

# State of the Rule of Law in Europe in 2022

## Reports from National Human Rights Institutions

Kosovo





## Kosovo\*

*Ombudsperson Institution of Kosovo*

### Impact of 2021 rule of law reporting

#### Follow-up by State authorities

To the Ombudsperson Institution's knowledge, there were debates and activities with regards to the rule of law in the country, especially regular meetings with the Parliamentary Committee on Human Rights, Gender Equality, Victims of Sexual Violence during the War, Missing Persons and Petitions, but also other meetings with various stakeholders in the country. However, these were not organised in specific relation to the findings of the 2021 ENNHRI rule of law report.

#### References

- <https://oik-rks.org/en/news/>

#### Impact on the Institution's work

For the Ombudsperson Institution in Kosovo (OIK), the 2021 ENNHRI Rule of Law report was a useful source of information about the works of counterparts from other European states and their good practices in tackling various human rights issues.

This report was also taken into account to set out priorities in the Strategy of the Ombudsperson Institution 2021 – 2025 and Action Plan 2021 – 2023, which entered into force on March 2021.

#### References

- Strategy of the Ombudsperson Institution 2021 – 2025 and Action Plan 2021 – 2023, <https://oik-rks.org/en/2021/07/06/strategy-of-the-ombudsperson-institution-2021-2025-and-action-plan-2021-2023/>

#### Follow-up initiatives by the Institution

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\* This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

OIK acknowledged the importance of the ENNHRI 2021 Rule of Law Report, on 7 July 2021, by publishing a press release in 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 will also be included in the OIK 2021 Annual Report as well, which will be published in end of March 2022.

### **References**

- OIK news on the publication of ENNHRI Rule of Law Report: <https://oik-rks.org/en/2021/07/07/ennhri-published-annual-report-on-rule-of-law-in-europe/>

### **NHRI's Recommendations to National and European policy makers**

- ENNHRI should provide opinions or guidance to the national parliaments on ways of their cooperation with NHRIs with the aim of advancing human rights and rule of law in the country, especially when discussing Annual Reports.
- European Commission should continue to impose measures on accession countries that require a high implementation rate of the Ombudsperson's recommendation as a conditionality for the Government to receive EU funds.

## **Independence and effectiveness of the NHRI**

### **International 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.

### **Regulatory framework**

The national regulatory framework applicable to OIK has not changed since the 2021 ENNHRI Rule of Law Report. The Ombudsperson Institution of the Republic of Kosovo continues to function on a constitutional basis. OIK has the mandate to contribute to access to justice for individuals, including through complaints handling, strategic litigation before courts, providing legal assistance to individuals and awareness-raising.

The Ombudsperson Institution of Kosovo functioning is based on a very strong legal framework, which guarantees its operational and financial independence. However, the existing framework could be strengthened further by removing the current 6 months'

deadline (after the legal act enters into force) for the Ombudsperson to refer a matter to the Constitutional Court. Moreover, the Ombudsperson's legal framework should be further strengthened by advancing procedures for the election of the Ombudsman and its deputies. According to the current legal provisions, when it comes to the election of the deputies, the Ombudsperson makes the proposal for deputy Ombudspersons to the Assembly based on an open and transparent competition, according to the call announced by the Ombudsperson Institution. Such proposal contains justification for the proposed candidates. The Ombudsperson proposes to the Assembly 10 candidates for five positions and the Assembly votes. However, recently the Assembly has refused to vote on any of the candidates proposed by the Ombudsperson.

### Enabling and safe space

The relevant state authorities have good awareness of the Ombudsperson's mandate, independence and its role. OIK confirms that it has adequate access to information and to policy makers and is involved in all stages of legislation and policy making with human rights implications.

The addressees of the NHRI's recommendations are legally obliged to provide a timely and reasoned reply. Article 28 of the Law on the Ombudsperson states that "Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions, including disciplinary measures, must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question".

In addition, the Office of Good Governance (OGG) within the Office of the Prime Minister is legally responsible in following up of the recommendation of the Ombudsperson. A good practice is already in place in this regard. The Ombudsperson Institution informs the OGG for all the reports with recommendation it addresses to the authorities, and then they start the process of communication and follow up with the authorities in order to facilitate their implementation.

However, although the implementation rate of recommendations addressed to the central and local level authorities has increased every year, it still remains unsatisfactory. Nonetheless, it is OIK's priority to improve this situation, and as indicated in previous reports, 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. This contract is towards its end and OIK already witnessed a huge impact on this issue, and recommends this same approach in all the accession countries.

OIK also raises concerns over identified threats to the Institution's independence. The Ombudsperson highlights some obstacles which have occurred in the course of his term. The Assembly of the Republic of Kosovo did not vote the list of the candidates proposed by the Ombudsperson for election of five Deputy Ombudsperson, although the process in candidates' selection proposed by the Ombudsperson was fair and transparent (monitored by civil society and international organizations). For several years in a row, the Assembly has neglected Ombudsperson's request with regard to not voting on the Annual Report. The Ombudsperson's Annual Report discloses the situation of human rights which needs to be discussed in the Assembly but should not be voted on and therefore approved by the Parliament. It is worth highlighting that in this regard the Ombudsperson has addressed a report with recommendations to the Assembly of the Republic of Kosovo. Moreover, the Assembly and the Government have not approved Ombudsperson's budget request for 8 additional positions in the Ombudsperson Institution.

The Ombudsperson Institution of Kosovo, however, confirms that measures necessary to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions) are in place.

Law on the Ombudsperson, in its article 12, state: "Ombudsperson, his/her deputies as well as staff of the Ombudsperson Institution enjoy immunity from prosecution, civil lawsuit and dismissal due to verbal or written statements, for activities or decisions that are within the scope of responsibilities of the Ombudsperson Institution. Functional immunity continues even after task accomplishment." In addition, Article 25 sets forth the obligation of cooperation with the Ombudsperson and consequences of refusal, stating that: "Refusal to cooperate with the Ombudsperson by a civil officer, a functionary or public authority is a reason that the Ombudsperson requires from the competent body initiation of administrative proceedings, including disciplinary measures, up to dismiss from work or from civil service" and that " In case when the institution refuses to cooperate or interferes in the investigation process, the Ombudsperson shall have the right to require from the

competent prosecution office to initiate the legal procedure, on obstruction of performance of official duty.”

However, we consider that human rights defenders in general, including NHRIs in performing their mandates can face threats including defamation, harassment, and attacks that constitute SLAPP, therefore we consider that having in place civil procedural safeguards against SLAPP and providing legal aid to SLAPP targets would positively curb the use of SLAPP, and EU can have a great impact in this regard.

### **References**

- Financial Agreement between Kosovo and the European Union on the Public Administration Reform: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=15707>
- Law on the Ombudsperson, Article 12 and 25: <https://oik-rks.org/en/2018/08/20/law-no-05-l-019-on-ombudsperson/>
- Ex officio Case No. 563/2016 Report with recommendations, related to the procedure for the review of the Ombudsperson’s Annual Report according to the Rules of Procedure of the Assembly of the Republic of Kosovo: <https://oik-rks.org/en/2021/09/23/ex-officio-case-no-5632016-report-with-recommendations-related-to-the-procedure-for-the-review-of-the-ombudspersons-annual-report-according-to-the-rules-of-procedure-of-the-assembly-of-the/>

### **Developments relevant for the independent and effective fulfilment of the NHRIs’ mandate**

The mandate of the Ombudsperson Institution of Kosovo is based in the Constitution and other laws which are approved by the Parliament. The legislation in which our institution base its mandate was approved in 2015 as part of a human rights law package, when three basic new human rights laws entered into force: Law on the Ombudsperson, Law for Protection from Discrimination and Law on Gender Equality, which vested new mandates and additional competences to the Ombudsperson Institution of Kosovo.

These laws were approved after a thorough assessment from a group of experts assigned from the Council of Europe, which produced an opinion on how to further advance the legal basis for the operation of the Ombudsperson Institution. Their opinion was based on the Venice Commission standards and also Paris Principles, but also ECRI General Recommendation no. 2, which where a roadmap for all the provisions set forth in this law package. As such, it has strengthened the role of the institution, adding provisions that guarantee organisational, administrative and financial independence. Furthermore, this Law has extended functional immunity not only for the Ombudsperson and his deputies,

but to its entire staff. All authorities are obliged to respond to the Ombudsperson on his requests on conducting investigations, as well as provide adequate support according to his/her request, and furthermore the government and the municipalities are obliged to provide space or offices suitable for work in public ownership in order to enable effective performance of the functions and responsibilities of the Ombudsperson Institution of Kosovo (OIK) and most importantly guarantees financial independence. In particular, Article 35 of this law provides that “Regardless of the provisions of other Laws, the Ombudsperson Institution prepares its annual budget proposal and submits it for approval to the Assembly of the Republic of Kosovo\*, which cannot be shorter than previous year approved budget. Budget may be shortened only by the approval of the Ombudsperson.” As these strong legal guarantees are in place, we didn’t have any threat to our independence.

### **References**

- Law on the Ombudsperson: [https://www.oik-rks.org/wp-content/uploads/2018/08/LAW\\_NO.05\\_L-019\\_ON\\_OMBUDSPERSON.pdf](https://www.oik-rks.org/wp-content/uploads/2018/08/LAW_NO.05_L-019_ON_OMBUDSPERSON.pdf)

### **NHRI’s recommendations to national and regional authorities**

- Additional mandates of the NHRIs should be followed with the additional budget and personnel, in order to ensure functionality of the operation.
- The Rules of Procedure of the Assembly should be amended<sup>3</sup>, including provisions which regulated the discussion of the NHRIs annual report in parliament and its findings and recommendation be enforced. Parliament should use its power and hold accountable all the responsible institutions for implementation of its recommendations.
- To strengthen the Ombudsperson’s independence the election of its deputies should be left on the discretion of the Ombudsperson (not the Assembly). The Ombudsperson should decide on its staff, thus avoiding lengthy procedures and being dependent on the decision made solely by the Assembly.

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<sup>3</sup> The Ombudsperson in 2016 issued a Report with recommendations related to the procedure for the review of the Ombudsperson’s Annual Report, <https://oik-rks.org/en/2021/09/23/ex-officio-case-no-5632016-report-with-recommendations-related-to-the-procedure-for-the-review-of-the-ombudspersons-annual-report-according-to-the-rules-of-procedure-of-the-assembly-of-the/>

## Human rights defenders and civil society space

Human Rights Defenders and civil society space are a strong voice of democracy, contributing in human rights protection and promotion as well as in policy, decision and law making processes and public policy development. OIK observes that the public institutions' attitude towards civil society organisations (CSOs) has definitely improved over recent years. Such an assessment has also emerged from the European Commission Progress Report for Kosovo 2021.<sup>4</sup>

### Access to and involvement of civil society actors in law and policy making

It is worth mentioning with regards to the right to access to public documents and information that many efforts need to be undertaken to better enable the exercise of this right. There are some obstacles identified regarding the respect of legal deadlines to review the requests for access to public documents, while delays in handling cases by courts discourage further the civil society actors. The reasoning of decisions denying access requests seems to be inconsistent. During 2021, the Ombudsperson Institution, has received 43 complaints with regard to the access to public documents, of which 7 were declared inadmissible and 37 were opened for investigation. From the complaints opened for investigation, 13 complaints were filed from non-governmental organisations and 6 complaints from media for restriction of access to public documents.

On the other hand, the election of the Commissioner for Information and Privacy should be acknowledged as a positive and a further step in terms of facilitating access to public documents and information, which contributes to the transparency of actions, the efficiency and effectiveness of public administration, this helping to build trust between institutions and citizens .

However, the lack of transparency and access on information in environmental issues remains worrying. The Ombudsperson Institution, on the 3<sup>rd</sup> of February 2021, has published the own initiative report with recommendations no. 365/2018, addressed to the 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. The Ombudsperson has recommended the responsible institutions to make public all the documentation concerning hydropower plants in the country and to take appropriate measures to prioritise handling of the cases related to hydropower plants in the courts.

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<sup>4</sup> The European Commission, Commission Staff Working Document Kosovo 2021 Report, Strasbourg, 19.10.2021, page 11, see: [file:///C:/Users/mtejeci/Downloads/Kosovo%202021%20report%20\(4\).PDF](file:///C:/Users/mtejeci/Downloads/Kosovo%202021%20report%20(4).PDF)

Recently, on the occasion of marking the International Day of Human Rights on the 10th of December 2021, The Ombudsperson Institution has published a Special Report on Health Emergency and COVID 19 pandemic impact on human rights in the Republic of Kosovo. Based on research and investigation conducted on the subject of inclusion of civil society organisations to government decision and policy making processes during this period, it has been noted that the government has organised very few substantial consultations with civil society. In addition, most of them were only formal, failing to enable civil society to meaningfully engage in designing support measures by the government, including the fiscal package measures. Some dissatisfaction has also been expressed from NGOs dealing with women's rights, who were not sufficiently involved in drafting the Draft Strategy and the Draft Law on Violence against Women and Domestic Violence, as it is envisaged by Istanbul Convention.

Nevertheless, civil society organisations in Kosovo were actively involved in the most important legal initiatives that have taken place during 2021, such as: The Vetting Process, the Draft Law on Confiscation of Unjustified Assets, the Code of Criminal Procedure, the Civil Code, the Reform of the Prosecutorial Council, Rule of Law Strategy, Draft Law on Municipal Performance and Performance Based Grant Scheme, Draft Law on Financing of Political Parties and many other initiatives. Most of the CSO's recommendations were taken into account by the legislators.

Civil society itself has also acknowledged the positive steps that have been taken by the Government of Kosovo in the process of public consultations. The Government Regulation on minimum standards in the public consultation process has made considerable progress in these processes. However, in certain cases the deadline for public consultations is too short, and fails to ensure a reasonable time to provide meaningful comments and input. The commitment of the Kosovo Judicial Council was assessed as positive, due to the fact that the draft bylaws are published by this institution for public consultation. By contrast, the Kosovo Prosecutorial Council is criticized for only exceptionally publishing bylaws or other documents for public consultation and for not making so far genuine efforts to engage with civil society.

## **References**

- Ex-officio report with recommendations no. 365/2018 of the Ombudsperson of Kosovo: <https://oik-rks.org/en/2021/02/03/report-with-recommendations-ex-officio-3652018-against-ministry-of-economy-and-environment-regarding-the-issue-of-lawfulness-of-the-procedures-concerning-the-hydropower-plants-in-the-country-as-we/>

- Health Emergency and COVID 19 pandemic impact on human rights in Republic of Kosovo, published by the Ombudsperson Institution in Kosovo, Prishtina 2021, page 83: [https://oik-rks.org/wp-content/uploads/2021/12/Raport-i-Avokatit-te-Popullit - Emergjencia-sh%c3%abndet%c3%absore-dhe-ndikimi-i-pandemis%c3%ab-n%c3%ab-t%c3%ab-drejtat-e-njeriut\\_FINAL.pdf](https://oik-rks.org/wp-content/uploads/2021/12/Raport-i-Avokatit-te-Popullit - Emergjencia-sh%c3%abndet%c3%absore-dhe-ndikimi-i-pandemis%c3%ab-n%c3%ab-t%c3%ab-drejtat-e-njeriut_FINAL.pdf)
- Information provided to OIK, by Kosovo Centre for Gender Studies, on 20th of December 2021.
- Information provided to OIK, by BIRN (Balkan Investigative Reporting Network Kosovo), via email on 21st of December 2021.

### Threats and attacks, including strategic litigation against public participation (SLAPPs)

Strategic Lawsuits against public participants (SLAPPs) have negative impact on the role of human rights defenders, including NHRIs and civil society. They represent a considerable threat to public debate and freedom of expression, decrease transparency and prevent public scrutiny.

Unfortunately, the Ombudsperson Institution has already identified several SLAPP lawsuits in Kosovo filed against environmental activists and journalists.

For example, in April 2020, Radio Television of Kosovo (RTK), a public broadcaster, filed a lawsuit against civil society activist Agron Demi, due to his views expressed on his personal Facebook account. The Basic Court in Prishtina, in September 2021 issued a decision to submit a response to the lawsuit by Mr. Agron Demi. RTK had asked the Court to prove that Agron Demi had slandered and insulted the plaintiff, by the publication of statements against RTK on Facebook. Non-governmental organisations reacted to RTK's lawsuit, considering this lawsuit as a lawsuit which falls within the category of Strategic Lawsuits against Public Participation (SLAPP). It is worth noting, though, that the withdrawal of this lawsuit by RTK has been recently confirmed.

The environmental activist Shpresa Loshaj was also sued by KELKOS company, regarding the views expressed in social media on the issue of hydropower plant in Deçan. This lawsuit was also considered as a lawsuit which falls within the category of Strategic Lawsuits against Public Participation (SLAPP) which are considered with the intention to prevent criticism and participation of activists in public processes and attack on freedom of expression.

Kelkos' lawsuit drew international attention and support from Amnesty International and the Business Human Rights Center and many other actors which called on Kelkos to

withdraw the lawsuit. After more than a year of pressure, Kelkos withdrew the lawsuit in October 2021.

Activists and civil society organisations have joined forces in an informal anti-SLAPP movement, initiated by the activist and media lawyer Flutura Kusari. The group provides legal support for SLAPP victims. In addition, the group increases awareness on SLAPPs via a Facebook page in local language which provides information on developments at European Union and Council of Europe level.

### **References**

- Information provided to OIK, by Kosovo Law Institute, via email on 22nd of December 2021.
- The lawsuit of RTK submitted for defamation and insult against Agron Demi, on 27.04.2020, to the Basic Court of Pristina.
- The Decision of the Basic Court in Pristina, C nr. 1675/20, issued on 22.09.2021.
- Information about the case details received by Mr. Agron Demi, via email on 20th of December 2021.
- Information provided to the OIK, via email by Mr. Agron Demi, on 20th December 2021.
- <https://m.facebook.com/KosovoSLAPPs/>
- Kosovo's Initiative against SLAPP lawsuits: <https://www.facebook.com/KosovoSLAPP>
- SLAPP withdrawn from the Court by RTK: <https://kallxo.com/lajm/rtk-terheq-padine-ndaj-agron-demit/>
- Amnesty International, Kosovo: Defamation lawsuits seeking to silence environmental activists must be withdrawn: <https://www.amnesty.org/en/latest/news/2021/06/kosovo-defamation-lawsuits-seeking-to-silence-environmental-activists-must-be-withdrawn/>
- Information provided to the OIK, via email, by Ms. Shpresa Loshaj, regarding her case, on 22nd of December 2021.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

In October 2021, upon OIK initiative, the Dialogue Forum between OIK and Civil Society Organisations (CSOs) was established, aiming to set up a structured cooperation between the OIK and CSO representatives. This initiative gathered a considerable number of active

civil society organisations dealing with human rights in different fields and perspectives. The goal of the forum is creating a common platform for the active involvement of both parties, OIK and CSOs, to enhance cooperation in the field of identifying challenges and human rights violations in Kosovo, as well as the development of joint activities for better promotion and protection of human rights in Kosovo; to address collectively systematic human rights violations; to coordinate joint activities for better human rights promotion and education and promote the work and the role the Ombudsperson Institution and Civil Society in protection and promoting of human rights in the country.

During October 2021, an informal advocacy task force on gender sensitive standards of safety and health at work and effective cooperation was established as well, consisting of the Ombudsperson as a chair, the representative of the Women's Caucus as co-chair and a number of civil society organizations, as well as the Labour Inspectorate, Kosovo Chamber of Commerce, and the Union of Independent Trade Unions of Kosovo. This task force is created to develop, advocate and promote occupational safety and health for all.

On 1-2 December 2021, the Ombudsperson Institution of Kosovo hosted the Fourth Regional Meeting between the Ombudsmen and the Commissioners for Protection from Discrimination of Kosovo, Albania and Northern Macedonia. The second day of this meeting was dedicated for a discussion forum with representatives of civil society, which aimed to highlight the current challenges and future opportunities in the partnership of national institutions for human rights with civil society. The discussion during this forum was focused on the following topics: Interaction of the Ombuds institutions and the Commissioner for Protection from Discrimination with civil society - opportunities and challenges, international standards requirements with regard to cooperation of national human rights institutions with civil society and cooperation opportunities between institutions in the future in order to strengthen respect for human rights in the respective countries.

The Ombudsman also continuously organises and participates in discussion meetings, roundtables or conferences where issues of human rights and fundamental freedoms are discussed together with civil society organisations. It is worth highlighting that the Ombudsman has signed about 50 Memorandums of Understanding (MoU) so far with various stakeholders, mainly with civil society organisations. For example, in June 2021 the Ombudsperson and the NGO Advancing Together (AT) signed the continuation of the Memorandum of Understanding, which established a platform for cooperation in the implementation of projects in the field of good governance and human rights.

## References

- Dialogue Forum between the Ombudsperson Institution of Kosovo (OIK) and Civil Society Organizations (CSO): <https://oik-rks.org/en/2021/11/03/the-ombudsperson-organized-the-first-constitutive-forum-for-the-dialogue-among-the-ombudsperson-institution-of-kosovo-and-civil-society-organizations-in-kosovo/>
- Forth Regional meeting between the Ombudsperson's and Commissioner for the Protection against Discrimination from Kosovo, Albania and North Macedonia- Forum with Civil Society in Prishtina: <https://oik-rks.org/en/2021/12/02/the-ombudspersons-from-region-met-civil-society-in-pristina/>
- The continuation of the Memorandum of Understanding signed by the Ombudsperson and the NGO Advancing Together (AT): [https://oik-rks.org/wp-content/uploads/2022/03/Aip\\_RaportiVjetor\\_ENG\\_22.04.pdf](https://oik-rks.org/wp-content/uploads/2022/03/Aip_RaportiVjetor_ENG_22.04.pdf)

## NHRI's recommendations to national and regional authorities

- Ensure better inclusion of civil society in early stages of policy and law making processes;
- Enable access to public interest data and information.

## Checks and balances

Year 2021, like the one before, was mainly characterized by the measures that state bodies introduced to combat the COVID-19 pandemic. Generally speaking, the Ombudsperson estimates that human rights violations have been further exacerbated with the breakout of the pandemic. This can be attributed to the fact that the state has been unprepared for the pandemic and that the country underwent frequent political changes during this time.

As regards the system of checks and balances of powers, actions taken by state bodies during the reporting year to fight the pandemic can be regarded, taking into account the circumstances, as balanced, although perhaps lacking a consolidated legal basis. In August 2020, the Law on Prevention and Combating Covid-19 was adopted by the Assembly of the Republic of Kosovo, providing the Government and the Ministry of Health with extensive powers in restriction of human rights in order to prioritize public health.

In addition to this, a number of laws are under amendment by the Ministry of Health in order of their adjustment with the circumstances created by the pandemic. In terms of control and balance, the Government currently operates on the basis of laws adopted by the Assembly.

Beyond the specific challenges brought by the pandemic, the Ombudsperson identified negative practices concerning the misuse of powers during the reporting year, in at least two instances:

1. The first example relates to the dismissal of 5 members of the Independent Oversight Board for the Civil Service of Kosovo (IOBCSK) by the Assembly of the Republic of Kosovo. The case was brought before the Constitutional Court by 10 members of the Assembly who opposed such dismissal. The Constitutional Court found that the Assembly has dismissed the IOBCSK members collectively without providing details on any fact based on law, but only with the reasoning that the IOBCSK "did not implement the applicable laws during decision-making process", actually due to their decision-making in specific cases, for which IOBCSK members enjoy constitutional independence and immunity from dismissal and which decision-making, moreover, is subject to judicial and not legislature control, has exceeded the limits of the competence in overseeing the work of public institutions, defined by the Constitution, in violation of the guarantees regarding IOBCSK independence in exercising its function, defined by the Constitution.
2. The second one concerns the reforms of the system of a public prosecution in Kosovo, proposed by the Ministry of Justice. The reforms concerns specifically, among others, the Kosovo Prosecutorial Council's composition (KPC) and the increase of number of lay members in relation to prosecutorial members, as well as Council members' election procedure. Opinion of the Venice Commission has been requested by the Ministry of Justice.

"Central reform element - namely the new balance between prosecutorial and non-prosecutorial members in the KPC - is not contrary to European standards. The prosecutors elected by their colleagues represent an essential part of this body (three members out of seven)", as pointed out by the Venice Commission. In its conclusions the Commission also states that the reform should not lead the Kosovo Prosecutorial Council to subjection by the ruling majority, and that this Ministry of Justice's proposal increases the risk of direct political interference towards the KPC, suggesting that the election of members with simple majority should be replaced by a proportional system. "However, the reform should not lead to the subjection of the KPC to the ruling majority. Draft amendments propose that all lay members are elected by a simple majority in the Assembly. This proposal increases the risk of undue political influence over the KPC and as such should be reconsidered: elections with simple majority should be replaced by a proportional electoral system, or appointment of several lay members by external independent institutions

or society civil. That is necessary to ensure that the core KPC component is sufficiently pluralistic, so that the members appointed by the votes of the governing majority cannot govern alone", clarifies the Venice Commission's draft opinion.

The Commission's conclusions point out that the reform should not lead the Kosovo Prosecutorial Council to subjection by the ruling majority and that the proposal of the Ministry of Justice raises the risk of direct political influence over the KPC, by suggesting that basic majority members' election system should be replaced by a proportional system. They also require a clear definition of the relevant areas of competence of General Prosecutor and state that the procedure for election of lay members by a parliamentary committee is complex and unclear, therefore recommend not to adopt the procedure envisaged by the reform.

As regards access to information, the Ombudsperson has not encountered cases where access to public documents has been intentionally restricted or denied. However, a number of Recommendation Reports have been published regarding the right to access to public documents and public information which mainly highlighted the maladministration of requests for access to public documents. It is worth mentioning that this year the Commissioner for Information and Privacy has been elected, whom the Ombudsperson met several times with the purpose of mutual cooperation and exchange of experiences.

In 2021, the Ombudsperson Institution monitored the elections for the Assembly of the Republic of Kosovo as well as elections for Municipal Assemblies and Mayors. The Ombudsperson considers that the electoral processes have been fair and well organised. The main problem that the Ombudsperson noticed is that a number of polling stations failed to provide appropriate access for people with disabilities.

## **References**

- Law on Prevention and Combating Covid-19 adopted on 25 August 2020: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=30819>
- Constitutional review of Decision No. 08-V-029 of the Assembly of the Republic of Kosovo, of 30 June 2021, for the dismissal of five (5) members of the Independent Oversight Board for the Civil Service of Kosovo, 9 December 2021: <https://gjk-ks.org/en/decision/vleresim-i-kushtetutshmerise-se-vendimit-nr-08-v-029-te-kuvendit-te-republikes-se-kosoves-te-30-qershorit-2021-per-shkarkimin-e-pese-5-anetareve-te-keshillit-te-pavarur-mbikegyres-per-sherbimin/>
- Venice Commission opinion concerning the reforms in the prosecutorial system in Kosovo, 13 December 2021: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)051-f](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)051-f)

## Trust amongst citizens and between citizens and the public administration

It has been observed that there has been an increase in the level of trust among citizens towards state administration. This is due to the fact that state bodies have taken a number of actions to fight corruption.

## NHRIs as part of the system of checks and balances

The Ombudsperson has not encountered any obstacles throughout its term, except in the cases mentioned above. When it comes to the Ombudsperson's role in the system of checks and balances, the Ombudsperson has undertaken the following initiatives:

- Opinion of the Ombudsperson on the Supreme Court's Referral sent to the Constitutional Court regarding assessment of Article 94 of the Law on Labour, concerning Labour Inspectorate's competencies (1);
- Ombudsperson's Opinion regarding the request of political entities- Egyptian Liberal Party (ELP), United Roma Party of Kosovo (URPK), and individuals from Egyptian and Roma communities (2);
- Follow-up letter to the Constitutional Court regarding actions and lack of actions of the relevant state authorities which violated the right to life of a citizen of the country, a right guaranteed by Article 25 of the Constitution of the Republic of Kosovo, in conjunction with Article 2 of the European Convention on Human Rights, and Articles 18, 50 and 51 of the Council of Europe Convention on Preventing and Combating Domestic Violence. The Ombudsperson Institution published an ex officio report which aimed to assess the liability of responsible authorities in protecting citizens' lives from domestic violence. The report gives attention to actions and inactions of the state regarding the right to life, related to the murder and committed suicide occurred on 14 March 2021, in the neighbourhood of Emshir in Prishtina. In this case media has reported that a man killed his wife with a fire gun and then committed suicide. The report analysed implementation of constitutional provisions, international human rights instruments, laws, policies and strategies against domestic violence, and since the Constitutional Court was reviewing a case which was similar, the Ombudsperson have sent to the Court the report for their consideration (3).

Furthermore, the Ombudsperson has sent to the Supreme Court an opinion regarding the assessment of the lawfulness of the Regulation on Internal Organisation and Systematization of the Institute of Forensic Medicine.

Moreover, the Ombudsperson has published reports recommending the amendment and adoption of the following non-legislative acts:

- Report on harmonization of the Regulation on the Establishment and Functioning of the Resident Ensemble of Actors of the National Theatre and City Theatres with Regulation (GRK) no. 15/2018 on the Ranks and Salaries of the Creators and Performers of Culture and Professional Employees of Cultural Heritage (4);
- Report on the issuance of the Administrative Instruction on Procedures for Licensing of Public Health Institutions (5);
- Opinion regarding placement of body-worn cameras to Kosovo Police officers (6).

### **References**

- (1) <https://oik-rks.org/en/2022/05/12/ombudspersons-opinion-on-the-request-of-supreme-court-sent-to-the-constitutional-court-with-regard-to-the-review-of-article-94-of-the-law-on-labor-which-relates-to-the-powers-of-the-labor-in/>
- (2) <https://oik-rks.org/en/2021/08/23/ombudspersons-opinion-with-regard-to-the-request-of-political-entities-egyptian-liberal-party-elp-kosovo-united-roma-party-kurp-as-well-as-the-following-persons-veton-berisha-from-the/>
- (3) <https://oik-rks.org/en/2021/04/27/ombudspersons-ex-officio-report-no-1502021-with-regard-to-states-positive-obligations-for-the-right-to-life-and-protection-from-domestic-violence/>
- (4) <https://oik-rks.org/en/2022/05/12/onbudspersons-report-complaint-no-9332019-versus-ministry-of-health-regarding-issuance-of-the-administrative-instruction-on-procedures-for-licensing-of-public-health-institutions-as-well-as-the/>
- (5) <https://oik-rks.org/en/2022/05/12/onbudspersons-report-complaint-no-9332019-versus-ministry-of-health-regarding-issuance-of-the-administrative-instruction-on-procedures-for-licensing-of-public-health-institutions-as-well-as-the/>
- (6) <https://oik-rks.org/en/2022/05/12/opinion-of-the-ombudsperson-of-republic-of-kosovo-ex-officio-7112020-regarding-placement-of-body-worn-cameras-on-kosovo-police-officers/>

### **NHRI's recommendations to national and regional authorities**

- Strengthen the monitoring process of the law enforcement and its amendment in terms of control and keeping balance between powers, including the Parliament.

- The European Commission can have a great impact on strengthening the system of checks and balances in the accession countries by highlighting problems in their enlargement packages and country reports.

## Functioning of the justice system

In the Ombudsperson's Institution' opinion, the functioning of the justice system in Kosovo remains hindered by serious challenges.

When it comes to judicial system, it should be reiterated, however, that 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.

Based on the number of complaints submitted to the OIK during 2021, citizens continue to face delays of several years regarding adjudication as well as non-enforcement of final court decisions which in turn affect the realisation of their rights. During the reporting period, the OIK received 449 complaints in the category of the right to a fair trial, of which 248 were proceeded, whereas the others were inadmissible. Moreover, the Ombudsperson notes that citizens perceive that judges lack impartiality during the adjudication of their cases. Due to the above mentioned, the Ombudsperson has received requests to monitor court hearings.

The Ombudsperson also addressed a number of reports based on individual complaints related to the delay of court proceedings with regard to Article 16, paragraph 8 of the Law on the Ombudsperson.

Furthermore, with regard to enforcement of final judgments of the regular Courts and of the Constitutional Court, the Ombudsperson has reported on the obstacles in enforcement of decisions in certain cases. However, significant improvement has been observed since establishment of private Enforcement Agents. The main obstacles in enforcement of final decisions by state bodies are related to the lack of sufficient funds or the lack of political will.

### NHRI's recommendations to national and regional authorities

The Ombudsperson continuously has raised the concern regarding the delay of court proceedings and for this reason an initiative has been requested for issuance of a law

through which citizens could exercise their right in the form of compensation for the inefficiency of the judiciary.

## **Media freedom, pluralism and safety of journalists**

The Ombudsperson's Institution confirms that the situation with regard to media freedom remains stable in Kosovo. However, some challenges persist.

Verbal threats, particularly online, towards journalists continue to be a worrying trend. For instance, on 25 February 2021, the Ombudsperson published a statement condemning a physical attack against the journalist Visar Duriqi by unknown individuals. Certainly, this attack was an example of a violation of freedom of expression as a fundamental right in a democratic society.

The Ombudsman Institution has also continued to receive complaints from journalist related to the access on public documents.

On May 3rd 2021, on the occasion of World Press Freedom Day, the Ombudsperson issued a statement claiming that the media freedom and of expression is guaranteed by the Constitution of the Republic of Kosovo and underlining the importance of any debate that intends to value media pluralism and safeguards editorial independence. The Ombudsperson stressed that all responsible authorities should take action and bring the perpetrators of threats or attacks against journalists in front of justice. He said that impunity should not be tolerated because it encourages the instigators to violate the right to information and freedom of expression. The COVID-19 pandemic has continued to bring economic difficulties to media making their financial sustainability at risk. The daily newspapers continue to work only in online. Concerning issue remains the portals that do not represent the ownership, thus disinformation and misinformation are largely published for a closed group of interest. When it comes to access to information, journalists experience lack of cooperation from the side of public authorities and long delays in providing the requested information.

### **References**

- Statement of the Ombudsperson for the World Press Day: <https://bit.ly/3qrSFeZ>

## **Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression**

During the reporting period, there were no complaints filed within the Ombudsperson Institution with regards to threats to free and pluralist media environment. As mentioned,

above, the complaints filed within the Ombudsperson institution by the media and journalists were mostly with regard to the access to public documents.

On 25 February 2021, the Ombudsperson published a statement condemning a physical attack against the journalist Visar Duriqi by unknown individuals. The Ombudsperson expressed his concern and stated that such physical attacks present an attack on freedom of expression as a fundamental right in a democratic society. He called on authorities to work to shed light and bring the perpetrators to justice. The Ombudsman also stated that the whole society, in particular state institutions, have an obligation to work together to set the highest standards with the broad character of guaranteeing freedom of expression and freedom of media pluralism.

### **References**

- Statement of the Ombudsperson condemning a physical attack against the journalist: <https://bit.ly/3z4OkIA>

### **NHRI's recommendations to national and regional authorities**

The Ombudsperson calls upon state authorities to strengthen their activities in order to ensure ongoing transparency in their functioning and public accountability, to respect the law on access to public documents and access to information as a public good. At the same time, the security and justice system should treat with priority and solve effectively cases of attacks and threats towards journalists. Also, a social dialogue should take place in near future to discuss the economic position of journalists, that according to media and journalist's association – many journalists continue to work without working contracts.

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

Compared to last year, the situation regarding the management of the pandemic was slightly more balanced. Measures introduced to combat and control the pandemic have started to phase out and the majority of people have returned to work following guidelines issued by the Ministry of Health. There has been a decline in Covid-19 cases and an increased uptake in the vaccination campaign.

### **Emergency regimes and related measures**

During 2021, emergency measures started to ease out in all spheres of life and in the majority of fields people returned to work. In May 29, 2021, the chief prosecutors of the prosecution offices were authorized to coordinate the activities for an increased return of

prosecutors to offices and for the administrative staff to carry out prosecutorial activities, as well as the full return to work of all employees in coordination with public health institutions in Kosovo. COVID measures were eased during the summer and then tightened back late August after a new surge of cases. New measures required that public officials present either a vaccination certificate or a negative test in order to show up for work. This did not extend to private institutions.

The start of the new school year was delayed until end of September and in the majority of schools teaching started with physical presence in the classroom, however, in some areas hybrid teaching continued. With regards to service provision, the measures and the pandemic have made it much more difficult for people and children with disabilities to receive services.

Overall, the pandemic caused a significant delay in the implementation of the legislative agenda of the Government and the Assembly of the Republic of Kosovo. For example, some of the laws affecting the direct interest of children (the Law on Social Services and the Law on Local Government Finance) failed to be submitted to the Assembly for approval despite being drafted.

On 14 February 2021 early parliamentary elections were held. OIK observed that elections had a normal course and no serious obstacles were being identified which would be reflected in the violation of the right to vote or to participate, apart from some problems of a technical nature.

The cessation of the daily newspaper press in the country has been reported among the negative impacts of the COVID-19 pandemic on the right to media freedom. The Ombudsperson estimates that the lack of print media in the country marks a decline in the right to information, as not everyone can use online media.

According to the Agency for Information and Privacy (AIP), since the outbreak of the COVID-19 pandemic no complaints regarding the publication, processing or management of personal data were received by AIP nor addressed to the court. So far no institution has issued an internal act, as required by law, to manage the processing and management of data (including data transfer and the procedure of destruction of data received after the intention for their collection ceases to exist). The Ombudsperson has found in several occasions violations of the right to privacy by various written media, for persons who have undergone testing for COVID-19, as well as for revealing the identity of persons who tested positive for COVID-19.

## References

- Ombudsperson Institution, Health emergency and the impact of the COVID19 pandemic on human rights in the Republic of Kosovo, 2021, p.43: <https://oik-rks.org/raportet/raportet-e-vecanta/> [last accessed 24.12.2021]
- Government of the Republic of Kosovo, General and specific measures for the control, prevention and control of COVID-19 pandemic, 28.08.2021: [https://kryeministri.rks-gov.net/wp-content/uploads/2021/08/Masat-kunder-COVID-19\\_28-08-2021.pdf](https://kryeministri.rks-gov.net/wp-content/uploads/2021/08/Masat-kunder-COVID-19_28-08-2021.pdf) [last accessed 24.12.2021]
- In some areas combined teaching (online& physical) continued to be held. Ministry of Education, Science, Technology and Innovation, School year 2021-2022 has started with physical presence in schools, 27.09.2021: <https://masht.rks-gov.net/article/viti-shkollor-2021-2022-ka-filluar-me-prani-fizike-ne-shkolla> [last accessed 24.12.2021]
- Ombudsperson's Special Report, Health emergency and the impact of the COVID19 pandemic on human rights in the Republic of Kosovo: <https://oik-rks.org/2021/12/10/raport-i-vecante-emergjenca-shendetesore-dhe-ndikimi-i-pandemise-covid-19-ne-te-drejtat-e-njeriut-ne-republiken-e-kosoves/> [last accessed 28.12.2021]
- Monitoring done by the Department for the Protection of Child Rights (to be published at end of January as part of the Ombudsperson's Annual Report)

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

Although containment and restrictive measures started to phase out in 2021, the Ombudsperson warns that the medium and long-term implications of COVID will be worst felt by vulnerable sectors of the population. The pandemic and the measures adopted to address it have had a serious impact on children at all levels. In particular, children with disabilities have been most severely affected. Social services, although more needed than ever in pandemic times, have been limited and implemented with great difficulty. The situation has been aggravated by the late announcement of regular grants to support social service providers. Delays have also been identified in terms of allocation of funds to service providers, and all this has affected a part of the beneficiaries - a large number being children, including those with disabilities .

State actions have failed to integrate human rights policies and practices in COVID-19 pandemic management policies. Mental health should be covered as a part of overall

health protection, in close consultation and active involvement of persons with disabilities and their representative organisations. Information should be tailored to the specifics of the category of persons with chronic psychiatric illness in response to the pandemic. This makes the vulnerable population with chronic psychiatric illness more vulnerable to the possibility of experiencing inequality in access to health care and respect for their human rights. Also, access and support in receiving health services for the category of persons with chronic psychiatric illnesses as well as treatment in specialised mental health services with beds has been limited. Overall, the Ombudsperson has concluded that the pandemic situation caused by COVID-19 has further exacerbated the already difficult situation of persons with disabilities.

In addition to the negative impact on economic growth, tax revenues and the labour market, Kosovo also experienced price increases, mainly in essential items and in pharmaceutical items, which due to the pandemic greatly increased market demand, by thus violating the rights of the consumer, provided in Article 4 of Law no. 06 / L-034 for Consumer Protection. So far these prices have been on the rise and spreading to the majority of items. This will further worsen citizen's socio-economic rights.

With regards to the functioning of the justice system, the situation with the pandemic has negatively affected the statute of limitations, dismissal and stalling of environmental cases and could possibly contribute to increasing the overall backlog of such cases.

Moreover, due to the COVID-19 pandemic, authorities occasionally issued decisions restricting some fundamental rights which are guaranteed to the persons deprived of their liberty by the International Conventions, incorporated into Kosovo Constitution, the Constitution of Kosovo and applicable legislation of Kosovo.

As regards places of deprivation of liberty, the Ombudsperson, based on the visits, findings and recommendations of the National Preventive Mechanism concluded that restricting fundamental rights and freedoms, in line with the international and national legal standards, must pass the test of legality, necessity and proportionality, and it should not be discriminatory and in full respect of human dignity and be subject to reviews. The authorities in Kosovo met this threshold.

The Ombudsperson of Kosovo recommended to the authorities to ground their decisions on restrictions affecting human rights on the Law on the Execution of Criminal Sanctions and House Rules of the Correctional Service of Kosovo.

The Ombudsperson of Kosovo issued several recommendations which are based on the CPT Statement of Principle and SPT advice for the Governments which were published in March 2020, particularly related to treatment of persons deprived of their liberty. Lack of

family visits, depending on the COVID-19 situation in the country, was compensated by enabling prisoners to contact with their families via SKYPE and increasing the number of phone calls. The Ombudsperson of Kosovo recommended that use of SKYPE must be regulated by adopting an Administrative Instruction.

The NPM noticed that due to situation with pandemic COVID-19 and decisions issued by the competent authorities, sentenced prisoners (not remand prisoners) were deprived of the right to contact their defence counsel until the situation improved. Based on this finding, the Ombudsperson of Kosovo recommended to the authorities that the right to meet the defence council in a confidential way should be observed during all times, including pandemic COVID-19.

### **References**

- Ombudsperson's Special Report, Health emergency and the impact of the COVID19 pandemic on human rights in the Republic of Kosovo: <https://oik-rks.org/2021/12/10/raport-i-vecante-emergjenca-shendetesore-dhe-ndikimi-i-pandemise-covid-19-ne-te-drejtat-e-njeriut-ne-republiken-e-kosoves/> [last accessed 28.12.2021]

### **Efforts by state authorities to mitigate challenges**

In general, the government has allocated additional funds for health and safety institutions, has undertaken financial packages in order to help citizens, businesses and some categories of workers (healthcare and police), has provided tools for schools and students for distance learning, in certain situations has extended the deadlines for the use of expired documents (ID cards, applications for extension of pensions, social assistance, vehicle registrations, etc.).

In 2021, in the framework of the Economic Revival Package, the government has allocated additional payments to mothers who have just given birth and children up to 16 years old to alleviate the impact of the pandemic. OIK believes this should be regarded as a good practice.

### **References**

- Government of the Republic of Kosovo, Decision on setting the conditions and criteria for the partial implementation of measure 3.5- Payment for young mothers and supplements for the Economic Revival Package, 2021, available at: <https://mf.rks-gov.net/desk/inc/media/4F250604-F09F-481F-B678-EB53F7BE9BEF.pdf>

- Decision on setting the conditions and criteria for the partial implementation of the measure 3.5- Supplements for Children of the Economic Revival Package, at: <https://mf.rks-gov.net/desk/inc/media/173A6369-973C-4189-B158-5E4F9BC13650.pdf> [last accessed 24.12.21]

### **Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context**

On 27 January 2021, the Ombudsperson has published the own initiative Report with Recommendations No. 698/2020 regarding 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. The main purpose of this Report was to assess provision of health care services, with a human rights-based and non-discriminatory approach, for persons with HIV / AIDS and TB in Kosovo during the COVID-19 pandemic period, 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.

On 23 February 2021, The Ombudsperson, has published the own initiative Report with Recommendations No. 434/2020 regarding the limitations on provision of health services during COVID-19 pandemic in Kosovo. The purpose of this Report was to assess the effective accomplishment of health rights during the COVID-19 pandemic period in Kosovo, in relation to access to health care and treatment, mainly in secondary and tertiary level institutions, focusing in particular on limitation on provision of health care services (specialist visits and elective surgeries), for persons who were not infected with COVID 19. Protection of human rights and fundamental freedoms is essential and very important for an effective response in the prevention and treatment of cases with COVID 19, but without leaving any citizen behind, especially those who seeks services in health institutions with a special focus on sensitive groups and other persons who need health care continuously. Notwithstanding, this Report took to account problems inherited over the years in the Kosovo health system and aims, that by focusing on the difficulties that COVID 19 pandemic disclosed, to recommend responsible authorities on steps to be undertaken, in order to gradually eliminate problems in the health sector and make progress in provision of health services. In this regard, National Institutions for Human Rights, such is the Ombudsperson Institution in Kosovo, play an important role on monitoring of state's actions, in achieving application of Universal Health Coverage for these groups.

On 10 December 2021, on the occasion of the Human Rights Day, the Ombudsperson Institution has published a Special Report "Health emergency and the impact of the

COVID-19 pandemic on human rights in the Republic of Kosovo” which assessed the impact of COVID-19 on human rights and application of government measures to prevent the spread of pandemic. In this regard, this report addressed the impact of these measures, in particular restrictions of human rights; the impact of the pandemic on public health, mental health; right to a fair trial; the rights of persons deprived of their liberty; economic and social rights; right labor and the impact of the pandemic on the public and private sectors; living environment; domestic violence; freedom of assembly, belief, conscience and religion, as well as restrictions on these rights; freedom of expression, freedom of the media; the right to privacy; voting rights; the rights of children and the impact of health emergency on the lives of children, including children with disability; the right to education and cultural activities as well as the analysis of standards and international practices of countries with developed democracies.

The Ombudsperson ascertained that social services, although particularly needed in times of an emergency such as the COVID-19 pandemic, have been limited and their implementation frustrated by many difficulties. The situation has been exacerbated by the late announcement of regular grants to support providers of social services. The Ombudsperson pointed out also that during the time of restrictive measures, the number of domestic violence has increased significantly. According to Report’s findings, 1915 cases were recorded in 2019, while in 2020 the number doubled, when 2069 cases of domestic violence were reported to the police.

On the other hand, the Ombudsperson has ascertained that the pandemic has also led to a deterioration of citizens’ economic status, further deepening the gap of social inequality among families. The precarious economic situation of households is reported to have been further worsened due to the risk of increasing poverty.

In its report, the Ombudsperson issued 22 recommendations calling on public authorities to respect human rights standards in the future in any restrictive measures that may be imposed in emergency situations.

On 1-2 December, the Ombudsperson Institution of Kosovo hosted the Fourth Regional Meeting between the Ombudsmen and the Commissioners for Protection from Discrimination of Kosovo, Albania and Northern Macedonia. The first day of this meeting was dedicated to the discussion of the work of the institutions during the COVID-19 pandemic period, with special emphasis on the challenges of government measures on vaccination of the population and their balancing with human rights standards.

## References

- Ex. Officio Report with Recommendations No. 698/2020 regarding 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: <https://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/>
- Ex. Officio Report with Recommendations No. 434/2020 regarding the limitations on provision of health services during COVID-19 pandemic in Kosovo: <https://www.oik-rks.org/wp-content/uploads/2021/03/Anglisht-Raport-me-rekomandime-Ex-officio-nr.-434-2020.-...pdf>
- Ombudsperson's Special Report, Health emergency and the impact of the COVID19 pandemic on human rights in the Republic of Kosovo: <https://oik-rks.org/2021/12/10/raport-i-vecante-emergjenca-shendetesore-dhe-ndikimi-i-pandemise-covid-19-ne-te-drejtat-e-njeriut-ne-republiken-e-kosoves/> [last accessed 28.12.2021]

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

During 2021, according to a decision no. 01/05 for general and specific measures for controlling, preventing and combating the COVID-19 pandemic, of the Government of the Republic of Kosovo, issued on 5<sup>th</sup> of April 2021 and the other decision no. 01/32, issued on 28<sup>th</sup> of August 2021, the public and private institutions in Kosovo were obliged to work only with staff who perform essential services. By these decisions all public and private entities were asked to reduce the number of staff working in the office, meaning only staff that is needed physically in the office with work from the office, whereas all others will work from home. All the institutions then where obliged to make individual decisions to organise their work to effectively fulfil their mandates. This did not affect the Ombudsperson Institution in any negative way, as the Ombudsperson himself decided which staff could be considered essential and who can work from home. By law, the Government cannot interfere in any way with regards to performing of the Ombudsperson's mandate. Even though in different working conditions the Ombudsperson Institution has continued to perform its constitutional and legal mandate in the most effective way possible, in order to ensure the respect and protection of human rights from violation during the application of pandemic measures.

Visits to places of deprivation of liberty are conducted by the National Preventive Mechanism operating under the Ombudsperson of Kosovo. In 2021, the NPM conducted 62 general and Ad Hoc visits to all places of deprivation of liberty, while obeying 'do no harm' principle. It also published 12 reports with recommendations. All NPM staff members were vaccinated and during the visits they used protective clothing and observed anti-COVID-19 measures in place.

### **NHRI's recommendations to national and regional authorities**

The Ombudsperson recommends the relevant authorities to implement its recommendations on respecting the rights of person deprived of liberty:

- Restrictions of fundamental rights and freedoms, in line with the international and national legal standards, must pass the test of legality, necessity and proportionality, should not be discriminatory and in full respect of human dignity and be subject to reviews;
- authorities' decisions on restrictions which affect human rights, should be compliant with the Law on the Execution of Criminal Sanctions and House Rules of the Correctional Service of Kosovo.
- prisoners' use of SKYPE should be regulated through adoption of the Administrative Instruction
- the right to meet the defence council in a confidential way should be observed during all times, including pandemic COVID-19

These recommendations build on the comprehensive Ombudsperson's assessment included in the Special Report "Health emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo". In this report the ombudsperson has provided recommendations to the responsible authorities on how to improve the situation. Among others, the Institution also reiterates the need to achieve the establishment of a Universal Health Coverage and to invest in the healthcare system in order to protect and promote access to health care for all citizens.