



REPUBLIC OF KOSOVO
OMBUDSPERSON INSTITUTION

NINTH ANNUAL REPORT 2008–2009

addressed to
the Assembly of Kosovo

Telephone: ++381 38 545 303
Telefax: ++381 38 545 302
e-mail: ombudspersonkosovo@ombudspersonkosovo.org
website: www.ombudspersonkosovo.org

Published by:
Ombudsperson Institution in Kosovo

Computer processing:
XHAD Studio

Photos:
Ombudsperson Institution Archive

Printed by:
“ORIENTI” Printing House - Prishtinë/Priština

2010, Prishtinë/Priština

Content

Foreword.....	3
1. Introduction.....	5
1.1. General Aspects	6
1.2. The situation of basic human rights and freedoms in Kosovo	7
2. Ombudsperson Institution	12
2.1. The Mandate of the Ombudsperson Institution	13
2.1.1. The interim measures and reports.....	14
2.2. The Ombudsperson	15
2.3. Public Access to the Ombudsperson Institution	16
3. The fundamental human rights and freedoms guaranteed by the Constitution of Republic of Kosovo	17
3.1. Human Dignity.....	17
3.2. Equality before the law	18
3.3. Right to Life.....	22
3.4. Right to Personal Integrity.....	23
3.5. Prohibition of Torture, Cruel, Inhuman and Degrading Treatment	24
3.6. Prohibition of Slavery and Forced Labour	27
3.7. The right to liberty and security.....	28
3.8. Rights of accused persons	29
3.9. Right to a fair and impartial trial	30
3.10. Right to Legal Remedies	32
3.11. The principle of legality and proportionality in criminal cases.....	33
3.12. Right not to be tried twice for the same criminal offence	34
3.13. Freedom of Movement	34
3.14. Right to privacy.....	36
3.15. Right of marriage and family	38
3.16. Freedom of religion, belief and conscience	39
3.16.1. Analysis of the situation in Kosovo	40
3.16.2. Religious denominations in Kosovo	41
3.17. Freedom of Expression	43
3.18. The Right of access to public documents	44

3.19.	<i>Freedom of Media</i>	44
3.20.	<i>Freedom of assembly</i>	46
3.21.	<i>Freedom of Association</i>	47
3.22.	<i>Freedom of election and participation</i>	48
3.23.	<i>Protection of Property</i>	49
3.24.	<i>The right to education</i>	51
3.25.	<i>Freedom of Art and Science</i>	52
3.26.	<i>Right to work and exercise profession</i>	53
3.27.	<i>Children’s Rights</i>	55
3.28.	<i>Health and Social protection</i>	59
3.29.	<i>Responsibility for the Environment</i>	61
3.30.	<i>Interpretation of Human Rights Provisions</i>	63
3.31.	<i>Judicial Protection of Rights</i>	64
3.32.	<i>Limitations on Fundamental Rights and Freedoms</i>	66
3.33.	<i>Fundamental Rights and Freedoms during a State of Emergency</i>	67
4.	<i>Ombudsperson’s Recommendations</i>	68
5.	<i>Activities of Ombudsperson Institution</i>	70
5.1.	<i>Activities of the Non-Discrimination Team</i>	70
5.2.	<i>Activities of the Gender Equality Team</i>	71
5.3.	<i>Activities of the Children’s Rights Team (CRT)</i>	72
6.	<i>Cooperation: Conferences, seminars and workshops</i>	74
6.1.	<i>Cooperation with National Institutions</i>	74
6.2.	<i>Cooperation and Capacity-Building</i>	75
6.3.	<i>Capacity-Building</i>	75
6.3.1.	<i>Study visits and training</i>	75
6.4.	<i>Budget of the Ombudsperson Institution</i>	77
7.	<i>Statistical summary</i>	79
7.1.	<i>Statistical summary of complaints and cases (1st of July 2008 – 30th of June 2009)</i>	79
7.2.	<i>Statistical summary of complaints and cases (1st of January 2009 – 31st of December 2009)</i>	85
8.	<i>List of staff and organization chart</i>	91
9.	<i>Abbreviations</i>	98

Foreword



With the adoption of the Constitution of the Republic of Kosovo, the highest legal act, the Kosovo legislators delivered the most encouraging news for human rights. Beside the Constitutional Court, the Ombudsperson was listed as a Constitutional category institution. This act reflects the Kosovo society's institutional commitment for human rights.

The drafting of the Law for the Ombudsperson Institution, processing of the same in parliamentary procedure, public debates for the law, including also the civil society, media, different institutions, as well as interested citizens, are clear signs that the creation of legal norms in the Republic of Kosovo is being demonopolized.

These two steps constitute the normative cornerstone for the Ombudsperson Institution. With these two fundamental documents, the decade of transition and institutional stabilization of the OI is coming to a close. With all the ups and downs, shortcomings and problems that accompanied it during the past decade, we are convinced that the OI established its place in the Kosovo society. We hope that the following decade, will be the phase of OI's full commitment toward its mission and full integration in the society of Kosovo.

Very often it happened, and still does, that citizens, different local and international organizations, politicians, and particularly the media, address questions and different requests to the Ombudsperson asking his opinion, assessment or even his position regarding specific issues that are often politically motivated. It is so because of the dissatisfaction, loss of trust, and in certain political situations to get political support, or even to cover some media airtime. Intentionally or not, people forget that the Ombudsperson's mission does not coincide with his assessment and judging of opinions, decisions and current individual political actions, or with the assessment of facts and of past political eras and systems. To insist in getting the Ombudsperson's assessment, especially for politically motivated issues and actions, is just another form of exercising pressure on the institution.

The mandate and competencies of the Ombudsperson are clearly established by the Constitution and the Law, according to which he functions. He deals with human rights, fundamental freedoms and democracy, with good or bad administration, judiciary and state of law. These are and shall remain fields in which the Ombudsperson is engaged and works, and for which he provides his assessment. The Ombudsperson shall carefully follow and consider all political decisions that are accompanied by legal decisions which could violate human rights and freedoms.

Within his scope of activities, the Ombudsperson shall first be focused in the protection of human rights from possible violations from public authorities and all other organizations and individuals that are authorized to work in the Republic of Kosovo. The second field of interest shall be further professional development of the OI staff, since only a fully

professional institution is able to dignifiedly fulfill its mission. The third field of interest shall be to simultaneously ensure institutional and financial stability of the OI.

Most of the complaints addressed to the Ombudsperson during the reporting period involved all levels of the judiciary, from minor offence courts to the Supreme Court. In addition to legitimate claims and complaints, mainly related to lengthy court proceedings, failure to execute final court decisions, misuse and suspicion of corruption in courts, a considerable number of people have addressed the Ombudsperson with claims against courts also because they lost their trust in the judiciary of Kosovo in general. This phenomenon currently presents the greatest risk for the new state of Kosovo.

Pursuant to his legal and Constitutional competencies, the Ombudsperson can ideally draw attention to possible cases of misuse in all levels of the judiciary, but does not interfere in judicial processes. The Ombudsperson is not an institution that administers justice. What is more important to emphasize, is the fact that the state in which the judiciary is today indicates that the rule of law is not functioning. If the judiciary, as one of the three pillars of the state, is weak or non-functional it can have serious repercussions for any society, particularly for the society in Kosovo, which is in its initial stage of state-building. A society can build a state only if there is trust in it. In turn, citizens trust the state only when they are convinced that it is fair. The conviction and trust in justice is rightfully fading if it is not equal for all, which happens when there are those who have no respect for justice because they are above it.



1. Introduction

There is no preset template for draft and contents of an annual report of the Ombudsperson. Nevertheless, it is natural that the drafting of a report should follow certain logic. This natural logic represents a basic unwritten principle, which should be always respected. The annual report of the Ombudsperson is a reflection of the actual situation but also of the changes in the area of human rights, their promotion and protection during the period covered by the report. Therefore, any annual report, while it cannot be pre-prepared, is a result of the continuous annual work, which differs from previous years only with regard to the matters that have been treated, initiatives undertaken and situations that were focused on. Some portions remain unchanged. Especially those that deal with issues and cases that remain unresolved.

Changes that characterize this report are of a conceptual nature. The list of subjects and issues presented in this report is not conducted as in previous reports, where they involved broader issues such as the judiciary, discrimination etc. As far as the contents are concerned, the list of issues raised in this report is significantly different from that of previous reports. The content of this report is in full correlation with the content of the second Chapter of the Constitution of the Republic of Kosovo. Human rights and other issues raised have been mentioned in accordance with the way in which they are mentioned by the Kosovo lawmakers in the Constitution. Put simply, this report is a critical analysis of all human rights matters guaranteed by the Constitution of the Republic of Kosovo according to those human rights listed in its second chapter.

The legal obligation for publishing the first annual report of the Ombudsperson Institution in Kosovo (OIK) in summer of 2009, which would cover the one-year period following the adoption of the Constitution of the Republic of Kosovo, is overdue for almost a year. This time discrepancy between the obligation to issue the regular report and the publishing of the annual report is a direct result not only of the fragility of every new institution, but is also due to the instability of the Ombudsperson Institution. The personal engagement of the OIK managing staff in the race for the election of the Ombudsperson obliterated the obligation for issuing the report. This situation was made worse by the departure from OIK of a part of the professional staff responsible for publishing the report.

This report, the ninth in a row, covers the time period from 30 June 2008 to 31 December 2009. In fact, when looking at a calendar, this report covers the activities of the Institution for one and a half years. For all statistical data related to this report, see the last part of this report.

However, even this report, with all its flaws and possible omissions, represents the continuity of the OIKs work. This continuity deals with the subjects covered. For the most part, looking at the subjects covered, the report that you have in front of you did not undergo any substantial change compared to the previous reports.

Even though the Republic of Kosovo is not a signatory party to the European Convention on Human Rights, Article 53 of its Constitution foresees that guaranteed basic human rights and

freedoms “should be interpreted in harmony with the court decisions of the European Court of Human Rights.” With this approved norm, Kosovo lawmakers embrace the European philosophy of the relation between language and logic, in a comparative, clear and formal manner. The interpretation and analysis of each individual article of the Constitution of the Republic of Kosovo in this report, was done in accordance with this constitutional obligation.

To remove any doubts that the “interpretation in harmony” with the decisions of the ECHR is not only a question of the good will of each individual or institution, Article 22 of the Constitution clarifies this obligation, by requiring that human rights and freedoms, as foreseen in international agreements and instruments, be “directly enforced” and that “in case of a conflict”, they take priority “over legal provisions and other acts of public institutions” in the Republic of Kosovo.

1.1. General Aspects

Following the adoption of the Constitution of the Republic of Kosovo on 15 June 2008, Kosovo insured a solid normative basis, in full compliance with international human rights standards. The Constitution of the Republic of Kosovo represents a synthesis of modern international human rights standards (Article 22).

The establishment of the Constitutional Court in January 2009, the highest authority for the interpretation of the Constitution provisions for the review of the legislation and review of the legality of public authorities’ actions in Kosovo in connection to individual claims for violation of human rights and freedoms, marked the decisive step for the assessment of the legality of state actions in general.

On 4 June 2009, the Assembly of Kosovo appointed the Ombudsperson of the Republic of Kosovo, as a democracy consolidating mechanism, to recommend to the public authorities the reinstatement of a right when there are violations of human rights and freedoms.

In particular, it is worth mentioning the fact that the Assembly of Kosovo, as the highest legislative authority, despite the huge work-load and a limited period of time, adopted a considerable number of laws of vital importance for the new state of Kosovo.

Despite the existence of a good normative basis, as well as mechanisms for the protection of human rights and freedoms, their implementation, as noted in the Council of Europe Human Rights Commissioner’s Report of 2 July 2004, in all the levels of the public authorities remains a problem. Effective implementation of the standards for the protection of human rights, the consolidation of the judiciary and prosecutorial system, as well as fight against organized crime and corruption still remain amongst the biggest challenges for the new state of Kosovo.

For the legislators and other state authorities of the Republic of Kosovo, a big challenge remains the adoption of certain fundamental laws, including the Law on Pension and Disability Insurance, the Labour Law and the Law on Medical Insurance, which directly impact the human rights of all the citizens of the Republic of Kosovo.

Failure to timely approve subsidiary legislation proved to be a particular difficulty, often impeding the adequate implementation of laws. The issue of adequate implementation of laws, also mentioned in previous reports of the Ombudsperson as one of the international standards regarding the quality of laws which requires that a law be accessible and foreseeable, continues to be a challenge for the public authorities. Its purpose is to protect the individual from arbitrary violations, namely to offer assistance to the individual to regulate his/her behavior in accordance with the law.

Also in this context, it is worth mentioning the issue of the lack of an administrative court, which would improve the situation in this regard. Although the law in force states that the decision on the administrative disputes is a competence of the Supreme Court of Kosovo, many weaknesses have been observed in the functioning of this Court. Despite reasonable expectations that the establishment of an administrative court would obviously improve the fulfillment of the standard for an effective legal remedy against final decisions in the administrative procedure, the initiative to draft such a law and to create such a court has not been undertaken.

However, one of the most important issues and simultaneously the biggest challenge which touches the foundations of the state itself and represents the basis of the state of law and order, is still the functioning of the judiciary and prosecutorial system in Kosovo. It is precisely against the judiciary that the Ombudsperson Institution Kosovo has received the highest number of complains submitted by the citizens of the Republic of Kosovo. The there still open and unhealed wounds of the judiciary of Kosovo are: a) failure to execute court decisions; b) lengthy court proceedings; and c) real or perceived corruption in the judicial system as a whole.

Another underscored problem in the judicial and prosecutorial system in Kosovo, with roots in the educational system, is the insufficient education of lawyers in Kosovo on the international human rights standards, especially in the interpretation of domestic legal norms according to the European Court of Human Rights case-law and European Convention on Human Rights, as envisaged in Article 53 of the Constitution of the Republic of Kosovo.

1.2. The situation of basic human rights and freedoms in Kosovo

Human dignity, an inviolable right and the basis for all fundamental human rights and freedoms, is also protected by the Constitution (Article 23). There can be no protection of rights without the respect of dignity and vice-versa.

The Ombudsperson Institution also dealt with cases that involved the protection of human dignity. One category of persons that could be considered as a potentially threatened category are prisoners and detainees. In these cases the OIK addressed the Kosovo Correctional Service.

If there is one right that is formally guaranteed by the Constitution of the Republic of Kosovo while being violated the most in Kosovo everyday life, it is *equality before the law* (Article 24). The constitutional guarantee is very encouraging, but the objective reality is very

alarming. This legal formula is one of the most discussed formulas, but also the most complex. Given the current state of the Kosovo judiciary, it is not right, illogical and completely unrealistic to expect that there will be equality before the law.

In this period, the OIK did not receive any complaint concerning the substantive aspects of *the right to life* (Article 25 CRK). However, with regard to the issue of procedural rights, problems have been noted. The OIK has received several complaints of violations of this right by the relatives of victims and these cases mainly involve the lack of respective investigations by public authorities that would shed light on the cases.

Regarding the *right to personal integrity* (Article 26 of CRK), complaints are lodged to OIK. The Legal construct of *personal integrity* is one of the most complex and most comprehensive. The current social and economical situation in Kosovo objectively does not guarantee respect of this right in the full sense and complexity of the term.

Preventing torture, cruel, inhumane and degrading treatment is incorporated into Article 27 of CRK, thereby providing the ban with an absolute character, without any spatial or timely restrictions. This ban is also a part of international legal practice and is considered to be a *jus cogens* norm, meaning that countries may not refrain from applying it or express their reserves, regardless of the circumstances.

There were no cases of torture in the classic sense of the word in the Republic of Kosovo during the reporting period. However, cases of physical abuse by the Kosovo Police have been submitted to the OIK. Following investigations, it was found that there were no effective and independent investigations within the Kosovo Police relating to these allegations of abuse, which would enable the identification and prosecution of those responsible for this violation.

Preventing slavery and forced labour (Article 28 of CRK) constitutes one of the basic requirements of a civilized and democratic country and society. If there is no slavery or similar human situations in the Republic of Kosovo, the same cannot be said with certainty regarding forced labour, given the difficult economic situation, and even less for *human trafficking*. The lack of concrete cases submitted to the OIK, does not make the real situation in the Republic of Kosovo better or more encouraging. If there is only one doubt in a society that such occurrences exist, this casts doubt and a big question mark on this society's freedom.

During the reporting period, there have been no complaints concerning *the right to freedom and security* (Article 29 CRK). The only related cases were those where the competent courts exceeded legal time limits.

The same cannot be said for *the right of each person accused of criminal acts* (Article 30 CRK), to have his/her case be heard lawfully, publicly and within a reasonable timeframe, by an independent and impartial court.

Among other things, based on the complaints of defendants submitted to the OIK, it was noted that even officially appointed defense attorneys in most cases offer ineffective legal representation under the abovementioned standards. This results in serious consequences for

the proceedings and the court decision itself, which will place the defendant at a disadvantage.

The Ombudsperson Institution has received a considerable number of complaints from citizens that dealt with allegations of a violation of *the right to a fair and impartial trial* (Article 31 CRK), especially with regard to the right to a trial within a reasonable time. In most of these complaints, the citizens complain about delays in court proceedings and the non-execution of court decisions, an occurrence that not only destroys the trust of the citizens in the Kosovo justice, but at the same time represents one of the most severe human rights violations.

As far as the *right to legal remedy* against Court and administrative decisions (Article 32 CRK) is concerned, also during the reporting period of time OIK registered a considerable number of complaints by the citizens of the Republic of Kosovo from all regions concerning the delays of Court and administrative procedures during the exercise of right to legal remedy.

The principle that there can be no criminal act or conviction if not foreseen by law, otherwise known as the *principle of legality and proportionality in criminal proceedings* (Article 33 CRK), constitutes the basis of justice. The absolute character of this norm was expressed with international consensus as being a cornerstone of human rights. The same goes for the principle, *Ne bis in idem*, stating that *no one can be taken to court twice for the same act* (Article 34 CRK).

The Ombudsperson Institution is encouraged by the fact that these principles have been treated in a lawful manner in the legal system and in their practical application in Kosovo. The Ombudsperson Institution did not receive any complaints related to the violation of these principles.

The restriction of *freedom of movement* in the Republic of Kosovo (Article 35 of CRK) is a complex issue and often directly depends on political developments in the country. Even though this right is not restricted by the authorities of the Republic of Kosovo, it is not at all times guaranteed for all ethnic communities throughout the territory of the country. There are particularly serious violations of freedom of movement in the northern part of the city of Mitrovica and of the Republic of Kosovo.

The right to privacy (Article 36 of CRK) is a broad concept, since it is impossible to define it in a finite manner, as it includes the right to develop other relations with human beings.

From the cases submitted to the OIK, it may be concluded that, because of the difficult economical situation, lack of complete legislation, but also due to the irresponsibility of different institutions, this right is not respected at a satisfactory level in all its complexity.

Even though the Law on Family has been approved, which regulates also the right to marriage, the OIK has received complaints during this reporting period related to the *right to marriage and family* (Article 37 of CRK), especially with regard to delays in court proceedings in cases of divorce, non-execution of the right to regular contacts with children, as well as to delays in court proceedings on decisions related to faith, which put children and their parents in difficult situations.

Unfortunately, in Kosovo there still exists the erroneous and unreal perception that family issues are private. Furthermore, often representatives of public authorities competent for protecting such rights, ask whether they should intervene in such relations!

The *Freedom of expression* (Article 40 of CRK) includes the right to express, disseminate and receive information, thoughts and other messages, without any restriction from anybody.

Even though during the reporting period there have been no complaints to the OIK related to the violation of this right, one matter of concern are the threats issued towards journalists and an inadequate enforcement of the Law on Access to Official Documents. Even though the *right to access public documents* is a guaranteed constitutional category (Article 41 of CRK) and the OIK has only two registered cases concerning the violation of this right, it should be noted in relation to the media that awareness and insufficient information of the citizens on their right to access official documents are the factors that have the most influence on the low number or lack of complaints.

The issue of *freedom of the media* continues to remain problematic in Kosovo even though freedom and pluralism of the media are guaranteed by the Constitution of the Republic of Kosovo (Article 42), and censorship is expressly prohibited. There is no basic law on the media. The actual legal infrastructure in place only covers parts of the issue and is no doubt lacking. This interferes with the supervisory role of the media and offers possibilities for different external influences, which is unacceptable for democratic societies.

During this reporting period, the Ombudsperson did not receive any complaints related to violations of the *freedom of assembly* (Article 43 of CRK). Without diminishing the value of the Law on Public Assemblies as a whole, adopted by the Assembly of the Republic of Kosovo in 2008, the Ombudsperson noticed that this law contains elements that are not in accordance with the practices of the ECHR, which constitutes the basis for interpreting rights in Kosovo.

Each person has the right to freely organize into associations with others, including the right to form or join unions for protecting his interests (Article 44 of CRK). This right is also regulated in the Law on *freedom of association* in non-governmental organizations adopted at the beginning of 2009. The OIK has noticed a more positive approach of governmental institutions towards civil society organizations.

Regardless of the constitutional guarantees and the lack of complaints to the OIK on *electoral and participatory rights* (Article 45 of CRK), the Ombudsperson is deeply concerned about the occurrences of abuse in this area. Of special concern is the negligence of courts in pursuing the acts of individuals and groups that violate this right of the citizens of the Republic of Kosovo.

The constitutional protection of the *right to property* (Article 46 of CRK), has caused the Ombudsperson Institution to continue to look into property issues which are managed by the Kosovo Property Agency (KPA), as a successor to the Housing and Property Directorate (HPD). A considerable number of complaints involve delays in decision-making procedures, which are due to erroneous registration and partially due to a lack of cooperation with the Kosovo Cadastral Agency.

The general situation in the field of property protection is seriously threatened by the lack of rule of law and ineffective mechanisms for power control. Discrimination of Kosovo citizens by the Kosovo Property Agency is manifested by the use of double standards, especially in executing decisions of the Committee on evictions from the property, as well as in the application of rental schemes. This has been proved in many cases concerning the non-execution of decisions of the Committee on property of Kosovo Albanian citizens located in the northern part of Mitrovica and simultaneously with regard to the noncompliance of obligations towards the owners whose property is under the administration of the KPA.

The right to education, as a constitutional category (Article 47), foresees the right to free basic education, obligatory and financed by public funds, which also obliges public institutions to ensure equal opportunities of education for all persons, according to their special abilities and needs. Notwithstanding the attempts of responsible institutions, the Ombudsperson Institution notices that laws concerning education issues in general have not been enforced in an adequate manner.

The freedom of art and science, guaranteed by the Constitution of the Republic of Kosovo (Article 48), is in accordance with the European Convention on Human Rights. During the reporting period the OIK did not receive any complaints on violations of the freedom of art and science.

Regardless of the extremely difficult economic situation in which Kosovo finds itself, the OIK did receive certain number of complaints related to the *right to work and professional practice* (Article 49 of CRK) during the reporting period.

Regardless of special care and constitutional guarantees for *children's rights* (Article 50 of CRK), and regardless of the actions undertaken by the Government of the Republic of Kosovo in drafting the Strategy and National Action Plan for children's rights 2009 – 2013, with the goal of ensuring adequate enforcement of the legal framework for children's rights, the OIK has received complaints related to the non-execution of decisions of centers of social welfare and courts on matters of contact with children, as well as to delays in court proceedings.

The OIK is extremely concerned about issues related to exercising physical violence on minors, within the family but also in schools, the issue of child labour in Kosovo, and school drop-outs in all regions of Kosovo, with a special emphasis of the Roma, Ashkali and Egyptian community (RAE).

Regardless of the attempts of the Ombudsperson Institution, some NGOs and international experts on human rights, the International Pact for Economic, Social and Cultural Rights (IPESKR), was not included in Article 22 of the Constitution of the Republic of Kosovo. The non-inclusion of this Pact into the Constitution is the main reason that *social and health protection* as a right guaranteed by the Constitution (Article 51 of CRK), has remained at the administrative discretion of the state.

Most often, complaints of citizens submitted to the OIK involve the nonpayment of medical expenses abroad, failure of the authorities in supplying essential medicine, as well as the weak infrastructure and follow up mechanisms in the KCUC, further social problems relating

to the issue of pension and disability pension, difficult living conditions, discontinuing social assistance and pensions for disabled persons, providing evidence for job experience and execution of the right to complain.

According to the Constitution of the Republic of Kosovo (Article 52), nature and biodiversity, living environment and cultural heritage, are the *responsibility of everyone*. On a practical note, in Kosovo a large number of environmental issues remain unsolved, among other things also because of the insufficient enforcement of control mechanisms, as well as a low general awareness of the issue.

During the reporting period, the OIK did not receive any complaints related to the *restriction of basic rights and freedoms* included in the Constitution (Article 55) and there was no *circumvention of basic rights and freedoms protected by the Constitution* (Article 56 of CRC).

2. Ombudsperson Institution

The Ombudsperson Institution in Kosovo was established by UNMIK Regulation No. 2000/38, thereby creating an independent institution with a mandate to address issues dealing with alleged human rights violations or abuses of authority by both international and local public authorities in Kosovo. The Ombudsperson Institution officially opened office on 21 November 2000 in Prishtina. Until 2005, the Institution was led by an International Ombudsperson. The Ombudsperson Institution started expanding its capacities by opening field offices and increasing the staff from 18, as it was in the beginning, to 47 persons currently employed. Since its establishment, the Ombudsperson Institution paid and is paying special attention to its multiethnic staff structure.

After the departure of the International Ombudsperson, the leadership of the Institution was transferred to local staff. Up to the appointment of the Ombudsperson by the Assembly of the Republic of Kosovo, the current Kosovan deputy was appointed as Acting Ombudsperson.

With the passing of the Constitution of Kosovo, respectively Articles 132-135, the Ombudsperson Institution was considered as a category of the Constitution and with this, the organizational structure of the Institution was changed. According to the Constitution, the leadership of the Institution is composed of the Ombudsperson and one or more deputies. Based on Article 134 of the Constitution of Kosovo, the Assembly of the Republic of Kosovo, on 4 June 2009, in a special session, elected Mr. Sami Kurteshi as Ombudsperson of Kosovo, with a five year mandate and no right to reelection.

2.1. The Mandate of the Ombudsperson Institution

The Constitution of the Republic of Kosovo and previous UNMIK Regulations No. 2000/38, No. 2006/06 and No. 2007/15 provided the Ombudsperson with a mandate to accept and investigate complaints from anyone in Kosovo believing that his/her human rights have been violated by public authorities of Kosovo.

Within its constitutional mandate, the OIK monitors and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities. The Ombudsperson conducts investigations, gives recommendations, issues reports, and provides legal services free of charge, as well as public advocacy, for all citizens of Kosovo. If the investigations of the lawyers of the OIK result in identifying human rights violations, the Institution may demand further information from the local authorities, in order to make recommendations to the authorities concerned, and issue public reports on different issues through the media. The OIK may also offer legal services for complaints of Kosovans against any public authorities outside Kosovo, by forwarding them to the competent domestic Ombudsman or similar institution of the State in question.

The OIK exercises its duties independently and does not accept any instruction or intrusions from organs, institutions or other authorities exercising state authority in the Republic of Kosovo. It can open investigations on suspicion of a violation of human rights even in the absence of an individual complaint (“*ex officio*” investigations). It also has the mandate to monitor policies and laws adopted by local authorities, to ensure that they are in accordance with human rights standards and the requirements of good governance.

In cases where the Ombudsperson considers that a general practice or situation affecting an individual or the public as a whole is not in accordance with local or international human rights’ standards, he issues Special Reports that also include recommendations to the Kosovo Assembly, with the aim of reverting the created condition and ensuring its harmonization with local and international human rights standards.

In order to identify problems and secure information regarding the alleged allegations, the Ombudsperson requires each body, institution or other authority exercising state authority in the Republic of Kosovo to respond to the requests of the Ombudsperson and present to him all requested documents and information, in accordance with the Constitution and the Law.

The OIK formed three special teams of specialized lawyers in order to cover human rights fields that include special issues of certain groups of people whose rights are considered vulnerable in Kosovo, such as children, women, ethnic minorities and others. These are: The Children’s Rights Team (CRT), the Gender Equality Unit (GEU) and the Non-Discrimination Team (NDT).

Even though the OIK conducts investigations and monitors the judiciary’s compliance with human rights standards, it is not a substitute for courts and cannot directly investigate crimes, change court decisions, or issue binding decisions. The OIK also does not deal with the investigations of issues involving disputes between private individuals.

Throughout the nine years of its existence, the OIK always held up the most important values and principles under which this Institution functions. In this context, the OIK would not be obtaining a proper effect in its field of activities if it would not stick to values and principles such as independence, impartiality, professionalism and confidentiality.

The main challenge and objective remains the creation and development of a so-called culture of good governance, namely proper administration, transparency and accountability of the public administration towards the Kosovo citizens, as well as a general strengthening of the rule of law. The OIK, through its engagement, aims at balancing the relations between the public administration and the citizens that this administration is meant to serve. The solutions achieved by the Ombudsperson aim at bringing improved standards and quality of services of the public administration to the citizens. The aim of the Ombudsperson's efficient activities is to increase the trust of people towards the institutions and the administration by ensuring a coherent relationship between the citizen and the public administration. This is necessary for the functioning of a normal democracy. For this reason, the Ombudsperson is part of those institutions that are considered to be "guarantors of democracy, a legal state and human rights".

The engagement and persistence of the OIK in improving the image of the public administration and legal system makes people realize that they can count on this institution and that they can submit their complaints against the administration by way of a simple procedure and free of charge. Such complaints directed at the OIK may concern actions, inactions or decisions of the public administration, which the complainants consider unjust or unfavorable to them. In investigating such complaints, the actions of the respective lawyers involve giving legal advice, obtaining information from different sections of the public administration, courts and other relevant public institutions, with regard to the complaints lodged, as well as monitoring certain court procedures. In cases that require immediate action, the OIK may issue requests for interim measures. The kind of action and the method applied will usually vary depending on the circumstances of each individual case.

2.1.1. The interim measures and reports

If the Ombudsperson considers that the Public authorities should issue immediate measures, he may formally request the respective and competent administrative body to issue or suspend a particular action as an interim measure in order to prevent incorrigible damage of the complainants and their property.

In case that the letters for intervention and attempts for mediation are not successful the Ombudsperson may issue a report by providing deep analysis and public presentation of the violation of human rights or violation of the applicable laws, together with the recommendations for the respective public institution how to avoid violations. The reports are the ultimate methods of the advocacy Institution while to copies of the report are to be handed-over to the authority which committed the violation, To National Assembly of Kosovo and to other relevant Organizations.

2.2. The Ombudsperson

On 4 June 2009, the Assembly of Kosovo elected Mr. Sami Kurteshi as the Ombudsperson in Kosovo for a mandate of five years. Mr. Sami Kurteshi was born on 5 June 1960 in Gjilan, Kosovo. He completed his elementary and secondary education in Gjilan and after that he continued his studies at the University of Prishtina, in the Faculty of Electro-Engineering and English Language and Literature.

Due to the political circumstances in Kosovo following demonstrations in 1981, in which he actively participated, Mr. Kurteshi immigrated abroad, mainly to Switzerland. After his return in 1983, the former Yugoslav regime arrested and sentenced him to 9 years of imprisonment because of his activities; the prison sentences were served in Belgrade and Pozharevac prisons.

In 1991, after his discharge, Mr. Kurteshi got engaged in the Council for the Defense of Human Rights and Fundamental Freedoms – CDHRF, in Prishtina, as a publication editor. During 1992 – 1995 he was member of the leadership of the CDHRF and head of the Central Secretariat of the CDHRF, while as of 1995 – 1996 he was the Secretary General of the CDHRF.

Between 1992 and 1996, he actively participated in sessions of the Commission and Sub-Commission of the United Nations Organization (UN) for Human Rights in Geneva, also as co-author of certain Resolutions of the Commission regarding Kosovo.

In May 1995, his Yugoslav passport was confiscated at the airport of Prishtina, as he was coming back from working with the UN Commission for Human Rights in Geneva. Prosecuted by the Serbian regime at the time, Mr. Kurteshi left Kosovo in February 1996 and immigrated to Switzerland. In 1998, he started studying Political Sciences, Sociology, Economy and International Law at the University of Bern. From 2000/01 onwards, he studied Political Sciences, Sociology, Economy and International Law at the University of Zurich. In 2006, he achieved the title Master of Arts in Political Sciences.

Afterwards, he was actively involved in different relevant state institutions in Switzerland; from 1997-2001, he worked professionally at the Swiss Organization for Refugees (Schweizerische Flüchtlingshilfe SFH) as well as the Swiss State Television SF1. During 1999-2005, he worked and led different professional courses for the staff of the Swiss organizations for human rights and refugees SFH, HEKS, SAH, SRK.

During his stay in Switzerland, in the period 1982- 1983, he worked as editor of “Zëri i Kosovës”, as a body of MASRY. In the period 1981-1983 and 1996-2006, Mr. Kurteshi was involved in organizing the Albanian community in this state, by establishing cultural associations of Albanian immigrants in Switzerland (Zurich, Siebnen, Basel, Bern, Bad Ragaz, Buchs).

Mr. Kurteshi is author, co-author and editor of several different publications, analyses and reports. He has translated two books and has published in different languages (German–Albanian and vice versa).

Since 2003, he is a private lecturer at the Swiss Education Centre for Correctional Service Staff (Schweizerische Ausbildungszentrum für das Strafvollzugspersonal – SAZ) in Fribourg.

Mr. Kurteshi is fluent in several foreign languages such as: English, German, Serbian and has a basic knowledge of both the French and Italian languages.

2.3. Public Access to the Ombudsperson Institution

The Ombudsperson Institution receives complaints from the citizens claiming that their rights have been violated on a daily basis. Next to the main office in Prishtina, the OIK also established field offices in Gjilan, Peja, Mitrovica, Prizren and Graçanica with the aim of facilitating the access of Kosovo citizens to the OIK. The field office of the OIK in Mitrovica also established a sub-office in the northern part of the city. The main and field offices consist of professional staff which serves the citizens, responds to their requests and complaints, and also protects the rights that they claim have been violated.

In the main office in Prishtina, complaints of citizens are received from Monday to Thursday, between 10:00 and 14:00. Field offices receive complaints twice a week, on Mondays and Thursdays, between 10:00 and 14:00. In urgent cases, complainants may of course approach the Ombudsperson outside working hours.

The lawyers of the OIK regularly visit different municipalities, settlements and areas with a substantial non-Albanian population. Mindful that prisoners and detainees have limited access to institutions, officials of the Ombudsperson Institution pay frequent visits to prisons and detention centers all over Kosovo on a regular basis.

Since 2004, with the cooperation of the Kosovo Correctional Service and competent prison authorities in Kosovo, the OIK has installed mailboxes in visible places in all prisons and detention centers on the territory of the Republic of Kosovo, in order to communicate directly with prisoners. The mailboxes may only be opened by representatives of the OIK. Practice has proved that the mailboxes installed in the prisons and detention centers have helped many prisoners or detainees establish first contact with the Ombudsperson. Next to the mailboxes, OIK representatives also distributes forms and brochures in all detention centers with information on the mandate of the Ombudsperson Institution, so that detainees and prisoners may be informed about their rights as well as the possibilities of lodging a complaint or request. One such mailbox has also been established in the Social Care Facility in Shtime, to facilitate access of the patients of this Facility to the Ombudsperson Institution. This Facility is also visited by a lawyer from the Ombudsperson Institution once a month.

In order to offer better access to citizens, and with the aim of being closer to those citizens who would like to speak to officials of the OIK, the Ombudsperson or his deputies hold so-called Open Days in many cities in Kosovo. In this case, complainants may meet the Ombudsperson in person or one of his deputies. These Open Days take place once a month, in all large centers in Kosovo. The Ombudsperson is always willing to visit citizens of other cities or towns in Kosovo, if they have submitted an advance request for such a meeting.

Field offices inform the citizens of the respective cities about open days by posting the dates in the respective municipality, as well as through announcements in the local media and a list of dates published on the Ombudsperson Institution's website.

Another easier access to the OIK is via e-mails, in the majority of cases this is used to receive complaints from Kosovans living abroad. There is also a hotline for urgent cases at the Ombudsperson Institution's headquarters that leads directly into the main lawyers' office without passing through the Ombudsperson Institution's switchboard.

3. The fundamental human rights and freedoms guaranteed by the Constitution of Republic of Kosovo

3.1. Human Dignity

In the highest legal act in Kosovo, Article 23 stipulates the protection of human dignity as a human right, which shall be inviolable and the basis for all fundamental human rights and freedoms.

The Universal Declaration of Human Rights in its preamble declares that: "the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". From this, one can clearly see the embryonic connection between human rights and human dignity. There can be no protection of rights without respect for dignity and vice versa.

In a narrow understanding of the term, human dignity is defined as the entirety of moral values of one individual. In a broader understanding, human dignity is seen as an inner value and as a right to be respected, which belongs to each human from its own being. As an inseparable part of human personality, dignity belongs to every person. It is inherent and inalienable. Guaranteeing human dignity imposes mutual obligations on the state. These obligations are not only the obligation to respect each individual by refraining from any dangerous action, but also the obligation to take any action to oppose violations of the human dignity by third persons.

The Ombudsperson Institution, in the course of investigating complaints of alleged human rights violations, has also dealt with cases involving the protection of human dignity, such as the case of the residents of Milaj village in the Prizren region.

Ever since the end of the war to the date of this report, the residents of the village Milaj have been forced to look for shelter elsewhere, since they were not able to return to their previous habitation since their village had been mined. With regard to this issue, the Ombudsperson, in August 2009, based on constitutional provisions that protect the human dignity as well as provisions protecting the right to property, sent a letter to the Government of the Republic of

Kosovo, respectively the Prime Minister, and asked him to find a dignified solution for former residents of this village.

The protection of dignity, due to its delicate nature as a fundamental right and as right of a more general character, remains a challenge for the authorities of the Republic of Kosovo. The Ombudsperson considers that it is necessary to increase the responsibility of this structure, which constitutes the front line of legal protection and which should be in the first place for the protection of fundamental rights. The Ombudsperson also considers it necessary to continue to conduct trainings and enhance the promotion of human rights.

One category of persons considered to be potentially threatened are prisoners and detainees, whom the OIK received complaints from regarding the right to medical treatment as well as protection from mistreatment. These cases are linked with the right to the protection of dignity. With regard to these cases, the OIK has sent a letter and provided concrete recommendations to the Kosovo Correctional Service, who have demonstrated an effective willingness to implement the recommendations given.

The Ombudsperson considers that this right constitutes the foundation of all rights and is a necessary precondition for Kosovo public authorities to respect and protect other rights.

The OIK considers that the issue of adopting the Additional Protocol of the United Nations Convention for the Protection against Torture will mark an important step for Kosovo in this direction. This would involve a mandate for the regular inspection of jails, detention centers and hospitals in which persons with mental disabilities are kept. Until now, a considerable number of states in the region have created this mechanism and it is already functional.

3.2. Equality before the law

The legal system in Kosovo ensures to all its citizens equality before the law and the right to equal legal protection, without discrimination (Article 24, CRK).

The principles of equal legal protection do not prevent putting in place necessary measures for the protection and advancement of the individual and group rights for those who are in unequal positions. Such measures will be implemented until the purpose of their existence has been fulfilled.

Today, the principle that all people are equal regardless of their individual differences is understood as an ethical imperative of every society and every democratic state that is based on the principle of the rule of law. Nowadays, injustice towards any person can no longer be justified, same as a preference towards any one person for whichever reason or based on whichever grounds. Discrimination is forbidden by law, not wanted socially, and not accepted morally.

The principle of equality is expressed as the principle of non-discrimination between people. In this context, the European Convention on Human Rights is especially important, which forbids discrimination based on any potential grounds in Article 14. This principle is also

embodied in the current legislation in Kosovo, which regulates issues dealing with allegations of discrimination in a special way. There exists a good legal framework which, by respecting the principles of equality, creates clear rules on the prohibition of discrimination.

In practice, the Anti-Discrimination Law is not implemented sufficiently or effectively. All this is happening, among other reasons, due to the lack of knowledge of the people in general concerning the possibilities offered by this law for the protection from discrimination, as well as the law's foreseen protection mechanisms. This creates a situation where the courts will not decide on any case where there were allegations of discrimination, until today. The only exception to this rule is the District Court in Gjilan and the Municipal Court in Peja, which has only one pending case. Regardless of some initiatives from the government of Kosovo to promote the Anti-Discrimination Law, it is evident that the general population is still not sufficiently informed about this legal mechanism. Therefore, the Government of Kosovo should continue to organize campaigns with the aim of making the general population aware of the importance of the Law and the respective mechanisms that offer protection in alleged cases of discrimination.

As mentioned in previous reports, the Law on Anti-Discrimination, in its Article 10, foresees that next to the local courts, the OIK is the authorized body to receive and investigate complaints involving allegations of discrimination from public authorities as well as the private sector. Throughout this year, the Non-Discrimination Team (NDT) within the OIK has received a number of complaints, where the complainants allege that they are victims of discrimination. In this context, the Ombudsperson has initiated and also conducted investigations *ex officio* regarding suspicions of existing discrimination in the Kosovan society.

The OIK published a report following the complaint of a group of complainants from the Faculty of Medicine, Dentistry Branch, against the Rectorate of the University of Prishtina, for having an age limit in extending the work contracts of assistant professors in the Faculty of Dentistry. However, to this day, there has not been a response to the recommendations made in that report.

The OIK, on 9 February 2009, published another report regarding the discrimination of Albanian employees compared to Serbian employees, by UNMIK, for the payment of pensions and salaries in the company "Trepça". Also, the NDT investigated a considerable number of complaints that were about discrimination in property issues as well as the right to use official languages.

Discrimination in property still continues to be a very sensitive problem in Kosovo. There were cases where many members of the Albanian population of Kosovo, before 1999, as a consequence of discrimination by the regime in power then, were made to leave their jobs and lost their rights to their apartments. The situation of these cases remains the same even after the cases were investigated by the former Housing and Property Directorate, respectively the Kosovo Property Agency. The above-mentioned agency was created exclusively to investigate property claims for the period 1989-1999. The lack of mandate of the courts for such cases has created a chaos in solving problems dealing with property

issues. In some cases, the decisions of this agency have even enhanced the discrimination, thereby often raising concerns of partiality and arbitrariness in the decision-making process.

The discrimination of the citizens of Kosovo by the Kosovo Property Agency is reflected in the use of double standards, especially in executing the decisions of the Commission concerning eviction from the property and in the implementation of the rental scheme. This is proven in many cases concerning the non-execution of the Commission's decisions for the properties of Albanian citizens, which lie in the northern part of Mitrovica, while at the same time obligations towards the owners whose properties are under the administration of KPA are not being fulfilled.

The phenomenon of discrimination extends too many other fields. This becomes especially apparent with regard to groups of people who are in a particularly vulnerable position. Persons with physical disabilities in the majority of cases live in poverty and are isolated from social, economical and political life. The position of persons with physical disabilities requires special attention of the society, especially in the field of protection and health care, education, and employment, which would enable them to realize their rights and offer them equal opportunities for active life in society, meaning full integration into society. Equal opportunities should necessarily be offered to persons with physical disabilities, in other words free access to the environment in which they live. Today, they do not have access to many private and public buildings, as well as information and communication. The category of persons with physical hearing and speaking disabilities face the problem of communicating with all public institutions. The OIK, since January 2008, has raised this issue with the Ministry of Public Services, but has so far not received any answer in that regard. The OIK notes that also in this aspect there do not appear to have been any improvements.

Almost in every city in Kosovo one can notice advancement in building infrastructure, so that the persons benefiting from support mechanisms could be independent in their movements. They still do not have the possibility of moving freely in public institutions. Only the capital city of Kosovo, Prishtina, has made some small efforts in this respect. Some of the streets in Prishtina are, to a certain extent, suitable for the movement of the persons with support mechanisms. But there is one concerning fact in this - in the places where the lines for the movement of the persons with support mechanisms were built, they were not built according to standards, so that this group of persons cannot move there without an escort. The free movement of persons of this category is also violated in schools and hospitals, places that are frequented by them very much.

The field of employment of persons with physical disabilities continues to remain without any perspective. The government is still failing to take appropriate measures in order to develop specialized services for professional trainings for persons with physical disabilities who are looking for employment, or who want to change their current employment.

The conditions of families with children who have physical disabilities also remain of considerable concern, since in the majority of cases they do not receive any material support from the respective institutions. The Assembly of the Republic of Kosovo has approved the Law on the Material Support for the Families of the Persons with Physical Disabilities, but this law was never implemented, based on the argument that there is a lack of budget for its

implementation. If social services are in such conditions, there is a need of financial assistance to families with one or more family members with physical disabilities. This is especially the case where family members with physical disabilities are in need of support and care from another person. Such financial support would ensure benefits for families with family members who have physical disabilities and who are living in poverty.

When it comes to persons with mental disabilities, it still remains concerning that a Regulation on Criminal Procedure is not being implemented, which deals with acts committed by persons with mental disabilities. Also of concern is the non-implementation of court decisions, as well as the lack of appropriate institutions for the treatment and placement of this category of citizens.

Families who have members with mental disabilities are facing huge problems. Persons with mental disabilities are treated in the University Clinic Center of Kosovo (UCCK), but only if they are going through a crisis at that time. After such treatment, they are discharged and sent home, and this creates huge problems for the other family members, who in certain ways are endangered by them.

To evidence the discrimination and lack of care of the government for this category of persons, it is important to mention that even after some mental care institutions were built and opened in Kosovo, the Ministry of Health has been shutting them down since the beginning of 2009. The Ombudsperson has raised this issue with the Ministry of Health and has received the answer that such a situation was created due to a limited budget.

The Ministry of Labour and Social Welfare has failed in creating normal living conditions in nursing homes, by violating the criteria for accepting people as residents. In nursing homes, next to persons who fulfill the criteria for being residents of these homes, there also live persons with mental disabilities and who do not fulfill the age criteria, as the regulation provides for an age limit of residents. In this way, persons who fulfill the criteria for being in nursing homes are discriminated; they cannot lead a normal life because they are endangered by other mentally disabled residents. Moreover, such homes also house residents of a younger age who also have special needs.

In Kosovo, a huge amount of medicines are in use where the instructions on how to use them are not translated into the official language. This presents a danger to the population. These medicines are being taken by the citizens of Kosovo without the latter understanding their side effects, because the instructions on how to dose them are written in different languages, but not in the language understood by the majority of the population in Kosovo, the official language of Kosovo based on the Law on the Use of Official Languages in Kosovo. This obviously constitutes a violation of the Law by the public authorities themselves.

Discrimination is present in the field of work relations as well. The OIK has conducted investigations regarding the issue of discriminatory treatment of medical technicians of the Unit for Intensive Care in the Department of Neonatology in the Gynecological Clinic at the Regional Hospital in Prizren. Until 2002, the technicians in question were paid the same amount as midwives in the Department of Neonatology. After this year, they were paid less than midwives, because their work was evaluated with a lower number of points in

comparison to the evaluation points given for the work of midwives. This constitutes a different treatment of persons in the same situation, since this differentiation in evaluation was not applied to their colleagues who work in other centers such as those in Gjilan, Gjakovë, Pejë and Prishtinë.

The OIK sent recommendations to the Ministry of Justice on the issue of employees of the Kosovo Correctional Service, who claimed about having been discriminated in comparison to other employees of this service with regard to compensation for work-related dangers. Up to the date of the publication of this report, the OIK did not receive any answer from this Ministry.

In the field of employment, the OIK has mediated successfully in a case of employees of the Kosovo Special Prosecutor's Office, who during a strike requested that they be treated the same as other employees of prosecution and courts, respectively the same as other employees. After having contacted the Ministry of Justice, this issue was solved positively.

Kosovo citizens need proper legal mechanisms against discrimination, not only on paper and not only for the purpose of political rhetoric's. They should feel the effective impact of these legal instruments in their daily life. Human rights are not rights for tomorrow, but for today. And they should be treated that way by all public institutions.

3.3. Right to Life

The Right to Life (Article 25, CRK) is a fundamental right and the first condition for the existence of other rights. The core of this right is the fundamental right to life that is acquired with the birth of a person. Nowadays this right is acknowledged as such in all relevant international standards, which oblige states to guaranty its legal protection. This right excludes in an absolute manner the arbitrary deprivation of one's life.

The ECHR gives absolute power to the right to life. This right cannot be derogated even in extraordinary circumstances or situations of war. The convention establishes the general obligation of the state to legal protection of life. Article 2 par. 2 of ECHR determines the exceptions to this right, which according to ECHR are exhaustive and should be interpreted in a rigorous manner.

The legal system in Kosovo is in full compliance with the standards mentioned and so far it has embodied the spirit of this right in all legal instruments in Kosovo.

Apart from the substantive law, respectively the obligations that it places on the state for its protection even in specific circumstances, and when making exception to this Article, this right also foresees the procedural law, respectively the obligation of state to conduct effective investigations in cases of violation of this right, either from the public authorities or individuals.

So far OI did not receive any complaint in relation to the substantive aspects of the right to life. While in the issues of procedural aspects, evident problems were observed. OI has

received several complaints for violation of the right to life from victim's relatives. The complaints are in relation to failure of public authorities to conduct adequate investigations in order to shed light to cases.

OI considers that for an investigation to be in line with the requirements of ECHR, regarding this right, it should be continuous and effective. Otherwise, every long period of inactivity in relation to every individual case could be an indicator of a failure to continue efficient investigations with the aim of identifying the perpetrators of the offence. In this regard, cases received by OI have often proved that the contentions of parties are founded, respectively that there is violation of procedural aspects of the procedural law by the public authorities.

OI observes that in the Republic of Kosovo, the applicants that were affected by the lack of effective investigations of responsible authorities, do not have a suitable and effective remedy, which would enable them to acquire compensation for the damage and hardship they suffered. Therefore, it is necessary for the lawmakers in Kosovo to establish such a legal mechanism, which would enable the applicants to have a suitable legal remedy, for realisation of compensation for the damage suffered.

Until the establishment of such a legal mechanism, the legal system in the Republic of Kosovo will continue to be noncompliant not only with internationally recognised standards for right to life, but also the commitments enshrined in the highest legal act in the country.

3.4. Right to Personal Integrity

Respect for personal, physical and psychological integrity of an individual is one of the fundamental aspects of human rights protection. Personal integrity is conceived as invulnerability or inviolability of the human body, is the sense of respect for its physical and psychological values.

The right to personal integrity is guaranteed by Article 26 of the Constitution of the Republic of Kosovo, which explicitly states that every person enjoys the right to have his/her physical and psychological integrity respected, including the right to make decisions in relation to reproduction, the right to have control over her/his body, the right not to undergo medical treatment against his/her will, and the right not to participate in medical or scientific experiments without her/his prior consent.

Also, the right to reproduction is regulated by the Law No.02/L-76 on Reproductive Health, which protects reproductive rights of individuals and couples, by guaranteeing them the right to make a decision on realization of reproductive rights according to their free wish and interest without any discrimination, enforcement and violence.

Furthermore, the right not to undergo medical treatment against a person's will is regulated by the Law no. 2004/38 on Rights and Responsibilities of Kosovo Residents in the Health Care System. The Law explicitly requires that during the course of medical treatment, the citizen's human dignity, privacy, personal integrity and religious beliefs shall be respected. However, if not stipulated otherwise by legal provisions, the Law also envisages the

possibility of necessary interventions during medical treatment even without the citizen's consent.

It is worth mentioning that in countries where case-law prevails, though the right to personal integrity of an individual is explicitly recognized, as is the right to have control over her/his body and the right not to undergo medical treatment against his/her will, in cases when an individual refuses to undergo medical treatment, or in cases when an individual convokes the right of control over his/her, judges have the authority to decide on necessary medical action, contrary to the individual's wish, while having in mind his/her best interest.

During the reporting period, the OI received 15 (fifteen) complaints relating to inadequate medical treatment. One of the complaints, registered under A. nr.107/2009, involved inadequate medical treatment of the complainant by a specialist doctor of the Gynecologic Ward of the Regional Hospital in Prizren. Furthermore, the complainant claimed that she was urgently instructed to the University Clinical Center of Kosovo (hereinafter UCCK) because her deteriorating health and the lack of necessary medical equipment to treat her in the Hospital were she was admitted. However, despite her serious health situation, she was not provided with transportation to the UCCK. In order to investigate the case, the OI addressed a letter to the Chief Health Inspector at the Ministry of Health. From the response, it was clear that the case was reviewed by the Ministry of Health Inspectorate and a special report was made. The report included the Inspectorate's findings and recommendations regarding the case. The Inspectorate's recommendations regarding the case are as follows: Doctor responsible for the case must report before the Disciplinary Board for having mixed private with public health service; those responsible for not enabling the patient's transportation to UCCK must appear before the Disciplinary Board. The rest of the recommendations were more general, encouraging more efficient health services, professional and humane care for all the patients without discrimination. The OI considers that, in order to increase the efficiency of healthcare services in the Republic of Kosovo, the Inspectorate's recommendations must be distributed to the responsible authorities of all regional hospitals.

3.5. Prohibition of Torture, Cruel, Inhuman and Degrading Treatment

Respect for physical and mental integrity constitutes the fundament of human rights and freedoms. Prohibition of torture or inhuman and degrading actions was embodied in the international human rights acts, including the European Convention on Human Rights, which also forms a part of legal system of the Republic of Kosovo.

Prohibition of torture, in itself is not only a prohibition enshrined in international conventions, but it also forms a part of international customary law, and is considered to be *ius cogens*, norm, implementation of which can not be derogated or implemented with reservation irrespectively of the circumstances. In this spirit, this basic right was integrated into the Constitution of the Republic of Kosovo (Article 27), which gives an absolute character to the prohibition, without any restriction in the spatial and time aspect.

The term torture implies every act through which a person is intentionally subjected to great physical or mental pain or suffering, with the aim of getting statement or information from him/her or a third person which may lead to his/her sentencing for an offence that he/she has committed or is suspected to have committed, or intimidation or coercion of him/her or a third person.

The action is characterised by premeditated purpose, to inflict great pain or suffering to another person, and by the intensity of pain or suffering caused, what distinguish this action from other forms of ill-treatment. This intensity is conditioned by the following factors: timeframe, physical and mental effects, gender and health condition of the victim and the manner and method of execution of this act.

With the aim of prevention of human rights violation situations, OI has continued monitoring of holding cells where persons who are deprived from liberty are held. During the regular visits at detention centres, correctional centres and prisons, the representatives of ombudsperson met personally with inmates, arrested and detained persons, but also received written complaints.

Apart from these visits, the Ombudsperson representative conducted a comprehensive monitoring in the Detention Centre in Pejë/Pec, Correctional Centre in Lipjan/Lipljan and Dubrava Prison. In the latter institution, the OI representative noticed technical deficiencies which are not in line with the required international standards, such as: lack of literature in the libraries and bad conditions in bathrooms. The need for renovation of the entire premises of Dubrava Prison is also evident.

During the reporting period, OI received complaints related to allegations of abuse of a juvenile at the Correctional Centre in Lipjan/Lipljan. According to the allegations of the complainant R.K, mother of juvenile D.K, on 13 February 2008, at about 15:00 hours some juveniles placed at the Correctional Centre in Lipjan/Lipljan, had a quarrel with some officers of this institution. They requested to be allowed to play football at certain time as approved by the management of this Centre. Again according to the allegations of the complainant several correctional officers called the Juvenile D.K in one of their offices where he was abused. As a consequence of such abuse he suffered bodily injuries, bruises in his left cheek and around his neck. Following the investigations conducted by OI, it was found that there was physical abuse, namely violation of Article 27 of the Constitution of Kosovo and Article 3 of the European Convention on Human Rights and Fundamental Freedoms. It was also found that there were no effective and independent investigations in relation to abuse allegations, which would allow for identification and sentencing of those who were responsible for this violation.

During the reporting period, OI has received complaints on abuses of citizens by members of the Kosovo Police. In this regard, the Ombudsperson contacted the Kosovo Police Inspectorate (KPI), requesting from them to initiate investigations against members of the Kosovo Police involved in such cases.

Based on the Law No. 03/L-036, KPI is an executive agency within the auspices of Ministry of Internal Affairs (MIA), independent from the Kosovo Police. Based on the respective Law,

KPI has a mandate to receive complaints and determine the nature of alleged violation. In case of a grievous disciplinary violation, KPI initiates an investigation within 14 days (Article 22 p 4). In a case of light disciplinary violation, KPI registers the details of the complaint and sends them to the Internal Investigation Unit of the Police (Article 22. p 5). The complainant is also notified on the initiation of investigations by this unit within 14 days as determined by this Law.

Pursuant to this law the Ombudsperson initiated *ex officio* Investigations regarding the abuse of two children aged, 11 respectively 14, by the members of Kosovo Police. According to the statements of two officials from the Ombudsperson Institution, who were eye witnesses of the incident that occurred on 4 August 2009, these children were abused physically by several members of the Bike Unit of the Kosovo Police. On 13 August 2009, the Ombudsperson addressed a letter to the Director of Investigation Department in KPI, requesting from him to initiate investigation regarding the incident, and find those who exercised violence against the children and notify him about the result of the investigation. On 27 August 2009, the Ombudsperson received a letter from the Director of investigation department in KPI, whereby he was notified on the case. The Department had undertaken the necessary investigative actions, in compliance with the applicable legislation. The letter also requested from the Ombudsperson Institution officials who were witnesses to the incident, to assist in relation to details of the case through depositing their statements on the case, as their testimony was considered as central moment for shedding light to the case. On 30 September 2009, the two Ombudsperson Institution officials gave their statements before the Inspectorate in relation to the incident of 4 of August 2009. Until now the Ombudsperson Institution was still not notified about the results of investigations from KPI in relation to this case.

In several cases referred to the Ombudsperson, KPI initiated investigations and following the termination thereof, it found that no disciplinary violation by the Kosovo Police officers was observed, or it found that there was light disciplinary violation and referred the cases to the Police Internal Investigation Unit for further investigations.

The Ombudsperson, reminds that the case law of the European Court of Human Rights instructs that, investigation of allegations of abuse should lead to identification and punishment of people who are responsible for violation of Article 3 of the Convention.

In order for the allegations of abuse by the police to be effective, the responsible persons for carrying out the investigations should be *de jure* and *de facto* (legally and practically) independent and impartial. The Ombudsperson has observed that preliminary investigations initiated by KPI, were conducted by an executive agency within MIA. These are internal investigations, thus they can not be considered as completely independent, and in line with requirements of ECHR.

In several cases of allegation of abuse and infliction of bodily injuries against citizens, the Ombudsperson requested from competent courts and prosecution authorities to provide information regarding actions taken by these institutions in reviewing criminal reports against members of Kosovo Police. OI observed the same prolongation of judicial proceedings like in other cases.

3.6. Prohibition of Slavery and Forced Labour

Article 28 of the Constitution of the Republic of Kosovo guarantees to each of its citizen the right to be free of slavery or servitude. Also, it further states that no one shall be required to perform forced labour, and that trafficking in persons is forbidden.

Within the legal instruments for the protection of human rights, the European Convention for the protection of human rights and freedoms, amended by Protocol No. 11, in its Article 4 envisages the prohibition of slavery and forced labour. According to the Article “no one shall be held in slavery or servitude, and no one shall be required to perform forced or compulsory labour.”

In its interpretation, the term “forced labour” shall not mean any work or service established by law for persons sentenced with a final court decision, during the ordinary course of detention or in state of emergency, declared according to the rules established by the Constitution.

Point 3 of the said Article 28 of the Constitution of Kosovo also forbids the trafficking in human beings, as a modern form of slavery and forced labour. In this context, Article 8 of the International Covenant on Civil and Political Rights (ICCPR) states “no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited”, and “no one shall be held in servitude.”

Considering that the trafficking in human beings constitutes a violation of human rights, violation of the dignity and integrity of human beings, and considering that the trafficking in human beings can result in slavery for the victims, in 2005 the Council of Europe ratified in Warsaw the Convention on Action against Trafficking in Human Beings. The purposes of the Convention are: a) to prevent and combat trafficking in human beings, while guaranteeing gender equality; b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution; c) to promote international cooperation on action against trafficking in human beings.

This Convention applies to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organized crime.

In this context, the fact that the phenomenon of trafficking in human beings, whether in national or transnational basis, is manifested in Kosovo can not be denied. Aimed efforts in different directions were made by the institutions of Kosovo in preventing and combating this phenomenon, through prosecution and punishment of perpetrators of the crime of trafficking in persons and related criminal acts, and through assistance and protection for victims of trafficking

Regulation No. 2001/4 “on the Prohibition in Trafficking in Persons in Kosovo”, followed by the Administrative Direction for the implementation of the said regulation, as well as the promulgation of the Criminal Code of Kosovo, which deals with the issue of trafficking in persons in its Article 139, all contain sufficient elements meant to prevent and combat

trafficking in human beings, and have thus established a comprehensive legal basis on how to treat and combat the trafficking in human beings in Kosovo.

Also, with the intention of preventing and combating the phenomena of trafficking in human beings, the Government of Kosovo, namely the Ministry of Internal Affairs appointed a National Anti-trafficking Coordinator in April 2008. Whereas, in July 2008 it approved and started with the implementation of the 2008-2011 National Strategy and Action Plan Against the Trafficking in Human Beings, as well as the State Strategy of the Republic of Kosovo Against Organized Crime and Action Plan for 2009-2012. Both documents focus in the prevention and combat of forms of organized crime, related to narcotics, trafficking in human beings and terrorism.

The prohibition of slavery or servitude, of compulsory and forced labour and of trafficking are considered as absolutely guaranteed rights, which can not be derogated under any circumstances. During the reporting period, the Ombudsperson Institution has not received any complaints regarding slavery and forced labour of any form, whether national or transnational. In this context, to this date Kosovo is in full compliance with the European Court of Human Rights case-law, which hasn't found or established a violation of this right.

The Ombudsperson encourages the institutions of the Republic of Kosovo, especially the relevant ministries, whose scope of activities is somehow related to the prevention and combat of the phenomenon of trafficking in human beings, to rigorously implement the strategy and action plan for the suppression of this phenomenon.

3.7. The right to liberty and security

This right guaranteed in Article 5 of ECHR, was transposed in all its philosophical and semantic content, without any change, into Article 29 of the Constitution of the Republic of Kosovo, and it embodies one of the key elements for protection of human rights of an individual. Personal freedom is a basic condition for development of a free and democratic society with free individuals, which shall be guaranteed to everyone. Deprivation of personal liberty can infringe other basic human rights directly, and it can especially bring a person in a position which may expose him/her to risk of humiliy "torture, inhuman, cruel and degrading treatment."

In several of its decisions, ECHR emphasised the importance of the right to liberty and security, by giving special emphasis to the protection of an individual from arbitrary deprivation of liberty. The Constitution of the Republic of Kosovo embraces this spirit as well, by guaranteeing a judicial control over the actions of deprivation of liberty, with defined responsibilities of authorities for such actions.

The Law No. 03/L-003 for amendment of the Criminal Procedure Code (CPC) No. 2003/26, adopted by the Assembly of the Republic of Kosovo on 6 November 2008, amends Article 212 paragraph 1 sub par 4 of CPCK, which had previously foreseen that "police detention can not exceed seventy-two hours (72 hours) from the moment of arrest", with this amendment,

the police detention period is reduced to forty-eight hours (48 hours). When this period elapses, the police shall release the detained person except in cases when the pre-trial judge orders detention on remand.

Article 283 paragraphs 3 of CPCK, guarantees the right of every person who is subjected to detention measure to appeal such a decision, and have his appeal reviewed within 48 hours. In this regard, there were cases when the legally foreseen deadlines were exceeded by competent courts.

Article 29 paragraph 5 guarantees that every person who “is detained or arrested in contradiction to the provisions of this Article...” has the right to compensation “in a manner foreseen by law”. Kosovo Judicial Council (KJC) issued a decision on general criteria for compensation of damage for persons who are punished or arrested for no reason, through which it has determined the modalities for realisation of the right to material compensation and the lost profit, for persons punished without a reason. In Section 9 of this decision, KJC foresees that the Department for Budget and Finance within KJC Secretariat is obliged to execute respective amounts for compensation of damage, to parties that file claims, within a period of 15 to 30 days from the day of submission of the documents for claiming compensation.

In the past there were many delays in this regard, justification being that there were no assets for execution of payments. During the reporting period, OI did not receive any complaint regarding the delays in compensation of damage.

3.8. Rights of accused persons

The rights of accused persons in Kosovo are guaranteed in compliance with international human rights instruments and domestic legislation. Both the Constitution of the Republic of Kosovo (Article 30) and Article 6 of ECHR, guaranty the right of every person to be heard in a fair and public hearing by an independent and impartial court.

Both these key documents, with all the safeguards for transparency, pay special attention to the dignity of the accused. Although they require that judicial decisions are taken publically, in specific cases the presence in the courtroom may be restricted to the press and public during the entire process or a part of it. The lawmakers in this took two important factors into consideration. The first is the interest of public morale, public peace and order and national security in a democratic society. The second is protection of private life of parties in the procedure, especially the interest of juveniles at the level that is deemed necessary by the court, in specific circumstances, when publicity would harm the interests of the individual and justice.

The above Provisions *inter alia* foresee that:

- Every person accused for violation of law, is presumed innocent until proven guilty.

- Every person charged with a criminal offence should be informed immediately, in a language that he/she understands about the charges against him/her, with all details related to facts in which the indictment was based. Such information should be offered within a reasonable time before the judicial proceedings, in order to enable the accused person to prepare his/her defence in an effective manner.

- The accused deprived of his/her liberty has the right to choose his/her legal representative or request free of charge legal assistance, when such assistance is available and receive visits by his legal representatives, with the aim of preparation of defence. He/she should especially be offered free of charge assistance of an interpreter in order to contact the administration and his defence. The discussions that are conducted between the defendant and his/her legal representative may be surveyed but not listened directly or indirectly by officials.

A suspect should not be obliged to incriminate himself, or plead guilty at no time and under no circumstance. A suspect has the right to remain silent at all times.

Every defendant should be offered practical assistance through a legal representative. In this regard, ECHR expressly emphasises that Article 6 of ECHR requires that guaranteed rights should be practical and effective and that authorities have an obligation to ensure that legal assistance provided is effective. ECHR considers an efficient defence by a counsel in a criminal matter, as one of the cornerstones of a fair trial. Therefore, in cases when the counsel deflects from his/her legal obligation and fails to offer effective representation, the authorities should oblige him/her to fulfil his/her obligations or replace/hem or her.

Based on the complaints of accused persons received by OI, it was observed that in most of the cases the defence counsels appointed *ex officio*, offer inefficient legal representation which is beneath the above mentioned standards. This is followed by serious consequences in the flow of the procedure and the court decisions themselves, in detriment of the accused.

Thus based on this fact, which is often observed in the courts of the Republic of Kosovo, the Ombudsperson requires from judicial authorities, to undertake all measures foreseen by the law in order to achieve the following:

-Defence councils always offer effective legal representation for their clients, irrespectively of the manner of their engagement – privately or *ex officio*.

-Undertake all legal measures in order to grant effective protection for the accused whenever a case of ineffective legal representation is observed.

3.9. Right to a fair and impartial trial

The Constitution of the Republic of Kosovo and the criminal legislation in relation to the right to a fair and impartial trial in general, has embodied elements from the most important international human rights instruments, especially from the ECHR [Article 6].

In the normative aspect, Article 31 of the Constitution of the Republic of Kosovo provides for an extensive and comprehensive interpretation of this right, in the light of Article 6 of ECHR,

by guaranteeing: the right to equal treatment before the court and other state authorities; the right to public hearing which can be restricted only in cases prescribed by law; the right to a trial within reasonable time frame; the right to presumption of innocence; the right to a legal representative and free of charge assistance etc.

The right to a fair and impartial trial is a wide concept, which evolved in time through ECHR case law, which ascertains that ECHR guarantees rights which are practical and effective, not theoretic. Thus, it is not sufficient to guarantee these rights only formally, but they should be ensured in such a manner that enables their implementation in practice for everyone.

During this reporting period, OI has received a considerable number of citizens' complaints and it opened 242 cases for investigation related to contentions on violations of the right to a fair trial, especially the right to a trial within reasonable time.

In most of the above-mentioned complaints, citizens complain about excessive length of judicial proceedings and non-execution of judicial decisions. In all these cases, in which such violations were noted, the Ombudsperson opened investigations and requested for information from the courts of different levels, in relation to actions undertaken to resolve these issues.

From the responses received by different courts in Kosovo, the Ombudsperson has observed that the judiciary of Kosovo is facing with a huge backlog of pending cases. It can specifically be assessed that the excessive length and non-execution of judicial decisions is especially prevalent in property cases, which have been accumulated over the years and as a consequence many cases remain pending and unresolved for years.

The Ombudsperson has also observed that lack of sufficient number of judges, lack of material motivation in their part namely low wages, lack of support staff in granting execution of judicial decisions and poor infrastructure, are the main factors that are influencing the increase in number of pending cases in Kosovo courts. However, one should also mention the cases of corruptive conduct of judges, which was witnessed by suspensions and arrests of judges of different levels, in recent years in Kosovo. This phenomenon, not only destroys the credibility of citizens in Kosovo Justice, but also destroys the fundamentals of the state of Kosovo, but at the same time it constitutes one of the most grievous violations of human rights.

Article 6 (1) of ECHR guarantees the right to a fair and public trial within a reasonable time, which is also sanctioned by law in the Republic of Kosovo. The main goal of this legal principle is protection of individuals from extensive length of proceedings and elimination of uncertainties, which may result in loss of public's credibility in courts, with a risk of taking up justice in their own hands.

The applicable legal provisions in the Republic of Kosovo and the international instruments which are directly applicable in Kosovo put a legal obligation over the state authorities, in appointing a sufficient number of judges and court support staff, so that justice can be served without delays which would endanger its efficiency and credibility.

Starting from the current situation of justice in Kosovo, in both its qualitative and quantitative aspect, one can ascertain that, ECHR requirement for national authorities to organise their

legal systems in that way so that they function in line with human rights standards, was still not met by the Republic of Kosovo, despite declarations and expression of good will.

Thus, OI deems that, creation of an independent judicial system, and its empowerment, is the best guarantee for rule of law in Kosovo. A judicial system reform in qualitative and quantitative aspect, an evident improvement of the social, institutional and material position of judiciary, is indispensable and inevitable. The judges of Kosovo should enjoy institutional and material security in order to be able to exercise their legal obligation properly and impartially from any external influence. The judges should be offered the possibility to make qualitative and independent interpretations so as to regain the trust of citizens in the judiciary of Kosovo, which represents one of the three cornerstones for functioning of a state ruled by law and democracy.

3.10. Right to Legal Remedies

The Constitution of the Republic of Kosovo and the criminal, civil and administrative legislation in general, guarantee to the citizen the possibility to use legal remedies, as provided by the law, against administrative and court decisions which violate the rights and interests of citizens (Article 32 of the Constitution of the Republic of Kosovo).

This provision is not only a requirement of international human rights legal instruments, but also a rule set by the European Court of Human Rights in Strasbourg which requires that, prior to addressing this Court, complainants must first exhaust all legal remedies set and guaranteed by the domestic legal system, following which they can address this Court for alleged violations. Citizens must follow a similar procedure of exhaustion of legal remedies prior to complaining before the Constitutional Court of the Republic of Kosovo regarding requests for legal protection.

All citizens can use legal remedies to challenge any decision issued by the state public authorities. The use of a legal remedy presents a good possibility for public authorities to once again review their decision, correct their mistakes or possible omissions, which might have happened during different procedures. This prevents injustice, abuse of power, provides for decisions based on law and guarantees the principle of rule of law.

Regarding the use of legal remedies, the legislation in Kosovo is quite explicit and there are no problems or uncertainties making it difficult for the citizens to understand. The problem lies with the procedure that takes place after the use of legal remedies, which is followed by lengthy court or administrative proceedings by respective public authorities.

In criminal court proceedings, the statutory time limit to review a complaint against an arrest, or a decision to impose or continue the detention is provided by law. This is not applicable for complaints submitted against first or second instance court decisions. The established legal remedies to challenge detention are in line with *Habeus Corpus Act* of Article 5 paragraph 4 of the European Convention on Human Rights.

The right to a fair trial within a reasonable period of time is guaranteed by Article 6 § 1 of the European Convention on Human Rights and Article 10 of the Law on Contested Procedure. Therefore, this right must be guaranteed by the courts in all court proceedings and at all levels. Administering justice within a reasonable period of time creates stability and contributes to the rule of law.

Pursuant to the Law on Administrative Procedure, the statutory time limit to review and issue a decision in administrative cases, after the use of legal remedy, is 30 days upon submission of appeal. Also, the problem in this procedure lies with the statutory time limit established by law, namely failure to respect the statutory time limit, though the procedure envisages that, if there is no decision on the appeal by the competent administrative body within 30 days, in compliance with the applicable Law on Administrative Procedure, parties have the right to address the court.

During the reporting period, the OI received a considerable number of complaints involving lengthy court or administrative proceedings in appeals submitted by the citizens of all the regions of the Republic of Kosovo.

3.11. The principle of legality and proportionality in criminal cases

The principle that there may be no penal act nor punishment, except if foreseen by law, constitutes the foundation of justice and as such is incorporated in the Constitution and Criminal Law of Kosovo (Article 33).

The arguments supporting the implementation of this principle are evident, as in free and democratic societies it is fundamental that citizens be able to, as much as possible, foresee the consequences of their behavior. This principle has a double purpose. On the one hand, notifying citizens about actions allowed and forbidden by law, the latter of which should be avoided, and on the other hand, the express and clear limitation through legal standards of the discretionary rights of the ones who were trusted with the implementation of the law.

The European Convention on Human Rights, in Article 15 par.2, treats the dictum *nullum crimen, nulla poena sine lege* as an absolute principle, and forbids states to derogate from it under any circumstances, not only in extraordinary circumstances, but in times of war as well. The absolute character of this norm is the strongest argument to express the international consensus on the importance of this principle as a foundation of human rights. This principle was also embodied as a basic principle in all international instruments implemented in Kosovo

The OIK is encouraged by the fact that the principle *nullum crimen, nulla poena sine lege* is adequately recognized in the legal system and during its practical implementation in Kosovo. Up to the date of this report, the OIK had not received any complaints with regard to the violation of this principle.

3.12. Right not to be tried twice for the same criminal offence

The principle, *ne bis in idem*, respectively that no person shall be tried twice for the same offence, is a general principle that is included in many legal systems of different places. In the legal system of the Republic of Kosovo, this principle is codified as a constitutional right (Article 34).

The incorporation of this important principle in the Constitution of Kosovo is also in full accordance with the drift of developments in the EU, as determined in the Amsterdam Treaty. According to this treaty, classical inter-state cooperation on criminal issues shall be replaced with court cooperation and cooperation with other stakeholders in the criminal system, and mutual and direct information-sharing of court decisions.

This general principle is also included in some of the international conventions applicable in Kosovo, such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights

Up to the date of this report, the OIK has not received any complaints with regard to the violation of this principle.

3.13. Freedom of Movement

Freedom of movement is one of fundamental rights and freedoms guaranteed by the European Convention on Human Rights, stipulating in Article 2, Protocol 4 as follows:

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 other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety for the maintenance of public order, for the prevention of crime, for the protection of rights and freedoms of others.

These rights may be restricted in some areas, but only in accordance with the law and public interest of the democratic society.

Regarding the specific implementation and possible violation of the right to freedom of movement stipulated by Article 35 of Kosovo Constitution, Ombudsperson Institution, in this reporting period, recorded no cases of violation of this Article as literally stipulated in this Article of the Constitution. However, the specificity of the situation and 1999 conflict in Kosovo created a different perspective of freedom of movement within Kosovo for the members of certain ethnic communities living in Kosovo, whose situation on the ground is rather complex and specific in relation to Article 35 of the Constitution.

Kosovo Government and civil service institutions competent for full implementation of this Constitutional Article need to provide for these rights and have an explicit obligation to enable Kosovo citizens, without any discrimination and restrictions, the security of freedom of movement. The competent institutions have the duty to undertake all measures in order to

provide fully the freedom of movement to all Kosovo residents. The international standards, but also national legal and constitutional legislation dealing with this issue are on the highest level, whereas the situation on ground does not correspond completely and in all parts of the territory of Republic of Kosovo to the guarantees provided in the previously mentioned legal regulations.

However, despite the very fragile situation prevailing in Kosovo, it must be said that the freedom of movement, for Serbian and Roma community members, who were affected the most by the movement restrictions, improved both in comparison to the previous years and to the previous reporting period. The improvement of freedom of movement is noticeable in the Regions of Prishtine/Prištine, Gjilan/Gnjilana and largely in the Region of Prizren, whereas the same cannot be said for the Regions of Mitrovica and Peja/Peć and the territory covering the Municipalities of Gjakova/Đakovica, Kline/Klina, Decan/Dečani, and for the municipality of Suhareke/Suva reka belonging to the Prizren Region. In these parts of Kosovo, there is still no full freedom of movement for the members of the Serbian and Roma communities, and the situation is specifically severe in relation to the lack of freedom of movement for returnees in these areas whose freedom of movement is restricted to only several kilometers in diameter. Regarding the Mitrovica Region, the situation is the most complex, Albanians cannot move north from the River Ibar, whereas Serbs and other minority communities living in Northern Kosovo cannot move freely south of this river.

There is no free movement towards religious orthodox sites, to cemeteries and property that is either illegally occupied by third persons or demolished. This implies that the lack of freedom of movement jeopardizes the exercise of majority of guaranteed fundamental human rights and freedoms.

There is still no public traffic and transportation, both urban and inter-urban, for all Kosovo citizens. As mentioned in previous reports of the Ombudsperson Institution, the public transportation is still a very complex issue and a great obstacle for Serb and Roma community members. Urban and inter-urban transportation is still not available to the members of these two communities and even though the public transportation passes every day through the places inhabited mainly by the members of these two communities, they do not stop there nor accept any passengers. Considering the lack of public transportation for the members of Serbian and Roma communities, it must be noted that this problem excludes the North of Kosovo where members of Roma and Serbian communities do not face this issue but rather Albanian and other communities for whom it is not available and secure. The only remaining means of transportation are private transport arrangements and minibuses transporting passengers within the enclaves in the Central part of Kosovo, and also from the Central to the Northern part of Kosovo. The only form of support in terms of public transportation provided by the Kosovo Government to minority communities in Central Kosovo is the special humanitarian transport operating since January 2007. This type of transportation is used mainly by the members of the Serbian and Roma communities in order to move between the villages mainly inhabited by the members of these communities. Regarding the Turkish, Bosniac, Gorani, Ashkali and Egyptian communities, in general

terms, these communities face no obstacles to move in their places of residence and they freely use public transportation operating in the areas inhabited by these communities.

In terms of freedom of movement of all citizens on the whole territory of the Republic of Kosovo, it needs to be stressed that a large part of the issue in this field needs to be seen also from the perspective of the perception of fear that is sometimes completely unreal but still prevails in Kosovo. In certain parts of Kosovo, notwithstanding the fact that urban and inter-urban transportation are available to all without any differences, many do not use it out of fear. The mere circumstance that “this“ and “that“ transportation vehicle is “Albanian“ or “Serbian“, because the majority of passengers using the transportation provided are either “Albanians“ or “Serbs“, and never passengers on the route from A to B, is a kind of self-exclusion and restriction of freedom of movement and the opportunity to move. In relation to this, an objective opportunity to abuse these perceptions of fear by many companies involved in passenger transportation needs to be stressed, as a factor contributing to prolonging and in some parts even deteriorating such a situation. Such a negative use of the current situation will not contribute certainly to the improvement of the freedom of movement, but on the contrary, it will contribute to continuation of this negative trend, or moreover to its deterioration.

Therefore, the duty of all Republic of Kosovo institutions is to provide, as soon as possible, the public urban, suburban and inter-urban transportation of passengers Kosovo-wide that will be easily accessible to all Kosovo citizens without any differences and limitations.

According to their nature, human rights are not an exclusively legal issue, but also a moral, and above all, a political issue. Human right to the freedom of movement, as any other human right, is a fundamental issue and thereby impacts the preservation, development and integration of a community in the society. Considering this, if Kosovo wants to realize its aspirations of becoming a society open for everyone, first and foremost, it has to make efforts to provide the freedom of movement to all its residents notwithstanding their ethnic, religious and racial affiliation.

3.14. Right to privacy

The right to privacy is one of the rights considered as a broad concept by the practice of the European Court of Human Rights, thus it is impossible to define it in an exhaustive way, because this right also includes the right to develop relationships with other human beings.

This right is guaranteed by Article 36 of the Constitution of the Republic of Kosovo and includes the respect for *private and family life, the inviolability of residence, the confidentiality of correspondence, telecommunication and other communication*. Each of these four constituent components of this right has an autonomous meaning. So far, practice has shown that this autonomous meaning has crossed national state borders and there is a general agreement that the European Court of Human Rights is not limited by any kind of interpretation that states may provide as to the abovementioned rights.

This Article includes the positive obligation of the state to respect this right, but to also take necessary actions to protect this right, where it is violated by private individuals.

The right to privacy is not only one of the most complex rights, but it is also an important indicator for the general level of implementation of constitutional rights in Kosovo.

A fair amount of complaints received by the OIK concern the *inviolability of residence*, which in the first place involves the right to access and use one's residence and habitation. The protected interest in this case is about the peaceful enjoyment of one's home, which according to the practice of the Court may also be violated in cases involving the noise of airplanes in homes located close to airports.

The OIK has also expressed its concern regarding the non-implementation of OIK recommendations concerning the complaint of representatives of the village Grabovc i Ulët against the Ministry of Environment and Spatial Planning (MESP) and the Kosovo Energetic Corporation. In fact, the Kosovo Energetic Corporation had begun excavating from an open pit mine in order to extract lignite from that area, using heavy machinery such as excavators and conveyor belts, which, next to constant excessive noise, also cause dust and pollute water that cannot be used for drinking, not even by animals. All this is being done in a distance of 30 to 100 meters to the residential houses in that village.

Form the answer that the OIK received from the MESP on 4 June 2009, it remained unclear on which legal basis the environment approval for the abovementioned work, issued on 15 January 2007 by the same ministry, had been founded. However, contrary to the recommendations of OIK that this issue should be treated urgently and to consider the possibility of relocation and avoiding pollution, the situation has remained the same up to the date of publication of this report.

In April 2009, following information taken from an article in the daily "Koha Ditore", the Ombudsperson initiated *ex officio investigations* due to concerns of inhabitants of the neighborhood "Dardania", regarding the noise caused by the pubs situated in the so-called "Te Santea" locality in Pristina at night. With regard to this issue, the Ombudsperson Institution sent a letter to the Mayor of Pristina, requesting him to take the necessary actions with the purpose of respecting the right to residence and implementing the Law on Noise Protection. Until today, the OIK has not received any reply regarding this issue.

In August 2009, the Ombudsperson Institution for the second time addressed the competent authorities regarding the issue of the village Milaj in the Municipality of Prizren. After the end of the war in Kosovo, this village remained almost fully mined and for this reason its inhabitants, consisting of 43 families with around 250 members, still cannot return to their habitation.

The OIK raised this issue with the Mayor of Prizren and the Prime Minister of the Republic of Kosovo, by asking them to ensure access to the properties involved, and at the same time find a temporary place of residence for these citizens, until they would be able to access their property. This recommendation was also sent to the Minister of Local Governance and Administration and the Minister of Labour and Social Welfare. Up to the day of publication of this report, no answer was received regarding this issue.

Even though the OIK did not receive any complaints regarding *privacy* and the right to correspondence, Kosovo still lacks a law on the right to privacy, which would not only help the authorities demonstrate a positive approach towards respecting this right, but would also support citizen, by creating legal safety for them.

An important step taken by the Ombudsperson Institution in this reporting period to protect the *confidentiality of correspondence*, even though of a specific nature, is the installation of OIK post boxes in all detention centers and jails in Kosovo, which are opened only by the representatives of OIK, with the purpose of ensuring the freedom of correspondence, as one of the basic principles of the right to privacy.

From the cases submitted to the OIK, it may be concluded that, due to the difficult economic situation, incomplete legislation, and not least because of the irresponsibility of different institutions, the right to privacy, in all its complexity, is not being respected on a satisfactory level.

3.15. Right of marriage and family

Marriage is a legally registered community of two persons of a different sex, through which they freely decide to live together with the goal of creating a family. According to the European Convention on Human Rights, these rights are attributed to man and woman of marriageable age who have the right to marry and to found a family, according to the national laws governing the exercise of this right. The right also includes the positive obligation of the state to respect this right and ensure proper mechanisms for its protection. This right can also be limited in certain circumstances determined by law.

The Constitution of the Republic of Kosovo, in the first paragraph of Article 37, defines the right to marriage and to have a family based on free will, according to which everyone enjoys the right to marry and the right to have a family as provided by law. Within the meaning of Article 14 of the Family Law No. 2004/32, marriage means a community of two persons of a different sex, registered according to the law, through which they freely decide to live together with the goal of creating a family. Paragraph 2 of the same Article, guarantees to persons who wish to create a marriage community the right to marry and found a family without any limitation due to race, nationality or religion, as well as their equality to marriage, during marriage and at its dissolution. Whereas, in Article 2, paragraph 1, of the same Law, family is defined as a vital community of parents and their children and other persons of the kin, as well as a “natural and fundamental nucleus of society”, which enjoys the right to legal protection.

The European Convention on Human Rights, in its Article 8, guarantees to individuals the right to respect for their private and family life and provides that public authorities may not interfere in the exercise of this right, except in such a way as is in accordance with the law and is necessary in a democratic society. “Family Life” guaranteed by Article 9 of the ECHR is indivisibly connected to the right to marry and create a family, guaranteed by Article 12 of

ECHR, even though these two articles protect different actions. Continuous protection ensured by Article 8 includes the principle of legal family life. But, concrete actions guaranteed by the Article 12 of ECHR should be undertaken according to the national laws that regulate marriage and the creation of family. The right to marriage and family is also protected by other conventions applicable in Kosovo.

In Kosovo, special attention is paid to marriage and family. One issue of concern noted with regard to the right of creating a family and marriage is the increasing number of divorce cases. This is an issue of concern because, taking into account the current economic and social situation and the objective inequality between persons of a different sex, this factor, aside from having a negative impact on the interests of children of the divorced family community, puts women in a more difficult position.

In this context, the Ombudsperson Institution, also during this reporting period, has received complaints with regard to lengthy court procedures in cases of divorces, non-execution of regular right of contact with children, as well as long court procedures in determining the right to custody, which place the children and the parents in difficult situations. The OIK, with regard to these issues, and aiming at protecting and promoting these rights, wrote to the respective authorities asking them to take necessary actions, as foreseen by law.

Also in this context, we can mention the cases of two complainants from Prishtina, directed against the Center for Social Labour of Vushtrri, respectively Prishtina, that were about the complainants' inability to having contact with their children. Thanks to the professional intervention and successful mediation of the Ombudsperson Institution, both of these cases were resolved according to the complainants' requests.

In Kosovo society, the wrong and unrealistic perception still exists that considers family issues to be private issues. In many cases even the representatives of competent public authorities responsible for protecting this right ask whether there should be an intervention in such relations! Even though the family and family issues are guaranteed rights that are also protected by law, the OIK, like the victims of conflicts in or within the family, is faced with, in the majority of cases, illegal actions of a patriarchal nature.

Therefore, the OIK considers that it is necessary to take serious actions for the promotion of legal mechanisms as well as drafting strategies for actions, with the purpose of protecting the interests of child and family. But all of this is not enough if public institutions do not prove in a correct and effective manner the will to treat this issue as a priority of their daily actions.

3.16. Freedom of religion, belief and conscience

Freedom of religion, belief and conscience includes fundamental human rights protected by international instruments, whose greatest significance lies in the fact that at the moment of opposition of differing opinions in the internal relations of a country, the attention is to be paid to these international standards in order to resolve the issues as fairly as possible.

The right to freedom of religion and belief is one of the eldest internationally recognized rights and subject of main provisions of every more relevant international instrument prohibiting discrimination.

This right entitles any individual to choose religion or any other belief based on their choice. It also gives the right to every person or society, to manifest religion or belief, alone or in community with others, in public or private, in worship, teaching, practice and observance. Apart from freedom of choosing religion and its manifestation, this right also provides protection to people from any kind of force that would restrict the practicing of these freedoms, except in cases and limitations provided by the law, in order to protect public safety and rights of others.

The right to freedom of thought, conscience and religion (including freedom to belief) is extremely far-fetched. It relates to opinion on all things and occurrences. International regulations protect equally freedom of thought and conscience and also choice of religion.

Since the adoption of Universal Declaration on Human Rights, freedom of religion has been put very broadly. It stipulates that everyone is entitled to the freedom of thought, conscience and religion, and it provides that this right includes change of religion or belief and the freedom that a person, either alone or in community with others, in public or private, in worship, teaching, practice and observance.

Provisions of the European Convention on Human Rights (ECHR) Section 9, very closely resemble the language from UN Universal Declaration. Also, this Section of the European Convention stipulates that freedom of expression (manifesting) religion or belief may be restricted only in conditions provided by the law and if necessary in a democratic society for public security or in order to protect the public order, health, morale or rights and freedoms of others (Section 9).

3.16.1. Analysis of the situation in Kosovo

Religious freedoms and rights of Kosovo citizens are guaranteed by Section 38 of Kosovo Constitution stipulating “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”.

Also Law on Religious Freedoms in Kosovo that is in accordance with international instruments, guarantees the protection of these rights. Also, Section 8 of Kosovo Constitution guarantees equality of religious communities without the opportunity of promoting state religion, and that Kosovo is a secular state with complete division between the religion and the state.

Freedom of religion, belief and conscience is also a right guaranteed by Kosovo Constitution that in Section 38 in a language very similar to the language of the UN Universal Declaration and other international instruments stipulates that this right is guaranteed to all Kosovo citizens. Kosovo Constitution gives another additional protection of this right through Section

16, Paragraph 3, stipulating that the Republic of Kosovo will abide by all international law norms and Section 19, Paragraph 2, giving precedence to international law regulations in case of contradiction between the legal norms of domestic laws.

However, even though there were no registered cases within Ombudsperson Institution during the reporting period, it doesn't necessarily imply that there were no violations of this right.

3.16.2. Religious denominations in Kosovo

Kosovo is traditionally a multi-national and multi-religious environment, and considering that its main aim is building up of contemporary and democratic society, Kosovo Constitution stipulates also protection and preservation of cultural and religious heritage. Also, Kosovo Constitution and the Law on Religious Freedoms in Kosovo, regulates the issue of religious freedoms in details in order to protect multi-religiousness and enable the legal protection of religious rights and freedoms in the best manner.

Whether a right will be real and protected depends on legal institutes regulating operation and organization of life and work of religious communities, and on its limitation by national legislation.

Section 39 of Kosovo Constitutions defines religious denominations and how they are given an opportunity of free functioning. Paragraph 2 of this Section gives freedom to religious denominations to regulate independently the manner of their operation, their internal organization, full religious activity and religious rituals.

The number of believers is primarily proportional to the demographic structure of Kosovo. The dominant religion in Kosovo is Islam professed by 90% of Kosovo population, mainly Albanians, whereas it includes also a smaller number of Gorani, Turkish, Roma, and Ashkali members. The Catholic Church in Kosovo has around 5-10 percent of Albanian population in Kosovo (data taken from official web page of Kosovo Catholic Church). The work of the Kosovo Catholic Church is organized within 24 parishes with 37 priests and 79 nuns.

Evangelistic church in Kosovo makes up less than 1% of total population. In relation to the Jewish community in Kosovo, there is information that approximately forty two persons from two families in Prizren are of Jewish roots; however there are no synagogues or Jewish institutions. In relation to the Serbian community in Kosovo, they are mainly believers of the Serbian Orthodox Church.

The issues faced by religious communities in Kosovo differ in many aspects however a dose of optimism is noticeable with all communities in relation to the future co-existence.

A joint conclusion can be drawn from the positions of the heads of religious communities that all religious communities suffered some losses, however also a message of all heads of religious leaders is clear that multi-religiousness and multi-traditionalism are a historical category and the biggest hope that a joint life of all communities will be possible in Kosovo.

The relations between the religious communities are good and appropriate, but within real expectations. It is impossible not to mention damages suffered by religious sites since the beginning of war clashes in 1998 but also in March riots in 2004. All religious communities state in their official stances that it is necessary to repair and return religious sites in their initial state, but also to enable believers to return to their previous places of residence, because only by that the goal would be achieved.

The Serbian Orthodox Church (SPC) has suffered one of the greatest destructions of its religious sites after 1999 during 2004 riots when a large number of monasteries was damaged, but in accordance with Memorandum of Understanding on the agreed general principles of reconstruction of SPC sites signed in 2005 between SPC and then provisional Kosovo institutions, a large number of these churches were reconstructed or the process of reconstruction is ongoing. During the reconstruction of churches and monasteries, SPC dignitaries insisted constantly on repairing some deficiencies, but also on continuation of the reconstruction process in accordance with the signed memorandum. The reconstruction itself was conducted in accordance with the Council of Europe Strategy, i.e., the reconstruction was done in stages on several sites simultaneously, rather than finishing one site completely, because there were many priority tasks needed on different sites at the same time. The first stage included cleaning of ruins and conservation, the second stage included development of concrete works, and on some sites this stage is still ongoing, and the third stage that was envisaged for the second half of 2008 and 2009 on some sites is finalized and on some of them still ongoing. At the same time, this is the most difficult and complicated stage because it envisages works on fresco conservation. According to SPC stance, this stage-based principle of reconstruction is in accordance with the professional methods of reconstruction used worldwide, and at the same time it enables that all deficiencies that occurred in one stage of reconstruction are remedied in the following one.

During the second half of 2008, more specifically on 15 August in accordance with the decision of the Holy Synod of the Serbian Orthodox Church, the sites were handed over to SPC representatives by the European Commission in Prishtina. The sites that were handed over include Bishop's palace in Prizren, Sime Igumanova Building within the Prizren Seminary, Parish centre in Prizren, Saint Nikola's cathedral with parish centre in Prishtina, Cathedral of Saint John the Forerunner with its parish centre in Prishtina, Cathedral of Saint John the Forerunner with its parish centre in Peć, Church of Holy Apostles Peter and Paul with its parish centre in Istok, Cathedral of Saint Elijah and parish centre in Vučitrn and Cathedral of Saint Andrew the Apostle.

One of the most valuable monuments of medieval culture put on UNESCO list of cultural heritage, the Church of the Holy Virgin of Ljeviš also suffered during the riots on March 17 and 18 2004. The reconstruction works on this site of utmost significance, are still ongoing and on several occasions there were delays in reconstruction i.e. there were repeated damages and stealing of lead abacus from the roof of the building. Despite all difficulties following reconstruction there are hopes that this site will enter the third stage of reconstruction as soon as possible.

OIK didn't receive any cases in relation to Section 39 of the Constitution during the reporting period.

3.17. Freedom of Expression

„ Freedom of expression is guaranteed (Article 40, CRK). Freedom of expression includes the right to express oneself, to disseminate and receive information, opinions and other messages without impediment.”

Freedom of expression is not important only as a right in itself but it plays a central role in the protection of other rights, guaranteed by the Constitution and the European Convention on Human Rights. As a right, while appearing to have links to other rights and freedoms, aside from its primary effect, the freedom of expression also has side effects and to a certain extent it limits and enables them. On one side, the freedom of free expression has a direct effect on exercising the Freedom of Association. On the other side, it may be in conflict with other rights, such as the right to a fair trial, or the right for respect to private and family life.

When exercising this right, which consists in duties and responsibilities, it may be subject to some limitations and sanction as foreseen by law which, in a democratic society, are necessary measures, such as: national security, territorial integrity and public safety, protection of order and peace and prevention of crime, protection of health and morale, protection of dignity or the rights of the others, stopping secret data from being distributed or guaranteeing authority and impartiality of the judicial system.

So far, Kosovo has approved a legal framework that in principle should have ensured the adequate protection of this right. This legal framework includes some basic laws such as the Law against Defamation and Insult and the Law on Access to Official Documents. However, the citizens of Kosovo are still not sufficiently aware of this right. Also, not much has been done in promoting the legal instruments that regulate this field. When it comes to the process of licensing of the media in Kosovo as well as drafting a regulation on the functioning of media, a noticeable advancement has been made by the Office of the Media Commissioner, an independent body, which has a role that the general opinion is not much informed about.

Even though during the reporting period, there were no complaints to the OIK regarding allegations of a violation of this right, cases involving threats towards journalists, as well as the inadequate implementation of the Law on Access to Official Documents remain issues of concern. Even though it was not registered as a case in OIK, the case of mistreatment of the television crew of BIRN in Skenderaj, who were doing recordings for the TV show “Jeta në Kosovë” in the beginning of 2009.

Since freedom of expression presents one of the most fundamental issues of a democratic society, on of the basic conditions for its progress and the development of human beings, all public authorities have the legal obligation to not only passively guarantee it by refraining from any intervention in this right, but also need to actively guarantee it, by taking all adequate needed actions to promote and strengthen this right in our society.

3.18. The Right of access to public documents

Article 41 of the Constitution of the Republic of Kosovo guarantees the right of access to public documents. In the international law arena, this right was confirmed as fundamental right in legal systems and case law of respective states.

OI is encouraged with the inclusion of this right as constitutional category. By acting so, the Kosovo lawmakers are following the trend of developments in democratic countries in Europe, which have marked a qualitative development towards accountability and increase of responsibility of public authorities.

OI observes that the law of access to public documents and the administrative instructions for implementation of this law, with all the solid grounds, and efforts made by state institutions and civil society, remain very little acquainted and used by the citizens of the Republic of Kosovo.

OI finds that the three state powers in the Republic of Kosovo, the Legislative, executive and judiciary, considering that they exercise public functions financed by public funds, are obliged not only to enhance their transparency in relation to the fulfilment of their obligations towards citizens at the central level, but also encourage other public authorities at the local level to do the same. The transparency of these state powers, enables citizens to form the opinion on their functioning, it enhances the effectiveness of work, reduces corruption and increases the public trust in their work.

From the information received during the discussions with citizens, OI may assess that insufficient awareness raising and information of citizens on their right of access to public documents, are the most influential factors for a small number of requests to OI by citizens.

Therefore, OI finds that it is necessary to have ongoing information campaigns with the aim of ongoing promotion of the right of access to public documents. This is an obligation that remains to be implemented by the executive power in two levels, in line with Article 13 of the above mentioned law, especially through human right units established in all levels, and the support of NGO initiatives in this field.

The necessary conditions for more frequent utilisation of this right by citizens can be created only through proactive approach of promotion of this right, which would subsequently improve the concept of good governance in the Republic of Kosovo.

3.19. Freedom of Media

Starting from the importance and the role of media in identifying and fighting negative phenomenon as well as stimulating and developing positive processes in the society, freedom of press is treated in all international conventions, as a fundamental right.

Freedom and pluralism of media is guaranteed by the Constitution of the Republic of Kosovo (Article 42, paragraph 1). Censorship is expressly forbidden. It can be applied except if it aims to prevent encouragement or provocation of violence, hostility and discrimination on grounds of race, nationality, ethnicity, religion, gender etc. In this respect, also the right to correct untrue information is guaranteed (Article 42, paragraph 3).

The issue of freedom of press remains problematic in Kosovo. There is a lack of a fundamental law on media. This field of rights is still being regulated by two UNMIK Regulations from 2000 as well as some administrative instructions, which are still in power. This legal infrastructure is partial and there is no doubt that it is not complete.

Lack of the law in this field makes the role of media in monitoring and intervening harder while it offers possibilities for different outside influences that for a democratic society are unacceptable. OIK considers that in this direction, in order to ensure the legitimacy of the freedom of media as it is guaranteed by the constitution, as well as to protect their independence in accordance with the constitution, having a law on press and media in general, is more than necessary.

Even though, the Law on Access to Official Documents has ensured a solid basis for an increase in accountability, as a suitable mechanism in the hands of the journalists, in reality that law remains as not being much implemented in Kosovo. Regarding the inability of ensuring information from public authorities, the journalists have contacted OIK in this regard in two cases only.

According to the report of the organization “Journalists without Borders” on the Freedom of Press in the world, published on 20 October 2009, Kosovo is ranked in the 75 place when it comes to respecting the freedom of press. Compared to one year ago, without going into the evaluation of methodology and applied criteria for this evaluation, a deterioration of the situation is noticed when it comes to the freedom of press and media.

With regards to this issue, respectively because of the obstacles that journalists are facing in doing their job, the Association of Professional Journalists of Kosovo (APJK), during 2009 has received 11 complaints. Some of these obstacles were caused by institutional officials of different levels.

APJK during this reporting period has organized 2 protests. One of them was aiming at increasing the institutional transparency and implementation of the Law on Access to Official Documents, while the other one was against the tendencies of politics to control the media.

Also, the Union of Kosovo Journalists (UKJ) constantly had a critical position and expressed its based concerns, regarding the problems that the only public broadcaster in the country, Radio Television of Kosovo (RTK) is facing.

In this direction, European Broadcasting Union (EBU), through a letter criticized the Prime Minister of the Republic of Kosovo, by accusing that, since the declaration of independence of the Republic of Kosovo, RTK is going under a merciless pressure through political and financial interventions, by transforming in this way the RTK into a “media wing of the party in power.” Through this letter, EBU requires from the Prime Minister of the Republic of

Kosovo to take measures “urgent measures” to return the autonomy of RTK again, as well as allowing area for expression for “critical voices or alternative” in RTK.

In this exchange of letters, the chairman of EBU also requested the removal of governmental control on the Press Council of Kosovo, which is a regulatory body to establish the parameters and rules of ethics of journalism as well as promotion and application of the Press Code for Kosovo. With regards to this, the representatives of media have mentioned as an example the election of the Board of RTK, after canceling the announcement for few times.

A serious problem is also the lack of funds and investments, that has made the newspapers weak in front of political pressure and of groups with special interest, who threatens to withdraw all the advertises if there is no media coverage on their favor.

As the newest state in Europe, the Republic of Kosovo is still facing the problems of consolidating its institutions. Regarding the consolidation of media in Kosovo, the report of the organization “Journalists without Borders” requires by the media in Kosovo to use the possibility of using the expertise of the Mission of the European Union EULEX, to develop more independent ways of work and to be released from the financial and political pressures. This is not the way of solving the problems that the media in Kosovo is facing, because in this way, there will only be passed from one dependability to another. The creation of legal infrastructure for the creation of media market and proper professional competition, are the only solutions for the consolidation of media in Kosovo.

The Kosovo market keeps on suffering by the lack of information and public data, which are still not guaranteed by the law.

3.20. Freedom of assembly

The right and guaranty for the freedom of assembly is one of the most important fundaments of a democratic society and one of the fundamental conditions for its development. The right to peaceful assembly involves private or public meetings in public places. Every person that aims to organise such an assembly or participate in it can benefit from this right.

Article 43 of the constitution of the Republic of Kosovo, which is in full compliance with relevant international norms, guarantees “*Freedom of Peaceful Assembly*”. This fundamental right includes not only the passive right for participation in “*gatherings, protests and demonstrations*”, but also the active right “*to organise*” them.

In defining this fundamental right, the lawmakers have embraced the fundamental logic of ECHR, in light of Article 11. In this spirit this right can be restricted by law only to the extent which is acceptable in a democratic society. “*if it is necessary to ensure public peace and order, public health, national security or protection of rights of others*”.

In 2008 the Assembly of the Republic of Kosovo adopted the Law on Public Gatherings (LPG). Without the intention of questioning the overall value of the law, the Ombudsperson observes that this legal norm contains elements that are not considered to be in compliance

with the ECHR case law, which is by all means the basis for interpretation of rights in Kosovo.

In Article 12 of LPA, the Kosovo lawmakers, left a part of competencies completely in the hands of the so-called “duty guards” who are assigned in *ad hoc* bases by the organiser of the gathering. This delegation of obligation to the organisers of the gathering, by the state authorities, is in contradiction with Article 11 of ECHR. This is due to the fact that in order to guarantee the right to assemble, the state can resort only to passive role of non-intervention. The obligation of the state is to undertake active role and protect persons that organise and participate in an assembly. If the “duty guards” are engaged in ensuring the proper flow of a gathering, their engagement is directly linked to the proper flow of a gathering in the meaning of achieving the aim of the organiser of gathering, which can not go beyond the request declared by the organisers. However, “duty guards” can not be tasked with the obligation of “ensuring that participants do not damage the properties that exist in the place of gathering”, as foreseen by Article 12 paragraph 2 of LPG. This action includes preservation of public or private property, and it is an exclusive obligation of state authorities and/or agencies specialised specifically for such activity, established according to the law, but which is not related to requests and purpose of assembly.

The “duty guards” assigned in *ad hoc* basis” by the organisers of gathering, do not belong to the category of persons who are prepared and legitimised in this respect.

The case law of European Court warns that the effective freedom of assembly can not be assumed to have been met by the state by merely fulfilling its obligation of non-intervention, but it requires affirmative measures to be undertaken even when it comes to relations between people if necessary. Based on this practice, the Ombudsperson observes that Article 12 paragraph 3 of LPG, according to which the lawmakers delegate the authority to “duty guards” of a gathering to “*immediately hand in to the police the participant or any other person violating peace and order, carrying weapons or any other dangerous items or prohibited signs, during the public gathering*” is unlawful. The legal obligation of apprehending persons carrying weapons, dangerous items or prohibited signs, their arrest or other forms of restriction of liberty, preservation of peace and order is exclusive obligation of state law enforcement authorities, and can not be delegated to any other natural or legal person.

During the reporting period the Ombudsperson has received a complaint related to violation of freedom of assembly.

3.21. Freedom of Association

Everyone has the right of organization in association with others, including the right to establish and be part of trade unions for the protection of one’s interests. The Constitution of the Republic of Kosovo offers guarantees for the freedom of association, by describing it as the right of every citizen to establish an organization without obtaining any form of

permission, to be or not to be a member of any organization and to participate in the activities of an organization.

Even if the right of every citizen to establish trade unions and organize him or herself, with the intent to protect their interests, is guaranteed, this right may be limited by law in special cases. This only applies when it has been noticed that the activities of an organization have the purpose to harm the constitutional order, violate human rights, or incite to racial, ethnic, religious or gender-related hate.

Also in this field, the constitutional guarantee of the freedom of association was not followed by the establishment of supporting legislation. This deficiency was evident for some time, and it was properly emphasized in the Progress Report for Kosovo of the European Commission for 2008.

As a consequence, with the aim of creating a legal environment that would strengthen and develop civil society, the Assembly of Kosovo, on 12 February 2009, approved the Law on the Freedom of Association of Non-Governmental Organizations. This law regulates the procedures and conditions of registering and closing down NGOs, their internal governance, status and requirements for financial reporting. Also, with this law, the obligations of the respective institutions to create a register of NGOs are foreseen.

Aside from this, two workshops were held to draft an administrative order for the implementation of the Law on the Freedom of Association of Non-Governmental Organizations, with the aim of ensuring a better functioning of this sector. The workshops were organized with the support of the Department for Registration of NGOs in the Ministry of Public Administration and several NGOs.

During this period, the OIK did not receive any complaint with regard to the violation of the freedom of association. The OIK has noticed a more positive approach of government institutions towards civil society organizations. This approach had an impact on raising the level of cooperation, by giving more space to civil society in drafting and discussing public policies. Within this context of cooperation, the initiative of the non-governmental organizations KDI-BIRN is worth mentioning. These organizations, in November 2008, established the Advising Group of NGOs, to advocate civil society issues in the Assembly of Kosovo and increase the impact of civil society in the law-making process.

3.22. Freedom of election and participation

The Constitution of the Republic of Kosovo guarantees that “every citizen of the Republic of Kosovo who has reached the age of eighteen, even if on the day of elections, has the right to elect and be elected, unless this right is limited by a court decision and the vote is personal, equal, free and secret” (Article 45). The right to vote is one of the fundamental human rights in the modern world. Today, elections are the fundamental source of legitimacy of the power. Only elections in which the eligible voter realizes his right by casting his ballot in a free,

secret and direct way can be considered democratic in compliance with international rules and standards.

The Ombudsperson noted that, with all the problems and difficulties, the last elections, which were organized and held for the first time under the full responsibility of Kosovo public authorities, prove that the new state is developing and that Kosovo institutions have achieved a greater democratic maturity. From the Ombudsperson's point of view, the participation of Serbs in elections, even if moderate, is encouraging and proves their will to exercise the right and decide on their future

Regarding the legal framework on elections, the Assembly of the Republic of Kosovo adopted the Law on General Elections and the Law on Local Elections in Kosovo, which are in compliance with Article 3 of the First Protocol of the European Convention on Human Rights and other international instruments applicable in Kosovo.

The election law provides an additional independent mechanism to review submitted appeals involving this right – Election Claims and Appeals Commission (ECAC), which is functional and meets the impartial authority criteria.

During the reporting period, the OI received no complaints involving this right, whereas the ECAC received forty (40) appeals regarding inadequate representation of political entities in polling station committees, withdrawal of candidacies from the lists of political entities, requests for presence of international observers in certain polling centers for the second round of elections, requests for additional oversight of the process, etc.

3.23. Protection of Property

“The Right to Property is guaranteed” by the Constitution of the Republic of Kosovo, while its use is regulated by law. Besides the solid legal framework on property, approved by the Assembly of Kosovo, the international respective norms are also applicable in Kosovo and they prevail over national laws.

According to Article 46 of the Constitution, guaranteeing of property is not absolute. The Constitution only prohibits the deprivation of the right to property “in an arbitrary manner”. Although the lawmakers in Kosovo guarantee that “the Republic of Kosovo or a Public Authority of the Republic of Kosovo may expropriate property if such expropriation is authorised by law”, a lot more remains to be done in further defining in a more detailed manner phrases such as “public interest”, “public purpose”, “necessary” or “appropriate”, which provide space for manoeuvring and misuse by the public authorities. Although the lawmakers restrict the space created by such phrases by offering “provision of immediate and adequate compensation for the person or persons whose property is being expropriated”, this alone still does not offer sufficient guarantees for the ordinary citizen from the state arbitrary intervention. This guarantee can not be provided even by the normative prescription that “disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo” in relation to expropriations” shall be settled by a competent court”.

The fact that these normative prescriptions and legal definitions do not provide for a sufficient protection for a citizen from arbitrary state intervention, is proven by many problems in relation to property rights issue in Kosovo. Lack of property documents, ineffective application of legal instruments, length of judicial proceedings, as well as the existence of the corruption phenomena and organised crime, are some of the factors which created a situation of legal uncertainty in relation to this issue.

The Ombudsperson Institution has continued investigations in relation to property issues which are dealt by the Kosovo Property Agency (KPA), as a successor of the Housing and Property Directorate (HPD). The KPA has the competence to decide on the settlement of disputes related to immovable private property, including the agricultural and commercial property, as well as the rights to use the property of this nature dating from the period of 27 February to 20 June 1999.

A considerable number of applications related to the length of proceedings, came as a result of erroneous registration and partially as a result of lack of adequate cooperation with the Kosovo Cadastral Agency. Until now, over 20.000 claims of mainly non-contested nature have been settled.

Another issue that remains a concern is the non-execution of HPD decisions related to repossession of properties in the northern part of Mitrovica, which at the same time constitutes an unequal treatment of citizens in a similar situation, because repossession of properties in other parts of Kosovo is now considered as a closed issue.

A specific problem in the field of rule of law related to property issues is still the expropriation issue. Although the Assembly of Kosovo has adopted the Law on Expropriation, non-execution of this law by public authorities in Kosovo remains a widespread concern, in both levels of administration. The law, *inter alia*, envisages short procedures (two weeks) within which the respective authorities should reach a compensation agreement. If the agreement is not reached, the public authorities will have the obligation to raise the matter with the regular courts. It happens very often in practice that issues remain unsettled for years due to compromise reaching tendencies. This leaves room for misuse and illegal profits.

Despite an increase of the budget for municipalities in Kosovo, during the reporting period there was almost no evident improvement in the program for reconstruction of houses burnt during the last war. At the same time the construction of social shelters for children and persons in need, has not been foreseen despite the fact that their number is increasing.

Another issue related to the loss of credibility in public authorities, is the creation of informal settlements or un-urbanised areas and illegal constructions, which public authorities and control mechanisms were not able to prevent.

The overall situation in the field of protection of property is threatened seriously by the lack of rule of law and ineffective control mechanisms of the state. The difficulties in the functioning of the judicial and prosecutorial system of Kosovo serve as an encouragement for people to take things into their own hands and as a possibility to abuse with the law. This

situation can be improved only by a general increase in the responsibility of state institutions and empowerment of rule of law.

3.24. The right to education

As a constitutional category, the right to education envisages the right to basic education free of charge, which is mandatory and financed by public funds. This right most certainly puts an obligation over the public institutions to ensure equal education opportunities for everyone, according to his/her abilities and special needs.

The Assembly of the Republic of Kosovo adopted the Law on Education in Municipalities of the Republic of Kosovo, which is in line with Article 2 of Protocol One of ECHR and other international instruments applicable in Kosovo.

The applicable law in Kosovo defines, in the narrow sense, the right to education as a process in which the religion, culture and other values of the society are conveyed to youth, while the education or instructions refer especially to attainment of knowledge and intellectual development.

According to this constitutional right, the right to education puts an active role for the state, to ensure implementation of this right including here preschool, primary and secondary education. Failure in the part of the state to undertake proactive approach for the creation of conditions for education constitutes sufficient grounds to consider that this right has been violated.

During the reporting period, the education system in Kosovo has scored some significant advancement, with regards to the adoption of legal framework and secondary legislation, as well as adoption of a higher education development and RAE community Integration Strategy.

A significant breakthrough in relation to the implementation of the Law on Education in Municipalities of the Republic of Kosovo came with free of charge distribution of basic school textbooks by MEST. This certainly was of great help to Kosovo families, especially those who live in difficult economic conditions for which the provision of school textbooks represents an unaffordable burden.

One of the remaining concerns in the context of implementation of the right to education is the phenomena of school drop-out, especially amongst female students. This dangerous and extremely harmful phenomena, requires a grater attention of public authorities than what we have at present. The percentage of school drop-out has marked a slight decrease in the primary education, in comparison to the last year, while in the secondary and higher education there is an increasing trend.

Extremely concerning is the fact that, in several occasions, the reason for the dropout was the risk to the life of students during their travel to and from the school as result of the lack of

underground pedestrian crossings in critical points in the vicinity of schools, alongside the regional roads in Kosovo.

Another concerning phenomena is also the lack of school space. Despite investments in the school premises, in a vast number of schools, especially in urban areas, due to great demographic changes within a short period of time, the education process is organised in several shifts. In several schools, this situation became more aggravated due to the lack of elementary hygienic conditions, including here the lack of potable water.

During the reporting period, the Ombudsperson Institution, continued *ex officio* investigations in relation to these issues. In special cases, it submitted recommendations to the Ministry of Transport and Telecommunication, e.g. about the issue of security of citizens especially students attending schools alongside the main roads Prizren-Gjakovë and Prishtinë-Podujevë.

The Ombudsperson Institution observes that the laws on education in general, have not been implemented in an adequate manner due to amongst other things lack of funds, lack of teachers' motivation, due to low salaries, low attendance, and limited municipal transportation to schools as well as inadequate school infrastructure.

3.25. Freedom of Art and Science

The freedom of art and science, as well as academic freedom, are extensions of the freedom of thought and expression. Every person has the freedom to request, receive and spread information and ideas of any kind, regardless of frontiers, orally or in writing, in print or in the form of art way, or by any means chosen by him/her.

The freedom of art and science is guaranteed by the Constitution of the Republic of Kosovo (Article 48), and is in accordance with the European Convention on Human Rights, which implies that the freedom of art and science, as well as academic freedom, shall be practiced within the same framework of freedoms and limitations determined by Article 10 of this Convention. The freedom of art and science is also guaranteed by the International Covenant on Civil and Political Rights (Article 19), which is one of the international human rights instruments embodied in the Constitution of the Republic of Kosovo.

In 2006, the Assembly of the Republic of Kosovo approved the Law on Copyright and Related Rights, whose purpose is to protect and develop intellectual property in general and the rights of authors in particular.

In this reporting period, the OIK did not receive any complaint regarding the freedom of art and science.

3.26. Right to work and exercise profession

Section 49 of the Republic of Kosovo Constitution guarantees the right to work and the right of every individual to choose his/her profession and work place freely. Right to work is one of the fundamental social rights, whose significance lies in enabling economic independence of an individual that is one of the pre-requisites of freedom. Also, exercise of this right enables full development and fulfilment of the individual's personality.

The right to work doesn't imply that every person is entitled to be provided an employment. It implies, first of all, that every person has an opportunity to provide for their lives by performing freely chosen or accepted work. However, even though the right to work doesn't imply getting employment, the states are obliged to undertake all measures at their disposal to decrease unemployment, and to make full provision of employment the aim of their policy.

The right to work and freedom of work is a form of implementing the obligations of the state, i.e. of the society. The state is obliged to undertake all necessary measures in order to provide to every citizen, capable and willing to work, employment opportunity on the job that suits his/her professional qualifications and psycho-physical abilities, wishes and needs, all this with payment, as a compensation ensuring the humanly dignified life and safe and secure work conditions, promotion opportunities, leave and leisure time.

The right to work is a fundamental human right and as such it is guaranteed by international instruments and standards; Universal Declaration on Human Rights (1948), International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), European Convention on Human Rights (1950.), European Social Charter (1961). International Labour Organization recommendations are among the most important sources of international law regulating this field.

There are no international instruments from this field, among the international legal instruments that are embodied in Kosovo Constitution, that are above the domestic law according to their legal force and that form a part of the normative legal order. This field was left to be regulated by domestic regulations. However, until today, Kosovo hasn't adopted any general legal frameworks in relation to rights and duties deriving from employment, i.e. even though in the procedural stage for a long time period, the Labour Law hasn't still been adopted.

Since 2001, labour market and labour rights in Kosovo are regulated by Regulation 2001/27, based on EU standards. This regulation on the fundamental labour law in Kosovo regulates employment in Kosovo, including employment relations for providing services and contractual works. According to this Regulation, discrimination at work is prohibited. The words work and profession include also access to professional development capacities, access to employment, both in profession and to labour conditions.

This Regulation stipulates that, the age of 18 is a minimum age for working or getting a job. Persons under the age of 18 can be employed only for light works that cannot be detrimental to their health and development and are not an obstacle for the further pursuit of education.

Persons under the age of 15 cannot be employed. Also, on the basis of the Regulation, forced work is prohibited.

Labour and Employment Department has been established within the Ministry of Labour and Social Welfare, including also some divisions dealing with employment issues in the Republic of Kosovo.

-Labour Law and Employment Division are responsible to prepare labour-related laws.

-Labour Division implements employment strategy prepared by Labour and Employment Department, i.e. Ministry of Labour and Social Welfare.

-Professional Development Division prepares MLSW professional development strategy, including also annual monitoring and inspection, as needed, works on promoting entrance into active employment policy programme. This division coordinates and develops the activities in terms of professional development, advises and give instructions on professional training of employment service networks.

Until the adoption of this Regulation, employees didn't have sufficient legal protection, and considering the high level of unemployment, even today they are in a very vulnerable situation. In the present context, there is a constant risk that compliance with fundamental employee rights is left at the mercy of employers. Lack of any representation and opportunity to raise the voice of employees, affects specifically people in the private and informal sectors, primarily composed of women and youth.

In September 2004, Kosovo Government representatives, Kosovo Alliance of independent Trade Unions (BSPK) and Kosovo Chamber of Commerce (KCC), signed a General Collective Agreement (hereinafter Agreement) regulating legal, social and economic relations and rights and obligations between the employers and employees. The provisions of this agreement should have been expanded later on by the Labour Law. The agreement, however, has never been implemented, due to lack of budget.

Ministry of Labour and Social Welfare Labour Inspectorate is responsible to implement labour standards and health and safety standards; however it has no trained personnel, whereby this duty is not implemented efficiently. The Law doesn't allow employees to leave their work station in case of hazards without risking to be dismissed.

Unemployment in Kosovo is one of the greatest obstacles in exercising the right to profession. At the same time, unemployment is one the greatest social issues and obstacles in the development of Kosovo. According to the current information of the Ministry of Labour and Social Welfare, there are around 338.366 unemployed in Kosovo. Out of this number 160.867 are women. This probably is not a real number due to the fact that there is no unemployment allowance in Kosovo and thereby there are no incentives to support registration of the unemployed.

At the same time, Kosovo has the youngest population in Europe, whereby around 36 000 young people enter the labour market every year. There is simply no possibility that the domestic labour market absorbs this labour force increment in the near future. The largest number of all official (formal) positions is in the civil service sector. However, the issue of

informal economy is of special significance in Kosovo. This kind of economy is probably larger than the formal and the majority of people in Kosovo work on interim or unregistered jobs, (including large numbers of farmers producing their own products, living outside of cash economy). However, the existence of huge grey economy doesn't make the issue of low employment levels look less serious.

Kosovo Primer Minister Hashim Thaci promised that during 2010 the main Government priority will be to fight against all forms of grey economy, black economy and all other forms of financial crime.

According to UNDP data, Kosovo has the largest unemployment rate in the western Balkans and Europe: around 45 % of work age population is unemployed, whereas official data say that the unemployment rate is higher.

It is a fact that high unemployment rate is prevalent in Kosovo, both in the majority Albanian community and in Serbian and other minorities in Kosovo. However, we can freely say that Roma community is affected the most by this issue. Unemployment rate in Roma community surpasses 95% that is even higher in some places.

Minority employment is still on a low level and in general it is restricted to the lowest level of competences; according to some information, minority members make up around 11-12 % of the employees in state bodies, even though the target is more than 16 percent.

Within its projects to decrease unemployment, MLSW in co-operation with the German Federal Employment Agency (ZAV), i. e. with its Service Centre for Mediation in Employment, developed a joint programme for seasonal employment of University of Prishtina students with German employers. This project included all Kosovo regions.

In the absence of radical policy changes, the forthcoming generation of Kosovo youngsters has very little to hope to, except the fall of life standard. It is necessary that the Government defines the employment policy and creates conditions for opening up new positions.

In relation to the right to work and profession, Ombudsperson Institution in Kosovo, opened 71 cases during the reporting period, out of which it resolved 37 and the others are still ongoing.

3.27. Children's Rights

The Convention on the Rights of the Child (CRC), one of the most important acts of the international law in the field of children's rights, is recognized as an applicable law in Kosovo through its empowerment in the Constitution.

The Constitution of Kosovo, guarantees particularly to the children their rights to protection and care necessary for their wellbeing, equal treatment for children born out of wedlock and those born in marriage, protection from violence, maltreatment and exploitation, as well as protection of the their best interest. Constitutional guarantees place a positive obligation on

the state to undertake adequate measures in this direction, including in relation with the parents.

The Convention on the Rights of the Child also requires the public authorities to undertake all necessary measures to guaranty the protection, respect and promotion of children's rights, through the adoption of relevant laws and creation of oversight and control mechanisms.

Kosovo generally has a good legal framework for the protection of the rights of children. However, there is still lack of effective institutional protection, insufficient and inadequate implementation of legal provisions, as well as lack of administrative instructions for their adequate implementation. While the Government of the Republic of Kosovo has drafted the 2009-2013 Strategy and National Action Plan for the Rights of Children, with the aim of insuring adequate implementation of the legal framework for children's rights and of co-ordinating the work of governmental institutions for effective protection of children's rights, the aforementioned shortcomings are evident.

In this context, institutional mechanisms were established in Kosovo, both at municipal and central level, which deal with the protection of children's rights. One of these mechanisms is the Inter-ministerial Commission for Children's Rights, whose aim is to assist in the improvement of the effectiveness of existing institutional mechanisms, as well as to guarantee the implementation and respect for children's rights.

The Law on Family No. 2004/3, which entered in force on 20 January 2006, is the main law in Kosovo that regulates the issues on the rights of children. However, this law does not cover some very important issues regarding children's rights. Furthermore, even the necessary administrative instructions to implement the new law have not been issued yet. As result of the lack of the above legal provisions, the Yugoslav Law on Marriage and Family Relations is still implemented in some cases. The abovementioned law is implemented in relation to some certain procedural issues regarding access and the right to custody, in cases when parents are divorced or when children are born out of wedlock, as well as for adoption issues.

Officials of the Social Welfare Centers and of the Ministry of Labour and Social Welfare have stressed that they have received instructions to implement both laws until the adoption of the Law on Regular Courts. Naturally, this situation creates further difficulties and confusion not only for officials involved in the implementation of the law, but also for individuals whose rights are regulated by these two laws.

Also, difficulties and lack of transparency still prevail in cases where the new law does not clearly determine which bodies are competent to decide on which issues. The situation is particularly unclear concerning adoption cases. In practice, the municipal and district courts, as well as the social work centers are in charge of dealing with these cases, as provided by the former Yugoslav law.

The protection of children's rights is also generally hindered by a lack of efficiency in the implementation of administrative and court decisions as well as by lengthy court proceedings in cases involving access or custody rights.

Also during this period, the Ombudsperson Institution Children's Rights Team (CRT), as the only institutionalized mechanism, continued to receive complaints for non-implementation of

decisions deriving from the centers for social work and courts in relation to contacts with children, as well as lengthy court proceedings involving custody rights, which sometimes can lead to very difficult situation for the children and their parents. Regarding these cases, CRT raised the issue before the respective authorities asking them to undertake the necessary actions, as provided for by the law.

During this period CRT also raised an issue with the respective public authorities in relation to inadequate living conditions of children, inadequate hygienic-sanitary conditions in several schools, and asked them to ensure shelter and social assistance for families of these children, namely by asking them to undertake adequate actions to improve the conditions in the schools.

CRT also investigated cases of use of physical violence against juveniles at the Correctional Centre in Lipjan/Lipljan, as well as alleged cases of use of violence against juveniles by members of the Kosovo Police.

In addition, based in the information gathered by the media published in Kosovo, CRT conducted *ex officio* investigations in relation to the issue of endangerment of life of children by stray dogs and the issue of abandonment of extramarital children.

One of the most concerning problems that comes as a consequence of difficult economic situation and high rate of poverty continues to be the issue of child labour in Kosovo. The child labour impairs the wellbeing of a child and constitutes a violation of Article 32 of the CRC which provides for the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Despite actions undertaken by the Government of Kosovo in addressing this phenomenon, the issue of child labour will not be eradicated or reduced without drafting and implementing an appropriate strategic plan. On the other hand, such a strategy can only be successful if the overall economic situation in Kosovo is improved.

Poor economic conditions in Kosovo, not only impose the child labour which is harmful to their physical and mental health, but also make them drop-out of school. When it comes to phenomena of children school drop-out, there are some other decisive factors in the school drop-out that are to be taken into consideration, e.g. the distance of several schools from the homes of children, and lack of security and transportation.

In September 2009 the Ministry of Education Science and Technology (MEST) in co-operation with organizations working in the field of children's rights, finalized the Action Plan for Tackling the Problem of School Drop-out 2009-2014, and it has implemented projects with the aim of preventing and addressing this issue. One of the concrete projects is the distribution of a Manual for tackling the problem of school drop-out throughout the schools in Kosovo, including the Roma, Ashkali, and Egyptian (RAE) Communities. Children from RAE communities really face more challenges than their peers from other ethnic communities in relation to school attendance. This comes not only as a consequence of

difficult social, economic and political situation that their children face, but also due to low awareness on the importance of child education, especially of young girls.

Another phenomenon of great concern is violence in schools. It continues to be present in public schools in Kosovo, despite preventive efforts made by governmental and non-governmental institutions.

In order to support prevention of violence in schools throughout Kosovo, the Ombudsperson Institution attended several workshops and debates. The CRT participated in the national debate on school violence, organized by the Kosovo Students' Council, which hosted discussions on the root causes and opportunities to possibilities of addressing this phenomenon on school violence from different angles (for more information see the part related to CRT activities). The Ombudsperson initiated ex officio investigations, based on an article published in the daily newspaper "Express". According to the article, on Monday, 1 June, while people were celebrating the International Children's Day violence took the life of a student in Prishtinë/Pristina. More concerning is the fact that the student died from the wounds inflicted on him by a knife of another student, following a quarrel between them at the school.

With the purpose of eliminating or reducing this phenomenon, the respective authorities should have *inter alia* ensured effective implementation of laws and regulations, which prohibit corporal punishment or other forms of degrading punishments in all education institutions, as well as continue with awareness raising campaigns regarding the prohibition of violence and children's rights.

Aside from violence in schools, domestic violence is another important phenomenon faced by the Kosovo society. Domestic violence occurs within the family and is often not reported as it is considered a private issue. This makes it even harder to fight as in such cases even government authorities responsible for the protection of children are hindered or deprived of the possibility of undertaking adequate measures in time in order to protect children at risk.

However, despite these obstacles and difficulties, the State is still obliged to effectively prevent domestic violence and punish the perpetrators. Domestic violence and violence at schools bear serious consequences to the intellectual, emotional, and social development of children, especially since the violence happens in places where children should usually feel safe. Disturbed family relations, respectively domestic violence often, drives children into abandoning their homes. In such cases they become a prey and potential victims of trafficking in human beings.

Article 35 of the CRC requires that the State undertakes all the necessary measures in the national and international bilateral and multilateral level to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. Trafficking is not only a component of organized crime, but also a violation of human rights, and thus a violation of children's rights. In July 2008, the Government of Kosovo drafted the National Strategy and Action Plan against Trafficking in Human Beings, which requires adequate implementation from respective institutions.

Unless awareness raising policies for effective implementation are in place, promulgation of laws will not bring adequate changes in the field of children's rights, and the children's rights situation will not be improved. The mere acknowledgement of children's rights is not enough, but it is more than necessary to undertake adequate actions for their protection and promotion not only by the respective authorities but also by the entire society.

3.28. Health and Social protection

Article 51 of the Constitution of the Republic of Kosovo determines that healthcare and social insurance for persons who are unemployed, ill, with disabilities and of old age shall be regulated by law.

Health and social protection, as elementary human rights, are guaranteed by many international instruments and agreements. According to these, every person has the right to an adequate standard of living, health and welfare for him/herself and family, including here the rights to have food, clothes, a place to live, medical treatment, necessary social services as well as the right to be insured in case of unemployment, illness, disability, widowhood, old age or other deficiencies to a good life due to circumstances beyond one's control.

Regardless of the efforts made by the Ombudsperson Institution, certain NGOs as well as international human rights experts on human rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) was not included in Article 22 of the Constitution of the Republic of Kosovo. As a consequence of the failure to include this Pact in the Constitution, this issue is left to the administrative discretion of the state.

The Law on Health of Kosovo was approved in 2004 and aimed at creating a legal basis for regulating, advancing and improving healthcare services for the citizens of Kosovo. This law regulated the healthcare system, activities and financing of this system, work principles and determines who will profit from health services.

One of the fundamental principles of healthcare, the principle of equality, is not reflected in Article 23 of the Law on Health. This article leads to discrimination in favor of citizens of the ages 15-65 as the ones who profit from healthcare free of charge. Therefore, this Law is not in accordance with international standards for health protection, as foreseen by the International Covenant on Economic, Social and Cultural Rights.

Even though, efforts were made to improve the health system in Kosovo, not much has been achieved. The public health system, financed by the Kosovo Consolidated Budget, makes up 9.2% of the expenditures of the government. Annual expenditures of the government for healthcare are the lowest in Europe – only 35 € per capita. The health system keeps on functioning despite different deficiencies, brought about by a number of factors; the low number of health professionals, medical equipment that is out-of-date, and not infrequently out of work, outdated primary care hospitals and facilities, a lack of capacity in hospitals, a small number of hospital beds (148.2 beds per 100,000 inhabitants), a lack of essential medicine, a lack of orto-prosthetic facilities, and prosthetic-dentistry facilitations, as well as

other medical facility equipment, lack of funds for treatment outside the country as well as health insurance, lack of measures to deal with protection from radioactive radiations.

The long list of abovementioned factors is directly linked to the health protection of mother and child, the high level of mortality at birth, tuberculosis as well as eating disorders.

The Ombudsperson Institution concluded that this sector has a low potential to protect the health and welfare of the population. Other reasons are also the lack of a health insurance system, the failure to approve a health strategy by the Assembly of Kosovo, a small budget, violations of law, various other violations and corruption.

With regard to this issue, the most common complaints of citizens to the OIK are those related to the non-payment of expenses for medical treatment outside the country, the failure of the authorities to supply sufficient medicines to be found on the list of essential medication, as well as the weak infrastructure and ensuing mechanisms in the Kosovo University Clinic Centre.

A number of complaints received by the OIK were about economic and social rights, which fall within the responsibility of the Ministry of Labour and Social Welfare (MLSW). For the abovementioned reasons regarding the non-implementation of the International Covenant on Economic, Social and Cultural Rights, the right to adequate shelter, the right to adequate working conditions as well as a series of other social and economic rights, continues to not be properly protected by law.

According to the statistics of the Ombudsperson Institution, a large number of complaints linked to social problems are related to the issue of pension and handicap insurances, hard living conditions, the suspension of social assistance and pensions for persons with disabilities, ensuring proof for work experience as well as exercising the right to complain. In this context, the lack of transparent decision-making processes of the respective MLSW commissions should be mentioned specifically.

Also, special obstacles to issues regarding employment rights and health protection of employees, exist due to the lack of an employment law and the lack of a specialized court that would deal exclusively with these issues, as well as the lack of necessary capacities within the Employment Inspectorate to implement the Law on Safety at Work, and protect the health of employees and the work environment.

The issue of determining criteria for having the right to social assistance still remains problematic. The Law on a Social Assistance Scheme determines the non-financial criteria that should be fulfilled to get social assistance, among others and stipulates that this right will extend to families who have at least one child under the age of five. This law does not include offering social assistance for the category of children who are older than five (5), whose parents do not work and who are not able to provide their children with elementary living conditions.

In this context, the respective authorities should take necessary and appropriate action to include in the Scheme of Social Assistance families with children who are older than five (5) years, in order to improve their life.

3.29. Responsibility for the Environment

The Constitution of the Republic of Kosovo, in Article 52, determines that nature and biodiversity, environment and national inheritance are everyone's responsibility. For public institutions, it adds the duty to be engaged in guaranteeing to everyone the opportunity to have an impact in decisions involving the environment where he/she lives and that the impact on the environment shall be considered by public institutions in their decision-making processes.

The European Court of Human Rights also draws attention to the positive obligations deriving from this article, by requesting that public authorities balance in an appropriate manner the competing interest of an individual or authority on one side and the community in general on the other. In both cases, states have the power of discretion to evaluate which steps will ensure compatibility with the European Convention on Human Rights. In any case, throughout this process, the economic welfare of the state is not a sufficient ground for limiting the rights of others.

States are thus required to minimize as much as possible any interference with this right, by trying to find alternative solutions that would adequately achieve the purpose in a manner that least interferes with the human right. In order to do this, there should be an adequate and full investigation with the purpose of finding the best solution to appropriately balance the requirements.

The legal framework for the protection of the environment determines the state's responsibility for creating a legal basis to promote a healthy environment for the population of Kosovo, which should be gradually adapted to the European Union's standards on environmental protection, and creating an environment that is safeguarded and in accordance with sustainable economic development.

According to the Law on Environmental Protection No. 03/L-025, public authorities, the Assembly and the Government of Kosovo, shall ensure the protection of the environment by drafting strategies and programs for environmental protection. The Ministry of Environment and Spatial Planning conducts the administrative supervision of activities related to environmental protection in municipalities, and takes actions aiming at stimulating the rational use of natural resources and the promotion of sustainable economic development.

In a practical context, there still remain a huge amount of unresolved environmental problems in Kosovo. Among other reasons, this is also due to an insufficient implementation of control mechanisms and a low awareness of the issue in general.

During this reporting period, the Ombudsperson Institution has initiated the investigation of several cases in relation to this right. As a result of investigations conducted following complaints of residents of the village Leban in the Municipality of Prishtina about the excavation and taking of soil near their village by the company "Guri", it was determined that the allegations of resulting environmental damage and threats to the life of the residents were correct.

After an intervention and continuous contacts with the Director of the Independent Commission for Mines and Minerals (ICMM), the Mine Inspectorate, after conducting its own field investigations, concluded that this company did not have an active license and that the activities of the company "Guri" were illegal. In October 2009, the OIK was informed by the claimants that this company has stopped its work and that their issue had been resolved.

In a case involving *ex officio* investigations that had to do with the disposal of waste near the yard of the primary school "Naim Frashëri" in Vushtrri, the OIK recommended to the municipal authorities of Vushtrri to take immediate action to remove this waste. On 16 October 2009, the OIK was informed that regarding this issue, adequate actions had been taken by the respective authorities.

In another *ex officio* case, the OIK investigated the issue of lead poisoning of the Roma community in the northern part of Mitrovica. After having conducted investigations in April 2009, the OIK recommended to the Government of the Republic of Kosovo to take all necessary actions for the immediate and sustainable resettlement of the Roma community from the camps in the north to another location where their safety and dignity would be guaranteed. Also, in relation to this issue, the OIK requested the immediate intervention of the Ministry of Health and the Ministry of Community and Returns, to take adequate actions to improve the health conditions of the Roma community. To the day when this report was drafted, the OIK has not received any response from the Government of Kosovo.

According to an official report from the National Institute of Public Health in Kosovo related to the quality of air for the time period January-March 2009, the registered levels of air pollution in Prishtina alone were many times higher than the allowed limits (120 µg/m³). The maximum value of 300µg/m³ permitted during one year was exceeded 18 times. In the Progress Report of the European Commission for the environment this year, the lack of progress in enhancing the quality of water, and in the field of environmental protection and the control of environment pollution are put into perspective. According to data included in the report of the Ministry of Environment and Spatial Planning for 2008, it had been planned to inspect 643 companies in relation to the protection of the environment, waters, urbanization and construction, while in reality only 466 were inspected. 33 decisions were issued obliging such companies to stop their activities, while 4 cases were taken to court.

The OIK found that there had been progress when it comes to drafting legislation according to European environmental standards, but noted that the non-adequate or selective implementation of the Law on Environmental Protection Nr.03/L-025 remains a general concern. One special problem in this context is the inappropriate functioning of control mechanisms for the implementation of the law on a central level. This has an impact in that public or private enterprises then ignore the criteria and conditions for obtaining environmental compliance certificates and work licenses. Also, based on the data presented above, it may be determined that the Ministry of Environment and Spatial Planning did not manage to maintain complete administrative control over economic operators with regard to the environment.

An increasing vigilance and responsibility for their obligations thus continue to be the duty of the responsible authorities in Kosovo. They are obliged by law to demonstrate greater

engagement to guarantee the implementation of the existing legislation. This is necessary for the development of the legal system in accordance with the spirit of the Constitution of Kosovo and at the same time for an efficient protection of the environment.

3.30. Interpretation of Human Rights Provisions

The Constitution of the Republic of Kosovo has declared the respect of human rights and fundamental freedoms of others to be a fundamental principle (Article 21). This obligation includes “everyone”, without exception, regardless of a person’s qualities or position. Every violation of human rights and fundamental freedoms of others presents a direct violation of the “legal order of the Republic of Kosovo”.

At the moment when a certain legal system has decided to implement international conventions through its laws and constitution and use the same expressions, it may reasonably be understood that this legal system aims at obtaining the same effect by implementing these provisions, as the one foreseen in the provisions of the convention. With the adoption of the Constitution, exactly this same position was also supported by lawmakers in the Republic of Kosovo.

Even if the Republic of Kosovo is not a signatory party to the European Convention on Human Rights, its Constitution, in Article 53, ensures that the human rights and fundamental freedoms guaranteed therein “shall be interpreted consistent with the court decisions of the European Court of Human Rights.” By adopting this provision, Kosovan lawmakers have embraced the European philosophy of connecting language and logics in a comparative, clear and formal way.

It is precisely this connection embodied in international human rights standards that distinguish international human rights conventions from other documents. The essence of this connection aims at protecting the interests of individuals against the interests of states. Indeed, this is the ideal of modern civilization.

The obligations accepted by signatory parties to the convention as well as by parties submitting to them voluntarily, are of a deeply objective character, designed to protect the fundamental rights of individuals from violations of any signatory party to the convention, and not to create subjective and mutual rights. Human rights in a broader sense are part of international law; therefore the same rules apply to them as well. In general, the principles for interpreting international conventions are determined by and included in the Vienna Convention on the Law of Treaties, 1969.

To avoid any dilemma that an “interpretation in harmony...” with ECHR decisions is not only an issue of the good will of every individual or institution, Kosovan lawmakers clarify the constitutional obligation in Article 22 by requesting that human rights and fundamental freedoms, as foreseen by international agreements and instrument, be “directly applicable” and that “in the case of conflict”, they have priority “over provisions of laws and other acts of public institutions” in the Republic of Kosovo.

Despite their good intentions, all of these constitutional obligations remain an extraordinary big challenge for public authorities in Kosovo. There are numerous factors that cumulatively result in this challenge being almost insurmountable and that touch all fields of state life: The general social, political and legal culture; tense political situation; difficult economic situation; the general situation of the judiciary in the Republic of Kosovo, etc.

When we add to these facts the differences between legal systems that are based on different judicial practices, it is not that realistic to expect that regular courts would be able to decide on claims of human rights violations, based on the decisions of the ECHR, due to the fact that judges are not familiar with the decisions of the ECHR.

First of all, the current system of university education does not offer education to students in this direction. Secondly, the lack of knowledge of foreign languages still remains problematic. The decisions of the abovementioned court are written in English and French, while translations into the Albanian language are rare. Contrary to the efforts of the Kosovo public institutions, especially of the Kosovo Judicial Institute, to organize trainings in the field of human rights, there is not much hope that we will have an adequate implementation of this constitutional provision in the near future.

In this context, while there are no long term actions planned that would have an effect on obtaining the necessary knowledge of the practices of the European Court on Human Rights, one possibility would be to include in the education curricula of the law faculty the practices of European court. Another possibility, of a more urgent nature, would be to train a group of lawyers who know some of the official languages of ECHR, who would then have the responsibility of interpreting its case law, in accordance with the constitutional provisions of the Republic of Kosovo.

Also, even in situations where courts will be able to adequately implement the court practices of ECHR, there will be other problems as well, due to the fact that the process of interpreting the European Convention on Human Rights is dynamic, is constantly changing. Therefore, problems would arise regarding the compatibility of laws in the Republic of Kosovo that may not change along with the dynamic development of ECHR practices.

In this context, one good option would be for the lawmakers of the Republic of Kosovo, while drafting the laws, to have in mind the need to prepare these laws in accordance with the decisions of the ECHR, in order to ensure that the laws are understood and interpreted in accordance with the interpretations made by this court.

3.31. *Judicial Protection of Rights*

The Constitution defines the Republic of Kosovo as a legal state, where all are equal before the law and “everyone enjoys the right to equal legal protection” (Article 24). This right cannot be understood and interpreted only in connection with Article 54 of the Constitution of the Republic of Kosovo, which guarantees that “Everyone enjoys the right to 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 [it is] found that such right has been violated.”

Thus, in the Constitution of the Republic of Kosovo, legal protection is a guaranteed right, that should be interpreted in accordance with the case law of the ECHR; referral to the definitions determined by this court is necessary.

The individual right to ask a court to determine rights and obligations, to present one’s case in an adequate and satisfactory way, also includes the right to an independent and impartial court, and constitutes the essence of this right within the meaning of ECHR case law. The essence of interpreting this right, according to the ECHR, involves court procedural guarantees regarding the right to an open access to court. According to this principle, the right of access to court does not depend on whether this right is guaranteed by the legal system of the respective country or not. This right is meaningful only if the appointed court has full jurisdiction to decide on the issue under discussion. This means that the court should have the competence to take a decision while basing itself on both the facts and the law.

The same article of the Constitution of the Republic of Kosovo also guarantees the right to an effective legal remedy, which in line with the interpretations of ECHR case law, is defined as a reasonable claim of a complaint for violation of human rights and determined by the ECHR (European Convention on Human Rights). It should exist as an instrument to decide a person’s complaint before the local authorities, and if such a complaint is acceptable, the individual in question should receive compensation. Hence, this right is not defined only in a legal remedy of the state, but also includes the legal right of the individual to submit a complaint before a respective state authority.

The right to an effective legal remedy cannot be interpreted autonomously, because this right is always connected with other rights guaranteed by the European Court of Human Rights (ECHR).

The Ombudsperson Institution, through special reports, has raised its concerns regarding violations of this right. Claims regarding violations of this right make up the majority of cases registered with the OIK. These violations mainly involve lengthy procedures and the non-execution of court decisions.

In this context, and in connection with the right to a effective legal remedy, the OIK constantly recommended to the public authorities of Kosovo to create a legal mechanism to investigate the possibility of compensating individuals whose rights were violated by having to wait for the conclusion of lengthy court procedures or who were affected by cases involving the non-execution of court decisions. However, up to the day of publication of this report, such a legal mechanism does not exist for citizens of the Republic of Kosovo, therefore they do not enjoy protection in cases where this right was violated.

Of special concern for the OIK are also individual cases that relate to the right to property, where the international security structures (KFOR) have been identified as responsible parties. Such cases involve the interference with individual property rights by these structures, but for the release from such interference or the compensation for property use,

citizens cannot go to the local courts. The OIK, due to a lack of mandate, cannot investigate these cases and recommend the re-establishment of the violated right.

Also, similar concerns exist with regard to the issue of non-functioning courts in the northern part of Mitrovica, due to security reasons. This problem also continues to this day and will pose a big challenge for the authorities of the Republic of Kosovo, when attempting to ensure the functioning of democracy and one of the most fundamental rights, the rule of law.

One special problem for the citizens of Kosovo connected to the right of access to courts and the right to an effective legal remedy, has been and will continue to be the Supreme Court, which has authority to decide upon administrative disputes. Until now, in almost all cases, this court has decided on issues by investigating only the legality of the case and, as a result, has returned the cases to administrative bodies for review, who again reiterated their previous decisions, the very decisions against which procedures were initiated before the Supreme Court. In this way, a situation has been created where the Supreme Court will take two or more of the same decisions, by returning the issue for review following repetitive behavior on the side of the administrative body. This happens despite the fact that, according to the law, this court is able to decide on each issue *in meritis* as well, which would save the valuable time of the citizens and unnecessary expenses and would create the effect of improving the responsibilities of administrative bodies.

Nevertheless, the creation of the Constitutional Court fulfills the preconditions for establishing a guardian of human rights, guaranteed also by the Constitution of the Republic of Kosovo. It now remains to be seen how effective the decisions taken by the Constitutional Court will be and what their impact will be on Kosovan society.

3.32. Limitations on Fundamental Rights and Freedoms

Fundamental human rights and freedoms are not without limits. The majority of rights have their limitations. The Universal Declaration on Human Rights, in its Article 29, states that the individual has duties towards the community, as it is only in this way that the free and full development of his/her personality is possible and that by exercising his/her rights, every human being is subject to those limitations determined by law. These limitations have the purpose of ensuring the acknowledgment and respect of the rights of others, as well as of meeting certain requirements such as: the right to morals, public order and general welfare in a democratic society.

Under no circumstances may the state resign from its duties to protect human rights and freedoms; however the state may limit them in concrete circumstances and only based on law. The level of limitations of rights and freedoms should correspond to the seriousness of a situation and the protection of those rights and values for which there is a set limitation measure, and it should be in accordance with accepted principles in a democratic society. In no case may these rights and freedoms be exercised in contravention to the purposes and principles of the United Nations.

In accordance with the principles of the Universal Declaration, the Constitution of Kosovo, in its Article 55, has also foreseen a limitation to human rights and freedoms, which may be applied only to the extent necessary for the fulfillment of the purpose of such limitation in an open and democratic society. These limitations may be established only by law, “in the public interest or for protection of the rights of others”. In cases of limitations of human rights or the interpretation of those limitations, all public authorities, and courts in particular, shall pay special attention to the essence of the limited right, the relevance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and a review of the possibility of achieving the purpose with a lesser limitation.

All limitations of the rights and freedoms guaranteed by the Constitution of the Republic of Kosovo, determined by respective articles of the Constitution, shall be applied in full accordance with the rules of precise interpretation of such limitation and in full accordance with Article 18 of the European Convention on Human Rights. This article requires that no limitation shall be applied for any purpose other than the one for which the limitation was provided.

In this reporting period, the OIK did not receive any complaint regarding the limitation of fundamental human rights and freedoms.

3.33. Fundamental Rights and Freedoms during a State of Emergency

The State of Emergency is declared through a decree of the President of the Republic of Kosovo with the consent of the Assembly as a response to an emergent and highly dangerous situation for the country. This right is also envisaged in Article 56 of the Constitution of the Republic of Kosovo.

The need to declare a State of Emergency may derive from different situations, such as: armed actions by internal or external elements against the state, natural disasters, civil riots, epidemics, financial or economic crisis, or general strike.

Declaration of a State of Emergency may suspend some of the state’s normal functions, may advise citizens to change their usual behavior, or may authorize government agencies to implement emergency preparation plans, as well as to limit or suspend certain human rights and freedoms

Pursuant to Article 15 of the ECHR, derogation of the fundamental rights and freedoms may only occur to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with other obligations under international law.

In this context, derogation of the fundamental rights and freedoms guaranteed by Articles 23, 24, 25, 27, 28, 29, 31, 33, 34, 37 and 38 of the Constitution of the Republic of Kosovo shall not be permitted under any circumstances.

During the reporting period, the OI received no complaints related to this event.

4. Ombudsperson's Recommendations

- ✓ A qualitative and quantitative reform of the judiciary and a visible improvement of the social, institutional and financial position of the judiciary are necessary and unavoidable. The OI considers that the best guaranty for the rule of law in Kosovo is to have and strengthen an independent judiciary.
- ✓ Judges in Kosovo must have institutional and financial security, in order to fulfill their legal obligation justly and fully independent of any external influences, so that the judiciary in Kosovo regains the citizens' trust.
- ✓ Bodies of the judiciary in the Republic of Kosovo must urgently take all necessary measures to investigate and punish corrupt behaviors of judges. Not only does this phenomenon destroy the citizens' trust in the justice and undermine the foundations of the state of Kosovo, it also constitutes one of the most serious human rights violations.
- ✓ Serious consideration must be given to the ECHR's requirement to national authorities to organize their legal systems so as to ensure compliance with human rights standards. This has not yet been achieved in Kosovo.
- ✓ In order to have efficient police investigation in alleged cases of police misconduct, persons in charge of the investigation must *de jure* and *de facto* be independent and impartial. Investigations of the Kosovo Police Inspectorate are investigations conducted by an executive agency of the MIA. These are internal investigations, hence, pursuant to requirements of the ECHR, they cannot be considered completely independent.
- ✓ The Ombudsperson recommends to judicial authorities to take all necessary measures provided by law, so that:
 - Defense lawyers always provide efficient representation for their clients, notwithstanding the way they are appointed – privately or *ex officio*.
 - In cases of inefficient legal representation, take all legal measures to guaranty efficient protection for the defendant.
- ✓ The OI considers that it is a Constitutional obligation of all institutions of the Republic of Kosovo to guaranty, as soon as possible, full freedom of movement for all the people in the territory of Kosovo. To insure, as soon as possible, urban and inter-urban public transportation of passengers in the entire territory of Kosovo, accessible for all citizens without distinction of any kind or any limitations.
- ✓ Unfortunately, the wrong perception that family matters are private matters still prevails in the society of Kosovo. Furthermore, often it happens that representatives of public authorities responsible for the protection of this right ask themselves if they should interfere in these relations. Cases of human rights violations within families should be subjected to justice.
- ✓ Lack of awareness and insufficient information of citizens on their right on access to official documents are key factors for the small number of complaints. A proactive approach for the affirmation of this right may create the necessary prerequisites for an easier use of the right

by citizens, which, in turn, would improve the concept of good governance in the Republic of Kosovo.

- ✓ In order to secure the legitimacy of the freedom of media, as guaranteed in the Constitution, and to protect their independence pursuant to the Constitutional spirit, it is more than necessary to adopt a law on press and media in general. Equally necessary is the creation of the legal infrastructure for the development of a professionally competitive media market.
- ✓ The Ombudsperson concludes that point 3 of Article 12 of the LPG, according to which the lawmakers delegate to the “Duty guard” of a gathering “*to immediately hand in to the police the participant or any other person violating peace and order, carrying weapons or any other dangerous items or prohibited signs, during the public gathering*” is illegitimate and must be changed. Legal obligation of apprehending such persons is an exclusive obligation of the law enforcing agencies of the state and cannot be delegated to any other legal or natural person.
- ✓ Though the Assembly of Kosovo adopted the Law on Expropriation, its non-implementation by Kosovo public authorities, at both levels of administration, remains a widespread phenomenon. The Law, inter alia, provides short procedures (two weeks) within which the responsible authorities must reach a compensation agreement. To prevent this practice, and improve the overall situation in the field of property protection, it is necessary to establish and functionalize effective mechanisms of control of authorities in order to have absolute rule of law.
- ✓ The Ombudsperson Institution notes that education laws in general have not been implemented adequately, inter alia, because of the lack of funds, low motivation of teachers due to low salaries, poor attendance of classes, limited municipal transport to schools, as well as inadequate school infrastructure.
- ✓ The Government of Kosovo and responsible institutions must issue adequate administrative instructions in the field of children rights in order to further the implementation of rights guaranteed by the Constitution.
- ✓ Control mechanisms for the implementation of the Law on Environmental Protection must be enhanced. This would have a direct impact on public and private enterprises to respect the criteria in obtaining environmental consents and work permits.
- ✓ The discrimination phenomenon is spread in many fields. The situation of persons with disabilities requires the society’s special attention, especially in the field of health care, education and employment, making it possible for them to realize their rights and providing them with equal opportunities for an active life in the society, in terms of complete social integration. It is mandatory that these persons have equal opportunities.

5. Activities of Ombudsperson Institution

5.1. Activities of the Non-Discrimination Team

Based on the Constitution of the Republic of Kosovo, international agreements and instruments, as well as the Anti-Discrimination Law, promulgated by UNMIK Regulation No. 32/2004, of 29 August 2004, the Ombudsperson Institution's Non-discrimination team (NDT) conducts investigations on all forms of discrimination. The Anti-Discrimination Law authorizes the Ombudsperson to receive complaints and conduct investigations concerning human rights violations related to discrimination.

The NDT was established on 8 March 2004 and consists of two lawyers specialized in non-discrimination issues. The team conducts investigations in cases submitted before the Ombudsperson Institution (OI) from persons who allege that their rights have been violated as a consequence of some form of discrimination.

According to Article 4 of the Anti-Discrimination Law, the Ombudsperson may also conduct investigations concerning discrimination in the private sector. In this context, and within its activities, the OI is engaged in increasing the public awareness on the competencies of the OI in this field.

During the reporting period, the NDT representatives visited several clinics in the University Clinical Center of Kosovo, focusing on the working conditions of the staff and conditions of the patients in these clinics. Similarly, visits were made in the Correctional Center in Lipjan/Lipjane, in the minors and women sector.

Also, within the scope of public awareness raising on the Anti-Discrimination law, the Non-Discrimination Team continued its activities in the campaign entitled "Stop to Discrimination", which comprised lectures on non-discrimination at elementary and secondary schools in many municipalities throughout Kosovo, informing students about different forms of discrimination and protection mechanisms.

On 31 October 2008, the NDT participated in a debate discussing the issue of discrimination in different fields, particularly about cases submitted before the OI concerning property related discrimination.

Within its activities, the NDT conducts regular meetings with different institutions, especially the Kosovo Property Agency (KPA), to review and ask for information in connection with complaints against the KPA submitted before the OI.

Within the SIDA projects, on 27 November 2008, the NDT attended the training on the topic "The right to a fair trial" within the meaning of Article 8 of the ECHR, while on 4 and 5 December 2008, together with the CRT, it attended the training on the topic "Prevention of corporal punishment of children". Together with the CRT, on 30 March 2009, the NDT also participated in the promotion of the campaign "Violence generates violence" organized by MEST, MLSW, MIA, MOJ.

The NDT attended the specialized workshop for the staff of national structures for human rights in Padova (Italy), from 9 – 11 June 2009, within the “Peer-to-Peer” Project, co-financed by the Council of Europe and European Union.

The main topic of the workshop was “The role of national human rights structures regarding measures against terrorist”. The project aims the creation of an active network of independent non-judicial human rights structures (NHRS), in harmony with the “Paris Principles”. In this context, the workshops for the specialized staff of the NHRSs are organized so that, through active participation, the participants could share their experiences and be informed on the governing legal norms in the principal fields of the NHRSs, as well as European practices.

From 16 until 20 November 2009, the representatives of the GEU and NDT attended the training titled “Improving sustainable impact and effectiveness in peace-building, development and post-war recovery,” held in Cluj-Napoca in Romania. After their presentations, institutions’ representatives shared experiences and information regarding their work and nature of cases in institutions from different parts of the world, present at the conference.

5.2. Activities of the Gender Equality Team

According to Article to 6 of the Gender Equality Law, the issue of gender based discrimination is under the jurisdiction of the Gender Equality Team (GET) within the OI, which has a mandate to review laws and is engaged in the implementation of the Gender Equality Law in practice. The GET examines and monitors cases of discrimination based on gender and is committed in the prevention of gender related human rights violations. The GET is also involved in promotion and of the gender equality principle.

During the reporting period, the GET has maintained regular contacts with local and international institutions and with representatives of civil society in Kosovo, such as: EULEX, UNDP, UNIFEM, representatives, Kosovo Police, Centers for Social Welfare, “Safe Houses”, different NGOs, in particular with „Norma”, Kosovo Center for Gender Equality, Center for the protection of women and children and Women’s network of Roma, Ashkali and Egyptian organizations in Kosovo”, etc.

Within its activities, on 20 March 2009, the GET attended the Conference “The participation of women and minorities in the Justice System in Kosovo”, which was organized in Prishtinë/Pristina by the Kosovo Judges Association and UNIFEM. Also, in 23 March 2009, the GET participated in a debate organized in Prishtinë/Pristina by EULEX on the topic “Women leaders in Kosovo, - Women as decision-makers in the development of the Kosovo society”: a vision or a close reality?”. In this debate, Kosovo women representatives in the political and civil society life expressed their dissatisfaction regarding the inclusion of women in the decision-making posts in the society of Kosovo. On 29 May 2009, the GET participated in the promotion of the “Study on the consequences of downsizing of employees in the Kosovo civil service in the life of women”, organized by the “Kosovo Center for

Gender Studies” in Prishtinë/Pristina. The aim of the study was to document the gender implications of the process of implementing the recommendations of the IMF for the downsizing of staff in the public administration of Kosovo.

On 29 June 2009, the representative of GET attended the Regional Conference “ Integration of women from Roma, Ashkali and Egyptian communities”, organized by the Kosovo Center for Gender Studies, UNIFEM and network of Roma Ashkali and Egyptian women. Data from the survey on the position of RAE women in the Kosovo society were presented during the conference. A video spot, made to raise the awareness of the Kosovo society on the position of RAE women and the need for the society’s support in their education, was also promoted during the conference.

On 20 October 2009, the GET representative participated in the debate organized by the NGO “Norma”, supported by UNIFEM, on the topic “Women Ambassadors of Peace, for a mutual life and tolerance”. Women representatives of NGOs presented the problems and challenges faced today by women in the Kosovo society. Also, on 30 October 2009, the GET together with CRT participated in the conference “Women and Heritage”, organized by the Gender Equality Agency.

On 16-20 November 2009, the GET and NDT attended the training titled “Improving sustainable impact and effectiveness in peace-building, development and post-war recovery,” held in Cluj-Napoca in Romania“. During the training several workshops were organized in which participants shared their experiences and information regarding the work and nature of cases faced by Ombudsman institutions.

5.3. *Activities of the Children’s Rights Team (CRT)*

The Children’s Rights Team (CRT) within OIK was established with the aim of monitoring, protecting and investigating children’s rights violations by public authorities in Kosovo.

Within the framework of activities covered by CRT in this reporting period, the team participated in several meetings, conferences and debates centering around the protection and advancement of children’s rights in Kosovo.

From 3-5 September 2008, CRT representatives participated in the annual meeting of the European Network of Ombudsman Institutions for Children (ENOC) in Dublin (Ireland), in the role of an observer. The main subject discussed was activities undertaken for the implementation of the Convention on Children’s Rights on a national and international level by ENOC, in order to improve the situation of children’s rights.

At a conference on the topic “Delinquency of Minors in Kosovo”, held on 16 October 2008, the discussion focused on the delinquency of minors and possibilities for preventing it. During a TV debate transmitted by RTV 21, the general situation of children’s rights in Kosovo was discussed, next to cases presented by the OIK dealing with corporal punishment in schools as well as the issue of child care in case of divorce.

At a Fair on Children's Rights organized by UNICEF and the Kosovo Education Centre (KEC), the work of governmental and non-governmental institutions for the protection of human rights was promoted.

Within the framework of regular trainings for professional staff, OIK lawyers also participated in certain training activities. As part of the SIDA projects, OIK lawyers participated in training on "Prevention of Ill-treatment of Children" on 04 and 05 December 2008, while on 27 November 2008, they participated in training on "The Right to a Fair Trial" according to Article 6 of the European Convention on Human Rights. An OIK lawyer also participated in training on "Gender Equality", where the issue of gender equality was discussed as well as national and international mechanisms that sanction this issue.

A representative of the OIK participated in a workshop organized by the KEC, as part of the project "Creating a safe, non-violent and human environment in schools and Kosovan society" on 18 December 2008, where the discussion was about "Security, Violence, Protection from Violence and Negative Consequences of Violence". On 11 March 2009, the same OIK representative took part in the workshop on "Situation, role and functioning of safe, non-violent and human environment for children and youth".

Violence was also the main subject of the promotional campaign "Violence Generates Violence", organized jointly by Ministry of Education, Science and Technology (MEST), Ministry of Labour and Social Welfare (MLSW), Ministry of the Interior (MI), Ministry of Justice (MJ) on 30 March 2009, as well as of a national debate on the phenomenon of violence in schools in Kosovo and the necessity of undertaking adequate measures to address this issue, organized one day later.

Another side to the activities of OIK is also the support of all forms of actions organized for the protection and promotion of children's rights by state institutions of the Republic of Kosovo, civil society or international organizations. One of these activities was the conference on "Stop Child Labour Today, so they could work tomorrow" organized by the MEST- Institute of Social Policy, on 12 June 2009, another was a conference organized by the Office of the Prime Minister of the Republic of Kosovo, on 1 October 2009, marking the launch of the "Strategy and National Action Plan for Children's Rights in the Republic of Kosovo (2009-2013)". The OIK also participated in a course on 30 October 2009 at a conference on "Women and Heritage", organized by the Agency for Gender Equality.

From 20-23 October 2009 the Center for Children's Rights of the University of Padua, in cooperation with the Directorate General of Human Rights and Legal Affairs of the Council of Europe, a workshop was organized on the "Protection of minors unaccompanied by their parents, from the National Human Rights Structures". One focus was on the creation of an active network of independent non-judiciary structures for the protection of minors unaccompanied by their parents, in case of their migration to different countries.

6. Cooperation: Conferences, seminars and workshops

6.1. Cooperation with National Institutions

During the reporting period, the managing staff of the OI held numerous meetings with institutions of both central and local level, as well as international institutions present in Kosovo. Contacts were further intensified with the appointment of the Ombudsperson on 4 June 2009.

Cooperation with representatives from these institutions, including the highest institutions of the three state pillars the Legislative, Executive and Judiciary, different parliamentary committees and specific political parliamentary groups, and especially establishment of direct contacts and intensification of forms of communication comprise the most important lever in this regard.

Cooperation with institutions at municipal level, namely with all public authorities in the entire territory of Republic of Kosovo is also very important in the OI strategy. The Ombudsperson visited most of municipalities and has conducted meetings with municipal leaders and officials of human rights units and good governance.

In order to identify problems and common grounds for cooperation, the Ombudsperson also had meetings with independent institutions such as the Independent Oversight Board of Kosovo, Anti-Corruption Agency, Central Election Commission and the Constitutional Court of Kosovo, as well as the Supreme Court of Kosovo.

During the visits, the representatives of contacted institutions fully supported the work and efforts of the Ombudsperson and expressed their readiness for inter-institutional cooperation and fulfilment of constitutional obligations.

The OI staff maintained their regular contacts with courts, in order to ensure information regarding the complaints submitted by individuals. During these meetings, there was discussion especially on the excessive length of judicial proceedings as well as non-execution of judicial decisions.

The OI is encouraged by the fact that the authorities of the Republic of Kosovo showed evident readiness to cooperate and respond to the requests of the Ombudsperson Institution. However, their reaction with regard to the recommendations made by the Ombudsperson Institution and the extent to which such recommendations will be implemented remains to be seen.

6.2. Cooperation and Capacity-Building

The Ombudsperson Institution has maintained close cooperation with partner institutions in other countries such as: The People's Advocate of the Republic of Albania, as well as of Macedonia, Croatia, Norway, Sweden and Italy.

In September 2009, a cooperation agreement was signed in Prishtina between the Ombudsperson of the Republic of Kosovo and the People's Advocate of the Republic of Albania. This agreement was signed with the aim of enhancing inter-institutional cooperation with regard to the effective protection of the rights and freedoms of citizens and other persons residing on the territory of these states, if they are negatively affected by an illegal action or omission of public authorities.

Also, the staff of the Ombudsperson Institution took part in work-related conferences, seminars and study visits. These visits were conducted in order to acquaint the Institution's staff with good practices of other similar institutions and human rights organizations of countries of the region and of Europe in general.

6.3. Capacity-Building

6.3.1. Study visits and training

Overall information on the participation of OIK staff in conferences, workshops and different study visits, will be presented below, while for such information concerning the institution's special teams, please see the section outlining the activities of these teams.

On 1-4 July 2008, four lawyers of the Ombudsperson Institution conducted a study visit to the National Ombudsman Institution in the Netherlands. In meetings with representatives of the National Ombudsman of the Netherlands and the Erasmus of Rotterdam University, issues discussed involved, inter alia, the protection of human rights in Kosovo and the case law of the European Court of Human Rights, both in general and specifically with regard to this Court's decision in the "Behrami" case.

On 14-17 November 2008, a group of OIK staff visited the Institution of the People's Advocate in Albania with the aim of exchanging best practices and of enhancing cooperation in the investigation and administrative fields.

Within the framework of cooperation with the Council of Europe Commissioner for Human Rights, the implementation of the "PEER to PEER" project with selected staff continued due to the joint cooperation of the Office of the Commissioner for Human Rights and the Centre on Human Rights and the Rights of Peoples of the University of Padova, Italy.

On 19-20 November 2008, one lawyer of the Ombudsperson Institution, with the help of a contact person, took part in the annual meeting of contact persons and organizers of the above-mentioned project in Strasbourg, France, with the aim of assessing activities

undertaken within the framework of this project and to discuss perspectives of the project in question in 2009.

Throughout the year 2009, the implementation of this project continued and contacts between staff of different human rights fields were established, which lawyers of the OIK took part in, while contributing in such topics as were discussed on such occasions. The topics discussed during workshops focused on the role of national human rights structures in promoting and protecting human rights related to counter-terrorism measures, the protection and promotion of the rights of the elderly by national human rights structures, and other issues.

Also, in order to assess the activities implemented in 2009 under this project, the Ombudsperson and one senior lawyer from the Institution took part in the annual meeting of contact persons on 17-18 November 2009 in Budapest, Hungary. Aside from conducting such an assessment, this meeting also involved discussions and perspectives of the project for the years 2010- 2011.

On 27-28 November 2008, lawyers of the Ombudsperson Institution took part in training on “the right to a fair trial” under Article 6 of the European Convention on Human Rights, which took place at the AUK (American University in Kosovo) in Prishtina.

On 4-5 December 2008, lawyers of the Ombudsperson Institution participated in training on “Prevention of corporal punishment of children”, held at the AUK in Prishtina.

On 11-12 December 2008, lawyers of the Ombudsperson Institution attended training on “Gender Equality”, held at the AUK, where discussions focused on gender equality and international and national sanctioning mechanisms related to this issue.

On 21-23 May 2009, the Deputy Ombudsperson took part in the “Conference for Human Rights” in Ankara, Turkey, which involved debates on the role of independent mechanisms for protecting human rights and on the model of ombudsmen.

In May 2009, the Director of Administration and an Executive Assistant attended training on the topic “Management and human resources”, held at AUK in Prishtina.

On 20-22 May 2009, the Director of Administration and Procurement Manager took part in training on drafting reports and official documents, which took place in Skopje, Macedonia.

On 3-5 June 2009, administrative staff of the Institution participated in training on managing Project cycles, held in Durrës, Albania.

On 8-13 June 2009, the Deputy Ombudsperson and Director of the Investigations Department took part in the IX conference of the International Ombudsman Institute in Stockholm, Sweden. At this conference, discussions focused on the cooperation of partner institutions at an international level.

On 2-3 July 2009, the Ombudsperson, Deputy Ombudsperson and Director of the Investigations Department visited the Institution of the People’s Advocate in Albania.

On 31 August and 1 September 2009, a lawyer of the Ombudsperson Institution participated in a planning workshop in Prishtina on strengthening the judiciary, judicial education and on offering legal aid in Kosovo, with a view to preparing a Plan for Strategy

Implementation within the framework of the project “ACCESS TO JUSTICE”, supported by UNDP.

On 2 September 2009, staff of the Ombudsperson Institution attended training on “Legal Education”, organized by USAID and held on the premises of USAID in Prishtina.

On 23 September 2009, the Ombudsperson took part in a conference organized by the Ombudsman of the Marche Region, in Ancona, Italy.

On 27–30 September 2009, the Ombudsperson and the Public Relations Officer participated in a conference on “Challenges and Opportunities in the Face of New Information Technology”, held in Oslo, Norway.

On 5 October 2009, the Ombudsperson took part in the General Assembly of the European Ombudsman Institute, held in Florence, Italy.

On 15 October 2009, staff of the Ombudsperson Institution attended training on legal writing, organized by USAID Prishtina, which took place at the main office of the OSCE in Prishtina.

On 23-24 October 2009, the Executive Director, Procurement Manager and Finance Officer took part in training on “Electronic Procurement and best practices of Public Procurement”, held in Durrës, Albania.

On 23-24 November 2009, the Ombudsperson and his Deputy attended an International Symposium held in Namur, Belgium, on “Mediation: communication in mediation services”.

On 25 November 2009, the Ombudsperson and his Deputy conducted meetings with the representative of the Office of the High Commissioner for National Minorities and with a representative of the Office of the Parliamentary Ombudsman of the Netherlands, in the Hague, Netherlands.

On 10 December 2009, the Ombudsperson, an Executive Assistant and a Legal Assistant took part in a conference organized on the occasion of the 10th anniversary of the establishment of the People’s Advocate of Albania and the 61st anniversary of the Universal Declaration of Human Rights on “Human Rights, Good Governance and the Performance of the Ombudsman”, held in Tirana, Albania.

6.4. Budget of the Ombudsperson Institution

For the efficient and sustainable functioning of an institution for human rights such as the Ombudsperson Institution, it is paramount to have not only political and institutional support but financial support as well.

During this period, the Ombudsperson Institution, in order to realize its mission and mandate, was given solid protection and financial support from the Kosovo Budget. The approved budget for the OIK covers only the basic expenses in order to function, without including here the other activities. Conducting special activities necessary in the field of activity of the

OIK, such as further professional advancement of the professional personnel of the institution, is completely supported and financed by foreign donors.

Regardless of the limited budget in line with the Law on Budget Allocations for 2009, based on the budget planning and requests, the OIK has administered its budget efficiently and according to its respective destination.

The budget of the OIK for 2009 was 509,788.68 Euro, and financed three budgetary categories: Wages and Salaries, Goods and Services and Expenses for Utilities. The OIK was not allowed to have any budget for capital investments.

Budget structure according to budgetary categories looks as follows:

1. Wages and Salaries 263,696.68 Euro,
2. Goods and Services 192,092.00 Euro, and
3. Expenses for Utilities 54,000.00 Euro.

Budgetary expenses for this reporting period were not realized as planned for the budgetary year. The reason for not using the planned budget is the non-election of the Ombudsperson and his/her deputies (while an Ombudsperson was elected in June 2009, his deputies were not), as well as the turnover of personnel in the OIK and the ensuing legal procedures for the recruitment of new personnel, especially due to the obligation of re-announcing the vacancy notices.

7. Statistical summary

7.1. Statistical summary of complaints and cases (1st of July 2008 – 30th of June 2009)

During the period of time from 1st of July, 2008 to June 30th, 2009, approximately 2260 people have visited the Ombudsperson Institution at the main Office in Prishtina or field offices to lodge complaints or to ask for a help and assistance. From the total number around 420 people met the Acting Ombudsperson or the Director in charge of Investigations during the 80 days of “Opened days” period which were held during the reporting period.

Most of the cases that were investigated by the Ombudsperson Institution during the reporting period were linked mainly with the procedural issues as: prolongation of the procedures in the Courts, administrative silence, non-performance of decision acts, property issues, social assistance issues, the complaints concerning the abuse of power and other issues.

Table 1: Registered cases (1st of July 2008 – 30th of June 2009)

Registered complaints	1031
Ethnic background of the complainants	
Albanian	923
Serbian	50
Bosnian	20
Turkish	16
Others	22
Gender	
Male	805
Female	226

Table 2: Investigated cases (1st of July 2008 – 30th of June 2009)

Cases opened for investigation (from registered complaints)	416
Cases opened <i>ex officio</i>	62
Closed cases (01st of July 2008 – 30th of June 2009)	
Cases declared inadmissible	224
Positively resolved	137
Other reasons	97

Table 3: The ethnic background of the complainants based on the investigated cases

	Albanian	363
	Serbian	36
	Bosnian	6
	Turkish	4
	Others	7
Gender		
	Male	297
	Female	119

Table 4: Respondent parties of the opened cases

	Ministries	154
	Courts	131
	Municipalities	103
	Others	54
	Police	23
	KPA (ex. HPD)	19
	KTA	5

Table 5: The subject of the investigated cases

	Access to the Court (Civil procedures)	112
	Administrative silence and similar issues	81
	Economic, social and cultural rights	76
	Abuse of authority	68
	Property related issues and similar	48
	Other rights protected by ECHR	41
	Fair hearing issues (criminal proceedings)	34
	Issues related to employment	31
	Good services	21
	Issues related to KPA- ex HPD	19
	Impunity of authorities	18
	Failures to investigate a criminal offence	14
	The right to liberty	1

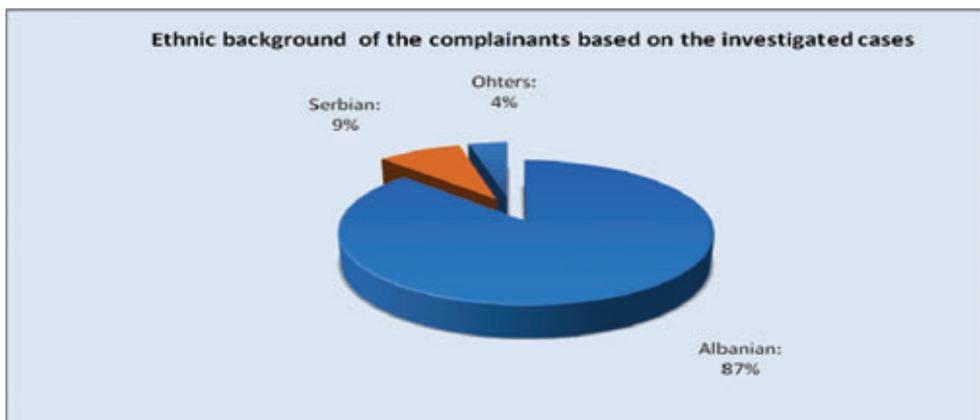
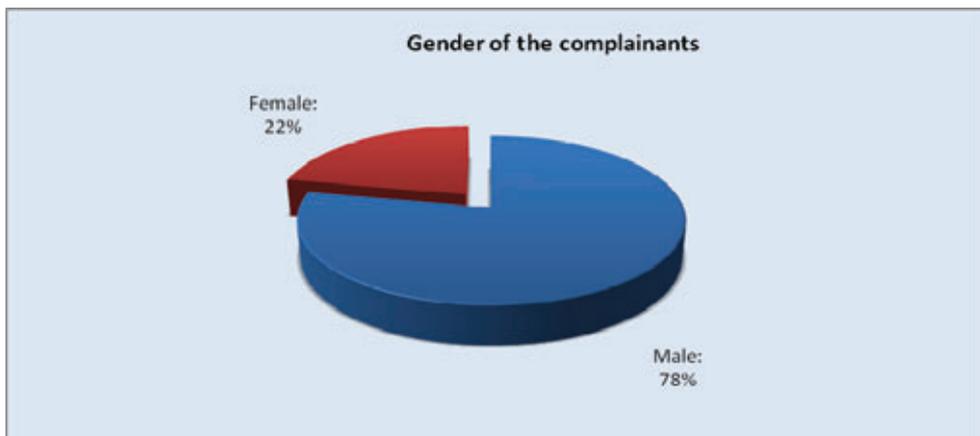
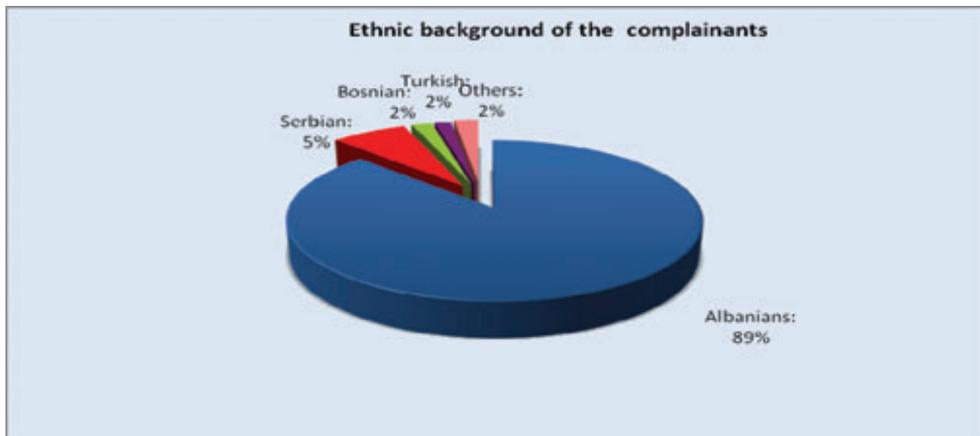
Table 6: Investigations and reports (1st of July 2008 – 30th of June 2009)

	Reports on cases	3
	Reports <i>ex officio</i>	2
	Request for interim measures	1

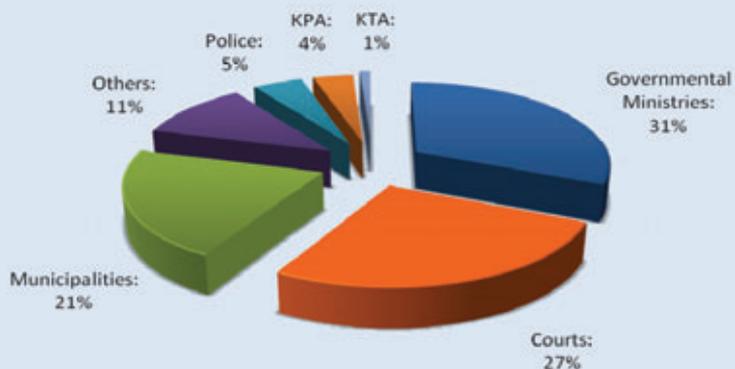
Table 7: The authorities which failed to respond to the letters of IOK

	Courts	49
	Municipalities	44
	Ministries	22

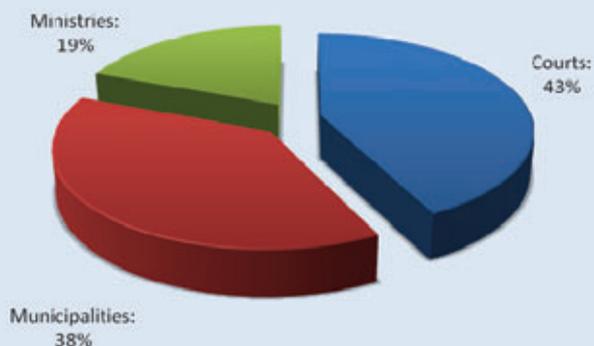
Figure 1: Graphic presentation of statistics 1st of July 2008 – 30th of June 2009



Respondent parties of investigated cases



The authorities which failed to respond to the letters of IOK



Closed cases



7.2. Statistical summary of complaints and cases (1st of January 2009 – 31st of December 2009)

During the period of time from the 1st of January to 31st of December 2009, approximately 2620 people have been visiting the Ombudsperson Institution at Prishtina Office and the regional Offices in order to lodge a complaint or to ask for advice and assistance. From this number approximately 400 people met the Ombudsperson, acting Ombudsperson or the Director of Investigation during the 82 “Opened days” period held during the reporting period.

Similar to the previous periods a number of cases investigated by the Ombudsperson Institution during the reporting period were mainly related to procedural issues as: prolongation of the procedures in the Courts, administrative silence, non-performance of decision acts, property related issues, social issues, abuse of authority and others.

Table 8: Registered complaints (1st of January 2009 – 31st of December 2009)

Registered complaints	1318
The ethnic background of the complainants	
Albanian	1151
Serbian	93
Bosnian	24
Turkish	20
Others	30
Gender	
Male	1019
Female	299

Table 9: Investigated cases (1st of January 2009 – 31st of December 2009)

The cases opened for the investigation (from registered complaints)	518
Cases opened <i>ex officio</i>	65
Closed cases (1st of January 2009 – 31st of December 2009)	
Cases declared inadmissible	204
Positively resolved	127
Other reasons	93

Table 10: Ethnic background of the complainants based on the opened cases

	Albanian	436
	Serbian	63
	Others	19
Gender		
	Male	378
	Female	140

Table 11: Respondent parties of the investigated cases

	Courts	179
	Ministries	158
	Municipalities	132
	Others	83
	Police	29
	KPA (ex. HPD)	18

Table 12: The subject of the investigated cases

	Access to the Courts (Civil procedure)	148
	Administrative silence and similar	85
	Abuse of authority	75
	The rights protected by the ECHR	74
	Economic, social and cultural rights	69
	Issues related to employment	57
	Property issues and similar issues	51
	Regular hearing proceedings (criminal procedure)	49
	Good services	25
	Failure to investigate a criminal offence	21
	Impunity of the authorities	21
	Issues related to KPA, Ex HPD	16
	Right to liberty	3

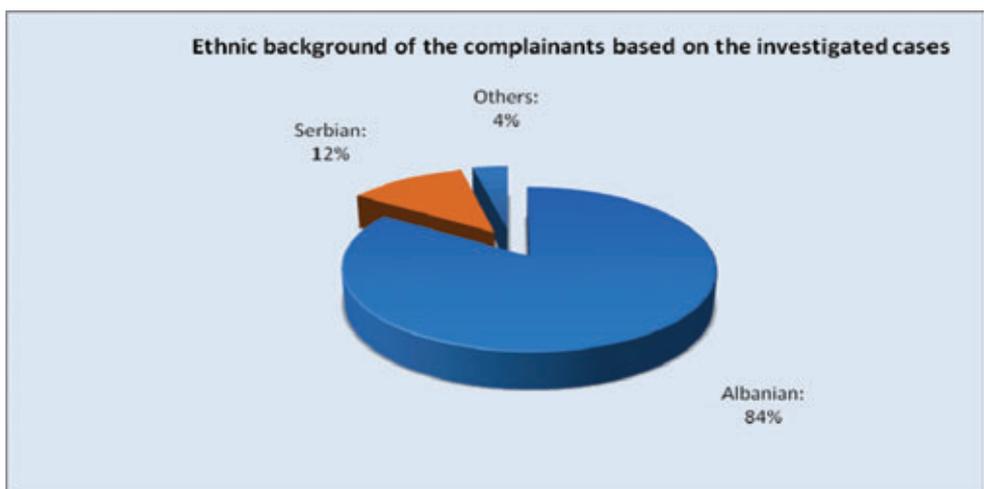
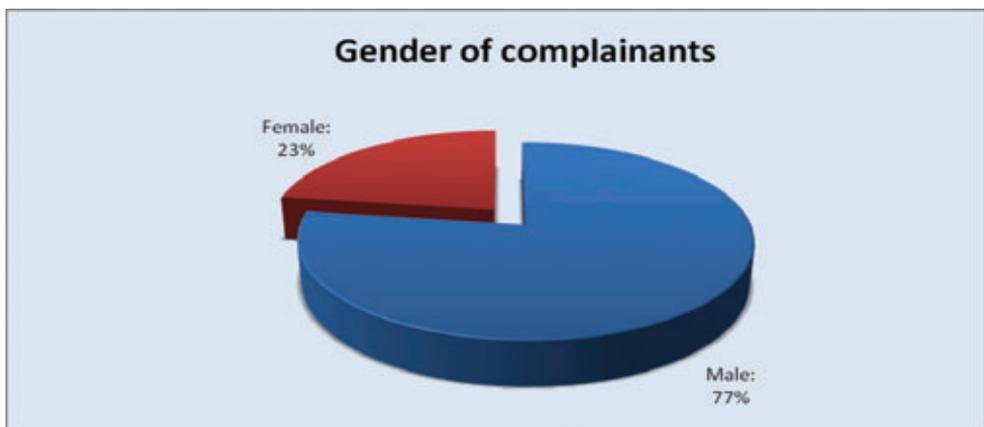
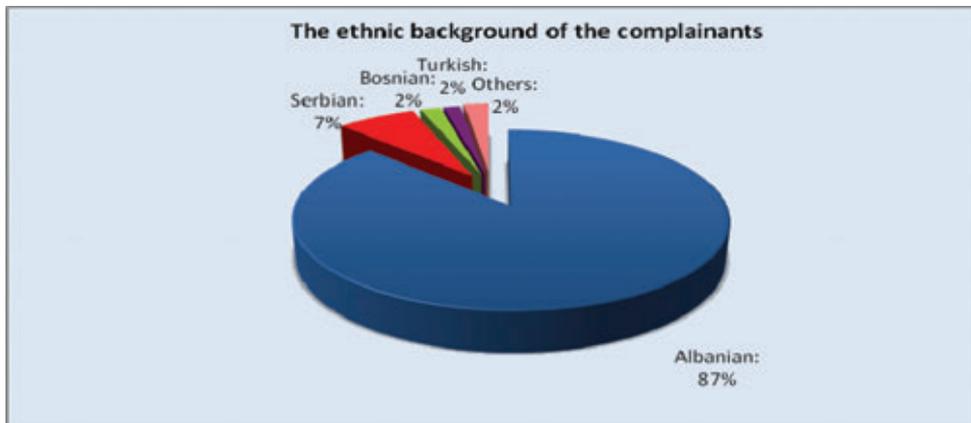
Table 13: Investigations and reports (1st of January 2009 – 31st of December 2009)

	Case reports	1
	Reports <i>ex officio</i>	2
	Request for interim measures	2

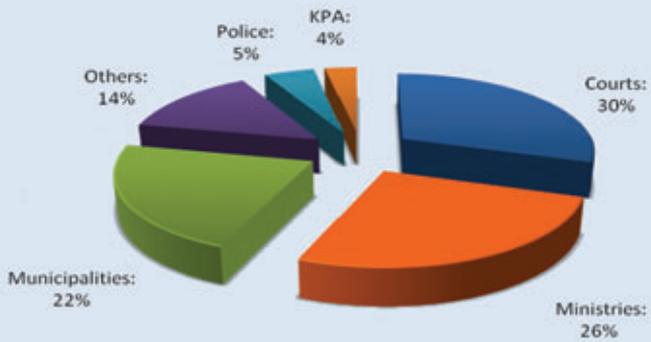
Table 14: The authorities which failed to respond to the letters of OIK.

	Courts	37
	Municipalities	38
	Ministries	21

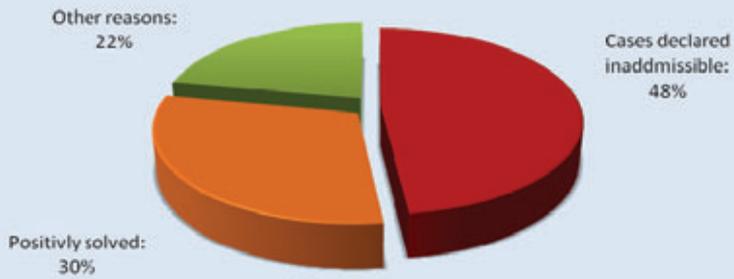
Figure 2: Graphic presentation of statistics 1st of January 09 – 31st of December 2009



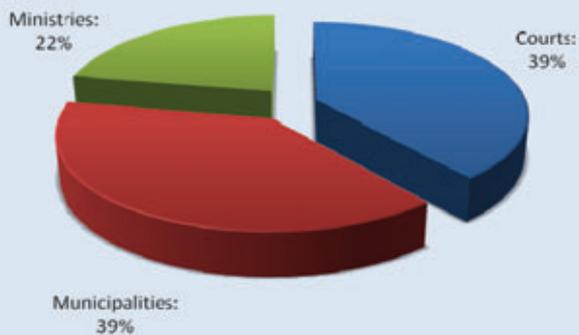
Respondent parties



Closed cases



The authorities which failed to respond to the letters of OIK



8. List of staff and organization chart

The staff and organizational staff structure in the Ombudsperson Institution, based on its current state, consists of three elected individuals and civil servants, in total 42 people. Except for other physical conditions, maintaining sufficient staff for managing and performing the work tasks is a key element in the efficient and sustainable functioning of an institution in fulfilling its mission and mandate.

In the reporting period, up to the end of 2009, the status of the leadership of the OIK has not been regulated in accordance with the applicable law and Constitution of Kosovo. The process of electing the leadership is not fully completed. In June 2009, the Ombudsperson was elected for the first time. The issue of the status of his deputies is not regulated. Currently, the Ombudsperson has only one deputy.

When it comes to the other staff, namely the civil servants, the current number of employees is 40. The services performed by this category of staff contribute to performing vital functions of the institution. The number of staff was and is insufficient. In certain periods, as a result of a high turnover of staff, meaning staff leaving on the one hand, and long legal procedures for choosing and hiring staff on the other, the OIK was faced with a lack of staff in key positions as well.

During this reporting period, 13 employees of the OIK have left the institution, while the OIK has hired 10 new employees. The main reason for staff leaving the OIK is considered to be the low salaries received in the institution, as well as people being hired by other local or international institutions within or outside Kosovo, where the income and work conditions are better.

Based on evaluations of the status of the current staff, according to the budgetary framework for 2009, on the one hand, and the volume of work on the other, we can conclude that the number of employees approved by the Kosovo Consolidated Budget for 2009, with 45 employees in total, was insufficient and did not cover all the needs of the OIK. At the same time, the plans for the approved budget for OIK for 2010 do not fulfill the real needs.

The main obstacle for stability within the OIK remains the lack of a Law on the Ombudsperson Institution by the Assembly of the Republic of Kosovo. Also, it is important for the normal functioning of the OIK to have other laws approved which are linked to the management and administration of the institution, such as the Law on Managing Public Finances and Responsibilities and the Law on Civil Servants.

The legal obligation to implement all responsibilities at work are more difficult, especially if there is a lack of staff for positions such as: An international relations officer, a public relations officer, lawyers for certain special sectors that should function within the OIK; also for positions of administrative officers, such as ones for internal audit of the staff, a certifying officer, two officers for Information Technology, and an editor for publications.

Of course, we have not mentioned at all one issue that constantly places the physical existence of the OIK at risk, and that is the matter of capital investments, especially with

regard to the work facilities. The existing facilities offered and the condition they are in, can not provide sufficient suitable working conditions for even half of the current staff, bearing in mind the nature and needs of the OIK. The legal and constitutional obligation to elect Deputy Ombudspersons risks ending up as a mere legal provision, if it is not possible to provide at least one office in which they can do their work in a dignified manner.

In this context, by evaluating the status and the movement of staff, respectively of the persons elected by the Assembly of the Republic of Kosovo and civil servants, the table below shows the structure and list of staff, according to the situation in December 2009:

Table 15: Structure and List of staff in the Institution

No.	POSITIONS	Approved Staff for 2009	Status of staff at the end of 2009
I.	OMBUDSPERSON Deputies of the Ombudsperson Executive Assistant – for the Ombudsperson	(1) (4) (1)	(1) (1) (1)
II.	EXECUTIVE DIRECTOR Executive Assistant	(1) (1)	(1) (1)
III.	DEPARTMENT OF INVESTIGATIONS 1. Director 1.1 Sector – Lawyers General Investigations 1.2 Sector – Non-Discrimination Team 1.3 Sector – Children’s Right Team 1.4 Sector – Gender Equality Team 1.5 Legal Assistant 2. Field Offices 2.1 Prizren Field Office 2.2 Gjilan Field Office 2.3 Peja Field Office 2.4 Mitrovica Field Office 2.5 Graçanica Field Office	(1) (5) (2) (1) (1) (2) (3) (3) (3) (3) (2)	(1) (5) (2) (1) (1) (2) (3) (3) (2) (3) (1)

IV.	ADMINISTRATIVE DEPARTMENT		
	1. Director of Administration	(1)	(1)
	1.1 Finance and Budget Official	(1)	(1)
	1.2 Media Sector	(1)	(1)
	1.3 Logistics Sector	(1)	(1)
	1.4 Translation Unit	(2)	(2)
	1.5 Resource Official	(1)	(1)
	1.6 Switchboard Operator	(1)	(1)
	1.7 Driver	(2)	(2)
	1.8 Household	(1)	(1)
V	PROCUREMENT DEPARTMENT		
	1. Head of the Procurement Department	(1)	(1)
	Total of Staff:	(45)	(42)

Table 16: List of Staff (updated on 31st of December 2009)

Ombudsperson	Sami Kurteshi
Deputy Ombudsperson	Hilmi Jashari
Executive Director	Jashar Kastrati
Director of Investigations	Veton Vula
Senior Lawyer - NDT	Dragana Rodić
Senior Lawyer – NDT	Merita Sylja
Senior Lawyer - GET	Luljeta Domaniku
Lawyer - CRT	Igballe Rrahmani
Senior Lawyer, Prishtina	Faton Morina
Lawyer, Prishtina	Shqipe Ibraj-Mala
Lawyer, Prishtina	Isa Hasani
Lawyer, Prishtina	Valbona Puka-Gola
Head of the Field Office in Gjilan	Goroljub Pavić
Senior Lawyer, Gjilan	Isuf Sadiku
Head of the Field Office in Gračanica	Aleksandra Dimitrijević
Head of the Field Office in Mitrovica	Makfirete Krasniqi
Head of the Field Office in Peja	Hasie Islami
Head of the Field Office in Prizren	Hunaida Pasuli
Lawyer, northern part of Mitrovica	Miljana Scekić
Lawyer, Prizren	Fitnete Mala
Lawyer, Gračanica	Mirjana Petrovic
Media and Public Relations Officer	Ibrahim Arslan
Head of the Procurement Department	Gëzim Latifi
Finance and Budget Officer	Beqir Musliu
Translator, Prishtina	Ismet Jashari
Translator, Prishtina	Reshat Bashota

Translator/Legal Assistant, Peja	Iliriana Gjuka
Translator/Legal Assistant, Gjiilan	Meliha Brestovci
Translator/Legal Assistant, Mitrovica	Merita Gara
Translator/Legal Assistant, Prizren	Abdullah Kryeziu
Executive Assistant	Shqipe Paçarada
Executive Assistant / personal	Arberita Kryeziu
Legal Assistant	Labinot Sheremeti
Legal Assistant	Vlora Veseli
Chief of Drivers / Logistics Officer	Shpëtim Reçica
Driver	Sami Kuqi
Driver	Kushtrim Çitaku
Switchboard /Receptionist	Mentor Myftari
Storekeeper/Assets Official (resources)	Hakif Imeri
Housekeeper	Gëzime Lepaja

Table 17: Persons who left the Ombudsperson Institution during the reporting period

Deputy Ombudsperson	Ljubinko Todoroviç
Executive Director	Bajram Zogiani
Director of Administration	Përparim Vula
Deputy Director of Investigations	Violeta Krasniqi-Rexha
Senior Lawyer	Gjylbehare Murati
Senior Lawyer	Ilijana Çollaku
Senior Lawyer	Avni Hasani
Legal Assistant	Leonard Desku
Chief of Translators	Safete Sadrija
Translator/Legal Assistant, Peja	Aida Nela
Media Officer	Blerim Krasniqi
Senior Translator/Media Officer	Jetmir Sefa
Chief of Translators	Isak Skenderi
Senior Translator/Translator	Rrahim Sylejmani
Executive Assistant	Arta Ibrahim
Driver	Goran Stević

Table 18: International Advisors who left the Ombudsperson Institution during the reporting period

OSCE Special Advisor to the Ombudsperson Institution (Human Rights/Legal)	Alice Thomas
OSCE Special Advisor to the Ombudsperson Institution (Human Rights/Legal)	Helvise Gallet

9. Abbreviations

OPI	Ombudsperson Institution of Kosovo
EHRC	European Human Rights Court
ECHR	European Convention on Human Rights
CRK	Constitution of the Republic of Kosovo
KPA	Kosovo Property Agency
HPD	Housing and Property Directorate
RAE	Roma, Askali and Egiptian Communities
NGO	Non-Governmental Organization
ICESCR	International Covenant on Economic, Social and Cultural Rights
UCCK	University Clinic Center of Kosovo
UNMIK	United Nations Interim Mission in Kosovo
CRT	Children's Rights Team
NDT	Non-Discrimination Team
CDHRF	Council for the Defense of Human Rights and Fundamental Freedoms
UN	United Nations Organization
SFH	Schweizerische Flüchtlingshilfe
SAZ	Schweizerische Ausbildungszentrumfür das Strafvollzugspersonal
KPI	Kosovo Police Inspectorate
MIA	The Ministry of Internal Affairs
PIIU	Police Internal Investigation Unit
ICCPR	International Covenant on Civil and Political Rights
CPCK	Criminal Procedural Code of Kosovo
KJC	Kosovo Judicial Council
MESP	Ministry of Environment and Spatial Planning (MESP)
SOC	Serbian Orthodox Church.
UNESCO	United Nations Educational, Scientific and Cultural Organization
APJK	Association of Professional Journalists of Kosovo
UKJ	Union of Kosovo Journalists

RTK	Radio Television of Kosovo
EBU	European Broadcasting Union
EULEX	Mission of the European Union
LTG	Law on Public Gatherings
KDI, BIRN	Non-Governmental Organizations
BSPK	Kosovo Alliance of independent Trade Unions
KCC	Kosovo Chamber of Commerce
UNDP	United Nations Development Program
MLSW	Ministry of Labour and Social Welfare
ZAV	German Federal Employment Agency
CRC	The Convention on the Rights of the Child
CRT	Children’s Rights Team
ICMM	Independent Commission for Mines and Minerals
MEST	Ministry of Education Science and Technology
ENOC	European Network of Ombudsman Institutions for Children
KEC	Kosovo Education Centre
AUK	American University in Kosovo

Activities of Ombudsperson Institution



Meeting between the Ombudsman Mr. Sami Kurteshi and the president of the Republic of Kosovo Fatmir Sejdiu.



Images from the meeting between the Ombudsman and the president of the National Assembly of Kosovo Mr. Jakup Krasniqi.



Meeting between the Ombudsman Sami Kurteshi and Head of European Union Mission EULEX Yves De Kermabon.



Ombudsman Mr. Sami Kurteshi and his collaborator Avni Hasani during the visit in Liplan/Lipljan prison.



Media Conference organized by the OPI concerning the launching of the media awareness campaign for the citizens on the role of the Ombudsperson Institution of Kosovo supported by the OSCE Mission in Kosovo, on the right Mr. Sami Kurteshi, Ombudsman, The ambassador Werner Almhöfer and Mr. Ibrahim Anslan, Information Officer.

Images from the meeting between Ombudsperson Sami Kurteshi and his collaborators, Deputy Ombudsperson Mr. Hilmi Jashari and the Head of the Directorate for Investigations Mr. Veton Vula with the president of the Republic of Albania Bamir Topi during the visit to Albania:

(from the right side)
Mr. Veton Vula, Mr. Ermir Dobjani, Ombudsman of Albania, Mr. Bamir Topi, President of Republik Albania, Mr. Sami Kurteshi, Ombudsperson of Kosovo, Mr. Gazmend Pula, Ambassador of Kosovo in Tirana and Mr. Hilmi Jashari Deputy Ombudsperson of Kosovo.





Ombudsperson Mr. Sami Kurteshi meeting with the former International Ombudsperson of Kosovo Mr. Marek Antoni Nowicki.



Ombudsperson Mr. Sami Kurteshi's press conference organized in Media Center in Çagllavicë/Çaglavica.



Meeting between the Ombudsperson Mr. Sami Kurteshi and the Citizens of Peja/Peçi during the "Open days"



From the staf meeting concerning the preparation of the 9'th Annula Report of the OIK



Staff of the Ombudsperson Institution, 2009

Remarks:
