



REPUBLIC OF ALBANIA

ANNUAL REPORT

**On the activity of the Ombudsman's
Institution**

**January 1st – December 31st
Year 2018**

Tirana, on May 2019

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The welcome speech of the Ombudsman

Since the ancient times, knowing the truth has been one of the main goals of people. It is this essential, seemingly implicit and prosperous desire, which lies in the foundation of our development. The tendency towards the truth and curiosity for it, serve as the safest means for the progress of mankind, even though it is no longer the most comfortable means.

In one way or another, our entire society, its mode of organization, as well as the institutions that make it functional, have been built on the premise of truth and the rejection of deceit, illusion, and falsehood.

Truth lies in the foundation of democracy, as an element quantified by the will of the majority and the public interest. On the other hand, if there is any distinctive feature of something that we should not accept as democracy, it is nothing less than avoiding important truths for citizens, building illusions, and suppressing freedom that derives from the truth.

In our modern society, even though democracy is universally accepted as our form of state, the boundary between the truth and the misguided propaganda has unfortunately been faded significantly these times.

We must admit that propaganda is not simply a consequence of anti-democracy. Often it is also its predecessor. As the freedom we enjoy is true and present, there remains an eminent risk of its misuse by alienating the system that produced it.

Propaganda is the other name of falsehood. The truth speaks through its existence and as such it does not need propaganda. Disguised as an aesthetic expertise to the surface, propaganda in the conditions of freedom, is in fact restrictive to freedom. The freedom to learn the truth first, and then the freedom itself in its intent.

Propaganda in our time exists as an attempt to create pleasing realities for the private interest, like music for the ear, and painting for the eye. In its essence, propaganda is an industrial fabrication of the profitable truths.

But there are no profitable truths. Profit is an economic concept, while the truth is a moral one. Profit is a loving round of figures, is the eloquent compromise of words and a dazzling blur of sight. While the truth is the most prosaic, cold, mathematic, and ruthless appearance of WHAT EXISTS.

After all, the truth may be boring. It refuses to look like propaganda, as a special effects clip that presents from favorable angles a view that would otherwise be disgusting. It is not a bombastic poster or a television show. It is not even an individual misery speculation for a bit more attention.

The truth may also be a grim statement of fact within a long relationship without any figuration. But that's the truth.

Over the course of a year, the Ombudsman's Institution, as the highest in the ranking of our national institutions in the protection of human rights, has heard, collected and reviewed the truths of the Albanian citizens. Those truths that have been brought to our attention precisely by them, but also that they have rashly presented to us from the reality of the country. This report does not claim anything more beautiful or more interesting than that.

Thank you!

CHAPTER 1

The legal and institutional framework

Nowadays consideration of the protection and promotion of human rights is visible and sensitive in every sphere of government's activity and in many other spheres of the public and private life. This reality is reflected by the number and scale of the dissemination of institutions that focus their work on human rights. However, it is understandable that only a legally and effectively independent institution, detached from the responsibilities of executive government and the judicial administration, can play a unique role as well as maintain a leading position in the field of human rights. Such an institution provides an irreplaceable contribution to a country's efforts to protect its citizens and to develop a culture that respects and develops the human rights.

Institutions established for the protection of human rights are important state-building actors in democratic systems. The Ombudsman as one of them plays an irreplaceable role, indicating the degree of maturity of the political class and the mentality of the society that creates it. In this sense, the establishment, functioning and support of the Ombudsman's Institution, the People's Advocate in Albania, as a new institutional and conceptual experience, despite the lack of institutional tradition in this approach, represents an inherent effort to build the rule of law. This lack of tradition is so tangible that even in the published memoirs of the drafting group of the Constitution text of 1998, when it was discussed about the prediction of the Ombudsman's Institution, the questions raised were numerous, but they still did not lack the models that could be followed.

The establishment of this institution in our country was achieved through the provision in the Constitution of the Republic of Albania, approved by a referendum in 1998. Following the classic model of the Parliamentary Ombudsman, the Albanian Parliament adopted the organic law "On the Ombudsman" in 1999, by affirming the Ombudsman's institution, as a constitutional guarantee for the protection of the rights, freedoms and legitimate interests of the individual, the Albanian citizens, foreigners, regular or non-regular residents in Albania, refugees as well as stateless people who are located in the territory of the Republic of Albania, by the unlawful and irregular acts or inactions of the public administration bodies.

For these reasons, it is part of those institutions, otherwise known as national institutions for the protection and promotion of human rights, of non-decision-making nature, but of opinion-making nature, as a guarantee of democracy and human rights.

In accordance with the Paris Principles¹, the Ombudsman was provided with a broad mandate, based on the international human rights standards, for the promotion, prevention of violations and the protection of human rights. This mandate is implemented in the jurisdiction and competencies that this institution provides for in its organic law and by the fact that, apart from the duties assigned to the provisions of this law, the Ombudsman may perform other duties assigned to specific laws, or the role of the trusted and implementing institution of the pre-trial procedures, the start of the selection process of the candidacies, the creation of important institutions of the system of the rule of law, as defined in the Constitution of the Republic of Albania², Law no. 84/2016 "On the transitory evaluation of judges and

¹ The UN's commitment to the establishment of national human rights protection institutions, which began in 1946, recognized a very important development of the workshop organized by the UN General Parliament in October 1991, in Paris. In this activity, several principles were laid down for enhancing the effectiveness of the work of national human rights protection institutions, otherwise known as the Paris Principles. They form the model (accepted by the member states) for the establishment and functioning of these institutions.

² See point 3, article 149 / d, item 11, article 179, and point 6 of Article C of the Annex - Transitional Judicial and Prosecutorial Reassessment of the Constitution of the Republic of Albania.

prosecutors in the Republic of Albania", as well as in the Law No.115 / 2016 "On the bodies of the justice system governance".

Paris Principles are the basic document adopted by the General Parliament of the United Nations, which sets the standards for the functioning of the National Institutions for the Promotion and Protection of Human Rights. In this way, the Ombudsman's institution in Albania is also certified by the competent international institutions for the high standards it meets. These standards are related to the right to submit to the Government, the Parliament and to any other competent body on a consultative basis or at the request of the relevant authorities or through the exercise of its initiative investigative powers, opinions, recommendations, proposals and reports on any issue that has to do with the promotion and protection of human rights.

With such institutional standing, the legitimate expectations of the public and all the other actors and factors of our fragile democratic society have been and are still high compared to the activity of the Ombudsman's Institution.

A national human rights institution (such as the Ombudsman's Institution) must necessarily act with the "Paris Principles", which define the competences, responsibilities, composition as well as guarantee independence and pluralism. For the National Human Rights Institutions to be conceived and to act in accordance with these principles and to act as the leading institutions for the promotion and protection of human rights, they are subject to the accreditation process which is carried out every four years. Some of the criteria governing the accreditation process are: institution with a broad mandate based on universal human rights norms and standards; autonomy from the government; the independence guaranteed by the statute or constitution; plurality; adequate financial resources and the clear powers of inquiry and investigation. Strengthening their human and financial capacities, implementing better standards and practices, through having an infrastructure that enables the achievement of aims and goals, is and remains a constant effort and challenge.

There are three accreditation levels by GANHRI (Global Alliance of National Human Rights Institutions): "A", "B", "C", where "A" is the highest status. Institutions with "A" status can fully participate in regional and international works and meetings of national human rights institutions, can hold leadership positions in GANHRI structures or in one of its subcommittees, etc.

The Albanian Ombudsman's Institution has been accredited with Status "A" for the first time in 2004; has been re-accredited in 2008 and 2015 with the same status. According to GANHRI's latest report (May 26th, 2017), the accreditation process for Albania started in 2013 and ended in October 2014, and consequently the next accreditation process (which is based on the fulfillment of some of the above essential conditions) should have begun in 2018, but was postponed to 2019.

CHAPTER 2

Cooperation

2.1 Cooperation with Public Administration Institutions and the level of implementation of the Ombudsman's recommendations

The level of implementation of recommendations by the public administration institutions has been and remains a constant concern for the Ombudsman's Institution. In this framework, the Ombudsman is aware that the activities of such institutions are very necessary to have an efficient and systematic mechanism for the following up and fulfillment of the recommendations addressed to the public administration bodies. In this regard, the fact that the Albanian Parliament has already adopted Decision No. 49/2017 "On the establishment of a mechanism for the systematic monitoring of the follow-up and implementation of the recommendations of the constitutional and legal independent institutions" which include the suggestions of the Ombudsman. More concretely, the level of implementation of the recommendations for 2018, is as follows:

The Ombudsman's Institution has addressed **171 recommendations**³ addressed to the public administration bodies, including central and local government. Out of the total number of recommendations, it turns out that:

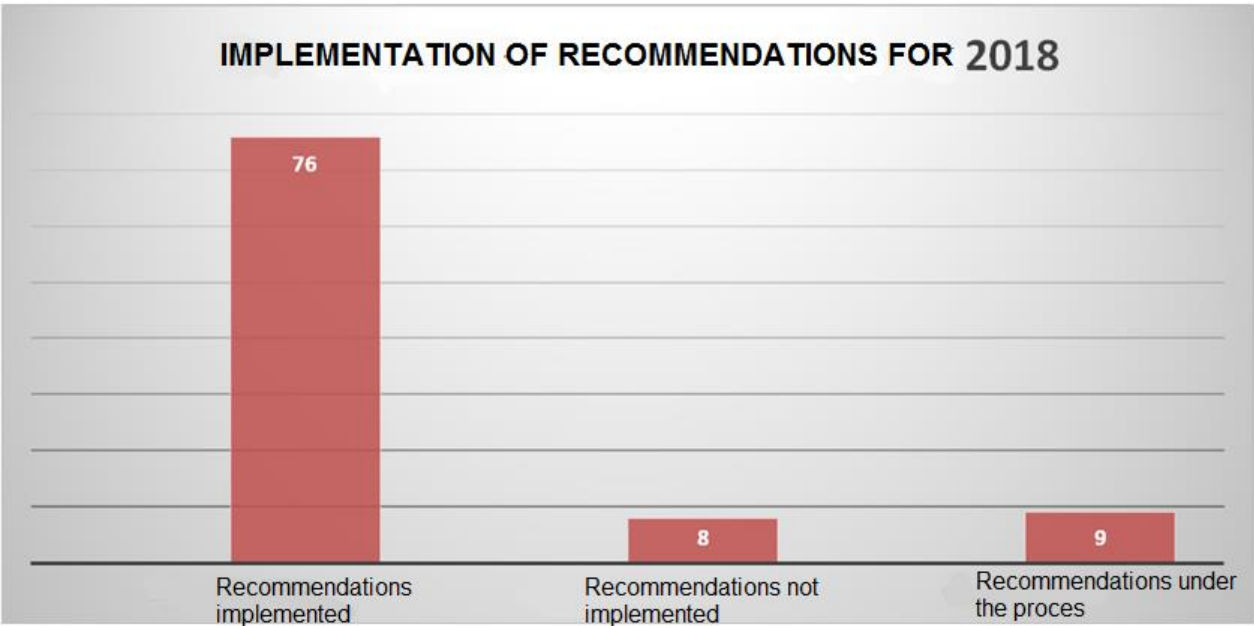
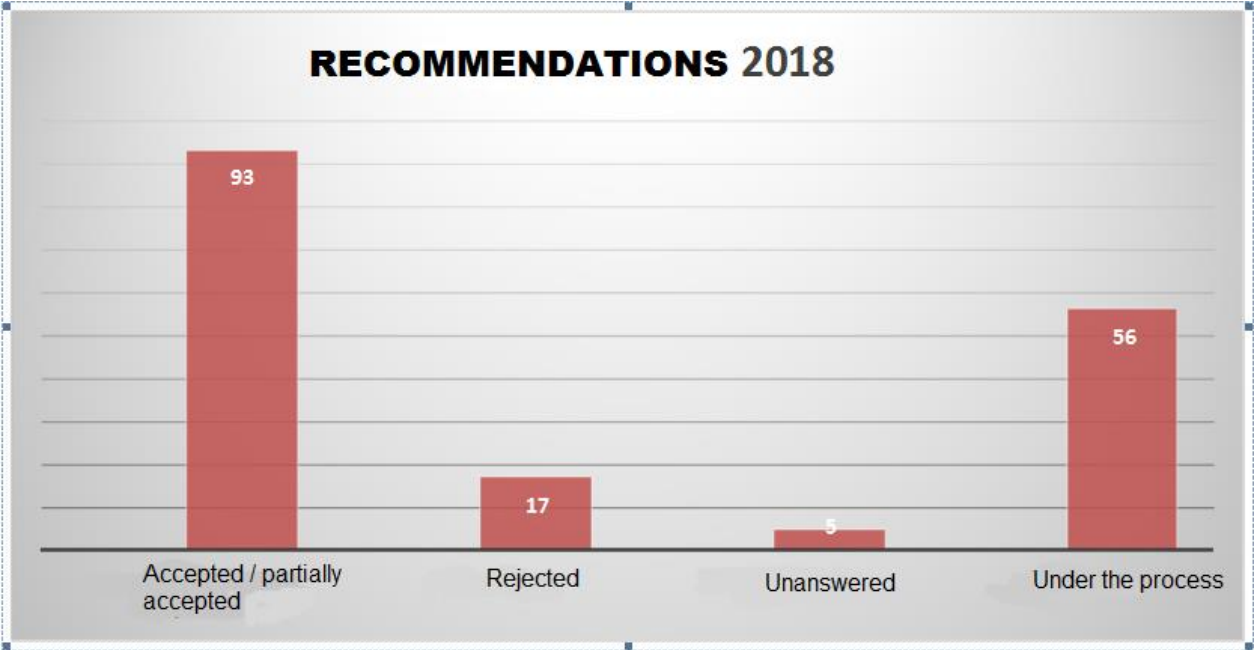
- *93 recommendations have been accepted;*
- *17 recommendations have been rejected;*
- *5 recommendations have been unanswered;*
- *56 recommendations are under the process.*

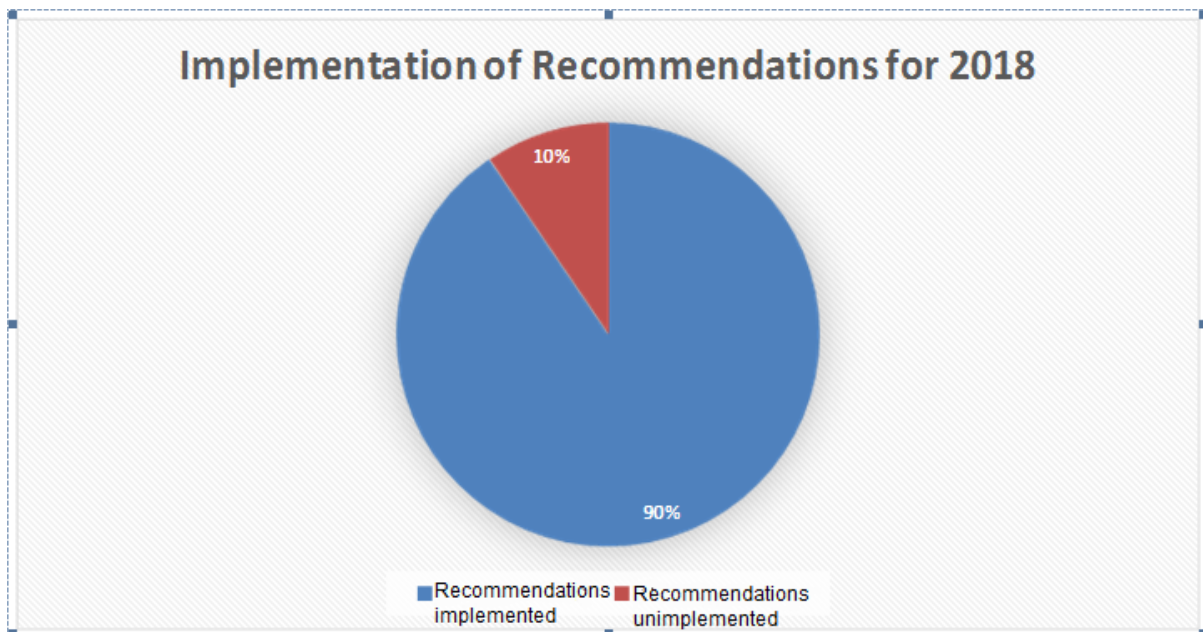
So, as it turns out from the above data, the number of recommendations registered for 2018 is 171, but 56 of them are under the process, which means that for these recommendations the procedural deadlines have not yet passed to consider whether they have been accepted or rejected, implemented or not implemented, with or without response, being sent at the end of 2018 or early 2019 for inspections carried out in 2018.

Based on the analysis of the above statistics, for 2018, it turns out and is evidenced that there is a decrease in the number of recommendations fully received by the public administration institutions, but there is an increase in the percentage of implemented recommendations. Meanwhile, with regard to the unanswered recommendations, there are fewer unanswered recommendations for 2018 compared to 2017.

Graphically, these data are presented as follows:

³ For more information regarding the content of recommendations and institutions which they are addressed to, refer to Annex 1 attached to this report.





2.2 International co-operation

During 2018, representatives of the Ombudsman's Institution participated in a number of international activities, in the framework of the bilateral and multilateral cooperation of the Institution, listed as follows:

- ✓ *Cooperation within the Global Alliance of National Human Rights Institutions (GANHRI) and the European Network of National Human Rights Institutions (ENNHRI).*
The Ombudsman's Institution has followed the activities organized in the framework of GANHRI and has been active in the European Network of Human Rights Institutions (ENNHRI). ENNHRI's mission is to support and strengthen the National Human Rights Institutions to promote and protect human rights throughout Europe in accordance with the Paris principles. The Ombudsman's Institution has given its contribution to various activities, working groups etc., developed within these organizations. More specifically:
 - ✓ A high-level delegation headed by the Ombudsman Mrs. Erinda Ballanca attended the Annual Meetings of the Global Alliance of National Human Rights Institutions (GANHRI) held on **February 21st-23rd, 2018** in Geneva, Switzerland, where they discussed "*the human rights and the rights of people with disabilities*".
 - ✓ Representatives of the Ombudsman's Institution participated in the ENNHRI's Workshop on *the protection of displaced people*, held on **April 23rd-25th, 2018, in Kiev, Ukraine.**
 - ✓ Representatives of the Institution covering the issues of protection and promotion of *the rights of people with disabilities* participated in the ENNHRI's Working Group meeting held on **October 2nd-3rd-4th, 2018 in Riga, Latvia.**
 - ✓ The ENNHRI's Annual Conference was held in Athens, Greece on October 24th-25th, 2018, with the main theme: "*Building Human Rights' Bridges - National Human Rights Institutions as Human Rights Defenders*". This meeting was attended by a senior management delegation from the Ombudsman's Institution, chaired by Mrs. Elinda Ballanca. Representatives of the Ombudsman. At this meeting, it was discussed respectively about the reality of democratic governance in the participating countries, on the forms of communication pursued for the promotion of human rights.
 - ✓ In the framework of annual meetings of the European Ombudsman's Network, there were held elections for governing bodies with mandates 2019-2022. One of the nominated

candidates for the Board of ENNHRI and GANHRI was that of the Ombudsman's Institution, represented by the Ombudsman, Mrs. Erinda Ballanca. We are pleased to note that at the end of the electoral process, Mrs. Ballanca was the winner of both positions, by becoming *a member of the board of two very important and influential structures in the field of human rights protection*, each being respectively the European and Global networks of homologous institutions. Albania's representation at these levels enables not only a positive image for Albania, but above all paves the way for further contemporary developments in the field of protection and promotion of human rights.

➤ *Cooperation within AOMF (Association of Ombudsmen / Mediators of Francophone) and AOM (Mediterranean Ombudsmen Association).*

The Ombudsman's Institution has held the presidency of the AOM Association for two consecutive mandates 2014-2016 and 2016-2019, actively participating in working groups, joint visits to migrant centers and subject-based trainings, focusing mainly on the theme of protecting and promoting the rights of migrants as the main objective of the Association under the Ombudsman's Presidency. Currently, the Ombudsman is a board member and Vice President of the AOM Association. For the reporting year, the activities are as follows:

Association of Ombudsmen / Mediators of Francophone:

- ✓ The Ombudsman, Mrs. Erinda Ballanca attended the meetings of the Board of Directors of AOMF and the conference organized in cooperation with the Romanian Ombudsman on **May 3rd – 4th, 2018** in Bucharest, Romania.
- ✓ Representatives of the Ombudsman participated in the training intended for the new associates of member institutions, with the main focus being complaints' management, relations with administration and complainants, etc., held on **October 9th – 10th – 11th, 2018** in Rabat, Morocco.
- ✓ The Ombudsman, Mrs. Erinda Ballanca attended the AOMF conference that coincided with the 20th anniversary of the Association, held on **November 6th - 9th, 2018** in Brussels and Namur, Belgium. The meeting concluded with the adoption of the Namur Declaration, which calls for the strengthening and consolidation of mediation institutions, the promotion of an open state strategy, the achievement of a comprehensive society and respect for the fundamental rights of every citizen.

➤ *The Ombudsmen Association of the Mediterranean countries:*

- ✓ A high-level delegation of the Ombudsman, chaired by Mrs. Erinda Ballanca participated in the annual AOM meetings that coincided with the 10th anniversary of the establishment of the Association and the 20th anniversary of the creation of the Macedonian Ombudsman on **May 30th – 31st, 2018, in Skopje, Macedonia.**
- ✓ Representatives of the Ombudsman participated in the next training on protection of the rights of people deprived of their liberty, which took place in Rabat, Morocco on **November 28th -29th, 2018.**

➤ *Activities of the Ombudsman's Institution in the role of the Mechanism for the Prevention of Torture*

In the framework of international cooperation, the following activities have been carried out:

- ✓ Participation of the Ombudsman Mrs. Erinda Ballanca at the International High-Level Conference on the occasion of the 10th anniversary of the establishment of the Armenian Ombudsman as a National Torture Prevention Mechanism held on November 28th -29th in Yerevan, Armenia.

- ✓ Participation of the institution's representatives at the European Torture Prevention Mechanism Forum on monitoring elderly homes organized on **March 12th**, in Trier, Germany.
 - ✓ Participation in trainings organized by FRONTEX regarding the monitoring of forced returns, held on **April 9th -13th**, in Belgrade, Serbia.
 - ✓ Participation in the European Forum on National Mechanisms for the Prevention of Torture, held on **April 17th -18th**, in Ljubljana, Slovenia, as well as at the meeting of the Network of National Mechanisms for the Prevention of Torture in South Eastern Europe, on **May 29th -30th**, in Podgorica, Montenegro.
 - ✓ Participation, in the framework of cooperation with IOI, with Workshop on "Strengthening the follow-up of recommendations to the Implementation of National Torture Prevention Mechanism", focusing mainly on the preparation of effective recommendations, tracking and evaluating the feasibility of recommendations and progress in this process.
 - ✓ Participation at the second regional meeting of the Torture Prevention Mechanisms organized by ATP and ODHIR on **December 3rd-4th** in Milan, Italy.
 - *Activities of the Ombudsman's Institution in the field of protection and promotion of children's rights*
 - ✓ Participation of the Ombudsman, Mrs. Erinda Ballanca, at the 22nd Annual Conference of the European Network of Ombudsmen for Children (ENOC) and the General Parliament held on **September 19th - 21st, 2018** in Paris on the topic "Mental Health of Children and Adolescents".
 - ✓ Participation of the representatives of the institution at the Conference on "The Rights of Children deprived of liberty", organized on **November 26th, 2018**, in Brussels, Belgium.
 - ✓ Participation of the institution's representatives at the International Conference organized by the High Commissioner for Human Rights of the Russian Federation, held on **November 8th**, in Moscow, Russia.
- Also, during 2018, it has also participated in the following activities:
- ✓ Participation of the Ombudsman, Mrs. Erinda Ballanca, at the invitation of the Ministry for Europe and Foreign Affairs of France, in the framework of the Future Personality Invitation Program, on the study visit held on June 3rd -10th, in Paris, France.
 - ✓ Participation of the Ombudsman, Mrs. Erinda Ballanca at the meeting organized by the Konrad Adenauer Foundation on the topic "Challenges of Implementation of the Reform in Justice", held on **September 30th – October 3rd**, in Como, Italy.
 - ✓ Participation of the institution's representatives on a study visit organized by the Council of Europe's Office in Tirana on **May 6th – 9th**, in Brussels, Belgium.

2.3 Cooperation in the framework of projects

During 2018, the Ombudsman continued implementing **the Cooperation Agreement with the UNHCR** to monitor the migration crossing points as well as to strengthen the respect for their rights. In this framework, in addition to the appointment of a representative of the Ombudsman in Gjirokastra, in 2018, it was decided to increase the number of Ombudsman's representatives in two other migrant crossing points, respectively at the border crossing point of Hani i Hotit in Shkodra and in Kapshtica. The total amount obtained from this agreement amounts to ALL 3,745 of which ALL 2,350 were used to cover expert expenses (wages, transport expenses, phone, etc.) during 2018.

The Ombudsman continued to co-operate with the **German Agency for International Cooperation (GIZ)** in order to improve social services. The focus of the project is to improve the capacity for delivering social services to vulnerable groups. In addition to capacity building, the project also envisions the awareness of beneficiaries for their social

rights, including the right to non-discrimination. As the project is regional, of high importance is also the exchange of experiences and best practices with partners contributing to this field in the countries of the region. The activities carried out under this project were focused on: participation of representatives of the Ombudsman's Institution in national and international trainings (Ljubljana, Skopje, Pristina) as well as in drafting an assessment regarding the provision of social services and a methodology for monitoring these services from the Ombudsman's institution for the services provided by the local government.

The **United States Agency for International Development (USAID)** finances a project on health transparency. The Ombudsman, along with the Supreme State Audit and ILDKPI, are beneficiaries of this project, which extended the scope of work for 2018. Up to now, the project has provided several training courses for the Ombudsman's staff, including regional offices of the Ombudsman. The aim is to strengthen inter-institutional coordination to combat corruption in the health sector through increased awareness of patients and the public, as well as all the structures responsible for monitoring and supervising the health service and respecting medical standards and protocols. Within this project, during the reporting year, several inspections were carried out in the health service for which the respective monitoring reports were prepared.

Within the **Grant Agreement between the Embassy of the Republic of Bulgaria in Tirana and the Ombudsman of Albania (a fund of 30,000 Euros)**, the Ombudsman is a beneficiary of a project for strengthening the administrative capacity. The project provides for strengthening the staff capacities, the public awareness as well as the awareness of institutions on the importance of implementing the Ombudsman's recommendations, as well as improving the complaints' management system at the institution. Its duration is for the period of January 2018 - June 2019. During the reporting year, this project used a total of about ALL 1.5 million mainly in the field of promotion, information technology improvement and staff training.

CHAPTER 3

The follow-up and implementation of Parliament 's resolution for the evaluation of the activity of the Ombudsman's Institution for the year 2017.

In the framework of the evaluation of the activity of the Ombudsman's Institution for 2017, the Albanian Parliament has adopted on 21.06.2018 the respective resolution, among which it has recommended to the Ombudsman's institution the adoption of a series of measures related to exercising his constitutional and legal functions. In implementation of this resolution, the Ombudsman's Institution has taken the following actions:

1. To monitor the implementation of recommendations addressed to the public administration bodies, in particular the formal recommendations received from them. The information in the Ombudsman's annual report on the level of implementation of the recommendations should be updated. Every three months, the Subcommittee on Human Rights should be informed in relation to the implementation of the recommendations addressed to the public administration bodies

The level of implementation of recommendations by the public administration institutions has been and remains a constant concern for the Ombudsman's institution. Beyond the steps and positive initiatives established over the years, much remains to be done in this regard not only by the public administration bodies at the central and local level (especially with regard to the implementation of the recommendations), but also by the Albanian Parliament, the legislative body where the reports drawn up by the Ombudsman's Institution are presented and discussed. That is the reason why the Ombudsman's Institution has continuously monitored and still monitors the level of implementation of the recommendations addressed to the public administration bodies through the preparation of up-to-date information that is part of periodic or annual reporting.

Throughout the reporting period, the Ombudsman's Institution, implementing even the Decision of the Albanian Parliament No.49 / 2017, "On the Establishment of a Mechanism for Systematic Monitoring of the follow-up and implementation of the Recommendations of Independent Institutions", has formally informed periodically (every three months) the Albanian Parliament regarding the recommendations that the Ombudsman's Institution has addressed to public institutions as well as the status of their implementation.

Despite the Parliament 's creation of such a mechanism, we are of the opinion that there is still room for improvement in this regard and more specifically the mechanism should play a more active role to justify the purpose of its creation. A very interesting model that has been applied in Kosovo and which has proved to be effective, is the inclusion of the voice of the implementation of recommendations of the Ombudsman of Kosovo on the list of issues that are being monitored by the European Union Commission.

2. To continue with the contribution of the Justice Reform, for the responsible implementation and independence of all legal responsibilities provided for in the Justice Reform Package

Justice Reform has received a special focus on the work of the Ombudsman's Institution, not only because of the legal obligations set out in the legislation, but also because of the importance that this reform has and which is directly related to the observance of Human rights in the country.

Under this responsibility, the Ombudsman has been and continues to be in full support of the implementation of the Justice Reform as a vital reform for all Albanians, as many of the issues addressed by citizens, are related to the justice system in the country, due to a number of problems that aggravate this system. Moreover, the Ombudsman considers as vital for the entire Albanian society to restore confidence in the justice system in the country and for this,

it has contributed to the monitoring of many of the processes carried out within the Justice Reform.

More specifically after the successful completion of the process for the verification and listing of candidates expressing interest in the positions of members of institutions for the transitional re-evaluation of judges and prosecutors, namely for the Member of the Commission; Judge of the Appellate Panel as well as the Public Commissioner, the Ombudsman continued with the process of verifying the formal legal criteria for candidates from the ranks of advocacy, and then for candidates from the ranks of the Civil Society who expressed interest in the High Judicial Council and the High Prosecutorial Council.

Also, being aware of the importance of the processes that this reform combines as well as the role that the Ombudsman can play in the transparency and respect of the right to a fair legal process, the Ombudsman in accordance with the provision made in paragraph 3 of Article 149 / d and item 11 of article 179 (the transitional and final provisions of the Constitution of the Republic of Albania, as well as Article 284, point 6 of Law No. 115/2016 "On the Bodies of the Judicial System Governance", monitored the election process of the members of the Council of Judicial Appointments held by the Parliament of the Republic of Albania. On the basis of this monitoring, the Ombudsman has drafted and made public the relevant monitoring reports on the procedure for drawing lots for the election of the members of the Council of Judicial Appointments, for which we are drawing attention to their evaluation and taking the relevant measures. As we have noticed, there is an urgent need to address the problems arising in the process of implementing the reform in justice and in particular in relation to the establishment and functioning of the organs of the governance of the justice system.

Meanwhile, at the beginning of the functioning of the new Justice Institutions, the Ombudsman has continued its constitutional duty and this duty has to do with the careful observation that the rights of citizens in this country are respected and every institution is implementing law correctly in the exercise of his duty. In this respect, the Ombudsman has monitored and attended most (80%) sessions of the Independent Qualification Commission and the Appellate Panel.

Moreover, the Ombudsman has found cooperation and understanding by the Independent Qualification Commission, in case we have requested information from this body, regarding the news published in the media on the control of the children of judges and prosecutors, during the eventual process of verifying the assets of their parents and continuing the good practice of conducting sessions in the halls that guarantee solemnity and publicity.

Moreover, it should be appreciated even the workload of the technical staffs of the new vetting bodies, as for the performance of normal working conditions and for the completion of the optimum time, in addition to trust, these bodies at the same time must be provided even with more normal conditions which implies increasing and strengthening the capacities of these institutions (including the increase of the number of employees, their training, or payment for work performed overtime as provided for in the labor legislation). However, despite the good work done, it seems that the pace of verification is not what the lawmakers have foreseen, neither are the expectations of the citizens. The non-functioning of the Constitutional Court and the minimal functioning of the Supreme Court are a major problem that directly affects the democracy situation in the country and at the Ombudsman's judgment, it brings about a significant deterioration in the level of guaranteeing the implementation of human rights in the country. It is clear now that to achieve this reform according to the constitutional and legal provisions, in addition to the political will (in the sense of supporting the parliament), there is a need for financial and human capacities greater than those available in our country.

The Ombudsman has raised these issues in all meetings with such topics, demanding that these be on the priority agenda of both executive and legislative powers.

Reform in justice, and the result for which it was conducted, should continue to be the main concern of all institutions in the country. At the end of reporting on this point, we repeat once again the natural link of the Justice Reform with the rights to: Justice, Good Governance, and the respect and protection of Human Rights and Freedoms in our country.

3. *To contribute proactively to the improvement of domestic legislation, in compliance with the recommendations of the Progress Report of the European Commission published in April 2018, where the Ombudsman is required to be part of consultations of draft laws in parliamentary committees.*

During the reporting period, the Ombudsman's Institution has invested in giving opinions and suggestions for the following acts:

- Draft-law "*On an annex to Law No. 8328, dated on 16.4.1998, "On the Rights and Treatment of Prisoners and Detainees"*", as amended, which proposed a special regime for prisoners, detained in a high security prison. It was very important that even in a law of a special nature, intended to sanction the deprivation of certain rights and the treatment of prisoners and detainees, a special place should also be provided to the part that belongs to their human treatment, because everyone has one's own fundamental rights - even prisoners. The purpose of this draft law was to apply a special regime of prison conditions that would deprive the rights of prisoners and detainees, by particularly limiting prisoners and detainees to contact each other or communicate with the outside world.

The accepted recommendations of the Ombudsman's Institution were of the nature of, Particularly, it was required to guarantee the right of prisoners that the involvement in this regime would be limited and decided by the court, but in any case, it would be an appealable decision in respect of the rights of prisoners to complain without restriction if their rights are violated.

- Draft-law "*On some annexes and amendments to the Law No. 9669, dated on 18.12.2006 "On Measures Against Violence in Family Relations"*", as amended. Following the implementation of the recommendations for the implementation of the Convention "On the elimination of all forms of discrimination against women", it was suggested, among other things, to include a specific legal provision that foresees the monitoring of this draft law by an independent constitutional institution, such as the Ombudsman's institution. This monitoring is done in accordance with the EC Convention "On prevention of violence against women and domestic violence", ratified by law no.104, dated on 8.11.2012, pursuant to the obligations set forth in Law No. 8454, dated on 4.2.1999, "On the Ombudsman", as amended.
- The Council of Ministers' draft-decision, "*On the adoption of the Juvenile Justice Strategy and its Action Plan 2018-2021*". For this strategic document, the Ombudsman's Institution has provided its comments with the aim of further improving this document, while at the same time seeking to consider the fact that the challenges in implementing the legislation on the protection of children's rights are related to budgeting real needs, starting from the perspective of children's rights, setting up new services in pursuit of the dynamics of the needs of children in contact and conflict with the law, compilation of comprehensive social policies at the local level, based on an accurate database on the number of children subject to criminal offense, but also in the quality of a victim and juvenile witness, the consolidation of responsible mechanisms that ensure the effective implementation of the supervision, promotion, protection and monitoring of child's

rights, and the establishment of an integrated system for the protection of the rights of children in contact and conflict with the law.

- The Council of Ministers' draft-decisions, "*On the activities of child protection structures, concerning a child under the criminal liability age, who is suspected or has conducted a criminal offense*" and "*On types, method of exchange and processing of information and data statistics requested by the State Agency for the Rights and Protection of Children at the responsible state structures at the central and local level*", for which some comments and suggestions have been given for their further improvement.
- The Council of Ministers' draft-decision, "*On the coordination of the activity between institutional advisory and coordination mechanisms and structures at the central and local level on issues related to the rights and protection of the child*". It is suggested that this draft-decision regulates explicitly and in detail the issues of co-operation and co-ordination between institutional advisory and coordination mechanisms at the central and local level, for which the legislator itself has not been expressed, but has delegated the right to the Council of Ministers to regulate these issues by a sub-legal act. In this sense, the treatment of concrete, clear and transparent mechanisms as a finding, is judged to be the bridge to further consolidation of this cooperation and would in fact constitute the essence of the draft-decision.
- The Council of Ministers' Draft-Decisions "*On the rules of functioning of the inter-sectoral child protection committee in municipalities and administrative units*", "*On referral procedures and case management, design and content of individual defense plan, its implementation as well as the implementation of protection measures*" and "*On the procedures and rules for the return and repatriation of the unaccompanied child*", for which comments and suggestions have been given with a view to their further improvement. in order to increase the protection of children.

Upon approval and entry into force of the Law No. 96 / 2017 "On the protection of national minorities in the Republic of Albania", by the end of 2018, the Ombudsman's Institution received for opinion, remarks or suggestions, the following draft-decisions:

- Draft-decision "*On the appropriate measures to promote the culture, history, language and religion of national minorities in the teaching and scientific activities of higher education institutions*". Through the given suggestions, it is intended to make this draft-decision declarative and to make it concrete and binding in implementation. With the adoption and entry into force of the Decision of the Council of Ministers No. 562, dated on 29.09.2018 "On the appropriate measures to promote the recognition of the culture, history, language and religion of national minorities in the teaching and scientific activity of higher education institutions", we note that our observations and suggestions were not taken into account.
- Draft Decision "*On the provision of school textbooks for students, further professional development of teachers, and the establishment and operation of classes in the language of national minorities*". As we have confirmed in the process of adopting Law No.96 / 2017 "On the protection of national minorities in the Republic of Albania", the definition given in Articles 13 and 15 of the Law No.96 / 2017 remains problematic, where the enjoy and the realization of some rights is related to such terms as "the essential number and sufficient requirement", as well as "... over 20% of the total population of this municipality". We have pointed out earlier that the provisions of this law create a kind of confusion at this point, because they state the right of public institutions at the central and local level to collect data related to the identification of people belonging to national minorities (article 7/1).

Another issue that has been noted in this context is the fact that the new territorial administrative division has created problems with regard to the actual presence of a population different from the majority located in certain areas of the country. According to this division, in specific cases, it results that the new territorial administrative boundary divides communities into two separate parts belonging to the same minority, but which then do not belong to the same administrative territorial unit. We have emphasized that this factual situation it will create problems with the implementation of the provisions of the law, which sanctioned the enjoy and realization of certain rights, previously associated with the fulfillment of the terms "substantial number and sufficient demand", as well as "over 20% of the total population of this municipality". We have estimated that these issues were also covered in the content of this draft-decision.

Approval and entry into force of the Council of Ministers' Decision No. 561 dated on 29.09.2018 "On the provision of school textbooks for students, initial formation, further professional development of teachers, and the establishment and operation of classes in the language of national minorities", we believe that it carries the same problems as we have ascertained above. Meanwhile, despite the envisaged issuance of a DCM, in accordance with the provision made in point 3 of Article 13 of Law No. 96/17, it results that this sub-legal act has not come out yet, despite the remarks and suggestions that we have provided for it and it is difficult to judge the compatibility of the notions and criteria to be determined by it, with those of the Council of Ministers' Decision No. 561, dated on 29.09.2018.

➤ Draft-decision "*On criteria for defining the local self-government unit, the essential number and sufficient demand of people of national minorities*".

Given the content of the provisions of this draft-decision, we have emphasized in our view that the issues raised above for the draft decision still exist and remain open for discussion, "*On the provision of school textbooks for students, further professional development of teachers, the establishment and operation of classrooms in the language of national minorities*". Given the issues examined by the Ombudsman over the years regarding the provision of free textbooks for students of national minorities, we have suggested that it would be necessary to provide for the technicalities of the textbook, the time of application of this facility that is created for these students, etc.

➤ Draft-decision, "*On the definition of strategies, programs and action plans to create the necessary conditions for the national minorities to preserve and develop their distinct identity in the Republic of Albania*". Even in this case, without wanting to repeat our same judgment used in the analysis for the draft-decision, "*On determining the measures and policies needed to ensure the participation of national minorities in their public, cultural, social and economic life in the Republic of Albania*", in the above, we have estimated that this draft-decision needs to be revised in order to extract it from the declarative character and to make it more concrete and binding in implementation.

➤ Draft-decision, "*On the determination of the measures and policies necessary to ensure the participation of national minorities in their public, cultural, social and economic life in the Republic of Albania*". Based on the content of the provisions of this draft-decision, we have emphasized that it did not "escape" the declarative character of the provisions of the Law No.96/2017 "On the protection of national minorities in the Republic of Albania". The accompanying report of the draft-decision, in fact, to the intended foreseen objectives with the adoption of this draft-decision, has resulted clearer and more concrete than the content of the draft-decision itself. In these circumstances, we have expressed the opinion that the draft-decision needs to be revised in order to extract it from the declarative character and to make it more concrete and binding in implementation, as well

as to correctly observe the binding content of point 3 of Article 11, Law No.96/ 2017 "On the protection of national minorities in the Republic of Albania".

In conclusion, apart from the above, it is necessary to mention as a concern the finding by the Ombudsman's Institution of the failure to adopt sub-legal acts (or delays in their adoption) for certain legal acts, the disapproval of which prevents the concrete implementation of legislation in several areas of law.

4. To increase engagement in pursuing the Sustainable Development Goals, Agenda 2030, with a special focus on gender budgeting, protection of children's rights, consumer protection, obligations deriving from applicable legislation in relevant fields and/or resolutions adopted by the Albanian Parliament.

Albania has already embraced the United Nations Sustainable Development Goals, which should be based on human rights. With this, we must understand that all of our joint work of institutions, the Parliament, the Local Business Authority, the civil society will in the future have as guidance, precisely these objectives, which aim at: Reduction of poverty, inequality and social exclusion.

Being a Comprehensive Agenda that sets priorities on issues globally affecting humanity, with the goal of ending poverty and hunger, providing access to health care, comprehensive education, access to resources such as potable water and electricity, economic growth and employment, a peaceful and inclusive society, etc., with its universal application and the importance of shaping development priorities, Agenda 2030 will open new paths for integrating human rights into global and national policies over the next 15 years.

The Ombudsman as one of the actors engaged in the protection and respect for human rights, which is the basis for the concept of the Sustainable Development Goals, has and should play a specific role in the process of implementation and monitoring of the Agenda. This is also based on Merida Declaration "On the role of human rights institutions in the Sustainable Development Goals", adopted in October 2015 in Mexico, at the 12th Conference of the International Coordinating Committee of the National Institutions of Human Rights, where it is determined the role and actions that the national human rights institutions have to undertake for this process.

In this respect, even the challenges for the work of the Ombudsman's Institution will be continuous and not easy, given the scarce capacity of the institution. Up to now, the Ombudsman's Institution has had a number of engagements and contributions to this very important initiative of the United Nations. It is worth mentioning the ongoing co-operation with the United Nations Office in Tirana, the participation in various SDG-related trainings and the provision of concrete contributions to the drafting of the Report of SDG indicators 16.1 and 16.2.

The Ombudsman has consistently expressed his opinions on the interventions that need to be conducted to the State Budget, reflecting on the problems and concerns of citizens, arguing that the state budget is an irreplaceable key instrument in the achievement of these objectives. It should be an expression in the coming years of this goal of the Albanian state to achieve them.

The Ombudsman evaluated the preparation and presentation by the Albanian government of the National Volunteer Report, which was presented at the United Nations High Level Political Forum on Sustainable Development, held in New York in July 2018, recommending at the same time the need to prepare and analyze in concrete terms the budget costs that would require the implementation of the Sustainable Development Goals (SDG).

Also, the Ombudsman strongly supports the Platform for Integration, Accelerating and Supporting Policies (MAPS), approved by the United Nations Development Group. Reports produced by this Platform have helped governments and other national partners to identify

concrete steps of the policies and programs needed to accelerate national transitions towards a sustainable development. The first such MAPS's mission in the Western Balkans took place in Albania during the period from April 16th – 20th, 2018, where meetings were held with representatives of the Ombudsman aiming at identifying the opportunities and the role that a national human rights institution can play in monitoring the implementation of sustainable objectives. The realization of this mission produced a report which among other things shows the strong link between Agenda 2030 and the SDG on one side and the EU membership agenda on the other, pointing out that national implementation of Agenda 2030 can accelerate progress towards EU accession – by also helping Albania to better address important development challenges that are not central to the EU accession agenda.

The Resolution adopted by the Parliament of the Republic of Albania on 04.12.2017, remains an important basis on the work of the Ombudsman's Institution, where inter alia, the members of the Parliament are committed to promote cooperation with independent accountability institutions such as the national human rights institutions (the Ombudsman).

In this process, there is no doubt that the legislative power also plays an important role. Consequently, it is imperative that this body work together with the Government and all the partners and stakeholders to review the existing legal framework and to identify opportunities to further implement the Sustainable Development Goals, particularly the adoption or change of laws to promote gender equality, social inclusion and environmental protection.

It is also very important that the Parliament provide support to local government institutions to implement and monitor the Sustainable Development Goals, recognizing that they are closer to citizens and often have responsibilities for important issues in achieving the Sustainable Development Goals.

The role of the Parliament can be very effective in providing development and the use of tools to enable parliamentarians to carry out a more effective oversight of proposed laws, budgets, programs and policies to assess their contribution to the implementation of Sustainable Development Goals.

Awareness raising on the achievement of sustainable development goals is an instrument to guarantee success in this process. The involvement of all actors (including young people) through awareness-raising campaigns, open-day development, or goal development weeks would help to better understand these goals as well as track and monitor their implementation.

Based on all of the above, the challenges for the work of the Ombudsman's Institution remain, inter alia, the establishment of mechanisms for the monitoring and implementation of the Sustainable Development Goals, strengthening of cooperation with international partners to support institutions of human rights methodology and capacities to monitor the implementation of Sustainable Development Goals and cooperation with relevant institutions that produce and collect statistical data including INSTAT, the academic world and civil society organizations.

The future vision of the Ombudsman, as well as the vision of every actor involved in the realization of this ambition is that "no one should stay behind" and the human dignity should be granted to everyone and everywhere and human rights should be fully observed. Sustainable Development Goals are already part of our daily work for monitoring, preventing human rights violations, as well as promoting them.

5. In the context of the function as a Torture Prevention Mechanism, it should be more proactive in monitoring the respect of the rights of people deprived of their liberty, the police commissariats and the places of execution of criminal decisions, at the Treatment Center for Illicit Foreigners in Albania and the Asylum Seekers Center, border checkpoints, and points

considered as feasible to build reception or assistance centers for the transit of people in need of international protection and to follow the implementation of the recommendations addressed.

The Ombudsman in the role of the National Mechanism for the Prevention of Torture (NMPT) monitors all the public institutions where the freedom of the individual is dealt with in order to assess the level of respect for human rights in these institutions, to prevent violations, to improve treatment standards of people deprived of their liberty and to promote the continued observance of their rights.

In 2018, the NMPT carried out a number of inspections, out of which 51 monitoring visits were carried out on the basis of the approved inspection plan and also carried out re-inspections, special subject checks and administrative investigations in all institutions where the freedom of the individual is deprived or could be deprived, including penitentiary institutions, police units, psychiatric hospitals, centers that treat foreign citizens, asylum seekers and traffic victims, as well as border crossing points and environments where the temporary migrant treatment camps were intended to be established and has prepared recommendations based on findings of inspections and complaints received under the legal provisions.

The main issues in the prison system (IECD) for 2018 were as follows:

- Failure to comply with the legal obligations and to implement the ongoing recommendations of the Ombudsman in creating the appropriate infrastructure conditions and providing the necessary material base to guarantee the respect of the legal rights of detainees and convicts in a significant number of institutions for the execution of criminal decisions.
- Failure to comply with legal obligations (Law No. 44/2012, dated on 08.05.2012 "On the Mental Health") for the establishment of a Special Medical Institution for the treatment of people with mental health disorders who have committed criminal offenses, for whom the courts have taken a decision on "compulsory medication in a medical institution".
- Failure to operate the health care system at the proper parameters which constitutes an inadequate treatment for the convicted people in these penitentiary institutions. Namely, the organization of the health care system in these institutions has not yet been standardized with the implementation of positive - legal solutions, financial and material resources, while the number of engaged medical personnel is insufficient as well as partial in time and human recourses to respond to the needs of the convicted people.
- Unjustified negligence on the part of the judicial authorities in the enforcement of the legal obligation provided for in Article 46, paragraph 1, of the Criminal Code, to consider mainly all decisions given for "compulsory medical treatment at a medical institution" the one-year term from the day of decision-making, and the delivery of decisions to the institutions where the respective people are treated.

The above is an example of the considerable work that remains to be done by the prison administration. Of course, improvements cannot be sustainable if the problems do not find the solution since their inception. Lack of funds is not justifiable for the failure to observe the human rights. Accurate strategies based on strategies that may be implemented are necessary to exercise the responsibilities provided by law.

On the other hand, the NMPT has continued to be in charge of its responsibilities both for the protection and promotion of the rights of people deprived of their liberty and will work closely with all actors to promote the highest standards at all levels, national and international ones.

Meanwhile, the issues in the Local Police Directorates and their respective sub-commissariats were as follows:

- Overcrowding of security premises.
- Failure to comply with the legal obligations for the construction or adaptation of escort and / or security facilities according to the standards set out in sub-legal acts.
- Problems with the installation or functioning of the monitoring system with surveillance cameras in escort and security corridors.
- Failure to accurately and responsibly fill out the records of the escorted people (in a part of the commissariats).
- Holding meetings in the working rooms and not in the interview rooms.
- Failure to complete the medical staff.

During the reporting year, the Ombudsman in the role of the NMPT participated in the activities of the South Eastern European NMPT Network, a network that was established in 2013 based on the Declaration of Cooperation signed by the Ombudsmen's Institution / Ombudsmen of Albania, Austria, Bulgaria, Croatia, Macedonia, Montenegro, Slovenia, Serbia, Bosnia and Herzegovina, Hungary, Greece and Romania. In achieving the goal of this specified network also in OPCAT for enhancing cooperation, sharing experiences and organizing other joint activities for a more substantial implementation of the NMPT mandate in the region, the Albanian NMPT participated and contributed to several seminars and conferences.

The National Mechanism for the Prevention of Torture has been closely cooperating with the Committee for the Prevention of Torture (CPT), being part of the meetings that the CPT held in Tirana during the periodic visit on November 20th-30th, 2018 at the United Nations Subcommittee on Prevention of Torture (SPT), Association for the Prevention of Torture (APT), to provide a quality oversight and reporting system. Collaborations with these structures were carried out in the framework of joint direct contact meetings and aimed at exchanging experiences and assessing the needs and means necessary in the fight for the protection of the rights of people deprived of their liberty in fulfillment of OPCAT.

In 2018, the National Mechanism for the Prevention of Torture, in the performance of its legal functions, has closely cooperated with the local Civil Society Organizations which were active and specialized in these areas, such as the Albanian Helsinki Committee, the Albanian Center for Trauma Rehabilitation (ARCT) etc. Thanks to this cooperation, joint inspections were carried out, with a multidisciplinary and profound nature, as well as auditoriums, conferences and seminars, with the aim of highlighting the problems encountered in prisons and commissariats, and discussing to find solutions for them.

On December 21st, 2018, in cooperation with the OSCE, the Ministry of Justice and the Coordination Center Against Violent Extremism organized the conference "Respecting human rights in the framework of prevention and fight against violent extremism in institutions of deprivation of liberty and probation".

Also, under the auspices of USAID as part of the project "Transparency in the Health System", a thematic report "Transparency in the mental health system" was prepared by NMPT experts with the expertise of the Albanian Center for Trauma Rehabilitation.

In order to promote human rights in the country and to prevent violations, the NMPT experts during 2018, have been active in Albanian print and electronic media, through joint meetings with journalists, interviews, magazine editions with a view to raising awareness on the issues and achievements in the area of human rights for people deprived of their liberty.

The Ombudsman's Institution has been continuously engaged under its mandate in monitoring the situation and protecting the interests of people in need of international protection who have been found in the Albanian territory.

The Ombudsman has consistently held an attitude that, while taking into account the challenges facing Albania in dealing with migratory flows, encourages the Albanian Government for more transparency and readiness for cooperation, so that the needs of all those seeking asylum in Albania, to be met in the best possible way and to treat non-asylum seekers in compliance with the international standards. During these efforts, emphasis has been put on better identification of illicit foreigners seized in the territory, by making it clearer through the correct implementation of the Selection Procedure that who is categorized as asylum seeker (and refers to the Refugee Directorate) as an illegal migrant or as a victim of human trafficking (and refers to relevant bodies that assist in this area).

The Ombudsman in the role of the NMPT is widely involved in monitoring the fulfillment of the Albanian state's obligations towards illicit foreigners, asylum seekers and refugees in Albania by undertaking a number of initiatives, including periodic inspections at the Closed Center for Illicit Foreigners – in Kareç, at the Center for Asylum Seekers – in Babru, and at the border crossing points, with the aim of exercising positive and ongoing pressure on the relevant authorities for the fulfillment of international human rights obligations and standards. In this context, the level of cooperation with UNHCR for 2018 has been expanded to help strengthen the border monitoring through the Ombudsman's institution recruitment of two external experts to monitor the implementation of the selection procedure as well as the treatment of illicit foreigners in Albania for border crossing points in Kakavija, Hani i Hotit and Muriqan, whose monitoring will continue during 2019 by extending it to the border crossing point in Kapshtica.

During the monitoring, it was noted the need for improvement of the protection of the rights of migrants entering the Albanian territory, with the best knowledge of their rights. The Ombudsman notes that increased responsibility of border officers is required to respect the principle of non-return as well as increase the quality of the selection interviewing. There are still many factors that affect the quality of the interviews and which are related to:

- limited human resources of the border personnel
- lack of specific capacities and environments
- lack of female officers for female migrant cases
- the limited number of translators in Arabic
- lack of social service from the respective municipalities
- the need to improve the medical treatment scheme in cases presented at the border, etc.
- increase in the number of migrants entering the Albanian territory.

For more information regarding the monitoring and inspections carried out and the issues identified by the NMPT, refer to Chapter 5, point 5.4.

6. To complete the preliminary selection procedures for the candidates for Commissioner, for the vacancies created in the Ombudsman's institution within September of 2018.

Regarding the completion of the preliminary selection procedures for the candidates for Commissioner, for the vacancies created in the Ombudsman's Institution, as you are also informed, this process has already been completed. More specifically:

In compliance with Article 33/1 of Law no. 8454, dated on 04.02.1999 "On the Ombudsman", as amended, as well as the Resolution of the Albanian Parliament "On the Assessment of the Activity of the Ombudsman's Institution for 2017", through the public open call during August 2018, the Ombudsman's Institution has announced the selection process for the three vacant positions for the Commissioner respectively:

- *Commissioner in the General Section;*
- *Commissioner in the section on police, secret service, prisons, armed forces and judiciary;*
- *Commissioner in the Section for central administration bodies, local government and third parties acting on their behalf;*

Within the set deadline, 13 (thirteen) candidates were presented who were invited on **30.10.2018** to present their platform at the hearing session with the Ad-Hoc Commission (one of the candidates did not appear at the hearing). This committee consisted of representatives of the civil society organizations that were active in the field of human rights protection as well as representatives of the Ombudsman's Institution.

This hearing was open and was held at the premises of the Ombudsman's Institution where the participant candidates were evaluated on the basis of objective legal conditions and criteria.

- a. **assessment of the curriculum vitae** of candidates, which consists in assessing the education, experience and training related to the field;
- b. **assessment of the platform** (presentation of candidacy, issues of the field concerned, issues to be addressed with priority, management mode and direction of the section);
- c. **assessment of the activity** in the protection and promotion of respect for the rights and freedoms of citizens;
- d. **structured oral interview** (assessment of the curriculum vitae, knowledge, integrity, figure, skills and candidates' background).

Pursuant to Article 33/1, item 6, of Law No. 8454, dated on 04.02.1999 "On the Ombudsman", as amended, which states that: "The list of *four candidates selected by the Ombudsman for every vacancy*, along with his assessment of the fulfillment of the legal conditions and objective criteria and the order of the candidacies according to his preference, passes to the Parliament's Committee covering the legal issues.....", the Ombudsman at the conclusion of this process, decided to propose to the Parliament of Albania (letter no.311 / 1, dated on 15.11.2018) the candidatures that fulfilled the legal conditions and objective criteria for the position of Commissioner in the General Section and the Section for Police, Secret Service, Prisons, Armed Forces and Judicial Power.

Candidates in the Commissioner's position in the Section for the Central Administration, Local Government and third parties acting on their account, were not sent since the Ombudsman's Institution was awaiting a verifiable response from the Information Authority on Documents of the former State Security, for one of the candidacies, which up to that time, fulfilled the legal conditions.

Following the selection process of candidacies for the vacant position of the Commissioner in the Section for central administration bodies, local government and third parties acting on their account, after the relevant documentation was completed with the arrival of information by the Information Authority on the documents of the Former State Security, the Ombudsman

decides to propose to the Albanian Parliament (letter no.311 / 14, dated on 26.11.2018) the list of candidatures that meet the legal requirements and objective criteria also for the position of the Commissioner in Section for the central administration bodies, local government and third parties acting on their account.

7. To enable the establishment of an online complaint management system in order to process the data in real time as well as increase the quality and speed of the investigation by the Ombudsman's commissioners and assistant-commissioners.

With the support of the Government of the Kingdom of Denmark, the Doculive system has been installed and functions since 2002 at the Ombudsman's Institution, which deals with the management and handling of cases and complaints submitted to the Ombudsman's Institution. This system helps a lot in the daily work of addressing citizens' complaints without the need for a hard copy file. Also, different statistics can be drawn through this system regarding the violated rights of citizens as well as the institutions responsible for disrespecting these rights, etc.

Given the fact that this data system needs to be improved, with a view to treating and prosecuting cases / complaints more efficiently, the Ombudsman's Institution has tried to assess the possibilities of replacing this database with a more advanced system. In discussions with the Danish Ombudsman, we were informed about the new Doculative system used by this institution, a system that would be appropriate for managing cases and complaints to our institution. As the cost of purchasing and installing this system (30-40 thousand euros) goes beyond the budgetary possibilities of the institution, it has been impossible to replace up to now the existing online system of handling and pursuing complaints.

However, in order to increase the citizens' access, it was enabled to the public the "Ombudsman" application for smart phones with the same name. The application is intended to provide an additional platform for receiving complaints from citizens regarding human rights' violations and reporting corruption, by continuously improving the internal complaints handling process so that citizens can receive professional and timely responses.

The application will be particularly useful for citizens living outside Tirana and those who do not own a computer. These citizens will be able to easily submit complaints via their mobile phone and follow the progress of their complaint. The application was made possible thanks to the support of the United States Agency for International Development USAID through the project "Transparency in the Health System" launched in 2017.

The Ombudsman's Institution is developing the process of organizing an information campaign around the countrywide application to raise citizens' awareness of its use in submitting complaints.

8. To make an internal assessment of the organization and functioning of the institution, in accordance with the updated Recommendation No. 2 of the European Commission against Racism and Intolerance (ECRI) on "Equality Bodies" and submit a report of findings to the Subcommittee for Human Rights in the Albanian Parliament.

Regarding the recommendation for an in-depth assessment of the organization and function of the institution in accordance with Recommendation No. 2 of the European Commission against Racism and Intolerance (ECRI), it should first be noted that this recommendation is related to equality bodies, i.e. for organs created with a clear mandate to fight racism, intolerance and discrimination.

With regard to institutional architecture, depending on the legal and administrative traditions of member states, equality bodies may take different forms. In some states, an equality body

has been created with the mandate to cover multiple areas; in some other states there are some equality bodies with the mandate to cover one or several areas. There are other practices where the mandate of equality is attributed to a broad mandate that also includes a mandate for human rights and / or the mandate of an Ombudsman. There are also other member states where equality bodies with a single or broad mandate are merged within the national human rights institutions (Ombudsman).

Following this logic, the ECRI's above-mentioned recommendation goes to the approach of defining the standards that equality bodies must have in terms of upgrading, functioning, competencies, independence and accessibility. Among other things, this recommendation requires equality bodies to coordinate and cooperate with one another (if there is more than one such structure) as well as with other human rights' institutions, including national institutions of human rights / Ombudsman. This cooperation is necessary with a view to maximizing their overall impact on the mandate of equality. They should also ensure the widest coverage of equality issues, addressing cross-cutting issues, and avoiding duplicate efforts / actions. This coordination and cooperation include dialogue in their planning process, joint initiatives in their work and continuous and sustainable communication.

To return to the Albanian terrain, it should be noted that Article 2 of Law No. 8454, dated on 04.02.1999 "On the Ombudsman", as amended, provides that "... *the Ombudsman protects the legitimate rights, freedoms and interests of the individual from unlawful and irregular actions or inactions of the public administration bodies and the third parties acting on its account*".

Effectively, the special jurisdiction set out in the Law on the Ombudsman defines the protection of the individual's rights, freedoms and legitimate interests. In this broad definition, the logic of organic law naturally includes the right to protection from discrimination, which includes the constitutional principle of equality of citizens before the law.

Meanwhile, with the entry into force of law no. 10221, dated on 4.02.2010 "On Protection from Discrimination", it was established the institution of the Commissioner for Protection from Discrimination (Equality Body) whose law defines as the main object of its activity the effective anti-discrimination provisions for each individual, as well as their protection from any form of conduct that promotes discrimination (Article 21/1).

From a narrow interpretation of legal provisions, it can be said that despite the broader competence of the Ombudsman in the protection of human rights, specifying the competence of the Commissioner for Protection from Discrimination, to ensure effective protection against discrimination for every individual, this leads to the fact that this competence belongs first to the Commissioner as a equality body and not to the Ombudsman.

In a broad interpretation of the legal provisions, it can be said that while the organic law of the Ombudsman includes as general competence the right to protection from discrimination and equality before the law, therefore there is no legal obstacle to the latter to handle these issues. This argument is added to the fact that in the possible competition of norms that determine the competences and jurisdiction of the above-mentioned institutions, the organic law of the Ombudsman is a normative act *higher* than the law "On Protection from Discrimination", after having been approved by the majority (three-fifths of all members of the Parliament), while the law "On Protection from Discrimination" has been approved by a simple majority.

Under these conditions, we have been very careful that in dealing with cases, we exclude those cases where in principle it is spoken of discrimination, addressing only issues where allegations of violation of other human rights are raised. This has not prevented us from intervening with recommendations regarding the amendment or improvement of the legislation on protection against discrimination.

Thus, there is effectively a division of labor between the two institutions, the Ombudsman and the Commissioner for Protection from Discrimination, for reasons that are under the mandate of ECRI (European Commission against Racism and Intolerance). This division is not in itself a well-defined matter within the law, but it is a matter of good practice, created between these two institutions and formalized through a Memorandum of Cooperation signed between the parties on 28.05.2018, in respect of the provisions of the recommendation in question. The purpose of this memorandum is to institutionalize the relationship between the parties in order to resolve the competing competence conflict that may exist between the Ombudsman and the Commissioner for Protection from Discrimination, due to the content of the laws that regulate their activity within the guarantee of human rights and freedoms.

Another important moment to be taken into consideration is that the jurisdiction of the Ombudsman includes **only the public sphere** as well as to the extent provided for in the Administrative Procedures Code of the Republic of Albania concerning the term "Public Bodies - Public Administration" and that the nature of its acts is recommending and policy-making as a whole. Meanwhile, the jurisdiction of the Commissioner for Protection from Discrimination includes not only the public sphere, but also the private one, and the nature of the acts issued by it, is not just recommending (it has the right to fine penalty). It seems that these might have been the elements that have been taken into consideration at the moment when there was established the functioning model of the Commissioner for Protection from Discrimination, which is an institution established later than the Ombudsman's institution. From the above we are of the opinion that this model has reinforced the protection of citizens' rights even for the simple fact of capacity growth, which could not have happened if the whole protection was to be carried out by a single institution. In any case, the current model seems to be working and both institutions have taken initiatives to use shared human resources at their regional offices.

CHAPTER 4

Assessment of the situation for the observance of human rights by the state bodies

4.1 Rights of people deprived of their liberty

Examination of individual cases

During 2018 a total of 308 individual complaints related to the rights of prisoners were presented, of which 264 were closed and 44 are still under review. Out of the closed cases, 150 have been found ungrounded in the law, 100 have been solved in favor of the complainant during the review, 13 have been found out of competence and 1 has been concluded with a recommendation to the prosecution body. There has also been an investigation on complaints carried over from the previous years.

Complaints received are presented both by convicts and their family members. The largest number of complaints (as happened with last year's report) is related to: the quality of health care; refusal to apply for a reward license; prolongation of the procedure to go with a rewarding permit; prolongation of the procedure for transfer to another penitentiary institution; unfair transfer to another penitentiary institution; allegations of physical, or psychological violence and maltreatment; the unjust granting of a disciplinary measure.

Problems arising from the review of complaints

Complaints regarding the quality of health services continue to be numerous in number. We find that overcrowding (despite improvements in this regard) has made the prison administration not timely and quality-responsive to prisoner's medical treatment requirements. Also, in some prisons, there is a lack of doctors, although the organigram provides for one, as this job is not acceptable. Some doctors, who go to work in the penitentiary institution, resign after a while.

The prisoners should serve the sentence in an institution as close as possible to the family domicile. This is one of the main legal criteria for determining the IECD where the prisoner has to serve the sentence. From the investigation of cases where it was alleged that the procedure for sending the prisoner to an IECD closer to the family domicile, it turned out that the cause of the delay was the overcrowding in other IECDs. The opening of the penitentiary institution of Malësi e Madhe (Reç) has granted some of the demands of prisoners to serve the sentence in an IECD close to the family domicile. In cases where an unjust transfer was claimed by the prisoners, the General Directorate of Prisons has replied that the reason for the transfer of the prisoner to an IECD far from his family domicile, has been his safety due to conflicts with other prisoners or the violation of the order in the IECD. On our part, it is difficult to prove whether the reason for the transfer was really the prisoner's safety or punishment because of his behavior in the institution. However, an investigative work was carried out on the grounding of information compiled to motivate the transfer. From the investigation we have conducted regarding the transfer of some prisoners from the IECD of Lezha to other IECDs, we have concluded that the reason for the transfers was not grounded. The General Directorate of Prisons has recommended the transfer of prisoners to an IECD closer to the family domicile.

Refusal of a request for a rewarding permit has been the subject of several complaints reviewed by the Ombudsman's Institution. In the case of complaints by convicts for a rewarding permit and special permit, the Ombudsman's Institution can not intervene to grant or not the permit, but only to verify the procedure for reviewing these claims. From the investigation of these cases it turned out that the reason for their rejection was the lack of credibility regarding the stay of convicts outside the institution. The institution had no guarantee that the life and health of the convicted person would not be violated during the permit or that the convict would not harm the life and health of others. The Ombudsman's Institution cannot verify the information obtained through operating or confidential information. However, the assessment given for these cases has an increased dose of subjectivity.

Regarding the remuneration of the prisoners, as we have previously informed, on March 4th, 2013, a recommendation was sent to the Ministry of Justice, which requested the drafting of the DCM project for determining the criteria for the remuneration of the detainees and sending it as soon as possible for approval to the Council of Ministers. *This recommendation has not been implemented and the work of the prisoners continues to be ignored.*

Prisons are not the right place for prisoners with mental health problems. No final solution has been found for housing in a hospital environment outside the prison system of people who have received by the court a measure for compulsory medication. Since 2012, the Ombudsman has sent a recommendation to the Ministry of Justice requesting the opening of a new medical institution for the accommodation of people with mental health problems for whom the court has given the medical treatment of "compulsory medication". *This recommendation has not been resolved.* In the last response we received from the GDP, we were informed that two facilities are being reconstructed in the IECD of Lezha to accommodate the convicts with mental health problems currently held in the IECD of Kruja.

At the end of the reconstruction, these facilities will function as a special medical institution and will be under the Ministry of Health.

Complaints for ill-treatment, physical and psychological abuse by the State Police and Prisons' employees have been reviewed with priority by the Ombudsman's Institution. Allegations of exercise of violence, especially of psychological violence, are not easy to prove. During 2018, 23 of such complaints were registered. In one case, we have come to the conclusion that some Penitentiary police officers of Fushë-Kruja, during their active actions to neutralize a convicted for violent behavior, lost their self-control by exceeding the minimum of use of force and by violating the principle of proportionality, because the intensity of the force was greater than the intensity of the convict's resistance. Because of this intensity, the convicted person had suffered injuries in various parts of the body. At the conclusion of the administrative investigation of this case, we came to the conclusion that the employees of the Penitentiary Police of Fushë-Kruja had committed elements of the criminal offense of "arbitrary actions". *The Prosecutor's Office of the First Instance Court of Kruja was recommended to initiate investigations against the responsible employees.* The prosecution body has informed us that the criminal proceedings have begun on this case.

Suicides in prisons are often overcoming events without much fuss. The Ombudsman's Institution informed by the media has initiated the investigation of suicide cases in prisons to find out if such events could be prevented. At the end of the investigation of a suicide committed at the end of 2017 at the IECD of Lezha, we recommended the General Directorate of Prisons and the Prison of Lezha to take suicide prevention measures. Lack of staff in the organogram of health and social personnel affects the quality of service that these two sectors offer. Consequently, the likelihood of preventing suicide cases is reduced. The amortized infrastructure which is not established according to the standards provides the convicts with the opportunity to commit the act of self-hanging. We appreciate that increasing the quality of psychosocial services will enable prevention of this issue.

On 18.10.2018, the Ministry of Justice has filed in the Parliament the draft law, "*For an annex to Law No. 8328, dated on 16.4.1998, "On the rights and treatment of prisoners and detainees"*", as amended, which will bring about changes in the rights and treatment of prisoners accused or convicted of high-risk criminal offenses. These prisoners will undergo a special regime under which their actions will be limited to those of other prisoners. The only concern that remains for us is if the IECDs in Albania have the right logic to make the special regime applicable while maintaining a balance between the security and dignity of prisoners. It remains to be seen whether the implementation of the special regime will allow a minimum acceptable contact level for prisoners and whether the social, cultural and creative activities will be sufficient to not be considered as inhuman and degrading treatment in the framework of the European Convention Human Rights.

Another issue raised in continuity is the issue of prison staff. As we have already reported, the recommendations sent to respect the rights of penitentiary police officers have been accepted, but are not being implemented with the justification that there is not enough funding. In 2018, we returned again to the financial rights of penitentiary police officers. At the conclusion of the investigation of complaints of officers of the IECD "Ali Demi", we recommended to the Ministry of Justice, Ministry of Finance and the GDP: compensation of additional hours worked during the weekly rest or on official holidays; implementation of the Labor Code with regard to the maximum additional hours that can be completed; uniform equipment; equal economic and financial treatment of penitentiary police officers with State Police employees; the amendment of DCM no. 201, dated on 15.03.2017, to formulate more clearly the rules for calculating the addition for seniority at work; increasing the number of

penitentiary police employees; solving the problem of transport from residence to work center and vice versa.

In conclusion, it is worth mentioning that the rehabilitation of prisoners is the main function of prisons. People deprived of their liberty should be encouraged to be employed by being rewarded for their work. Through programs and services, they should be helped to solve their problems, dependency on the use of narcotic substances and violent behavior. Also, a final solution should be found for housing in a hospital environment outside the prison system of prisoners with mental health problems. The prison's rehabilitation function has become a more difficult challenge with the prison overcrowding and insufficient budget. The security measure "imprisonment" and the prison sentence should be chosen as the last alternative in providing and punishing people who commit minor offenses. The treatment of the penitentiary staff requires the attention of state institutions to provide them with working conditions, wages and economic compensation appropriate to the difficulty of working in prisons.

In the above, it remains very important for the responsible institutions to take the necessary measures to address the issues mentioned above, in compliance with the Minimum Rules and Standards of treating Prisoners (**the Mandela Rules**), as adopted by the General Parliament of the United Nations on December 20th, 2015.

4.2 Respect for human rights by the State Police bodies

During 2018, *146 complaints were administered by the Ombudsman's Institution, against the Ministry of Interior and the State Police. We ascertain that the number of complaints against these bodies in 2018 is greater than the number of complaints administered in 2017, which was 91.* The subject of citizens' complaints were allegations of violations of their legal rights by the structures or employees of the Ministry of Interior and the State Police.

The scope of complaints has been diverse, as we can mention: physical or psychological abuse during the arrest, accompaniment or interrogation at the police bodies; inhuman and dignified treatment in the premises of the police bodies where the escorted or arrested / detainees are kept, maintained and treated; illegal accompaniment; failure to take, administer or prosecute criminal reports or complaints made by them; obstructing the exercise of the constitutional right of rallies; imposing unjust administrative measures; failure to keep and record the actions performed by the police officers; blocking of personal belongings; life insurance; obstructing the free movement abroad; failure to disclose information; providing negative responses to convicts who have sought the benefit of the right to a reward; violation of the rights of foreign nationals in Albania; violation of work relationships as well as unfair transfers by the State Police, etc.

From the review of the administered complaints, it turned out that some of them were grounded and specifically for exercising physical violence, for obstructing the exercise of the right to gather, for violation of labor relations, and so on. We must bear in mind the fact that the violations and infringements of the constitutional and legal rights of citizens made through the actions or non-actions of certain employees or structures of the Ministry of Interior and the State Police directly affect the violation of the image of these organs in public and therefore affect severely the public confidence in them.

In cases where violations of citizens' rights have been found, Ombudsman's institutions have made appropriate recommendations to the competent authorities for taking the necessary criminal, administrative and organizational measures with the aim of restoring the rights of citizens to their country, punishing offenders and generalizing them in order not to repeat such offenses in the future.

The right of citizens to have an intact physical integrity and to be treated with dignity

In the Ombudsman's Institution, several complaints were filed by different citizens who allegedly complained of an incorrect behavior by the police officers in the case of catching the wanted people as suspected offenders, when they have violated the rules provided for in the provisions of the Road Code, or during routine checks made by police in bars, other environments and on the street. Instead of behaving correctly and ethically, police officers offend and violate them, or exercise physical force and tie them with handcuffs for no reason. If only these were not enough and in order to justify and cover illegal actions, police officers charge and arrest them for the criminal offenses of "Opposing the Police Officer" and that of "Hitting the Police Officer". After the arrest, when sent to the relevant court for assessment and assignment of the security measure, by having no evidence of their innocence, the court assesses as lawful such arrests in flagrante and in the meantime imposes the personal security measure of "imprisonment".

On one occasion, after the administrative investigations as well as obtaining of the statements of the two witnesses present, citizens A.C. and L.F., it was enabled to prove that the arrest of the citizen D.D. was committed in an unlawful manner, because he had not committed any of the criminal offenses for which he was arrested by the police and he had not opposed, nor hit the police officers. The arrest of D.D. was made to justify the violence that police officers of the operational structure of the Local Police Directorate in Tirana, had exercised against him. Meanwhile, from the verifications conducted, it resulted that the complainant had made a denunciation at the Internal Affairs and Complaints Office in Tirana. The IACO employees, had referred the denunciation filed by the complainant and other procedural materials to the Prosecutor's Office of the First Instance Court of Tirana. The latter had recorded the criminal proceeding no. 3120, dated on 20.04.2018 for the criminal offense of "Conduct of Arbitral Actions", provided for by Article 250 of the Criminal Code. Upon commencement of the criminal proceeding, the prosecutor delegated him to conduct investigations at the IACO in Tirana. Later, on 18.05.2018, the prosecutor of the case had decided to join the criminal proceeding no. 2927 of 2018 for the criminal offense of "Opposition of the police officer" with the criminal proceeding no. 3120, dated on 20.04.2018, for the criminal offense of "Conduct of Arbitral Actions" as well as to investigate them in a single proceeding.

Based on the testimonies of witnesses present at this event, the fact that the arrested D.D on the night of the event had not used any alcoholic beverages and that he was a person of a small size and body weight, as well as considering the large number of about 10 police officers, we judged that he had no reason to commit the criminal offenses for which he was arrested. In addition to this fact, the complainant was physically abused by one of the police officers, while our administrative investigation did not prove as necessary to use the force against him either.

In these circumstances, when for the same complaint and event the prosecutor's office had initiated the criminal proceedings against the police officers for the criminal offense of "Conduct of arbitrary actions", we decided not to address this body with a recommendation to initiate investigations against employees of the police. Meanwhile, the IACO in Tirana was informed about the facts administered by us and the statements of the present witnesses. It is the duty and the right of the prosecutor's office to conduct a professional, objective, complete and comprehensive investigation into the criminal proceedings initiated against police officers and the arrested D.D.

However, based on this complaint, but also on some other similar complaints, we judged that these cases should be seriously evaluated by the General Directorate of the State Police. For these reasons, there was an immediate need for police officers to be educated and trained to behave and communicate with citizens with ethics, patience and professionalism. They should be cautious that in the cases of finding the administrative offenses, not to become a

cause for the occurrence of improper incidents up to committing criminal offenses, such as those cited above by the police officers, or even worse to justify their illegal action against citizens, by making false statements. This behavior of some police officers comes in violation of Article 2 of Law no. 108/2014 "On the State Police", which states that: "*State Police has the mission of maintaining public order and security, guarding high state personalities and objects of special importance, guaranteeing law enforcement, in accordance with the Constitution and international acts, by respecting human rights and freedoms*". It also contradicts Article 94 of this law, which provides that:

"The police officer is obliged to respect the rules of conduct and ethics while performing the duties"

As per the above and in order to increase the performance and image of the State Police as well as increase the public confidence in this body, it was recommended to the General Director of the State Police:

1. To initiate the disciplinary performance of police personnel of the operational structure of the Local Police Directorate in Tirana by the Directorate of Performance and Professional Standards at the General Directorate of the State Police.

2. To impose responsibilities, disciplinary measures against responsible people and to generalize this case in the State Police structures in order to avoid the repetition of such cases in the future.

3. To continue training the state police officers with a view to respecting the rights of citizens, their ethical conduct in the performance of their duties and the application of the principle of proportionality if the need for using force conforms to Article 123 of the Law "On the State Police".

We were informed by the General Directorate of the State Police that the recommendation was welcomed and accepted, and that it had begun a disciplinary investigation for all the police officers involved in this event. Following the conclusion of the disciplinary investigation, the identified issues would be generalized in order to prevent such cases in the future and at the same time they would be kept in mind also in the ongoing training of the State Police employees.

4.3 Preventing violence and torture

During 2018, the Ombudsman in the role of the Mechanism conducted **91** visits, out of which **51** monitoring visits conducted on the basis of the 2018 approved inspection plan and **8** re-inspections, special subject checks and administrative investigations, in all institutions where the freedom of the individual is deprived or can be deprived, including penitentiary institutions, police units, psychiatric hospitals, centers for foreign nationals, asylum seekers and traffic victims, as well as the border crossing points and facilities foreseen for establishing temporary migration treatment camps. All of the above activities were accompanied by the follow up of **51** inspection reports and recommendations, in the responsible institutions, on the identified issues and phenomena.

From the answers so far received on the recommendations, they result to be accepted and to have stirred up institutions to fulfill their obligations. It remains to be followed in the continuation the completion of other measures to improve the treatment conditions of individuals held in these institutions.

In the inspections carried out, a number of issues were identified, which are a pressing need for consideration and improvement. A summary of the findings is reflected in the following:

- Extremely degrading materials and failure to fulfil the recommendations for the reconstruction of the premises in the internal regimes of the IECs in Zahari Kruja, Saranda, Tepelena, Kuksi, which make it impossible to guarantee the rights of detainees and convicts sanctioned in international acts and national legislation in force. Since these

findings continue to be repeated, even with more degraded conditions as a result of continued overcrowding, lack of investment and amortization, the Ombudsman recommended the immediate closure of these institutions and the transfer of people to other penitentiary institutions .

- Overcrowding remains a problem of our penitentiary system with an annual average of 15-20% over capacity. There is a decrease in overcrowding of 5% -10% compared to the previous year from a redistribution of prisoners / detainees to the IECD and from the establishment of the IECD in Shkodra and the reconstruction of the IECD "Jordan Misja". However, the situation in the IECD of Kruja, Rrogozhina, Tepelena, Jordan Misja, Drenova, Durrës, Vaqarr and Saranda was problematic, which functioned most of the time over the allowed capacity. As a consequence of overcrowding, some of the prisons have increased the number of beds, which has reduced the number of people who slept on the ground, but did not address the guarantee of living space standards per person. In some of the prisons, the situation was even more problematic since as a consequence of overcrowding, common activity environments, observation and isolation had become residential environments. Meanwhile, the situation in the segregation-observation section of the IECD Rrogozhina, where the majority of people remained in this sector in degrading conditions, was unusual, and it was impossible for them to have airing and activities according to the legal parameters.
- Failure to conclude an agreement between the Ministry of Justice and the Ministry of Health for the establishment of a Special Medical Institution, as provided for in Law no. 44/2012, dated on 08.05.2012 "On Mental Health" with the purpose of sheltering and treating people who have received the measure "compulsory medication" and "temporary hospitalization" from the court. Treatment of this category in the IECD of Kruja etc. in degrading material conditions and when there is no psychiatrist in their organogram and when access to psychiatric consultations at regional psychiatric hospitals is difficult or in the Special Prison Health Institution for cases with acute episodes, still remains illegal, by reflecting national, international reports and regional conferences.
- Problems with the creation of conditions for the provision of educational and vocational training courses as well as for the provision of other cultural activities, we distinguish the IECD 302 and 313 in Tirana, Tepelena, Saranda and Fushë-Kruja. Secondary education is not offered in any of the penitentiary institutions.
- Remuneration for the work done in all institutions was made by a reduction of the sentence, which implies guilty prejudice for the detainees. In this context, the relevant social insurance value was not paid for the work performed by the detainees in these institutions, which leads to a lack of work time in the institution as well as the denial of a right, that of the benefit of the seniority pension. The convicts were not provided with work booklets or social contributions.
- Infrastructure in most of the prisons represented problems of amortization, humidity, electricity supply, water and heat supply, provision of natural lighting and full cell ventilation, presence of insects, out of standard conditions of toilets, kitchens, showers, ventilation rooms, isolation rooms, etc. Institutions with emergency infrastructure issues were present in Zahari-Kruja, Lushnja, Rrogozhina, Saranda, Lezha, Tepelena, and in the Special Prison Health Institution in Tirana. The exception was the new and reconstructed prisons that practically created a two-level system in the Albanian penitentiary system.
- Common facilities for the development of rehabilitation activities were missing in a part of the IECs as a result of the return of educational facilities or exercise of religious rites and sports activities to residential rooms as well as the lack of funds for their equipment with didactic materials. Also, the small outdoor airing areas conditioned the type of sports

activities that could be developed there. Consequently, in almost all IECDs there were problems with group or individual activities and inability of the psycho-social sector, which despite of trying to actually perform them, they cannot manage to do it because of the lack of suitable facilities, the material base and / or the incomplete organogram with the necessary staff.

- Prison health care facilities, excluding new prisons such as the IECDs of Vlora, Berat, Fier, Durrës, Elbasan and Shkodra, were generally unsuitable for medical examinations and were not equipped with ancillary equipment.
- Delays and shortcomings appear in the equipment of prisoners / detainees with health booklets or electronic data in the health insurance system in most of the prisons, resulting in the failure to implement the drug reimbursement scheme and problems with the supply of medication.
- Difficulties in conducting consultations, specific laboratory examinations and analyzes as well as surgical interventions were still noted in some of the prisons for reasons related to the lack of full-time physicians in the organogram or the lack of ambulances, the resistance of regional hospitals to treat such people due to the lack of security conditions in them, etc.
- Problems in providing dental services in prisons due to the lack of equipment and aids. Dental services, except for extra-actions, were difficult to be conducted in public polyclinics or in private clinics at the expense of the convicts themselves⁴.
- In most cases, prisoners / detainees are not provided with heating according to legal provisions. The central heating systems, in almost all the prisons where they were installed, were not functioning as a result of technical defects or lack of fuel.
- Lacks in the supply of basic personal hygiene products (toothpaste, toothbrush, shampoo, etc.) and detergents needed to clean the premises of the IECDs, as well as shortages in uniforms and gloves during the distribution of food were found in most of the IECDs.
- Lacks in closets and shelves for clothes led prisoners / detainees in keeping their clothes in plastic bags or sacks, mainly under the beds. This problem was mainly faced by the IECD of Lezha, Tepelena, Korça, Durrës, "Jordan Misja", Saranda, Kukës, Rrogozhina and Tropoja.
- The problem encountered in all the inspected institutions was the finding of high prices of the products in the shops of the IECDs.
- The quality and variety of food remained a concern in almost all of the IECDs.
- Remuneration for the work done in all institutions was made with a reduction of the sentence, which implies guilty prejudice for the detainees. In this context, the relevant social insurance value was not paid for the work performed by the detainees in these institutions, which leads to a lack of work time in the institution as well as the denial of a right, that of the benefit of the seniority pension. The convicts were not provided with work booklets or social contributions.

Observed issues need to be addressed through decision-making by senior state bodies, as in most cases, they are the result of the tightening of criminal policy, the lack of funds, along with the need to issue sub-legal acts to generate apparent improvements to the system, in form and content.

Level of respect for the rights of the escorted, detained / arrested individuals in police units

Inspections carried out in police units were aimed at observing objects as well as collecting and evaluating data on the actions and practices pursued by the State Police in meeting the standards set out in the Law No.108 / 2014 "On the State Police", the standard procedure "Technical rules of escorting in the police", approved by Order No. 306, dated on 31.03.2016, of the General Director of the State Police, the standard procedure "On the treatment and provision of convicted / detained people in the premises of the Police State, recognizing and resolving their claims / complaints",

⁴ More information about the dental service in the IECD is found in Annex 2 of this report.

approved by Order No. 1102, dated on 07.11.2017, of the General Director of the State Police, as well as verification of the implementation of the Ombudsman's recommendations issued during 2017.

From the inspections carried out in the police structures, the following issues have been identified:

- Significant overcrowding in police directorates and commissariats where there are security environments depending on them. In these structures, employees most of the time worked over the official capacity. Overcrowding was created mainly as a result of many police arrests and bans made during the year for criminal offenses recently included in the Criminal Code, but also because convicted people with a final or absent decision, were accepted in delay by the General Directorate of Prisons.
- Allegations of cases of torture as well as physical and psychological abuse of citizens by police officers have existed in some commissariats. Grounded complaints are mainly followed by joint groups with the Special Section followed by concrete recommendations for taking measures related to responsible people.
- The detention and treatment of convicted people by a final court decision, by imprisonment in absentia, for a period of 5 to 30 days, in some of the security facilities in the State Police structures.
- Failure to comply with the legal obligations for the construction or adaptation of the escort facilities according to the required standard (3 escort rooms, 1 for adults, 1 for females and 1 for minors). The accompanying chambers in most of the commissariats did not meet the standards for dignified treatment of people, as they were few in number and did not create decent, dignified environments, equipped with the necessary furniture for living, separate for women, adults and juveniles.⁵
- Failure to comply with the legal obligations for the construction or adaptation of security facilities, according to the standards required and approved by the International Conventions and the standard procedure "On the treatment and provision of the arrested / detained people in State Police premises, identification and solving of their request / complaints", approved by Order No. 1102, dated on 07.11.2017, of the General Director of the State Police. The exception was the security facilities at the LPD of Tirana, Gjirokastra, Kukës, Korça and Fier. The subordinated Commissariats of the LPD of Tirana, where security rooms are located, were also in violation of the standards. In the commissariats that were supposed to have out-of-service security rooms, it is still noted that they were not closed according to the respective procedures, with plastering and minutes. Generally, these rooms were found to be closed or locked.
- Problems in the provision of a health service by some LPDs, regarding the correct completion of medical records and charts, as well as the inadequate facilities for the provision of consultations, the lack of doctors in some directorates. In some of these institutions, medical visits were carried out beyond the 12-hour deadline set out in the standard procedures of the State Police.
- Problems with the installation of a monitoring system with observation cameras in corridors of escort rooms, security and interrogation facilities of citizens in some commissariats.

Cases of torture, ill-treatment and violence in police units and penitentiary institutions

Priority and rigorous acceptance and consideration of citizens' complaints against the State Police bodies for their physical violations in police units as well as the Penitentiary Police for the physical violation of detainees and convicts in penitentiary institutions, still remain a concerning issue, since violating the right to not be subject to torture, punishment or cruel,

⁵ More information about the security chambers can be found in Annex 3 of this report

inhuman or degrading treatment, constitutes one of the most serious violations of the fundamental human rights.

Cases of using violence by police officers to citizens are difficult to prove as well as certified. This is related to many causes and reasons, because they are carried out indoors, within the police premises, in the office, without external eyewitnesses, but even in cases where there is such, it is difficult for the convicts to stand against the police employees. Citizens are also afraid of revenge to denounce cases of violence, as well as lack certainty and trust in their prosecution by the judiciary. In order to enable verification of police violence, it is necessary that the complaint be made as soon as its consequences are still apparent and, in the meantime, an administrative investigation should be carried out in the country.

During 2018, the Ombudsman initiated a series of cases including the prosecution of the case made public in the media about the violence exercised by the employees of the Tirana Municipal Police, against the citizen N.B, on 18.04.2018.

In this context, an independent administrative investigation was conducted by the Ombudsman, following which a series of procedures were conducted. The explanations of the citizen N.B have been recorded in a minutes, who in turn has also filed an individual complaint at the Ombudsman's Institution. At the end of the administrative investigation of this case, the Ombudsman has recommended to the Mayor of Tirana, "... *the issuance of responsibilities with the purpose of preventing such actions in the future for the employees of the Municipal Police*", while the Prosecutor's Office of the Tirana Judicial District has recommended, "... *the commencement of investigations in charge of citizens, J.M, A.H and I.S, in the position of Tirana Municipal Police Officers, for the criminal offense of "Conduct of Arbitral Actions", conducted in cooperation, provided for by articles 250 and 25 of the Criminal Code*".

This case was received by the Prosecutor's Office and at the conclusion of the investigation and prosecution, it was sent for trial to the First Instance Court of Tirana, with the same evidence and arguments presented in the Ombudsman's Recommendation.

4.4 Respect for Human Rights by the Prosecution

In addressing the citizens' request / complaints for 2018, against the work activity of the Prosecutor's Office, it is ascertained that the prosecutors have a better understanding and implementation of the procedural criminal provisions following the amendments to Law No. 35 / 2017 "On some annexes and amendments to Law No. 7905, dated on 21.3.1995 "Criminal Procedure Code of the Republic of Albania" as amended, and Law No.36 / 2017 "On Annexes and Amendments to Law No. 7895, dated on 27.1.1995 "Criminal Code of the Republic of Albania" as amended. Another aspect to be mentioned is the pressure of expectation by prosecutors and judges to initiate procedures by the Vetting Commission.

The citizens' request / complaints to the *Prosecution Office for 2018 were 120, with an increase of 27 percent compared to 2017*. There are a variety of complaints about the violation of rights by the prosecution body in the criminal process, which reach up to 10 percent. In a grouped manner and according to the importance of violating the rights in the criminal process, citizens' complaints are presented as follows:

First: For unjustified delays in investigating criminal proceedings.

There are unjustified delays in investigations on criminal events that have been initiated on the basis of the case for high socially dangerous acts, which are largely prosecuted by the Judicial Police of the State Police. According to the answers provided by the Judicial District Prosecutor's Offices, the reasons for the delay in investigating criminal proceedings were: complexity of the case; compilation and late submission of expert acts of different nature;

failure to reply to the letter of arrest by the justice authorities of foreign states etc.; complex procedures that mobile companies have in order to make available the required data; assignment of the case prosecutor to another prosecution office etc. But in dealing with these complaints, we have concluded that there are subjective reasons for prosecutors, which have brought unjustified delays in the investigation of criminal proceedings.

Secondly: For unfair changes and arrest.

Regardless of the responses received from the Judicial District Prosecution Offices, we appreciate that prosecutors need to be more stringent in the correct implementation of Article 304, paragraph 1 of the Criminal Procedure Code to "*conduct investigations also for verifying the facts or circumstances in favor of the person against whom investigations are conducted*". While handling the case for the gathering of 31.03.2018 in "Rruga e Kombit" to oppose the fee set for the passage on this road, we found that the Judicial Police showed a lack of quality and responsibility in its actions, which consisted in recording the detention time of 23 people at the time of their locking in the security rooms and not when citizens were handcuffed in the apartment, which proved that the time of deprivation of liberty for each of them was before 2 hours and a half.

The prosecution body violated the rights of the detainees by counting as the time of detention the hour of execution of detention orders, which did not reflect the reality of the acts committed in this case. So, for the 23 detained people, the time and place of execution of their detention were incorrect and did not reflect what had actually happened.

The Prosecution Office made no effort to see and follow the correct implementation of the execution of the detention orders by the Judicial Police, thus affecting the procedural guarantees of the people under investigation.

From the study of detention orders, in the reasoning part, the proceeding body not only did not present any legal grounds for the detention of people, but also did not prove any condition for the existence of root causes for the risk of flight for each of them. Even in its request for the validation of the prohibitions and the imposition of the security measure, developed on 04.04.2018, the prosecution did not submit any evidence to prove the risk of escape for any detained person.

From the independent investigation of the Ombudsman and the conduct of the main trial at the detention hearing, it was evidenced that some of the detainees had no objective causes and reasons to ever think of escaping, i.e. there was no risk of escape, as the Prosecution Office claimed.

Thirdly: Failure to comply with the procedural provisions envisaging the rights of the parties to the criminal proceedings related to the failure to notify the manner of solving the criminal report or the conduct of the investigation, the citizens who have denounced the criminal offense, the failure to notify or delay the notification of the parties to the decisions taken by the Prosecutor's Office, especially the criminal offender, mainly in cases of non-initiation of criminal proceedings and in the omission of various acts seized during the investigation of criminal proceedings.

Until the entry into force of the Law No.35 / 2017, dated on August 1st, 2017, for the cases of suspending the investigation, the Prosecution most of the time did not notify or forward the respective decision to the parties, on the grounds that "this obligation is not foreseen in Article 326 of Criminal Procedure Code".

This right of the parties was recognized by the intervention of the Ombudsman's Institution, with the amendment to paragraph 3 of Article 326 of the Criminal Procedure Code, which states: "*The reasoned decision is notified to the victim or to the person who has made the denunciation, who can file an appeal within 10 days of receiving the information in front of*

the judge of the preliminary hearing. The appeal is reviewed in the counseling room within 30 days. No appeal is allowed against the decision "

Fourthly: On the non-return or delayed return of items, material evidence seized during the investigation phase.

Fifthly: Delayed issuance of the execution order of the criminal decision that has become final.

During 2018, 4 recommendations were made, which are as follows:

1. Recommendation dated on 13.02.2018 addressed to the General Prosecutor's Office *"Taking measures with the purpose of speeding up the investigation of the criminal proceeding no. 8775/2010, investigated by the Prosecutor's Office of the Judicial District of Durrës and the possibility of transferring the case to another Prosecution of the closest Judicial District, to conduct comprehensive and investigative investigations"*. The recommendation was partially accepted, by refusing to transfer the case.

2. Recommendation dated on 07.05.2018, addressed to the General Attorney *"On the initiation of the investigation on the criminal offense of "Conduct of arbitrary actions" against the citizens I.M, A.H, and I.S, employees of the municipal police in the Municipality of Tirana" against the citizen N.K"*. The recommendation was accepted and, after the investigation began, the case was sent to the court.

3. Recommendation dated on 05.02.2018, addressed to the Prosecutor's Office of the Judicial District and Police Station no.4 in Tirana, *"Taking measures for the return of the seized items to the citizens D.D, pursuant to letter no.7590, dated on 18.09.2017, of that prosecution"*. The recommendation was accepted, and citizens received their seized items.

4. Recommendation addressed to the Prosecutor's Office and the District Court of Kukës, dated on 19.04.2018, *"Concerning the handling of the rally case of 31.03.2018 in "Rruga e Kombit" for objection to the fee set for passing on this road"*.

4.5 Execution of the civil and administrative judicial decisions

The issue of respecting the principle of developing a fair legal process in the execution process of executive titles by the authorities charged with the law, for their execution, as a result of their non-execution within a reasonable time, has been and remains an issue of fundamental importance as it is related to the establishment, strengthening and development of a respectful justice system for all.

Failure to execute final court decisions in a reasonable time by the public administration bodies in the capacity of the debtor, remains a problematic systemic issue that violates the provisions of the articles of the Constitution of the Republic of Albania⁶ and the Civil Procedure Code⁷, as well as the principles under which the activity of the public administration bodies takes place.

In the process of reviewing complaints filed during 2018, with the object of not executing executive titles, the Ombudsman considers that as a cause of the failure to observe the right to a fair legal process, it is also noted the issue covered by Guideline No. 1 dated on 04.06.2014, of the Council of Ministers, *"On the manner of execution of the monetary obligations of the general government units on the account of the treasury"*, as well as the failure of the Ministry of Finance to approve the draft budgets of the debtor institutions, which also include the monetary obligations derived from court decisions.

⁶ Article 142/3

⁷ Article 451/a

The violation of the fundamental right to a fair legal process as a result of the non-execution of executive titles in a reasonable time, in the assessment of the Ombudsman's Institution comes from a number of other causes, among which we can mention:

- ✓ Lack of professional quality of judicial bailiffs, which appears in their actions and inactions during the execution process of executive titles.
- ✓ Denial of the civil and procedural legislation by judicial bailiffs.
- ✓ Execution of bailiff actions outside the scope of execution, as well as misinterpretation of the provision of the judicial decision.
- ✓ Lack of will or fear of judicial bailiffs, for the imposition of sanctions against the subject to the obligated person, by a final court decision, or against other people in the execution process, who refuse, irregularly perform, do not respect the deadlines, or perform the opposite of what is decided in the final court decision.
- ✓ Failure to perform correctly the execution actions as well as non-compilation of the acts in accordance with the competences given in the legislation in force. This situation is noticed especially in the issuance of acts for the seizure of the account, deposit, of the debtor party. Both the state and private judicial bailiffs issue acts of sequestration of the debtor's account, deposit, by delegating the power to "set the sequestration measure" to the third person, which turns out to be the second level bank or the branch of treasury.
- ✓ Failure to comply with the actions by the authorities mandated by law to execute the executive titles, which enable the fulfillment of the monetary obligation that the state institution is obliged to pay according to the final court decision.

The number of complaints registered during 2017 and 2018 is as follows:

During 2017, 24 complaints were filed against the State Judicial Bailiff's Service and 16 complaints against the Private Judicial Bailiff Service. During 2018, 32 complaints were filed against the State Judicial Bailiff's Service and 11 complaints against the Private Judicial Bailiff's Service. As evidenced, complaints against the State Judicial Bailiff's Service have increased, while those to the Private Judicial Bailiff Service are at a lower number compared to the previous year. On the other hand, it is noted that during 2018, the number of complaints to the State Judicial Bailiff's Service is three times higher than the number of complaints to the Private Judicial Bailiff Service.

Also, a problem identified in the previous years by the Ombudsman in the process of execution of the final court decisions, with the object of the obligation of the private debtor subject to pay certain amounts in cash, remains the official non-determination of the vital minimum of the individual. Under these conditions, in the case of conducting execution actions for the Bailiff execution of the executive title on the debtor's monthly income, situations arise in violation of his vital interests. The non-formal determination of the vital minimum leads to failure to execute Article 533 of the Civil Procedure Code⁸ by the Bailiff's Service.

The process of executing executive titles on real estates sequestered for the collection of monetary obligations is hampered by the failure of the Council of Ministers to issue a decision to determine the methodology for determining the value of the seized object from the Judicial Bailiff Service, in accordance with Article 7 and Article 11 of Law 114/2016 "On Annexes and Amendments to Law No.8116, dated on 29.03.1996, "The Civil Procedure Code of the Republic of Albania", as amended. Failure to issue this sub-legal act does not allow the

⁸Article 533 of the C. Pr. Code provides for the imposition of the sequestration measure on the debtor's salary without prejudice to the vital minimum, which to date is indefinite.

performance of execution actions in the process of bailiff execution of executive titles at the stage for which the bailiff will have to comply with the above-mentioned provisions of Law 114/2016.

Another issue which may and should be the subject of consideration by the Parliament of the Republic of Albania is also the determination of the housing rate as a thing on which the sequestration measure cannot be imposed in the execution of the executive titles.

The situation created after the expulsion of the indebted individual from the possibility of his housing, on the occasion of mandatory execution of the executive title, has created and creates premises for the extreme reduction of the standard of living for the indebted individual when he possesses the apartment along with his family. The category of indebted individuals, their families, who have been deprived of their ownership of the single real estate, i.e. their residence as a result of the execution of executive titles, has been and is exposed to the loss of the minimum standard for housing, aimed to achieve the social objectives of the state provided for in Article 59 of the Constitution.

With a view to ensuring the effective exercise of the right to housing, we consider that the social objective of meeting the needs of citizens with minimal housing, may and should find its expression as an inviolable object in the case of amendment to Article 529 of the Civil Procedure Code, as amended, providing for the exclusion from the seizure of the rate of accommodation that an individual must have in the dwelling.

Likewise, the question of determining the economic aid or the aid for the health treatment of the debtor as an item on which the measure of seizure cannot be imposed in the process of execution of executive titles, may and should be the subject of legislative scrutiny by the Parliament of the Republic of Albania. In the process of reviewing this issue, the Ombudsman's Institution has prepared and sent a recommendation to the Minister of Justice for amending Article 529 of the Criminal Procedure Code. Although recommendations have been accepted in principle, the adoption of the amendment initiative has not yet been completed.

In previous annual reports, the Ombudsman has brought to attention the issue of the execution of criminal court decisions, the fine of the subject, by the Bailiff's Service. Although we have considered and still consider the execution of bailiff actions for the compulsory execution of these criminal court decisions, not in accordance with the legal framework in force, we further conclude that the Bailiff's Service continues with the execution of bailiff actions for the collection of criminal fines, by illegally seizing the property of the convicted. Although this issue has been recommended by our letter Prot. no. K2/I40-9, dated on 22.02.2016, to the Minister of Justice, "Taking the initiative to change the legislation", the situation remains unchanged, although our recommendation has been accepted in principle. Acceptance in principle of this recommendation will need to be followed by the legislative initiative by the Minister of Justice.

Also, we bring to attention the fact that one of the state institutions that should give first the example of the execution of final court decisions, the Ministry of Justice, does not turn out to be in these positions if we refer to the case of execution of Decision no. 7023, dated on 16.09.2011, issued by the Judicial District Court, in Tirana. Specifically, although more than five years have passed since its final form, the ruling party has not yet achieved the rights it has earned.

The process of execution of the criminal, civil and administrative judicial decisions, as an integral part of the trial process, has carried and still carries the same issues as reflected in previous Ombudsman's reports.

4.6 Free legal aid

From June 1st, 2018, Law no. 111/2017, "On the State Legal Aid". This law sanctions the procedures for obtaining free legal aid and guaranteed by the state in the form of primary legal aid (providing legal information and counseling), or secondary legal aid (providing legal aid as well as defense in front of the court). This law has also provided for the creation of a special structure within the Ministry of Justice, which will be the Directory of the Free Legal Aid, a structure that will administer, coordinate and eventually identify the needs for changes and improvements in the system of the free legal aid.

The Ombudsman's Institution has administered only for 2018 about 54 requests / complaints by citizens asking for our assistance in obtaining free legal aid, guaranteed by the state. Regarding this issue, there has been an ongoing official communication between the Ombudsman's Institution and the Ministry of Justice to enable the proper orientation of citizens towards the structures that enable the appointment of a free lawyer. However, despite the institutional engagement of the Ombudsman's experts to clarify citizens on the legal path that they should pursue in order to benefit from free legal aid guaranteed by the state, it has been noted that there has been constant uncertainty over how to apply this law, and the procedure to be followed by citizens, who are often transferred from one institution to another, between the Ministry of Justice, the Courts and the National Chamber of Advocates. For this purpose, the Ombudsman's Institution has taken an active role in addressing and solving this problem, by requesting explanations from the Ministry of Justice on the implementation of the provisions of Law no. 111/2017, "On the State Guaranteed Legal Aid", concerning two issues: the establishment of the structure of the Free Legal Aid Directory and the drafting of the necessary sub-legal acts for the implementation of this law.

With regard to the first case for which explanations have been requested, i.e. the creation of a special structure at the Ministry of Justice, which is the Directory of Free Legal Aid, we have been informed that procedures have been initiated for the approval of this structure, cooperation with the Department of Public Administration and the Ministry of Finance and Economy.

Regarding the second issue for which explanations have been requested, that of the adoption of sub-legal acts aiming at detailing the procedures deriving from the implementation of the law no.111 / 2017, acts for which this law has stipulated that they should be approved in any case not later than 3 months after its entry into force, the Ministry of Justice has informed us that by order of the Minister of Justice, a working group of 6 experts has been established, which has drafted 13 bylaws on the initiative of the Minister of Justice, as well as a draft of the joint instruction of the Free Legal Aid Directory and the National Chamber of Advocates on the determination of the criteria of lawyers that will provide secondary legal aid guaranteed by the state. These acts have undergone a process of prior consultation with the Courts and key bodies that have consolidated contributions in this area, and the adoption of such acts is expected to be completed as soon as possible.

The Ombudsman's Institution will continue to monitor the issue of providing free legal aid in compliance with Law no. 111/2017, in cooperation with the structures charged by this law for its effective implementation.

4.7 The observance of property rights

The issue of property rights for the category of subjects whose property was expropriated without reparation, nationalized or confiscated after 1944, has undergone substantial changes with the entry into force of the Law No.133 / 2015 "On Property Treatment and Termination of the property compensation process". The legal situation foreseen in this law for the

treatment of property rights is an inappropriate approach to the respect of this right. The Ombudsman evaluated the legal situation of the property right from this law, not in accordance with some constitutional principles, an attitude which was accepted in the decision No. 01, dated on 16.01.2017 of the Constitutional Court, where it was decided to abolish points 3 and 5 of Article 6 of Law No.133 / 2015.

Meanwhile, in the absence of the necessary decision-making quorum, the Constitutional Court did not state the constitutionality of the provision made in letter "b" of Article 6 and in letters "a" and "b" of Article 7, of Law No.133 / 2015. Although the request for the repeal of these legal provisions has been filed by the "Property with Justice" Association at this Court, the Constitutional Court has for more than two years been unable to objectively review this request, as the necessary number of members of the panel is not completed. This deficiency constitutes one of the existing causes that affects the efficiency of those systemic mechanisms, which are created at the constitutional level as a guarantee for the observance of property rights as a fundamental human right, with direct consequences also in protecting this right.

The solution granted for the recognition of property in Law No.133 / 2015, relying on cash compensation according to the financial assessment provided in this law, not only does not respect the ownership right of the owner, but has damaged and still damages the interests of the Albanian taxpayers, who will have to continue paying very large financial bills.

Even though there have been identified thousands of hectares of land under the state law, enough to resolve the issue of compensation in a physical way, this issue under Law No.133 / 2015 is mainly addressed to be resolved by financial compensation. Failure to execute until today 26 thousand decisions with the right to compensation, given over the years by the Agency for Restitution and Compensation of Property Owners (ARCP), today the Property Treatment Agency (PTA) has still maintained this process in a declarative framework.

The issue of non-enforcement of court decisions as well as administrative decisions regarding the restitution and / or compensation of owners has been and still remains a systematic issue. Even though PTA has been ordered to pay the obligation in money as decided by the court, it drags their execution without any cause. The same situation is noticed in the process of the execution of decisions given by the European Court of Human Rights, with the Albanian State party, which must fulfill the obligations imposed on these decisions within the established deadlines.

The obligation provided for in paragraph 1 of Article 34 of Law No.133 / 2015 "On the Treatment of Property and the Completion of the Property Compensation Process" for the completion of the process of reviewing the files that were applied before the entry into force of this law and which have been under review at PTA, within a period of three years from the entry into force of the law, has not been fulfilled by the PTA.

The provision of Law 133/2015 on the obligation of PTA not to deal by decision the claims relying solely on a court decision for the certification of the legal fact of the property, Article 27/3 of Law 133/2015, comes in accordance with the provisions of the Administrative Procedures Code, and does not respect the right to a fair legal process or even the right to property.

Establishing a preclusive deadline for the right to seek property recognition by the interested parties, as provided for in Article 27/1 of Law No.133 / 2015 "On the Treatment of Property and the Completion of the Property Compensation Process", has been assessed by the Ombudsman in the sense and implementation of articles 41 and 42 of the Constitution, Article 1 of Protocol No. 1, Article 6/1 of the ECHR and Article 113 of the Civil Code as a

violation of the right of individual ownership or the right to conduct a fair legal process. There does not appear to be any justified reason which could legitimize the imposition of such a limitation.

In the activity of PTA, cases of non-execution of civil judicial decisions are found, in which it is imposed the obligation to perform a certain action or the obligation to hand over the cash compensation. Although civil court decisions have become final years ago, the PTA has not proceeded and still does not proceed properly to execute them.

The "loss" of files created over the years and administered by the PTA is another issue that has concerned and still concerns the proprietary subjects, forcing them to go to court to conduct a judicial process to establish the existence fact of the decision-making carried out by the former CRCP, the former ARCP, the current PTA.

Real estate's registration with surface discrepancies, from the area defined in the title of ownership is another thorny issue, which requires resolution. There are many irregularities and deformations found in determining the exact status of the property that it has become necessary to carry out an initial registration for all real estate at the country level.

Restrictions imposed by the DCM no.138 dated on 23.02.2018 *"On the temporary suspension of the follow-up of the procedures for transferring ownership of agricultural lands of Former Agricultural Enterprises to Agricultural Land Beneficiaries and the Registration of Land Acquisitions Act at the area of importance for the Strategic Investment Support Fund"*, are considered by the Ombudsman, not in accordance with the Constitution of the Republic of Albania and the international agreements. According to Article 17 of the Constitution, the rights and freedoms of the individual may be limited only by law and not by a decision of the Council of Ministers, as it has done with the issuance of Decision No. 138, dated on 23.02.2018. The Ombudsman also considers that, in the absence of a legitimate public interest, we are faced with a violation of the rights guaranteed in Articles 41/3, 42/1 of the Constitution.

In the process of reviewing complaints filed by various individuals at the Ombudsman's institution, it was ascertained that employees of the local real estate registration offices have displayed and exhibit irregularities in the exercise of the duties defined in the legal acts and by-law, in relation to subjects that require certain services. Setting different barriers for citizens leads to favoring corruption.

The failure to develop procedures by the responsible institutions for the implementation of the DCM no.608, dated on 05.09.2012, *"On the determination of the procedure for the transfer of ownership of real estates, established up to 10.08.1991, of their functional land, when there are no property gains, as well as for their registration"*, as amended⁹, until the entry into force of DCM no.442, dated on 18.07.2018 *"On the determination of the procedure for the transfer of ownership and registration of real estates, constructed until 10.08.1991 and of their functional land"*, is an issue that has violated and still violates the right of ownership of the individual. The non-prosecution of the state bodies charged with the implementation of the DCM in question, has impeded the effective implementation of the process of issuing the titles of property, pursuant to DCM no. 608, dated 05.09.2012.

Another issue ascertained in the process of registration of land acquisition acts is the non-compliance of the documentation on a regular basis, from the former land allocation commissions, in the countryside. This irregular proceeding, carried out particularly by the land allocation commissions in the countryside in the northeastern part of the country, has

⁹ This is due to the non-discharge by the Ministry of Finance and the Ministry of Justice of the joint instruction (Article 10, DCM No.608 / 2012) for setting the service tariffs in the process of obtaining the ownership title.

prevented the registration of property-acquisition acts for every agricultural family according to Article 196 of the Civil Code, as well as creating premises for property disputes between entities.

Responsible institutions have not yet been able to complete the documentation of ownership even though, the determination of the procedures for completing the property acquisition acts was carried out by DCM No. 253, dated on 06.03.2013, while the deadline was postponed year after year, until 31.12.2018. This created and inherited situation of 27 years requires the maximum commitment of the responsible institutions charged by law, for completing the documentation and sending them to the local real estate registration office. There are 500 thousand properties occurring in 359 cadastral zones, which are still not registered in the real estate registry of local offices.

An issue that is being pursued by the Ombudsman's Institution is the approval of DCM no.708 dated on 21.11.2018 *"On the registration and transfer to the administration of the ministry responsible for the tourism of some state real estate properties in the coastline of Vlora - Saranda"* .

This sub-legal act is published in the Official Journal No.171 of December 4th, 2018 and defines the transfer of responsibility to administer some of the state real estate properties in the coastal line of Vlora-Saranda, a territory which has long been very problematic with regard to issues that are related to the registration of real estates of various private entities. The issue of this area is mostly related to the inability to register at the competent Local Office for the Registration of Real Estates, of the Land Ownership Act for agricultural land, or other real estate property located on the Vlora-Saranda coastline by private interested parties, with the justification provided by the responsible state authorities that we are dealing with an "unmanaged area".

Under these conditions, the issuance of this DCM establishes a double standard in the treatment of real estate registration in this area, which in principle violates the fundamental right of property of entities possessing legal acts of ownership transfer by the state to them. The Ombudsman, since December 2018, has initiated the review of this act, which he does not consider to be in the respect of the fundamental right of property or the right to conduct a fair legal process.

Other issues, which are in our previous annual reports and have not yet found solutions, are:

- ✓ Failure to complete the process of initial systematic registration of property in those cadastral areas where it is decided on the recognition and restitution / compensation of the real estate;
- ✓ Extension of the process of reviewing self-declarations made by subjects who have completed the construction of informal facilities even though concrete deadlines have been announced for the completion of this process;
- ✓ Extension of the process of reviewing property titles, issued pursuant to Law No. 7501, dated on 19.07.1991 "On Land", etc.;
- ✓ Failure to create a unique, digital map that can provide property information;
- ✓ Failure to guarantee the execution of court decisions in the judicial system in the country, as well as the decisions of the European Court of Human Rights related to the right of ownership.

4.8 The Right to Health Care

During 2018, the Ombudsman's Institution has reviewed 87 complaints in the field of health. Of these, 7 have been cases with initiatives addressed by us. The object of the complaints was the non-conforming medical treatment, the bureaucracy regarding the waiting line in the QSUT, the complaints about lack of medicines mainly at the Oncology Hospital in QSUT, the lack of medical protocols, and so on. Out of the total number of complaints received for

80 complaints, the review is over, while the remaining 6 are under review. In the number of complaints reviewed, 30 complaints were solved in favor of the citizen.

In order to improve the quality and standards of treatment of patients in each hospital or health center, there should be permanent medications that are sufficient mainly in QSUT, Tirana due to the flow of patients from all over Albania. There are shortages carried year after year at the oncology hospital because of the specificity and the increase in the number of patients treated by this hospital institution in particular.

The lack of specialist doctors in regional hospitals across the country remains problematic over the years, and as a result the lack of services or equipment affects patients to find alternative ways of treatment, such as patient flow to the capital and QSUT. Problematic is also the lack of medical equipment, or the depreciation of existing equipment in regional hospitals, which further leads to the lack of quality and standard of medical service in these areas.

Referring to the most specific complaints reviewed for which 2018 recommendations were drafted, we would point out the Recommendation on *"Immediate measures to meet the needs of patients suffering from hemophilia and specifically to facilitate bureaucratic procedures and the continued guarantee of Factor 9 at the University Hospital Center "Mother Teresa", in Tirana*, a complaint addressed by the association of patients suffering from hemophilia.

Also, another case was the issue of the citizen D.XH who suffers from a rare illness not included in medical protocols, which has impeded an appropriate health and social treatment for this citizen. In this case, it is recommended to take the necessary and immediate measures for the introduction of medical protocols of fibromyalgia disease as an obligation of any state institution for the respect of human rights recognized by the constitution and special laws. Another case was a complaint filed by the association of patients treated with hemodialysis, which has recommended to the Ministry of Health and Social Support *"Consideration and early resolution of problems raised by patients treated with hemodialysis in QSUT "Mother Teresa"*.

Also, for the year 2018 in the field of health, the Ombudsman's institution was assisted by the USAID project *"Transparency in the Health System in Albania"*, whose aim is to improve health services through the support of the Government of Albania in its efforts in fighting corruption. Also, an important component of this project is the encouragement and co-operation of its independent beneficiary institutions such as the Ombudsman, the Supreme State Audit, the High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest, civil society and the media to fight corruption in health, but also for a better governance of the health system. An added value for the year 2018 in this project was the cooperation for the drafting of two Special Reports, one with a focus on "National Urgency" and the second with focus on "Patient Referral System in Cardiology and Cardiac Surgery", in QSUT, Tirana.

An innovation has also been the increase of the co-operation of the Ombudsman's Institution with associations that operate in the protection of patients' rights. Participation and organization of many roundtables, seminars and conferences has considerably increased the scrutiny of joint cases with these associations in respecting the rights of patients and addressing their concerns in responsible health institutions.

The Ombudsman through treating and addressing the complaints as well as the drafting of his recommendations aims at sensitizing the employees of the health administration for a qualitative and standard service to the rights of citizens whatever social category they belong to.

4.9 The Right to Education

Recent concrete efforts and initiatives for reforming education, require the involvement of many stakeholders for their realization. Every institution that is responsible for the progress of this system is required not only to recognize the situation and needs, but also to find the ways as well as determine the appropriate policy for improvement, as weaknesses of this system will directly affect the long-term stability and development of the country.

The efforts of recent years to have a common ranking / rating system for universities, besides accreditation, are useful, but should include all higher education institutions.

During 2018, the Ombudsman's Institution has reviewed 92 complaints in the field of education. Out of these 8 cases were cases with initiatives treated by us. The object of these complaints was mainly the exclusion from student study fees for student categories that come from the social classes in need, the lack of response from the Ministry of Education and Science, the administrative problems from university staff and administration employees, employment and claims for breach of equality to be employed by the portal "Teacher for Albania", etc. Out of the number of complaints, *a review of 80 complaints has been completed and 12 are still under review. In the number of complaints reviewed, 40 complaints are resolved positively.*

The main issues that our institution has dealt with in the field of education have been different, but those that have been most prominent have been the problems of students who come from social classes in need, who have had to face irresponsibility of the administration and not exclusion of them by halving the tuition fee by the Boards of Universities in the country. This issue has been increasing year after year since the entry into force of the Law on Higher Education and Scientific Research in 2015.

The Council of Ministers' decisions of 2017-2018 for *"On the determination of individuals that meet the admission criteria in a first cycle program, an integrated study program or a professional examination program from the annual tuition fee"*, brought the exceptions and wandering of many students from social classes in need, by the administration of universities.

During 2018, 8 Recommendations were made for some universities regarding consideration for the exclusion or halving of high tariffs in universities, of students coming from social classes in need. It is worth pointing out that in only two cases our recommendations have been taken into consideration, and concretely by the Faculty of Foreign Languages and the University of Medicine. Even the absence of the issuance of subordinate legal acts in implementation of the Higher Education Law No. 80/2015, is a problem raised by us. Despite the provision that these acts should expire 9 months after the entry into force of the law, there has been more than 3 years and they have not come out entirely.

Our institution is engaged in December 2018, also with regard to the student protest and the issues they address, which have been dealt with on our part since the entry into force of the Higher Education Law in 2015. Their problems have to do mainly with the high university fees, the conditions and infrastructure of their buildings and dormitories, the quality of teaching, the lack of policies for hiring young people after graduation, the inflation of diplomas, etc. All of these concerns are being pursued with utmost attention on our part in respecting the rights of students for a qualitative and dignified education.

An issue of extreme concern was the complaint from the "Quality Education Center" regarding the examinations at the end of the 9-year school. Given the concerns of many of the graduates regarding the decision on the inability to re-evaluate the tests and their right to file an appeal, they proposed the amendment of point 10, Article 24 of the Regulation of

29.12.2017 "On the development of the Matura State 2018 in the Republic of Albania", which prohibits the re-evaluation of the tests and the right of graduates to file an appeal. Regarding this issue, the Ombudsman's Institution recommended to the Ministry of Education and Sciences *"Taking measures to amend point 1, article 24 of the Regulation "On the Development of the State Matura 2018 in the Republic of Albania, which prohibits the right of appeal, following the informing of graduates on the steps they need to follow in order to complain."*

Cases treated initially by the Ombudsman's Institution were mainly cases made public in print and visual media related to conditions and infrastructure in various schools of the country, the lack of heat in the winter months or humidity as well as the lack of basic articles for the normal development of a classroom like desks, doors and windows, which continue to be a problem in many remote schools.

4.10 Environment and human rights

Following the concerns raised in previous years, the Ombudsman again notes the fact that the main problem that exists in the field of environmental protection is the lack of punishment or the very low fines provided for and imposed as administrative penalties for those individuals or entities that carry out a harmful activity to the environment and which impacts in a cleaner environment.

Given the public's sensitivity to a healthier environment, as well as regional and global initiatives being undertaken in the context of environmental protection and climate change, the Ombudsman's Institution has been very active in dealing with various cases on the initiative as well as rigorous consideration of individual cases and complaints filed by different individuals. Concretely, in 2018, 42 complaints were submitted to the public administration bodies charged with the law on environmental protection, as well as to promote cleaner and more environmentally sound surroundings and environment. Comparing this figure with the data of the previous year, it results that the Ombudsman has reviewed the duplicate of complaints that were dealt with during 2017, during which we had 20 complaints. This is mainly due to the fact that the Ombudsman's sensitivity and proactivity is increased in addressing and examining various cases with an initiative in the field of environment, but also the problems faced by individuals in different areas of Albania in terms of pollution and the risk to their life and health from various factors, the environment and the surrounding environment.

Specifically, for 2018, it turns out that the Ombudsman has begun the administrative review and has dealt with 11 initiated issues, almost quadrupling the number of cases initiated in 2017, in order to investigate and verify sensitive issues in this area, from which there are found actions, or inactions in violation of the legal provisions in force, which violate the right to a clean and healthy environment.

In this context, the issues initiated with the initiative regarding the alarming pollution due to the burning of hospital waste in Vlora, the pollution of the quarry site in the neighborhood "Gur i Bardhë" / Berat, the explosions of quarries at Bovilla lake, the pollution of the environment near Kserja river, in Upper flow of Dropull, the flow of gas at the Plant of Ballsh that caused the poisoning of the inhabitants of the area, the pollution of the environment in Porto Romano, as well as the implementation of the legal and sub-legal framework in force in terms of treating and processing further "bio" residues, by the local government structures.

From the verification and treatment of the above quoted complaints, it was consistently concluded that the cause of the continuation of environmental pollution is precisely the

failure of the state bodies charged by law to various entities that cause environmental pollution.

Summarized for 2018, the issues in the field of environment in Albania remain as follows:

- ✓ Air pollution in the major cities of the country, especially in Tirana, which is due to the increase in the number of cars in circulation and the reduction of green spaces, despite the modest projects of certain units of local government, or the structures of central power, for planting new seedlings, in areas that have high levels of pollution.
- ✓ Waste disposal in rivers and lakes, as well as pouring unprocessed wastewater into them.
- ✓ Urban waste collection in Albania and their recycling is not yet at the consolidated world standards. There is conducted almost no urban waste collection at the countryside.
- ✓ Forest cuttings and fires are the main causes for forest deforestation and eradication in Albania, thus damaging one of the valuable sources of conservation of acceptable environmental parameters.

4.11 The Right to Housing

The Ombudsman's Institution has played a proactive role in transmitting opinions and comments regarding the law adopted by the Albanian Parliament, no. 22/2018, "On Social Housing". We emphasize the inclusion in this law of our recommendation for the local government units, which should annually provide for in their social housing programs that, not less than 5% of the seats from each program, should be filled by families who declare that belong to the Roma minority as well as the design of new housing programs by providing a 100% funded rent bonus from the respective units for all families benefiting from the economic aid scheme and without any financial income.

During 2018, recommendations to local government units and the ministry responsible for achieving housing objectives were addressed to improve and create facilities or alternative shelters, especially for vulnerable groups and those in economic need.

The most pronounced problems identified by the Ombudsman regarding housing are:

- The lack of solution for homeless people who are poor and unable to afford the expenses of the part that is not subsidized by the local government or the soft loans;
- The housing of Roma communities' people, who in some cases have been forcibly displaced by their settlement centers; the dragging of procedures by state structures, etc.
- The inability of poor people to benefit from the low-cost housing program and their inability to afford this program due to too long and costly banking procedures applicable to this purpose.

The leased social housing program focuses on low-income families, but people living near or below the poverty line cannot afford this program. The smallest program is that of housing subsidies, while these programs are seen as a temporary solution to housing problems. Social housing programs need to be further expanded to meet the needs of vulnerable groups and should be reoriented to disadvantaged levels to meet the selection criteria starting from the poorest.

During 2018, 55 complaints from individuals, families and groups in need or in economic difficulties, have been reviewed by the local government bodies, regarding the failure to treat and solve the housing problem, compared to 77 complaints received during 2017.

Given the problems evidenced by the complaints that have been dealt with over the years in this area, it has been found that, mainly in rural areas as well as in the periphery of cities, there are a considerable number of families facing extreme needs for housing, since they are in conditions of total inability to pay and benefit from social housing programs, currently offered by local government in co-operation with central government. Meanwhile, from the treatment of these issues, it has resulted that this problem has been and still remains a major concern for the activity of the local government.

The Ombudsman, in the context of housing problem solving, has recommended to state bodies the drafting of a full legal framework aligned with international standards that responds to the effective implementation of the requirements of individuals and their families for housing, thereby ensuring the provision of a shelter for each category of individuals, families in need, or economic difficulties. It is also considered that the drafting of legislation should be accompanied by increased budgeting in this area as well as the support that central government should provide to local government bodies with social housing projects.

If we refer to statistics, with the exception of Tirana Municipality and any of the major municipalities in the country, that have managed to benefit projects from social housing programs, the other local government units lack the capacity to compete in these projects and have no financial opportunities to build social housing for the categories of families in need.

The Ombudsman, despite the problems encountered year after year, is aware that some local government units have financial difficulties for building social housing or for providing other programs, such as a social rental bonus.

4.12 Economic Aid

The official poverty of a state is clearly indicated by the number of individuals or families who are treated with economic aid, the definition of which in the Albanian legislation is:

"Economic aid is a timely and conditional payment that is given in the form of a monthly reward in ALL for the defined categories. Eligibility criteria for economic aid are assessed according to needs and consider the poverty situation, which is assessed jointly by providing clear, objective and transparent specific assessments as part of a rating formula."

In 2018, for the benefit of economic aid due to poverty, it started the application of the rating system through the electronic register, which is spread all over the country. The implementation of this electronic rating system, as provided for by the Ombudsman's Institution in the previous annual report, brought many problems. Suffice it to affirm that 30% of beneficiaries, including individuals and families with difficult living conditions, were excluded from this benefit, as evidenced during the first months of the year. It is worth mentioning the allocation of 6% of the economic aid block, that, after assessing the socio-economic situation of families excluded from the economic aid scheme, the decision shall be taken by the Municipal Councils.

However, if 30% of the beneficiaries were excluded from the benefit, the massive increase in economic aid was not reflected in a worthy value, to consider this as very dignified in providing the most necessary means to live, let alone its own purpose: eradication of poverty and reintegration into the society.

One problem that has been identified during this year was the lack of the right to receive financial compensation for the electricity costs of the category of people benefiting the economic aid from **the conditional fund for the economic aid block up to 6%**. Failure to comply with this right derives from the non-implementation of Guideline No. 5, dated on 17.02.2017 *"On the use of the conditional fund for the economic aid block up to 6%"*, as amended.

After our institutional intervention to resolve this issue, the Guideline no. 15, dated on 15.01.2019, "On an amendment and annexes to the Guideline no. 8 dated on 25.02.2015 "On the planning of funds for the economic aid", which was published in the Official Journal on 29.01.2019.

The Ombudsman's Institution has addressed *80 complaints from citizens this year compared to 36 complaints in 2017*, while the issues have been almost the same. Due to the increase in their number, as we pointed out above, there have been abnormalities that have caused the application of the rating system across the country.

The right to live, if we consider the amount of money benefited by individuals or families benefiting from the economic aid, is at risk! Failure to provide the Albanian state with a dignified vital minimum, the inability to provide many social care services without the possibility of providing adequate and affordable housing to be paid; clearly show what we said above.

Believing that the initiation of a new law on economic aid by the Ministry of Health and Social Protection for which is being worked on continuously, for which the Ombudsman's institution has contributed with thoughts and suggestions, will improve or eliminate many problems evidenced over the years.

4.13 The right to social security

The Social Insurance System in our country is the main social protection scheme in Albania. The pension scheme plays an important role in social protection and in the fight against poverty. *During 2018, the Ombudsman's Institution received 121 complaints, against 142 complaints dealt with in 2017.*

The problem raised in citizens' complaints is almost the same as in previous years. Specifically, citizens complain about the extent of the retirement benefit, failure to recognize the seniority at work, failure to provide the invalidity benefit by the Medical Commissions of appointing the ability to work, the failure to receive old-age pension supplements, the non-failure to recognize as an insurances period of non-political imprisonment years, non-response to requests for reconsideration of the old age pension or to reviewing appeals against decisions of the Benefits Branch of the Regional Social Insurance Directorates, unlawful interruption of the old age pension, failure to obtain copies of the documentation of the file of the pension, the denial of the right to benefit from supplementary pension, etc.

Generally, these complaints have highlighted that often the complainants, mainly for not denying the law, have not consumed the degree of administrative appeal at the Appeal Commissions at the Regional Social Insurance Directorates and at the Central Appeal Commission of the Social Insurance Institute. In these cases, our legal aid has been favorable to giving the citizen the opportunity to clarify his problem without entering into long-standing administrative procedures. We have directed this action to perform at a second moment if they are not satisfied and then to address the respective Appeals Commissions.

Also, by our Institution, a small work has been done to inform the citizens about the recent developments regarding the improvements in law no.7703, dated on 11.05.1993 "On social security in the Republic of Albania", for the impacts on their pension amounts. This is because of the fact that many citizens when addressing the Regional Social Insurance Directorates receive verbal and unwritten answers, by not clarifying their demands.

In the following there are some of the issues reviewed during 2018:

-Membership of Accident Victims in the execution of compulsory military service in law no. 10142, dated on 15.05.2009, *"On the Supplementary Social Security of Armed Force Military, the State Police Officers, the Guard of the Republic, the State Police Information Service, the Prison Police, the Fire and Rescue Police and the Internal Control Service Workers in the Republic of Albania"*.

After addressing this issue with the competent institutions, the Ministry of Defense in July 2018 responded that it would reactivate the practice launched in 2016, which provided for interference with Law 10142/2009, in order to find a legal solution for this issue. This issue will continue to be reviewed, as we still have no legal initiative to take on this case.

- *Additional allowance to the amount of the old-age pension of the people who have been provided with the Employee Status Certification of the Oil and Gas Industry.*

From the examination of this issue, we have concluded that failure to grant this right by the Regional Directorates of Social Insurance was due to the non-issuance of subordinate legal acts pursuant to law no. 8/2017 *"On the Status of Employees of the Oil and Gas Industry"*, as well as the incomplete interpretation of the eligible categories.

Following the intervention at the Ministry of Finance and Economy on this issue, in August 2018, we were informed that all the necessary administrative procedures are being prepared for the purpose of drafting, reviewing and approving sub-legal acts in the Council of Ministers.

- *Disapproval of the Miner Status.* This status is required because miners in Albania live in very difficult economic conditions, lower retirement age measures, many of the miners have died in charge of duty and the family should benefit from a special pension.

In response to our request to the Ministry of Infrastructure and Energy, we have been informed that with the Joint Order no.158 dated on 28.05.2018, a working group has been set up for handling and evidencing the problems with the pensions of former miners and drafting the Status of the Miner. The purpose of this working group is to determine the legal, economic-financial and social position, rights, obligations and limitations of underground workers, ensuring a special treatment for hard-skill workers in the extractive and processing industry.

- A considerable number of complaints have been the object of a low level of old-age pensions and have called for our institutional intervention for the recalculation of pension measures. After reviewing the complaints, we have recommended to the Regional Social Insurance Directorates, the recalculation of the old age pension measures. Our recommendations have been taken into account, making the corresponding recalculation of the pension. Some complainants have benefited from an increase in the pension provision and have been given the respective differences.
- The protection of immigrants' rights in the field of social security remains a legal obligation for the Albanian state, which should intensify efforts to sign bilateral agreements with the neighboring countries, Italy and Greece.

4.14 The Rights of People with Disabilities

During 2018, *131 complaints were filed and treated for this category. Compared to 2017 (30 complaints), it results that there is a significant increase in the number of complaints.*

The issues dealt with generally during this year were the same as in previous years, but the number of complainants increased. This is due to the lack of benefits from non-issuance of

secondary legislation for the implementation of laws and the failure to implement the legal and sub-legal acts by the public administration. Below there are some of the issues addressed this year:

- *Regulation of the legal obligation of the employees to implement the legislation on employment of people with disabilities.*

Article 15 of Law No. 7995, dated on 20.09.1995 "On Employment Promotion", as amended, states: "Every employer employing more than 24 employees is obliged to employ a person with disabilities for every 25 employees of its staff".

While in its Article 16, it is explicitly stated: "3. An employer who does not employ the recommended number of people with disabilities as indicated in section 15, is obliged to pay in a special account to the National Employment Service Fund an amount equal to the minimum wage for each month and each person with disabilities that he should have employed, but that did not do so. These incomes are used to create jobs for people with disabilities. 4. The Council of Ministers shall lay down the rules for the implementation of the preceding paragraph of this Article."

There is a legal vacuum for employers to enforce this legal obligation. There is no legal regulation of the existence and administration of the National Employment Service Fund. It has been mediated by the Ministry of Finance and Economy to enable the establishment of the National Employment Service Fund as well as employers to respect the legal obligation for the employment of people with disabilities.

In response to our request to address this issue, we have been informed that the Ministry of Finance and Economy has drafted the "On Employment Promotion" bill, which is currently in the process of being approved by the Council of Ministers. In this draft law, there are also defined the rules of depositing to the National Employment Fund, the obligation of employers who do not employ people with disabilities.

- *Failure to benefit the supplement to the amount of disability pension, as a disability benefit.*

On the part of the Administrative Unit, the supplement to the invalidity pension as a disability benefit is not granted one month after leaving the commission, but it is given one month after the submission of the Type Certificate received from the Regional Social Insurance Directorate. After reviewing the complaints, we have addressed to the Administrative Units to provide this payment one month after the commissioning, a recommendation that was not taken into consideration.

Finally, as for the cases when commissioned for the first time or even when the work invalid changes his dwelling, the draft-Joint Guideline "On Amendments to Instruction No. 1406 dated on 30.07.2018" was prepared by MSHMB "On defining the procedures and documentation necessary for the granting of benefit pursuant to the Decision of the Council of Ministers No. 869, dated on 18.06.2008 "On the implementation of the Law No. 7889, dated on 14.12.1994" On the Invalidity Status", which was sent for opinion and co-ordination at the Ministry of Finance and Economy on 14.12.2018.

- *Failure to benefit the compensation for urban and interurban transport costs for people with disabilities and people who benefit from the status of the blind.*

Although in their specific laws, it has been determined that the measure and procedures of this benefit are determined by a decision of the Council of Ministers, there is no sub-legal act to regulate the situation of these beneficiary categories. From the correspondence on this issue, the Ministry of Health and Social Protection in response to our request, has informed that it will set up an interagency working group to determine a compensation or subsidy

formula, measure, financial impact and preparation of the project - decisions, which will be consulted and with interest groups.

- Failure to grant the right to benefit 200% of the amount due to blindness for the period of February-May 2018 of the category of people who have attended the second level of advanced computer course.

On this issue, which resulted from the misinterpretation of point 1 of the Guideline No. 47 dated on 11.01.2018 on some annexes and amendments to the Guideline No. 2356 dated on 26.11.2008 "On the Implementation of the Decision of the Council of Ministers no.277 dated on 18.06.1997 "On benefits from the Status of the Blind", as amended, relating to the replacement of the term "*qualification course*" with "*vocational training course*".

From the examination of this case, as this substitution in this act was made for the unification of terminology with the legislation in force in the field of employment and vocational training and was not intended to limit the rights acquired by disability groups, we addressed to the Municipality of Shkodra and the Administrator of the Administrative Unit for issuing double payment due to blindness. Upon receipt of the complaint, the complainants benefited from their legal rights.

- Non-profit hygiene-sanitary package of people who benefit from disability and work invalids.

According to the legislation in force, only paraplegic and tetraplegic invalids benefit an additional charge of ALL 16000 (sixteen thousand) per month to cover the necessary package with special hygienic-sanitary materials.

Given that for a particular category of invalids and disabled people who are declared invalids with the decision of KMCAP, but who need to benefit from the hygiene and sanitary package, there is no legal provision to regulate their situation, we addressed the Ministry of Health and Social Protection and the Ministry of Finance and Economy.

In response to our requests, in December 2018, we were informed that:

"The Ministry of Health and Social Protection is reforming the disability assessment system, based on the international standards of the World Health Organization (WHO) and the United Nations (UN) Convention on the Rights of People with Disabilities", moving from medical assessment to bio-psycho-social assessment. This reform will support individuals with payments and services in order to integrate into social life. The hygiene and sanitary package will be beneficial to all those people who are in need of this package and regardless of the diagnosis or status they have."

- Failure to obtain a disability pension for the category of people who have not been employed in the last 5 years of age, even though they meet the medical criteria.

Law no. 9355, dated on 10.03.2005 "On the Social Assistance and Services", article 4, point 3, stipulates: ".3. "*Disabled People (DP)*" means an invalid with impaired ability as a result of physical, sensory, psycho-mental intellect, born or acquired during life by accident, temporary or permanent illnesses, which do not derive from employment-related causes."

Although there is a Cooperation Agreement between the State Social Service and the Social Insurance Institute¹⁰, where the categories to be commissioned in the State Social Service

¹⁰ Cooperation Agreement between SSS and SII no. 556/1 dated on 11.03.2015 and the Instruction of the General Directorate of the State Social Service of Tirana, where it is cited that: People whose work ability has been restricted due to illness that is not due to employment, are instructed that: 1. People who have only

Disability Scheme have been defined, the above-mentioned law clearly states that there are no restrictions on people claiming to benefit from the disability payment, where disability is not related to employment reasons. Currently, we have addressed this problematic to the General Directorate of the State Social Service and we are waiting for their answer.

- Failure to obtain reimbursement for the purchase of fuel and lubricant oil for invalids who have motor vehicles in use, who are declared with a disability group after 2011.

Specific Laws for people enjoying the status of work invalidity, of paraplegic and tetraplegic invalids as well as the blind status¹¹, entitle these categories to benefit from the reimbursement of fuel and lubricant purchase costs for motorized means adapted to them. Those invalids who have benefited from this right before 2011, continue to benefit from this, while the other invalids who have been equipped with motor vehicles after July 2011, do not receive this reimbursement.

With the entry into force of law no. 10458 dated on 21.07.2011 "On some amendments to law no. 9975 dated on 28.07.2008 "On National Revenue Taxes", invalids are excluded from the obligation to pay only the car tax, but are not granted the right to receive the relevant reimbursements.

We point out that none of the sub-legal acts implementing the specific laws for the above categories for the benefit of this right, has been abolished or altered. All this situation as well as the penalty have come as a result of non-implementation of the law.

Following the ongoing review of this problem, we have been informed that the Social Insurance Institute is cooperating with the Ministry of Finance and Economy to resolve the requirements of this category.

Regarding the lack of construction suitability, a recommendation was sent to the Director of Health Center in Kukës for taking measures for the realization of construction suitability for people with disabilities as well as to the Director of Shkodra Regional Hospital for the realization of the ramp suitability at the main entrance of this hospital. Recommendations of the Ombudsman's Institution were taken into consideration and implemented.

It should be emphasized that the free movement of people with disabilities is a prerequisite for the full inclusion in society. In this context, there is a fundamental importance to access to physical, social, economic and cultural environments.

4.15 Children's rights

The activity of the Ombudsman's Institution for the children's rights during 2018 has continued to be intertwined in two main functions, namely the protection and promotion of children's rights. The focus of the work was to increase the visibility on the ground, to

military years, but have never worked, although the military is known as a contribution. 2. People who do not have one year of employment, but have voluntarily contributed for a time. People who have never worked, but the high school is known as seniority. People who have worked in the cooperative. All of the above cases will be commissioned in the SSS's Disability Scheme."

¹¹ Law No. 8098 / 28.03.1996 "On the Status of the Blind", as amended

Law No. 8626 / 22.06.2000 "Status of Paraplegic and Tetraplegic Invalids", as amended

Law No. 7995 / 20.09.1995 "On the Status of Invalids", as amended

address the most sensitive issues of children's rights, and to prepare and publish promotional materials, enabling children to be involved in decision-making.

In the system of registration of cases dealt with during 2018, *on the Ombudsman's initiative, 94 cases were addressed, with the object of children's rights*. Regardless of the number of complaints / requests addressed, we note that many of the complaints dealt with have been targeted to a certain number of individuals-children, but we can say that a larger number of children have benefited from their treatment and relevant recommendations. In this regard, *around 145 complaints / requests and cases on initiative*, dealing with violation of children's rights by acts and inactions of public administration bodies have been addressed. Out of the total number of cases handled in the census system, they received positive solutions, and *68 cases were clarified, with about 25 of them having been completed with recommendations*.

The Ombudsman enjoys the legal title for monitoring the respect of the rights of people deprived of their liberty, including minors. And in these cases, the Ombudsman's institution has submitted recommendations or proposed measures to improve the situation in violation, which are part of the monitoring work by NMPT¹².

Initiative cases, dealt with during 2018, have been extracted from various publications in print and visual media. Mostly, the common object of most of them was the social problems, the treatment of families with many children, both from the economic aid system and social care services, as well as cases of juvenile abuse. Through the handling of initiated cases, the correspondence exchanged with representatives of the central and local government¹³ have aimed not only at solving mediated problems, but also in promoting and inciting the culture of respecting the rights in the implementation of the highest interest of children, in accordance with the legal obligations deriving from the legislation in force in the area of rights and protection of the child.

During the exercise of the activity of the Ombudsman's Institution in 2018, for all the cases reviewed and addressed, a number of issues are identified, and we appreciate that the challenges for the implementation of the legislation on the protection of children's rights are related to:

- ✓ Realistic budgeting needed, based on the perspective of children's rights;
- ✓ Establishing new services in pursuit of the dynamics of children's needs;
- ✓ Designing comprehensive social policies at the local level, based on a precise database on the number of families in need, as well as the categories of children with social problems;
- ✓ Consolidation of responsible state mechanisms that ensure the effective implementation of the supervision, promotion and protection of children's rights, as well as the creation of an integrated child protection system;
- ✓ Lack of specialized services for sexually abused children;
- ✓ Lack of trained and qualified staff for the identification, referral, protection, investigation and reintegration of victims, sexually abused children in all areas of activity of relevant bodies in education, health, police, child protection structures at the local level, etc.;
- ✓ Lack of professionalism in written and visual media, complex and delicate cases of sexually abused, neglected or abused children, minors in conflict with the law, victims

¹² There are 10 inspections of the Mechanism against Torture, including the rights of juveniles in conflict with the law.

¹³ Child Protection Units at Municipalities; Ministries (Health and Social Care, Justice, etc.); State Social Service; The Directorate of Prisons, etc. Meanwhile, the Torture Prevention Unit has its correspondence mainly with the Directorates of institutions for the deprivation of liberty, Probation Service, Police Commissariats, etc.

and / or witnesses, regarding the protection of private life and preservation of confidentiality, in accordance with the legislation in force.

Unlike 2017, in 2018, the promotion of children's rights by the Ombudsman's institution was realized as a process with the participation of the children themselves, who have recognized and developed their rights, being also the main contributors towards awareness and advocacy of all society for these rights.

The Ombudsman's Institution, through awareness raising campaigns, has implemented the guideline "*On the cooperation of the Ombudsman's Institution with children and the civil society*", where the instruments proposed by the children themselves have enabled the increase of the cooperation of the Ombudsman's institution with them and the civil society.

Drafting of the document "*Standard Package, Child Participation in Service Evaluation*" as a working methodology during the inspections to be carried out by the Ombudsman's Institution to guarantee the participation of children during the evaluation process of state institutions, which provide public services for children, is a significant indicator that proves to be a safe step towards fulfilling international principles and standards, the most important principle being "the right of children to be heard and to be part of decision-making processes", where their opinion and voice will be heard even more.

The Ombudsman's Institution has partnered with the "Youth Group Voice 16+ " (supported by Save the Children). This key instrument served to lobby and advocate, in partnership with children and the civil society in the Assembly of the Republic of Albania, the findings of the report "*The Voice of the Youth 16+ in Albania*", which is a study on the assessment of the views of children, regarding their issues as defined by the CRC.

Within the days marked in the field of children's rights, the Ombudsman's Institution has implemented a number of promotional activities, such as:

- "*Stop to child labor exploitation*" in the framework of the *International Day Against the Economic Child Abuse*, organized in the Municipality of Bulqiza, in order to raise awareness of society and state institutions through the active identification of child labor exploitation cases, as well as prioritizing each case of the exploited child and taking concrete actions to remove the child from the economic exploitation situation. The special report on "Children's work in the Municipality of Bulqiza" was drafted, specifically for the protection of children from economic exploitation, which poses risks to physical and mental health, for the comprehensive well-being and development and undermines their education.

The purpose of this report was not only to ascertain and record the current state of the level of implementation of the functional duties of the institutions at the local level, namely the Prefect, the Municipality of Bulqiza, the Child Protection Unit, the Regional Educational Directorate, the Regional Directorate of Employment, Regional Labor Inspectorate, the Regional Directorate of the State Social Service, the Regional Directorate of Taxation, the Police Commissariat of Bulqiza, as well as providing recommendations to these responsible institutions.

- "*Together in the Name of Love*," as part of Mother Theresa's Day of Sanctification, in order to promote the values of Mother Teresa and Janusz Korczak, who provided services in the name of love for the protection of children's rights, by consolidating this value with children to children.

"*Beyond the clichés – celebrating together with children with disabilities*", in the framework of the end of year 2018, where the Ombudsman's Institution organized in the premises of the institution an activity with children with disabilities receiving social residential care services.

The positive aspect has been the cooperation with the state institutions, especially in accepting the recommendations addressed, but the implementation of the recommendations

received remains a challenge. From the inspections carried out in the institutions of education of children with disabilities and the Child Protection Unit (municipal case management structures), the lack of capacities (human resources) and the limited financial possibilities that led to governance local authorities not to respond to the demands for setting up new services in pursuit of the dynamics of children's needs.

Also, there are problems of lack of coordination and institutionalization of cooperation between local government, NGOs and other state structures. It is noted that the knowledge about the implementation of children's rights in everyday practice is still limited with the training that is provided from time to time by various organizations. Institutions should work every day to strengthen the system of denouncing and referral of cases.

The 2018 innovation was the publication of the Report of the Commissioner for Human Rights in the Council of Europe¹⁴, Mrs. Dunja Mijatovic, after her visit to Albania on May 21st – 25th, 2018. Regarding the issues of protection of children's rights, the conclusions of the High Commissioner are fully in line with the findings and recommendations that the Ombudsman has issued in the annual work reports, special and public reports, as well as in promotional activities and public outreaches in the print and visual media.

The findings and recommendations of the Report of the High Commissioner for Human Rights in the Council of Europe have served as a guide in our work for the drafting of valid recommendations for state administration institutions, but not only.

This is because the human rights of children (violence against children, children without parental care, juvenile justice, the right to inclusive education, focusing on Roma children and children with disabilities), stateless people, the rights of people with disabilities (accessibility, the right of people with disabilities to independent living and their involvement in society), as well as the issues of free legal aid, constitute the object and priorities of the activity and mission of the Ombudsman's Institution in the future.

CHAPTER 5

¹⁴ Report of the Commissioner for Human Rights in the Council of Europe, Mrs. Dunja Mijatovic, dated on 13.9.2018.

Other institutional engagements

5.1. Special report on the issues related to the implementation of the construction project of the road segment "Tirana's Eastern Ring Road", in the area of Shkoza.

Based on the announcement made in the media in September 2017, the Ombudsman has initiated an initiative to review the problems related to the implementation of the project for the construction of the road segment "Tirana's Eastern Ring Road (Lot III), (Laying of Lana River and the construction of parallel roads, the New Maternity segment, Tirana's External Ring Road)". Meanwhile, 9 individual complaints and a petition-complaint on this issue were reviewed in parallel. After our administrative review, we have ascertained the following main findings:

5.1.1 Expropriation process in the Shkoza area, with beneficiary subject to the Albanian Road Authority (ARA).

After our preliminary requests to ARA, the latter with letter Prot. no. 6988/1 dated on 21.09.2017, informed us that field work was ongoing for the identification of the assets that were affected by the implementation of this project and would then be followed by completing and submitting to the Ministry of Transport and Infrastructure (MTI) the request for expropriation (additional), where all private property that would benefit expropriation, would be treated under the legislation in force. Even after the new request for explanation addressed to this public body, in response to a delay of more than 2 months, the ARA continued to emphasize the fact that it had completed and sent to the MTI the "Request for Expropriation" (additional), with Prot. no. 1464 dated on 23.02.2017, where there are treated the private properties, "field" and "land", as confirmed by the Local Registration Office of Real Estates. In the following, it is submitted through letter no. 9053 dated on 10.11.2017¹⁵, the request for expropriation at the Ministry of Industry and Energy (MIE), for 49 properties, respectively of the type "field", "land", "building" and business objects, with a total value of ALL 614 591 261.1¹⁶. We were also informed that two payments were made in the amount of ALL 24 296 791, pursuant to DCM no. 557 dated on 27.07.2016¹⁷.

The ARA also claimed that only 5 owners had submitted the documents for compensation under the law at the amount of ALL 20 716 102, for which the payment procedure was ongoing. These payments were not yet executed, *as there was a lack of funding* that they were waiting for. This justification given is not grounded legally, as according to the legal provisions in force, the payment fund must be insured before the expropriation begins.

In accordance with the provisions of Law No. 8561, dated on 22.12.1999 "On Expropriations and the temporary use of private property for public interest", as amended, we have evidenced that:

- For some assets affected by the implementation of the project, the Decision of the Council of Ministers (DCM) No. 557 dated on 27.07.2016 "On the expropriation, for the public interest of owners of real estate, private property affected by the road segment construction "Tirana's Eastern Ring Road (Lot III)". Meanwhile there was an ongoing work for an additional "Expropriation Request", where other properties¹⁸ were expected to be affected by

¹⁵ This letter appears to be sent after the first request for explanation sent to the ARA by the Ombudsman, requesting information on the procedures that ARA carried out in Shkoza.

¹⁶ This letter has been sent attached and administered by us.

¹⁷ Pursuant to DCM 557/20156, the total value of the expropriation for the "land" and "forest" assets is ALL 253 220 184 (two hundred fifty-three million two hundred and twenty thousand one hundred and eighty-four), and will face the 2016 budget, approved for the Ministry of Transport and Infrastructure, the item "Expropriation" planned for the Albanian Road Authority. However, it should be emphasized that the implementation of this DCM cannot be carried out without adequate funding coverage, otherwise we may be in the condition of consuming the criminal offense of "Abuse of Duty".

¹⁸ Specifically, there are 49 properties of land, land, buildings and business objects totaling ALL 614 591 261.1.

the implementation of this project and their inclusion in the expropriation process was required. This additional procedure for submitting a request for expropriation on our part was judged as ungrounded and very problematic for the legal situation of the owners whose ownership was affected, while the National Territorial Defense Inspectorate (NTDI), Tirana interfered in the project implementation area, for the demolition of several buildings.

- Owners possessing regular property documentation had not yet benefited from the expropriation value, although law no. 8561, dated on 22.12.1999, provides for necessarily the completion of the expropriation procedures and then the continuation of the implementation of the public project. In these circumstances, the legal situation of the treatment of the occupants possessing these properties became more unclear, while the collapse of some housing under these conditions had also occurred.

- DCM No.557 dated on 27.07.2016 does not explicitly specify the term and manner of payment for the expropriated owners, for the owners of properties that are depreciated, as well as for third people compensated for their property rights. Likewise, no deadline was set for the commencement and termination of the expropriation, as well as the timing and completion of the works for the project or for the realization of the purpose of the expropriation.

In this context, we have noted that, considering the lengthening of the compensation procedures of residents for the purpose of expropriation and other additional property verifications affected by the project implementation, this expropriation procedure became invalid according to point 3 of article 26, of Law 8561/1999, as amended. This invalidity can also be assessed in the framework of meeting the criteria set out in point 1 of Article 26 of Law no. 8561/1999, as amended.

The Ombudsman emphasizes the fact that the manner of guaranteeing and protecting the ownership rights of expropriated citizens should be developed through a regular legal expropriation procedure, taking into account the full liquidation of the expropriation value of the subject as well as the determination of a closing time of this process within the shortest and most reasonable time, as part of a regular administrative process. Compensation payment may be subject to postponement or installment payment, but in no case people shall have to and may lose the right to enjoy the object without fully paying the compensation.

5.1.2 Construction demolition in the Shkoza area, in Tirana, under the project "Tirana's External Ring Road", Lot III. The activity of NTDI and ALUIZNI.

In order to verify the legality of the activity initiated by the NTDI, the institution of the Ombudsman for demolishing the constructions in the Shkoza area, has officially addressed several state organs and institutions for providing information or explanations. ALUIZNI's activity was also analyzed.

- In document Prot. no. K3 / I39-3 dated on 15.09.2017, ALUIZNI requested from the General Director, information about subjects who have self-declared informal legal constructions in the area of Shkoza in Tirana as well as the availability of official acts issued for each self-declaration subject.

The availability of the information requested by ALUIZNI has been partial, since only copies of decisions on disqualification of constructions from the legalization process as well as copies of official notices sent to each person, were made available. But there was a missing copy of all the acts administered by ALUIZNI in specific files created on the basis of the self-declarations of any of the subjects affected by the implementation of the project.

- With document Prot. no. K3 / I39-2, dated on 15.09.2017, it was requested from the Chief Inspector of the NTDI, making available all official acts issued for each subject whose

constructions were designated as facilities subject to demolition by the NTDI, in the area of Shkoza, in Tirana.

The Chief Inspector of NTDI, with letter Prot. no.3498 / 3, dated on 25.09.2017, has informed us that the actions for the demolition of the constructions, are in support of the request of ARA, (addressed to NTDI with letter no.5736, dated on 12.07 .2017), where it was required the release of the construction site. We have been provided with copies of administrative acts issued only for an offender whose construction was destroyed on 20.09.2017. After more than a month from the repetition of our request, the Chief Inspector of NTDI, with letter Prot. no. 3911/1, dated on 18.10.2017, sent to us copies of the issued acts against 50 subjects, 43 of which are sanctioned by a decision to demolish the object.

From the examination of individual complaints to interventions carried out by the NTDI, it has resulted that the procedure of notifying the respective subjects of the verbalization process of the offense has been carried out in violation of the legal provisions in force.

The failure of the NTDI branch in Tirana has resulted in the conditions provided for by Law No. 8510, dated on 15.07.1999 "On the extra-contractual liability of the public administration bodies", as amended, since it has actually caused damage to the possessors of already collapsed buildings in terms of handling these issues in contravention of the legal provisions in force.¹⁹ In these circumstances we have recommended the Chief Inspector of NTDI on two occasions; *"The initiation of administrative procedures for the compensation of damage caused to the respective subjects as a result of the intervention by the NTDI for the demolition of their dwellings, contrary to the provisions of Law No. 8510, dated on 15.07.1999" On the extra-contractual liability of the bodies of public administration", as amended.*

- With letter Prot. no. K3 / 19-19, dated on 24.10.2017, we have addressed to ARA, for making available a copy of the respective Decision, for the approval of the project *"Tirana's External Ring Road", Lot III (Laying of Lana River and Construction of Parallel Roads, New Maternity segment, Tirana's External Ring Road)*, as well as a copy of letter Prot. no. 5736, dated on 12.07.2017, which ARA has sent to the NTDI.

Despite the copy of the Decision on the approval of the project *"Tirana's External Ring Road" Lot III*, we have been sent a copy of Decision no. 89, of the Technical Council of ARA, administered by him with letter Prot. no. 10369, dated on 15.12.2016, with the object: *"Construction of Tirana's External Ring Road, the Northeast part (the Segment "Kthesa e Saukut" – "Bregu i Lumit")*, Lot 3"²⁰. Under these conditions we have repeated our request for sending a copy of the Decision for the approval of the project. ARA with the letter no. 9315 / 2 dated on 30.11.2017, sent us a copy of the Decision of the Technical Council of the Albanian Road Authority dated on 20.02.2013, "On the examination of the project implementation of the facility "Study-design, Construction of the Tirana's External Ring Road, the continuation of the road that goes from Sauk turn – eastern part, north-east, northern part of Tirana - to the vicinity of the Kamza turn (AMC offices). So, despite our requests, we did not send a copy of the Decision to approve the project, and we have not been given any explanation for this fact.

¹⁹ Article 3 / a, of Law No. 8510, dated on 15.07.1999 "On the extra-contractual liability of public administration bodies", as amended, which states: *"The state administration bodies are responsible for damages caused to natural or legal persons, in the following cases: - When performing unlawful actions or inactions"*.

²⁰ In the content of Decision no. 89 of the Technical Council of ARA, administered by him with protocol no.10369 Prot dated 15. 12.2016, expressly states that: "The ARA Technical Council, meeting on 14.12.2016... reviewed the materials with the proposals for amendments / improvements / modifications / precisions and additions to the project - estimate of the facility "Construction of the Tirana External Ring Road, the North-East part (the Sauk Curve segment - the Lumi River), Lot 3. Similarly in the section of this clause the decision in its first point is expressly stated: "To approve in principle the contractor's proposals approved by the supervisor of the works for clarification, alterations / modifications, improvements and additions to the project-budget, and additional works in the facility" Construction of the Ring Road Exterior Tirana, Northeastern part (segment Sauk - Bregu i Lumit), Lot 3".

- Failure to complete the respective administrative procedure for reviewing self-declarations and issuing a final decision by ALUIZNI in the legal deadlines set by the applicable legislation.

From the documentation made available by ALUIZNI, it turns out that the possessors of informal constructions occurred in the area where the project was being implemented, have made a self-declaration for legalization, from 2005 until 27.06.2014. If the administrative procedure for reviewing the self-declaration for legalization would take place, within the legal deadline provided for by Article 49²¹ of Law No. 8485, dated on 12.05.1999 "Administrative Procedure Code of the Republic of Albania", since Law No. 9482, dated on 03.04.2006 "On the legalization, urbanization and integration of illegal constructions", as amended, does not provide for deadlines for the completion of this procedure, the legal status of constructions in Shkoza would be different from what is presented today.

- From the reviewed complaints about the progress of the process of legalization of constructions in the area of Shkoza, in Tirana, we have also found on several occasions that ALUIZNI has conducted legal proceedings in connection with a contract for the transfer of ownership of the construction parcel, as is the case the complainant H.L, who has entered into the "Contract for the Transfer of Ownership of the Construction Parcel", with ALUIZNI, the Regional Directorate, in Tirana (with No. 3792 Rep, no.1491 Kol, dated on 04.06.2009, edited in front of the Notary M.SH). This contract is concluded in compliance with the criteria set forth in Article 39 of Law no. 9482, dated on 03.04.2006 "On legalization, urbanization and integration of illegal constructions", as amended, and paragraph 1, point 2, letters "a", "b" and "dh" of DCM no.438, dated on 28.06.2006 "On the determination of the applicable criteria, procedures and documentation, to qualify buildings under construction, whether legalized or not," as amended.
- Five years later, ALUIZNI, with Decision No. 90, dated on 17.11.2014, has ruled the exclusion from the process of legalization of informal object in possession of the subject H.L. This decision is unlawful, as under the terms when the contract for the transfer of ownership of the construction parcel is concluded between ALUIZNI and the interested entity, then the construction parcel is considered to be owned by the entity. This subject should therefore be expropriated.
- It is evidenced the fact that for some construction parcels there has been approved their transfer to the possessors' ownership, in accordance with the provisions of DCM No. 125, dated on 17.02.2010 "On approval of the transfer of ownership of some construction parcels in favor of possessors of informal objects". Although this decision of the Council of Ministers is in force, its implementation has not been carried out to date by ALUIZNI as a public body with this legal obligation.

5.1.3 The situation of forced eviction

From the data obtained, it was estimated that some 169 buildings-constructions would be affected by the implementation of the project. Based on this fact, we have addressed to ARA and the Municipality of Tirana for information on the unsuccessful measures taken to resolve the housing problem of the families affected by the project implementation.

Based on the reply of the ARA with letter no.8294 /1 dated on 26.10.2017, and the submitted documentation attached to this response, it results that, DCM no.557 dated on 27.07.2016 "On expropriation, in the public interest, of owners of real estates, affected by the construction of the road segment "Tirana's Eastern Ring Road (LOTI III)", provides for the expropriation of 30 properties, "Land" and "Forest", but not constructions - dwellings. From

²¹ A deadline of 3 months is determined for the completion of the administrative procedure, by ALUIZNI, from the moment of its initiation, for any self-declaration of informal construction by the interested subjects.

the only preliminary list that the ARA has sent with the additional expropriation request, it follows that *it requires expropriation for the respective entities for 2 (two) properties of the type "field", for the respective entities for 13 (thirteen) properties of the type "land", for the respective entities for 29 (twenty-nine) properties of the type "Building", as well as for the respective entities for 2 (two) properties of the type "Apartment"*. According to this list, it is clear that only 31 properties that we can describe as dwelling houses of this community will be expropriated, while the difference of 138 other buildings will be destroyed.

According to letter no. 33714/3 dated on 18.09.2017, of the General Directorate of Social Services, in the Municipality of Tirana, contacts were made with the families of the community of residents, whose dwellings are affected by the implementation of the project, for the recognition of the socio-economic situation of these families. According to an initial assessment cited in the paper, the employment of members of a part of these families covers only the basic needs and no more. Under these conditions, the Municipality of Tirana has sought understanding and interaction with the NTDI to provide residents with assistance through their treatment with social housing programs. We have asked to become aware by the Municipality of Tirana if there has been coordination between ARA and the Tirana Municipality on this issue and if a preliminary study of the situation of families whose ownership has been affected by the implementation of the project, regarding their composition, financial opportunities, possible housing treatment and other issues related to the level of their living. According to the respective response, the Municipality of Tirana assessed in advance the emergency situation and the need for housing of affected families in this area, by realizing the social economic assessment in each family. Through the decision of the City Council No. 113 dated on 28.09.2017, the Municipality of Tirana has assisted the affected families (113 families) from the implementation of the project, covering the rental expenses for a period of one year.

Meanwhile, it turns out that there was a lack of real and necessary communication, as well as the prior coordination between ARA and the Municipality of Tirana, for the treatment of families whose ownership has been affected, i.e. dwellings, whether possessed or legally owned, as a result of the implementation of the project. This situation is presented in terms of "forced eviction", in violation of all international principles and international standards for the treatment of forced eviction cases.

5.1.4 Existing constructions before August 1991, in the area of Shkoza

In reviewing some individual complaints, it resulted that, on the basis of preliminary findings, ARA has maintained correspondence with the Municipality of Tirana on the existence of the constructions established before 1991 in the area of Shkoza and for which the possessors do not possess legal ownership documents. The ARA has requested from Tirana Municipality the continuation of the procedures for registration of these constructions already registered in letter no.7487 /1 dated on 3.10.2017, in accordance with the provisions of DCM No. 608, dated on 5.09.2012. For this reason, we have asked the Municipality of Tirana for explanations regarding the measures taken for this purpose. The Municipality of Tirana informed us with letter no. 36284/1 dated on 23.11.2017 (addressed to the ARA for information) that for the 16 subjects included in the list of ARA, it was waiting for the documentation required by the DCM no. 608, dated on 5.09.2012, for the further extension of the real estate's registration procedures. Although ARA has been asked for further explanations on the measures taken to complete the missing legal documentation, according to the request submitted by the Tirana Municipality, no official response has yet been sent to us.

Tirana Municipality's decision-making has been missed and this has led to the fact that real estate located in the area of Shkoza under these conditions and affected by the

implementation of the project, shall not be legally owned by their possessors, thus denying a process expropriation for them.

5.1.5 Concluding Conclusions:

From the review of the activity of the ARA, the NTDI and the Municipality of Tirana, regarding the issues encountered, several conclusions have been drawn, which include:

5.1.5.1 Failure to provide or disclose information about the decision to approve the project "Tirana's External Ring Road", Lot III, concludes that: there is no decision to approve the project "Tirana's External Ring Road", Lot III (Laying of Lana River and Construction of Parallel Roads, the New Maternity Segment, Tirana's External Ring Road), which has very serious consequences for the entire legality of the process as a whole.

5.1.5.2 ALUIZNI's activity, there are legal violations which consist of:

- a) Violation of self-declarations within the procedural legal deadlines, defined by Article 49 of Law No. 8448, dated on 12.05.1999 "The Administrative Procedures Code of the Republic of Albania". This omission actually caused harm to the self-declarant subjects of informal constructions in the area of Shkoza affected by the implementation of the project, under the conditions provided by Law No. 8510, dated on 15.07.1999 "On the extra-contractual liability of public administration bodies", as amended. Likewise, this inaction has brought about the consequence of a violation of the fundamental right to a fair trial or the principle of legal security.
- b) ALUIZNI turns out to have carried out the legal proceedings, in connection with a contract for the transfer of ownership of the construction parcel (located in the area where the project is being implemented), in favor of the self-declaring subjects. But unlawfully the procedure has not continued further, which has had serious consequences for the already legally-owned subject of the construction parcel, regarding the assessment of the legal status of the informal building complained by him and the non-inclusion on the list of subjects that should be expropriated, for the property of type "Land".
- c) ALUIZNI has not implemented the DCM No. 125, dated on 17.02.2010 "On approving the transfer of ownership of some construction parcels in favor of informal objects possessors".

5.1.5.3 The activity of the NTDI in this case appears fragmented, not analyzing and not responsive, on the legal actions required to undertake, as well as the required institutional interaction.

5.1.5.4 The process of expropriation with a beneficiary subject, the Albanian Road Authority, appears problematic and with serious legal violations. DCM no.557 of 27.07.2016, there is a lack of essential elements defined by law, which disputes the validity of the entire expropriation procedure.

5.1.5.5 There is a need for the amendment and improvement of legislation regarding the provision of reasonable compensation within a specific expropriation process for all possessors of informal objects affected by the implementation of projects for the construction of public works. This grouping should include informal constructions for which the legalization process or other informal constructions have begun, which are proved to be existing in time before the approval and implementation of projects for the construction of public works.

On the basis of these findings, a special report was prepared "On the problems encountered in the activity of some public administration bodies, during the implementation of the project" Tirana's External Ring Road", Lot III (Laying of Lana River and Construction of Parallel Roads, the New Maternity segments, Tirana's External Ring Road)". This Special Report has been sent to the Albanian Parliament with the accompanying letter no.256 dated on 29.06.2018, but has not been addressed and discussed within the legal deadlines. We point

out that the identified problems continue to be in their dynamics, so the findings and conclusions drawn are valid for the ongoing progress of the entire project implementation process for the construction of this road segment as well as other ongoing projects, for the construction of the Tirana's External Ring Road.

In the last months of 2018, we started reviewing the residents' complaints in the area of Astir, who have raised their concerns and allegations regarding the planned demolition of this area of a high number of residential and service facilities, pleaded for legalization in different time periods, starting from 2005. Apart from individual complaints, the issues raised are being considered by our initiative. As the cause of this situation it is identified the implementation of the project "Rehabilitation of the road segment: the overpass "Pallati me shigjeta"- the Roundabout "Shqiponja".

For the administrative investigation of this issue, contacts with residents of this area have been received, from which individual documents and complaints are handled on the basis of which the fact remains that their apartments are unfairly demolished after being subjected to a long process of legalization. It is also claimed that the project being implemented in this area has been drafted and adopted in the absence of full transparency and without a genuine consultation and information process, as claimed by the complainants for many interventions in the preliminary project as a result of which some special subjects or people are favored, in order to develop a high-building zone. In dealing with this complex issue it is involved the activity of several public bodies such as the Albanian Road Authority, ALUIZNI, as well as the Municipality of Tirana.

From the verifications and findings made during 2018 on this case, we have the same problems that are related to the activity that is not in accordance with the law by the Albanian Road Authority, ALUIZNI and the Municipality of Tirana, as we have emphasized and evidenced also in the Special Report "On the problems encountered in the activity of several public administration bodies, during the implementation of the project" Tirana's External Ring Road", Lot III (Laying of Lana River and construction of parallel roads, the New Maternity Segment, Tirana's External Ring Road), addressed to the Albanian Parliament. This is understandable also for the fact that the implementation of the project "Rehabilitation of the road segment: the overpass "Pallati me shigjeta"- the Roundabout "Shqiponja" is a continuation of the construction of segments of Tirana's New Ring, divided into several construction lots.

Meanwhile, we are working on the preparation of a special report on the issues and findings related to the implementation of the project "Rehabilitation of the road segment: the overpass "Pallati me shigjeta"- the Roundabout "Shqiponja" in the area of Astir in Tirana.

5.2. The right to peaceful rallies

In the course of the year 2018, in the Ombudsman's Institution, complaints were filed by various entities, both natural and legal persons (NGOs, trade unions, groups of citizens, etc.) who had allegations against the State police for not allowing the exercise of the right to rally required by them. According to the complainants, the obstacles of the police bodies have been due to various causes, such as not making the notification to the police bodies within the deadline provided by law, due to the lack of identity or address of the organizer or the leader of the rally, failure to give notice of the purpose of the rally, its date, place, time of the beginning and end of the rally, or its itinerary (if any), the approximate number of participants and the number of assistants in the progress of the rally, the identity of the people who will speak at the rally, etc.

From the examination of these cases by our institution, it has been found that for most of them, the police authorities have rightly replied to the notifiers that their notices did not meet the legal requirements set forth in the law "On rallies". While in some cases the notices of the subjects for the rally were rejected because the place requested for the rally, was not suitable as it became an obstacle to the normal movement of citizens and vehicles. There have also been cases where the police bodies' responses for data retention or refusal of the rally were incorrect, but uninhibited reasons have been found to refuse the notices or reply that they did not meet the legal criteria. Meanwhile, we have found that the heads of the police bodies, mainly the Heads of Commissariats to whom these reports are addressed, do not issue grounded decisions for communication with the organizer or leader of the rally for the possible restrictions and limitations or other conditions, including the number of the

people who will assist him / her in his / her performance under Article 6/1 / a of the Law "On Rallies"²², for the ban on rallies in public squares or crossings, or for determining the time and venue of the rally, according to Article 8 of this law²³.

Failure to issue a grounded decision on the request for the rally by the Chief of Police Commissariat is not only a correct attitude to the law, but at the same time it is the cause of the violation of the right to a fair legal process, as it denies the legal right of the applicants to appeal the expected decision of the Chief of Police Commissariat provided for in Article 25 of the Law "On Rallies".

In cases where the responses of police bodies (Chiefs of Police Commissariats) were not based on the law or were not correct, the police has been the cause of the violation of a constitutional and legal right of citizens to gather freely. Meanwhile, there were also cases that although the police rejected the announcements, the rallies were held and after that the police had forcibly dispatched the tubers and / or made referrals to the prosecutor's office for initiating investigations against the organizers and participants in the rally for the criminal offense of "Organization and participation in illegal gatherings and manifestations" provided for by Article 262 of the Criminal Code.

We point out that the non-legal attitudes held in these cases by the police bodies seriously affect the image of the State Police and public confidence in this body, which are necessary in the successful performance of its legal mission for the rule-of-law and public safety.

The Ombudsman expresses his / her attitude regarding the exercise of the right to freedom of rallies by citizens as one of the fundamental human rights and freedoms. I note that freedom of rallies is provided for and guaranteed by the Constitution of the Republic of Albania, Part II "Fundamental Rights and Freedoms," Chapter III "Freedom and Political Rights", respectively in Article 47, which provides that :

1. *Freedom of peaceful and weaponless rallies, as well as participation in them is guaranteed.*
2. *Peaceful rallies in the squares and in places of public passage shall be conducted according to the procedures provided for by law".*

The procedural rules that discipline or condition the exercise of this right are set forth expressly in Law no. 8773, dated on 23.04.2001 "On the rallies", which also provide for limitations or exhaustive prohibitions which cannot be overcome in the exercise of the right to rallies. This law stipulates that every person has the right to organize and take part in a peaceful and weaponless rally, it also provides for that the State Police guarantees and protects each person's right to organize and participate in peaceful and weaponless rallies.

²² Article 6 of Law no. 8773, dated on 23.4.2001, "On the Rally", provides that:

"1. The Head of the Police Commissariat within 24 hours from the receipt of the request pursuant to point 2 of Article 5 or within 8 hours from the receipt of the request according to point 3 of Article 5 of this Law by reasoned decision shall:

- a) Communicate to the organizer or the leader of the rally the prohibitions and possible limitations or other conditions, including the number of people who will assist in its progress,
- b) Provide copies of the official order for the assignment of a police officer to be responsible for assisting and observing the progress of the rally,

2. The Head of the Police Commissariat notifies in writing the head of local government and the prefect for the development of the rally".

²³ Article 8 provides that:

When there are motivated reasons that the development of a rally in a square or public passage poses a real threat to national security, public security, crime prevention, health or morals protection or the protection of the freedoms and rights of others and this risk cannot be prevented by less restrictive measures, the chief of the police commissariat may stop the development of the rally or decide on the time and venue of the rally.

The prohibition and spreading of a rally is allowed only in cases provided for by law. The reference to the content of the provisions of this law clearly shows that the duties of the State Police regarding the rallies are:

Firstly, actions to guarantee the exercise of this fundamental constitutional right of citizens and;

Secondly, the prohibition of exercising this freedom / right is only for limited cases and is clearly defined in the law.

We point out that the right to rally, since 2001, the year in which the law in force was adopted, is not subject to any formality for approval by the police, as provided for in the previous law no. 8145, dated on 11.9.1996 "On the right to rally", which has already been repealed. For the exercise of this right, it is only required to notify at a designated time the police bodies to reflect some of the data related to the implementation of its duty as a guarantor of the exercise of this right, giving it time to take the measures necessary for the progress of the rally. Even the present law, in Article 7, also provides for the right of citizens to hold emergency rallies in cases where there are urgent circumstances which may be conducted without respecting the deadline provided for in Article 5²⁴ of this law, but it is obligatory to make written notice which contains the elements defined in article 5, point 2 of this law, as well as the reason for the emergency. In these cases, notification should be made immediately, but not later than 3 hours before the time of the rally. The fact that the current law uses the term notice to the Police Commissariat for the rally development and not the request, is very important and significant in favor of exercising and guaranteeing this right / freedom by the citizens. If the term "request for the development of the rally" would be foreseen in this law, it is clearly understood that the approval of the police body, as in the previous law, should be done to enable this freedom to be exercised. While the use of the term notice in the law means that the "decision" for the exercise of the right has been received by the reporting subject itself and the approval of the police body is not required. This is where the fundamental change brought about by the new law "On the rallies" is to guarantee the real exercise of this fundamental constitutional right of citizens in a democratic country, like our country. If the notifiers do not make the notification with the data provided and required by the law, the Chief of Police Commissariat has the legal right to communicate with the organizer for filling in the data or to take a grounded decision to ban the rally in squares or public passes, or to change the place and time of its development. It is important to point out that the positive spirit of the current law is clearly reflected in Article 12²⁵, where it is envisaged to hold rallies in public places without prior notification to the police under Article 5.

In addition to the provisions cited above, referring to Article 15/2 of the Constitution, which stipulates that: *"Public authority bodies, in fulfillment of their duties, shall respect*

²⁴ Article 5 of this law provides that:

1. In the event of a rally in public squares or public passages, the organizer and the manager are obliged to notify in writing the head of the commissariat not later than three days before the date of the rally.

2. The written notice must contain:

- a) The identity and address of the leader and organizer of the rally;
- b) The purpose of the rally;
- c) The date, place, time of commencement and termination of the rally and its itinerary (if any);
- ç) The approximate number of participants and the number of assistants in the progress of the rally;
- d) People who will speak at the rally.

3. If the written notice does not contain the elements provided for in paragraph 2 of this Article, it shall be returned to the organizer and the conductor of the meeting, who shall resubmit it, completed no later than 24 hours before to hold the rally.

²⁵ Article 12 provides that:

1. Rallies in public places are held without prior notification by the police, according to Article 5 of this law.

2. Organizers of these rallies may require police support outside these countries to avoid disturbances during or after the rally.

fundamental human rights and freedoms and shall contribute to the realization of them" and Article 2 of Law no. 108/2014 "On State Police", which provides for that: *"State Police has the mission of maintaining public order and security, maintaining high state personalities and objects of special importance, guaranteeing law enforcement, in accordance with the Constitution and the international acts, respecting human rights and freedoms"*, the Ombudsman considers that the State Police is required not only to become an obstacle to the exercise of the freedom of citizens' rallies, but also to contribute to the realization of them.

Following this obligation and to facilitate the citizens for the realization of their constitutional and legal rights, but also to unify the position of the State Police organs in such cases, the General Directorate of State Police should prepare a template of notification to the police body to exercise the freedom of rallies in squares or public crossings and to report cases of urgent rallies. All the columns should be included in these templates in order for the notary to complete the necessary data provided for in article 5, point 2 and article 7 of the law "On the rallies". These templates are published on the State Police Website and are accessible to citizens by creating the possibility of on-line application from them. Also in order to be correct with the law and to unify the position of the State Police bodies on the notices of the subjects for the rally, a template is prepared for issuing an administrative decision justified by the Chief of Police Commissariat as "Administrative Decision for communication with the organizer or the leader of the rally for the prohibitions and possible limitations or other conditions, including the number of people who will assist him / her in its progress", pursuant to Article 6/1 / a of the Law "On Rallies" and the "Administrative Decision on the ban of rallies in squares or public crossings, or determining the time and venue for the development of the rally", according to article 8 of this law and not to continue to the most up-to-date practices by responding to notifiers. The preparation and publication of these templates would guarantee the exercise of the right to freedom of rallies effectively by the citizens as the law recognizes and without administrative obstacles.

For the above, and in order to increase the performance and image of the State Police, as well as increase the public confidence in this body, the Ombudsman recommended to the General Director of the State Police:

- a- *To take the necessary measures for the preparation of template types such as "Notification to the Police Commissariat for the progress of the rally in the squares or public crossings" and "Notification to the Police Commissariat for the Emergency Meeting in the Squares or Public Crossings" by the notifying subjects, its publication on the Website of the General Directorate of the State Police in order to be accessible to citizens and to create the possibility of on-line application from them.*
- b- *To take the necessary measures for the preparation of template types, such as the "Administrative Decision for communication with the organizer or leader of the rally for possible prohibitions and limitations or other conditions, including the number of people who will assist in its progress", According to Article 6/1 / a of the Law "On Rallies" and the "Administrative Decision to ban the organization of the rally in square or public crossings, or to determine the time and place of the rally", according to Article 8 of this Law .*

The General Directorate of the State Police with letter Prot. no. 5530/3, dated on 06.11.2018, informed that the recommendation was accepted and following its implementation, it was prepared the Standard Work Procedure on "Planning of police services during the rallies", approved by the Order of the General Director of the State Police No. 1034, dated on 31.10.2018. This procedure was sent to the Sector of Communication with Media and Public at the General Directorate of the State Police, to publish the relevant templates on the websites of the State Police.

5.3 Protest against the Nation's Road Tax

This case was evaluated by the Ombudsman, by carrying out a comprehensive administrative investigation and following the findings of the Prosecutor's Office and the Judicial District Court of Kukës.

After the incident, the prosecutors, based on Article 253 of the Criminal Procedure Code, on March 31st, 2018, at 23.00, compiled 37 banning orders for protesting citizens as suspected of committing the criminal offenses of "*Opposition of police law enforcement officer*" and "*Destruction of property*", provided by articles 236/2 and 150 of the Criminal Code.

From the study of detention orders, in the reasoning part, the proceeding body not only did not present any legal grounds for the detention of people, but also did not prove any condition for the existence of root causes for the risk of escape for each of them. Even in its request for the validation of the prohibitions and the imposition of the security measure, developed on 04.04.2018, the prosecution did not submit any evidence to prove the risk of escape for any detained person.

From the independent investigation of the Ombudsman and the conduct of the main trial at the detention hearing, it was evidenced that some of the detainees had such objective reasons and motives that they could not even think of leaving, i.e. did not pose any risk of escape, as the Prosecution Office claimed. More specifically, violations of the individual's fundamental freedoms and rights in our assessment were created by the following actions or inactions:

- ✓ The detention orders issued by the Prosecution did not contain any reasoning regarding the reasons that led the Prosecution to enforce in the case concerned a security measure with deprivation of liberty.
- ✓ The Prosecution and / or the Police did not identify the concrete actions taken by them to document the time when the police were required to enforce these detention orders;
- ✓ Neither the detainees nor their relatives were informed of a copy of the detention order, at the moment when they were deprived of their liberty;
- ✓ The Judicial Police Officers and / or prosecution bodies failed to correctly identify the hours in which people were deprived of their liberty;
- ✓ The minutes of the communication of detention orders included inaccuracies in their drafting and there were shortcomings in the identification of procedural actions that were to be carried out in accordance with the Criminal Procedure Code, which led to the non-guarantee of the legal rights of detainees;
- ✓ The Prosecution's request to the First Instance Court of Kukës for the assessment and assignment of personal security measures against 23 detained citizens, was filed with the First Instance Court of Kukës outside the legal deadline provided by Article 258 of the Criminal Procedure Code.
- ✓ In addition, the Prosecution had violated detainees' rights by counting as a detention time for the execution of detention orders dated on 01.04.2018 between 10.20 - 12.00, which did not reflect the reality of the actions carried out in this case. So, for the 23 detained people, the time and place of execution of their detention were incorrect and were not reflected as it actually happened. In fact, it turned out that the time of deprivation of liberty for each of them had been at least two and a half hours ago;
- ✓ The prosecutor of the case had not followed the correct implementation of the procedural provisions by the Judicial Police of the Local Police Directorate of Kukës against the detained people, as provided for in point 1 of article 304 of the Criminal Procedure Code.
- ✓ The large presence of the State Police forces during court hearings, although legally justified due to the number of detained perpetrators, could create grounds for intimidation of the judicial body for the normal course of the proceedings, especially in cases when there were allegations regarding law enforcement by the police. Also, such presence

could have an impact on the state of "increased psychological pressure" among the other people present in the courtroom (people being tried or their defenders).

During the trial session for the assessment of the security measure, at the same time 23 people were tried. It is evident that changes to the Criminal Procedure Code in the present case, cause the failure to guarantee the correctness of all the rights that are foreseen in a fair trial for the detained people, due to the large number of them. Also, the large number of people had requested the taking of unusual measures to ensure order and safety in the outside room.

Despite the changes that have taken place in the Criminal Procedure Code, on the adjudication of several people at the same court session, as has happened in this case, it should be noted that this way of trial cannot provide in the actual situation (when there is a high number of detainees) the effectiveness of the trial as well as the contradictory nature needed in the trial and therefore it needs to be assessed a legislative change in this regard.

Meanwhile, from the documentation available concerning this case, it was noted that in the judicial decision no. 39329, dated on 04.04.2018, it was specified that this court hearing had been public, which was in conflict with the situation created prior to the hearing. It did not result from the acts either to have had a request from the accused body or to have taken any decision by the Judge for the trial of the closed-door court session.

This situation is in contravention of the provisions of the Criminal Procedure Code for the conduct of an open hearing and specifically Articles 339 and 340 of the Criminal Procedure Code, which provides that in principle, court hearings are public.

From this first finding, it should be noted that open court hearings constitute an essential feature of the right to a fair trial. The open character of proceedings before judicial bodies, under Article 6/1 of the European Convention on Human Rights (ECHR), protects litigants against the exercise of justice in secret and without public oversight. Publicity in the exercise of justice contributes to the fulfillment of the goal of a fair legal process.

More accurate identification of decisions, communications and their correct implementation regarding closed or opened-door development of the security assessment session would avoid confrontation between family members of detained people and members of the Parliament, with the State Police forces, which had undertaken to guarantee the order and security in the courtroom. These decisions and communications should be made for such cases in public and by the administration of the Court, to avoid tensions on the eve of the hearing.

Not being a direct object of the Ombudsman's work to give an opinion on the content of the Court's decision regarding its form, we are of the opinion that a court decision must be reasonably substantiated and exhaustive by considering and analyzing all allegations raised during the trial to exclude the negative effects that may arise in the opposite case. Only then will the justice system be able to create the lack of faith in the eyes of the public.

Respect for the fundamental right to a fair legal process remains one of the key elements in any decision-making process of state bodies, which itself includes a number of other rights, the violation of which seriously undermines the credibility and legitimacy of these organs. "Presumption of innocence" requires an exhaustive and complete legal process whereby every step and procedural link completes the legal "mosaic" of the merits of the measures and decisions given in the criminal process.

At the end of this administrative investigation, the Ombudsman drafted a recommendation to the Prosecutor's Office and the Judicial District of Kukës, dated on 19.04. 2018, "*Concerning the treatment of the rally of March 31st, 2018 in "the Nation's Road", for objecting the fee set for passing on this road.*" As such a problem is emerging as a concern, the Ombudsman's institution is at the end of a special report on this issue that will be addressed to Parliament in a timely manner.

5.4. Independent monitoring of the rights of foreign emigrants and the forced returns of the Albanian citizens

Albania continues to face increased access to foreign migrants mainly from the border with Greece as an entry point and the border with Montenegro as an exit point. The Kakavija Point in Gjirokastra and the surrounding areas serve as a way to penetrate foreign migrants.

During 2018, as previously informed, the Ombudsman's Institution (NMPT) within the framework of the cooperation agreement signed with UNHCR, has been involved in monitoring the migration crossing points and strengthening the observance of their rights.

This has been achieved through activities such as systematic border monitoring, presence in selection procedures with the people concerned, analysis and recommendations related to the above procedures and border monitoring, data reporting to the Central Office and UNHCR, contribution to drawing up leaflets for refugees and asylum seekers, cooperation with actors and participation in joint activities / events. During December 2017 - December 2018, more than 50 monitoring missions in the Gjirokastra border region with Greece were conducted, most of them in cooperation with UNHCR in Gjirokastra while the rest independently. Missions were also performed in Qafëbotë of Saranda and in Saranda's Border Directorate.

**THE MONITORING TABLE OF REFUGEES' SELECTION INTERVIEWS
(Gjirokastra and Kakavija for the period January-December 2018)**

Month	Monitoring of Selection Procedures		Performing in-depth interviews in Gjirokastra and Kakavija	Joint monitoring visits to the selection facilities in Kakavija and Grehot
	Cases	People		
January	8	29	18	4
February	24	160	21	7
March	31	296	27	6
April	25	240	17	7
May	23	210	11	5
June	13	103	13	5
July	21	116	19	4
August	27	87	9	4
September	24	50	11	4
October	27	81	13	4
November	21	30	9	4
December	24	52	6	4
Total	268	1454	169	58

The inspection of the Closed Center for Foreigners, in Kareç, for the accommodation of irregular foreigners in the territory of the Republic of Albania, against whom a detention measure has been taken in accordance with the legislation in force, has been another mission accomplished with a view to assessing the treatment conditions of the people treated in it. During the monitoring and investigative visits to this Center, as a result of numerous complaints about the treatment of foreign nationals during 2018, it was found that migratory flows are irregular, as there are cases in certain periods of the year, that this center does not

have any presence of accommodation for foreigners to whom a detention measure has been taken, as there are other cases that over certain periods of the year there is overcrowding. Generally, the same issues ascertained in the inspections carried out in recent years are generally followed:

- The envisaged organization did not meet the needs of staff for foreign-language communications of foreigners, psycho-social, legal and medical services.
- There was a lack of equipment in recreational and sports facilities.
- There was a lack of cultural, entertainment and sports activities.
- There was a lack of activities for minors, adult children and women.

Throughout the reporting period, the Ombudsman in the role of the NMPT, in cooperation with the Directorate of Border and Migration Police and FRONTEX, has continuously monitored the voluntary and forced repatriation operations of the Albanian citizens from EU countries and Schengen area states, with the purpose of transference according to the rules of the Albanian citizens by decision of repatriation from the territories of EU member states. The NMPT was part of the 32 repatriation operations monitoring team, co-ordination with the Mechanisms of other countries, thus exercising its legal role as a guarantor, while complying with Directive 2008/115 / EC²⁶ of the European Parliament for the common standards between EU and third countries in the independent monitoring by the NMPT of EU citizens' return operations in the countries of origin. The standards of the work of the NMPT in this process are based on the legal principles that derive from international instruments (human rights).²⁷

At the end of the monitoring process, the NMPT has recommended taking measures to ensure the human return by fully respecting the fundamental rights of the Albanian migrants, the rigorous observance of EU standards and the rigorous respect of the Albanian law, by underlining the implementation of standards especially for vulnerable groups, including women and children, in order to maximally reduce the psychological effect to them; taking measures regarding the provision of translation service by the French side during the questioning phase at the detention places as well as the procedures for conducting protocols for the submission of documentation at the closed center in Lille France, as well as taking measures for equipping the Albanian citizens with medical certificates (fit to fly) before the forced return process etc.

5.5 Drafting of the Strategic Plan 2019-2022

The Ombudsman's Institution, with the support of the Danish Ombudsman's Office and the Danish Human Rights Institute, during the second semester of 2018, continued work on the drafting of the Strategic Plan of the institution, covering the period 2019-2022. Through this Strategic Plan, the Ombudsman aims to create and develop a culture of good governance which implies good administration, transparency and accountability of public administration to the citizens of Albania, as well as a general strengthening of the rule of law, indispensable elements for the functioning of democracy and integration into the European Union.

²⁶ Directive 2008/115 of the European Parliament and of the Council of December 16th, 2008 on the common standards and procedures in Member States for the return of third-country nationals residing illegally. The Directive applies to all Member States of the European Union except the United Kingdom and Ireland. To the extent applicable to individuals entering the territory without authorization, it also applies to Denmark and Schengen collaborators (Iceland, Liechtenstein, Norway and Switzerland).

²⁷ European Convention on Human Rights (ECHR) In particular Articles 3, 5 and 8, 20 Guidelines of the Committee of Ministers for Forced Return CM (2005) 40 Final Version, May 9th, 2005; in particular Guidelines 10 and 11, the relevant United Nations (UN) treaties, and Returns Directive of the European Union (EU) of 2008

Also, given the institutional capacity and resources, and considering the political, legal, social, economic, developmental and cultural reality of Albania, the Ombudsman's strategic ambition is to be the main human rights activist of a well-functioning national system of human rights in Albania. With this approach and the strategic ambition, the Ombudsman aims to focus on what is considered important for both; increasing the capacity of the institution and establishing dialogue with the interested parties.

At the same time, the Ombudsman will focus on achieving results in a short-term period, while maintaining long-term goals in focus, in order to show to the Albanian society that the Ombudsman can make and create the change. The Ombudsman will also address issues that require long-term commitment, external political support of the civil society and the international community in Albania, as well as the collection of additional funds beyond the funding that the Ombudsman receives from the state budget.

For the purpose of drafting and adopting a comprehensive document, it was considered necessary to initiate a broad public consultation process with all stakeholders and different factors of society (national and international experts, representatives of public institutions and international organizations, civil society etc.), in order to obtain suggestions and real contributions for the further improvement of this strategic document.

The Ombudsman is aware that he will not be alone in the implementation of the Strategic Plan, as advancing the human rights agenda in Albania requires the commitment of all actors who are dedicated to human rights' standards. Strengthening cooperation and establishing new relationships with other actors will be an essential element in the work of the Ombudsman. Only by working together and by being more inclusive to different groups of society, our voice and that of citizens whom we serve, will become more credible and powerful.

Currently, with the technical support of the United Nations Office in Albania, an action plan is being drafted in the framework of the implementation of the Strategic Plan, through the definition of concrete activities, costs and deadlines for their realization. The implementation of the Strategic Plan in all its components would necessarily require greater financial support from the state budget, human and financial resources to enable the Ombudsman's mandate to be implemented in the area of promotion, prevention and protection of human rights.

CHAPTER 6

Support Services

Strengthening their human and financial capacities, implementing better standards and practices, through having an infrastructure that enables the achievement of goals and aims, is and still remains a constant effort and challenge.

Human Rights Institutions need stronger and more sustained political and financial support from Parliament and the government to ensure the realization of their duties in a fully effective manner; to have legal autonomy, operational autonomy and financial autonomy by the government, independence guaranteed by the Constitution or law, pluralism in membership, adequate resources, adequate investigative power. All this is to ensure a more efficient institutional activity.

A national human rights institution (such as the Ombudsman's Institution) must act with the "Paris Principles", which define competences, responsibilities, composition and guarantee

independence and pluralism. Moreover, the Paris Principles sanction that "A national institution must have an infrastructure that enables a satisfactory direction of its activities....".

6.1 Management of Human and Administrative Resources

The manner of approval of the structure and the organization of the institution is expressly provided for in Article 35, paragraph 3 of Law no. 8454, dated on 04.02.1999 "On the Ombudsman", as amended. Unlike many independent constitutional institutions and other independent institutions established by law, the structure and organization of the institution is determined by the Ombudsman himself.

The truth is that in recent years, the structure and organization of the institution has undergone periodic changes, changes aimed at increasing efficiency and adapting to the rules and procedures provided for by the legal framework in force in the field of the civil service. These changes aimed to establish a regular relationship between managerial, leading and executive level positions, both in organizing unit structures, directorates and sectors, and in terms of the number of job positions needed for building these units of the structure.

Also, these changes have aimed and reflected the existence of a stable, timely structure, relatively homogeneous with the structures and categorizations of employees of other state institutions, as well as the fulfillment of standards in terms of formulation of unit structures, related to the departments and sectors concerned.

Given the total number of the approved institution staff, the unit assessment and the actual structures, problems, and deficiencies found regarding human resources management, as you are aware, during the last 2-3 years (including the requirements and the proposals made during the discussion of the draft budget for 2019), we considered it necessary to support the Albanian Parliament for the increase of human resources, especially with regard to the strengthening of the institution's supporting structures.

Since these permanent requirements, notwithstanding the needs and arguments presented, were not considered during 2018, the structure of the institution underwent some changes (amendments adopted in April and November 2018). Initially, in April there was an amendment to the existing structure, which concerned the need for further strengthening of the Assistant Cabinet of the Ombudsman through the strengthening of this structure even with an adviser. This is to enable the facilitation and better performance of the work of the head of the institution, as this organizational structure plays an important consultative and verifiable role for the problems and the area of responsibility covered by the Ombudsman, and serves as a filtering structure of administrative problems.

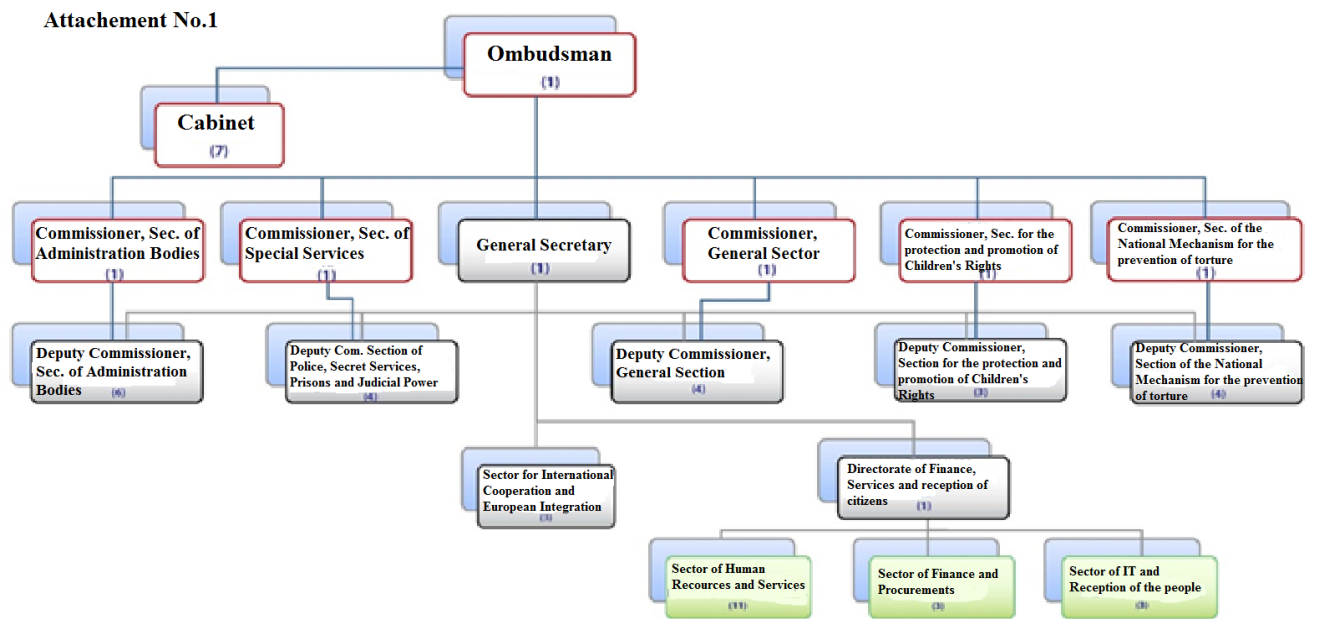
The second change came after an assessment of the functioning and organization of the institution (especially regarding the supporting structures and more specifically the reorganization of the two directorates: the Human Resources and Services Directory and the Directory of Services to the Citizen) with the aim of restructuring direction of formatting the units of these structures with the aim of strengthening the institution in accordance with the standards of organization and the activity of the national institutions for the protection of human rights.

Looking at this viewpoint, it is estimated that the structure approved by the Ombudsman's Order No. 252, dated on 21.11.2018, in its form and within the existing possibilities and

capacities, accommodates the observed concerns, problems and suggestions as well as provides all the necessary guarantees to best respond to the successful and complete fulfillment of objectives and mission especially for issues related to the European integration, international co-operation, support services, etc., which require permanent interaction and engagement as well as dedicated and qualified structures for their proper addressing.

It should also be noted that in its entirety this structure respects the same principles and standards that should be followed during the drafting of the organizational structures of state administration institutions and is in full compliance with the decision no.893, dated on 17.12.2014 "On the approval of the rules for the organization and functioning of the subsidiary cabinets, the internal organization of the state administration institutions, as well as the detailed procedures for the preparation, proposal, consultation and approval of the internal organization".

Structure and Organigram



Attachment No.2

Name of the function	Number of Employees (56)	Category / Class
Ombudsman	1	Law no. 8454, dated on 04.02.1999, as amended
Cabinet - Director of Cabinet - Adviser - Secretary	7 1 5 1	DCM no. 187, dated on 08.03.2017, as amended I-b DCM no. 187, dated on 08.03.2017, as amended
- General Secretary	1	I-a
Section for central Administration Bodies, of the local power and of third parties who act on their account - Commissioner - Deputy Commissioner - Deputy Commissioner	7 1 3 3	Law no. 8454, dated on 4.2.1999, as amended I I-a II-b
Section for the police, secret services,	5	

prison, the armed forces and the judicial power		
- Commissioner	1	Law no. 8454, dated on 4.2.1999, as amended
- Deputy Commissioner	3	II-a
- Deputy Commissioner	1	II-b
General Section	5	
- Commissioner	1	Law no. 8454, dated on 4.2.1999, as amended
- Deputy Commissioner	3	II-a
- Deputy Commissioner	1	II-b
Section for the protection and promotion of children's rights	4	
- Commissioner	1	Law no. 8454, dated on 4.2.1999, as amended
- Deputy Commissioner	1	II-a
- Deputy Commissioner	2	II-b

Mechanism for the prevention of torture, treatment or severe inhuman or humiliating sentences	5	
- Commissioner	1	Law no. 8454, dated on 4.2.1999, as amended
- Deputy Commissioner	2	II-a
- Deputy Commissioner	2	II-b
Directorate of Finance, Services and reception of citizens	18	
- Director	1	II-b
Sector of Human Recourses and Services		
- Head of Sector	1	III-a
- Specialist of Human Recourses	1	III-b
- Protocol Specialist	1	III-b
- Archivist / Librarian	1	Class VIII
- Warehouseman	1	Class VI
- Driver of the Head of Sector	1	Class VI
- Driver	2	Class IV
- Secondary technician of different specialties	1	Class VI
- Sanitarian	2	Class I
Sector of Finance and Procurements		
- Head of Sector	1	III-a
- Specialist of Finances	1	III- b
- Specialist of Procurements	1	III- b

Sector of IT and reception of citizens		
- Head of Sector	1	III-a
- Specialist of services to citizens	2	III-b
Sector for international cooperation and European integration	3	
- Head of Sector	1	III-a
- Specialist	2	III-b

6.2 The Overview of Income and Expenses

In support of law no. 109, dated on 31.11.2017, "On the State Budget of 2018", Instruction of the Minister of Finance no. 2 dated on 06.02.2012 "the Standard Procedures for Budget Implementation" and Supplementary Guidelines of the Minister of Finance no. 2, dated on 19.01.2018, "On the Implementation of the Budget of 2018", as amended, the performance of the budget product for the Ombudsman's Institution, according to the budget program approved for 2018, is as follows:

Program - "Advocacy Service"

The budget allocated to this program (the only program that the Ombudsman's Institution has) has under its Program Policy Statement (PPS) drafted during the 2018-2020 MTBP process and aims at achieving the objectives of the product as defined and approved in the Medium-Term Budget Program document (2018-2020).

Report on the factual program expenses by item for 2018.

By law no. 109/2017, "On the State Budget of 2018", the funds allocated to the changes made during the year for the functioning of the Ombudsman's Institution according to items, are presented in the following tables:

Report on the factual program expenses by items

Table no. 1

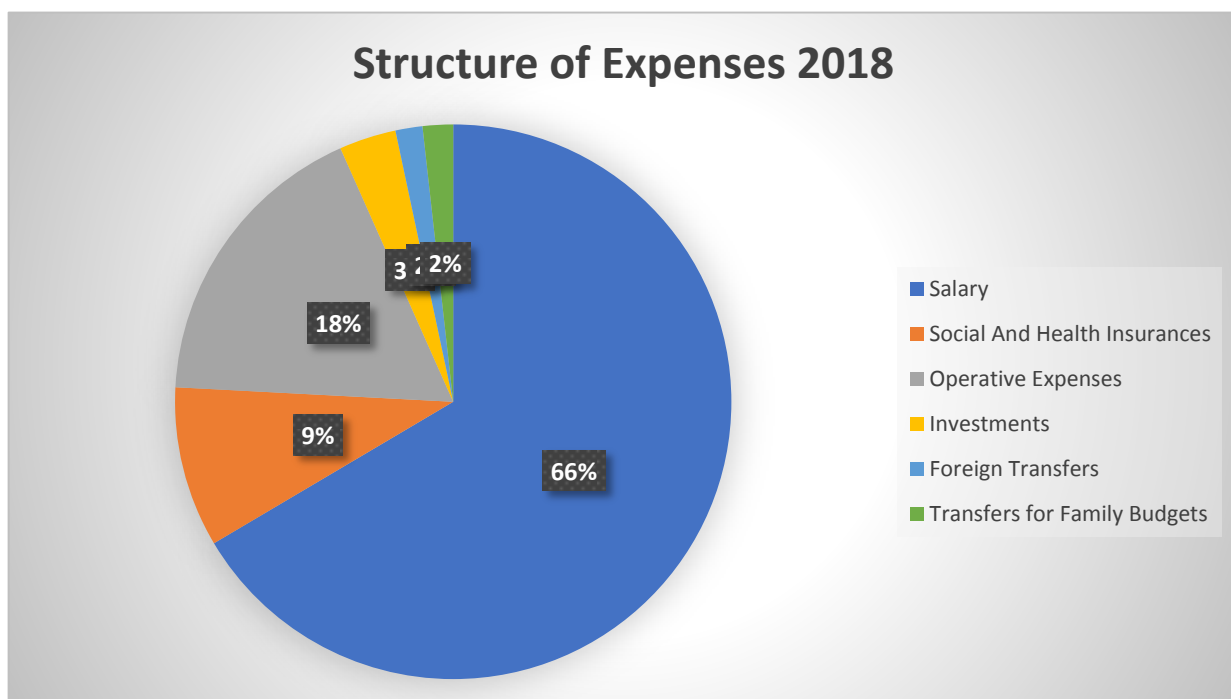
Account No.	Name	Initial plan	Addition & reduction	Changed plan	Fact
600	Salary	81.800.000	-10.500.000	71.300.000	71.128.898
601	Social and Health Insurance	12.700.000	-2.500.000	10.200.000	10.012.953

602	Goods and other services	15.400.000	3.380.000	18.780.000	18.743.952
605	Foreign Exchange Transactions	1.600.000	120.000	1.720.000	1.679.442
606	Transfers for family budgets	500.000	2.639.100	3.139.100	1.887.915
231	Investments	4.000.000		4.000.000	3.543.498
	TOTAL	116.000.000	-6.860.900	109.139.100	106.996.658

Annual Report on the realization of expenses for 2018

Table no. 2

No.	Name	Changed plan	Fact	Difference	Realization in %
1	Salary	71.300.000	71.128.898	171.102	99,80
2	Social and Health	10.200.000	10.012.953	187.047	98,20
3	Goods and other services	18.780.000	18.743.952	36.048	99,80
4	Foreign Exchange	1.720.000	1.679.442	40.558	97,60
5	Transfers for family	3.139.100	1.887.915	1.251.185	60,10
6	Investments	4.000.000	3.543.498	456.502	88,60
	Total	109.139.100	106.996.658	2.142.442	98,00



6.2.1 Personnel expenses

The realization of the payroll reflects the structure and the organigram, internal and external movements. This fund allocated for 2018, to cover the expenditures on staff salaries was ALL

81.800.000, as amended by letters Prot. no. 7101/1., dated on 11.04.2018, "Transfer of funds for 2018", no. 7101/4, dated on 12.12.2018, "Transfer Funds for 2018", as well as changes under the Normative Act no. 2, dated on 19.12.2018, at the amount of ALL 71.300.000, **while the realization is ALL 71.128.898 or 99.80%, the changed budget** as well as the social and health insurance were planned at ALL 12.700.000, as amended by the Normative Act no. 2, dated on 19.12.2018, at the amount of ALL 10.200.000, **while the realization is ALL 10.012.953 or 98,80% of the changed budget.** Both voices together, the staff salaries as well as the social and health insurances (600 + 601) for 2018 **are realized at 99.60% of the changed budget.** During 2018, the average number of employees was 51.80 employees of 56 employees, which was the boundary approved by the above-mentioned law. Failure to realize this item of expenditure is due to the lack of organic structures as a result of vacancies created at the end of 2017 and during 2018 by the movement of our institution's staff to other duties.

6.2.2 Expenses for Other Goods and Services

The amount allocated for the period January - December 2018 for the expenses on goods and services (**item 602**) was ALL 15.400.000, as amended by letter Prot. no. 7101/1, dated on 11.04.2018, "Transfer of funds for 2018" at the amount of ALL 18.780.000, **while the realization is ALL 18.743.952 or 99.80% of the changed budget.**

For 2018, operating expenses are used for payments of office purchases, cleaning materials, supplies of other office materials, newspaper and publishing releases, electricity, water, Albtelecom, Vodafone, postal service, vehicle insurances, fuel purchase for the maintenance of the vehicles of the institution, diets within the country or abroad, construction maintenance costs, maintenance costs of equipment and technical equipment, foreign attendance expenses, costs for execution of court decisions, participation expenses at events, etc.

The foreign exchange transfer fund (**item 605**) for 2018 was ALL 1,600,000, as amended by letter Prot. no. 7101/1, dated on 11.04.2018, "Transfer of Funds for 2018" at the amount of ALL 1.720.000 (due to the increase in membership fees), while **the realization is ALL 1.679.442 or 97.60% of the changed budget.**

No.	Name of Organization	Quotations in years						
		Currency	Value in years					
			2014	2015	2016	2017	2018	2019
1.	The Mediterranean Ombudsman Association (MOA)	Euro	750	750	750	750	750	1.000
2.	The Association of Ombudsman and Mediator of Francophonie (AOMF)	Euro	650	650	650	750	900	900
3.	European Network of National Institutions of Human Rights (ENNHRI)	Euro	3.000	3.000	3.000	3.000	4.000	4.000
4.	The European Network of Ombudsman for Children (ENOC)	Euro	0	0	1.100	1.100	1.100	1.100
5.	The European Ombudsman Institute (EOI)	Euro	350	350	350	350	350	350
6.	Global Alliance of National Human Rights Institutions (GANHRI)	CHF	5.000	5.000	5.000	5.000	5.000	5.000

7.	The International Ombudsman Institute (IOI)	Euro	750	750	750	750	750	750
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For 2018, these funds were used for the payment of membership fees in time, where the Ombudsman's Institution is a member of international organizations such as the Association of Ombudsman and Mediators of Francophonie (AOMF), the European Ombudsman Institute (EOI), the Association of the International Organization of Ombudsmen (IOI), the Global Alliance of National Human Rights Institutions (GANHRI), the European Network of National Human Rights Institutions (ENNHRI), and the European Network of Ombudsman for Children (ENOC).

The budget for family transfers and individuals (**item 606**) for the period January - December 2018 was ALL 500.000, as amended by letter no. 14795/1, dated on 22.08.2018, "Fund allocation for special fund use", as well as no. 7101/4, dated on 12.12.2018, "Transfer of funds for 2018", ALL 3,139,100, while **the realization is ALL 1,887,915 or 60.10% of the changed budget.**

6.2.3 Investment Expenses

The investment fund allocated from the state budget for 2018 is ALL 4.000.000, **while the realization is ALL 3.543.498 or 88.60% of the changed budget.** These investments were made to improve the conditions of the Ombudsman's institution (see table below).

in thousand / ALL

Project	Code of Project	Plan	Fact	%
1. Reconstruction of the terrace and painting	M660005	2.500	2.277	91
2. Purchase of camera system	M660016	1.500	1.266	84,40
TOTAL		4.000	3.543	88,60

6.2.4 Approval of the institution budget for 2019

As part of the preparation and discussion of the Budget Project for 2019, the Ombudsman's Institution presented arguably some concrete proposals related to some additions and changes to the budget of the institution (additions to human and financial resources). The arguments regarding the increase of financial support were first related to the mission of the Ombudsman as a national institution with a broad mandate in the field of protection and promotion of human rights, an institution which enjoys the status "A" and taking into account that its activity is based on the prevention, protection and promotion of human rights, it is considered as necessary the support through a human and financial infrastructure.

The truth is that, despite the arguing requirements for increasing budgeting for certain items (e.g. operational / capital expenditures) or increasing the number of human resources, these requirements were not taken into account when discussing the budget for 2019 at the relevant parliamentary committees.

The Ombudsman's Institution is aware that support, or financial independence, does not and cannot have the same nature with organizational or functional independence. This aspect of

independence depends largely on the financial capabilities of the state itself. However, as noted in the Paris principles and the principles set by the Venice Commission, a national Human Rights Institution should have not only sufficient staffing and a flexible structure, but also the necessary financial resources for the full, independent and effective performance of its responsibilities and functions.

Based on a comparative approach, the budget of the institution for the period 2014-2019 was as follows:

In thousand ALL

No.	Years	Approved					
		600-601	602-606	231	No. of Employees		Total
		Salary+ insurances	Operative Expenses	Investments	Deputy Commissioner	In total	
1	2014	75.500	16.000	4.000	21	50	95.500
2	2015	75.500	16.000	4.000	21	51	95.500
3	2016	84.500	17.000	4.000	21	55	105.500
4	2017	84.500	18.000	4.000	21	56	106.500
5	2018	94.500	17.500	4.000	21	56	116.000
6	2019	104.500	18.600	2.000	21	56	125.100

6.3. Functioning of regional offices

It is in the constitutional record of the Ombudsman's institution that in the fulfillment of its functions, it should be able to act in equality and make the public administration more sensitive to public opinion and more accountable to requests for justice and credibility. In other words, the Ombudsman enjoys the right and the obligation to work in cooperation with public officials at the central or local level to strive for the creation of a democratic culture and the highest standards of respect for human rights and freedoms in the country.

Referring to the above reasoning, the Albanian Parliament in Law No. 8454, dated on 04.02.1999 "On the Ombudsman", as amended, has determined, inter alia, the right of the Ombudsman to appoint a representative of the Ombudsman as well as the obligation of local government bodies to provide office accommodation and the creation of necessary working conditions for the implementation of all the requirements of this law (Article 32)

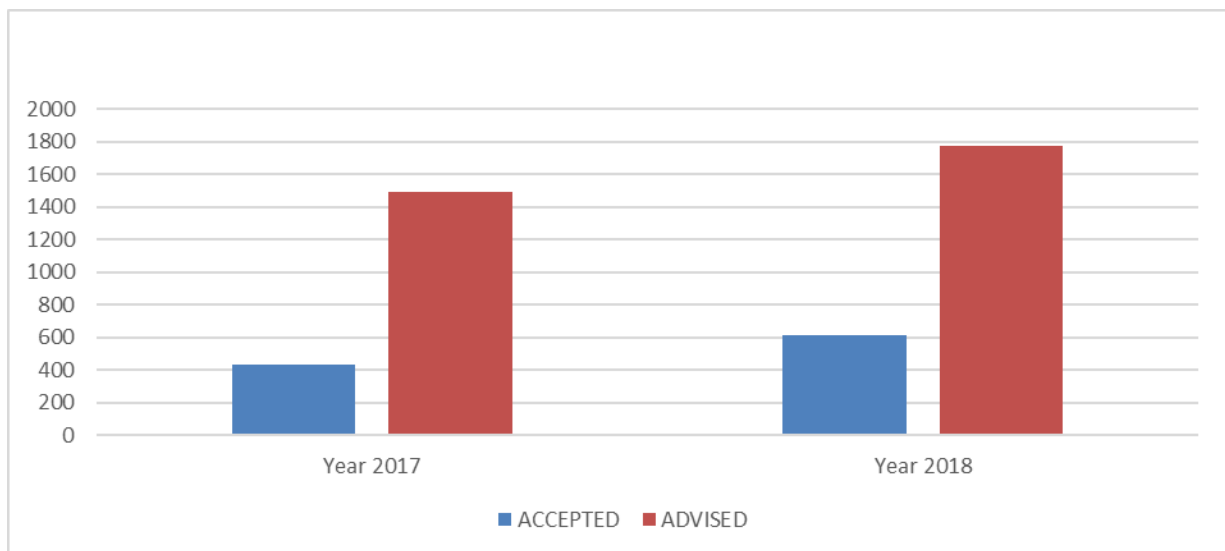
The welfare, well-functioning, and effectiveness of the Local Office of the Ombudsman is not only to the attention of the Albanian government (which allocates a special annual budget for their functioning), but also to the attention of international organizations (European Union, Council of Europe etc.), which aim to support a national human rights institution, such as the Ombudsman, in better exercising his constitutional and legal functions. The essence of all the recommendations of these institutions over the years is to create better and closer access to citizens to receive their complaints.

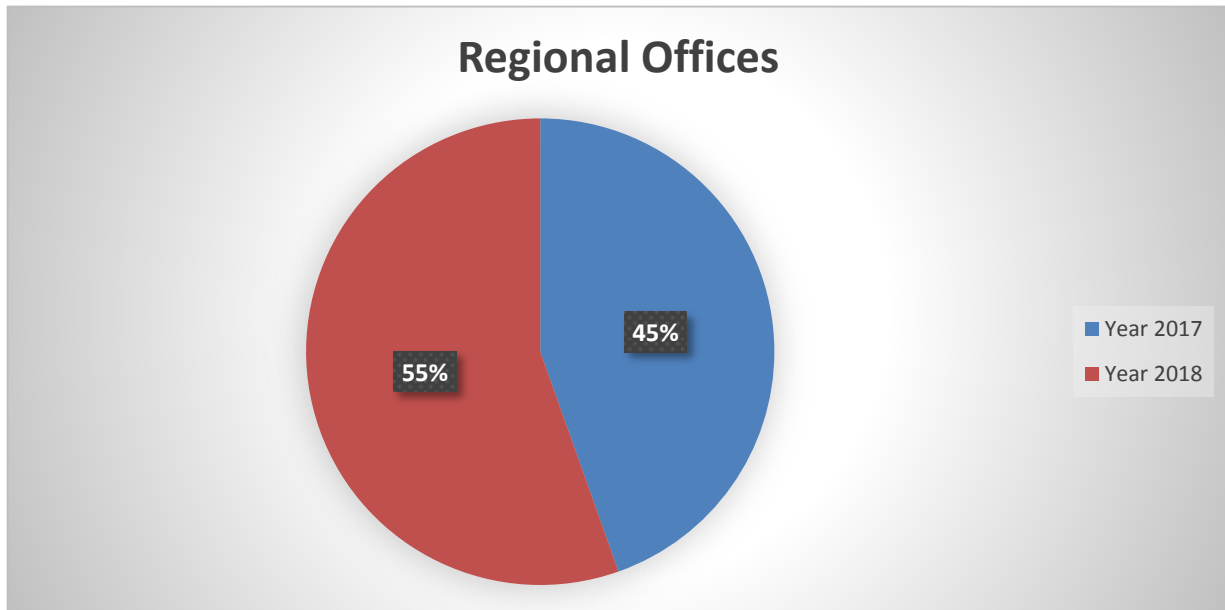
Based on the above-mentioned provision and in the agreement with the local government, since 2013, the Local Offices have been set up and operate in 7 (seven) Municipalities of the country, which has enabled an ever-increasing recognition of the role of the Ombudsman's Institution as a promoter of human rights.

The fact is that there is an increasing number of citizens addressing the Local Offices to file a complaint or receive legal advice on the ways that they should pursue to restore their alleged right. ***For the period of January-December 2018, the number of complaints / applications submitted was 2385 or 43% of the total for 2018.***

In our institutional judgment based on the relevant experience, we estimated that if local offices of the Ombudsman were located within the respective municipal buildings or near them, the accessibility of citizens to these offices would be much easier, visibility much higher, and would enhance the inter-institutional cooperation as well as the image and trust of citizens in this institution. This concern was raised even during the discussion in the Parliament of last year's annual report, as well as through an official letter sent to the Speaker of the Parliament. Despite the intervention of the Parliament (through the involvement of the county prefect institution), the situation of regional offices in some municipalities where they operate, continues to remain the same (Local Office of Pogradec, Berat, and recently also in the Municipality of Saranda).

Below is a comparative overview of complaints received by local offices for 2017 and 2018.





CHAPTER 7

Figures and facts about complaints and their treatment

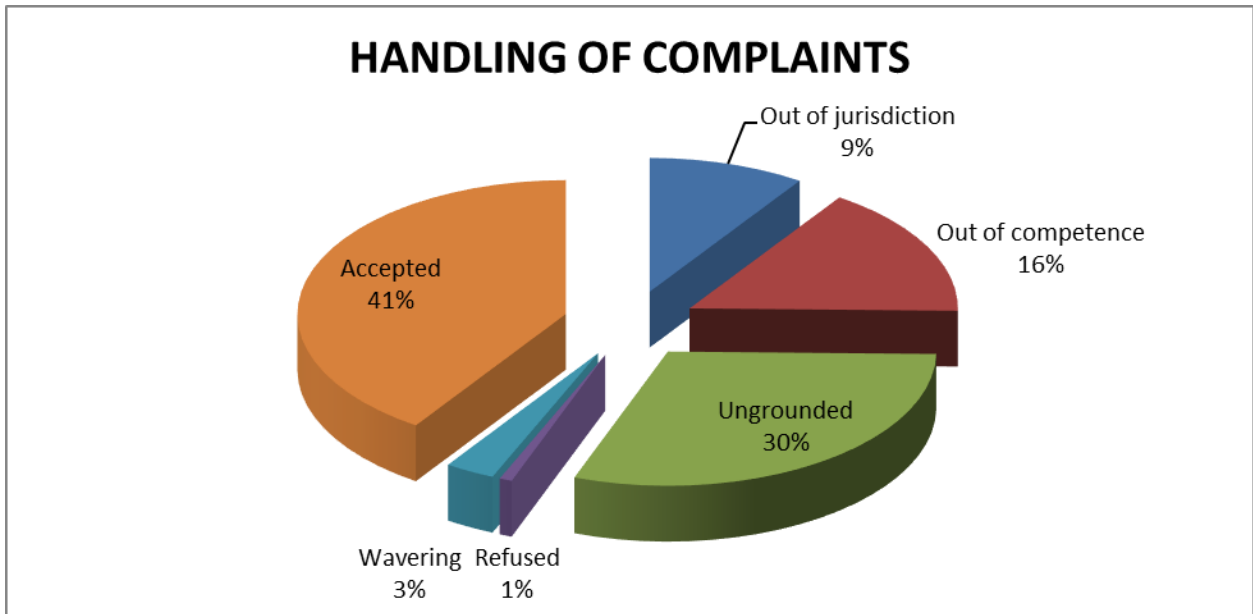
For the whole period of 2018, 5516 complaints were filed at the citizen's reception office, the regional offices and through other means of communication, postal and on-line ones, of which **2601 complaints** were part of the work subject of the Ombudsman's Institution and are classified as "within jurisdiction and competence" and **2915 complaints** have been treated in the form of "counseling and guidance" on the legal paths to be followed by citizens to further address complaints and institutions that should be addressed. Out of the total of complaints for this year, 2385 complaints came from the Regional Offices.

7.1 Number of complaints, requests and notices reviewed

During the 2018 review of the complaints conducted by the Ombudsman's Institution, 1831 complaints were closed as follows:

- 173 complaints outside jurisdictions
- 290 complaints out of competence
- 556 ungrounded complaints
- 14 rejected complaints
- 743 accepted complaints (*resolved in favor of citizens*)
- 55 wavering complaints

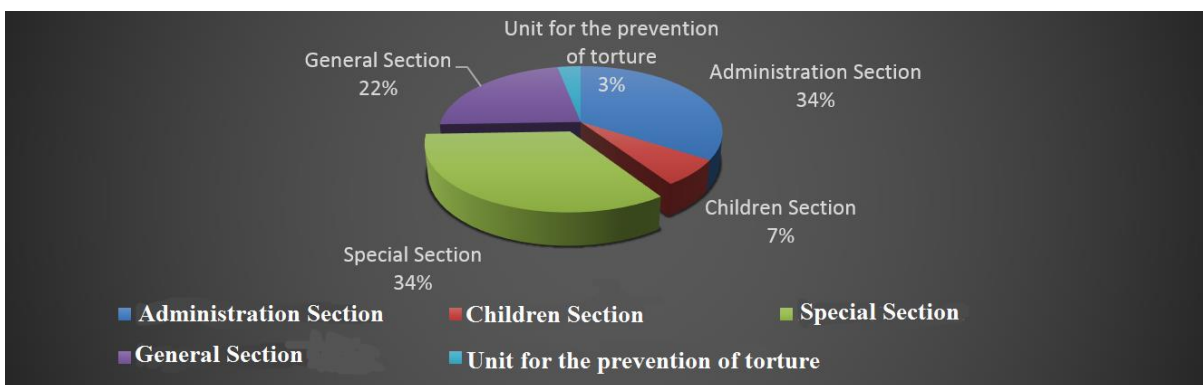
Graphic Overview No.1 - Handling of complaints



The chart below shows the manner of allocating complaints, requests and notifications by sections of the Ombudsman’s Institution, namely:

Administration Section	886 complaints
Child Section	170 complaints
Special Section	880 complaints
General Section	585 complaints
NMPT	80 complaints

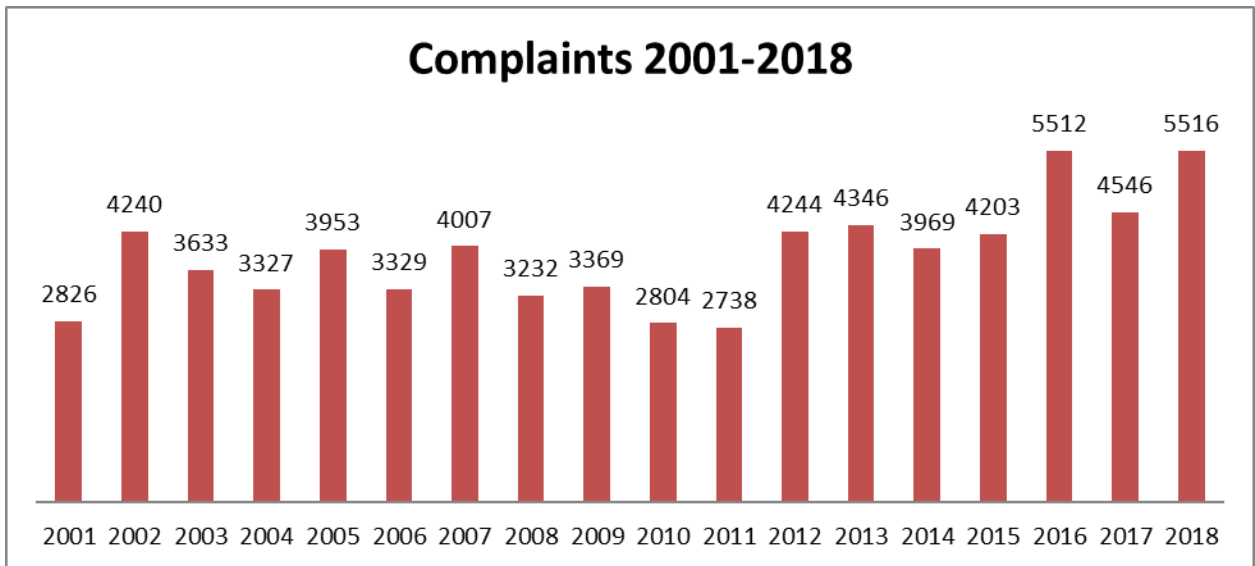
Graphic Overview No. 2- Allocation of complaints by sections



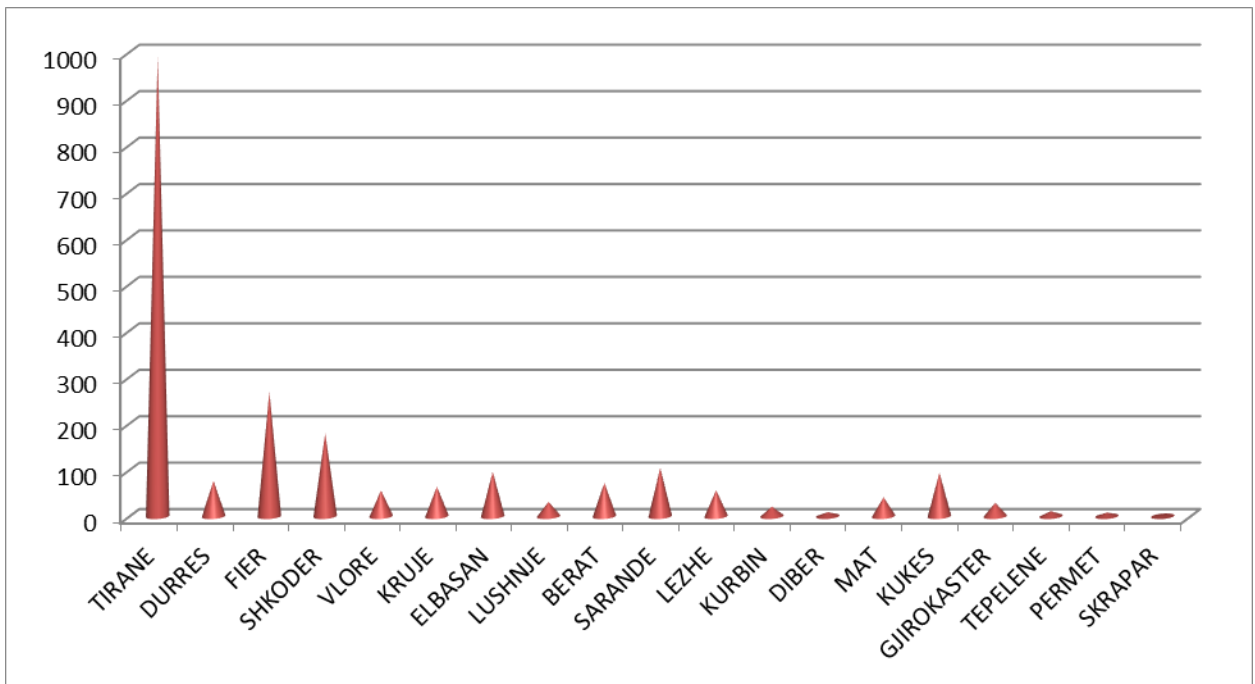
7.2 Cases carried over in years

The following tables graphically provide information about complaints that have been dealt with over the years by the Ombudsman’s Institution.

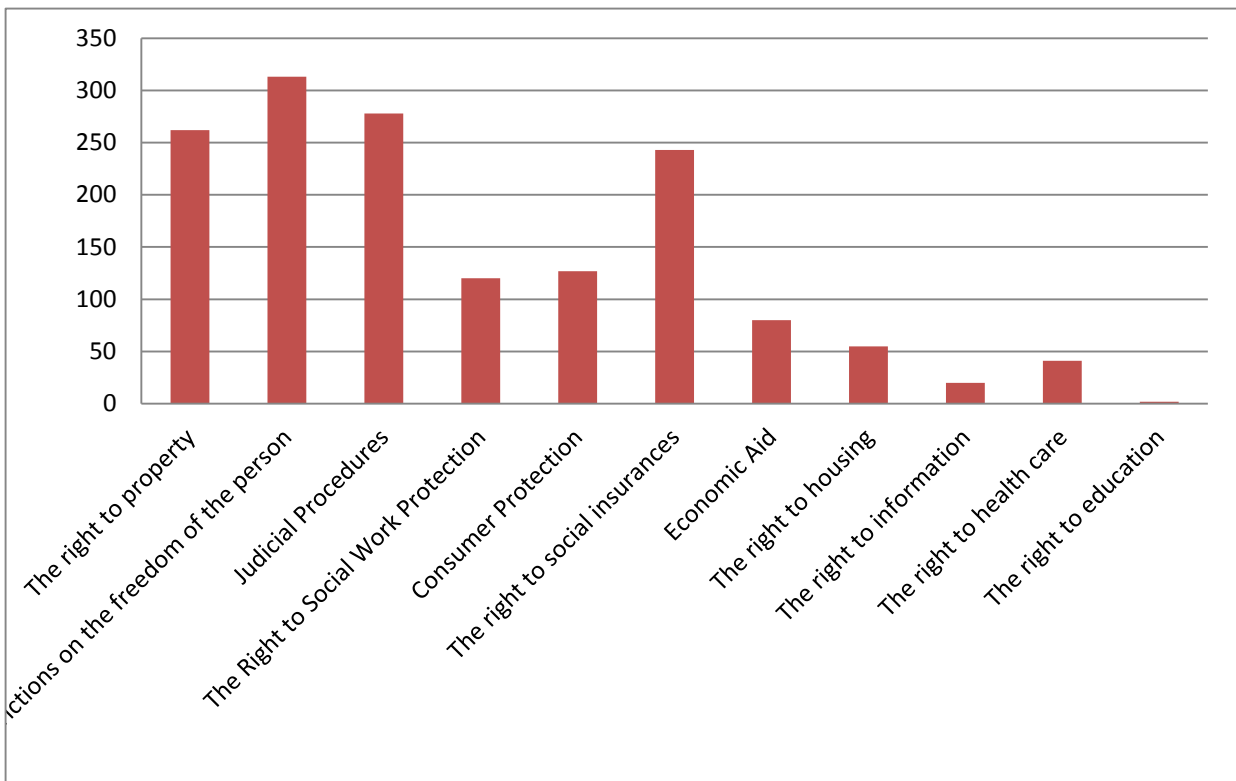
Graphic Overview No.3- Complaints received by the Ombudsman’s Institution over the years



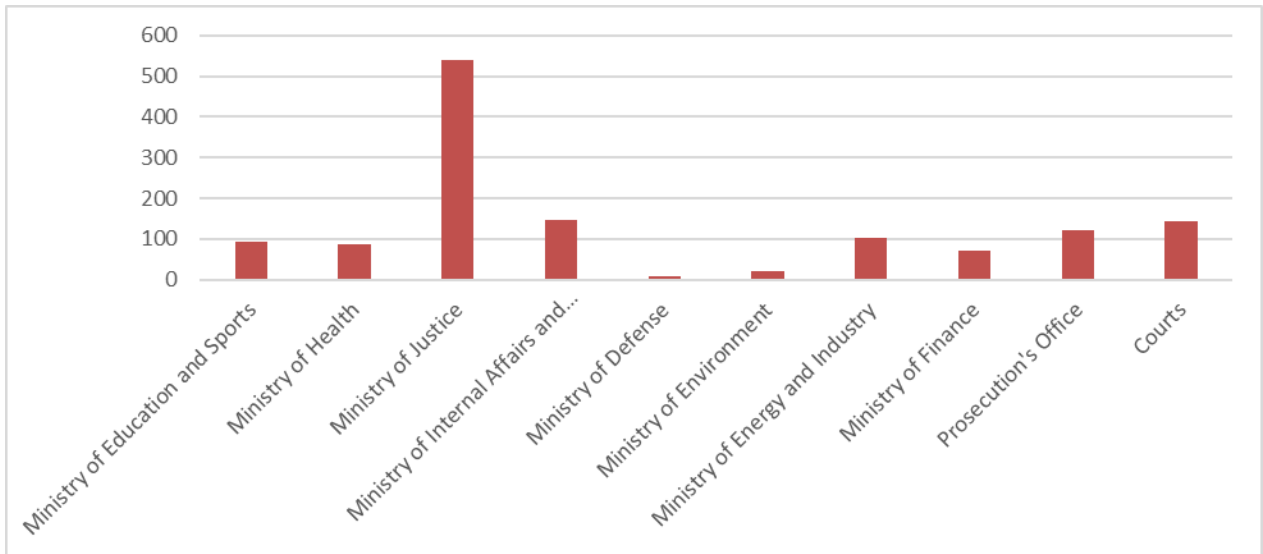
Graphic Overview No.4 – Allocation of complaints during 2018 by cities



Graphic Overview No.5 - Complaints registered during 2018 according to the citizen's right violated



Graphic overview No.6 – Allocation of complaints addressed to the Ombudsman’s Institution towards the State Institutions and the institutions that are subordinated to them.



Graphic overview No.7 – Allocation of complaints according to treatment and resolution in 2018

