Kosovo* 2024

Information from: Ombudsperson Institution of Kosovo*

* 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.

Kosovo* 2024

Information from: Ombudsperson Institution of Kosovo*

Follow-up to last year's rule of law recommendations

State authorities' follow-up to regional actors' recommendations on rule of law

The Ombudsperson Institution of Kosovo (OIK) through the years has established a very good working relations with the European Union, the Council of Europe and other international human rights organizations based in Kosovo, which have continuously been strategic partners to our institution. Therefore, our NHRI's work has been regularly part of European Union benchmarks for Kosovo, which helped in strengthening our NHRI and ensuring compliance with international human rights standards. This process facilitated the development of a robust institution capable of promoting and protecting human rights effectively, thus contributing to the overall democratic progress and rule of law in our country.

According to the 2023 EC Report for Kosovo, the country's general legal framework guarantees the protection of fundamental rights and is in line with European standards. During the reporting period, Kosovo adopted the Law on the Kosovo Property Comparison Verification Agency and set up a State Protocol for the Treatment of Sexual Violence cases. Moreover, the capacity of the authorities to which the OIK has been addressing recommendations regarding fundamental rights policies and legislation has improved and the rate of implementation of the Ombudsperson's recommendations increased. In addition, during the reporting period, the Parliament adopted the Law on Prevention and Protection from Domestic Violence, Violence against Women and Gender-Based Violence. However, despite these positive developments,

human rights issues need to feature higher on the political agenda and consequently more human and financial resources should be allocated to relevant institutions, this way also strengthening the rule of law compliance in Kosovo.

In relation to the Ombudsperson Institution, this report emphasized also the delay of the Assembly in selecting the fifth deputy Ombudsperson from non-majority communities and in approving the Ombudsperson's annual report. It recommended more systematic tabling of review of the annual reports and selection of deputies of the Ombudsperson in the Assembly are needed to avoid such delays. In addition, it stated that although the institution has progressively expanded its responsibilities, it was not provided with additional financial and human resources to carry them out. Nevertheless, "the Ombudsperson still enjoys broad public trust".

NHRI's follow-up actions supporting implementation of regional actors' recommendations

The Ombudsperson is constantly monitoring the implementation of recommendations from regional actors, and they are reflected in our annual reports.

State authorities' follow-up to NHRI's recommendations regarding rule of law

The Ombudsperson has continuously taken action on raising awareness of responsible authorities in implementation of its recommendations, however, further action is required to increase their rate. During the reporting period, the institution has carried out a campaign which consisted of roundtable discussions in six different municipalities throughout of Kosovo with the purpose of raising awareness of the authorities with regard to the mandate of the Ombudsperson and the importance of implementation of its recommendations (See roundtables in Graçanica, Ferizaj and Mitrovica).

Article 28 of the Law on the Ombudspersons stipulates 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". The Office for Good Governance (OGG), within the Office of the Prime Minister, is responsible for overseeing enforcement of the recommendations provided by the Ombudsperson. In this regard, a good practice has already been established so far. OGG is notified by the Ombudsperson about all Reports with Recommendations that the Institution addresses to authorities, and on the base of this, the OGG commences follow-up and communication processes with

authorities in order to facilitate their implementation. In order to support the implementation of the given recommendations, meetings are organized with responsible authorities and also with the Human Rights Committee (See Law for Protection against Discrimination, article 10). In this regard, an electronic system for monitoring the implementation of Ombudsperson's recommendations was established, as well as a joint team for their coordination and monitoring.

During the reporting period, the OIK has addressed 300 recommendations that raise various human rights issues which will have an impact on the rule of law in the country. The institution has a positive trend with regard to their implementation, however progress needs to continue. The Assembly should strengthen its cooperation with the Ombudsperson and address the problem of the lack of responsiveness of public administration bodies, which was also a recommendation from the EC Country report.

Kosovo* 2024

Information from: Ombudsperson Institution of Kosovo*

Independence, effectiveness, resilience and establishment of NHRIs

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 Ombudsperson Institution of Kosovo operates based on a very strong legal framework, which guaranties its operational and financial independence.

The mandate of the Ombudsperson Institution of Kosovo is based in the Constitution and other laws which are approved by the Parliament. The legislation on which the institution bases 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 on Protection from Discrimination and Law on Gender Equality, which vested new mandates and

additional competences to the Ombudsperson Institution of Kosovo. Later on, in 2019, the Law for Child Protection was approved, which assigns the Ombudsperson as complaint mechanism.

A recent EU Peer Review Mission on Independent Oversight Bodies in Kosovo concluded that the Ombudsperson Institution of Kosovo (OIK) is a constitutional and legal body with a broad mandate, which upholds human rights and fundamental freedoms, founded under a democratic parliamentary legitimacy and in accordance with Paris and Venice Principles.

Due to this strong legal infrastructure, the Institution has not encountered any challenges in the effective fulfilment of its mandate during the reporting year, except with the Law on Salaries in the Public Sector which entered into force on 5 February 2023. This law regulates salaries in the public sector, where Ombudsperson Institution was included as well and affected the institution due to the deduction of salaries and attempted interference in the internal organization of it. Therefore, on 7 April 2023, the Ombudsperson raised the issue of the constitutionality of this law with the Constitutional Court. On 26 December 2023, the Constitutional Court decided on this case by approving Ombudsperson's Referral and declaring as unconstitutional the contested provisions.

Despite the legal amendments that may affect the Ombudsperson Institution, there are substantiated mechanisms in Republic of Kosovo for protection of the independence of independent institutions, such as the Constitutional Court.

It is worth pointing out that the Constitutional Court in 2023 has also assessed the constitutionality of the Law on Amending the Law on Kosovo Prosecutorial Council, according to which the Ombudsperson had the power to appoint/delegate the third member of this Council. The Constitutional Court, among other things, has concluded in its judgment that this provision is not compatible with the Constitution in terms of Ombudsperson's role and mandate.

In this regard, the Ombudsperson notes that there is a tendency of vesting of additional tasks to the Ombudsperson through adopted laws by the Assembly, which frequently are not in compliance with Ombudsperson's constitutional powers. This can perhaps be assessed positively due to the credibility that the Ombudsperson enjoys, but on the other hand, there is no assessment of whether these new tasks are in compliance with the constitutional powers of the Ombudsperson as well as the budgetary impact that these additional tasks may have on Ombudsperson Institution while the Ombudsperson has not been consulted in advance regarding these delegations.

NHRI enabling and safe environment

The Ombudsperson does not consider that there were situations that posed risk to the functioning of the institution. However, authorities can further improve the environment for the effective exercise of Ombudsperson's mandate. In this regard, the Assembly should set timely scheduled sessions for the review of Ombudsperson's Annual Report, while the executive authority would have to promote accountability by responding to Ombudsperson's requests.

Similarly, it is necessary to involve and notify of the Ombudsperson on drafting of normative acts related to human rights, where the Ombudsperson's comments and response are required, as well as on normative acts that have an impact on constitutional powers and the budget of Ombudsperson's Institution.

NHRI's recommendations to national and regional authorities

The Ombudsperson recommends that:

- Timely and reasoned response(s) are provided to the Ombudsperson's recommendations;
- Effective follow-up of NHRI recommendations is carried out by state authorities;
- The Assembly schedules sessions timely for review of Ombudsperson's Annual Report and to make members of the Parliament aware of the importance of this Report for human rights in the country; and
- The practice of voting Ombudsperson's Annual Report is discontinued, because it undermines the effectiveness of NHRI recommendations as a tool to promote and protect human rights.

Kosovo* 2024

Information from: Ombudsperson Institution of Kosovo*

Democracy - checks and balances, disinformation, and law-making processes

Separation of powers

The Assembly of Kosovo has adopted the Law No. 08/L-196 on Salaries in the Public Sector, according to which, salaries of judges of all levels of courts, as well as of employees of Independent Constitutional Institutions were diminished, by reflecting in this way, the intrusion of executive and legislative power in the salaries of institutions that are part of the judicial power as well as

independent constitutional institutions. With reference to this issue, the Ombudsperson has submitted a Referral, by which he requested the Constitutional Court to assess whether the Law on Salaries in the Public Sector is in compatibility with the Constitution of the Republic of Kosovo. Regarding this issue, the Constitutional Court has issued a Judgment by which it repealed some provisions of the above-mentioned law. In this regard, the Ombudsperson and the Constitutional Court have played the role of the checks and balances between institutions of the Republic of Kosovo.

The process for preparing and enacting laws

The Ombudsperson, during the reporting year, had observed that the Assembly of Republic of Kosovo had adopted the Law No. 08/L-228 on General Elections in the Republic of Kosovo. This law was adopted in an accelerated procedure, by making it impossible for interest groups to provide their comments regarding the content of the provisions of this law. The Ombudsperson has noted that this law contains a provision (Article 28), which indirectly places in an unequal position women and men in the electoral lists. Regarding this subject matter, the Ombudsperson addressed the Constitutional Court with a Referral to assess whether Article 28 of the Law on General Elections in the Republic of Kosovo is in compliance with the Constitution of the Republic of Kosovo. The Constitutional Court has not yet decided on this issue.

Access to information

The right of access to public documents is guaranteed by the Constitution of the Republic of Kosovo (Article 41) and since 2019 the new Law on Access to Public Documents is in force which guarantees and regulates the right of each person, without discrimination on any basis, to have access to public documents. Based on this Law, the Information and Privacy Agency is responsible for monitoring and implementing it, also based on the relevant legal infrastructure, the Agency has the right to take measures and impose fines, which are provided for by Law on Access to Public Documents as well as Law on the Protection of Personal Data.

It is worth taking into account Article 22 of the Constitution on the basis of which human rights and freedoms guaranteed by international instruments are directly applicable in the Republic of Kosovo. The Ombudsperson notes that the legal framework that governs and covers this field is quite well consolidated because in case of conflict, the international norms have priority over the provisions of national laws and other acts of public institutions.

As for the practical aspect, the Ombudsperson notes that since the election of the Commissioner of the Information and Privacy Agency in 2021, it is observed that there is an improvement in the implementation of the Law on Access to Public Documents.

Independence and effectiveness of independent institutions (other than NHRIs)

Apart from the Law on Salaries in the Public Sector, which has negatively affected the independence of independent institutions as a whole, namely the Ombudsperson Institution; Auditor General of Kosovo; Central Election Commission; Central Bank of Kosovo; and the Independent Media Commission, the OIK has not come across any other law which could have negatively affected the independence of these institutions.

In such cases, when the Ombudsperson assesses that the adopted laws are in contradiction with the constitutional independence of independent institutions and addresses the matter to the Constitutional Court. It is worth taking into account that the Constitution vested the Ombudsperson with the power to raise the question of constitutionality of laws with the Constitutional Court and that he has so far exercised this authorization several times successfully and without obstacles.

Enabling environment for civil society and human rights defenders

Mainly, the civil society organizations in Kosovo are considered to have an enabling environment of operation. Regarding the reporting period, the OIK did not receive any complaint from civil society organizations for any arbitrary interference on freedom of assembly, freedom of association or SLAPPs lawsuits. Freedom of association and assembly generally can be estimated to be respected in our country. Such an assessment was also given in the 2023 EC Report for Kosovo (see page 10). Mainly the dissatisfactions of CSOs are related to public participation in the legislative process, because the comments and inputs provided by civil society are not systematically reflected in public consultation reports and more efforts need to be done to enforce cooperation in this regard.

It is worth mentioning that in 2023 the new Law no. 08/L-166 on Public Gatherings was adopted by the Assembly of the Republic of Kosovo, according to which “Each person shall have the right to organize and participate in public gatherings, regardless of gender, race, colour, language, religion, nationality, economic or financial, education or social status, political or other beliefs or any other personal circumstances, according to the rules set out in this Law”.

As it was reported also in recent reports, the Ombudsperson in order to strengthen the cooperation between the Ombudsperson Institution and Civil Society Organizations in Kosovo, with regard to human rights protection and promotion, has established The Forum for Dialogue between the Ombudsperson Institution and Civil Society Organizations in Kosovo. There are

mainly three working meetings of the Forum, held per year, where are discussed current issues and challenges regarding human rights situation in the country and joint activities planned for further strengthening of human rights promotion and protection.

NHRI's recommendations to national and regional authorities

The Ombudsperson Institution of Kosovo addresses following key recommendations to national and regional authorities to strengthen the system of checks and balances:

- Ensure that Ombudsperson enjoy organizational, administrative and financial independence in the implementation of their mandates, to ensure full alignment and compliance of national laws and policies with international and regional human rights standards;
- Refrain from any action aiming at or resulting in undermining the integrity and independence of Ombudsperson institutions.
- Increase the accountability of public institutions and improve public consultations process by involving relevant stakeholders and representatives of vulnerable groups in consultation processes during law making.

Kosovo* 2024

Information from: Ombudsperson Institution of Kosovo*

Securitisation's impact on the rule of law and human rights

Republic of Kosovo has adopted advanced legislation in the field of security, including the Law on the Prevention of Money Laundering and Combating Terrorist Financing, the Law on Preventing and Combating Trafficking in Human Beings and Protecting Victims of Trafficking, the Law on Cyber Security, the Law on Interception of Electronic Communications and other laws that cover this field and that are in the spirit of European Union standards and legislation.

The Ombudsperson Institution has not observed any particular development in terms of changes in legislation, and no additional measures of increased supervision by the security institutions in the country have been observed. There was a proportionate response to the September 2023 events, when the organized terrorist attack against the state and security in Kosovo occurred, in

which a police officer was murdered and some of armed attackers.

In a part of the country (four municipalities of the north of Kosovo), members of the minority community, influenced from abroad, gave up their guaranteed constitutional and legal rights thereby affecting the exercise of those rights. Members of Serbian ethnicity employed in institutions of Republic of Kosovo, within a short period of time (within some days) resigned in an organized way and continued with the boycott of work. This situation has affected the service providing to citizens living in this part of the country.

In this part of the country, riots and protests have been organized by citizens of Serbian community after early local elections in these four municipalities, which came as a result of the resignations of in office mayors. These protests have been accompanied by acts of violence against law and order and security bodies, where members of the international security forces have been injured as well.

The efforts of the security institutions in establishing order and rule of law throughout the country have continued.

After the meetings held with representatives of civil society organizations in that part of the country, the Ombudperson in a public statement emphasized that it is the duty and responsibility of the state security authorities and other bodies to guarantee security and full respect for human rights, of each citizen in accordance with the rights guaranteed by the Constitution and the law. Moreover, the National Preventive Mechanism, which operates under the umbrella of the Ombudsperson Institution, based on the mandate for monitoring places where persons deprived of their liberty are kept, visited the High Security Prison and interviewed, arrested persons accused of terrorism and saw that rights of detainees were being respected and that during the interview they had no complaints regarding the treatment by the correctional officers.

NHRI’s recommendations to national and regional authorities

The Ombudsperson Institution of Kosovo recommends that security and law enforcement institutions must take care of having due respect for the rights of citizens, but for general national security as well. In situations where national security is compromised, individual rights are also called into question. A cautious analysis of policies and establishing a balance between them is imperative.

Kosovo* 2024

Information from: Ombudsperson Institution of Kosovo*

Implementation of European Courts' judgments

Kosovo, in its Constitution, has given direct effect and supremacy over its domestic laws to nine international human rights instruments. These instruments include the European Convention of Human Rights (ECHR) and its protocols, the Council of Europe Framework Convention for the Protection of National Minorities (Framework Convention) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

Furthermore, Article 53 of the Constitution of Kosovo provides that all "Fundamental human rights and freedoms guaranteed by the Constitution shall be interpreted in accordance with the judicial decisions of the European Court of Human Rights".

However, due to political obstacles, Kosovo is still not a member of the Council of Europe and as a consequence citizens cannot file application to the European Court of Human Rights. Despite the advanced Kosovo's legal infrastructure, citizens have no further effective remedy in case they feel their rights have been violated or not effectively adjudicated by authorities in Kosovo and cannot submit a complaint to the European Court of Human Rights.

However, on 12 May 2022, the Government of the Republic of Kosovo, has applied to become a Council of Europe (CoE) member and its application is being reviewed, hoping that it will have a positive epilogue, because it will provide our citizens with a human rights protection system than can only work effectively and relevant authorities can only be held accountable for human rights standards in a significant way through membership.

A Report by the eminent lawyers appointed by the Bureau of the PACE related to the Application for membership of Kosovo to the CoE, was published on 25 May 2023, which emphasised that "with respect to the rule of law, the legal framework in Kosovo generally corresponds to Council of Europe standards and provides in particular strong guarantees for the independence of the judiciary".

NHRI's recommendations to national and regional authorities

The Ombudsperson Institution of Kosovo recommends to:

- Strengthen follow-up mechanisms to address the non- implementation of European Court's judgments by state authorities;
- Increase capacities of responsible authorities through training on the importance of implementation of European Court's judgments.

Kosovo* 2024

Information from: Ombudsperson Institution of Kosovo*

Other challenges to the rule of law and human rights

Media freedom

Media freedom is Kosovo is guaranteed by Constitution of Kosovo, namely Article 42. According to Association of Kosovo Journalists, in 2023, in Kosovo happened 72 attacks against media and journalists. A number of attacks happened in the Northern Part of Kosovo as a result of tensions, during which many KFOR soldiers and Kosovo Police officers were attacked and seriously wounded.

The Association declared to the media that it was happy the way the justice system was handling these cases. However, the Association of Kosovo Journalists, on 27 December 2023, expressed its concern with the Draft-Law on Kosovo Independent Media Commission, proposed by the Government of Kosovo to the Parliament for adoption. According to their press release, the proposed changes in the Draft-Law are in contradiction to Council of Europe and OSCE. This situation came to the attention of the Ombudsperson of Kosovo as well.

It is worth mentioning that on 5 December 2023, the Ombudsperson published the ex officio report no. 146/2021 with regard to Language used in public discourse, in relation to the obligations that the state has in guaranteeing freedom of expression and preventing hate speech.

This report reflected the situation of the language used in the public in Kosovo. The report is based on monitoring, research and analysis of data collected from parliamentary sessions, TV debates and comments on social media for the period covering 2020 through 2022.

The design of datasets and the choice of the timeframe were determined by the ultimate goal of the research: provide not only an updated and comprehensive overview of the various instances and groups that may be

targets of hate speech in public discourse in Kosovo but also potential instigators of hatred (with or without intent).

The report provides an overview of the analysis of public and media discourse, combining quantitative and qualitative approaches, following the examination of transcripts from: 8 parliamentary sessions (January 2022 – March 2022); 23 online TV debate shows; 4 social media platforms; 43.511 comments and 313 news posts on social networks. The research has identified recurring patterns, such as reasons and targets for the language used (political beliefs and affiliation; ethnic affiliation; religion; sex, gender and sexual orientation), forms of expression (threats and curses; insults based on racial and ethnic grounds; dehumanising metaphors); as well as media discourse that triggers hate comments from social media users. It also highlights the lack of moderation in the media, exposing public opinion to instances of hate speech. Attention has also been paid to the rhetorical discourse and language used towards LGBTI individuals, the impact of public discourse, the agenda in mainstream and social media, as well as public reactions to them.

Among other things, this report aims to draw attention to public awareness and institutions regarding international and local standards, the right to freedom of expression, and the concept of hate speech. It also aims to contribute to understanding the discourse patterns of language used in social media and public communication in the country, including hate speech, discriminatory language, offensive rhetoric that involves disagreements with certain ideas or thoughts, challenging ideas or beliefs, rhetoric that includes nonviolent negative actions or characterizations and insults, and specifications of dehumanizing characteristics of individuals or affected groups. Furthermore, it aims to enhance society’s ability to react and develop a narrative that promotes human rights, diversity and tolerance. The report provides examples retrieved from research on the language used in public discourse, with a focus on television shows and the country’s parliament that trigger debate, even in social media. From monitoring 9 parliamentary sessions in the Assembly of Kosovo within the period from January 2020 through March 2022, the Ombudsperson found no direct incitement of hatred, however, other expressions of the language used were identified, which in the findings of this report were assessed as soft hate speech. Whereas, from monitoring 23 TV debate shows broadcasted on various media, including online platforms, and the comments generated by followers on social networks, the Ombudsperson finds that hate speech is quite prevalent. The Ombudsperson emphasises that comments containing hate speech and other expressions are not only a result of other comments in the live broadcast of the debate on Facebook but are directly related to the topic discussed by the participants in the TV debate shows. To explore examples of hate speech content comments on social media platforms, comments have been collected from the Facebook pages of four online media outlets - “Gazeta Express”, “Telegrafi”, “IndeksOnline”, and “Kosovo Online”. The selection of these four online media outlets has been

made based on the number of followers. The research finds that one (1) comment in every fifteen (15) comments contains hate speech. The majority of comments fall into three categories: dehumanising metaphors, political beliefs and limited abilities.

Justice systems

For many years Judicial System of Kosovo was criticized by many International and national bodies due to inability to handle the cases in accordance with the Article 6 of ECHR. Also, the Ombudsperson of Kosovo, every year received a number of complaints against judiciary due to inability to handle cases within a reasonable time limit (see the EC Report for Kosovo, p. 15 and Ombudsperson's annual reports)

Corruption

As regards corruption, according to International and National reports, despite many efforts, Kosovo needs to do more in order to successfully combat corruption(US State Department Human Rights Report on Kosovo, 2022, Transparency International Report, EC Kosovo Report 2023.

Protection of rights of marginalized groups

The adoption of Civil Code of Kosovo, which provides for the rights of LGBTIQ+ communities, has been pending since last year, due to opposition by some MPs in the Parliament. Adoption of UN Convention on the Rights of Persons with Disabilities appears to be problematic in the Parliament as it requires votes of national minority communities as well. Currently Serbian MPs are not attending the Parliament sessions. Despite many measures and activities taken by the Authorities, domestic violence remains a problem for Kosovo. Also, despite many improvements and efforts by the Government of Kosovo, more must be done in order to improve situation of Roma, Ashkali and Egyptian Communities in accordance with the Constitution and applicable legislation in Kosovo.

NHRI's recommendations to national and regional authorities

The Ombudsperson Institution of Kosovo recommends to:

- The national and regional authorities to understand the obligations deriving from the international conventions, constitution and national legislation and that Human Rights and Fundamental Freedoms are necessary for all democratic societies in order to provide equality and justice for all;
- Establish Impartial and independent Judiciary and independent media;

- Establish mechanisms to successfully fight corruption.

Co-funded by
the European Union

