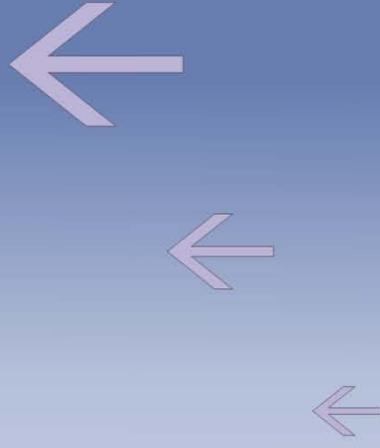


**The Ombudsman in the system of
protection against discrimination**



Policy Brief





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POLICY BRIEF

BACKGROUND

After analyzing the overall situation, independent bodies are widely recognized as a key component of a stable and efficient democratic system, developed on the foundation of the rule of law and good governance. In this case it is the office of the Ombudsperson. On one side, they provide additional means for representation and protection of citizens and their rights, while on the other they offer a strong mechanism of checks and balances which facilitates efficient and effective control over the executive branch of power. That is why independent bodies are often mentioned as the fourth branch of power responsible not only for the protection of citizens' rights, but also for the oversight of the work of institutions in the executive power. To be sure in proper support and proper representation of citizens, adequate conditions must be created, to provide for proper study, play and overall personal development. Of equal measure, is the need to create conditions and opportunities that encourage and facilitate citizens in active participation in the broader social, legal and economic life of the country.

Office of Ombudsperson has been involved with varying degrees of success in promoting the human rights in different stages of national development. This Policy brief, therefore, gives substance and recommendations to the local office efforts especially. The policy brief provides guiding principles in accordance with requirements to harness the opinions, initiatives, resources and experiences of employees working in Mitrovica region office and main office of Ombudsperson in Pristina.

INTRODUCTION

This document and efforts made in preparing the document aimed at taking away the debate on human rights issues from the political debate and theory of the human rights, and to identify common challenges and interests among real citizens and try to achieve solutions, and promote the work and the efforts of the Ombudsperson as an independent and constitutional institution, on promotion and protection of human rights. This document and its findings and recommendation come at a crucial moment for the Serbian community. During the research the citizens used the opportunity to come forward and comment local and central office of Ombudsperson and its role is positive in solving the problems of the citizens, the recommendations and findings are as follows:

- (i) To monitor, review and advise Local Government on matters pertaining to human rights protection and enforce the recommendations given by the Ombudsperson office;

- (ii) To assure and guarantee by the law that recommendations given by the office of Ombudsperson will be followed without any delays.
- (iii) Strengthening the cooperation between civil society organizations dealing with rule of law and Office of Ombudsperson.

METHODOLOGY

The Policy Brief document is the result of efforts made by number of Consultations which involved the active, uninhibited and committed participation of a wide cross-section of stakeholders who participated throughout the project implementation and workshops held in Mitrovica north in a process that began in Early December 2017. Emerging from the interaction and exchange of experiences, ideas and concepts was the notion that a Policy brief should be developed for the benefit of this, and future generations of citizens in Mitrovica and Kosovo wide. During the preparation of this policy brief active consultations were conducted with Ombudspersons office in Pristina and in Mitrovica North and the NGOs, Medias and individuals mentioned in the special recognitions section.

SPECIAL RECOGNITIONS

Recognition is here given the CSOs, Media organizations, student's organizations, representatives and Local Government Departments that agreed to participate to this research as well as to all individuals who actively participated in the workshops, for their contributions to the Policy Brief. Those organizations/Departments include:

- NGO Advocacy Centre for Democratic Culture (ACDC)
- NGO Centre for Society Orientation
- Municipal Youth Departments
- NGO COD
- NGO Human Centre Mitrovica
- TV MIR Leposavic
- Radio Kontakt Plus
- Sub-office of Ombudsperson in Mitrovica
- Ombudspersons office in Pristina
- KoSSev Media Portal

CHAPTER 1

DEFINITION

The Constitution and the legal package on human rights entered in force in 2015(Law No. 05/L -019 On Ombudsperson, Law No. 05/L-021 On The Protection From Discrimination and Law No. 05/L-020 On Gender Equality)foresee a wide range of Ombudsman competencies, which derive from promotional activities, through research in the field of discrimination, to the treatment of individuals' complaints who claim to be victims of discrimination and taking an active role in misdemeanor procedures for protection against discrimination. In this sense, legal competencies of the Ombudsperson Institution of Kosovo in the field of protection against discrimination are in accordance with the international standards relevant to the work of the bodies for the protection of equality and human rights.

According, article 5, on the Regulation no.01/2016 on Internal Organization and Systematization of job positions in the Ombudsperson Institution, 2016,

(http://ombudspersonkosovo.org/repository/docs/Rregullorja_01-2016_ang_528820.pdf and Regulation 02/2016), the organizational structure of the OIK, are consisted of:

“the Professional Service, which includes 5 sectors, within which there are 7 departments: Department for Admissions and Administration of Complaints: Department for Investigation of Complaints: Department for Protection from Discrimination: D. for Protection of Children's Rights, Department for the Prevention of Torture, Department for Legal Issues, and Department for Cooperation, Reporting and Promotion of the Human Rights. The departments have been established and started operating during 2017.

CHAPTER 2

POLICY GOAL

Directives of the European Union on non-discrimination require the establishment of a body for the protection of equality that would have minimum mandatory jurisdiction in the field fight against discrimination. These directives envisaged the obligation to establish a body whose responsibilities would include "providing independent assistance to victims of discrimination when submitting a complaint to discrimination", "conducting independent research "and "publishing independent reports and recommendations" on discrimination.(Article 228 of the Treaty on the Functioning of the European Ombudsman).By using such wide-ranging formulations, EU law leaves considerable discretion to the states in deciding what specific powers will be assigned to these bodies in this case Ombudspersons office. The essence is that these bodies must, among other things, provide some kind of visual legal assistance to victims of discrimination, and assist them in obtaining their rights and at the end recommend the actions to the institutions.

CHAPTER 3

CONDITIONS FOR EFFECTIVE WORK

As two key indicators for assessing the domestic bodies involved in protecting equality it must be emphasized that “independence” and “effectiveness” are the most important factors, whereby the first indicator is in fact the key to the other. Independence implies the possibility of these bodies to provide and arrange their human resources, their financial means and their priorities in the way that they consider it best suited to the quality of their activities, to independently decide on personnel issues, to determine their priorities and to use their powers when and how they consider it necessary. Effectiveness, on the other side, implies that these bodies are able to apply all their functions and its powers in a way that ensures a real impact on the phenomenon of discrimination and non-equality which means that their recommendations are followed and implemented without any delays.

CHAPTER 4

THE ROLE OF THE OMBUDSMAN IN THE SYSTEMATIC PROTECTION AGAINST DISCRIMINATION

Generally speaking, the legal competencies of the Ombudsman of Kosovo in the field of protection from discrimination are largely in line with EU directives, international standards and relevant comparative practice.

The Ombudsperson Institution (OI) deals with cases related to discrimination according to powers and competences provided by the Law on Ombudsperson Institution and the Law on the Protection from Discrimination. (Law No. 05/L-019, Law No. 05/L-021)

Furthermore, the Ombudsperson is an equality mechanism for promotion, monitoring and support of equal treatment without discrimination on the bases protected by the Law on Gender Equality (Law No. 05/L-020) and the Law on Protection from Discrimination,

The OI is an independent institution that is governed by the principles of impartiality, independence, pre-eminence of human rights, confidentiality and professionalism.

According to provisions under article 9, of the Law nr. 05/L-021 on the protection against discrimination, the OI has competences:

- to receive and investigate complainants of from any natural or legal person,
- gives opinions and recommendations on concrete cases of discrimination also can initiate investigations ex-officio;
- provides assistance to victims of discrimination during preparation of complaints from discrimination and provides essential information to persons who have filed a complaint for discrimination with regard to their rights,
- obligations and opportunities of the court, as well as other protective tools;
- addresses directly to investigation and prosecution bodies with a request to initiate an investigation of criminal offenses and requires to initiate the applicable disciplinary proceedings;



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- informs the public about cases of discrimination and undertakes measures to promote equality, human rights and non-discrimination;

The Ombudsperson may appear in the capacity of the friend of the court (*amicus curiae*), monitors the implementation of this law and initiates the amendments of provisions for implementation and advancement of protection from discrimination;

OI can also provide advices, guidance and support to subjects of public and private sector, on best practices in the promotion of equality, adapting to diversity and combating discrimination on the grounds covered by the relevant Law on Gender Equality

OI provides opinions to draft normative acts on the protection from discrimination; collects statistical and other data, conducts studies, researches and trainings regarding discrimination; cooperates with social partners, non-governmental organizations that deal with the promotion and protection of human rights, with other countries respective mechanisms dealing with the promotion and protection of human rights, and with institutions and religious communities registered in the Republic of Kosovo; submits the report at least once a year, to the Assembly of the Republic of Kosovo on the implementation of this Law and can also draft special reports related to its implementation; Ombudsperson may be presented in the quality of a friend of the court (*amicus curiae*) in proceedings related to issues of equality and protection from discrimination.

The Kosovo Ombudsperson Institution also has a broader promotional and preventive role in the fight against discrimination. In addition it has the role to protect people in specific cases; this institution also has wider powers in this domain. A significant part of competence is focused on preventive action - education and promotional activities in the context of the right to exclude discrimination. In that sense, the Institution the Kosovo Ombudsperson collects and analyzes statistical data on cases of discrimination Kosovo wide, on its own initiative, carries out research in the field of discrimination, which submits to the responsible Entity and state parliamentary bodies on an annual, and if necessary, an extraordinary report on the occurrence of discrimination, informs the public on the occurrence of discrimination, raises awareness of issues related to discrimination in society, recommend promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo, gives advice to legislative and executive authorities and proposes legal and other solutions, and promotes policies and practices which aim to ensure equal treatment.

CHAPTER 5

• TREATMENT OF COMPLAINTS – BASIC PRINCIPLES

Procedure for individual complaints before the Institution of the Ombudsperson for Kosovo has many advantages - it is free, simple and it means responsive friendly assistance. This procedure, which does not require professional legal assistance, is also the most important aspect of the protection against discrimination that individuals provide in stated institution. Victims of discrimination, individuals and legal persons, can appeal for their complaints directly by contacting the Ombudsperson's office (by post, phone, email, fax or personal by submitting), which, if necessary, provides assistance in completing a special form which is foreseen for it, clarifies their rights and obligations, as well as the possibilities of judicial review and other protections available to individuals, including referrals to bodies and organizations that can represent them in the judicial protection procedure. On this one way a complainant in an accessible way is helped by legal adviser in protection of his rights and protection against discrimination, in addition client is assisted in formulating its claims and requirements in the best way possible, and uses other ways of protection, which, depending on the particular circumstances, may imply litigation, administrative, criminal or misdemeanor proceedings, as well as addressing to competent inspections.

The protection process before the Ombudsperson's institution is adapted to the needs of the poor and marginalized population groups. In this protection mechanism as a rule there is no need for a professional legal representative, as it is often emphasized in the international and local level, as one of the main advantages of the procedure before the protection bodies that protect equity, legal rights or human rights. It is enough that the person who believes that is discriminated or who recognizes that is a victim of a violation of a human rights address the Ombudsperson of Kosovo, who, through a conversation with complainant and through the use of investigative mechanisms identifies jurisdictions, collects information, evidence, statements, and based on this can identify a violation of the right. Given that this mechanism is free, it is in the most cases easily available to the victims of discrimination, including the poor and marginalized groups. This is very important having in mind the fact that "the majority of citizens who turn to the institution are in (legal) assistance need or in a state of social need".

According to article 9 of the Law on protection against discrimination, the Ombudsperson Institution has the authority to investigate or initiate a case with self-initiative (ex-officio) when there is a suspicion that there has been discrimination committed by public entities. According to Constitution and the Law on Ombudsperson (article 9) all other institutions exercising legitimate power are bound to cooperate and respond to the requests of the Ombudsperson Institution.

This implies requiring information and the statements of the legal entities against whom the proceedings were initiated.



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All institutions of government and other legal entities and individuals shall be obliged to respond to the Ombudspersons requests no later than 30 days from the receipt of the request, and provide all the requested data and documents. According to the Law on the Ombudsperson, there is a duty of cooperation with the Ombudspersons office in terms of enabling access, all files or documents.

The Ombudsperson Institution of Kosovo also issues recommendations with measures to eliminate discrimination and monitor their implementation. If the cases are not resolved at the stage of the investigation, and based on the information obtained during the course of the investigation, it has been established that if the discrimination occurred the Ombudsperson issues a recommendation with the aim of preventing and suppressing discrimination, requiring correction of the violation of rights and proposing measures (individual and/or general) for their removal, on which occasion usually leaves a deadline of 30 days. After issuing the recommendation, the case is not closed and there is a system and technical support for monitoring implementation of recommendations.

During the project period ACDC project team had several meetings with Ombudspersons office and its legal departments, the meetings took place in August 2017 with Ombudsperson Mr. Hilmi Jashari, December and January 2018 with Mrs. Miljana Scekic from the Ombudspersons office in Mitrovica North, in July and August 2018 with Mrs. Marija Radulovic deputy Ombudsperson and in June and September 2018 with Ombudsperson himself Mr. Hilmi Jashari, with Mrs. Miljana Scekic from Mitrovica North legal department as well as with Isa Hasani Director of the Department for Admission and Administration of Complaints. In addition it is worth mentioning that the meetings with Mitrovica North Ombudspersons representative Mrs. Miljana Scekic took place on monthly bases in order to have an overview of the work of the office and the citizen's knowledge of what services the office can provide in the protection of their rights.

According to the information obtained from the Ombudspersons office officials during first six months of the 2018 the office of Ombudsperson has received 1,010 complaints from the citizens of Kosovo. According to the office of Ombudsperson, from the total number, 566 of complaints were not acceptable as per article 21 and 22 of the Law of Ombudsperson, and 444 complaints were accepted and further distributed among different departments. In the first six months of 2018, Ombudsperson office resolved 121 cases with positive outcome while 323 are still in the process of resolving. In order to better present the positive work of the office of Ombudspersons the office agreed to provide several cases which provide information on the versatility of the cases that are presented by the citizens and processed by the Ombudsperson office before different courts.

1. Complaint no. 344/2018-against Lipjan municipality.

On 28 May 2018, the Ombudsman Institution, through the official electronic address of the OIK, received an appeal from the group of citizens.

“I am writing to you about the appeal against the “Ulpiana Gymnasium” in Lipjan, which has asked from students 2 Euros for alleged repairs.”



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Usually, during the regular school year period, the students are paying the damage they cause with the payments for other school obligations therefore the additional payments are unfair.

After the Ombudsman counselor contacted the municipal officials and explained the case and request for additional payments, the Municipal officials withdraw this request and the case was closed on request of the applicants with positive outcome.

Ombudsman, called upon the Article 21 point 1.5 of the Ombudsman Law no. 05 / L-019, and since the case was resolved positively the Ombudsperson decided to close the investigation in this case on 05.07.2018 on the mentioned issue with positive result.

2. Complaint no. 201/2018 against the Basic Court in Gjilan, Branch in Vitina.

On 28 March 2018, the Ombudsperson Institution received an appeal of the applicant concerning the length of proceedings before the Basic Court in Gjilan, a branch in Vitina for the case P.br.541 / 16 for the usurpation of real estate in the village of Požaranje, Municipality of Vitina. After addressing the responsible party regarding this appeal as per pursuant article 21, point 1.5 of the Ombudsman Law no. 05 / L-019, the OI received information that the case was resolved and an order for the deployment of a usurper was issued.

Ombudsperson decided to terminate the further investigation in this case on June 11, 2018 with the mentioned issue as the case was successfully resolved.

3. Ex officio case No.412 / 2017 / Ministry of Education (MO)

On the basis of the information obtained from the field on 21 June 2017, the Ombudsman opened the case "Ex officio" in connection with Decision no. 2-1843, dated 16.05.2017. The State Commission for graduation, which in points 1 and 2 stipulates: "1. All students who have a higher secondary school and who are subject to a graduation examination should present the evidence from the bank that have paid the amount of 5 euros 2. Payment is used as evidence for participation in the state examination." This decision is not in accordance with the criteria established by the Law on State Graduation Examination.

Ombudsperson on May 4, 2018. sent a report with recommendations to the Minister requesting the annulment of that decision, since it is considered illegal and violates human rights. On the date 14.05.2018, in the official reply of the Ministry, IO was informed that the recommendation has been implemented and the decision has been annulled. Ombudsman, used the article 21 point 1.5 of the Ombudsman Law no. 05 / L-019, and the Ombudsperson decided to terminate the investigation in this case of the case on June 21, 2018 with the mentioned issue since it was resolved with positive decision.



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4. Complaint no. 670/2017 - appeal against the Municipality of Peja / Peć

The Ombudsman Institution received an appeal against the Municipality of Peja in which appellant stated that he received unofficial information from the acquaintance that one of the parcels that he owned was sold and used as a building plot, and that he wants to have an overview from cadastral books related to his property and this alleged situation.

Regarding the allegations in the complaint, IO addressed the Municipality of Pec / Cadastre and Geodesy Department and requested information on the real estate situation.

IO received information from the Municipality of Peja that one transfer of property was conducted on the basis of a sales contract between the person (R (P) T and H (U) A), while the rest of the property is still kept in the name of the complainant's father. In addition to the received answer, the original copies from the cadastre office regarding the aforementioned parcels were also attached.

On 21 February 2018, the complainant was informed of the content of the response received and the accompanying documentation was presented.

The procedure was completed in accordance with the request of the party and the Ombudsperson in accordance with Article 21, paragraph 1.5 of the Law no. 05 / L-019. The Ombudsperson, decided to terminate the investigation in relation to the aforementioned issue since it was resolved positively.

5. Complaint no. 97/2017 against the Municipality of Suva Reka

The Ombudsperson Institution received appeal regarding the land owned by a family which was expropriated by Suhareka Municipality for road / traffic purposes, but anyone from the family was not informed nor exercised their rights on land expropriation, as well as that there is no information about the current status of property that was once registered in the name of the head of the family.

Regarding the allegations in the complaint, the IO addressed the Suva Reka Municipality, the cadaster department and asked for information on whether the expropriation process on the land, as well as information about the status of real estate owned by the complainant's family.

On May 3, 2017, the Ombudsman received a response from the Suva Reka Municipal Successor who stated that in relation to this case in the cadastral books the land is registered on the head of the family and verified by the cadastre and geodesy expert of the Suva Reka municipality, it was recorded as well that the mentioned property is intact and that there is no construction on it, and regarding the status of the property owned by the family in the village Mušutište they also submitted copies of the plans and a copy from the cadastre in the name of the requesting family.

Given that the case is in accordance with the Appellant's request, according to Article 21, point 1.5 of the Ombudsman Law no. 05 / L-019, the Ombudsperson decided to terminate the investigation in this case as it was resolved positively.

6. Complaint no. 920/2017 against the Civil Registration Center -Peć

Appeler in his appeal stated that he addressed to the Civil Registration Center in Peja for the purpose of obtaining the documentation necessary for issuing personal documents / documents from the Central Registry with personal identification number and citizenship, but without success.

Regarding the allegations in the complaint, the IO contacted the Civil Status Office, informed them of the complaint, forwarded the documentation submitted by appeler, and requested information whether and what the appellant needs to complete from the documentation in order to obtain the requested document. Civil registration office answered and explained what is needed in order to grant to the appeler the requested documents.

After informing the complainant and giving the instructions we received to the complainant, he managed to obtain the requested documentation in accordance with the Appellant's request, in accordance to Article 21, item 1.5 of the Ombudsman Law no. 05 / L-019, the Ombudsperson decided to terminate the investigation in this case as it was resolved successfully.

7. Complaint no. 21/2018 against the Municipality of Prizren

Based on Article 16.1. of the Ombudsman Law No. 05 / L-019, on 17 January 2018, the Ombudsman received an appeal against the Municipality of Prizren - the Directorate of Geodetic and Cadastral Administration, in order to protect appellers property rights in the real estate located in Prizren and In this direction, appeler requested the mediation of the Ombudsperson Institution at the Directorate of Geodetic and Cadastral Administration of the Municipality of Prizren to prevent the issuance of a property deed to a person convicted of forging a sales contract, by which the convict tried to take immovable property, and the family house of the appellant in an unlawful manner.

On January 24, 2018, a representative of the Ombudsperson paid an official visit in relation to the complainant's case, informed by the Deputy Director of the Directorate of Geodetic and Cadastral Administration in Prizren that this office had already been informed about the complainant's case by the Prizren Basic Court, which sent them solution C. no. 777/10 of 27 December 2017, by which the Court terminated the previously imposed, provisional measure of the prohibition of disposing of the property in question, and the right of the appellant to freely use his property was given. In this decision, it was explained that this case was completed with a final verdict in favor of the appeler. A copy of that court decision was also submitted to the representative of the Ombudsperson.

On the same day, the responsible legal adviser of the Ombudsperson informed the complainant of the response of the responsible party, and on 21 June 2018, since the complainant's case was settled according to Article 21, paragraph 1.5 of the Law no. 05 / L-019 on the Ombudsperson, the Ombudsperson decided to terminate the investigation in this case since it was successfully resolved.

8. Application no. 402/2017, against the Basic Prosecution in Djakovica

Based on Article 16.1 of the Ombudsman Act, no. 05 / L-019, on 26 May 2017, received an appeal due to the length of the proceedings before the Basic Prosecutor's Office in Djakovica in connection with a criminal complaint lodged with the complaint on 7 June 2013. regarding the unlawful usurpation of the immovable property.

The representative of the Ombudsman Institution (IO), after analyzing the documentation of the appellant, noted that after the conducted investigation into the criminal complaint, the prosecution filed an indictment PP.br.1035 / 2013 dated 15 July 2013. against the accused for the criminal offense of unlawful usurpation of immovable property. Based on Article 363, paragraph 1, sub-clause 1.1 of the CCCR, the Basic Court in Djakovica rejected the indictment against the accused because it was established that the property in question in connection with which the criminal offense was initiated is owned by the Municipality of Gjakova, which means that the Municipality of Gjakova is the holder of the right of property on the disputed real estate, which was decided by the Municipal assembly from 1 October 2001 it gave the temporary use of the property to defendant's wife.

On the basis of the information provided, the Ombudsman concludes that the Basic Prosecution in Djakovica has acted upon a contested criminal complaint in accordance with the law and without any delay, thus the case is prosecuted within a reasonable time and does not indicate the existence of a violation of the right to a hearing within a reasonable time period and a violation of Article 6 Of the European Convention on Human Rights.

Pursuant to the above, the Ombudsman on 29 December 2017, pursuant to Article 22, paragraph 1.1 of the Ombudsman Law, no. 05 / L-019 decided to terminate the investigation in this case - human rights and freedoms were not violated or no mismanagement was committed.

According to article 25,(Obligation of cooperation and the consequences of refusal):

1. "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".
2. "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".



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3. "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."

- **IMPACT AND NON-IMPLEMENTATION OF RECOMMENDATIONS BY THE OMBUDSPERSON**

Human Rights Protection Bodies with similar competencies do not have a direct opportunity to implement their recommendations. It is so on the grounds that such jurisdiction is deemed unacceptable a combination of investigative and quasi-function works in the same body. In one opinion The Venice Commission points out:

"From the very nature of the Ombudsperson's Institution it can only provide recommendations. There can be no directives to follow these recommendations. However, it would really be necessary for the administrative bodies which are in charge to react on the Ombudsperson's recommendation, either accepting and rectifying the recommendations or offering a justification in case of refusal" of Ombudspersons recommendations".

Significant number of unimplemented recommendations of the Ombudspersons office of Kosovo in the field of discrimination was recorded, some of the cases goes back from 2009 mostly cases on the property rights and use of the property rights.

Out of 18 completed cases in 2017 concerning discrimination in the rule of 12 cases, the closing decision was made, while there were 2 cases for initial investigation after which was issued a recommendation to the violators to take measures that will prevent discrimination. Out of this number, 6 recommendations have been implemented; two are partially realized, 8 out of 18 recommendations were not implemented at all. (Statistics form the OI report for 2017)

The statistics of unrealized recommendations are as follows:

On the occasion of 4 cases, there was a meeting, in which the recommendations were repeated: For the 2 cases there is no answer, and 2 cases were left without realization. (Statistics form the OI report for 2017).

In addition as per the interview made with Ombudspersons office and its legal departments during first six months of the 2018 the office of Ombudsperson have received 1,010 complaints from the citizens of Kosovo, according to office of Ombudsperson from this number 566 complaints were not acceptable as per article 21 and 22 of the law of Ombudsperson, and 444 complaints were accepted and further distributed among different departments. In the first six months of 2018, Ombudsperson office resolved 121 cases with positive outcome while 323 are still in the process of resolving.

In order to provide the proper insight of the work of the Ombudsperson Institution the office have provided some of the unresolved cases in order to present the work and some of the case which were not resolved but are still under the Ombudspersons watch until the positive results are seen:

1. Complaint no. 357/2017 - Basic court in Pristina

The Ombudsman Institution on 04.05.2017, received an appeal alleging that the appellant is the owner of land property located in Kosovo Polje, in the area of Vojvode Bojovića street, with the surface of 0.89.68 ha, registered in possession parcel no. 682. The property is listed on late father of the complainant. According to the Appellant, during 1999 property was violently and unlawfully usurped by a third person, on the basis of forged documents, the complainant filed a criminal complaint on 18 September 2007. The competent prosecutor's office registered the case under number K.br.210 / 09, and after the initiated proceedings, upon the filing of a criminal complaint, criminal proceedings was initiated with the Basic Court in Pristina, the outcome of this case was not announced/presented to the complainant until July 2017. IO published Report with recommendation on 29.05.2018. Regarding this case and so far the case has not been implemented or the recommendation of the IO was not taken into account.

2. Appeal no. 864/2017 - against the Court of Appeals

The Ombudsperson Institution, pursuant to Article 16.1 of the Law on Institution of Ombudsman no. 05 / L-019, on 09 December 2017, received an appeal complaining about the length of the proceedings before the Court of Appeals and according to the case of the Basic Court in Prishtinë C.nr. 1972/13. The subject of the appeal is regarding the employment and the appellant is demanding priority in handling. However, even after the expiration of more than 5 years, the processing of the same has not begun yet. A report with recommendation from IO was published on May 29, 2018 and has not yet been implemented.

3. Complaint no. 303/2018 against the Municipality of ZubinPotok

The Ombudsperson Institution received a complaint stating that official request to the Municipality of Zubin Potok in connection with obtaining copies of the documentation settled in the archives of the municipality was requested but not received.

The Ombudsman sent a letter to the Mayor of Zubin Potok on two occasions but did not receive an answer yet. Most likely a non-cooperation report or a letter of recommendation will be issued.

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• LEGAL ASSISTANCE (LIMITED)

According to the explanation of the representative of the Kosovo Ombudsperson's Institution, this institution is most often the first instance that individual addresses their case. Some people are addressing the office when they already initiated court proceedings and seek monitoring of trials, some are addressing the application for help and legal advice when initiating court proceedings, and some in situations when they have already addressed some of the governing bodies, but they cannot enforce their right in the finalized proceedings that they have achieved through legal system.



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The scope of legal assistance that the Ombudspersons Institution can provide to the victims of discrimination is limited by the structural problem of the inaccessibility of its services on the entire territory of Kosovo. Although there are seven regional offices in all five regions, there is still a need for additional offices (especially in the North of Kosovo) and more of the visibility campaign for the citizens to address their problems to the regional offices and seek for their rights. The employees of the regional offices, same as in central office in Pristina, fulfill the OI's mandate, protection, supervision and promotion of fundamental rights and freedoms, provide advice and guidance regarding the rights of the citizens and possible protection mechanisms, but the citizens have to be more involved in the awareness raising campaign were they can learn the role of the OI and what rights can they seek and protect through assistance of the Office of Ombudsperson.

CHAPTER 6

CONCLUSION

Although the legal framework provides a quality platform for the important role of the Ombudsperson Institution in Kosovo in the fight against discrimination, numerous problems with this institutions recommendations to public institutions in practice are downsizing the potentials and good work of its widely-established law mandate. In this respect, we have tried to identify the underlying problems in these research that need to be addressed in the next period. Equality Protection Bodies can be an effective means of protecting individuals from Discrimination - Specialized and available. By bringing them with court protection, they can be a simpler, faster, and more efficient way to gain protection against discrimination.

These bodies develop a special expertise and experience over time, and can have an important impact on the law and its application. The Ombudsperson' Institution of Kosovo, which has been assigned the role of the institution for the protection against discrimination, could become a true catalyst for social change in this area, it is necessary, however, to ensure the conditions for its undisturbed, independent and effective work.

On the other hand, under the conditions of the underdeveloped culture of the rule of law, its recommendations were not always paid attention to, with the lack of necessary support from other key actors, in improving the implementation of unrealized recommendations. In this way, and absence of the support for strengthening the authority of this institution, remains to be tackled/dealt.

CHAPTER 7

RECOMMENDATIONS

Using optimally secured means, it is necessary to strengthen the personnel capacities of the Ombudspersons department for elimination of all forms of potentials discrimination, forming a team of employees and reorganizing the departments in terms of establishing special sectors for work on complaints, research and development, announcing reports and publications, and preparation of statistical analysis of normative-legal issues.

Among employees who are dealing with specific cases it is desirable to distribute authorizations according to individual knowledge and experience, especially in high important cases, or distribution of cases of individual appeals represented by discriminatory grounds, which would secure long-term assistance, with a minimum cost and continuous education of employees, and will also ensure development and expertise of employed personnel in the specific areas of law and violation of law.

In addition enhanced presence of the Ombudspersons in the field needs to be ensured by opening new sub offices and announcement of public awareness campaigns where the institution of the Ombudsperson will be seen as responsible and accountable in assisting citizens and upholding their rights.

This will, on one hand, strengthen the availability of the Institution's services to individuals in the entire territory of Kosovo, and on the other it will create conditions for more efficient implementation of other important activities - investigation, monitoring procedures and raising awareness in the field of combating discrimination, especially in the public institutions.

Special attention should be paid to promoting the innovations and results, with focusing on the possibility of protection from discrimination in the private sector, the rules on transfer of burden of proof, prohibition of victimization and misdemeanor liability foreseen by the law.

This can have a double positive effect - the encouragement of victims to file complaints and to discourage potential offenders from unauthorized actions. In addition it will also educate

the general public, this is especially important because it will inform any person identified as potential discriminator on the prohibition of victimization of persons involved in the proceedings and sanctions that may follow. On the other hand, a timely clarification of the burden of proof will normally create an incentive to provide answers and cooperation with the Ombudspersons institution for the purpose of adequate defense and protection of rights.



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REFERENCES

1. Ombudspersons institutions (<https://oik-rks.org/sr/pravni-akti>)
2. Law on the protection against discrimination (<https://www.kuvendikosoves.org/common/docs/ligjet/05-L-021%20s.pdf>)
3. Annual report of the Ombudsperson institution (<https://www.oik-ks.org/en/2018/03/30/annual-report-2017>)
4. Venice Commission (https://www.coe.int/en/web/strengthening-the-human-rights-ombudsman-to-fight-discrimination-disco-/-/asset_publisher/GHMoSbFjVXpc/content/seminar-for-judiciary-antidiscrimination-standards)
5. http://ombudspersonkosovo.org/repository/docs/Rregullorja_01-2016_ang_528820.pdf

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North Mitrovica



Policy Brief

**The Ombudsman in the system of
protection against discrimination**

Policy Brief

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