



REPUBLIC OF KOSOVO
THE OMBUDSPERSON INSTITUTION

TWELFTH ANNUAL REPORT

1 January – 31 December 2012

addressing
THE ASSEMBLY OF KOSOVO

Published by:
The Ombudsperson Institution

Pristina, 2013

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 twelfth 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, 3 October 2013

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Ombudsperson`s remarks

Based on Article 135, Paragraphs 1 and 2 of the Constitution of the Republic of Kosovo and on Article 27, Paragraphs 1 and 2 of the Law on the Ombudsman, I hereby submit you the annual report, the twelfth from the Institution of the Ombudsman of the Republic of Kosovo which includes the period of 1 January - 31 December 2012.

The presentation of the annual work of the Institution of the Ombudsman includes all its segments that are presented following a logical listing based on the constitutional mission of the Institution of Ombudsman: protection, supervision and promotion of human rights and freedoms. The presentation of the situation of human rights and freedoms in Kosovo and the development directions of this situation based on data collected and archived by the IO, and also on information and testimonies collected by other primary and secondary sources, which is the main postulate presented by this report.



Fundamental human rights and freedoms constitute the basis for the rule of law in the Republic of Kosovo. Legal justice, admissible and applicable in practice, for all individuals without any distinction in the entire territory of the state constitutes the basis of a rule of law state. Unfortunately in Kosovo these essential pillars of the rule of law are continuously impaired and continue to be frail in each area of life.

A direct consequence for the failure of state mechanisms to be involved in the justice delivery area is the lost confidence and trust in the rule of law. This lack of confidence expands from the poorest and most vulnerable masses to the most senior state officials. Further, in the Republic of Kosovo, the justice of the state is selective. Instead of mending it further deepens the rift between the unprotected citizen and the state, regardless of the latter's fundamental and only duty being to protect the citizens.

Loss of confidence in the rule of law and failure of state mechanisms to be engaged in improving this situation indicates the lack of awareness for the improvement of the situation. This situation strengthens the position of the group that violates the human rights and freedoms in the face of the ever more vulnerable citizens.

Lack of institutional awareness for the application of the laws and establishment of a rule of law is being accompanied by a tumult that is affecting every pore of the legal system in the Republic of Kosovo. Citizens are increasingly losing their confidence in the justice mechanisms in Kosovo, which is resulting in larger and more dangerous consequences – increasingly more attempts to self-justice on the part of citizens. Unfortunately this situation is leading to a legal anarchy that is engulfing all areas of our society. Meanwhile, we notice an increasing deterioration of relations within the society and between individuals.

The Ombudsman has given and continues to give recommendations to improve the shortcomings and errors noted. Unfortunately though the absence of the influence of the Ombudsman's recommendation to the state institutions is evident, as a large part of though regrettably do not make even the slightest attempt to improve this situation.

Failure to apply and ignoring these recommendations by the same institutions that are entitled to apply the laws and create opportunities for the citizens to resolve their problems is extremely concerning.

The Institution of the Ombudsman is constantly engaged in improving the situation through its findings of various violations and recommendations on how to avoid those, through its continuous communication with the respective institutions and through mediation between these institutions and citizens. In fact, the ombudsman does this in spite of the negligence of the institutions to create a good climate for human rights and freedoms.

The tendency of different state institutions to minimize the role of independent national institutions in general, either by disregarding their findings or failing to apply their recommendations or even by making unlawful attempts to impair their constitutional independence is very concerning.

This is happening to the Institution of the Ombudsman which fights for creating a climate where citizens of the Republic of Kosovo can resolve their problems based on the constitution and the laws. Unfortunately though, in spite of achieving some modest results, a lot remains in the wish list.

In spite of numerous obstacles, the IO has made important steps to offer services to the citizens and other people in need. Apart from the opportunity to file complaints utilizing all methods of communication, directly in the offices of the Ombudsman, every work day, by mail, by email, through family members or attorneys or even by phone, the IO has organized Open Days to provide direct meeting opportunities once a month to all people in need in all municipalities of the Republic of Kosovo, mainly in the buildings of municipal assemblies. Also, with the goal of increasing transparency for the citizens and all complainants, the Ombudsman responds in writing to each request addressed to him.

Although all these actions result in a significant workload for the IO associates, the increase of trust and confidence of the citizens and some state institutions in the work of the IO is satisfactory for the IO.

From 1 January 2012 until 31 December 2012, the IO has received 1670 cases in its head office in Prishtina and regional offices, which consist in complaints or requests for legal advice and assistance. Of those, in 377 cases these individuals have met in person with the Ombudsman or his deputies during the "Open Days" held in the reporting period.

The largest number of cases investigated by the Institution of the Ombudsman in the reporting period were mainly related to: the right to fair and impartial trial, health and social protection, the right to legal remedies, protection of property, the right to labor and to exercise the profession, right before the law etc.

Unfortunately, a large number of complaints concerns unfair decisions with elements of corruption and forgery, which implies injustice on the part of those people who are expected to deliver justice in the country. In spite of undertaking actions to fight this phenomenon by the judiciary, based on the IO data in general we have no improvement in this respect compared to earlier reporting periods.

A considerable number of complaints, a number that is ever increasing, concern the failure to provide legal regulative for pensions, health insurance, inappropriate health protection, absence of medicaments from the so called essential list in the public health institutions.

An area of complaints that is accompanied by serious consequences for human relations, and where we note a serious failure of the justice system – either due to excessive delays or due to failure to execute final court decisions or even proved forgeries is the violation of the right to property. In these cases, when the state justice pushes people by the wall of justice, they end up taking justice in their hands.

Another area where we note a tendency of increased number of complaints is the failure to protect the living environment – either due to continuous deterioration of the situation in this area, or due to an increased awareness of an increasing number of citizens on the intolerable situation, which have resulted in a more frequent reaction on the part of the citizens, which constitutes a more conscientious and courageous concern of the citizens.

Another concern for the Ombudsman is the security situation in the Republic of Kosovo. There is a significant increase of the number of murders by weapons.

Freedom of movement in the northern part of Mitrovica and in the municipalities of Leposaviq, Zubin Potok and Zveçan continues to be almost entirely restricted for the citizens, especially the individuals of non-Serbian ethnicity and also for the public authorities of the Republic of Kosovo and international institutions. The same goes for the physical security.

A very serious situation with regards to the freedom of movement is noted in the traffic. In urban centers, apart from sidewalks being occupied by inconsiderate parking of vehicles, an intolerable irresponsibility and chaos is also noted in driving vehicles both in urban centers and national roads. Apart from directly endangering the lives of people with fatal accidents, sometimes freedom of movement of pedestrians is limited, especially that of children, the elderly and people with disabilities.

The serious economic situation in the country affects the majority of the citizens of the Republic of Kosovo thus directly influencing on the quality of their lives. Lack of perspective for the youth and the situation of the retired are especially concerning. In this respect, the Ombudsman asks from the Assembly of the Republic of Kosovo to adopt a Law on Invalidity and Pension Insurance. We also repeat the request for the inclusion of the Convention on Economic, Social and Cultural Rights in the framework of the Constitution of the Republic of Kosovo as one of the international instruments for the protection of human rights and freedoms directly applicable in the Republic of Kosovo.

A special concern for the Ombudsman is the structural isolation from the public life and consequently, self-isolation of the Ashkali, Roma and Egyptian communities. The current attempts of the public authorities in the Republic of Kosovo, including of the Institution of the

Ombudsman for a true integration of these communities in the public and social life, apart from some modest improvement in the housing and education area have not yielded any desirable results.

The Ombudsman, with the purpose of improving the situation of human rights and freedoms in all special cases when a violation of these rights has been established, has included in its annual and special reports the appropriate recommendations for all public authorities – ministries, municipalities and all responsible public other agencies. Unfortunately though in this respect we are faced with a failure of public institutions. Until now, the Ombudsman has not received any information or notification from any institution whether its systemic recommendations have been implemented. Such practice is repeated every year and as such, is very concerning.

Since the application of the law is the main premise for the functioning of the rule of law, in the Republic of Kosovo the failure to apply the laws is the worst institutional wound in spite of modest attempts. This is the main indicator for the loss of citizen's trust in the state institutions, for which the application of the law is both a legal and constitutional obligation. Meanwhile, this loss of trust places the Ombudsman in a position that the institution is the receiving end of requests for justice to be delivered. This is happening exactly due to the failure to apply the law in most cases and due to violation of the law in special cases by the majority of state institutions.

The Ombudsman will continue to identify and highlight actions or lack thereof, that are either undue or unlawful, by public authorities in order to strengthen the role it has in building a society that is based on the principle that all are equal before the law. However, regardless of all these actions and attempts to improve the situation of human rights and freedoms it must me emphasized that the Ombudsman does not deliver justice. It is the state institutions – the courts – the ones that deliver and apply justice. The state institutions are the ones that should not violate the principles of justice because if they do so then they have damaged the necessary essence for the functioning of a free and democratic society. This should not be allowed!

The hope for a better future, although faded and infringed, is not entirely lost. There are some hope-inspiring attempts to enforce the rule of law. However, the Ombudsman, in spite of its dedication and individual and social responsibility, requires in particular institutional and legal dedication and responsibility from public authorities with regards to their actions or lack thereof.

Being the overseer of the application of the constitution and the laws for human rights and freedoms for the citizens of the Republic of Kosovo, the Ombudsman is also the entity that throws light upon cases when citizens are deprived of any of their rights, and also criticizes the public institutions when they act with disregard in applying the constitution and the laws for their rights and freedoms.

The Ombudsman hopes, and also insists that all public authorities and organizations that exercise public authorizations in the Republic of Kosovo to take into consideration the

findings of the Ombudsman and to implement the recommendations made in the annual report or in the special reports.

The Ombudsman continues to remain loyal to the principle that good governance is a right of the citizens and an obligation of the elected public authorities and therefore continues to remain dedicated to the protection of human rights and freedoms and to good governance.

1. INTRODUCTION

1.1. Ombudsperson Institution

Constitution of the Republic of Kosovo, precisely articles 132-135 define the Ombudsperson Institution (OI) as constitutional category. Ombudsperson Institution monitors, protects and promotes the rights and freedoms of individuals from unlawful and improper acts or failure to act of public authorities, but of other bodies and organizations as well that exercise public authorities on their account.

1.2. The mandate of the Ombudsperson Institution

The Constitution of the Republic of Kosovo and the Law on Ombudsperson determined the competences of the Ombudsperson Institution, receiving and investigation of complaints from every Kosovo citizen who claims that his/her rights and freedoms have been violated by public authorities in Kosovo.

OI is independent in exercising its duties and does not permit any instructions or intrusions from other bodies, institutions and authorities that exercise state power in the Republic of Kosovo. Every institution, body 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 information and documents in conformity with the law.

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

In the scope of its legal and constitutional competences the Ombudsperson undertakes investigations for the complaints lodged by any natural or legal person regarding claims on human rights violation foreseen with the constitution, laws and other legal acts as well as other international standards on human rights and international conventions, specifically with European Convention on Human Rights (EKHR). The Ombudsperson can conduct investigation on its own initiative (*ex-officio*) if proves, facts, evidences and indications obtained offer sufficient base for human rights violation. It is worth mentioning that the Ombudsperson applies mediation and reconciliation and can offer good services to Kosovo citizens residing abroad.

OI does not intervene in cases that are ongoing in courts, apart from unreasonable lengthy proceedings or vivid misappropriation of power. OI also is not involved in investigation of cases which deal with disputes between private persons. On the other hand OI can initiate issues with the Constitutional Court of Kosovo in compliance with the constitution and Law on Constitutional Court.

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

Among main objectives of OI is establishment and development of the culture of good governance and administration that requires professional, efficient and effective administration, transparency, accountability and responsibility of public administration towards citizens and rule of law enforcement. This entirely refers to judicial system and other government institutions and bodies as well.

OI is committed to improve the image of public administration, judicial system as well as of other state institutions and bodies. Such commitment enables citizens to figure out that they can rely on this institution and that they can lodge their complaints against administration, based on simple, free of charge procedure. Complaints submitted with the OI might refer to actions, inactions or decisions of public administration, that complainants might find them erroneous or unfavorable. When reviewing such complaints, actions undertaken by the OI legal professionals consist on provision of legal advices through requesting data from public authorities, courts and other important institutions regarding the complaints lodged and regarding monitoring of particular court procedures. OI submits requests for prompt provisional measures for cases that require immediate actions.

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

Recent years OI has established Children's Right Team, Gender Equality Unit and Anti-Discrimination Team in order to cover fields that involve specific issues of some human being groups, whose rights are considered to be most vulnerable in Kosovo. After appointment of deputies of the Ombudsperson, other specific units have been established, presided by them. Thus, within team against -discrimination the following units are functional: children's rights, gender equality (including trafficking of human beings and violence), people with special needs, community rights, social issues and the unit of human rights of people belonging to LGBT group.

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

Executive department comprises from the following units: investigation of complaints against presidency, investigation of complaints against the government, investigation of complaints against independent agencies, investigation of complaints against public enterprises, environment protection and National Mechanism for Torture Prevention while establishment of Business Unit and human rights is being planned as well.

Units in the Judicial department are: investigation of complaints against judiciary, investigation of complaints against prosecution, investigation of complaints against Judicial Council, investigation of complaints against Prosecutorial Council as well as investigation of complaints against Judicial Institute. While in Public relation department the following units are functional: cooperation with civil society, cooperation with foreign organization in Kosovo, cooperation with donors, materials and publications as well as trainings and conferences.

1.3. Access to the Ombudsperson Institution

Every working day Ombudsperson receives complaints from the citizens who claim that their rights have been violated. They are hosted by OI legal advisors who handle the cases professionally, carefully and with confidentiality.

In order to facilitate access of Kosovo citizens the OI, apart from the Head Office in Prishtina, has established regional offices in Gjilan, Pejë, Mitrovicë, Prizren and Graçanicë. The regional office of OI in Mitrovica has established its sub-office in the northern part of the city. Personnel working in head office and regional offices expose high level of professionalism and all of them are on citizens' disposal to respond to 'their requests and complaints as well as to protect their rights which allegedly have been violated. OI plans to open other regional offices in Ferizaj and Gjakovë.

Citizens can lodge complains each working day in OI (Monday-Friday) from 8:30 - 15.00. For urgent cases citizens can show after the working hours as well.

Organization of open days is another way of easy admittance of citizens by Ombudsperson and his deputies. They are arranged in Prishtina (twice per month) as well as in other municipalities of Kosovo (once per month). The citizens of respective area are informed by officials of the regional offices regarding the open days by publishing the dates in the respective municipalities, through local media as well as in the official OI web-site.

Another easy access to Ombudsperson is through e-mail that is mainly used to submit complaints from citizens living abroad. There is free of charge telephone lend line in the OI head office for urgent cases but ordinary cases can be reported as well.

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

2. Human rights and freedoms in the Republic of Kosovo

2.1. Direct application of international instruments and agreements

Liability of each state, especially of those pretending to be democratic, is safeguarding and respect of human rights and freedoms. Thus, states should abide with international instruments and agreements on human rights, which mean their endorsement and application as well.

Constitution of Republic of Kosovo contains some of the most important international instruments and agreements that are directly applicable in Kosovo. In cases of disparities they prevail towards legal provisions and other acts of Kosovo public institutions.

Constitution of Republic of Kosovo explicitly guarantees direct application of the following international instruments: Universal Declaration of Human Rights, European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols, International Convention on Civil and Political Rights and its Protocols, The Council of Europe's Framework Convention for the Protection of National Minorities, Convention on Elimination of all Forms of Racial Discrimination, Convention on Elimination of all Forms of Discrimination Against Women, Convention on the Rights of the Child, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹

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

During this year the Ombudsperson Institution has been the witness of sound violation of these instruments in specific cases. Based on the complaints lodged with the Ombudsperson Institution it can be stated that majority of them consist on the right to have regular court process.² Issues that burden the work of the judiciary for many years in Kosovo consist on the overload of courts with unsolved cases that have reached status of limitation and delays in handling new cases and not executing omnipotent decisions. In this way Kosovo citizen are deprived from the right to have fair, impartial and regular court process.

Increased number of judges and prosecutors alongside with functionality of Notary Service as well as application of mediation method along with reorganization of judicial and prosecutorial system of the Republic of Kosovo, started on the 1st of January 2013, with full application of Law on Courts, efficiency and effectiveness of courts' work is predicted to increase, actually the number of solved cases will grow.

¹ Constitution of Republic of Kosovo, article 22.

² *European Convention for Protection of Human Rights and Fundamental Freedoms (ECHR)*, article 6, paragraph 1. "Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which will decide as per the disputes concerning the rights and liabilities of civil nature as well as for the ground of each criminal charges against him...".

To enable effective, efficient and full monitoring of institutions where incarcerated people are kept, the Ombudsperson identifies as necessary application of Optional Protocol against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment provisions. Activities of the working group have continued as per this aspect.³ This working group acts as predecessor of Kosova Rehabilitation Centre for Torture Victims (KRCTV), establishment of which is been foreseen with this protocol.⁴ By all means this mechanism will enable better access to the detention institutions and more efficient and effective protection of human right of detainees. The Republic of Kosovo is not a signatory of Protocol but its constitution directly obliges it to apply the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in particular that application of Optional Protocol is one of the preparatory actions of Kosovo for the European integrations.

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

Thus, the Ombudsperson strongly recommends that in the course of Constitution amendment, the Convention of Economic, Social and Cultural Rights as well as the European Social Charter to be included, respectively the Constitution to ensure their direct implementation in the Republic of Kosovo.

The Ombudsperson also recommends to the Assembly and the Government of the Republic of Kosovo that within the scope of international instruments directly applicable in the Republic of Kosovo to include all other relevant universal and regional international instruments, especially those European on human rights, which until now have not been included in the Constitution of Republic of Kosovo.

2.2. Human dignity

Constitution of Republic of Kosovo protects *human dignity*, determining it as intact and the base of entire human rights and fundamental freedoms.⁵ Human rights and dignity are indivisible from one another.

³ As a result of cooperation of OI with come local NGOs (Council for the Defense of Human Rights and Freedoms (CDHRF) and Kosova Rehabilitation Centre for Torture Victims (KRCTV) in May 2011 a memo of understanding they have signed and a joint working group established in May 2011.

⁴ *Optional Protocol against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 3* "Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment".

⁵ Constitution of the Republic of Kosovo, Article 23.

Universal Declaration of Human Rights, in its preamble states that: *“Inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”*,⁶ explaining embryonic connection between human rights and human dignity.

Human dignity is inner value but a social right as well. Each of one is entitled to dignity, even to an unborn or deceased. Respecting dignity obliges the state to wave from everything that endangers it. The State should respect human being as a person, should not in any case treat him/her as a state possession and should not in any case misuse the person for any reason. Protection of human dignity means that state is obliged to undertake everything in its power to set against infringement of human dignity.

Human rights violation and dignity infringement occur mainly in unfavorable situations for human being when he/she has no power to demand or fight for them, whether for social or arbitrary circumstances, or due to mental inability and limited abilities in general. Special attention has been given to people with mental disorder in the Republic of Kosovo by the Ombudsperson. In order to prevent violation of dignity as well as the rights of people in such situations he is decisive to be more committed in this field. Periodic visits are performed to the Mental Health Center in Shtime and other mental health centers in other cities of Kosovo during this year and complaint boxes have been placed in all of them in order to be sure that human dignity and respect are safeguarded in these institutions.

Ombudsperson Institution also had handled complaints of claimed violation of human dignity, among them the case of some employees of Ensemble “Shota”.⁷ Employees persistently without their knowledge were observed by cameras placed by the director within the working facilities and places where camera surveillance is strongly forbidden since such activity violates human dignity. During the meetings that Ombudsperson representative had with the Ensemble representatives as well as responsible persons in the Ministry of Culture, Youth and Sport demanded taking measures against responsible persons of this institution in order not to repeat such deeds.

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

Representatives of Ombudsperson Institution as well as Ombudsperson himself were frequently visited by representatives of RAE community as well as citizens of northern part of Kosova. Among other things, due to persistent dedication of Ombudsperson, after shutting down of camps in Osterode and Cesmin Lug, the camp in Leposaviq is in the process of shutting down due to house construction in southern part of Mitrovica for them. Some families of RAE community consider returning in Mitrovica and residing in houses built mainly for them.

However, everlasting challenge which institutions of Kosovo Republic still face is protection of human dignity, as a basic right and of general character. The Ombudsperson considers that

⁶ Universal Declaration of Human Rights, Preamble.

⁷OI, Case no. 184/2012.

it is crucial increase of accountability of public authorities that comprise first line of law protection and which initially should be in favor of defense of this fundamental right.

2.3. Gender Equality

According to the Constitution of Republic of Kosovo equality of all citizens in front of the law is also the equality of their right in protection against discrimination regardless of gender, language, religion, ethnicity, sexual orientation or social-economic status. As per this, gender equality is defined as fundamental value for the democratic development of the society, providing equal opportunities for women and men to participate in political, social-economic, cultural life as well as other fields of social life.⁸

Gender equality is also guaranteed with the Convention on Elimination of all Forms of Discrimination against Women (CEDAW), as one of directly applicable instruments in Kosovo. This Convention defines discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”⁹

Ombudsperson’s persistent request, as given also in recommendations of 2011, is amendment of the Law on Gender Equality,¹⁰ where administrative or legal competence of defined competent body will be determined clearly and in explicit manner in case when human rights guaranteed by law are violated, solely because of belonging to a certain sex. This amendment is necessary in order not to remain further solely a letter on the paper and to ensure non discrimination based on gender.

2.3.1. Decision taking and the right to work

The role of woman in the labor market is of great significance in terms of gender equality. Elimination of inequality that occurs in the field of representation, between man and woman, has been partially evaded with inclusion of quota in the Assembly of Kosovo. This has

⁸ Constitution of the Republic of Kosova, article 7.2 “The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life.

⁹ CEDAW, article 1 of the Convention on elimination of all forms of discrimination against women (CEDAW) adopted in 1980 and enter into force in 1981 “ For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

¹⁰ Law on Gender Equality, no. 2004/2, ratified from the Assembly of Kosovo on 19th of February 2004, 11th OI annual report, Prishtinë, 2012, p. 24.

positively reflection on woman's status, thus until more favorable solution found, the quota remains further as a model of gender equality.

Inadequate participation of women in leading bodies is stressed weakness of the system.¹¹ Women remain to be scarcely and symbolically represented in leadership posts. Stereotypes remain to prevail in Kosovo according to which only men are capable to be appointed for such positions. This mainly is present in municipal level of leadership. Quota as positive model of gender equality should be protected by law and be applicable. This will enable and facilitate setting of women's participation culture in leadership positions, which after a certain period of time, will be replaced with real competition.

Grave economic crises reflect differently on male and female. Even though the society in general is poor, crises unevenly impacts on aggravation of females' position in the labor market. This can be attested with the accelerated number of unemployed women, their greater dismissal from work and covert or sometimes open violation of maternity rights.¹² Majority of women wait for a job more than a year. The principle of same salaries for the equal job performed is not being applied as it should according to the law, especially in private enterprises.

Unfavorable financial situation in society has also impact in the quality of women health protection, with the main emphases on reproduction health.¹³ Discrimination in employment starts with the moment when vacancy for the position is advertised. In majority of cases, among other employment conditions, gender is mentioned as well.

2.3.2. Property Right

Discrimination and violation of gender equality principle most commonly is exposed in the field of property right. In general very low percentage of women is the owner of movable and real estate in Kosovo, approximately 7 %. Women commonly is overload with unpaid work that is not recognized, performed usually at home.

Older women, single mothers, housewives, women of RAE community, those uneducated, ill and with disabilities as well as those victims of violation, belong to the most vulnerable category of people.

As per local legislation, women and men are equal based on the Law on Inheritance.¹⁴ This law, in principle, partly complies with international norms directly applicable in Kosovo. But taking in consideration the practice and the tradition of Kosovo society, application of this law is hardly noticeable, to say hardly at all. There are a great number of women who are ill-

¹¹ Regarding this, the case has been registered with OI, C.no.550/2012.

¹² OI, Case C.no.313/2012.

¹³ OI C.no.44/2012. The complaint was about termination of the working contract by NGO after child's birth. After failure of Ombudsperson's efforts for mediation the party has been advised to use legal remedies, respectively to submit complaint with Inspectorate of Labor.

¹⁴ Law no. 2004/26, Law on Inheritance, article 3.

treated in different ways, even expelled from their family members, in cases they demand or expresses their willingness to enjoy the realization of legal property right.¹⁵

2.3.3. Health Care

Among Ombudsperson's persistent recommendation of 2010 and 2011 annual reports was and remains to be the adoption of the Law on Health Insurance and Social Protection.¹⁶ Kosovo is the only state in Europe which has not adopted the given law. Health insurance and social protection, with the main emphases on old and retired people, are rights protected and guaranteed by the Constitution of Kosovo as well as with all international instruments directly applicable in Kosovo. Regardless of all possible justifications stressed by the Government of Kosovo, inexistence of this law institutes the most serious violation of humans' rights. Inexistence of this law undermines specifically health situation of women and children in Kosovo.

2.3.4. Right to Education

Discrimination of woman in the field of education reflects on education policies, content of curriculum, text books as well as on professional status of woman.

Even though the law does not distinguish education as per the gender,¹⁷ the problem of school dropping out by girls remains to be of great concern for the society. This phenomenon tackles most vulnerable groups of girls that live in rural areas of Kosovo as well as girls of RAE community. Most common reasons of school dropping is poverty, lack of security as well as marriages in early girlhood, very often below the age foreseen by law.

Another disturbing problem that is present for some years is prohibition of headscarf wearing as religious symbol in pre-university education of Muslim girls. Kosovo still lacks general practice in handling of this sensitive issue. After several years dealing with this sensitive problem, the Government, specifically the Ministry of Education, Science and Technology (MEST) did not manage to strengthen legal aspect for unique treatment of this phenomenon within the whole territory of Kosovo Republic. The diversity in treatment of these girls, forbidding their participation in lectures, depending from municipality and specific school, constitutes impermissible and unjustifiable discrimination in a lawful state.

¹⁵ OI C no. 316/2011. This is repeated complaint for judicial monitoring in 2012. The complainant has lodged the same complaint because of her uncle's prevented to become a legal owner of the house which has been constructed, while her father was alive, in the same plot with her uncle's. The case is in the Court's procedure while the OI is monitoring the case.

¹⁶ OI Eleventh Annual Report, Gender Equality, p.26

¹⁷ Law no. 2004/3 Law Against Discrimination, article 2

In all cases complainants have been advised to use legal remedies with the competent administrative and judicial institutions¹⁸ Representatives of educational institutions continuously recall the fact that Kosovo is secular state and that legislation at force (Administrative Direction) comprise a legal base that ban wearing religious symbols in state-run schools. On the contrary, parents and girls themselves, but even some religious NGOs, wearing of headscarf in state run schools do not consider as religious deed, but a religious obligation that is undisputable.

The Ombudsperson considers and recommends to the Assembly and the Republic of Kosovo prompt adjustment of legal base as per religious symbols, in this case headscarf wearing, in public pre-university educational institutions. This should be an acceptable solution for those girls, which will enable unimpeded attendance of lectures and education in general without breaching secular character of the Republic of Kosovo.

2.3.5. Domestic Violence

Domestic violence is a complex problem of Kosovo society that is rooted in historical attitude towards woman and can be physical, psychological, economical, and other as well.¹⁹

United Nation Declaration on the Elimination of Violence against Women which supplements the Convention on Elimination of all Forms of Discrimination against women (CEDAW) gives a definition for the violence against women, and first article of this convention states that “any violence based activity that impose physical, sexual, psychological harm or suffering for women, including threats for such acts, coercion or arbitrary deprivation of liberty that occur in public and private life.”

The most common violence exercised towards women is use of force by their husbands. The fact that women are very often emotionally bound as well as economically dependent with the perpetrators, which has great effect on abusing dynamics and the approach to treat it.

In majority of cases domestic violence is considered to be internal family problem with the restriction to be exposed out of it. In vast majority of domestic violence cases when such deed is reported to the competent body, it results with perpetrator’s revenge or the woman turns into the subject of moral judgment of the neighborhood where she lives.

According to the Republic of Kosovo Police report for 2012²⁰ some 306 cases have been recorded in 2012 in Prishtina municipality where domestic violence has been exercised, Gjilan municipality had 94 cases reported, Ferizaj municipality recorded 120 cases, Peja municipality 191 cases, Prizren municipality 139 cases and Mitrovica municipality recorded 182 cases.

¹⁸ Cases registered in OI C. No. 421/2012 and C no. 155/2012

¹⁹ Case registered in OI C. No. 326/2012

²⁰ The Report of Kosova Police regarding cases of domestic violence in Kosovo for 2012.

2.3.6. Women and girls, victims of sexual assault during the war in Kosovo

For many victims of sexual assault during the war in Kosovo as well as for their families the war did not end yet, due to legal non-inclusion of this category. Rape is war weapon and international conventions define it as well. War crimes committed against women and girls are of a very sensitive and painful nature and demands social understanding in order to overcome the traumas and report the cases. There were great polemics during 2012 in Kosovo regarding inclusion of sexually assaulted women and girls during the war in 1999 in the same category with war civil victims within the Law on War Veterans of Kosovo Liberation Army, but the recommendation was dismissed. Women and girls sexually assaulted during the war ought to be included within the law, weather by special law or within any other law that will adjust the status of victims and their designation as civil war victims. Among legal support this category of war victims should enjoy appropriate welfare, health and psychological support. It should be stated that in post war period they suffer enormously from the prejudices of the society towards them.

Women and girls, the victims of the war in Kosovo, should be granted with the legal infrastructure and institutional support with the main focus on eradication of prejudices and establishment of equality among all in our society

As per this issue, only two complains have been submitted to the Ombudsperson Institution, during the reporting period. Standing firmly for the rule of law in Kosovo, the Ombudsperson Institution at the same time soundly supports the issue of women and girls victims of sexual abuse during the war in Kosovo and calls upon for enjoyment of their rights for civil victims of war.

2.4. Right to Life

Each person enjoys the right to life. The life of a person is protected by law. Respecting the right to life and its absolute and unconditional protection, comprise the legal based concept of the Constitution of the Republic of Kosovo. The life is a right; fundamental attribute of human being which, when taken or removed in any form, the human being is eliminated as holder of rights and liabilities.

2.4.1. Excessive delays of investigation and professional procedures

Just in the first nine months of this year 24 murders have been committed in the territory of Republic of Kosooa: 3 in Prishtinë, 3 in Mitrovicë, 3 in Gjilan, 1 in Ferizaj, 7 in Prizren and 7 in Pejë. Most frequent reason for undertaking such action is: usury, bribe and kickback as well as property disputes etc. Blood feud phenomenon, as a motive for murder, is not excluded even though not in the degree as it was many years ago.

The primary fundamental right promulgated by the European Convention on Protection of Human Rights (ECHR) is the right to life. ECHR predicts positive liability of countries to investigate cases of death, which have the elements of the breach of this article.²¹ Ombudsperson's deep concern remains to be the lack of investigation of the cases reported, regarding violation of the right to life. During the reporting period the OI has received some complaints related to the breach of this right and the lack of investigation by the competent bodies as per finding, identification and disclosure of the perpetrators and punishment in compliance with the law.

The complainant from Rahoveci has lodged a complaint against the District Prosecution Office in Prizren for the lengthy proceedings in filing the charges concerning suspicious death of his daughter, just three days after she entered into the wedlock. He was disappointed with the District Prosecution Office in Prizren for the excessive delays in case investigation. This Prosecution Office, even a year after the death of the girl, is not in a possession of the autopsy report from the Institute of Forensic Medicine that operates in the scope of Ministry of Justice and accomplishes investigation related to the case that remains suspicious for the plaintiff.²²

From examination of plaintiff's allegations and investigation conducted by OIK as well as discussions held with the prosecutor of the case it resulted that replacement of prosecutor occurred during this period and that the case has not been completed by the Prosecution Office. In meantime, case prosecutor still did not receive autopsy report from the Institute of Forensic Medicine to initiate investigation and file an indictment. Ministry of Justice has been informed regarding this by the prosecutor.

The Ombudsperson on 15.10.2012 requested from the District Public Prosecution Office in Prizren to proceed the case with no longer delays. From the response obtained on 12.11.2012, the Ombudsperson was informed that the Department of Forensic Medicine in Prishtina has submitted to the Prosecution Office the autopsy report for the given case and that the prosecutor of the case has immediately asked further actions regarding the case.

OIK last year upon media reporting on injuries suffered by the citizens from the use of pyrotechnic substances during end of year holidays, according to article 15.3 of the Law of Ombudsperson, initiated *ex-officio* investigation identifying these substances as very hazardous, which infringe directly the right to life. As per this issue the Ombudsperson compiled a report with recommendations for the Ministry of Internal Affairs but no response has been provided from the Ministry to the Institution.²³

2.4.2. Blood feud and negligence of justice

²¹ Article 2 of the ECHR.

²² Rasti nr. 343/2012.

²³ *Ex-officio*, Report no. 4/2011.

The Ombudsperson considers as unacceptable that the innocent people, who unjustly are “*drawn in blood*”, unexpectedly are forced to split from the society as well as their life, being deprived from enjoyment and exercising of the rights guaranteed by the law and the constitution. For the Ombudsperson it is absolutely unacceptable that these persons are deprived from exercising their rights and fundamental freedoms which are guaranteed by the law and constitution. In such cases, Ombudsperson reminds again the complete failure of responsible law and order enforcement bodies to act.

It should be noted that dimensions that assassinations have reached, including those of blood feud, request collective action of society, but primarily of state authorities. Accurate law enforcement has indisputable role, mainly by the criminal police, prosecution offices and the courts that are competent, adequately specialized and qualified state bodies as per this issue. Timely reaction of police is necessary in identification and detection of possible conflicts that may results in murders while comprehensive, timely, objective and thorough investigations ought to be conducted by the prosecution. Accurate law enforcement by the courts against the perpetrators will have preventing effects for the other to commit such offences.

As in previous reports the Ombudsperson repeats his requests for efficient law enforcement, for effective judicial system, for efficient investigation system within a reasonable time frame as well as application of recommendations issued by the Ombudsperson. Till then the judicial system in Kosovo continuous to be in the contradiction with the Constitution, applicable law and the international standards that guarantee this right.

Recommendations:

- *Kosova Police to display more efficiency in detecting perpetrators that infringe the right to life.*
- *Institute of Forensic Medicine within Ministry of Justice to conduct without delays actions foreseen by law for completing autopsies of murder cases within a reasonable time limit.*
- *Prosecution Office to conduct thorough, efficient, detailed and accurate investigations without delay, within the time frame foreseen by law.*
- *Kosova Judicial Institute to continue with training of judges and prosecutors in criminal field, specifically in the fields that deal with the rights to life.*
- *Kosova Judicial Council to hasten appointment of young judges and prosecutors in order to elude lengthy proceedings, due to understaffing.*
- *Ministry of Internal Affairs to apply recommendations issued by the Ombudsperson regarding the use of pyrotechnic devices and substances.*

2.5. Right to personal integrity

Personal integrity is defined as inviolability of the human body, phenomenon or any other combined form that denotes the unity and reacts as one organism.

The Constitution of Republic of Kosovo guarantees the Right to a Personal Integrity through protection “*Every person enjoys the right to have his/her physical and psychological integrity respected*”,²⁴ including the right to take decisions for reproduction, the right to have control over the body, the right not to be the subject of medical treatment against own will as well as the right not to be a part of medical or scientific experiments without his consent.

The concept of personal integrity is defined as intact and inviolable of human being in terms of respect of his/her physical and psychological values. According to this definition the Right on Personal Integrity apart from being protected by the Constitution of the Republic of Kosovo, in our country is also governed by a set of laws relating to paragraph 1,2,3,4 of Article 26 of the Constitution of the Republic of Kosovo.²⁵

During the reporting period OI did not receive any complaint on violation related to the Right on Personal Integrity.

2.6. Rights of the accused

The terms *arrest* and *detention* are used interchangeably almost in all clauses of the article 5 of ECHR and should be considered mainly as referring to the certain measure- whatever reason they are used for – with the effect of deprivation a person from liberty. Arrest and detention should be in accordance with the domestic law and with ECHR²⁶ and should not be arbitrary.

Any person arrested shall be informed within a short period of time and in a language he understands, of the reasons for his arrest and of any charge against him. He/she should be informed on his/her fundamental rights: The right to be examined by a doctor/consultant, the right to have a lawyer, and the right to inform family or friends. These fundamental rights must be provided as soon as possible – immediately after the arrest. These three fundamental rights are sufficiently respected by the country’s authorities.

The Ombudsman Institution has continuously monitored, in some cases even without notice, detention centers, prisons and facilities where people deprived of liberty are located, through regular monthly visits performed in these center, as in Dubrava, Lipljan and Smrekonica Prisons, and Detention Centers (DC) in Prishtina, Peja, Prizren, Gjilan, and Mitrovica. During the visits Ombudsperson conducted personal interviews with the detainees, among other things regarding three basic rights mentioned above, but has not received complaints.

²⁴ The Constitution of Republic of Kosova

²⁵ Law on Rights and Responsibilities of Citizens for the Health Care, no. 2004/38; Law on Reproduction Health, no. 02 /L-76 and Law on Emergent Health Care, no. 02/L-50.

²⁶ European Convention on Humans rights

From the visits made and information gained in these places, it was noted that centers are overcrowded and conditions of detention in some of them continue to be unsatisfactory. Such conditions are serious also for the staff working there. Tight spaces, insufficient ventilation, humidity and darkness characterize some of the staff's working environments and facilities where incarcerated persons are located.

In order to improve this situation, based on information received by the Commissioner of Kosovo Correctional Service (KCS), construction of Gjilan Detention Centre has started and construction of Prishtina DC is expected to start soon. In addition, some improvements at Dubrava Prison are being finalized. Their reconstruction will enable more decent working and imprisonment conditions.

These centers during the reporting period were mostly overcrowded with detainees: Correctional Center in Dubrava had 215 detainees, CC in Lipjan had 19 women and 11 juveniles, Prizren DC had 87 detainees, Prishtina DC had 56 detained persons, 155 were detained in DC in Lipjan, 70 were detained in DC in Peja, DC in Mitrovica had 5 detainees and DC in Gjilan, 55 detainees. These figures change from day to day, for example, according to the director of DC in Gjilan, given number of detainees sometimes during the year was doubled.

This situation occurred as a consequence of imposing detention on remand without applying any other measure prescribed in Article 3 of the KPCC.²⁷ Imposing of this measure can later result with compensation of those detained without any reason. Due to this, during the reporting period, 104 requests for compensation were lodged of which 92 were reviewed and paid.²⁸

Article 5 (3) of the ECHR determines a solution between release or trial of a person within a reasonable time period, but in order to justify lengthy detention sufficient and acceptable reasons ought be given for that such as: the risk to flee, influence in the process of justice, commit another criminal offence or breach public order, etc. Although one or more of these reasons may exist when the person is initially detained, they may become less important over time and in such circumstances the person confined must be released.²⁹ ECHR even found breach of Article 6 for trial within a shorter time, after 15 days had passed between the time when the defendant was kept in custody and first-time he was brought before a court.³⁰

Moreover, even when there is a justifiable reason for the continued detention of the person, however general condition remains that the period of pre-trial detention should not be unjustifiable. This should be judged by the complexity of the legal proceedings, but also the level of issue preparing. Prolonged inactivity will inevitably lead to an attestation of violation. It is unjustifiable to supposedly think of fear as a reason than the accused might flee or

²⁷ KPCC Article 3, provides that “criminal sanctions are the following: principal and alternative punishments, penalties and judicial admonition.”;

²⁸ Statistics taken from the Kosovo Judicial Council, within which is formed a committee of three members which decides based on “General criteria for damage compensation of persons convicted or arrested without reason”, dated August 25, 2008;

²⁹ OI, case A. 191/2012. The party complains regarding continuation of detention without sound reasoning even though all evidences have been obtained from the prosecution office

³⁰ ECHR case McGoff v. Sweden (Application no. 9017/80, Judgment 13.10.1982 Strasbourg.

influence on witnesses. There is not a credible reason when statements under oath have been taken. The reason given must be real and not a ritual citing of permanent formula, showing that no statements were taken in consideration for application of release. Continuation of detention may be justified in a given case only if there are clear indications that there is a genuine public interest which, notwithstanding the presumption of innocence, outweighs the right to release the person.

Drafting of justification for detention should be not done in a technical language, since majority of people experienced deprivation of liberty have not the intellectual capacity or professional experience to understand the complexity of law. The general idea is that person involved has the idea what is happening to him.

In cases where communication is not possible due to a person's age or his mental state, the reason should be given to the person that is in charge of him. When a person, deprived of liberty, does not understand the official language, the reason for detention should be given in a language which he understands (this may include Braille or body language).

The right to defend in person or through legal assistance of his/her will or in case the person has no sufficient means to pay for legal counsel, one should be appointed to him/her for free when the interests of justice demand this.³¹ When the accused has the right to free legal assistance, he/she is entitled to legal aid which is practical and effective and not merely theoretical and deceptive.³²

The right for legal aid for an accused person depends on two circumstances. Firstly, the fact that the accused lacks sufficient means to pay for legal assistance and, secondly, when it is in the interests of justice to require legal aid provision. When complex issues involved occur and the defendant has not sufficient legal qualifications to present and develop arguments for herself, the interests of justice require that the defendant be granted with official experienced and skilful attorney to prepare the case in matter. The court must also consider the complexity of the issue.³³

The right for legal assistance in civil matters is not expressly set out in the Convention, but the Court states that it should be available if the interests of justice require it.³⁴

The need for assistance goes beyond preparation of a claim and includes presentation in hearings before the court. These procedures should also be open and refer to equality of financial means, between the parties, plaintiff and the detained person. It is totally unacceptable hearing of plaintiff in the absence of detained party,³⁵ or as in case when

³¹ ECHR case, *Moudefo v Woukam*. France, (Application no. 10868/84), Judgment 21.01.1987, Strasbourg. In cases when a detained person cannot afford a lawyer costs, this has to be done by the state. The Court found a violation of Article 5 (4) ECHR, because the accused was not granted with lawyer for his release.

³² ECHR case, *Artico v. Italy*, (Application no. 6694/74), Judgment 13.05.1980, Strasbourg.

³³ ECHR case, *Pham Hoang v. France*, (Application no. 13191/87), Judgment 25.09.1992, Strasbourg.

³⁴ ECHR case, *Airey v. Ireland* (Application no. 6289/73), Judgment 10/09/1979. Strasbourg.

³⁵ ECHR case, *Toth v. Austria* (Application no. 11894/85), Judgment 12.12.1991, Strasbourg.

prosecutor had access to official files in preparation of the case but the detained was restricted to such access.³⁶

During this reporting period, OIK continued to receive complaints regarding difficulties that families of detained person face when visiting them because to the long distances. Due to this family visits are rare and expensive and very often unaffordable

Recommendations:

- *To render other alternative measures and not only detention on remand to be imposed, as a mean to ascertain the accused person.*
- *Judicial and Prosecutorial Council to exercise broader oversight in the work of judges and prosecutors, and to undertake disciplinary measures against judges and prosecutors in cases of unjustifiable and unlawful excessive delays in cases of detention.*
- *Kosova Chamber of Advocates also to exercise additional surveillance over attorneys and impose measures against those who infringe the Law on Advocates and Advocates' Professional Ethic Code.*

2.7. Right not to be tried twice for the same criminal act

Ne bis in idem principle, namely the principle that no person shall be tried twice for the same offence is a general and fundamental principle in a rule of law state. The right not to be tried twice for the same offence is guaranteed by the Constitution of the Republic of Kosovo³⁷ and the European Convention on Human Rights (ECHR)³⁸. This principle is also included in the International Convention on Civil and Political Rights.³⁹

The purpose of the *Ne bis in idem* principle is to protect the individual from arbitrary power of the state and to prevent the state or law to punish people twice for the same offense.

The Ombudsman Institution for the period subject to this report did not find any violations regarding the violation of this principle. Therefore, the Ombudsman institution is encouraged by the fact that the principle *Ne bis in idem*, is treated fairly in the legal system and its application in practice.

³⁶ OI case A. 309/2011. OIC / District Court in Prishtina. See also ECHR case Lamy v. Belgium, (Application no. 10444/83), Judgment 30.03.1989, Strasbourg;

³⁷ Constitution of the Republic of Kosovo

³⁸ Article 34 of the Constitution of the Republic of Kosovo

³⁹ ECHR, Article 4.1. of the Protocol no.7, “No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that state”;

2.8. Right to legal remedies

Each subject of the contested law has the right to use legal remedies against judicial and administrative decisions.

This right is exercised by citizens in case their rights and interests are being violated, as prescribed by law.

Citizens are guaranteed the right to legal remedies by the Constitution of the Republic of Kosovo,⁴⁰ criminal law, civil and administrative as well as international agreements and legal instruments.

Citizens can use legal remedies against any decision issued by state public authorities and courts. Application of legal remedies is a good opportunity for state public authorities to reconsider their decisions, to improve accidental omissions, which can occur during accomplishment of various procedures. This enables prevention of injustice, misuse of power and provides right decision based on law. It also guarantees rule of law principle.

Citizens' request for legal protection can be submitted to the Constitutional Court of Kosovo but only after exhausting all previous legal remedies, determined with appropriate legislation in Kosovo.

In judicial criminal proceedings, legal remedies and time limits for use of claims, those against ban, setting or continuation of detention, complaints on judicial decisions as well as exercising of extraordinary legal remedies, are prescribed by law.⁴¹ Prescription of legal remedies to challenge detention is also foreseen by international instruments.⁴²

The right to a trial within a reasonable time, is guaranteed by Article 6 of the European Convention on Human Rights⁴³ and Article 10.1 of Kosovo Law on Contestable Procedure⁴⁴ and as such should be provided by all courts in any judicial proceeding, at all levels of the judicial system.

As previous years, most common reason of complaints submission with OI are against judicial system, then those against municipalities, ministries and public companies. Complaints are lodged against inefficiency of the legal remedy, actually inability of complaint review within a reasonable time frame as well as negligence of administrative decisions.

Complaints lodged against the judiciary, as per legal remedies, mainly are submitted against all levels of courts as well as the Special Chamber of the Supreme Court regarding Privatization Agency of Kosova. Citizens' complaints mainly deal with excessive delays of judicial procedures until the verdict rendered after exercising of legal remedies. This has great

⁴⁰ Article 32 of the Constitution of the Republic of Kosovo

⁴¹ Code of Criminal Procedure (2003 and 2008)

⁴² ECHR, Article 5.4

⁴³ ECHR, Article 6.1

⁴⁴ Law no.03/L- 006 for Contestable Procedure, Article 10.1

impact on inefficiency of legal remedies, for the protection of human rights that are guaranteed with legal provisions.

As per complaints submitted with the Ombudsperson, in administrative or judicial proceedings, when violation of the right to legal remedies have been ascertain, due to actions or inactions of public authorities, the institution has initiated investigations and requested information from administrative authorities and courts of different levels, on causes of delays.

A part of citizens' complaints lodged consist on their demand on drafting legal remedies by OI such as complaints and lawsuits, aiming to protect their rights for which complainants claim to have been violated. There were also requests to represent them in disputes with the competent institutions, which disclose the fact that they are unfamiliar with the OI competencies on one side and the trust of citizens towards this institution on the other. But, Ombudsperson's great concern is citizens' distrust in the work and justice offered by the competent institutions, with the particular emphases on judiciary and attorneys in Kosovo.

In order to have effective and efficient legal remedies as well as to avoid infringement of human rights and fundamental freedoms, the Ombudsperson notes that legal time frames should be respected by the competent institutions regarding the case or otherwise to ensure appropriate compensation, when such violations occur. Therefore, the Ombudsman recommends Kosovo institutions at central and local levels, administrative bodies and courts, to make consistent implementation of national laws and international instruments for exercising of remedies by public authorities.

2.9. The principle of legality and proportionality in criminal cases

The principle of legality and proportionality in criminal cases is guaranteed by the Constitution of the Republic of Kosovo.⁴⁵ This principle is one of the basic principles of criminal law under the Provisional Criminal Code of Kosovo (KPCC).⁴⁶ Based on this, legal safety and human right protection is guaranteed to all individuals in the territory of the Republic of Kosovo.

The principle of legality *Nullum crimen sine lege, nulla poena sine lege* requires that the crime is prescribed by law. No defendant can be punished arbitrarily or retroactively, for which no action has been defined by law as a criminal offense, with the exception of actions, which at the time of their commission, under international law, constitute genocide, war crimes or crimes against humanity. European Convention on Human Rights (ECHR) in

⁴⁵ Constitution of the Republic of Kosovo, Article 33

⁴⁶ Provisional Criminal Code of Kosovo, UNMIK/Regulation/2003/25, Article 1 "offences, criminal sanctions and measures of mandatory treatment are prescribed only by law."

Section 7.1. clearly defines that "*there is no punishment without law.*"⁴⁷ In this regard, in accordance with the spirit of the ECHR, the Kosovo legislation guarantees the same thing.

The first part of the principle *nullum crimen sine lege* (no punishment without crime), prohibits the criminal conviction of the person who, at the time of committing the crime, did not constitute criminal conduct. Thus, the criminal law provisions cannot be applied retroactively. The second part of *nulla poena sine lege* (no punishment without law) protects the perpetrator from getting more severe punishment than what is prescribed by the law. Even in this regard, Kosovo legislation in force is more favorable for the accused, because in case of change of legislation, even in the legal system of the Republic of Kosovo, against the perpetrators of the crime, the most favorable law would apply.⁴⁸

During the reporting period, the Ombudsperson Institution has not registered special cases in connection with Article 33 of the Constitution of the Republic of Kosovo. The Ombudsperson in all cases of complaints regarding the violation of the principle of proportionality, with limited power in judiciary, has instructed citizens to use legal remedies.

The Ombudsperson found out that the principle of proportionality continued to be violated this year as well in cases of punishments rendered by judiciary against those who have abused with the citizens' votes in the local elections in 2009 and parliamentary elections of 2010.

Municipal courts have continued to issue punishments with fines and probation while punishment with effective imprisonment was imposed in rare cases. Therefore, the Ombudsperson notes that, apart from unjustified delays in court proceedings, the punishment imposed by the municipal courts to Kosovo elections manipulators were low, and totally disproportionate and inadequate compared to the scale and nature of the offense committed.⁴⁹

Such behavior of the courts, violating the principle of proportionality in such cases, when a fundamental right guaranteed by the constitution has been breached and which is prohibited by the law at force, destroys creation of legal base state and undermines the foundation of the democratic society.

2.10. Freedom of movement

⁴⁷ ECHR, Article 7.1. "No one may be punished for an act or omission which, at the time it was committed, did not constitute a criminal offence under national or international law. Nor shall a heavier penalty be given than the one that was applicable at the time when the criminal offence was committed. "

⁴⁸ Provisional Criminal Code of Kosovo (KPCC), UNMIK/Regulation/2003/25, Section 2. "If the law changes prior to rendering of final decision then against the perpetrator more favorable law will be used."

⁴⁹ The daily newspaper "Koha", September 1, 2012, page 42. August 31, 2012, only one person was convicted of Gjakova Municipal Court, for alleged vote rigging in the last election. While, judicial process of others is continuing even after almost 2 years since the prosecutors have filed an indictment. The process is ongoing. Since the first six months of 2011, when the municipal prosecutor has filed and sent to the Court about 100 charges. Municipal Court in Gjakova, so far has issued only one final decision. A person was convicted and sentenced to three months in prison. In fact the person was initially fined by the Municipal Court with 250 Euros, but after the prosecution appeal, the District Court imposed him 3 months imprisonment.

The Constitutional⁵⁰ and legal regulations concerning the freedom of movement in the Republic of Kosovo⁵¹ are of the highest level and in compliance with the international standards.⁵² The Government of Kosovo and the state institutions, which are competent for the full implementation of these norms should ensure these rights and obligations, and have an explicit obligation to offer safe free movement to all citizens in Kosovo, without any discrimination or restriction. The competent institutions have an obligation to undertake all measures so that full freedom of movement is provided to all people in Kosovo.

As per the previous annual reports, in this reporting period too the safety and freedom of movement of specific ethnic communities within Kosovo has varied between specific regions.

In the reporting period, the Ombudsman has received several complaints from the Serbs due to the failure of the MIA of Kosovo to provide permanent registration plates to them in the process of re-registration of vehicles. Without these plates, they cannot cross the border points with Serbia, and therefore their movement with vehicles is restricted.

There have also been complaints about an instruction issued by MIA based on which the Kosovo Police has confiscated plates issued by the MIA of Serbia with signs of cities in Kosovo. During vehicle check, the Kosovo Police has confiscated these plates, which the owners of the vehicles were using the territory of Serbia because the RKS plates are unacceptable for the government in Serbia, who only accept plates with KS sign.

Regarding these problems, the Deputy Minister of Internal Affairs of Kosovo highlighted in November last year that Serbs who still await Kosovo plates with either "KS" or "RKS" signs should be issued temporary plates.⁵³

⁵⁰ Article 35 of the Constitution of Kosovo, [Freedom of Movement]: "1. Citizens of the Republic of Kosovo and foreigners who are legal residents of Kosovo have the right to move freely throughout the Republic of Kosovo and choose their location of residence. 2. Each person has the right to leave the country. Limitations on this right may be regulated by law if they are necessary for legal proceedings, enforcement of a court decision or the performance of a national defense obligation. 3. Citizens of the Republic of Kosovo shall not be deprived the right of entry into Kosovo. 4. Citizens of the Republic of Kosovo shall not be extradited from Kosovo against their will except for cases when otherwise required by international law and agreements. 5. The right of foreigners to enter the Republic of Kosovo and reside in the country shall be defined by law."

⁵¹ By Law on Citizenship of Kosovo No.03/L-034; Law on Dwelling and Emplacement No. 02/L-121; Law on Foreigners No.03/L-126; Law on Travel Documents No. 03/L-037, dated 19 June 2008, the version amended by the Law on Amendments and Supplements to the Law on Personal Documents No. 03/L-217, dated 11 December 2010.

⁵² Article 13 of the Universal Declaration on Human Rights: "Everyone has the right to freedom of movement and residence within the borders of each state." *The European Convention for the Protection of Human Rights and Fundamental Freedoms*, Protocol 4, Article. 2: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence, and no restrictions shall be placed on the exercise of these rights."

⁵³ Statement of the Deputy Minister for Internal Affairs given to Radio KIM, broadcasted on 13.11. 2012. "In total, Kosovo has received 2.066 such requests. According to him, the Kosaovo Serbs may drive vehicles with temporary registration plates until Pristina obtains proof of their validity from Belgrade. Also, citizens who pay regular tax for temporary registration plates shall not pay again when, after the abovementioned verification and re-registration of vehicles take place they withdraw the temporary registration plates with the KS or RKS signs." Accessed at http://www.info-ks.net/clanak.php?id=23619&naziv=preko-2000-zahtjeva-od-strane-srba-zatblisce-osova&nav_id=1&pod_nav=10, (25.12.2012, 14.h.).

On that occasion it was also said that the deadline for re-registration was on 1 June, and after that, during the extension, the Serbs were enabled to file requests for re-registration the change from plates issued by the MIA in Serbia into plates with the signs “KS” and “RKS”.⁵⁴

Based on the conclusions reached in Brussels, in October 2011 the Government of Kosovo brought a decision to re-register the old Yugoslav plates as either RKS or KS plates of all vehicles that were in Kosovo until 1 November, whereas the vehicles imported after that date would be subject to taxes.⁵⁵

The application of the agreement that was reached on the freedom of movement between Kosovo and Serbia, which concerned the travel across the borders using ID cards, and also the issue of the registration plates and vehicle insurance starting from 02. 07. 2011 which agreed, among others, that all vehicles entering Serbia with Kosovo plates and coming from Serbia with Serbian plates would pay insurance compensation⁵⁶ has created additional difficulties in the reporting period and has rendered difficult the movement of citizens from Kosovo and Serbia. Vehicle insurance prices are very high, and given the already difficult economic situation of the citizens in this region, this may lead to isolation. In addition to administrative difficulties now there are financial burdens, which most people cannot afford, thus resulting in restricted freedom of movement.

People from Presheva Valley have been affected by this decision as the amount of compensation for insurance prevents them from maintaining family, trade or economic relations with Kosovo. At a meeting with the Vice Prime Minister of the Government of Kosovo the political representatives of three municipalities in south Serbia, where Albanians are a majority, expressed their dissatisfaction with the given situation and were promised that the Government would look into the possibility of decreasing the vehicle compensation prices.⁵⁷ To date, the Government has not undertaken any concrete measures about this matter, and the amount for the vehicle insurance compensation has not changed.

In north of Kosovo there are enormous difficulties for the implementation of the agreements on the freedom of movement reached between the Kosovo and Serbian officials. EULEX Mission assists with the implementation of these agreements in the north of the country too.

2.10.1. Humanitarian Transport

⁵⁴ Ibid, “Due to the needs of people in the field, first and foremost of people from the region of Gjilan, the Government has decided to extent. The displaced or the returnees who had no access to information or were physically unable to re-register their vehicles can still do so” but the vehicle re-registration procedure has been rendered strickter after June 1 because there exist reasons to believe that a number of vehicles and driving licenses have been forged, and therefore the MIA of Kosovo has decided to verify these with the document issuing authority. For this reason the Kosovo Police does not allow vehicles without the respective registration signs to drive.”

⁵⁵ Ibid

⁵⁶ EU Press Release EU, 225, 12410/11, 2 Juky 2011, Brussels, accessed at <http://www.consilium.europa.eu>

⁵⁷ <http://www.koha.net/?page=1,13,95221>, Meeting of the Government of Kosovo 11.04.2012.

When talking about humanitarian transport, the one for the endangered communities and groups who live in isolated areas of Kosovo is still very necessary to ensure safe access to key services and goods and connect with the largest regions of these cities. However, lack of coordination between institutions at the central and local level, as well as procedural supervision have resulted that in this period, the humanitarian transport failed to meet adequately and entirely the needs of the users.

Although in the previous years the number of reported security incidents has decreased, the expansion of the existing line and inclusion of additional lines, budget restrictions and proposed reforms of an administrative character may result in a significant reduction of this service which would affect the users. People who use this type of transport still rely on humanitarian transport, and it is important that it continues to provide access to rights and services, such as education, health care, social assistance, employment etc.

In the reporting period, the Ombudsman has received complaints from the members of the Serbian community who have complained that from May 2012 the humanitarian transport in the directions Prishtinë-Graçanicë-Laple Selo–Preoc-Livagje-Gushtericë-Dobrotn, which is the sole transport in the abovementioned directions, as there is no public transport service available, has been discontinued. In relation to this issue, representatives of the Ombudsman have had several meetings with responsible officials at the Ministry of Infrastructure, which is the competent ministry to deal with issues of humanitarian transport. At all meetings with the responsible party, the representatives of the Ombudsman asked that this line be reinstated as soon as possible. However, until the end of the reporting period, the transport line had not become operational, although it was discontinued eight months ago when the operator that was selected at their will discontinued the transport. Apart from the mentioned line, three additional itineraries were also discontinued, two of which being LOT 1 (Milloshevë-Graçanicë and Bërnjicë- Graçanicë, discontinued from September 2012) and LOT 10 (Gorazhdec-Zveçan, discontinued from January 2012.)

The tendering process in relation to this matter is ongoing, and commenced only following the intervention of the Ombudsman. The failure of the Ministry of Infrastructure to respond to the obligations entrusted to the management for humanitarian transport in an efficient manner and in compliance with the administrative provisions is clear.

The freedom of movement in the territory of Kosovo should be permanent and unrestricted. There exist indicators to show that things are improving but unfortunately, there still exist areas where freedom of movement is not complete.

2.10.2. Travel to the EU countries

EU visa regime towards the third countries is still valid for the territory of Kosovo. The citizens of Kosovo still cannot travel to the EU countries without a visa and this would be possible only if they possess a valid Schengen visa.

The ability of all people to have and possess travel documents has a great influence on the realization of rights pertaining to the freedom of movement, including the right to return, the right to travel freely, (e.g. coming in and out of Kosovo) and the right to choose the place of residence. Keeping in the importance of these issues for all citizens and communities in Kosovo, the Law on Travel Documents of Kosovo⁵⁸ provides for their appearance of classification, as well as for the procedures to issue travel documents, including the validity time.

Recommendations

- *The Government of Kosovo, namely the Ministry of Internal Affairs should undertake all necessary measures in order to resolve in the shortest deadline possible all requests received for the re-registration of vehicles and issuance of permanent registration signs.*
- *The Government of Kosovo should undertake all relevant measures in relation to the vehicle insurance and removal of administrative obstacles for a more efficient circulation of goods and services and free movement of people.*
- *The Government of Kosovo, namely the Ministry of Infrastructure, should undertake necessary measures to continue conducting the unobstructed humanitarian transport.*

2.11. Right to Privacy

The Right to Privacy is guaranteed by the Constitution of Republic of Kosovo as well as with ECHR.⁵⁹ According to the Constitution and ECHR, Right to Privacy include the right in legal protection against illegal or arbitrary interference into ones private life, in family, at home or correspondence, telephone and other kinds of communication, protection of honor and reputation, etc.

As previously stated in reports, the Ombudsperson continuous to expose concerns relating the noise caused by vehicles, persons and different activities conducted in public places. In majority of Kosovo settlements, notably in big cities, the issue of noise produced from the loud music coming from restaurants, bars and places where private parties (weddings) are organized constitutes not only great disturbance but at the same time sound breach of the right to privacy. In this direction, in majority of cases, competent and responsible authorities, law

⁵⁸ See Article 7 of the Lw on Travel Documents No. 03/L-037.

⁵⁹ Constitution of Republic of Kosova, article 36; ECHR, article 8.

enforcement bodies as well as municipal inspection have failed to provide peace and quiet living environment for the citizens living close to restaurants, bars and other places that organize such events, and enabling to the restaurant owners gaining a great profit but torturing others living in close neighborhood.⁶⁰

Competent bodies are obliged by law as well as by ECHR to protect the privacy of citizens.⁶¹ This obligation is not fulfilled in any dwelling place Kosovo wide with particular emphases on big cities. Despite above mentioned activities, there are some others that are permitted within the settlements (such as industrial units where sawing machines and other heavy equipment operate and produce loud noise from vibration caused from cutting, drilling, and other similar activities) without being obstructed by Kosovo police and municipal inspection.

2.11.1. Inviolability of home (residence)

According to article 8 of the ECHR the home in general has been identified as a place where a person lives permanently or with which a person has sufficient and continuous connections. Court of Human Rights in Strasburg has decided to make more flexible definition, defining the concept of home as follows:

- *Holiday homes, second homes and hotels that provide long time accommodation; homes on other person's ownership, occupied by someone else during a significant time period of the year;*
- *Social settlements where the plaintiff pays the lease even though the legal tenancy can be accomplished according to local law;*
- *Business premises, when there is no precise division of private residence of the person and the office or between private activities;*
- *Recorded company office, other business locations or premises;*
- *Unconventional settlements, such as caravans and other remote settlements.*

⁶⁰ OI, *Ex officio case 333/2012*. The report regarding the noise caused from the owners of coffee shops and bars broadcasting music from 20:00h till 24:00h during weekends. On 22nd of July 2012 OI representatives met with the Mayor of Gjilan Municipality. Decision agreed during the meeting was to inhibit further upset of citizens with the music with assistance provided by the Municipal Directorate of Inspection in cooperation with Police. Due to later reactions of OI of the date 16th of July 2012, of the 3rd of October 2012 and of the 7th of November 2012 the Directorate of Inspection has ordered removal of provisional constriction of coffee shops. This case has resulted with positive outcome, but just temporarily. As in other big cities, in Gjilan as well the noise remains to bother the citizens of Kosova continuously, intensified to maximum these summer days very often up to the early morning hours.

OI Case no. 485/2012. Complaint of some citizens Of Vushtri Municipality. They denoted their concern because of the loud music coming from the pubs in their neighborhood in late night hours. On the 7 of February 2013, 6 of March 2013 and 30 of May 2013, OI representative met with the director of the Municipal Directorate of Inspection and competent inspector. After actions taken by the OI it has resulted that this directorate has fined all owners of pubs and that the case has been proceeded in the court. This case ended positively.

⁶¹ Law no. 02./L- 102 *Law on Noise Protection, article 2* .

During 2012 the Ombudsperson has received a considerable number of complaints for privacy infringement. Complaints in majority of cases dealt with illegal constrictions or sound and harmful exceed of physical specifications in issued permits of the multi level buildings. Another issue of great concern is the direct risk that digging of huge halls for basement of multi level construction represent for the existing houses close to the locations of construction.⁶² It should be stated that many complaints lodged refer to closeness of the buildings to private existing houses, or occupation of public spaces mainly pavements and roads without having due respect for the legal norms.

2.11.2. Control and interception of communication means

Republic of Kosovo still lacks the law that regulates interception communication issue. Lately in some detected cases of phone and stored communication interception, it has been proved that responsible people for management of intercepted material have abused with these information. Current Law for telecommunication in Kosovo has great shortcoming related to the phone interception, recording of phone calls, interception of stored communication through phone and through computer network. This legal gap leaves open door for various types of misappropriation and omissions by the responsible and competent bodies in terms of interception.

Given the interception cases occurred in Kosovo, known as scandals for the public, just in the last two years victims of such deeds have been declared leaders of government and the Ministry of Internal Affairs themselves, members of the assembly as well as other people appointed in leading positions of the highest state institutions, the Ombudsperson stresses that security from misuse of illegal interception of communication in Kosovo, the right guaranteed by law, is equal to zero. There is not the least security from abusive interception of communication in Kosova. Local responsible authorities as well as those international in Kosova have failed completely in provision of security of all kinds of communication.

⁶² OI, *Case no. 457/2012*. Complaint of Prizren citizen due to crevices of the private house resulted from construction of annex for the restaurant in the close neighborhood. Emergency and Rescue Directorate visited the place and issued a report stating clearly the damage that the house endured from the construction occurred close to it.

On 15th of October 2012, OI representative met with the construction inspector of the Prizren municipality. Based on the information obtained from him, crevices were evident in the house but he was unable to attest the cause of house damage and if the complainant can continue to live in that house. He also stated that there is no constriction expertise since there is no construction expert in the Prizren municipality to ascertain security of living there. The inspector notified that the owner of restaurant in construction has valid construction permit and the work is being monitored by the construction inspector. The complainant notified that she had lodged a lawsuit with the Court through attorney. This case has ended since the complainant is in use of legal remedies and waits her complaint to be resolved through the court.

OI Case 539/2012. Complaint of Prizren citizen regarding placement of electric power transformer in complainant property. On 16th of January 2013, the Ombudsperson sent a letter to the KEK Management Director. But, complainant informed that he has lodged complaint with the court. The case has ended since the complainant is in the use of legal remedies and waits resolution of the case through the court.

The Ombudsperson recommends the following:

- *Kosovo Police and the municipal inspection to act decisively according to the law on protection of the right to privacy in all its forms.*
- *The Assembly and the Government of Republic of Kosovo to proceed with endorsement of the Law on interception of communication in Republic of Kosovo, which should be fully in compliance with criteria and norms set by international instrument applicable in Republic of Kosovo.*

2.12. The right to marriage and family

Marriage is the living union between man and woman set by the law through which the interests of the spouses, family and society are being accomplished.⁶³ Matrimonial relations between spouses are based on their free will to unite in wedlock and rely on the equality between them, mutual respect and support.⁶⁴ Equality of spouses during entering into wedlock, in the course of the marriage and in cases of marriage dissolution is guaranteed by the Universal Declaration on Human Rights as well as with ECHR directly applicable in Kosovo.

Basic principles that set mutual rights and liabilities of the spouses is the right of spouses in gaining rights and obtaining liabilities during marriage, respect for human rights during the matrimony as well as cooperation for the benefit of family and living together. Within the scope of this principle, Divorce as family right institution takes part as well, that enables dissolution of omnipotent marriage.⁶⁵

According to ECHR, spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This right includes state's liability to respect this right and to ensure mechanisms for its protection.⁶⁶

During 2012 reporting period, the Ombudsperson has received a considerable number of complaints regarding breach of this right. Most common cases refer to lengthy proceedings of marriage dissolutions, procedures on deciding about minor children custody, payment of alimony and failure to execute decisions. Ombudsperson's great concern is divorces since in these cases victim remains children (juveniles) who after the dissolution of the matrimony are forced to separate from one parent. There are also cases when children are separated from both parents and the custody is entrusted to the third person. This whole thing has negative impact on their development, growth and education.

⁶³ The Constitution of Republic of Kosovo Article 37.

⁶⁴ Kosovo Law on Family No. 2004/32.

⁶⁵ Kosova Law on Family, Article 68.

⁶⁶ ECHR, Article 5 of Protocol no. 7.

In all cases of marriage divorces, decisions of public authorities ought to be in the best interest of the child.⁶⁷ Child shall not be separated from any parents against his/her will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.⁶⁸

From the information obtained by the Department of Social Welfare of the Ministry of Labor and Social Welfare (MLSW) it resulted that this year in majority of cases the custody was gained by male parents while statistics of the last year indicate that custody entrusted to female parents prevailed.⁶⁹

2.12.1. Lengthy judicial proceedings in matrimony dissolution cases

For female complainant coming from Prizren, the right to alimony for the juvenile remains to be unsolved, due to lengthy proceeding in execution of judgment from the Municipal Court in Suhareke.⁷⁰ Even after the second letter addressed by the Ombudsperson no response has been received. Such failure of the courts is unlawful and is in contrary with article 6 of the ECHR which proclaims efficient judicial proceeding within a reasonable time frame.⁷¹

After wedlock dissolution and court's ruling on entrusting the children to her custody the female complainant from Peja, still did not carry out this right. She requested execution of the ruling from Municipal Court in Peja. Based on complaint lodged, the OI has monitored almost all hearings and talked with case judges regarding the case, since the case has been assigned to different judges.⁷²

After investigation and many undertaken activities by OI, the complainant met with her young children for the first time after the divorce. The Ombudsperson persistently requests execution of court's ruling for attainment of parental right on custody to her young children.

But, there are cases when Courts are effective in their actions such is the case with the complainant from Deqan municipality. The complainant has requested from the OI investigation of the excessive delay of the court procedure for payment of the alimony from Municipal Court in Deqan, after dissolution of the matrimony. The case was monitored by the OI. The Ombudsperson requested explanation from the competent bodies for the delay of the

⁶⁷ Convention on the Rights of a Child (CRCH) article 3 (1).

⁶⁸ Convention on the Rights of a Child, *article* 9 (1).

⁶⁹ Information obtained from the department of Social Welfare of the MLSW on 1st of November 2012, statistics for nine months, January- September 2012. The number of divorces 118, the number of children from divorced matrimonies 223, those entrusted to male parent 107, those entrusted to female parent 90, combined 24 and 2 undefined.

⁷⁰ OI, *Case A. No. 266/2011*.

⁷¹ ECHR, article 6.

⁷² OI, *Case no. 90/2012*.

procedure in the Municipal Court in Deqan and due to Ombudsperson's efforts Municipal Court in Deqan brought the omnipotent ruling on alimony payment.⁷³

One specific aspect of the Right in marriage and family is adoption (foster care) aspect. Even though during this reporting period the OI did not receive any complaint regarding this issue, according to the statistics obtained from the Department of Social Welfare in the MLSW there are some 1.245 children without parental care in Kosovo which are on custody. From this number some 1.153 are inherited cases from 2011, while 92 are new cases of 2012. Some 24 children from this number have been adopted from different families.⁷⁴

Centers for social work (CSW) play crucial role in various family issues, such as during divorce procedures, determining of foster care and adoption. The Ombudsperson requests from CSW to diligently and professionally accomplish their work, without external interference and impartiality, based on law since their professional thoughts play crucial role on obtaining the decision by the courts that deal with children custody as well as with the procedures of spouses' reconciliation.

Judiciary is granted with the power for resolution of family issues. Thus, the Ombudsperson demands more decisive professional strives for taking decisions and their executions within a reasonable time and without procedural delays.

Recommendations:

- *Kosovo Judicial Council to continue with appointment of young judges with the aim to increase the efficiency of the courts and evade different delays.*
- *Kosovo Judicial Institute to continue further with training of judges that adjudicate family issues.*
- *Courts to be impartial in taking decisions specifically on the aspect of gender discrimination, when determining parental custody for the children.*
- *CSW to accomplish their professional work and to respond on courts' queries regarding case assessments in expert capacity.*

2.13. Freedom of religion, belief and conscience

⁷³ OI, Case no. 13/2012.

⁷⁴ Information from the Department of Social Welfare of the MLSW, on 1st November 2012.

As a result of many remarks made by the Institution of the Ombudsman of Kosovo⁷⁵ and other organizations about the existing need that the legal status of religious communities in Kosovo be regulated by law, it may be suggested that in the reporting period there was some activity to resolve this problem. By the end of 2011, the Government of Kosovo submitted to the Assembly of Kosovo the draft Law on Religious Freedom, which makes proposals about resolving the issue of the legal position of religious communities. As per the proposed legal amendments, the legal position should be regulated institutionally.

The promulgation of this law would contribute to the observance of freedoms of religion, belief and conscience that are guaranteed by the Constitution of the Republic of Kosovo⁷⁶ and the European Convention on Human Rights ECHR.⁷⁷

The legal amendments that need to be implemented upon adoption of the draft Law on Religious Freedom provide for the regulation of the manner and conditions of the registration of religious communities, and also for the appointment of the competent body for the registration of religious communities in Kosovo.⁷⁸ The adoption of religious novelties should also regulate the method of payment of income tax by both clergy and secular personnel, who work for religious organization and receive salaries.

Likewise, Article 4A of the draft law brings essential novelties. Paragraph 1 of this article in the draft law explicitly mentions the religious communities recognized by law, which are the Islamic Community of Kosovo, the Serbian Orthodox Church, the Catholic Church, the Hebrew Community and Evangelist Church. The following paragraphs of this Article emphasize the obligations of the religious communities and of the legal persons towards the Ministry of Justice, which will be competent on matters involving the religious communities.⁷⁹

Article 7 of this Draft Law provides in detail the rules on how to register the religious communities, whereas Paragraph 2 of Article 7 provides the rule that the religious

⁷⁵ *Ex officio* report of IO No. 145/2010, IO, On the Non-Existence of Normative Acts to Resolve the Legal Position and Status of Religious Communities in Kosovo, submitted to the Assembly of the Republic of Kosovo on 30.7.2010.

⁷⁶ Constitution of the Republic of Kosovo – Article 38 [Freedom of belief, conscience and religion] guarantees: “2. Freedom of belief, conscience and religion includes the right to accept and manifest religion, the right to express personal beliefs and the right to accept or refuse membership in a religious community or group.”

⁷⁷ ECHR, Article 9, [Freedom of belief, conscience and religion]: “1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2 Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

⁷⁸ Assembly of Kosovo, draft laws, draft law on amending the Law on Religious Freedom, page 2 Article 1A, <http://www.assembly-kosova.org/common/docs/ligjet/NZ%20o%20izmen%20zakona%20o%20verskim%20slobodama.pdf> (2. 11. 2012.)

⁷⁹ *Ibid*, pages 3 and 4, Article 4A.

communities are obligated to respect human rights and freedoms and the constitutional order, otherwise they may be denied registration.⁸⁰

2.13.1. Religious Communities

Freedoms and rights of the religious communities that are guaranteed by the Constitution of the Republic of Kosovo⁸¹ and the Law on Religious Communities in Kosovo,⁸² should, as a general rule, be regulated and protected by adopting the proposed amendments of the existing Law on Religious Freedoms.

2.13.2. Situation in the Field

The problems that the religious communities in Kosovo face are more or less similar to the problems they have faced in the past. The number of believers is the same; in fact, the largest number around 90% are believers of the Islamic Community of Kosovo, around 7 % of the population are believers in the Serbian Orthodox Church, while the other religious communities together make up for the remaining percentage. In the reporting period we note an increased activity of the Hebrew Community, which we will elaborate further in the text.

2.13.3. Islamic Religious Community

One of the biggest problems that has been highlighted in the past by the Islamic Religious Community and which has often spurred protests and massive public gatherings of the believers of the Islamic Religious Community, and to which the IO has drawn the attention in the previous reporting periods concerns the need to build a new mosque in the central part of the city.⁸³ The authorities of Pristina have supported the request of the Islamic Religious Community and have allocated space in the city center. The construction of the new mosque started in October 2012.⁸⁴

Additionally, one of the most important events for the Islamic Religious Community is the inclusion of the Faculty of Islamic Studies in the public university system. The

⁸⁰ Ibid, page 6, Article 7 Paragraph 2.

⁸¹ The Constitution of the Republic of Kosovo, Article 39, [Religious Denominations]: „1. *The Republic of Kosovo ensures and protects religious autonomy and religious monuments within its territory. 2. Religious denominations are free to independently regulate their internal organization, religious activities and religious ceremonies. 3. Religious denominations have the right to establish religious schools and charity institutions in accordance with this Constitution and the law.*“

⁸² Law No. 02/L-31 On Religious Freedoms in Kosovo, adopted by the Assembly of Kosovo on 13. 7. 2006, and published by SPGS 24. 8. 2006.

⁸³ IO Annual Report 2011, page. 48.

⁸⁴ *The construction of the large mosque in Prishtina began*, Radio Free Europe, (8.10.2012) <http://www.slobodnaevropa.org/archive/news/20121008/500/500.html?id=24732681>, (13.11.2012.).

representatives of this faculty consider that this union with the University will enable the faculty to receive public funding, which means that 23 professors and the additional administrative personnel of the faculty will receive salaries from the state budget. Apart from the financial support they will receive, joining the University is of importance for the representatives of this faculty because it will render easier the acceptance of students' diplomas, as earlier there were instances when the Ministry of Education would not always allow that.⁸⁵

In the reporting period there have been protests due to dissatisfaction with the wearing of *hijab* in elementary and secondary public schools in Kosovo. An important protest was held on 23 February 2012, when around 5000 people gathered in the streets of Prishtina. The main reason for this gathering and for organizing the protest was the decision of the Ministry of Education to prohibit wearing of *hijab* on the part of students and teachers in the schools of Kosovo. This prohibition encountered the disapproval of a part of NGOs and participants in the protest, who considered that this questioned their human rights. People from all over Kosovo participated in this protest.⁸⁶

The problem involving the wearing of *hijab* in the elementary and secondary public schools in Kosovo has not been solved in a uniform fashion Kosovo wide. In some municipalities in Kosovo this issue has been solved depending on the will of the mayors, municipal education directors, or directors of specific schools. For the simple reason that competent national public institutions are undecided, the situation is presented with different positions in different environments within Kosovo, with regards to this problem that yet remains unsolved. Due to this situation it is quite understandable that students are discriminated in schools and other environments in Kosovo, compared to the others. The Ombudsman expects that the Assembly and Government of Kosovo will open an institutional debate on this problem and will find the most definitive favorable solution for the children in the elementary and secondary schools in Kosovo.

2.13.4. Serbian Orthodox Church

The problems which the Serbian Orthodox Church has faced in 2012 are similar to the problems they have faced in the previous reporting periods. Most pronounced cases involved damaging of churches and local cemeteries, however, this reporting period featured less such cases than before.

The Church of Archangel Michael in Shtimje sustained serious damages; in July 2012 the entire lead roof was taken from the church, which has been visibly damaged. In the last years this church has been renovated several times.⁸⁷ Also, the Church of Saint Nicholas in

⁸⁵ Muhamet Brajshori, University of Prishtina integrated the program of Islamic Studies, *SETimes.com*, (22.10.2012). http://www.setimes.com/cocoon/setimes/xhtml/sr_Latn/2012/10/22, (13.11.2012.).

⁸⁶ Around 5000 people protested for wearing *hijab*, *Sanxhak Europe*, (23.2.2012) <http://sandzak.eu/?p=366>, 13.11.2012.

⁸⁷ The temple of Archangel Michael has been destroyed, *KIM radio* (19.07.2012), <http://www.radiokim.net/vesti/stimlje-devastiran-hram-svetog-arhangela-mihaila.html>, 13.11.2012.

Kamenica has been broken into and stolen on 10 February 2012,⁸⁸ and the Church of Saint George in Stanishor was also the target of theft on 3 March 2012. According to the spokesperson of Kosovo Police – Region of Gjilan, after the assessment, the police reached the conclusion that the motivation of damaging and stealing at the church are not ethnic, but it is stealing for gaining.⁸⁹

During the visit to the local cemetery in Zhaç village, the residents of this village came across many damages to the graves, and a portion of the cemetery fence has been ripped off and stolen.⁹⁰ In 2011, with the purpose of solving the problem of cemetery reconstruction, the Ministry of Local Administration started the initiative of cleaning the cemeteries in Prishtina. The first part of this activity has been completed, and the second part will commence now. This part will involve works to fix the cemetery and reconstruct the new and old chapel building.⁹¹

The Office for Community Affairs which operates under the auspices of the Office of the Prime Minister of Kosovo is paying special attention to the religious monuments and buildings of the Serbian Orthodox Church. Based on the information from the official website of the Office of the Prime Minister the creation of “special protection areas” (SPAs) around monuments and buildings that are of importance for the Serbian community, or of the historical city centers, is foreseen, and these will be controlled by the Council for Implementation and Monitoring (CIM). According to the information from the official webpage of the Office of the Prime Minister of Kosovo, if any area is designated as a special protection area it is safe from any event or activity that may damage its historical, cultural, architectural or archaeological context, its natural environment or aesthetic surroundings.⁹²

2.13.5. The Catholic Church in Kosovo

The problems of the Catholic Church in Kosovo in the reporting period do not differ much from the ones mentioned in the previous IO reports. Also, members of the Catholic Church have emphasized in the past years the need to regulate the legal position of religious denominations. The national structure of the believers remains the same as in the previous years; they are mainly Albanian but there are some Croats too who mostly dwell in Janjeva and Letnica. The Croats are mainly elderly, and there are relatively few younger people. The Catholic Church caters to the needs of the elderly through the priests.⁹³

⁸⁸ Church in Kamenica desecrated and looted *Tanjug* (10.02.2012), <http://www.blic.rs/Vesti/Hronika/306500/Oskrnavljena-i-opljackana-crkva-u-Kosovskoj-Kamenici>, 13.11.2012.

⁸⁹ Church in Stanishor looted, *KIM RTV PLUS*, (03.03. 2012) <http://www.radiokim.net/vesti/objijena-crkva-u-stanisoru.html>, 13.11.2012.

⁹⁰ Serbian cemetery in Zhaç desecrated *net*, (6.10.2012) <http://www.naslovi.net/2012-10-06/b92/oskrnavljenosrpsko-groblje-u-zacu/3933574>, 13.11.2012.

⁹¹ Displaced invited to return, *B92 News*, (3.11.2012), 13.11.2012.

⁹² Office of the Prime Minister of Kosovo, Office for Communities, Culture and Religion, Religious and Cultural Heritage <http://www.kryeministri-ks.net/zck/?page=3,82>, 13.11.2012.

⁹³ Report on the life of Kosovo’s Croats in Viti, OSCE (October 2011), <http://www.osce.org/kosovo/83789>, 19.12.2012.

The problem of the ever ageing population in these dwellings increases every day, and as priests of the Catholic Church from this place say, the reason for this constant moving away of the population is conditioned by various factors but they hope for the cordial support of state institutions.⁹⁴

2.13.6. Protestant Evangelist Church of Kosovo

This year, as in the previous years, the Protestant Evangelist Church of Kosovo is one of the most interested to resolve the legal position of religious denominations in Kosovo. The legal position of religious denominations, which for them has been less than satisfactory considering the manner of regulation to date, should be regulated by promulgating a new law. The representatives of this church have emphasized this on previous occasions too.⁹⁵ There is no information whether the buildings of the Protestant Church have been damaged this year.

2.13.7. Hebrew Denomination in Kosovo

Unlike previous years when there was no information about the work and activities of the Hebrew Denomination in Kosovo, in 2012 we have data on their activities. The largest part of the information on the current activities of the Hebrews in Kosovo may be found in the webpage of the organization of Kosovo-Israel Friendship named after “Dr. Haim Abravanel”, who was a well-known doctor and one of the most famous personalities who saved the Hebrews in the territory of Kosovo during the Holocaust.⁹⁶

However, there is information which he have not collected either earlier or now. This information pertains to the Hebraic cult of praying and in reality there is no clear information whether these exist and if yes, how that functions in Kosovo. We did not manage to find any information whether the Hebrews practice in Kosovo their religious traditions and if yes, how.

2.14. Freedom of expression

Freedom of thoughts, as well as searching, obtaining and giving information and ideas regardless of boundaries is the core of what is called freedom of expression, protected by the Constitution of Republic of Kosovo (article 40), Universal Declaration of Human Rights (article 19) and ECHR (article 10).

⁹⁴ Beta, Jahjaga: Croatian Community is part of the Constitution of Kosovo, *Blic Rs.* (20.5. 2012), <http://www.blic.rs/Vesti/Politika/324567/Jahjaga-Hrvatska-zajednica-deo-u-Ustavu-Kosova>, 18.11.2012.

⁹⁵ From the public debate of the Commission on Human Rights, Gender Equality and Missing Persons and Petitions, (1.11.2011) <http://www.assembly-kosova.org/?cid=3,128,4162>, 18.11.2012.

⁹⁶The important thing is they came alive, e-novine, <http://www.e-novine.com/feljton/45926-Vano-stigli-ivi.html>, 19.11.2012

General overview exposed through public opinions, whether through media, public debates or any other form as well as through reports of international organizations, disclose adverse undesirable situation of freedom of expression in Kosovo.⁹⁷

The concordance of the right to express freely with other rights frequently is subject of debates, but at the same time makes more complex division of justice. Authorities are prone to treat this right as an issue of their competency and not as a fundamental right.

The tendency of breaching the freedom of expression alluding to protection of privacy for issues that might be in the interest of the public is observed as issue that demands additional attention. The part of information and documents concerning personalities and authorities who exercise public functions in the interest of the state and its citizens should be public and available.

The freedom of expression has been challenged by technology development. On one hand telecommunication world offers possibilities to accomplish this right in new ways of expression, while on the other hand free flow of information exposes the need to adjust lawfully the aspect of freedom of expression and its protection.

Legal mechanisms at force in Republic of Kosovo in majority of cases do not contain penalty provisions for disrespecting of the rights in the field of freedom of expression. Advocacy and promotion of the freedom of expression should never be considered as excessive and unnecessary. This might be done also through specific legal instrument that will provide additional protection to the freedom of expression.

25 complaints have been handled totally by Ombudsperson during 2012 for infringement of freedom of expression. Vast majority of them deal with the use of bilingualism in different municipal centers in Kosovo as important and crucial element for obtaining and offering necessary information that allows accomplishment of other individuals and social rights.

Case of obvious breach of the freedom of expression was the attack against organizers and other participants on promotion event of one of the numbers of *Kosovo 2.0* magazine. The attack denotes that the freedom of expression is likely to be a target of dissension of different natures in societies with cultural and religious diversity and in a transition such is the case in Kosovo.

The Ombudsperson had closely monitored the event of this gathering and the violation exposed against the organization "Libertas". In his public reaction the Ombudsperson expressed his concern for physical and verbal assault, threats addressed directly. Due to public statements regarding the case the Ombudsperson was and remains to be the target of verbal, media and electronic attacks from individuals and particular groups of people with extreme religious orientation.

In paragraph 2 of the article 40 of the Constitution of Republic of Kosovo the state is entrusted with the power to limit the freedom of expression when such thing is necessary "[...]

⁹⁷Visit: <http://www.freedomhouse.org/sites> (13.02.2013).

to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion .”⁹⁸

Article 10 of the ECHR protects not only thoughts and information that is peacefully obtained but thoughts and information that might be distressing and offending, but in the function of democratic value. This article protects not only the spoken or written word, but images as well, actions or even clothing if the purpose is information. At the same time article 10 of this Convention protects not only the substantive aspect of information but also the form through which they are articulated.

2.15. Right of access to public documents

The Constitution of the Republic of Kosovo (Article 41) guarantees the right of access to public documents. This includes the right of everyone to know the content of documents held by public authorities as well as the right of access to public information with the exception of restrictions established by law. This right sets and establishes rules for proper functioning and transparency of public administration in relation with public regarding its daily activities.

Free flow of information is an important tool in building trust between institutions and citizens, in creating transparency of operations as well as in contributing to the efficiency and effectiveness of public administration. Law on Access to Public Documents (LAPD) foresees a comprehensive procedure of access to public documents and is important for the fact that through its implementation, the citizen is aware of the services expected by the administration, as the administration becomes aware of liability to offer services to the citizen.

Implementation of the LAPD in Kosovo, in practice, is followed by practical difficulties of various natures. The number of cases lodged with OI in terms of denial of the right of access to public documents in 2012 is 17. Compared with the previous year 2011, there is a slight increase in reported cases. Contribution to this increase must certainly be acknowledged to the activities of Ombudsman Institution either by meeting citizens or by organizing roundtables, whose aim was to raise the awareness of citizens about their rights to be familiar with the contents of documents compiled and kept by public institutions.

With the support of OSCE Mission in Kosovo on 30th of January 2012, the Ombudsperson Institution organized a roundtable on "*Implementation of the Law on Access to Public Documents*" the purpose of which was open discussion of issues related to law implementation and identification of the challenges that arise during its implementation in practice, along with other stakeholders such as the parliamentary commission of Public Administration, Office of the Prime Minister, civil society and media.

Some of the recommendations that emerged from this meeting were that the classification of documents and compiling of documents lists by classification in each public institution should be done to avoid arbitrariness on access or denial of official documents, appointment

⁹⁸ Constitution of Republic of Kosovo, *article* 40, paragraph 2.

of persons responsible for receiving requests for access to public documents even in institutions where this has not been done, organization of information campaigns for citizens about opportunities that this law offers as well as coordinated conduct of requests for access to public documents and complaints for denial or refusal of access to public documents, in accordance with the State Agency on Personal Data Protection.

Again on the 19th of November 2012, the Ombudsperson Institution organized a round table with the support of the OSCE Mission in Kosovo with the theme "*The citizen at the Crossroad*" which intended to discuss on the challenges in implementing LAPD, the Law on Personal Data Protection and the Law on Classification of Information and Security Clearances from the perspective of independent institutions and civil society. As a joint conclusion of participants in this discussion was the necessity of public awareness rising to accomplish their right to access to public documents as well as raising awareness of public institutions and authorities for their compulsion in respect of this right.

Article 12 and 13 of LAPD determines the interest that may justify denial of access to public documents. Accordingly, persons are entitled to have access to public documents, but it can be subject only to such limitations and conditions which are prescribed by law and which are mandatory to protect the interests envisaged in the European Convention.⁹⁹

LAPD during its implementation should be harmonized with other laws, especially the Law on Classification of Information and Security Clearances and the Law on Personal Data Protection. And as observed in practice, the biggest problem of administrative authorities stands here. Classification of documents is most complex issue in the whole process. Classification of documents would create a clear division of documents accessible and non accessible to the public, and would not leave room for breaching of the law based on assumptions whether a document is or is not accessible. There are still many ambiguities about what is being considered a document which cannot be published.

The Ombudsperson to a certain level acts a role of arbiter that is connected with the right to be informed, but without the necessary attributes to accomplish it effectively. The Ombudsperson is not executive body. Therefore, Ombudsperson's recommendations are rarely taken in consideration.

Having judicial appeal as the only alternative, many people demanding access to public documents decide to withdraw from the battle for freedom of information. Given the backlog of cases in courts, delays in handling cases of this nature is to be expected. Although last year's annual report recommended establishment of accelerated judicial procedure for handling of these cases, it seems that in practice it is impossible. Changing of this practice maybe should be given a consideration, which in reality is very discouraging for the citizens.

⁹⁹ ECHR Article 10, paragraph 2. "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, Information classification system in the interest of national security, territorial integrity to public safety, for the prevention of public disorder and crime prevention, the protection of health or morals, for the protection of dignity or rights of others, for preventing the disclosure of information received in confidence, or for guaranteeing the authority and impartiality of judicial power. "

It is more than a need establishment of execution mechanism in Kosovo which will ensure the effective implementation of LAPD.

The Ombudsperson is endlessly committed for full implementation and without delays of the LAPD, as this is a condition for transparency of administrative bodies which should be open to the public, making public the rights, obligations and public institutions' services towards citizens, ways how they are obtained, and what is needed to solve the problems that they have, in accordance with the law.

During 2012 the Ombudsperson has published three reports with recommendations where denial of this right was recorded, shortcomings highlighted and recommendations given. Only one of the recommendations issued by the Ombudsperson addressed to public institutions for denial of access to public documents was implemented,¹⁰⁰ meanwhile in two of these reports the Ombudsperson has either not received response by the responsible institutions at all, or the Ombudsperson's recommendations were not implemented.

Recommendations:

- *For the Government of the Republic of Kosovo, namely the Ministry of Public Administration (MPA) to undertake concrete actions to increase the transparency of administrative bodies which should be open to the public, making public the rights, obligations and public institutions' services towards it, ways how they are obtained, and what is needed to solve the problems that they have, in accordance with the law.*
- *For the Government of the Republic of Kosovo, namely the MPA to take concrete actions to increase the public awareness in order to accomplish the right of access to public documents, as well as to raise the awareness of institutions and public authorities for their obligations that they have for respect of this right.*
- *For the Government of Republic of Kosovo, precisely for the MPA to undertake concrete activities as per documents classification and compiling list of documents based on classification within each institution public institution as a necessity to avoid arbitrariness or denial of access to official documents;*
- *Each public institution in the Republic of Kosovo to appoint persons responsible for receiving of requests for public access to documents in those institutions where this has not been done.*
- *For the Parliament and the Government of the Republic of Kosovo, in this case, MPA to take concrete actions to synchronize the LAPD with other laws, especially with the Law on Classification of Information and Security Clearances and the Law*

¹⁰⁰ OI Report with Recommendations A. no 354/2011 regarding the denial of the right of access to public documents from the Kosovo Cadastral Agency. This agency, after publication of the report acted in compliance with the recommendations although complainants were not interested further for their case. Also other cases at OI A.354/2011, A.502/2011, 520/2011.

on Personal Data Protection, to enable its implementation in practice and avoid the problems which are encountered by public administration bodies.

- *For the Parliament of the Republic of Kosovo to create an execution mechanism, which would ensure effective implementation of the law of access to public documents.*
- *Application of Ombudsperson's recommendations for access to public documents from all bodies of public institutions.*

2.16. Freedom of the Media

Freedom and pluralism of the media has been guaranteed by Article 42 of the Constitution of the Republic of Kosovo. This article prohibits media censoring and at the same time specifies in which cases the prevention from circulating information becomes necessary.¹⁰¹ Meanwhile, Item 3 of this Article reiterates the right of correcting published information which is incomplete or inaccurate.

In the entirety of what is referred to as the freedom of media which is intrinsically linked with the freedom of expression the media outlets may be positioned in two roles. Every time the information is conveyed correctly by observing the standards of professionalism media has served the fair cause for freedom of information and general interest. On the contrary, from being a leader and advocate, media outlets are transformed into instruments that harm the grounds of freedom of expression or in more extreme cases, they become violators of what freedom of media and expression means.

Media are the key source of information. In cases when they do not have economic independence, in cases of legal uncertainty or loopholes, even in cases of failing to observe the respective laws, freedom of media with the goal of informing the public faces a dilemma. Legal guarantees alone do not reduce the amount of continuous dilemmas if the media are truly free in conveying accurate information in a credible or independent fashion.

Independence of the media and the legal infrastructure of their freedom remains an issue that continues to be emphasized in various reports on Kosovo by local and international institutions. International organizations point out specifically in their reports the lack of freedom of the media.¹⁰²

In spite of remarks and recommendations that the Ombudsman has presented in the annual report of the previous year regarding the disputable Articles 37 and 38, the Assembly of Kosovo adopted the Criminal Code. These two Articles were inconsistent with the Law on Slander and Defamation and in contravention of Article 42 of the Constitution of the country, which guarantees freedom of the media. After the adoption of the Criminal Code, including these two Articles, by the Assembly of Kosovo, the Ombudsman has opened *ex officio* cases.

¹⁰¹ *Constitution of the Republic of Kosovo*, Article 42, Item 2.

¹⁰² *Freedom House*, Reports, Freedom of the press 2012, Global and regional ranking. <http://www.freedomhouse.org/sites> (13.03.2013).

After the severe reaction of the media, of the civil society and of the opinion, after this code was remanded to the Assembly to review and re-vote, the disputable Articles were removed from the law and the IO case was closed.¹⁰³

The IO has received two other cases alleging violation of the freedom of the media; one alleged violation of the freedom of circulating information but it was established that there was no violation of this nature in the case at issue.

The second case concerned disloyal competition in the operational media space. This case was found inadmissible because the party was in the process of exhausting the legal remedies.

The Ombudsman is concerned by the cases when violence and pressure is exerted, along with blackmail, threats or other forms of obstructing the work of the journalists in Kosovo. Just as concerning the fact that the journalists and the media fail to report to the IO the cases concerning the violation of their freedom and rights, in spite of public declarations accompanied by stories and films of unacceptable behavior towards the journalists. The reporting of such cases would offer a clearer picture and more accurate data than how and how much, from whom and at what moments the freedom of media in Kosovo is impaired and targeted.

The Ombudsman considers as very positive and important the fact that RTK 2 has offered a good platform for media space in Serbian language. However, there still is no media space and there is need for capacity building of the staff, either in electronic media, or press, for the Turkish, Roma, Bosniac, Ashkali and Egyptian communities.

The issue of financial and professional independence of the public broadcaster RTK continues to be a sensitive issue that requires an acceptable legal solution for the nature of the free media. Full respect for the freedom of the media is fundamental for the functioning of a democracy and for the protection of human rights. Freedom of the media is also key to ensuring that the citizens play an active role in the public life and democratic processes.

The Ombudsman asks from the relevant institutions to prepare jointly with the journalists a strategy to open the necessary space to promote freedom of the media. On the other hand, observance of the Law on Labor, specifically with regards to employment contracts would help protect the journalists from pressure within the media outlets and would result in better working conditions. Nevertheless, the general economic situation is reflected in the general media situation and therefore, institutional support is necessary.

2.17. Freedom of Gathering

The right to Freedom of peaceful Gathering is guaranteed by the Constitution of the Republic of Kosovo.¹⁰⁴ Being one of the basic human rights, this right is clearly determined in the most important international instruments for human rights that are applicable in Kosovo.¹⁰⁵

¹⁰³ IO, Case 338/2012, Institution of the Ombudsman vs. Assembly of Kosovo.

In the Republic of Kosovo, this right – as a constitutional category, and the obligatory legal restrictions, never and in no way given the conditions of the usual state should not be deprived of its substance. The legal restrictions of this right are exercised only if “*it is necessary to ensure public order and security, public health, national security or protection of the rights of others.*”¹⁰⁶

In general, we may say that in 2012 this right has been exercised considerably by the citizens who, through organizations, gathering and protests have expressed their requests, dissatisfaction and objections regarding a variety of issues.

In 2012 the IO has monitored some of the protests organized in Kosovo with the purpose of monitoring closely the conduct of these events and to oversee the observance of fundamental rights and freedoms of the citizens guaranteed by Constitution. The IO has noticed that in general the involvement and conduct of members of the police force in most cases has been correct. Likewise, in the majority of these protests it has been noted that the organizers have called for peaceful protests and have made considerable efforts for the protests to be peaceful. However, in spite of mutual efforts there have been instances when the situation of the protests has escalated.

Based on its competences and legal mission the Ombudsman acted following the statements and tense situation related to the forewarned protest by Vetëvendosje Movement on 14 January and 22 January 2012 by engaging 4 teams to monitor the situation at the locations where the protests were being held, i.e. border crossing points Dheu i Bardhë and Merdare, in order to observe the fundamental human rights and freedoms.¹⁰⁷

During this monitoring the Ombudsman has noted that police intervention, including the choice of means and methods as well as the use of force during the protests on 14 January 2012 in Podujevë and Dheu i Bardhë was unnecessary, unjustifiable and disproportionate.

While monitoring the protest of 14 January 2012, the Ombudsman has noted that in addition to the protest site, members of the Special Police of Kosovo have used violence also while transporting the arrested, accompanied by degrading and humiliating acts, failing to spare even a media representative who was doing his job.

The Ombudsman considers that while doing its job the police is obligated and should have as primary goal to protect the fundamental human rights and freedoms. This obligation stems

¹⁰⁴ *Constitution of the Republic of Kosovo*, Article 43. “Every person has the right to organize gatherings, protests and demonstrations and the right to participate in them.”

¹⁰⁵ *Universal Declaration of Human Rights*, Article 20, Para. 1; *International Pact on Civil and Political Rights*, Article 21; *European Convention on Human Rights*, Article 11. “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 [...].”

¹⁰⁶ *Law on Public Gatherings*, No. 03/L-118, Article 5, Para. 3: “Competent bodies for public order can undertake measures to use force, only when the public gathering respectively the protest endangers the general good”.

¹⁰⁷ Press release of the representative of Vetëvendosje Movement: “*We will stand there until the Government begins to execute the decision of the Assembly of Kosovo*”; Press release of the MIA Minister: “*All those who support Vetëvendosje Movement may face on Saturday the use of force by the Kosovo Police*”. Accessed at: <http://www.gazetaexpress.com/index.php/artikujt/rubrika/C21/C6/?cid=1,15,71429> (10.02.2012) and <http://www.gazetaexpress.com/index.php/artikujt/rubrika/C21/C6/?cid=1,15,71429> (10.02.2012).

from the local law and the acquired international obligations.¹⁰⁸ This highlights specifically the protection of human rights as per the principles of the European Convention on Human Rights, which not only obliges that these rights and freedoms be protected but at the same provides boundaries for police action by giving instructions as to what can the police do to meet the “*legal police objectives*”.¹⁰⁹

Any type of demonstration in public places, be they protests, manifestations or other types of expression of dissatisfaction may cause a specific level of concern in a given normal day including disruption of traffic or any public service. However, when protesters are not involved in acts of violence, “*it is important that public authorities indicate a high level of tolerance towards peaceful gatherings if the freedom of gathering guaranteed by Article 11 of the European Convention on Human Rights should not be deprived of its substance.*”¹¹⁰

ECHR has also noted that “*an individual does not cease enjoying the right to freedom of gathering as a result of sporadic violence or other punishable acts committed by others in the course of a protest if the individual at question remains peaceful in his/her goals or conduct*”.¹¹¹

After reviewing the fact gathered in the field and after the legal analysis of events of abovementioned protests the Ombudsman addressed on 21 February 2012 a report to the Minister of Internal Affairs. The recommendations from this report were:

1. *To conduct a judicial investigation into conduct of police members who used force against the protesters and passer-by citizens at the protest of 14 January 2012 in Podujevë and at the border crossing point of Dheu i Bardhë.*
2. *To identify and bring before justice all those individuals from the police force who have used and/or ordered use of violence against the protesters on 14 January 2012.*
3. *To identify and bring before justice all those individuals who have used force during the protest against the Kosovo Police.*
4. *To review the role and mission of the Kosovo Police Inspection, the officials of this inspection who have violated the code of ethics and the regulation of activities of the Kosovo Police Inspection on 14 January 2012 to be investigated by an independent institution and to face the legal responsibilities.*
5. *To undertake disciplinary and legal measures against the member of the Special Police Unit who obstructed the work of the Institution of Ombudsman and threatened the representative of the Institution of Ombudsman.*

¹⁰⁸ *Law on Police*, No. 03/L-035, Article 2, Item b. See also *The European Code of Police Ethics*, I. Police Objectives – “to protect and observe fundamental human rights and freedoms of individuals that are foreseen especially in the European Convention on Human Rights.”

¹⁰⁹ *Law on Police*, No. 03/L-035, Article 3: Definitions – “Legal Police Objective – means the goal that the Police follows while exercising its functions, which is in compliance with the international standards of human rights and the law in power;”.

¹¹⁰ *European Court on Human Rights*, see case *Balçık and Others v. Turkey* (Application no. 25/02) Paragraph 52 and *Ashughyan v. Armenia* (Application no. 33268/03), Paragraph 90.

¹¹¹ *Ibid*, see case *Ezelin v. France* (Application no. 11800/85) and case *Ziliberberg v. Moldova* (Application no. 61821/00).

6. *To organize for the Special Unit of the Kosovo Police special training regarding the management of situations when facing large crowds of people in various public organizations, organized in line with the instructions of the Venice Commission on Protests with special emphasis on the observance of human rights and freedoms.*

7. *The Ministry of Internal Affairs is required that all members of the police of the Republic of Kosovo be issued with identification number regardless of the form, manner and situation of their engagement in the units within which they operate.*

8. *Kosovo Police, as a constitutional institution for the protection of public order and safety, public health, national security, and human rights and freedoms should by all means ask to have contacts with the organizers of public gatherings regarding their planning when this is necessary because of space, time and number of participants unless that is not expressly prohibited by special decision.*¹¹²

The Ombudsman has never received any response by the Ministry of Internal Affairs (MIA) regarding the abovementioned report which makes recommendations that need to be implemented by the MIA.

The Ombudsman received a report by the Kosovo Police Inspection (KPI) informing that upon the analysis of the events, the KPI has handled several cases involving the conduct of police officers.¹¹³

The KPI informed the Ombudsman that with regards to the case initiated by criminal charges filed with the Municipal Prosecution Office in Gjilan, the KPI did not receive any additional information about the progress of the case or the stage of investigation regarding this case.

According to the information that the Ombudsman has obtained from the Directorate of Internal Investigation it results that this directorate has received from the IO some cases involving complaints from the citizens regarding the protests of 14 January 2012, but after conducting investigation they reached the conclusion that there are no elements of disciplinary violations on the part of the Kosovo Police officials.¹¹⁴ This result of the investigations conducted by the Directorate of Internal Investigation leaves room for suspicion in the independence of this institutions with regards to the uncovering of the real situation. Leaving aside the methods, way and manner of investigation conducted by this directorate, the expression alone that “there are no elements of disciplinary violation on the part of the Kosovo Police officials” in this case in spite of all evidence offered by the individuals, media and the IO proves either forged investigation results or absence of courage to face the supervisors which necessarily raises the question of the independence of this

¹¹²IO, *Ex-officio Report No. 28/2012*, Regarding the events in the protests of 14 and 22 January 2012. Accessed at: <http://www.ombudspersonkosovo.org/repository/docs> (19.01.2013).

¹¹³ *Kosovo Police Inspection Report*, dated 7 March 2012. Page 27: The report reads that the KPI in collaboration with the public prosecutor have assessed in one case that there exists the grounded suspicion that the police officer has committed a criminal act, and therefore criminal charges were filed with the Municipal Prosecution Office in Gjilan. While in three other cases, still according to the KPI report, after conducting the investigation the KPI reached the conclusion that there are no elements of the criminal act, but there are elements of disciplinary breach and these cases were forwarded for disciplinary investigation to the Directorate for Internal Investigation of the Kosovo Police.

¹¹⁴ Official notification from the *Directorate of Internal Investigation at the KP* submitted to IO, dated 26 December 2012.

directorate for genuine investigation. This result renders legal and necessary the requirement for the independence of these institutions in the Republic of Kosovo.

Another occurrence that the Ombudsman has monitored closely is the protest of 17 October 2012, where Vetëvendosje Movement organized a protest in the vicinity of the Government of Kosovo building which was followed by intervention of the Kosovo Police that resulted in several injured people and several others arrested.¹¹⁵ Some members of the Assembly of Kosovo had been amongst the protesters trying to get into the Government building but had been obstructed from doing so by the Kosovo Police.

Although the number of the injured and the arrested was not small the Minister of MIA declared publicly at the Assembly that: “*Yes, it is true, I have given the order and the order had to be executed in a manner even stricter*”, alluding to the fact that the Constitution and the law provide for “*deputies, leadership of the Assembly, Government and Presidency*” be stopped if they block public institutions,¹¹⁶ although these institutions do represent the people’s will.

On 22 October 2012, Vetëvendosje Movement had organized another protest. Following the attempts of some protesters to block the entrances of the officials at the government building the police intervened and arrested a number of people protesting among whom some were deputies who during the Police arrest sustained serious injuries.

The protest of 22 October 2012 continued until afternoon when the members of the Special Police Unit intervened using tear gas alongside the “Nëna Terezë” square. During this intervention the police did not spare people passing there by chance from the arrest at “Nëna Terezë” square.¹¹⁷ Given this situation, a German citizen, according to the statements from her family members, sustained serious injuries (passed out), and later was sent to the Clinical Center in a comatose state.¹¹⁸

The ombudsman considers that the police intervention and use of force against the protesters and uncontrolled use of tear gas during the protests of 17 and 22 October 2012 was unnecessary, unjustifiable and disproportionate.

The Ombudsman considers that the Minister of MIA contributed to this situation, as he declared publicly at the Assembly of Kosovo that he had given order for the abovementioned actions to be undertaken adding that his order *required even stricter action* against the protesters. This was in fact noticed in the police actions against the protesters on 22 October 2012, including against members of the Assembly of the Republic of Kosovo.

The Ombudsman considers that “*the authority of the minister does not include the police operational management*”,¹¹⁹ while it is very natural and fair for the police to obstruct

¹¹⁵ *Internal Official Report of the IO* from the protest of 17 October 2012.

¹¹⁶ *Transcript of the plenary session of the Assembly of the Republic of Kosovo held on 17 October 2012* – page 16.

¹¹⁷ *Official internal IO report* from the protests of 17 and 22 October 2012, statements by the arrested at the Police Detention Centers.

¹¹⁸ *Internal IO Report* from the protest of 22 October 2012, statement of the family members of the injured party at the KCCU.

¹¹⁹ *Law on Police*, No. 03/L-035, Article 5.1.

protesters from entering into the working premises of the Government. However, obstructing the representatives of the people is in contravention of Article 70 of the Constitution which stipulates that “*Deputies of the Assembly are representatives of the people and are not bound by any obligatory mandate.*”

The Ombudsman draws the attention that regardless of the severe contradicts and political positions between the political subjects may be, the police cannot be misused for political purposes. Making the police an instrument for political purposes is unacceptable and highly dangerous for the democracy, stability and leads unavoidably towards the destruction of the principle of the division of powers and consequently, towards the violation of human rights.

The ombudsman also followed closely the occurrences at an event organized by the NGO “Libertas” on 14 December 2012 at the Youth Palace in Prishtina where some individuals assaulted physically and demolished the hall where the organizers of the event had planned their gathering to promote a magazine that dealt with LGBT community issues.

The Ombudsman considers that regardless of the group membership of the assaulters, they should face justice and the law, because their actions constitute of intolerance, unacceptable acts and impairment of the constitutional and democratic order. The acts of the individuals who assaulted the organizers of the gathering contain elements of harming the right to freedom of expression, freedom to association and freedom to gather, all of these being rights guaranteed by the Constitution of the Republic of Kosovo.

The Ombudsman invites publicly the competent institutions, the law and order authorities to act in such cases in compliance with the responsibilities they have and to investigate cases of such assaults. On the other hand, preventing such unlawful actions is a duty of all institutions of the country.

In its previous reports the Ombudsman has drawn the attention to Item 3 of Article 12 of the Law on Public Gatherings according to which the legal obligation that the lawmaker delegates to the “custodian” of a gathering is “*To apprehend and deliver to the police the participant or the other person circulating nearby the location of the public gathering if he/she disturbs the order, if he carries weapons or dangerous objects or prohibited signs*” are an exclusive obligation of the state law enforcement authorities and cannot be delegated to any other natural or legal person. Since so far no action has been undertaken to amend this article the Ombudsman recommends the amendment and supplementing of the abovementioned article of the Law on Public Gatherings so that the law is applicable and in harmony with the European standards.

The practice of the ECHR too highlights that the effective freedom for a peaceful gathering cannot be presumed unless the state has met its obligation by not interfering but if needed, requests that positive measures be taken even with regards to relations between individuals.¹²⁰

The Ombudsman invites and asks again from the responsible institutions to execute all recommendations made so far in the previous reports and in the future reports, either specific or annual, which concern the right to gathering.

¹²⁰ ECHR, decision dated 21 June 1988, application no. 10126/82.

2.18. Freedom of Association

The freedom of association in the Republic of Kosovo is guaranteed by the Constitution of the Republic of Kosovo (CRK),¹²¹ and by the ECHR,¹²² while it is regulated by the Law on Freedom of Association to Non-Governmental Organizations.¹²³

However, an issue that risks the non-governmental sector in Kosovo is the adoption of the Law on Banks, Micro financial Institutions and Non-Banking Financial Institutions by the Assembly of Kosovo. The law at issue provides articles that allow the transformation of Micro financial Institutions registered as Non-Governmental organizations (MFI-NGO) into share holding companies, which seriously impairs the freedom of association.

Attempts by different stakeholders to transform MFI-NGOs into share holding companies have existed even earlier during the process of the amendment of the Law on the Freedom of Association into Non-Governmental Organizations. However, following an intensive involvement and in cooperation with the international factor in Kosovo, the civil society succeeded in preventing the inclusion of elements that impair the essence of the existence of the civil society. And in spite of the involvement of the civil society not to permit such process, the Assembly of the Republic of Kosovo adopted the Law on Banks, Microfinance Institutions and Non-Banking Financial Institutions.¹²⁴

After exhausting all legal remedies available in contravention of the Law on Banks, Microfinance Institutions and Non-Banking Financial Institutions the organizations of the civil society addressed the Institution of the Ombudsman to request from the Constitutional Court of the Republic of Kosovo to review the constitutionality of Article 90, Article 95, Item 1.6, Article 110, Article 111 and Article 116 of the Law on Banks, Microfinance Institutions and Non-Banking Financial Institutions.¹²⁵

The abovementioned NGOs considered that the Law on Banks, Microfinance Institutions and Non-Banking Financial Institutions intends to regulate the functioning of the MFI-NGOs through the regulation of the principles and procedures of their management. However,

¹²¹ *Constitution of the Republic of Kosovo*, Article 43: „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 any 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.“

¹²² *ECHR*, Article 11.

¹²³ *Official Gazette of the Republic of Kosovo*, No. 14, dated 9 September 2011, Prishtina.

¹²⁴ *Transcript of the plenary meeting of the Assembly of Kosovo*, held on 12 April 2012, http://www.assembly-kosova.org/common/docs/proc/trans_s_2012_04_12_11_4155_al.pdf (18.02.2013). The Assembly adopted this law with 55 (fifty-five) votes “pro”, none (0) “against” and 4 (four) “abstentions”.

¹²⁵ Letter dated 21 February 2012 addressed to the Chairperson of the Parliamentary Committee for Budget and Finance, letter dated 29 March 2012 addressed to the Chairperson of the Parliamentary Committee for Legislation, and the letter dated 19 April 2012 addressed to the President of the Republic of Kosovo. On 11 May 2012, non-governmental organizations (NGOs): Kosovo Civil Society Foundation (KCSF), Movement FOL, Kosovo Democratic Institute (KDI) as bearers of the request and 55 other NGOs supporting the request.

specific provisions (Article 90, Article 95, Item 1.6; Article 110; Article 111 and Article 116) of this law deal with the issue of the legal subjectivity of the MFI-NGOs and open the opportunity to transform the same from a legal subject as NGOs into a legal subject as share holding companies.

Having in mind the role and importance of the civil society and of the NGOs as an essential part in the development of democracy, the Ombudsman considers that this law may damage irreparably not only the foundations for the existence of the civil society but also the development of democracy. Additionally the Ombudsman considers that as such this law violates the constitutional principles, the international principles of non-profit right and is in contravention with the legislation in power in Kosovo that regulates the area of the freedom of association in NGOs, and endangers the future of the civil society sector in general.

The Ombudsman points out that the basic universal principle of the non-profit sector that regulates these matters in Kosovo is regulated expressively by law, which "*Prohibits the distribution of net profit or gains of any person, or the use of assets, income and gaining of an NGO to bring directly or indirectly profit for any founder, director, official, member, employee or donor of the NGO apart from the salary or reasonable compensation for persons doing work for the organization*".¹²⁶

This principle implies that an NGO has no owner and that its property cannot be treated as private property because "*All assets, income and profit of an NGO may be used only to achieve the non-profit mission for which the NGO was founded*",¹²⁷ and in case an NGO is dissolved "*the assets of the NGO as given to another NGO with the same or similar goals*".¹²⁸

Having all these in mind, in the framework of the constitutional and legal competencies, the Ombudsman, in the capacity of the authorized party asked from the Constitutional Court of the Republic of Kosovo to "*invalidate as incompatible with the Constitution, Article 90; Article 95, Item 1.6; Article 110; Article 111 and Article 116 of the Law on Banks, Banks, Microfinance Institutions and Non-Banking Financial Institutions*".¹²⁹

Due to the irreparable damage this law may cause, the Ombudsman asked from the Constitutional Court to impose an interim measure to suspend the application of this law until a meritorious decision was brought on the abovementioned articles.

On 24 December 2012, the Constitutional Court of the Republic of Kosovo approved the request of the Ombudsman and decided to permit the interim measure to suspend the application of the abovementioned articles of the Law on Banks, Microfinance Institutions and Non-Banking Financial Institutions until a meritorious decision of this court.¹³⁰

¹²⁶ Law No. 04/ L-057 on the Freedom of Association in Non-Governmental Organizations, Article 4.1 and 4.3 and Recommendation of the Council of Europe CM/REC(2007) 14 of the Committee of Ministers of member countries on the legal status of the non-governmental organizations in Europe, Article 9.

¹²⁷ *Ibid*, Article 4.2 and the Recommendation of the Council of Europe CM/REC(2007)14 of the Committee of Ministers of member countries on the legal status of the non-governmental organizations in Europe, Article 9.

¹²⁸ *Ibid*, Article 21.3 and the Recommendation of the Council of Europe CM/REC(2007)14 of the Committee of Ministers of member countries on the legal status of the non-governmental organizations in Europe, Article 56.

¹²⁹ IO, Request submitted to the Constitutional Court on 11 October 2012.

¹³⁰ Decision of the Constitutional Court of the Republic of Kosovo, Case KO 97/12, published on 26 December 2012, accessed at: http://www.gjk-ks.org/repository/docs/gjkk_ko_97_12_mp_shq.pdf (24.03.2013).

Another extremely troubling fact for the Ombudsman is in the case of the assault of some groups of people, mainly young ones, against the organization of the promotion for the magazine “Kosovo 2.0” by the NGO “Libertas” on 14 December 2012 at the Youth Palace in Prishtina, which was accompanied by physical violence, verbal attacks and damages to the infrastructure of the venue used for the gathering. The Ombudsman has closely followed the events and has publicly expressed his concern about the physical and verbal assaults, the direct threats and demolishing of the hall where the abovementioned event was taking place.¹³¹

2.19. The right for election and participation

In every democracy, elections are free with secret voting, namely free expression of the opinion of citizens under conditions that ensure the will of citizens to elect independently their legitimate representatives for the state institutions. This realizes the right of the citizens to participate in the elections and be elected.

The right for election and participation, as a fundamental right, is realized based on the Constitution of the Republic of Kosovo,¹³² the Law on General Elections¹³³ and the Law on Local Elections,¹³⁴ which are in harmony with the European Convention on Human Rights and Fundamental Freedoms.¹³⁵ An independent authority, namely the Central Elections Commission (CEC) takes care in realizing this constitutional category pursuant to its true meaning of the word.¹³⁶

In 2012 the CEC has organized extraordinary elections to elect the mayor of the Municipality of Ferizaj and the mayor of the Municipality of Kaçanik.

Elections in the Municipality of Ferizaj were held on 29 April 2012, and in the Municipality of Kaçanik on 17 June 2012. Both municipalities had runoffs to elect the mayor. During the elections the CEC established that there had been no complaints or any decision by the Supreme Court of Kosovo or the Election Panel for Appeals and Complaints (EPAC).

At the finalization of the election process, the CEC established that there had been no major violations of the election rules, namely of the right for election and participation. Some minor violations were identified, mainly similar to the ones from the previous elections concerning the addressed, confusion in finding voters in the voting stations, and there were names of the deceased still in the voters’ lists. There were some problems and errors at the voting stations (VSs) concerning the delivery of forms to the Counting and Results Center (CRS).

Counting was done at the CRS and there were no problems apart from some minor ones of a procedural nature. There were fewer problems compared to previous times.

¹³¹ *IO, Press Release*, <http://www.ombudspersonkosovo.org/?id=5,0,0,1,a,666> (20.12.2012).

¹³² Constitution of the Republic of Kosovo, Article 45. Item 1.

¹³³ Law on General Elections, No.03/L-073.

¹³⁴ Law on Local Elections, No.03L-072.

¹³⁵ European Convention on the Protection of Human Rights and Fundamental Freedoms, Protocol I, Article 3.

¹³⁶ Central Elections Commission, Constituion of Kosovo, Article 139.

A new project for the final results and Internet as the means to send data from VSs – CRS – CEC were used for the first time ever, thus eliminating large result presentation differences between the preliminary and final results.

During election processes the CEC faces a variety of challenges both at the local and central levels. This year, when there were no elections, CEC organized training programs with the topic of updating voting registers and eliminating problems that accompany the voting registers. The most important in this respect was the updating of the voting register and first of all, deleting the names of the deceased and updating the voters' addresses, voting stations and the like.

To ensure that elections are following democratic processes and to stop abuse during voting the last elections started for the first time to process with the municipal courts and sanction those who violate election rules and the criminal code. However, the sanctions are not in harmony with the provision that those who commit election and criminal acts be prevented to commit in the future election or criminal offences.

The IO is concerned because such verdicts are not in compliance with the burden of the criminal acts and as such, are not sufficient to prevent potential violators in the future from violating election rules. The Ombudsman established that the court should measure sanctions fairly and in proportion with the criminal act that has been committed for which the law envisages sanctions.

So far, the laws on general and local elections contained many unclear points or ambiguities in implementation. It was decided that the existing laws be reviewed and the amendment of the election law is being amended by the Committee for the Review and Amendment of the Laws. In this respect, the Ombudsman expects that both election laws shall contain clearer and more precise provisions for their easier implementation and interpretation. Also, a different method of selecting CEC members is expected; the CEC would be comprised of individuals who do not belong to political parties.

The Ombudsman also notes that there is an insufficient number of reports on the CEC activities which should be posted on the CEC webpage. Additionally, there is no information in the languages of minority communities, including Serbian.

Recommendations:

- *The Kosovo Judicial Council, namely all competent courts in Kosovo should measure the sanctions fairly and in proportion to the committed criminal act thus prevent potential future violators of election laws.*
- *The Assembly of the Republic of Kosovo should review as soon as possible, and before the next general elections at the local and national levels, all election laws and provide provisions that are clearer and more precise thus render easy the implementation and interpretation of the election laws.*
- *The Central Elections Commission should solve as soon as possible all problems pertaining to the updating of voting registers and first of all, to delete the names of the*

deceased and update the voters' addresses, the voting stations and similar information, and also avoid any problems or errors when delivering the forms to the Counting and Results Center CRC(CRC).

- *The Central Elections Commission should undertake all necessary measures to update the CEC webpage with reports and information on the activities of CEC and other institutions responsible for elections, in particular in Serbian and the languages of minority communities.*

2.20. The right of property

Although the right of property is guaranteed by the Constitution of the Republic of Kosovo and the Addendum Protocol of the ECHR based on the complaints filed with the IO the main property-legal problems in Kosovo still continue to remain without any notable positive changes, as has been emphasized in previous annual reports of the IO.

The legal infrastructure remains deficient. As has been mentioned in the previous annual report of the IO, the Law on Property and Assets does not provide a clear definition of all property rights, e.g. private property, publicly-owned property, socially-owned property or the right to use socially-owned property.

Property problems continue to be notable in construction cases. Construction of higher buildings in Kosovo continues to be in areas where the urban plan has been finalized. This construction are not in compliance with urban plans and are also in contradiction with the regulative plan. Permits for the construction works results in neighboring citizens to be obstructed from the free and unobstructed use of their property.¹³⁷

A troubling problem continues to be the compensation of the owners by the municipalities for their properties that are included in the urban plans for the cities. Properties of the citizens are included in urban plans but the municipality does not compensate them until the municipality begins construction in that part. On the other hand, the owners cannot obtain permits for changing or re-constructing their property upon reasoning that the urban plan for that part of the city has changed, while they receive no material compensation for their property over which the Municipality has shown an interest for expropriation.¹³⁸

¹³⁷ *IO, case A. 257/2011.* The party complained that 10-story buildings have been constructed on three sides of her property. The complainant has complained to the Municipality of Prishtina but no action has been undertaken to protect her right to unobstructed use of her property. The construction party at issue failed to observe the urban rules and the windows and balconies are located on the side of the cadastral lot that belongs to the complainant.

¹³⁸ *IO, case A. 109/2012.* The complainant alleges he has asked the Municipality of Prishtina since 2008 to issue him a permit to construct on his property and the Municipality of Prishtina has responded by saying that the urban plan envisages the complainant's property will become a park. Afterwards, the complainant has filed a request for compensation but he never received any response. He was told verbally that he needs to wait until the urban plan is invalidated.

As presented in the previous annual report of the IO, registration of the properties in the cadastral register books still remains a problem for the citizens of Kosovo.¹³⁹ The administrative procedures require that in order to register property transactions the owners should present confirmation of payment of taxes and other utilities issued by other municipal departments before they register their property in the municipal cadastral office. There still exists no coordination between the departments how to execute the tasks and save the time of citizens when registering the properties in the cadastral register books.

Another serious concern is posed by the fact that often, cadastral data are inaccurate and not updated. This represents difficulties in identifying the legitimate holders of the property rights and renders questionable the validity of the cadastral certificate as proof of title over that property.

Collaboration between the offices for civil registration, courts, and municipal cadastral offices in relation to cases reporting the deceased still does not function in Kosovo. Evidence from the civil registration office on the death of family members is presented to the court by the parties in order to regulate the inheritance. Usually, this is a burdensome procedure for the parties and takes too much time due to delayed proceedings. As a result, in many instances the citizens regulate the inheritance only when they need to do so urgently because of other personal needs.

Kosovo citizens still encounter difficulties in realizing their right in a due court proceeding of a civil case related to the property. Delayed proceedings by regular courts is still present. The IO registers such complaints all the time.¹⁴⁰

Safe and unobstructed access to public spaces is a problem that citizens are facing on daily basis throughout the Republic of Kosovo. Almost all sidewalks in all dwelling places of Kosovo, the urban ones in particular, are impassable because of parked vehicles and therefore, pedestrians have to walk down the streets. This situation is endangering the lives of Kosovo citizens. No commitment is noted on the part of municipalities or the police of Kosovo to ensure that the citizens of Kosovo use the sidewalks freely. This phenomenon is extremely concerning and constitutes a very big danger especially in the vicinity of schools.

An incident occurred in October in the center of Prishtina; at the yard of the elementary school “Meto Bajraktari”, where a student of this school was hit by a vehicle during the break, and this is only one of the shocking evidence. The directorate of this school affirmed the accident over the phone. Upon receiving the information the Ombudsman raised the issue with the officials of the Municipality of Prishtina. Even upon intervention by the Ombudsman nothing has been noted by the municipality taking any measures to secure school children. Ironically, especially in the face of the taxpayers, the Municipal Director for Public Services, Defense and Salvation sent away from his office the representatives of the Ombudsman, after they reported the case and presented the request of the Ombudsman that security be provided for the school children to have safe movement and access to the school building.

¹³⁹ *IO, Annual Report 2011*. Sub-Section 2.22, the Right of Property, page 74.

¹⁴⁰ *IO, Cases: A. 477/2012, A. 447/2012, A. 454/2012*. The complainants complain about delayed proceedings of their civil cases by the regular courts.

As mentioned in the previous IO reports the Kosovo Property Agency (KPA) is failing to meet its legal mission to create a functional scheme for a reasonable compensation of the bearers of the property rights whose properties are located in north Mitrovica and that are under the KPA's administration. Still, citizens of the Republic of Kosovo whose properties are located in north Mitrovica are obstructed from possessing and using them freely.

The failures of the municipalities as per the complaints filed with the IO are noted also in cases involving offering of shelter to families that social cases. Still, municipal assemblies Kosovo wide have failed to provide shelter for the people in difficult social economic conditions; especially for the people living in "Fusha e Pajtim" in Prishtina. Twelve years after the war this camp is populated by people who, according to the commission for allocation of apartments for social cases of the Municipality of Prishtina, do not meet conditions or criteria to be users. The IO has received the complaints from residents of Prishtina against the Municipality of Prishtina regarding irregularities and violation of criteria by the commission for allocation of social apartments of the MA of Prishtina.

Recommendations:

- ***The Government of the Republic of Kosovo should put in place a functional legal infrastructure to regulate property issues; one that can be implemented easily.***
- ***The Government of the Republic of Kosovo and the municipalities of Kosovo should enable and ensure enjoyment of property rights completely, without obstruction or discrimination.***
- ***The Municipalities of Kosovo should ensure to their citizens the free, safe and unobstructed use of their private properties in compliance with the law.***
- ***All municipalities of Kosovo together and in coordination with the Kosovo Police, especially in the urban centers of Kosovo should ensure to their citizens free, safe and unobstructed use of the publicly-owned properties for each citizen.***
- ***The Municipality of Prishtina should collaborate with the Institution of the Ombudsman and should undertake measures foreseen by law against all citizens who do not cooperate with the Ombudsman.***
- ***The Kosovo Property Agency should fulfill its legal mission by establishing a functional legal structure to provide reasonable compensation to all bearers of the property rights, without discrimination over the entire territory of the Republic of Kosovo, including north of Mitrovica.***

2.21. The right to education

According to the Constitution of the Republic of Kosovo (CRK) the right to education provides that “every person enjoys the right to free basic education,” financed by public funds.¹⁴¹ The Constitution determines the obligation of public institutions to ensure equal education opportunities to each person according to his/her abilities and needs.¹⁴² This is also guaranteed by the ECHR and its Protocols.¹⁴³

2.21.1. Pre-School Education

Pre-school education is the first link of the education system and is realized by pre-school institutions. Kosovo has developed an integrated approach to early childhood education that combines the process of education, health care, learning, children’s play and professional care to their development. In this context, important steps have been taken for the pre-school education by issuing an Administrative Instruction (AI), Caring for early childhood and education,¹⁴⁴ and by drafting standards for the development and learning in early childhood.¹⁴⁵

In the report for 2011 the Ombudsman has recommended to ensure comprehensive and equal approach for all children through upgrading the physical infrastructure and capacities. In spite of this recommendation in the academic year 2011/2012 we have one less pre-school institution than in 2010/2011.¹⁴⁶ In some municipalities the pre-school institutions (PSI) face lack of infrastructure.

2.21.2. Pre-University Education

Pre-university education in the Republic of Kosovo offers services for children aged 6-18 who attend any of the three following education levels: elementary grades (grades 1-5), lower secondary (grades 6-9), both of which are obligatory for all children,¹⁴⁷ and higher secondary education (10-12/13).

According to MEST statistics, in the academic year 2011/2012 in the Republic of Kosovo 11 elementary schools and lower secondary schools and 4 higher secondary schools have been constructed. The average number of students for one class in the lower secondary school has dropped from 22.8 to 22.1, whereas for the higher secondary schools the average number of students per class has dropped from 32.4 to 31.1.¹⁴⁸

¹⁴¹ *Constitution of the Republic of Kosovo*, Article 47 Para 1.

¹⁴² *Ibid*, Article 47 Para 2.

¹⁴³ *Protocol no. 1 of ECHR*, Article 2 “No one can be denied the right to education...”

¹⁴⁴ *Administrative Instruction, 15/2012*, Caring for early childhood and education, dated 18.09.2012.

¹⁴⁵ *Standards for the development and learning in early childhood*, 0-6 vjet, MEST, October 2011.

¹⁴⁶ *Education Statistics in Kosovo*, 2010/2011 and 2011/2012. At: www.masht-gov.net/ (22.03.2013).

¹⁴⁷ *Law on Pre-University Education*, Article 9 Para 2.

¹⁴⁸ *Education Statistics in Kosovo*, 2010/2011 and 2011/2012. Accessed at: www.masht-gov.net/ (22.03.2013).

However, statistical data and comparative average number generated by the general data of MEST do not reflect the reality in this aspect. Depending on the demographics and geographical position, the situation is grimmer. IN many rural dwellings, in particular villages that are isolated from urban centers the general number of students decreases rapidly, and many school facilities are empty and unused, the number of students for one class is notably smaller than the national average presented by MEST.

A completely different situation can be seen in schools in urban areas, where we note a higher attendance of school children, lack of space facilities and an extremely high increase of students in one class, which often reaches the double of the national average presented by MEST. It is very likely that this situation will continue to prevail in Kosovo for a long time.

2.21.3. Students with Special Needs

Students with special needs attend classes in special schools offering special education. The Ombudsman's report for 2011, has recommended that better conditions be ensured for these categories of students. For this purpose the Resource Center "Lef Nosi" in Prizren inaugurated an annex to the center with better learning conditions, food and dormitory. However, the Resource Center "Nëna Terezë" in Mitrovicë still has very old premises and does not meet conditions for schools premises.¹⁴⁹ MEST has determined the procedures that make the professional evaluation for people with special education-learning needs.¹⁵⁰

Kosovo still has a serious situation in the aspect of ensuring physical infrastructure for children and students with special needs, especially children with disabilities. Only a small number of schools in Kosovo offer technical opportunities for children with physical disabilities to have access to school premises.

A special concern regarding the school infrastructure is represented by the fact that many schools lack basic sanitary conditions and it is difficult to talk about a physically healthy environment.¹⁵¹ In this respect, the Ombudsman establishes with regret that municipal education directorates and the municipal sanitary inspection have failed, without excluding from responsibilities the MEST inspection and the school directorates.

2.21.3.1. Abandoning of Schools

¹⁴⁹ *IO, Case 414/2012, ex officio*, Special school "Resource Center Nëna Terezë" in Mitrovicë.

¹⁵⁰ *Administrative Instruction No. 07/2012*, Professional Assessment of Children with Special Education-Learning Needs dated 23.05.2012.

¹⁵¹ *IO, Case 15/2012, ex officio*, Elementary School "Zenun Çoçaj" in village Gjonaj, Municipality of Prizren.

The phenomenon of abandoning of obligatory school level remains continues to cause concern. MEST has issued Administrative Instruction (AI), No. 19/2012 dated 04.10.2012 on the Establishment and Strengthening of Teams to Prevent and React to Abandoning and Non-Registration in the Obligatory School System. Based on this document hope remains that these teams will be established and will influence on preventing this phenomenon.

This phenomenon is most pronounced in many rural areas of Kosovo among Albanian children and in particular among Roma, Ashkali and Egyptian communities.

2.21.3.2. Violence in Schools

The Institution of Ombudsman (IO), with the purpose of investigating cases of violence in education institutions, from 2 May 2012 to 23 November 2012, has conducted research and has gathered information on cases of violence in education institutions in the Republic of Kosovo.¹⁵²

The Kosovo Police had to intervene at the lower secondary school "5 Dëshmorët e UÇK-së" in Pleshinë village, Municipality of Ferizaj to stop protests of students and in this case, according to statements from the students, violence has been used.¹⁵³ A complaint was filed against a member of the Kosovo Police in relation to the conduct of members of Kosovo Police while dispersing the protesters (students. The Kosovo Police Inspection is investigating into the case.

According to the Law on Pre-University Education, physical punishment or any other form of humiliating punishment in all education or training institutions, either public or private, is prohibited.¹⁵⁴ In order to create a safer and more suitable environment in all education institutions, on 26.05.2008 MEST signed an MOU with the Ministry of Internal Affairs (MIA), Ministry of Justice (MOJ), Ministry of Labor and Social Welfare (MLSW) and the Kosovo Judicial Council (KJC). The duration of the MOU was four years with the possibility of extension,¹⁵⁵ but it was not extended.¹⁵⁶ However, based on the information gathered we may establish that violence is present in all education institutions. This is a dangerous phenomenon and an extremely concerning one and keep re-occurring in variety of ways and with extremely serious consequences.

2.21.3.3. School Trips

¹⁵² *Work Reports*, dated 02.05.2012 and 23.11.2012.

¹⁵³ *IO, Case 414/2012, ex officio*, Lower Secondary School "5 Dëshmorët e UÇK-së" in village Pleshinë, Municipality of Ferizaj.

¹⁵⁴ *Law on Pre-University Education, Article 4, Para 2.*

¹⁵⁵ MOU between MEST, MIA, MOJ, MLSW and KJC, Article 11, Para 1.

¹⁵⁶ Interview of Mr. Isni Kryeziu, Director of Legal Department, MEST.

In the 2011 report, the Ombudsman has recommended that the educational and learning character of school trips be reinforced, and include the councils of parents and students in the decision making process. MEST issued Administrative Instruction (IA) No. 30/2012 dated 31.10.2012 on Extra-Curricular Activities, according to which participation of students in decision-making is ensured.¹⁵⁷ MEST acted rightfully when it issued this IA and it promises that problems which accompanied some school trips of senior students in some municipalities will be eliminated.

2.21.4. Higher Education

Following the opening of University “Haxhi Zeka” in Peja and the investment made for the infrastructure of the Faculty of Education, Faculty of Agriculture, Faculty of Economy and University of Prizren, University of Peja and that in Mitrovica, investment made for the infrastructure of the Center of Students, better conditions for learning, food and dormitories have been created.¹⁵⁸

This academic year, with the purpose of completing the legal infrastructure, MEST has issued 7 bylaws,¹⁵⁹ has harmonized the statute of the University of Prishtina and the harmonization procedure for the other universities is ongoing.¹⁶⁰

In order to mitigate the situation created as a result of lack of university books, 158 books by the best authors in the world in the area of nature sciences have been purchased, however, the absence of university textbooks is still noted.¹⁶¹

A positive development in the process of professional growth and training of new people after higher secondary education for the labor market is marked by the establishment of Centers of Competence in Kosovo within the Kosovo Professional Education and Training system, as new institutions of post-secondary education.¹⁶² These centers intend to prepare qualified workers who have knowledge and practical skills that respond to the need of the labor market in the Republic of Kosovo.¹⁶³

2.21.5. Education System for Communities

¹⁵⁷ *Administrative Instruction No. 30/2012*, Article 1 Para 1 Item 1.3, dated 31.10.2012.

¹⁵⁸ Interview, Director of the Higher Education Department Prof. Dr. Naim Hasani.

¹⁵⁹ *Law No. 04/L-037 On Higher Education in the Republic of Kosovo*, Article 35, Para 1.

¹⁶⁰ *Ibid*, Article 35 Para 2.

¹⁶¹ Shih në: *www.masht-gov.net/*, (22.11.2012).

¹⁶² Post secondary education from eighteen (18) years of age.

¹⁶³ *Administrative Instruction No. 05/2012*, dated 02.05.2012.

Teaching in the Republic of Kosovo is conducted in Albanian, Serbian, Turkish and Bosnian. Regarding the right to education of the Serbian community, the municipalities have created conditions to offer education-learning services in the Serbian language.¹⁶⁴ Schools that conduct the learning process in Serbian still work based on the program of the Republic of Serbia without having the approval of the Ministry of Education, Science and Technology (MEST), the employees of this community still receive double salaries.

In 2012 the IO has investigated 5 complaints against MEST, 3 complaints against the University of Prishtina and 7 complaints against the Municipal Education Directorates (MEDs).

Thanks to the good collaboration between the IO and the institutions that are responsible for education, out of the pool of complaints that were resolved positively it is worth mentioning the complaint of 1200 students from secondary high schools in the municipality of Kaçanik,¹⁶⁵ filed against the MED because of the high price for the school uniform and with IO mediation and thanks to the good collaboration with the students and the MED in Kaçanik, students received school uniforms at a reasonable price.

Also, with IO mediation and in collaboration with MEST the complaint for recognition and validation of diplomas earned outside of the Republic of Kosovo was resolved.¹⁶⁶

The Ombudsman Recommends:

- *To ensure comprehensive and equal access for all children in the pre-school education up to 6 years of age.*
- *To complement the school infrastructure and improve maintenance of buildings with special emphasis on hygiene and sanitary conditions.*
- *Since in spite of earlier recommendations by the IO,¹⁶⁷ cases of violence continue to take place in school institutions, the Ombudsman asks from MEST and MEDs to undertake immediate measures to prevent this phenomenon.¹⁶⁸ In this respect, inter-institutional involvement and extension of the MOU between MEST, MIA, MOJ, MLSW and KJC and its punctual implementation to prevent violence in school institutions is a necessity.*

¹⁶⁴Law on Education in the Municipalities of the Republic of Kosovo, No. 03/L-068, Article 12 Para 12.1, 21.05.2008.

¹⁶⁵ IO, Case A.nr. 246/2012.

¹⁶⁶ IO, Case Complaint A.nr. 336/2012.

¹⁶⁷ IO, Annual Report 2011, page 82, Annual Report 2010, page 74.

¹⁶⁸ Law on Pre-University Education, Article 4 Paras 1 and 2.

- *The Ombudsman requests from the Government of the Republic of Kosovo, especially MEST to continue further the implementation of all strategies and memoranda that have been approved to date.*¹⁶⁹

2.22. The Right to Labor and Exercise of Profession

The right to labor and exercise of the profession is guaranteed by the Constitution of the Republic of Kosovo¹⁷⁰ and is in compliance with the international instruments on human rights that are directly applicable in the Republic of Kosovo.¹⁷¹ This right is also regulated and is protected by the basic laws that determine the rights and obligations deriving from the employment relations.¹⁷²

The realization of the rights of citizens from the employment area is of special importance for the status of each individual and is at the same time an indicator of how the state regulates the obligations towards its citizens.

In the reporting period the high rates of unemployment in Kosovo continue to be the most serious social issue that Kosovo citizens face.¹⁷³

Based on data from the Ministry of Labor and Social Welfare (MLSW), in 2011, Kosovo had 335'905 unemployed, of which 162.277 female and 173.628 male. In 2012, the general number of jobseekers registered as unemployed in the employment public services was 256.546 individuals. Of them 117.760 were female and 138.786 male.¹⁷⁴

The Kosovo reality sees many violations of the labor market, both in the public and private sectors. The Ombudsman considers that the Labor Inspection – as a preventive and responsible authority for the application of the law, should control in a uniform manner all jobs in the public and private sector; it should check on work conditions, safety at work and health care for all employees in general. It should also act actively to prevent all types of discrimination. Special care should be given to work conditions in the private market, with special emphasis on the age of the employed in the private market.

Based on the investigation conducted in this period the Ombudsman establishes that both in the private or public sector there are violations of the employment right – violation of employment procedures, termination of employment relations, duration and compensation for overtime, and failure to use annual leave right.

¹⁶⁹ *Strategic plan for education in Kosovo – 2011 - 2016, Strategy for the development of higher education – 2005 - 2015, Strategy for the development of pre-university education in Kosovo – 2007 - 2017 and the Strategy for the integration of Roma, Ashkali and Egyptian communities in Kosovo – 2007 - 2017.*

¹⁷⁰ *Constitution of the Republic of Kosovo*, Article 49.

¹⁷¹ *Ibid*, Article 22 [Direct applicability of the international agreements and instruments].

¹⁷² *Law on Labor No.03/L-212*, adopted on 1 November 2010; *Law on Civil Service No.03/L-145*, in effect as of 28 May 2010; *Law on Salaries of Civil Servants No.03/L-147*, in effect as of 13 May 2010; *Law on Economic Social Council No.04/L-008*, in effect as of 21 July 2011.

¹⁷³ *Public Pulse Report*, March 2012. Accessed at www.kosovo.undp.org (29.03.2013).

¹⁷⁴ *Market Labor Information of the DE of the Ministry of Labor and Social Welfare*, September 2012.

2.22.1. Prohibited Labor for Children

A major concern is the work of underage children who do harmful and dangerous jobs for their health. We come across underage children every day pushing carts, begging in restaurants and especially junctions of the most used roads, selling cigarettes and other jobs.

Although this is prohibited and children enjoy legal protection by local legislation, and the Convention on Human Rights and Freedoms,¹⁷⁵ this phenomenon continued unchanged. In this regard, the Ombudsperson asked the relevant institutions to observe international norms and the local legislation that protects human rights.

In this regard it is necessary to have inter-institutional and inter-sectoral cooperation between the Labor Inspection, relevant sectoral trade union branches, the Ministry of Labor and Social Welfare and the Ministry of Internal Affairs. An important role in this cooperation should be played by the Ministry of Education, Science and Technology jointly with the municipal education directorates through following up continuously and in a disciplined manner on pre-university school attendance by the students.

2.22.2. Cases of violation of the right at the workplace or for employment

In the reporting period, the IO has received a total of 228 complaints on the right to labor and exercise of profession, of which 59 were opened as investigation cases. In the meantime, 12 complaints for non-execution of the decisions of the Independent Oversight Board of Kosovo (IOBK) were registered.

The cases identified and dealt with by the IO indicate that there is a general hesitation on the part of public institutions to execute decisions of the IOBK. In most cases, this hesitation deals with the lack of knowledge of the Law on Civil Service and of the competences of IOBK. At times, total neglect of IOBK, of the law in effect and of the Constitution on the part of specific public institutions is noted.¹⁷⁶

¹⁷⁵ *Convention on Human Rights*, Article 32: "Member countries recognize the rights of children to be protected by economic abuse and exercise of any work that represents risks or that harms his/her education or health or physical, mental, spiritual, moral or social development."

¹⁷⁶ *IO, Case No. 154/2012*. Complaint against the Municipality of Kamenica, Directory for Economy, Finance and Development (DEFD) due to non-execution of the decision of the Independent Oversight Board for the Civil Service (IOBK). IOBK has obliged the employment authority-municipal administration of Kamenica to reinstate the complainant in his work place within a deadline of 15 days from the receipt of the decision, asking the Mayor and Head of HR to execute the decision.

Due non-execution of the decision on 5 October 2011 the complainant addressed the Municipal Court of Kamenica with the proposal for execution of the IOBK decision. On 2 March 2012, the execution clerk of the Municipal Court of Kamenica, with the purpose of executing the decision, visited the Municipality of Kamenica as a debtor and requested the execution of the IOBK decision. On 13 March 2012, the execution court clerk again visited the Municipality of Kamenica on the same case when the Mayor declared that: "*he did not care either for the court or IOBK decisions!*"

On 9 July 2012, the Ombudsman sent a report with recommendations to the Mayor of Kamenica, asking that immediate measures be taken to execute the IOBK decision. As of the publication of this report the Ombudsman has received no response from the Mayor of Kamenica whether the IOBK decision has been executed.

However, the hesitation concerns the nature of IOBK as a non-authority judicial decisions that are obligatory to be executed by all means. In this regard, in certain instances, it is noted that many institutions have serious remarks about how biased handling of cases, of drafted decisions that lack professionalism and incompetent interpretation of the law.¹⁷⁷

These remarks should be taken and handled very seriously first of all by IOBK which in this way would identify the eventual shortcomings and errors of its own work. Then, the Assembly of Kosovo should handle these carefully and determine clearly without any ambiguities and expressively the areas and competences for actions¹⁷⁸ and the compatibility between the nature of the IOBK as an independent institution with quasi-judicial right to decision making, with a character of finality and without the right to appeal.¹⁷⁹

Recommendations of the Ombudsman:

- *The Assembly and the Government of the Republic of Kosovo should play an active role in execution of decisions of the Independent Oversight Board of Kosovo (IOBK), by asking for concrete responsibility from institutions and responsible persons for their failure to observe, in compliance with the law.*
- *The Government should draft bylaws foreseen by the respective laws in this area and to increase the budget for the exact application of the Law on Labor in the public and private sectors.*
- *The Government should ensure that the provisions of the Collective Contract be applied entirely.*
- *To increase the number of inspectors at the Labor Inspection.*

¹⁷⁷ IO, Case No. 323/2012. Appeal against the decision of the president on personal income withholding to the amount of 20% for March 2012. This decision was a result of an inspection by the Mayor in the offices where he did not find anyone at the workstation during the working hours. The complainant does not dispute the reprimand but the withholding of 20 % on personal income.

On 22 October 2012, the complainant informed the IO representative that he received a positive response from the IOBK about his complaint but the Municipality of Skenderaj had failed to take any action to compensate the complainant. According to the complainant, upon receiving the IOBK decision, his job was changed against his will and without him being asked. Since there are several follow up decisions in this case one of which is a retaliatory act of the Municipality with elements of victimization the complainant has been advised by the IO to address the competent court.

¹⁷⁸ IO, Case No. 387/2012. The complainant complains that in 2003 he was dismissed from his job where he worked since 1999, without any explanation. In April 2003 he had filed a lawsuit with the Municipal Court in Prizren, which had failed to take any action until August 2009, when it declared itself non-competent and forwarded the case to the IOBK.

In September 2010, the complainant came to the Ombudsman to deliver a copy of the IOBK decision according to which, the complainant had been rejected the complaint not because of non-competence but because the IOBK had no mandate to review cases of health sector staff members. The complainant has filed a lawsuit with the Supreme Court of Kosovo which to date has not decided on the lawsuit.

¹⁷⁹ Law on Independent Oversight Board for the Civil Service of Kosovo, Article 13:” The Council’s decisions represent a final administrative decision and is executed by a senior managing official or the responsible person of the institution which brought the initial decision against hte party”.

2.23. The Right of Children in Kosova

No significant improvement has been noticed in Kosova in the field of protection and respect of children's rights regardless efforts and activities undertaken from its institutions in this direction during this reporting phase.

Domestic legal framework at place offers sufficient ground for protection of children's rights but its implementation in practice mainly continues to be insufficient, inadequate and ineffective. In this direction severe economic and social conditions as well as unemployment and poverty makes protection and respect of children's rights more difficult, in fact endangers children's welfare.

Thus, Kosova children today face many difficulties and problems of different nature. Prevention of breaching the children's rights, protection, strengthening and improvement of the life of children is everyone's responsibility and among other things additional efforts ought to be done from entire Kosova society as per this issue, in compliance with Convention of the Rights of a Child.¹⁸⁰

2.23.1. Application of the Strategy and the National Action Plan for Children's Rights

As per application of the Strategy and the National Action Plan 2009- 2013¹⁸¹ institutions of the Kosova Republic, despite activities undertaken in areas designated as priorities, still lacks accomplishment of several specific objectives in the field of governing, education, social welfare, etc.

When talking about the field of governance, determined as priority with the Strategy and National Action Plan, actually the objective which refers to put in function Inter- Ministerial Committee on Children's Rights¹⁸², we can state that the committee still is not functional. As per this it should be mentioned that Human Rights Protection Units in all levels continue to have insufficient personnel, actually they don't have a full time official that will deal solely with the issues concerning children's rights but with other issues as well. Such thing is not in

¹⁸⁰ Convention on the Rights of a Child is one of the most important document of the international law in the field of the children's rights that is directly applied by Kosova institutions according to the article 22 of the Constitution of the Republic of Kosova..

¹⁸¹ The Strategy and the National Action Plan for the Child's Rights in the Republic of Kosova is being endorsed by the Kosova Assembly in 2009 with the aim to ensure adequate application of the legal framework of Child's Rights.

¹⁸² With the decision no.086 of the 25th of October 2006 and of that no.07/46 of the 3rd of December of 2008 the Republic of Kosova Government has established the Inter- Ministerial Committee on Children's Rights with the aim to facilitate improvement and efficiency of existing institutional mechanisms and to guarantee application and respect of the rights of the children.

compliance with the Administrative Direction¹⁸³ no. 04/2007 that makes application of the Strategy and the National Action Plan more difficult within defined time frames. The Kosova government should undertake all necessary measures in its power to make functional the Inter- Ministerial Committee on Children's Rights or simply to terminate formally its existence and to appoint the appropriate official who will work solely on the Rights of the Child.

2.23.2. The right of children in education

Inclusion of children in qualitative education, ensuring inclusion of children with special needs within education process, prevention and combating of violence within school premises are some of the objectives emphasized by the field of education within the Strategy and National Action Plan in which Kosova institutions should be continuously engaged. Accomplishment of these objectives among other things requires application of appropriate legislation, professional and organizational staff growth and upgrading on inclusive education, specific text books as well as designated funds allocation for children assistants, when speaking for special needs children (with limited abilities).

During this reporting period the OI has accepted a considerable number of complaints. A mother of a 9 years child with disabilities has lodged a complaint with the OI regarding inclusion of her child in a regular school within a school in the close neighborhood.¹⁸⁴ With the intention to mediate, actually to solve the case, OI representative met with the representatives of the Ministry of Education, Science and Technology (MEST), Municipal Directorate of Education (MDE) as well as of two schools in Prishtina. Currently the child is attending lessons in the nearest school to its residence.

OI also has mediate, respectively has assisted in solving of two other complaints lodged with this institution concerning the right to be included into the upper secondary school as well as regarding ensuring transport to children attending specific schools.¹⁸⁵ From investigation conducted and the information obtained in the field it results that in order to enroll greater number of children with disabilities in education process, more should be done in rising the awareness of parents, teachers as well as children in general on the rights of the children with disabilities and specifically with the obligation in offering them friendly and adequate treatment as well as equal opportunities during education process.

Improvement of children's inclusion in education at the same time requires improvement of physical infrastructure of schools. In this direction, during this reporting period, OI has

¹⁸³ Administrative Direction no. 4/2007 on Human Rights Units in Kosova Government, issued on the 19th of March 2007 with the purpose to structure and integrate Human Rights Units within the Ministries of Republic of Kosova.

¹⁸⁴ OI, Case C. no. 244/2012

¹⁸⁵ OI, Case C. no. 422/2012 and C. no. 521/2012

addressed ex-officio respective public authorities regarding inadequate learning conditions in some schools and demanded from them concrete actions for their improvement.¹⁸⁶

2.23.3. Prevention and combating violence at schools

Prevention and combating violence in schools is another target which has been identified from the education field and which requires involvement of Kosova institutions in order to be as much as possible effective. From the information secured from the representatives of 15 Municipal Education Directorates as well as from some pupils of some primary schools, it has resulted that the violence within public school in Kosova is present. Such issue is of a great concern since it is taking different shape: violence is being used from the teachers towards pupils, from pupils against pupils as well as from pupils towards teachers. It has unfortunately resulted that some parents has exposed violence towards respective school teachers. During this reporting period, as per this issue, the OI has received several complaints which are under investigation.¹⁸⁷

With the intention to reduce this phenomenon, responsible institutions among others, should adopt and apply a document which will clearly determine liabilities of respective institutions in preventing and fighting as well as refer the violence within pre-university education institutions. They should also undertake activities in community awareness rising, in particular of teachers and parents that use of violence is harm, unlawful and being such cannot be tolerated.

As per this issue it is necessary that other professional workers such as psychologists and pedagogues are involved into educational work in all Kosova schools, apart from regular school staff, that will for sure have positive impact in this direction. In order to ensure qualitative flow of education process, respective institutions among other things, should undertake all necessary measure that the guardianship class is to be included in school programs.

OI has received some complaints during this reporting period against Centers of Social Work regarding not accomplishment of the regular contact with children, not payment of the assistance for family shelter as well as not payment of the alimony. Regarding these cases OI has addressed respective authorities and demanded undertaking of appropriate activities, foreseen by law.

As per the case lodged by a mother to our institution against Municipal Court in Gjilan, Kosovo Police, Municipal Prosecution in Gjilan and Centre for Social Work in Gjilan regarding not undertaking of appropriate legal actions regarding domestic violence and child entrust issue, OI has published a report which has attested that violation of the right of the complainant has occurred to have a regular process within a reasonable time, guaranteed with the Article 31 and 32 of the Kosova Constitution and the paragraph 1 and article 6 of the

¹⁸⁶ OI, Case C. No. 414/2012,

¹⁸⁷ OI, Case C. No. 536/2012, C. No. 576/2012 and C. No. 487/2012

European Convention of Human Rights. Another violation that OI attested also in this case is violation of the right to have effective legal remedy, guaranteed with the Article 13 of the same Convention.¹⁸⁸

2.24. Responsibility for life environment

The Constitution of the Republic of Kosovo has regulated the responsibility of all natural and legal persons for the protection of the environment, and at the same time has invited all institutions to guarantee everyone's participation in decision making.¹⁸⁹

Because of its status, Kosovo continues to be party to many conventions, protocols and international environmental agreements.

Nevertheless, Kosovo continues to approximate its legislation with the EU environmental and climatic standards. The laws on waste, waters, chemicals, noise and civil defense should be adapted and completed with bylaws.¹⁹⁰ On the other hand, the institutions that have already been established and deal with the implementation and rule of environmental laws both at the local and central levels should be strengthened by raising their material and human capacities.¹⁹¹

Having in mind the importance of this right with broad based influence: the right to life, privacy, family, property, public health, and noting the numerous environmental problems, and the complaints by citizens, the IO established a special unit to deal with the protection of the right to environment.

In 2012 the Kosovo Police too established in the framework of serious crimes department the unit against environmental crimes.

Continuous environmental pollution, mass burning of the forests, uncontrolled urban expansion and abusive interventions, construction without criteria, loss of agricultural land, water and air pollution, destruction of forest surfaces, damaging and destruction of biodiversity, absence of sufficient monitoring systems, information system, failure to treat waste, enormous noises continue to challenge the Republic of Kosovo. These were all rendered more difficult by the non-inclusion of the environmental protection in the priorities of the Government that allocated only 1.1% of the general budget of the Republic of Kosovo for the environment in 2012.

¹⁸⁸ OI, Case C no.442/2011

¹⁸⁹ *Constitution of the Republic of Kosovo*, Article 52.

¹⁹⁰ Accessed at: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_analytical_2012_en.pdf, pg.46. (20.03.2012).

¹⁹¹ *Ibid.*

2.24.1. Air Pollution

Air pollution in urban and industrial environments continues to be a serious problem. The main air polluters in Kosovo are: power plants (Kosova A and B); open lignite mines; industrial complex in Mitrovica; Ferronikel in Gllogoc; cement factory “Sharrcem” in Han i Elezit (which has noted improvement in the reporting year), central heating systems (Prishtina, Gjakova and Mitrovica). Apart from these, a great contribution in this aspect has been given by the old transportation means and use of low quality fuel.

In most cases, air pollution comes from sulphur dioxide emissions (SO₂), nitrogen oxide (NO_x), lead (Pb) and other heavy metals, carbon monoxide (CO), smoke, particles, volatile organic compounds (VOC), dioxins and soot. The monitoring stations in place are not sufficient and therefore it is necessary to undertake measures not only to control and monitor the emissions systematically but also reduce them.

The levels of air pollution in Kosovo are notably above levels foreseen by the EU directions. Lignite pools are among the biggest polluters of dust, NO_x and SO₂ that exceed several times the directions of the EU and World Health Organization (WHO), whereas the quality of monitoring is not satisfactory.¹⁹²

After receiving a complaint from a resident of Dardhishte village the Ombudsman together with representatives of MESP Inspection and Hydrometeorology Institute took samples of environmental pollution in order to conduct investigation. Since the samples proved the polluting elements, especially phenol exceeded the levels, MESP addressed the competent court. The IO reacted about the case through a press release.¹⁹³

Noting the practice of tire burning on 1 May, the burning of hay and forests and their negative effect in air pollution the Ombudsman asked by means of a press release issued on 29 April 2012 that competent authorities take measures to prevent this phenomenon that has been qualified to have grave long-term consequences.¹⁹⁴ The Ombudsman expressed his concern in relation to air pollution in the case of investigation into the management of the landfill in Gjilan, where waste burning occurred on frequent basis, and in relation to this asked for the action of the environmental inspection.¹⁹⁵

2.24.2. Damaging Water Sources and Water Pollution

Mismanagement, inappropriate and unequal use of waters characterizes the difficult situation that Kosovo faced this year. The quality of water at the source and upper flow is good. This quality deteriorates in the middle and lower part of the flow due to the direct and untreated discharge of sewage from urban areas, industries, agriculture, transport etc.

¹⁹² Accessed at: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_analytical_2012_en.pdf (21.03.2012).

¹⁹³ IO, case A.250/2011. See also <http://www.ombudspersonkosovo.org/?id=5,0,0,0,a,552> (20.03.2012).

¹⁹⁴ See: <http://www.ombudspersonkosovo.org/?id=5,0,0,0,a,566> (21.03.2012).

¹⁹⁵ See: <http://www.ombudspersonkosovo.org/?id=5,0,0,0,a,566> (21.03.2012).

Monitoring continues to be a challenge; there are no sufficient data on the quality and quantity of superficial and subterranean waters, or for their use. The situation with the treatment of sewage is critical country wide. The only plant to treat the sewage has been constructed in the Municipality of Skenderaj.

Discharge of sewage from households, industry and pollution by the agriculture and transport is made directly to the rivers without any preliminary treatment.

Upon receiving information on the pollution of Morava river in the vicinity of Gjilan and upon conducting field investigation in the villages where this river passes (Uglar, Pogragjë and Dobërçan), the Ombudsman noted a considerable amount of dead fish. Later, the same was noted in the base of Drini i Bardhë river, in Malësi e Vogël. By means of a press release, the Ombudsman expressed his concern by inviting the responsible mechanisms to undertake all measures to prevent such pollution and to prevent throwing of substances and residues that due to their physical, chemical and biological properties may endanger the public health and organisms living in the water.¹⁹⁶

An extremely troubling phenomenon Kosovo wide that is more pronounced in urban centers is the loss of tap water through old lines, inconsiderate use of tap water for irrigation and cleaning cars or objects, and especially the low rates of collection of used water. Almost all large dwellings in the Republic of Kosovo face continuously the lack of tap water, long reductions especially in summer months.

Positive progress has been noted with the beginning of the implementation of the decision of the Government of the Republic of Kosovo No. 02/46, dated 2 November 2011, which prohibits exploitation of inert materials from river beds, banks and surrounding areas in the entire territory of the Republic of Kosovo and the beginning of its implementation in 2 January 2012.

2.24.3. Damage and Destruction of Agriculture Land and Forests

Reduction of agriculture land continued with the same intensity in Kosovo. Rapid decrease of agriculture surfaces and change of destination from agriculture to construction land, land erosion, sewage pollution, degradation by superficial exploitation of lignite to supply KEC, numerous and uncontrolled quarries are some of the activities that have a destructive effect on land. Thirty locations have been identified in Kosovo where the land is contaminated by heavy metals, chemical products, used oil and other pollutants.¹⁹⁷

Failure to respect the spatial plan and development plans of the municipalities, the absence of a land monitoring system, lack of and unreliable cadastral data are all factors that contribute to the degradation of land protection.

This year, the Ombudsman has noted environmental problems with special influence on human rights, from construction without criteria, to fail to observe spatial and regulative plans

¹⁹⁶ See: <http://www.ombudspersonkosovo.org/?id=5,0,0,0,a,496>, (21.03.2012).

¹⁹⁷ See at: http://www.ammk-rks.net/repository/docs/Gjendja_e_Mjedisit_ne_Kosove (21.03.2012).

of the municipalities, and this calls for urban balancing.¹⁹⁸ Construction of buildings, failure to respect space between buildings, adding more stories, inadequate lightning and ventilation, lack of emergency stairways and measure to secure life or property from fire, as well as other dangers attributed to the construction environment,¹⁹⁹ are a result of the delayed adoption of the new law on construction and the failure to complete it with the secondary legislation.

One of the biggest environmental problems for this year is the massive burning of 3700 hectares of best quality forests and loss of forest biodiversity. Although this situation keeps repeating every year the fact that the competent authorities make no action plans and the lack of training on these emergency cases with contemporary tool is concerning.

2.24.4. Securing Sites – a Direct Danger for Life

The Ombudsman has assessed as a special concern that affects the environment and presents risks for life, health and safety of citizens and employees the failure to secure and the lack of site fence by the executors of works. This is often accompanied by placing construction material and dispersing construction waste on sidewalks and roads thus impairing the freedom of movement and usurping public property.

Although the public access to information is one of the most effective tools for dealing with environmental problems, it is a right guaranteed in the legislation on environmental protection - the Law on Spatial Planning and the Law on Construction – the Ombudsman has noted that the competent authorities have failed to observe this right. In this context, the IO has noted absence of information tables on construction sites, which is a legal obligation of executors of works. Although, severe physical changes from the plans posted on information tables have been noted. To make matters worse, this has been done by the public institutions that are obligated to apply the law.²⁰⁰

In relation to this, especially in urban centers, the most pronounced problems are the following: usurping of sidewalks for pedestrians or chairs for the disabled or strollers for children; lack of green spaces; lack of proper road infrastructure; lack of underground or passages or overpass in urban and regional roads that have intense traffic; failure to restrict or secure spaces/sidewalks by the schools; lack of parking places proportionate to the number of inhabitants and apartments etc. All these phenomena cause direct inability to have free and easy access and circulation of citizens. All these actions consist in violation of rights for a healthy environment, impair health, impair the right to privacy and family, the right to property, children's rights, freedom of movement, the right to life etc.

¹⁹⁸ See at: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks (21.03.2012).

¹⁹⁹ Law No. 04/L – 110 On Construction, Article 6.

²⁰⁰ IO, Case A.354/2011. The complaint concerns the infringement of the right to access information by the Municipality of Prishtina. The complainant has requested information with regards to the construction permit for a public building (of MIA) in the center of Prishtina, as he had noticed that floors had been added compared to the information on the table. With regards to this case the Ombudsman drafted a report with recommendations asking the Municipality of Prishtina to allow access to information and to respect the legal procedures. We never received any response on this.

2.24.5. Lack of Protection from Noise

The situation concerning the protection of citizens from noise continued to be poor. The IO has received complaints from the citizens regarding the noise coming from cafes and restaurants in the city centers, from business activities in residential areas. Non-observance of the law is noted in the new neighborhoods, the ones that are being constructed where construction activity using heavy machines continues on weekends and at night.

The IO representatives have tested several times the responsibility of the competent authorities with regards to the implementation of the law on protection from noise in several urban areas. Both the Municipal Inspection and the Kosovo Police had failed in implementing the law in Prishtina and Gjilan.

With regards to the issue of noise that the Ombudsman considers a matter that affects negatively the right to privacy and family, the right to property and quiet environment, and the violation of the Law on Protection from Noise and Protection of Environment, in 2012 we drafted two reports with recommendations. One deals with the complaint of the citizens in a central quarter of Prishtina against the noise caused by the vibration of air conditioning for a business.²⁰¹ The other case deals with the complaint of the citizens in another quarter of Prishtina about illegal activities of wood cutting and sale of firewood that caused loud noises.²⁰² While investigating these cases we noted that in spite of the complaints and collective requests from citizens the competent authorities fail to respond.

The work of central and local inspection offices, their negligence and lack of professionalism aggravates the already serious environmental situation in Kosovo. An immediate building of professional human resources capacities is required.

The breach of the principle of confidentiality on the part of inspection offices and the police poses an additional difficulty and extremely serious problem for the citizens that prevents them from increasing cooperation and information sharing with the competent authorities. This affects the infringement of safety for citizens especially keeping in mind the nature of social relationships in Kosovo. This cooperation is further aggravated by the absence of direct phone lines and extreme delays to react when cases are reported by citizens who muster up their courage and report cases involving interference with the environment.

2.24.6. Waste Management in Kosovo

²⁰¹ IO, Case A. 365 /2010. Complaint by a group of citizens co-owners of a building in the center of Prishtina, where the ventilation system of a business activity is located on the first floor, and emits noise and vibrations all the time.

²⁰² IO, Case A. 394/2011. Complaint by a group of citizens, residents in a neighborhood in Prishtina complaining about noise and inconvenience caused by the activity of firewood selling at that location.

In the reporting year the IO has noted serious problems with the functioning of the waste management system in the Republic of Kosovo. The waste management system is not efficient and there are issues with it in many aspects. The degree of waste collection is low still and there are problems related to the degree of fee collection and in particular due to the non-application of the principle that who pollutes, pays. Waste recycling in Kosovo has not started yet.

While conducting investigation into the complaint of the citizens from Gjilan, the Ombudsman has come across irregularities and mismanagement of the landfill in Gjilan on the part of the CMLK. Qualifying this as a problem of large influence on the environment and human rights, the Ombudsman undertook all measures in the framework of its competences to overcome the situation by directly contacting the responsible local authorities and through issuing a press release.²⁰³

Other urban areas in Kosovo have faced similar situation with regards to the landfill management, especially in Prishtina.

Environmental protection in the Republic of Kosovo was characterized in the reporting year by extreme problems and challenges that require immediate actions to be undertaken not only by the MESP but the entire society.

The Government of Kosovo should begin to handle the environmental issue as an issue of priority and increase the budget, raise the dedication and cooperation of all existing institutions by increasing commitment to draft appropriate policies and put in place required mechanisms and instruments to protect environment and improve its quality. Regardless of the current high cost of environmental protection the price to repair and mend degradation in the future will be much higher.

Special attention must be paid to raising the awareness of the public on environmental protection. In this context collaboration with the civil society and the NGOs involved in environmental protection in Kosovo must continue.

2.25. Judicial Protection of Rights

Judicial protection of rights in Kosovo has strong normative grounds. It is guaranteed by Constitution,²⁰⁴ and ECHR and its Protocols.²⁰⁵ Nevertheless, to realize this legal right in practice, citizens continue to face numerous difficulties especially from the judiciary.

This year too the judiciary has faced problems and difficulties of various natures. Non-functioning of the judicial power over the entire territory of the country; delayed decisions in

²⁰³ See: <http://www.ombudspersonkosovo.org/?id=5,0,0,0,a,566> (20.03.2013). Inside the landfill apart from continuous burning of waste we noted an inappropriate treatment of waste that would be scattered all over the landfill. The situation worsened three days later when CMLK, due to low rates of fee collection by the regional waste management companies, closed the doors to all landfills in Kosovo.

²⁰⁴ *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".

²⁰⁵ *Ibid*, Article 22, p (2). *ECHR and its Protocols*.

civil and criminal cases; number of unresolved cases brought forward from earlier years; low rates of execution of court decisions; cases running statute of limitations, even intentionally at times; court proceedings against corrupted judges; failure to execute in practice the ECHR and failure to interpret ECHR decisions in court decisions are only some of the most pronounced difficulties and problems.

The judicial system in the country is going through consecutive reforms with the purpose of rendering it functional in accordance with the international standards; in spite of these reforms and some advancement in this area though, the results for citizens are yet insufficient.

One of the particular challenges for the judiciary, in spite of constitutional guarantees for division of powers is the inequality of the judiciary with the other powers, the legislative and executive ones. This is particularly reflected in the occasion of the allocation of budget. Even in 2013 the budget requests of the judiciary were not approved by the other two powers that have political monopoly over the budget. Although the judiciary has submitted its budget request to the Government and the Assembly in time in order to apply the law on courts and the judicial reform, a significantly smaller amount of money has been allocated compared to the request. This renders considerably difficult the capacities of the judiciary for a successful implementation of the judicial reform.²⁰⁶

The judiciary faces lack of professional staff, judges and associates. Lack of sufficient money shall have a negative effect with regards to the security for judges, especially for those working in the serious crimes department for whom it is a necessity to have adequate security measures. This will directly affect the independence of the courts and the readiness of the courts and individual judges to handle serious criminal cases, especially high profile corruption cases.

The Law on Courts No. 03/L-199 began to be implemented as of 01.01.2013. This law provided for a new organizational structure of the judiciary that resulted in judges and administrative staff moved around and that cases were transferred and registered. This reform is expected to have positive effects in the efficiency of the judiciary. However, the current process of changes in the judiciary is proving to be very difficult and complex especially in terms of deciding on cases, the confusion created due to court competences that have changed and case transfer.

The law on courts has established new courts in some newly established municipalities, which require buildings, judges, administrative staff and basic work materials. Although Article 41 of this law provides that the Government of Kosovo should provide sufficient means from the Budget of the Republic of Kosovo to implement the law, this has not happened and significantly less money has been allocated compared to the budget request.²⁰⁷

The Kosovo Judicial Council (KJC) has succeeded to finalize by the end of 2012 the appointment process of 111 judges at all levels of the judiciary. Now, there are 351 judges

²⁰⁶ Meeting held on 9.01.2013 between the Ombudsman Mr. Sami Kurteshi with the KJC Chairperson Mr. Enver Peci.

²⁰⁷ *Law on Courts No. 04/L-199*, Article 41. Official Gazette of the Republic of Kosovo, Prishtina, No. 79, 24 August 2010: "For the complete application of this law the Government of Kosovo provides sufficient funds from the Budget of the Republic of Kosovo."

working in the system. A difficulty that was part of this process was the failure of individuals from minority communities, especially the Serb community, to apply for the positions reserved for judges as per the Constitution of the Republic of Kosovo.²⁰⁸ This phenomenon is being accompanied by negative influence on resolution of court cases.

2.25.1. Complaints about unsolved cases due to non-exercise of the judicial power over the entire territory of the country

The Institutions of the Republic of Kosovo and the judiciary failed in the course of this year to expand the judicial power over the entire territory of the country, as is foreseen by the Constitution of the Republic of Kosovo. In spite of many political statements by local and international institutions for the functioning of the judiciary, this remains a big concern and sore point for the Republic of Kosovo.²⁰⁹ Ever since the independence of the Republic of Kosovo was proclaimed, the District and Municipal Courts, the District and Municipal Prosecution Offices, the Minor Offences Court in Mitrovica, the Minor Offences Court in Zubin Potok and Leposaviq, remain outside of the judicial system of Kosovo.

Criminal civil cases, over 11.700 cases with the prosecution and 1.615 cases from the abovementioned courts risk running the statute of limitations because of the expiry of foreseen legal deadlines. Also, many personal documents such as ID cards and passports confiscated by the police as evidence remain with these institutions. This situation represents a serious violation of human rights and freedoms for all citizens who have court cases and this fact remains a significant challenge for the authorities of the Republic of Kosovo in order to ensure the functioning of the rule of law.

The Ombudsman, based on the complaints from the citizens with regards to the non-functioning of the judicial authorities in north Mitrovica, on 27 April 2011 submitted a Report with Recommendations to the respective state authorities,²¹⁰ asking by that report that the adequate measures be taken and that citizens be ensured access to judicial services and delivery of justice. Local and international institutions have not yet executed the recommendation. On the other hand, the complaints of the citizens, although disappointed by the lack of the rule of law, keep coming.

The Ombudsman has continuously expressed in all meetings with the competent local and international authorities, and in the media, this concern of the citizens/complainants to render the judiciary functional. Without any exception, all local and international competent authorities have completely failed to establish the rule of law in these municipalities in Kosovo.

²⁰⁸ *Constitution of the Republic of Kosovo*, Article 103 specifies 15% of the positions of judges for representatives of members of minority communities.

²⁰⁹ *Ibid*, Article 102, p. 2. The judicial power is uniform, independent, fair, apolitical and impartial and ensures equal access to courts.

²¹⁰ *IO, Report with Recommendations*, dated 27 April 2011, submitted to Mr. Jakup Krasniqi, Speaker of the Assembly of Kosovo on the non-functioning of judicial authorities in north Mitrovica.

2.25.2. Complaints about unresolved court cases and the implementation of the National Strategy on Reduction of Backlog

On 18 November 2010 the KJC approved the National Strategy for the reduction of backlog that aimed to reduce the number of court cases received from the beginning of 2000 until 31 December 2008, which had not been resolved/decided upon by 31 December 2010. The deadline for the implementation of the National Plan for the reduction of backlog was 1 January 2011 until December 2012.

The number of cases registered as unresolved until 31.12.2010 was in total 161.273. These cases comprised of criminal and civil but also executions of court decisions. The KJC report of 25 April 2012 on the progress in the work of the judiciary to reduce the number of backlog it is noted that in general the judiciary has managed to reduce the backlog by only 49,57%.²¹¹

According to this report based on the number of judges and in particular with the municipal courts, satisfactory progress has been achieved with criminal cases, while the work with civil cases has stalled and more commitment is required in 2011.

The Ombudsman has established that in spite of the success achieved to reduce the backlog the judiciary should be more engaged in resolving all cases in order to avoid the running of the statute of limitations because this represents a serious violation of human rights and freedoms and a complete failure of the goal to install the rule of law.

2.25.3. Complaints for court cases by mixed panels with EULEX judges and prosecutors

At the plenary session held on 7 September 2012 the Assembly of the Republic of Kosovo approved the constitutional amendments about the end of the international supervision of the independence of the Republic of Kosovo, proposed by the Government of Kosovo.²¹² This political action intended to amend 21 systemic laws with the purpose of reassigning the legal position of international staff in the local institutions and the justice system, namely the judiciary and prosecutorial system.²¹³

These changes resulted in the amendment of the Law No. 03/L-199 On Courts and the Law No. 03/L-224 On the Kosovo Prosecutorial Council (KPC). With these amendments the new municipalities established based on the Law on Municipal Administrative Boundaries and that did not have a basic court could establish such courts upon approval of the KLC. Also,

²¹¹ *Kosovo Judicial Council*, Report No. 5/8-2012. Progress achieved in the work of the judiciary in the Implementation of the National Strategy to Reduce the Backlog”.

²¹² Amendment of the Constitution of the Republic of Kosovo in relation to the end of the international supervision of the independence of Kosovo. Official Gazette of the Republic of Kosovo, Prishtina, No. 25, 07 September 2012.

²¹³ *Law on the Amendment and Supplement of the laws concerning the end of the international supervision of the independence of Kosovo*, No. 04/L-115. Official Gazette of the Republic of Kosovo, No. 25, 07 September 2012.

the laws provided that at least 15% of prosecutors, namely judges should come from the ranks of minority communities for the prosecutorial system and the Court of Appeals.

Even after the conclusion of the internationally supervised independence the judicial and prosecutorial systems of the country are still supported by a contingent of international judges and prosecutors who are engaged in the framework of the European mission for the rule of law in Kosovo – EULEX, to assist the local judicial authorities in developing and strengthening an independent justice system. They act in mixed judicial panels in specific reserved areas: investigation and adjudication of war crimes, terrorism, organized crime, corruption, inter-ethnic crime, murder, grievous murder, commercial crime and other serious crimes. They also have competences to adjudicate civil cases of all natures and levels of the judiciary according to the law on competences.²¹⁴

KJC has no competences whatsoever on EULEX judges and prosecutors. They are appointed/dismissed and are accountable before the President of the EULEX Judges' Assembly, and the Head of EULEX Prosecutors, who acts under the orders of the EULEX Justice Component Chief.

In the reporting year the Ombudsman has received 11 complaints of citizens against EULEX judges and prosecutors for delay of investigation procedures and court procedures in deciding on cases, decisions on detention,. Requests for monitoring of trials by the Ombudsman, suspicions for material evidence proposed by the prosecutor, requests to receive notification and contacts with prisoners, and in some cases the parties inform the IO about the complaints filed with the EULEX judges and prosecutors.

A part of the complaints from the citizens mentioned that their cases should be adjudicated by EULEX judges and not local judges. The parties requested this due to their suspicion on the objective handling of the case on the part of local judges and this is a result of the loss of trust in the local justice.

In some cases complaints concerned the legal measures of detention considering that there were no strong legal grounds for such measures to be pronounced and that alternative ways of ensuring the presence of the accused in the trials could be used and that their human rights and freedoms had been restricted.

In the case of the complaint of the defense counsels of Fatmir Limaj, Arben Krasniqi²¹⁵ et al, the case known as *Kleçka Case*, against whom an indictment for war crimes against civilian population and war prisoners in 1999 had been raised, they requested that the Ombudsman monitor the case. They alleged that the investigative procedure against one of their clients was conducted through serious violation of human rights, guaranteed by Article 30, [Rights of the accused] and Article 31 [The right to a fair and unbiased trial], of the Constitution of the Republic of Kosovo and the procedural rules of the Criminal Procedure Code of Kosovo (CPCK) by the prosecutor and preliminary procedure judge.

²¹⁴ *Law on Competences, Selection of Cases and Appointment of Cases to EULEX Judges and Prosecutors in Kosovo, No. 03L 053*, Article 5. P. 1. Official Gazette of the Republic of Kosovo, Prishtina, No. 27, 03 June 2008.

²¹⁵ *IO, Case A. 309/2011*.

By the letter dated 01. 03. 2012 addressed to the Presiding Judge of the Panel at the District Court of Prishtina the Ombudsman expressed his concern in relation to the allegations of the complainant.

In all cases involving complaints from the citizens, the Ombudsman has addressed letters to the EULEX judges and prosecutors requesting information on cases and has received written responses every time. The Ombudsman has had the understanding and excellent collaboration with all judges and prosecutors of the international mission of EULEX in investigating all complaints of the citizens. The Ombudsman uses this opportunity to thank the EULEX justice component for mutual collaboration.

2.25.4. Complaints about court cases with the Special Chamber of the Supreme Court

The Special Chamber of the Supreme Court of Kosovo (SCSCK) for cases related to the Privatization Agency of Kosovo (PAK), as part of the Supreme Court of Kosovo, according to the law, reviews and rules on appeals against the decisions of the Kosovo Trust Agency (KTA) as predecessor of PAK, and requests from socially-owned enterprises from mixed panels of local and international judges.²¹⁶

According to official notes from the KJC, the SCSCK²¹⁷ is working on a large number of cases submitted by the citizens. They have received to date 8.240 first and second instances complaints. Of them 4.823 are complaints for the so-called lists of employees. Based on the report we also note that there is little efficiency of only 37 % in solving cases from this court. This is a very troubling fact having in mind the number of cases this court deals with.

This year the Ombudsman has received 22 complaints from citizens against the SCSCK for long delays in reviewing their claims. Some of these complaints concerned the obligation of the citizens to translate documents in English.²¹⁸ This concern has been raised also by the civil society with the request to be forwarded to the Constitutional Court to assess the legality of the law that obligates the translation of documents.²¹⁹

In order to investigate the received complaints, on 24.4.2012 IO representatives met with the Presiding Judge of the SCSCK Mr. Sahit Sylejmani, to get information on the delays in reviewing court cases on distribution of the 20 % from the sale of publicly owned enterprises and the issue of translation of documents in English by the citizens.

²¹⁶ Law No. 04/L-033, *On the Special Chamber of the Supreme Court of Kosovo on Matters Related to the Privatization Agency of Kosovo*. Official Gazette of the Republic of Kosovo, Prishtina, no. 27, 22 September 2011.

²¹⁷ *Kosovo Judicial Council*, Report on the first 6 months of 2012, statistics from the regular courts, page 3 and 6, at: www.kgjk-ks.org, (26.12.2012).

²¹⁸ *IO, ex-officio no. 12/2012*. Report against the Special Chamber of the Supreme Court of Kosovo and the Assembly of the Republic of Kosovo for obligating citizens to translate documents in English.

²¹⁹ *IO, Case A. 151/2012*. Request of the NGO CLARD for the submission of the Law to the Constitutional Court to assess its constitutionality.

According to Mr. Sylejmani the delays in resolving cases occurred due to the failure of the timely appointment of international judges.²²⁰ This made it impossible to handle cases in time. With regards to the translation of documents according to Mr. Sylejmani this is a legal obligation as the panels of judges are mixed (locals and international), but in most cases the court has approved the requests of the citizens to be relieved of translation of documents and the court has translated the documents.

After analyzing the complaints from the citizens the Ombudsman established that the practice of refusing the complaints of citizens by SCSCK due to the failure of citizens to have the documents translated in English in accordance to Article 25, Para 8, 9 and 10 of the Law No. 04/L-033 on SCSCK on matters related to PAK is discriminatory against citizens as it denies them the right to access to the court.

Therefore, the Ombudsman submitted a report with recommendations²²¹ to the Committee for Legislation of the Assembly of the Republic of Kosovo with the request to initiate procedures to amend Article 25 Para 8, Para 9 and Para 10 of the Law No. 04/L-033 on SCSCK on matters related to PAK so that the law is in harmony with the Constitution. Likewise the Ombudsman recommended to the SCSCK to stop the refusing practice and request the strengthening of translation services within the court so that the citizens' access to the court – justice is not impaired.

2.25.5. Complaints from citizens on cases against regular courts

Based on the Constitution and Article 15.6 of the Law on the Ombudsman, the IO has restricted competences in terms of investigating complaints from the citizens in the area of the judiciary. In any case, none of the actions of the Ombudsman can affect or risk the independence of the prosecutors in conducting investigation and of the judges in bringing court decisions.²²²

While investigating the complaints, the Ombudsman paid special attention to the protection of the principles of fair trial and the right to trial within a reasonable timeframe guaranteed by Article 6 of ECHR.

The largest number of citizen complaints filed with the IO in 2012 concern the judiciary as a responsible party. This is an indicator of the serious situation of the judiciary that has not yet managed to accomplish its legal obligations in relation to the requests and citizen rights that are guaranteed to provide judicial protection of their rights.

²²⁰ Meeting on 24.4.2012 between SCSCK Mr. Sahit Sylejmani and Deputy Ombudsman Isa Hasani.

²²¹ IO, *Report with Recommendations*, 24 October 2012, submitted to the Committee on Legislation of the Assembly of the Republic of Kosovo and the Special Chamber of the Supreme Court of Kosovo.

²²² *Constitution of the Republic of Kosovo*, Articles 132-135; *Law on Ombudsman*, No. 03/L-195, Article 15, P. 6. "The Ombudsman shall not interfere in cases and legal procedures being conducted before the court unless there is unreasonable delay or obvious abuse of power."

Citizens have filed a total of 532 complaints against courts as the responsible party, while in the previous year, in 2011, we have had only 365 complaints. We note a large increase of the number of complainants against the judiciary in relation to the previous year.

From the general number of received complaints 308 were decided to be inadmissible pursuant to Article 19.1.3 of the Law on the Ombudsman,²²³ while in 216 complaints the decision was taken to open investigation and 8 complaints are awaiting review.

The largest number of complaints has been filed against the municipal and district courts, the Supreme Court of Kosovo and also against SCSCCK for matters related to PAK.

In all cases where the requests or complaints of citizens in relation to the judiciary were not in accordance with the competences of the Ombudsman, they were instructed to go to competent professional authorities that provide legal service such as the Legal Aid Commission and NGOs, which provide free legal service for the citizens.

Based on an analysis of the nature of the citizens' complaints that were investigated it is established that the majority deal with: delays, sometimes for many years, of court proceedings; statute of limitations of cases; non-executing of final court decisions; suspicion on the objectivity of the judges in deciding on the case and inappropriate representation by defense counsels.

2.25.6. Delays of court proceedings in decision of cases

First of all, delay of court proceedings is a consequence of the large number of cases brought forward by previous years and the continuous increase of the number of new court cases from various areas. In spite of the fact that the courts hired last year 111 new judges, no considerable progress has noted in terms of delay of court cases.

According to the KJC annual report 2011 on the regular courts, the number of unresolved cases at the end of the first 6 months in 2012 was 220'613.²²⁴ While at the end of 2011 the number of cases awaiting decision was 213.037.²²⁵ So we have an increased number of unresolved cases in the judiciary.

According to statistical data in the report, we note that in the first six months the court resolved 22.441 cases, while the citizens have filed 23.512 submissions with the courts. The judiciary still receives more cases that it can resolve. This fact is very concerning for the Ombudsman and therefore the latter asked from the KJC to urgently find a legal solution.

²²³ *Law on Ombudsman, No. 03/L-195*, Article 19, P. 1.3.: "The complaint is not under the competence of the Ombudsman, the complaint was filed beyond the provided deadline; the complaint is anonymous; the complaint constitutes misuse of the right to complaint; the complainant has failed to provide information requested by the Ombudsman".

²²⁴ *Kosovo Judicial Council*, Report on the first 6 months of 2012, page 6. Statistics on regular courts, www.kgjk-ks.org, (26.12.2012).

²²⁵ *Kosovo Judicial Council*, Annual report 2011. Statistics on regular courts, www.kgjk-ks.org, (26.12.2012).

In spite of this situation in the judiciary the Ombudsman does not find any justification for the delays of procedures concerning property disputes, where citizens are obligated to wait for many years.²²⁶

2.25.7. Statute of limitations of cases with the courts

Although the report of the first 6 months in 2012 of the KJC does not present any data on the statute of limitations of the cases, in the reporting year the IO has received complaints about cases with court running the statute of limitations.

The statute of limitations may be a result of an overload with cases and inability to decide within the deadline. Another factor of temporary negative influence may be the continuous judicial reforms. What can be proved though and which is highly concerning is the fact that the statute of limitations may be a result of negligence or misuse of the judge's office.²²⁷

To the Ombudsman the statute of limitations of the court cases represents one of the most grievous violations of human rights and freedoms guaranteed by the Constitution in a country with a rule of law!²²⁸

Based on the complaints of the citizens regarding the statute of limitations of court cases, on 30 March 2012 the IO submitted to the KJC a report with recommendations and requested that the necessary measures be undertaken to apply the legislation in effect in the Republic of Kosovo so that the courts do not delay cases until they run statute of limitations.²²⁹

The Ombudsman has requested continuously and uses the opportunity to emphasize to the Office of the Disciplinary Prosecutor at the Kosovo Judicial Council to investigate in each case involving statute of limitations the causes for the running of the statute of limitations and to initiate disciplinary measures against all those found guilty for the cases that have ran the statute of limitations.

2.25.8. Non-execution of final court decisions

²²⁶ *IO, Case No. 403/2012.* Complaints against the Municipal Court of Prishtina about the property right. The complainant has filed a lawsuit for verification of the property right in 2005, and to date the court has not resolved the case. Due to the unreasonable delay of the court procedure the Ombudsman asked the Municipal Court of Prishtina by a letter addressed on 17.10.2012 to continue with the case within the shortest deadline, in accordance with the norms and standards for the observation of human rights and the right to a fair trial and within a reasonable deadline.

²²⁷ *IO, Case No. 479/2012.* Appeal against the Municipal Court of Prizren. The party complained about the court allowing the running of statute of limitations. Being dissatisfied with the court decision the party filed an appeal with the District Court of Prizren. The party asked the Ombudsman to monitor the case at the court. The Ombudsman has opened investigation into this case.

²²⁸ *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.”

²²⁹ *IO, Case A. 308/2011.* Report with recommendations in relation to the complaint from the citizen on this case that was submitted on 30 March 2012 to the Kosovo Judicial Council.

In 2012 the Ombudsman has received a considerable number of complaints for non-execution of final decisions of municipal courts. They have requested the assistance and intervention of the Ombudsman so that these decisions be executed.

The execution of court decisions country-wide is low. The reasons that affect the low scale of execution of final court decisions, according to the KJC, consist in the small number of execution clerks, lack of accurate addresses etc. However, it seems likely that another important factor in this aspect is the non-coordination and deficient inter-institutional collaboration between the judiciary and the executive.

In all appeal cases under the competence of the IO, the Ombudsman has conducted investigation and has contacted by letters and direct meeting the officials of municipal courts, who are responsible for the execution of court decisions. The Ombudsman has inquired about the reasons for the delayed execution of decisions. In many cases upon action of the Ombudsman the courts have undertaken actions to execute decisions but there have been instances when the decisions were not executed.²³⁰

2.25.9. Other cases with complaints from the citizens

In many cases the Ombudsman has received complaints against final court decisions for which the parties have exhausted the appellate remedies. In these cases, the Ombudsman has advised the complainant that should they still consider their rights have been violated by the process and the court decision they have the right to raise the issue within a deadline of four months from the final decision with the Constitutional Court of Kosovo.

Also, there are cases where the Ombudsman has been requested to raise the issues individually with the Constitutional Court. This is a result of the lack of proper information of the citizens about the nature of cases that may be raised with the court and the authorized persons to do so according to the Constitution. The Ombudsman is not competent to raise an individual case with the Constitutional Court.

In some cases there have been complaints against final court decisions for which all appellate remedies have been exhausted, including the appeal with the Constitutional Court. The Ombudsman requests that their issue be submitted for trial to ECHR in Strasbourg. In these cases the parties have been notified with the legal restrictions because the Republic of Kosovo has not signed or ratified the ECHR and the citizens of the country cannot file cases with this court.

²³⁰ IO, *Case No. 386/2012*. Complaint against the Municipal Court of Prishtina, in relation to the delayed court proceedings involving non-execution of the decision for compensation of debt by the Ministry for Returns and Communities of the Republic of Kosovo. By final verdict the party was acknowledged the right to compensation of debt by the Ministry for Returns and Communities but although over 3 years had passed the decision had not been executed. Keeping in mind the duration of the court procedure for the execution of the final decision of the Municipal Court of Prishtina, in the letter the Ombudsman sent on 25 September 2012 he requested from the Court to proceed with execution in this case within the shortest timeframe possible in accordance with the constitutional norms and the standards for the observance of human rights and the right to a fair trial within a reasonable timeframe.

Complaints have also concerned undue delays by the court administration due to failing to submit court decisions within the legal timeframe, and due to the inability of the parties to have access to their cases with the court. In all cases of complaints of this nature the Ombudsman has contacted the court officials and in collaboration with the courts has resolved the complaints. Parties were delivered the court decisions or were information about the status of the cases with the courts.

Additionally, a large number of the complaints were filed due to the inappropriate representation of the complainants by their defense counsels at court sessions, either when they chose the defense or when the advocates were appointed *ex officio* by the court. In all cases the parties were informed of their right to request that the advocates be changed and to file their complaint with the Kosovo Chamber of Advocates (KCA).

Often, in their complaints to the Ombudsman the citizens have requested that their case at the court be monitored and in some cases request that various complaints be drafted and that they be represented at various court instances.

In both cases, apart from the legal restriction of the Ombudsman in relation to the litigant relations, as the Ombudsman cannot take anyone's part in a court or administrative procedure, there are also the personnel restrictions. The Ombudsman does not have such a large number of employees to enable monitoring all court sessions. Therefore, the IO cannot monitor all court proceedings as per the requests of the parties.

Many of these actions of the citizens apart from proving the lack of sufficient information of the citizens about the mission and competences of the Ombudsman prove on the other hand the increased trust of citizens in the Ombudsman, although the Ombudsman, based on the legal competences, cannot replace the defense counsel before the courts. Unfortunately though, many of these cases prove the loss of trust in the genuineness and commitment of defense counsels and in the courts' justice in the country in general.

2.25.10. Reports with recommendations from the Ombudsman

After investigating the complaints from the citizens filed against the judiciary, in many cases the Ombudsman has established there have been violations of the human rights by the judiciary. Therefore, in order to eliminate the violations of the rights and to reinstate their rights and to improve legislation in the human rights area, the Ombudsman has submitted to the judiciary 4 reports with 12 recommendations.²³¹

²³¹ IO, *Reports with Recommendations. Report in case A. nr. 442/2011*, submitted to the Municipal Court in Gjilan on 10 September 2012. *Ex-officio report A. nr. 12/21012*, submitted to the Special Chamber of the Supreme Court of Kosovo on 24 October 2012. *Report on case A. nr. 395/2009*, submitted to the Supreme Court of Kosovo on 5 June 2012. *Report on case A. nr. 308/2011*, submitted to the Municipal Court in Prizren, on 30 March 2012. The Ombudsman in the reports with recommendations *A.nr.442/2011* and *A.nr.12/2012*, has received a response from the institutions where the recommendations were submitted. While in cases *A.nr.442/2011*, *A.nr.12/21012*, no answer has been received from the Municipal Court in Gjilan, Special Chamber of the Supreme Court, the Kosovo Judicial Council and the Assembly of the Republic of Kosovo.

2.25.11. Complaints of the citizens against the Prosecution

In the reporting period the citizens have filed a total of 18 complaints against the prosecution as the responsible party. Of those 10 were decided to be inadmissible,²³² while in 8 complaints a decision was made to open investigation. The complaints were in compliance with the competences of the Ombudsman and were handled in accordance with the Law on the Ombudsman and the appropriate investigation actions were undertaken.

The number of complaints concerning the realization of rights before the criminal prosecution authority – public prosecution offices was higher compared to the previous year but smaller compared to the ones concerning the courts. Based on an analysis it results that a part of the complaints are about delays of investigation procedures by the public prosecution offices until the decision is taken.

In many cases, due to the need for additional information on the final decision, according to the criminal, additional information by the police is needed. At this stage of the procedure as a result of passivity and insufficient initiative on the part of public prosecutors, their work often falls behind.

Most often such actions result in the expiry of the legal deadline within which the injured parties have the legal right to initiate criminal prosecution as private suits. In these cases it is noted that there is no communication between the injured party, the police and prosecutor and therefore in many cases the criminal charges are rejected or the investigation in a criminal procedure are stayed in accordance with Articles 82 and 158 of the Criminal Procedure Code.²³³

2.25.12. Delays of investigation procedures in criminal cases

Some of the complaints that the citizens have filed with the IO concern the detention and delayed filing of indictments by prosecution offices due to delayed completion of investigation procedures and delayed/postponing of criminal sessions as a result of the failure of prosecutors to attend trial sessions and in these cases, detention measures are extended based on the same justification.

²³² *Law on the Ombudsman, No. 03/L-195*, Article 19, p. 1.3. “After receiving the complaint the Ombudsperson within thirty (30) days decides on the admissibility of the case: 1.3. to reject the complaint because: it is not in the competence of the IO according to this law; the complaint is submitted after the term foreseen with this Law; the complaint represents an abuse of the Law for filing the complaint or; the complainant has failed to provide information requested by the Ombudsperson”.

²³³ *Code No. 04/L-123 of the Criminal Procedure* Article 82: The state prosecutor shall issue a decision dismissing a criminal report received from the police or any other source within thirty (30) days if it is evident from the report that: 1.1. there is no reasonable suspicion that a criminal offence has been committed; 1.2the period of statutory limitation for criminal prosecution has expired; 1.3the criminal offense is covered by an amnesty or pardon; 1.4. the suspect is protected by immunity and a waiver is not possible or not granted by the appropriate authority; or there are other circumstances that preclude prosecution. 3. The state prosecutor shall notify the injured party of the dismissal of the report and the reasons for this within eight (8) days of the dismissal of the report.

In all cases admissible, the Ombudsman has opened investigations on the complaints of the parties and has contacted the prosecution officials asking for clarifications on the delays of investigation procedures and delays in filing indictments. In some cases, following the actions of the Ombudsman, the authorities have been more active in conducting and completing investigation.

Some other complaints filed with the IO concern the non-inclusion of the injured persons in the prosecutor's act for filing the indictment. This action places the injured persons in a difficult position with regards to the return of material compensation of the assets or property damaged by the perpetrators of the criminal act.

In some complaints there are suspicions of the objectivity of the investigation conducted by the prosecutor due to a lot of delays. In such cases there are requests that the prosecutor handling a case be changed.

In the case of a citizen against the District Prosecution Office in Prishtina, the complaint concerned delay of the criminal/investigating procedure by the prosecution office. According to the complainant's allegations his son had lost his life on 26.09.2007 in a traffic accident but to date the case has not yet been handled by the prosecution office in spite of the fact that the person who caused the fatal accident is known to the authorities.²³⁴

With the purpose of investigating the party's claims on 7 December 2009 and 8 November 2012 the Ombudsman sent a letter to the Chief Prosecutor of the District Prosecution Office in Prishtina to get information on the stage of the investigation procedure in the case of the complainant and about the actions undertaken by this prosecution to deal with the case within a reasonable timeframe in compliance with the Law and Article 6 of ECHR.

In its letter dated 27 November 2012 the Prosecution notified the Ombudsman that the case of the complainant was ongoing and awaiting the opinion and ascertainment of the traffic expert and as soon as that opinion is obtained the case will be proceeded with.

In this case the ineffective investigation and failure to proceed with the case for decision on the part of the Prosecution is unreasonable and has no legal grounds. When the decisive facts of the case are known to the authorities: the victim, the perpetrator of the criminal act, venue, time and parties present in the accident, the Ombudsman considers that the unreasonable delay and ineffective work of the prosecution has gone on for over 5 years, only for a traffic expert's opinion as in the case at issue and this constitutes serious violation of human rights and freedoms guaranteed by law and constitution.²³⁵

According to the information obtained by the State Prosecutor the main reason for the delays in conducting criminal investigation and submitting those to the courts is the small number of

²³⁴ *IO, Case No.529/2009*. Complaint of a citizens against the District Prosecution Office in Prishtina, in relation to the delay of investigation procedure since 2007.

²³⁵ *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.". *Code No. 04/L-123 of Criminal Procedure*, Article 159: "If an investigation is initiated the investigation shall be completed within two (2) years. If an indictment is not filed or a suspension is not entered under Article 157 of this Code after two (2) years of the initiation of investigation, the investigation shall be automatically terminated".

prosecutors in all levels in spite of the fact that in the reporting year the number of prosecutors in all levels reached to 125.

In spite of the caseload and pronounced lack of human resources and required infrastructure, in the opinion of the Ombudsman the delays in filing criminal cases with the courts within the foreseen legal deadlines by the prosecution offices and for the Chief State Prosecutor are not always credible or justifiable.

2.25.13. Criminal charges brought forward from the previous year

According to the first semi-annual report of 2012 the State Prosecution of the Republic of Kosovo has brought forward from the previous year 12.941 unresolved criminal charges and has received in 2012 a total of 11.841 new reports-criminal cases. In 2012 a total of 12.006 criminal cases have been resolved, and at the end of the reporting period a total of 12.402 reports-criminal cases were unresolved.²³⁶

Based on this situation one may established that the prosecution offices have completed nearly as many cases as the number of cases filed in the reporting period, namely 145 cases more than those reported. The number of unresolved cases brought forward still is very concerning, as in spite of the current work intensity will not be dealt with within the deadline and risk running statute of limitations. The annual work report of the prosecution system lacks data on running of statute of limitations for criminal cases.

The inability of citizens to realize their rights with the justice authorities has had an extremely negative effect on the public opinion, invalidates the work of the judiciary/prosecution and casts suspicion on corruption of this institution. Procedural delays lasting for years until cases end by verdicts affect directly the loss of citizen trust in justice institutions, especially courts and prosecution offices.

From the complaints filed by the citizens we may establish that we have violation of human rights that are guaranteed by the Constitution of the Republic of Kosovo Articles 31, 32 and 54 and Article 6 of ECHR. The citizens of the country do not have a legal mechanism to protect their right to trial within a reasonable timeframe when the local judiciary infringes this right.

The situation is further aggravated by the fact that in the general system of Kosovo there does not exist an institution for material compensation of the material damage caused, for delays of court proceedings, namely violation of human rights as is the practice in democratic countries.

Recommendations of the Ombudsman:

²³⁶ *First semi-annual report 2012*. On the work of the Municipal, District and Special Prosecution Offices of the Republic of Kosovo and the State Prosecutor.

To the Assembly and Government of the Republic of Kosovo

- *To respect the equality of powers as per the Constitution and allocate to the Judiciary the budget requested as per its needs to enable its independent functioning.*

To the Assembly of the Republic of Kosovo, Government and the Kosovo Judicial Council

- *To expand the judicial power the entire territory of the country including the north of Mitrovica and the municipalities of Leposaviq, Zubin Potok and Zveçan, as provided for by the Constitution of the Republic of Kosovo.*

To the Kosovo Judicial Council and the Ministry of Justice

- *To initiate the drafting of a legal instrument that would constitute an effective tool pursuant to Article 13 of the European Convention on Human Rights that facilitates the prevention or compensation for complaints on running of statute of limitations of cases and excessive delay of court proceedings.*

To the Kosovo Judicial Council

- *That the court structure reform which according to the Law on Courts No. 03/L-199 began implementation in January 2013 to be functional and not to bring new delays in decision of cases.*
- *To increase the efficiency for the implementation of the National Strategy on the Reduction of Backlog to reduce the number of unresolved cases.*
- *To guarantee safety of judges, especially of those at the serious crimes departments, to undertake the necessary legal actions to apply adequate measures of safety inside and outside the court buildings.*

To the Kosovo Judicial Council and the Special Chamber of the Supreme Court of Kosovo

- *To stop refusing practices and request the establishment and strengthening of translation service within the Special Chamber of the Supreme Court of Kosovo so that citizens are not conditioned to address this chamber in English too.*

To the Kosovo Judicial Council and the Kosovo Prosecutorial Council

- *To pronounce measures depriving of freedom - detention, depriving from freedom of the defendant to ensure the presence of the defendant in the criminal procedure only in cases when it is necessary and there are legal reasons and instead use other alternative measures according to Article 173 of the Criminal Procedure Code No. 04/L-123.*

To the Office of the Disciplinary Prosecutor

- *To investigate into all cases of complaints from the citizens concerning the running of statute of limitations and in cases of abuse of duty to propose and undertake legal*

measures foreseen by law against judges and prosecutors for any eventual established violation.

To the courts

- *To execute final court decisions within the foreseen legal deadline.*

To the prosecution offices

- *To inform the injured parties of the possibility to file private charges in all criminal cases when the prosecution offices reject criminal reports and do not file indictments.*

To the Kosovo Chamber of Advocates

- *To ensure legal assistance of a better quality in cases of ex officio representation and to regulate clearly and without ambiguities insurance of clients for the advocate in cases of damages caused while conducting the duty of an advocate.*

2.26. Use of languages

The Albanian and Serbian languages, and their alphabets, are the official languages in the Republic of Kosovo and have an equal status with the Kosovo institutions. Turkish, Bosnian and Roma languages have the status of official languages at the municipal level according to conditions foreseen by law.²³⁷

The Law on the Use of Languages is one of the most important laws for the minority communities in Kosovo. Although it is one of the most advanced laws because it contains all relevant provisions concerning the protection of basic human rights, its implementation still is disputable. As has been emphasized in earlier annual reports of the Institution of the Ombudsman, the problems pertaining to the implementation of this law continue. The Law on the Use of Languages is not implemented entirely and as foreseen because it is implemented only partially both at the central and local levels. There is lack of human and financial resources, which constitutes an obstacle and endangers access to multi-lingual services and fruitful participation of the minority communities in the public life.

Problems concerning the quality of translation into community languages of laws and bylaws issued by the Kosovo institutions at the central and local levels still exist. Often, the translations are incomprehensible and present many orthographic mistakes. These problems need to be resolved because these documents originate from the highest state power. The central institutions have no editors for Serbian language or the other languages. Given such a situation the use of the languages of minority communities in most cases consists in the formal application of these languages without any supervision or professional verification.

²³⁷ Constitution of the Republic of Kosovo, Article .5; Law on the Use of Languages No. 02/L-37; Law on Protection and Promotion of the Rights of Communities and their Members No.03/L-047, Article 4.

2.26.1. Use of languages at the municipal level

At the municipal level there exist a large number of various problems. For example, the issue of translation for minority communities is still problematic. Although the majority of communities have established translation units, some joint problems they have such as the large volume of work, the insufficient number of translators who have relevant qualifications results in poor quality translations.

Signs in official languages or languages in official use on public buildings remain a problem. Although some municipalities have made improvements, such as the case with the Municipality of Gjilan, where all municipal buildings have entrance signs in more than one official language, the other municipalities are far from observing this rule. For example, at the Municipality of Malisheva all public buildings have signs only in Albanian.

Likewise, the majority of traffic signs are not written in the official languages or languages in use at the municipality. However, there has been some improvement. For example, the Municipality of Dragash, all road signs are in the official languages. At the Municipality of Podujeva, the newly-placed signs on the roads are written in Albanian and Serbian. A positive example is the municipality of Graçanica which in the reporting period has placed traffic signs in two official languages.

In the reporting period during the process of monitoring the issues concerning the equal use of official languages in Kosovo the Ombudsman has noted that the Law on the Use of Languages still is not respected in the municipalities in the north of Kosovo.

2.26.2. Use of official languages in schools

The communities in Kosovo have few opportunities to learn any other official language apart from their mother tongue. It is important to encourage the Kosovo youth to learn other languages so that they can understand each other without interpreters. The education system of Kosovo has no opportunities for Albanian and Serbian students to learn official languages which in the future will create greater difficulties in the implementation of the Law on the Use of Languages. This is why this issue is of importance and it is a responsibility of the Government to work on raising the awareness and creating better conditions and a more favorable environment for learning official languages and including them in the education system in Kosovo.

2.26.3. State policy on the application of the Law on Languages

Responding to these shortcomings and to ensure the efficient application of the Law on the Use of Languages and to establish practical policies for the use of languages, the Government has adopted Regulation 07/2012 on the Office of the Language Commissioner that came into

effect on 4 April 2012. This Regulation foresees the establishment of the Office of the Language Commissioner that will become functional with the establishment of the Council for Language Policies, with the selection and appointment of the commissioner for languages, with the employment of the staff for the Office of the Language Commissioner, with ensuring office space and resources and with the establishment of the language policy network.²³⁸

The Council for Language Policies and the Language Policy Network is one of the support mechanisms for the Office of the Language Commissioner. The Council is an important mechanism because it offers institutional support for the development, implementation and strengthening of language policies while the Commissioner is obligated to submit his reports to the Council in addition to the Government and the Assembly.

After it was indicated that the Language Commission,²³⁹ was established in 2007, but was not functional and failed to provide quality response to its obligations the Government reformed this commission and the Ombudsman has reported in detail about this in the previous annual report for 2011,²⁴⁰ and now this process has not yet been completed. The Office of the Language Commissioner that will be made functional at the central level under the auspices of the Cabinet of the Prime Minister has not become operational,²⁴¹ but the general public opinion still is unaware that this commission exists and is not informed about the complaint mechanism. In the reporting period the Government of Kosovo did not initiate any information campaign to clarify the obligations of the central and municipal institutions or the rights of users of official languages of minority communities.

2.26.4. Filing of complaints the IO has received in relation to the use of languages

In the reporting period the IO received a large number of complaints (25) dealing with the issue of the equal use of official languages at the local and central levels in Kosovo.

With regards to these complaints filed with the IO, one case concerned the inability of establishing communication in Serbian language with a person employed in the Civil Registry Office in Prishtina, to correct the maiden name in the marriage certificate on which occasion

²³⁸ At the meeting of the Council on language policies that was held on 01 November 2012, the chairperson and his deputy were selected, who in accordance with the Regulation on the Office of the Language Commissioner, were proposed to the Council for Language Policy by the Consultative Council for Committees, as representatives of the Serbian and Turkish languages. The mandate of the chairperson and his deputy shall be for two years with the possibility of being elected one more time. <http://www.kryeministri-ks.net> (15.02.2013).

²³⁹ The Commission for Languages' mandate is to monitor and improve the application of the Law on Use of Languages by the respective institutions and service providers, and to advice the Government in terms of measures provided in Article 31 of the Law on the Use of Languages, which reads "*The Government and Kosovo institutions shall adopt measures promoting the use and equal status of the official languages, as well as ensuring the protection, preservation and promotion of the languages of communities whose mother tongue is not an official language.*"

²⁴⁰ IO Annual Report 2011. Pg. 23.

²⁴¹ Information obtained by the webpage of the Office of Prime Minister for Communities. In fact, following the resignation of the newly-elected commissioner for languages whom the Government appointed in October 2012, the Cabinet of the Prime Minister, pursuant to Regulation 07/2012 on the Office of the Commissioner, appointed on 19 December 2012 Slavisha Mlladenoviq as the commissioner for languages. See <http://www.kryeministri-ks.net/zck/?page=3,4,111> (15.02.2013).

the complainant had suffered the unprofessional conduct of the civil registry officer of this municipality.²⁴²

Regarding the complaint about the violation of the right for the equal use of Serbian language, again at the Civil Registry Office in the Municipality of Prishtina, and the failure of this service to issue personal documents of the complainant in the Serbian language and alphabet, in accordance with the Law on Use of Languages, after the investigation conducted into the complaint the IO published a report with recommendations that was submitted to the respective party.²⁴³

In fact, this service had written the data in the documents incorrectly in the Serbian language and alphabet and some sections contain data in Albanian. At the request of the complainant the official of this civil registry service did not want to correct the errors. On the other hand, this service has not responded to the IO report within the foreseen legal deadline and the IO addressed to the responsible party a reminder, pursuant to Article 23 of the Law on Ombudsman.

The Civil Registry Office of the Municipality of Prishtina again failed to meet the recommendations in the report of the Ombudsman even after the reminder. In the ensuing response the responsible party justified its failure with the technical problems in the computer system because the officials are unable to type some letters of the Serbian alphabet.

This explanation is unacceptable for the Ombudsman. These problems can be easily overcome by installing the Serbian alphabet in the computers of the Civil Registry Office in the Municipality of Prishtina, and in the other municipalities in Kosovo and this should have been immediately upon entering into effect of the Law on the Use of Languages. And also there exists the possibility of using letters from the existing computer programs for languages and alphabets that can be found in every computer today.

2.26.5. Use of official languages in the official web pages of the municipalities in Kosovo

In the reporting period the Ombudsman published an *ex-officio* report with recommendations that was submitted to the relevant municipalities the web pages of which the IO has analyzed, and to all relevant institutions at the national level in the Republic of Kosovo. The response of relevant institutions in relation to the report at issue with regards to the recommendations of the Ombudsman is expected in the next reporting period.²⁴⁴

²⁴² IO has solved positively case A. no.99/2012. After the investigation conducted and presenting the case to the responsible party, the case was solved in a short time in accordance with the party's request.

²⁴³ IO case A. no. 132/2012. After the conducted investigation on the filed complaint the IO published a report with recommendations and submitted it to the responsible party.

²⁴⁴ Case with the IO, Report *Ex – Officio No. 275/2012* et al on the use of official languages. With regards to 12 complaints filed by the NGO CLARD, that deal with the equal use of official languages in the official webpages of the Municipalities, the Ombudsman expanded that to 10 more municipalities. Also with regards to the equal use of languages in the official webpages of some institutions at the central level and public enterprises, a full

After the conducted investigation and the legal analysis of the facts presented in this report the Ombudsman established that the failure to publish public documents in the official languages in the official web pages of the municipalities that were object of the investigation constitutes a violation of the provisions of the Constitution and of the Law on the Use of Languages that guarantee equal use of official languages in the municipalities, which also constitutes violation of human rights and freedoms.

Based on the aforementioned, we may conclude that the problems and differences in the implementation of the language policy and equal use of official languages keep being repeated and are present at all levels and areas of social life.

Recommendations

- *The Government of Kosovo should ensure at the local and central level the strengthening of capacities of public institutions so that the Law on Use of Languages is applied entirely and qualitatively.*
- *The Government of Kosovo should undertake concrete measures and enable the Office of the Language Commissioner to become operational as soon as possible in the framework of the mandate given to it and to undertake measures to increase the awareness of the function and role of the language Commission.*
- *The Government of Kosovo and the Ministry of Education, Science and Technology should undertake measures to ensure teaching in obligatory classes of any selected official language to encourage closer language relations.*
- *The Government of Kosovo should provide training on regular basis for public officials to ensure learning of both official languages to overcome linguistic barriers.*

2.27. Rights of Communities and their Members

The rights of communities and their members are guaranteed by Article 59 of the Constitution of the Republic of Kosovo that deals with the protection of rights from the areas of culture, preservation of identity, education, use of languages and alphabet, access to and representation in the media.

Apart from Article 59, the rights of minorities are guaranteed also by the framework conventions on the protection of national minorities (framework conventions)²⁴⁵ that aim to advance full and efficient equality of minority communities on all areas of economic, social, political and cultural life.

investigation has been conducted. The Ex-officio reports with the recommendations from the Ombudsman in relation to these issues shall be published in the future.

²⁴⁵Constitution of the Republic of Kosovo, Article 22(4).

In the previous reporting period, the Institution of the Ombudsman (IO) is mainly focused on culture, education and access and representation in the media of the minority communities in the territory of Kosovo. In the reporting period for 2012, with regards to these areas, the IO has not noted any essential changes compared to the previous reporting period. In fact, in spite of numerous projects, strategies and plan little of this has been realized in terms of sustainable return of the displaced, employment of members from the minority communities, meeting the quota of 10% in state institutions and local government.

There still exists the current problem of the usurper properties and the non-efficiency and delayed action on the part of the police especially the jurisprudence to the solution of these disputes, and the slow progress of the Kosovo Property Agency (KPA) which directly handles these problems and has the mandate to solve property requests.²⁴⁶

2.27.1. Return of the displaced and refugees in Kosovo

Based on official UNHCR data, from January to September 2012, 662 persons have returned voluntarily to their homes in Kosovo of whom 230 Serbs, 58 Roma, 253 Ashkali and Egyptian, 39 Bosniac, 80 Gorani and 2 Croats.²⁴⁷

The Ministry of Returns and Communities (MRC) continues to offer support to the returnees in Kosovo; therefore, through its local and international partners has constructed in all regions of Kosovo a total of 76 houses which are equipped with all basic elements for a household and have been given into use during 2012.²⁴⁸ All returnees, in a period of six months after their return to their homes receive food by the municipalities where they have returned. The MRC has also described and established in almost all municipalities the Municipal Offices for Return and Communities (MORC) that aim to promote and protect human rights of minority communities. The purpose for establishing these offices is to provide support to the displaced and refugees and repatriated, and to coordinate and promote the return of the displaced and refugees to their homes in Kosovo.

In the reporting period there existed obstacles to assist all individuals who expressed the desire to return because it was not possible to help all individuals in general and to assist them in all their requests and needs. In fact, due to the absence of money in some municipalities they had to choose the users and assisted only those who were most endangered and returned to their homes.²⁴⁹

²⁴⁶ IO representatives, with the goal of drafting this report have collected information from all over Kosovo through discussions with many local people (citizens, municipal representatives member of the minority communities, local NGOs etc.).

²⁴⁷ Office of the Chief of Mission of UNHCR in Prishtinë, a review of statistical data updated by the end of September 2012.

²⁴⁸ Data by MRC.

²⁴⁹ At the meeting between the IO and the Head of MORC in the municipality of Partesh-Pasjan, we obtained the data that in 2013, 90 families have expressed the desire to return to their homes but due to budget restrictions for the returnees the municipality is unable to help all but based on the budget they will select the users who return. At the meeting it was highlighted that 150 families have left this municipality in the last 10 years, mainly young people who left their homes because of their inability to find employment.

In spite of all attempts from the MRC and international stakeholders in Kosovo the return of the displaced and refugees has been nearly twice as small compared to 2011, when 1143 persons returned to Kosovo voluntarily. From a general point of view, we cannot say that the return of the displaced to their homes in Kosovo is satisfactory and sustainable. The fact that these persons very often are target of assault in the environments to which they return contributes to the reduction of the displaced and refugees who return. In this context, in 2012, there were a series of incidents in the municipalities of Klina and Istog, which had the largest number of returnees.²⁵⁰

In fact, by mid-May 2012, the villages of returnees in the municipality of Klina sprouted slogans inviting the returned Serbs to move away.²⁵¹ By the end of May 2012, two houses of returnees in Drenoc village of the municipality of Klina were burnt.²⁵² In August 2012, the family home of Drleviq returnee family in Zhaç village municipality of Istog was hit with stones,²⁵³ while the assault against a Serb returned to Peja happened in the same month.²⁵⁴

The fact that there still exists a number of usurped properties belonging to the displaced or returnees that affects the return of the displaced in addition to the mentioned incidents, the property-legal requests are still filed with the KPA. Complaints concerning the delay of proceedings at the KPA have been submitted to the IO in 2012. However, the IO still has unresolved complaints filed in the previous years where the complainants have asked the KPA to vacate their properties from the usurpers so that they can possess their property freely and/or eventually return to their properties and homes.²⁵⁵

2.27.2. Readmission and Repatriation from Western Europe

When we talk about readmission and repatriation in 2012, from host countries, mainly Western Europe, a total of 1'753 persons have been returned by force, of whom 1'206 Albanians and the rest, 547 were representatives of minority communities.²⁵⁶ In spite of the existence of the strategy and action plan for reintegration that the Government of Kosovo issued in 2009, its implementation in practice and further is problematic especially at the municipal level. There is no progress in very important areas such as: registration of citizens, education, health and social care, employment, housing issues and placement. Almost in all cases the non-efficiency of implementing this strategy is, apart from the lack of political will at the central level, the non-existence of sustainable municipal funds that result in non-

²⁵⁰ Source MRC.

²⁵¹ <http://www.mkk-ks.org/?page=3,12,437>

²⁵² <http://www.mkk-ks.org/?page=3,12,436>

²⁵³ <http://www.mkk-ks.org/?page=3,12,447>

²⁵⁴ <http://www.mkk-ks.org/?page=3,12,449>

²⁵⁵ Complaints of citizens filed with the IO due to the failure to solve their property requests by the KPA: 338/2009 M.T, 258/2009 M.O, 64/2010 Đ.S, 338/2010 D.M, 7/2011 R.Š, 30/2011 R.P, 42/2011 T.V, 131/2011, 153/2012 R.V, 388/2012 N.T, 405/2012 Lj.Đ, 514/2012 N.Š etc.

²⁵⁶ Office of the head of UNHCR Mission in Prishtina, a review of statistical data updated by the end of September 2012.

efficient payment of money for reintegration because only a small percentage of these funds reach the repatriated as direct assistance.²⁵⁷

In addition to the abovementioned we should highlight the fact that even after 13 years from the conflict and almost 9 years from March 2004 riots, a part of members of minority communities lives in neighborhoods with containers and collective centers Kosovo wide. Such situation creates an impression that these people were forgotten both by the system and the society in general. The IO is of the opinion that this issue should be resolved urgently by the institutions that deal with these problems and by distinguished members of the civil society in municipalities from where these people have been displaced. This issue should also be solved in such way as to ensure safe and sustainable return of all displaced in their homes.²⁵⁸

All that was mentioned above in relation to problems that the returnees and repatriated face influences at a large degree not only on their perception of personal and general security, of those who have returned and those who plan to do so, and in addition on the process of the sustainability of the return of these people.

In the previous period the IO reporting on the issue of minority communities focused on the Serbian community and other communities in separate chapters, while in this report all communities are represented equally in chapters that are object of reporting for 2012. The situation, at a general view, has not changed essentially for any of the communities in Kosovo compared to 2011.,²⁵⁹ therefore on this occasion we shall elaborate only on the situation of the Roma, Ashkali and Egyptian communities as the communities that are the most marginalized in the Republic of Kosovo.

2.27.3. The situation of Roma, Ashkali and Egyptian Communities

In this report the IO places special emphasis on the Roma, Ashkali and Egyptian communities which are the most endangered and marginalized communities in Kosovo. Regrettably, member of this communities are still treated differently compared to other communities and do not have the same rights or approach of institutions like the others.²⁶⁰

The current problems that members of the Roma, Ashkali and Egyptian communities are facing consist of inadequate living and housing conditions, education for children and youth,

²⁵⁷ OSCE Report on the assessment of rights of communities, third publication, July 2012 and information obtained by the NGO „Zëri i romëve, ashkalive dhe egjiptasve“ which prove the difficult situation and inadequate action and lack of willingness of many municipalities in Kosovo to face this problem.

²⁵⁸ Examples are as follows: two neighborhoods with containers in Graçanicë, the neighborhood with containers for the displaced in Uglar village, municipality of Graçanicë, the neighborhood with containers in Plemetin village, Municipality of Obiliq, collective center in north Mitrovica, collective center in Leposaviq, collective centers in Brezovicë, Municipality of Shtërpce, etc.

²⁵⁹ For more information on minority communities in Kosovo see IO Report 2011. (http://www.ombudspersonkosovo.org/repository/docs/4263_RAPORTI%202011%20serbisht.pdf or http://www.ombudspersonkosovo.org/repository/docs/91976_RAPORTI%202011%20shqip.pdf)

²⁶⁰ One of the conclusions of the round table on the occasion of international human rights day on 10 December 2012, organized in Prishtina by the IO.

socio-economic situation due to higher percentage of unemployed from the Roma, Ashkali and Egyptian communities and their integration in the Kosovo society.

A particular problem from the previous years and in this reporting period concerns the camps for Roma and Ashkali who are displaced in north of Kosovo. The camp of “Lugu i Çezmës” in north Mitrovica was definitely closed and demolished by the end of 2010. After the closure of this camp most of the camp inhabitants settled in „Lagjja Rome“, newly built in south Mitrovica, while a part settled temporarily in „Osterode“ camp also in north Mitrovica.

Camp „Osterode“ for displaced Roma and Ashkali closed down on 13 December 2012 and all its inhabitants were sent to „Lagjja e Romëve“, where they were given apartments. The newly built neighborhood has an outpatient clinic that offers primary health care for the citizens of this neighborhood and in particular for those who have health problems due to lead contaminated land, where the abovementioned camps had been placed.²⁶¹ The project for the construction of „Lagjja Rome“ was achieved thanks to the efforts and money by the MCR, Municipality of Mitrovica and International NGO „Mercy Corps“, under the auspices and support of the European Commission Liaison Office (ECLO) and USAID. The MCR, with the goal of sustainable integration of the residents in this neighborhood has financed some social-economic projects.²⁶² Although the camps for Roma and Ashkali displaced in north Mitrovica are closed there still is concern for competent institutions about what they should undertake with regards to the Roma camp for the displaced in Leposaviq, which continues to be operational. The project to close down this camp and construct the new neighborhood such as „Lagjja rome“ in south Mitrovica for the Roma displaced in Leposaviq has existed for more than seven years for nothing has been done to realize it.²⁶³

The mentioned strategy for the integration of Roma, Ashkali and Egyptian communities (2009-2015) and its action plan for implementation elaborate in detail the concerns and problems that these three communities face. This plan proposes and emphasizes concrete measures to be undertaken, both at the central and local levels in order to being the solution of problems and better integration of these communities in the Kosovo society. In the framework of this strategy and its Plan the directions and the assessment of the budget to achieve the goal until the end of 2015 are given. However, the state institutions do not manage to find time to being implementation of this Strategy and create conditions for the integration of RAE communities.²⁶⁴

Although there has been positive progress with regards to the return of members of Roma, Ashkali and Egyptian communities in their homes, as far as the implementation of the

²⁶¹ Roma and Ashkali were placed in camp „Lugu i çesmës“ for 10 years, while the camp had been erected on land polluted by lead and as a result a large number of camp inhabitants had lead poisoning, especially the consequences of lead polluted land were seen in children who lived there. IO has reported on this problem in previous years’ reports and *ex officio* (<http://www.ombudspersonkosovo.org/?id=2,0,151,156>, or <http://www.ombudspersonkosovo.org/?id=2,0,151,156,a,0>).

²⁶² Source MCR, <http://www.mkk-ks.org/?page=3,12,483>

²⁶³ The IO archive has a copy of the entire project that aims to give a permanent solution for the camp inhabitants who have been displaced to Leposaviq; the project was made by the then provisional institutions of self-government in Kosovo (PISG) and local NGOs from Leposaviq.

²⁶⁴ In order to better understand the problem, and for purposes of this report, in relation to the Strategy and Action Plan and realize both the IO talked to the representative of the Roma community and the director of NGO „Zëri i romëve, ashkalive dhe egjiptasve“.

Strategy and Action Plan in the area of culture and education is concerned, there exists no political will, coordination is poor at the central level and lack of money at the central and local authorities level that would enable their efficient implementation, is obvious. Therefore, it is true that the positive steps have been undertaken thanks to the participation of international governmental and non-governmental organizations to realize with success the majority of the projects that deal with the culture and education of Roma, Ashkali and Egyptian communities.²⁶⁵

2.27.4. Education of minority communities members

Compared to the previous reporting period with regards top education the situation in essence has not changed. There still continue to be two parallel education systems according to the plan and program of the Ministry of Education, Science and Technology of Kosovo (MEST) and the plan and program of the Ministry of Education of Serbia. Both systems function independently of each other.

The opportunity for learning official languages: Albanian and Serbian, depends on the education system that students in Kosovo attend. The Turkish, Bosniac, the majority of Ashkali and Egyptian and a part of the Roma communities attend school in line with the MEST plan and program. Members of the Serbian, Croatian,²⁶⁶ Montenegrin, Gorani and a part of the Roma communities attend school based on the program applied in Serbia. For the time being, learning in Albanian is possible for members of the minority communities who study based on the Kosovo education system, while Albanian language is not even optional for the students who study based on the education program of Serbia. One exception to this is the case in the municipality of Dragash, where some schools attended by Gorani who study based on the Serbian education system Albanian language classes are on offer. This program of Albanian language learning as a second language has been supported by the OSCE and MEST. For this reason at the end of 2011 the textbook “Albanian language as second language” was prepared and published but MEST lacked the initiative to initiate a similar program for the Serbian language.²⁶⁷

With regards to Roma language MEST has approved the plan and program on the language, culture and history of the Roma, from grade 2 to 9 of the elementary school, and there are no text for further study and the qualified teaching corpus in order to commence realizing this program in the entire territory of Kosovo is lacking. For the time being the classes in Roma language under the auspices of MEST take place only in Prizren. Likewise, the subject Roma language and culture exists and is applied in schools operating under the auspices of the education system of Serbia.²⁶⁸

²⁶⁵ Information obtained by NGO „Zëri i romëve, ashkalive dhe egjiptasve“.

²⁶⁶ Janjevë village, Municipality of Lipjanit.

²⁶⁷ Information obtained by NGO OJQ „Zëri i romëve, ashkalive dhe egjiptasve“ assert the difficult position and inadequate action and lack of willingness of many municipalities in Kosovo to face this problem.

²⁶⁸ Data and information obtained by NGO „Zëri i romëve, ashkalive dhe egjiptasve“.

A larger problem in the area of education that makes the already bad situation worse for the Roma, Ashkali and Egyptian communities is the high rate of school abandoning by children, mainly after they complete grade 4 of the elementary school. The problem of school abandoning, especially by the girls is a consequence of the difficult social-economic situation of the members of these communities. In most cases parents have to unregister children from school and send them out to beg or collect secondary matter to earn a living. Another problem to be mentioned is the discrimination at schools against the members of the minority communities by students who are members of other communities, and the teachers.²⁶⁹

Positive initiatives to provide education to children of Roma, Ashkali and Egyptian communities have been undertaken by the local NGOs of these communities with the support of international donors. The mentioned NGOs organize for children from the Roma, Ashkali and Egyptian communities supplementary out-of-school classes during which children mainly do their homework and get assistance to better understand the school program. Also, the NGO sector works to raise the awareness of parents on the importance and necessity of education. Such activities contribute to the reduction of the number of children who abandon school, and also who have survived and have achieved success only thanks to donations from international organizations.²⁷⁰

With regards to the Bosniac and Turkish communities who attend school in their languages and in accordance with the plan and program of MEST, just as in other years, the problem concerns lack of textbooks in the languages of these minorities. The mentioned communities still face inadequate translation of the textbooks and lack a number of textbooks for vocational schools, and therefore they come up with other ways by getting textbooks from the Republic of Bosnia and Herzegovina and Turkey. This is not a solution but only postpones the issue for an indeterminate period of time and competent institutions ignore the existence of this issue. This problem however may result in grave consequences in terms of non-qualitative education or similar approach to education by members of minority communities who receive the education in their mother tongue.

2.27.5. Culture

Culture, as one of the specificities of each community, represents individually one of the areas that by Constitution and the laws is a protected value of a people, and for which there exists the need to cultivate and protect it further. Promotion of religious and cultural heritage of all communities still is not at the right level. Apart from the problems with realizing and registering the special areas under protection as of cultural and religious significance, positive progress has been noted in the framework of this area. In fact the Law on the village of Hoçë e Madhe and the Law on the Historical Center of Prizren were adopted,²⁷¹ with the purpose of protecting the traditional characteristics of Hoçë e Madhe and the historical center of Prizren,

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Both laws adopted by the Assembly of the Republic of Kosovo on 20 April 2012.

as provided for in the Law on Special Areas under Protection.²⁷² In this context we should mention the functioning of Bogosllovia Shën Qirili and Metodije in Prizren, where future priests of the Serbian Orthodox Church are educated (KOS).²⁷³

Culture of minority communities is promoted very little at the local level, and in particular of the minorities such as Ashkali and Egyptian. It is quite obvious that even if support from local power authorities is obtained for this reason, it is done only upon the initiative of members of these communities. With regards to this we should mention the positive case of local governance throughout Kosovo that have allocated money to mark the International Roma Day in April 2012 and supported many cultural activities of the Roma community.

2.27.6. Media

When elaborating on the media there has been some small positive progress in this area compared to the previous reporting period for the IO. The public media service of Kosovo Radio Televizioni i Kosovës (RTK), based on the Law on RTK²⁷⁴ is obligated to allocate at least 15% of its program to the minority communities in their mother tongues. In the reporting period we noted the execution and observance of this legal obligation; programs broadcast in other languages than Albanian increased. In compliance with this, the Kosovo public service broadcasts each day (Monday to Friday) 10-minute newscasts and weekly program in Roma language.

Nevertheless, Ashkali and Egyptian communities had no chance to promote their communities in the public service of Kosovo and present through this media outlet the problems that each member of their communities faces on daily basis.²⁷⁵ From this general point of view the Bosniac, Turkish, Gorani and in particular the Ashkali and Egyptian communities are not happy with their representation in the public information outlets, especially the public service of Kosovo.

With regards to the written media outlets, the majority of minority communities do not have a daily press.²⁷⁶ The only press in Kosovo in the language of minorities are periodical publications due to lack of financing. One of the rare positive examples at the local level is the municipality of Gjilan which publishes the monthly bilingual publication in Albanian and Serbian, financed by the U.S. Embassy and edited by a local NGO.²⁷⁷

The Serbian community receives press mainly from Serbia, while the only newspaper that was published before June 1999 in Kosovo „Jedinstvo“, is printed in Serbia and is distributed once a week for free in Kosovo areas inhabited by a majority of members of this community.

²⁷² Articles 8 and 9. Of the Law No.03/L-039 On Special Protection Areas dated 15 June 2008.

²⁷³ Bogosllovia in Prizren did not function since June 1999, while during March 2004 riots it was damaged notably. It re-started work after the renovation in 2011.

²⁷⁴ Article .6(6) of the Law No.02/L-047 On Radio Television of Kosovo promulgated by UNMIK Regulation 2006/14 dated 11 April 2006, and Law No.04/L-046 on Radio Television of Kosovo, April 2012.

²⁷⁵ Information obtained by NGO „Zëri i romëve, ashkalive dhe egjiptasve“.

²⁷⁶ IO lacks data on press in Turkish and Bosnian.

²⁷⁷ OSCE Report on the assessment of community rights, third publication, July 2012.

Prizren issues a magazine in Roma language financed by a local NGO, which is not distributed to members of this community who live in other municipalities.

With regards to radio stations and local TV stations the situation has not changed from last year.²⁷⁸ There exists a large number of radio stations broadcasting programs in all minority communities languages and covering all areas of life of the minorities in Kosovo but the majority of these radio stations are commercial and broadcast mostly entertaining programs. There exist some radio stations that have a more serious editorial approach and deal with the minority problems in Kosovo such as „KiM“ from Çaglavica, „Radio Peja“ from Peja, radio „Kontakt plus“ from north Mitrovica, radio „Graçanica“ from Graçanica. With regards to local TV stations, there are the following: „TV Most“ from north Mitrovica and „TV Herc“ from Shtërpca.

The Law on Radio Television of Kosovo (RTK) was promulgated in April 2012 and it provides for the establishment of the second RTK channel in Serbian language, but until the end of the reporting period the RTK has not yet started with this second TV channel.²⁷⁹

More energetic institutional commitment is required in all areas mentioned, both at the central and local levels, in order to meet not only the local but also the international standards to protect and advance the rights of the minority communities in practice. In spite of what is established by the comprehensive legal framework for the protection of minority communities more should be done in practice in order to provide real protection of minority communities' rights.

²⁷⁸ For more information see the IO annual report for 2011. (http://www.ombudspersonkosovo.org/repository/docs/4263_RAPORTI%202011%20serbisht.pdf,

http://www.ombudspersonkosovo.org/repository/docs/91976_RAPORTI%202011%20shqip.pdf)

²⁷⁹ Law No.04/L-046 On Radio Television of Kosovo, April 2012.

3. Constitutional Court of the Republic of Kosovo

Based on the Constitution of the Republic of Kosovo the Constitutional Court is the final authority in the Republic of Kosovo to interpret the Constitution and the compliance of the laws with the Constitution.²⁸⁰ Its decisions are binding for the judiciary and the institutions of the Republic of Kosovo. This practice, however, has instances when the state institutions fail to execute its decisions.

In the reporting year the Ombudsman has received 8 requests from citizens and non-governmental organizations to raise with the Constitutional Court the cases for alleged violation of their human rights and freedoms by public authorities.

After analyzing individual requests the Ombudsman has established that some requests do not have an authorized person to file them with the Constitutional Court, but the authorized individuals based on Article 113, Para 7, are the ones to report the alleged violation of their rights guaranteed by the Constitution with the Constitutional Court. The Ombudsman has announced these as inadmissible as they do not fall under his competence.²⁸¹

Some complaints from the non-governmental organization regarding the filing of some cases with the Constitutional Court, upon analyzing, resulted to have been filed past the legal deadline, and therefore were announced to be inadmissible.²⁸²

Upon receiving and analyzing the cases of the non-governmental organizations (NGOs) that asked to file with the Constitutional Court the assessment of the constitutionality of the Law on Banks, Micro-Financial Institutions and Non-Bank Financial Institutions, based on its constitutional and legal competencies, proceeded this law to the Constitutional Court.

While reviewing the constitutionality of the amendments for the amending of the Constitution of the Republic of Kosovo the Ombudsman received from the Constitutional Court three packages with constitutional amendments to assess and comment whether the proposed amendments do not reduce any rights or freedoms determined by Chapter II of the Constitution.

In the reporting year, at the invitation of the Constitutional Court, the Ombudsman participated in a review session in the capacity of the court's friend (*amicus curiae*) and submitted the opinion of the Ombudsman on the conditioning for provision of municipal services by payment of water and waste bills that are being made against citizens of the Republic of Kosovo in some municipalities of the Republic of Kosovo. The case was filed with the Court by some citizens in the municipalities of Gjilan, Viti and Mitrovica, who

²⁸⁰ *Constitution of the Republic of Kosovo*, Article 1124 [General Principles], Article 116 [Legal effect of decisions].

²⁸¹ *Law on Ombudsman No.03/L-195*, Official Gazette of the Republic of Kosovo/Prishtina Year V/No.80/27, August 2012. Article 19. 1.3.1 "it is not the competence of the Ombudsman according to this law" the complaint is rejected as inadmissible.

²⁸² *Law on Constitutional Court of the Republic of Kosovo No. 03/L-121*. Article 30, provides for "The filed request pursuant to Article 29 of this law should be filed within the deadline of six (6) months after the disputed act comes into effect."

considered that the decisions of the municipalities to condition the citizens violated their human rights and freedoms guaranteed by the Constitution.

3.1. Non-Execution of Decisions of the Constitutional Court

Non-execution of the decision of the Constitutional Court in the case of the trade union of the Steel Factory “IMK” Ferizaj

The trade union of the Steel Factory “IMK” Ferizaj filed with the Ombudsman the matter concerning the non-execution of Verdict No. KI 08/09 of the Constitutional Court dated 17 December 2010.²⁸³ This decision has not yet been executed by the state authorities that are obligated to do so as per the verdict – the Government and the Privatization Agency of Kosovo (PAK).

By Verdict No. KI 08/09, the Constitutional Court found admissible the request of the trade union of the Steel Factory “IMK” Ferizaj and considers there has been violation of Article 31 (The right to fair and unbiased trial) of the Constitution in conjunction with Articles 6 (The right to fair trial) and 13 of ECHR (The right to effective legal remedies). By its decision the Constitutional Court asked for the execution of the decision of the municipal court obligating the material compensation for 900 employees, worth over 25 million Euros.

On 14.06.2012, the Ombudsman sent a letter to the Prime Minister of the Government of the Republic of Kosovo and the PAK to conduct investigation into the appeal of the employees of the SOE “IMK” Pipe Factory in Ferizaj, with the request for information as to what actions had been undertaken or were planned to be undertaken by the Government of Kosovo and the PAK, so that the case was dealt with in compliance with the law and in accordance with Articles 6 and 13 of ECHR.

On 21.09.2012, the Ombudsman received a response from the PAK that did not provide the right explanations in relation to the reasons why the verdict of the Constitutional Court was not being executed, instead giving explanations on the liquidation of the enterprise, which has been privatized a long time ago whereas the Government of Kosovo has not given any response to the submitted letter.

In November and December 2012 former employees of “IMK” Pipe Factory in Ferizaj organized in front of the Constitutional Court a peaceful protest asking the execution of the decision and compensation of salaries for the period of 1990-1999, when they had been dismissed unfairly and violently.

²⁸³ *IO, Case No.197/2012, Qorolli et al., vs. PAK-former KTA and the Government of the Republic of Kosovo. Request for execution of the court’s decision.*

3.2. Cases filed with the Constitutional Court by the Ombudsman

Request filed with the Constitutional Court to assess compliance with the Constitution of the Law on Banks, Micro-Financial Institutions and Non-Bank Financial Institutions No. 04/ L-093

On 11 May 2012, the non-governmental organizations (NGOs): Kosovo Civil Society Foundation (KCSF), FOL Movement, Kosovo Democratic Institute (KDI) as bearers of the request and 55 other supporting NGOs addressed the IO that the latter, based on the competences and responsibilities granted by the Constitution, request from the Constitutional Court of the Republic of Kosovo to review the constitutionality of Article 90, Article 95, Item 1.6, Article 110, Article 111 and Article 116 of the Law on Banks, Micro-Financial Institutions and Non-Bank Financial Institutions.²⁸⁴

The Ombudsman, and the above-mentioned NGOs consider that Law on Banks, Micro-Financial Institutions and Non-Bank Financial Institutions seriously violates three articles in the Constitution of the Republic of Kosovo: Article 44 – Freedom of Association, Article 46 – Protection of Property, and Article 10 – Economy. In addition to constitutional violations, this law also violates the international principles of the non-profit right of the NGOs, and is in contravention with the legislation in power in Kosovo that regulates the area of freedom of association to the NGOs, and endangers the future of the civil society sector in general.

After receiving the abovementioned request and analyzing it based on the legal facts, on 11 October 2012 the Ombudsman raised at the Constitutional Court the issue of Incompatibility of *Article 90; Article 95, Item 1.6; Article 110; Article 111 and Article 116* of the Law on Banks, Micro-Financial Institutions and Non-Bank Financial Institutions, with the Constitution of the Republic of Kosovo. The Ombudsman asked the Constitutional Court of the Republic of Kosovo *to invalidate as incompatible with the Constitutions, Article 90; Article 95, Item 1.6; Article 110; Article 111 and Article 116 of the Law on Banks, Micro-Financial Institutions and Non-Bank Financial Institutions, with the Constitution of the Republic of Kosovo*. At the same time, the Ombudsman asked from the Constitutional Court the application of the Interim Measure for the suspension of application of this law, for as long as the Court does not rule meritoriously on this case.²⁸⁵

²⁸⁴ IO, Case No. 232/2012. Request for the Constitutional Court to assess the compatibility with the Constitution of the Law on Banks, Micro-Finance Institutions and Non-Bank Financial Institutions No. 04/ L-093, published on 11 May 2012, Official Gazette of the Republic of Kosovo.

²⁸⁵ *Constitutinal Court of the Republic of Kosovo, Case No. K097/12*. Decision for an interim measure, 24 December 2012. Accessed at: <http://gjk-ks.org/> (26.12.2012).

Position of the Ombudsman on the conditioning by some municipalities of the Republic of Kosovo to offer municipal services to the citizens

The Ombudsman, in the capacity of *amicus curiae* of the court, has attended a review session at the Constitutional Court and has presented the opinion in relation to the conditioning for offering municipal services to the citizens by the Municipalities of Gjilan, Viti and Mitrovica.²⁸⁶ The citizens claim that the conditioning for municipal services with the completion of financial services to public companies by the municipalities violate the human rights and freedoms guaranteed by the Constitution.

The Republic of Kosovo is organized in 36 municipalities, which exercise their activities in compliance with the Law on Local Self-Governing. Some of these municipalities have issued decisions that condition the citizens for offering municipal services.

Municipal public enterprises, as share holding companies, exercise their activities based on the Law on Public Enterprises and the Law on Business Organizations. Therefore, they should function based on these laws and for the services ordered to collect the debts.

According to the Law on Local Self-Governing (Article 17, Item f) municipalities are obligated to offer and maintain public and municipal services, including water supply, and waste management. How can this legal mandate be achieved?

The Ombudsman is worried by the fact that municipalities – public enterprises – shall meet this legal obligation vis-à-vis the citizens when the latter do not pay for the services. Will this affect the ability of these enterprises to provide services for the citizens who pay regularly for the services? Is the burden of violation of human rights when being conditioned by the municipalities for offering the municipal services graver than the failure to meet the legal obligation for these services to all citizens? These are the issues that need to be raised and dealt with from the legal point of view.

The Ombudsman considers the state of public companies in offering these services as concerning, and we are witness to occasional interference on the part of the Government and the Municipality that allocate additional funds to keep these companies – that provide services for the general good, namely water supply and waste removal – operational, their failure would endanger the welfare of all .

The Ombudsman considers that the conditioning of all citizens with payment of debts to the public companies for offering municipal services because of some citizens who, thinking from the perspective of rationalist maximization of the individual material interest expect to make profit from the general public services to the detriment of others without paying for those services, they fail to meet their financial obligations towards the public companies, particularly the water supply and waste removal, cannot, however, be justified from a legal point of view.

It is known that public companies providing public services can undertake individual adequate measures against individuals who fail to meet their financial obligations towards the

²⁸⁶ Public session held on 02.12.2012 at the Constitutional Court.

company, up to the extent of individual disconnection. Likewise, companies may proceed cases with the court and request payment of debts by the individuals who have failed to do so.

Also, on the other hand, selective conditioning of citizens only by some municipalities places the citizens on unequal position with other citizens in the Republic of Kosovo and therefore, the constitutional principle of equality before the law is infringed. Article 3, Para 2, of the Constitution of the Republic of Kosovo guarantees that *“the exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms.”*

Another important element that influences on the severity of this problem and one that should be kept in mind is that the policies of these public enterprises that provide public services for determining the fees are high, non-transparent, arbitrary and do not correspond with the social situation in the country. Comparing to other richer countries, the fixed fee of 3 to 4,50 Euro per month for the removal of waste for each family is extremely high and unaffordable. Additionally, this method of determining the fees/payment without keeping in mind any other criteria especially quantitative, is unacceptable, unfair and unreasonable.

The Ombudsman considers that the conditioning some municipalities are applying for the citizens for the provision of municipal services in the current form and manner is unacceptable and infringes, or in the best case scenario reduces human rights. This does not relieve any citizen from the obligation to pay the debts to public companies that offer these services in case of using the services.

3.3. Constitutional Amendments submitted by the Constitutional Court

The Constitutional Court of the Republic of Kosovo, in the process of the review of the constitutionality of the amendments to amend the Constitution of the Republic of Kosovo, in the course of this calendar year submitted to the IO three packages of constitutional amendments with the purpose of receiving the assessment and comments on the proposed constitutional amendments and whether any of these amendments reduces any rights or freedoms determined by Chapter II of the Constitution.

Upon reviewing the package of constitutional amendments, the Ombudsman offered concrete and substantial proposals within the legal deadline based on the legal competences and Chapter II of the Constitution of the Republic of Kosovo.

Based on the experience and the findings so far of the Ombudsman in relation to the Constitutional Court of the Republic of Kosovo and with the purpose of creating a true state with a rule of law and empowering the role of the court in protecting the human rights and freedoms guaranteed by the Constitution the Ombudsman:

Recommends

- *That the Government of the Republic of Kosovo and the Privatization Agency of Kosovo implement forthwith Verdict No. KI 08/09 of the Constitutional Court dated 17 December 2010, in favor of former employees of Steel Factory “IMK” Ferizaj.*
- *That the Constitutional Court put in place effective legal and institutional mechanisms that are suitable for the execution and implementation of its decisions in the legal deadline.*

4. Communication with the Media

The IO considers the creation of a more powerful public identity is part of the framework of meeting its constitutional and legal mission to protect and promote human rights. In this context in 2012, communication with and more intensive cooperation with the media was unavoidable and necessary.

Using the media as one of the tools to communicate with the public and the institutions, the IO has given priority to: protection and promotion of human rights as the core of the IO mission; strengthening of the public image of the IO as protector and advocate of citizens' rights; providing necessary information on the competencies, responsibilities and work of the IO, and the media pressure to help solve cases.

In 2012 there were 100 public appearances through the electronic media and press (interviews, statements, shows with questions from citizens, debates etc.).²⁸⁷

At the IO initiative, a special project titled "The Role of the IO in Protecting Human Rights", realized 11 shows at the RTK (in September – December 2012).

Eleven round tables open to the media were organized to discuss topics from specific areas requiring urgent improvement and progress.

MEDIA APPEARANCES BROKEN DOWN BY MEDIA OUTLET	
BIRN / Jeta në Kosovë	7
Epoka e Re	1
Express	1
Independent journalists (foreign)	2
Indeksonline	1
KIM Radio	3
KLAN Kosova	9
Koha Ditore	3
Kosova Live / M- Magazine	2
Kosova Press	3
Kosova Sot	12
KTV	10
Lajm	4
Politika Press	1

²⁸⁷ The number of 100 media appearances does not include distribution or reproduction of the same.

Radio Dukagjini	1
Radio KFOR	1
RROKUM	5
RTK	13
RTV 21	8
SETimes	1
Tribuna Shqiptare	3
TV AS	1
TV Puls	1
VoA	1
Zëri	6

In 2012, the IO webpage and the media published 60 press releases, alerts, reports etc (see the table below). Also this year the IO published the annual report and two newsletters, as an executive summary of the work, statistics and functional structure of the institution.

	janar	shkurt	mars	prill	maj	qershor	korrik	gusht	shtator	tetor	nentor	dhjetor	Total
2002	1	2	2	1	2	1			3	1	2	2	17
2003	1	3	5	5	2	2		1	1				20
2004	1	1						2					4
2005									3	1			4
2006		1	2	3	1	1				1	1	1	11
2007		1			2	3	4	2	4	4	1	4	25
2008	3	6	4	4	5		1	1					24
2009									1		1	2	4
2010				1		1	2			2	1		7
2011			5		2	5	8	1	4	7	10	8	50
2012	8	5	3	6	3	6	3	1	5	2	10	8	60

5. Collaboration of the Institution of Ombudsman

5.1. Collaboration with Local Institutions

In 2012, the Institution of the Ombudsman (IO) has collaborated with local institutions such as: the Assembly of the Republic of Kosovo, the Government of the Republic of Kosovo/ministries, municipalities, institutions and independent agencies and the courts.

The IO has collaborated in continuity with the Assembly of the Republic of Kosovo. Many meetings have been organized throughout the year and reports and recommendations have been provided, however we did not receive any response whether they have been taken into consideration or whether any related action has been undertaken. The IO is grateful for the collaboration and the support of the Speaker of the Assembly of the Republic of Kosovo who apart from visiting the IO to get familiar with the functioning and the difficulties of the institution in realizing its mandate, he also accepted the invitations to participate in various activities organized by the IO. The IO has attended meetings of the Assembly Committees. We may point out that the IO has a very good collaboration especially with the Parliamentary Committee on Human Rights, Gender Equality, Missing Persons and Petitions and various activities were organized with the latter throughout the year.

This year too the IO has submitted to the Assembly the annual report that was considered to be very substantial in describing the violations and injustices being perpetrated against the citizens of the Republic of Kosovo. However, this year too the report of the Ombudsman was voted by the deputies – this being a practice that makes no sense and should not be applied. In the annual report the Ombudsman presents the situation with the human rights and the recommendations how that shall be improved. The IO report does not need voting but on the contrary needs discussion of the findings and efforts to provide solution.

The collaboration with the Government of the Republic of Kosovo has improved compared to last year however there is still room for improvement. During the year we have sent letters and recommendations for investigating complaints but we have not received responses in all cases as to how the IO recommendations have been implemented. In 2012, we have intensified contacts and activities with the Office for Good Governance and we were invited to participate in some activities organized by this office on a variety of issues in the area of human rights. However, the same cannot be said for the Agency for Gender Equality which has never invited us in the events they have organized or to draft the Action Plan for Gender Equality, where around 30 different stakeholders from institutions and the civil society took part. We consider that as the only national institution on human rights with a mandate to deal with complaints concerning violation of rights on gender basis it is a must for us to be invited and contribute to plans that directly impact the rights of the Kosovo citizens.

The IO has collaborated with the municipalities too. The Deputy Ombudsmen pay regular monthly visits to all municipalities of the Republic of Kosovo in order to be closer to the citizens and receive their complaints. It is worth mentioning the collaboration with the

Human Rights Units in the municipalities with which we have regular meetings and collaboration. The Ombudsman receives twice a month the citizens in the Head Office in Prishtina.

On the other hand, collaboration with the judiciary has continued, as the judiciary is the target of the largest number of complaints by the citizens; letters and reports have been sent and we have had contacts with many courts. In spite of the numerous complaints, we notice their readiness to collaborate with the IO. As far as collaboration with the Constitutional Court is concerned, the IO has collaborated on issues raised both by the IO and the citizens.

5.2. Collaboration with local NGOs

Collaboration with the civil society is very important for the Institution of the Ombudsman in order to ensure an effective system for the protection and promotion of human rights. The joint work of the IO and civil society enables the improvement of the human rights system in Kosovo, which results in a reduced number of violations against the citizens of the Republic of Kosovo.

This year the IO continued with the good cooperation with the Council for the Protection of Human Rights and Freedoms (CPHRF) and the Kosovo Center for Rehabilitation of Torture Victims (KCRTV) who we have signed MOUs with to monitor the centers where people are deprived of freedom. Another agreement is the one with the NGO CLARD that aims to strengthen the cooperation between the parties in order to ensure proper protection of human rights in Kosovo by facilitating contacts with the Institution of the Ombudsman for all persons who consider their human rights and freedoms have been violated.

With the support from the Office of the High Commissioner for Human Rights (OHCHR) in Kosovo on 2 November 2012 the Institution of the Ombudsman organized a round table with the topic "Cooperation between the IO and NGOs in promoting human rights". The round table offered the opportunity to discuss about the cooperation so far between the IO and the NGOs in the area of the protection and promotion of human rights. Discussions also focused on the opportunities and way for cooperation in the future emphasizing that the level of cooperation needs to be strengthened and empowered further through coordination of activities. Several recommendations were the result of this round table among which: to increase and strengthen the level of cooperation between the IO and NGOs; to sign MOUs with the purpose of implementing joint activities; to expand contacts and cooperation between the IO and NGOs, and the IO annual report to be presented and discussed in university premises and with NGOs and civil society.

5.3. Collaboration with international organizations

Proactive collaboration at the international level is one of the priorities for the IO. Having this purpose, the IO has paid special attention to its participation in international meeting and conferences on human rights. Through active participation and exchange of experiences the IO contributes directly to the latest development in the human rights area in Kosovo.

Collaboration with international organizations abroad is very good. We receive invitations to participate actively in all meetings of the Office of the High Commissioner for Human Rights of the United Nations in Geneva, especially by the International Coordinating Committee International Coordinating Committee for NHRIs, which is an international organization of institutions dealing with human rights. It promotes and empowers these institutions so that they are in compliance with the Paris Principles²⁸⁸ and acts a leader of promoting and protecting human rights. In the framework of its work, this organization held its 25th meeting this year where the IO was represented by two associates and held some meetings with representatives of other countries. The international conference “*The rights of women and girls: Gender Equality: Role of National Institutions on Human Rights*” was held in Amman, Jordan, where the Ombudsman and two of his associates participated. This conference offered a platform of opportunities for discussing about the current situation, challenges and advancement in relation to the rights of women and girls in the light of relevant standards for human rights. As a result of the works of this conference *The Statement of Amman and the Plan of Action* was issued. It was drafted by the national institution groups on human rights and international/non-governmental organizations, including the Institution of the Ombudsman in Kosovo.

The IO also reported on human rights in Kosovo. In this context we highlight the questionnaire that was submitted to the Special Rapporteur on the situation of protectors of human rights²⁸⁹, who will report to the Council on Human Rights in Geneva.

In 2012 the IO became member of the International Institute of Ombudsmen that has been established in 1978 and is the only organization for the cooperation of over 150 institutions of ombudsmen worldwide. This institute organized periodic conferences to exchange information and experience and to build the capacities of the institutions dealing with the protection and promotion of human rights.²⁹⁰ Additionally the IO became member of the European Institute of Ombudsmen that is the umbrella of the institutions of ombudsmen in the region of Europe.²⁹¹

²⁸⁸For more detailed information on the Paris Principles please visit the following website: <http://www2.ohchr.org/english/law/parisprinciples.htm>

²⁸⁹ Questionnaire of the Special Rapporteur on the situation of the protectors of human rights submitted on 22 October 2012.

²⁹⁰ For more information on the International Institute of Ombudsman, visit the following webpage: www.theioi.org.

²⁹¹ For more information on the International Institute of Ombudsman, visit the following webpage: www.eoi.at.

The IO continues with its close cooperation with the OSCE mission in Kosovo. This year too the OSCE mission has supported the IO as the only national institute for human rights in the Republic of Kosovo through the OSCE advisor who assists the IO in its day to day activities.

Additionally, the OSCE has provided financial support to realize some IO activities in the framework of improving public relations including: nine round tables with specific topics from the human rights area, four workshops, two training sessions, one conference, and has financed the participation of 6 IO staff members in two meetings abroad, also has made a donation to purchase IT equipment required for the work of the IO.

The IO has good cooperation with the Council of Europe (CE). Apart from various joint activities, the IO is the main beneficiary of the joint EU and CE project “*Advancing Protection of Human Rights in Kosovo*”. This project began implementation in June 2012 and lasts 18 months. Its main goal is to improve implementation of the standards of the European Convention on Human Rights, the standards and findings of the Committee on the Prevention of Torture and Inhumane or Degrading Treatment or Punishment and the Framework Convention for Protection of Minorities.

On 14 November, the Ombudsman received an invitation from the Committee for Political Affairs and Democracy of the Parliamentary Assembly of the Council of Europe to report on the situation of human rights in Kosovo in the framework of drafting of a report by Mr. Bjorn von Sydow, who is the rapporteur of the Parliamentary Assembly of the Council of Europe on the situation of human rights in Kosovo. This meeting resulted in the resolution with recommendations which expressively demand that: 1) the IO recommendations be implemented and that sufficient resources are provided for the IO to function; 2) the Assembly of Kosovo is encouraged to improve communication with independent institutions such as the IO and to ensure that they have allocated required means for the implementation of the mandate.²⁹²

Worth mentioning is also the report “*Advancing Gender Justice*”, which focuses on gender equality and women empowerment, and that is financed by the Ministry of Foreign Affairs of the Netherlands and is implemented by UNDP in Kosovo. It is expected to last for two years and its main beneficiaries are: justice institutions, the Institution of the Ombudsman and the civil society.

The Institution of the Ombudsman will cooperate in the future with local institutions, civil society and international organizations with the hope that there will be greater support by the Assembly of the Republic of Kosovo, there will be greater implementation of the IO recommendations by the Government of the Republic of Kosovo and greater cooperation with the civil society in the future in order to work together for the protection and promotion of human rights in Kosovo.

²⁹² The Committee proposes to intensify and expand the dialogue with the Assembly of Kosovo, 14/12/2012, Council of Europe, Political Affairs and Democracy. To read the entire resolution and recommendations, please visit [the following link:](http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=8267&L=2)

5.4. Capacity Building of the IO

As in the previous years, the Institution of the Ombudsman (IO) has given importance to the capacity building of its staff.

The IO staff have participated in many trainings programs organized by the Kosovo Institute for Public Administration (KIPA), namely, training in development of public policies, negotiation process for EU membership, communication and document drafting, gender equality, law on access to public documents etc.

It is worth mentioning for the reporting year the continued support of the OSCE in the capacity building area. OSCE has organized several trainings in various areas of human rights, such as: “Lobbying and advocacy”, “Investigative techniques – interacting with treaty mechanisms and special reporting procedures” and “Organizational and communications skills”.

With regards to capacity building the IO has had support from the Council of Europe too, which organized the training: “Training of trainers in the human rights area”. The IO also had support from the United Nations Development Program (UNDP), which organized the training on “Referral of cases to the Constitutional Court”, and training for mediators.

UNICEF in collaboration with the Office of the Prime Minister has organized training on the monitoring, evaluation and reporting for the Council for Protection and Justice for Children.

With the purpose of increasing staff performance, the IO will pay in the future special attention to capacity building depending on the needs of employees.

6. Activities of the Institution of the Ombudsman

6.1. Activities of the Children's Rights Group

The Children's Rights Group (CRG) functioning under the auspices of the Institution of the Ombudsman (IO) was established with the purpose of supervising, protecting and investigating any violation of the rights of children by the public authorities in Kosovo.

In 2012 the CRG in addition to reviewing complaints filed with the IO undertook several other activities to promote and protect the rights of children and to increase the professional capacities.

"The protection of children from sexual use" was the topic of discussion at the thematic meeting of the Children's Rights Ombudsmen Network for South Eastern Europe (CRONSEE)²⁹³ where the IO is a member. The meeting took place in Podgorica on 16-18 March 2012.

Following the presentations and discussions on the topic the participants in the meeting agreed that to provide adequate protection to the children it is necessary that competent authorities of participating countries undertake all necessary measures to create registers to record perpetrators of criminal acts against sexual integrity in order to eliminate the possibilities that after serving the sentences they get employment where children are involved. Based on the needs and interests of the children the participants also agreed that the competent authorities should undertake other adequate measures to mitigate the consequences, namely to improve the situation and re-integration of children victims; to inform and educate them and the professional individuals about the dangers of sexual use and how to recognize the signs, as well as about the rights of children to help and support.

"Protecting children from abuse via Internet" was another topic for discussion by the CRONSEE at the seventh annual conference that was held on 12-14 September 2012 in Budva (Montenegro). The conference concluded that the strengthening of the system for the protection of the children and their rights and interests, particularly protection from all forms of abuse, including abuse via Internet, required continues intervention and joint commitment of all authorities and subjects of the society. With regards to the protection of children from abuse via Internet it was concluded that the participating states, among others, should:

- *Undertake the necessary actions and measures to ensure continued education for the children (from early age), and for the persons who work directly with children, on the harmful effects of Internet and risks that advanced telecommunication technologies bring.*
- *Undertake the necessary actions and measures to include the program for safe use of Internet in the regular school curriculum of computer information and technology subjects.*

²⁹³ Accessed at : www.cronsee.org/ (25.03.2012).

CPG attended the conference for the publication of the report on the Mapping and Assessment of the Children Protection System in the Republic of Kosovo that was held in Prishtina on 2 October 2012. The publication of this report was part of the promotion and documentation of the Reforms for Children's Justice led by the Council for the Protection and Justice for Children (CPJC), organized by the Office of the Prime Minister and supported by the European Union and UNICEF.²⁹⁴

The conference 'Strengthening of competences of mediators and ombudsmen for the protection of the children's rights' was held in Tirana on 23-24 October 2012 and was organized by the Association of Francophone Ombudsmen and Mediators. IO representatives attended the conference. Among other topics, the Convention on Children's Rights, the rule and the strengthening of ombudsmen to protect the rights of children and the need to raise the awareness of the children about their rights were discussed at the conference.

In October, namely on 22-24 October 2012, the IO participated in the framework of CPJC in the workshop organized by the Office of the Prime Minister in cooperation with UNICEF and the Kosovo Education Center which aimed to review the document entitled "Protocol for the prevention of violence in the pre-university education institutions". This protocol aims to determine the obligations of the governmental institutions and non-governmental organizations to prevent violence in the pre-university education institutions and to transform schools into safe and friendly environments for children.

The annual work plan 2013-2013 review and the planning of bi-annual work for 2013-2014 of UNICEF took place at the workshop held on 3 December 2012, where the CPG participated. Discussions at this workshop focused on the activities undertaken so far, foreseen in the plan of action for 2012-2013 and on the challenges encountered. Other topics discussed at this workshop were activities to be undertaken by the CPJC for 2013, to be supported by UNICEF.

This year, the IO in cooperation with Save the Children International in the framework of the region project "Advancement of the position of children with the purpose of protection from all types of use" conducted the research with the topic "Sexual use of children in Kosovo". The main goal for conducting research into the issue of sexual use of children in Kosovo concerned the determination of the level of understanding of the notion of sexual use of children victims, the determination of the situation from the prevention perspective and protection of children victims.

The main goal of the research was to achieve progress in the adequate battle against sexual use of children in Kosovo and in the area of protection of children victims. After conducting this research, with the purpose of improving work for the protection of children's rights, preventing the occurrence of and strengthening the fight against sexual abuse, and in particular to improve the situation of children victims of sexual abuse and use, the IO has

²⁹⁴ The Council was established by the Government of the Republic of Kosovo on 25 August 2011. The Council's mandate is among others to define the priorities and determine the required measures to be undertaken with the purpose of improving the situation in relation to the protection and justice for children. It comprises of representatives of governmental and non-governmental institutions working in the area of children's rights. The Institution of the Ombudsman is part of the Council in the capacity of an observing member.

made recommendations that were addressed to the respective authorities and all other parties that can assist in any way with the solution of this problem (see the webpage of the IO).²⁹⁵

This year too, with the purpose of marking the Universal Children's Day, the CPG held many meetings with elementary school pupils in some of the villages in the municipalities of Mitrovica, Prizren, Peja and Gjilan. At these meetings, they informed the school pupils about the mission of the IO, namely of the CPG to protect and promote children's rights in Kosovo. At these meetings, they discussed about the situation of children in the respective schools and the manner how pupils' concerns and problems are addressed in schools.

From the discussions it resulted that in some schools that were visited the pupils have little information on children's rights and the role of the IO in protecting human rights; some schools have inadequate learning conditions, namely they need more support to organize cultural and sport activities.

While in Prishtina on the occasion of marking the Universal Children's Day, children from the elementary schools of the municipality of Prishtina visited the Central Office of the IO and met with the Ombudsman and learned more about the work of this institution, its mission and the involvement of the IO in protecting and promoting children's rights.

6.2. Activities of the Non-Discrimination Group

The complaints filed with the Institution of the Ombudsman and handled by the Non-Discrimination Group (NDG) in this reporting year concern discrimination in the social, health, property, employment relations areas, and complaints by the disabled.

In the reporting period the NDG has realized visits in hospitals, schools, organizations and with representatives of the disabled and dwellings where mainly minority communities live and has participated in several public debates in different municipalities where they became familiar with the problems of citizens.

In this period the NDG has also met with the Office for Good Governance, and with human rights coordinators both at the local and central levels.

During visits to elementary schools in the Municipality of Prishtina, which is considered as the first part of the investigation, IO representatives have given the students information about the Law Against Discrimination and about the constitutional and legal mission of the IO. In the course of this campaign they have received anonymously complaints from students concerning their situation when they were discriminated on various grounds.

During the campaign at schools they also investigated physical and psychological violence, inclusion in the teaching process, the issue of safety inside and outside of the school and health care. Upon completion of the first stage of this investigation that is continuing in this period on 1 June 2012, the Ombudsman organized a round table with the topic "Stop

²⁹⁵ See: <http://www.ombudspersonkosovo.org>.

discrimination against children” and has published the findings for 6 elementary schools in Prishtina.

The NDG has published 2 reports. The *ex-officio* report number 275/2012 deals with the use of official languages, while the Report with recommendation in relation to case A. 395/2009 against the Supreme Court of Kosovo deals with procedural delays. In this case the complainant complains about economic-social discrimination.

Apart from these activities in 2012 the NDG has participated in many other activities, meetings and round tables:

- 14 May 2012, a public debate was organized in Prishtina by the Committee for Human Rights, Gender Equality, Missing Persons and Petitions of the Assembly of the Republic of Kosovo on the Anti Discrimination Law, where the IO representatives presented a proposal for the amendment of the law at issue, as the Ombudsman had pointed out in the last year’s annual report.
- On 7 March 2012, a public debate was organized by the Committee on Human Rights, Gender Equality, Missing Persons and Petitions of the Assembly of the Republic of Kosovo. The representative of the Ombudsman informed the participants about the establishment of the department against the discrimination at the Institution of the Ombudsman and the groups within this department. They also presented the work of the IO at the time and the published reports containing findings on discrimination. The IO representative also raised as a concern the non-cooperation between the Government of Kosovo and the Assembly of Kosovo with the IO with special emphasis on their failure to respond to the recommendations of the Ombudsman.
- On 19 September 2012, representatives of the NDG attended the conference organized by the strategic network of Kosovo in Prishtina with the topic “Challenges and problems in implementing the law on use of official languages”.
- On 12 and 13 December 2012, representatives of the NDG attended for the first time ever in a seminar organized by the Council of Europe in Belgrade on the role of the ombudsmen to monitor the situation of the displaced and incentives to improve this situation.
- On 12 and 13 September 2012, the NDG was part of a panel at the round table organized in Prishtina by the OSCE on the topic “Together against discrimination”.
- On 2 October 2012, the NDG was part of a panel in the round table organized in Prishtina with the topic “Comprehensive review of the law against discrimination”, organized by OHCHR in collaboration with the organization Youth Initiative for Human Rights (YIHR)
- On 7 November 2012, the NDG attended in Prishtina a meeting with the NGO the Institute for Research and Development (IRD), with regards to the problems pertaining to and the protection of the rights of the LGBT community.

- On 23 November 2012, the NDG attended in Prishtina the conference organized by the IO with the topic: Eliminating violence against women.
- On 11 December 2012, the NDG attended in Prishtina the round table organized by the Group for Legal and Political Studies with the topic “Pension system in Kosovo”.

In the reporting year, representatives of the NDG participated in six TV programs with various topics: people with disabilities, the rights of pensioners in Kosovo, property rights, implementation of the law against discrimination, economic-social rights, and use of official languages in Kosovo.

7. Budget of the Institution of Ombudsman

The Institution of Ombudsman (IO) is an independent public institution that is financed by the budget of the Republic of Kosovo. According to the Law on the Ombudsman “*The IO prepares the annual budget proposal and submits it to the Assembly of the Republic of Kosovo for adoption*”.²⁹⁶ According to the same provision, the IO is provided with the required budget “regardless of the provisions of other laws”.²⁹⁷

7.1. IO Funding by the Budget of Kosovo

Based on the legislation for the budget and financial independence of the IO and based on the legal process for the drafting and submission of the regular budget request, the Ombudsman has submitted its budget request for 2012 to the Assembly of the Republic of Kosovo.

The budget request of the Ombudsman for 2012 is based on the work plan and plan of activities for the IO. While the decision making authorities reviewed the budget request for 2012 they did not approve the IO’s request as per the Budget Request filed by the IO. The IO’s Budget Request is presented in the following table:

No.	Economic Category	Budget Request for 2012	Budget Approved for 2012	Budget for 2011
1.	Salaries and per diem	639,073.00 €	361.080.00 €	361.080.00 €
2.	Goods and services	334,000.00 €	238.239.00 €	224.239.00 €
3.	Utility expenses	30,000.00 €	30.000.00 €	44.000.00 €
4.	Capital expenses	95,000.00 €	7.000.00 €	0.00 €
Total		1,098,073.00 €	636.319.00 €	629.319.00 €

Table 1. IO’s Budget Request and the budget approved for 2012

In spite of the normative independence guaranteed by the Constitution of the Republic of Kosovo, due to budget restrictions by the decision making authorities while deciding on allocation of the budget for 2012, the IO’s ability to fulfill the obligations and the mandate of its constitutional and legal mandate has been restricted and rendered difficult.

²⁹⁶ Law on Ombudsman No. 03/L-195, Article 34, Para. 2.

²⁹⁷ *Ibid.*

7.1.1. Semi-annual budget review and its implications in the functioning of the Institution of Ombudsman

During the semi-annual budget review the IO has filed on 28. 5. 2012 with the decision making authorities of the Republic of Kosovo a request to review the budget.

Based on the assessment of the budget insufficiency, in general terms and as per economic categories, in its budget review request for 2012 the IO has asked that additional money be allocated to them amounting 44,991.47 €, as follows:

- For the budget category *salaries and per diem*, the amount of 22,698.47 €,
- For the budget category *goods and services*, the amount of 22,293.00 €.

7.1.2. Budget required for the category goods and services – lease

The budget approved under the economic code B (*14110 Lease for premises*) for 2012 amounted to 45,000.00 €, and this amount was insufficient to pay the lease.

Based on calculations for the contracted obligations for the office premises of the IO seat in Prishtina, Graçanica and Mitrovica until the end of 2012, the IO's annual obligations for office lease amounted to 67,293.30€, while the allocated budget of 45,000.00 € was insufficient to pay for the contractual obligations for lease.

7.1.3. Budget required for salaries and per diem

The budget approved for the category *salaries and per diem* for 2012 amounts to 361.080,00€, for 48 positions permitted to the IO. In the first six months the IO had 44 employees and due to pronounced lack of budget the IO was restricted to fill 4 positions, namely to hire 4 civil servants. The lack of budget for *salaries and per diem* has directly affected the failure to fill 4 positions, three of which for legal advisors (2 in Prishtina and 1 in the office in Peja) and one officer for expenses and assets.

NO	Economic Category	Initial Budget 2012	Semi-Annual Review	Final Budget 2012
1.	Salaries and per diem	361.080.00 €	22,698.00 €	383.778.00 €
2.	Goods and Services	238.239.00 €	22,293.00 €	260.532.00 €
3.	Utility Expenses	30.000.00 €		30.000.00 €
4.	Capital Expenses	7.000.00 €		7.000.00 €
Total		636.319.00 €	44.991.47 €	681.310.00 €

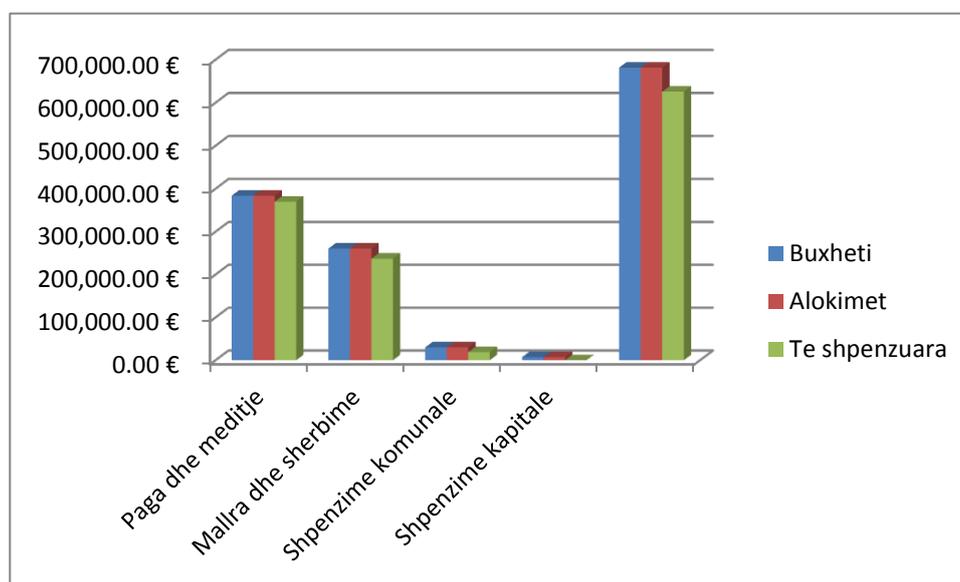
Table 2. Situation with the Budget and the semi-annual budget review for 2012

As can be noted in Table 2, during the semi-annual budget review the budget for the IO was increased to 44.991.47 €, which has helped meet the minimal needs and fill the number of positions approved for 2012.

7.1.4. Final IO budget and the realization of expenses for 2012

No.	Economic Categories	Budget	Allocations	Spent	Repaid	Free money
1.	Salaries and per diem	383.778.00 €	383.778.00 €	369.771.61 €	0.00 €	14.006.39 €
2.	Goods and services	260.532.00 €	260.532.00 €	236.904.67 €	22.713.93 €	913.40 €
3.	Utility Expenses	30.000.00 €	30.000.00 €	18.713.69 €	5.132.70 €	6.153.61 €
4.	Capital Expenses	7.000.00 €	7.000.00 €	0.00 €	7.000.00 €	0.00 €
Total		681.310.00 €	681.310.00 €	625.389.97 €	34.846.63 €	21.073.40 €

Table 3. Budget spending in 2012



Budget spent by the IO totals 625.389.97 €, or 91.79 %

7.2. Donor Funding

In 2012, the IO has received financial support by donors such as: Kingdom of Norway, Republic of Turkey, OSCE, UNDP and the NGO Save the Children. The importance of donations to the IO in the reporting period has been very significant and has enabled the IO to achieve the objectives foreseen from the aspect of the professional growth of personnel on one hand, and in the aspect of creating necessary opportunities to realize many more IO activities. It is unlikely that these objectives would have been achieved without the financial support by the donors keeping in mind the restrictions from the consolidated budget of the Republic of Kosovo.

NO	Donor	Economic category	Budget	Money spent	Unpaid money	Free money	Realization
1.	Kingdom of Norway	Goods and services	7.204.83€	6.176.16€	441.00€	587.67€	85.72 %
2.	Republic of Turkey	Goods and services	2.374.08€	0.00€	0.00€	2.374.08€	0.00 %
3.	Save the Children	Salaries and per diem	3.340.00€	3.168.75€	0.00€	171.25€	94.87 %
4.	Save the Children	Goods and services	10.420.00€	3.535.08€	4.757.00€	2.127.92€	33.92 %
Total			23.338.91€	12.879.99€	5.198.00€	5.260.92€	55.18 %

Table 4. IO financing by the donors in 2012

8. Statistical Summary of Complaints and Cases for 2012

From 1 January 2012 until 31 December 2012, the IO main office in Prishtina and its regional offices have received 1670 requests to file complaints and to seek advice or legal aid. Of these, in 377 cases the individuals have met in person with the Ombudsman or the Deputies of the Ombudsman during the “Open Days” held in the reporting period.

The largest number of cases investigated by the Institution of the Ombudsman in the reporting period mainly concerned the: right to a fair and unbiased trial, health and social protection, right to legal remedies, protection of property, right to work and exercise the profession, equality before the law etc.

The tables below represent the general number of complaints wiled with the IP in 2012, the number of cases closed by the IO in 2012 (including the number of cases registered before 2012 and closed during this year), the number of reports and recommendations published by the IO, the failures and delays of responsible authorities to respond to the letters from the IO, and the authorities who failed to execute IO recommendations, etc.

Table 1: *Complaints filed by the citizens with the IO (1 January 2012 – 31 December 2012)*

	General number of complaints filed with the IO (one complaint may contain more than one complainant and may have more than one responsible party)	1670
<i>Ethnicity of the complainants</i>		
	Albanians	1464
	Serbs	125
	Bosniacs	26
	Roma	24
	Turkish	18
	Others	13
<i>Gender of the complainants based on the complaints filed with the IAP</i>		
	Male	1328
	Female	342
<i>Responsible authorities for the complaints filed with the IO</i> (one complaint may have more than one responsible party)		
	Courts	521
	Ministries	368

	Municipalities	298
	Other	220
	Police	103
	Publicly-Owned Enterprises	98
	PAK	53
	Privately-Owned Companies	37
	KPA	24
	Public Prosecution Offices	22

Table 2: *Complaints found to be inadmissible from complaints filed in 2012*

	Number of complaints found inadmissible	1113
<i>Legal basis of inadmissibility of complaints based on the Law on the Ombudsman</i>		
	Failure to use legal remedies – Article 20, Item 1.4	619
	In using legal remedies – Article 20, Item 1.3	187
	No violation, misadministration – Article 20, Item 1.1	121
	Outside of jurisdiction – Article 19, Item 1.3.1	115
	Failure to indicate interest, failure of the party – Article 20, Item 1.2	56
	Other	15

Table 3: *Ongoing cases for investigation IO (1 January 2012 – 31 December 2012)*

	Cases opened ex officio	3 3
<i>Ethnicity of the citizens based on the investigated cases</i>		
	Albanians	446
	Serbs	78
	Bosniacs	12
	Roma	10
	Turkish	7
	Other	4
<i>Gender of the complainants based on the cases investigated by the IO</i>		
	Male	425

	Female	132
Responsible authorities in cases investigated by the IO		
(one case may have more than one responsible party)		
	Courts	215
	Municipalities	137
	Ministries	105
	Other	40
	Publicly-Owned Enterprises	36
	Police	34
	Privatization Agency of Kosovo	17
	Kosovo Property Agency	12
	Public Prosecution Offices	10
	Privately-Owned Companies	4

Table 4: *Subject matter of investigated cases based on the rights guaranteed by Constitution*

(one case may involve more than one violation of the guaranteed rights)

	The right to a fair and unbiased trial	163
	Health and social protection	89
	The right to legal remedies	77
	Protection of property	74
	The right to work and exercise the profession	63
	Equality before the law	44
	Freedom of expression	25
	Preventing torture, cruel, inhuman or humiliating treatment	21
	Responsibility for the living environment	16
	The right to education	15
	Judicial protection of the rights	13
	Children's rights	12
	Freedom of movement	12
	The right to marry and family	11
	Mediation cases	9

	Human dignity	8
	The right to access public documents	8
	The right to freedom and security	5
	The rights of the accused	4
	The right to privacy	4
	The right to life	3
	Freedom of the media	3
	Restriction of fundamental rights and freedoms	3
	The right to personal integrity	1
	The freedom of belief, conscience and religion	1
	The freedom to gather	1
	Election and participation rights	1
	Freedom of art and science	1

Table 5: *General number of cases closed by the IO in 2012*

(not only 2012 cases, but also cases registered earlier and closed this year)

	General number of closed cases	538
<i>Legal basis for closing the cases based on the Law on Ombudsman</i>		
	Solved positively in compliance with the complainant's request – Article 19, Item 1.5.	276
	Closed due to lack of interest shown by the complainant, failure of the party – Article 20, Item 1.2	89
	Inadmissible, no violation, misadministration – Article 20, Item 1.1	82
	Inadmissible, using legal remedies – Article 20, Item 1.3	51
	Inadmissible, failure to use legal remedies – Article 20, Item 1.4	25
	Inadmissible, outside of jurisdiction – Article 19, Item 1.3.1	4
	Inadmissible, misuse of the right to appeal – Article 19, Item 1.3.4.	4
	Closed by a report	7

Table 6: *Individual responsible authorities in cases investigated by the IO*

JUDICIAL AND PROSECUTORIAL SYSTEM		
	Municipal Court in Prishtinë	28
	Municipal Court in Prizren	25
	Supreme Court of Kosovo	22
	District Court in Prishtinë	18
	Municipal Court in Gjilan	14
	Special Chamber of the Supreme Court	13
	District Court in Prizren	12
	Municipal Court in Pejë	10
	Municipal Court in Vushtrri	8
	Municipal Court in Ferizaj	5
	Municipal Court in Mitrovicë	5
	District Court in Mitrovicë	5
	Municipal Court in Istog	5
	Constitutional Court of Kosovo	4
	Municipal Court in Kamenicë	4
	District Court in Gjilan	4
	Municipal Court in Suharekë	4
	Municipal Court in Viti	4
	District Public Prosecution Office in Prishtinë	3
	Municipal Court in Gjakovë	3
	Municipal Public Prosecution Office in Prishtinë	2
	Municipal Public Prosecution Office in Prizren	2
	Municipal Court in Dragash	2
	District Court in Pejë	2
	Municipal Court in Rahovec	2
	Municipal Court in Klinë	2
	Municipal Court in Lipjan	2
	Municipal Court in Skenderaj	2
	Municipal Court in Drenas	2

	District Commercial Court in Prishtinë	2
	Municipal Court in Podujevë	2
	Other	7
GOVERNMENT AUTHORITIES		
	Ministry of Labor and Social Welfare	17
	Kosovo Correctional Service	14
	Department of Pension Administration of Kosovo	13
	Ministry of Education Science and Technology	13
	Ministry of Internal Affairs	9
	Ministry of Health	8
	Office of the Prime Minister	4
	Ministry of Infrastructure	4
	Ministry of Environment and Spatial Planning	4
	Ministry of Agriculture Forestry and Rural Development	3
	Tax Administration of Kosovo	3
	Ministry of Public Administration	2
	Ministry of Culture Youth and Sports	2
	Other	9
LOCAL POWER		
	Municipality of Prishtina	25
	Municipality of Gjilan	14
	Municipality of Prizren	11
	Municipality of Mitrovica	11
	Municipality of Gjakova	9
	Municipality of Peja	6
	Municipality of Graçanica	6
	Municipality of Lipjan	5
	Municipality of Vitia	5
	Municipality of Ferizaj	4
	Municipality of Vushtrri	4
	Municipality of Skenderaj	4

	Municipality of Klina	3
	Municipality of Rahovec	3
	Municipality of Obiliq	3
	Municipality of Shtërpca	2
	Municipality of Ranillug	2
	Municipality of Drenas	2
	Municipality of Kamenica	2
	Municipality of Kaçanik	2
	Municipality of Suhareka	2
	Municipality of Kllokot	2
	Municipality of Shtime	2
	Other	8
OTHER		
	Kosovo Police	34
	Kosovo Energy Corporation	20
	Privatization Agency of Kosovo	18
	Kosovo Property Agency	12
	Trepça	5
	Foreign Authorities	4
	University of Prishtina	4
	Assembly of Kosovo	4
	Private parties	4
	EULEX	3
	PTK	3
	Regional Water Company in Prishtina	3
	Kosovo Customs	2
	Other	27

Table 7: *Failure of responsible authorities to respond to IO letters*

JUDICIAL AND PROSECUTORIAL SYSTEM		
	Municipal Court in Prishtinë	3
	Special Chamber of the Supreme Court	3
	District Court in Prishtinë	3
	Municipal Court in Vushtrri	3
	Municipal Court in Prizren	2
	Municipal Court in Gjilan	2
	Municipal Court in Pejë	1
	Supreme Court of Kosova	1
	Municipal Prosecution Office in Prishtinë	1
GOVERNMENT AUTHORITIES		
	Ministry of Environment and Spatial Planning	2
	Ministry of Infrastructure	2
	Ministry of Finance	1
	Ministry of Education Science and Technology	1
	Ministry of Internal Affairs	1
	Department of Pension Administration of Kosovo	1
	Tax Administration of Kosovo	1
	Office of the Prime Minister	1
LOCAL POWER		
	Municipality of Prishtina	10
	Municipality of Prizren	2
	Municipality of Viti	2
	Municipality of Obiliq	2
	Municipality of Gjakova	2
	Municipality of Mitrovica	1
	Municipality of Dragash	1
	Municipality of Lipjan	1
	Municipality of Kamenica	1
	Municipality of Shtërpce	1

OTHER		
	University of Prishtina	4
	Kosovo Police	3
	Energy Regulation Office	2
	Kosovo Cadastre Agency	1

Table 8: *Delays of the responsible authorities to respond to IO letters*

JUDICIAL AND PROSECUTORIAL SYSTEM		
	Municipal Court in Prizren	3
	Municipal Court in Prishtina	2
	Supreme Court of Kosovo	1
GOVERNMENT AUTHORITIES		
	Ministry of Education Science and Technology	4
	Department of Pension Administration of Kosovo	2
LOCAL POWER		
	Municipality of Prishtina	3
	Municipality of Shtërpce	1
OTHER		
	Privatization Agency of Kosovo	1
	Kosovo Cadastre Agency	1

Table 9: *Reports and recommendations published by the IO*

	Reports on cases	12
	Reports <i>ex officio</i>	4
	Recommendations in the published reports	44

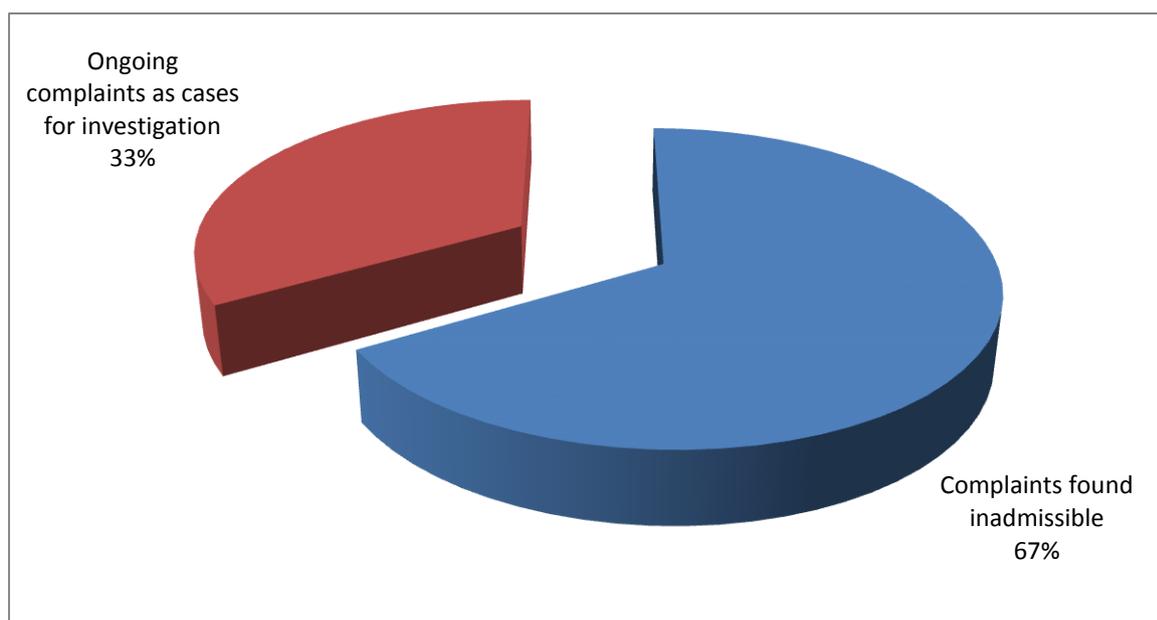
Table 10: *Responsible authorities who failed to implement IO recommendations*

	Municipality of Prishtina	7
	Ministry of Internal Affairs	5
	Kosovo Judicial Council	4
	Tax Administration of Kosovo	3

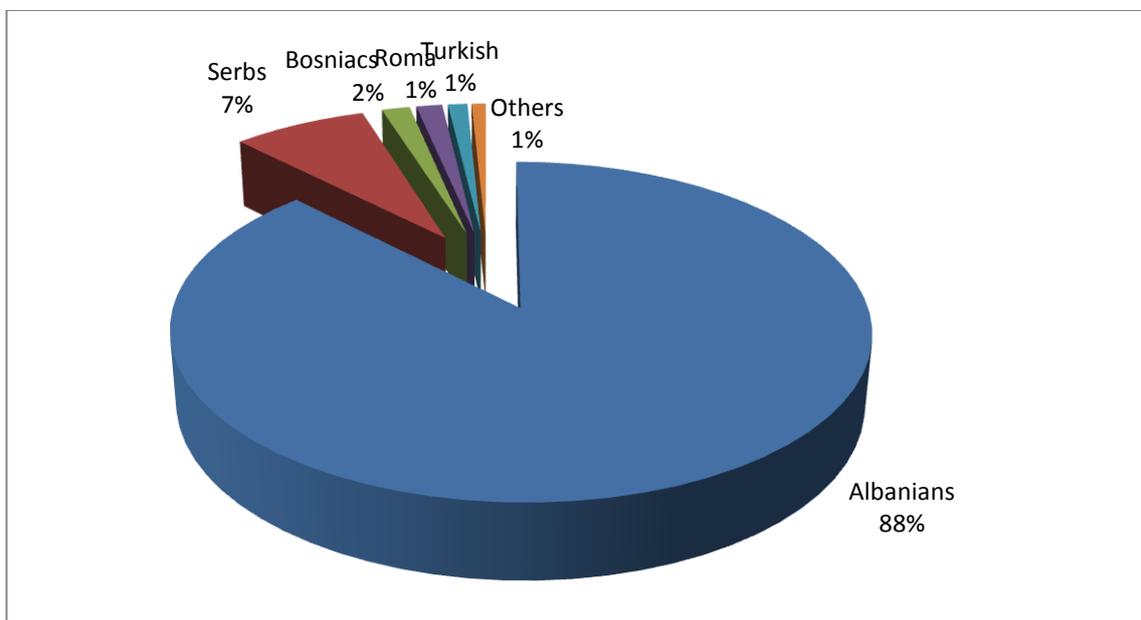
	Ministry of Infrastructure	2
	Ministry of Economic Development	1
	Ministry of Labor and Social Welfare	1
	Municipal Court in Gjilan	1
	Municipality of Skenderaj	1
	Municipality of Kamenica	1
	Total of recommendations not implemented	26

Figure 1: Chart of Statistics for 1 January 2012 - 31 December 2012

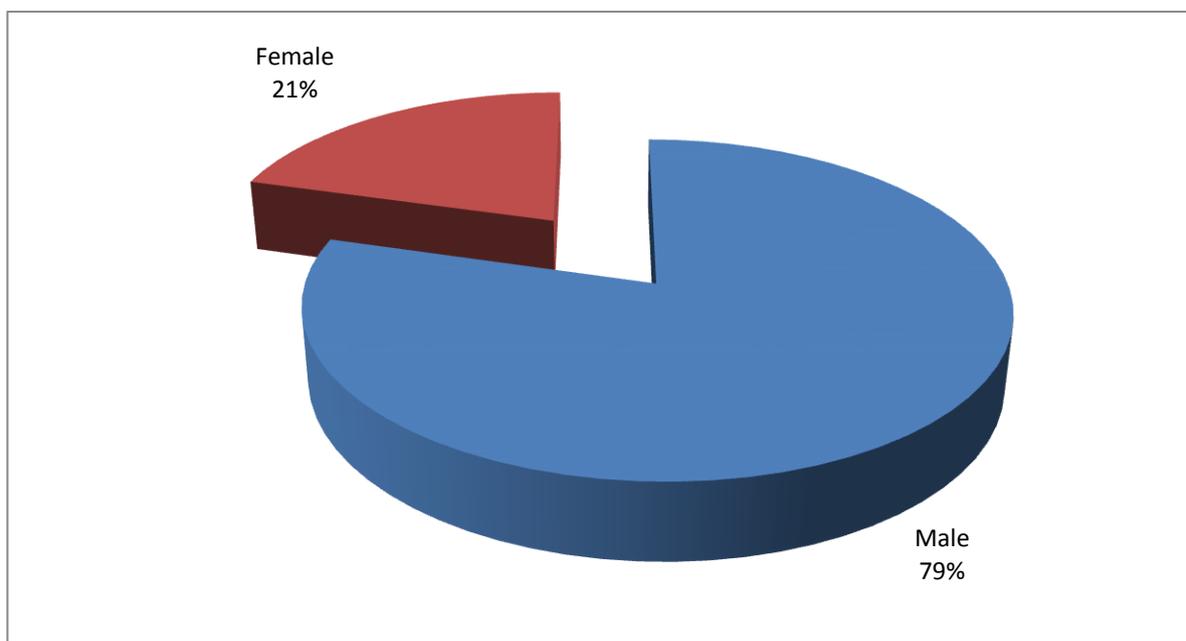
Review of complaints filed with the IO in 2012



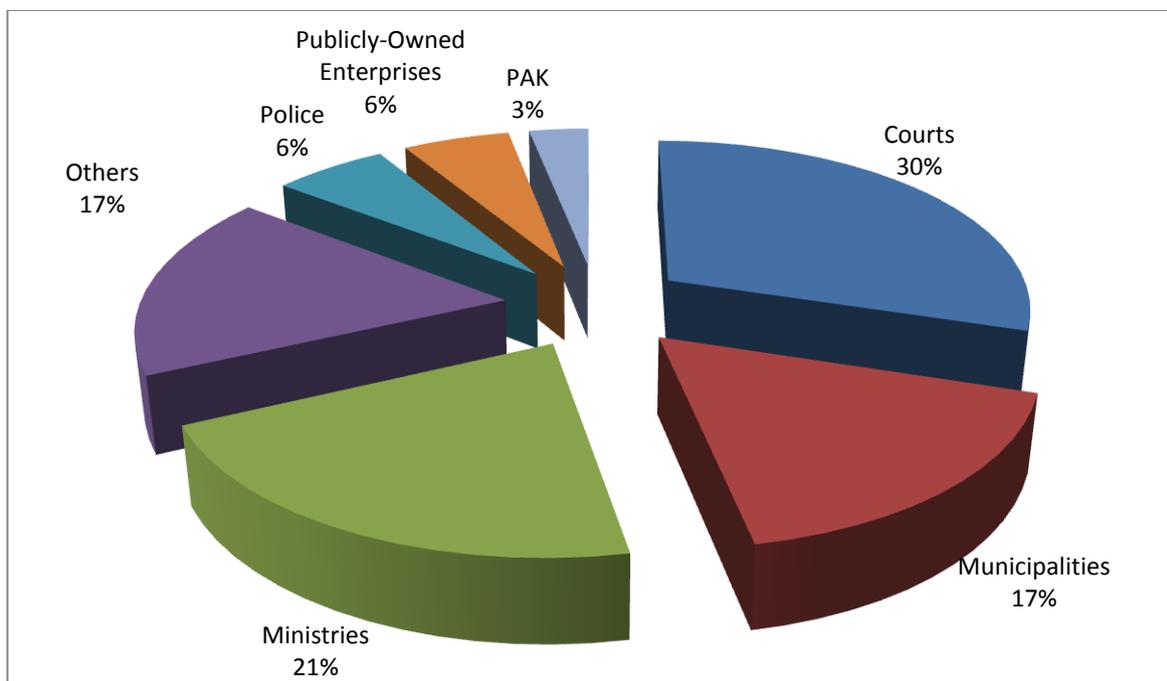
Ethnicity of citizens based on the complaints filed with the IO in 2012



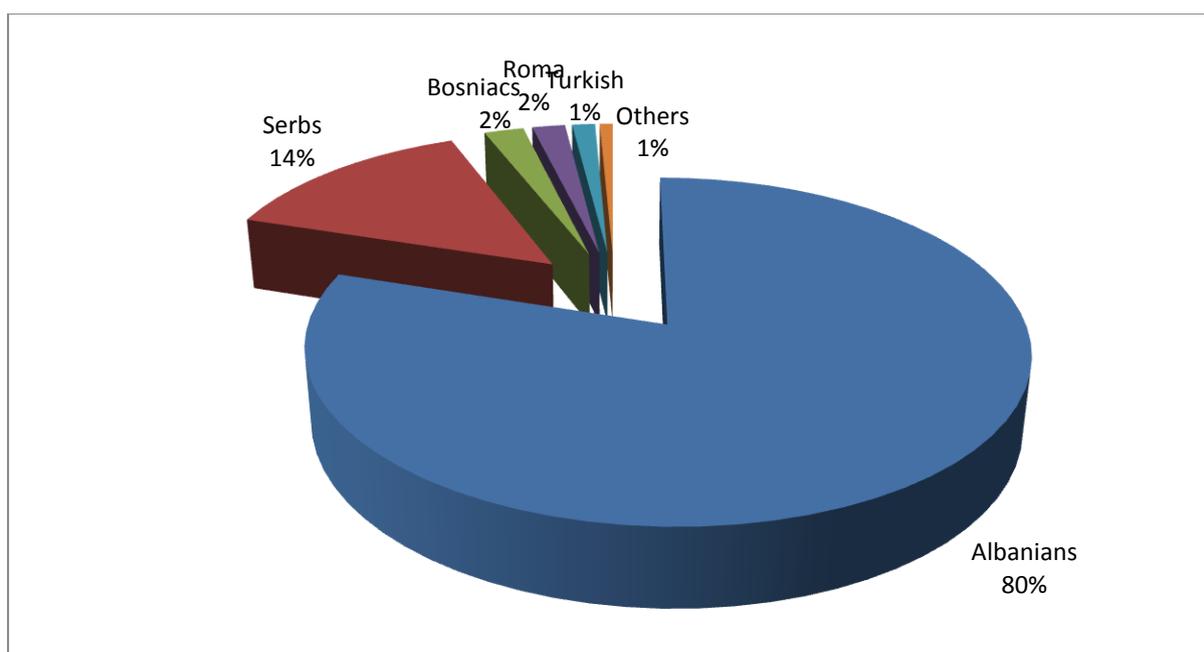
Gender of citizens based on the complaints filed with the IO in 2012



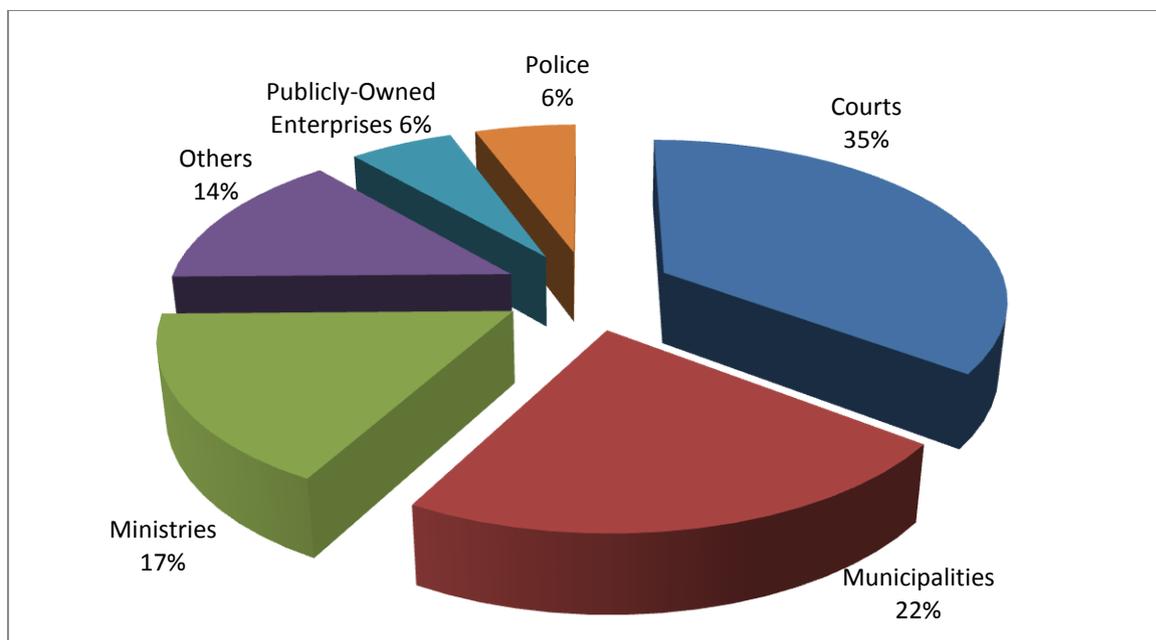
Responsible authorities of the complaints filed with the IO in 2012



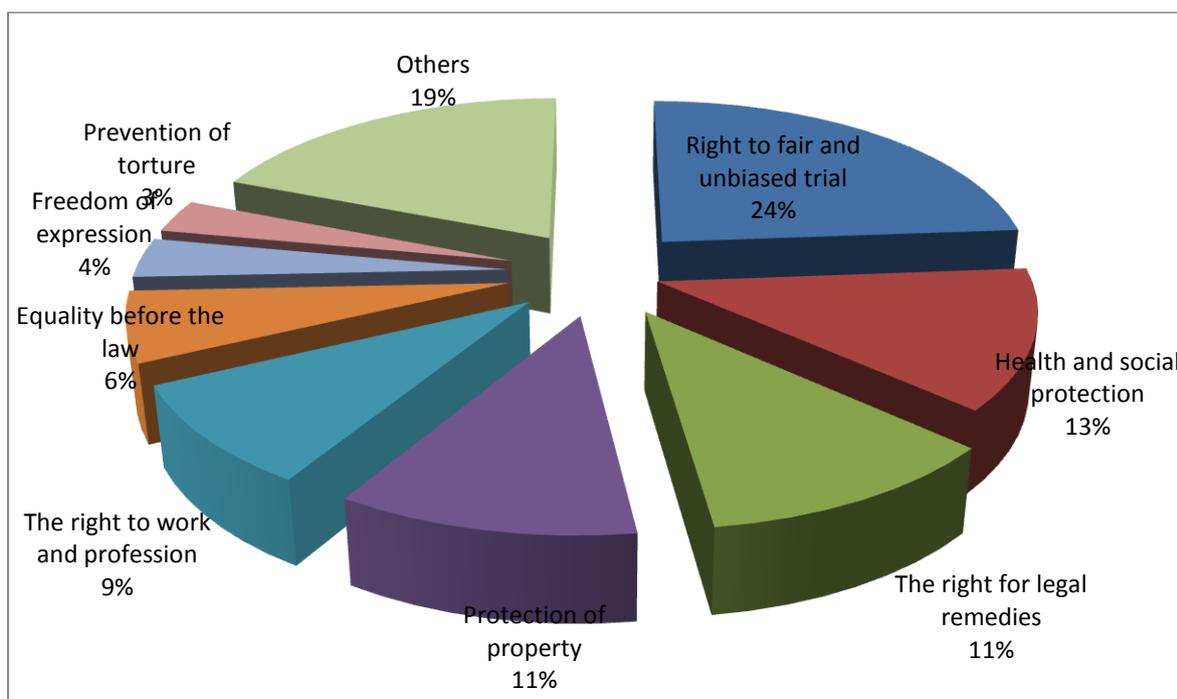
Ethnicity of citizens based on the investigated cases



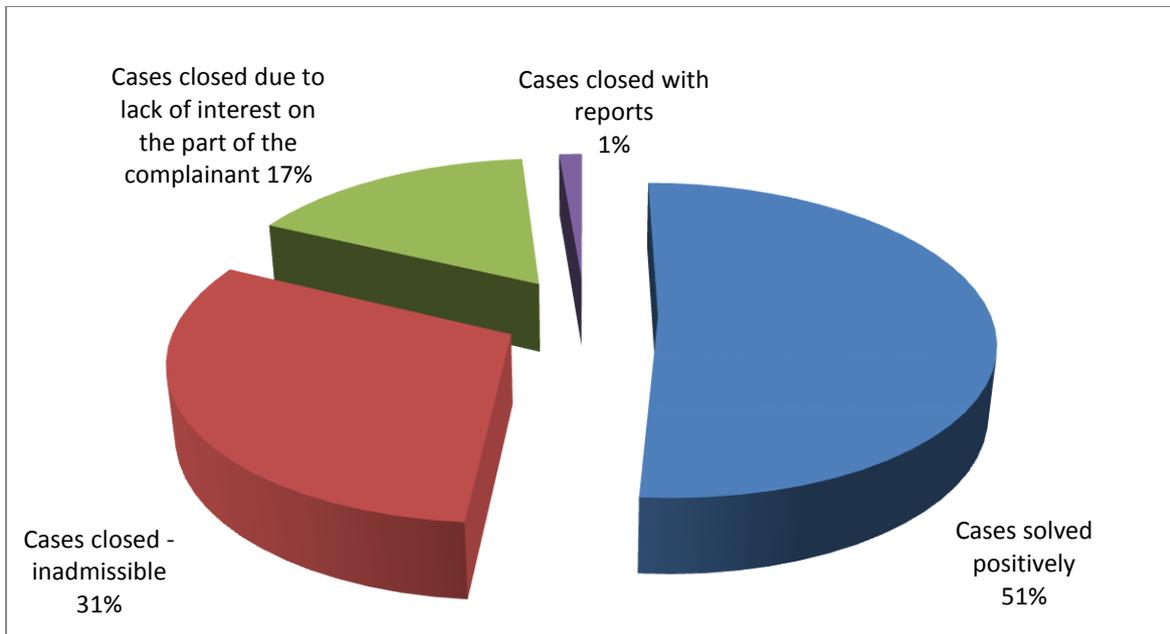
Responsible authorities of cases investigated by IO



Subject matter of investigated cases based on rights guaranteed by Constitution



Cases closed by IO in 2012 (*not only cases in 2012, but also cases registered earlier and closed this year*)



9. Institution of Ombudsperson Personnel

9.1. Personnel Situation

In order to fulfill its constitutional mission, the composition and number of employees constitutes a fundamental factor for the functioning of the IO. The allowed number of positions for 2012 was 48, the same number as in the previous year. In 2012, with this number and composition of the staff, the IO encountered difficulties and restrictions at work to fulfill its mission, obligations and responsibilities at work.

The approved number of positions of 48, according to the categories of the employees, is broken down as follows: six (6) public officials, elected by the Assembly of the Republic of Kosovo, and forty-two (42) officials – civil servants.

Due to restrictions for additional personnel, the IO was restricted in conducting the work-related duties and responsibilities. The increased number of complaints, and the additional obligations stemming from more laws adopted by the Assembly of Kosovo concerning the protection of human rights and freedoms in Kosovo, as well as the adoption of new laws imposing legal obligations and responsibilities for the management and functioning of the administration create direct additional responsibilities of the IO that can be executed only through additional engagement of the human resources.

In spite of the IO request to increase the numbers of the personnel for 2012, as in the two previous years, no new positions were approved for the civil service. The IO budget for salaries and per diem for 2012 was insufficient even for the approved 48 positions. With the budget approved for the first six months of 2012, IO was able to hire only 44 employees. IO was unable to activate 4 other positions due to lack of budget. In the second six months following the 2012 budget review IO was allocated additional budget based on the IO request for a budget review in order to activate the 4 approved positions.

Human resources restrictions and lack of budget in 2012 proved to be obstacles for the IO in carrying out many obligations and responsibilities at work, and many other activities to fulfill the constitutional mandate. In spite of the increased work efficiency and organizational restructuring the lack of sufficient human and financial resources has notably affected the failure to fulfill the delegated responsibilities, the non-functioning of some sectors etc.

9.2. Personnel Turnover

An important matter that influences on the functioning of the MIA is the personnel turnover; - their willing termination of employment. This significantly affects the quality of work and the achievement of the main work obligations of IO.

The main reasons for the voluntary termination of employment following long-term professional training were: other jobs in more advanced positions or where personal income

rates are higher and provide more favorable working conditions than the IO. In the reporting period, 2 long-term employees have quit their jobs and 4 new employees were hired.

The voluntary termination of employment with IO is a concerning fact, because professional and specialized staff members cannot be promoted or rewarded for their efficient and professional work, and they cannot be denied the right to voluntarily terminate employment.

A positive fact worth mentioning is that the tendency of professional staff trained by the IO to leave is visibly smaller than in the previous years. First of all, this is a result of the appropriate understanding, coordination and collaboration of international institutions involved in Kosovo with the IO not to engage the IO associates without the consent of or consultation with the IO and also due to the staff reduction in Kosovo and consequently more requests for employment than in the previous years.

10. Abbreviations

PAK	Privatization Agency of Kosovo
KEPA	Kosovo Environment Protection Agency
KPA	Kosovo Property Agency
EU	European Union
CEDAW	Convention on the Elimination of Discrimination Against Women
CLARD	Center for Legal Aid and Regional Development
CRONSEE	Children's Rights Ombudspersons Network in South and Eastern Europe
MED	Municipal Education Directorates
DLE	Department of Labor and Employment
SCSCK	Special Chamber of the Supreme Court of Kosovo
ENOC	European Network of Ombudspersons for Children
EULEX	European Union Rule of Law Mission
CRG	Children's Rights Group
ECHR	European Court for Human Rights
NDG	Non-Discrimination Group
IO	Institution of the Ombudsperson
KPI	Kosovo Police Inspection
IRD	Institute for Research and Development
MFI-NGO	Micro-Finance Institutions registered as Non-Governmental Organizations
KDI	Kosovo Democratic Institute
ECHR	European Convention on Human Rights
KEC	Kosovo Energy Corporation
KJC	Kosovo Judicial Council
CPJC	Council for Protection and Justice for Children
CMKL	Company for the Management of Kosovo Landfills
CPHRF	Council for Protection of Human Rights and Freedoms
SOC	Serbian Orthodox Church
KPC	Kosovo Prosecutorial Council
CCK	Criminal Code of Kosovo
IOBK	Independent Oversight Board of Kosovo
PCCK	Provisional Criminal Code of Kosovo
CRK	Constitution of the Republic of Kosovo
LAPD	Law on Access to Public Documents

LGBT	Lesbian Gay Bisexuals Transsexuals
MPA	Ministry of Public Administration
MEST	Ministry of Education Science and Technology
MOJ	Ministry of Justice
NMPT	National Mechanism for Prevention of Torture
MESP	Ministry of Environment and Spatial Planning
MIA	Ministry of Internal Affairs
MLSW	Ministry of Labor and Social Welfare
GEU	Gender Equality Unit
HRU	Human Rights Unit
KCA	Kosovo Chamber of Advocates
NGO	Non-Governmental Organization
UNO	United Nations Organization
OHCHR	Office of the High Commissioner for Human rights
OSCE	Organization for Security and Cooperation in Europe
PTK	Post-Telecomm of Kosovo
KCRTV	Kosovo Center for Rehabilitation of Torture Victims
KCGS	Kosovo Center for Gender Studies
KCUC	Kosovo Clinical University Center
DC	Detention Center
DCM	Detention Center in Mitrovicë
CSA	Center for Social Affairs
RCT	Rehabilitation and Research Centre for Torture Victims
RTK	Radio Television of Kosovo
KCS	Kosovo Correctional Service
ICT	Information and Communication Technology
AI	Administrative Instruction
KLA	Kosovo Liberation Army
UNDP	United Nations Development Programme
UNICEF	United Nations International Children's Emergency Fund
YIHR	Youth Initiative for Human Rights
WHO	World Health Organization