidence of the citizens in the State authorities whose legal and constitutional obligation is to implement the law. While, this loss of trust makes the citizens request the Ombudsperson to administer justice. This occurs due to negligence of many State authorities in charge of implementation of law.

Despite continuous efforts of the Ombudsperson for improvement of the situation of human rights and freedoms, it must be emphasized that the Ombudsperson does not administer justice. The Ombudsperson will continue to identify and point out actions and omissions or irregular and illegal actions of the public authorities in order to play his role in setting up a society, which would be based in the principle, which implies that all persons are equal before the law.

The State institutions should not violate the principles of legal justice because if they do so, then they have affected the necessary confidence for functioning of a free and democratic society. The State mechanisms should be the first to provide and guarantee the equality before the law.

Despite the situation of human rights, which is not at all enviable, a hope for a better future hasn't been lost, even though, such a hope has been trampled. The efforts to establish the law and order are obvious. In order to achieve this, there must be more individual, social and especially more commitment and accountability by the public authorities for their actions and omissions.

Despite the shaken faith, we sincerely hope for a better future. Therefore, we call on all authorities to undertake all possible measures in order to not break these sincere hopes.

1. INTRODUCTION

The constitutional and legal mission of the Ombudsperson Institution (OIK) is protection, monitoring and promotion of human rights and fundamental freedoms of legal and natural persons, from actions or omissions, illegal and irregular actions of public authorities of the Republic of Kosovo, as well as from such actions of other bodies and organizations exercising public authority for their account.

Despite the fact that now the Republic of Kosovo has legal and institutional mechanisms for protection of human rights and fundamental freedoms, these rights are not respected at a satisfactory level. Some of the reasons for such situation are lack of effectiveness of the existing mechanisms and lack of sufficient commitment of public institutions for implementation of the laws in force. The various forms of human rights violations are obvious.

Therefore, the OIK`s commitment is not focused only on protection of human rights and fundamental freedoms, but also on monitoring and promotion of human rights.

One of the forms of commitment in the field of protection of human rights and fundamental freedoms is also the OIK`s annual report (the 11th in a row), which except reflecting the current situation of human rights in Kosovo, at the same time presents the general activities of the institution and Ombudsperson`s activities in particular.

The citizens of Kosovo lodged a number of complaints regarding various cases of human rights violations. These cases were carefully reviewed and in the cases when the OIK reached the conclusion that the human rights violations occurred, it issued recommendations to the relevant institutions, but these recommendations were not always taken into consideration.

The annual report contains a structured logical order based on the constitutional mission of the OIK, respectively protection, monitoring and promotion of human rights and fundamental freedoms.

The biggest part of this report includes human rights situation in Kosovo in conformity with the content of second chapter of the Constitution of the Republic of Kosovo and based on the listing of these rights in the Constitution. This part of the annual report includes activities of certain groups and units acting within the OIK, such as the Anti-Discrimination Team, Children`s Rights Unit and Gender Equality Unit.

Also, in the report is presented cooperation with domestic institutions, civil society and the international organizations, as well as OIK`s daily activities, including meetings (meetings in the institution and outside), participation in trainings, seminars, study visits, the issues related to staff members and financial issues as well. The statistical overview of the complaints and cases lodged in the OIK is also included in this annual report.

1.1. General Aspects

The Republic of Kosovo by adopting its Constitution established a solid normative base for human rights in full compliance with most of the international standards. Furthermore, the Constitution expressly guarantees direct implementation of most important international instruments and agreements regarding human rights and fundamental freedoms (Article 22).

The Law on the Ombudsperson, despite some emphasized shortcomings, by being a legal mechanism that guarantees protection, monitoring and promotion of human rights and fundamental freedoms in case the public authorities don't respect them, has succeeded to strengthen the Ombudsperson's voice, as well as to create a new spirit in a human rights and fundamental freedoms triangle: The Ombudsperson Institution – public institutions - citizens.

Although there is a solid normative base, as well as mechanisms for protection of human rights and fundamental freedoms, the public authorities of the Republic of Kosovo at the central and local level are still negligent and ineffective and not rarely indifferent towards respect and implementation of citizens' human rights and freedoms, which is a consequence of inadequate implementation of laws.

Amongst the main challenges that Kosovo is facing currently are lack of effective implementation of the standards for protection of human rights and implementation of the laws in force, further consolidation of judicial and prosecutorial system, as well as combating the organized crime and corruption.

However, a big challenge for the legislators and Kosovo State authorities remains adoption of several very important laws, which directly affect human rights of all Kosovo citizens', such as the *Law on invalidity and pension insurance* and the *Law on health care insurance*. Lack of these laws presents obvious violation of fundamental rights in the Republic of Kosovo.

In addition, lack of adoption of by legal acts is also causing significant difficulties for proper and effective implementation of laws (Administrative Instructions and Regulations). These issues were also mentioned in the previous annual reports of the Ombudsperson Institution (OIK).

In the previous OIK's reports was also raised the issue of lack of an Administrative Court, which shall deal with administrative contests. So far, the administrative contests are the competence of Supreme Court of Kosovo. But, by adoption of the Law on Courts, the issues of administrative contests based on the lawsuits lodged against final administrative acts and other issues set forth by law shall be handled by Department for Administrative issue of Basic Court as a first instance court (Articles 12 and 14) and the Court of Appeals as a second instance court (Article 20).

One of the most important issues regarding rule of law and at the same time the foundation of legal state is meaningful functioning of prosecutorial and judicial system in the Republic of Kosovo. The Judiciary remains one of the fields identified with biggest number of lodged complaints at the OIK. Non-execution of judicial decisions, excessive duration of court procedures and corruption in the judicial system are the main shortcomings identified by the Ombudsperson that seriously affect the basis of a legal State.

Another problem in Kosovo justice system, whose roots are in the education system of jurists in Kosovo is insufficient knowledge about international human rights standards, especially regarding interpretation of domestic legal provisions based on the case law of the European Court of Human Rights in accordance with the European Convention for Human Rights, as it is set forth in the Article 53 of the Constitution of the Republic of Kosovo.

This Article expressly requests “interpretation of human rights and fundamental freedoms in harmony with decisions of the European Court of Human Rights”. While, Article 22 of the Constitution stipulates that human rights and fundamental freedoms guaranteed by the international agreements and instruments “are directly applicable in the Republic of Kosovo” and “in the case of conflict”, have priority “over provisions of laws and other acts of public institutions“.

2. Human rights and freedoms in the Republic of Kosovo

2.1. *Direct application of international agreements and instruments*

Protection and respect of human rights and freedoms is the duty of states. They must comply with international agreements and instruments for human rights, i.e. to ratify and implement them. Republic of Kosovo has gone one step further, by including them in the Constitution and making them directly applicable, and by giving priority in case of conflict, to the provisions of laws and other public institutions in Kosovo.

Constitution of the Republic of Kosovo¹ explicitly guarantees the direct implementation of these international instruments: the Universal Declaration of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the International Convention on Civil and Political Rights and its Protocols, Convention of the Council of Europe Framework for the Protection of National Minorities, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman and Degrading Punishments.

The institution of Ombudsperson has found serious violations of these instruments in certain cases. They mainly deal with the right to due process.² An overload of the courts with old pending cases, delay in treatment of new cases, non-enforcement of final decisions, are some of the issues that have caused and continue to weigh on the judiciary for years, thus violating the Kosovo's citizens' right to a fair, orderly and fair process.

The reorganization of the judicial and prosecutorial system of the Republic of Kosovo, along with significantly improving the financial situation of judges and prosecutors, conducted in 2011, and early application of mediation and the expected functionality of the Notary Service is expected to significantly affect the efficiency and effectiveness of the judiciary, namely in solving cases.

In order to monitor the most comprehensive, effective and efficient institutions where detainees are held, the Ombudsperson considers necessary to implement the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Punishments. In this regard, OI, in May of 2011, has formed a working group with several local NGOs (Council for the Protection of Rights and Freedoms - CDHRF and Rehabilitation Centre for Torture Victims - KRCT) with which it signed a cooperation agreement. This working group will act as a precursor of the National Mechanism for the Prevention of Torture, which foresees the creation of this protocol³. This mechanism will

¹ Article 22, the Constitution of the Republic of Kosovo.

² European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 6, paragraph 1. "Every person has the right to have his case heard fairly, publicly and within a reasonable time by an independent and impartial tribunal, established by law, which will decide how disputes about rights and obligations of his civil, as well as validity of any criminal charge against him."

³ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading treatment, Section 3 "Each State creates, designs or maintains at national level one or several visiting bodies for the prevention of torture and cruel treatment or punishment, inhuman or degrading treatment."

enable better access to the detention institutions and more efficient and effective protection of human rights of detainees. Republic of Kosovo is not a signatory to the Protocol, but the Constitution has an obligation to directly implement the Convention against Torture and Other Cruel, Inhuman and Degrading Punishments.

The Ombudsperson reiterates its concern for exclusion in the Constitution of the Convention on Economic, Social and Cultural Rights and the European Social Charter. Some of the rights contained in this Convention, such as the right to adequate housing, the right to work and those that arise from employment, right to health insurance and a range of other rights, continue to lack proper legal protection. Inclusion of this Convention, in the Constitution of the Republic of Kosovo, is necessary and will be an additional guarantee for the citizens of Kosovo and to protect their rights.

It is worth mentioning that among the recommendations of the roundtable organized by the OI and the OSCE Mission in Kosovo, on December 2, 2011, the International Day of Persons with Disabilities was the inclusion of the Convention on the Rights of Persons with Disabilities and its Optional Protocol in the Constitution of Kosovo. Under this Convention," Persons with disabilities include those who have bodily injury, mental, intellectual and sensory disabilities, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."⁴

Ombudsperson recommends for the Constitution of Kosovo to include the Convention on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities, or the Constitution to ensure their direct application in the Republic of Kosovo.

2.2 Human dignity

Human dignity act is defined as an inviolable right and the basis of all rights and fundamental freedoms⁵. Human dignity is indivisible part of human being and his personality. It is not the creation of any political or ideological systems, but simply stems from the depths of the human being and belongs to every man regardless of his nationality, religion, gender, social status, political affiliation etc.

The preamble of the Universal Declaration of Human Rights states: "*Inherent dignity of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.*"⁶ This is clearly an embryonic connection between human rights and human dignity. There can be no protection of human rights without respect for his dignity and vice versa.

The Institution of Ombudsperson has dealt with complaints about alleged violations of human dignity, in the case of some employees in international institutions operating in Kosovo.⁷ Workers were constantly abused, constant pressure was applied, physical violence was used against them and they were insulted on ethnic and religious grounds.

⁴ *Convention on the Rights of Persons with Disabilities, Article 1, paragraph 2.*

⁵ *Constitution of the Republic of Kosovo, article 23.*

⁶ *The Preamble of Universal Declaration of Human Rights.*

⁷ *The case of local staff in EULEX, A. no.147/2011.*

Ombudsperson, through mediation, is informed of all measures taken by institutions against which complaints were filed. From those institutions it demanded equal treatment without discrimination, respecting laws.

The Institution of Ombudsperson in recent years has paid special attention visiting detention centres. Their treatment in these institutions, protection from abuse and torture, is in a straight line with the protection of human dignity. As a result of previous visits and monitoring of these institutions, the findings and recommendations of previous years, the Ombudsperson is committed to creating the National Mechanism for the Prevention of Torture.⁸ This mechanism aims to regularly inspect all places and areas where people with limited freedom of movement and action are held. Creating such a mechanism could affect to a large extent in advancing human dignity, in areas where it can be breached more, such as detention centres, prisons and hospitals.

IO evaluates positively the closure of the camps of Roma, Ashkali and Egyptian communities in Çeshmilluk and Osterode in northern Mitrovica. After eleven years spent in these camps, they were moved to their rebuilt properties in Roma Mahalla in the southern part of Mitrovica, in full coordination with USAID, EU and national institutions, camps in the neighbourhood were eventually closed during 2011.⁹ As the camp in Leposaviq is in the process of closure, the reconstruction of several other houses in the Roma neighbourhood in the southern part of Mitrovica is expected during 2012.

Challenge faced by citizens and institutions of the Republic of Kosovo is still protecting human dignity, of the people in northern Kosovo, Albanian community and all other non-Serb communities. Since the end of the war until today, they cannot return to live in their properties, however due to restriction of free movement they are forced to live in different houses, rentals, or in different collective shelters, in difficult conditions, in the southern part of Mitrovica and other Kosovo towns and cities.

2.2. Equality before the law

To be equal before the law means not to be discriminated. In this spirit in the Constitution of the Republic of Kosovo equality before the law for all individuals is one of its superior aims, by treating it as the springboard for exercise of public authority in the Republic of Kosovo.¹⁰

Equality before the law and the law, and prohibition of discrimination, are general principles that condition the enjoyment and exercise of all human rights and fundamental freedoms. Rights and freedoms, guaranteed by international agreements and instruments are directly applicable in the Republic of Kosovo through the Kosovo Constitution.¹¹

⁸ On May 10, 2011, in Prishtina, a cooperation agreement for the establishment of the National Mechanism for the Prevention of Torture was signed between the Ombudsperson Institution, Kosovo Rehabilitation Centre for Torture Victims (KRCT) and Council for the Protection of Rights and Freedoms (CDHRF) with support of OSCE.

⁹ OIK has published two reports on the camps: ex-officio Report no. 304/2008, published on April 1, 2009 and ex-officio Report 50/2010, published on February 23, 2010. See : www.ombudspersonkosovo.org.

¹⁰ *Constitution of the Republic of Kosovo, 2008, article 3.*

¹¹ Same as above, Article 22.

Lack of integration of the Convention on the Rights of Persons with Disabilities and the International Convention on Economic, Social and Cultural Rights, makes disadvantaged groups against discrimination,¹² prone to be discriminated from the rest of society and cannot be directly protected by the Constitution.

Assembly of the Republic of Kosovo, in 2004 adopted the Law against Discrimination,¹³ which due to certain deficiencies, still remains impracticable.

Amendment of the Law against Discrimination, respectively of Article 7 and Article 9, would create a possibility that this law should not remain impracticable in reality.¹⁴ Such action is urgently needed, because it will demonstrate the efforts of relevant institutions, namely the Assembly and Government, to ensure equality and non-discrimination for all Kosovo citizens, as guaranteed by the Constitution.¹⁵

2.3.1. Laws applicable in Kosovo containing discriminatory provisions

Although the Law on Social Assistance Scheme in Kosovo¹⁶ has been discussed many times, after its shortcomings have been identified in previous annual reports of IO, even has been discussed in meetings with the Ministry of Labour and Social Welfare (MLSW), still some provisions of this law remain discriminatory against Kosovo's population in poor economic and social state.

Under Section 4 of this law, based on non financial criteria for social assistance, are identified two categories of beneficiaries of social welfare. The beneficiaries included in the second category must satisfy the condition that a family with one member able to work has at least one child under the age of five (5) year old.¹⁷ Article 4 of this law contradicts itself, because Article 2, paragraph IV, dependents are considered "persons up to the age of fourteen (14)."¹⁸ "This article is also in complete contradiction with Article 24 and Article 22, paragraph 7, of the Constitution of the Republic of Kosovo.¹⁹ Limiting the child's age to 5 years, as a condition for the family to be the beneficiary of social assistance, is contrary to article 1 of the Convention on the Rights of the Child.²⁰

Also, Article 4 of this law, which requires that "a family with one member able to work and with a child under the age of five (5) " to be a beneficiary of social assistance, violates Article 3 of the Convention on Rights of the Child, because it is not taken into account the "best

¹² Social groups in a weak position against discrimination people who can easily be victims of discrimination, as people with disabilities, families with poor economic and social conditions, unemployed women or men, pensioners, etc.

¹³ *Law against Discrimination, no. 2004/3*, dated August 20, 2004.

¹⁴ Same as above.

¹⁵ *Constitution of the Republic of Kosovo*, 2008, article 3.

¹⁶ *Law 2003/15 for Social Assistance Scheme in Kosovo*.

¹⁷ Same as above, Article 4.

¹⁸ Same as above, Article 2, paragraph 7.

¹⁹ *Constitution of the Republic of Kosovo*, 2008, Article 24 and Article 22, paragraph 7.

²⁰ Convention on the Rights of the Child, Article 1, "everyone below 18-years of age, unless adulthood is reached earlier, in accordance with the legislation to which he is subject".

interest of the child”, which should be a primary consideration.²¹ In this case there is no thought for the interest of the child after the age of 5 years. This section (Section 4) is inconsistent with Article 26 and Article 40, paragraph 4, of the Convention on the Rights of the Child.

According to information dated December 8, 2011, the Ministry of Labour and Social Welfare (MPMS) has submitted to the Kosovo Government, the Bill on amendment of Law 2003/15 for Social Assistance Scheme in Kosovo. However, until the conclusion of this report the OIK did not receive any information regarding procedures for an eventual change of this article.

2.3.2. Discrimination in pensions

MPMS, since 2005 has prepared the Draft Law on Pension and Disability Insurance. The draft is sent for approval to the Government, but has not yet been proceeded to vote in the Assembly of Kosovo. With this, it further shows that the legal infrastructure to regulate pensions in Kosovo is not met. In Kosovo today only the Basic Law on Pensions is applicable. This makes the pensioners in Kosovo unsatisfied, while greatly hampers their position in society.

2.3.3. Discrimination in the health care

Given the fact that Kosovo's population lives in poverty and poor economic conditions, elements these that directly affect their health, investment in health infrastructure should be a priority for the Government.

Approval of Health Insurance Law, which will be the solution to many problems in the health system, still remains an open question in the Assembly. This delay by the responsible institutions undermines Kosovo's citizens, who face a serious medical condition.

2.3.4. Discrimination by the judiciary and of the judiciary

With all the improvements of financial nature, as well as the legal basis of the judicial system in Kosovo, even after the reappointment of judges, the situation remains almost the same. The small number of judges and prosecutors appointed, physical conditions and inadequate and dysfunctional environment, the increasing number of pending cases, are the factors that have

²¹ Article 3 of the Convention on the Rights of the Child states that "*In all actions to do with children's life whether undertaken by public or private social welfare, courts, administrative authorities or legislative bodies, the highest interest of the child should be the primarily consideration.*"

almost paralyzed the judicial system. Not yet seen any significant progress. Citizens still face the problem of lengthy review procedures and delays, and inefficient justice.

Based on the cases registered and investigated in the Institution of Ombudsperson in direct violation of Article 31 of the Constitution of the Republic of Kosovo Article 6 of European Convention on Human Rights (ECHR) and Article 1 of Protocol of the ECHR, are the complaints of citizens of the Republic of Kosovo, regarding property disputes, set in the former Department of Housing and Property and then transferred to the Kosovo Property Agency.

These property disputes, after the procedural delays in the former Department of Housing and Property transferred to the Kosovo Property Agency, now under the authority proceedings are subject to regular courts. It is disturbing that the citizens of the Republic of Kosovo need more than 10 years to reach a final court decision regarding their property.²²

Direct violation of Article 31 of the Constitution of the Republic of Kosovo, Article 6 of the ECHR and Article 1 of Protocol of the ECHR, are also the cases of complaint reviews in district courts. Associated with this are very frequent the complaints filed at IO,²³ about courts responses that "the case will be decided according to the order."

During this reporting period at IO is not filed any complaint about the work of the Constitutional Court.

Furthermore the Special Chamber of the Supreme Court, during its work does not respect the rights of citizens guaranteed by the Constitution and law. Use of official languages for submission of claims to the Special Chamber of the Supreme Court, still remains a violation, which is noted in the 10th annual Report of the Ombudsperson,²⁴ still not seen any positive movement for the elimination of violations of the Constitution and the law on the use of official languages in Kosovo.

2.3.5. Inequality in the field of employment

According to the complaints of citizens of the Republic of Kosovo to the Ombudsperson Institution, the most frequent cases of discrimination in work during this year were filed against the Municipal Education and mostly from females. Most frequent were the cases when because of pregnancy to some teachers the contract of employment was not renewed.²⁵

Also, against the municipal education departments in the IO are registered other complaints in which complainants have alleged that the employment and the division of classes is done improperly and without professional criteria, and in many cases according to family ties.²⁶

Regarding age discrimination in employment, the Ombudsperson, in the previous annual report, with particular emphasis has highlighted the decision of the senate of the University of

²² Regarding this with the OIK is registered the case no. A 413/2011.

²³ Regarding this, with the OIK are registered cases no. A 82/2011 and case no. A 182/2011.

²⁴ 10th OIK Annual Report, Pristina, 2011, p.30-31.

²⁵ Regarding this with the OIK are registered cases no. A 341/2011 and no. A 410/2011.

²⁶ Ibid, cases no. A 431/2011 and no. A 495/2011.

Prishtina, which has to do with the age restriction, as criteria for first time applicants for the position of teachers at the University of Prishtina.²⁷ However, even today IO has not seen any change as regards to the discriminatory elements of the Senate of the University of Prishtina.

2.3.6. Discrimination against persons with disabilities

Although the legal infrastructure related to certain rights for people with disabilities was partly completed, in the absence of laws it is not fully implemented in practice. As we have noted in previous reports of IO- regarding road infrastructure for free movement of people, this situation still remains problematic.²⁸ Despite the fact that there is administrative guidance for the technical conditions of buildings for access of persons with disabilities, this phenomenon is not regulated even in the busiest places like hospitals, schools, courts and municipal assemblies.²⁹

In general, access to health facilities is difficult for all types of disability. In UCK, hospitals have adjusted their access for carts and wheelchairs by installing ramps, while the lift (vertical approach), in most cases is inadequate, since most elevators are not maintained and are out of use. Clinical Centre Rooms are overloaded with beds and the free movement of persons in a wheelchair through them is almost impossible. Existing toilets in hospitals and family medicine centres are very small and are not suitable for use by persons with wheelchairs.

Inclusion in the primary schools, according to the Law for undergraduate education in the Republic of Kosovo is compulsory for all children.³⁰ Significant improvements in education is comprehensive, i.e. involvement in the education system of children with special needs. In recent years, adequate facilities were setup, there was an advancing of technical skills and increased capacity to make Kosovo's education system more open to inclusion of children with special needs in regular schools.

However, regular schools are not following infrastructure guidelines for children with disabilities who use wheelchairs. No school has access for this category of children. Even if there is access, it may just be the first floors of the school. This prevents children to attend school with their peers and feel equal in society. They are obliged to attend classes in the resource centres.

Unemployment and lack of economic activities are the main problems affecting most of the Kosovan society, but are significantly more prevalent among persons with disabilities and their families. Without doubt, people with disabilities experience higher rates of unemployment.

Number of persons with disabilities involved in employment, especially in the civil service, is very small. So today no movement has been made in the direction of creation of suitable working environment, including the suitability of the job, providing assistive technology

²⁷ 10th OIK Annual Report, Prishtina, 2011, p.31-32.

²⁸ 10th OIK Annual Report, Prishtina, 2011, p.32-33.

²⁹ *Administrative Instruction for the technical conditions of buildings for access of persons with disabilities, no. 33 serial number of protocol 07/07, Article 1.*

³⁰ *Law no.04/L-032 Pre-University Education in the Republic of Kosovo, article 9, paragraphs 2 and 3.*

tools; adequate infrastructure provision such as toilets, lifts, ramps, communication tools, transportation, etc., in order to enable such persons the right to employment.

Permanent or temporary disability differs on individual basis. Depending on the diagnosis of a disabled person, the basic necessities for living change accordingly. In Kosovo there is no legal basis which makes the categorization of disability.

Under existing law, all persons with disabilities are included in the same category.³¹ In this case, and under this law, people with disabilities remain discriminated because disability is not the same in all persons. This egalitarian approach is specifically expressed in financial support, and adjustment of benefits, because under this law all receive the same compensation.

According to the Law on pensions for persons with disabilities in Kosovo, no article provides categorization of disability, which will be followed by material compensation, with the objective the degree of disability. The absence of a rule or an administrative guideline for categorizing disability caused general confusion, because there are many cases that claim they are disabled and with limited movement, while the Commission considers that there is no disability.

Given the fact that the higher the disability, the greater are the needs for material assistance for person with disabilities, there is an urgent need that the Law on pensions for persons with disabilities in Kosovo is revised, amended or supplemented with additional articles, under which would be prescribed degree of disability, which will be followed with an appropriate material assistance, depending on the degree of disability.

Regarding all these findings, the Ombudsperson, on the occasion of International Day of Persons with Disabilities, organized a roundtable on "Stop Discrimination - equality for all". In this round table were discussed problems which directly confront people with disabilities in their daily lives and actions planned to be undertaken by central and local government, so that this category feel an equal part of our society. Unfortunately, number of competent and relevant institutions of central and local level did not respond to the OIK invitation to discuss these matters.

From this table have come recommendations, which will be followed by the unit for the rights of persons with disabilities, created within the department for discrimination in the institution of Ombudsperson.

2.3.7. Discriminatory treatment by the Kosovo Property Agency (KPA)

The Kosovo Property Agency (KPA) still in its rental scheme does not include Albanian owners who have their properties in the north of Mitrovica , but the Serbian and other communities property owners in other parts of Kosovo, are included in the rental scheme. A small number of Albanian citizens of northern Mitrovica have collected rent from the property which they left under KPA administration for a period of two months only and then ceased,

³¹ *Law on Pensions of Persons with Disabilities in Kosovo*, no.2003/23.

without any notification and justification. This has made the citizens of this part of the Republic of Kosovo not to feel equal, because they are treated differently by the KPA from other fellow communities. In this case the KPA violates Article 46 of the Constitution of the Republic of Kosovo and Article 1 of Protocol of the ECHR.

2.3.8. Discriminatory treatment by the Kosovo Energy Corporation (KEK)

At IO are registered the complaints of the citizens of Kosovo against KEK regarding categorization of electricity to A, B and C.³²

KEK official site publishes nearly every day the schedule for supply with electricity for categories A, B and C.³³ According to KEK officials, categorization for electricity supply in A, B and C is due to the irregular payments by citizens. No doubt that the categorization into A, B and C, from the KEK, is discriminatory against its citizens and contrary to Article 24 of the Constitution of the Republic of Kosovo. This categorization is estimated and discriminates against citizens categorized into C arbitrarily by KEK, who are regularly paying for energy they consume, as it privileges those who are categorized into A by the KEK but who have unpaid debts, even in large amounts, for the energy used. This is a typical case of abuse of the monopoly in the market.

2.3.9. Gender equality

The principle of gender equality and non-discrimination is one of the core principles of human rights. Modern democratic States cannot be imagined without establishing equal preconditions for implementation of human rights. Despite the efforts put in the new state, the gender inequality is very much present in the most parts of life in societal and institutional life in Kosovo.

The Constitution of Kosovo foresees direct implementation of the Convention on the Elimination of All Forms of Discrimination against Women /CEDAW/.³⁴ The issue of gender equality is regulated by Law on Gender Equality,³⁵ which has completely included the principles of the above-mentioned convention. In accordance with the requirements of this law³⁶, the Ombudsperson Institution has established Gender Equality Unit (GEU). The mission of this unit is to review complaints related to gender based violations and to promote and monitor the gender equality in Kosovo.

³² Regarding this with the OIK is registered the case no. A 512/2011.

³³ <http://kek-energy.com/orariKat.asp> , Friday, December 9, 2011 at 15:07.

³⁴ The Constitution of the Republic of Kosovo, article 22. " *Human rights and fundamental freedoms guaranteed by the international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions* ".

³⁵ The Law on Gender Equality, no. 2004/2, adopted by the Assembly of Kosovo on 19 February 2004.

³⁶ The Law on Gender Equality, article 6.

The Law on Gender Equality identifies the GEU within the Ombudsperson Institution as a body, which is competent to receive, investigate and to decide on the complaints related to gender equality.³⁷ But, taking into account the jurisdiction and the role of the Ombudsperson Institution, especially the fact that the Ombudsperson makes recommendations, which are not of the executive character, it is necessary to complete this law. Indeed, the Law on Gender Equality should expressly and clearly set forth the judicial or the administrative competence for the case in which to a certain person has been violated the right or freedom due to his/her gender. Thus, the law should provide to a certain person a possibility to initiate the procedure upon the complaint in the competent court or highest administrative body.

The Law on Gender Equality does not determine the manner of commencing the procedure regarding gender based discrimination. Therefore, it is not surprising the fact that this law continues to remain only a letter on the paper, which is inapplicable in the practice by the judicial and administrative bodies.

2.3.9.1. Decision-making and the right to work

Participation of women in the decision-making process is of an extraordinary significance and at the same time, it proves the level of the achieved democracy in a society. Elimination of inequality between the male and female in decision-making positions, to some extent has been achieved by including the special measures in the legislation, indeed by determining the quota for the gender which is less represented, which indeed presents the manner of elimination of discrimination against women.

It must be emphasized that the Assembly of Kosovo respects the representation quota for the less represented gender, which is set to be 30%.³⁸ The representation quota in its bottom, initially it enables setting up of the women's participation culture in decision-making and work in a society, which of course, in a certain time interval will be replaced by a real competition.

Difficult economic and social situation and the high rate of unemployment in the Republic of Kosovo, at a large extent have impacted the marginalized position of the women in the labour market. This discrimination is especially present in the rural areas among the women members of Askali, Roma, and Egyptian communities. Women face difficulties not only when applying for a certain job in a labour market, but they also have small odds to get a job, especially in the decision-making positions, even in the cases where they are competent for such a position just the same as men.

Discrimination starts at the moment of declaring a job vacancy,³⁹ by setting forth the gender as a criterion for employment. As in the previous reporting period, also during this period were lodged complaints based on violation of the right to motherhood.⁴⁰ It is noticeable that most forms of violations of women's rights by the employers occur by refusing to offer to

³⁷ Ibid.

³⁸ Ibid, article 3.2.

³⁹ The OIK report, *ex officio* case no. 48/05.

⁴⁰ The OIK case, A.no.515/2011.

female candidates work contracts when the employers realize they are pregnant.⁴¹ Even worse are the cases when the public authorities illegally terminate their work contracts and maintain a discriminatory attitude towards the women who get back at work after the maternity leave.⁴²

During the year 2011, the OIK, amongst others has received a complaint, which related to termination of work contract to a female employee by a private hospital operating within the territory of the Municipality of Prishtina. The employee has been working in this hospital in the office for admission of patients. The simple reason for termination of her contract was her pregnancy. The complainant has been instructed to address her concern to Labour Inspectorate. After the Ombudsperson's intervention, the complainant was returned back to her previous working place within a very short time limit.

All these facts demonstrate clearly that legal system and established protective mechanisms are not strong enough in preventing and stopping discrimination in the field of employment. As regards legislation, we must also emphasize the necessity to harmonize the Law on Labour with the Law on Civil Service, because non-harmonization of these laws also creates grounds for discrimination.⁴³

2.3.9.2. The right to inherit property

Another field of vital importance in which the women are unequally treated is the inability to realize the right to inherit property in Kosovo. The mutual connection "cause-consequence" between the right to inherit property and women's social role is one of decisive factors for women's gender based discrimination. Denying to the women the right to property, insufficient education, illiteracy and advantage of male family members to education are typical factors of our traditional Kosovan society.

In Kosovo there is a particular Law on Inheritance, which regulates the issue of inheritance without discrimination. According to this law the women has completely equal rights as the men.⁴⁴ But, there are lots of cases where women who request realization of their property rights through the inheritance become subject to physical and psychological threats from their husbands or other male family members.⁴⁵

In the year 2011, the OIK has received a complaint lodged by a young girl regarding the right to inheritance. After the death of her father, she and her mother were simply thrown out from the family house, which was located in the yard that was owned by her family and her uncle. She submitted a request for division of property. The first instance court ruled into her favour, but the case file was with the second instance court under the appeal process. The complainant addressed the OIK due to the excessive duration of procedures in the second instance court. After the OIK's intervention, the procedure at the second instance has been terminated.⁴⁶

⁴¹ Ibid.

⁴² The OIK case, A.no.357/2011.

⁴³KCGS report "Impact of the Law on Labour on Kosovo women".

⁴⁴Law no. 2004/26, Law on inheritance, article 3.

⁴⁵Tawil Edward, the property rights in Kosovo, a difficult heritage in transitional society, case A. no.316/2011.

⁴⁶ The Case A. no.316/2011, Municipality of Prishtina.

2.3.9.3. The right to education

As regards education, a progress has been marked in the field of gender equality, but this progress is not sufficient. In Kosovan society, the women less educated than men, and amongst them, the percentage of illiteracy is higher.⁴⁷ The societal discrimination is also expressed in the public institutions of Kosovo among the persons who are well spoken and who speak of patriarchal form of division of professions for men and women.

The applicable law don't recognize the gender discrimination. The applicable laws in Kosovo treat the girls and boys equally.⁴⁸ But, in the practical life, the Kosovan tradition contributes very much to providing the advantage in education for female family members. Also, dropping out from school occurs often among the girls and this is very common for girls of Roma, Askali and Egyptian community. Also, one of the characteristics for these communities is marriage at an early age, which is directly linked with the dropping out from school.

2.3.9.4. Health care

The law on social and health care in Kosovo does not exist yet. The Ombudsperson's recommendation from the annual report for 2010 has not been implemented.⁴⁹ Kosovo is the only State in Europe that is lacking such law. Lack of such law constitutes serious violation of human rights. Lack of this law causes a great uncertainty amongst the Kosovan population, especially among the women. The only positive change in this aspect was the adoption of the Law on Labour, which regulates the issue of maternity leave. The provisions of this law guarantee paid maternity leave for 6 months and 6 more months of maternity leave, which is partially paid.⁵⁰

The OIK during this year has received complaints related to discrimination by the Ministry of Health and Ministry of Finance. The Ministry of Finance did not approve the request of a complainant for a medical treatment abroad reasoning that there are no financial means available. However, after the OIK's intervention, the complainant received the financial assistance from the company at which she was employed.⁵¹

2.3.9.5. Domestic violence

⁴⁷ MEST (Ministry of Education, Science and Technology), UNICEF and ESK (Statistical Office of Kosovo), Reviewing the gender issues in Kosovo, 2002 p.7. In rural parts of Kosovo 14 % of female are illiterate and 4 % of them male.

⁴⁸ Law no. 2004/3, Anti-Discrimination law, article 2.

⁴⁹ The Ombudsperson Institution, tenth annual report, gender equality, recommendations, p. 36.

⁵⁰ Law No. 03/L-212, on Labour, article 49.

⁵¹ Case A.no.247/2011, Municipality of Prishtina.

Domestic violence is a serious problem in Kosovan society. The phenomenon of violence is not new; such phenomenon has always existed in the society. In the post-war period was adopted the Law on Protection against Domestic Violence.⁵²

Domestic violence, as such has many aspects; it can be physical, psychological, sociological and economic violence. The most frequented victims of domestic violence are women and children, but there are also a small number of cases where men were victims.

Very often, the domestic violence is regarded as internal private problem of a certain family, which in no manner may become public. It happens that reporting of such an event causes retaliation of the perpetrator or women becomes a subject of moral condemnation by the environment in which she is living. In Kosovo, during the year 2011, occurred 3 cases of murder in which women were victims. Murder cases occurred as a consequence of domestic violence. Still, most of the competent courts even after receiving a request for Protective Order (Restraining Order) submitted by the victims do not issue a decision imposing an adequate protective measure within the reasonable time set forth by law.⁵³ However, there are no indicators that the situation during this reporting period has changed for the better.

According to the report of the Police of the Republic of Kosovo on the cases of domestic violence in the area of Prishtina Municipality for the year 2011, there were 268 registered cases, in the Municipality of Gjilan 109 cases, 108 cases in Ferizaj, Municipality of Pejë 207, in Prizren 172 and in the Municipality of Mitrovica 182 cases.

2.4. The right to life

The right to life is a fundamental right and the first condition for the existence of other rights. This right is guaranteed by the Constitution of the Republic of Kosovo. This right is also sanctioned by the Criminal Code of Kosovo.⁵⁴

The article 25, section 2 of the Constitution of the Republic of Kosovo prohibits death penalty. Based on the Protocol 6 of the ECHR, article 1, the death penalty is abolished. No one may be sentenced by such penalty, neither be executed. The Article 2 of ECHR stipulates a positive obligation for the States to investigate cases of deaths, which pertain elements of violation of this article.

In Kosovo, the criminal offences against life occur in various forms. Some of the forms of the infringements of the right to life are blood feud related murders, conflicts related to the property disputes, crimes against morality, crimes related to various forms of trafficking, such as trafficking in persons and drug trafficking. In several areas of the country, there are still families isolated due to the blood feuds. All these innocent individuals and members of our society are indeed forced to break away from the society, by depriving themselves from exercising such rights. The Ombudsperson notices that in all these tragic cases the legal state has failed to act.

⁵²Law No.03/L -182, Law on Protection against Domestic Violence.

⁵³ Kosovo Police report on the cases of domestic violence for the year 2011.

⁵⁴ Criminal Code of Kosovo, article 146.

2.3.2. *A phenomenon that worries the Kosovan society*

During a period of time from January till November 2011 156 cases of attempted murder were reported. As a result of this 222 persons were arrested.⁵⁵

According to the information available to the OIK, in most of the cases investigations conducted by the Kosovo Police result with arresting of persons who are reliable for commission of a criminal offence against life and body, but it is up to the courts to make decisions. Despite the reforming of the justice system of Kosovo and the increase of recruited judges and prosecutors, the Kosovo courts still have limited capacities. The number of pending cases since the previous years and other negative phenomenon, which are present in the Kosovo Justice system put at stake the right to a fair trial in the cases related to criminal offences against life and body.

The Ombudsperson is seriously concerned regarding lack of investigations in some of the cases reported regarding violation of the right to life. Also during this reporting period, the OIK received several complaints related to excessive duration of procedures and lack of investigations by the public authorities, which should be shedding the light on murder cases. Last year, the Ombudsperson published a report with recommendations regarding lack of effective investigations by the competent authorities (Public Prosecution in Pejë).⁵⁶ This recommendation has not yet been implemented and the OIK did not receive any response to recommendation issued.

In most of the cases regarding violation of this right was concluded the lack of official investigations and excessive duration of procedures for ensuring a fair and impartial trial by the competent bodies.

The OIK, after receiving the information on citizens injured due to use of pyrotechnics during the year-end celebration, based on the article 15.3 of the Law on the Ombudsperson decided to commence *ex officio* investigations⁵⁷ regarding the use of pyrotechnics as a very dangerous act, which directly violates right to life. After media reports on injured citizens due to use of pyrotechnics, the OIK representatives visited several medical centres in Kosovo and contacted the officials in charge, aiming to collect information regarding health state of the persons injured due to use of pyrotechnics. Regarding the issue of trade and use of pyrotechnic means, the Ombudsperson based on the facts collected on the field reached the conclusion that the competent institutions failed to perform their duties set forth by law and that the authorities through actions or omissions committed a series of violations. Regarding this recommendation addressing the Ministry of Interior, the Ombudsperson Institution did not receive any response. The Ombudsperson continues to appeal on the citizens and the competent authorities to pay more caution during the use of pyrotechnics. The Ombudsperson also requests implementation of legal provisions regarding use of pyrotechnics. The

⁵⁵ Daily "Kosova Sot", 21 November 2011, p. 13.

⁵⁶ Case 1546/2004

⁵⁷ Ex officio report no. 4/2011, dated 19 January 2011.

pyrotechnic means directly endanger human life; therefore, the institutions and those using pyrotechnic means should pay additional caution.

The Ombudsperson, therefore has repeated its request for an effective implementation of law and establishing an effective judicial system, a system in which the crimes are fully and effectively investigated and the perpetrators get fair trial and within the reasonable time limit. Until then, the legal system in the Republic of Kosovo continues to be incompatible with the Constitution and the international standards as regards guaranteeing the right to life.

Recommendations

- *The Kosovo Police should be quicker in apprehending the perpetrators of criminal offences against life and body.*
- *The justice system should increase the number of judges and prosecutors that should deal with criminal cases, aiming to avoid excessive duration of proceedings for promulgation of judgments in cases of commission of the criminal offences against life and body.*
- *Kosovo Judicial Institute to continue further trainings for judges and prosecutors dealing with the criminal cases, especially regarding investigation of criminal offences against life and body and their trial.*
- *The citizens should be able to use adequate remedies for realization of compensation for the damages caused to them in cases of failure of the public competent authorities to investigate, resolve the cases, detect and put the perpetrators on trial.*
- *The respondent bodies to implement Ombudsperson's recommendations.*

2.5. The right to personal integrity

The concept of personal integrity is defined as invulnerability or inviolability of the human body, in terms of respecting its physical and psychological values. Constitution of the Republic of Kosovo," protects the right to respect the physical and psychological integrity of each person"⁵⁸ including the right to take decisions about reproduction, the right to have control over the body, the right not to be subjected to medical treatment against his will, and the right not to be part of medical or scientific experiments without his consent. The right to personal integrity, in addition to the Constitution of the Republic of Kosovo, in our country is also governed by a set of laws relating to paragraphs 1, 2, 3, 4 of Article 26 of the Constitution of the Republic of Kosovo.⁵⁹

The right to protection of personal integrity includes the protection of witnesses. Assembly of the Republic of Kosovo, during the period for which we are reporting has approved the Law

⁵⁸ Article 26, Constitution of the Republic of Kosovo.

⁵⁹ Law on Rights and Responsibilities of Citizens on Health Care, no.2004/38, the Law on Reproductive Health, no. 02 / L-76 and Law on Emergency Health Care, no. 02/L-50.

no. 04/-L-015 on Witness Protection. It is heartening that in the working group for drafting the new law, are also included representatives of the Ombudsperson, civil society and international organizations.

The OIK has reviewed the draft law on witness protection, or compliance / controversy of his rights and fundamental freedoms guaranteed by the Constitution of the Republic of Kosovo and the Ombudsperson's powers, and has made its comments and sent them via a recommendation on July 7, 2011, to the President of the Assembly of the Republic of Kosovo and Chairman of the Assembly Committee on Legislation of the Republic of Kosovo, recommendations these which have been partially taken into account with the approval of this law.

From this table have come recommendations, which will be followed by the unit for the rights of persons with disabilities, created within the department for discrimination in the institution of Ombudsperson.

During this reporting period the OIK has only dealt with a single complaint for violation of the right of personal integrity. The Ombudsperson has expressed its concern about the tragic death - suicide of Agim Zogaj, also known as witness X in Germany, while under the protection of the EULEX mission.

2.6. Prohibition of torture, inhuman or degrading treatment

The Constitution of the Republic of Kosovo⁶⁰ and the international instruments⁶¹ guarantee that "*no one shall be subject to torture, cruel, inhuman or degrading treatment or punishment*".

Law on the Ombudsperson provides that OIK officers at any time and without warning can monitor the detaining institutions.⁶² The OIK conducts monitoring visits to detention centres, to evaluate the treatment of persons deprived of liberty. These places include prisons, detention centres, police stations, psychiatric hospitals etc...

Prisons are closed institutions in which freedom, in every sense, is limited and prisoners' rights can be violated more easily. Appeals of these persons were given special attention by the OIK.

The OIK during this reporting period, on regular monthly basis, has visited all prisons (Dubrava, Lipjan and Smrekonica) and detention centres (Prishtina, Peja, Prizren and Mitrovica), as well as detention centres within police stations, the Institute of Mental Health

⁶⁰ *Constitution of the Republic of Kosovo, 2008, article 27.*

⁶¹ Same as above, Article 22, paragraph 8, the Universal Declaration of Human Rights, 10.12.1948, Article 5, ECHR, Rome, 4.XI. 1950, Article 3, International Convention on Civil Political Rights, 2200 A (XXI), 16 12 1966, Article 7 and Article 10.

⁶² Law on the Ombudsperson, nr.03/L-195, Section 16.7 , according to which "*officials of the Institution of the Ombudsperson at any time and without notice may enter and inspect any place where detainees are held and other institutions with limited freedom of movement and can be present at the meetings or hearings involving such persons. Officers of the Institution of the Ombudsperson may hold meetings with such persons without the presence of officials of the relevant Institution. Any type of correspondence of these persons with the Institution of the Ombudsperson is not prevented or controlled.*"

in Shtime etc.. Visits have been conducted for the purpose of providing an assessment of treatment of persons deprived of liberty, the conditions in which they are held, their health, etc.

Recommendations are already addressed to the Kosovo Correctional Service, Ministry of Justice, and Ministry of Health etc..

Torture, in the classical sense has not been encountered by the OIK, in exception to any isolated case, but there were cases of non-decent behaviour followed by insults and obscenities, the complaint regarding supply of medicines, for the subjective selection as regards the privileges and benefits, the dragging of the proceedings in making the final decision, etc.

In most cases the prisoners' complaints are made in writing and placed in boxes of complaints, but also by telephone, family members, attorneys or employees of the prison administration. Ombudsperson has received complaints about the conduct of prison staff, who have offended and insulted the prisoners; complaints directed against the decisions of the courts, claiming that they are not guilty of offenses for which convicted, and that courts did not evaluate the evidence correctly evidence, complaints regarding the supply of medicines as appropriate, in some cases non-supply with methadone - to drug addicts. In all these cases, representatives of the OIK, direct the complainants to the path that they should follow to achieve their right. Also, a large number of complaints were directed against the Panel for Conditional Release (PLK) decisions, where representatives of the Ombudsperson have informed the prisoners about the decision-making procedures of the Panel.⁶³ Cooperation with authorities has been satisfactory, as the OIK's goal also is the protection of persons deprived of liberty rather than punishment for possible abuses.

In order to investigate the complaints against the decisions of the Panel for conditional release, the OIK has held several meetings with the coordinator of the Panel and has performed its legal obligation to monitor the work of the panel. The application of the OIK was confirmed by Vice Premier and Minister of Justice, Mr. Kuçi for IO's mandate to monitor the work of the Panel, from the initiation of proceedings until the decision of the panel, namely the monitoring of all procedures: before, during and after reviewing the case for bail. From April 2011, the OIK has monitored the work of the Panel and for the three month monitoring period, the Ombudsperson informed the Ministry of Justice and the Panel itself. The Ombudsperson will continue to cooperate with the Panel and will monitor its performance in the future.

The Ombudsperson met with Commissioner of KCS as a result of findings during the monitoring and prisoners' complaints and aiming to increase and intensify the mutual cooperation.⁶⁴ On this occasion it was discussed about the health treatment of prisoners; categorization of prisoners, for the cases of detainees transferred to Smrekovnica and conditions that need to be met by the prisoner to be transferred to this prison which is considered half-open, etc. Also there was a discussion about access to public documents, as

⁶³ At the invitation of the MOJ, in March requested that a representative of the OIK to be part of the Commission set up by MD, in order to review the decisions of the Panel on bail, from 16th October to February 22, 2011, at the time the MD was left without political staff and therefore no minister. The commission has reviewed 189 cases and issued recommendations which were forwarded to the MD and PLK

⁶⁴ On March 7, 2011, the Ombudsperson met with the Commissioner of KCS, Mr. Resmi Hoxha

representatives of the OIK have encountered difficulties in the Gjilan Detention Centre to photocopy documentation of a detainee, who was abused during the arrest, demanding that in future OIK is not hampered in its work.⁶⁵

The OIK's concern is also shedding light on the tragic case that occurred at Dubrava Prison in 2003. For this purpose, the Ombudsperson met with senior legal officer of EULEX Commission on Human Rights (HRRP),⁶⁶ to discuss the case in the Dubrava prison, in 2003, which left five inmates dead, while their families are still seeking answers about what happened and who should be held responsible. The OIK's representatives were informed that at this stage HRRP had nothing to report, as they are still in process of gathering information. Several meetings were held with the families of those killed and at the end families were informed by HRRP that this Panel is not competent.

On March 31, 2011, the OIK has monitored the court hearing, in the case registered with the IO, A. no. 271/2010, which for years was awaiting a final decision. Due to failure to reach a verdict, within the deadline, according to LESP,⁶⁷ the Ombudsperson addressed a report with the recommendation, to the Supreme Court, after which the court has decided and informed the Ombudsperson with the outcome.⁶⁸

The Ombudsperson met with representatives of the European Commission mission set for Kosovo and the Director General of Health in the KCS, where it was discussed about identifying the need for the establishment of the Forensic Psychiatric Institute (IFP) and the contribution of IO in this regard.⁶⁹ After extensive presentation of the work of the OIK, it was decided that the OIK does not need to be included as a necessary institution in this scheme (draft project).

In the course of cooperation in the defence of the rights of persons deprived of liberty, IO met with representatives of NGOs from Leskovac, who deal with the protection of human rights of detained persons. This meeting was aimed at cooperation to protect the rights of the citizens of Kosovo who are in prisons in Serbia and vice versa. The OIK has had a very good cooperation with this NGO, which is currently investigating several cases of Kosovan prisoners, who were assisted in various forms, especially for their legal protection.⁷⁰

In December, during the reporting period, the OIK monitored a court hearing in a case of the three police officers who exceeded their official duty during the interrogation of a detainee. In this case, the OIK has found that there was excessive use of force and the case is being held in

⁶⁵ Report with recommendations to the MD, regarding the complaint, no. A 32/2011, R.A. against the Detention Centre in Gjilan.

⁶⁶ *On March 9, 2011, the Ombudsperson has met with the Senior Legal Officer, Mr. John Ryan, with the aim of raising concerns about the case.*

⁶⁷ In Article 395, paragraph 1, the LESP provided that: "The promulgated judgment shall be drafted in writing within fifteen days from its announcement when the accused is in custody, and within thirty days in other cases [...] and 45 days in other cases."

⁶⁸ Report with recommendations regarding the appeal no A 271/2010, A.K. against the Supreme Court.

⁶⁹ *In April of 2011, the Ombudsperson met with Mr. Nigel McCarly, representing the European Commission and Mr. Milazim Gjoci, director general of healthcare in the KCS.*

⁷⁰ On 21.11.2011, at the OIK was held a meeting with representatives of the Committee for Human Rights from Leskovac, Serbia.

the Municipal Court in Pristina. The case will be monitored by the Ombudsperson until its conclusion.⁷¹

Given the number of complaints against health care in prisons, the Ombudsperson met with the Director General of Health of KCS, to whom it raised its concerns and where it was discussed about the difficulties of the health system in the correctional facilities.⁷² According to information received by the KCS, the health system will soon be transferred to the Ministry of Health. The OIK supports the transfer of powers and considers it more than necessary, due to interference and breach of professional autonomy of health staff.

During this year there has been no epidemic in the prisons or places of detention in the Republic of Kosovo. There were three deaths for which after the autopsy was concluded that they were deaths by natural causes. Cases of attempted suicide and self-inflicted injuries are declining, as well as other offenses (sexual offences and hunger strikes). Prisons hold valid contracts for supply of medicines. Prisoners have been integrated in the Bill of health and health insurance and will be treated as a social category - the state will pay for their health insurance.

According to the KCS director of health, as deficiencies of the health system, this year, can be counted: the lack of prison psychologist for prisoners; pharmaceutical supply during the year has not been complete, the Law on Execution of Criminal Sanctions is inappropriate for the health system. A pronounced deficiency is the reduced budget, which will not be able to fulfil needs, while the medical staffs is not stimulated financially for performing hazardous work.

A remark concern, according to Director of Health of the KCS is that the introduction of life imprisonment in the law will be followed by additional duties and obligations and necessarily requires creation of conditions, such as: facilities, staff, care, etc...

For this reporting period, the OIK has registered 14 cases of alleged violations of legal norms against torture, which are being processed. These complaints are against the Kosovo Police - excessive use of force, this concern has been raised in the report of the Committee for the Prevention of Torture (CPT) of Council of Europe.⁷³

In general, the situation in Kosovo prisons is satisfactory and in accordance with local and international laws, the number of complaints has declined and the situation continues to improve, but there is much to be done in this direction.⁷⁴

2.6.3. National Mechanism for the Prevention of Torture

⁷¹ Complaint registered at the OIK, no A 60/2010, A.H. against Regional Investigations Unit in Pristina, the monitoring of the session on December 21, 2011.

⁷² *The Ombudsperson, in December 2011, met with Mr. Milazim Gjoci, director general of healthcare in the KCS.*

⁷³ *Council of Europe, CPT / Info (2011) 26, Strasbourg, 6 October 2011.*

⁷⁴ Annual Report January - December 2011 The KRCT, Standards of Human Rights in Correctional Institutions in Kosovo, which reflects the detailed situation in Kosovo prisons, which in some parts of the joint monitoring is the stance of the OIK too.

In the framework of joint activities with NGOs, not only as a legal obligation to cooperate with civil society, but given the common interest to fight every phenomenon of torture or inhuman and degrading treatment, the Ombudsperson has continued its cooperation with NGOs, which deal with protection of the rights of detained persons who are proven and have a unique experience in this regard.⁷⁵

During 2011, the Joint Task Force has conducted field monitoring operations, joint training and workshops with the support of the OSCE, the Office of the High Commissioner for Human Rights and EULEX.

On July 13, 2011, in the framework of joint visits, the OIK and the QKMRT conducted the first joint visit to the Detention Center in Mitrovica and the Smrekonica prison. During his visit we were accompanied by representatives of the European Committee for the Prevention of Torture (CPT), from Denmark. The aim was to assess the observance of human rights in places of detention, as well as enhancing transparency, thereby enhancing the fulfilment of international standards by the authorities of the country.

Monitoring team is focused on the conditions in which detainees are held and prisoners. For work and activities of the Detention Centre (CET) monitoring team was informed by the director of the Centre. Realization of this visit was only possible with Kosovo police escort, because CET is located in the northern part of Mitrovica, where the freedom of movement for the residents and the institutions of the Republic of Kosovo, as well as for the residents of non-Serbian ethnic background is almost forbidden.⁷⁶

Also during this day the team visited Smrekonica Prison, which is currently being renovated and still has not reached the full capacity.⁷⁷

The Ombudsperson, under the joint work with KRCT and the support of the Centre for Rehabilitation of Torture of Denmark (RCT) are working on compiling a manual that will serve not only for Kosovo but also for the region. This manual will be distributed to relevant institutions.⁷⁸

In the framework of joint visits and strengthening of cooperation, with the purpose of obtaining the best practices, joint working group (Task Force), on the IO initiative and with support of OSCE, organized a study visit to Albania (15 to 18 November 2011). During this visit, the group met with Acting Ombudsperson in Albania, MKP Unit, Directorate General of Police, Albanian Centre for Rehabilitation of Torture victims, European Institute of Tirana and the director of Fushë Krujë Prison. The reason was the model of MKP in Albania (Ombudsperson Plus), and their experiences are a successful model, from which good lessons can be learned by the establishment of the Republic of Kosovo MKPT.

⁷⁵ On May 10, 2011, this cooperation was formalized with the signing of the Cooperation Agreement KRCT-OIK-CDHRF. Signing the agreement is made within the common commitment to the fulfilment of the national campaign against torture in order to initiate the creation of the National Mechanism for the Prevention of Torture (NMPT), which is required by the Optional Protocol to the UN Convention against Torture - OPCAT.

⁷⁶ Recommendations arising from the visit were addressed to the Director of CET, Mr. Milan Radovic and these recommendations will be addressed in writing in the KRCT report, scheduled to come out in March of 2012, after this was a joint visit.

⁷⁷ Recommendations arising from the visit, the team have passed on to Mr. Muharrem Bajrami, Acting Director, at the end of the visit, and will be presented in writing in the KRCT report.

⁷⁸ *The Ombudsperson, in October 2011, met with the representative of RCT from Denmark, Ms. Louise JOHANNSEN, to discuss the latest interventions that can be made to the Manual.*

From November 24 to 26, with KRCT initiative, supported by the Danish RCT, three-day training was held in order to harmonize the approach of the Task Force. During those days was conducted the second joint visit to monitor the Dubrava Prison and Detention Centre in Peja. The findings will be published in the joint report.

On 26 and 27 of December, in the framework of joint visits, visits took place in Macedonia, for the representatives of KRCT which was supported by the OSCE. During the visit we were informed about the work of MKPT and their cooperation with NGOs. During this visit they met the Ombudsperson of Macedonia and some NGOs.

In addition to establishing contacts and exchanges of experiences, we discussed the possibilities of regional cooperation in the future.

Recommendations

For Kosovo Correctional Service, Ministry of Justice, Ministry of Health and Ministry of Internal Affairs

- *To organize seminars or training courses for staff in institutions, where detainees are held, in order to expand knowledge about the nature and content of international conventions on human rights, especially those that are directly applicable in Kosovo.*
- *Inform the detainees and prisoners of their rights and obligations, and how to file a complaint.*
- *Categorize the detainees, according to the nature of the offense, criminal history, risk, age etc.*
- *Measures to be taken regarding courts, to come to a decision within reasonable time limits and in accordance with the law, with as little delay as possible.*
- *To organize training and round table discussions with relevant factors for the possibility of description of the documents that are accessible as this is not specified in the Law on Access to Public Documents.*
- *To take action for equal treatment of prisoners, in terms of providing benefits and privileges.*
- *Health services should be transferred from the Ministry of Justice to the Ministry of Health, in order to provide a more efficient service.*
- *To take into account the recommendations of the Director of Health of KCS, for LESP, as according to him the healthcare is inadequate.*
- *To organize training for the Kosovo Police, with the aim of expanding knowledge and respect for human rights, so the detainees are treated with humanity and respect.*

2.7. The right to liberty and security

Constitution of the Republic of Kosovo states that "Everyone is guaranteed the right to liberty and security. Nobody can be deprived of liberty except in cases as foreseen by law [...]".⁷⁹ This right is in full compliance with international instruments of human rights under ECHR⁸⁰ and the Covenant on Civil and Political Rights.⁸¹

This right can be restricted only in cases foreseen by law.⁸² Provisional Kosovo Criminal Procedure stipulates that the court can set custody to a person only if there is suspicion that such person has committed a criminal offense and if one of these conditions is fulfilled: there is a risk of escape, the risk that a person can change the evidence of the offense and the risk that the person may repeat the offense.⁸³

Based on a comprehensive analysis of the situation and complaints handled by the Ombudsperson Institution (OIK),⁸⁴ we can say that despite the fact that there is a good legal defence both by domestic law as well as international norms, the right to liberty and security in practice is not appropriately protected.

However short the period of detention is, detention can be imposed only in cases where this is necessary. The decision to impose such a measure should be well justified, since it serves to protect individual liberty and protects individuals from arbitrary deprivations of liberty by the authorities. Assignment of detention with a reasoned legal decision, it is necessary and important that the defendant can exercise his right to challenge that decision.⁸⁵

In some of its decisions the European Court of Human Rights (ECHR) has emphasized the importance of the right to liberty and security, by requiring that any deprivation of liberty is in conformity with the purpose of Article 5, which means the protection of individual from the risk of arbitrariness.⁸⁶

As for the length of the detention period, the ECHR has emphasized also that no matter what the period of detention is, it must be convincingly justified by the authorities.⁸⁷ According to the ECHR this must happen because well-reasoned decisions serve to show the party that they were given full attention, give the party an opportunity to file a complaint and ultimately ensure public scrutiny of the administration of justice.⁸⁸

During this reporting period, the OIK officials have conducted a number of visits to prisons, detention centres and detention centres in police stations in Kosovo. From interviews with detained persons, in some cases there were allegations of violations of the right to freedom, referring to decisions on detention and delays of the proceedings until the issuance of a final decision.

An international instruments envisaged by the Constitution of the Republic of Kosovo, the Convention on the Rights of the Child, the right to liberty and security has paid particular

⁷⁹ *Constitution of the Republic of Kosovo, article 29.*

⁸⁰ *European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5.*

⁸¹ *International Convention on Civil and Political Rights, article 9.*

⁸² *Provisional Code of Criminal Procedure, Article 279.*

⁸³ *Provisional Code of Criminal Procedure, Article 281.*

⁸⁴ OIK-official reports from visits to detention centres, custody centres and prisons in Kosovo.

⁸⁵ *Provisional Code of Criminal Procedure, Article 283.*

⁸⁶ *European Court of Human Rights, "Erkalo against Netherlands", Judgment, 09.02.1998, paragraph 56.*

⁸⁷ *European Court of Human Rights, "Belchev v. Bulgaria", Judgment, 04.08.2004, paragraph 82.*

⁸⁸ *European Court of Human Rights, "Suominen v. Finland", Judgment, 07.01.2003, paragraph 37.*

attention to and explicitly requires that "every child deprived of liberty shall be treated with humanity and with respect for the inherent dignity of a human and so, to keep in mind the needs of persons of its age [...]." ⁸⁹

The Ombudsperson Institution has praised as very positive initiative which Kosovo Police with the support of European Commission Office in Kosovo and UNICEF has begun a program to reform the system of juvenile justice. Within this program, as the first phase, in October 2011 in seven centres in Kosovo were established friendly rooms to interview the children, while the second phase of this program aims to ensure that the treatment of juveniles in conflict with the law to be in accordance with local and international children's rights. ⁹⁰

The OIK recommends that the responsible authorities, primarily judges and prosecutors to be more careful in protecting this right and the application of detention is only in those cases where it is in full compliance with legal requirements and international standards of human rights.

2.8. The rights of the accused

Acts and most important international documents in the field of human rights, directly applicable in Kosovo, explicitly require the observance of the rights of the accused. ⁹¹

Constitution of the Republic of Kosovo in accordance with these documents, guarantees that everyone charged with a criminal offense shall have these minimum rights: to be notified immediately in a language they understand, the nature and cause of the accusation against , be notified of their rights, according to law to have time and sufficient opportunity to prepare their defence, to have free assistance of an interpreter if they do not understand the language in which the judicial process is conducted, to have the assistance of counsel of personal choice to communicate freely with, and if not sufficient, provide them protection and not to forcefully make them testify against themselves or to admit guilt. ⁹²

Ombudsperson Institution within the constitutional and legal framework continued the monitoring of detention centres, where the accused for several criminal offenses are held and has conducted regular visits to these centres such as Lipjan, Dubrava, Gjilan, Pristina, Peja, Mitrovica and Prizren.

From these visits it was observed that some detention centres are overcrowded ⁹³ and the conditions in some of them are not yet satisfactory, especially in terms of natural lighting, ventilation and cleanliness. ⁹⁴ Regarding this matter, the European Court of Human Rights in

⁸⁹ *Convention on the Rights of the Child, Article 37, paragraph c.*

⁹⁰ http://www.eeas.europa.eu/delegations/kosovo/pres_corner/all_news/news/2011/20111031childrooms_sq.htm. *Kosovo Police establishes child friendly interviewing rooms, October 31, 2011.*

⁹¹ Article 11 of the Universal Declaration of Human Rights, Article 6 of European Convention on Human Rights, Article 14 of the International Convention on Civil and Political Rights.

⁹² *Constitution of the Republic of Kosovo, 2008, article 30.*

⁹³ In Prizren Detention Centre during the regular visit of representatives of the Ombudsperson Institution on December 21, 2011 the number of detainees and prisoners was 92 (10 sentenced and 82 detained), as is the entire capacity of the Centre. On December 22, 2011 in Pristina Detention Centre detainees numbered were 63, while its capacity is 65.

⁹⁴ The findings from the visits to Gjilan Detention Centre on 10 November 2011.

the case *Mandic and Jovic Vs.Slovenia* and *Strucl and others Vs. Slovenia*⁹⁵ states that the conditions of holding detainees in a space of only 2.7 square meters, with the temperature in August of 28 degrees centigrade and the detainees had spent most of their time in cells, it violates the European Convention on Human Rights.⁹⁶

Although PCPC allows the detention centre director to request the transfer of a detainee,⁹⁷ placing the accused for an offense too far from their families makes it difficult for the family and their relatives to visit them. One defendant, a resident of the municipality of Gjilan, who is located in Peja Detention Centre, presents a problem for his family, because due to geographical distance visits are rare due to travel costs, which in some cases are unaffordable.

A problem in itself is also the procedure of obtaining permission to visit the accused. This is a complicated and expensive procedure, as shows the example of an alleged offender, a resident of the municipality of Skenderaj, held in a detention centre in Peja. To be able to visit, family or his friends must travel to Pristina to obtain permission to visit, in order to visit him in Peja. Given the economic situation of many families in Kosovo, this form of regulation hinders the realization of regular visits therefore puts a strain into their financial situation.

Detention centres are still far from the European Prison Rules, adopted by the Committee of Ministers of member states of the Council of Europe on February 12, 1987.⁹⁸ The situation remains unchanged, compared with previous years. This is explained by economic failure.

In connection with notification of the accused for the offense for which he is charged, from interviews with detainees held in Pejë and Dubrava Prison, The Institution of Ombudsperson has not identified any deficiencies and has not received any complaint regarding the denial of this right.⁹⁹

Of particular importance for the realization of this right is the standardization of interrogation procedures of the accused by police investigators and public prosecutors. This would enable the creation of a unique model of procedural actions. Thus it would eliminate the various approaches to the interrogation of the accused. Standardization of this process will enable police investigators and public prosecutors to rightly enforce the law.¹⁰⁰ But the lack of a standard procedure can lead to arbitrariness of this process, because within the same police

⁹⁵ *Mandic and Jovic Vs.Slovenia* (application 5774/10 and 5985/10) and *Strucl and others Vs.Slovenia* (application 5903/10, 6003/10 and 6544/10).

⁹⁶ *European Convention on Human Rights, Article 3 "No one can be subject to torture or to inhuman or degrading treatment or punishment".*

⁹⁷ Article 291, Paragraph 3, of the Code of Criminal Procedure: "The competent court, with the proposal of the director of the detention centre where the detainee is placed, can transfer a detainee from the premises of a detention institution to another for reasons of safety and discipline, or for the effective and reasonable enforcement of the penal procedure."

⁹⁸ Rule 94: "The untried prisoners shall be given the opportunity to have separate rooms, except when there are circumstances to do such an undesirable thing."

⁹⁹ Interrogation of detainees N.D., SH.SH. K.N., M.M., F.R., S.F. and A.N, on the occasion of the visit to the Detention Centre in Peja and Dubrava, on November 25, 2011.

¹⁰⁰ Provisional Code of Criminal Procedure, Article 155 paragraph (1) During any interview or examination is prohibited to: 1) the defendant's freedom to formulate and express its opinion be affected by ill-treatment, causing fatigue, physical interference, drug use, torture, coercion or hypnosis; 2) To threaten the defendant with actions prohibited by law; 3) To promise a benefit unforeseen by law, and 4) Impair the defendant's memory or his ability to understand.5) The prohibition under paragraph 1 of this Article shall apply irrespective of the consent of the interviewed or interrogated person. 6) If questioning or examination is conducted in violation of paragraph 1 of this Article, the minutes of the interview or examination are unacceptable.

station or prosecutor assigned different standards applied to the examination, which means that the interpretation of legal norms is the arbitrarily.

Respect of human rights even when a person is a suspect, even for a serious offense, does not hinder the effectiveness of investigations, but rather is indicative of the professionalism of the investigators from the perspective of using legal means and methods to find the perpetrators of crime. In such cases obtaining the evidence in terms of legality cannot be contested. Also, it would affect people's confidence that the functioning of the rule of law is growing.

Issue that is raised in the previous report and continues to be disturbing is the issue of engagement of counsel ex officio. Even under the ECHR PCPC, each person is recognized and guaranteed the right to defend himself in person or through legal assistance of own choosing or if there is not enough money to pay for legal assistance it should be provided for free when the interests of justice so require.¹⁰¹ The institution of Ombudsperson has not received any complaints related to denial of this right by the authorities, but the Ombudsperson during visits to detention centres, has received complaints from most of the defendants, in connection with protection services provided by authorities ex officio.

Engagement on the appropriate level of defence in the initial stage can be crucial to the whole process. Thereby it directly affects the right to a fair and impartial trial according to Article 6 of European Convention on Human Rights.¹⁰²

Detention should only exist in those circumstances when this is necessary. It is the most severe mechanism to ensure the presence of the accused. In some cases due to courts being overburdened with unresolved cases they are held for much longer in detention centres, which are already overloaded anyway.

Even the disciplinary measures taken against judges who neglect this issue are very symbolic. In practice, the cases where the court "forgets" that a person is in custody are not rare, even after the legal deadline. In such cases the detention centres contact the courts "to remind" them that they should decide on the duration of detention. And, in these cases the decisions for non-extension of detention are rushed without proper analysis. Consequently, the decisions on the extension of detention are not justified as well.

Recommendations

➤ Detention as a mean of securing the accused not to become a rule. Measure of detention to be imposed only in cases where there is no room for imposition of other alternative measures. Decisions on detention to be justified more broadly, taking into account all the circumstances of the case.

¹⁰¹ Article 6, paragraph 3 (c) of the ECHR, Article 12 of the PCPC, paragraph 3 "If the defendant does not engage a defence to provide protection, but protection is required, the defendant is assigned to an independent defence with experience and competence in accordance with the nature of the offense and under the conditions foreseen by this Code "and paragraph 6" In accordance with the provisions of this Code, every person deprived of liberty shall have the right to defence services from the time of the arrest."

¹⁰² Article 6 of the ECHR, "Right to a fair trial".

➤ *To aim towards the expansion of detention facilities, detention centres and prisons and to improve conditions, especially the removal of humidity, this can directly affect the health of the accused, but also the employees of these institutions.*

➤ *To standardize the procedures of interrogation of the accused by police investigators and public prosecutors, as this will help create a unique model of procedural actions and would eliminate the various approaches to the interrogation of the accused.*

➤ *Chamber of Advocates to exercise greater oversight and take disciplinary action against lawyers who violate the Bar Code and the Law on Professional Ethics.*

2.9. The right to a fair and impartial trial

The right to a fair and impartial trial is guaranteed by the Constitution of the Republic of Kosovo¹⁰³ and has a comprehensive interpretation of the meaning of Article 6 of European Convention on Human Rights.¹⁰⁴

This right is also regulated by other basic laws, in the criminal and civil fields such as Law on Courts of the Republic of Kosovo, the Provisional Criminal Procedure Code and Law on Civil Procedure.¹⁰⁵ The above mentioned laws protect the right to trial within a reasonable time, both in civil and criminal procedure.

In the determination of civil rights and obligations, or in any criminal charge against them, everyone is entitled to have the case heard fairly, publicly and within a reasonable time by an independent and impartial court. Publication of judicial decisions may be limited to special cases only, if concluded that it would prejudice the interests of justice under the law.

In this reporting period, for violations of the right to a fair and impartial trial institution of the Ombudsperson received a total of 171 complaints from citizens. Of these, 54 complaints were determined to be inadmissible under section 19.1.3 of the Law on the Ombudsperson,¹⁰⁶ while for 111 appeals a decision to open investigations was made, and 6 complaints were pending for review.

¹⁰³ *Constitution of the Republic of Kosovo*, article 31, paragraphs 1 and 2. "(...) Everyone shall be guaranteed equal protection of rights in proceedings before courts, other state bodies and holders of public powers. Everyone has the right to a fair and impartial public review of the decisions regarding the rights and obligations or any criminal charge arising against him / her within a reasonable time by an independent and impartial tribunal, established by law."

¹⁰⁴ *European Convention on Human Rights, Article 6*. Paragraph 1. (...) In the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to have his case heard fairly, publicly and within a reasonable time by an independent and impartial court. The decision must be given publicly, but in the court room the press and public can be excluded during all or a part thereof, in the interest of morals, public order or national security in a democratic society, when requested by interests of juveniles or the protection of private parties to process or to the extent deemed necessary by the court too, when in special circumstances where publicity would prejudice the interests of justice."

¹⁰⁵ The Law on courts no 03/L-199, article 7, Official Gazette of the Republic of Kosovo, no. 79, August 24, 2010, Provisional Criminal Procedure, no.03/L-199, article 7.par 2, the Law on Contested Procedure, no.03/L-006, Official Gazette of the Republic of Kosovo, no. 38, September 20, 2008, article10, paragraph 1.

¹⁰⁶ *Law on the Ombudsperson, no.03/L-195, Article 19, p. 1.3*.The appeal is not within the competence of the Ombudsperson if the complaint is filed after the time specified in this law, the complaint is anonymous, the complaint represents an abuse of the right to appeal, and appellant has failed to provide information requested by the Ombudsperson.

After analyzing the nature of the complaints, it shows that most of them were related to alleged violations of the right to a fair trial, especially the right to trial within a reasonable time. A significant number of complaints were about the doubts on the objectivity of judgments, the non-execution of judgments by the courts, as well as delays in delivering judgments.

Complaints received from citizens, of delays of court proceedings in civil cases, the greatest in number are the property disputes, obligatory, employment relations, contentious, but also the execution of judgments. Court procedures by courts in decision making cases take well over 5 years. In these cases we get delayed justice for the party and the loss of the effect and of the meaning of the trial. In all cases where such violations are found, the Ombudsperson has opened an investigation and has requested information from the courts of various levels, related to actions taken to resolve these issues.

From the responses of various courts of Kosovo, the Ombudsperson is not satisfied with the treatment of its recommendations by the judiciary. In the majority of written responses, the court stressed "that the case will be reviewed in due course" or "the case is in the queue for review." The Ombudsperson is very concerned particularly by such answers, without a deadline for processing the citizens' issues. Of course, the Ombudsperson considers the load of the courts with inherited cases as outstanding from previous years, and lack of staff needed to accelerate the procedure.

Municipal Court in Pristina,¹⁰⁷ in response to the Ombudsperson's letter regarding the delay of cases by this court, Ms. Makifete Saliuka, Acting President of the Court announces that "the Court is unable to observe the standard time limits set by law and therefore incurred claims of the parties, the court has 65.000 outstanding civil, criminal and court bailiff cases and there are not enough judges to deal with them ".

Complainant from Ferizaj complained to the Municipal Court in Ferizaj about a delay without any legal cause in a court case regarding a property issue.¹⁰⁸ On review of this complaint it showed that his claim, the return of an estate to his possession was presented for trial in court on 03.05.2004. From the investigation showed that a number of different judges handled the case and the issue had not yet been finalized by the court. By analyzing the causes of court delays resulted in that the former owner had sold the same property twice, to different Albanian persons and that three court proceedings were initiated on the same issue.

Given the present case, the Ombudsperson, on 07/04/2011 asked the Municipal Court in Ferizaj, for the case to proceed without further delay, according to Article 6 of European Convention on Human Rights, and the court on 06.07.20011, notified us about the actions taken on the case and that case will be reviewed in September 2011.

The Ombudsperson in the case of complaint due to excessive duration of criminal proceedings by the Supreme Court on 17.6.2011 sent a report with recommendations to the Kosovo Judicial Council, with the requirement to respect Article 395 of the Provisional Criminal

¹⁰⁷ Pristina Municipal Court, acting president of the court, Makifete Saliuka, the document 295/11, date, 01/11/11, addressed to the Institution of Ombudsperson.

¹⁰⁸ Case registered in the People's Advocate Institution, S.G. No. 64/2011, the right to a fair and impartial, article 31. On 03/05/2004 the appellant S.G. from Ferizaj, filed a property lawsuit in Municipal Court in Ferizaj and his case was not decided, because he did not have a final court decision.

Procedure, for issuance of criminal judgments within legal deadline of 15 days from the announcement of the verdict.¹⁰⁹

Decisive factors that influence the growth of the number of unsolved cases in courts of Kosovo and delay outside all the standard time limits are insufficient number of judges, lack of professional collaborators and other administrative personnel, and poor infrastructure.

For the Ombudsperson, particularly disturbing are unreasonable delays while waiting for trial in cases of detention, then delays in the confirmation of charges, scheduling of hearings, and issuance of judgments. Extremely disturbing and serious situation is in the Mitrovica region, due to malfunctioning of the judiciary, as a direct result of political calculations and the failure of local and international institutions competent and responsible for public safety and protection law and order in the region Mitrovica.

Despite the limited powers in the field of judiciary,¹¹⁰ The Ombudsperson, in all cases of complaints of citizens, however, has sent letters and recommendations, especially to courts of first instance, through which it requested acceleration of the proceedings to establish the parties' submissions. However, the Ombudsperson is not satisfied with the level of treatment of statements and responses received by the courts.

Particularly concerning to the Ombudsperson, is the infringement of the constitutional right, the case of prescription of complaints of citizens, respectively of the court cases by the courts. According to the Judicial Council for the year 2011,¹¹¹ in the district courts, in 2011, were prescribed 4 cases, while 2,367 in the municipal courts. From the report it cannot be established the legal nature of the substances which are prescribed by the courts, and there is no data related to the dates when the cases were presented to the court.

The severity of the country's judicial system has affected the right to a fair and impartial trial, guaranteed by the Constitution and basic laws,¹¹² to a considerable number of citizens. The inefficiency of the judiciary, in reviewing the cases, the prescription of time limits and subject, results in loss of trust in the institutional and social justice and also constitutes one of the worst violations of human rights.

Ombudsperson believes that institutions must commit to an independent and efficient judiciary, which would be the best guarantee for the realization of the constitutional right to a fair and impartial trial. Judges in Kosovo must have institutional safety so they can perform

¹⁰⁹ Case registered in the institution of Ombudsperson, A.K. No. 271/2010, the Right to Fair and impartial trial. Article 31, report with recommendations sent to the Kosovo Judicial Council. The appellant A.K. was convicted and sentenced to 7 years in prison, on July 3, 2009, but had not yet a final decision by the Supreme Court

¹¹⁰ *Law on the Ombudsperson, no.03/L-195, Article 15, p. 6.* "The Ombudsperson will not intervene in the cases and legal proceedings that are being conducted before the courts, except in cases of unreasonable delays or apparent abuse of power."

¹¹¹ Kosovo Judicial Council, Annual Report 2011, Statistics of the regular courts, <http://kgjk-ks.org> (02/04/2012).

¹¹² *Law on Courts no.03 / L-199, article 7 paragraph 2, Official Gazette of Kosovo No.79, August 24, 2010,* "Every person has equal access to courts and no one is denied the right to a fair trial in accordance with normal procedure or legal right to equal protection by law. Every person is entitled to a fair trial within a reasonable time "

Provisional Criminal Procedure Code no.03/L-199, Article 5, paragraph 12, "Every person suspected or charged with a penal offense has the right to request impartial penal proceedings conducted in reasonable time."

Law on Contested Procedure, no.03/L-006, Article 10, paragraph 1, Official Gazette of Kosovo No.38, September 20, 2008, "The court has a duty to try that the procedure runs without delay and with as little cost as possible, and to make its utmost not to come to any abuse of the procedural rights of the parties under this law."

their legal obligations in a just and orderly way, independent from any external influence, in order to return people's confidence in the judiciary of Kosovo, which represents one of the three main pillars for the function of the rule of law and democracy.

2.10. The right to legal remedies

The right to use legal remedies against judicial and administrative decisions which affect the rights or interests of the citizens is one of the fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo.¹¹³

Like the Constitution, the criminal, civil and administrative law, shall guarantee citizens the possibility of using all legal remedies against judicial and administrative decisions, which violated their rights or interests in the way as prescribed by law. The right to use the legal remedies is guaranteed by international agreements and legal instruments directly applicable in the Republic of Kosovo.

Citizens of the Republic of Kosovo may use remedies against any decision issued by state public authorities and courts. The request for legal protection they may also send to the Constitutional Court, but only after exhausting all other remedies prescribed by legislation of Kosovo.

Kosovo's legislation is very clear when it comes to providing a remedy, but has severe problems regarding the procedures that must take place after their submission. Consequently, in different occasions we come across delays of judicial or administrative proceedings by public authorities.

In criminal proceedings, remedies and time limits for complaints, such as those against the ban, ordering or extending detention, appeals to court decisions and the exercise of extraordinary legal remedies are regulated and defined by law.¹¹⁴ Remedies for challenging the detention are envisaged with international instruments too.¹¹⁵

The right to trial within a reasonable time is guaranteed by the law of Kosovo¹¹⁶ and ECHR.¹¹⁷ This applies to any judicial proceedings in all levels of the judicial system.

Deadlines for procedure development and issuance of the administrative cases are required by the Law of Administrative Procedure. In accordance with the Law on Administrative Disputes, if 30 days from the date of the remedy no decision is taken by the competent administrative body, the parties acquire the right to address the court.

¹¹³ *Constitution of the Republic of Kosovo*, article 32. Every person has the right to pursue legal remedies against judicial and administrative decisions which affect his/her rights or interests in the way as prescribed by law".

¹¹⁴ *Code of Criminal Procedure*, adopted on July 6, 2003, supplemented and amended on November 3, 2008.

¹¹⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 5, paragraph 4, "Everyone who is deprived of his liberty by arrest or detention shall be entitled to appeal in court in order that within a short time it is decided, the legality of his detention and order release if the detention is unlawful."

¹¹⁶ Law no.03/L-006 on contested procedure, Article 10.1. The court has a duty to try the procedure without delay and with much less expense, and make impossible any abuse of procedural rights of the parties under this law."

¹¹⁷ *ECHR*, Article 6, paragraph 1. Every person has the right to have his case heard fairly, publicly and within a reasonable time by an independent and impartial tribunal, established by law, which will decide how disputes about rights and obligations of his civil, as well as merits of any criminal charge against him."

During the 2011, regarding the judicial and administrative procedures in the use of remedies, IO has investigated 76 cases, of which 64 are open, and 12 are closed. Based on the analysis of complaints filed, shows that nearly half of cases (31) are against the judiciary, 21 against the ministries and administration and 14 against municipalities, while against other subjects are total of 10 cases. Complaints have arisen due to failure of the legal remedy, namely of not reviewing the complaints within legal time periods and the failure to implement administrative decisions.

The most common causes for inadmissibility of complaints are: non-usage of legal remedies or the party has used these remedies and is awaiting a response from the courts or other public authorities, and when they are outside the jurisdiction of the IO. Some of the complaints were actually requests towards the IO for the compilation of complaints, claims and lawsuits for certain cases for which the complainants have alleged that their rights were violated. From this we can conclude that despite the fact that citizens have confidence in the IO, they do not have enough knowledge of the competencies, mission and the mandate of the Ombudsperson. In such cases, applicants are advised to address the Committee on Legal Aid and local NGO - "CLARD",¹¹⁸ which provides legal aid.

As regards appeals for remedies to the judiciary, more than half of them (30 cases) were filed against different Municipal Courts, while others mainly against the District Courts and the Supreme Court. It must be emphasized that there were two cases involving minor offenses and only one case against the Special Chamber of the Supreme Court, in connection with the Privatization Agency. Citizens' complaints were related to dissatisfaction with the decisions of courts, but also with excessive delays in proceedings up to the final judicial decision after the use of legal remedies. However, this has a great impact on the effectiveness of remedies for the protection of human rights guaranteed by the legal provisions and decisions within reasonable legal time limits.

Complaints of citizens against ministries, municipal administration for remedies include various areas: labour relations, property issues, housing, permits for construction and renovation of houses and business premises etc...

The following will highlight two positively solved cases.

The complainant B.F. from Prishtina was delayed in the granting of citizenship of the Republic of Kosovo by the Ministry of Interior Affairs (MIO) with various pretexts although it has met all the documentation request of the relevant organs of the said Ministry. Her case was resolved positively after 5 months, after the intervention of the Ombudsperson and it has taken a positive decision which resulted in her granted the citizenship of the Republic of Kosovo.¹¹⁹

The complainant XH.L. From Pristina, Kosovo Custom's employee with valid work contract until December 31, 2011, by decision of the Director General of Customs of Kosovo, no. 225/20.07.2010 protocol was suspended with full payment from work, until a further decision.

¹¹⁸ CLARD is a local NGO established in 2007 as the successor of the activities of Spanish NGOs, MPDL - Movement for Peace, which has been active in Kosovo since 2002, with funding from the Spanish Agency for Cooperation and International Development (AECID).IO has signed a Memorandum of Understanding with CLARD for cooperation and support in protecting human rights.

¹¹⁹ The institution of Ombudsperson, Case 312/2011 - B.F. / MIA.

On March 17, 2011, the Director General of Customs of Kosovo announced that Mr. X.H.L has been reinstated at his place of work in Kosovo Customs.¹²⁰

In all cases of complaints made to the Ombudsperson, either in judicial or administrative procedures, when violations for the right of use of legal remedies were found, due to illegal action or inaction of public authorities, the Ombudsperson has opened investigations and has requested information from administrative bodies and courts of various levels, regarding the causes of delays.

The Ombudsperson, in accordance with its legal powers, after finding a violation of law, addressed the public authorities via recommendation letters, with requirements for implementation of recommendations, in order to eliminate violations of human rights guaranteed by the constitution and laws.

Ombudsperson considers that, for the legal remedies to be efficient and effective, and to avoid violations of human rights and freedoms, the legal time limits must be respected by relevant institutions, or otherwise an appropriate compensation to be provided when these rights are violated. This human right is not conducted according to international standards and local laws. Therefore, the Ombudsperson recommends that Kosovo institutions at central and municipal levels, administrative bodies and courts make consistent implementation of domestic laws and international instruments for the exercise of legal remedies by public authorities.

2.11. The principle of legality and proportionality in criminal cases

The principle of legality and proportionality is among the fundamental principles of rule of law in all modern legal systems and is elevated to the rank of constitutional principles. The principle of legality and proportionality, in criminal cases is guaranteed by Article 33 of the Constitution of the Republic of Kosovo.¹²¹ Also this principle is one of the fundamental principles of criminal law under the Criminal Code of Kosovo (PCCK).¹²² With these legal acts, citizens and all persons in the territory of Kosovo are guaranteed legal certainty in criminal matters and the protection of their rights. The principle of legality (*Nullum crimen sine lege, nulla poenitent sine lege*) is a fundamental principle of criminal law from the perspective of protecting human rights and fundamental freedoms, justice and fairness. No defendant can be punished arbitrarily or retroactively, for an act which has not been defined by law as a criminal act, except acts which at the time of perpetration, according to international law, constitute to genocide, war crimes or crimes against humanity. In this

¹²⁰ *The institution of Ombudsperson, Case 37/2011 - X.H.L / Kosovo Customs.*

¹²¹ *Constitution of the Republic of Kosovo, dated June 15, 2008, Article 33, the principle of legality and proportionality in criminal cases.*

¹²² *The Criminal Code of Kosovo, UNMIK / Regulation /2003/25, Section 1 "offenses, criminal sanctions and measures of mandatory treatment are defined only by law.*

respect, and in full accordance with the spirit of the ECHR, the Kosovan legislation guarantees that "There is no punishment without law."¹²³

In the case of change of legislation, the legal system of the Republic of Kosovo, against the perpetrator of the offense, will apply the law that is more favourable.¹²⁴

Institution of the Ombudsperson during the reporting period, received complaints from citizens concerning violations of the proportionality principle. Ombudsperson, in all cases of complaints of this nature, having limited powers in the judiciary, has instructed the parties to use the legal remedies.

The Institution of Ombudsperson has also noted violations of the principle of proportionality in the cases of penalties imposed by the judiciary against abusers with votes of citizens in the parliamentary elections in 2010.

Ombudsperson during the monitoring of the elections had found serious violations of the rules of the electoral process and vote rigging. In the report on monitoring the process of re-runs of Parliamentary elections in the Republic of Kosovo, no. 010/2011, dated January 20, 2011, the Ombudsperson asked the State Prosecutor's Office, the prosecution and trying of all the cases of election rigging in 2010, of all offenders, the indictment and deserved punishment in relation to the offense,¹²⁵ as prescribed by legal norms in force.¹²⁶

According to the six monthly report of the State Prosecutor, related to cases of early parliamentary elections held on December 12, 2010 in the Republic of Kosovo, municipal prosecutors indicted 502 persons for offenses of abuse of voting rights under Article 178 and criminal offense of election fraud under Article 180 of the PCK. The completed cases were mainly followed by conditional sentences and fines.¹²⁷

Also Institute for Policy Research and Development (KIPRED) concluded that municipal courts, when deciding about the criminal cases of manipulators of elections, in 92% of cases, the sentences were usually a fine, a suspended sentence, or released without charge, and the effective prison sentence was imposed in rare cases.¹²⁸ Sentences imposed by municipal courts in Kosovo election manipulators` cases were low, insufficient and disproportionate compared to the scale and nature of offense committed.

The OIK considers that the principle of proportionality in criminal cases of the manipulators of elections is not implemented in terms of law, the imposition of light and symbolic

¹²³ ECHR, Article 7.A., *No punishment without law* "Nobody can be punished for an act or omission which, at the time when it was committed did not constitute a criminal offense under national or international law. Also, cannot be given a heavier punishment than that which was applicable when the crime was committed."

¹²⁴ The Criminal Code of Kosovo, UNMIK / Regulation/2003/25, Article 2, "If the applicable law changes prior to a final decision, then the more favourable law should apply."

¹²⁵ Report, *Ex Officio, to observe the process of re-run of parliamentary elections in the Republic of Kosovo, nr.010/2011, dated January 20, 2011*, addressed to Mr. Ismet Kabashi, Chief Prosecutor, Mr.. Krasniqi, Acting President of the Republic of Kosovo, Mr. Bajram Rexhepi, Minister of Home Affairs, Ms. Valdete Daka, president of CEC, Mr.. Shukri Sulejmani, chairman of the Election Complaints and Appeals Panel and Mr. Enver Peci, head of the Kosovo Judicial Council.

¹²⁶ The Criminal Code of Kosovo, UNMIK / Regulation /2003/25, Section 180, Fraud in voting "Whoever falsifies results of elections ... shall be punished with imprisonment from six months to five years."

¹²⁷ State Attorney's Office, six month report (January-June 2011), related to cases dealing with the early parliamentary elections held on December 12, 2010 in the Republic of Kosovo, www.psh-ks.net , 23.11.2011.

¹²⁸ *Election crimes, Analysis of Prosecution and Trial of election crimes cases in Kosovo-KIPRED October 2011* www.kipred.net , 23.11.2011.

sentences by the municipal courts and the punishments that do not fit the purpose and effect of law, especially in light of the consequences caused to the image of local institutions both at domestically and internationally, financial expenditure of the taxpayers for the repeat of elections and citizens' trust in institutions. This requires practical interpretation of the independence of institutions of justice, prosecutors and judges, in implementation of applicable laws.

2.12. Freedom of movement

The right to freedom of movement is guaranteed by the Constitution of the Republic of Kosovo¹²⁹ and by domestic legislation,¹³⁰ in accordance with the international instruments on human rights.¹³¹ These international documents on human rights guarantee to all those staying within a territory of a certain State freedom of movement and movement without any limitation. Every person is entitled to leave every State, including here his own State and no one has the right to deprive any other person from the right to return, respectively to enter his/her own State.

The security situation and situation of freedom of movement of certain ethnic communities in Kosovo during this reporting period varied from one region to another.

The freedom of movement of Serbian community during 2011 was a bit worse comparing to situation in 2010. Several incidents occurred in a case when the members of Serbian community tried to visit their properties in Pejë.¹³²

These and similar events, still cause fear and feeling of insecurity among the Serbian community. They still very rarely use public transport to travel outside their neighbourhoods. They mostly use private transport (own vehicles), taxi services and humanitarian transport and bus lines, which connect villages with the city centres.

The cases of violation of freedom of movement were reported to Kosovo Police with the purpose of conducting the investigations.

Regarding freedom of movement, the biggest improvement has been achieved in the region of Prishtina and Gjilan where the members of minority communities enjoy full freedom of movement.¹³³

Security and freedom of movement of other communities, such as Turkish, Bosnian and Goran is stable. These communities mainly enjoy the right to freedom of movement without obstacles. The above-mentioned communities use public and private transport and are well

¹²⁹ Article 35 of the Constitution of the Republic of Kosovo.

¹³⁰ Law on Dwelling and Emplacement no. 02/L-121, Official Journal of the Republic of Kosovo, no 40/15, October 2008; Law on Nationality, no.03/L-034, which has been amended and completed 04/L-059, Official Journal of the Republic of Kosovo, no.26/25, November 2011; Law on Foreigners, no.03/L-126, Law on Asylum, no.03/L-066, Official Journal of the Republic of Kosovo, no. 30/2008.

¹³¹ Article 13 of the Universal Declaration on Human Rights; Article 2, Protocol 4 of the International Covenant on Civil and Political Rights,.

¹³² The case occurred on October 2011 in village Dobrushë, Municipality of Pejë.

¹³³ Statements of the officials of the Municipalities of these areas given to the representatives of the Ombudsperson institution during the regular monthly meetings.

integrated into the Kosovo society because they speak the language of majority community and communicate easier with the institutions and population.¹³⁴

Members of RAE communities mainly enjoy the right to freedom of movement in the entire territory of the Republic of Kosovo and majority of them use private and public transport. Some members of Roma community from time to time use services provided by humanitarian transport as these bus lines link villages and towns inhabited by the members of Roma and Serbian community.¹³⁵

The members of Croatian community mainly are older people. They are placed in the Municipality of Lipjan, precisely in the village Janjevë, as well as in four (4) villages of Municipality of Viti. As regards freedom of movement in the Municipality of Viti, the situation is not good due to permanent security problems, which cause among the residents feeling of isolation and insecurity.¹³⁶ This community does not have its representative in the Municipal Council for Security of Minorities in the Municipality of Viti. Due to lack of fixed phone lines in the areas where the Croatian community lives and most of them don't have cannot afford to have cell phones, it is difficult for these residents to report to the police eventual problems or to ask for help in case of need.¹³⁷

In the Municipalities of northern part of Kosovo, which are inhabited by majority of Serbs, such as Zubin Potok, Leposaviq, Zveçan, and northern part of Mitrovica the situation is unstable. Members of Albanian community are facing big difficulties as regards freedom of movement. Members of the Albanian community in this part of Kosovo mainly use private transport, as well as services of humanitarian transport from their villages to southern part of Mitrovica.

Generally speaking, the security situation in the north of Kosovo has deteriorated in the second part of 2011 when the local Serbs opposed decision of Kosovo institutions to establish control in the whole territory of Kosovo. As a result of barricades that were set up by local Serbs, the non-Serbian residents were forcefully isolated. Also, members of Serbian community established kind of self-isolation. In this part of Kosovo in a short period, due to setting up of barricades, freedom of movement has been restricted freedom of movement, even for the members of Kosovo institutions, EULEX Rule of Law Mission and KFOR. The barricades must be removed because they present a limitation of full freedom of movement.

During the dialog in Brussels has been reached an agreement regarding freedom of movement between Kosovo and Serbia whose implementation begun on 26 December 2011. The Agreement on freedom of movement has not been implemented by the end of this reporting period, because the barricades in the northern part of Kosovo have not been removed.

As regards humanitarian transport, which is funded by the Government of Kosovo, the transport is still playing an important role as regards freedom of movement. During the past year, the humanitarian transport has been going on according to the plan and without any problems. Another three new lines have been established: two (20) in the region of Mitrovica and one in travelling in the route Shtërpçë- Ferizaj. It has been planned that these bus routes become operational from January 2012. After the remarks of persons who use this kind of transport as some bus routes were not in regular basis, measures were taken to place

¹³⁴ Information that the Ombudsperson's representatives obtained during the regular visit to the Municipalities of Kosovo and conversations with the officials during the 2011.

¹³⁵ Po aty.

¹³⁶ The problem has been reported in OSCE report "the Croats in the Municipality of Viti: A community at stake", October 2011.

¹³⁷ Information obtained from the meeting with the representatives of the Human Rights Office of the Municipality of Viti, held on 15 December 2011.

tachographs in a bus and were measures the kilometres they passed, as well as the time of round trips in these destinations. During this reporting period were submitted few requests for establishing new bus routes of humanitarian transport. These requests will be reviewed in the coming period. While, as regards problems of this humanitarian transport a case of bus stoning has been reported in the bus route Babush – Ferizaj.¹³⁸

Recommendations:

- *The Government of Kosovo and the competent institutions in accordance with their legal obligations to provide to Kosovo citizens without any discrimination and limitation freedom of movement in the entire territory of the Republic of Kosovo, which is one of the pre-conditions for rule of law..*
- *Reactions of local and central institutions, as well as reactions of Kosovo Police must be harsh and effective in the cases of incidents related to freedom of movement.*

2.13. Right to privacy

The right to privacy is guaranteed by the Constitution of the Republic of Kosovo and the European Convention on Human Rights (ECHR).¹³⁹ Article 36 of the Constitution of the Republic of Kosovo and Article 8 of the European Convention on Human Rights, defend the right to privacy, including the right to legal protection against arbitrary or unlawful interference with privacy rights, within the family ,at home, telephone conversations or other forms of communications, as not to violate his honour and reputation.

Importance in the right to privacy has the free access to public information and personal data protection. Sometimes these two rights collide, especially the release of news by the media, which referring to the right of access to information and public access to information, forget the most important one, that sometimes certain information violates the privacy of citizens.

2.6.4. 2.13.1. Removal of noise and occupancy rights

ECHR Article 8, provides indirect interventions, which are an unavoidable result of actions that have not affected persons specifically i.e., loud noise from the surroundings.¹⁴⁰ The Law no. 02/2 for noise protection protects the right of privacy.

In this regard, the Ombudsperson has expressed concern about the noise in Stanishor village, municipality of Novo Brdo. They complained that the private quarry "Bejta Commerce", with its heavy machinery causes noise, especially in the evenings and at night, starting at 20:00

¹³⁸ Information is obtained during the meeting with the Director of Transport of the Ministry of Infrastructure on 20 December 2011.

¹³⁹ Constitution of the Republic of Kosovo, article 36, European Convention on Human Rights, Article 8.

¹⁴⁰ Marek Antoni Nowicki, "About the European Convention," Short Commentary on ECHR, Tirana, 2003.

until the early morning hours. For this, residents had complained to the municipality, but had not received a response. IO representative had contacted the coordinator of the Unit for Human Rights in the municipality of Novo Brdo. The purpose of the contact was to gather information of the meeting of the Municipal Assembly, where the applicants' request was to be discussed. After the visit of representatives of IO on the ground and direct contact with the director of the company in question and after the promise to stop working in the evenings and at night, the noise stopped and the applicants' case was resolved positively.

On November 23, 2011, complainant notified the IO he had received a reply - a decision by MA Novo Brdo, in which the party was instructed to file a complaint to the Municipal Inspection, and if a dispute arises to submit the case to court.¹⁴¹

The Ombudsperson also expressed concern about another case where a complaint received by a citizen which appealed against the Department of Inspection of the municipality of Pristina, for not taking action to remove a ventilating apparatus from a collective residential building in Pristina. Company "Lesna Trade", has placed ventilation equipment in the collective housing facility. According to Decision no. 07 NR 355-9855, dated April 19, 2010, the company "Lesna Trade" was ordered to remove the ventilation device. IO's representative met with the Director of Administration, Director of Inspection of the municipality of Pristina, the Director of Public Services, and has contacted environmental inspector in the Ministry of Environment and Spatial Planning. The aim was to find out why the company has been issued with consent to use the ventilation system. Ombudsperson has sent five letters to the mayor of Pristina and a copy also to the Director of Inspection to take action regarding the case. Mayor of Pristina has not responded to any of the letters. Also, the situation has not changed, towards solving the case, and for this the IO's representative has informed the Parliamentary Committee for Environment of the Assembly of Republic of Kosova, for breach of the Law on Protection from Noise.¹⁴²

2.6.5. 2.13.2. *The right to healthy environment and right of residence*

The right to a healthy environment and right of residence have a special place in Article 8 of the Convention. The Ombudsperson received a complaint from a citizen who complained about sewage spilling out of college "Mehmet Akif", near the homes of his neighbourhood. Even other residents of that neighbourhood had requested several times by representatives of the College to correct the situation. Upon request and complaints of citizens, representatives of the IO have visited the College "Mehmet Akif" in the village of Banullë, Lipjan, but have not noticed the sewage spill, as described in the complaint. To clarify the complainant's allegations and factual situation after the visit of representatives of the IO at the scene, he was contacted by a representative of the IO. Complainant also stated that the College "Mehmet Akif" had taken action and repaired the problems thus avoiding further spills.¹⁴³

¹⁴¹ Case no A.443/2011, IO.

¹⁴² Case no. A365/2010, OIK.

¹⁴³ Case no. A6/2010, OIK.

2.6.6. 2.13.3. House searches

Article 8 paragraph 1 of the Convention requires respect for private and family life of each and every one, at their residence and their correspondence. However, paragraph 2, provides that a public authority can interfere in the exercise of this right, by recognizing the legitimate need for such actions "in the interest of national security, public safety or crime prevention."¹⁴⁴

The Ombudsperson received a complaint against Kosovo Police by a citizen, which has complained about the non presentation of a search warrant by members of the police during a house search. Ombudsperson representative has contacted officials of Kosovo Police in charge of the case. Police officials have offered evidence to the Ombudsperson that they have received a search warrant from the prosecutor of the District Public Prosecutors Office, due to suspicion. From the evidence presented, we did not find existence of any violation of human rights, based on Article 201 and Article 242, paragraph 4, of the Code of Criminal Procedure, regarding the complaint about a house search.¹⁴⁵

2.6.7. 2.13.4. Control and surveillance of communications

The Ombudsperson is concerned that in the draft law on surveillance of telecommunications, the legal procedure is not detailed enough as regards the surveillance of telecommunications in Kosovo. The problem of clarity of legal tapping of telecommunications in Kosovo makes it difficult for the justice and security institutions, to take necessary measures to investigate crimes and gather information, because not all measures of monitoring, surveillance and investigation, including telecommunications services, qualify to be investigated with interception of telecommunications and not all of these measures are based on Kosovo's legislation.¹⁴⁶

The Ombudsperson is extremely disturbed about the nature and mandate of the security institutions in Kosovo. These have changed several times over the past decade. Even though the mandate to provide intelligence and special investigative measures passed gradually from international players to the national security institutions, especially after independence, the interception of telecommunications remains in darkness.

Suspicion of the Minister of Internal Affairs of the Republic of Kosovo that his communication, and even the Prime Minister of the Republic of Kosovo, was intercepted by international authorities in Kosovo, more precisely, EULEX, is extremely disturbing. This declaration of the first man of the Republic of Kosovo, that his conversations were tapped and

¹⁴⁴ Mark W Janis, Richard S. Kay, Anthony W. Bradley, *European law and human rights*, Prishtina, 2002.

¹⁴⁵ Case no.A115/2011, OIK.

¹⁴⁶ Shpend Kursani, *Interception of telecommunications in Kosovo: security implications*, Centre for Security Studies, Prishtina, 2011.

he was powerless to undertake anything in this regard, not only do not help clarify the circumstances, in this regard, but it has caused general social and institutional uncertainty. Indeed, in the Republic of Kosovo today no person is safe in terms of surveillance, but also other security measures, especially the special measures of surveillance, phone tapping and investigation, furthermore, even the person whose mission is the safety of the country publicly declares with full legal and institutional liability about this matter.¹⁴⁷

One of the reasons why this is happening is that the authorities of the Republic of Kosovo, the competent local and international institutions, work independently and without a permanent cooperation between them, and the fact is that national and international institutions of justice and security have signed separate and independent agreements with the telecommunications operators. Such an arrangement provides space for the appeals to be addressed to various security actors separately.¹⁴⁸ In any case, the citizen of the Republic of Kosovo loses the most and is also endangered without a fault of its own. Finally, based on the findings for year 2011, the Ombudsperson finds that the right of privacy has not been respected and continues not to be respected to a satisfactory degree.

Based, on the above mentioned, concerning right to privacy, the Ombudsperson recommends that:

➤ *Public institutions, especially municipal ones, to respond promptly and without bureaucratic complications to the requirements - complaints of citizens, adding accountability and improving communication in relation with citizens.*

➤ *Public institutions, especially municipal ones, not to delegate to municipal courts of Kosovo, already overloaded with pending cases, to solve simple problems of citizens, which fall into their area of responsibility.*

➤ *The Assembly and Government of the Republic of Kosovo, urgently, as soon as possible, to take proceedings for the approval of the law on interception of telecommunications in the Republic of Kosovo.*

2.14. Right to marriage and family

Marriage implies a legally registered community of two persons of different sexes, through which they freely decide to live together with the goal of creating a family¹⁴⁹. Based on the

¹⁴⁷ www.koha.net, on 14 September 2011 presented the following declaration of the Minister of Interior of the Republic of Kosovo Mr. Bajram Rexhepi: "My conversations with the Prime Minister Thaçi are intercepted by the internationals and later on they get deconspirated. In the past there were cases of UNMIK associates collaborating with the illegal structures. For this reason, the action of Kosovo Police in the northern part of Kosovo has been planned quickly".

¹⁴⁸ Shpend Kursani, Interception of telecommunications in Kosovo: security implications, Centre for Security Studies, Prishtina, 2011.

¹⁴⁹ The Law on Family, no. 32/2004, article 14, section 1.

free consent everyone is entitled to right to marry and found a family in accordance with the law.¹⁵⁰

The family constitutes a unity between the persons who due to the marriage, kin or adoption get into a mutual psychological, moral, economic and legal relationship and live in a common family economy and maintain societal responsibility for each other. The family, based on the manner of its creation is a family deriving from marriage, out of wedlock and family deriving from the adoption.

The Ombudsperson, during this reporting period received a number of complaints related to excessive duration of divorce proceedings; non-realization of regular contact with children and non-execution of decisions regarding alimentionation for children.

The Ombudsperson expresses his extraordinary concern regarding divorces of couples with children because in such cases children are innocent victims. Children, without their fault must live separately from one of their parents. Such situation impacts their development, education and welfare negatively.

In the cases of divorce arise problems regarding custody over the minor children, contacts between the children and parents and alimentionation for the children or the other spouse, which after the divorce remains without necessary living means. Based on the data of Department for Social Services within the Ministry of Labour and Social Welfare, it results that the custody over the children was more entrusted to mothers, including both, children deriving from regular marriages and children deriving from wedlock.¹⁵¹ A complainant expressed her concern regarding excessive duration of procedures for the execution of the Municipal Court of Suharekë, regarding payment of alimentionation for her minor children. Despite the Ombudsperson's letter, dated 13 September 2011, the respondent party, so far, did not respond.¹⁵² Such failure of the courts is in contradiction with the law and violates the international standards on human rights, especially articles 6 and 13 of the ECHR, as well as the Convention on the Rights of the Child.

But, there are cases in which the courts react faster. The complainant, representing his daughter, requested the Ombudsperson to investigate the reason for delay in court proceedings at the Prishtina District Court in the case of his daughter's divorce.¹⁵³ After a formal meeting between the Ombudsperson's representative and the Judge assigned to the case and continuous interest regarding the developments in this case, the Ombudsperson was informed by the complainant itself that Prishtina District Court, as regards custody over the children decided into the mother's favour. Within the right to marriage and family are also included the issues of adoption. The Ombudsperson, during this reporting period did not receive any complaint with regard to this issue. The Law on Family does not make a difference between the procedures that must be followed-up in case of abandoned child and the procedure that

¹⁵⁰ Article 37, section 1 of the Constitution of the Republic of Kosovo.

¹⁵¹ Information provided from Department of Social Welfare of the MLSW, dated 11 January 2012. According to this Department there were 121 cases. In these cases were involved 136 children, 69 were entrusted to the mother and 67 to the father. The number of cases from co-habitation was 7 and 16 children involved. 14 of these children were entrusted to the mother and 2 to the father. The total number of matrimonial and extra marital cases was 128 with 83 children who were entrusted to the father and 69 to the mother.

¹⁵² Rasti nr. 266/2011.

¹⁵³ Rasti nr. 99/2011.

should be followed-up in the case of a child whose parents are known (except the particular parts with regard to the way of initiating the request for adoption).¹⁵⁴

According to the Ombudsperson, the Law on Family foresees that Social Work Centre (SWC) shall play an important role in providing to the Courts assistance and advising during the proceedings in certain marriage disputes.¹⁵⁵ In the cases of couples with children, the SWC should initiate reconciliation procedures.¹⁵⁶ Furthermore, when this centre is summoned to attend the court session, the court should not make a decision before “hearing the opinion and proposal” of SWC with regard to unsolved issues, which include “care and education of children”.¹⁵⁷ WSC’s inclusion is requested in the procedures for confirmation of motherhood and paternity, divorcing procedures as well where the spouses have minor children for which procedures are foreseen formal reconciliation procedures and petition for custody over the minor children. But, despite these legal requirements, it has been noticed that the courts in most of the cases fail to include SWC in these proceedings.¹⁵⁸

The Ombudsperson, therefore, concludes that in order to respect this right, an effective legal system is needed, a system which is in harmony with the applicable international human rights standards and domestic laws in Kosovo.

Recommendations

- *To increase the promptness of court proceedings regarding decisions on the family cases.*
- *The Judicial Institute of Kosovo to continue trainings for judges on the role of courts in resolving family disputes; implementation of the Law on Family and the Law on Contentious Procedure, as well as on the importance of exhausting all procedures in civil cases, including here the cases of divorces and custody over the minor children.*
- *SWC officials to respond to the court’s request for assistance within the reasonable legal time limit set forth by the relevant legislation and to provide to the court their professional assessment in the capacity of experts when the courts require so.*

2.14. Freedom of faith, conscience and religion

Freedom of religion, belief and conscience is a right which is guaranteed by the Constitution of the Republic of Kosovo¹⁵⁹ and **ECHR**¹⁶⁰. Concerning the observance of this right, the religious communities in Kosovo have filed various objections.

¹⁵⁴ The Law on Family, article 182.

¹⁵⁵ Law no. 2005/02-L17 for Social and Family Services, article 14 and 7.2.

¹⁵⁶ The Law on Family, article 80 (1).

¹⁵⁷ The Law on Family, article 140 (2).

¹⁵⁸ The OSCE report, February 2011, dealing with the family cases, p. 17.

¹⁵⁹ Constitution of the Republic of Kosovo, 2008, article 38.

¹⁶⁰ European Convention on Human Rights, article 9.

Islamic Community of Kosovo as one of the forms of violations considers ban on students wearing headscarves in schools. Also, the worshipers in many cases, by organizing protests have asked the government to find a solution to this problem.

The Ombudsperson Institution in the reporting period has recorded three cases where complainants have complained about the bans to attend school due to wearing a headscarf. Of these, one case was received by the institution of the Ombudsperson due to non-usage of legal remedies, while in two other cases students have continued their education at another school on part time basis. Also, the Constitutional Court of the Republic of Kosovo in September 2011, decided on the case of the complainant Arijeta Halimi, who has complained about non-enforcement of the judgment of the District Court in Gjilan, which granted her the right of wearing the headscarf at school.¹⁶¹

One of the problems to which attention was drawn in reports of IO, where mostly the complainants were the representatives of the Serbian Orthodox Church, during the past years, is desecration and destruction of Orthodox cemeteries throughout Kosovo.

One of the steps taken towards solving of this problem was the clearing up of the Orthodox cemetery in Pristina on November 18, 2011 which was organized by the Ministry of Local Government in collaboration with the Municipality of Pristina.¹⁶²

Similar problems face the Croatian community mainly concentrated in Viti.¹⁶³ They have drawn attention to the desecration of Catholic cemeteries in this part, over the years.

An incident of this nature occurred on December 2, 2011 in the Jewish cemetery in Pristina, when on the memorials were found Nazi symbols.¹⁶⁴

2.6.8. **2.15.1. Religious confessions**

Constitution of the Republic of Kosovo¹⁶⁵ and the Law on Religious Freedoms in Kosovo¹⁶⁶ protects and guarantees the rights and freedoms of religious communities.

IO in previous reports has warned the competent authorities of the existence of a large number of problems that religious communities face which are caused by the Law which regulates the position of religious communities. In order to solve this problem in 2010 the IO has asked the Assembly to issue legal norms which would regulate this field. This law has not been drawn as yet.¹⁶⁷

¹⁶¹ The Constitutional Court of the Republic of Kosovo, the Constitutional Court ruling on inadmissibility of the request for the assessment of Ms. Arijeta Halimi's complaint (30/09/2011), <http://www.gjk-ks.org> , 29.2.2012.

¹⁶² The cleaning of the Serb cemetery in Pristina, Kuririnfo (27.6. 2011.), <http://www.radiokim.net> , 22.11.2011.

¹⁶³ OSCE report, Kosovo Croats in the municipality of Prishtina: community at risk, p. 12 (October 2011), <http://www.osce.org/kosovo> , 22.11.2011.

¹⁶⁴ Amra Zejneli, harsh judgments, desecration of Jewish cemetery in Pristina, Radio Free Europe (12/01/2011), <http://www.slobodnaevropa.org> , 29.2.2012; The trial on desecrating of the Jewish cemetery in Pristina (02.12.2011), <http://www.radiokim.net> , 29.2.2012.

¹⁶⁵ Constitution of the Republic of Kosovo, 2008, article 39.

¹⁶⁶ Law no.02/L-31 on religious freedoms in Kosovo, adopted by Assembly on 13.7.2006.

¹⁶⁷ Ex-Officio Report of OIK nr.145/2010, OIK, (07/30/2010) regarding the lack of normative acts to resolve the legal position of the status of religious communities in Kosovo, sent to the Assembly of Kosovo on 30.7.2010.

2.6.9. 2.15.2. Islamic religious community

Islamic religious community as one of its largest problems of this year highlighted the need to build a mosque in the centre of the capital, within the university area, arguing that there are a large number of believers who live in this part of city and have no space to perform their religious services. Islamic religious community has asked the city of Pristina authorities' permission for the space in which to build the new mosque, but this request was not supported by government representatives. In protest to this approach, aimed at drawing attention to this problem, from the beginning of 2011, the worshipers in great numbers prayed out in the open near the Old Stone mosque, between the Assembly of Kosovo and Pristina municipal building.¹⁶⁸ At the same time they have sometimes organized protests in Prishtina (protests were organized every Friday, while the largest were on 24 of June and 1 July 2011), in which they were seeking from the government to resolve the problem of the lack of space and to build new mosque, and the same treatment in solving the needs of all religious communities.¹⁶⁹

Also, one of the requirements of Islamic Community in Kosovo is the introduction of religious studies in public schools.¹⁷⁰ Regarding this problem ICK has filed a request for the amendment of the law on undergraduate education, in which they requested the introduction of religious studies as a new subject. This proposal has not received the support of MP's and the Assembly in its session held on August 29, 2011 denied the request to amend the law on undergraduate education, to introduce religious studies and the right to wear religious headscarves in schools, arguing that the Constitution of the Republic of Kosovo guarantees secularism of the state.¹⁷¹

2.6.10. 2.15.3. Serbian Orthodox Church

The problems facing the Serbian Orthodox Church (SOC) are similar to those of previous years. One of the most important events for the Serbian Church during this year is the resumption of the teaching process in "Bogosllovia" in Prizren.¹⁷² After repairing the

¹⁶⁸ Muhamed Brajšhori, The unreachable Mosque angers Muslims, See Times, (15/08/2011) <http://www.setimes.com/> , 8.12.2011.

¹⁶⁹ Not asking for tenders, but a mosque, the Bota Sot daily, <http://www.botasot.info> , 4.06.2011.

¹⁷⁰ Amra Zejneli, "Government stands against religious teaching in classrooms", Radio Free Europe (05/28/2011) <http://www.slobodnaevropa.org> , 12.2011.

¹⁷¹ Minutes of the plenary session of the Assembly of Kosovo held on August 29, 2011, in which is opposed the introduction of religious teaching in schools, <http://www.kuvendikosoves.org> , 1.3.2012.

Republic of Kosovo MPs voted against the introduction of religious education curriculum and wearing of headscarves in public undergraduate education in Kosovo, which was proposed by the parliamentary groups of the New Kosovo, SLS and 6-Plus, without the support of the Functional Committee and the Committee on Legislative . Article 3, amendment 7 and 8, the Law on undergraduate education, dealing with the matter of introduction of religion studies and wearing of headscarves in schools. *Amendment 7 and Amendment 8 was rejected.*

¹⁷² "Bogosllovia again in Prizren, Naslovi net (19.9 in 2011) <http://www.naslovi.net> , 2.3.2012.

"Bogosllovia" and its guest houses this year the teaching process continued and 9 students were enrolled.

In comparison with previous years, cases of attacks on monasteries and churches were numerically lower, but there were cases. According to statements by officials of the Serbian church in Prizren on April 13, 2011, a part of the lead roof was stolen from the church of the Virgin of Levishka.¹⁷³ Regarding these statements from representatives of the Serbian Church, Interior Minister, Bajram Rexhepi, on April 17, 2011, in a statement given to Serbian news agency "Tanjug", said that "the police have conducted an investigation and have determined that a portion of the roof was missing for a long time and that this is not the result of religious intolerance in this city. Minister Rexhepi added that a report about this event, the police handed to the Greek Ambassador Dimitris Moskopulos, who is a mediator for the protection of cultural and religious heritage of the Serbian Church in Kosovo, in order to avoid politicizing the event. He said that the police investigation proved that a part of the church was missing from earlier and this may be due to damage from winds or maybe even the non-finishing of the work by the contractor.¹⁷⁴

Otherwise the church of The Virgin of Levishka is in the UNESCO list of medieval monuments in Kosovo and is also found on the list of world cultural heritage by UNESCO, but is threatened by destruction.¹⁷⁵

Another object of the Serbian Church in Prizren was damaged. Thus, on June 22, 2011 during the construction works near the church of the Holy Sunday the foundations of the church were exposed, endangering the whole church building.¹⁷⁶

In the Zhupa e Siriniqit, on May 23, 2011 a break-in at the church was reported, but there was no major damage.¹⁷⁷

According to the statements of representatives of the NGOs, on June 10, 2011 the St. John's church in the village of Samaras is damaged "roof of this church was destroyed above the altar, windows and doors were broken, and the bell and wall around the church were destroyed, while the interior has been transformed into illegal dump site.¹⁷⁸ Representatives of the Association have invited representatives of local government to protect and repair the building.

2.6.11. 2.15.4. Catholic Church of Kosovo

¹⁷³ Beta Agency, church roof was stolen from the Virgin of Levishka (13 April 2011) <http://www.kurir-info.rs>, 3.3.2012.

¹⁷⁴ Tanjug, part of the roof of Virgin of Levishka missing from long ago, (04.17.2011), <http://www.naslovi.net> , 2.3.2012.

¹⁷⁵ UNESCO list on the endangered monuments, <http://www.unesco.org> , 5.12.2011.

¹⁷⁶ The foundations of the fourteenth century church in Prizren exposed, Gradjevinarstvo (24.06.2011), <http://www.gradjevinarstvo.rs>, 2.3.2012.

¹⁷⁷ The church in Zhupa Siriniqit demolished, Kurir info (23.05.2011), <http://www.kurir-info.rs> , 2.3.2012

¹⁷⁸ Church as dump site, B92 Net (06/10/2011), <http://www.b92.net/info/vesti/index> , 4.3.2011.

The Kosovo Catholic Church also supports legal regulation of religious communities. Catholic Church worshipers are mainly Albanian, but also Croats who are mostly situated in Janjevo and Letnica. Croats who live in villages of Viti are mostly old and ill people, while the number of young people is relatively small, so for these people the Kosovo Catholic Church through its clergy looks after them.¹⁷⁹

2.6.12. 2.15.5. Evangelical Protestant Church of Kosovo

Evangelical Protestant Church's remarks year, as in the past, are regarding the resolution of the position of religious communities. Protestant church representatives insist that the law must be clear and must define the legal position of religious communities.¹⁸⁰ As in previous years Protestants have filed their grievances, because of the refusal of local institutions to give permission for the construction of religious buildings, and to allocate a location for the cemetery.

Also, Kosovo Protestant Evangelical Church, through its representative, on February 22, 2011 and March 7, 2011 had complained to the Ombudsperson about the census held in the Republic of Kosovo in April 2011, due to wording of the question no. 10 of the form for registration of households and apartments (the individual questionnaire) demanding removal of question no. 10 from the form and to replace this question with a wording under the Article 38 of the Constitution of the Republic of Kosovo after the sub-question no. 3, the word "catholic" to be replaced with the word "protestant".¹⁸¹

In order to investigate the complaint of Kosovo Protestant Evangelical Church, on 24 March 2011, representatives of the Ombudsperson met with Chief Executive of the Statistical Office of Kosovo, and demanded that during the census not to ask the question "What is your religious belief," but according to the Constitution of Kosovo, people can choose to declare or not their religious belief.¹⁸²

After clarification of the complaint the Chief Executive of Kosovo Statistical Office was of the opinion that the question 10 is not formulated in the best way and that changes to the form are not possible, as they were already printed, but promised that the IO's remarks regarding the point 10 are acceptable, and that during staff training the issue will be raised and they will be instructed that the question will be asked according to the IO's request.

The Ombudsperson after analyzing and investigating the complaint found that question 10 (ten) on the registration form, is not well formulated, is very suggestive and does not coincide with the Law on Religious Freedom, that such a statement apriori creates the situation that a person belongs to a particular religion, and should declare it.

Recommendations

¹⁷⁹ OSCE Report on Kosovo Croats life in Viti, OSCE (October 2011), www.osce.org/kosovo, 5.12.2011.

¹⁸⁰ <http://www.assembly-kosova.org/>, 12.09.2011

¹⁸¹ Case no.60/2011.

¹⁸² *Constitution of the Republic of Kosovo, article 38.2 and article 40.*

➤ *The Ombudsperson recommends amendment of Law no. 04/I-032 for Pre-University Education in the Republic of Kosovo and the Law no. 04/1037 for Pre-University Education in the Republic of Kosovo, regarding the laws which will regulate the issue of use of religious symbols in public education institutions and also to clarify the institutional stance regarding these matters.*

➤ *The Ombudsperson recommends the Assembly of the Republic of Kosovo, to issue legal norms, which will regulate the legal status of religious communities.*

2.16. Freedom of expression

Believing in democratic values, peace and justice, opens the way towards respect of human rights in every society. Freedom of expression is one of the fundamental freedoms and it also plays a crucial role in defending the other rights.

In the Republic of Kosovo, the freedom of expression is guaranteed by the article 40 of the Constitution of the Republic of Kosovo.¹⁸³ Freedom of expression recognizes everyone's right to demand, receive or deliver information, opinion or any other message without being disturbed.

Also, the freedom of expression is guaranteed by the Universal Declaration of Human Rights, which stipulates the following “...*this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*”.¹⁸⁴ A country cannot even be imagined as democratic and free without freedom of expression. The social and political processes cannot be imagined without freedom of expression.

The European Convention of Human Rights protects “*freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers*”¹⁸⁵.

On the other side, the states are entitled to the right to impose restrictions and sanction this right in accordance with the law when this is “...*necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*”¹⁸⁶

The meeting point between the right to freedom of expression and other rights often becomes a debating topic, but it also makes more complex putting the justice in place. The authorities seem to consider this right more as the issue of their competence than one of the fundamental rights.

¹⁸³ The Constitution of the Republic of Kosovo, Prishtina 2008, article 40.

¹⁸⁴ Universal Declaration of Human Rights, <http://www.ohchr.org>

¹⁸⁵ The Convention for Protection of Human Rights and Fundamental Freedoms, article 10, paragraph 1. <http://www.echr.coe.int>.

¹⁸⁶ Ibid, paragraph 2.

Media are a key information source, but in the cases when they lack economic independency, when there are legal uncertainties, lack of laws or by legal acts, as well as the lack of relevant laws, the freedom of expression, whose aim is to inform the public, comes into question.

The legal mechanisms in force in the Republic of Kosovo in most of the cases do not contain punitive provisions in case of violation of the rights in this field.

The Ombudsperson concludes that European Convention of Human Rights encourages all States to promote human rights by adopting specific national instruments, which provide additional protection, including here the international agreements.

During the reporting period for the year 2011 the Ombudsperson Institution received only one complaint lodged against the Municipality of Prishtina,¹⁸⁷ with regard to prohibition to the citizens, civil society and Media to attend the work of the Committee, which is related to violation of the right to freedom of expression. The complaint is currently being reviewed.

2.17. Right of access to public documents

Among the most important principles in a democratic world is also known the responsible governance and functional administration. Responsible governance exists only when such governance is transparent. One of the most important levers of transparency are information and access to public documents, which are issued, collected, processed, saved and held by the public authorities.

The information held by the public authorities is public information and the public body holding them is only a temporary custodian of this information. Transparency and accountability should be the guiding principles for the central and local authorities. These two very important components of governing are also the main objectives of the acts on the freedom of information. The starting point for providing the access to information and within this frame to provide access to public documents is the Universal Declaration of Human Rights (UDHR), which to every person recognizes amongst others “[...] *freedom to demand, obtain and spread information and ideas by all means; regardless of frontiers*”.¹⁸⁸

The right of access to public documents in the Republic of Kosovo is regulated by law. Based on the legislation in force, a person demanding the information or access to public documents does not need to justify his/her request for access to public documents.¹⁸⁹ The body or public institution that receives request for access to public documents has an obligation to provide such documents, while in case that the public body does not provide requested information or documents, it must provide reasoning for such decision.¹⁹⁰ Even, in the cases when the request is not clear, this cannot be a ground for refusal. In such a case, the public institution

¹⁸⁷ Complaint no. 223/2009, Initiative for Progress (INPO) against Municipality of Prishtina.

¹⁸⁸ Article 19, of the Universal Declaration of Human Rights.

¹⁸⁹ Article 6, paragraph 2 of the Law on Access to Public Documents no. 03/1-215 ” *The applicant of a document shall not be obliged to state the reasons to have access to documents*”.

¹⁹⁰ Article 13 paragraph 2 of the Law on Access to Public Documents ”*The public authority refusing a total or partial access to a document shall state the reasons for refusal. The applicant shall be entitled, following the submission of an application, to receive a justified decision in writing for this refusal by the public institution concerned*”.

has an obligation to ask the person requesting the access to documents to specify his request.¹⁹¹ A burden to specify the request falls on the institutions, because the institutions have full knowledge regarding documents they possess and clarification of the request simplifies the work.

The Law on Access to Public Documents stipulates a comprehensive and unique procedure of access to public documents. The Law on Access to Public Documents in analogy with the ECHR sets forth the reasons for refusing the access to public documents. The access to public documents may only be subject to restriction and conditioning which are stipulated by law and are necessary for the protection of interests set forth in the ECHR.¹⁹² The Kosovo legislators have done a serious step forward by clarifying the concept of *classified information*, and by categorizing the classified information as in the next four categories: “top secret”, “secret”, “confidential” and “restricted”.¹⁹³ Even though, for the purposes of implementation of this law were adopted by legal acts as well¹⁹⁴, there are still uncertainties regarding documents that should be classified and the authority that shall be in charge of classification of those documents.

The number of complaints lodged at the Ombudsperson Institution against refusal of access to public documents is relatively small. In 2011 were lodged only 10 complaints of such a nature, mostly by journalists and members of civil society. A citizen, in order to be able to defend his/her rights, first of all needs to be well informed about these rights. This symbolic number of lodged complaints is an indicator that the citizens are not well informed about this right.

Several civil society organizations, such as GAP, Movement “Fol”, etc. organized awareness campaigns through raising their voice through Media and by demanding implementation of the law, or by presenting their concerns by attending the meetings of Parliamentary Committees.

Although, following the adoption of the Law on Access to Public Documents were repealed the provisions of the previous Law on Access to Official Documents no. 2003/12, it was noticed that in several cases the institutions continued to apply the provisions of the previous law, which has been repealed.

The lack of knowledge about the provisions of the law and lack of readiness to implement the law results with the violation of the right of access to public documents.¹⁹⁵ Lack of citizens’

¹⁹¹ Article 6, paragraph 3 of the Law on Access to Public Documents “*If an application is not sufficiently precise, the public authority shall ask the applicant to clarify the application and shall assist the applicant in doing so*”.

¹⁹² Article 10, paragraph 2 of the ECHR “*The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*”.

¹⁹³ Law on Classification of the information and Verification of Security No. 03/L-178 Official journal no. 76, 10 August 2010

¹⁹⁴ Regulation no.17/2011 on Classification and declassification of Information, and Regulation no.18/2011 on Delivery and Transfer of Classified Information.

¹⁹⁵ Case no. 473/2011 registered in the OIK because the authorities provided to the complainant only a limited Access because they were referring to the previous law, which is repealed.

knowledge about the concept of freedom of information, especially the right of access to public documents, which are possessed by the institutions, remains a challenge.

The lack of transparency of the institutions continues to be a problematic issue in relations between the institutions and the journalists. Their “walking” from one directorate to another, or promises that a certain document will be handed over to them, but indeed it never happens so, has become a rule of communication between the journalists and public institutions. Even when such a document is provided to them, normally it will be done by a delay and when the public does not have any interest for it. Therefore, journalists are not anymore interested in such a document. Such way of working by the authorities, makes everything difficult.

One of the Non-Governmental Organizations lodged a complaint at the OIK. The Organization was interested to have access to a certain public document, so it submitted a request for access to a relevant institution. Although, the official in charge of this institution by a decision allowed access to this document, the applicant never succeeded to get those documents, even though he contacted the officials several times by phone. Except the promises that very soon the document will be handed over to him, the applicant has never succeeded to realize its right.

Many persons who applied for access to these public documents simply decide to give up their battle for freedom of information. Based on the information available to the OIK, only two cases of violation of this right ended up in the court. When a case ends up in the court, as the courts are overburdened with cases and cases pending, this means that the complainant will be waiting for another few years for a court’s decision. Such a discouraging situation compels the applicant for access to a public document to finally withdraw from his application without getting any answer.

In several cases, even the lawfulness of a certain document was questioned. On 15 November 2011, the Ombudsperson issued a report with recommendations through which it raised his concern regarding a public document (Regulation for handling the illegal construction), which was earlier adopted by the Municipality of Prishtina, but it did not pass through the obliged assessment of lawfulness, even though, the document produced legal consequences for a number of citizens.¹⁹⁶ Although, the OIK recommended to 3 institutions (The Ministry of Administration of Local Power, the Ministry of Environment and Spatial Planning and Municipality of Prishtina) to take measures with respect to this problem, the Ombudsperson received a response only from the Ministry of Administration of Local Power. The answer of this ministry did not fit at all with the reality. The other 2 institutions entirely ignored the recommendations. These 2 institutions never responded to the OIK, although they are bound by the law and the Constitution to respond.¹⁹⁷ Refusing or failing to respond to Ombudsperson’s requests is considered obstruction of Ombudsperson’s work. The Law

¹⁹⁶ Report with recommendations, dated 15 November 2011, *Complaints no. 235/2011 and no. 233/2011*.

¹⁹⁷ The Constitution of the Republic of Kosovo, article 132, paragraph 3 “Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law.” Article 26 of the Law on the Ombudsperson” *Bodies, to which the Ombudsperson has addressed recommendation, request or proposal for disciplinary measures, must respond within thirty (30) days. The answer must include written reasons for actions taken on the issue in question*”.

stipulates sanctions in case of obstruction to Ombudsperson's work, but the public authorities never apply these sanctions.¹⁹⁸

The Law on Access to Public Documents stipulates adoption of by legal acts by the Ministry of Finance in order to determine cost fees, which would be unique for all institutions. But, so far, this has not been done.¹⁹⁹ This legal vacuum leaves a space for interpretation and determination of cost fees in accordance with the will of the institution to which the request for access to public documents has been submitted.

Recommendations

- *To increase the fields and activities to increase the awareness of officials in charge of institutions and citizens for undisturbed access to public documents through the information campaigns (Media campaign, leaflets etc).*
- *To draft a fast-track judicial procedure for the cases with regard to access to public documents.*
- *The Public Institutions must be more prompt and open to the applications for access to public documents. The transparency is a corner stone of a democratic society and condition for combating corruption and abuse of power.*
- *The Ministry of Finance to adopt by legal acts for determination of cost fees in accordance with the obligations deriving from the Law on Access to Public Documents.*

2.18. Freedom of the media

Legal base of freedom of the media in the Republic of Kosovo is particularly regulated by the Constitution. However, the legal guarantees do not decrease continues dilemmas of the society and the monitoring mechanisms of human rights and fundamental freedoms over the question whether the medias are really free in broadcasting a precise, trusted and independent information.

Even though the Constitution prohibits censorship of media and obstructing diffusion of information or ideas through the media, excluding the cases when such restriction is necessary for the reasons specified in the Constitution of the Republic of Kosovo,²⁰⁰ the Ombudsperson is concerned because of the continues complaints expressed publicly by the journalists.

¹⁹⁸ Article 23 paragraph 2 of the Law on the Ombudsperson “*Refusal to cooperate with the Ombudsperson of a civil officer, a functionary or public authority is a reason that the Ombudsperson requires from the competent body the initiation of administrative proceedings, including disciplinary measures, till the removal from job or civil service.*”

¹⁹⁹ Article 21, paragraph 3 of the Law on Access to Public Documents “*Cost fees for production and service of copy of documents shall be regulated by the sub-legal act issued by the respective Ministry of Finance and shall be unified for all public institutions*”.

²⁰⁰ Kushtetuta e Republikës së Kosovës, neni 107.

Also, the Ombudsperson is concerned because of publication of information in the media, which indeed violates the private life of the individuals, as well as publication of incomplete, incorrect and false information. The freedom of media provides a healthy democracy and informed society, but respecting the human rights and freedoms of the individuals by media is essential for establishment of credible and independent media.

In the process of democratization of society Medias play a special role. Due to the importance of the freedom of the media, many international and domestic institutions and organizations in their reports raised the issue of Media independence and the legal infrastructure of their freedom.

Regarding this issue, the Ombudsperson notices inconsistency between the Law on Defamation and Insult²⁰¹ and Articles 37 and 38 of the Criminal Code of Kosovo²⁰², and that the issue of legal insecurity with regard to inclusion of defamation and insult in the Criminal Code creates legal vacuum. The emphasized Articles of the Criminal Code of Kosovo are also in contradiction with the Article 42 of the Constitution of the Republic of Kosovo.

Except the legal vacuum and lack of adequate independency of mechanisms, such as the Independent Media Commission, the Ombudsperson is very concerned regarding violence and pressure exercised against the journalists.

The international institutions, in their special reports, in particular emphasize the lack of freedom of the media. According to Freedom House, which is monitoring body headquartered in the USA,²⁰³ Kosovo is 104 in a row from the total number of 196 States, and as regards the freedom Media Kosovo is considered as "partially free" (May 2011).

Such ranking is another evidence and clear view on how the Republic of Kosovo is seen by the international community regarding this issue.

On the other side, the European Commission in its Kosovo Progress Report for 2011,²⁰⁴ with regard to freedom of the media states the following: *“The measures to appease incompatibility between the Law on Defamation and Insult and Criminal Code of Kosovo have been taken, but the amendments must urgently be adopted. Although, the reports mention improved environment of freedom of the media journalists continue to face restrictions in their reporting. The cases of intimidation, abuse, provocation, even physical assaulting continues. Such acts have been strongly condemned by Kosovo institutions and there were cases when such acts have been even been committed by government’s officials. Furthermore, the government is continuing to preserve its dominating role over the media through the advertisements which the government uses as mean to control the information. Also, RTK’s independence and impartiality is an issue that has not yet been addressed”*²⁰⁵.

On the other hand, the president of Kosovo Ahtifete Jahjaga, after a meeting with a SEEMO (South East Europe Media Organization) delegation estimated that freedom of expression, the freedom of the media and press are essential characteristics of a democratic society

²⁰¹ The Law on Defamation and Insult, article 83.

²⁰² http://www.md-ks.org/repository/docs/kODI_pENAL.pdf

²⁰³ <http://www.freedomhouse.org/regions/central-and-eastern-europeeurasia>

²⁰⁴ http://mei-ks.net/repository/docs/Raporti_i_Progresit_per_Kosoven_2011_-_Shqip.pdf

²⁰⁵ The Youth’s Initiative for Human Rights-Kosovo, ‘Public space limitations in Kosovo, ‘Governance and freedom of expression in Kosovo’, 24 May 2010, please see this publication at ks.yihr.org/en/article/8/State-of-Constriction-report read on 27/09/2011

emphasizing that: “Kosovo during these years has achieved a high level of development of all Media”²⁰⁶

Lack of funds and foreign investments makes the news papers weak on the front of public pressure and particular groups of interest, which threat the media to withdrew their advertisements in case certain media are not into their favour.

From 101 journalist participants in a poll, 47 of them described the freedom of media as "bad", 13 as "very bad" and 38 as "good". Only three journalists said that the freedom of the media is "very good". Comparing to previous years, the situation of freedom the media according to journalist is only worsening.²⁰⁷

The Press Council of Kosovo²⁰⁸ is a self-regulatory body formed by the printed media sector. Its mission is based on the Code of Conduct principles.

The foundation of Press Council acting is the freedom of speech, the right of citizens to be duly and completely informed and complete respecting of Journalism Code of Ethics.

The Press Council of Kosovo during the reporting period has reviewed many complaints regarding violations of Press Code of Conduct with regard to insulting or lying, promoting hate or denying the right to public answer.

The Ombudsperson estimates the situation of press media in the languages of communities as unsatisfactory.

In the Medias of communities there is a lack of press media in Turkish, Bosnian and Roma languages.

There is a need to extend the programmes and to strengthen the professional capacities of the staff who prepares the programmes in the Public Broadcasting Service - RTK, as well as to develop capacities of press media in the languages of Turkish, Bosnian and Roma communities.

The limited possibilities of communities with regard to freedom of expression prove that there is a need that the press and electronic media in Albanian language provide more space for the problems and life, which the communities face. This would contribute to identifying and avoiding the problems, with the purpose to achieve their integration into the society as soon as possible.

The general situation, especially the economic situation in Kosovo impacts also the general situation of Media, especially those belonging to the communities. Because of this reason, the Medias of the communities need more institutional support.

From the fund established by the government with the purpose of supporting the Medias of communities whose amount is 180.0000 Euros for 2011, only half of it has been allocated at the end of the year. The representatives of media run by the communities considered this amount to be very low.

On the other side, we must emphasize especially the absolutely unacceptable and very bad situation of Medias run by RAE (Roma, Askali, and Egyptian) communities.

²⁰⁶ Notification by President`s Office, dated 24 November 2011.

²⁰⁷ www.evropaelire.org/content/article/24361101

²⁰⁸ www.presscouncil-ks.org/

The Ombudsperson notices that full respect of freedom of the media is essential for functioning of democracy, as well as for protection of human rights. The freedom of the media is also a key issue for providing to the citizens an active role in ensuring peace and democratic processes.

The Ombudsperson requests preparation of a strategy by the relevant institutions with the purpose to provide necessary space to increase media freedom.

The issue of financing the public broadcaster RTK continues to be a sensitive issue and it demands continuous attention of relevant authorities. Also, in accordance with the European standards, the harmonization between the Law on RTK and Law on Independent Media Commission (IMC) must be done.²⁰⁹ With respect to this, the European Broadcasting Union (EBU) has stated the importance of regulating the issue of financing this public media.²¹⁰

The Ombudsperson considers that one of the indicators of the level of democracy in the Republic of Kosovo is the freedom of expression and the freedom of the media. As such, this indicator will continuously be one of the aspects of assessment carried out by the international bodies, which Kosovo is intending to join.

Therefore, the parliamentary initiatives to debate and estimate the situation of freedom of media in Kosovo are needed.

During the reporting period, the Ombudsperson Institution did not register particular cases violating the article 42 of the Constitution of the Republic of Kosovo.

But, during this reporting period Media representatives did not lodge any complaint with regard to violation of the right to freedom of the media.

Recommendations

- *The Ombudsperson recommends full implementation of the Law on Defamation and Insult (Law No. 02/L-65),*
- *Revision of the Criminal Code, especially the Articles related to freedom of Media (articles 37 and 38).*
- *Respect of free Media principles and journalists` freedom while performing their duty.*
- *Harmonisation of the Law on RTK and Law on IMC with the European standards.*
- *The authorities to provide more financial support for the Medias run by the communities.*

2.19. The freedom of assembly

²⁰⁹ www.kpm-ks.org/materiale/dokument/1304587848.809.pdf

²¹⁰ www.assembly-kosova.org/common/docs/.../trans_s_2011_05_05_10_al.pdf

The freedom of assembly, like the other rights stipulated by the Constitution of the Republic of Kosovo,²¹¹ is in harmony with the most important international human rights standards.²¹²

During this reporting period in Kosovo were organized series of demonstrations. In several demonstrations the situation went out of control and the Police intervened. During the Police intervention, in some cases both sides, the Police and demonstrators used physical violence.

In one case, the Ombudsperson commenced *ex officio* investigations. The Ombudsperson also received a complaint lodged by the activists of Movement “Self-Determination”, who alleged that during their protest organized on 12 May 2011 on the front of the government’s building, the Kosovo Police officers exercised violence against the demonstrators. During this event, several activists of Movement “Self-Determination” were arrested. Also, Medias have been reporting that in one of the peaceful demonstrations situation escalated from a peaceful demonstration into a violent demonstration, where except the pecuniary damage, dozens of police officers and demonstrators were injured. After the demonstration, the OIK representatives visited the Correctional Service in Lipjan and interviewed 2 arrested persons. The other persons arrested during this event were already released.²¹³

During this visit, the Ombudsperson’s representatives did not reach the conclusion that against these 2 protestors was exercised violence. But, in their statements they alleged that violence was exercised against several other persons during the demonstration, which were already released from detention.

Aiming to collect additional information, the OIK contacted the Kosovo Police Inspectorate (IPK), regarding actions that were taken or those planned to be taken with regard to the above-mentioned case. The Kosovo Police Inspectorate in its response addressing the Ombudsperson notified that as regards the above-mentioned case, the Kosovo Police Inspectorate commenced investigations and it reached the conclusion that in the case of the above-mentioned demonstration there were no serious disciplinary violations committed and for this reason the case has been forwarded to the Professional Standards Unit operating within the Kosovo Police.

The OIK, so far did not receive any additional information by the Kosovo Police Inspectorate or Professional Standards Unit regarding the course of the investigation in this case.

In another case, several KLA (Kosovo Liberation Army) war veterans started a demonstration and were demanding realization of their rights. Their main demand was adoption of the Law on War Values. After few days of protesting on the front of government’s building, the KLA veterans entered into a hunger strike, which continued for several days.

²¹¹ Article 43, the Constitution of the Republic of Kosovo: “Freedom of peaceful gathering is guaranteed. Every person has the right to organize gatherings, protests and demonstrations and the right to participate in them. These rights may be limited by law, if it is necessary to safeguard public order, public health, national security or the protection of the rights of others.”

²¹² Article 11, the European Convention on Human Rights: “Everyone has the right to freedom of peaceful assembly, no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State”.

²¹³ Report from the visit to Correctional Centre in Lipjan, dated 7 September 2011.

On the 9th day of protest and after the second day of hunger strike, on 31 May 2011 the Ombudsperson with the associates visited war veterans who were protesting on the front of government's building. The protestors set up a tent on the front of the Government's headquarters. The purpose of their protest and hunger strike was to express dissatisfaction regarding the way the government treats them. The veterans set up a field tend on the front of the government's building.

The Ombudsperson expressed its concern regarding health situation of hunger strikers and called the competent authorities (the Government of Kosovo and the Assembly) to undertake appropriate measures to adopt the law and during the adoption of the law to take into account remarks and demands of war veterans.²¹⁴

Another issue related to freedom of assembly, which has been also mentioned in the OIK's previous reports is the Law on Public Gatherings.

As regards this law, the Ombudsperson reiterates that article 12.3 of the above-mentioned law contains elements which are not in compliance with principles of article 11 of the ECHR and the case law of the European Court of Human Rights, which presents a binding base for the interpretation of human rights in Kosovo.

The article 12 of the Law on Public gatherings leaves a part of competencies in the hands of the so-called "duty guards", who are assigned in *ad hoc* bases by the organizer of the gathering. While, the European Court of Human Rights states that it the States has a legal obligation to protect persons who organize and participate in a public assembly. Also, in another case, the European Court of Human Rights warned that the effective freedom of assembly cannot be assumed to have been met by the state by merely fulfilling its obligation of non intervention, but it requires affirmative measures to be undertaken even when it comes to relations between the individuals, even the relation between the protesters if necessary.²¹⁵

The Ombudsperson observes that Article 12 paragraph 3 of LPG, according to which the lawmakers delegate the authority to "stewards" of a gathering to "*immediately hand in to the police the participant or any other person violating peace and order, carrying weapons or any other dangerous items or prohibited signs, during the public gathering*" is exclusive obligation of State law enforcement agencies, and such competencies cannot be delegated to any other natural or legal person.

The Ombudsperson recommends the relevant authorities to amend, complete and harmonize the above-mentioned article of the Law on Public Gatherings with the European standards.

The Ombudsperson concludes that during 2011, the Kosovo citizens, various stake-holders and civil society realized their constitutional and legal right by organizing series of protests. Also, in most of the cases of public assembly the Kosovo Police has performed its mission in accordance with the law and there were no violations of the right to freedom of peaceful assembly.

²¹⁴ Media advisory of the Ombudsperson Institution, dated 31 May 2011.

²¹⁵ European Court of Human Rights (*Decision, dated 21 June 1988, Application no. 10126/82*).

2.20. Freedom of association

The freedom of association is guaranteed by the Constitution of the Republic of Kosovo. The guarantees provided by the article 44 of the Constitution²¹⁶ are in full compliance with the international human rights standards, such as the European Convention of Human Rights.²¹⁷

The Ombudsperson in his last year's annual report recommended that during the process of reviewing and amendment of the Law on Freedom of Association in Non-Governmental Organizations, the Assembly of Kosovo, respectively the Parliamentary Committees to take into account the remarks and suggestions of civil society, so that completion and amendment the law is transparent and to ensure full compliance of the law with the European standards.

The Ombudsperson highly appreciates the fact that during the amendment of the law, civil society demonstrated vigilance and determination in its requests. Through the professional expertise provided by the civil society were avoided few defects, which were in contradiction with the international principles and would endanger the credibility of the Non-Governmental sector in Kosovo.

The Law on Freedom of Association in Non-Governmental Organizations was adopted by the Kosovo's Assembly in August 2011²¹⁸ and the adoption of this law presents a substantial improvement comparing to previous version, which was adopted in February 2009. This law now contains more clear and favourable provisions as regards the internal governance of the NGO's, their status on public benefits, NGO's obligation to submit a report, as well as the cooperation between the State institutions of the Republic of Kosovo and the NGO's registered in accordance with this law.

As regards constitutional and legal aspect, the freedom of the association is guaranteed and exercised without any obvious problem. However, in a democratic society, providing only a passive access to this right is not enough. As regards this issue Kosovo lacks a proactive and encouraging access of public institutions to motivate freedom of assembly and participation of citizens in decision-making process.

Concretely, the problems are noticeable in several practical levels of exercising of this right, starting from the access to information and public documents; consultations with the relevant stakeholders, especially with the civil society during the drafting of the law and lack of structured and continues dialogue between the state institutions and the civil society.

This occurred because, so far, most of the legal provisions, which regulate participation of citizens in decision-making process, were not binding, and the eventual inclusion of citizens and civil society depended on the will of political officials of various institutions.

²¹⁶ Article 43 of the Constitution of the Republic of Kosovo: *1. the freedom of association is guaranteed. The freedom of association includes the right of everyone to establish an organization without obtaining any permission, to be or not to be a member of any organization and to participate in the activities of an organization. 2. The freedom to establish trade unions and to organize with the intent to protect interests is guaranteed. This right may be limited by law for specific categories of employees. 3. Organizations or activities that infringe on the constitutional order, violate human rights and freedoms or encourage racial, national, ethnic or religious hatred may be prohibited by a decision of a competent court.*

²¹⁷ Article 11 of the European Convention on Human Rights and Fundamental Freedoms.

²¹⁸ Official journal of the Republic of Kosovo dated 14, 9 September, Prishtina.

The Internal Regulation of the Kosovo's Assemblies allows the Committees to hold public hearings and to invite experts and NGO representatives to attend these public hearings. But, this provision is not binding. Therefore, its implementation depends of the president's and the Commission members will. As a result of such a situation, only 30 % of draft laws passed in the Kosovo's Assembly are discussed with the public.²¹⁹

At a local level, the Law on Self Government contains a number of provisions, which enable participation of citizens in decision-making process, including here meetings between the president of Municipality and the citizens, consultative Committees, petitions and citizen's initiative.²²⁰ Most Municipalities of Kosovo do not implement in practice these provisions and the participation of citizens at local level remains at a very low level.²²¹

However, it is worth mentioning and it encourages the fact that during this reporting period there were several successful cases and examples of NGO' inclusion in decision-making process, such as inclusion of the NGO's in drafting the Law on Legislative Initiative, the Law on Access to Public Documents, the Law on Freedom of Association in NGO's etc. But, at the same time, there are also other negative and discouraging cases where the legislative processes were carried out without inclusion of the civil society and citizens, despite the fact that these organizations and citizens publicly expressed their opinion to participate, such as the case of drafting the Law on Kosovo's Budget and the case of drafting the Law on Prizren Historical Centre.

The Ombudsperson notices that encouraging steps forward have been made towards creating a necessary legal framework as regards participation of citizens, but the challenges facing the public authorities regarding motivation of citizens to participate remain numerous.

One of the main challenges that need to be addressed is the fact that the public authorities at all levels, besides the political will, are also required to establish functional and applicable mechanisms for the participation of citizens.

The latest improvements of the legal framework regarding public consultations must be completed with a general system of rules and concrete mechanisms for all levels, by providing sustainable, effective and motivating attitude of the public authorities with regard to inclusion of citizens in these processes.

The civil society should increase its communication with citizens in order to motivate them and to impact the civic activity. Undertaking the activities in accordance with the identified needs in accordance with such a communication certainly would positively impact the influence of various organizations of civil society, which they can exercise in making the public policies. Through the communication and civic activity would be achieved reduction of dependants on foreign donors, which is only one of the important steps that contribute in addressing this challenge.

²¹⁹ Report of Kosovo Foundation for Civil Society "We and them", Participation of Kosovo Citizens, October 2011.

²²⁰ The Law No. 03/L-040 on Self-Government.

²²¹ Report of Kosovo Foundation for Civil Society "We and them", Participation of Kosovo Citizens, October 2011.

The Ombudsperson emphasizes that the freedom of association is essential for democracy and constitutional values and it contributes to development of pluralism and tolerance in a society. The existence of strong social relationship directly supports success and raise of the economy.

Based on the above-said, the Ombudsperson recommends the public authorities to demonstrate their necessary political will and to sincerely be open towards the contribution of the civil society.

2.21. Freedom of election and participation

The Constitution of the Republic of Kosovo²²² stipulates the right to election and participation in the election as a constitutional category. In the context of this has been adopted the Law on General Elections²²³, as well as the Law on Local Elections,²²⁴ which are in compliance with the article 3 of the European Convention of Human Rights²²⁵ and with the other international applicable standards in Kosovo.

The Central Election Commission (CEC) during the election process is facing various challenges at the central and local level. A year, during which there was election for the CEC despite the action planes foreseen, has been used for the evidence and the summary of the previous election process. In this sense, the CEC has organized meetings and seminars with the aim to analyse the elections and to identify weaknesses, which accompanied the election process.

The Ombudsperson in accordance with its legal and constitutional responsibilities observed the elections in the capacity of an observer and it has recommended the CEC that in case of revising its work results to pay a special attention to the following:

- The voting list,
- Family voting,
- The lack of understanding the seriousness and responsibility of voting commissions,
- Confusion in finding the names and polling stations.

The aim of every election commission is to organize free, fair and democratic elections. One of the criterions impacting the trust of voters is voting list. The trust of the voters will increase if there is an updated voting list.

In this respect, the CEC organized during this non-election year trainings on updating and improving the voting lists in order to eliminate problems that accompanied the election process and voting lists. The main task that needs to be done in the context of this is updating of the voting lists, and most of all, removing the persons who passed away from the voting

²²² The Constitution of the Republic of Kosovo, Article 45, section 1 “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, as well as the article 45, section 2 “The vote is personal, equal, free and secret”.

²²³ The Law on General Elections, no. 03/L-073

²²⁴ The Law on Local Elections no. 03/L-072

²²⁵ European Convention on Human Rights, Protocol 1, article 3.

list, as well as updating the addresses of polling stations and similar actions. In the current voting lists, not only there were names of persons who passed away, but there were also cases of abusing with their names during the election process. So, according to these voting lists it happened that even “deceased” persons have been voting.

Aiming to provide democratic and fair elections and to prevent abusing with the voting process, for the first time the Municipal Courts have begun proceedings and pronouncing sanctions against those who violated the election process provisions.

In its regular meetings CEC has followed-up the report on criminal issues regarding elections. In this aspect, CEC engaged also senior Municipal Election Commission (MEC) officials²²⁶ to be in touch with the Municipal and District Prosecutions and the Police Stations (Investigation Units) in their Municipalities with which they have a very close cooperation, as well as with the courts, aiming to obtain reports on criminal sanctions pronounced to the persons who violated election norms. Unfortunately, the relevant Courts are not pronouncing to these persons sentences adequate with the committed offence and violation of election rules. These convictions will not scare the future offenders. Indeed, such convictions will only stimulate the perpetrators of such criminal offences. The question arises as to whether the CEC is happy with the sentences pronounced against the persons who violated the election process rules?

In order to confirm this conclusion, we will refer to the State’s Prosecutor annual report.²²⁷

The State Prosecutor monitors the work of Municipal Prosecutions, by giving priority to these cases. There was a considerable number of persons who were accused of election fraud based on the article 180 of the Criminal Code of Kosovo and abusing the right to vote, article 178 of the Criminal Code of Kosovo, but the Municipal Courts issued a small number of Judgments and almost in all Judgments the courts pronounced the measure of punishment of fine.

The Ombudsperson Institution expresses its concern regarding such sentences issued by the courts; as such sanctions do not have any effect, because this will only encourage the future potential violators of legal provisions. Therefore, the Ombudsperson considers that punishments must be in accordance with the committed offences as stipulated by the Criminal Code of Kosovo. According to CCK, for commission of such offences are foreseen convictions up to 5 (five) years.

The current laws with regard to local elections contain many uncertainties and doubts, which pertain to the implementation phase. A decision for revision of current law has been issued, while the Law on Elections is under the process of revision by the Commission for Revision and Amendment of laws.

The Ombudsperson Institution expects that both election laws (The Law on General and Local Elections) will contain clear and concise provisions, which will be easy for the interpretation. Also, the OIK expects changes of the manner of election of CEC members, respectively the CEC should be composed of persons who are not members of any political party.

²²⁶ Municipal Election Commissions.

²²⁷<http://www.psh-ks.net/>.

2.22. Right to property

The right to property, which is guaranteed by the Constitution of the Republic of Kosovo,²²⁸ as well as by the Additional Protocol of the European Convention of Human Rights and Fundamental Freedoms,²²⁹ still remains a violated right.

There are still big legal property relations problems in Kosovo. The nature of problems does not differ from those mentioned in the OIK tenth annual report.²³⁰ The violation of property rights, as well the property problems, based on the cases registered in the OIK are still of the same nature and same actors.

The Constitution of the Republic of Kosovo stipulates that all interests in social ownership and in the enterprises in Kosovo shall be under ownership of the Republic of Kosovo.²³¹ But, this article is not clear as regards the fact whether this is about the existing socially owned properties or properties transformed into State's property after the entering of the constitution into force. The Law on Property and Other Real Rights does not contain a clear definition for all property rights, such as: private property, socially owned property and the right to use the social property.²³²

The lands in ownership of the public enterprises, even nowadays are registered as socially owned properties. The public enterprises have only the right to utilisation in these properties, but not also the property right. Based on the laws in force it is not clear whether the possibility to become the owner of socially owned property based on the principle of Acquisition by Prescription.

Also, the socially owned apartments present a problem for their registration. The problem is to determinate who is the legitimate holder of the right to utilisation of such an apartment and who is the owner.

Although, the establishment of the immovable property registers is regulated by Law on Establishment of Immovable Property Rights Register,²³³ nowadays the Kosovo citizens are

²²⁸ The Constitution of the Republic of Kosovo, article 46. [Protection of property]: "1. the right to own property is guaranteed. 2. Use of property is regulated by law in accordance with the public interest. 3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated. 4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court. 5. Intellectual property is protected by law."

²²⁹ The Additional Protocol to the European Convention on Human Rights and Fundamental Freedoms, article 1. Protection of Property: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

²³⁰ The Ombudsperson Institution, report, dated 10 December 2011, p. 70.

²³¹ The Constitution of the Republic of Kosovo, article 159 section 2, [Socially Owned Enterprises and Property]: "2. all the socially owned interests and public enterprises in Kosovo shall be property of the Republic of Kosovo."

²³² The Law on Property and Other Real Rights, no. 03/L-154,

²³³ The Law on Establishment of the Registry of Immovable property, no. 2002/5,

facing the problems to register their property in the cadastral records²³⁴. The administrative procedures require the applicants for registration of property transactions to present confirmation on paid municipal taxes and fees, which are usually, issued by other Municipal Departments before they register their property at the Municipal Cadastral Offices. There is no coordination between the departments for performing tasks that would spare the citizen's time while registering their properties in the cadastral records. The cadastral data very often are incorrect and not updated. This makes difficulties in identifying the legitimate holders of the property rights and puts into question the validity of the cadastral certificate, which is an evidence of property ownership over a certain property.

Cooperation between the civil registration offices, courts and municipal cadastral offices regarding reports on deceased persons does not function. It is the litigants themselves who present to the court the evidence issued by civil registration office on deceased family members in order to regulate the issue of inheritance. This procedure is laborious and it takes time to the litigants due to excessive duration of procedures. Due to these problems and procedural delays, the citizens regulate the issue of inheritance only when they need it for regulation of their personal issues. As a result of this, the cadastral data of property rights holders are considered to be incorrect.

All these complicated procedures through which the Kosovo citizens have to pass in order to register their property in the cadastral records, also cause problems in the cases of expropriation. Until there are no accurate cadastral data, the proof of ownership should be confirmed through other documents, such as contracts and other public documents whose legitimacy is questionable.

All public institutions are obliged to respect and protect the right to property. In order to have accurate cadastral records, the Government of Kosovo should eliminate administrative obstacles and unnecessarily complex administrative procedures, so that the Kosovo citizens do not take regulation of the property disputes as a hardship.

The citizens of the Republic of Kosovo still have problems in obtaining the construction permissions. Based on the registered complaints in the Ombudsperson Institutions the Municipality of Prishtina is still delaying the procedures for furnishing the applicants with the construction permissions.²³⁵

The citizens of Kosovo still face obstacles in the regular courts in case they want to exercise their right to property. Excessive duration of procedures in the courts obstruct the citizens of Kosovo in having free access to their properties, as well as in free and undisturbed use of property. The Kosovo citizens complain to the Ombudsperson Institution due to the excessive duration of procedures in the courts of Kosovo with regard to making the final decision on the cases of property disputes.²³⁶

The Kosovo Property Agency as a successor of Housing and Property Directorate continues to fail in fulfilling its legal mission for setting up a functional scheme for reasonable compensation for property right holders whose properties are located into the Northern part of Mitrovica under administration of the above-mentioned agency.

²³⁴ The OIK, cases A. 237/2009, A. 286/2011.

²³⁵ The OIK, cases A. 157/2011, A. 83/2011.

²³⁶ OIK, cases A. 413/2011, A. 397/2011.

During this reporting period only a few dozen families, whose properties are located in the Northern part of Mitrovica under the administration of Kosovo Property Agency, received compensation in the capacity of rent, but the renting price paid to them was lower than the market price. The citizens of the Republic of Kosovo whose properties are located in the Northern part of Mitrovica are still prevented from enjoying the right to free utilisation of property.

The Government of Kosovo should enable to every person full, undisturbed and without discrimination, exercise of the right to property.

2.23. The right to education

According to the Constitution of the Republic of Kosovo every person “enjoys the right to free basic education Mandatory education is regulated by law and funded by public fund.”²³⁷ The Constitution stipulates the obligation of public institutions to ensure equal opportunities to education for everyone in accordance with their specific abilities and needs.²³⁸ Such a guarantee is also stipulated by the European Convention on Protection of Human Rights and Fundamental Freedoms and its Protocols²³⁹ which is directly applicable by the Constitution of the Republic of Kosovo.²⁴⁰

The issue of education and the right to get educated, as regards the legal infrastructure, has marked a qualitative improvement since the adoption of the Law on Higher Education in the Republic of Kosovo²⁴¹ and the Law on Pre-University Education in the Republic of Kosovo.²⁴² The purpose of the Law on Pre-University Education is to regulate the education and training from ISCED levels from 0 to 4,²⁴³ in accordance with the International Standard Classification of education (ISCED).²⁴⁴ This new level of education comes into force in accordance with the date which is to be set by the Assembly of the Republic of Kosovo.²⁴⁵ The pre-school education, according To the Law on Pre-University Education, shall be binging from the school year 2015/2016, if the financial conditions are created and after an exact assessment of the financial cost of the following period.²⁴⁶

The new curriculum frame of Kosovo has been adopted with the purpose to ensure the quality of materials used by educational and training institutions and its implementation is expected to occur in the future.²⁴⁷

²³⁷ *The Constitution of the Republic of Kosovo, article 47, paragraph 1.*

²³⁸ *Ibid, article 47, paragraph 2.*

²³⁹ *Protocol no. 1 of ECHR, article 2 “No person shall be denied the right to education...”*

²⁴⁰ *The Constitution of the Republic of Kosovo, the article 47, paragraph 2.*

²⁴¹ *The Law no.04/L-037 on Higher Education in the Republic of Kosovo, adopted on 31 August 2011.*

²⁴² *The Law no.04/L-032on Pre-University Education in the Republic of Kosovo, adopted on 31August2011.*

²⁴³ Level 0(pre-school education), level 1 (Grades 1-5), level2 (Grades 6-9), level 3 (Grades 10-12/13) and level 4 (post secondary non-university education).

²⁴⁴ *Ibid, article 1, paragraph 1.*

²⁴⁵ *Ibid, article 49, paragraph 3.*

²⁴⁶ *Ibid, article 49, paragraph 2.*

²⁴⁷ *A Decision no.262/01B, dated 29 August 2011.*

The education has been put into the priority list of the government of the Republic of Kosovo. Within this priority is also included the increase of infrastructure quality. The primary and urgent task for the Ministry of Education, Science and Technology (MEST) remains adoption of by legal acts in order to enable implementation of the adopted laws.

2.23.1. The education system for the communities

As regards the right to education of Serbian community, the Municipalities have competencies to establish conditions for providing education services in Serbian language.²⁴⁸ The schools providing the education in Serbian language are entitled to use education plans and programmes drafted by the Ministry of education of the Republic of Serbia. Those education plans may be used only upon the information of MEST.²⁴⁹ So far, the communities did not inform MEST on their plans and programmes.²⁵⁰

The Government of Kosovo has developed a Strategy for Integration of RAE Communities 2007-2017. Some of the activities foreseen by this strategy were implemented, while others are in the process of implementation. It is important to mention drafting of the plan and programme in Roma language, which contains elements of Roma history and culture, as well as learning the Roma language by pupils of second grade, which is a pilot project in one of the primary schools in Prizren. Teaching in the Republic of Kosovo is provided in Albanian, Serbian, Turkish and Bosnian language. Turkish and Bosnian communities are integrated into the unique education system of Kosovo.²⁵¹

The independent Commission for reviewing the teaching material in Serbian language has reviewed the compatibility of teaching textbooks in Serbian language with the Constitution of the Republic of Kosovo and the applicable legislation.²⁵² According to Commission's report, there were essential differences noticed between the two curriculums.²⁵³

Based on the Strategy for Development of Pre-University Education in Kosovo 2007-2017 and Strategic Plan of the Education in Kosovo 2011-2016 is foreseen effective governance of education system, providing the qualitative teaching, comprehensive inclusions in the education, adequate environment and teacher's professional development. During this year, 2500 teachers were trained in using the Information and Communication Technology in the teaching system and 39 educational institutions were furnished with information technology.²⁵⁴

²⁴⁸ The Law in the Education in the Municipalities of the Republic of Kosovo no.03/L-068, article 12, paragraph 12.1, 21.05.2008.

²⁴⁹ *Ibid*, article 12, paragraph 12.2; Law on Protection and Promotion of the Rights of Communities and their members in the Republic of Kosovo, article 8, paragraph 8.5.

²⁵⁰ Interview with Enesa Kadiq, Head of the MEST Community Department.

²⁵¹ *Ibid*.

²⁵² The Law on education in the Municipalities of the Republic of Kosovo, article 12, paragraph 12.4.

²⁵³ The report of the Independent Commission for reviewing the teaching material in Serbian language, dated 24 June 2010, MEST.

²⁵⁴ www.masht-gov.net/, The enclosing conference on pilot project "Implementation of Information Technology and electronic learning in the schools of Kosovo (TIK)", dated 09.12.2011.

2.23.2. Preschool and pre-primary education

The Republic of Kosovo has developed an integrated access to preschool education, in which are combined the education, schooling, children's` games and professional care. The early years of education are decisive for the development of a child. Despite the raise of the number of children in the preschool education, in many Municipalities there is a lack of infrastructure and not all interested children may be included in the education system, especially the children from villages and minority communities.

2.23.3. Pre-University Education

The Pre-University Education in the Republic of Kosovo provides services to the children from the age 6 to 18, who follow one of the three levels of education as following: primary school (grades 1-5), lower secondary school (grades 6-9), those two levels are obligatory for all children and also the higher secondary education (grade 10-12/13).

A part of the population has migrated to the towns by overburdening the infrastructure in the town schools. On the other hand, in some of the schools in rural areas, there are a very small number of pupils. Thus, the number of pupils in the class rooms in the urban areas has increased, while the in the rural areas the number of pupils in the class rooms has decreased. The consequence of all this is lack of teaching and sanitation environments. Many primary and secondary schools work on shifts, which results in teaching with shorter classes, which also restrains the implementation of teaching plans and programmes.

In some of the schools there is a lack of basic sanitary conditions and there is almost no healthy environment in these teaching premises. Lack of space in the secondary schools prevents the schools to organize professional practice, providing various labs; there is a lack of textbooks for most of the teaching subjects. As a result of shortages of textbooks, the pupils are forced to take notes and learn from them.

The pupils with special needs follow the education in special schools that provide special education. The conditions provided by the special school "Lef Nosi" in Prizren and special school for blind pupils and pupils with weakened seeing "Dr Xheladin Deda" in Pejë, are very good. These schools are furnished based on the European standards and the transport for these pupils is also provided. But, at the special school "Source Centre Mother Teresa" in Mitrovicë, the school premises are very old and don't meet teaching conditions, the vehicles for transport of pupils are in very bad conditions and the school has difficulties to provide safe transport.

Although, the number of pupils who dropped out of the obligatory education this year marked fall, this phenomenon remains worrying. 1884 pupils abandoned the obligatory education. So far, we have no information whether any measures of punishment have been taken against the

persons who are responsible for dropping out from obligated education, although this is punishable by law.²⁵⁵

Aiming to provide safe and adequate environment in the education institutions, MEST has signed a Memorandum of Understanding with the Ministry of Interior, Ministry of Justice, Ministry of Labour and Social Welfare and Kosovo Judicial Council.

Although, the Law on Pre-University Education prohibits corporal punishments or other form of degrading punishment in all educational and training institutions, public and private,²⁵⁶ there are indicators that violence is present in the educational institutions.

For the education of persons deprived of their liberty, the MEST has signed a Memorandum of Understanding with the Ministry of Justice. In Dubrava Jail, there are 81 convicted pupils receiving a regular education in the “Mit’hat Frashëri” secondary technical school branch in Gurrakoc. The convicted persons, as in the regular schools, receive education from all courses. The lack of textbooks for these pupils still remains an unsolved problem. The certificates for these pupils are issued by principal schools.

At the Correctional Centre in Lipjan, the relevant authorities provide education for the minors as well. The pupils are equipped with school textbooks and school bags. The issue of functional libraries in the correctional centres, jails and detention centres remains a challenge for the relevant authorities. The problem is that in most cases, the libraries are not furnished well with books and the books are old. These centres hardly provide new books.

Increasing the quality and functioning of the education must be done through recruitment of new managing and teaching staff by announcing the public vacancies and respecting the criteria and selection procedures,²⁵⁷ as well as by respecting the legal provisions.²⁵⁸ So far, it has been noticed that there were many dissatisfactions and complaints lodged after the announcement of vacancies by the Municipal Educational Directorates (MED). Another big challenge for the relevant authorities is applying the fast-track procedures in case of complaints and implementation of decisions, which in most of the cases are postponed or the employers do not implement them at all. The licensing process of teachers has begun, but there are also deadlocks in this process.²⁵⁹ This process must end as soon as possible.

Raising the quality and functioning of the education must be achieved through the commitment of teachers within the school. However, there are indications that teachers are organizing supplementary courses for their pupils.

The Ombudsperson recommends MEST that in cooperation with the MED prevents the teachers from organizing courses with their pupils. For the pupils who need supplementary courses, the relevant authorities should find other forms of organizing courses within the schools.

²⁵⁵ *The Law on Pre-University Education, article 15, paragraph 4.*

²⁵⁶ *Ibid, article 3, paragraph 7.*

²⁵⁷ *The Administrative Instruction no. 17/2009 on the procedures for selection of teaching staff in the schools.*

²⁵⁸ *The Administrative Instruction no. 19/2009 on the norms for professional staff of the general education.*

²⁵⁹ *The Administrative Instruction no. 5/2010, Teacher`s licensing.*

Based on the Administrative Instruction²⁶⁰ and annual work plan of the school it is foreseen realization of excursions for the graduates. The way of organizing such events is often accompanied by the problems, such as: hotel accommodation, overcrowded hotel rooms, dirty food, use of alcohol and narcotic substances by the pupils during the excursions, the contracted companies do not fulfil the undertaken obligations etc. MED do not respect or are very irresponsible in implementing the Administrative Instruction with regard to this issue. A bad example is an excursion of graduates from a secondary school in the Municipality of Gjilan.²⁶¹

During this year there were requests submitted for inclusion of religious education and wearing the religious dresses in the schools. But, according to the Law on Pre-University Education, the public education institutions should refrain from providing religious education or other activities promoting a certain religion.²⁶² On the occasion of delivering gifts for the Christmas celebrations by the Evangelical Church “Ringjallja” in Gjilan, in some primary schools were delivered to the pupils’ leaflets containing religious propaganda.²⁶³ Some pupils continue to wear religious dresses in the public schools, although this is in contradiction with the applicable laws.²⁶⁴ The school executive council has the competencies to decide on the dressing code of the employees and pupils.²⁶⁵

2.23.4. Higher education

The number of students in Kosovo is increasing every year. This increase of the number of students presents a challenge for the government with regard to funding the Universities. Another challenge is providing the curriculum, which reflects the needs of labour market, helps the employment for the graduated students and also impact the image of higher education. The higher education is facing the lack of sufficient teaching premises, labs, information technology equipments and lack of university textbooks for the students, which in most of the cases must learn from the copied books prepared by their professors. Also, providing a modern teaching environment and an environment for scientist research in the institutions of higher education remains a challenge.

Strategy for Development of Higher Education in Kosovo 2005-2015, is a proposal for transformation and development of higher education based on a modelling, planning, administration and effective managing. Development of an effective system of higher

²⁶⁰ The *Administrative Instruction No. 35/2008 on picnics, visits, excursions and celebrations-ceremonies in the schools*.

²⁶¹ *Extract from the record of meeting of the Committee on education*, paragraph 4, 21.10.2011, *Report no. Pr. 201/11*, Gymnasium “Zenel Hajdini” in Gjilan, dated 29 September 2011.

²⁶² *The Law on Pre-University*, article 3 paragraph 7.

²⁶³ <http://2lonline.com>, Mr. Shefik Surdulli, head of the information office in Gjilan, dated 20.12.2011, *leaflets*, “The biggest gift for all”, Envoy House Publishers, published in Germany, 2011.

²⁶⁴ *Memorandum no. 1029*, 12 pupils are following up the education with religious dress, Directorate of Education in Gjilan, dated 20.12.2011.

²⁶⁵ *The Law on Pre-University Education*, article 17 paragraph 11, subparagraph 11.6. *Administrative Instruction no. 6/2010*, article 4, paragraph 1 “the pupil is prohibited”, subparagraph 1.13, “to wear religious uniform”.

education would contribute to increasing of welfare of Kosovan society by providing a high quality education and scientist research with equal possibilities for all.

The existing infrastructure does not support a comprehensive inclusion of students in the system of higher education, because it does not support diversity of higher education programmes and it does not support at a satisfactory level the category of students with special needs.

Within the process of integration of the communities, during this year 84 students from RAE communities were admitted by public universities, but there are no data on the admitted students from the other communities.²⁶⁶

During 2011, the OIK has investigated 8 complaints against MEST and 30 other complaints against Municipal Directorates of education. From the total number of received complaints, it is worth mentioning the complaint lodged by 22 pupils of a secondary school in Gjilan,²⁶⁷ which complaint against MEST due to violations during the State Matura exam. Upon the request of the OIK, the MEST reacted in due manner and time and State Matura exam was repeated. Through the OIK mediation were solved the complaints lodged by school secretaries²⁶⁸ and educators in institutions of the pre-school education,²⁶⁹ which complained due to non-payment of salaries based on their qualification and working experience.

The Ombudsperson recommends:

- ***The Ombudsperson recommends further improvement of TIK and to provide relevant TIK infrastructure at all levels of education.***
- ***The Ombudsperson recommends providing a comprehensive and equal access for all children. This should be done through the building-up of capacities of infrastructure, by improving the curricula through the programmes for professional development of educators and administrative personnel.***
- ***The Ombudsperson encourages setting up new education classes for preliminary education in order to improve comprehensive inclusion of pupils in the education system, to encourage children from minority groups, children with special needs, children from rural areas and from poor families.***
- ***To increase and extend the schools infrastructure and to improve the quality of premises, especially in the rural areas where the school premises are overcrowded.***
- ***To provide the best possible conditions for children with special needs.***
- ***The Ombudsperson expresses its concern and requests prevention of violence in the educational institutions. The Ombudsperson also requests the relevant authorities to provide pedagogical services in the schools.***

²⁶⁶ An interview with Enesa Kadiq, Head of the Community Division at MEST.

²⁶⁷ Complaint A. no. 222/2011.

²⁶⁸ Complaint A. no. 375/2010.

²⁶⁹ Complaint A. no. 86/2011.

- *The Ombudsperson recommends MEST that in cooperation with the Municipal Directorates of Education organize awareness campaigns for pupils and the parents on the importance of education, elimination of violence in the educational institutions and effective combating of school dropping out.*
- *The Ombudsperson recommends strengthening the pedagogical and teaching character of excursions, inclusion of parents` and pupils` council in decision-making process, establishment of internal and external control mechanisms for the implementation of Administrative Instruction no. 35/2008.*
- *The Ombudsperson requests the relevant authorities to take measures for protection of pupils from religious propaganda and to implement the applicable legislation in the Republic of Kosovo.*
- *The Ombudsperson supports and encourages studying programmes, which are adequate to the labour market needs; create equal possibilities for inclusion of other ethnic groups in higher education system, as well as the inclusion of groups with special education needs and other social groups..*
- *The Ombudsperson requests the government of the Republic of Kosovo, especially MEST to continue implementation of all strategies and memorandums with a higher commitment than now.*
- *The Ombudsperson requests the MEST that within the legal limit time of 1 (One) year adopts the by legal acts for the issues covered by the Law on Higher Education and the Law on Pre-University Education in the Republic of Kosovo.*

Freedom of art and science

Freedom of art and science is guaranteed by the Constitution of Kosovo,²⁷⁰ International Covenant on Civil and Political Rights,²⁷¹ and is in accordance with the ECHR, according to which the freedom of art and science and academic freedom should be exercised within the same frame of freedoms and restrictions set forth in its article 10.²⁷²

In the Republic of Kosovo there is a basic legal framework, which protects development of intellectual property and the copyrights.²⁷³

The freedom of art and science, as well as the academic freedom are an extension of the freedom of thought and expression. Everyone has the right to seek, receive and impart the information and ideas regardless of frontiers, orally and in written form, in an explicitly or artistic manner or by any other mean chosen by him.

During the 2011, the OIK received only 1 (one) complaint against Municipal Assembly of Gjakovë,²⁷⁴ with regard to denial of folk ensemble “Shqiponja e Dukagjinit” for utilization of

²⁷⁰. The Constitution of the Republic of Kosovo, article 48.

²⁷¹. The International Covenant of Political and Civil Rights, article 19.

²⁷². The European Convention for Protection of Human Rights and Fundamental Freedoms, article 10.

²⁷³. The Law on Copyright and Related Rights, no. 2004/45, 29 June 2006, the Patent Law, 2004/49, the Law on Industrial design, 2005,02 L 45, the Law on Trademarks, 2006/2 L 54.

the cultural palace for its activities. Based on its legal competencies, the OIK representative has spoken to respondent party at the Municipal Assembly of Gjakovë and the complainant and requested them to find a solution for this concrete case.

In this case, the Ombudsperson recommended the Municipal Assembly to respect legal provisions on cultural institutions²⁷⁵, and in the capacity of the founder of the institution is cumulatively and unlimitedly responsible for their obligations. After the intervention of the Ombudsperson the case was positively resolved.

Right to work and exercise profession

The Constitution of the Republic of Kosovo in its article 49 guarantees to every person the right to work and the freedom to choose his profession and occupation.²⁷⁶ Also, this right is guaranteed by the Universal Declaration of Human Rights,²⁷⁷ which together with the other international instruments is directly applicable in the Republic of Kosovo.²⁷⁸

Since the entering into force of the Labour Law,²⁷⁹ the problems for its practical implementation continue where some of the rights guaranteed to the workers are not being respected by the employers in the public and private sector. Despite the basic laws that regulate the right to work, such as the Law on Civil Service,²⁸⁰ Law on the Salaries of the Civil Servants²⁸¹ and the Law on Socio-Economic Council²⁸², the lack of by legal acts makes the practical implementation of the Labour Law impossible.²⁸³

During this reporting period, only a year after the entering into force of the Labour Law, the Ombudsperson received a considerable number of complaints lodged by the Kosovo citizens. Also, the Ombudsperson in 90 cases commenced the investigation regarding allegations for violations and realization of the rights arising from the work relationship.

The Ombudsperson concludes that the most serious violations were noticed in the employment procedures, procedure for interruption of work relationship, non-compensation of overtime work, preventing the employees from exercising the right to annual leave.

For a effective monitoring of provisions of the Labour Law, which regulate the work relationship, safety and protection at work in the public and private sector, must be increased the number of inspectors by Labour Inspectorate.²⁸⁴ A very small number of inspectors do not

²⁷⁴ OIK case, A. no. 455/2011, dated 21 October 2011.

²⁷⁵ The Law no. 02/L-57 on Institutions of Culture.

²⁷⁶ The Constitution of the Republic of Kosovo, article 49.

²⁷⁷ The United Nations Universal Declaration of Human Rights (1948), article 23.

²⁷⁸ The Constitution of the Republic of Kosovo, article 22 [Direct Applicability of International Agreements and Instruments].

²⁷⁹ The Law on Labour no. 03/L-212, adopted by the Assembly of Kosovo on 1 November 2010.

²⁸⁰ The Law on Civil Servants, no. 03/L-145, which came into force on 28 May 2010.

²⁸¹ The Law on Salaries of Civil Servants no. 03/L-147, which came into force on 13 May 2010.

²⁸² The Law on Economic and Council, no. 04/L-008, came into force on 21 July 2011.

²⁸³ Ibid.

²⁸⁴ [http:// mpms. rks-gov.net](http://mpms.rks-gov.net) "Workshop on 1 (one) year implementation of the Labour Law", held on 16 December 2011.

provide effective monitoring regarding implementation of legal provisions by the employers in the private and public sector.

The fact that during this reporting period the Ombudsperson received a number of complaints regarding non-execution of decisions issued by the Independent Oversight Board of Kosovo (IOBK) continues to be worrying.²⁸⁵ Non-execution of IOBK decisions constitutes a violation arising from the work relationship based on the Law no.03/L-195 on the Independent Oversight Board of Kosovo Civil Service.²⁸⁶

In this annual report we are going to present the failure of respondent institutions to implement a decision issued by IOBK.

The OIK received a complaint lodged by 10 employees of Graçanica Community Office who complained due to the failure of Prishtina Municipality to implement decision no .A 02/64-74/2011 of Independent Oversight Board of Kosovo Civil Service (IOBKCS).²⁸⁷ According to IOBKCS decision issued on 20 May 2011, the employment body was obliged to extend to the submitter of complaint and others the work contract with all rights and obligations in accordance with the Law on Civil Service of the Republic of Kosovo. On 15 November 2011, the Ombudsperson has sent a letter to the President of Municipality of Prishtina requesting the implementation of the above-mentioned decision. But, until now, the Ombudsperson did not receive any response.

Based on the complaints lodged at the OIK, during this reporting period it can be reached the conclusion that regardless of the fact that there are safeguards, there are continues violations of the right to work and exercise of profession in the public and private sector.

Regarding violations of the right to work during this reporting period, we are going to present two cases where thanks to the Ombudsperson's intervention at the public institutions, which requested explanations from the respondent authorities, the complainants got back to their work.

In April 2010, the Ombudsperson received the complaint lodged by a citizen from Rahovec who alleged that Directorate for Urbanism fired him without any explanation. On 22 February 2011, the Ombudsperson's representatives in order to investigate the case, met with the director of the above-mentioned directorate who declared that the issue of the above-mentioned complainant will be reviewed as soon as possible and the OIK will be timely informed. On 27 September 2011, the director of Directorate of Urbanism informed the OIK that the complainant has been returned back to his work. On 27 October 2011, the complainant informed the OIK that he has been returned back to his previous work place.

On 11 May 2011, the OIK received a complaint lodged by a teacher employed at the secondary agricultural school in Prishtina, who alleged that he was not being treated well and he was being discriminated by the school director.

²⁸⁵ See <http://kpmshc.rkc-gov.net>, Annual report of the Independent Oversight Board of Kosovo 2010.

²⁸⁶ The Law on Independent Oversight Board of Kosovo Civil Service, article 13 "*Decision of the Board shall represent a final administrative decision and shall be executed by the senior managing officer or the person responsible at the institution issuing the original decision against the party*".

²⁸⁷ Ibid.

Based on his complaint he did not receive job description as required by the Law on Civil Service of the Republic of Kosovo and the complainant has received a proposal for termination of his work contract.²⁸⁸

On 8 July 2011, the Ombudsperson's representative met with the Director of Directorate for Education at Municipality of Prishtina who was informed about the complainant's issue. On 14 July 2011 the complainant was instructed to address his concern to Independent Oversight Board of Kosovo (IOBK) as a competent body for implementation of the Law on Civil Service. On 1 September 2011 was held a public hearing by IOBK where except the parties involved in dispute, the session was also attended by the Ombudsperson's representative. During this session, the parties presented their evidence and appealing claims. During the session was also presented OIK's conclusion that the complainant's work contract should be extended. The OIK's conclusion is a result of conducted investigation. *As a result*, of the commitment of OIK's representative, on 9 September 2011, Directorate of Education of Prishtina Municipality extended the complainant's work contract.

Another concern for the Ombudsperson is the high rate of unemployment, which is wide spread in Kosovo. Based on the UNDP data for 2011, around 45% of labour force is estimated to be unemployed.²⁸⁹

Based on the MPMS's Department of Labour and Employment Performance Report for 2010/2011 the total number of unemployed registered job seekers in the public employment services in Kosovo is 335.905 persons. From the total number of employed persons, 162.277 are female and 173.628 male. Comparing with the same period of the previous year, there is no positive movement in this aspect. In 2010, around 335.926 persons were registered as unemployed, 160.065 female and 175.861 male.²⁹⁰

According to this report, the number of Kosovo active population is 1.200.000 persons, while every year in labour market of Kosovo enters around 30.000 persons. Around 6.000 are estimated to leave the market. The unemployment rate is around 39-41%. The unemployment rate among the female Kosovans is around 53-59 %, which is considerably higher than the unemployment rate among the male.²⁹¹

According to Labour Law, the work relationship can be established by every person who is 18 years old. While, the persons of the age from 15-18 may do jobs that do not cause any harm to their health.

Despite the legal regulation of this issue, on the streets of Kosovo cities every day children of younger age carry out hard work that causes damage to their health and dignity. Those children beg on the streets, especially at most frequented cross ways, selling cigarettes and other prohibited means. Regarding this phenomenon, the Ombudsperson has expressed his concern through the public media. The Ombudsperson also expressed his concern to relevant institutions of the Republic of Kosovo. The Ombudsperson requests the public authorities of

²⁸⁸ The Law no. 03/L-149 on Civil Service of Kosovo, article 45 paragraph 1.

²⁸⁹ See [http:// www.kosovo.undp.org](http://www.kosovo.undp.org), Public Pulse Report, September 2011.

²⁹⁰ Performance Report of DLE functioning within the Ministry of Labour and Social Welfare, 2010/2011 (06/2010-06-2011).

²⁹¹ Ibid.

the Republic of Kosovo to respect the international instruments and domestic legislation, which protect children's rights.²⁹²

Regarding situation of the rights deriving from the work relationship in Kosovo in the public and private sector and with the purpose of the implementation of the legal provisions, the Ombudsperson recommends as following:

- *The government to increase the budget for Labour Law and to ensure implementation of the law in the public and private sector.*
- *The Ministry of Labour and Social Welfare to adopt secondary legislation for an effective implementation of the Labour Law.*
- *The Ombudsperson recommends the Labour Inspectorate of the MLSW to increase its field activities, to inform the workers on their right to lodge complaints in case of violation of law by the employers and to inform the employers on their legal obligations towards the employees, as well as to let the employers know that failing to fulfil these obligations will produce sanctions, which are foreseen by law.*
- *The Ombudsperson recommends the Labour Inspectorate to monitor execution of decisions regarding violations of the Labour Law.*
- *The government of the Republic of Kosovo should regulate the issue of working experience for the period of time 1990-1999 by a special Administrative Instruction.*
- *The Ministry of Labour and Social Welfare to take steps towards drafting the strategic plan for protection of children under the age of 18 from doing the street jobs.*
- *All public institutions of the Republic of Kosovo to respect and implement the decisions of the IOBK, while in case of failure to do so, the responsible persons should be held accountable in accordance with the laws in force.*

Children's rights

The domestic legal framework provides a good base for protection of children's rights, but the practical implementation of this legal framework often is insufficient, inadequate and ineffective. Protection and respect of children's rights, as well as their position and welfare is conditioned by the general country's economic and social situation, which remains difficult for most of Kosovo citizens. The improvements, protection, respect and promotion of children's rights remains a big challenge and in this aspect, the entire Kosovan society must do more. During this reporting period, no significant improvements have been marked, despite efforts and activities undertaken by the institutions of Kosovo in this respect.

2.23.5. The implementation of the National Action Plan and Strategy on children's rights

²⁹² Article 32 of the Convention on the Rights of the Child.

Based on the National Action Plan and Strategy 2009-2013, the institutions of the Republic of Kosovo, aiming to improve the general situation of children's rights continued to take relevant actions in the fields that were given the priority by the national strategy and plan, such as the governance, education, social welfare etc.²⁹³

As regards the achieved progress in the field of governance, it is worth to mention drafting of the first State report regarding implementation of the Convention on Rights of the Child (CCR),²⁹⁴ as an attempt of the Kosovo's government to harmonize the domestic legal framework with the Convention on Rights of the Child, respectively to achieve some the objectives set forth by the above-mentioned National Strategy and Plan. This report has been submitted to the United Nations Committee on Children's Rights in Geneva, which has a mandate to monitor children's rights. But, the realization of objectives which refer to making operational the Inter-Ministerial Committee on Children's Rights, as well the full institutionalization of Human Rights Units is not yet achieved. The Inter-Ministerial Committee of human right is still not operational. In the context of this, the Human Rights Units at all levels have no sufficient staff, respectively these units don't have an officer for children's rights who would work full time and cover only children's rights issues. Such situation is not in accordance with the Administrative Direction no. 04/2007,²⁹⁵ which also makes difficult realization of National Plan and Strategy within the time limits set forth in this document. In this aspect, it is necessary to appoint respective officials that will deal only with the issue of children's rights.

2.23.6. Children's right to education

The Ministry of Education, Science and Technology (MEST) based on the priorities set forth in this education plan prepared the curriculum for Kosovo. The Ministry has prepared the curriculum for Roma language, which contains the elements of Roma history and culture, as an optional subject and it continued the preparations to draft base curriculum and teaching program for the pre-school, primary and secondary education.

As regards inclusion in education, a progress has been achieved with regard to admission of children in generally, in the primary and secondary, but not at the levels of pre-school and higher secondary education. Within the registration process done in the primary and secondary schools, there are differences as regards the access to education. The children with disabilities don not have adequate access to education, respectively they are indirectly excluded from the right to education, among other also due to lack of financial support and other kind of assistance, lack of transport till the school and adequate infrastructure. In this

²⁹³ National Action Plan and Strategy on children's rights in the Republic of Kosovo was adopted by the government of Kosovo on 2009.

²⁹⁴ Convention on Children's Rights is incorporated in the list of the international instruments, which directly applicable and part of the Constitution of the Republic of Kosovo, see *Constitution of Kosovo*, article 22, p. 7.

²⁹⁵ See *the Administrative Instruction, no. 4/2007, on the Human Rights Units of the Government of Kosovo*, adopted on 19 March 2007, aiming to provide structuring and integration of the human rights units in the ministries of the Republic of Kosovo.

aspect, also RAE children face numerous obstacles which are amongst others related to the fact that they are not registered in the civil registration offices, poverty, their tradition etc, which unable the inclusion into the education process or even force them to abandon the education.

The children of other ethnicities also abandon the school. Based on data provided from MEST, it results that the number of pupils who dropped of the obligatory education during the period of time 2010/2011 marked falls comparing to the previous school year 2009/2010. The situation is worrying given that 485 pupils (718 female) dropped out of the schools. In this aspect, within the continues efforts to stop this phenomenon, MEST together with the relevant partners, amongst others should start strict application of Administrative Instruction no. 7/2011-on the Establishment and Strengthening of Prevention and Reaction Teams regarding school dropout and non-attending of the obligatory education, adopted on 14 October 2011.

In order to provide full access to education for the children, the relevant institutions of the Republic of Kosovo should provide sufficient budget for the inclusion, respectively the institutions should undertake all necessary actions for an effective implementation of laws, policies and programs, which support the qualitative education.

Regarding the issue of education, the Ombudsperson received a complaint lodged by several parents of pupils from one of the secondary schools who complained against MEST regarding inadequate content of State Matura Exam, which the pupils were supposed to complete, although the exam was not adequate with the content of their studies.²⁹⁶ This action put them into the discriminating position comparing with the pupils who were doing the same studies in the other school. The parents requested the Ombudsperson to help them to achieve their intention to make the relevant authorities repeat the exam. After the mediation of the Ombudsperson's representatives, the exam has been changed and repeated in accordance with the nature and the pupil's studies.

2.23.7. Child labour

Protection of children from hard and hazardous child labour presents one of the most important objectives in the field of social welfare, which is set forth as a priority issue in the National Action Plan. Poverty, obstacles to the access to education which are linked to its importance and constitutionality, as well as tolerant attitude towards the child labour, force may children to work since the early age.²⁹⁷ The child labour is widespread phenomenon and it remains one of the most worrying issues in the country.

The Government of the Republic of Kosovo, on 13 October 2011 adopted the Action Strategy on Prevention and Elimination of all hazardous forms of child labour 2011 - 2016. This strategy and the action plan intend to set forth the priorities, roles and responsibilities of the State institutions in combating and preventing the child labour. The strategy sets forth as a

²⁹⁶ Complaint: A no. 222/2011.

²⁹⁷ See ILO IPEC report "*ILO – IPEC steps towards elimination of worst forms of child labour in Kosovo*", dated 17 November 2011.

strategic objective the elimination of the hazardous child labour in the Republic of Kosovo by 2016. Given the difficult economic and social situation, the achievement and adequate implementation of the Strategy and Action Plan for prevention and elimination of child labour will be one of the biggest challenges, not only for the State institutions and its partners involved in combating this phenomenon, but also for the entire Kosovan society.

On 25 August 2011, the Government of the Republic of Kosovo by decision no. 09/34, established the Council for Protection and Justice for Children with the aim to improve children's welfare and protection. The Council deals with setting forth the priorities and measures needed to be taken by the relevant institutions in order to improve the current situation regarding protection and justice for children at the central and local level.

The council is composed by the relevant institutions working on the field of protection and justice for children. The Ombudsperson Institution is a part of this council. The participation of the OIK as an observer in this council is also a good possibility for a close cooperation with the involved actors in order to address the issues related to protection and justice for children.

During this reporting period, the OIK received several complaints against social work centres due to failure to respect legal provisions and procedures in the cases of making decisions on custody over the children; due to the courts' failure to undertake adequate actions to investigate some cases of domestic violence, as well as the complaints due to the excessive duration of judicial procedures regarding proposals for the execution of final judgments and payment of alimentation.

Regarding these cases, the OIK addressed the relevant authorities requesting them to undertake appropriate actions which are foreseen by law. In the context of issuing decisions with regard to custody over the children, the OIK representatives monitored court sessions in several courts of Kosovo. Also, upon the party's request, the OIK has monitored judicial sessions regarding requests for issuing the protective orders.

Health and social protection

A difficult economic situation, high rate of unemployment, lack of health and social care, as well as the weak health infrastructure continue to be matter of concern for the whole Kosovan society. Based on the citizens' complaints lodged at the Ombudsperson Institution, also during this reporting period there is no progress as regards health and social care. Some small positive movements are noticeable, but this is not satisfactory for a population, which is facing a difficult economic conditions.

2.23.8. The social problems and lack of legislation

The Constitution of the Republic of Kosovo stipulates regulation of health care and social security.²⁹⁸ However, as we mentioned in our previous annual report,²⁹⁹ the problem related to legal base for regulation of social and health issues in Kosovo remains unresolved. The social and economic situation of children depending on the social assistance as a result of increased prices and inflation has worsened. The social assistance scheme in Kosovo, due to budget limitations still has as a base the family, not the individual. According to the law in force, some categories of the Kosovo society living under hard economic and social conditions still remain discriminated.³⁰⁰ The Ministry of Labour and Social Welfare (MLSW) has prepared a draft-law on completion and amendment of the Law 2003/15, but this draft-law, so far, has not been reviewed by the government of Kosovo.³⁰¹

Also, since 2005, the MLSW is stressing out that a draft law on Pension and Disability Insurance has been prepared, and the draft-law has been forwarded to the Government of Kosovo. But, this draft-law didn't pass in the Assembly of the Republic of Kosovo. The legal infrastructure for regulation of the pensions in Kosovo continues to remain uncompleted. The only applicable law in Kosovo as regards this issue is the Basic Pension Law.

2.23.9. The social and economic situation in Kosovo

Regarding employment in Kosovo, also during this reporting period there were a number of complaints lodged at the OIK. The unemployment rate still remains very high. According to the MLSW, the total number of unemployed persons at the beginning of 2011 was 335.260, from which 160.856 are female. Also, the figures from the labour market in Kosovo for the month of August 2011 are similar to those provided by MLSW, where 335.700 persons were unemployed, among them 162,526 are female.³⁰²

The most affected categories by the high rate of unemployment and on the same time the poorest families in Kosovo are big families having lots of children, families whose family heads are unemployed, residents of rural and mountainous areas. The Ombudsperson is concerned since all these categories are not being treated equally in accordance with the Law 2003/15 on the Social Assistance Scheme in Kosovo.³⁰³

Kosovo has the laws, which regulate the issue of pension for certain categories, but there is no law that regulates the issue of pension and disability insurance or a law for pension schemes funded by the government. The retirees in Kosovo still face a difficult social and economic situation as a consequence of lack of the Law on Pension and Disability Insurance. This category of our society remains endangered and social category regardless of their

²⁹⁸ The Constitution of the Republic of Kosovo, article 51.

²⁹⁹ The Ombudsperson Institution, 10th annual report, p. 84, Social welfare problems and lack of legislation. n

³⁰⁰ Law 2003/15 on Social Assistance Scheme in Kosovo.

³⁰¹ Information obtained from the Human Rights Unit of the Ministry of Labour and Social Welfare till 31 December 2011.

³⁰² Ministry of Labour and Social Welfare, information on labour market for the month of December 2011, please visit: http://mpms.rks-gov.net/Portals/0/ShpalljePublikime/0811_Informatat_ne_tregun_e_Punes.pdf, (09.12.2011).

³⁰³ For additional information please see the part equality before the law in the 11th annual report of the Ombudsperson Institution, the applicable legislation in Kosovo containing discriminating provisions.

contribution. The OIK registered requests of Kosovo retirees with regard to draft-law on Pension Schemes.³⁰⁴

2.23.10. *Dropping out of school*

Based on the requests lodged at the OIK, dropping out of the school is a very worrying phenomenon, which occurs due to the difficult living conditions. This also occurs due to lack of clothes, food, as well as due to inability of families to transport their children to the schools. The Ombudsperson raised at the Ministry of Education, Science and Technology (MEST) and at the Municipal Directorates of Education the issue of transportation of children to their schools. According to MEST, the municipal directorates of education are responsible for transportation of pupils to their schools, while the municipal directorates alleged that in their budget there are no financial means foreseen for transportation of pupils. In order to eliminate transport as a reason for dropping out of the school, the MEST and municipal directorates of education in Kosovo should regulate in a precise manner the issue of budget for transportation of pupils, which have difficulties to travel till their schools.

2.23.11. *Housing issues*

The issue of providing shelter to families under the social assistance also during this year remained as one of the major problems in Kosovo.

Good news is that the Municipality of Prishtina made functional the only building which was constructed and dedicated to social cases since the end of war. In this building are accommodated around 60 families. But, the OIK received a number of complaints lodged against the commission in charge of delivering so called social apartments in the Municipality of Prishtina due to irregularities during the process of selecting the beneficiary families.

On 20 September 2011, the Ombudsperson raised the issue of delivering the social apartments at the Department of Health and Social welfare at the Municipality of Prishtina and the President of the Commission in charge of delivering such apartments. According to them, the entire process was regular and the commission respected the Regulation for delivery and renting for the social cases.³⁰⁵

2.23.12. *Health care services*

³⁰⁴ Such complaint was registered at the OIK, A. 446/2009.

³⁰⁵ The cases registered at the OIK, A. 314/2011 and A. 242/2011.

Adoption of the Law on Healthcare, which would provide a solution for many problems in the health care system, still remains an open issue in the Kosovo's Assembly. This procedural delay caused by the relevant institutions damages the Kosovo citizens who are facing a difficult health care situation.

Given that the Kosovo population is living in poverty and hard economic conditions, which directly impacts their health, it is an obligation for the government of Kosovo to invest in the health care system and infrastructure, so that most of the advanced services which are expensive may be provided in the country.

A positive example that should be followed is the solution of the problems for the patients suffering of cancer. During this year such patients had the opportunity to seek cancer treatment at the Institute of Oncology, respectively at the Department of Oncologic Medicine at the UCCK (University Clinical Centre of Kosovo), because now this institute has begun to provide to the patients chemotherapy and hormonotherapy treatment. Since this department is providing such services, the patients suffering of cancer don't need any more to address the health care institutions abroad.

Except hard conditions which the patients are facing while being in the UCCK's clinics, just as it happened during the last year, also during this year, during the winter season the patients were facing the problem of cold in these clinics due to the lack of supplying the UCCK with heat from the "Termokos" district heating. The low temperatures have been contributing negatively to the health state of hospitalized patients, because due to the staying in the cold room the patients were getting new illnesses. These cases are an unforgettable evidence of failure of the Kosovo institutions to provide elementary health care conditions to the Kosovo citizens.

Another serious problem is the pharmaceutical market of Kosovo. Still in the pharmacies are being sold medicaments without doctor's prescription and without user's guide in the languages of Kosovo citizens. The Ombudsperson mentioned this problem in its tenth annual report,³⁰⁶ but even nowadays, no commitment to this issue, which may endanger Kosovo population, was noticed by the Ministry of Health.

The Ombudsperson, in his 10th annual report raised the issue of allegations of many Kosovo citizens who complained against the medical staff of the public health care institutions. Almost in all cases, the doctors working at the public health sector during the working hours that they perform in these institutions they instruct and often force the patients to visit their private clinics and seek services, which indeed they may also get in the public health care institutions. No actions of the Ministry of Health were noticed in order to avoid a situation, which has been the same also during this reporting period, even though this is also a problem for the public health care institutions in which these doctors work.

In order to avoid such practices, the Ombudsperson recommends the Ministry of Health to revise the Law no.2004/4 on Health aiming to complete and amend the law.³⁰⁷ According to this law, a full time employee employed in the public health care institution may perform private activities in the health care system only after the regular working hours in the public sector. The Ministry of Health should more seriously tackle this issue, because such legal

³⁰⁶ The Ombudsperson's 10th annual report 2011, p. 86.

³⁰⁷ The Law no. 2004/4 on Health, article 98.2.

provisions may be abused by the medical personnel and it can also endanger the public health by impacting the citizens' life, especially of those living in hard economic and social conditions.³⁰⁸

Recommendations

- *The Assembly and the Government of Kosovo to adopt the necessary legal infrastructure for regulation of the pension scheme in order to provide to the retired persons a decent life in their old age.*
- *The Assembly and the Government of Kosovo to adopt the necessary legal infrastructure of social assistance scheme in Kosovo, so that all the Kosovo citizens who are living in the social assistance to benefit the social welfare equally and without discrimination.*
- *The Ministry of Health to revise the Law no. 2004/4 on Health, respectively to complete and amend the article 98.2.*
- *The government should strictly, continuously and systematically monitor the quality of medical procedures, qualification of medical staff and to minimize the possibility of abusing with the exercising of profession in the health care sector.*

Responsibility for the environment

The Constitution of the Republic of Kosovo³⁰⁹, stipulates the issue of protection of the environment as one of the values on which the legal order is based, and at the same time it sets forth the responsibility of the legal and natural persons for the protection of the environment.

Even though the right to environment is one of the fundamental rights with direct impact on the right to life, right to privacy, right to family, public health, the government of Kosovo also for the 2011 allocated small budget, which will not fulfil the minimum needs and requests for overcoming the environmental challenges facing Kosovo.

The Republic of Kosovo continues to face environmental problems such as continuous pollution, uncontrolled interferences and inadequate monitoring. The pollution of the air and rivers, utilisation of sand and gravel, waste treatment, problems with old urban waste landfills, biodiversity degradation, installing the quarries in a wild manner in every part of Kosovo's territory, maladministration of protected areas, destruction of forests, losing the agricultural land, enormous noise, uncontrolled radioactivity and lack of monitoring systems are some the challenges and environmental problems.

³⁰⁸ The complained registered at the OIK, A. 208/2011.

³⁰⁹ The Constitution of the Republic of Kosovo, article 52, the Responsibility for the environment.

Delayed adoption of the MESP's (Ministry of Environment and Spatial Planning) Action Strategy provided action space to abusers with natural resources and the environment.³¹⁰

The most emphasized interventions in the environment, which pollute the environment without any mercy and cause irreparable consequences, come from the huge projects of the public and private economic operators. Hot points created by operators, such as "KEK" (Obiliq), "Ferronikeli" (Drenas), "Sharceci" (Han i Elezit), "Trepça" industrial complex in Mitrovicë, public heating systems, landfills of urban and industrial waste, as well as the traffic constitute big environmental graves and are the generators of pollution with large scale of destruction.³¹¹ The motivating factors for these interventions without criteria and environmental crimes remain to be as following: negligence of inspectorates at the central and local level, as well as *delays of court proceedings with regard to environmental issues*.³¹²

The Ombudsperson welcomes the engagement of Parliamentary Committee for Agriculture, Forestry, Environment and Spatial Planning of the Kosovo's Assembly as a positive and encouraging movement for the protection of environment, cooperation of the MESP's Inspectorate with the OIK, as well as inclusion of the environmental crimes within the Draft-Criminal Code of the Republic of Kosovo. Even though, during the 2011 were marked improvements, the cooperation between the NGO's and the MESP was not satisfactory. Participation of the NGO's and the public in the policy making process remains unsatisfactory.

In Kosovo, although there is a lack of official statistics, it is believed that during the 2011, the destination of approximately 1000 acres of agricultural land has been changed. The main reasons for changing the destination of the land are as following: transforming the agricultural land into a construction land, fragmentation of big parcels into small parcels, as a consequence of division of the family wealth, non-utilisation of the land in a sustainable manner by not cultivating it, construction of roads and high exploitation of minerals and gravel³¹³ and living the fertile land uncultivated. Some of the factors that have been impacting the issue of the environment are negligence of the municipal bodies for drafting the municipal development planes, the lack of coordination between the bodies in charge of protecting the agricultural land, some of the Municipalities, such as the Municipalities of Mitrovica, Skenderaj, Drenas, Klina, Prizren, Shtime, Gjilani, Kamenica did not seek permission from the Ministry of Agriculture, Forestry and Rural Development (MAFRD) in the case of changing the destination of the agricultural land of categories from 1 to 4, for the municipal development planes. The municipalities, such as the Municipality of Lipjan, Shtërpce and Suhareka did not seek permission from the MAFRD (Ministry of Agriculture, Forestry and Rural Development regarding change of land destination. The constructions continued in the land sites under the irrigation system and the land managed by the government (in the vicinity of Prizren and Gjakovë). Also, some parts of agricultural land, which are under the Kosovo Property Agency (KPA) management are not in use and have been left fallow. A typical

³¹⁰ www.gapmonitor.org, on 27 July 2011. In its 26 meeting, the Government of Kosovo adopted the Strategic Development Plan of the Ministry of Environment and Spatial Planning 2011-2014. MESP is a fifth ministry for which the three years plan was adopted.

³¹¹ European magazine "Environment", July 2011, p. 4.

³¹² Information obtained from the MESP, dated 23 April 2012 according to which during the year 2011 the MESP's Inspectorate were commenced the following judicial proceedings: in the sphere of the environment 24 cases, in the sphere of waters 39, in the sphere of construction and planning 3 cases and nature 4 cases.

³¹³ Power Plant "Kosovo A, B, C", the public enterprises "Ferronikeli" and "Trepça".

example of non-implementation of the Law on Agricultural Land is construction of new neighbourhoods in the vicinity of Prishtina, out of the urban area, as well as the development of the industrial zone, which is also located in Prishtina.

Even though, during the 2011, according to KFA's (Kosovo Forestry Agency) plan were wooded 350 acres of forests,³¹⁴ on the other hand, degradation and changing of forest's destination through uncontrolled and unlicensed woodcutting, setting fires, as well as exploitation of stones by setting up queries has continued. In this aspect the non-determination of clear responsibilities and legal competencies, respectively confusion over the competencies between the local and central power impacted areas protected by a special law, as well as the areas controlled by the parallel bodies. Except this, in this aspect has significantly influenced the lack of institutional care, such as the small number of forest guards (1 guar for 1000 acres of forest), small number of forest inspectors, non-application of punishing measures, as well as the excessive duration of court procedures. Amongst others, this occurred as the Republic of Kosovo has not yet adopted a new law on forests and their protection. The KFA initiated 190 court proceedings, but none of these cases have been reviewed by the courts.³¹⁵

The lack of strategic spatial plan in Kosovo,³¹⁶ lack of municipal plans, as well as lack of the spatial planes, which are an obligation of the municipalities, have contributed to the real environmental chaos.³¹⁷ The Ombudsperson considers Continuing upgrade on the current buildings with new floors in narrow and dense spaces without respecting the standards and distances (often these new construction upgrades are attached to one another), without lightning, ventilation system and adequate access to apartments' entries, lack of infrastructure, other necessary public infrastructure, lack of parking, construction of formal and informal neighbourhoods, pedestrian's inability and limited ability to walk in the public streets, as the sidewalks are occupied by vehicles, lack of green areas in all urban centres of Kosovo, especially in the Municipality of Prishtina as a flagrant violation of human rights, violation of freedom of movement, public health, the right to family, rights of persons with disabilities, especially the children's rights, taking into account implications of these problems in the children's mental and physical health.

The case of land sliding in "Lakrishte" neighbourhood in Prishtina that occurred on 23 September 2011, the information received regarding land sliding in the neighbourhood "Arbëria", present examples of impacting the environment, impact on sustainability of neighbouring buildings, endangering the life, property and health of citizens, as well as the public order and security. Even thought, these construction sites are placed in residential neighbourhoods, very rarely these construction sites are protected by fence and construction works go one during the evenings and weekends by posing a permanent danger for the life and health of citizens.³¹⁸ Even thought, there are serious violations of the Law on

³¹⁴ Forested areas based on the forestry plans of the Kosovo Forestry Agency based on the information provided by the Kosovo Forestry Agency, 8 December 2011.

³¹⁵ Information obtained from Kosovo Forestry Agency, dated 23 April 2012, according to which during the 2011 were filed 190 reports 161 reports on offenses and 29 criminal offences. While, the municipal bodies filed 7635 reports, 4868 regarding committed offense and 2767 criminal offences.

³¹⁶ Information obtained from Kosovo Association of Architects, dated 23 April 2012.

³¹⁷ The European magazine "Environment", July 2011, p. 27.

³¹⁸ Construction sites in neighbourhoods "Arbëria", "Bregu i Diellit", "Mati" etc.).

Construction, Law on Protection of the Environment and the Law on Protection against Noise, the reaction of local inspectors is not at a satisfactory level.

In the areas which were industrial zones in the past and now are partially industrial zones, such as Mitrovica, Obiliq, Drenas, Gjilan, Peja, Ferizaj and Hani i Elezit, there is continuous land pollution. The main actors of such pollution don't respect land protection standards. All these industrial enterprises, which are mostly privatized, but also those State owned, continue to externalize various expenditures, especially by polluting and destroying the environment. The release of heavy metals from the industrial processes, such as metallic mercury, arsenic, lead, cadmium, beryllium, that have direct impact on nervous system, cardio vascular system, urinary system and also cause pneumonia and serious skin wounds.³¹⁹

In Kosovo, despite calls of the institutions and experts, continues the habit of setting on fire tires during the celebrations, setting on fire the fields during the harvesting time, as well as setting of fire the forests, which directly impacts the land quality, lose of its values, erosion and causes air pollution. Also, maladministration of construction waste continues, as well as non-implementation of the administrative instruction no. 02-2009 for resolving the issue of abandoned vehicles and the government's decision issued on 19 June 2009 on this kind of waste.

Comparing with the previous year, a progress has been marked as regards measuring and protection of the air quality. The MESP and the European Commission bought the air monitoring equipments. Four of these equipments are operational, while other 5 equipments are under the process of getting completed. The monitoring system is installed in Prishtina as well. In Prishtina region were recorded values that exceed the pollution limits PM10 and soot. There were registered continues exceeding of PM10, PM2.5, by "Feronikel" factory. "Sharcem" factory exceeded soot and lead values. The monitoring station installed there is not operational.³²⁰ KEK (Kosovo Energetic Corporation) continues emission of dust, SO₂ and NO_x, and the registered values exceed the limits set forth by European Union Directives. Producing of the sulphide ores in Mitrovicë presents biggest air pollution by impacting the land and water through emission of huge quantity of heavy metals, lead and cadmium. The request of Hydro Meteorological Institute of Kosovo (IHMK), for setting up a monitoring system in the premises of the faculty of philosophy was refused by the Municipality of Prishtina. Also, the parallel structures of Brezovica refused installation of a monitoring system.³²¹ Fortunately, the legal vacuum as regards air pollution monitoring has been covered.

Even though the right to drinking water is a one of the fundamental rights, in Kosovo only 70 % of population have access to water supplying system and the rest of the population is supplied from the uncontrolled water wells. Only 48 % of the population have access to canalization system and there is no handling of black waters for this percentage of download from the canalization system. Taking into account the importance of water as a fundamental right, not much progress has been noticed in this area. As regards water quality, very little progress has been marked.³²² The number of plants is an indicator about the water situation in

³¹⁹ Report "Situation of the environment in Kosovo" 2008-2010, MESP, AKMM, 2011.

³²⁰ Based on the information obtained from the Hydro Meteorological Institute of Kosovo on 15 December 2011.

³²¹ Ibid.

³²² http://mei-ks.net/repository/docs/Raporti_i_Progresit_per_Kosoven_2011_-_Shqip.pdf

Kosovo. Currently, in Kosovo there is only one plant for treatment of industrial waters,³²³ another plant is under the process of being completed. Vulnerable and protected areas have not been set up yet.

During this reporting period, there was no positive movement marked in the sphere of monitoring the underground waters. The uncontrolled degradation of ponds and rivers has continued due to extraction of inert materials without criteria in the aspect of water regime or utilisation of material substances by causing the change of the river flow direction and transfer of fertile land surfaces.

Although, a part of the legal infrastructure exists, unfortunately, the lack of implementation of the existing laws in the Republic of Kosovo is an extraordinary problem of political and legal nature. The implementation of the Law for assessment of impact on the environment has begun, but the quality of reports should be improved.³²⁴

A limited progress has been marked as regards controlling of industrial pollution and risk management.³²⁵ Lack of implementation of the Law on Noise Protection is still present. The same situation is with the Law on Prohibition of Smoking in Public Premises. The Law sets forth the obligation to separate within the premises the smoking and non-smoking areas and to install ventilation equipments. Despite numerous requests, the Law on Establishment of Environment Protection Fund has not yet been adopted.

The environmental problems in the Republic of Kosovo remain at alarming level. Undertaking the immediate measures in order to prevent uncontrolled influence on the environment is an urgent need. We, as a society, institution and a generation, have no right to leave to the next generations such environmental heritage. The government of Kosovo should increase the budget of the MESP as the environmental protection cost is high, but the price of restoration of future degradation will be much higher.

Recommendations

- *To increase the MESP's budget.*
- *To establish a relevant institutional authority composed of relevant State institutions and civil society, which are familiar with the environmental issues and will harmonize economic plans with the environmental limitations and with the applicable legislation.*
- *The courts should give priority to the cases related to environment protection.*
- *To adopt the Law on Environment Protection.*
- *To strengthen the environment inspectorates at the central and local level in terms of human resources and budget allocation.*

³²³ Plant in Skenderaj.

³²⁴ Ibid.

³²⁵ Ibid.

- *To strengthen the monitoring network in hot points, such as “Ferronikel”, “Sharcem”, “KEK”, and areas where the gas emission in the traffic is at a high level, as well as in the towns where there are district heating systems.*

Judicial protection of human rights

The judicial protection of human rights is guaranteed by the Constitution of the Republic of Kosovo,³²⁶ the Law on Courts,³²⁷ as well as the European Convention for Protection of Human Rights and Fundamental Freedoms at its Protocols, which is directly applicable in the Republic of Kosovo.³²⁸

Realization of this constitutional right continuous to face many difficulties. Despite the efforts, promises and numerous declarations for improvement in this field, also during this reporting period the citizens of the Republic of Kosovo have been facing big difficulties in exercising this right due to bad situation in the country’s judicial system.

The last year’s reforms, whose final aim was to make the judicial system of Kosovo functional in accordance with the international standards, such as the process of re-nomination of judges and prosecutors, adoption of the fundamental laws on judiciary, adoption of the State Strategy for Reduction of Pending Court Cases, raising the salaries of judges and prosecutors and construction of new facilities did not provide the results expected by the citizens.

Non-functioning of the judicial system in the entire territory of the country, excessive duration of civil and criminal proceedings, a big number of pending cases from the previous years, low level of execution of the court decisions; the exceeding of the statutory limitations of the cases pending to be reviewed, practical non-implementation of the European Convention of Human Rights, as well as lack of interpretation of ECHR’s decisions in domestic courts decisions, are just some of the forms of violation of the citizens` right to a trial within a reasonable time and as a consequence of this situation, the trust of citizens in the justice system and rule of law in Kosovo is diminished.

Lack of extension of the authority in the entire territory of the country as stipulated by the Constitution of the Republic of Kosovo,³²⁹ despite numerous political statements released by domestic and international institutions remains an extraordinary concern and an open wound for the Republic of Kosovo. Since the declaration of independence of the Republic of

³²⁶ *The Constitution of the Republic of Kosovo, article 54: “Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated”.*

³²⁷ The Article 7 of the Law no.03L-199 on Courts, p. 3. (The official journal of the Republic of Kosovo / Prishtina: year V / no. 79 / 24 August 2010): “Every person has the right to address the courts to protect and enforce his or her legal rights. Every person has the right to pursue legal remedies against judicial and administrative decisions that infringe on his or her rights or interests, in the manner provided by Law”.

³²⁸ *The Constitution of the Republic of Kosovo, article 22, p. 2, European Convention for Protection of Human Rights and Fundamental Freedoms at its Protocols.*

³²⁹ *The Constitution of the Republic of Kosovo, article 102, p. 2 “The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts”*

Kosovo,³³⁰ the following courts continue to be out of the Kosovo judicial system: Mitrovica District Court, Mitrovica Municipal Court, Mitrovica District and Prosecution Office, Mitrovica Minor Offences Court, Minor Offences Court in Leposaviq and Zubin Potok. The criminal and civil cases, which number over 11.700 civil cases in prosecution and 1.615 cases in the above-mentioned courts risk exceeding to exceed the statute of limitations foreseen by the law. Also, many identification documents, such as the ID cards and passports sized by the police remained in these institutions. Failure of the courts and prosecutions of Mitrovica to review the judicial cases filed by the citizens constitutes serious violation of human rights and fundamental freedoms. Such situation persists to be a challenge for the authorities of the Republic of Kosovo in ensuring the functioning of the rule of law.

Due to numerous complaints lodged by the citizens whose cases are pending for review in these courts, the Ombudsperson on 27 April 2011 issued a report with recommendations to the relevant State institutions regarding non-functioning of judicial authorities in the northern part of Mitrovica,³³¹ through which it has requested the authorities to undertake appropriate measures and to provide to the citizens as soon as possible access to judicial services.

A very high number of pending cases which are inherited from the past periods are facing the exceeding the statute of limitations foreseen by law, since the legal limit times for their review have exceeded. According to Kosovo Judicial Council (KJC) annual report for the year 2011³³², the statistics of regular courts show that only during this reporting period, 2.371 pending cases exceeded the statute of limitations. Such situation constitutes a serious violation of human rights and fundamental freedoms. Always according to this annual report, the number of pending cases in the courts at the end of 2011 is 213,037; while during 2011 the courts received 86.394 new cases and resolved in total 82.805 cases. Based on the above-mentioned statistics, there are more new cases filed by the citizen than the number of resolved cases by these courts. Also, based on this report, the number of the cases pending at the end of 2011, comparing with 2010 is higher in all courts. The Supreme Court of Kosovo marked raise of pending cases for 16, 47%, the Economic Court of Kosovo 26, 91 %, District Courts 5, 3 % and Municipal Courts 1, 1 %.

The State Strategy for Reduction of Pending Court Cases, which is drafted by the Kosovo Judicial Council and was adopted on 18 November 2010,³³³ with the aim to reduce the number of pending cases, did not provide expected results. The key factors for this very difficult situation according to Kosovo Judicial Council are small number of judges and prosecutors. The Ombudsperson also reached this conclusion in his 10th annual report.

KJC on 23 February 2011 declared a vacancy for 111 judges in all courts.³³⁴ Due to complicated administrative procedures and negligence, so far, only Supreme and District

³³⁰ On 17 February 2008, The Assembly of the Republic of Kosovo declared Kosovo independent and sovereign State.

³³¹ Report with recommendation, dated 27 April 2011, regarding non-functioning of the justice system in the northern part of Mitrovica. This report was addressed to Mr. Jakup Krasniqi, President of the Assembly of Kosovo and copies were sent to Mr. Enver Peci, Head of Kosovo Judicial Council; Mr. Fejzullah Hasani, President of Supreme Court of Kosovo, Mr. Ismet Kabashi, Kosovo Chief Prosecutor; Mr. Xhevdet Abazi, President of Mitrovica District Court.

³³² The Kosovo Judicial Council annual report, regular statistics, www.kgjk-ks.org, 2 April 2012.

³³³ Kosovo Judicial Council, Decision no. 22/2010, 18 November 2010, the State strategy for reduction of pending cases.

³³⁴ Kosovo Judicial Council, vacancy, dated 23 February 2011, for completion of free positions in judiciary.

Court Judges were selected, while the Municipal and Offences Court judges were not selected yet. Since the biggest number of pending cases is in the municipal courts-196.713 cases,³³⁵ the KJC should adopt practical and fast-track procedures for nomination of judges.

The Ombudsperson welcomed levelling of the salaries of judges and prosecutors with the salaries of the officials of the executive branch. This was one of the recommendations issued in the annual report for 2010 regarding implementation of the Law no. 03/L-199 on Courts, especially articles 29 and 36. This levelling of the salaries will certainly positively impact the working effectiveness of judges and prosecutors.

The Ombudsperson expresses his concern concerning the decision of the Government of the Republic of Kosovo no. 04/13, dated 29 April 2011 on the establishment of Consultative Council of Justice, as interference into the judiciary's independence.³³⁶ The separation of powers in the Republic of Kosovo is regulated with the country's highest legal act, which is the Constitution, which in its article 4, chapter VII guarantees independence of judiciary from the legislative and the executive power.³³⁷

2.23.13. *The EULEX judges and prosecutors*

Also during this reporting period, the judicial and prosecutorial system of the country continues to have the support from a contingent of international judges and prosecutors who are engaged within the rule of law mission in Kosovo - EULEX.

The aim of mission of the EULEX judges and prosecutors is to assist domestic judicial authorities in developing and strengthening an independent justice system, which is free from the political interferences and performs its mission based on the internationally recognized standards and good European policies.

The EULEX judges and prosecutors have also the executive competencies in the Kosovo judiciary. They work together with domestic judges in mixed Panels at all levels. They are assigned on duty to review and investigate the cases of war crimes, genocide, terrorism, organized crime, corruption, inter-ethnic crimes, murder cases, aggravated murder, economic crimes and other crimes. They are also competent to deal with civil law cases of all natures and levels in accordance with the Law on jurisdiction..³³⁸

The Kosovo Judicial Council has no competencies at all over the EULEX judges and prosecutors. These judges and prosecutors are nominated, dismissed and report to the President of the Assembly of EULEX Judges and the EULEX chief prosecutor, who acts upon receiving the orders from the EULEX Justice Component Chief.

³³⁵ Ibid, KJC annual report 2011, p. 3, table No. 2.

³³⁶ The Government of the Republic of Kosovo, Decision on Establishment of Consultative Council of Justice no.04/13, adopted on 29. April 2011, please visit www.kryeministri-ks.net (16.12.2011).

³³⁷ The Constitution of the Republic of Kosovo, article 4 [Form of Government and separation of Power] "Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution". See also the Chapter VII, articles 102-110.

³³⁸ Law on jurisdiction, case selection and case allocation of EULEX Judges and Prosecutors in Kosovo, no. 03L 053, article 5, p. 1 (Official gazette of the Republic of Kosovo / Prishtina: Year III / no. 27 / 03 June 2008).

During this reporting period, there were complaints lodged against the EULEX Judges due to excessive duration of court proceedings until issuing the final decisions, but also due to the exceeding of the statute of limitations of the cases filed with the prosecution. But, the number of citizens who wanted their cases to be tried by the EULEX and not by the local judges was much higher. The complainants requested so because of their doubts regarding fair trial if their case would be assigned to a local judge. Such requests are a result of distrust of the citizens on domestic justice.

A citizen from the Municipality of Gjilan, on 5 August 2011 complained to the OIK because the EULEX Prosecution issued a Decision Act PP.no 23/2011, dated 3 May 2011 rejecting the criminal report G-00-2213/RIU#0073-00, dated 10 March 2000 reasoning that the legal limit time for criminal prosecution under the article 208 & 1 (3) of Provisional Criminal Procedure Code of Kosovo (PCPCK) has exceeded the statute of limitation.³³⁹ In this concrete case, the OIK, after analyzing the legal base of the case advised the complainant to submit his case to the EULEX Human Rights Review Panel in Prishtina.

The Ombudsperson in all cases of complaints lodged by citizens, addressed the EULEX judges and prosecutors in written asking for information regarding these cases. The Ombudsperson each time received a written response from the EULEX judges and prosecutors. The Ombudsperson had an excellent cooperation and understanding with the EULEX judges and prosecutors in all cases of investigating the complaints lodged by citizens. The Ombudsperson takes the opportunity to thank the EULEX Justice Component for the mutual cooperation.

2.23.14. *The Constitutional Court of the Republic of Kosovo*

According to the Constitution of the Republic of Kosovo,³⁴⁰ the Constitutional Court is the final authority in the Republic of Kosovo for the interpretation of the Constitution and compliance of the laws with the Constitution. Decisions issued by the Constitutional Court are binding for the judiciary and all persons and the institutions of the Republic of Kosovo. This court has been established since two years and there are cases in which the State authorities do not implement decisions of the Constitutional Court.

Several former employees of the steel factory “IMK” Ferizaj raised at the OIK the issue of non-implementation of the Decision Act C.no.340/2001, dated 11 January 2002 against Kosovo Privatization Agency.

The Municipal Court of Ferizaj, by the Judgment issued on 11 January 2002 adopted the request for compensation of unpaid salaries to 572 employees of steel enterprise “IMK” in the amount of 25.649.250, 00 Euros. Even though, the Judgment became final, but it has never been executed. After the end of judicial proceedings at the Special Chamber of the Supreme Court and exhaustion of all available legal remedies, on 3 March 2009 the Independent Union

³³⁹ Rasti i regjistruar në IAP nr.262/2011.

³⁴⁰ *The Constitution of the Republic of Kosovo*, article 1124 [General principles], article 116 [Legal effect of decisions].

of Employees of still factory “IMT” in Ferizaj submitted to the Constitutional Court the request for the execution of the final Judgment issued in the Municipal Court of Ferizaj.

The Constitutional Court by its Judgment No.KI 08/09,³⁴¹ declared this request admissible and it reached the conclusion that there was a violation of article 31 (the right to a fair and impartial trial) of the Constitution, in conjunction with the articles 6 (right to a fair trial) and 13(right to an effective remedy) of the European Convention of Human Rights. Also, the Constitutional Court noticed that final and binding Judgment issued in the Municipal Court of Ferizaj should be executed by the relevant authorities, government and Kosovo Privatization Agency as a successor of the Kosovo Trust Agency. The Constitutional Court’s Judgment, dated 17 December 2010, until now has not been implemented by the State authorities, namely, the government and the Kosovo Privatization Agency, which were obliged to do so as set forth by the Court’s Judgment.

The whole judicial process of “IMT-Ferizaj” employees since 2002 till now in 2012 produced only worthless piles of letters, wasting of time, lose of confidence on the State authorities and losing the hope that one day the justice will prevail.

2.23.15. *The complaints of citizens against judiciary*

The Ombudsperson based on the Constitution and article 15.6 of the Law on the Ombudsperson has limited competencies in investigating the complaints lodged by citizens related to the field of judiciary. In any case, the activities of the Ombudsperson do not affect or endanger the independence of prosecutors in conducting the investigations and judges in making decisions.³⁴²

The Ombudsperson, in cases of investigating the complaints pays special attention to protection of the principles of fair trial and trial within a reasonable time. These principles are guaranteed by the article 6 of the ECHR.

Also during the year 2011, the largest numbers of complaints of the citizens were lodged against judiciary as a respondent party. This is an indicator of difficult situation in the judicial system, which yet did not succeed to fulfil legal obligations in relation to requests and rights guaranteed to the citizens, namely the judicial protection of their rights.

The citizens lodged at the OIK 365 complaints against judiciary as a respondent party. From this total number of complaints, 162 were declared inadmissible under the article 19.1.3 of the Law on the Ombudsperson,³⁴³ while in 192 cases of lodged complaints the OIK issued a

³⁴¹ *The Judgment of the Constitutional Court No. KI 08/09, the Independent Union of the employees of steel factory -IMK Ferizaj, represented by Mr. Ali Azemi, the Union’s president.*

³⁴² *Constitution of the Republic of Kosovo, articles 132-135; Law on the Ombudsperson, no. 03/L-195, article 15, paragraph 6. “The Ombudsperson will not intervene in the cases and other legal procedures that are taking place before the courts, except in cases of unreasonable delays or apparent abuse of power.”*

³⁴³ *Law on the Ombudsperson, no. 03/L-195, article 19, p. 1.3.: “the complaint is not in the jurisdiction of the Ombudsperson according to this Law; the complaint is anonymous; the complaint represents an abuse of the Law for filing the complaint or; the complainant has failed to provide information requested by the Ombudsperson”.*

decision to commence investigations and 12 more cases are pending. The largest number of complaints has been lodged against Municipal and District Courts of Kosovo, as well as against Supreme Court of Kosovo and its Special Chamber regarding cases related to Kosovo Privatization Agency.

In all cases, when the citizens' complaints and requests were not in accordance with the Ombudsperson's competencies, the complainants were instructed to address the relevant professional institutions which provide free of charge legal services to the citizens, such as the Commission for Legal Aid and the Non-Governmental Organizations.

Based on the analyse of nature of the investigated complaints lodged by the citizens, the OIK reaches the conclusion that most of the complaints are related to procedural delays that some times last several years, non-execution of the final court decisions, doubts on the fairness of the judge during issuing a decision on the case. The citizens also lodged complaints with regard to bad legal representation by the defence counsels.

The procedural delays occur as a consequence of large number of cases inherited from the past. The situation in this aspect gets worse with the continuous arrival of new cases from various spheres. Already difficult situation in judicial system becomes even worse and almost at no way out the limitation of human and financial resources. According to Kosovo Judicial Council's annual report for 2011³⁴⁴, referring to the part where the statistics are presented, the number of cases pending in the courts at the end of 2011 was 213037.

Despite this situation in judiciary, the Ombudsperson does not find any justification excessive duration of proceedings related to property disputes where the citizens are forced to wait for a final decision for many years. Such situation in judiciary with regard to excessive duration of proceedings in handling the cases has been also confirmed by the international organizations for monitoring of judiciary.³⁴⁵

Also during the 2011, the OIK received complaints for bias actions and attitudes of judges, due to lack of fairness in reviewing the cases, so the complainants asked the OIK's assistance for disqualification of these judges from the case. The Ombudsperson explained to the complainants the legal requirement for disqualification of the judges from the case and the legal way they need to follow to achieve their rights.

Dissatisfied with the court decisions, the citizens address the Ombudsperson with submissions through which they express their dissatisfaction and request the Ombudsperson to intervene into the decision-making process in judiciary, but they also requested the Ombudsperson to monitor their cases in the court. Very often, the citizens in their complaints addressing the Ombudsperson request drafting of various submissions and representation at the different judicial instances. First of all, this is a result of lack of sufficient information of citizens on the Ombudsperson's mission and competencies. But, at the same time, this also proves loss of confidence on the fairness of judiciary in generally and the citizens' trust on the OIK.

The OIK has also received complaints against final judicial decisions because of non-execution of these decisions by the Municipal Courts. In these cases has been requested assistance and intervention of the Ombudsperson for execution of judicial decisions. The execution of judicial decisions at the country's level is very low and the reasons which

³⁴⁴ Kosovo Judicial Council, annual report 2011, statistics of regular courts, www.kgjk-ks.org, 2 April 2012.

³⁴⁵ OSCE Mission in Kosovo report on civil cases in Kosovo, please visit, www.osce.org/kosovo/.

contribute to such low level of execution according to KJC are small number of associates for execution, lack of precise address etc.

In all cases of complaints which are within the competencies of the OIK, the Ombudsperson has conducted the investigations and contacted the officials of Municipal Courts who are responsible for the execution of judicial decisions through letters and directly. During these contacts, the Ombudsperson requested explanations on reasons for non-execution of these decisions. In many cases, after the actions of the Ombudsperson, the courts have taken actions for the execution of decisions, but there were also cases where judicial decisions were not executed. According to court officials, the problems for the execution of judicial decisions of a financial character are banks, which despite the orders issued by court do not implement decisions.

In some cases there were complaints lodged against final judicial decisions against which all available legal remedies were exhausted. In these cases, the Ombudsperson explained to the complainants that in case they still consider that their rights have been violated as a result of judicial process, they can within the four month limit time address their case at the Constitutional Court of Kosovo. But, in some cases the Ombudsperson was requested by the complainants to refer their case to the Constitutional Court because of the violation of human rights and fundamental freedoms even in the cases when the Ombudsperson is incompetent to refer such case to the Constitutional Court. This is a result of lack of citizens` proper information on the nature of the cases that may be referred to this court.

Also, in some of the case there were complaints lodged against the final judicial decisions in which all available legal remedies were exhausted, including the constitutional appeal. Some of the complainants requested the Ombudsperson to refer their case to the European Court of Human Rights in Strasbourg.³⁴⁶ In such cases, the complainants were informed about the legal obstacles, because the Republic of Kosovo is not a signatory party to the European Convention of Human Rights and the citizens of Kosovo may not lodge their cases to this court. Such demands of citizens prove their increased trust on the Ombudsperson, although, based on the law on the Ombudsperson, the Ombudsperson may not substitute the defence counsel in the courts.

The Ombudsperson also received complaints lodged against unfair excessive duration of proceedings caused by the courts` administration, due to failing to deliver the judicial decisions within the limit time set forth by the law, as well as due to inability of the parties to have access to their case file in the court. In all these cases, the Ombudsperson contacted the court officials and in cooperation with the courts resolved the complaints of the parties. The parties were furnished with the judicial decisions and were informed on the situation of their case.

Also, a number of complaints were lodged due to bad legal representations in the court sessions by the *ex officio* appointed defence counsels. In all cases, the parties were informed on their right to request substitution of their current defence counsel and to lodge their complaint at the Kosovo Advocate`s Chamber.

³⁴⁶ In the folk`s jargon the term Strasbourg`s Court implies the European Court of Human Rights.

2.23.16. *Complaint of citizens lodged against the prosecution*

During this reporting period, the citizens lodged against the prosecution as a respondent party. The OIK, based on the article 19.1.3 of the Law on the Ombudsperson declared 6 complaints as inadmissible,³⁴⁷ while regarding 5 other complaints, the Ombudsperson decided to commence investigations. The complaints that were in accordance with the Ombudsperson's competencies were reviewed in accordance with the Law on the Ombudsperson and the appropriate administrative measures were taken.

The number of submissions related to realization of the rights pertaining to the criminal prosecution institutions was lower than the number of submissions related to courts. Based on the analyses carried out, it results that procedural delays during the investigation stage until making the final decision are the reason for lodging these complaints. In many cases, due to the need for supplementary information as regards final decision with regard to police criminal report, the police requests particular information. At this stage of the procedure, as a consequence of passivity and insufficient initiative by the public prosecutors, very often occurs deadlock in the Public Prosecutor's work.

Such actions often result with exceeding of the statute of limitations set forth by law, within which the injured parties are entitled to initiate criminal prosecution in the capacity of a private prosecutor. In these cases, when the criminal proceedings based on the article 224 of the PCPCK discontinue is noticeable the lack of communication between the injured party, the police and the Public Prosecutor.³⁴⁸

A number of complaints of the citizens were lodged at the OIK regarding detention on remand and delays in filing the indictment by the Prosecutions due to delays in conducting the investigation procedures with regard to the cases, but also due to the adjournment of hearing sessions on criminal cases, to the detainees is extended the detention of remand based on the same reasons. The Ombudsperson, in all admissible cases commenced investigations regarding complaints and contacted the Prosecutions Offices and requested explanations concerning procedural delays and delays in filing the indictments. In some cases, after the actions taken by the Ombudsperson, the relevant authorities for criminal prosecution took necessary steps to conduct and terminate the investigations.

Based on the information received from the State's Prosecutor, the main reason for delays in conducting the criminal investigations and proceeding the cases to the relevant courts is the small number of prosecutors at all levels. Even though the relevant bodies are overburdened and they also face lack of human resources and necessary infrastructure, for the Ombudsperson the delays of the Prosecutions in filing the indictments within the limit times set forth by law are not always reliable, even for the Chief Prosecutor.

³⁴⁷ Article 19 of the Law on the Ombudsperson, no. 03/L-195, p. 1.3.

³⁴⁸ Provisional Criminal Procedure Code of Kosovo, article 224: "The public prosecutor shall terminate the investigation if at any time it is evident from the evidence collected that:

1) There is no reasonable suspicion that a specific person has committed the indicated criminal offence; 2) The act reported is not a criminal offence which is prosecuted *ex officio*, 3) The period of statutory limitation for criminal prosecution has expired; 4) The criminal offence is covered by an amnesty or pardon; or 5) There are other circumstances that preclude prosecution."

During the 2011 were filed 75.745 criminal reports at the State Prosecutor's Office of the Republic of Kosovo.³⁴⁹ From this total number of filed criminal reports, 52.754 were solved or expressed in percentage, 69, 6 % of the criminal cases filed with this were proceeded further and by the date of closing our annual report there were 22.991 unresolved cases or 30.4 %, while during the 2010 there were 22307 criminal reports or expressed in percentage, 29, 5 % of criminal reports or criminal cases remained unsolved. Based on this data, we may reach a conclusion that at the end of 2011 there is an increase of unsolved cases for 0, 9% comparing with the previous year, respectively 2010.

Meanwhile, the low rate of disclosure of unknown perpetrators of criminal offences by the police is a matter of concern, because from total number of 11644 criminal reports filed in 2011 against unknown perpetrators, only in 2, 6 % unknown perpetrators were detected. Even more worrying is the fact that 3990 or 34, 2% of criminal reports filed against unknown perpetrators were rejected due to exceeding of statute limitations of the cases.³⁵⁰

Also, the Ombudsperson is concerned because of a very high rate of criminal reports-cases that exceeded statute of limitations after raising the issue in the court. The Public Prosecutions of the Republic of Kosovo during the year 2011 filed accusation acts against 25865 persons, while the courts issued rejecting judgments against 3336 persons or 16, 1 % due to exceeding of the statute limitations of these cases in the court.³⁵¹

Inability of the citizens to realize their rights in the justice bodies has negative impacts on the broad public regarding the work of judiciary and prosecutions and such situation creates doubts about corruption in these institutions due to delays that last for many years until the courts issue final judgments on these cases. The trust of citizens on the justice institutions, courts and prosecutions is at a very low level. This conclusion is also supported by the UNDP report,³⁵² which states that the level of satisfaction of Kosovo citizens with the courts is 25,90 %, level of satisfaction with the prosecutions is 20,00 %. These institutions, as regards trust and appreciation of the citizens are the last in the list according to this report.

Based on the lodged based on the applicable legislation, there are violations of human rights by judiciary due to excessive duration of proceedings till issuing decisions after exercising the right to legal remedies. These violated rights are guaranteed by the articles 31, 32 and 54 of the Republic of Kosovo and article 6 of the European Convention on Human Rights. The citizens of our country do not have a protection mechanism for protection of the right to trial within a reasonable time limit in cases of violation of this right by the judiciary.

Many regional countries have a legal protection mechanism in case of violation of this right. In such cases, the State allocates huge amounts of money for compensation of pecuniary damage caused as a result of excessive duration of judicial procedures, respectively because of the violation of human rights.

³⁴⁹ *State's Prosecutor Kosovo of the Republic of Kosovo annual report*, p. 4.

³⁵⁰ *Ibid*, p. 10.

³⁵¹ *Ibid*, p. 38.

³⁵² *UNDP Report "Democratic pulse"*, published in September 2011, Prishtinë, www.ks.undp.org, 07.12.2011, page 13, Table.1.1. Satisfaction with Kosovo institutions; Government 32,60 %, Prime Minister 37,60 %, Assembly 41,00 %, the president of the Assembly 60,90 %, the president 54,10 %, Courts 25,90 % and Prosecutor's office 20,00 %.

Recommendations

- *The Ombudsperson recommends the Kosovo Judicial Council (KJC), the Government and the Assembly of the Republic of Kosovo to extend the judicial power in the entire territory of the Republic of Kosovo, including northern part of Mitrovica and other municipalities, as stipulated by the Constitution.*
- *The Ombudsperson recommends the Kosovo Judicial Council (KJC) to establish effective procedures as regards time limits and administrative delays for nomination of judges based on the Law no. 03/L-223 on Kosovo Judicial Council.*
- *The Ombudsperson recommends the relevant authorities to clarify the plan on restructuring the courts based on the Law no. 03/L-199 on Courts and this plan should avoid new delays in issuing decisions in the cases.*
- *The government of Kosovo should declare null and void its decision on establishment of Justice Consultative Council since such a mechanism constitutes interference of the executive power in the judicial and prosecutorial system, which is in contradiction with the Law on Kosovo Judicial Council and the Law on Prosecutorial Council of Kosovo.*
- *The Ombudsperson recommends the relevant authorities to persist implementation of the strategy and to take all legal measures, which would contribute to elimination of the cases pending in the courts and to declare this issue a priority of the judiciary and other relevant institutions of the Republic of Kosovo.*
- *The Ombudsperson insists that the difficulties that the courts are facing and which are the main causes of delays in the decision making process are not and may not be the infinitely acceptable reasons for violation of the right for reviewing a case without delays. This right is guaranteed by the Constitution and it requires those performing the function of a judge to respect the principle of trial within a reasonable time in all proceedings.*
- *The Ombudsperson recommends the relevant authorities to provide all necessary conditions for effective implementation of the legal act that regulates the protection of the right to a trial within a reasonable time and adoption of amendments for a better protection of constitutional and legal of clients in preceding their cases.*
- *The Ombudsperson recommends adoption of the appropriate measures in order to provide faster review of the interim preventive measures since based on the investigations carried out and the information collected it was confirmed that some courts need few years to adopt an interim preventive measure.*
- *The Ombudsperson notices that the courts are facing delays as regards the execution of judicial decisions. The Ombudsperson, therefore recommends the relevant authorities to provide to the courts all conditions for execution and implementation of judicial decisions within the time limit set forth by law.*
- *The Ombudsperson recommends the Kosovo Chamber of Advocates to provide better quality of legal aid in cases of ex officio representation or in the cases of providing free*

of charge legal representation and to clearly regulate the issue of providing compensation in the cases of failing to perform the lawyer's duty.

- *The Ombudsperson recommends all prosecutions that in all criminal matters where the criminal reports are rejected by the prosecutions and in the cases in which the indictments are not filed to inform the injured party on their possibility to file a private charge.*
- *The Ombudsperson recommends the Kosovo Prosecutorial Council to increase the number of Prosecutors, so that the cases of procedural delays in the courts do not repeat again due to absence of the prosecutors in the court sessions.*

Use of languages

Equal use of the official languages in Kosovo is a constitutional right.³⁵³ The Albanian and Serbian languages and their scripture according to the Constitution of the Republic of Kosovo³⁵⁴ and the Law on Use of Languages³⁵⁵ are the official languages in Kosovo and enjoy equal status in the institutions of Kosovo.³⁵⁶ Turkish, Bosnian and Roma languages enjoy the status of official languages at the municipal level in accordance with the conditions set forth by law.

With the purpose to respect the linguistic identity of all persons, as well as to create an appropriate environment for the members of all communities to express and preserve their linguistic identity in accordance with the international conventions,³⁵⁷ which foresee the right to use of languages by the communities, the Assembly of Kosovo adopted the Law on Use of Languages.

The Law on Use of Languages through its provisions protects and promotes the rights of communities in the sphere of using their native languages in the public life. The law also stipulates that every person may communicate and receive all services and documentation issued by the institutions at the central and local level or authorities working for their account in one of the official languages.

The right of the members of minorities to use their native language derives from many international documents and on the same time this right is the individual and collective right of peoples. The use of official languages, which is regulated by the *Law on Use of Languages*, impacts the daily life of members of communities and it contributes to their integration into the Kosovan society. As regards use of languages in Kosovo, during this reporting period, comparing to the previous periods, there are not big changes.

³⁵³ Article 5 of the Constitution of the Republic of Kosovo.

³⁵⁴ Ibid.

³⁵⁵ Law no. 02/L-37 on Use of Languages.

³⁵⁶ Ibid, foreseen by article 1.1 and article 1.2.

³⁵⁷ The International Covenant on Civil and Political Rights; the European Convention on Human Rights and Fundamental Freedoms and its Protocol 12; Framework Convention for the Protection of National Minorities; European Charter for Regional or Minority Languages; the Hague Recommendations Regarding the Education Rights of National Minorities and Oslo Recommendations on the Rights of National Minorities.

Even though, the government of Kosovo established mechanisms to monitor use of languages,³⁵⁸ the Law on Use of Languages is not being monitored with full capacities in cases of disrespecting the requests for use of languages. The by legal acts that should support the implementation of law are not clear in the part for determination of procedure for administrative sanctions and in the case of violation of the Law on use of Languages, as well as regarding final decisions.³⁵⁹ Also, there are still no sufficient financial and human resources that help implementation of this law.³⁶⁰

2.23.17. *Language commission*

Aiming to provide equal status to official languages in Kosovo, their preservation and promotion, as well as to provide protection of languages which are not official languages in Kosovo, the Law on Use of languages has stipulated the obligation of the government of Kosovo to establish Language Commission, which shall monitor the implementation of the above-mentioned law. This Commission, which has been established on 2007, except the measures for providing the equal status of official languages and providing protection to languages of minorities who do not enjoy the status of official language, also conducts investigations based on the lodged complaints or based on own initiative, undertakes administrative measures in case of violation of provisions of the Law on Use of Languages, issues recommendations and remarks to the institutions which did not implement the Commission's recommendations. Each community considering that its rights to use of official languages and the right to use the language in official use have been violated is entitled to address the Commission on Use of Languages and to lodge a complaint against the institution for which he believes it has violated his rights. The Commission has its portal, although the portal is not yet fully operational.³⁶¹

As the Commission on Languages is not yet fully operational and the Commission is not succeeding to fulfil its obligations, the Government has decided to reform the Commission. This reforming is in progress.³⁶² The Commission, so far did not have its own budget and its members have been working on voluntary basis within the duties and responsibilities they have had in the institutions by which they have been employed. In order to have a fully operational Commission, the relevant authorities should provide human and financial capacities and the members of the Commission should work full time. The Government's working group is working on reforming this Commission.

The composition of this Commission does not provide effective participation of all language communities. Although the article 32, paragraph 10, of the Law on Use of Languages requires

³⁵⁸Administrative Instruction no. 2006/10 on the rules and methods of the unit for follow-up of use of official languages in central institutions; Prime Minister's Administrative Instruction no. 03/2007.

³⁵⁹Ministry of Public Services, Administrative Instruction no. 2007/01, on determination of administrative sanctions regarding violation of Law on use of Languages, article 5.2 and articles 6, 7 and 8.

³⁶⁰ The number of professional translators is not in accordance with the needs and there are no sufficient financial resources for recruitment of professional translators at the central and local level.

³⁶¹ <http://www.ks-gov.net/kgjz/>.

³⁶² Information obtained during the meeting with the Language Commission President on 23 December 2011.

determination of Commission: “taking into account the rights and interests of all language communities in Kosovo, and taking into account the need to reflect the linguistic diversity of communities in Kosovo”, the Administrative Instruction for composition and competencies of the Commission for Languages, no. 03/2007, article 5, reserves that each of six Ministries and the Assembly appoint one member in this Commission without prior consultation with the language communities. The Language Commission currently is composed by members of Serbian and Turkish communities, each community is represented by one member, but there are no representatives of Bosnian and Roma community, or any other minority communities.³⁶³

The Commission has the authority to issue administrative sanctions against the subjects who violate the provisions of the *Law on use of Languages*,³⁶⁴ but so far, there are no cases of pronouncing any kind of measure regarding violation of this law, although the use of official languages is not at a satisfactory level.

During the reporting period, the Commission based on the annual work plan for 2011 drafted forms of complaints in five languages (Albanian, Serbian, Turkish, Bosnian and English language), which all communities may use in case they intend to lodge a complaint to the Commission with regard to use of languages. The Commission, during this reporting period received and reviewed 8 complaints lodged by citizens of Turkish and Serb ethnic background. All complaints were reviewed and respective measures have been taken. Also, recommendations were issued for relevant institutions with the aim to eliminate violation of the *Law on Use of Languages*.³⁶⁵

The Ombudsperson Institution issued a recommendation to the Ministry of Administration of Local Self-government, the Ministry of Interior, Ministry of Infrastructure and the Kosovo Police recommending them to take measures in order to ensure implementation of the Law on Use of Languages, so that every Kosovo national has the opportunity to communicate, to receive services and public documents in a respective official language.³⁶⁶

With the aim of implementation of the Law on Use of Languages, the Commission has visited the following 10 municipalities: Prizren, Mamusha, Malishevë, Pejë, Shtërpcë, Partesh, Graçanicë, Ranillug, Klllokot and Mitrovicë, and it has reached the conclusion that except the Municipality of Prizren and Malishevë, all other Municipalities have adopted the Regulations on use of official languages.

The Law on Use of Languages is not being implemented in the Municipalities in the northern part of Kosovo, such as Municipality of Leposaviq, Zubin Potok and Zveçan, as well as the northern part of Mitrovica.³⁶⁷

Aiming to establish the cooperation regarding use of languages, the Language Commissions visited the Ombudsperson Institution.

³⁶³ See: Decision of the Government of the Republic of Kosovo, no. 05/99, dated 17 December 2009 regarding composition and responsibilities of Language Commission.

³⁶⁴ The Ministry of Public Services Administrative Instruction no. 2007/01 regarding determination of administrative sanctions regarding violation of the Law on use of Languages, article 1.

³⁶⁵ Information obtained during the meeting with the Language Commission President on 23 December 2011.

³⁶⁶ Constitution of the Republic of Kosovo, article 5; Law on Use of Languages, article 1, paragraph 1.1.ii, article 2, paragraph 2.1 and article 4.

³⁶⁷ Ibid.

2.23.18. *Difficulties in implementing the Law on Use of Languages*

During this reporting period, the Ministry of Local Government Administration in accordance with the Government's Order no. 2011 for the areas of administrative responsibility of the Prime Minister's Office and other ministries adopted *the Administrative Instruction for amendment and completion of the Administrative Instruction no. 2007/06 on determination of procedures for implementation of the Law on Use of Languages in the Municipalities*. This Administrative Instruction determines which official languages shall be used; the manner of handling requests by the persons whose native language is in official use and the manner of using the official languages in the Municipalities.

Still the newly formed Municipalities in which Serbs are majority receive documents from the central institutions only in Albanian language or they receive documents with poor translation in Serbian language. Almost all Ministries, excluding the Ministry of Administration of Local Government, send their correspondences only in Albanian language despite the remarks addressed by the officials of these Municipalities for realization of correspondence in both official languages (Albanian and Serbian). Also, during the process of census during this year, all the correspondence which the Census Registration Commission of Kosovo has sent to Municipality of Kllokot was in Albanian language.³⁶⁸

During this reporting period, the newly formed Municipalities, namely Partesh and Ranillug employed two translators for Albanian language, one per each Municipality. The Municipality of Kllokot employed two translators, but there is a need for one more translator. Due to the budget shortages the Municipality may not achieve this objective.³⁶⁹ Despite the measures taken by these Municipalities, there are still failures as regards implementation of the *Law on Use of Languages*.

During the process of monitoring the use of official languages, the Ombudsperson noticed that the insufficient number and reduction of the number of translators presents a continuous problem for the other Municipalities of Kosovo as well, which directly infringes the implementation of the Law on use of Languages. The problem is that several Municipalities in Kosovo have translators for all official languages. Also, there were no regular trainings organized for the translators in the Public Administration sector, which impact the quality of their translations due to lack of financial means to recruit professional translators.

Also during this reporting period, there were cases of violations of the right of communities to have their names written in the civil registration books in the official languages in the municipalities, as well as other documents issued by the public institutions and municipal authorities,³⁷⁰ in their original form which is adequate with the alphabet and correct spelling of the language communities to which they belong. The authorities justified such situation

³⁶⁸ Information obtained during the meeting with the President of Ranillug Municipality and Vice-President of Partesh Municipality, held on 15 December 2011, as well as meeting with the President of Kllokot Municipality, held on 22 December 2011.

³⁶⁹ Information from the meeting with the official of Kllokot Municipality held on 22 December 2011.

³⁷⁰ Article 27 of the Law no. 02/L-37 on Use of Languages.

with lack of software in Turkish and Serbian language. Therefore, some of the letters in Serbian and Turkish language are still written incorrectly and also incorrectly appear on the ID cards, birth certificates, certificates of titles and other official documents. The Serbian names in the documents of the Republic of Kosovo mainly are written in Latin alphabet, not the Cyrillic alphabet, which is an official alphabet of the Serbian language.

Due to lack of professional translators in Serbian language occurred delays in delivering judicial decisions because they needed to be translated, but during this period of time there were no complaints lodged regarding this problem.

While, there are also delays in delivering decisions to the complainants by the Constitutional Court as well, because all documentation must be translated into English language due to the Court's composition as from the total of 9 Judges in this court, 3 are foreigners. But, the OIK did not receive any complaint.

On the Prime Minister's official web page, the names of the ministers who are members of Serbian community are written incorrectly, because these names are not written in accordance with the Serbian alphabet and in accordance with the spelling in Serbian language.³⁷¹

The Turkish language, except in the Municipality of Prizren also enjoys the status of official language in another 5 Municipalities, such as Prishtinë, Gjiilan, Mitrovicë, Vushtrri and Mamushë. The Municipality of Gjiilan in the translation office employed two Serbian speaking translators, but there are no Turkish speaking translators, which is one of the official languages in this Municipality.³⁷² Also, in the Municipality of Mitrovicë and Vushtrri there are no official translators for Turkish language.³⁷³ In the Municipalities in which the Turkish language is an official language, the authorities are not fully respecting the obligation to put official signs in and out of the municipal premises of all institutions and bodies acting within the authority of these municipalities.³⁷⁴

The Bosnian language enjoys the status of an official language in the following municipalities: Pejë, Prizren, Istog and Dragash. In these Municipalities, the information activities are being conducted in Bosnian language. In accordance with the needs, the authorities provide oral and written translation, but we must emphasize the fact that the number of translated documents and the quality of translations are not at the satisfactory level.

The topographic signs showing names of all places of regional roads in the territory of the Republic of Kosovo are put in all official languages in accordance with the names of these places,³⁷⁵ but these road signs have not yet been replaced with the new ones because the names in Serbian or Albanian language in the current tables are erased and are not readable. One of the few roads where almost no names of the places on the road sign have been damaged is the road Prishtinë-Gjiilan.³⁷⁶ Also, there are cases in the Municipalities inhabited

³⁷¹ <http://www.kryeministri-ks.net>, on 23 December 2011, 13:40h.

³⁷² Information obtained from the meeting with the president of Committee of Communities and the President of the Human Rights Office of Municipality of Gjiilan held on 15 December 2011.

³⁷³ Information provided by officials of Mitrovica and Vushtrri Municipalities, dated 22 December 2011.

³⁷⁴ Article 9.1 of the Law on Use of Languages and Article 8 of the Administrative Instruction no. 2011/02 on determination of administrative sanctions regarding violation of the Law on use of Languages.

³⁷⁵ Law on use of Languages, no. 02/L-37, article 9, section 2.

³⁷⁶ Note taken on 15 December 2011.

by the minority communities in which topographic signs showing names of villages and cities are not written in both official languages.³⁷⁷

As regards use of languages of minority communities in public places, in some Municipalities, such as Municipality of Ferizaj, Viti, Glogoc and Skënderaj, the Kosovo Serbs still don't feel comfortable to speak their native language because they are concerned about their own safety, although there were no complaints lodged by the individuals due to an action or concrete concern. While the Albanians still do not feel safe to use their native language in the public places in the Municipalities in the northern part of Kosovo, such as: Leposaviq, Zubin Potok and Zveçan. The Turks and Bosnians feel free to use their native language in public places. The members of these communities speak Albanian language as well, which helps them in their daily communications at all levels.

The Ombudsperson notices that despite the fact that there is a will and there are positive developments as regards implementation of the Law on Use of Languages, there are still problems and differences in implementation of language policy and equal use of official languages at the central and local level.

Recommendations

- *The Language Council to become fully operational and to provide to this Council necessary human capacities and financial means.*
- *To appoint in the Language Commission another two members of communities, one from the Bosnian and one from Roma communities.*
- *To provide a budget for recruitment of professional translators in the institutions lacking such translators at the central and local level.*

The rights of communities and their members

The rights of communities and their members guaranteed by the article 59 of the Constitution of the Republic of Kosovo include protection of their rights in the field of culture and preservation of their identity, education, use of their native language, use of toponyms, access and representation in media, development of non-governmental sector within their community, as well as participation in the Non-Governmental international sector in Kosovo.

As regards the total number of Kosovo population, we emphasize the data that the census in Kosovo has been carried out from 1 to 15 April 2011.

But, this census was accompanied by many shortcomings. Most of the members of Serbian community did not participate in this census. Also, due to the political reasons, the census has not been carried out at all in the north of Kosovo, while it has been partially carried out in other parts of Kosovo, namely in the Municipalities where the Serbs are majority. However, the Albanian ethnic community constitutes majority of Kosovo population (90 %). While, the

³⁷⁷ Ibid.

minority communities, which make 10 percent of Kosovo population are: Serbs, Turkish, RAE, Gorani, Bosnians and a small number of Croats and Montenegrins.

2.23.19. *The Serbian community*

During this reporting period, positive movements were noticed as regards the issue of return refugees in Kosovo from various country, as well as the issue of the internally displaced persons. In the Municipality of Klina, in July 2011, started the official work on the project “Pogragja”, which has begun on 2009. Based on the project, 15 premises were constructed in this village, while the houses were delivered to the returnees by the Technical Commission of the Ministry of Communities and Return (MCR) during the month of October. In the Municipality of Prizren, the construction of the houses for the returnees in the town, respectively near the Saint George Church is finished. The project was finished officially in July, where 10 houses were constructed, while during the month of August, the MCR has received the premise for use. Also, the process of return of 8 families, members of Serbian community in the Municipality of Shtërpçë has been supported. At the end of November were finished works on the premise which has been handed over for utilisation.³⁷⁸ The newest Municipality of Kosovo, Partesh has established a Working Committee on reparation, aiming to ensure the right to return to all persons who are by origin from Kosovo by putting all efforts to create favourable conditions for a sustainable and permanent return for all persons originating from Kosovo. The reparation process must be implemented based on the principle of *non-refoulement*³⁷⁹, while for few families, which returned in this Municipality has been provided a social welfare.

The Serbian community preserves its national and cultural identity through humanitarian and cultural organizations, NGOS`s, as well as through the political groups. This community preserves its religious identity through the Serbian Orthodox Church. As regards the education system, which includes the primary, secondary and higher education as well, the education system functions based on the plans and programs of the Ministry of Education of the Republic of Serbia. But, the education system of the Serbian community and the Serbian Church has almost no contact at all with the official competent bodies of the Republic of Kosovo.

A similar situation is with the health care system of the minority communities. The health care system, which is managed by the Ministry of Health of the Republic of Serbia, still provides health care services to the members of Serbian community, as well as to other communities living in the areas of Kosovo where the Serbs are majority. In the territory of the Municipality of Shtërpçë there is a primary health care protection. While in case of serious health problems the patients get transported to Gračanica hospital and in the northern part of Kosovo. At the end of 2010, in this Municipality started construction of a hospital that is

³⁷⁸ The Ministry of Communities and Return, annual report 2011, please visit <http://www.mkk-ks.org>.

³⁷⁹ The principle of *Non-refoulement* is an internationally adopted law. Article 33 of Geneva Convention from 1951 regarding status of refugees states the following: “ No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion ”.

going to provide a secondary health care. The construction of this hospital is finished. But, the situation with health funds is not at a satisfactory level and far from the acceptable criterions. Due to limited budget, the transport of the equipments cannot be done in order to provide to the members of the communities such health care. Similar situation is also in a hospital in Partesh, which has been constructed in a village resided by Serbs, namely village Pasjan. The building, which is dedicated to provide secondary and partially tertiary healthcare services, was finished and installation of necessary equipments is excepted.

2.6.13. 2.32.2. The other communities

The possibilities of the Bosnian community which is concentrated in the region of Prizren, Gjakovë and Pejë to preserve its language, habits, cultural heritage and tradition are not sufficient. In Kosovo, the education in Bosnian language goes on, but also during this reporting period there were no positive movements marked towards resolving the problems of lack of textbooks in Bosnian language. This problem was planned to be solved during the school year 2010/11.

The RAE communities continuously face the problem of preserving their identity in terms of religion, language, tradition and culture. The cultural and artistic society "Durmish Asllano" from Prizren deals with the cultivation of Roma tradition, while the other organizations were transformed into NGO`s.

The RAE communities in Kosovo are facing a certain scale of discrimination and poverty, which forced them to abandon from their origin by going towards assimilation into the communities which make majority in the areas where RAE communities are living. As a response to such a situation, in 2007 the Kosovo institutions adopted the Strategy for integration of RAE communities, while in 2009 has been adopted the Action Plan for implementation of the above-mentioned strategy. Even after several years since the adoption of these acts, no implementation in the field has been noticed. There are only some sporadic financial activities by the government`s structures and international donors. The report on the implementation of the above-mentioned Action Plan of the OSCE Mission in Kosovo confirms such situation.³⁸⁰

During the 2011, the European Commission adopted the European Framework for establishing a national strategy for integration of Roma community based on which all EU member states, but also those intending to join the EU are obliged to adopt national strategies for integration of this community and to enable respective implementation, including here Kosovo. This has been particularly mentioned during the meetings between the Kosovan and European officials in the presence of representatives of RAE communities in Prishtinë in 2011. The RAE communities in Kosovo still face many problems, which directly and indirectly impact the quality of their life and their integration into the Kosovan society. Due to ethnic background based discrimination, very often the members of these communities decide to immigrate to European countries.

³⁸⁰ <http://www.osce.org/sr/kosovo/77416> (20 December 2011).

Kosovo is facing another problem regarding forceful repatriation of RAE community members from the western countries. The process of forceful repatriation in many cases violates human rights. Despite the fact that so far, no needed pre-conditions for repatriation have been created, amongst which is the issue of habitation, economic existence and the issue of discrimination, the repatriation is going on. There were cases, in which despite the above-mentioned problems, the repatriated person right after the arrival the Prishtina airport remain without any kind of institutional assistance. It happens often, indeed in almost every case that these persons decide to leave Kosovo again. The entire repatriation process has been monitored by the UNHCR and the Ministry of Interior.

The repatriation process of RAE communities is going slowly, but during this reporting period there were also positive movements marked. A positive example is Mitrovica, where during the year 2011 continued returning of the people living in the camps in the north of Mitrovica to “Roma Mahalla” (Roma neighbourhood) in the southern part of Mitrovica. The Osterode and “Çeshmilluk” camps were shutdown like the camps in Zhitkovc near Zveçan, while the residents of these camps are placed in the houses or apartments build for them. Another positive example of investing into the welfare of RAE communities is decision of Swiss Development Agency in cooperation with the Government of Kosovo and Municipality of Gjakovë to shutdown the unsanitary neighbourhood “Kolonia” in which 700 members of these communities were living in very bad conditions. Financial means for building of a new neighbourhood have been allocated. Meanwhile the members of these communities during this reporting period were placed in their own houses.

2.6.14. 2.33.3. The education system of minority communities

In Kosovo in generally, there are still two education systems. The education system managed and financed by the Ministry of Education of the Republic of Serbia still exists in all regions where the Serb live, in the regions where the Serbian speaking Roma live, as well as in the regions where members of Gorani community live. This education goes on based on the plans and programmes of Serbian education system, which defers from the education system of the Republic of Kosovo, where off course, the planes and programmes of the Republic of Kosovo, are implemented. The professional and technical staff of the schools functioning in accordance with the Serbian education plans and programmes receive their salaries from the budget of the Government of Serbia, while the Ministry of Education, Science and Technology (MEST), does so in the form of financial stimulation, which was in a linear manner determined for all employees in the schools.

During this reporting period, we emphasize that as regards education in Gora region, where two education systems are applicable, one education system is in accordance with the plans and programs of the Republic of Kosovo and the other one is in accordance with the education plans and programmes of the Republic of Serbia. In this case, most of the members of Gorani community decided to follow education in Serbian language, mainly because of better conditions to follow-up higher education by using the textbooks in accordance with the plans and programmes prepared by the Serbian Ministry of Education. On the other hand, a

part of residents of Dragash Municipality identifying themselves with the Bosnian community accepted the plans and programmes in Bosnian language prepared by MEST.

The education in the primary and secondary schools in Turkish language is going on in accordance with the plan and programmes prepared by MEST. But, there is a lack of school books for the primary and secondary schools in Turkish language. During this reporting period, for the needs of primary education in Turkish language, no working notebook has been published, while for the needs of secondary education, except basic books for grades I, II and III, there is a lack of other school books in Turkish language. MEST, aiming to facilitate the situation with the lack of schoolbooks in Turkish language, provided some schoolbooks from Turkey. But, the teachers are facing big problems during the implementation of the plans and programmes because these schoolbooks are not in accordance with the planes and programmes drafted by MEST. (For example: in the schoolbooks is mentioned Ankara as a capital city, not Prishtina...).

The low level of education, as well as the low level of awareness on the importance of education is another problem facing the RAE communities mostly. Due to difficult living conditions, many families decide to deprive their children from the right to education. This problem is also supported by the fact that they pursue education in non-native languages, such as the Albanian or Serbian language. Of course, the low quality of education impacts the quality of life of the members of these communities, as well as their living age, which is significantly lower than the living age in generally in Kosovo.

In the Republic of Kosovo, there is still lack of primary education in Roma language, despite the indications that MEST is attempting to develop the education potential in Roma language, which would significantly contribute to preservation of their cultural identity and preservation of language of this community.

The NGO “Voice of Roma, Ashkali and Egyptians“ is headquartered in Gračanica and its fundamental mission is to help RAE communities to get integrated into the Kosovan society, as well as to provide better living conditions to them. Currently, the relevant authorities are working on the implementation of the socialization program and on improving living conditions of RAE communities, which is financed by the Swiss government through the HEKS Swiss funds.

The programme stipulates investments in the field of education (working with the children from the pre-school age in the education centres, scholarship programmes for students of secondary schools, university students and professional trainings); investments in the field of economy (establishment of small family businesses, aiming to decrease the high rate of unemployment and creating the possibilities to achieve a profit) and investments in the field of infrastructure (lobbying at the municipal authorities for investments in the infrastructure projects in the Roma neighbourhoods, such as the installation of canalization system, reparation of roads etc.)

The children of RAE communities mostly pursue education in Albanian language. But, unfortunately the children, members of these communities very early decide to drop out of the school.

2.6.15. 2.33.4. The minority communities and media

The Constitution of the Republic of Kosovo guarantees access and representation of minority communities to public media,³⁸¹ which implies establishing and using their Medias, providing the information in their own language through daily news papers and wire services and to use the reserved number of frequencies for electronic media in accordance with the law and the international standards.

Base on data available to the Ombudsperson Institution, in Kosovo there are 92 radio stations and 22 TV stations. The Serbian community has 3 local TV stations; Turkish community has one TV station, which also broadcasts program in Albanian and Bosnian language, while the other minority communities don't have TV stations. In Prishtina broadcasts radio „Kent FM“, which broadcasts the program in Turkish language, while „Mehmetcik FM“ is a radio station owned by Turkish KFOR contingent, which in May stopped broadcasting the program.

The Radio Television of Kosovo (RTK) is the only public Media institution, which is funded by the Kosovo consolidated budget and financially assisted through various donations. RTK, except broadcasting the program in Albanian language, it prepares and broadcasts the TV and radio programmes in Serbian, Bosnian, Turkish and Roma language. There are indications that in 2012 will start broadcasting the RTK 2, which will mainly broadcast program in the languages of minority communities.

As regards printed media, the Serbian community has the news paper “Jedinstvo”, which is printed in Mitrovicë and financed by the Government of the Republic of Serbia. In Bosnian language, exists magazine “Alem”, which during this reporting period has been published only periodically.

In Prizren exists the magazine in Roma language “Yekhipe”, which is published 6 times during a year, while the local NGO`s in Prizren have established an information web page in Roma language.³⁸²

After termination of publishing the weekly magazine in Turkish language “Yeni Donem” in 2008, the efforts to publish other magazine in Turkish language have failed due to the lack of financial means. The Association of Turkish journalists in Kosovo, which is headquartered in Prishtina, during this period, has started to publish the family newspapers “Tan Haber”. So far, 4 editions of this newspaper have been published. In terms of information through the internet, there are two web pages in Turkish language, “Kosova haber”, which is headquartered in Prizren, and for its readers provides translated services into Albanian and Bosnian languages and the web page “Kosovaport”, which is headquartered in Prishtina.

³⁸¹ The paragraphs 10 and 11 of the article 59 of the Constitution of the Republic of Kosovo.

³⁸² <http://roma.courriers.info>

3. THE ACTIVITIES OF THE OMBUDSPERSON INSTITUTION

3.1. The activities of the Gender Equality Group

Within the Ombudsperson Institution (IAP) functions the Gender Equality Group (GEG), which has been established based on the article 6 of the Law on the Gender Equality,³⁸³ as well as based on the Law on the Ombudsperson,³⁸⁴ with the aim to investigate, monitor and protect the citizens of Kosovo against gender based discrimination. GEG is engaged in the process of advancing the principle of gender equality. Also, GEG is responsible for revision of laws and awareness rising regarding appropriate implementation of the Law on Gender Equality.

During 2011 the GEG has carried out many activities for promotion and protection of gender equality in Kosovo.

From 6 to 8 April 2011, two legal advisers of the OIK participated in a conference “the role of national human rights structures in protecting the rights of children under care”, which took place in Talin (Estonia). The aim of participating in this training was building up professional capacities of the staff that investigates and monitors human rights and fundamental freedoms.

On 18 May 2011, the Gender Equality Unit participated in a project “the Security Index of Women in Kosovo”, which has been organized by the Kosovo Centre for Gender Studies. The aim of the project was to implement a new standardized methodology, which enables periodic measuring of the important security parameters for women in Kosovo in long term periods. The Kosovo Centre for Gender Studies created a base for promotion of women’s safety in Kosovo and promotion of Resolution 1325 for Women, Peace and Security.

On 24 and 25 May 2011 two legal advisers participated in a conference held in Kiev (Ukraine) on the topic “the role of national human rights structures for protection of rights of persons with disabilities”. The purpose of the visit was building up the professional capacities of the Anti-Discrimination Department and the Gender Equality Unit.

On 8 June 2011, the RAE Women Network of Kosovo organized a conference aiming to create the concrete initiative by key actors in supporting the reintegration and repatriation of women and girls members of RAE communities who were repatriated from the western countries. The following topics were tackled during this conference:

- The institutional repatriation strategies and agreements for integration of RAE communities in Kosovo, including gender aspect in the process of integration of returnees;
- The cooperation between the international organizations and domestic NGO`s in the integration process of returnees;

³⁸³ The article 6 of the Law on Gender Equality, no. 2004/2, adopted by the Assembly of Kosovo on 19 February 2004.

³⁸⁴ Law No. 03/L-195 on the Ombudsperson, adopted by the Assembly of Kosovo on 20 July 2010, article 31; Regulation of the Ombudsperson Institution of Kosovo, adopted on 2011.

- The integration of returnees into the education system;
- The regional cooperation of the NGO`s of RAE communities;

On 3 June 2011, the Gender Equality Unit participated in a round table on the topic “Maternity leave, legal provisions that go into women’s favour or disfavour based on the applicable laws”. The round table was organized by the Kosovo Centre for Gender Studies. The purpose of this table was to harmonize the Law on Labour and the Law on Civil Service of Kosovo with regard to maternity leave. During this round table, the participants also discussed the maternity leave provisions scale of women’s favouring and disfavouring.

On 6 July 2011, the non-governmental organization “Norma” organized a round table “Research and monitoring of the Law on Gender Equality”, in which participated the Gender Equality Unit as well. During this round table, the participants discussed the level of implementation of this law.

On 18 October 2011, the Gender Equality Unit participated in a debate organized by the Assembly of the Republic of Kosovo on the topic of “Domestic violence”. This debate has been organized by the female MP`s of the Assembly of the Republic of Kosovo. During the meeting was reached the conclusion that there is lack of courage to report cases of domestic violence. Also, the participants proposed adoption of the normative acts by the Government of Kosovo, aiming to implement the Law against the Domestic Violence.

On 4 October 2011, the Gender Equality Unit participated in the promotion of the report “Women Security Index for 2010-Report on Kosovo”, organized by Kosovo Centre for Gender Studies.

On 25 November 2011, on the occasion of the Day on the Elimination of Violence against Women, the Ombudsperson accompanied by the representatives of Gender Equality Unit visited the Centre for Protection of Women and Children in Prishtina and during the meeting they were informed by the directress of this centre about the work and difficulties that this organization is facing.

On 12 December 2011, the Gender Equality Unit participated in a conference on the topic “the equal political representation of women in Kosovo”. The Gender Studies Centre, together with the organization “Kvina till Kvina” organized a lecture regarding gender quota in the election system.

On 19 December 2011, the Gender Equality Unit participated in a conference “The impact of Law on Labour on women in Kosovo”, organized by the Kosovo Gender Studies Centre. The purpose of this project was promotion of data research report, which would be useful information for the institutions and organizations dealing with women’s rights in the field of labour.

3.2. The activities of Children’s Rights Group

The Children’s Rights Group (CRG) functioning within the Ombudsperson Institution was established to monitor, protect and investigate cases of violation of children’s rights by the public authorities of Kosovo.

CRG, during the 2011, except reviewing the complaints lodged at the OIK has also undertaken the other activities related to promotion and protection of children's rights, as well as building-up the professional capacities.

From 1 to 4 March 2011, one of the workshops planned to be held for development of the project "Mapping, assessment and development of children's protection system in Kosovo", took place in Durres and was organized by the UNICEF in cooperation with the Advisory Agency DeLegibus Consulting. The CRG attended this workshop.

During this workshop were provided the information on the situation regarding protection of children in Kosovo through completing several questionnaires, which pertained to so called set of analytical instruments, necessary for the assessment of legislation, services and existing policies for protection of children's rights in Kosovo, as well as for the identification of obstacles and possibilities for their implementation. After the analyzing and assessment of this information and other data related to children's protection, the enclosing draft-report, respectively findings and recommendations regarding situation of children's rights in Kosovo were revised and discussed during the other workshop, which took place in Prishtina on 10 June 2011. During this workshop were also discussed future steps that need to be taken with the aim of finalizing and asses the children's protection system in Kosovo.

"The role of the Ombudsmen in protecting the children from the psychological and corporal punishment" was a topic of discussion during the annual meeting of the Network of Ombudsmen for Children of Southeast Europe (CRONSEE),³⁸⁵ whose member is also the OIK. The meeting took place on 20 May 2011 in Skopje.

Based on the presentations during the meeting, it results that in the CRONSEE members States, the psychological and corporal punishment of children is still a widespread phenomenon in the families, schools, institutions taking care of children and on the streets and as such this phenomenon is not recognized and treated as a violation of children's human rights. Given the situation and aiming to improve the children's protection from all kinds of corporal and psychological punishment, as well to provide to them protection from abusing, the participants of this meeting among others agreed that changes need to be done, especially regarding legislation of the countries in which the corporal punishment must be explicitly prohibited at all segments of the society (family, education, institutions, streets etc.) and that the persons exercising violence against the children must be subject to harsher punishments.

"Protection of children from the economic exploitation", was another CRONSSE topic of discussion during the conference which took place in Ohrid (Macedonia) from 6 to 7 September 2011. During this conference, all participants agreed that the economic exploitation of children, especially begging on the street remains an extremely worrying phenomenon (except in Slovenia). The joint conclusion from this conference was that the respective States should undertake necessary measures in order to prevent and eliminate this phenomenon aiming to protect children's health and welfare.

From 14 to 16 September 2011, in Warsaw (Poland), took place the annual conference of the European Network of Ombudspersons for Children (ENOC), in which, except the member States of this network, participated also the representatives of the Ombudspersons for children from non-member states. CRG participated in this conference in the capacity of a observer.

³⁸⁵ www.cronsee.org/.

The main topic of this conference was “Respect of the rights of children living in institutional care”. Regarding this issue, there was a research conducted in order to assess the situation with regard to this issue in ENOC member States.

Based on the presented research results, in many countries there is a huge inconsistency between the legal frameworks that regulates this issue and its practical implementation. While, in most of the countries, the reasons for putting the children under the institutional care are not sufficiently clear and leave the space for interpretation by the courts or the other competent bodies.

From 4 to 6 October 2011, the CRG participated in a workshop organized by the Prime Minister’s Office and the UNICEF in Durrës. The topic of this workshop was to make operational the Council for Protection and Justice for Children³⁸⁶. During the workshop has been draft the Work Draft-Regulation and action plan for this council for the next three months.

On 7 December 2011, the CRG participated in the workshop “Annual review of the activities foreseen by UNICEF action plan for 2011”, organized by the UNICEF. During this workshop was discussed about the undertaken activities, which were foreseen by action plan for 2011, as well as about the challenges faced during taking such actions. Also, during this workshop were determined activities undertaken by the Council for Protection and Justice for Children for 2012, which are going to be supported by the UNICEF.

Aiming to mark the Universal Children’s Day³⁸⁷, CRG realized several meetings with the pupils of primary schools in some of the villages of the Municipalities of Prizren, Pejë, Mitrovicë and Gjilan. During these meetings the OIK staff members informed pupils on the OIK mission, respectively the mission of CRG regarding protection and promotion of children’s rights in Kosovo. During the meetings was also discussed the situation of children’s rights in the respective schools and the way of addressing these concerns and problems of pupils in the schools.

Based on the discussions with the pupils, it seems that pupils in some of the visited schools are not well informed about the children’s rights and the OIK role for protection of human rights. Some of the schools have no adequate conditions for education, while the pupils of the primary school “Zenun Çoçaj” in Gjonaj village are facing lack of drinking water and toilets.

On the occasion of marking the Universal Children’s Day, the children from Prishtina primary schools visited the OIK headquarters. They met with the Ombudsperson and got closely acquainted about the work, mission and the engagement of the OIK for protection and promotion of children’s rights.

³⁸⁶ The above-mentioned council has been established by the Government of the Republic of Kosovo on 25 August 2011. The mandate of the Council among others is to determine the priority of necessary measures, which need to be taken with the aim of improving the situation regarding protection and justice for children. This Council is composed of representatives of governmental and non-governmental institutions dealing with the issue of children’s rights. The Ombudsperson Institution is a part of this council in the capacity of observer member.

³⁸⁷ The Universal Children’s Day is marked on 20th November every year by many world countries since 1956 in accordance with the United Nations General Assembly Recommendation. The General Assembly recommended marking of this day aiming to encourage brotherhood and understanding between the children, as well as to promote children’s well being.

3.3. The activities of the Anti-Discrimination Group

The Anti-Discrimination Group (ADG), established as a special group, which functions within the Ombudsperson Institution since 8 March 2004, during this reporting period has received and reviewed a large number of complaints lodged by persons who allege they were victims of discrimination.

The lodged complaints belong to various natures. Most of these complaints are related to discrimination in the sphere of social, health care and property issues, as well as work relationship. While, some of these complaints were lodged by the persons with disabilities and the other complaints are related to discrimination on religious basis.

During this reporting period, the ADG visited hospitals, schools, NGO`s, representatives of persons with disabilities and neighbourhoods that are mostly inhabited by the Serbian community. Also, the ADG participated in several debates with citizens in different Municipalities and was closely informed about the citizens` problems on the field.

Aiming to get closely acquainted with the problems of Serbian community and to receive eventual complaints regarding freedom of movement, the ADG visited the following Municipalities: Ranillug, Gjilan, Kllokot, Viti, Shtërpçë, Prizren, Dragash, Pejë, Klinë, as well as the villages Gorazhdec and Osojan, which are mostly inhabited by members of Serbian community.

ADG, during 2011 participated in several meetings and round tables, as following:

- 29 March 2011, round table held in Prishtina on the topic “Implementation of mediation in the Kosovo Property Agency, an alternative method for resolution of property contests”. The recommendation arising from this round table was that KPA uses mediation as a method for resolution of property contests.
- 5 May 2011, joint meeting at the Prime Minister’s Office with RAE communities regarding progress of strategy for integration of these communities for the period of time 2007-2017.
- 24 - 25 May 2011, Kiev (Ukraine), the 4 workshop on the topic “The role of national human rights mechanisms for protection and promotion of the rights of persons with disabilities”, which has been organized by the Council of Europe/European Commission in their joint programme: "Promoting the national non-judicial mechanisms for protection of human rights".
- 8 June 2011, in Hotel Grand in Prishtinë, took place the conference on the topic "Integration and reintegration into the Kosovan society of the repatriated women, members of RAE communities”, organized by the Kosovo Centre for Gender Studies.
- From 9 to 11 June 2011, ADG participated in a regional conference held in Ohrid (Macedonia) on the role of the Ombudsperson in combating discrimination and torture. The representatives of the Ombudsperson Institutions from the countries participating in

this meeting exchanged their experiences in handling discrimination based complaints and their experience in combating the torture. Also, each representative of the Ombudsperson Institution introduced the Anti-Discrimination law of his/her own country, the issues that regulates this law, as well as the issue of implementation.

- On 28 June 2011, in “Vila Lira”, in Prishtina took place training "Practical and organizing skills”, organized by the OSCE within the project "Supporting the local mechanisms for monitoring the places where the persons deprived of their liberty are held”.
- On 29 June 2011, ADG participated in a press conference held in Prishtina regarding publication of the Kosovo Property Agency annual report.
- 8 July 2011, was organized a round table on the topic “Health care insurance – a lacking right”, in which the ADG has had an active role by presenting concerns of Kosovo citizens regarding lack of Law on Healthcare Insurance.
- From 28 to 29 September 2011, in Sarajevo (Bosnia and Herzegovina) was held 5th thematic workshop "The role of national human rights mechanisms in protection from all kinds of discrimination", which was organized by the European Council/European Commission in their joint programme " Promoting the national non-judicial mechanisms for protection of human rights”.
- On 1 November 2011, ADG actively participated in a round table organized by the Ombudsperson on the topic "The Ombudsperson – Human Rights - Media".
- From 2 to 5 November 2011, in the restaurant “Brilant” in Prishtina was held training on "The implementation of human rights standards in Kosovo – the applicable standards and legal methodology – the strategies and research techniques”, organized by Democratization Department of the OSCE Mission in Kosovo.
- From 29 to 30 November 2011 in Geneva (Switzerland) at UN “the Palais des Nations” took place the fourth session of United Nations Forum on the minority issues on the topic "Safeguarding the rights of women of minority communities”.
- From 2 December 2011, under the ADG coordination was held the round table organized by the Ombudsperson on the topic “Stop discrimination-equality for all”. During this round table was discussed about the problems that the persons with disabilities face in Kosovo, the Ombudsperson’s findings regarding violation of human rights, as well as on the measures taken or measures planned to be taken by the competent authorities at the central and local level. During the round table was also discussed the issue of implementation of the laws and National Action Plan for the persons with disabilities for the period of time 2009-2011. The round table issued recommendations, which are being followed-up by the Unit for Human Rights of Persons with Disabilities, which has been established within the Non-Discrimination Department of the OIK.
- From 15 June 2011, the ADG representative participated in the capacity of a panellist in “Media Centar”, where the participants discussed the issue of implementation of the Anti-Discrimination Law.
- On 19 December 2011, the ADG representative participated in a round table organized by the Prime Minister’s Office for Good Governance on the topic “Action plan for the implementation of the Anti-Discrimination Law”.

- On 20 December 2011, the ADG representative participated in a round table organized by the Ombudsperson Institution. The topic of the round table was “Proving the work experience”.

4 OIK`S COOPERATION

4.1. *Cooperation with domestic institutions*

During the reporting period, the Ombudsperson Institution (OIK) has cooperated with domestic institutions, such as the following: the Assembly of the Republic of Kosovo, Government of the Republic of Kosovo/Ministries, Municipalities, as well as with the Independent Agencies and the Courts.

The OIK has cooperated with the Assembly of the Republic of Kosovo in continuity, it has submitted to the Assembly its annual report, notified the Assembly regarding non-implementation of OIK recommendations, participated in the activities of the Assembly's Committees and it has also informed the Assembly about the real difficulties of the OIK³⁸⁸. Also, the OIK has closely cooperated with the relevant Parliamentary Committees regarding selection of Deputy Ombudspersons and informed the Assembly regarding the problem of Deputy Ombudspersons` salaries.³⁸⁹

As regards cooperation between the OIK and the Government of the Republic of Kosovo, the OIK has sent letters and recommendations regarding investigations of complaints, but we must emphasize that cooperation was not at a satisfactory level, especially as regards lack of government's response to the letters that were sent, as well as lack of implementation of OIK`s recommendations.

The OIK has also cooperated with the municipalities. The OIK has sent letters and recommendations, but it also faced difficulties in some of the Municipalities because some Municipalities were not willing to provide to the OIK work offices in their premises. The OIK, supported by the OSCE Mission in Kosovo organized 3 round tables on the topic: "the inter-institutional cooperation for respect and protection of human rights". The activities were carried out in Mitrovicë, Prizren Gjilan and Gjakovë. The coordinators of municipal human rights units, other public officials from the municipal level and various NGO`s participated in these round tables. This activity has been carried out within the public campaign for 2011 "The Ombudsperson, a step closer to the citizen", which was extended throughout Kosovo. Discussions were focused on methods of a more effective cooperation and communication for the benefit of the citizen.

On the other side, the cooperation with judiciary continued. A large number of the complaints of citizens are lodged against judiciary. Letters and reports were sent to this institution and there were numerous contacts with various courts.

³⁸⁸ Report on obstacles to fulfilment of OIK`s constitutional mission due to violation of its independence. This report has been sent to the Assembly of the Republic of Kosovo on 17 June 2011.

³⁸⁹ Non-execution of OIK`s decision regarding processing of salaries for the Deputy Ombudsperson by the Ministry of Public Administration, sent to the Assembly of the Republic of Kosovo on 29 November 2011.

While, as regards cooperation with the Constitutional Court the OIK cooperated regarding issues raised to the court by the OIK and citizens. The OIK has raised the issue of the Law on the Ombudsperson at the Constitutional Court of Kosovo.³⁹⁰

The OIK pays particular attention to cooperation with Media. Within this cooperation, the OIK organized the round table “The Ombudsperson – Human Rights - Media”, which provided a possibility for a joint discussion between the representatives of Media in Kosovo and the Ombudsperson regarding human rights and fundamental freedoms, the space that is provided to this issue in media and the mutual cooperation.

4.2. Cooperation with the civil society

The Ombudsperson considers as a very important issue the cooperation with the civil society for providing an effective system for protection and promotion of human rights. Such cooperation can help the OIK to accomplish its mission. The cooperation with the civil society impacts positively the awareness rising on human rights and participation of vulnerable groups of society in the human rights system.

As an evidence of this cooperation is Decision of Constitutional Court on the Law on the Rights and Responsibilities of the MP`s, which was initiated by the Ombudsperson upon the request of civil society, respectively upon the request of the following organizations: Kosovo Democratic Institute (KDI), Forum for Civic Initiative (FIQ), Youth Initiative for Human Rights (YIHR), Kosovo Initiative for stability (IKS), Initiative of Progress (INOP), Balkans Policy Institute (IPOL), the Council for Protection of Human Rights and Freedoms (CDHRF), Movement “Fol”, Community Building Centre in Mitrovica (CBM), Centre for Politics and Advocacy (QPA) and “Syri” Vision, which highly appreciated the work of the OIK in protecting the interests of Kosovo citizens, which strengthens the integrity of this institution and trust of Kosovo citizens for building a State based on rule of law.³⁹¹

Another example of good cooperation is the Memorandum of Understanding signed between the OIK, Kosovo Rehabilitation Centre for Torture Victims (KRCTV) and Council for Defence of the Human Rights and Freedoms (CDHRF), which marks initiation of establishing a transparent and sustainable mechanism for monitoring the places where the persons deprived of their liberty are held and will work on establishing a National Prevention Mechanism for Prevention of Torture (NPM).

After signing this agreement the signatory parties started series of activities. It is worth to mention the study visit to Albania, which has been organized by the OIK in cooperation with the OSCE. The aim of this study visit was that the participants get acquainted with the functioning of the Albanian NPM and to benefit from the experience of the People’s Advocate of Albania acting in the capacity of an NPM. Also, during this study visit the

³⁹⁰ Request addressed to the Constitutional Court of the Republic of Kosovo regarding imposing of interim measure to implementation of the article 32, section 31 of the Law no. 03/L-195 on the Ombudsperson. This request was submitted to the Constitutional Court on 6 December 2011.

³⁹¹ Kosovo Democratic Institute, an open letter, dated 27 December 2011, www.kdi-kosova.org.

participants were informed on the work methodology, action plans, as well as the way of submitting the NPM reports.

The Ombudsperson Institution on 2 December 2011 organized a round table on the topic “Stop Discrimination – equality for all”, on the occasion of the international day of persons with disabilities. Several recommendations arose from this round table, such as the following: the need for amendment of the Anti-Discrimination Law, incorporation into the Constitution of Kosovo of Convention on the Rights of Persons with Disabilities; creating a comprehensive strategy for the persons with disabilities, providing the official status to the language for deaf persons; improvement of the cooperation between the organizations of persons with disabilities and the institutions whose mission is to realize their rights, creating the conditions for education, employment and free movement for this group of persons.

4.3. Cooperation with the international organizations and capacity-building

The cooperation with the international organizations in Kosovo and abroad is of a particular importance for the OIK. Therefore, the OIK has participated in the various activities, including active participation of the OIK staff members in many meetings and international conferences, workshops, seminars and study visits regarding developments in the field of human rights.

The OIK continues close cooperation with the OSCE Mission in Kosovo. In order to create long-term institutional care, the OSCE Mission supports the OIK as the only national human rights institution in the Republic of Kosovo through its special adviser to the Ombudsperson Mrs. Jerina Dampier who assists the OIK in its daily activities.

Except this, the OSCE supports the OIK in capacity building by organizing and supporting many activities and trainings in the field of human rights, which directly impact increasing of performance of the OIK staff members.

It is worth mentioning the study visit to Strasbourg, during which 17 staff members of OIK had the opportunity to visit the Council of Europe and the European Court of Human Rights and to learn closely about the work, as well as to learn from this experience, which could be useful in their daily work. During this study visit, the participants had the opportunity to receive lectures from the Judges of the European Court and experiences of other employees as well regarding their work and main challenges they face during their daily activities, the manner of proceeding the cases in this court, admission criterions etc. The OIK staff members were present during a session held in Grand Chamber in Strasbourg’s Court,³⁹² where they learned about the work and its functioning. Except this, the participants had the opportunity to hear lectures from few Departments of Council of Europe, such as: Department of Legal Issues and Human Rights, The Committee for EU Agency for Human Rights, the Secretariat for Framework Convention for the Protection of National Minorities and Committee for Prevention of Torture.

³⁹² A session of Grand Chamber of the European Court of Human Rights in Strasbourg regarding the case no. 9300/07, Herrman vs. Germany, held on 30 November 2011, at 09.15 o’clock.

Also, the OSCE supported the OIK in organizing several trainings from various human rights fields, such as the following: implementation of international human rights standards during which the experts of the European Court of Human Rights delivered lessons, Strategic Planning and communication skills with the persons deprived of their liberty, training on planning the work in monitoring the places where the persons deprived of their liberty are held. The OIK staff members joined this training together with the other members of working group, which are the part of the initiative for establishing the NPM.

The OIK also has very good cooperation with the Council of Europe. Although, Kosovo is not a member of the European Council the OIK has been invited in regular basis to join various conferences, which also impacted improvement of cooperation between the OIK and homologous institutions for human rights in Europe.

A project Peer-to-Peer is of particular importance. This project is financed by the European Union and Council of Europe, which has the following objectives: promotion, supporting and strengthening the national human rights institutions in accordance with the international and European standards (including Paris Principles); promotion of national prevention mechanisms against torture; promotion of cooperation/network of national structures for human rights and national prevention mechanisms.³⁹³

Within this project, the OIK participated in several activities, such as the workshop on the topic “The role of National Human Rights Structures in the Protection and Promotion of the Rights of Children in Care”, which took place in April 2011 in Talin (Estoni). During the conference, the participants discuss on the international legal mechanisms, which protect the rights of children in care, adoption of children by families and presented various opinions regarding family and institutional care provided by State.

Another meeting within this project was the 5th meeting of contacting persons in the human rights institutions, which took place on 8 December 2011 in Ljubljana (Slovenia). During this meeting the participants discussed various issues of future interest.

The OIK also has a good cooperation with the United Nations Human Rights Commissioner Office in Geneva. The OIK received from the above-mentioned office various invitations for meetings and conferences, but it also reported to the Office of Human Rights Commissioner on the situation of human rights in Kosovo. On 15 March 2011, the OIK submitted to this office a report on the situation of human rights in Kosovo in accordance with the questionnaire sent to the OIK by the Office of High Commissioner for Human Rights. Also, on 24 February 2011 the OIK received a questionnaire and answered questions regarding situation of human rights of older persons in Kosovo.³⁹⁴

In May 2011, the Ombudsperson and another institution’s staff member participated in the 24th meeting of International Coordinating Committee of National Human Rights Institutions (ICCNHR).³⁹⁵ Many representatives of the States around the world participated in the meetings of this Committee where many issues regarding human rights were discussed. The

³⁹³ Council of Europe, Joint European Union - Council of Europe Programme, 26 December 2011, www.coe.int

³⁹⁴ Questioner sent by the Office of High Commissioner on the role of the institutions and civil society in prevention and protection of human rights of elderly persons in the Republic of Kosovo.

³⁹⁵ The International Coordinating Committee on promoting and protecting human rights is an international independent mechanism which promotes establishment and strengthening of national human rights institutions for human rights in accordance with the Paris Principles.

participants also discussed the ICCNHR progress report, the right to education, the rights of persons with disabilities; the Convention against Torture and its implementation; women's rights, combating racism, the international human rights institutions in the situation of armed conflicts.

Within the OIK cooperation in this sphere, the Ombudsperson has had meetings with many personalities and discussed the tendencies and current developments in Kosovo. During the meetings, these personalities promised to the Ombudsperson an intensive engagement for the OIK and its accreditation to ICCNHR in accordance with Paris Principles³⁹⁶. Within this meeting was also organized the workshop on the topic "the role of prevention in protection and promotion of human rights", in which the participants discussed the role of prevention of violation of civil and political rights, prevention of torture and abusing, prevention of violation of social and cultural rights, trafficking in persons, migration and discrimination.

On the occasion of marking the International Human Rights Day, the OIK together with the Office of High Commissioner for Human Rights in Kosovo organized a round table on the topic "what does it mean to be a human rights protector". Many human rights an activist participated in this round table and displayed motives and challenges that they face during their daily work.

The OIK will also in the future cooperate with domestic institutions, civil society and the international organizations hoping that it will have bigger support of the Assembly of the Republic of Kosovo, bigger respect to its recommendations by the Government of the Republic of Kosovo, closer cooperation with the civil society and support of the OSCE in the future, aiming to jointly work on improvement of the human rights situation in Kosovo.

³⁹⁶The Paris principles are standards that must be met by all national human rights institutions in order to achieve credibility and to function properly.

5. THE BUDGET OF THE OMBUDSPERSON INSTITUTION

The Ombudsperson Institution of Kosovo (OIK) is an independent public institution, which is financed by the budget of the Republic of Kosovo. According to the Law on the Ombudsperson “*the Ombudsperson Institution prepares its annual budget proposal and sends it for approval to the Assembly of the Republic of Kosovo*”.³⁹⁷ Also, according to this provision of the law, the relevant authorities provide necessary budget to the OIK regardless of the provisions of other laws”.³⁹⁸

5.1. *Financing the OIK from the budget of Kosovo*

Based on the applicable legislation on budgeting and financial independence, the OIK on 29 June 2010 has submitted to the Assembly of the Republic of Kosovo the budget request for 2011, based on the legal process for preparation and submission of regular budget request.

The Ombudsperson’s budget request for 2011 is based on the work plan and planned activities, as well on the new competencies of the Ombudsperson, which are set forth by the legislation adopted by the Assembly of the Republic of Kosovo.

On the occasion of reviewing the Ombudsperson’s budget request for 2011, the Ombudsperson was not invited by the Assembly of Kosovo/Committee for Budget and Finance for reasoning of budget request despite the legal right and obligation to do so.

The Ombudsperson is very concerned and expresses his dissatisfaction since the highest legislation body did not provide to the Ombudsperson the opportunity and the legal and constitutional right for protection and reasoning of budget request.

The OIK’s budget request for 2011 has been prepared based on two following versions:

- a) Based on the first version, the OIK requested a budget amount of 1.595.025.60 €. This budget request included expenses for the following budget categories: *wages and salaries, goods and services, public utility expenses and capital expenses* (a project proposal for building new work premises for the OIK).
- b) Based on the second version, the OIK requested a budget amount of 765.025.60 €. This budget request included expenses for the following budget categories: *wages and salaries, goods and services, public utility expenditures and capital expenses*. Through this budget request the OIK particularly calculated and requested necessary budget for rent of offices in the OIK headquarters in Prishtina.

Despite the regular budget request, the OIK budget request for 2011 has not been assessed, reviewed and adopted based on the law and merits by the Assembly of the Republic of

³⁹⁷ The Law on the Ombudsperson, no. 03/L-195 article34, paragraph 2.

³⁹⁸ Ibid.

Kosovo. The adopted budget, which amounts to 629.390.00 € was insufficient and did not fulfil the needs and real requests for work and functioning of the OIK.

The allocated budget for 2011 was insufficient, especially for the following budget categories:

- a) As regards salaries and wages, the budget request was related to request for increase of the number of the employees – fulfilment of needs for new staff for the professional service and the administration. The OIK planned the following new positions: investigation legal officer (6 positions); manager of the office of personnel, manager of the office for the international relations, certification officer, internal auditor, information technology officer (2 positions), editor; archivist and librarian etc.
- b) As regards the category of goods and services, it must be emphasized in particular that budget allocated for rent of work offices at the OIK headquarters in Prishtina was insufficient. As a result of privatization process of the socially owned premise (the premise that the OIK rented by the month of May 2011), the OIK has established new contractual obligations for the rent of the OIK headquarters in Prishtina.

Due to the limited budget allocated to the OIK for the 2011 by the decision-making bodies, respectively the Assembly and the Government of the Republic of Kosovo, despite the fact that the intuition's independence is safeguarded by the Constitution of the Republic of Kosovo, the OIK has difficulties to fulfil the obligations and accomplish its constitutional and legal mission. The OIK's work specifics and responsibilities set forth by the Constitution of the Republic of Kosovo also have various financial implications. The OIK's mission accomplishment directly depends and it is impacted by the financial means provided by the Kosovo State budget.

Table 1: The OIK's budget request and the budget allocated to OIK for 2011

Economic categories	Budget request: Version I	Budget request: Version II	The approved budget for 2011	Budget for 2010
Salaries and wages	382,274.60	382,274.60	361,080.00	271,425.00
Goods and services	246,751.00	246,751.00	224,239.00	188,205.00
Public utility expenses	44,000.00	44,000.00	44,000.00	46,000.00
Capital expenses	992,000.00	92,000.00	-	7,000.00
Total	1,595,025.60	765,025.60	629.319.00	512,630.00

The table above presents a budget request for 2011 before the raise of salaries and wages of civil servants for 30 % comparing with the base of budgetary allocation based on the Law on Budget for 2011. While, the OIK did not receive the budget that it has requested for 2011.

Due to the raise of salaries of civil servants for 30% for 2011, the OIK has recompleted its budget request on 23 March 2011 for the budget categories for *salaries and wages* in the amount of 160.789.26 €, comparing to the previous budget request, dated 29 June 2010.

The OIK's budget for 2011 was allocated and approved without prior regular hearing session with regard to budget request of the OIK by the Ministry of Finance and the Parliamentary Committee for Budget and Finances of the Assembly of the Republic of Kosovo, thus the budget allocated to the OIK was unfair and not in accordance with the needs for these economic categories. The arbitrary allocation of budget by the Ministry of Finance with the approval by the Assembly of the Republic of Kosovo proves the illegal and anti-constitutional violation of the OIK's budget independence by the Government and the Assembly of the Republic of Kosovo. As a consequence, to the OIK was allocated a non-functional budget. Excessive and unnecessary financial means were allocated for the budget category of public utility expenses, but there were no sufficient means allocated for the category of *salaries and wages*, as well as for the category of *goods and services*. Due to this arbitrary allocation of budget, the OIK by exercising its legal right was forced to make transfer of budget from the budget category of *public utility expenses* into the category of *goods and services*-indeed for rent in the amount of 6,400.00 €, in order to fulfil obligations towards the contracting parties.

5.2. Interferences of the Government of Kosovo into the Ombudsperson's budget

The OIK's management on 22 November 2011 confirmed that the Ministry of Finance in an arbitrary and unauthorized way interfered from the Information System of Public Finances Management-Free balance into the OIK's budget without prior warning and consultation with the OIK. In this case, the Ministry of Finance withdrew 13,454.00 € from the OIK's budget for the budget categories of *goods and services*. Through this arbitrary intervention into the budget, the Ministry of Finance directly violated the OIK's financial independence, which is guaranteed by the Constitution of the Republic of Kosovo and the Law on the Ombudsperson. This intervention prevented the OIK from carrying out the obligations for services and planned and contracted supplies by the end of December 2011.

Against this arbitrary intervention of the Ministry of Finance, the OIK reacted on 22 November 2011 by notifying the Speaker and the Committee for Budget and Finances of the Assembly Republic of Kosovo. Despite the fact that relevant authorities admitted their mistake and promises of the Ministry of Finance to return the "frozen" financial means, so far, this has not been done. Despite the transfer of budget of 13,454.00 € from "reserve fund" of the Ministry of Finance into the Free Balance, the OIK was not allowed to use these financial means. On 5 December 2011, the OIK addressed the Ministry of Finance in written form and requested permission to use the budget and access to Information System for Management of Public Finances in order to fulfil the obligations towards the other parties. This is an evidence of arbitrary, unconstitutional and illegal interference of the Ministry of Finance in the OIK's budget.

Table 2: The general report on budget and realized expenses for the period of time 1 January to 31 December 2011

<i>Economic categories</i>	The final budget for 2011	Unallocated financial means	Unspent budget	Bad debts	Free financial means	Realization in %
Salaries and wages	361,080.00	-	314,118.00	-	46,961.87	86.99 %
Goods and services	229,845.03	13,454.00	209,301.77	6,367.93	14,175.33	91.06 %
Public utility bills	22,733.26	-	12,525.65	10,192.31	15,30	55.10 %
Capital expenses	-	-	-	-	-	-
Total	613,658.29	13,454.00	535,945.55	16,560.24	61,152.50	87.33 %

5.3. Reasons for non-realization of expenses based on the budget allocated to the OIK

Management and realization of budget expenditures, based on the economic categories, was not realized based on the budget allocated to the OIK as a result of following reasons:

1. Realization of budget expenses for the category *salaries and wages* was at 86.99 %. The remained 46,961.87 € or 13.01 % of unspent financial means for the category of *salaries and wages* is a direct consequence of non-election of 5 Deputy Ombudspersons till the month of November 2011. The unspent budget dedicated for the salaries of the 5 Deputy Ombudspersons is 39,773.96 €, respectively 11.02%. This means that the OIK, based on the planning has spent over 98 % of foreseen funds. While, the unspent part of allocated budget is a consequence of actions and omissions of the Assembly of the Republic of Kosovo.
2. As a result of unpaid holidays of two employees, for professional advancement and maternity leave, as well as due to interruption of work relationship on voluntary basis by some OIK staff members and recruitment of new staff members, the remaining budget is 7,187.91 €, respectively 1.99 %.
3. Realization of budget expenses for the economic categories *goods and services* was 209,301.77 €, respectively 91.06 %. The OIK has spent the planned budget with around 97 % thriftiness. The unspent amount of budget of 13,454.00 € or 5,85 %, for *goods and services* is a direct consequence of arbitrary interference of the Ministry of Finance in the OIK's budget on 21 November 2011. This is a direct interference into the OIK's budget by the Government of the Republic of Kosovo.
4. The budget expenses for the budget categories *public utility expenses* were realised at 55.10%. This level of public utility expenses is a result of fall of public utility expenses, such as the expenses for the power and expenses for fixed phone lines.

5. The fall of expenses for the electric power is a result of OIK's savings, because during this year the IAP begun using the heating system that runs on gas since the OIK changed its location and was transferred to a privately owned premise and it didn't use anymore the power to warm the offices. While, the fall of expenses for fixed phone line services is a result of OIK's policy, which implies limitation of communication through the fixed phone lines and giving the advantage to the communication through the cell phone lines, aiming to achieve as much as possible effective utilisation of cell phones since the prices of cell phone services are lower in case of communication within the cell phone network comparing to communication via fixed phone lines-cell phone lines. Therefore, use of budget for this category could not be realized based on the destination due to the internal changes, but also due to external factors.

Table 3: The presentation of public utility expenses for 2011 comparing to the previous years 2010 and 2009.

Public utility expenditures	2011	2010	2009
1. Power	7,619.27	9,489.15	8,850.00
2. Fixed telephony	4,273.62	7,223.70	14,175.95
3. Waste	632,76	1,128.70	944.63
Total amount	12,525.65	17,345.55	23,971.48

In total, for the functioning and for the accomplishment of mission and other various activities foreseen by the OIK, the budget allocated by the various donors has had a big impact. Therefore, financial means allocated by the donors has had a positive impact as regards realization of budget expenses and management of budget allocated by the Republic of Kosovo. These donations helped at a large scale the OIK to fulfil its needs, especially for the economic categories of *salaries and wages, goods and services*, engagement of an information technology officer and the OIK's spokesperson.

5.4. *Non-execution of the salaries of the Deputy Ombudspersons*

After the election of 5 Deputy Ombudspersons on 7 October 2011 by the Assembly of the Republic of Kosovo, the OIK issued a decision for determination of salaries of the elected officials, aiming to fulfil the legal vacuum in the article 32 of the Law no. 03/L-195 on the Ombudsperson. According to the Law on the Ombudsperson the salary of the Ombudsperson and his/her Deputies shall be determined in accordance with the Law on the Salaries of Senior Public Officials, which does not exist.

But, the Government of the Republic of Kosovo, respectively the Ministry of Public Administration and the Ministry of Finance didn't implement OIK's decision for the execution of salaries for the elected officials, respectively salaries of 5 Deputy Ombudspersons and the Ombudsperson. Thus, two Deputy Ombudspersons did not receive their salaries for the month of November and December 2011, while three other Deputies

received their salaries for the month of November and December in the capacity of civil servants. In this case, the Ministry of Public Administration (MPA), as a Ministry in charge of executing the salaries of the employees of the institutions of the Republic of Kosovo violated the legal provisions for execution of salaries of the elected officials, as well as it committed direct discrimination against 5 Deputy Ombudspersons.

For and about the problem of non-execution of salaries of the Ombudsperson by the Ministry of Public Administration for the months of November and December 2011, on 29 November 2011 was informed the Speaker of the Assembly, Prime Minister of the Republic of Kosovo, the Ministers of MPA and MF, as well as the Committee for Budget and Finances of the Assembly of the Republic of Kosovo. But, the OIK received no official response from these institutions by 31 December 2011.

5.5. Financing the OIK by donors

During the year 2011, the OIK has been financially supported by the various international donors. Donations that were available to the OIK were realized through two financial forms: donations free for use and donations dedicated to supporting the trainings and study visits (these trainings and study visits were financed directly by donors).

The OIK received donations (financial means ready for use and their destination) by the Embassy of Norway, Turkey and UNICEF Office in Kosovo. While, regarding trainings and study visits, the OIK was supported by the OSCE, UNECEF, and UNDP. While, the domestic donation from PTK (Post Telecom of Kosovo) is a budget dedicated to OIK`s unfulfilled obligations for 2010. The PTK transferred this donation into the OIK`s budget after the enclosure of procedures for payments carried out during the year 2010. The importance of donations for the OIK for the budgeting year 2011 was of a multiple benefiting regarding capacity building of staff members for the purpose of achieving many activities of the OIK, respectively due to budget shortages in the consolidated budget of the Republic of Kosovo.

Table 4: Report on donations for 2011

Donors	Budget based on the economic categories	The amount of budget	Unallocated financial means	Unspent means	Bad debts	Free financial means	Realization in %
Embassy of Norway	Salaries and wages	10,897.42	-	9,735.02	-	1,162.40	89,33 %
Embassy of Norway	Goods and services	47,691.82	-	41,648.93	3,268.80	2,773.67	87,33 %
Embassy of Turkey	Goods and services	6,468.28	-	4,094.20	-	2,374.08	63,30 %
UNICEF	Goods and services	2,548.52	-	2,548.52	-	-	100,00 %
PTK	Goods and services	2,981.00	-	2,981.00	-	-	100,00 %

Embassy of Belgium	Salaries and wages	1,846.11	1,846.11	-	-	1,846.11	0 %
Embassy of Belgium	Goods and services	721.20	721.20	-	-	721.20	0 %
	Total	73,153.9	2,567.31	61,007.67	3,268.80	8,877.80	83,39%

6. STATISTICAL SUMMARY OF COMPLAINTS AND CASES FOR 2011

From 1 January 2011 to 31 December 2011, 1453 persons contacted the Ombudsperson in the central office in Prishtina and regional offices in order to lodge their complaints or to ask for advice and legal aid. From the total number of lodged complaints, 546 were proceeded further as cases that need to be investigated, while as regards other part of complaints, the parties were advised or instructed on the following steps they should follow. During this period, 238 persons met the Ombudsperson in person or his Deputies during the “Open days” held during this reporting period.

The largest numbers of cases investigated by the Ombudsperson Institution during this reporting period were mainly related to the following issues: the right to a fair and impartial trial, the right to work and profession, protection of property, health care and social protection, the right to legal remedies, equality before the law etc.

Table 1: Received complaints (1 January 2011 to 31 December 2011)

	The number of received complaints	1453
The ethnic background of complainants		
	Albanians	1284
	Serbians	87
	Bosnians	39
	Roma	18
	Turks	16
	Others	9
Gender		
	Male	1099
	Female	354

Table 2: The investigated cases (1 January 2011 to 31 December 2011)

	Cases opened for the investigation (from the received complaints)	546
	Cases opened <i>ex officio</i>	13

Table 3: Cases closed (1 January 2011 to 31 December 2011)

	The total number of closed cases	269
	Positively resolved	162
	Cases declared inadmissible	86
	Other reasons	21

Table 4: Ethnic background of complainants based on the investigated cases

	Albanians	471
	Serbians	39
	Bosnians	14
	Turks	9
	Roma	8
	Other	5
Gender		
	Male	414
	Female	132

Table 5: Respondent parties of investigated cases

	Courts	193
	Ministries	141
	Municipalities	107
	Public enterprises	35
	Police	28
	Other	84

Table 6: Reports, recommendations and requests for interim measures

	Reports on the cases	5
	<i>ex officio</i> reports	4
	Recommendations	2
	Request for an interim measure	1

Table 7: Individual respondent parties of the investigated cases

JUDICIAL AND PROSECUTORIAL SYSTEM		
	Municipal Court of Prishtina	30
	Municipal Court of Prizren	23
	Supreme Court of Kosovo	20
	Municipal Court of Gjilan	16
	District Court of Prishtina	15
	District Court of Prizren	15
	Municipal Court of Pejë	12
	District Court of Pejë	7
	Special Chamber of the Supreme Court	6
	Municipal Court of Mitrovicë	5
	District Court of Gjilan	5
	Municipal Court of Suharekë	5
	Municipal Court of Dragash	4
	Municipal Court of Malishevë	4
	Municipal Court of Ferizaj	3
	Municipal Court of Viti	2
	Municipal Court of Kaçanik	2
	Municipal Court of Gjakovë	2
	Municipal Court of Mitrovicë	2
	Municipal Court of Rahovec	2
	Municipal Court of Vushtrri	1

	District Public Prosecution of Gjilan	1
	Municipal Public Prosecution of Gjilan	1
	Municipal Public Prosecution of Prizren	1
	Municipal Public Prosecution of Drenas	1
	Municipal Court of Deçan	1
	Municipal Court of Istog	1
	Municipal Court of Klinë	1
	Municipal Court of Lipjan	1
	Municipal Court of Shtërpce	1
	Kosovo Judicial Council	1
	Municipal Court of Skenderaj	1
	District Public Prosecution of Prishtinë	1
	Municipal Public Prosecution of Prishtinë	1
	Municipal Court of Podujevë	1
	District Public Prosecution of Prizren	1
	Municipal Court of Kamenicë	1
GOVERNMENT'S AUTHORITIES		
	Pension Administration Department of Kosovo	21
	Ministry of Labour and Social Welfare	14
	Ministry of Interior	8
	Ministry of Education, Science and Technology	8
	Ministry of Health	7
	Government of Kosovo	7
	Ministry of Environment and Spatial Planning	5
	Ministry of Infrastructure	5
	Tax Administration of Kosovo	5
	Dubrava Jail	3
	Ministry of Kosovo Security Force	3
	Ministry of Public Administration	3
	Conditional Release Panel	2
	Ministry of Justice	2

	Lipjan Detention Centre	2
	Gjilan Detention Centre	2
	Lipjan Jail	2
	Prizren Jail	1
	Ministry of Agriculture, Forestry and Rural Development	1
	Ministry of Trade and Industry	1
	Correctional Service of Kosovo	1
	Ministry of Culture, Youth and Sports	1
	Prishtina Detention Centre	1
	Department of War Veteran Families, War Invalids and Civil Victims	1
LOCAL AUTHORITIES		
	Municipality of Prishtina	31
	Municipality of Gjilanit	22
	Municipality of Prizrenit	17
	Municipality of Pejës	7
	Municipality of Mitrovicë	7
	Centre for Social Welfare in Gjilan	5
	Municipality of Podujevë	5
	Municipality of Ferizaj	4
	Municipality of Gjakovë	3
	Centre for Social Welfare in Prizren	3
	Municipality of Dragash	3
	Municipality of Ranillug	3
	Municipality of Obiliq	3
	Municipality of Rahovec	2
	Municipality of Skenderaj	2
	Municipality of Drenas	2
	Municipality of Kamenicë	2
	Municipality of Lipjan	2
	Municipality of Mamushë	2
	Municipality of Graçanicë	2

	Municipality of Viti	2
	Municipality of Kaçanik	1
	Municipality of Istog	1
	Centre for Social Welfare in Pejë	1
	Centre for Social Welfare in Gjakovë	1
	Municipality of Novo Bërdo	1
	Municipality of Fushë Kosovë	1
	Municipality of Suharekë	1
	Family Medicine Centre in Podujevë	1
	Family Medicine Centre in Prizren	1
	Main Family Medicine Centre in Prishtinë	1
OTHER		
	Kosovo Police	28
	Energetic Corporation of Kosovo	18
	Kosovo Property Agency	14
	Kosovo Privatization Agency	13
	University of Prishtina	8
	Foreign Authorities	6
	Public enterprise Trepça	6
	Public Enterprise “Hidroregjioni Jugor”	5
	Assembly of Kosovo	5
	Private enterprises	4
	PTK (Post Telecom of Kosovo)	3
	Prishtina International Airport	3
	Private parties	3
	Kosovo Customs	2
	RTK (Radio Television of Kosovo)	2
	Kosovo Archive	2
	Kosovo Intelligence Agency	2
	Energy Regulatory Office	2
	Independent Supervisory Council of Kosovo	1

	Central Election Commission	1
	Habitation Public Enterprise	1
	Public Enterprise “NBI Suhareka”	1
	Kosovo Forestry Agency	1
	Kosovo Cadastral Office	1
	Regional Waste Company “Pastrimi”	1
	Kosovo Insurance Association	1
	Telecommunications Regulatory Authority	1
	EULEX	1
	Central Bank of Kosovo	1
	Regional Hospital of Prizren	1
	UNMIK	1

Table 8: The subject of the investigated cases

	Right to a fair and impartial trial	111
	Right to work and exercise of profession	102
	Protection of property	81
	Healthcare and social welfare protection	81
	Right to legal remedies	76
	Equality before the law	21
	Judicial protection of rights	18
	Prohibition of torture, inhuman or degrading treatment	14
	Children’s rights	13
	Right to education	12
	Responsibility for the environment	11
	Right of access to public documents	10
	Mediation cases	8
	Right to security and liberty	7
	Right to marriage and family	7
	Rights of the accused	5

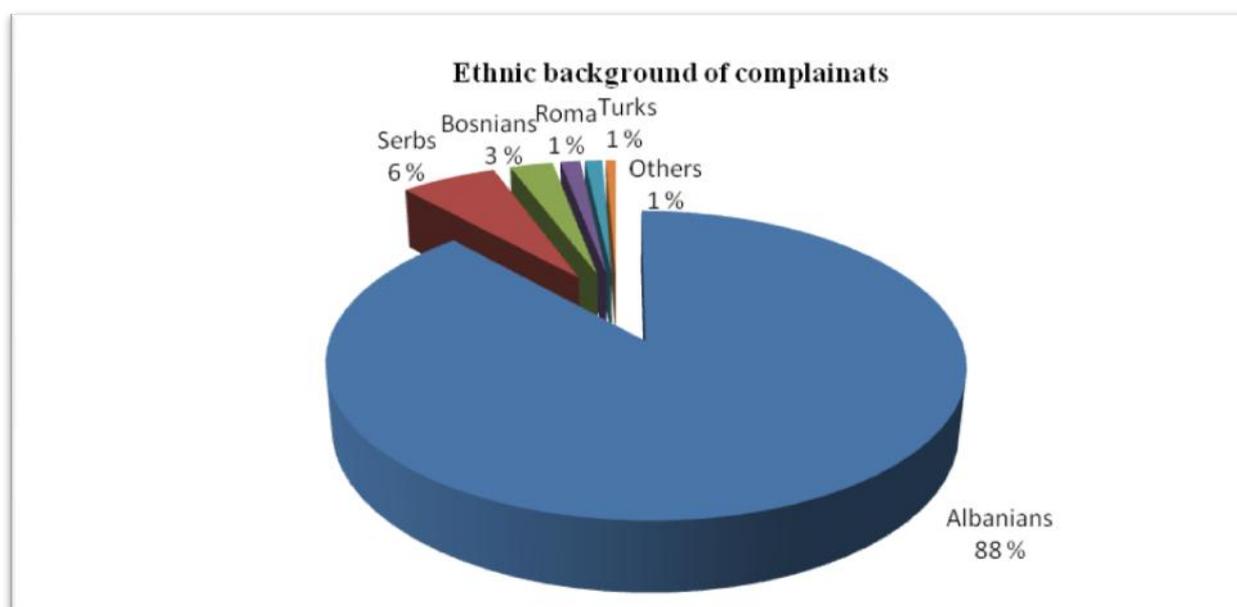
	Limitation of human rights and fundamental freedoms	5
	Right to life	4
	Freedom of religion and belief	4
	Human dignity	3
	Freedom of movement	3
	Interpretation of human rights provisions	3
	Good services	2
	Right to personal integrity	1
	Right to privacy	1
	Religious confessions	1
	Right to freedom of assembly	1
	Right to election and participation	1
	Freedom of art and science	1

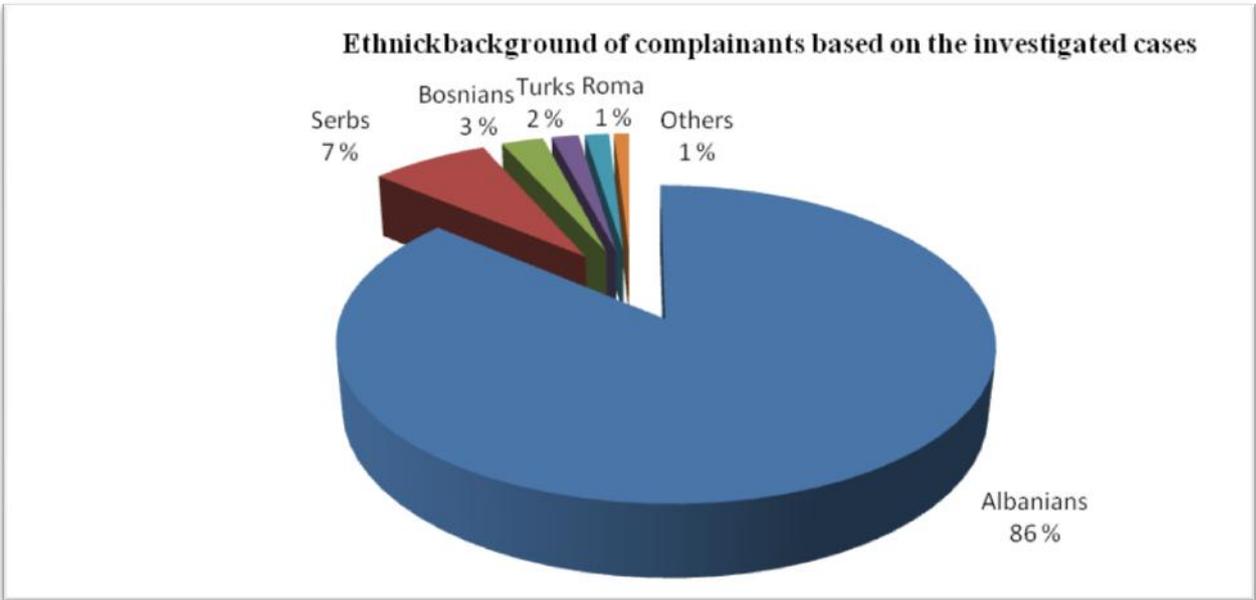
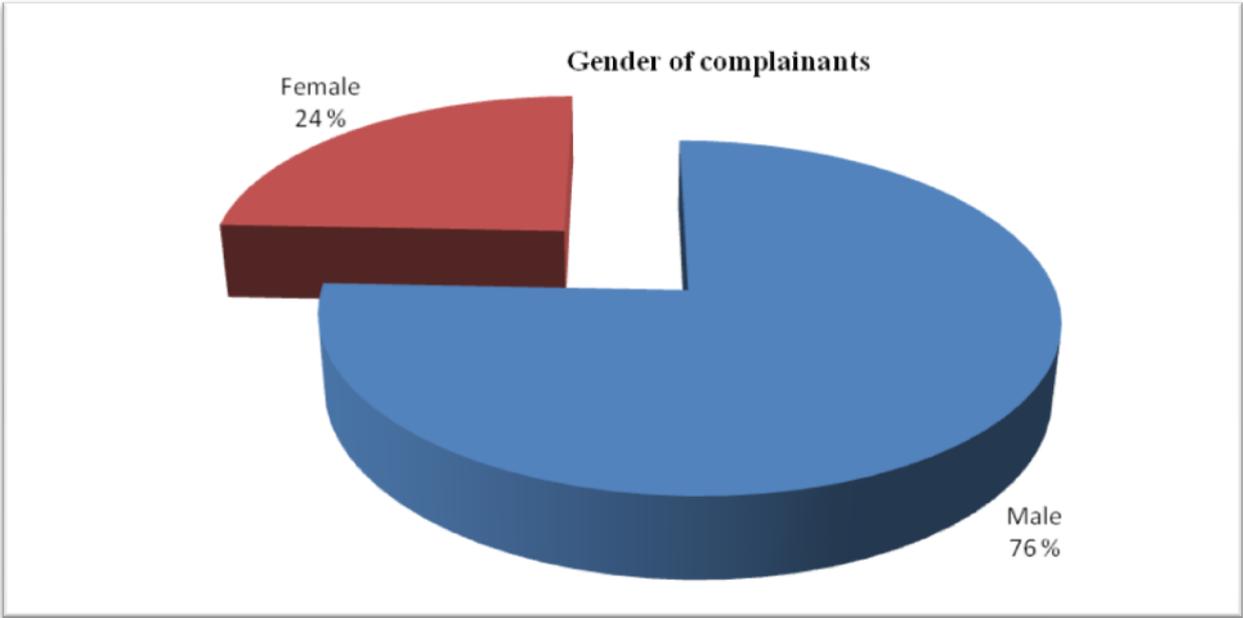
Table 9: Failures of the authorities to respond to OIK`s letters

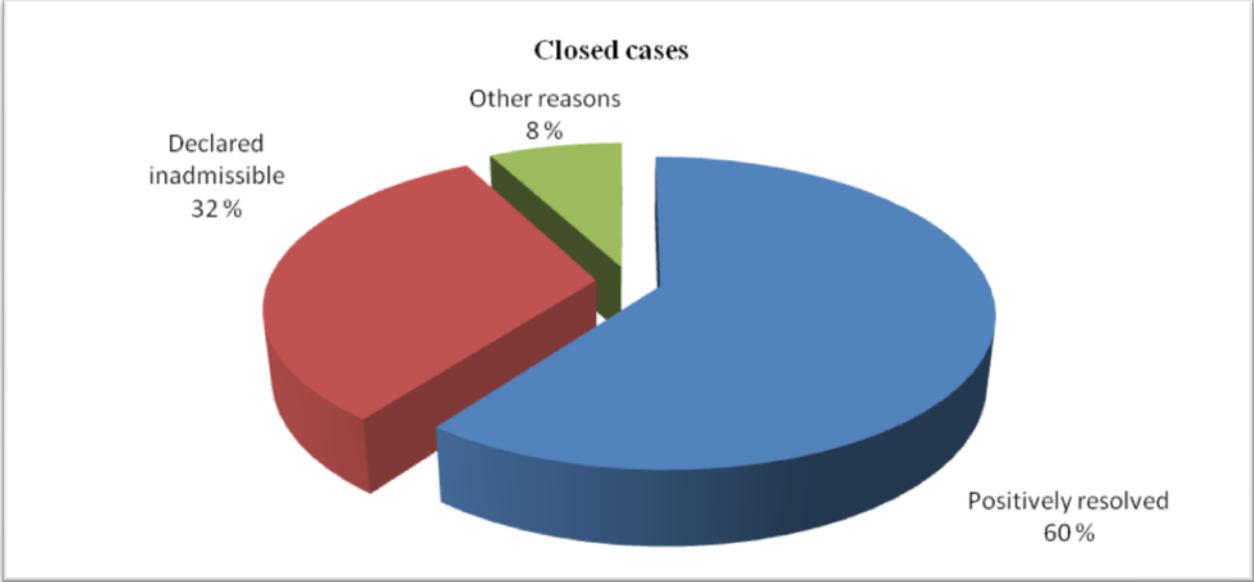
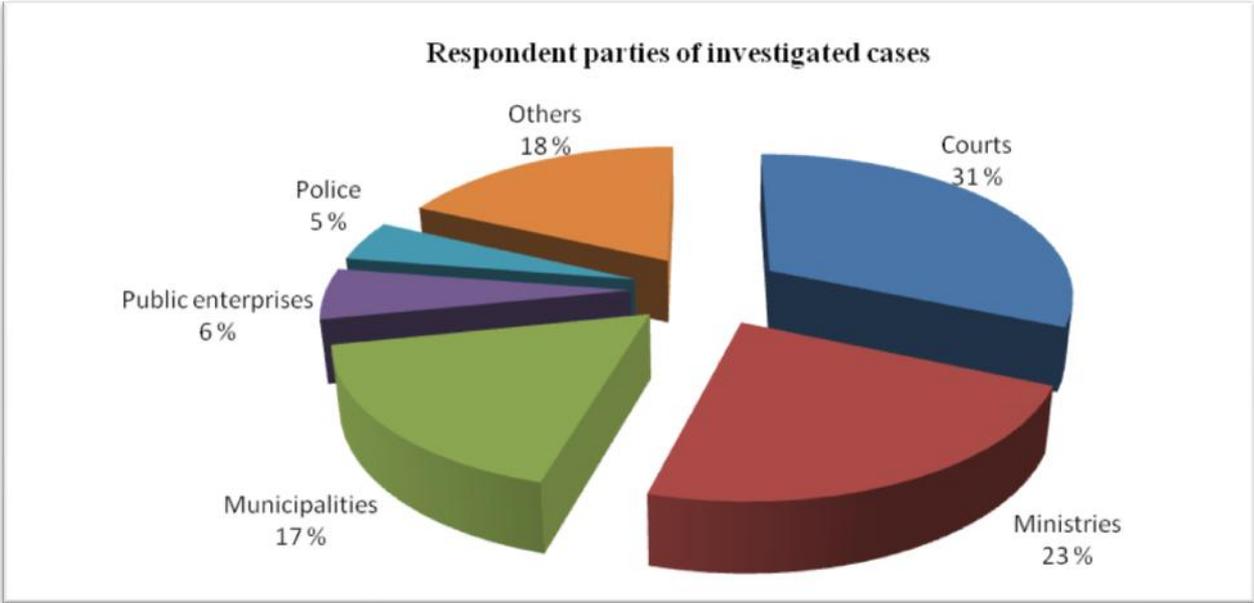
JUDICIAL AND PROSECUTORIAL SYSTEM		
	Municipal Court of Prishtinë	5
	Municipal Court of Prizren	3
	Special Chamber of the Supreme Court	3
	Supreme Court of Kosovo	2
	Municipal Court of Gjilan	2
	Municipal Court of Pejë	2
	Municipal Court of Suharekë	1
	Municipal Court of Shtërpce	1
	Municipal Court of Viti	1
	Municipal Court of Skenderaj	1
GOVERNMENT'S AUTHORITIES		
	Ministry of Labour and Social Welfare	4
	Ministry of Finance	2
	Ministry of Environment and Spatial Planning	2

	Ministry of Education, Science and Technology	2
	Ministry of Interior	1
	Ministry of Health	1
	Prishtina Detention Centre	1
LOCAL AUTHORITIES		
	Municipal Court of Prishtinë	10
	Municipal Court of Gjilan	2
	Municipal Court of Viti	1
	Municipal Court of Mitrovicë	1
	Municipal Court of Prizren	1
OTHER		
	Kosovo Property Agency	1
	Kosovo Privatization Agency	1
	Kosovo Police	1
	University of Prishtina	1

Figure 1: Graphic representation of statistics of complaints from 1 January 2011 to 31 December 2011







7. THE OIK`S ORGANIZATIONAL STRUCTURE

Based on the Constitution of the Republic of Kosovo and the Law on the Ombudsperson, the structure of the OIK is composed of staff elected by the Assembly of Kosovo and by civil servants, which are selected in accordance with the Law on Civil Service.

Despite the OIK`s need to recruit additional staff, the Ministry of Finance approved employment of only 48 staff members for 2011, including both civil servants and staff members elected by the Assembly. This number of staff is placed in Prishtina Central Office and Regional offices in Prizren, Pejë, Gjilan, Mitrovicë north and south and Graçanicë.

Based on the article 31 of the Law no. 03/1-195 on the Ombudsperson, the Ombudsperson by Decision no. 01/2011, dated 21 March 2011 adopted the OIK`s Regulation. Based on this Regulation, the organizational structure of the OIK shall be composed as following:

- The Ombudsperson;
- Deputy Ombudspersons;
- The Executive Director;
- Experts Service;
- Administration.

The organizational chart of the institution presents mutual subordination of structures and it was adopted by an internal Order of the Ombudsperson.

The structure of the organizational chart was created so that the organizational structure is clearly defined as a pre-condition for a meaningful function of the institution by respecting its vertical and horizontal hierarchy, as well as by creating the necessary links of horizontal functioning.

Election of the Deputy Ombudspersons in October 2011 helped functionalising of organizational structure in accordance with the requests and needs that were identified during the daily work.

Considering that the human rights do not require explicitly only the education, but also human commitment and readiness to face certain situations, which often are very challenging and difficult, the OIK`s employees give their contribution through the established human rights units according to the fields in which the protection and promotion of human rights is foreseen.

These units are grouped in 5 departments as following:

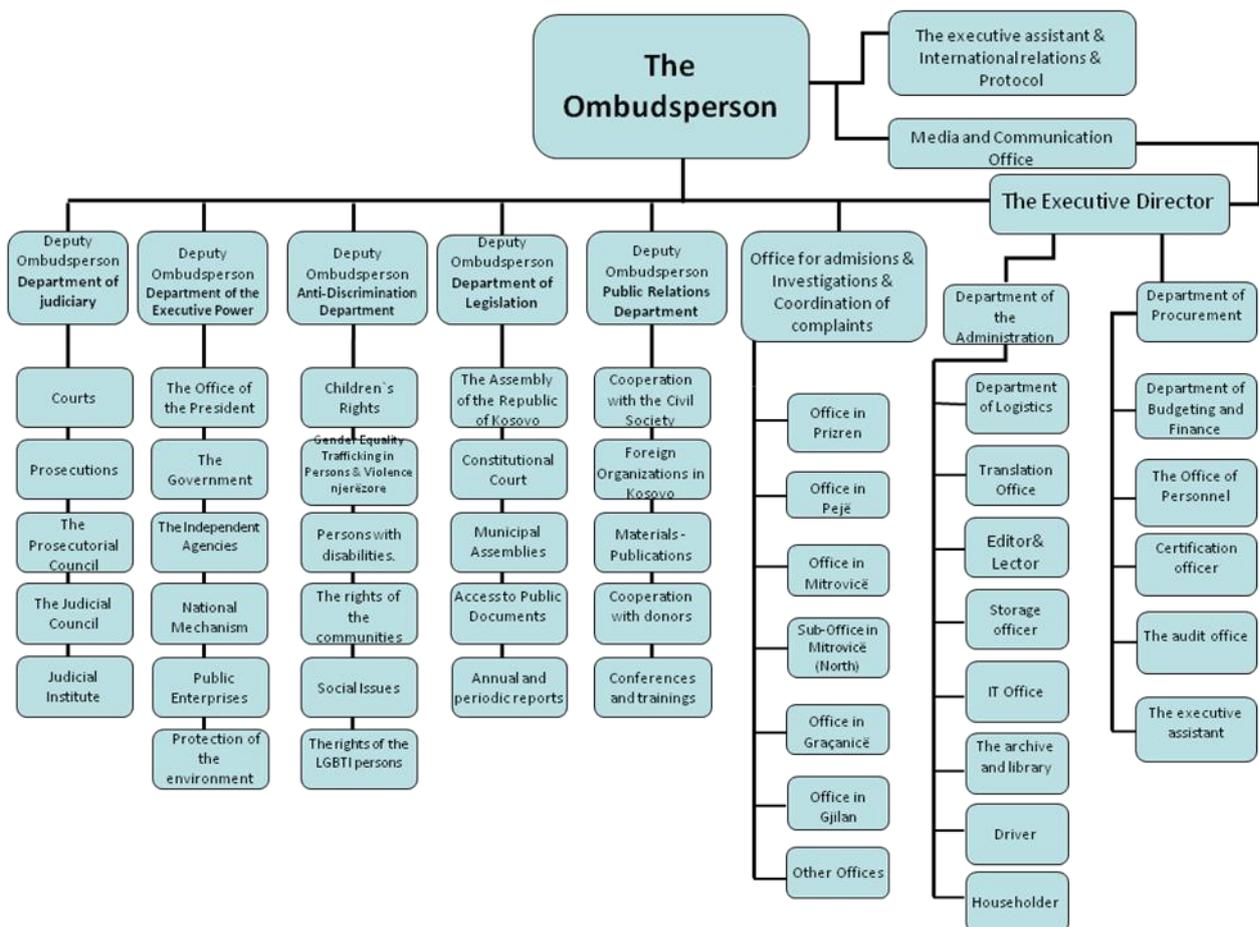
- Department of Judiciary,
- Department of the Executive Power,
- Anti-Discrimination Department,
- Department of Legislation,

- Public Relations Department.

The Ombudsperson Deputies are in charge of these departments and provide effective planning and clear achievable targets.

Due to limitation of financial means, the OIK is facing lack of staff, especially lack of professional staff. As a result of these financial shortages, some of the units don't succeed to fulfil their obligations.

7.1. The OIK's organizational chart



7.2. The staff situation

For the OIK's functioning, the relevant authorities allocated budget for 48 employees. Such allocation of budget and number of employees was the same as in 2010. Such number of employees approved to the OIK, caused big limitations and obstacles in accomplishing the constitutional and legal mandate, realization of responsibilities and obligations at work.

The number and staff structure, in accordance with the approved budget, is composed from 48 employees who are divided in 2 categories:

1. Six (6) public officials who are elected by the Assembly of the Republic of Kosovo and
2. 42 civil servants.

Based on this number of staff, the OIK considers that there are limitations and insufficient number of staff, which affects handling of cases and carrying out tasks since the number of lodged complaints has increased for 20 % since 2010. Also, many new responsibilities arose since the Assembly of the Republic of Kosovo adopted new laws regarding protection of human rights and fundamental freedoms and laws with regard to Administration, which determine obligations and responsibilities in order to provide functionality and management of the Administration, such as the Law on Management of Public Finances and Responsibilities, the Law on Civil Service of Kosovo, the Law on Internal Audit and other legal provisions related to information technology, the Law on Archive of Kosovo etc.

The OIK through its budget request requested financial means for recruitment of new 16 additional employees for 2011. But, this OIK request was not approved by the Government of Kosovo, respectively by the Ministry of Finance and the Committee for Budget and Finance of the Assembly of the Republic of Kosovo and no new civil servants were employed.

The budget request for 2011 included request for 16 new positions - employees, not calculating the number of staff for 2010, which implies 47 employees, as following:

1. One (1) Deputy Ombudsperson,
2. Two (2) investigating legal officers for the office in Prishtina,
3. Four (4) investigating legal officers for the regional offices in Kosovo,
4. One (1) Director for international relations,
5. One (1) senior staff officer,
6. One (1) Certification officer,
7. One (1) Internal auditor,
8. One (1) information technology officers,
9. One (1) executive assistant for Deputy Ombudspersons,
10. One (1) Archivist - librarian,
11. One (1) editor and lector,
12. One (1) translator from English into Serbian language.

Disapproval of budget request for recruitment of new staff for 2011, based on the needs for the above-mentioned positions caused obstacles and consequences to the OIK regarding management of many responsibilities during carrying out of tasks and activities for realization of constitutional mandate and various legal obligations.

The civil servants are engaged as following: 30 civil servants are engaged in the Central Office in Prishtina and another 12 employees are engaged in regional offices.

Based on the assessment of available human resources, it results that the number of approved employees based on the allocated budget for 2011 was and is extremely insufficient for the

OIK's functioning, because it is impossible for an institution to function normally if the institution in its composition does not have any information technology officer, official in charge of staff, no internal audit officer, archive officer, as well as lack of key officials at the expert service in central office in Prishtina and regional offices.

The big needs for additional staff identified in 2010 are the same for 2011. Therefore, the expectations for higher level of functioning, management and sustainability of the OIK are limited.

7.3. The movements of the employees

During this reporting period, on 7 October 2011 The Assembly of the Republic of Kosovo elected 5 Deputy Ombudspersons in accordance with the election procedures set forth by the Law on the Ombudsperson.

While, during this reporting period, upon their free will, 3 employees of civil service terminated their work contracts with the OIK, while 6 new were employed (two of the new staff members were financed from donations, but only till 31 December 2011). The main reasons for voluntary termination of work contracts are new work places, especially working with the international and institutions where they earn much more and have much better working conditions.

7.4. Staff structure

The number of employees and positions at the OIK for 2011 and the number of new employees requested for 2011 is presented in the following table:

No.	The name of the position	Budget request for staff for 2011	The number of approved positions for 2011
I.	1. THE OMBUDSPERSON	1	1
	2. Deputy Ombudspersons	5	5
	3. The executive assistant to the Ombudsperson and Deputy Ombudspersons	2	1
II.	1. THE EXECUTIVE DIRECTOR	1	1
	2. The executive assistant	1	1
	3. Certification officer	1	1
	4. Internal auditor	1	0
	5. The international relations officer	1	0

	6. Office of budget and finance	2	1
	7. Procurement office	1	1
III.	DEPARTMENT OF THE INVESTIGATIONS		
	1. Director of Investigation Department	1	1
	1.1 Sector – Investigation legal officers	7	5
	1.2 Sector – Anti-Discrimination Group	1	3
	1.3 Sector – Child rights Team	3	1
	1.4 Sector – Gender Equality Unit	1	1
	1.5 Legal Assistant	1	3
	2. Regional offices:		
	2.1 Office in Prizren	3	2
	2.2 Office in Gjilan	2	2
	2.3 Office in Pejë	2	2
	2.4 Office in Mitrovicë (sub office in the northern part of Mitrovica)		4
		3	2
	2.5 Office in Graçanicë	3	0
	2.6 Office in Gjakovë	1	0
	2.7 Office in Ferizaj	1	0
	2.8 Office in Shtërpçë	1	0
	2.9 Office in Dragash	1	
		1	
IV.	DEPARTMENT OF ADMINISTRATION		
	1. Director of Department of the Administration	1	1
	1.1 Media Sector	2	1
	1.2 Sector of Logistics	1	1
	1.3 Translation Service	3	2
	1.4 Senior staff officer	1	0
	1.5 Information technology officer	2	1
	1.6 Editor and lector	1	0
	1.7 Archivist - Librarian	1	0
	1.8 Officer for storage and assets	1	1
	1.9 Admission officer/operator	1	1
	1.10 Driver	2	2
	1.11 Householder	1	1
	The total number of positions and staff:	64	48

8. ACRONYMS

AECID	Agencia Española de Cooperación Internacional para el Desarrollo
KPA	Kosovo Privatization Agency
KAPE	Kosovo Agency for Protection of the Environment
KPA	Kosovo Property Agency
OIK	The Ombudsperson Institution of Kosovo
EU	European Union
CEDAW	Convention on the Elimination of Discrimination against Women
CLARD	Centre for Legal Aid and Regional Development
CBM	Community Building Mitrovica
CPT	Committee for the Prevention of Torture
CRONSEE	The South East Europe Children's Rights Ombudsperson's Network
MDE	Municipal Directorates of Education
DLE	Department of Labour and Employment
DSS	Department of Social Services
UDHR	Universal Declaration on Human Rights
EBU	European Broadcasting Union
ENOC	European Network of Ombudspersons for Children
PE	Primary Education
PSE	Pre-School Education
EULEX	European Union Rule of Law Mission
FCI	Forum for Civic Initiatives
GAP	Non-Governmental Organization
CRG	Children` Rights Group
ECHR	European Court of Human Rights
ADT	Anti-Discrimination Group

OJRK	Official Journal of the Republic of Kosovo
HEKS	Hilfswerk der Evangelischen Kirchen in Schweiz
HRRP	Human Right Review Panel
OIK	Ombudsperson Institution of Kosovo
IFP	Institute of Forensic Psychiatry
HMIK	Hydro-Meteorological Institute of Kosovo
KSI	Kosovo Stability Initiative
IP	Initiative for Progress
KPI	Kosovo Police Inspectorate
BPI	Balkan Policy Institute
ISCED	International Standard Classification of Education
UN	United Nations
KDF	Convention on the Rights of the Child
KDI	Kosovo Democratic Institute
KE	Council of Europe
ECHR	European Convention on Human Rights
KEC	Kosovo Energy Corporation
KJC	Kosovo Judicial Council
KIPRED	Kosovar Institute for Policy Research and Development
MA	Municipal Assembly
ICC	International Coordinating Committee
MEC	Municipal Election Commission
CDHRF	Council for the Defence of Human Rights and Freedoms
PCK	Press Council of Kosovo
SPC	Serbian Orthodox Church
OPCAT	Optional Protocol to the Convention Against Torture
RCT	Rehabilitation and Research Centre for Torture Victims
SEEMO	South East Europe Media Organization

UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNMIK	United Nations Interim Administration Mission in Kosovo
USAID	United States Agency for International Development
YIHR	Youth Initiative for Human Rights