

Kosovo*

*Ombudsperson Institution of Kosovo**

Accreditation status and SCA recommendations

Due to the specific international standing of Kosovo*, the Ombudsperson Institution is unable to seek accreditation before GANHRI's Sub-Committee on Accreditation, organized under auspices of UN OHCHR. The Institution is a non-accredited, associate member of ENNHRI. It has worked for the promotion and protection of a wide range of human rights issues in Kosovo*.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The most important initiative for the rule of law at national level is the ongoing Functional Review of the Rule of Law Sector, which is designed to provide a thorough analysis in the area of rule of law and a sound basis of reform and modernization of various aspects of the judiciary. Two phases of this process have been completed, and the third phase consists in putting in place a comprehensive "sector strategy" aiming at strengthening the independence, impartiality, integrity, accountability as well as the overall capacity of the judiciary and prosecution.

The three phases of the Functional Review process have stimulated a detailed and substantial debate not only among the stakeholders involved in the process (Kosovo* Judicial Council, Kosovo* Prosecutorial Council, State Prosecutor, Ministry of Internal Affairs, Anti-Corruption Agency, professions free, etc.), but also at the level of legislative bodies. The working group involved in drafting the Sector Strategy for Rule of Law has met several times with the deputies of the Committee on Legislation of the Assembly of Kosovo* to discuss the measures and recommendations of the Strategy and to raise awareness regarding the proposals of the Functional Review process.

In addition, dozens of workshops and meetings were held with stakeholders, international strategic partners, and civil society organizations to present and discuss the recommendations of the Functional Review of the Rule of Law Sector, whose key goal is to improve the functioning of the rule of law. The design of the above-mentioned strategy is completed and the strategy is now in the process of public consultation, after which it will be adopted.

Follow-up initiatives by the Institution

The Ombudsperson Institution of the Republic of Kosovo* (OIK) acknowledged the importance of the ENNHRI 2020 Rule of Law Report, on 30 June 2020, by publishing it in the institution's website, with the purpose of promoting it to the general public, responsible authorities, civil society organizations and media, but also raising awareness on the challenges with regard to the rule of law in the country.

Information with regard to the ENNHRI Rule of Law Report is included in the OIK 2020 Annual Report as well, which was published in March 2021.

In addition, on 10 December 2021, the OIK has organized a virtual regional conference to mark the International Human Rights Day with the topic on " Human rights in the pandemic period and the role of National Human Rights Institutions", which gathered the highest public authorities in Kosovo*, ENNHRI, national human rights institutions from the Western Balkans, international organizations and NGOs. One of the panellists of the conference was also ENNHRI Secretary General, who addressed the conference with the role of NHRIs during the pandemic. During her speech, the Rule of Law Report was mentioned as well, as it contained information on the activities of NHRIs during Covid-19 crisis.

References

- OIK website article "ENNHRI published the report on state of rule of law in Europe", <https://www.oik-rks.org/en/2020/06/29/>
- OIK Annual Report 2020, <https://oik-rks.org/en/2021/04/14/annual-report-2020/>
- OIK organized a regional conference on the challenges of the pandemic and its impacts on human rights, <https://www.oik-rks.org/en/2020/12/10/the-oi-organized-a-regional-conference-on-the-challenges-of-the-pandemic-and-its-impact-on-human-rights>

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There were no developments that would affect the regulatory framework of the Ombudsperson Institution of Kosovo* during 2020.

Enabling space

The Ombudsperson Institution of Kosovo* has been provided with the necessary space to carry out its constitutional and legal mandate independently. However, the implementation of recommendations addressed to the central and local level authorities remains unsatisfactory.

Nonetheless, the OIK is trying to improve this situation, and the European integration process was of great help. The issue of implementation of the OIK's recommendations was included in the Financial Agreement between Kosovo* and the European Union on the Public Administration Reform, through two indicators. The first indicator intends to increase responses to the letters and recommendations addressed by the Ombudsperson within a 30 days' deadline, and the second one intends to increase the implementation rate of the recommendations addressed to the central government institutions. These indicators serve as the basis for the financial support to the Government with regard to the public administration reform. If they are not met, funds will be subtracted, as indicated in the signed contract.

The presence of this indicator in the above-mentioned contract and the conditionality of receiving (or not) funds, has proved very successful with regard to the implementation rate of the Ombudsperson's recommendations. The OIK already witnessed a huge impact on this issue, and recommends this same approach in all the accession countries.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

No changes have been identified that would affect the fulfilment of the institution's mandate, with the exception of restrictions that all governments applied as a precautionary measure to prevent the spread of the pandemic. This has been challenging also for the OIK as these restrictions affected the normal progress of work. The effects are visible both through the number of complaints received, as well as through the number of recommendations addressed to the authorities, and the delays with which those were implemented.

References

- Constitutional Court JUDGMENT in Case No. KO219/19, Applicant The Ombudsperson Constitutional review of Law No. 06/L-111 on Salaries in Public Sector, https://gjk-ks.org/wp-content/uploads/2020/07/gjk_ko_219_19_agj_ang.pdf

Human rights defenders and civil society space

The lockdown, in Kosovo* as in any other country, significantly reduced the space for civil society activism. In spite of this, many civil society organizations were very vocal on different human rights issues during the pandemic period.

The OIK also continued to cooperate with the civil society, as part of its mandate under both the Paris Principles and the Law on the Ombudsperson, during the reporting period. In addition to addressing issues of common interest, the Ombudsperson Institution was an attentive interlocutor for civil society to raise issues of systematic human rights violations.

In this regard, the OIK, on 1 February 2021 published the Report with recommendations Ex officio 365/2018 against the Ministry of Economy and Environment, questioning the lawfulness of the procedures concerning the hydropower plants in the country as well as access to documents related to hydropower plants. The report also alerts on the restriction of access to public documents on the issue for civil society actors. The OIK is investigating 7 civil society complaints of this nature. One of the cases addressed is delays in responding to the access to public documents requests with reasons for working with essential staff, and working remotely. Of the 62 complaints received in 2020 regarding the restriction of the right of access to public documents, 39 complaints were filed by the media and civil society. The lack of capacity for pandemic reasons and staff working remotely made it difficult to access public documents.

The OIK undertook several projects in cooperation with civil society actors in 2020, such as:

- a Joint Declaration with NGOs in Kosovo*, agreeing to be “committed and dedicated in undertaking joint actions, with particular emphasis on development of effective cooperation in respect of human rights and fundamental freedoms for all”. Since then, different initiatives were implemented jointly with CSOs as a very strong partner to the OIK, as the only NHRI in the country, including signing of memoranda of understanding (MoUs) with organizations in the field of children’ rights, prevention of torture etc.
- a Joint Statement on the protection of health and life of juveniles deprived of liberty, with the UNICEF Office in Kosovo* and the Coalition of NGOs for Child Protection, issued on 22 May 2020. The Declaration (addressed to the President, Speaker of the Parliament, Parliamentary Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency, Judicial Council, Prosecutorial Council and Ministry of Justice) called on these institutions to make decisions which will enable the replacement or review of institutional educational measures, replacement of detention, early release, parole, or even pardon of sentences.

- A Virtual regional conference to mark International Human Rights Day with the theme "Human rights in the pandemic period and the role of National Human Rights Institutions", in which two panellists from Civil Society Organizations addressed the audience with their perspective on this issue.

OIK has a very good cooperation with different international organisations based in Kosovo*. Among them the OSCE, which supports the OIK with different projects for capacity building and promotion of the mandate. In 2020, they supported the OIK with promotional videos against hate speech, hate crimes and for raising public awareness against discrimination. The purpose of the videos was to raise general awareness about the grounds of discrimination, hate crimes, hate speech, as well as to encourage victims to report cases of discrimination and hate crime to the competent institutions. They were broadcasted on several television channels as well as social networks, in December 2020.

References

- Report with recommendations Ex officio 365/2018 against Ministry of Economy and Environment regarding the issue of lawfulness of the procedures concerning the hydropower plants in the country as well as access to documents related to hydropower plants, <https://www.oik-rks.org/en/2021/02/03/report-with-recommendations-ex-officio-3652018-against-ministry-of-economy-and-environment-regarding-the-issue-of-lawfulness-of-the-procedures-concerning-the-hydropower-plants-in-the-country-as-we>
- Joint Declaration of the Ombudsperson and non-governmental organizations of the Republic of Kosovo*, <https://www.oik-rks.org/en/2017/12/10/joint-declaration-of-the-ombudsperson-and-non-governmental-organizations-of-the-republic-of-kosovo/>
- Joint Statement of the Ombudsperson, UNICEF and KOMF (Coalition of NGOs for the Protection of Children) - Call for Action "To give juveniles a chance", 2020, available at: <https://www.oik-rks.org/en/2020/05/22/joint-statement-of-ombudsman-unicef-and-komf/>

Checks and balances

The outbreak of the COVID-19 pandemic and related counter measures affected in several ways the national system of checks and balances, more details are provided in the COVID-19 section below. Regarding more general issues:

Separation of powers

The OIK recently questioned the constitutionality of two laws.

The Law on Public Officials, which provides to the Government of the Republic of Kosovo* power to establish a legal basis for employment of public officials in institutions of the Republic of Kosovo*, including public officials in independent institutions (e.g. OIK) as well as in other public sector entities, regardless of the specificities of the constitutional status of these entities. The Ombudsperson considered that the Law on Public Officials did not take into account the fact that organisational, functional and activity issues in various public sector entities are regulated separately, in accordance with the Constitution of the Republic of Kosovo* and with their organic laws. The Ombudsperson, among other things, considered that the law violates the separation of powers, as it provided to the Government power over legislative, judiciary and independent institutions.

The Law on Salaries in the Public Sector, which defines the system of salaries and bonuses for public officials, who are paid from the state budget, and the rules for determining the salaries of employees of public enterprises in Kosovo*. The Law authorizes the Government of the Republic of Kosovo* and the Assembly of the Republic of Kosovo* to issue bylaws for the implementation of this law. The Ombudsperson considered that this law and Annex 1 of this Law failed to carry the constitutional spirit in the sense of separation of powers, equality before the law, nor the guarantee of property rights. Furthermore, the Ombudsperson considered that this law was not in compliance with the principles of the rule of law, due to shortcomings in terms of its clarity, accuracy and predictability.

The Ombudsperson has raised, in the Constitutional Court, the issue of compliance with the Constitution of the Republic of Kosovo* of the above-mentioned laws (Law no. 06/L-114 on Public Officials and Law no. 06/L-111 on Salaries in the Public Sector), and requested interim measures on both laws, in order to avoid irreparable damages due to the implementation of these laws, in particular of the Law on Salaries.

On 30 June 2020, the Constitutional Court issued:

- the Judgment KO 203/19 regarding the assessment of the constitutionality of Law no. 06/L-114 on Public Officials. The Court decided that: the referral was admissible for review on merits; that the articles, challenged by the Ombudsperson are not in compliance with the Constitution; and that the challenged law does not apply in relation to the Kosovo* Judicial Council, Kosovo* Prosecutorial Council, the Constitutional Court, the Ombudsperson Institution, Auditor-General of Kosovo*, Central Election Commission, the Central Bank of Kosovo* and the Independent Media Commission, as it violates their functional and organisational independence guaranteed by the Constitution.
- the Judgment KO 219/19 regarding the assessment of the constitutionality of Law no. 06/L-111 on Salaries in the Public Sector. The Court decided that: the referral was admissible for review of merits; the challenged Law, in its entirety, is not in compliance with the Constitution and therefore declared it invalid.

While these laws had nothing to do with the COVID-19 pandemic, it is worth noting that the Constitutional Court has fulfilled the obligations and deadlines regarding the resolution of the issues raised by the Ombudsperson despite the fact that it has been working in aggravated circumstances due to the pandemic.

Access to information

During 2020, 62 complaints to the OIK were related to access to public documents. Of those, 39 were received from the civil society and the media, while others were individual complaints.

In most cases the responses of the institutions to accept applications are timely and within the legal deadlines. However, the decision-making time for granting or rejecting access exceeds the time limits provided by law, despite the importance of providing information in a timely manner. It has also been noted that delays are often due to a lack of human resources. In cases where public institutions rejected access or granted limited access, they often fail to provide a justification based on law. Furthermore, the state institutions, holders, compilers or recipients of information, in most cases have not classified the documents in timely manner, or not at all, as provided by Law no. 03/L-178 on Classification of Information and Security Clearances. Failure to comply with this law opens the way to arbitrariness in deciding whether to grant or reject access to public documents. The Ombudsperson has reported this issue in previous years.

Since the declaration of the pandemic emergency, an excuse for delays in responding to access applications has also been used to suggest that institutions are working with reduced staff and remote work.

Another obstruction in the realization of the right of access to public documents derives from the non-appointment of the Commissioner of the Agency for Information and Privacy. In July 2019 entered into force the Law no. 06/L-081 on Access to Public Documents, by which the information seeker can file a complaint to the Information Commissioner within fifteen days, in case the public institution remained silent, has not responded, or has rejected the application for access to public documents. The appointment of the Commissioner by the Assembly of the Republic of Kosovo* has failed three times (the first time, none of the candidates managed to qualify; the second time, the selection failed due to the dissolution of the Assembly of the Republic of Kosovo*; the third time, none of the candidates managed to get the required votes). The failure to appoint the Information Commissioner has also hindered the issuance of bylaws for the internal organization of the Agency, which (according to the Law on Personal Data Protection) must have been issued 6 months after the entry into force of this Law (25 February 2019).

Judiciary

The Government of the Republic of Kosovo* issued decisions on the state of emergency in public health, which limited the work of public institutions.

Electoral process

The Ombudsperson has monitored the process of the Early General Elections held on 14 February 2021. The OIK monitored this process in the field in almost all municipalities of the Republic of Kosovo*. In general the process was orderly, except for some technical problems which did not have an effect on the right to vote, or to be elected.

NHRI as component of checks and balances

The Ombudsperson Institution of the Republic of Kosovo* has a strong constitutional and legal mandate in monitoring how the mechanisms of checks and balances work and if principles of rule of law, democracy and human rights are respected in the country.

1. Participation in legislative and policy processes

The OIK's mandate has in its duties to observe policies and laws adopted by national authorities, in order to ensure that they are in compliance with international human rights standards and good governance principles. The OIK then makes recommendations, such as:

The OIK Annual Report 2019 had emphasized that the laws published in the Official Gazette do not mention when provisions have been abrogated by the Constitutional Court. However, it has recently been noticed that in the reporting period, the Official Gazette has started to publish

notices of the Judgments of the Constitutional Court regarding the relevant laws, as recommended.

In order to protect the rights of children, the Ombudsperson Institution, on 12 August 2020 published a Report with Recommendations regarding the prevention of child marriages and recommended the Assembly of Kosovo* to amend and supplement Article 16, paragraphs 2 and 3, of Law no. 2004/32 on Family, respectively removing paragraphs 2 and 3 of Article 16. However, because of the health and political crisis, the Assembly of Kosovo* has not taken any action in order to implement the recommendation in question.

2. Intervention before the courts

The Ombudsperson Institution may appear in the capacity of the Court's friend (amicus curiae) in judicial proceedings dealing with human rights, equality issues and protection from discrimination, however it does not intervene on cases and other legal procedures, except those related to administration of justice (delays of judicial procedures and failure to execute judicial decisions). The Ombudsperson may nevertheless provide general recommendations on the functioning of the judicial system, and can raise issues with the Constitutional Court of Kosovo*.

The OIK has appeared in the capacity of court friend (amicus curiae) in 4 cases during the reporting period, in court proceedings related to human rights, equality issues and protection from discrimination. It also received several complaints against prosecutors and from the cases investigated in four complaints have ended with Reports with recommendations to the Basic Prosecution (BP) in Pristina.

References

- Decision no.01 / 07, dated 15.3.2020 and Decision no.01 / 11, dated 15.3.2020, of the Government of the Republic of Kosovo*. <https://kryeministri-ks.net/wp-content/uploads/2020/03/Vendimi-nr.01-11.pdf>
- Kosovo* Judicial Council, Decision KJC.no. 52/2020, dated 12 March 2020, https://www.gjyqesori-rks.org/wp-content/uploads/decisions/13755_Vendimi_Nr_52_2020_Kufizohen_perkohesisht_veprijtarit_gjyqesore.pdf

- Kosovo* Judicial Council, Decision KJC.No. 83/2020, May 2020, source: https://www.gjyqesori-rks.org/wp-content/uploads/decisions/57454_Vendimi_KGJK_Nr_83_2020_Shtohet_aktiviteti_punes_se_Keshillit_Gjyqesor_te_Kosoves_dhe_te_gjitha_Gjykatat_vendit..pdf
- Kosovo* Prosecutorial Council, "Decision - Activities to be reduced essentially within the Kosovo* Prosecutorial Council and the State Prosecutor", March 2020, source: <https://prokuroria-rks.org/kpk/lajm/4638>
- Kosovo* Prosecutorial Council, Decision KPC.nr.462 / 2020, May 2020, source: <https://prokuroria-rks.org/assets/cms/uploads/files/Dokumente%20Publikime/KPK/Vendime/Vendim%20Nr.462.2020%20-%20Shtohen%20aktivitetet%20e%20pun%C3%ABs%20n%C3%AB%20sistemin%20prokurorial.pdf>

Functioning of the justice system

When it comes to judicial system, the Ombudsperson Institution has a limited mandate. It may only make general recommendations on the functioning of the judicial system, without interfering in legal cases and legal proceedings being conducted before the courts, except in cases related to allegations on the administration of justice, namely delays in court proceedings, and in the execution of judicial decisions.

The national justice system has suffered from the backlog of cases for a significant period of time, causing excessive length of proceeding, both in the processing of cases and the enforcement of court decisions. This chronic problem in the domestic courts is the issue stressed by the highest number of case received by the Ombudsperson. The current circumstances created by the pandemic have only deepened the problem.

A huge number of monitoring of court proceedings is also an indicator that there is still a perception of citizens about the lack of objectivity of judges in deciding their cases. In this relations, the OIK has published two Reports with recommendations and a Letter with Recommendation addressed to the courts.

The outbreak of COVID-19 virus imposed the need to take state protective measures aimed at protecting public health. The Government of the Republic of Kosovo* issued decisions on the

state of emergency in public health, thereby limiting the work of public institutions, including on the functioning of the judiciary. As a result, the activity in courts and the prosecution was reduced to only reviewing cases where the public was not present, in urgent cases and with reduced staff.

This new situation in the judiciary contributed to further deterioration of the efficiency of ruling on court cases within legal time limits and this led to further increasing the court's backlog at the national level. This in turn contributed to citizens' dissatisfaction with human rights and freedoms, for the judicial protection of their rights.

It should be noted that citizens mainly complain about delays in proceedings for ruling on cases by the courts as well as delays in the enforcement of final court decisions. In accordance with the legal competencies that the Ombudsperson has in relation to the judiciary (Law no.05 / L-019 on Ombudsperson, Article 16, paragraphs 8 and 9) the Ombudsperson has published two reports with recommendations and a Letter of Recommendation for the judiciary and in 4 cases has appeared as a friend of the court (*amicus curiae*) in trials related to human rights, equality related issues and anti-discrimination.

As already evoked in 2020 ENNHRI Rule of law report, the OIK found that the Law no. 06 / L-111 on Salaries in the Public Sector law failed to convey the constitutional spirit in terms of separation of powers, equality before the law, and the guarantee of property rights. The OIK also found it incompatible with the principles of the rule of law, due to deficiencies in terms of its clarity, accuracy and predictability. On 30 June 2020, the Constitutional Court issued the Judgment KO 219/19 declaring the Law unconstitutional in its entirety. It was the Ombudsperson Institution that challenged the law in question in the Constitutional Court, considering it not in compliance with the Constitution of the Republic of Kosovo*.

In the Judgment, among others, the Constitutional Court ruled that "the Court noted some serious conceptual and practical problems to the detriment of the Judiciary and Independent Institutions. This is due to the fact that, if this provision were declared constitutional, it would mean that whenever the Judiciary and other Independent Institutions need to create a new position within their organizational chart, or change the internal organizational structure depending on the need that may arise in the future – they should address the Government to ask for permission and approval to create a new position and to seek permission and approval to change the internal organizational structure. The contested Law in the final decision-making chain, left to the Government the decision to "approve" any proposal of the Judiciary. The Court found that this legal regulation, without any doubt, in a flagrant way goes contrary to the notion of "institutional, functional and organizational" independence of the Judiciary and Independent Institutions.

The Ombudsperson Institution may appear in the capacity of amicus curiae in judicial proceedings dealing with human rights, equality issues and protection from discrimination. In this regard, the Ombudsperson during the reporting year has investigated cases of non-execution of final court decisions which for years were not executed by the courts, therefore these delays negatively affected the realization of guaranteed rights and citizens' trust in the judicial system.

On 22 May 2020, the Ombudsperson together with the UNICEF Office in Kosovo* and the Coalition of NGOs for Child Protection issued a Joint Statement on the protection of health and life of juveniles deprived of liberty. The Declaration (addressed to the President, Speaker of the Parliament, Parliamentary Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency, Judicial Council, Prosecutorial Council and Ministry of Justice) called on these institutions to make decisions which will enable the replacement or review of institutional educational measures, replacement of detention, early release, parole, or even pardon of sentences.

In spite of some cases which have been properly dealt with by the police and the justice system, the OIK has noted a general impunity regarding the growing cases of threats, physical assaults, breaches of security and prevention of free exercising of the journalist profession during 2020 (see below).

Media pluralism and freedom of expression

During the reporting period, there were no complaints filed within the Ombudsperson Institution with regard to the regarding the free and pluralist media environment. The complaints filed within the Ombudsperson institution by the media and journalists were mostly with regard to the access to public documents (see checks and balances section above).

However, the OIK welcomes and follows on any request in this field.

On May 3, 2020, on the occasion of World Press Freedom Day, the Ombudsperson published a statement (link in references) focused on the importance of the media and the global pandemic situation. The Ombudsperson stressed that in the existing circumstances, with multiple challenges in almost all segments of life, reliable journalism, which is built on professional and ethical standards, is vital for the processes in the country. Considering the many obstacles in journalism, respect for media freedom and media pluralism are vital to guarantee other rights and freedoms. Independence and professionalism in journalism ensure transparency and accountability on issues of general interest and at the same time sensitize the citizens for activism and participation in social, economic, cultural and political processes.

The nature of their work makes journalists subject to threats or assaults, which makes it challenging for the media to function effectively in disseminating information. Verbal or physical assaults on journalists, threats through social networks or in any other form, violate the constitutional rights to freedom of the media and freedom of expression and alert to the fragility of the functioning of democracy and the rule of law in the country. The authorities have a constitutional obligation to safeguard the necessary safety and security of journalists, in fulfilling their role. At the same time, they are obliged not to interfere in the work of the media and are obliged to provide transparency and grant access to official information and documents, as essential components of the exercising of freedom of the media, respectively freedom of expression and information.

In this context, the Ombudsperson shares his concern regarding the growing cases of threats, physical assaults, breaches of security and prevention of free exercising of the profession during 2020. In spite of some cases which have been properly dealt with by the police and the justice system, the OIK draws attention to the general impunity around those cases. This contributes to an insecure environment for the work of the media and indirectly paves the way for the self-censorship of journalists and the media. Also, the persistent difficulties of journalists to access official information and documents are a constant concern over the years.

In this context, on 25 February 2021, the Ombudsperson reacted and condemned the physical attack on journalist Visar Duriqi, which he qualified as an attack on freedom of expression as a fundamental right in a democratic society, and called on law enforcement mechanisms to treat these cases with priority and seriousness, emphasizing the obligation of the state to ensure the life, health and physical integrity of citizens and demanded that all measures be taken to prevent such cases in the future.

References

- Ombudsperson's statement on the World Press Freedom Day, <https://www.oik-rks.org/en/2020/05/03/ombudspersons-statement-on-event-of-the-world-press-freedom-day/>
- Reaction of the Ombudsperson related to the physical assaults against citizens, <https://www.oik-rks.org/en/2021/02/26/reaction-of-ombudsperson-related-to-physical-assaults-against-citizens/>

Corruption

The Ombudsperson Institution was not alerted of any such practice.

In compliance with the obligations arising from Law no. 06 / L-085 on the Protection of Whistleblowers, the OIK has appointed the responsible person from the Institution for issues related to whistleblowing, who reports directly to the Anti-Corruption Agency.

In order to determine the procedure for receiving and handling whistleblowing cases and implementing the above-mentioned law, the responsible authority (Ministry of Justice) has finalized the draft regulation which is expected to be voted in the Government of the Republic of Kosovo*, in order to begin its implementation.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The COVID-19 outbreak and the authorities' counter measures impacted many aspects related to rule of law and human rights protection, such as:

Accountability of state authorities in the context of the COVID-19 pandemic

1. Assembly of the Republic of Kosovo*

In 2020, the Assembly of the Republic of Kosovo* has only adopted 17 laws. This small number is a result of the irregular functioning of the Assembly and the Government, due to political circumstances and those caused by the COVID-19 pandemic.

One of the most special events that occurred in the legislative process during the reporting year is the adoption of the Law no. 07/L-006 on Preventing and Combating COVID-19 Pandemics in the Territory of the Republic of Kosovo*. This law was adopted by the Assembly of the Republic of Kosovo* on 14 August 2020. This law aims to create the legal basis for the state institutions of the Republic of Kosovo*, to combat and prevent the COVID-19 pandemics, and was issued as a result of the assessments of the Constitutional Court when deciding on the referrals filed by the President against the Government's decision on restrictive measures, respectively against the restriction of freedom of movement and freedom of gathering.

On 4 December 2020, the Assembly of the Republic of Kosovo* adopted the Law no. 07/L-016 on Economic Recovery – COVID-19. This law aims to supplement and amend some laws, in order to recover the economy of the Republic of Kosovo* after the negative effects caused by the COVID-19 pandemic.

2. Government of the Republic of Kosovo*

The work of the executive during the reporting year is undoubtedly largely characterized by the COVID-19 pandemic and its impact on the work of the executive.

The COVID-19 pandemic posed an unprecedented human rights challenge worldwide. The circumstances created by the COVID-19 virus and the danger it poses to the life and health of citizens require balancing between the right to life, which cannot be restricted in any circumstances, and other rights for which the Constitution and International human rights instruments allow restrictions in certain circumstances. The Ombudsperson considers that the COVID-19 pandemic falls within the definition of threat to the health and life of citizens, and the state is obliged to take measures to protect their life and health, which, among other things and in general, was also the position of the Ombudsperson expressed in two opinions, which he has referred to the Constitutional Court regarding the Government's decisions related to the restriction of the freedom of movement and freedom of gathering.

On March 13, 2020, the first two cases of COVID-19 in Kosovo* were confirmed, and as a result, the Government of the Republic of Kosovo* began to take the first measures to prevent the spread of this virus and issued: on March 30, 2020, Decision no. 01/19, approving the Fiscal Emergency Package; on April 3, 2020 Decision no. 31/2020, approving the Operational Plan of the Emergency Package; on April 17, 2020 Decision no. 06/25 supplementing the Fiscal Emergency Package.

The media reported that applying for the benefit of some measures of this Package has been a complicated procedure. They also reported delays in the implementation of payments of these measures. Salary delays also affected some workers from the Fiscal Emergency Package due to the fact that their data were erroneously uploaded to the system during the application for benefiting from this package etc. Individual complaints on the matter have been submitted to the Ombudsperson, which are under investigation.

On April 15, 2020, with the decision of the government, strict measures of restriction of movement entered into force. The Ombudsperson has closely followed the issuance of decisions by the government, in order to impose restrictive measures to protect public health from the COVID-19 pandemic.

The Ombudsperson, from March 15 to December 31, has received 64 complaints related to the pandemic, of which 39 have been opened for investigation. While 9 other cases were initiated ex officio related to the pandemic situation, as follows:

- Based on the urgent request of the Constitutional Court to submit comments regarding the imposition of an interim measure, following the request of the President of the Republic of Kosovo* for the Court to provide an: "Assessment of the issue of compliance of the Decision of the Government of the Republic of Kosovo* no.01 / 15, dated. 23/03/2020, with the Constitution of the Republic of Kosovo* regarding the restriction of fundamental rights and freedoms protected by the Constitution." Regarding the case, the Ombudsperson has sent an Opinion to the Constitutional Court regarding case no. KO 54/20
- Case related with the decisions of the Ministry of Health for the restriction of the freedom of movement during the pandemic (Decision no. 2381IV / 2020, no. 229 / IV / 2020, no. 2141IV / 2020, no. 2391IV / 2020). The Ombudsperson has sent an Opinion regarding the case no. KO 61/20, according to the notification of the Constitutional Court for the registration of the request for submission of comments with ref. no.: KK 82/20, dated 20 April 2020.
- Case related to the restriction of the right to privacy of citizens affected by COVID-19, from the publication of their data by the media and journalists.
- Case related to the provision of health services during the COVID-19 pandemic.
- Case related to Decision no. 31/20120, dated 3.4.2020, of the Ministry of Finance on the approval of the Operational Plan for the Fiscal Emergency Package.
- Case related to the licensing of private laboratories for PCR and serological testing by the Ministry of Health.
- Case of A. G., who lost his life on May 3, 2020 while being quarantined at the Student Center, at the time of the COVID-19 pandemic.
- Case regarding the violation of the rights to access to health care services of persons affected by HIV / AIDS and Tuberculosis (TB) in Kosovo* during the pandemic.
- The Ombudsperson has recommended to the Ministry of Health and National Institute for Public Health of Kosovo* to act in accordance with the provisions of Article 5, paragraph 1, of the Constitution and Law no. 02 / L-37 on the Use of Languages, so that citizens and the public, in a timely and immediate manner, e.g. through their official websites, inform them in both official languages of the Republic of Kosovo* about the public health emergency situation caused by the COVID-19 pandemic.
- The Ombudsperson has also issued an Opinion regarding the requests for the release of prisoners of certain categories during the COVID-19 pandemic. Through this Opinion, the

Ombudsperson, among others, reminded all competent bodies of the Republic of Kosovo*, the absolute nature of the prohibition of torture and inhuman and degrading treatment, which is envisaged by The Constitution of the Republic of Kosovo*, with the relevant country legislation, as well as with international human rights standards. The Opinion recommended the authorities to apply the CPT standards in order for the persons deprived of their liberty to be guaranteed the level of health care available to other community. Competent authorities, if necessary, to provide medical care to prisoners outside prisons and detention centres. It also urged competent authorities to impose alternative sanctions on remand detention in order to prevent an increase in the number of prisoners and not to risk the principle of maintaining social distance, which is one of the measures proclaimed by the WHO in the fight against COVID -19.

Judiciary

The Government of the Republic of Kosovo* issued decisions on the state of emergency in public health, which limited or in some cases even stopped the work of public institutions. These decisions also had negative impacts on the functioning of the judiciary and reduced the work of the courts and the prosecution to only reviewing cases where the public is excluded, in urgent cases and with reduced staff.

This caused further deterioration in the efficiency of courts' decisions within legal deadlines and increased the number of unresolved cases at the national level. This affects citizens' dissatisfaction with human rights and freedoms, for the judicial protection of their rights.

Electoral process

The Ombudsperson noted that at the polling stations where the monitoring was conducted, Covid-19 protection measures were not fully implemented, as the masks were not used by all voters, and the necessary distancing was not maintained. According to the Ombudsperson, this could endanger public health, which could have major repercussions on the citizens of the Republic of Kosovo*. Finally, the Ombudsperson highly appreciates the organization of the General Elections by the Central Election Commission (CEC).

Trust between state authorities and citizens

The work of the executive/ state administration for 2020 was clearly characterized by the COVID-19 pandemic to a large extent and the impact on its work.

The circumstances created by the COVID-19 virus and the threat caused to the life and health of citizens have contributed to taking measures to restrict human rights, especially the right of movement and freedom of assembly, in order to protect the life and health of citizens.

Restrictive measures taken by the executive have not been welcomed by citizens and businesses and certain executive's decisions have been sent to the Constitutional Court to assess their constitutionality, and the Court has found human rights violations. In that regard the Ombudsperson has provided his opinions to the Constitutional Court.

The state administration has operated with limited human capacities, focusing only on emergency work thus preventing citizens from fulfilling their claims and complaints. In many cases, the Ombudsperson has been notified by the state authorities that they are not able to respond to the latter in a timely manner and this has not been welcomed by the citizens.

Civil society space

The lockdown, in Kosovo* as in any other country, significantly reduced the space for civil society activism. In spite of this, many civil society organizations were very vocal on different human rights issues during the pandemic period.

Long term implications of the pandemic

1. Children's rights

With regards to child rights, the long term implications of COVID-19 have been most visible in three domains: education, access to social and health services and mental health. With the transition from school to online learning, consequences on education have been twofold as affecting both access to and quality of education. Disruptions of the learning process can potentially result in a larger share of students becoming illiterate and dropping out of school . In particular, Ashkali, Egyptian and Roma children have had difficulties accessing technological and internet equipment. An appropriate curricula is being developed to address the needs of children with disabilities. Furthermore, the rise of domestic violence as well as the psychosocial stress caused by home confinement, isolation and the pandemic overall have continuously affected the mental health of children. The Ombudsperson specifically has requested that institutions include specific measures to support children in difficult economic situations when approving support packages, accompanied by sustainable funding to alleviate the health, social and economic crisis caused by COVID-19.

2. Impact in the economy and jobs

While restrictive measures may have had a positive impact on slowing the spread of the virus, and on preventing the escalation of the health crisis in the country, the effect and consequences of closing the economy will have severe impacts. People losing jobs will deepen poverty and inequality.

3. Judicial system

The Kosovar judicial system had a long-term problem of the backlog of cases, which will be even worsened by the pandemic, because of the cases that may be brought that are related to the pandemic (losing jobs, Government recovery packages, non-provision of adequate health care).

Actions taken by the OIK

The OIK has undertaken a lot of activities aiming to fulfil its constitutional and legal mandate, from which (in addition to organization of a regional conference and various meetings with the highest representatives of the institutions in the country, international and civil society organizations) the most important ones are:

1. Reports with recommendations:

1. On 27 January 2021, the Ombudsperson, has published the Ex. Office Report with Recommendations No. 698/2020, which assesses the access to health care services for persons affected by the Human Immunodeficiency Virus (HIV) and Tuberculosis (TB), during the COVID-19 pandemic period in Kosovo*, with a human rights-based and non-discriminatory approach, in relation to universal health coverage, as an objective of the 2030 Agenda for Sustainable Development, as well as to draw authorities' attention to the importance of adequate treatment of persons with HIV / AIDS and TB, given the detrimental consequences that their ongoing failure to get treatment might cause.
2. On 3 February 2021, the Ombudsperson, published Ex-Officio Report with Recommendations no. 365/2018, concerning the issue of lawfulness of procedures with regard to hydropower plants in the country and access to documents related to hydropower plants.
3. On 12 March 2021, the Ombudsperson published the Ex officio Report no. 434/2020, which deals with the assessment of the realization of health rights during the period of the COVID-19 pandemic in Kosovo*. The report deals with access to health care and treatment, mainly in secondary and tertiary level institutions, focusing in particular on restrictions on the provision of health services (specialist visits and selective operations), for persons who were not infected with COVID-19. The report covers the period from March to September 2020. Based on the collected

facts and analysis of relevant laws which define the right to provide health services in Kosovo*, it was concluded that during the health emergency in the Republic of Kosovo* there were violations of fundamental human rights and freedoms. Relevant authorities have failed to meet constitutional and legal obligations to citizens who have potentially needed health services. Among other things, the report finds that the actions of the health authorities to discontinue selective operations and specialist ambulances had no legal basis, and also left no alternative as to where these persons could be treated and the state had not assumed its responsibilities.

2. Statements:

1. Statement of the Ombudsperson related to the measures for the prevention of the Covid-19 pandemic during the election campaign for the 2021 General Elections
2. Statement of the Ombudsperson on the Universal Children's Day (mentioning COVID-19 impacts)
3. Ombudsperson's statement on the occasion of International Day for the Elimination of Violence against Women (mentioning COVID-19 impacts)

The Ombudsperson also went on with its usual activities addressing non-COVID-19 related issues, e.g. Reports with recommendations on equal access to interurban transport of blind persons and on danger posed to citizens by stray dogs, Legal opinion on the legal identity of unregistered persons, Statements at the occasion of the Pride Week, or following a physical attack against a journalist.

References

- Report with recommendation, H.K versus Ministry of Infrastructure, <https://www.oik-rks.org/en/2020/08/05/recommendation-report-complaint-no-8992018-halil-kurmehaj-versus-ministry-of-infrastructure/>
- Ombudsperson's legal opinion in the capacity of friend of the court (Amicus Curiae) for the Court of Appeals, Basic Court in Prishtina, Basic Court in Pejë, Basic Court in Mitrovicë – Ex-officio No.148/2020, <https://www.oik-rks.org/en/2020/08/11/ombudspersons-legal-opinion-in-the-capacity-of-friend-of-the-court-amicus-curiae-for-the-court-of-appeals-basic-court-in-prishtina-basic-court-in-peje-basic-court-in-mitrovica-ex-officio-no-14/>
- Ex officio Report no. 434/2020, which deals with the assessment of the realization of health rights during the period of the COVID-19: <https://www.oik-rks.org/2021/03/12/raport-me-rekomandime-ex-officio-rasti-nr-4342020-ne-lidhje-me-kufizimet-e-ofrimit-te-sherbimeve-shendetesore-gjate-pandemise-covid-19-ne-kosove/>
- Ex-Officio Report with Recommendation no. 517/2019, regarding the danger posed to citizens by stray dogs, <https://www.oik-rks.org/2020/11/02/raport-me-rekomandime-ex-officio-rasti-nr-517-2019-ne-lidhje-me-rrezikun-qe-i-kanoset-qytetareve-te-republikes-se-kosoves/> <https://www.oik-rks.org/en/2021/01/27/report-with-recommendation-ex-officio-case-no-6982020-on-the-access-to-health-care-services-for-people-affected-by-the-human-immunodeficiency-virus-hiv-and-tuberculosis-tb-during-the-covid-19/> <https://www.oik-rks.org/en/2021/02/03/report-with-recommendations-ex-officio-3652018-against-ministry-of-economy-and-environment-regarding-the-issue-of-lawfulness-of-the-procedures-concerning-the-hydropower-plants-in-the-country-as-we/>
- Ombudsperson's statement on the occasion of the Pride Week, <https://www.oik-rks.org/en/2020/10/12/ombudspersons-statement-on-the-occasion-of-world-pride-week/> <https://www.oik-rks.org/en/2020/11/20/statement-of-the-ombudsperson-naim-qelaj-on-the-universal-childrens-day/> <https://www.oik-rks.org/en/2020/11/25/ombudspersons-statement-on-the-occasion-of-international-day-for-the-elimination-of-violence-against-women/>

Most important challenges due to COVID-19 for the NHRI's functioning

The OIK, despite the challenges which arose in early 2020 due to the Covid-19 pandemic, has taken various initiatives in accordance with the constitutional and legal mandate in terms of promoting and protecting human rights and fundamental freedoms. As the health emergency presented a challenge for the OIK in terms of carrying out promotional activities, the institution, through the existing capacities with the maximum of efforts, adapted the realization of activities to the measures against the pandemic.

In the first two months of 2020, the planned promotional activities were carried out in the field, while from March of the same year, many were converted into virtual activities and carried out through various platforms due to restriction measures. In addition, the institution was present in several TV media programs and awareness raising video clips.

Challenges of the institution in general

The decisions of the Government of the Republic of Kosovo* with regard to Covid – 19, required all the institution the OIK to limit services to the citizens, closing complaints' admission offices, in the Headquarters and regional offices, which has made it difficult for citizens to file complaints according to previous practice.

Nonetheless, the institution has advised the citizens to address their complaints through mail, telephone calls and Post office. However, this has led to a decrease in the number of complaints of approximately 35 percent compared to last year. According to the past practice, the citizens of the country prefer to come to our offices to file complaints. But the reason for the decrease in complaints may have been the lack of technology tools for their submission, as well as the emergency functioning of the state administration.

Work as National Preventive Mechanism (NPM)

Kosovo* NPM is authorized to conduct unannounced visits to all places of deprivation of liberty, including here psychiatric institutions and social care homes. In 2020, when the first COVID-19 cases were contracted, the NPM suspended its visits to all places of deprivation of liberty based on "Do no harm" principle. During this period of visit suspension, the NPM made available 4 cell phone numbers through which the persons deprived of their liberty were able to contact NPM staff members at all times. Also, regular contacts were maintained with the competent authorities.

During the total lockdown the NPM published a legal opinion regarding the treatment of persons deprived of their liberty in the times of pandemics, and a report with recommendations on NPM

visits to a number of police stations. This legal opinion was based on CPT Statement of Principles and SPT Guidelines for Governments of treatment of persons deprived of their liberty during COVID-19.

When some of the restrictive measures were eased by prison authorities, the NPM resumed its visits, which in most cases were Ad Hoc visits and therefore avoiding full assessment visits due to COVID-19. In total, it has carried out 56 visits to all places of deprivation of liberty. The authorities never obstructed the NPM in conducting its duties, which illustrates the general very good the cooperation between the NPM and the authorities.

The main focus of the NPM Ad Hoc visits during the COVID-19 was on treatment of persons deprived of their liberty, possible overcrowding, provision of health care, and restriction of contacts with the outside world. It received no complaints regarding treatment by authorities, no overcrowding was noticed, and the health care, despite complaints received, was found to be adequate during that period.

Restriction of contacts with the outside world was compensated by enabling contacts through Skype and other means of electronic communications. The NPM received complaints regarding temporary suspension of sentences and complaints against decisions of Panel of Release on Parole, which could however not be acted on as the NPM has no mandate to review decisions issued by the above-mentioned bodies.

References

- Ombudsperson, NPM, Legal Opinion on treatment of prisoners during COVID-19 measures. Please see: <https://www.oik-rks.org/en/2020/04/23/ombudspersons-opinion-related-to-requests-for-release-of-certain-categories-of-prisoners-at-the-time-of-global-corona-virus-covid-19-pandemic/>.
- National Preventive Mechanism, Report with recommendations on visits to Police Stations. Please see: <https://www.oik-rks.org/en/2020/09/16/report-of-the-ombudspersons-national-preventive-mechanism-against-torture-on-the-visits-to-police-stations/>

