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Opening Remarks from the Ombudsperson

The report you are reading today summarizes the annual work of the largest human rights institution in Albania.

Above all, the report is a testimonial of the citizen trust in this institution, as during the year a slew of complaints related to the dissatisfaction of our citizens with public institutions have been submitted to the Ombudsperson.

We have learned much from these complaints. We have learned that our institutions still have a long way to go to fully uphold human rights. Also, these complaints provide accurate information on the level of our citizens' freedom of expression.

A citizen that complains is a free citizen. A person who is not afraid to state their dissatisfaction and holds the institutions of his/her state accountable, is a citizen the exercises the attributes of the freedom of expression. The freedom to complain is a form of freedom of expression.

In itself freedom of expression implicates two preconditions. The first is that there should be a possibility to express oneself, and the second is that this expression should be manifested freely. There can be neither freedom, nor expression if one of these two elements is absent. Without freedom there cannot be true expression and at the same time there cannot be the expression of one's mind without freedom.

Throughout history a wrong perception that dictatorships hate freedom and therefore restrict expression has existed. However, freedom is in itself a tool, a means that enables the articulation of dissatisfaction.

Autocracy hates the expression of dissatisfaction and that is why it restricts freedom with the final goal of not allowing the expression of dissatisfaction. In autocracy no one must be dissatisfied. Even if there are, they should not have the freedom to express their dissatisfaction.

For this reason, in the democracy we are striving to build, we must always keep an eye on any tendency of any power to restrict the freedom of anyone and to devalue rights, making them part of a populist rhetoric to keep any construction discussion of our concerns at bay!

These are nothing but their first steps to undo the freedom of expression, which allows anyone to express dissatisfaction with any power in democracy. The strength of democracies stands not in the silencing critical voices, but in fundamentally addressing with reason the opinion of others, which could be different from ours.

Freedom of expression is fragile in fragile democracies like ours and that is why our efforts to safeguard them must be that much greater.



CHAPTER 1

Legal and institutional framework

In a democracy, the very important principle of division of powers and checks and balances mainly aims at avoiding the risk of power concentration into the hand of one entity or specific persons, which inherently carries the risk of abuse of power. For this reason, even though state power in its entirety is one and undivided, within it there are a series of mutual intertwining relations that the Constitution provides between the given segments of the state. At the core of this principle then, stands the idea that the three central level powers should not only be exercised independently, but also in a balanced manner.

In this regard, the Constitution provides also for the establishment of other central level institutions taking a neutral or in-between position, and the role and position of which is highly important for the functioning of a democratic state and the protection of fundamental human rights and freedoms of the citizens. These important bodies exercising their constitutional functions enjoy independence that is guaranteed by specific provisions of the Constitution. The constitutional provisions regulate to care to best protect and ensure the independence of constitutional bodies and institutions, especially from the potential influence or intervention of politics or the executive, which could threaten their activity in the framework of the relevant constitutional functions.

One of the components of democracy is good governance that implies good administration. Democracy goes beyond elections. It includes daily governance practices. There cannot be good governance when the public administration fails to uphold human rights. The right to better administration is part of citizen rights. So is any decision making by the state administration and legislators with an approach and from

a perspective of human rights¹. Institutions established to protect human rights are relevant state building stakeholders in democratic systems. Both in exercising its traditional and broader mandate as one of these institutions, the Ombudsperson plays an irreplaceable role, being first and foremost an indicator of the level of maturity in the political class and of the mentality of the society creating it.

The Institution of the Ombudsperson, pursuant to the national legislation (Constitution and Law No. 8454, dated 04.02.1999 "On the Ombudsperson", as amended) and the international law (especially the Principles of Paris and the principles of the Venice Commission), has been provided with a broad mandate as the highest level national institution for the promotion, violation prevention and protection of human rights, also based on international standards. This mandate is translated in the jurisdiction and the competences of the institution provided in the Constitution, the law "On the Ombudsperson" and in other duties provided by specific laws.

The Ombudsperson is increasingly becoming not only an institution with a voice but also one that is critical for the protection of citizen rights and the stimulation of government bodies' accountability. It is ever more stressing the exercise of its mandate as a front line for the protection of citizen rights and to stimulate government body accountability. This has become more evident considering the need for an open and accountable government. Citizen requests to have the Ombudsperson intervene or take an institutional position related to high public interest issues are continuously on the rise. This is a responsibility that we try to meet and realize at all time, regardless of the very limited capacities available.

¹ The now well-known principle of the "human rights approach"

It is the constitutional competence of the Ombudsperson in the framework of its functions to make the public administration more sensitive and responsible to the requests for justice and confidence. In other words, in cooperation with public officials at the central and local level, the Ombudsperson enjoys the right and the obligation to strive to create a democratic culture of high human rights and freedoms standards in the country.

The General Assembly of the United Nations has adopted Resolution 48/134, dated 20.12.1993 providing standards that member states should implement to guarantee an effective Human Rights protection system. This resolution, widely known as the Paris Principles, is the document providing standards for the functioning of National Institutions to Promote and Protect Human Rights. In order for National Human Rights Institutions to be conceptualized and act in line with these principles and to act as guiding institutions in promoting and protecting Human Rights, they are subjected to accreditation which is conducted every 4 years. This process is conducted by the Global Alliance of National Human Rights Institutions (GANHRI) which operates as an independent organization with the support of the United Nations. The Office of the High Commissioner for Human Rights of the United Nations in Geneva acts as a secretariat for the accreditation process.

It is of note that the international standards developed for national human rights institutions ("Paris Principles") provide for the competences, responsibilities, achievement and guarantees of independence and pluralism. National Human Rights Institutions (NHRI) are generally considered as competent to:

monitor any human rights violation situation and take relevant actions against them;

advise the Government, Parliament and any other competent body on specific violations and issues related to the legislation, compliance and general implementation of international human rights instruments;
cooperate with regional and international organizations;
provide education and information in the field of human rights.

The Venice Commission, recognizing and accepting the fundamental principles of national human rights institutions, such as independence, objectivity, transparency, fairness, impartiality, and considering these institutions as an important element of a state founded on democracy, rule of law, respect for human rights and fundamental freedoms and good governance, has adopted the *Principles for the protection and promotion of national human rights institutions*.

Since national human rights protection and promotion institutions are focused on creating a society where state institutions are accountable to citizens and act transparently, effectively and efficiently, human and financial support is necessary to guarantee that public institutions act in compliance with national and international standards and acts in the human rights field.

The Ombudsperson Institution in Albania is certified by competent international organizations for the high standards it meets. More concretely, the Institution of the Ombudsperson in Albania has been accredited with Status "A" for the first time in 2004 and was reaccredited in 2008 and in 2015 with the same status. Upon conclusion of this process, the Committee makes recommendations for the Human Rights Institution to improve its work and/or guarantee the standards defined in the



Paris Principles. When reaccredited in 2015, the attention of our Institution was pointed to the need to advocate with Parliament to improve its human and financial capacities. A good portion of the recommendations of the Committee are addressed to Parliament and Government, because only in financially supporting and guaranteeing the human capacities of institutions critiquing them, can they demonstrate increased democracy sustainability in the country.

One of the evaluation criteria leading the accreditation process, among many others such as autonomy from government; independence guaranteed by statute or Constitution; pluralism, etc. is adequate financial support from the state budget to allow the gradual and progressive implementation of activities by these national institutions in the framework of their mandate. Currently, (since August 2019) has entered the Status A reaccreditation process, which will be completed in 2020.²

² Because of the Covid 19 caused situation, the reaccreditation procedure for the Ombudsperson was postponed from March to September 2020.

CHAPTER II

Implementation of the Parliament of the Republic of Albania resolution for 2018 by the Ombudsperson Institution

In the framework of assessing the Ombudsperson activity for 2018, the Albanian Parliament adopted on 30.5.2019 its relevant resolution, where among other things recommends the Ombudsperson to take a series of measures related to the exercise of its constitutional and legal functions. Pursuant to this resolution, the Ombudsperson has undertaken the following steps:

Increasing efforts to meet the objectives of Agenda 2030 Sustainable Development, focusing especially in gender budgeting, women and child protection, consumer protection, the obligations stemming from the applicable legislation in relevant fields and/or resolutions adopted by the Parliament of Albania

With regard to gender budgeting as a fundamental element towards meeting the gender equality objective in the Albanian society, the Ombudsperson believes that the policies and strategic plans that are not accurately cost and budgeted from a gender perspective are not implementable and do not ensure a “*de facto*” guarantee of women and girls rights in Albania. In this context, and in meeting the obligations expressly provided in the Parliament Resolution for 2018, in 2019 the institution has committed in 2 (two) main directions:

the Ombudsperson institutions implements the principles of gender budgeting and its staff is aware of the importance of respecting these principles during our Mid-Term Budget Framework (MTBF) planning;

the Ombudsperson institution monitors and stimulates other central and local institutions to respect the gender

budgeting principles in line with the CEDAW Convention and the National Gender Equality Strategy.

With regard to the primary commitment noted above, the Ombudsperson MTBF 2020-2022 was for the first time developed with gender budgeting elements, pursuant to the requirements expressly provided in Law No. 9936, dated 26.6.2008 “On the budget system management in the Republic of Albania”, as amended and further detailed in Council of Ministers Decision No. 465 dated 18.7.2012 “On gender integration in the midterm budget framework”.

In this budget framework, the policy of the Ombudsperson regarding gender equality, policies directly or indirectly impacting gender issues are under focus and clearly stated, addressing them effectively to achieve and maintain the final goal of gender equality. The gender budgeting principle is clearly expressed in the performance indicators at target level. In addition, solid bases will be established for to rigorously monitor institution gender-based policies during the budget implementation and to allow for their control and audit in line with the public expenditure management cycle.

With regard to monitoring and stimulating other central and local institutions to respect gender budgeting principles, the Ombudsperson started work in 2019 to develop a monitoring report on budgeting to address domestic violence and gender-based violence in Albania.

A number of central institutions and local government units have clearly provided obligations to address domestic violence, stemming from Law No. 9669, date 18.12.2006 “On measures against domestic relations

violence”, as amended and the secondary legislation for its implementation. In addition, the National Strategy for Gender Equality and its Action Plan 2016-2020 provides, in strategic objective No. 3 “Reduction of gender based and domestic violence”, for a series of activities that must be completed by these institutions and the relevant financial costs.

A very important factor in effectively addressing gender-based violence is sufficient planning of expenditures related to the fulfillment of legal obligations and strategic objectives in central and local level Albanian authority budgets.

With the aim of assessing budgeting in this area, with the support of the UN Women Office in Albania, the Ombudsperson started the work on developing this monitoring report with the identification/mapping of the obligations provided by law and the above-mentioned strategy for each central and local level institution. Afterwards, the Ombudsperson requested detailed budget planning information regarding expenditures for 2018 in the context of the 2018-2020 Mid Term Budget Framework, from the main central level institutions and 5 (five) municipalities with the highest population concentration in the country.

In addition, the OP staff was trained on the topic of “*Gender Equality Principles and General Gender Budgeting*” in the field of gender budgeting **on 30 and 31 October 2019**. Staff training is necessary, because the MTBF planning at the Ombudsperson with General Gender Budgeting elements is not only an obligation for the staff of the finance and budget sector, but also the staff of other OP sectors, so that working plans and budgets can be harmonized as best possible. This training was organized with the support of UN WOMEN and in cooperation with the staff

of the Commissioner for the Protection Against Discrimination.

As regards child rights protection, guarantee and promotion, in 2019 the Ombudsperson has worked to:

mediate and promote new child protection rules;

inspect, develop reports and make recommendations for the administration, with the aim of changing inadequate administrative practices or to improve legislation.

More concretely, in 2019 the Ombudsperson has addressed the following:

46 complaints, the object of which was violation of child rights as a result of poverty. This factor is a hurdle to healthy physical, mental, moral, spiritual and social development and to the enjoyment of a healthy life without deprivations and in the highest interest of the child, which then results in the violation of other child rights.

8 (eight) ex-officio cases, the object of which was the violation of the **child right to benefit health care services** to treat diseases and recover.

Pursuant to the applicable legislation on funding hospital health care services from the compulsory health care insurance scheme, the Ombudsperson has continuously requested that the MoHSP cover treatment expenses (in full or partially) from the Compulsory Health Care Insurance Fund in treating the cases in question. Beyond the official communication between the OP and the Ministry of Health and Social Protection, none of the case referred by our institution have been treated through the Compulsory Health Care Insurance Fund, pursuant to the applicable legislation.

1 (one) complaint, regarding the violation of **the child right for healthy nutrition** in its three main components: food security, food safety and healthy nutrition. To guarantee food safety for children between 0 and 6 years of age, the Ombudsperson has addressed the relevant recommendation to the state administration bodies⁴. We are yet to receive an official reply on this case regarding the implementation or not (completely or partially) of this recommendation.

In addition, the Ombudsperson has developed three synthesis reports, which have been described at length in the following chapters, more concretely in Chapter IV “Other institutional engagements”. One of the persisting issues followed by the OP institution provided also in the Resolution of the Parliament of the RoA “On assessing the work of the “Friends of Children” Members of Parliament Group” for 2018 and the action plan for 2019” is **the completion of the child deinstitutionalization reform** and measures taken to identify and support biological or alternative families and the facilitation of adoption procedures by the Ministry of Health and Social Protection and the Ministry of Justice, and the Adoptions Committee. The Ministry of Health and Social Protection again did not adopt the Deinstitutionalization Action Plan in 2019.

In the child rights protection field, the Ombudsperson Institution has implemented to guidelines “On the cooperation of the Ombudsperson with children and civil society” through a series of awareness raising campaigns, where the tools proposed by the children

⁴ Addressed to the Ministry of Health and Social Protection and the Municipality of Tirana.

themselves have enabled better cooperation among the Ombudsperson, the children and the civil society. In the framework of awareness raising work with education institutions and various schools in the country to promote the role of the Ombudsperson in protecting child rights, a series of activities were organized. More specifically:

In the framework of the “*For children by children*” project, on **18 April 2019** and in cooperation with the Save the Children Albania Organization, the Commissioner for the Protection and Promotion of Child Rights, organized meetings at the “Qemal Mici” school in Durrës where it presented the guidelines “On the cooperation of the Ombudsperson Institution with children and civil society”.

On **24 April 2019**, a meeting was organized with students and teachers of the “Qamil Guranjaku” 9K school in the city of Elbasan.

In the framework of the 2030 Agenda, on **12 April 2019**, representatives of the Ombudsperson Institution participated in the event entitled “*Together for the realization of Objective 8.7 for Sustainable Development in Albania*”, organized by the MoHSP in cooperation with the OSCE and ILO. The 8.7 Alliance is a global partnership to identify various priorities and initiates to make progress on SDG 8.7 towards full achievement of a world without forced labor, modern slavery, human trafficking and forced child labor.

On **24 April 2019**, representatives of the Ombudsperson Institution participated at the National Conference “*In support of child protection workers*” organized by the MoHSP

- SAPCR, with the support of the following international partners: UNICEF, ESCE, Save the Children, World Vision Albania and Terre Des Homes, Albania.

- On 2 May 2019, the Ombudsperson participated in the First Youth Summit in our country.
- **On 14 May 2019**, Ombudsperson representatives participated in the presentation of the “Children on child rights” report at the Assembly of the Republic of Albania, developed by the CRCA with the participation of 500 children from across Albania in the framework of the project implemented by Save the Children in cooperation with the Ombudsperson Institution and the State Agency for the Protection of Child Rights.
- In **May 2019**, the Section for the Protection and Promotion of Child Rights launched to 2019-2022 Strategy and Action Plan. This strategy, which is a component of the 2019-2020 Ombudsperson Strategic Plan aims at providing a broad and comprehensive protection plan, based on the highest interest of the child. The child friendly website of the Section for the Protection and Promotion of Child Rights, part of the official Ombudsperson website, was also presented during this event.
- The development of the strategy and Action Plan, the development of the child friendly website and the event organization were implemented in the framework of the “Children for children” project implemented by Save the Children in cooperation with the Ombudsperson Institution. In addition, the Section for the Protection and

Promotion of Child Rights website, as part of the Ombudsperson official website, was established for the first time with the aim of being as friendly as possible and to achieve accessibility to children (and not only) in a simple and understandable language.

- As part of the South East Europe Children's Rights Ombudsperson's Network (CRONSEE), and in the framework of the 30th anniversary of the United Nations Convention “On the rights of the child”, the Ombudsperson organized on **17 October 2019** a regional conference entitled: “*Protection of migrant children rights*”. The mission of this network is to promote and protect child right in the framework of the Convention on the Rights of the Child.

The exchange of ideas and opinions and the sharing of the best work practices between the Ombudspersons of the Region as members of the CRONSEE and civic society, international organizations, representatives of state institutions, and NGOs enabled the identification of issues, challenges, and addressing of the main recommendations to guarantee the highest interest of the child, focusing mainly on the protection of migrant children, their highest interest, and the improvement of adequate legal procedures, including the effective integration of migrant and refugee children and their families. Based on the qualitative and quantitative data collected by the member countries of the network and based on their experiences, the meeting resulted in 15 joint recommendations.

Southeastern Europe Ombudspersons for Child Rights recommend to the government of the respective countries,

to improve institutional cooperation and coordination between responsible state central and local level authorities and to enhance local level human resources to better respond to the needs of moving children, especially through the provision of continuous staff training, allocation of required budgets and periodic inclusion in consultation and monitoring. These recommendations will be followed up upon by the Ombudsperson and CRONSEE network members to implement a moving child rights perspective and to specifically deal with cases of children in movement, the promotion of their rights and the monitoring of implementation by relevant states.

Ombudsperson representatives actively participated in the launch event of the National Center for the Protection of Children and Youth from Sexual Violence, organized on 23 October 2019 by CRCA/E CPAT, which fulfills one of the recommendations made by the OP to provide specialized services for sexually violated children and youth.

Contribution was also made in the framework of the Office of the High Commissioner for Human Rights of the United Nations report "**On Child Rights and SDGs**" which includes *challenges to the realization of child rights - Solutions or best practice to leave no child behind*.

In cooperation with the UNICEF in Albania, the OP organized on **30 October 2019**, the concluding event in the framework of the completion of the work to monitor conditions and treatment in institutions

holding, detaining and imprisoning juveniles in conflict with the law and deprived of freedom, where the findings of the inspections undertaken by competent juvenile criminal administration bodies took in the framework of the Juvenile Criminal Justice Code were presented. For this purpose and in accordance with the agreement with UNICEF, the main institutions treating juveniles deprived of freedom were inspected during the *May to June 2019* period. The Tirana Local Police Directorate and the 6 precincts it includes at the local level and the Shën Koll (Lezha) IECD and the Kavaja IECD at the national level.

As regards the protection of consumer rights, special focus has been given during this period, to complaints received about electric energy service quality and provision for family consumers in economic difficulty and distress; to the payment of overdue electric energy bills; to the lack of drinking water supply services, to food safety, etc. We should point out that the mandate of our institution when addressing complaints only relates to the services provided by the public sector or third parties providing public services. Our mandate does not cover the private sector when addressing complaints. However, we have considered this issue in the framework of our promotion mandate and in recommendations to state bodies supervising the sector. We are convinced that the public expects our mandate in this field to extend to the private sector as well. In regard to the above, we have undertaken the relevant actions within our mandate and in the spirit of Parliament resolution.

The right to receive vital services, such as drinking water supply and electric energy supply

services, are fundamental human needs and a fundamental right, the lack of which constitute grave violation of human rights.

In many cases, financial dues have accumulated over the years, and even though the parties have entered agreements for installment payments of power consumption back dues, families have still not been financially capable of even paying the minimum amount of ALL 1,000 against their dues.

In these circumstances we have suggested that the Energy Regulatory Entity find adequate opportunities for vulnerable consumers, with the aim of introducing seasonal protection policies taking into account weather conditions, extremely low temperatures in winter and extremely high temperatures in summer. In all these cases, we have recommended that electric energy supply interruption for consumers be forbidden, especially between 08:00 and 23:00 hrs.

Regardless of the Energy Regulatory Entity developing the regulation "On specific conditions for the interruption of power supply for clients in need", which provides a series of measures related to the obligations of the Universal Supplier and the procedures to be followed in cases of power supply interruption (in case of failure to pay for power for more than four months and in case of failure to comply with the power bill payment based on a payment schedule agreed with the supplier), we believe that the social and economic protection of these vulnerable groups is not sufficient and it should be considered a priority, because families in extreme need cannot secure their survival, let alone being able to afford the public services in question.

The Ombudsperson is of the opinion that this should be coupled with a legal changes package to provide an immediate solution that would allow these families not to be deprived of the right to access to necessary power supply and which would ensure a minimum supply of kilowatt hours. In addition, interruption of power supply for these groups should be absolutely avoided, in order for everyone to receive basic services regardless of the social and economic status they may have in the country.

Another issue is related to the **water sector reform**. Even though the latest indicators show that the water sector reform is on the right track as regards previous issues with the payment of water bills, there are still challenges as regards to the provision of better-quality services and more investments in the future. A portion of the territory of Albania, especially rural areas are not supplied at all or are partially supplied with drinking water, resulting in a challenge for the livelihood and basic services needed by the residents.

- **Increasing its information and awareness raising activities regarding the field of its activity and the role of the institution**

Since, National Human Rights Institutions act as leaders in promoting and protecting human rights, the Ombudsperson Institution has focused its continuous efforts in the promotion, information or awareness raising of citizens regarding human rights and the role of the institution in this regard.

Having said that, continuously citizens understand the role of the Ombudsperson Institution as being broader. Even though explanations of

the role of our institution have been made in many interviews or public appearances by the Ombudsperson herself, the institution is still perceived by the public as a free legal aid organization and there are many requests asking and expecting of us representation in the courts for concrete issues of groups in need. We believe that the implementation of the free legal aid law and the better promotion of mechanisms made available by the state through this law, will improve public perception regarding this matter.

An issue remains with regard to the limited mandate over the private sector and the deadlines for administrative activities. However, during the reporting period, the institution has undertaken the following activities:

- **In the gender equality domain,**

in cooperation with the UNDP, the Ombudsperson organized on **25 June 2019**, the first Consultation Round Table for the development of the integrated law on violence against women and girls. The discussion was focused on the need to develop an integrated law on violence against women and girls based on the Standards of the Istanbul Convention against all forms of violence against women and relevant measures that should be taken by all state institution, independent institutions monitoring human rights and civil society organizations following their joint work to improve legislative measures against gender based violence.

- On 11 July 2019, in cooperation with the Commissioner for the Protection Against Discrimination and UNDP Albania, the Ombudsperson organized a consultation table with representatives of the public administration, the private sector, civil society and trade unions considering the

topic of: “*Principles, policies, and standards for a safe working environment*”. The discussion of policy and procedural document development by various public institutions and private entities regarding harassment and sexual harassment is a guarantee to ensure a safe work environment. Issues related to harassment, sexual harassment arising during activities or because of the activity have already been identified as a concern in a series of reports and studies. The consultation round table discussed and made proposals to reach conclusions the needs for legal, political and procedural regulations against violence, harassment and sexual harassment to guarantee a safe working environment in both the public and private sector.

During the reporting period, the Ombudsperson has focused especially on the promotion and protection of **vulnerable groups rights**. Of note in this regard, are the activities under the “*Monitoring and improving the equal social rights distribution at the local level*” Project, funded by GIZ and implemented in the municipalities of Elbasan, Librazhd, Pogradec and Kukës. A number of activities have been carried out under this project, more notably consultation meetings with Local Government Units, civil society organizations and groups in need, on the monitoring and assessment methodology of social services provided by local government units (*June 2019*); workshops organized with representatives of the local government units and civil society organizations for the achievement of the Sustainable Development Goals at the national and local level (*April 2019*); **consultation and advocacy**

meetings to present the findings and recommendations of the “Economic assistance distribution and upholding of rights of Persons with Disabilities Monitoring report” (June-July 2019); concluding event titled: *“Challenges in protecting and realizing the rights of the rights of social groups in need and further action”* (July 2019).

In September, this project was extended to another 4 cities (Pogradec, Berat, Fier and Tirana) where the relevant activities were conducted where Ombudsperson presented the Monitoring Report and recommendations developed based on issues identified. The closing event titled "Challenges in protecting and realizing the rights of the rights of social groups in need and further action", was organized on **18.12.2019**. The following was presented at this event:

The “Monitoring and improvement of equal distribution of social rights in groups in need at the national and local level (Pogradec, Fier and Berat)” Initiative;

Measures taken by the Ombudsperson in protecting and upholding the social rights of groups in need;

Conclusions and recommendations of the monitoring report and the measures taken by the OP to implement these recommendations.

In this framework, the Ombudsperson has sent the mayors of Berat, Elbasan, Fier, Kukës, Librazhd and Pogradec the relevant Monitoring Report on economic assistance distribution and upholding of the persons with disabilities rights, and asked their reply regarding the measures they will take to implement the recommendations in question.

In the meantime, recommendations were developed based on the issues presented and they were official sent to the Ministry of Health and Social Protection and the Ministry of Finance and Economy on **02.12.2019** with the aim of improving the economic assistance scheme and the rights of persons with disabilities.

On 05.07.2019, representatives of the Ombudsperson participated in the hearing organized by the Labor, Social Affairs, and Health Committee of the Parliament of Albania on the draft law “On social assistance in the Republic of Albania”. The suggestions made by the Ombudsperson were taken into account and have been reflected in Law No. 57/2019 “*On social assistance in the Republic of Albania*”.

In July 2019, the closing event of the “*Transparency in the Albanian health system*” project, supported by USAID (March 2017 - July 2019) was organized. The aim of this project was to create a more accountable health care system, enhancing the role of independent institutions and engaging community beneficiaries. The project provided technical assistance to the Ombudsperson, the Supreme Audit Institution, and the HIDACI with the aim of developing transparency and citizen engagement mechanisms to effectively fight corruption in the health care sector.

On the occasion of the International Seniors Day, on **01.10.2019**, representatives of the Ombudsperson organized a meeting with senior citizens living in the Home for the Elderly in Fier, which focused on the needs of seniors regarding the improvement of service standards.

In cooperation with the LGBTI shelter, the Ombudsperson organized between September and November, a series of workshops to raise awareness among members of the LGBTI, Roma and Egyptian communities and among vulnerable women and girls about their rights, the institutions they can access when their rights are violated or denied, the applicable legislation for their protection, etc. The events were organized in Tirana, Shkodra, Durrës, Korça and Gjirokastra.

On **31 October 2019**, the Ombudsperson organized a discussion event with women associations in the city of Vlora to discuss the legislation on the prevention and fight against violence against women and domestic violence and its implementation in practice.

On **14 November 2019**, the Ombudsperson organized an “open Day” in the Municipality of Korça to promote, protect and prevent the violation of fundamental human rights and freedoms.

On **15 November 2019**, the Ombudsperson organized a meeting with the Roma and Egyptian NGO network active in the Korça Region to discuss the rights of minorities in the framework of human rights.

In cooperation with UN Women, the Ombudsperson organized on **25 November 2019**, a forum with students focusing on gender based and sexual violence, and knowledge of the national and international legislation on gender-based violence.

On **17 December 2019**, the Ombudsperson organized a workshop titled “Knowing the

role, functions and competences of the Ombudsperson Institution” with social education and civics teachers of public 9K schools in Tirana, with aimed at informing them about the relevance of the OP activity and functions.

Promotion of child rights has been one of the main engagements of the Ombudsperson during the reporting period. More specifically:

On 3 June 2019, representatives of the Ombudsperson participate in the Terre des Hommes event on the implementation of a program dedicated to children in conflict with the law, aimed at modeling services for the reintegration of children in conflict with the law and at strengthening and enhancing the capacities of competent authorities to implement this model. This was considered as a joint round table for stakeholders working for the reintegration of children in conflict with the law in the society, and the engagement and role of each stakeholder in each sector/institution to model and successfully implement the reintegration services model.

On **7 June 2019**, a promotion event was organized at the “Mësonjëtorja e Parë Shqipe” 9K school in Korça.

The Ombudsperson (the Child Rights Protection and Promotion Sector) organized on **18 and 19 June 2019**, in cooperation with the “Zëri 16+” youth group, a meeting with the children of Peshkopia, with the aim of promoting child rights and to enable them to have their voice heard, by exercising their right to complain with the support of the Ombudsperson.

In partnership with the children and civil society, a lobbying and informative meeting was organized on 14 May 2019 at the Parliament of Albania, where the findings of the “Voice of the youth in Albania” Report, which is a study on the assessment of the child perspective regarding their issues pursuant to the CRC, were presented.

The cooperation agreement between UNICEF and the Ombudsperson was implemented (June 2019) for the achievement of objectives and implementation of activities foreseen in the action plan of the Child Rights Protection and Promotion Sector for 2019-2021 regarding the promotion, prevention and protection of child rights. This Cooperation Agreement was signed on a marked and important day for children, as it was signed on June 1.

On 5 November 2019 a meeting was organized with students of the Faculty of Social Sciences of the University of Tirana, about the role of independent human rights institutions with regard to protecting, guaranteeing and upholding human rights in general and child rights especially.

Participation in the second Girls Summit in Albania, which was organized in Tirana on **18 November 2019** on the European Day against violence and sexual exploitation of children. The second edition of the Summit and the #Girl2Leader campaign was organized by the Albanian National Youth Network (ANYN), CRCA/ECPAT Albania, the National Youth Resource Center in Albania (YRCA), Child and Youth Policy Hub and the Coalition for Education in Albania. The motto of the Summit this year was: “*Girls for change: Challenging reality and designing their future*”.

As a member of the ENOC (European Network of Ombudspersons for Children), the Ombudsperson produced a video statement for **20 November 2019**, with key messages on child rights and the Convention on the Rights of the Child. This video was published on the occasion of the 30th anniversary of the Conventions on the Rights of the Child in all member countries of this network.

In the framework of the 30th anniversary of the Convention on the Rights of the Child, the Commissioner for the Protection and Promotion of Child Rights, organized on 21 November 2019, a reception with a group of sixth and seventh grade children from the “Tirana Jonë” non-public school.

During the reporting period, the Ombudsperson institution organized and participated in a series of other events ***in the domain of public legal education***, as follows:

Participating in a television show of the Albanian public broadcaster on **09.04.2019** regarding the draft law “*On legal initiative*” to inform the public on the goal of this draft law regarding the right of legal initiative, on which the Ombudsperson has provided its opinion.

Active participation in the event organized by the Bedër University and the Embassy of the United States in Tirana on **29.05.2019** in the framework of strengthening Democracy, Human Rights and Freedoms in Albania, focusing on knowing more about religious harmony values in Albania, and which was attended by students from all state and private universities.

The Ombudsperson organized on **11 November 2019**, in cooperation with the OSCE, an event titled “*The role of the Ombudsperson in protecting and promoting human rights*”. The aim of this event was to discuss and address current challenges and hurdles to the integration of human rights in Albania, and the creation of a more favorable environment to address individual cases of human rights violations, especially through the mandate of the Ombudsperson.

The activities and events described above were only some of the events organized by the institution during the reporting period.

In conclusion, the work done during this period for the development, preparation, publication, and distribution of various reports, special reports, various promotional materials, the participation in various television shows, etc. to improve information and raised awareness on human rights and the role of the Ombudsperson as a National Human Rights Institution, is of note. For the answer to this point, please refer also to section 1.

Improving its engagement for the protection of the interests of Albanian citizens residing outside the Republic of Albania territory by improving cooperation with counterpart organizations.

Protecting the interests of Albanian citizens outside the territory of the Republic of Albania is part of the permanent engagement and work of the Ombudsperson when identifying human rights violations, or when the institution must intervene to address a given issue. Considering the fact that these are Albanian

citizens residing abroad, the Ombudsperson has requested the support of counterpart institutions (Ombudspersons) to intervene with relevant institutions depending on the issues encountered, including the protection of the rights of Albanian citizens deprived of their freedom.

During event organized in the framework of networks with our counterparts across the world, we have found that Ombudspersons are very sensitive with regard to their citizens facing legal issues away from their country of origin, and for this reason the Ombudsperson is interested in proposing concrete action mechanisms.

Based on Article 8/2 of the Constitution of the Republic of Albania, which provides: “*The Republic of Albania shall protect the interests of Albanian citizens permanently or temporarily living outside its borders*”, the Ombudsperson believes that it is the duty of the Albanian institutions to continuously care for Albanian citizens abroad, especially Albanian citizens deprived of freedom in other countries.

In regard to the above, Ombudsperson, Ms. Erinda Ballanca sent Letter Protocol No. 442 on 14.10.2019 to four ministers (namely Ms. Etilda Gjonaj - Minister of Justice, Mr. Sandër Lleshaj – Minister of Internal Affairs, Mr. Pandeli Majko – Minister of State for Diaspora and Mr. Gentian Cakaj Acting Minister for Europe and Foreign Affairs) with the following subject line: *Organization of a meeting on human rights issues and the protection of Albanian citizens deprived of freedom in other countries.*

The letter expressed the initiative of the Ombudsperson to establish a network among these institutions to address, discuss and resolve the human rights issues and protection of Albanian citizens residing abroad. This was done in the context of the fact that while free movement

and seeking legal opportunities for a better life in other countries have often been success stories for Albanian citizens, serving the recognition and consolidation of relations between other countries and our own, unfortunately some Albanian citizens have committed criminal acts outside the territory of the Republic of Albania and are currently imprisoned abroad.

Unfortunately, with the exception of the reaction by the Minister of State for Diaspora, Mr. Majko, the other three ministries failed to address the issue (after many calls with the Ministry of Internal Affairs, we received an answer noting that we should contact with the specialist with regard to this matter, instead of setting a date and time for a meeting with the leadership of the institution, while the other two ministries (the Ministry for Europe and Foreign Affairs and the Ministry of Justice) have not responded at all (we note here that the Ministry of Justice has also been sent a second letter on the matter in January 2020).

Since our institution considers this matter as highly important and considering the fact that cases of Albanian citizens continue to lose their life in penitentiary facilities in various countries, the Ombudsperson will continue efforts to organize this meeting with the aim of establishing relevant structures to respond to these situations.

Regardless of the above, during the reporting period, the Ombudsperson is heavily engaged in protecting the interests of Albanian citizens outside the territory of the Republic of Albania.

More specifically:

The institution has addressed the case of citizen M.V., who wrote about her daughter A.V., who was in a Sentence Execution Institution in Serbia. During her sentence there, she had been diagnosed with a **“Malign tumor of the lymphatic nodes”**. **Because of the disease but also as a result of her good behavior** during her serving the sentence, she sought the help of the Ombudsperson to mediate with the Protector of Citizens of the Republic of Serbia, so that it could lodge a request with the competent Serbian authorities to pardon 1/3 of her sentence.

Upon being informed of the situation, the Ombudsperson contacted the Protector of Citizens of the Republic of Serbia officially, which provided information on the potential opportunities to address the matter.

As a result of the press story on the passing of Albanian citizen F.B while being detained in the immigration center of Le Canet, in Marseille, France, which brought about the reaction of the Albanian public, the Ombudsperson recorded the case and upon its own discretion sent on official letter to the French Ombudsperson requesting their intervention in following up on the case. In reply to the letter, the French Ombudsperson said that the case was being investigated by the French State Prosecution and that the decision of the prosecution at the end of the investigation would be made available. We have contacted a number of times with the contact persons at the French

Ombudsperson, without receiving a final answer on the matter.

The Ombudsperson has received the complaint of citizen L.T., on 04.10.2019, writing that her son I.T was in Switzerland and applied for asylum in the country. Claims were made that law enforcement institutions have violated some of his rights, such as the right to life and the right to freedom, and that our Embassy in Switzerland has not followed up on the case. This case has been recorded and is being followed up by the Ombudsperson.

In April 2019, the Institution of the Ombudsman received the complaint of citizen E.N., who complained against Greek justice authorities, because he has been imprisoned for three years on unjust charges for the murder of Albanian citizen B.T., in Igoumenitsa, Greece. The applicant claimed that citizen K.T., cousin of the victim who is in the Criminal IECD Kosovo Lushnja, has information on the events and he requested the intervention of the Ombudsperson to take his statements and to then forward the information to him at the place of his imprisonment.

After recording this complaint/request, the Ombudsperson undertook all relevant administrative actions through official communications with the General Directorate of Prisons, and the verifications made by this institution returned that no person with the relevant identification information was being held in any IECDs in Albania. In addition, the Ombudsperson conducted verifications both with the Prosecution and the District Court of Kavaja and was informed that this institution has not investigated any criminal cases involving the person in question. Upon concluding administrative procedures, the Ombudsperson institution sent the applicant clarifying

information, orienting them on further legal procedures and steps to follow.

In the framework of efforts in cases to protect the rights of Albanian citizens rights deprived of freedom in other countries, one of the activities of our institution abroad in 2019 was the one in the framework of the Council of Europe for the establishment of the "Nafplon" group (Rome, Italy, October 2019 - The meeting was attended by Council of Europe Representatives, National Mechanisms for the Fight against and Prevention of Torture and Inhumane Treatment from many European countries, etc.) This project created a group/association of the National Torture Prevention Mechanisms, which will monitor the upholding of human rights in cases of forced return operations conducted by Frontex (i.e., repatriation from EU member countries and Schengen area countries to their countries of origin).

In the framework of the same meeting held in Rome, Italy in October 2019, the representatives of our institution visited the largest penitentiary facility in Rome (Rebibia), where they had the opportunity to meet Albanian citizens serving sentences in this prison and also discussed their issues with them. One of their complaints, was the lack of interest on the part of Albanian authorities in the country (our Embassy in Rome) regarding requests they believed should be met by staff of the embassy. Considering their issues were not resolved, they requested the intervention of our institution with our diplomatic structures.

During the meeting in Rome, the Ombudsperson representatives established contact with counterparts in Italy (Garante Nazionale Italiane)

and only a week later, there was a request lodged by the *Garante delle persone sottoposte a misure restrittive della liberta personale della Regione Piemonte* about an Albanian citizen who had gone into a hunger strike in a prison in Turin.

During the January to December 2019 period, in its quality as the NMPT and in cooperation with the Border and Migration Police Directorate and FRONTEX, the Ombudsperson has continuously monitored voluntary and forced repatriation operations of Albanian citizens from EU member countries and Schengen area countries, to ensure that Albanian citizens for whom there are repatriation decisions from the territories of EU member countries, are transferred to Albania pursuant to the relevant rules. The NMPT has been part of a group of some **26** repatriation operations, coordinating with the Mechanisms of other countries and at the same time fulfilling its legal role as a guarantor, while also complying with Directive 2008/115/EC26 of the European Parliament on joint EU member country and third party country standards for the independent NMPT monitoring of citizen repatriation operations from EU countries to origin countries. Our participation in these operations was realized using the limited capacities of the institution, because even though we have requested to be provided with additional capacities at the level of assistant commissioner, Parliament has not provided for such additional resources. As a result, out of the 44 operations in which the presence of our institution was requested, we have only been able to participate in some **26** of them, because of lacking human resources.

Upon conclusion of the monitoring processes, in its quality as the NMPT, the Ombudsperson has suggested in meetings with FRONTEX and Border and Migration Police Directorate representatives that measures be taken to guarantee the humane return of these persons in complete respect of the rights of Albanian migrants, and rigorous compliance with EU standards and the Albanian legislation.

- **Publishing its recommendations and addressing them to the relevant institutions and the Parliament of Albania in a timely manner, and informing the Parliament of Albania on the progress of their implementation.**

As you are aware, in compliance with the Decision of the Parliament of Albania No. 134/2018 “On adopting the Annual and Periodic Monitoring Manual”, the Ombudsperson has periodically informed (electronically and in writing) the Parliament of Albania on the recommendations that the Ombudsperson institution has addressed to public institutions, and the stage of their implementation (the last two reports were submitted with letters protocol No. 392, dated 10.09.2018 and No. 27 dated 15.01.2020, corresponding to the May-August and September-December 2019 periods respectively). In the meantime, in the framework of updating the official institution website, work continues on transferring the database from the old website to the new one, and to ensure the real time upload of the recommendations (complete text) on the website, which will enable better accessibility for any interested citizen or subject, complying with transparency and personal data protection rules.

Following up on recommendation implementation level, reasons why recommendations have not been implemented or not accepted, and informing relevant institutions and the Parliament of Albania on measures to be taken.

Developing and publishing a record of complaints/requests received by the institution, and declaring their status in line with the rules on transparency and personal data protection, no later than 6 months from the adoption of this resolution.

Please refer to the information provided in *section 5.1 of Chapter V, Cooperation with public administration institutions and the level of OP recommendation implementation.*

with regard to this point of the resolution, we would like to inform that starting September 2019, the Ombudsperson has developed a record of complaints/requests received from citizens, including their current status. The record is public and accessible on the official Ombudsperson website at:

<https://www.avokatipopullit.gov.al/sq/article/transparency>

CHAPTER III

Assessment of the public administration in regard to upholding human rights

3.1 Rights of persons deprived of freedom

In 2019, a total of 212 individual complaints related to rights of inmates have been submitted, and the administrative investigation has been completed for 113 of them, while it is still ongoing for 99. Among the cases completed, 75 cases have resulted to have no legal grounds, 30 have been resolved in favor of the claimant during the review, 4 were out of the competencies of the institution, and 4 have led to generalized recommendations addressed to the General Directorate of Prisons and two health care institutions outside the penitentiary system. In addition, the Ombudsperson has, in an ex-officio manner, registered for review a number of cases made public by the media and are related to events occurring in prisons, while also continuing investigations on complaints carried over from previous years.

The majority of complaints are related to: the quality of health care services; refusal of requests to obtain furlough; delays of procedures to grant furlough; delays of procedures for transfer to another IECD; unfair transfers to other IECDs; claims of physical and psychological violence and maltreatment; unfair disciplinary measures, etc.

Issues arising from complaints review

Complaints related to the quality of *health care services* continue to make up the largest number of complaints filed by inmates or their family members. Health care services in IECDs should ensure diagnosis and treatment of diseases with relevant drugs. For our part, we have believe that the reason for failing to provide timely and quality health care services, is the lack of medical staff, especially physicians. The

health care organizational chart in IECDs is not complete, because physicians/nurses have left their positions and replacing them has proven challenging. Some physicians answering calls to fill these vacancies only accept to work in prisons on a part time basis. The cause identified by the General Directorate of Prisons for this lack of interest, is the challenging work in the prisons and the low pay for medical personnel, which is actually lower than that of staff in public hospitals. For this reason, an increase in pay for physicians, dentists and pharmacists in the prison system has been requested. The request has been supported by the Ministry of Justice, which has requested the Ministry of Finance and Economy to increase the pay for medical staff in the prison system. The Ombudsperson has taken contact with the Ministry of Finance and Economy for information on whether this ministry had reviewed and made an opinion or the request to increase the wages of prison medical staff. Our interest did not receive a direct response. The Ministry of Finance and Economy noted that the Council of Ministers adopts the general direction of state policy and based on that policy, proposes an annual budget to Parliament. Currently, we are still waiting for a reply of the Council of Ministers regarding the increase of prison medical staff wages.

Regardless of the recommendations we have made over the years, we have found that no final solution has been found for the housing in a hospital environment outside the prison system of those persons given a sentence of "*compulsory medical treatment*" by the court. The latest reply received by the GDP, informed that two buildings at the Lezha IECD are being adapted to house inmates with mental health issues currently housed in the Kruja IECD. Upon conclusion of the reconstruction, these facilities will operate as a special medical institution and

will be subordinate to the Ministry of Health. The transfer of mentally ill inmates from the Kruja IECD to the Lezha IECD was scheduled for November 2018, but has still not been undertaken. We have contacted the Ministry of Health regarding the arrangements of the two buildings expected to be put under its subordination. In its reply of 25.01.2019, the Ministry of Health stated that the draft DCM "*On determining the method and rules for the establishment and operation of the Special Medical Institute and on security measures for its protection*" was being finalized, and that after the DCM was adopted, a joint MoHSP and MoJ working group would start the work to develop the regulatory acts package. Furthermore, in its reply of 31.07.2019, the Ministry of Health noted that the draft act in question is being discussed within the institution as a result of the considerable financial effect expected from its implementation. We note in this regard that Albania was ordered to pay 15,000 Euro in penalties and 2,500 Euro in court expenses by the European Court of Human Rights for what the court called inhumane and degrading treatment and illegal imprisonment of citizen A. Strazimiri, who by order of Albanian courts was kept in the Tirana prison hospital under a sentence of compulsory medication, since there is no special hospital to treat persons with mental health issues sentenced by courts with compulsory medication.

A considerable number of complaints have been filed by inmates regarding the refusal of requests to *grant furloughs* by IECD Directors where they serve their criminal sentence, even though they met the legal requirements for furlough. The provisions of the normative acts providing and regulating this right state that furloughs are foreseen as a right granted to inmates meeting the legal requirements of serving a

certain portion of the sentence, behaving well in IECDs and being motivated to participate in rehabilitation and reintegration programs, and not being a danger to society. Thus, this legal right is a stimulus driving and motivating inmates to respect the rules and to make efforts to rehabilitate and reintegrate in the society after having served their sentences decided by the courts. In addition, being granted furlough, allows the beneficiaries to enter in tangible and broader contact with the world outside the prison and to prepare for their reintegration in the future.

Even the portion of the report of the European Committee for the Prevention of Torture, Inhuman and Degrading Treatment and Punishment (CPT) for 2019, related to the IECDs, section E "Contact with the outside world", paragraph 2, stresses the importance of meeting family members and relatives on inmate rehabilitation.

According to the normative acts in effect, the responsible and competent authority to grant furloughs and special leaves for inmates serving in normal security sections of the IECD Director.

We found the following violations in the replies and the accompanying documents sent by the IECDs on this matter.

The position taken by the IECD Directors in refusing furloughs for inmates when the local State Police bodies have not made an opinion or suggestion on whether to grant the furlough, or when no opinion has been given on whether the inmates would return in the IECD after the expiry of the Furlough, is not in compliance with the applicable normative acts.

The cooperation agreement between the General State Police Directorate and the General Directorate of Prisons is not a secondary legislation act (source of law) and it cannot create or establish criteria for granting furloughs to inmates, beyond those provided by the relevant normative acts. Thus, since the suggestion of the police bodies on whether to grant a furlough and the provision of information on whether the inmate may not return to the prison are not provided for as legal requirements, the IECDs cannot request the local State Police bodies to obligatorily provide them.

The Monitoring Board has not been given or delegated decision making competencies of granting or refusing furloughs or special leaves or to make verifications related to whether the legal requirements for granting the furlough have been met. As a result, it cannot exercise them.

In regard to the above and with the aim of upholding the legally provided inmate rights, we recommended the following to the General Directorate of Prisons:

Required technical and organizational measures should be taken by the General Directorate of Prisons to have all IECDs across the country respect the legal right of inmates meeting legal requirements to obtain furloughs.

The GDP should develop a template that IECDs would send to local State Police Bodies requesting information on inmates filing for furloughs, sticking only to legal requirements.

The Monitoring Board should not take action beyond what is provided in article 50/4 of the General Regulation of Prisons on the supervision of furlough planning conducted by IECD according to the chart determined at the beginning of the year and on their coordination nationally.

Measures should be taken for IECDs to respond both in writing and within the legal deadlines to inmate requests for furloughs.

Such cases should not be repeated in the future, as they threaten the legal rights of inmates, arbitrarily adding requirements to obtain furloughs, beyond those provided for by applicable normative acts.

Even though the legal deadline to respond to the recommendation has lapsed, this response has not yet been sent.

One of the rights enjoyed by detainees/inmates is the *right to work*. Jobs provided, depending also on the organizational chart, are those of kitchen aid, cleaning common areas, and maintenance. Employment in prison is an important contribution to inmate rehabilitation and their preparation to reintegrate into the society. Legislation in our country provides that inmate work should be remunerated, but this inmate right continues to not be upheld as a result of the missing secondary legislation. In the context of the remuneration of the work of detainees and inmates, the OP sent a recommendation to the Ministry of Justice in 2013, requesting the development of the secondary legislation act that would define the requirements for work remuneration and its submission as soon as possible to the Council of Ministers. Currently, this recommendation is still not implemented and their work continues to not be remunerated.

In the information provided on 22.10.2019, the General Directorate of Prisons has finally informed us that the DCM “On the stimulation and remuneration of inmate work” is being developed.

Maltreatment and the exercise of physical and psychological violence are considered to be some of the gravest violations against persons deprived of their freedom. These actions destroy the victim’s personality and dignity. The psychological and physical consequences of violence are some of the most detrimental and most difficult to rehabilitate from. For this reason, complaints regarding *perpetration of violence* by Prison Police officers have been reviewed with priority by the Ombudsperson, endeavoring to act as quickly and as efficiently as possible. On the other hand, claims of violence, especially psychological violence is not practically simple to prove. In some cases, inmates have threatened order and security in the prison and the guard staff has used violence to restore normality, which is determined to have been justified or not at the conclusion of a relevant investigation. Our investigations have mainly aimed at preventing violence. For this reason, it is important to understand the causes that resulted in violence either by the inmates or the guard staff, and the measures that should be taken to prevent a repeat of the situation. We have continuously considered camera surveillance of all IECD facilities, except for those threatening privacy, a fundamental process because surveillance has a preventive effect against illegal activities and ensures a more objective and impartial judgment of the measures to be taken.

Upon concluding the investigation on two claims of physical violence, we found that the areas where the events occurred were not completely monitored by cameras and the footage

recording had issues. In addition, we found that the events were not documented on time and in detail in the IECD records. As reported above, on 17.09.2019 the European Committee for the Prevention of Torture, Inhumane and Degrading Treatment and Punishment (CPT) published its report on the visits undertaken in some of the penitentiary institutions of Albania from 20 to 30 November 2018. In the section related to the IECDs, namely letter C, paragraph 4, findings and recommendations for the health care staff regarding documentation of the inmate health status and bodily damage and reporting of cases of violence are described, which according to the CPT are not detailed, do not make conclusions and should be improved.

The Ombudsperson has also focused its work on the *requests/complaints of the IECD administration staff*. We believe that improving work conditions for IECD staff and guaranteeing the rights of employees would lead to more positive attitude in their treatment of the inmates. More attention should be paid to recruitment in order to ensure better IECD administration. Their wages should be sufficient to attract the interest of the right people, work conditions and economic remuneration should be commensurate to the challenging work environment in these institutions. In 2019, we have again taken contact with the Ministry of Justice to receive information on whether a proposal to adopt the draft DCM providing for the rules to ensure free transport to police officers employed in IECDs located far from residential areas has been made. The reply of the Ministry of Justice states “... The General Directorate of Prisons has allocated a fund to guarantee the transport of police officers in three IECDs and an instruction has been issued determining that prison police officer cannot be transported over distances of more than 45 km from their place of residence.”.

Some prison police employees commanded into the “Jordan Misja” IECED in Tirana have claimed that the cost of the transport is covered by them and that this cost is not covered by the employer. The investigation is currently ongoing and a conclusion on whether the rights in question are upheld in reality is not yet made. We believe that the lack of adequate conditions has led to great staff insufficiency, which lowers security levels in prisons, and for this reason this issue should be addressed urgently.

In its quality as the National Mechanism for the Prevention of violence and inhuman treatment, the Ombudsperson remains strongly committed to guaranteeing the rights of persons deprived of freedom and to guaranteeing that international standards as interpreted by the CPT and the SPT are met.

3.2 Upholding human rights in State Police structures⁵

In 2019, the Ombudsperson has handled 145 complaints of rights violations by structures or employees of the Ministry of Internal Affairs and the State Police. We have noted that the number of complaints against these bodies is almost the same in 2019 with the number of complaints handled in 2018, which was 146.

The object of the complaints varied widely as can be shown below: complaints of physical and psychological maltreatment during arrest, holding or questioning by police bodies, of inhuman and non dignified treatment at the police facilities where suspects or arrested individuals were held, observed and treated; of

illegal holding or holding beyond legal deadlines; of not accepting, managing or following up on reports or complaints made by them; of obstructing the exercise of the constitutional right to assembly, of damage to health of citizens from use of tear gas during rallies; of not granting or revoking authorizations to hold/ purchase hunting weapons; of not supporting bailiffs with police officers during the execution of judicial decisions; of setting imposing unfair administrative measures; of not keeping and not making available records of actions taken by police officers; of blocking personal belongings; of not securing life; of obstructing the free movement abroad; of not providing information; of unfair disqualifications from attending the Security Academy; of negative replies by police bodies to inmates that have requested from IECEDs to be granted furlough; of violation of foreign citizen rights in Albania; of threatening the legal rights of State Police Employees, etc.

During the review of the complaints handled by the Ombudsperson institution and in cases violation of legal rights of citizens have been proven, we have noted that some of the reasons for these violations by police officers come from lack of knowledge of normative acts regulating the State Police activity and the negligence to implement legal provisions for the accurate completions of the legal tasks and mission they have, but also from open and clear actions in violation of the law. Another cause is the lack of control by superior structures of the local or central State Police bodies.

We should consider the fact that violations and threats to constitutional and legal right of citizens committed through the action or lack thereof by specific employees or structures of the Ministry of Internal Affairs and the State Police directly and adversely impact the image of this bodies

⁵ For more about this topic, see Chapter IV, section 4.2 the *Right to Assembly*

in the public and as a result greatly harm public trust in them.

In these cases, the Ombudsperson institution has made a series of public statements, but also relevant recommendations addressed to relevant bodies to take necessary criminal, administrative and organizational measures with the aim of reinstating the rights violated, punishing the perpetrators and generalizing actions to avoid repetition in the future. Some of the constitutional and legal rights about which recommendations have been made are the following:

The right of citizens to not have the physical integrity threatened and to be treated with dignity

The Ombudsperson has handled a series of complaints made by citizens claiming incorrect behavior by police officer when holding, questioning or arresting them as suspects in criminal acts, during various rallies organized by opposition parties or various citizen groups, or during routine checks the police undertakes in bars or other facilities in the framework of keeping public order and security. In the meantime, the Ombudsperson has also started the ex-officio registration of some cases of physical and psychological violence against citizens by police officer that have been made public. All unethical police officer communication situations and instances of physical or psychological violence have been reviewed with priority, because they grave threaten the image of State Police bodies and adversely impact the public trust in these bodies. In addition, in some cases they amount to grave violations of citizen rights, and include elements of criminal acts related to arbitrary action and torture. In the cases where the review of the complaints proved the claims of the applicants, recommendations were developed

and addressed to the relevant institutions and the prosecution to start their investigations against the perpetrators, or to State Police bodies to start disciplinary proceedings, when the violations were of lesser degree, or when for the same violations the prosecution had started criminal proceedings.

With regard to this concerning issue, we believe it is necessary to identify a series of findings and notes made by the European Committee for the Prevention of Torture, Inhuman and Degrading Treatment and Punishment, but which are also findings of our institution as well. The part of the report related to the State Police, letter "A", describes the findings and recommendations on treatment of persons held/arrested by the Police bodies. Paragraph 14 notes that it is essential to ensure that police officers or all levels are aware that the government is committed to stopping maltreatment of persons deprived of their freedom, by strengthening the accountability of the police and by investigating effectively any allegations of maltreatment.

The CPT recommends that Albanian authorities multiply their efforts to fight maltreatment by police officers. Police officers should be especially reminded that all forms of maltreatment (including verbal violence) are illegal and will be punished according to the circumstances.

Police officers should be trained to not use more force than necessary and that such force may only be used in case of catching a person. After having been arrested and put under control, there is no justification for the person to be hit. When it is necessary to cuff a person, the handcuffs should under no circumstances be too tight, and they should be used only for as long as necessary.

Paragraph 15 describes that a fundamental component of any strategy to prevent maltreatment, is the careful review of all complaints of maltreatment by relevant authorities and the adequate punishment of such actions. Without quick and effective reaction to an allegation of maltreatment, the persons impacted will soon believe that there is impunity for these violations. In order for potential police maltreatment to be investigated effectively, the procedure should be independent and impartial. These investigations should be quick, complete and comprehensive.

The administrative investigation of one case started ex-officio by the Ombudsperson, after the media reporting on the protest of 28.06.2019 in the Municipality of Dibra before the local elections of 30.06.2019⁶, found that the State Police officers had committed the following legal violations:

The taking of a number of persons in the night hours starting from 03:00 hrs., while not being caught in the act and while they had left for their homes;

Physical and psychological violence against the persons arrested;

They were kept for 9 hours in the holding facilities without an act and forms of arrest in the act, after this period of time;

⁶ The news reported was about a group of individuals attempting to break and enter the facilities of the "Nazmi Rushiti" Vocational High School in the town of Peshkopi where the Elections Administration Zonal Committee No. 19, Dibra (EAZC No. 19 Dibra) was installed, to destroy the election materials. During the action of the State Police structures officers in the first hours of the morning of 29.06.2019, when the suspects were being held and arrested from their homes, they alleged physical violence against some individuals.

Medical assistance was not immediately provided to those damaged by the violence perpetrated;

Intervention in their residences without a warrant and upon initiative of the State Police officers.

dh. The holding and arrest of two individuals, for whom the prosecution had not confirmed presence in the protest;

The allegation of 6 criminal acts, while the prosecution only filed criminal charges on 3 counts;

The acts were submitted to the prosecution by the Dibra Police Precinct on 30.06.2019, some 30 hours later;

The persons arrested were not accompanied to the court to review and decide on the security measure on 01.07.2019, refusing the request of the court;

The prosecution was not notified and actions with the persons arrested were conducted ex-officio;

gj. 26 police wanted individuals were held without the knowledge of the prosecution and without security measures.

In regard to the above, we found that the actions of the State Police officers contained elements of the "Arbitrary actions" criminal act, committed in complicity, provided for in articles 250 and 25 of the Criminal Code, because they gravely threatened the physical integrity of a number of citizens arrested, which is guaranteed by article 25 of the Constitution, the Criminal Code, the

Criminal Procedure Code, and Law No. 108/2014 “On the State Police”.

Upon concluding the review of this case, we recommended that the Prosecution at the Dibra District Court *open investigations against the State Police officers that assisted the Dibra LPD in committing the “Arbitrary Actions” criminal act in complicity, provided by articles 250 and 25 of the Criminal Code as amended, and against the Dibra Police Precinct for the “Abuse of power” criminal act provided by article 248 of the Criminal Code, as amended.*

The Prosecution at the Dibra District Court informed is that the recommendation has been accepted.

Two other cases handled and reviewed by us for unprofessional and incorrect behavior are presented below:

The case of the complaints filed by students E.K. and K.D. of the Faculty of Economics against the officers or Police Precinct No. 1, Tirana for physical violence by grappling and twisting their right hand. These damages were confirmed by the medical examiner examination of citizen E.K.

The case of the complaint lodged by Citizen M.F for physical violence against his person, leading to damages to his ankle, and damages against his son E.F by the officers of Police Precinct No. 1, Tirana during the arrest in the act of the criminal act of “Resisting a police officer of public order” during a rally at the Unaza e Re in Tirana.

Since, the Prosecution of the Tirana Judicial District had started their investigation for these two cases, we recommended to Police Precinct No. 1, Tirana *to improve their work in strengthening the accountability of the State Police officers, with the*

aim of achieving correct and professional behavior with student protesters or citizens organized in peaceful protest. The reply of Police Precinct No. 1, Tirana showed that the recommendations were welcomed and accepted.

Another case made public by media reporting is that of the violation of citizen F.H by State Police officers after he was caught and accompanied from his residence to the Tirana Local Police Directorate during the evening hours after the protest of 16.02.2019⁷. Upon concluding the administrative investigation of this case, started ex-officio by the Ombudsperson, we reached the conclusion that during the actions for the arrest and holding of citizen F.H some police officers had committed elements of the “Arbitrary action” criminal act in complicity, provided for by articles 250 and 25 of the Criminal Code as amended.

In addition, some other police officers committed elements of the “Failure to report a crime” criminal act. Even though they witness a colleague of theirs committing the crime of “Arbitrary actions” against F.H being held, by hitting him with an open palm on the body, they did not report this to the relevant bodies.

In the meantime, we found that the search conducted at one of the residences of citizen F.H is illegal, because it was conducted after the legal deadline and was not in the conditions of flagrance.

In order to restore the violated rights of citizen F.H we recommended that the Prosecution at the Tirana District Court *start investigations against the police officers of the Special Forces, Operations*

⁷ For more information visit the official web-site of the institution, where access to the relevant recommendation is provided. <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekom-andim>

and Search Sector of the Tirana LPD and the GSPD for the criminal act of "Arbitrary actions", provided by articles 250 and 25 of the Criminal Code and against the officers of the Special Forces, Operations and Search Sector of the Tirana LPD and the GSPD and police officers of the Special "Shqiponja" Force of the Tirana LPD for the criminal act of "Failure to report criminal acts" provided for in article 300 of the Criminal Code, as amended.

Even though the legal deadline to respond to the recommendation has lapsed, this response has yet to be received.

In addition to the above, the interview with the wife of citizen F.H, citizen F.H, led to the identification of a series of issues in the actions of the State Police officers during their task of arresting citizen F.H in the presence of his children and eventual use of unnecessary and disproportional force to achieve the goal of the police action, and without taking into consideration damages to the healthy physical, mental, moral, spiritual and social development of the childrens.

In fulfilling its legal mission, the Ombudsperson recommended the following to the General State Police Directorate:

Necessary measures should be taken for the development and adoption of a standard procedure for procedural actions that State Police officers must take when in the presence of children.

Including a psychologist or sociologist in the working group established for such cases,

For more information visit the official web-site of the institution, where access to the relevant recommendation is provided. <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekom-andim>

to assist children during the actions to be undertaken by the police officers when they are present.

The General State Police Directorate informed us that the recommendation was welcome and that a working groups had been established to develop the standard procedure.

Constitutional right of citizens to information

The right to information, which is one of the fundamental human rights, is not respected at the adequate level by State Police bodies. The review of a number of cases filed with our institution found that the reasons for failing to uphold this right are the lack of adequate knowledge of the applicable normative acts providing and regulating its realization, the failure to understand the spirit and contents of the normative acts and the exaggerated efforts to safeguard "the secret" of some documents which have been classified as "secret" because of inertia, formalities, and a mentality of the past. Furthermore, there are local structure leaders that do not react after clear and exhaustive explanations of and recommendations on the legal framework regulating the right to information.

One of the cases reviewed by the Ombudsperson regarding the violation of the right to information is the complaint filed by citizen O.M. Even though he had contributed to the discovery and capture of the authors of a murder, and had been rewarded for the contribution, the relevant police body (Durrës LPD) had not given him a copy of the reward document, even if months had passed since he lodged the request.

Upon conclusion of the complaint review, we found that the claims of the applicant

were justified and based on law, because his fundamental and constitutional right to information had been threatened. In regard to the above, we recommended to the Durres LDP to take measures and *provide applicant O.M a unified copy of the financial reward document paid out of the Special State Police Fund for contribution made to Police bodies in discovering and identifying murderers.*

However, the recommendation was not accepted with the argument that the "Payment slip" is a single copy and cannot be reproduced, because it is classified as "Top secret". The Recommendation was resubmitted to the General State Police Director in the quality of the superior officer of the Durres LDP.

The General State Police Director informed us that he had welcomed and accepted the recommendation. In the meantime, a document proving the claimed fact by the applicant regarding the contribution he had made in the case in question, was provided by the Durres LDP.

Constitutional right of citizens to education (applicants for employment in the police)

The right of citizens to education is one of the fundamental rights guaranteed by article 57/1⁹ of the Constitution. In 2019, a series of complaints by citizens claiming they were unjustly disqualified from the Security Academy, even though they had passed the competition organized by the State Police, were reviewed.

One of the cases handled related to this right is the one involving citizen L.J who had applied to the Basic Police Academy. After the medical examination, he was disqualified with the

reasoning that he had resulted positive for Hepatitis B. The applicant claimed that his disqualification was unjust and discriminatory.

Upon reviewing the complaint, we found that the disqualification of citizen L.J was made by the Health Control Committee for failure to meet health requirements, provided in the Standard Procedure for Acceptance in the Security Academy. However, the act did not provide for a superior body to review complaints against the decision of the Health Control Committee, thus not giving applicants the possibility to exercise their right to appeal.

Upon concluding the administrative investigation, the Ombudsperson recommended the following to the General State Police Directorate:

Necessary measures should be taken to change and improve the instructions of the Standard Procedure "On acceptances in the Security Academy". The deadlines and procedures for reviewing documentation, verification and applicant complaints adopted with order No. 984, dated 17.12.2015 of the General State Police Director, should include the right of Security Academy applicants to appeal the Superior Health Committee in regard to the decision of the Health Control Committee.

Necessary measures should be taken to change and improve the current practice regarding Security Academy applicant disqualification decisions, taking them in compliance with the requirements of article 99/2/c/iii "Requirements of the written or electronic administrative act" of law No. 44/2015 "Code of Administrative Procedure".

The General State Police Director informed us that he had welcomed the recommendation and

⁹ Anyone shall have the right to education.

that a working group had been established to improve the Standard Procedure *“On acceptances in the Security Academy. Deadlines and procedures for reviewing documentation, verifications and applicant complaints”*.

Constitutional economic and social rights of persons employed by police bodies.

Over this year, the Ombudsperson has handled and reviewed a number of complaints related to violations of economic and social rights of employees, namely employees of the State Police, which are guaranteed by article 49/2¹⁰ of the Constitution and Law No. 108/2014 *“On the State Police”* as amended. We would point out here that in the framework of the Ombudsperson activity, State Police employees have not only been subjects against whom complaints have been filed, but also subjects with the legal right to access the Ombudsperson when their legal rights and interests are violated by public administration bodies, including the General State Police Directorate and the Ministry of Internal Affairs. Complaints from public administration employees, including those of the State Police, have been reviewed and will continue to be reviewed with priority and commitment on our side. We believe that fulfilling state obligations in the quality of employer, to protect and uphold the constitutional right of *social protection in the workplace*, guaranteed by article 49 of the Constitution and of the legal rights of State Police employees guaranteed by the organizational law, the Labor Code and secondary legislation regulating employment relations in this structure, would certainly lead to their motivation and commitment in fulfilling the legal mission of the State Police.

Employees shall have the right to social protection in the workplace.

One of the cases reviewed is the one started ex-officio by the Ombudsperson after media reporting on a letter with a series of request by the Chair of the State Police Employee Union addressed to the Prime Minister. This letter raised a series of issues of concern for this organization related to failure to uphold the rights of its members.

In conclusion of this review, we reached the conclusion that State Police employee rights guaranteed by the organizational law and other secondary legislation had been violated. To enable the reinstatement of the violated rights, we recommended the following to the Council of Ministers and the Ministry of Internal Affairs:

Immediate organizational measures should be taken to allow relevant structures to develop the draft decisions provided in Law No. 108/2014 “On the State Police”, which should then be adopted by the Council of Ministers.

Immediate organizational measures should be taken to enable relevant structure to complete the draft law “On financial treatment with service pensions for State Police employees interrupting their employment relations” and to submit the draft to Parliament.

Immediate necessary measures should be taken to secure budget funds to enable overtime pay and coverage of travel expenses for State Police employees for the 2017, 2018, and 2019 period and to compensate food expenses for police employees, pursuant to DCM No. 68, dated 07.02.2018 “On the thresholds and requirements for determining remuneration commensurate to the in-kind wages and added to the annual leave pay.”

4. *Necessary measures should be taken to successfully complete procurement procedures for State Police employee uniforms.*

Necessary measures should be taken to reach an agreement between the parties (GSPD and the State Police Employee Union) and to develop a new Collective Contract.

The violation of legal rights guaranteed by Law No. 108/2014 "On the State Police" and other secondary legislation acts, against State Police employees for some 5 years, should be analyzed, responsibilities should be defined and administrative measures should be taken against the relevant persons.

Budget funds should be provided to include the position of a psychologist providing psychological treatment services to police employees, in the organizational charts of Local Police Directorates.

The Ministry of Internal Affairs informed us that the recommendation had been welcomed and that the institution had developed the secondary legislation pursuant to law No. 108/2014 "On the State Police", as amended, which were in the process of being adopted. However, these acts have yet to be adopted.

In the meantime, the General State Police Directorate informed us that it had approved the psychology specialist position in all Local Police Directorates and that the vacancies were announced for competition by the Department of Public Administration. In addition, they have foreseen in the State Police budget for 2020, the funds for the psychologist position in each Local Police Directorate.

Protection of foreign citizen rights in the territory of the Republic of Albania

Pursuant to article 2 of Law No. 8454, dated 04.02.1999 "On the Ombudsperson", as amended, the provisions of the law shall also apply to the protection of rights of foreigners regardless of whether they are permanent residents in Albania, of refugees, asylum seekers, and stateless persons located in the territory of the Republic of Albania.

Based on this provision and the international normative acts recognized and ratified by our state, the Ombudsperson has accepted and reviewed complaints lodged by foreign citizens who have claimed violations of their rights by Albanian public administration bodies.

One of the cases followed in 2019 is the complaint lodged by British citizen O.A.E.G.L. The complainant, a journalist by profession, had been living in Albania since 2017 and had been issued a stay permit. Since December 2018 she had had health issues and complications resulting from a pregnancy with risk of miscarriage. For these reasons she had communicated by phone with the Local Border and Migration Directorate (LBMD) of Tirana and had informed them of her health issues, requesting the renewal of her stay permit. According to the claimant, the LBMD had informed her that in order to renew her permit she would have to pay an administrative fine because of her late application.

Upon reviewing this complaint, we reached the conclusion that since the Tirana LBMD had considered this case for humanitarian reasons, that being the pregnancy of the complainant, this body should have not applied the administrative fine penalty. Fining the applicant in this case, and

her not paying the fine was stopping her from obtaining a stay permit in the RoA.

To reinstate the violated right of the complainant, we recommended that the Tirana LBMD *take necessary measures to revoke the decision of 05.02.2019 of the relevant committee of the Tirana LBMD to administratively fine applicant O.A.E.G.L.* However, the recommendation was not accepted by the Tirana LBMD.

The case above shows that even though improvement have been made in the work of State Police structures to uphold the rights and freedoms of individuals, there is still work to do in this regard. We appreciate the cooperation with the General State Police Directorate to ensure and guarantee the effective upholding of citizen rights at any time.

3.3 Preventing violence and torture

In 2019 and in the quality of the National Mechanism Against Torture, the Ombudsperson conducted **79** inspection visits. These visits were conducted based on the adopted plan of inspections in institutions where the freedom of the individual may or is deprived, including penitentiaries, police units, psychiatric hospitals, centers for foreign citizens, asylum seekers and trafficking victims and border crossing points and the facilities where the temporary migrant treatment camps were to be installed. In addition to the above, the NMPT has also undertaken other monitoring activities, which are described below.

All above mentioned activities have been followed by **79** inspection reports and recommendations

to relevant institutions, concerning the phenomena and issues encountered.

From replies to the recommendations to date, they have been accepted and relevant institutions have mobilized to fulfill their obligations. Other measures to improve the treatment conditions for individuals held in these institutions remain to be followed up on.

During the monitoring visits, the NMPT focused its work on collecting information on:

Treatment of persons in institutions and identification of psychological pressure, degrading and discriminatory treatment, torture or physical violence cases beyond the thresholds provided by normative acts.

Level of implementation of protection measures comparing their compliance with the domestic normative framework and international standards.

Quality of health care.

Material conditions for treating persons in these institutions, focusing mainly on aspects such as food and provision of meals on time, natural and artificial lighting, ventilation, aspiration and heating systems, respect for personal hygiene, sanitation conditions, over-population, living conditions, etc.

Evaluating the upholding of the rights of persons treated, based on the lines provided for in institutional regulations and their specifics (provision of contact with their legal counselors and family members, possibility to make phone calls to get information on their rights in a language they understand, possibility to

be informed through electronic media and press on employment procedures and remuneration of the work done, to be informed on activities in open air, the right to exercise religious rituals, the right to benefit financial assistance, etc.).

Provision of compulsory education, vocational courses and recreational and rehabilitation activities, based on the specifics of the institution, etc.

During inspections in 2019, we noted a series of issues, which should be urgently addressed and improved.

A summary of these findings is provided below:

Widely degrading material conditions without any possibility of reconstruction in the internal facilities of the Zahari Kruja IEC, Tepelena IEC, Kukes IEC, Lezha IEC, which make the guarantee of rights of detainees and inmates provided by international acts and applicable national legislation impossible. Since these findings have been noted continuously, while the conditions are in an even more degraded state as a result of continuous over-crowding, lack of investment and amortization, the Ombudsperson has recommended the immediate closing of these institutions and the transferring of individuals housed in them to other penitentiaries.

For the most part, IEC infrastructure presents issues of amortization, humidity, non-continuous supply with power and water, lack of natural lighting and complete airing of cells, presence of insects, out of standard conditions in toilets, kitchens,

showers, airing facilities, isolation rooms, etc. The IECs with urgent infrastructure issues were the ones in Zahari-Kruja, Lushnja, Rogozhina, Saranda, Lezha, Tepelena. An exception to this situation are newer and reconstructed IECs, which have practically led to an Albanian penitentiary system with two standards.

Even though it has decreased in recent years in some IECs, such as the IEC 302, IEC Tepelena, IEC Jordan Misja, IEC Durres, over-crowding remains a present concern. During their visits, inspection groups have found in many cases cells holding between

(four) and 6 (six) persons, failing to respect the 4m² living space required for each inmate. (*For more please refer to Table below*).

Failure to implement the agreement between the Ministry of Justice and the Ministry of Health on the establishment of a Special Medical Institution provided for in Law No. 44/2012, dated 08.05.2012 "On mental health" to house and treat persons sentenced to "compulsory medical treatment" and "temporary admission" by the court. The investment started in 2019 to adapt to buildings of the IEC Lezha is not complete yet, thus violating the contractually provided deadline, while the reasons for the interruption of the works are also not clear. This category continues to be treated at the Zahari-Kruja IEC, which has degrading material conditions and does not have the adequate medical staff and where access to psychiatric consults in regional psychiatric hospitals is challenging. In addition, treatment of cases with acute episodes in the Special Prison Health Institution continues to be illegal

and continues to be reflected in national and international reports and in regional conferences. The situation became graver in 2019 in this institution, because of the acute over-crowding.

The lack of Physicians in the Institutions of the Execution of Criminal Decisions remains a concerning issue of our penitentiary system. In 2019 the Ombudsperson has made recommendations for some 12 IECDs at the national level, to take measures to fill the full-time physician positions, according to the provisions of the institution organizational charts. The situation is most concerning in IECD 302, IECD Tepelena, IECD Fushe Kruja, IECD Kukes, IECD Korça, IECD Berat, IECD Durres, IECD Fier, IECD Peqin, IECD Lushnje. (*For more refer to table 2 below*)

Health care facilities in prisons, except for the new ICEDs such as the ones in Vlora, Berat, Durres, Elbasan and Shkodra are in general inadequate for medical visits and do not have adequate relevant equipment.

Issues in providing the opportunity of education. IECD Kukes, IECD Jordan Misja 313, IECD Rrogozhina, IECD Fier, IECD Tropoja, IECD Fushe Kruja, IECD Saranda, IECD Shen Koll - Lezha, IECD Elbasan, IECD Peqin, IECD 302 did not have vocational courses and the 9K compulsory education as required by the existing agreement between the Ministry of Justice and the Ministry of Education and Sport is not provided. We note that none of these penitentiaries provide high school education. In addition, in over 17 (seventeen) ICEDs vocation training courses in cooperation with regional directorates, are missing.

Remuneration for the work done, continues to be paid in the form of days subtracted from the sentence in all institutions, which implies prejudice of being found guilty for the detainee category. In the same context, the relevant amount of social insurance contributions was not paid for the work done by detainees in these institutions, which leads to the amount of work done in the institution to not be counted for work seniority calculation purposes, in turn leading to the right to pension being denied. Inmates were not issued work or social insurance contribution booklets. This issue is addressed in detail in section 4.1 "Rights of persons deprived of freedom".

Common areas for rehabilitation activities were absent in a series of IECDs as a result of converting education, religious ritual and sport activity areas into cells or because of lack of funds to equip them with the required materials. In addition, small airing areas outdoors limited the types of sport activities that could be organized. As a result, in almost all IECDs, issues related to group or individual activities were identified and a lack of the psycho-social sector services, which are not adequately provided because of the lack of adequate facilities, material base and incomplete human resources, even though efforts are made to provide these services.

The majority of IECD faced delays and issues in issuing inmates/detainees health booklets or health insurance system electronic registration data, which led to the drug reimbursement scheme not being implemented and to issues in drug supply.

11. Difficulties in conducting consults, examinations and lab testing, and surgical interventions were still present in some of the IECs because of reasons related to lack of full time physicians in the organization, or the lack of ambulance vehicles, and the resistance of regional hospitals to treat these persons because of lacking security conditions, etc.

Issues with the provision of dentistry services in IECs resulting from the lack of equipment and relevant materials. With the exception of tooth extractions, dentistry services were received with difficulty in public polyclinics or private clinics paid for by the inmates themselves.

Central heating systems were not operational in almost all IECs where they are installed as a result of technical malfunctioning or lack of fuel. In the majority of the cases inmates/detainees are not provided with heat pursuant to the legal provisions.

There are gaps in the supply of basic personal hygiene products (toothpaste, tooth brush, shampoo, etc.) and detergents necessary to clean the cells and the lack of uniforms and gloves during food distribution in the majority of the IECs.

Lack of closets or clothing shelves led to many inmates/detainees storing their clothing in plastic bags or sacks, mainly underneath their beds. This issue was mainly encountered in the Lezha, Tepelena, Korça, Dirres, Tirana ("Jordan Misja"), Saranda, Kukes, Rrogozhina and Tropoja IECs.

A problem encountered in all inspected institutions, was the high product prices found in IEC commissaries.

The quality and variety of food in almost all IECs remains a concern.

The issues found need to be addressed with decisions made by senior state bodies, because in the majority of the cases, they are a result of the harsher criminal policies, lack of funding, and lack of relevant secondary legislation required to improve the system in both form and content.

Table 1 - Recommendations of NMPT inspections in 2019, with data on the overcrowding (if any) of the IECDs

No.	IECD	Inspection date	Official institution capacity	Population on inspection day	Over Capacity
1	Tepelena IECD	11.12. 2019	75 people	90 people	15 people
2	Elbasan IECD	12.03.2019	140 people	145 people	5 people
3	Peqin IECD	05.04.2019	560 people	548 people	-
4	Durres IECD	02.07.2019	300 people	261 people	-
5	Kukes IECD	22.07.2019	36 people	13 people	-
6	Tropoja IECD	23.07.2019	26 people	19 people	-
7	302 IECD	11.12.2019	170 people	90 people	-
8	Fushe Kruja IECD	16.10.2019	312 people	384 people	72
9	Kavaja Juvenile Institute	21.03.2019	40 people	32 people	-
10	Korça IECD	23.09.2019	312 people	375 people	63
11	Berat IECD	02.07.2019	112 people	108 people	-
12	Lushnje IECD	10.04.2019	198 people	179 people	-
13	Fier IECD	11.04.2019	870 people	813 people	-
14	Reç IECD	27.05.2019	857 people	405 people	-
15	Rrogozhina IECD	08.07.2019	343 people	309 people	-
16	Kruja IECD	20.06.2019	190 people	288 people	98
		17.12.2019		290 people	100
17	Jordan Misja IECD	04.09.2019	482 people	486 people	4

Table 2 - Recommendations of NMPT inspections in 2019, on the lack of medical physicians and staff in IECDs

No.	Institution	Inspection Date	Population on inspection day	Current situation of medical staff	NMPT Recommendations
1.	302 IECD	26.12.2019	170 inmates	1 part-time physician	Take measures to complete the organizational chart with 1 full time physician
2.	Fushe Kruja IECD	16.10.2019	384 inmates	1 part-time physician	Take measures to ensure a full time physician

3.	Tepelena IECD	11.12.2019	90 inmates	1 part-time physician	Take measures to fill the full time physician position according to the institution organizational chart.
4.	Kavaja Juvenile Institute	21.03.2019	32 inmates	1 part-time physician	Take measures to ensure full time physician
5.	Korça IECD	23.09.2019	375 inmates	2 part-time physicians	Take immediate measures to fill the full time physician position according to the institution organizational chart.
6.	Berat IECD	02.07.2019	108 inmates	1 part-time physician	Take immediate measures to hire 1 physician, 1 dentist, and 1 pharmacist on full time basis
7.	Durres IECD	30 May 2019	261 inmates	1 general practitioner and 1 nurse, part time	Take measures to fill the medical staff positions with 1 general practitioner and 1 nurse.
8.	Peqin IECD	05.04.2019	548 inmates	3 physicians and 1 dentist missing	Take immediate measures to fill institution positions with 3 general practitioners and 1 dentist, full time, to respond to the needs and requirements of inmates/detainees for medical visits and the provision of quality health care services.
9.	Fier IECD	11.04.2019	813 inmates	Organizational chart composed of 2 physicians of whom 1 was employed part-time.	Take measures to fill the second position with a full time physician.
10.	Lushnje IECD	10.04.2019	179 inmates	1 part time physician and no pharmacist	Take immediate measures to fill the physician position, with full time staff according to the provisions of the Kosovo IECD, Lushje or alternatively with 2 part time physicians.
11.	Kukes IECD	22.07.2019	13 inmates	1 part-time physician 3 assistant physicians	Take measures to fill the physician position, with full time staff.
12.	Kukes IECD	23.07.2019	19 inmates	1 part-time physician 3 assistant physicians	Take measures to fill the physician position, with full time staff.

In 2019, we have recommended that 12 (IECD) institutions fill their positions with general practitioners.

Level of rights upholding for persons accompanied, held/arrested in police precincts

Inspections conducted in police precincts in 2019 aimed at observing the facilities and collecting and evaluating data on the actions and practices of the State Police in complying with the standards provided in law No. 108/2014 "On the State Police", Order of the General State Police Director No. 925, dated 18.07.2019 on adopting the standard procedure "on treating and securing persons arrested/held in State Police facilities, identification and resolution of their requests/complaints", Order of the General State Police Director No. 306 dated 31.03.2016 on adopting the standard procedure "On technical rules of accompanying into the police facilities" and to verify the implementation of recommendations made by the Ombudsperson in previous inspections.

The following was found during the inspections conducted in police structures:

Occasional over-crowding in the Tirana LPD and in some of the precincts with security facilities under its subordination.

These structures operated over the official capacity for the majority of the time. Over-crowding was mainly a result of the numerous arrests and holding by the police over the year for criminal offenses that were recently included in the Criminal Code, but also because persons sentenced by final decision in absentia, faced delays in being accepted by the General Directorate of Prisons. In addition, the closure of

security rooms in a number of precincts exacerbated the issue further.

In some precincts, complaints were lodged for cases of violence and physical and psychological maltreatment by police officers. Complaints found to have basis were followed with concrete recommendations to take relevant measures against persons responsible.

Bodies failed to meet legal obligations to develop or adapt holding facilities according to the required standards (3 holding rooms, 1 for adults, 1 for women, and 1 for juveniles). In the majority of the precincts, the holding rooms did not meet the standards for dignified treatment of persons, because they did not meet the number requirement and did not have adequate and dignified facilities complete with the required furniture to separate women, adults and juveniles.

Failure to meet legal requirements to develop or adapt security facilities, pursuant to the standards required and adopted in International Conventions and the Order of the General State Police Director No. 925, dated 18.07.2019 on adopting the standard procedure "on treating and securing persons arrested/held in State Police facilities, identification and resolution of their requests/complaints". The exception were the security facilities of the Tirana, Gjirokastra, Kukes, Korça and Fier LPDs. The precincts under the Tirana LPD with security rooms, clearly violated these standards as well. The inspection found that in Tirana Precincts No. 1, 2 and 3, a number of security rooms have been

closed and take out of operation, and a relevant report has been developed on the matter.

There are problems in providing health care services in some LPDs, with regard to the accurate maintenance of registers and medical charts and with regard to inadequate facilities providing consults. In some Directorates there are no physicians. In some of these institutions, medical visits were done after the 12-hour deadline provided in the State Police Manual and the quality of visits does not meet the purpose for which they are held. This issue has also been raised in the CPT report on Albania for 2018.¹¹

Issues with the installation of the camera surveillance system in the hallways and holding and security rooms, in questioning rooms in some precincts.

Cases of torture, maltreatment and exercise of violence in police units and penitentiary facilities

Accepting and reviewing with priority and rigorousness any complaints lodge by citizens against the State Police for physical violence in police units and against Prison Police for physical violence against detainees and inmates in penitentiary facilities, has been and will continue to be one of the priorities of the Ombudsperson.

We should note that even with the important steps forward in this regard, the issue remains a concern, because it is one of the gravest violations of fundamental human rights. The right to not

be subjected to torture, cruel, inhuman, and degrading punishment or treatment, which is guaranteed and protected by the Constitution of the Republic of Albania (article 25), the European Convention for the Protection of Fundamental Human Rights and Freedoms (article 3), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment "The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)", the Criminal Code (articles 86 and 250), is an absolute right.

Violence exercised by police officers, which in some cases amounts to torture or arbitrary action, gravely threatens the physical and psychological integrity of the person and impacts the health and in specific cases the life of the person violated, and could even lead to death. This person committing this act is criminally responsible. At the same time, it gravely impacts the image of the State Police and Prison Police and harms and threatens public trust in these bodies. Furthermore, this negative indicator for the Police is unacceptable in a country with rule of law and a democratic society.

Cases of excessive force by police officers against citizens are difficult to prove and validate. This is related to many reasons, such as they take place in closed environments, in police offices or facilities, without any external eye witnesses, and even when there are witnesses, it is difficult for the persons violate to go against the police officers. Citizens do not report cases of violence for fear of retaliation, and because they are not sure that justice bodies will follow up on their allegations. In order to make possible the identification of police violence, it is necessary for the complaint to be lodged as soon as possible, while the consequences are still visible, and the administrative investigation should

¹¹ <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-alban-3https://rm.coe.int/168097986b> "access to a physician" page 19

be conducted immediately. The Mechanism for the Prevention of Torture investigated 4 (four) ex-officio cases and 5 (five) complaints with allegations of violence in 2019. For more, see the relevant recommendations on the Ombudsperson website.

Cooperation in the framework of OPCAT

In its quality as the National Mechanism for the Prevention of Torture, in 2019 the Ombudsperson has closely cooperated with the Committee for the Prevention of Torture (CPT), the Subcommittee of the United Nations for the Prevention of Torture (SPT), the Association for the Prevention of Torture (APT) to ensure a quality supervision and reporting system. Cooperation with these structures was realized in the framework of joint meetings and direct contact with the goal of exchanging experiences and assessing the needs and tools required to protect the rights of persons deprived of freedom, pursuant to OPCAT.

Upon invitation of the Ombudsperson, a delegation of the NPM Independent Observatory (NPM Obs) accompanied the Albanian NPM (NMPT) between 27 and 31 May 2019 in their inspection visits in freedom depriving facilities, such as:

Reç IECD Shkodra
 Muriqan Border Crossing Point
 Shkodra Border Police Directorate
 Bushat Police Directorate
 Shkodra Psychiatric Service
 Shen Koll Prison in Lezha with its two buildings that will currently serve for inmates subject to compulsory medical treatment.

Elbasan psychiatric hospital
 Closed emigrant welcome center in Kareç

Kavaja Juvenile Institute
 Durres IECD

The NPM Obs delegation was headed by Mr. Patrizio Gonella, a renowned expert in the field of jurisprudence and prevention of torture and was also composed by Mr. Petur Haukson, psychiatrist with long experience in his field and former member of the CPT, and Mr. Markus Jaegger, head of the Human Rights and Migration Section of the Council of Europe, and one of the best known international figures of torture and inhuman and degrading treatment prevention, who participated as a representative of the Council of Europe in the quality of NPM Obs and in the framework of the joint project of the Council of Europe and the European Union called the "NPM European Forum".

All visits had been announced ahead of time. The NPM Obs/Council of Europe Delegation was able to access all above mentioned institution along with the Albanian NMPT, pursuant to the national legislation and the OPCAT principles allowing the NPM to be accompanied by any expert it selects, including foreign experts.

After the visits and meetings, both parties developed their preliminary final conclusions, in which the NPM Obs expressed its gratitude for the experience during the monitoring week in the institutions of execution of criminal decisions and other facilities where freedom is deprived in the Republic of Albania, and especially focused on the work and procedures of the NMPT experts group, who according to the expert group of the observatory all showed high levels of professionalism in completing their tasks and organizing adequately, which showed that this section operated in line with the standards required by OPCAT, CPT and the Albanian legislation. The recommendations of

the OBS group will serve for the improvement of the NMPT work.

A joint report was developed about the visits undertaken, which is currently being discussed and will be published upon finalization.

Independent monitoring of the rights of foreign immigrants

In the role of the National Mechanism for the Prevention of Torture, The Ombudsperson's Institution continued to implement during 2019, the Cooperation Agreement signed with the UNHCR within the framework of the joint project "Refugees and Asylum Seekers in Southeastern European Countries". Besides the border area of Gjirokastra, Saranda and Përmet, the activity of the Ombudsperson was extended by experts during 2019 in the area of Shkodra, Kukës, Korça and Bilisht.

Pursuant to the guidelines of the Ombudsman institution and in cooperation with UNHCR, the experts kept contacts throughout the year in these three cross-border areas with hundreds of irregular foreigners informing them about their rights, interviewing them and monitoring the process of their identification performed by immigration sector staff, observing and cooperating on the needs in assisting them with food and clothing, coordinating cooperation with the responsible structures in cases when medical assistance was necessary, including communication to the emergency room, follow-up of cases in the hospital, communication for the progress of medication for simple cases, etc.

The experts were involved in systematic border monitoring, periodic reporting to the Ombudsman institution on findings, addressing and resolving problems encountered in

cooperation with Regional Border Directorates at the local level, central border and migration authorities and in cooperation with UNHCR.

During 2019, Albania has faced an increase of irregular foreigners, mainly through the southern and southeastern border with Greece moving further on towards Montenegro, having EU member countries as their final destination. The increase in the influx of irregular foreigners was accompanied by an increase in asylum applications in the Albanian territory and address of priority needs for protection, assistance and services, especially for the most vulnerable groups, such as women and children, people with special needs or people with health conditions.

The increased influx also affected the activity of human trafficking networks which were struck by the Albanian police in cooperation with the European Border Guard "Frontex". In May 2019, the Agreement on Joint Border Management between Albania and the European Union entered into force and the first 50 *Frontex officers were deployed in the border area of Albania with Greece (25 in Gjirokastra Region and 25 in Korça Region) working alongside* the Albanian Border and Migration officers and stakeholders who cooperate in dealing with issues of irregular foreigners and the border.

The experts gained access from the migration sector to be physically present in the selection interviews for hundreds of irregular foreigners who entered from the Greek territory in the time span of one year, observing the observance of the relevant guidance and the implementation of international standards and best practices in the field. In many cases, representatives of the Ombudsperson on the field and the NMPT in cooperation with the UNHCR Gjirokastra

Office or the UNHCR Headquarters referred to the border authorities the issues presented by irregular foreigners and how to deal or solve them.

Representatives of the Ombudsperson have been prone to critical thinking during their contacts in order to improve the quality of several elements in the migrant protection

mechanism based on the identification of gaps in the asylum system. One of the challenges the system faces is lack of translators of rare languages (since one person of the immigrant's group usually serves as a translator for the rest of the group using very poor English) and such language barriers influence the identification and selection process.

Table 3. Summary of the Experts' activity in Gjirokastra, Korça and Shkodra

Processes followed	Regions	Annual indicators
Observation in the identifying process for irregular foreigners and Selection Interviews	Gjirokastra Saranda Korça Bilisht Shkodra Kukës	1.510 persons 18 persons 110 persons 680 persons 1.180 persons 17 persons
Border monitoring and field visits in border areas	Gjirokastra Saranda Korça Bilisht Shkodra Kukës	146 visits. 15 visits. 16 visits. 38 visits. 135 visits. 9 visits.
In-depth interviews with irregular foreigners	Gjirokastra Saranda Korça Bilisht Shkodra Kukës	330 persons 14 15 persons 46 persons 181 9
Analytical reports on findings during observations	Gjirokastra Saranda Korça Bilisht Shkodra Kukës	10 1 2
Recommendation reports on findings during observations	Gjirokastër Saranda Korça Bilisht Shkodra Kukës	7 2 1 3

Table 4: Irregular foreigners treated by experts in 3 areas Gjirokastra, Korça and Shkodra

Age	Men		Women		Total	
	In %	In numbers	In %	In numbers	In %	In numbers
0-17	212	7,1	160	26,8	372	10,6
18-59	2400	82,5	380	63,8	2780	79,1
60 >	305	10,4	55	9,4	360	10,3
Total:	2917	100%	595	100%	3512	100%
Regions	Korça, Shkodra, Gjirokastra					

We find it appropriate to emphasize that this activity could not have been carried out without the cooperation and support of the UNHCR, as the current capacities of the NMPT cannot have carried out this mandate.

3.4 Upholding human rights in the Prosecution offices

The activity of the work of the Prosecution body has been viewed and evaluated in the context of the changes in the procedural-criminal legislation and during the development of a difficult process of justice reform. These changes have placed the prosecuting authority before legal obligations to correct implement the correct procedures both in making the final decision, as well as investigating on facts and circumstances that are in favor of the person, against whom the investigation is conducted, taking into account the increased workload due to deficiencies in the system.

Under these circumstances citizen's requests/complaints have been received, evaluated and handled in cases where they have raised various allegations about the work done by prosecutors, during the investigation of criminal proceedings,

being a party in the criminal process in the capacity of plaintiff or person under investigation.

The Ombudsperson as an independent constitutional institution that upholds and protects human rights has tried to play an active role in the form of a mechanism, reviewing the work practices of prosecutors after the concerns raised by citizens, addressing issues and on this basis has intervened through recommendations with the final goal of doing justice to the violated right.

During 2019, the Ombudsperson Institution received and dealt with 79 complaints of citizens, that were grouped or divided according to the type of violation of rights in the criminal process, are presented as follows:

First: Unjustified delays in the investigation of criminal proceedings

The Ombudsperson has given priority to the delay of the investigation of criminal proceedings, assessing it in the framework of a due process of law in respect of the obligations provided in point 2 of Article 42 of the Constitution of the Republic of Albania and Article 6 of the ECHR.

The reasons for the unjustified delays of the investigation, in our judgment, were mainly:

- a. failure to conduct comprehensive investigations, unplanned coverage of investigative actions rather than ongoing investigation, delays in conducting investigative actions, especially by the judicial police, by not implementing correctly the orders of the prosecutor;

Significant delays in cases when the pre-trial judge did not approve the prosecutor's request for non-initiation of criminal proceedings or dismissal of the case, returning the acts to the prosecution and ordering and carrying out other investigative actions;

conduction of various examinations, often several examinations in a single proceeding, conducting and delaying administration of expertise acts;

non-evaluation, non-review or delayed review of the requests of the parties in the criminal process, especially the claims of the person under investigation; non-appearance of witnesses in the preliminary investigation phase as a result of submission of an incorrect address, delayed answer to letters of inquiry to justice authorities of foreign countries, etc.

Second: Failure to respect the right to information on actions taken during the investigation phase or final decisions on how to resolve criminal charges or terminate the investigation.

From the information sent by the prosecutors as well as the communication we had with the prosecutors of the cases, we were informed about the fact that the citizens, parties in the criminal process have been notified in writing

about the decision made, but lack knowledge and the failure to receive the decision is related to lack of accurate addresses of their residence.

Taking this into consideration, we have suggested that the mobile phone number or landline number, if made available by them, be placed in the accompanying documents so that parties can receive notifications, a practice which has had good results and has been followed in the institution of the Ombudsperson.

Third: Failure in making available various acts from the investigation files or seized documents.

The procedural body's failure to take action and the delays due to failure of issuing various acts of criminal proceedings have resulted in violation of the legitimate interests of citizens, such as to follow the necessary court proceedings such as the right to appeal in court.

We would also like to mention here the handling of material evidence items seized during the investigation by the prosecution. Although the fundamental rule for returning the stolen item is an attribute of the court, Article 218 of the Criminal Code gives the prosecutor the discretion to carry out the return to the rightful owner even at the stage of preliminary investigation. So, after the necessary procedural actions regarding the item have been performed, if the investigation of the case is not damaged, the prosecutor should return the item without hesitation and without delay, as the opposite would bring consequences to the family business or other activities of the citizens. Thereupon, recommendation no. K2 / A87-9, dated 11.07.2019 was drafted, in which we recommended to the Prosecutor's Office of the Tirana District Court "Taking immediate measures to return the seized item, material evidence in order to implement decision no.859,

dated 27.12.2018 of the Court of the Tirana District Court" and also required an in-depth investigation on the fate of the material evidence and the responsible person who committed the illegal action.

Forth: Raising allegations of unfair accusation

Despite the difficulties encountered by the prosecution in these cases, due to the significant number of people arrested by the Judicial Police and the inability to find and administer the necessary evidence against the persons under investigation due to the short time until the filing of the motion to the court, we would consider that the prosecution body has had obvious cases when it should have ordered the immediate release of the detained.

Complaints have also been filed by relatives of people with mental health problems who have submitted allegations to the prosecution body for not issuing an execution order of the court decision which contain mandatory medical measures, provided by Articles 46 and 239 of the Code of Criminal Procedure.

The Ombudsperson has emphasized for years the fact that keeping these people in facilities within the prison system is a degrading and inhuman treatment, as it contradicts the Universal Declaration of Human Rights and Article 3 of the ECHR. According to international acts, people with mental health disorders are treated as disabled and vulnerable, therefore they must be provided with appropriate medical treatment, adequacy of medical assistance and care in a Specialized Psychiatric Institution.

Based on this concern we have recommended: "Drafting an instruction in order for the Prosecutors of Executions of Criminal Decisions attached to the District Prosecution Sections

or to the Appellate Prosecutions to fulfill their functional duty in the capacity of procedural subject, based on Articles 24 and 480 of the Code of Criminal Procedure "to submit a request for sentence remission, which sets the court in motion to take the necessary legal steps, so that convicts are not deprived of their legal rights."

In some cases, when the Prosecution has decided to suspend investigations for non-recognition of the perpetrator of the criminal offense such as "Murder", "Violation of traffic rules" resulting in death for which a long period of time has gone by, we have contacted managers or prosecutors as well as employees of the State Police in police stations to expedite the execution of necessary actions, in order to administer evidence and conduct a joint analysis to decide the resumption of the suspended investigation.

Also, concerning is the fact that some prosecutors in the Court District Prosecutor's Offices, such as in Tirana, Gjirokastra, etc, are reluctant to provide clarifications to our requests for more emphatic information to clarify the reasons for delays in the investigation of criminal proceedings, justifying it with the secret character of investigation.

We have brought to the attention of these prosecutors, the right of the Ombudsperson to request information or documents related to cases under consideration classified as state secret, which is provided in Article 20 of the functional law of the Ombudsperson.

A fundamental problem identified is the interpretation of the blazing offense situation contrary to the principles of the European Court of Human Rights. International human rights standards require that any restriction of liberty be an exception, objectively justified and for a duration not exceeding the absolutely

necessary by expressly encouraging the non-use of restrictive measures of liberty during investigation and trial, until a decision is made.

Article 228 of the Code of Criminal Procedure provides the conditions for imposing personal security measures¹². In the appointment of these restrictions, a conviction must be made that the evidence rises suspicions that a criminal offense has been committed or is being committed. Of course, this conviction or reasonable suspicion arises when the person is detained or arrested in blazing offense but this conviction must be such that it can be assessed by the judge. In both cases the principle of presumption of innocence is respected. Reasonable suspicion under the ECtHR requires facts, or information, that would convince an objective observer that the person in question may have committed a criminal offense. The fact that an individual has a criminal record is not considered sufficient to raise reasonable suspicion. Reasonable suspicion can also be based on anonymous information. However, the ECtHR has assessed that the information of an anonymous informant unconfirmed by evidence or other information is insufficient to create reasonable suspicion.

The Criminal Procedure Code of the Republic of Albania provides for the imposition of several precautionary measures of restriction of liberty, namely "arrest in blazing offense" and "detention of a suspect for a crime". These precautionary measures are limited in time and must follow the observance of certain strict criteria as well as procedural rights and guarantees to the persons being applied, until the court decides whether or not to validate the personal security measure

¹² According to point 1 of this article, no one can be subject to personal security measures unless there is a reasonable suspicion, based on evidence, against the person.

requested by the prosecution. The detention is not related to the blazing offense but to the suspicion of committing a crime and the risk of absconding. The request of the prosecutor for the assessment of arrest in blazing offense or detention as a lawful measure and for the determination of the security measure that is deemed appropriate must be substantiated. As we have pointed out above, the actions carried out by the Judicial Police are often carried out on their own initiative, without notifying the prosecuting authority.¹³

It is worth mentioning that, if a person is arrested in blazing offense or detained in the relevant record of arrest / detention, the moment, the time, of his arrest in fact, the moment he is actually deprived of liberty should be set. ¹⁴During our work we have noted that the prosecution has requested the measure "prison arrest" for a significant number of citizens who have been detained/arrested in blazing offense. Also, cases of imposing a security measure, without assessing the complexity of the circumstances, the conditions in which the crime

¹³ The arrest in blazing offense must be carried out by the judicial police structures of the Prosecution body and under the lead of the prosecutor, according to articles 24/1, 30/2 and 304/2 of the Code of Criminal Procedure. This aims to avoid any conflict of interest situation due to the fact that police structures have been subject to damage. The Ombudsperson finds it appropriate to emphasize that in imposing personal security measures against suspected perpetrators of criminal offenses, the conditions and criteria for their appointment are provided by the provisions of the Code of Criminal Procedure, respectively Articles 228, 229 and 230.

¹⁴ Referring to Articles 144, 250 of the Criminal Code, recording in the minutes the moment (time) of arrest in blazing offense or detention is an important element on the basis of which the effects of detention can be calculated. Whereas, according to article 258 of the Criminal Code, from the moment (time) of arrest or detention a 48-hour period begins, within which the prosecutor requests the validation of the security measure in the court of the country where the arrest or detention was made.

was committed the consequences that followed, etc. have been ascertained. In most cases it turns out that the request for security measures is based mainly on evidence collected by the judicial police and that the prosecution has not conducted an investigation or has not processed acts drafted by the police. Also, the evidence provided by the prosecution while carrying out procedural actions did not fully comply with the requirements of legality. Awareness on the proper application of the law by the prosecution body will also reflect on the better respect of the rights that the law guarantees to detained/ arrested persons and to those against whom a personal security measure is imposed. CPT has made concrete recommendations in its report on Albania published in 2019 regarding the fact that investigations of prosecutors on cases of violence should be investigated swiftly and efficiently and not alongside investigations into allegations made against a person in conflict with the law who has suffered of violence. The Ombudsperson will follow attentively the implementation of this recommendation.

3.5 Right to a due process of law

In the framework of the submitted complaints regarding the judicial bodies, the issues were mainly related to the violation of the right to a due process of law. more specifically:

non-provision of primary and secondary legal aid pursuant to law no. 111/2017 "On state guaranteed legal aid";

- procrastination of court proceedings in particular overdue deadlines for consideration of cases by the Administrative Court of Appeal and the High Court.

According to the basic provision of Article 6 of the ECHR, "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which will decide both on disputes regarding his rights and obligations of a civil nature, as well as on the merits of any criminal charges against him." Meeting the obligations of the signatory states of the ECHR requires positive action on their behalf.

The ECtHR has emphasized the broad relationship between the right to a fair trial and the principle of the rule of law. The object and purpose of Article 6 to protect the right to a fair trial is to nurture and preserve the principle of the rule of law in a democratic society. Thus the expression "Not only must Justice be done; it must also be seen to be done" emphasizes the broad concept of a fair trial, including the specific feature of protection and the principle of equality between the parties. Taking into account all of the proceedings, the right to go to court constitutes an element which is internal to the right provided for in Article 6/1, on the one hand the principle of international law prohibits rejection by justice, and on the other hand the principle according to which a civil claim should be able to be presented before a judge as one of the universally recognized basic legal principles.

Also with regard to the right to a trial within a reasonable time, the ECHR sets out an obligation for Member States to organize their legal systems in order to allow courts to comply with the obligations of Article 6/1 of the ECHR, including that of a trial "within a reasonable time."

Fair process is also sanctioned by Article 42 of the Constitution and is considered one of the basic principles of the rule of law, accompanying both administrative and judicial processes.

Impartiality, separation from other executive and legislative powers, political pressure, economic and social interest and independence guarantee for a consolidated judicial system. Therefore, the normal functioning of the courts nationwide is a necessity and a functional duty of the state to provide citizens with a judicial system that meets these guarantees.

Courts in Albania, just like in any other country are a key element in enabling a rule of law. Thus, like the entire legal system, during the years of Albania's transition to democracy, they have attracted considerable national and international attention. It is of particular importance to support their independence and at the same time ensure their professional qualification and responsibility.

Due to vacancies created in the Supreme Court as well as due to the lack of appointment of a judge to fill vacancies since 2013 and due to the vetting process in the judiciary and new appointments, delays that have been going on for years in the adjudication of cases in this court have become a troubling issue. The functioning of this court should be a priority, as it is directly related to the protection of human rights, and in particular to the right to a trial within a reasonable time.

The high quantitative workload of administrative judges, especially in the Court of Appeals is another factor influencing the delays in the review of court cases. This issue requires intervention, as these delays are harming citizens which have filled in complaints.

There have been repeated requests for the presence of the Ombudsperson's representative in court hearings, but our institution, due to its limited mandate and workload has been unable to respond to all citizens' requests to be present

during court hearings. On the other hand, in the exercise of the competencies recognized by the law no.8454 dated 04.02.1999 "On the People's Advocate", as amended, the institution of the Ombudsperson requested information and withdrew officially documentation in courts regarding the incoming claims.

For appeals against unfair and illegal court decisions, legal advice has been provided regarding the right to appeal or review decisions.

Regarding the alleged complaints of judge and prosecutors corruption, the plaintiffs are oriented to address the vetting bodies, the High Judicial Council and after the appointment, the High Inspector of Justice, according to the competencies determined by the legislation in force. Amendments made to the Code of Civil Procedure in relation to this issue have not yet been implemented in concrete decision-making in order to show their effectiveness.

Regarding the category of former political prisoners of the communist regime in the institution of the Ombudsperson several complaints for compensation are being handled, which are related to:

non-acceptance of documents for handling by the Ministry of Justice;

delay in granting the third installment by the Ministry of Finance and Economy;

improper assessment of the compensation amount;

not benefitting of a pension or compensation as deported or interned person during the totalitarian regime due to lack of normative acts, etc.

Although this stratum of society and their families have suffered enough during the totalitarian regime and a good part of them are in old age, suffering of ill health and economic problems, the deadlines for the granting of the third installment of compensation in particular are very extended. This is related to the provisions of the instruction no. 273/1, dated 27.08.2012, according to which the families of former political prisoners who have been have been assessed as completely incapable of work by the Medical Commission for Assignment of Ability to Work (KMCAP) or suffer from malignant oncological or hematological diseases (blood diseases) treated by state university hospitals, benefit from gaining priority to the payment of financial compensation.

Although approximately 12 years have passed since the entry into force of law no. 9831/2007 "On the compensation of former political prisoners of the communist regime" as amended, the DCM has not yet been approved to enable the factual process of financial compensation for the category of internees and deportees provided in Article 6 thereof.

Regarding the above, we recommended to the Council of Ministers, the Ministry of Justice and the Ministry of Finance and Economy as follows:

Immediately taking organizational measures for the establishment of a joint working group represented by the Ministry of Justice, the Ministry of Finance and Economy and the Social Insurance Institute to enable the drafting and proposal to the Council of Ministers of the special pension scheme for internees and deportees during the totalitarian regime.

Taking organizational measures to issue the Decision of the Council of Ministers on the approval of the special pension scheme for internees and deportees during the totalitarian regime.

We were informed by the Ministry of Justice that the recommendation has been welcomed and measures are being taken to establish a working group to draft the DCM project.

3.6 Free legal aid

The Ombudsperson in the role of warrantor of the protection of human rights and freedom in the Republic of Albania has closely monitored the implementation of law no. 111/2017 "On state guaranteed legal aid". We have already addressed the importance of this law and the need for the state to guarantee this service to citizens, taking into account the number of requests received to seek free legal aid.

For this reason, we conducted an administrative investigation and followed all the steps taken by the responsible institutions for the approval of bylaws, as well as for the establishment of structures provided by law.

The number of applications submitted in recent years for the period 2016-2019 is presented as follows:

Table of requirements for the years 2016-2019

Years	2016	2017	2018	2019
Requests for free secondary legal aid in total	19	24	54	14 ¹⁵
Requests for free secondary legal aid from women and girls	9	11	13	5

During 2019, 14 complaints requesting free legal aid were made, mainly from low or insufficient income categories, individuals who are not able to address the court through a private lawyer. The cases for which free legal aid is mainly requested include family (such as divorce, guardianship, alimony obligations, etc.), civil (such as causing damage, division of property, etc.), administrative cases, but criminal cases are included as well. The Ombudsperson, the Minister of Justice, the High Prosecution Council, the Albanian Bar Association and the courts have constantly exchanged official communications to enable the proper orientation of citizens towards the structures for the appointment of a free lawyer.

Law no. 111/2017 "On state guaranteed legal aid" entered into force on June 1, 2018. This law provides for the creation of a public legal entity, depending on the Minister of Justice, the Directorate of Free Legal Aid. In order to implement the new law, the bylaws and the Directorate of Free Legal Aid should have been approved and established within 3 months from the entry into force of the law. Thus, the establishment of the structure and the adoption of bylaws in September 2018 would have implemented the law.

Meanwhile, the work for the establishment of this directorate has started only after the approval of the Prime Minister's order no. 59, dated 25.03.2019 "On the approval of the structure and staff of the Directorate of Free Legal Aid",

after more than 6 months of delay since the law entered into force.¹⁵

The Ombudsperson has repeatedly taken interest on the case, emphasizing the importance of the establishment of this directorate to the responsible institutions such as: the Ministry of Justice, the Ministry of Finance and Economy, the Department of Public Administration (DoPA) and the Prime Minister's Office.

After the carrying out procedures for the recruitment of staff, it is concluded that even after almost one year from the establishment of this directorate, the staff has not been completed. There is a lack of senior and middle level managers who can carry the duty of administering, coordinating and eventually identifying the needs for change and improvement in the system of provision of free legal aid. The failure to establish the Directorate of Free Legal Aid in time and within the legal deadlines by the Ministry of Justice as well as the non-approval of bylaws, created a legal vacuum in the regulation of the field of providing free legal aid for a long time.

This way, the non-compliance to legal obligations by the responsible bodies and establish within the legal deadlines of the relevant directorate, in

The cases above, registered and handled by the Ombudsperson Institution relate to secondary legal aid, and do not include the numerous cases in which citizens have been advised/oriented by the Ombudsperson Institution regarding the legal paths they should follow in order to handle their problem further on (primary legal aid).

order to fill the sub-legal vacuum, makes access to justice for the needy and representation through a free lawyer in certain cases impossible. It should be noted that exceeding the legal deadlines has caused many problems in the enjoyment of the fundamental rights of groups with insufficient or low income. Access to justice for vulnerable groups, an important principle of the rule of law and legitimate expectations, has long been non-existent.

Considering the duties assigned by law, it is concluded that the Ministry of Justice has still not completed:

approval of the establishment of primary legal aid service centers, after taking into consideration the opinion of the High Judicial Council. (So far, the only center of primary legal aid service is the one opened in the city of Elbasan, set up on 16.10.2019, in which two employees with special training have been recruited. Setting up these centers in some cities of the country remains a necessity, taking into account the expansion of the geographical distribution for the provision of services as close as possible to the community.)

approval by joint instruction with the Minister responsible for finance, after having previously taken into consideration the opinion of the Albanian Bar Association, "On the criteria for obtaining payments and the relevant remuneration fees for lawyers who provide secondary legal aid services";

approval of the joint draft instruction with the Albanian Bar Association "On the rules for the implementation of rotation in the appointment of lawyers who will provide secondary legal aid services".

authorization of non-profit organizations that provide primary legal aid services and publication of the list on the official website of the Ministry of Justice. Non-profit organizations provide primary legal aid services in accordance with the authorization approved by the Minister of Justice. The procedures and documentation for their authorization are determined by a decision of the Council of Ministers. Although bylaws regarding authorization rules and procedures have been adopted, non-profit organizations that will provide primary legal aid remain unauthorized.

Through the correspondence we kept up during 2019 with a large number of district courts nationwide, regarding the review of requests for secondary legal aid as well as the exemption from court fees and costs, we were acquainted with the fact that for most part they were not provided with free secondary legal aid, such as Korça District Court, the Administrative Court of First Instance Tirana, Pogradec District Court, Mat District Court, Saranda District Court, etc.

We have come to the realization that since the entry into force of the law, there is still a lot of work to be done to make it functional and enforceable. Also, the categories with insufficient or low income have little knowledge on access to legal aid and the right to seek exemption from court fees and costs. Also, citizens do not have the necessary information regarding the benefits of legal aid, the procedure they must follow to obtain it and the documentation they must fill out. For this reason it is necessary to organize awareness campaigns aiming at legal education, through the assistance provided to the community in mobile clinics, publications, TV campaigns and print media, paying special attention to issues of vulnerable groups.

3.7. Execution of civil and administrative court decisions

The Institution of Ombudsperson has received a total of 28 cases for review during 2019, in which the winning subjects or creditors have alleged the violation of the principle for a fair legal process, as a result of non-execution of executive titles within a reasonable time, by the authorities charged by law for their implementation, as provided in Article 42/2 of the Constitution, or Article 6/1 of the European Convention on Human Rights, ratified by the Assembly of the Republic of Albania with law no. 8137, dated 31.07.1996.

The process of execution of civil court decisions, notarial acts containing a monetary obligation as well as administrative acts considered executive titles as an integral part of the trial process has had almost the same issues, as the ones reflected in the reports of the previous years of the Ombudsperson.

The dismissals/removal of civil servants from the administration that have ended in lawsuits, have cost a lot to the state budget. The courts have ruled in favor of the departed seeking the execution of their financial claims as well as a return to the job positions they held before leaving, or a similar one. Finding opportunities to return to the position of the departed so that their financial benefit does not come from the decision of the courts but to be paid for the work they do is already being discussed among institutional ranks¹⁶.

¹⁶ The 2019 Commissioner's Civil Service Monitoring report highlights that 601 final court decisions

The return to office of winning litigant parties was part of last year resolution approved by the Parliament, which required the follow-up of the process and the way that decisions were executed.¹⁷

The issue of non-execution of final court decisions issued by courts in the Republic of Albania or the European Court of Human Rights remains an issue of crucial importance for the Albanian state, as it is related to the strengthening and development of a judicial system respected by all. The prolongation of decisions' execution and "putting in question" the justice given by the court, result in loss of trust in state institutions.

With regards to the process of reviewing cases administered during 2019, with the object of forcing public administration bodies to pay cash amounts, the Ombudsperson concludes that the cause of non-execution of executive

that are mandatory to be enforced have been issued. Of these 236 decisions, or 39% of them have been implemented and the employees have returned to the civil service, or have been dismissed from the civil service for legal reasons (full old age pension or resignation) and in 365 decisions or 61% of them, the winners are registered in a waiting list to gain a civil service position. "According to the data reported by the institutions, it turns out that currently the amount of 511,748,508 ALL has been paid from the state budget in favor of the winning employees in the implementation of court decisions." the report states. Also, "The process will continue monitoring the implementation of decisions by the line ministries during 2020 and the hearings with the General Directorate of Taxes will continue, which has approximately 143 unenforced decisions and with local administration institutions and independent ones".

The Commissioner has reported that he has communicated and administered data from public administration institutions, including line ministries, state administration subordinate institutions, independent institutions and local administration institutions, out of which 36 resulted having problems (11 line ministries, 6 institutions under their dependency, 11 municipalities, 5 Regional Councils and 3 independent institutions). For more information about this argument, see <http://www.panorama.com.al/largimet-e-padreja-nga-administrata-del-raporti-ja-sa-milione-euro-ka-paguar-buxheti-i-shtetit/>.

titles, which has violated the right to a fair trial, is the issue provided for in Instruction of the Council of Ministers No.1, dated 04.06.2014, *“On the way of executing monetary obligations of general government units in treasure accounts”*. To improve this situation, the Ombudsperson has intervened and will continue to intervene to relevant bodies for its regulation, on a case by case basis.

The issue of not allowing new debts, although being set forth as an objective of the government, as outlined in DCMNo. 50, dated 05.02.2014, *“On approval of the Strategy for the prevention and payment of arrears and of the action plan”*, results to be unfulfilled.

The debtor bodies or institutions, upon the case of paying the cash obligation, as decided by the court, have not and do not conduct the procedures set forth on Instruction of the Minister of Finance No. 2, dated 06.02.2012, *“On Standard Procedures on Implementation of Budget”*, (Article 62) or Instruction of the Minister of Finance No. 1, dated 13.06.1997, under Financial Act No. 1, dated 13.10.1997, paragraph 7, which defines the obligation of the head of debtor institution to conduct an audit of the entire process, which has led to economic damage, as well as to take administrative measures and initiate civil proceedings against persons causing the damage. The failure to observe the above-mentioned acts has resulted and will result in violation of proprietary interests for every taxpayer in the Republic of Albania.

According to the Ombudsperson, the violation of the principle of a fair trial as a result of the non-execution of final civil court decisions in a reasonable deadline is a result of a series of causes, such as:

Manifestation of the lack of professional qualities and knowledge by special judicial bailiffs;

Carrying out bailiff actions out of the scope of execution or not provided for by law, as well as misinterpretation of the disposition of civil or administrative court decisions;

Unjustifiable hesitation by judicial bailiffs to impose sanctions to the debtor subject, other persons who refuse or incorrectly perform, do not respect the deadlines or perform the contrary of what they are obliged to perform by a court decision;

Non-performance of the right actions by authorities charged by law for the execution of executive titles, which ensure the fulfillment of the cash obligation that a state institution is obliged to pay under a final court decision;

Non-issue of sub-legal acts by the Council of Ministers, Ministry of Justice and the minister responsible for finance and public order and security, as provided for in Article 24, paragraph 3; Article 36, paragraph 2; Article 39; Article 54, paragraph 4; Article 55, paragraph 3 and Article 56, paragraph 2, within the legal deadline set forth in Article 89 of Law No.26/2019, *“On Private Judicial Bailiff Service”*.

In the previous annual report, the Ombudsperson has re-highlighted the issue of non-execution of criminal court decisions on punishing subjects by a fine. Under the conditions when the Judicial Bailiff Service has accepted and admitted requests for their execution, as well as has performed and performs bailiff actions for their enforcement, a proposal has been recommended

to the Minister of Justice via letter with Protocol No. K2/I40-9, dated 22.02.2016, *“On taking the initiative to change the legislation”*. Although this recommendation has been admitted in principle, following the submission of the draft-law on some addenda and amendments to law on execution of criminal court decisions to the Parliament, the Ministry of Justice has not reflected the amendments requested by the Ombudsperson. Therefore, the issues presented in the recommendation given by the Minister of Justice have not been resolved and the process of enforcement of criminal decisions on punishing a subject by a fine is carried out by the Judicial Bailiff Service, not in line with the principles or rights guaranteed by the legislation in force.

Another issue is the process of enforcement of executive titles on monthly income (salary) of the debtor. Following the bailiff actions carried out for the enforcement of executive titles, the State or Private Judicial Bailiff Service have performed and perform the seizure of monthly income of the debtor, leading to situations that affect his/ her vital interests because of non-observance of provisions of Article 533 of the Criminal Procedure Code or Article 123 of the Labor Code.

The fact that the minimum living level has not been defined to date has resulted in the fact that the provision of Article 533 of the Civil Procedure Code remains non-applicable by the Judicial Bailiff Service. Under the legal provision in question, the placement of the measure of seizure on monthly income (salary) of the debtor is carried out without affecting the “minimum living level”, a minimum that has not been defined to date. **This situation requires maximum attention to be tackled in line with the legal framework in force and respecting the rights of individuals.**

An issue that we consider as important is the problem we have encountered with private bailiffs and the Ministry of Justice related to our position towards them as a subject. It is wrongly perceived that the activity of the Private Judicial Bailiff Service does not fall under the scope of competence and jurisdiction of the OP Institution. The meaning given by the above-mentioned bodies is contradictory to the provisions of Article 3/6 of the Administrative Procedure Code, as well as Article 2 of Law No. 8454, dated 04.02.1999, *“On Ombudsperson”*, as amended.

In addition, with regards to the relationships with the Ombudsperson, some special judicial bailiffs have refused to provide the OP with information and explanations during the process of executive titles execution. This position is a result of non-cognizance or wrong interpretation of the legal framework related to the prevailing of Law No. 8454, dated 04.02.1999, *“On Ombudsperson”*, as amended, over Law No.26/2019, *“On Private Judicial Bailiff Service”*.

3.8. Respecting the right to property

The issue of respecting the right to property has been subject to evaluation by the OP Institution throughout 2019 as well. The number of complaints related to this issue remains too high and the issues to be addressed are too complex and accumulated year by year. While exercising its competences and functional duties, the OP Institution has been very active and focused in addressing and reviewing on merits of some of key issues of the right to property, which are sensitive and fragile for special individuals or

broad communities of individuals¹⁸.

Guaranteeing of the human rights and fundamental freedoms, in particular the right to property by state bodies and institutions, throughout years, has continued having problems, which have violated, among other things, the right to property, or have violated the principle for a fair trial as provided for by Articles 41 and 42/2 of the Constitution of the Republic of Albania respectively, Article 1 of Protocol No. 1 of ECHR, Article 6/1 of the European Convention of Human Rights¹⁹.

The Ombudsperson highlights that the right to property should be protected and guaranteed not only in texts of laws and sub-legal acts, but it should be at the core of work of every state administration institution to guarantee the effective implementation of this right. But, the implementation of requirements of the rule of law by ensuring legal procedures that guarantee the impartial and uniform enforcement of law, participation of affected persons, transparency of decision-making processes and fight against corruption tendencies, remains a problem of the state administration bodies' activity.

In many cases, certain public bodies have not conducted the administrative activity in line with provisions outlined in legal and sub-legal acts in force, illegally affecting in this way the subjective rights or legal interests of the individual. The correct and full implementation of requirements and provisions of law has not been considered

¹⁸ See also Special Reports developed by the OP Institution addressed to the Parliament of the Republic of Albania, in its official website <https://www.avokatipopullit.gov.al/sq/list/publications/rraporte-speciale-1/>

¹⁹ Approved by the Parliament of the Republic of Albania by Law No. 8137, dated 31.07.1996, "On Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms".

as the most important function by certain administrative bodies. The non-fulfillment or non-exercise of legal obligations in an efficient, economically right and appropriate, and as soon as possible, consist of situations identified in the administrative activity of some public bodies.

The identification of such situations indicates that the public administrative functions have not been effectively fulfilled.

The establishment of a single institution, namely the State Cadaster Agency, aiming to centralize all the activity of institutions, such as former IPRO and former ALUIZNI, was realized formally and only physically without a specific approach on how to solve the issue that those institutions have had during their independent operation.

Such a wrong tackling in formalizing new institutions has not brought effectiveness in the activity of duties fulfillment towards subjects and individuals, and has caused a fragmentation of their activity, as well as avoidance from their most important administrative functions, timely response and solving of problems identified in property issues.

Similarly, the approval of DCM No. 138, dated 23.02.2018, "On the temporary suspension of the procedures for the transfer of ownership of agricultural land beneficiaries of former agricultural enterprises and the registration of land acquisition acts in the area of importance to the Fund of Strategic Investment Support", as amended, has been considered by our Institution in violation of the right to property and the principle for developing a fair trial²⁰.

²⁰ Provided for in Article 41, 42/2 of the Constitution of Albania or Article 1 of the Protocol No.1, as well as Article 6/1 of the European Convention of Human Rights and Fundamental Freedoms, ratified by Law No.8137/1996.

The submission of this case to the Constitution Court by our Institution was not made possible, because this Court is not operational. In our opinion, the repeal of decision by the body that approved it, by DCM No.241, dated 04.04.2019, is an indicator of reflection.

The legal framework of the rights to property in Albania has some legal and technical weaknesses, which are further deepened due to the non-uniform enforcement of law. Still, no judicial security is provided to the right to property, and the legal framework tackling such issue is complicated and continuously changing. This situation has also been synthetically commented by the EU Commissioner, Mr. Hahn, stating that: "... *Conclusion of legal security and clarity of ownership titles have not been fully achieved, regardless of the continuous efforts to achieve them. The legal segmentation, fragmentation and gaps in the registration system and its implementation in this field remain to be addressed across the whole country ...*"²¹. In addition, before inspecting the local directorates of State Cadastre Agency, the

World Bank representatives concluded that:

Existing cadastre maps have a high tendency of not complying with the on-site situation.

The most frequently encountered situation is that immovable property units (parcels and buildings) have been wrongly positioned in many cases. With the passing of time, and due to changes made in specifications and references, this issue has been widely increased.

In many cases, when different copies

<https://www.dë.com/sq/hahn-shqip%C3%ABria-situat%C3%AB-problematike-me-t%C3%AB-drejt%C3%ABn-e-pron%C3%ABs/a-4840086>

of map sheets are available, there is a discussion on which is the actual or right map.

The data on parcels are not missing in SCA offices, but the property status is not accurately known²².

In general, the situation is more confusing in urban areas, especially in Tirana and its surrounding areas, as well as in large coastal areas, where there are more informal buildings.

Errors are mostly accumulated because of inconsistencies deriving from the lack of documentation.

In general, errors in property registrations indicate wrong boundaries, parcel size and ownership documentation.

- Usually, errors are identified when a transaction to the relevant unit of immovable properties is carried out. When a transaction is carried out, the property owner or owners of properties close to that property are not aware of errors on property²³.

Apart from the above-mentioned findings, in the process of reviewing cases submitted by various individuals, the OP Institution has found that:

Public administration bodies²⁴ at local level have a low level of cooperation and

<https://shqiptarja.com/lajm/pronat-banka-boterore-regjistrimi-i-te-patundshmeve-lemsh-me-hartat-ne-shqiperi>.

<https://www.monitor.al/projekti-i-bb-hartat-e-pronave-ne-hipoteka-pa-lidhje-me-realitetin/>
Local Directorate and Offices of SCA and Municipalities.

interaction, and do not fulfill the legal obligation on providing explanations and information to the OP Institution within the set deadline, such a situation that has been found year by year. This problem not only causes discontent of citizens to not perform the service they should perform pursuant to the legislation in force, but it also declines trust of citizens in our institution effectiveness. This issue has not been properly addressed neither by the General Director of State Cadaster Agency, nor by the Ministry of Justice itself.

Furthermore, these bodies at local level do not fulfill the legal obligation about the position held related to the implementation of recommendations addressed by the Ombudsperson.

The administrative process of reviewing self-declarations made throughout years by different subjects has not been completed, although every reasonable deadline has expired. The Local Directorates of SCA continue to issue legalization permits without clear boundaries, and which lack the required legal form and content²⁵.

State or non-state entities continue to not meet their legal obligation provide for in Article 196 under the Civil Code and Article 24 under law on cadastre about sending the acts/decisions for approval to local directorates of the State Cadaster Agency²⁶.

²⁵ See the Special Report prepared by the OP institution "Rehabilitation of the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja" on <https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20p%C3%ABr%20zon%C3%ABn%20e%20Astirit.pdf>

²⁶ Law No.111/2018 "On cadastre" defines the public service of immovable properties registration, organization of the institution responsible for such

Courts, notaries, state/private bailiffs and other state bodies are also in non-compliance with the law.

Legal obligation of bodies to declare acts/decisions with the National Digital Cadastre provided for in article 24/2 under law no.111/2018 "On cadastre" cannot be complied with due to its non-functioning.

Public administration bodies at the local level do not exercise the right to request accuracy for the documentation on property to the entity issuing the property title, but they rather file this request with the beneficiary of the right to property. This situation is noted mainly in the registration of land take over acts.

Errors made by former local immovable property registration offices, or SCA local directorates at present, have not been corrected, although according to law no.111/2018 "On cadastre", correction is mandatory.

Administration of immovable property registration by former local offices, or SCA local directorates at present, has lead to several ownership titles overlapping over one single property, which has generated

service and the administration of the cadastre as a public immovable properties register. The institution established by the law is the State Cadaster Agency and pursuant to paragraph 1, article 67 under the law, its establishment results from the Agency for the Inventory and Transfer of Public Properties, ALUIZNI and IPRO. The merging of these special institutions with jurisdiction and their respective legal compe-tences clearly indicates that the State Cadastre Agency is now responsible for the continuity and completion of the process set forth under law no.9482, dated 3.04.2006 "On legalization, urbanization and integration of illegal buildings", as amended, but such agency has no competence in the two other processes mentioned above on right to property.

further judicial conflicts between different individuals and subjects.

Additionally, it should be emphasized that SCA Local Directorates have not completed or started the initial registration of properties in 353 cadastre zones. Lack of initial registration of properties in these cadastre zones has brought insecurities among individuals about the property documents they own. Property documents may be owned by more than one individual. The legal insecurity related to property documents the title holder possess in these zones is reflected first and foremost by potential conflicts with persons/individuals/entities that possess the same property document over the same property, which leads to infringement of the right to property on the civil circulation of the asset, and lethal conflicts. If the initial property registration process had started in these zones, individuals/entities possessing property documents over the same property would have been guided quicker to solve the issue judicially and to commence the final property registration.

Even in those zones where the initial property registration has already been completed in line with law 111/2018 "On cadastre", there are multiple issues with regards to individuals or entities being granted with cadastre acts such as certificates, property records etc, because these offices require the individuals to file the supplementary documentation, although such an obligation has been imposed on the SCA local offices.

Lack of a digital archive, which stores the entire archival documentation of SCLA

Local Directorates, is an issue that has remained unsolved over the years.

Former local offices, or SCA local directorates at present, in breach of the provision in article 196 under the Civil Code or article 24 under the law on cadastre, are still not registering court decisions on the grant of right to property, especially the gaining prescription according to the Civil Code, with the argument that offices have not been parties to these judicial processes.

About 80% of registered properties are problematical, according to the statement of the SCA chair.²⁷ Approximately 220.000 land use acts issued pursuant to the law no.7501/1991 "On land", as amended, are still not registered, which represents half of the arable land in villages. 20000 agricultural households are still to be granted the LUA.²⁸

160,000 properties (96%) of the total transferred to local units are still unregistered.

10% of buildings constructed before 1991 are still unregistered with the immovable property register.²⁹

<https://abcneës.al/kreu-i-ri-i-hipotekave-prezanto-het-artan-lame/>

<http://gazetashqiptare.al/2019/04/07/agjencia-shtetore-te-kadastres-te-regjistroje-220-mije-amtp/>

According to the SCA General Director, the situation regarding the upholding of property right up to date has presented in the media with the following words: "...We've been gathering evidence on public and private property abuse on a daily basis. This is not to keep ourselves busy or to bring people before justice. This is because property abuse is a violation to the constitutional order which brings stagnation of the economic development in the country. during these 6 months of SCA operation, 30 audits, controls and verifications have been exercised at all local directorates. 120 measures have been adopted, including dismissals, but the novelty

- Communication over the phone with SCA local directorates is totally impossible although the lines are available, which means that access to citizens is not functional.
- About the financial assessment of final decisions, PTA has completed the financial assessment for 9458 decisions, of which:
 - a. 8642 decision were financially assessed at ALL 34 156 228 643 (which may change due to complaints);
 - b. 632 decisions are considered compensated with reference to article 7, paragraph 2, subparagraph a under the law no. 133/2015;
 - c. 184 decisions were recognized the pre-emption right. The PTA, based on the legal obligation to complete the financial assessment of final decisions, within 3 years from the entry in force of law no. 133/2015, (dated 23 February 2019) has financially assessed 25 314 final decisions issued in the period 1993-2013³⁰. The OP voices its reservations with regards to the financial assessment of decisions issued by former-bodies charged by the law with the property return and compensation, and the number of files that have not been handled and reviewed in line

is that all measures have been associated with fines against employees. 7500 complaints made by the public and different institutions have been handled during these months, with the majority focusing on infringement of property right. These numbers are more than suffice to evidence how deep the roots of this issue are, how extensive the reform was and how high the public expectations are towards this new institution. Map of abuses with properties extends over the entire RoA territory. However, these abuses are mostly encountered in areas of economic interests, that is in areas where the country and economy are more open to investments, development and free initiative”<https://shqiptarja.com/video/problemet-me-pronat-kreu-i-kadastres-artan-lame-kemi-trajtuar-7-500-ankesa-tokat-ne-disa-zona-dalin-me-nga-4-pronare>.

30 <http://atp.gov.al/>.

with article 34 under Law 133/2015. Given the multiple issues and bureaucracies featuring the process for many years now, the Albanian citizens already affected by the procedure employed for their requests handling and financial assessment of respective decisions they are subject to, instead of being compensated with the right value, considering the interests and missed profit for that value which has been denied to them for many years, are now obligated to address the courts to request the re-assessment and verification of decisions or respective administrative acts. Given the issues distressing and blocking the judicial bodies, the processes initiated by individuals on these administrative acts will still be ongoing for many years in the future. This issue is currently being reviewed by the OP, therefore we have requested and are requesting official information by District Courts on the requests they have accepted and are reviewing regarding the financial re-assessment of former-decision of bodies on property return/compensation. On 23 February 2019, 25.314 final decisions on recognizing the right to property compensation issued by the PTA in 2013 were assessed. The Property Treatment Agency, just like provided for by the law, has not been able to complete the financial assessment of 2.886 decisions within three years. For all decisions on recognizing the right to property compensation, the subjects will address the court.

- The administrative process not completed within the defined legal time frame, has not only infringed the principle of due trial, but also overloads the judiciary with cases awaiting for adjudication, and procrastinates the solution of this

problematical issue. The goal of changes made to law no. 133/2015 “On property treatment and completion of property compensation process” to conclude the property return and compensation process has been clearly not met, although the manner of property return and compensation was radically changed. We deem that the judiciary has not been able to handle so far (the three instances) cases under adjudication in the moment of approval of the law no. 133/2015 and to conclude with the judicial review of decisions granted to the PTA in line with the amended law. In this framework, the issue of property return and compensation is far from being settled.

Non-execution of decisions issued until 2013 by PTA recognizing the compensation right has caused the process to remain in the declarative framework. Only 2.2% out of the overall number of decisions recognizing the compensation right have been executed.

The Property Treatment Agency has not fulfilled its obligation on reviewing requests on property return or compensation.

Despite the above-mentioned findings, the OP institution, in the framework of exercising its competences and functional duties, except for the handling of complaints, has been quite active and has attentively followed the property issue by analyzing in details proposals/legal amendments³¹. It's worth mentioning the draft

³¹ See law no. 9/2019 On some addenda and amendments to law no. 171/2014, “On completion of legal procedures for the transfer of agriculture lands owned by former-agricultural enterprises to beneficiaries”, as amended by DCM No. 807, dated 11.12.2019 “On defining the criteria and conditions for turning the

law “On completion of transitory processes of ownership in the Republic of Albania”, where our institution has provided its opinions in the meeting with the Venice Commission³² and representatives of institutions on improvement and well-functioning of state bodies legally responsible for addressing such a wide and extensive issue like the property issue in Albania³³. It's worth mentioning that no wide public consultation was carried out in its first phase, by considering it as a procedural act related to the property right and not as an act that would cause the citizens many more problems on ownership titles than they had before, thus entrusting the review of their validity to administrative bodies. This would drive citizens towards a greater ongoing insecurity on their ownership titles given that they were not registered by the administrative bodies responsible for such a thing.

We would like to highlight that the registration of ownership titles is a service guaranteed by the state and is related to the guarantee the latter gives to the titleholder of an immovable asset and such obligation cannot be transferred to the citizen automatically, if the state wants to establish the right registration systems, as happened in 1991 and onwards. On the other hand, the practice of delegating the regulation of many issues for handling through Council of Ministers sub-legal acts and not laws (or cases of great importance on the citizen right to property) gives rise to major issues affecting the individuals’

state property into private property in the framework of general local plans”.

<https://www.avokatipopullit.gov.al/sq/articles-layout-1/home/nees/this-article-is-available-only-in-albanian-309/>

The Venice Commission provided its Opinion about Albania dated 19.10.2019 “On the draft law on completion of ownership processes” making, among others, specific recommendations on article 6, and 9 of the said draft law.

rights and freedoms. This is because the sub-legal acts in practice have produced many rules that are not in line with the law, and acts, in the majority of the cases, were issued later than the time frames foreseen by the law, thus freezing the activity of state bodies, infringing the human rights and increasing juridical insecurity.

In this framework, the OP deems that the Venice Commission findings in its Opinion no. 952/2019 on this issue are quite valuable and have clearly influenced the radical improvement of the law from the approved draft of the³⁴ Committee on Laws into the approved Law No. 20/2020³⁵, through public consultation following the Venice Commission Opinion. An open more structured and constructive public consultation procedure on the draft before being submitted for opinion to the Venice Commission, would have spared many efforts and would have contributed to the achievement of the ultimate goal of addressing issues pointed above related to property right.

Lastly, the OP institution expresses its concern on how the ECtHR decisions on property rights have been executed. The decisions issued by this court have two primary purposes. First, they address a specific action or omission of states to guarantee rights and obligations pursuant to the Convention, or an infringement of these rights, by awarding a compensation to the plaintiff in case the infringement is established. The main purpose of the ECtHR decisions is the elimination of practices related to the infringement of rights and obligations pursuant to the Convention; compensation is secondary to the fulfillment of

See the version at [https://konsultimipublik.gov.al/documents/RENJK_102_Projektligji%20"Per%20perfundimin%20e%20proceseve%20kalimtare%20te%20pronesise%20ne%20Republiken%20e%20Shqiperise"](https://konsultimipublik.gov.al/documents/RENJK_102_Projektligji%20).pdf

See the final version at <http://www.parlament.al/Files/ProjektLigje/20200310112944ligj%20nr%20%20%20dt%20%205%203%202020.pdf>

the purpose the Convention implementation mechanism.

Regretfully, this aspect in the field of property right is not properly addressed in our country and decisions are mostly regarded as obligation amounts, and not as an instruction or final interpretation to identify the illegal practices related to infringement of human rights, according to the Convention provisions. In this regard, we deem that the Albanian Parliament first, and the public administration second,³⁶ but also the OP institution in particular, should focus on the assessment, avoidance and elimination of practices that have led to citizen right infringement in general, and property right violation in particular, since most of applications with the ECtHR address this issue.

3.9. Child rights and protection

The OP institution activity focusing on child rights during the 2019, the jubilee marking the 30th anniversary of the UN Convention on the Rights of the Child combines three main functions: **protection**, **promotion** and **guarantee** of child rights.

In 2019, in the framework of the 30th anniversary of the UN Convention, the OP institution played an active role in the promotion and guarantee of child rights by organizing different activities and open days, climaxing with the First Conference of Children's Rights Ombudsmen Network in South-East Europe (CRONSEE).

See article 8, paragraph 3 under the law 20/2020 providing for the State Attorney's competence to file a lawsuit on invalidity of acts that cannot be registered and recognition of state ownership over the property.

Added attention has been paid throughout the year to the handling of sensitive issues related to child rights, mainly to the handling of cases of violence against children, guarantee of their protection and the promotion of child rights.

In sharp distinction from 2018, 2019 was the year when the OP institution started to implement the activities foreseen under the Action Plan of the Strategy of the Section on Child Rights Promotion and Protection, which is part of the institution's strategic plan³⁷.

The strategy is a guide to monitoring, assessment and analysis of the OP institution activity in fulfillment of strategic objectives on guaranteeing the direct involvement of children and sharing with them child experiences and perspective in the framework of their rights protection and guarantee.

Likewise, it's worth mentioning that, for the first time ever, our institution enabled the participation and representation of the RoA in the ENYA project by ENOC network.

Schematic representation of fundamental OP institution functions in the framework of fulfilling the three main directions of the activity of the Commissioner on Protection and Promotion of the Rights of the Child is as follows:

(OP institution legislative functions, Protection, Promotion, Guarantee

Inspection / monitoring, Administrative investigation, Complaint/request review, Ex officio cases, Recommendation, Special reports

³⁷ The strategy and action plan goal was child rights protection and promotion through the professional and timely review of complaints, promotion of the institution's proactive role in child rights protection and effective cooperation with the state administration and civil society actors.

Visibility, Advocacy, Lobbying

Consultation, Impact assessment, Inclusion in the legislative process)

In 2019, in the handled cases registration system were handled **150 cases**, complaints, cases ex officio focusing on child rights, of which **95 have been ex officio cases**. Out of the total number of handled cases in the registration system, there's been an increase in the number of complaints made by children themselves standing at **10 cases** for the first time ever. This number of complaints by children themselves, although modest, is however motivating to add our efforts and work towards a child-friendly approach to enable them to file for themselves any complaint/request.

Irrespective of the number of handled complaints/requests, or cases ex officio, we would like to highlight that many of the handled requests focused on a particular number of individuals-children and their handling was beneficial to a great number of complainants/ requesters. This means that we have managed to address a considerable child-related number of issues and problems, with minors being present. Likewise, in 2019, our institution addressed a series of issues on the upholding and guarantee of rights of children with disabilities, among which we can mention the complaints on non-payment of social contributions for the personal assistant approved by Decision of the Medical Commission for the Assessment of Ability to Work (MCAAW) given the child disability³⁸.

In 2019, the OP institution made **20** (twenty) recommendations to the public administration

³⁸ About 7 (seven) complaints on the same issue have been registered with the complaint handling system.

institutions at the central and local level, including recommendations made by synthesis reports. Out of the total, **8** (eight) recommendations were accepted, **10** (ten) are in the process and **2** (two) have not been implemented³⁹.

In 2019, **95** cases were handled at OP institution's discretion, focusing on child rights and the main source of identification were the print and audiovisual media, or different social networks. Most of them addressed **socio-economic issues** such as: families with multiple children's treatment with economic assistance, social care services etc. By handling cases ex officio based on the correspondence exchanged with local and central power representatives, we aimed at solving issues identified by the media, promoting and encouraging a new culture related to the upholding and practical break down of the child's best interest principle and obligations deriving from law no. 18/2018 by responsible state bodies. We have still identified issues and challenges In our administrative practice related to the implementation of the legislation on child rights protection, regarding the:

Establishment of new services in response to the dynamics of child needs;

Drafting of inclusive social policies at the local level, based on an accurate database on the number of needy families and the categories of children with social problems;

Lack of necessary budgets dedicated to the guarantee of the integrated child protection system;

³⁹ Among the unimplemented recommendations are: one recommendation for the Ministry of Education, Sports and Youth on the guarantee of rights of students in pre-university education institutions and one recommendation made to Lushnja municipality.

Strengthening of responsible state mechanisms guaranteeing effective monitoring, promotion and protection of child rights;

Analysis and overall review of the legal framework in force at all line sectors to align it with law no. 18/2017 "On child rights and protection" and law no. 37/2017 "Juvenile Criminal Justice Code", including the alignment of these two laws;

Assessment of professional capacities in different areas of child protection;

Engagement of the CCTG (Cross-cutting Technical Group) members to implement the legal and institutional obligations in the framework of case management and follow-up of the individual protection plan.

One of the cases the Ombudsperson addressed⁴⁰ at its own discretion during the 2019 - particularly worth mentioning given its nature and issue highlighted during the administrative investigation - was about the infringement of a fundamental child rights (unaddressed before), namely **the freedom of peaceful assembly**. Considering the early legitimization of child rights, the OP highlighted the non-operation of mechanisms provided for by the pre-university legislation at all their links, which has led to child rights to be heard and to assemble in the framework of their best interest to be infringed. All this has been triggered by the school management underestimating their skills, voice, competences and functional duties, thus breaching the legislation in force.

⁴⁰ Audiovisual media aired two videos shot in "Sami Frashëri" high school premises targeting students and institution managers, with the topic student protest in December 2018.

In order for children to be educated in peaceful premises, thus guaranteeing their right to education, and in the framework of upholding their best interest, we have recommended the following⁴¹, among others:

- **Strengthening the educator-child and teacher-student relationship:** cooperation to achieve the joint objectives for a qualitative and contemporary education; cooperation laying solid foundations for the effectiveness of creative methods in education and schooling; robust relationships leaving no room for authoritarianism to manifest in education as a nondemocratic society feature; candid relationships aiming at improvement and not punishment, shaping the true educator and student identity leading to mutual respect between them.

Education institutions adopting measures to work more with children **regarding their education, awareness raising and information on the right to peaceful assembly** and promotion of good work practices in realizing such right. Children should not be used by anybody, but should rather put their skills into work in order to peacefully and duly solve issues directly affecting them.

Another complex and rather sensitive case addressed at our own discretion which is truly worth mentioning is related to a minor being sexually abused. The case has been also been made public in the media. The OP brought forward an administrative investigation on the case and according to the generated information it was

⁴¹ Pursuant to articles 18 and 28 under the Convention on Rights of the Child and Law Lo.18/2017 "On Child Rights and Protection".

concluded that the state mechanisms had not complied with their obligations in case child abuse cases are noted or suspected. Moreover, there was a lack of coordination among state institutions at the local level and the communication among them was rather fragmented, and oriented towards a individual approach, with proved inefficient. Most importantly, lack of knowledge and information on facts and events, which are qualified as elements of the crime is noted and the obligation to immediately report the criminal offense has not been complied with.

Therefore, the OP institution made a series of recommendations to responsible state institution ⁴², including :

Complying with the obligations and responsibilities pursuant to the legislation on child protection and Juvenile Justice Code;

Strengthening the child rights monitoring and assessment system;

- **Addressing sexual violence/abuse at a wider scale** in the curriculum (especially in sexual education course) and conducting awareness-raising and educational campaigns targeting parents and community members on protection of child's best interest;

Continuously monitoring the work of responsible state units according to the legislation in force and the **Agency for the Protection of Children's Rights adopting**

⁴² Recommendations addressed namely Ministry of Justice, Ministry of Internal Affairs, Ministry of Health and Social Protection; Ministry of Education, Sports and Youth; State Agency for the Protection of Children's Rights, Audiovisual Media Authority and Kavaja Municipality.

specific measures on provision and application of administrative sanctions in case these units fail to comply with their legal obligations;

Establishing a specialized service for sexually abused children, given that the establishment of such center is not bound by budget inadequacy, but rather by necessity and exigency;

Bringing the sub-legal acts approval process into completion, pursuant to Law No. 18/2017 “On Child Rights and Protection” and No.37/2017 “Juvenile Justice Code”

Amending the legislation on audiovisual media activity to set forth more detailed rules on airing cases related to sexually violated/abused minors⁴³.

In 2019, OP engaged in the following areas related to the implementation of the new juvenile justice legislation, focusing mainly on protecting and guaranteeing the rights of minors in conflict with the law, victims and/or witnesses:

Child rights promotion and monitoring by public administration institutions at the central and local level;

OP recommendation implementation assessment⁴⁴ aiming at the monitoring of conditions and treatment of minors in penitentiary facilities, in the framework and in the spirit of the new legislation on juvenile justice administration;

⁴³ We would like to highlight that, based on other cases made public, the media may speak about the phenomenon, but not refer to the specific case.

⁴⁴ Special Report “With the Voice of Children Deprived of Their Liberty”, Tirana 2016.

- **Initiative on promotion and implementation of law no.37/2017** “Juvenile Justice Code” by certain institutions working with minors in conflict with the law and minors deprived of their liberty⁴⁵, and not only

In the framework of cross-sectoral coordination, cooperation and interaction at the central and local level for the accurate implementation of the new legislation on child protection and juvenile justice administration, the OP institution organized a workshop on the monitoring of conditions and treatment of minors in conflict with the law and deprived of their liberty in detention, pre-detention and penitentiary facilities in order to present the findings, conclusions and main recommendations related to Juvenile Justice Code implementation.

Child rights in the framework of protection and guarantee

In 2019, the OP carried out several activities such as workshops, promotional activities, conferences etc. These activities highlighted sharp issues related to child rights protection and served as discussion forums targeting effective solutions in line with the legislation in force. They also presented the relevant recommendations. Among the main activities carried out were:

Workshop on the monitoring of conditions and treatment of minors in conflict with the law and deprived of their liberty in detention, pre-detention and penitentiary

⁴⁵ During the May-June 2019 period, the Section on Child Rights Promotion and Protection, supported by UNICEF, inspected the main institutions working with minors deprived of their liberty, namely: Tirana Local State Police Directorate, 6 (six) police stations under Tirana Local State Police Directorate, as well as Shën Koll (Lezha) Kavaja IECDs.

facilities, where the findings of inspections made by the competent juvenile justice administration bodies pursuant to the Juvenile Justice Code.

Workshop “On inclusion of human rights information in general and child rights information in particular in school curricula”, in the framework of complying with the OP constitutional and legal obligations to prompt the inclusion of information on human rights and freedoms in school curricula and their implementation in education institutions, as well as the obligations deriving from the OP membership to the Institutional Mechanism for Public Legal Education⁴⁶.

Activities carried out by the OP in the framework of guaranteeing child participation, our institution organized 7 successful informational meetings with 9k school students in Tirana, Elbasan, Durrës, Korça, Berat, Saranda and Kukës in order to learn more about their opinions and ideas, considered as instrumental to the in-depth analysis of child rights situation and identification of potential gaps in the integrated child protection system. This methodology proactively affected case referral to the OP institution by children themselves. Children using for the first time ever online platforms (online SCRPP website, OP smartphone application, social networks) enables these children to access and use the official Section on Child Rights Protection and Promotion website designed into a simple and child-friendly language in order to make it easier for them to receive information on/about their rights.

In the framework of child rights promotion,

⁴⁶ DCM No.47/2019 “On Approval of 2019-2023 Strategy for Public Legal Education”

the OP attended multiple activities whereby lobbied for an institutional approach to issues and violations, conveyed the voice of children and shared the OP institution's experience and best work practices. Among the activities the OP participate in actively were:

Presentation and constructive discussion with students attending social work program at the UoT Faculty of Social Science on the role of independent institutions in protecting, guaranteeing and upholding human rights in general and children in particular.

Active participation in the event organized for introducing the National Center for Protection of Children and Youth from Sexual Violence organized by CRCA/ECPAT, attended by RoA MPs.⁴⁷

Active participation in the round table organized by AMA, with the topic “Children and commercials in audiovisual broadcasting” by addressing issues identified by the OP institution when carrying out its activity.

Active participation in the activity with the topic “Together to meet the SDG 8.7 in the framework of 2030 Agenda”, organized by the MoHSP in cooperation with OSCE and ILO.

The OP institution shared the best work practices on responsible state institutions, namely the National Child Protection Mechanism, complying with their functional duties in an event organized by the Ministry

⁴⁷ Recommendations addressed by the OP on provisions on specialized services to children and youth victims of sexual violence.

of Internal Affairs in cooperation with COD Center at the Prime Minister's Office, with youth themselves attending in the event.

Likewise, in order to comply with its obligations deriving from its membership to the National Council for Child Rights and Protection, has been proactive and has provided tangible contributions in the Council approving several decision-making acts⁴⁸, such as National Action Plan on Child Protection from Economic Exploitation, including children in street situation for the 2019-2021 period, mirroring the recommendations out institutions made in the special report "Child labor in Bulqiza Municipality", November 2018⁴⁹, submitted with the RoA.

Conclusions

The OP will continue its mission to protect, promote and monitor child rights implementation all over the country.

Efforts made this far to bring all the above into completion in line with international conventions and standards on child rights and mechanisms responsible for guaranteeing effective observation, promotion and protection of such rights are a good start, but there is still much work to be done and many efforts to be made by the society, actors influencing the public policies, NGOs etc.

We strongly believe that any type of investment in children promoting their potential and their self-assurance to become useful future members of

society and responsible citizens is a worthwhile investment which needs ongoing improvement.

Children should be granted access to mechanisms ensuring and guaranteeing their rights upholding, in line with the basic principles underlying the convention, and in this, the joint work for **guaranteeing children that such an access is indeed reachable**.

3.10. Upholding the right to health care

From the OP perspective, the principle that should underlie the health care system should be service quality and efficiency, thus guaranteeing the patient's safety. Hence, the implementation of another international standard enshrined in the Universal Declaration of Human Rights is enabled.

Based on the number of complaints filed with the OP institution for 2019, **35 complaints** made by citizens on issues such as medical treatment not complying with the standards, bureaucracies and long waiting lines in the University Hospital Center "Mother Teresa" (QSUT), lack of medicines in the Oncology Hospital at QSUT, lack of medical protocols, lack of physicians and nurses in regional hospitals and rural areas etc. were handled. Out of this total, 27 complaints were concluded, while the other 8 are still ongoing. Out of the complaints handled, 20 complaints were settled in favor of the citizen.

Based on the jurisdiction and competences granted to the OP by the law, the OP institution activity regarding the right to health care consisted mainly of ex officio investigations carried out for such purpose. The OP institution

⁴⁸ National Action Plan on Child Protection from Economic Exploitation, including children in street situation for the 2019-2021 period and the 2017-2018 medium-term report on the National Agenda on Child Rights.

⁴⁹ Official letter with prot. no.412, dated 31.10.2018 on sending Bulqiza special report.

investigates 5 cases ex officio for the 2019 with their publication in the audiovisual and print media serving as indications.

in line with its legal obligations, the OP institution monitored during the 2019 up to date, the issues highlighted through citizen complaints filed with the institution and cases made public by the print and online media, or cases investigated ex officio. The OP institution notes considerable differences being made when it comes to care provision quality and level depending on the patient's place of dwelling. These differences pertain mainly to rural versus urban areas. It has also been noted that access to health centers is quite distressing in certain areas given the terrain features and lack of infrastructure. Lack of medical and nursing staff in far-flung and nearby rural areas is still an issue to be solved.

In order for the right to health care to be effectively realized, which has been reported by the institution as a carried-over issue, the continuous and sufficient supply of health and hospital centers, mainly the QSUT in Tirana, with medicines is needed given the high number of patients incoming from all over the country. Lack of services and equipment in regional hospitals prevents patients from finding alternative treatment ways, thus contributing to an added influx of patients addressing the QSUT in Tirana, Trauma University Hospital, University Hospital "Shefqet Ndroqi, and the two Obstetric-Gynecologic University Hospitals.

Issues manifested in the health care system multiplied in the aftermath of the 26 November earthquake, which negatively impacted Tirana, Durrës, Lezha etc.

Another highlighted issue is the medical staff having their rights not guaranteed and the unreasonable extension of legal time frames

when competing for leading positions in the health system.

Drug subsidy schemes applicable to retirees is still an ongoing issue, since its implementation is ineffective given the large number of retirees.

With reference to specific complaints filed by citizens in 2019 for which recommendations have been made, the recommendation on adopting immediate measures to rehabilitate the Municipal Hospital Stefan Gjoni" in Kruja stands out, reading:

"...Allocating funds for the total reconstruction of the maternity hospital and its staffing with 1 laboratory physician, 1 obstetrician-gynecologist, 1 reanimation physician, 1 dermatologist. Reconstructing the completely depreciated hydraulic power network, making operational the heating system and the elevator, adding the number of medical examination equipment that have been lacking this far such as resonant scanner and other lab equipment, adding funds to meet the needs for accommodation equipment..."

The OP institution deems that responsibility mechanisms are essential to ensure that state obligations deriving from upholding the right to health care have been complied with. Monitoring and holding the state accountable may be achieved through administrative, political, judicial mechanisms and by including a series of actors such as CSOs, national institutions for the protection of human rights, and the citizens, who are becoming increasingly more aware of their right to a decent health care.

3.11. Upholding the right to education

The state should be the main actor moving the legal and institutional reforms aiming at providing a qualitative education to all. Right to education is among the fundamental human rights, buttressing other rights if guaranteed and undermining their entitlement if denied. It's worth mentioning that the national and international legal system is strengthened with regards to the right to education.

During 2019, the OP handled 53 complaints in the field of right to education. The scope of these complaints was mainly: non-exclusion of needy students from tuition fee, non-reply from the Ministry Of Education, Sports And Youth (MoESY), administrative issues involving university staff and administration officials, alleged breach of equality principle in employment and transfer of teachers through the portal "Teachers for Albania" etc. Out of the total number of complaints handled, 40 were completed, while 13 are still ongoing. Out of the handled requests in total, were in favor of citizens.

More specifically, main issues noted in terms of complaint content were

Exclusion from and halving of the tuition fee for needy students, which have been addressed to university administrations.

One of the issues that needs to be paid specific attention is a group of alumni complaining that their diplomas are not recognized by education authorities, for they have been issued by a private non-accredited university at the time they were pursuing their studies.

Complaints on transfers, horizontal movements and subjectivity when it comes to employment in regional educational offices have been also the scope to complaints reviewed in 2019. With reference to specific complaints filed by citizens in 2019 for which recommendations were made the recommendation addressing the Ministry of Education, Sports and Youth on immediately changing and including the category of pre-school (kindergarten) teachers as a category subordinate to municipalities, which was left out in the instruction no. 13, dated 22.05.2019 of the Minister of Education, Sports and Youth "On procedures for admitting and appointing teachers to vacant positions in pre-university public education institutions and "Teachers for Albania" portal administration" stands out.

Based on the jurisdiction and competences granted to the OP by the law, the OP institution activity regarding the right to education consisted mainly of ex officio investigations carried out for such purpose. The OP institution investigated 4 cases at its own discretion in 2019 regarding the flooding of several schools in Tirana or refusal to open the new dormitory in Berat.

Considering its promotional role, the OP institution organized a series of trainings in 2019 with pre-university teachers in Tirana. The review of Citizenship Education textbooks taught in 9k schools uncovered the insufficient amount of information on human and rights and identified the reduced information on the OP institution and its responsibilities and functioning. This reminded us once again the importance of informing pre-university teachers on the OP activity constitutional significance. Training sessions will continue through 2020.

Teaching quality enhancement is a carried-over issue which has not been properly addressed,

despite the serious efforts made in this regard. However, we would like to highlight that Educational Directorate approach should aim at meritocracy and should disregard political affiliations during the teaching staff employment.

The OP institution considers the drafting of and/or modification to legal acts on the present education system reform, aiming at solving system and occasional issues the present systems faces with as a necessity.

3.12. Upholding the freedom of expression

Freedom of expression is one of the fundamentals for a democratic society and one of the prerequisites for its progress and development⁵⁰. This right is the core of democracy and the key to other rights enjoyment, including the exercise and protection of individual rights⁵¹. Freedom of expression is not strictly confined to the individual, but it is rather a fundamental right and freedom that should be enjoyed by the media, as the fourth power of any democratic society⁵².

Freedom of expression in the RoA is de-tailedly regulated by means of relevant provisions. Article 10 addresses freedom of expression in the public life, article 20 freedom of expression for minority groups and article 22 freedom of expression and freedom of the press, radio, television etc.

Article 10 in the European Convention of Human Rights set forth that "Anybody is entitled to the freedom of expression. *Such right includes freedom of opinion and freedom to receive and provide information and idea without the intervention of public authorities and without limitation.* This articles does not prevent

13 audiovisual broadcasting, TV or cinematography entities from being granted a license".

The European Convention of Human Rights (ECHR) and case law of the European Court of Human Rights (ECtHR) representing the highest authority charged with interpreting the convention highlight that in the context of an effective democracy and up-

The OP institution, in order to accomplish its constitutional mission, has been continuously monitoring the multiple discussions with Albanian state bodies and the recommendations and comments made by international stakeholders⁵³, as well as has actively provided its input with legal proposals with regards to ⁵⁴media services in the RoA until the law no. 91/2019 "On Some Addenda and Amendments to Law No. 97/2013 "On Audiovisual Media in the Republic of Albania", as amended dated 19.12. 2019⁵⁵ was finally approved.

In this regard, the OP was quite active in 2019 by thoroughly analyzing draft laws and their versions, which were actually not made public to be timely reviewed by interested parties and institutions. Our activity has always aimed at meeting the institutional obligation to bring attention to the multiple issues the law no. 91/2019 "On Some Addenda and Amendments to Law No. 97/2013 "On Audiovisual Media in the Republic of Albania", as amended displays by influencing and raising the awareness of state bodies. This is also indicative of our readiness to

holding the human rights mentioned in the Preamble, freedom of expression is not only essential, but also key to protection of other rights. There is no free and democratic country if freedom of expression is not guaranteed and protected by independent and impartial courts.

These sharp issues were targeted by the OP institution Annual Conference, entitled "Freedom free of hate". Freedom of expression vis a vis human rights, dated 06.12.2019, attended by scholars, field experts, and researchers who shared their opinions and experience.

Draft laws on some addenda and amendments to Law No. 97/2013, "On Audiovisual Media in the Republic of Albania" as amended, and no. 9918 19.5.2014, dated "On Electronic Communications in the Republic of Albania", as amended.

Law No. 91/ 2019, dated 19.12. 2019 "On Some Addenda and Amendments to Law No. 97/2013 "On Audiovisual Media in the Republic of Albania", as amended, accessible at <https://www.parlament.al/Files/ProjektLigje/20200121101826ligje%20nr%20%2091%20dt%20%2018%2012%202019.pdf>

guarantee the media and journalists to exercise their role in line with international standards. On these grounds, the OP institution submitted a legal opinion with the Law Commission, aiming at highlighting the series of issues this law displays. The OP considers the registration of legal persons providing such services as necessary, and self-regulation as the best way for addressing fake news-related issues. It's worth mentioning that, in our view, the final approved version of the administrative complaint review procedure provides no guarantee to an objective and impartial decision-making in line with the obligation to uphold media freedom to expression. Vesting an administrative authority like AMA in quasi-judicial competences does not provide sufficient constitutional guarantees to impartiality, especially if considering the fact that AMA Board members are elected upon proposal of political parties in the Parliament. From its establishment up to now, this body has never made it to earn the trust of media when it comes to its role in the field of audiovisual media. Therefore, this body, that will also select the membership to Complaint Council responsible for making decisions upon reviewing complaints filed against electronic⁵⁶ service operators, does not guarantee the necessary impartiality in addressing the sensitive topic of the borderline between the freedom of the press and freedom of expression.

It should be moreover stressed that sanctions and fines foreseen by the said law are too high and their application would place the operations providing electronic publication services into unequal positions. According to the OP institution, the application of such sanctions

⁵⁶ See Article 29 under Law No. 91/2019 dated 19.12.2019 amending article 132 in the Law 97/2013 "On Some Addenda and Amendments to Law No. 97/2013 "On Audiovisual Media in the Republic of Albania", as amended.

should ensure that the proportionality principle is observed, taking into account the capacity and capital (size) of electronic publications services, and the violations made by such operators, in order for the sanctions to be proportionate with the capacity of electronic publication providers and the importance and consequences arising from the violation. On the other hand, it's worth mentioning that the law was made several change from its first until its final version, but transparency of the process from the refusal of the first draft proposed by the Ministry of Justice, Ministry of Infrastructure and Energy and AMA marked by the participation of the OP institution, until the final draft submission with the Parliament, leaves much to be desired.

The approval of the law was also objected by the Commissioner for Human Rights at the Council of Europe, Dunja Mijatovic in her press conference⁵⁷. President of the Republic send back the law for review to the Albanian Parliament by Decree No. 11413, dated 11.01.2020⁵⁸ associated with a series of reasons, which in the OP view, should be carefully considered by the relevant Parliament committees. They should be viewed in tandem with the Venice Commission opinion on the issue, which is expected to undergo review in June 2020⁵⁹.

The OP will keep on focusing on the progress made in the field of guaranteeing freedom

⁵⁷ <https://www.coe.int/en/web/commissioner/-/commissioner-urges-albania-s-parliament-to-review-bills-which-restrict-freedom-of-expression>

⁵⁸ <http://president.al/presidenti-meta-dekre-ton-kthimin-per-rishqyrtim-ne-kuvend-te-ligjit-nr-91-2019-arsyet-e-kthimit-per-rishqyrtim-te-ligjit/>

⁵⁹ The European Commission sought the Venice Commission opinion on the law, which sent a mission in Albania in 10-11 February 2020. The OP institution met with the Venice Commission representatives and expressed its stance and opinion on the approved law and potential adverse implications several articles therein may have on human rights.

of expression and supervision of accurate implementation of the law on the media.

3.13. Upholding the right to health care

The 2019 novelty related to economic assistance was the approval of the new legal framework, namely of law no. 57/2019 “On Social Assistance in the Republic of Albania”⁶⁰ and its relevant sub-legal acts.

One of the social protection programs specifically and detailedly regulated by the new law on social assistance in the Republic of Albania is economic assistance provision and entitlement.

This new legal initiative aimed at transforming this social protection scheme into an active scheme, integrating employment boosting programs targeting economic assistance beneficiaries.

The OP institution proactively engaged in the devising of the relevant draft law by providing its remarks and suggestions, which were mirrored to a considerable extent in the provisions under law no.57/2019. We have also been quite active in discussions on and approval of sub-legal acts either issued or expected to be issued by the relevant bodies charged with implementing the provisions under the above-referenced law.

With regards to the complaints registered with the OP institution in 2019, 40 requests filed

⁶⁰ Approved on 18.7.2019, the law sets forth the rules and mechanisms for benefiting social assistance, criteria and procedures for benefiting or being excluded from economic assistance, types of assistance payments, authorities responsible for guaranteeing such right and funding for social assistance provision and entitlement.

by citizens on issues such as termination of economic assistance, non-entitlement and exclusion of citizens from economic assistance schemes and the low economic assistance amount were addressed.

The OP institution, upon complaint review, has informed citizens on the legal basis employed by local power to address issues and the legal and actual criteria they should meet to benefit from the economic assistance scheme.

The low and almost inconsiderable amount of economic assistance barely covering the monthly expenses necessary to a family or individual to survive, let alone a decent life and integration in society, is another issue persisting through the years.

The current economic assistance is insufficient to address the needs of needy groups in general and female family heads, Roma women or women from other vulnerable groups, including victims of domestic violence or trafficking in particular.

The undefined minimum living level, which should be decent, although relying only on the Albanian State resources, and would better satisfy the needs of every needy citizen, is unjustifiable. The undefined minimum living level is a barrier to defining the social policies the state employs for needy groups.

Based on the jurisdiction and competences granted to the OP by the law, the OP institution activity regarding economic assistance consisted mainly of ex officio investigations carried out for such purpose. Cases investigated ex officio by the institution were mainly cases made public in the print or audiovisual media on exclusion from economic assistance scheme or termination of economic assistance to families living in depleted houses.

The OP institution deems that although the new legal initiative aimed at transforming the new economic assistance provision and entitlement into an active scheme integrating employment boosting programs in order to alleviate poverty, poverty is still a sharp issue at the national level. All the above is easily verified by the considerable number of individuals or families benefiting economic assistance.

3.14. Upholding the rights of persons with disabilities

Persons with disabilities should be provided with equal opportunities just like all Albanian citizens, and considered as equal among equals with dignity and inalienable rights from birth. From this perspective, persons with disabilities are that part of society that needs the state's continuous support to have their rights and fundamental freedoms, access and appropriate infrastructure guaranteed in every sphere of life.

Despite the obvious improvements made to the legal framework through frequent reformations to accommodate the requirements and dynamic needs of this category, and to raise the awareness of the society, which although already more sensitive towards persons with disabilities, is still discriminating against this category in terms of employment, education, access to infrastructure, access to services etc.

With reference to complaints registered with the OP institution in 2019, 33 were handled in total. The issues standing out the most are as follows:

Persons with disabilities are not fully granted their right to vote in order to freely and independently express their will.

Our electoral code expressly provides for under article 108 the entire voting procedure for voters unable to vote themselves, starting from their registration in the voters' lists in the voting center, appropriate infrastructure to facilitate the participation of paraplegic persons in the election and the supply of voting centers with the adequate voting tools for individuals with visual impairments.

As per above, in the framework of 2019 local elections, the OP addressed the Central Election Commission a request on adopting measures to guarantee disabled persons' their right to vote, in the Republic of Albania, which has been left with no official reply. This request has been reiterated in all electoral processes from 2012 till now.

Furthermore, in the framework of its legal rights, the institution monitored 47 voting centers in Tirana and Vlora on safety and accessibility, upon which the following were recommended:

Placement of ramps for paraplegic and tetraplegic persons;

Adjustment of infrastructure (yellow lines) at the entrance of the voting center for persons with visual impairments and the blind;

Guarantee of secret and independent voting for persons with visual impairment and the blind (ballot paper should be written in Braille).

Issues noted upon monitoring completion:

Almost all voting centers had placed ramps at the entrance for persons with disabilities (paraplegic and tetraplegic).

Voting centers were set up in the first and second floor. Centers set up in second floor

are problematic in terms of paraplegic and tetraplegic persons' accessibility. These centers were not adjusted to this specific category. The centers were accessible through stairs only.

All monitored voting centers featured a lack of infrastructure adjusted for persons with visual impairments and the blind (sign posts for accessibility of the blind- yellow lines)

All voting centers were supplied with ballot papers written in Braille.

Monitoring of 2019 local elections reconfirmed an issue highlighted by other previous monitoring exercises- lack of appropriate infrastructure for persons with disabilities- which significantly and adversely affects the full and quiet exercise of the right to vote for this category.

Work disabled and individuals granted the status of the blind are not granted the refund for their urban and interurban transport expenses

2019 re-emphasized once again a years-long issue- Work disabled and individuals granted the status of the blind are not granted the refund for their urban and interurban transport expenses. The OP institution engaged fully in this issue by sending official letters, making recommendations and attending special meetings with the bodies responsible for solving such issue. The OP reported several Parliamentary Committees on the issue to bring their attention to this issue.

After re-addressing the issue to the Ministry of Health and Social Protection, we were informed that, in line with Order No.474, dated 24.06.2019 of the Minister of Health and Social Protection

"On establishment of the inter-institutional working group on the transport of beneficiary categories according to the legislation in force", there's been an ongoing cooperation among the Ministry of Finance and Economy, Ministry of Infrastructure and Energy and local governance to determine the amount of refund for such individuals and preparing the relevant draft decisions. However, these acts have not been approved yet.

Work disabled owing motor vehicles, declared under disability category after 2011, have not been entitled to benefit refund for their fuel and lubrication oil expenses

Specific laws on individuals having been granted the work disabled status, namely the paraplegic, tetraplegic and the blind⁶¹, entitle these categories to have their expense on fuel and lubrication oil expenses for their disability-adjusted motor vehicles refunded. Those disabled persons granted such right before 2011 continue to benefit, while other disabled persons equipped with motor vehicles after July 2011 do not benefit such refund.

Upon Law No. 10458, dated 21.07.2011 "On Some Amendments to law no. 9975, dated 28.07.2008 "On National Taxes", as amended, the work disabled exempt from the obligation to pay the car clearance tax, but re nevertheless not entitled to the relevant refunds. We would like to highlight that no sub-legal act relevant to specific laws on the above-mentioned categories benefiting such right has been repealed or amended.

⁶¹ Law No.8098/28.03.1996 "On the status of the blind", as amended

Law No.8626/22.06.2000 "Status of the paraplegic and tetraplegic persons", as amended.

Law No.8098/20.09.1995 "On the status of the work disabled", as amended

After re-addressing the issue to the Institute of Social Insurances, we were informed that, the Administrative Council at the Institute of Social Insurances, upon Decision No. 27, dated 06.12.2019, approved the regulation “On criteria, documentation and procedures for evaluating the requests of work disabled to have their fuel and lubrication oils expenses refunded”. Upon Order No. 766, dated 03.02.2010 of the General Director of the Institute of Social Insurances the ad-hoc commission on review and evaluation of requests of work disabled to have their fuel and lubrication oils expenses refunded was established.

Based on the jurisdiction and competences granted to the OP by the law, the OP institution activity regarding the protection and upholding of rights to persons with disabilities consisted mainly of ex officio investigations carried out for such purpose.

The OP institution noted that, despite the approval of DCM No. 1074, dated 23.12.2015 “On adopting the measures for avoiding barriers to communication and infrastructure in the provision of public services for persons with disabilities”, inappropriate public or private buildings and rural or urban roads is still ranked among the sharpest issues this category of individuals faces with.

On these grounds, the OP investigated ex officio in 2019 the case in “Dropull i Poshtëm” Administrative Unit to identify the level of appropriateness and accessibility of persons with disabilities and elderly to ALEAT office when applying for ID cards and biometric passports.

On site monitoring highlighted the lack of appropriateness and accessibility according to the standards set forth by the legislation in force, thus creating difficulties leading to persons with

disabilities and the elderly finding it impossible to receive the service.

Upon identification of issues, the relevant recommendation was made to the Dropull Mayor on adopting measures to ensure appropriateness and accessibility according to standards foreseen by the legislation in force for persons with disabilities and the elderly in ALEAT office when applying for ID cards and biometric passports in the “Dropull i Poshtëm” Administrative Unit, Sofratikë village.

In the framework of its legal rights, the OP institution monitored in 2019 the extent to which the rights of persons with disabilities accommodated in social care institutions were upheld, through inspections made in Gjirokastra, Shkodra, Kavaja, Fier and Tirana.

Following the inspections made and issues identified, specific recommendations were made, which have been sent to the relevant state bodies, mayors and State Social Services on improving the quality of life and ensuring the quality implementation of social care standards for this category.

3.15. Gender equality and LGTBI community rights

Irrespective of all achievements made towards improving women’s participation in the government or other leading and decision-making positions, the OP institution deems that the current situation related to women and girls’ rights in Albania features sharp issues, especially regarding the use of misogynistic language, gender-based violence, domestic violence, access to justice, employment and other social services provision.

Awareness-raising activities stressing already highlighted issues in the field of protection and upholding of women's rights (integral part of human rights) associated with suggestions or recommendations on their addressal or solution are an added value impacting directly the women and girls community in our country.

This is because Albania has no culture for orienting individuals to file their complaints on non-observance or infringement of rights on gender grounds with the OP institution. This is also reflected by the limited number of complaints filed on this issue and handled by our institution during 2019.

The OP institution, given its mandate as a human rights and freedoms defender, has noted that the issues standing out the most from the content of complaints filed and handled for the 2019 by women consist of claims related to employment, economic assistance, pension, access to justice, non-execution of alimony granted by court decision etc.

An easily identified issue is the use of misogyny language by MPs, TV shows or articles published in the Albanian press and social media. Misogyny is more hostile towards career women.

The OP institution calls other institutions responsible for protection of women's rights and CSOs that when identifying instances of misogynistic language, a coordinated and immediate response is needed by all actors against misogenes, given that indifference towards such instances renders them more empowered to downgrade women.

Likewise, in 2019, in the framework of its mandate as a guarantor to the implementation of international standards, the OP institution

started working on the drafting of the Shadow Report on the extent CEDAW convention obligations were implemented. The reporting period covered 2016-2020.

National institutions on human rights, such as OP institution, are the fundamentals of the national system for human rights protection and are regarded as key mechanisms contributing to the implementation of international standards on human rights. Through monitoring and reporting on the progress made by the Albanian State in the framework of meeting the Convention obligations, the OP institution has identified several specific issues by coming up with proposals on improvement of the situation of women's rights in Albania. Additionally, this report will aid the CEDAW Convention Expert Committee to get to know the real situation of women's rights in Albania and their needs, in order to give recommendations responsive to such needs.

LGBTI community rights

Albania has made progress in acknowledging LGBTI community rights, starting from the drafting of an efficient legislation against discrimination, public discussion about LGBTI rights, establishment of a solid and active community for protecting such rights and ending with the drafting of an action plan with specific tasks for each institution.

The OP institution deems that the most common issue concerning this community is the hardship of the society in getting accustomed to diversity and the low level of knowledge on the LGBTI community.

The OP institution activity in the field of LGBTI community rights protection in 2019 combined

two main functions: protection and promotion of rights for this community.

Out of all the complaints registered with the OP institution by LGBTI members in 2019, only one was filed on exercise of violence against a LGBTI member. Lack of complaints filed with the institution on non-observance and infringement of this community rights is underlaid by their hesitation to do so given the stigma surrounding the member of this community accepting publicly their gender identity.

The OP institution plays a key role when it comes to the promotion of this community rights in the framework of human rights, acknowledgment of the legislation on this community right protection, and the ongoing monitoring of their upholding, or measures that should be adopted by responsible state institutions on their full guarantee.

In 2019, the OP institution strengthened its partnership with all CSOs active in protecting such community rights, by organizing and proactively attending all activities aiming at raising the awareness of the society on such rights.

In the framework of LGBTI community- especially women and girls - rights protection, guarantee and upholding, the OP institution activity will continue to focus on informing all LGBTI members on the highest standards of rights they enjoy pursuant to the international and national standards.

3.16. Upholding the rights of the elderly

Protection of the rights of the elderly, classified as one of the most vulnerable and most exposed groups to the risk of having their rights sanctioned under the national and international legislation not guaranteed is one of the priorities of the OP institution, given its capacity as a human rights and fundamental freedoms defender.

In order to guarantee their rights to social safety, access to health care services, free transport etc., the institution has forwarded for many years now its recommendation to the state administration, especially to the line ministries, on approval of the third age status.

An ad-hoc working group was established in 2018 for drafting the draft law "On Active Aging"⁶². In the framework of its proactive role, the OP institution has been actively engaged with this group by attaching one representative to it.

In the framework of its legal obligations, the OP institution monitored in 2019 the extent to which the rights of the elderly accommodated in social care institutions were upheld, through inspections made in Gjirokastra, Shkodra, Kavaja, Fier and Tirana retirement homes. Following the inspections made and issues identified, specific recommendations were made, which have been sent to the relevant state bodies, mayors and State Social Service focusing on improvement of the quality of life and the quality implementation of social care standards for this category.

⁶² Albanian Society for All Ages (ASAG), National Chamber of Mediators, Albanian Association of Demographers, Albanian Association of Retirees etc.

Lack of day care centers for the elderly - n issue already highlighted many years earlier-resurfaced in 2019. The OP institution recommended on the issue establishing and making operational day care centers. Another issue concerning this category, which has been addressed by the institution, is the inaccurate implementation of legal acts in force regulation this field of law.

More specifically, in the framework of the request to accommodate an elderly person in one of the retirement homes, the social worker had made no inspection to verify the real conditions the elderly was living in, in violation to the criteria foresee by DCM No.425, dated 27.06.2012 *“On determination of criteria and necessary documentation for the admission of persons in residential public and non-public social care institutions”*

By considering this as a flagrant infringement to legal rights, we recommended the relevant body, that is the Administrative Unit No.8 manager, to verify have the social administrator verify the social-economic conditions of the citizen and to accurately fill out the “Verification of the social-economic situation” form. Our recommendation was indeed considered by the social administrator, who inspected the social-economic situation of the elderly in situ and accurately filled out the “Verification of the social-economic situation” form.

Likewise, in the framework of 2019 local elections, the OP institution addressed Tirana, Kavaja, Shkodra, Fier and Gjirokastra retirement homes, at its own discretion, the request on taking the necessary measures to ensure the full and quiet exercise of the right to vote, in order to provide the elderly with the necessary conditions

and infrastructure to freely exercise their right to vote. In reply to our request, we were informed that all elderly were equipped with identification documents and the necessary measures were adopted for them to exercise their right to vote, in accordance with the law.

Given its promotional role, the OP institution organized in 2019 a meeting with Fier Retirement Home, focusing on the OP institution role in protecting the elderly, by enabling the adoption of concrete measures for the elderly in the country.

The OP institution deems that the Albanian State and society should continue to strengthen the social and economic mechanisms for the protection for the protection of the elderly.

3.17. Rights of national minorities

2019 is a dynamic year in terms of developments related to obligations Albania must fulfill in its path towards EU integration and on the other hand the concrete fulfillment of these obligations and their compliance with the basic rule of law principles and fundamental human rights.

The OP institution, as a constitutional independent institution guaranteeing the legal human rights and freedoms and promoting the highest standards of the rule of law, has closely monitored a series of initiatives combining the upholding, guarantee and promotion of such standards in Albania during the previous year.

In this wide approach to legal human rights and freedom, a special attention has been devoted to the analysis of the situation on the upholding of the rights of national minorities and the specific measures adopted for their effective exercise.

Based on the jurisdiction and competences granted to the OP by the organic law, the OP institution activity regarding the protection and upholding of rights of national minorities consisted mainly of ex officio investigations carried out for such purpose. This course of action has been also conditioned by the fact that the majority of complaints are filed by members to national minorities has been rather low. Therefore, the OP has been rather more inclined to come closer to such communities by contacting them in their houses, either in individual cases or through open days organized in their settlements.

During the 2019, 27 complaints filed by members to national minorities were reviewed. What's truly particular about these complaints, is their focus not on the concern that their collective minority rights are being denied or violated, but rather on the infringement of individual legal rights and freedoms. This leads the number of declared complaints in this part of the report to be disassociated with this field of human rights, but rather a statistical datum included in the complaints reviewed by the OP institution on legal individual human rights and freedoms tackled in other parts of the annual report. More specifically, these complaints addressed the right to housing and employment, violation of right to property, to benefit from the social care (economic assistance) system, or right to potable water supply and improvement of the overall quality of life.

About the right to property, we would like to highlight that the issue of sub-legal acts by the Council of Ministers, just like the DCM No. 708, dated 21.11.2018 "On registration and transfer of several immovable state-owned properties located in the Vlorë-Saranda coastline under the administration of the ministry responsible

for tourism", as amended by DCM No.187, dated 4.04.2019 has brought a series of issues concerning the violation of such right and other freedoms deriving thereof. This has been mirrored in several complaints the OP institution has filed with the OP. However, it should be stressed that the legal consequences this sub-legal act brings about, are not directly related to the potential infringement of rights of national minorities living in the areas, but rather in the infringement of the right to property affecting a several owners of immovable properties located along the coastline.

Despite reviewing the complaints submitted, the OP institution participated in a series of activities dedicated to rights of minorities both in and out of country. We would like to particularly highlight the promotional activity carried out thanks to the cooperation with the Roma and Egyptian Organizations Network in Korça region in the premises of Korça Community Center. Topics discussed during the activity were related to the real activation of Roma and Egyptian communities in the decision-making process at the local level and their effective participation in the process, as well as cooperation and coordination of the work with the OP institution in the framework of protecting and upholding their rights.

In the framework of its proactive role in this field, the OP institution actively engaged in the entire process of devising the relevant draft law, by providing its remarks and suggestions, which were mirrored to a considerable extent in the provisions under law no.57/2017 "On protection of national minorities in the Republic of Albania". We have also been quite active in discussions on and approval of sub-legal acts (either approved or under the approval process) pursuant to the provision in Law 96/2017.

The new legal framework on protection of rights of national minorities highlighted the need for the OP institution to re-evaluate the current situation of such minorities in relation to the actual majority population size, by identifying the new stage the issues concerning their members are manifesting all over the country, measures that the Albanian State should take to their integration, and the real evaluation of the access provided in this regard in its broader meaning.

The new reality created upon the affirmation, guarantee and protection of collective rights of minorities in Albania, concertized by the acknowledgment of 9 national minorities, is a good chance to promote and analyze the OP institution in this field.

However, we should stress that despite the positive developments related to the approval and entry in force of Law 96/2017 “On protection on national minorities in the Republic of Albania”, or approval and entry in force of some other sub-legal acts pursuant to the law, the issue of a complete sub-legal package considered as necessary to the full implementation of the law is still considered as problematical. Some very important sub-legal acts for these purposes have not been issued and entered in force yet (time frame set forth by the law on their issue has lapsed).

The legal obligation of designated bodies to approve the sub-legal acts relevant and pursuant to the law is expressly provided for by the RoA constitution. The spirit of this provision leaves no room for interpretations other than what provided for, that is the constitutional obligation of bodies authorized by the law to issue sub-legal acts relevant and pursuant to laws. This obligations means that the authorized body should comply with the time fames foreseen

by the law on the issue of sub-legal acts, as well as refer and determine the basic principles on which such acts will be issued and the specific issues to be regulated through sub-legal acts relevant and pursuant to the law.

Omission to met such an obligation consist of a violation to the constitutional and legal provision, but it's also an infringement instance of the legal individual rights of members to national minorities, as already granted and guaranteed by the law no. 96/2017 “On protection of national minorities in the Republic of Albania”.

In other words, although the law grants to this specific category specific rights in the framework of collective rights of national minorities, when the relevant sub-legal act regulating the technicalities of enjoying and enabling the effective exercise of the guaranteed right is not issued, the effective implementation of the law is not ensured, and consequently, the enjoyment and effective exercise of the right by subjects that such right has been granted and guaranteed to is not ensured either.

This factual condition has lead to the representatives of national minorities being rather skeptical and considering this lack as an adverse impact to the observation of democracy, good governance and integration process standards. This process is essential and should be concluded the soonest possible, in order to fully guarantee the community and individual rights of members to national minorities in Albania.

This lack adds to the series of challenges encounteredwhenitcomestotheimplementation of the minority rights contributing to the mutual trust among actors operating in the field, change of mentality and acceptance of diversities,

upholding of rights of individuals representing them, appropriate institutional environment enabling real equality among members to different minorities with the other part of the population and their integration.

Another challenge is avoiding temporary and invaluable propagandistic campaigns, and shaping a continuous ongoing process for monitoring the upholding of minority rights and enabling the exercise of such rights.

The OP will continue to protect the rights and fundamental freedoms of minorities, by encouraging and monitoring the work of inter-institutional groups when discussing and approving such sub-legal acts and by providing its opinion on their content. This construction is essential to the promotion and protection of collective and individual minority rights in the country.

In this spirit, we have intentionally mentioned earlier, among others, the need to change and improve the domestic legislation, by adding the legal criteria foreseen by the legislation in force for the protection against discrimination, or ratifying the European Charter for Regional or Minority Languages.

This process followed by the real integration of minorities in the local and central governance will absolutely contribute to a more democratic society and cohabitation harmony, which would turn into a landmark for Albania. The new census to be carried out in 2020, should be based on the best international criteria and standards and should be a process where minorities can objectively and freely express their existence.

Protection of minorities and accommodation of diversity in the society should be a standing

objective for the Albanian State to take additional measures to prevent and solve issues as soon as they arise.

Upholding minority rights is not a privilege the state and out society grants them, but rather an obligation and a natural process based on the human dignity and diversity, thus representing a major investment a given society makes for its future.

3.18. Upholding the rights in the field of social insurances

The right in the field of social insurances is expressly sanctioned in the RoA Constitution in its article 52/1 "Whoever in third age or disabled to work shall be entitled to social insurances according to a system defined by the law...".

The effective implementation and upholding of such right is essential to citizens, therefore this sensitive right should be efficiently upheld and realized within legal time frames.

Although the public social insurance system has been reformed in line with the socio-economic developments noted time after time, our institution has identified many previous issues in relation to the non-observance or violation of rights of individuals in the field of social insurances.

With reference to citizen complaints registered with the OP institution in 2019, 77 were handled in total. Issues standing out the most upon review of filed complaint are related to infringement of rights due to the unfair calculation or non-review of pension amounts, non-recognition of work seniority for the low amount of pension at the time the right to benefit retirement pension was

granted, non-reply for the review of complaints against branches of Regional Social Insurances Directorate, procrastinating the grant of retirement pensions, unfair interruption of the retirement pension etc.

More specifically, the OP has identified and highlighted the following most common essential issues in 2019 in the field of social insurances:

Unfair withholding of the monthly supplementary state pension at 100% scale

Complainants, beneficiaries of both the retirement and supplementary state pension, complained about the monthly supplementary state pension being withheld at the 50% or 100% scale until the relevant obligation was settled.

Upon reviewing the case, we noted that law no.8097, dated 21.03.1996 "On supplementary state pensions of persons performing constitutional duties and state officials", as amended, expressly foresees in its article 19 that: *"Right to request back the amounts received during one year is exercised not later than 3 years from their reception, but no later than six months from the date of finding and the amount withheld every month shall be 20% of the monthly amount"*

Since no provision in the law foresees that 50% or 100% of the supplementary state pension amount will be withheld, we addressed made the relevant recommendation to the Institution of Social Insurances. The recommendation was considered, by applying a withholding at 20% for every month until the relevant obligations was settled.

Non-recognition of the right to benefit the disability allowance to the category of

individuals who were not in employment relationship the last 5 years before the right was granted to them, although they meet the medical criteria.

The institution has handled complaints made by citizens on non-recognition of their right to have their health condition assessed by the Medical Commission for Work Capability Assessment since the individuals were not ensure for 12 months in the last 5 years before the right to benefit was granted.

The OP institution has addressed the state institutions on the issue of penalized category of individuals by paragraph 2, article 35 under Law No. 7703, dated 11.5.1993 "On social insurances in the Republic of Albania", as amended, ever since the legal amendments became effective, by sending official letters, making recommendations and participating in special meetings to solve the issue.

From this year and onwards, following the multi-year rigorous institutional engagement in the above issue, the category of persons not meeting the legal criteria to benefit from the legislation on social insurances will be treated with law no. 57/2019 "On social assistance in the Republic of Albania".

Low amount of retirement pension

Our institution has handled complaints addressing Regional Social Insurances Directorate on the unfair calculation of the retirement pension amount.

Law No.104/2014, "On some addenda and amendments to law no.7703, dated 11.5.1993 "On social insurances in the Republic of Albania", as amended.

Based on our institutional review and intervention, by suggesting a recalculation of the retirement pension, the complainants have benefited an increase to the pension amount. The differences have been also calculated according to the legislation in the field of social insurances.

Based on the jurisdiction and competences granted to the OP by the law, the OP institution activity regarding social insurances consisted mainly of ex officio investigations carried out for such purpose. The case addressed at the OP institution own discretion was the case made public in the media, entitled "The list/Shocking, municipalities do not pay the employees' social insurances".

The General Tax Directorate presented on 18.05.2019 a list indicating that all municipalities and former communes had tax liabilities, mainly related to unpaid employee social insurances, by also foreseeing the enforcement of unsettled tax liabilities for Libohova, Memaliaj, Përmet, Tepelena, Pustec, Sukth, Himara, Poliçan, Fushë-Kruja, Kruja, Kavaja, Rrogozhina and Divjaka municipalities. Official sources from that directorate affirmed that the debt of municipalities and communes consisted of unpaid social insurances. Municipalities' failure to pay social insurances is intolerable. The budget of a public institution is planned based on rules and law and the planning of expenses considers first and foremost salaries and social insurances altogether, because salaries cannot be transferred without paying first social insurances, according to the percentage provided for by the law.

Municipality may find themselves in financial difficulties indeed, because the budget allocated to them by the central power is insufficient to carry out their functions and provide local public

services, just like local government units are not managing to increase their budgets from their own income (local taxes, fees). However, none of the above difficulties justifies failure to pay social insurances. On the other hand, treasury branches allowing for such failure is equally distressing. Treasury is a filter that should take care and push municipalities to proceed first with paying social insurances before certifying other expenses

These municipalities, with reference to the General Tax Directorate should review their budgets and cut their expenses where possible in order to ensure the insurance fund. On the other hand, the General Tax Directorate should assist and cooperate with these municipalities in order to agree on a plan to solve the issue and have all employees go unaffected by this situation.

The Ministry of Finance and Economy on its part affirmed that its local power units are frequently sending the payrolls to the treasury in delay and abusing with the instructions related to payments from the treasury.

According to Albanian Association of Municipalities data, the local power had employed roughly 33.500 employees in 2018 as compared to 22.000 in 2015, that is 500.000 employees more. The number of transfers related to new functions is no higher than 10.000 employees.

The administration of municipalities however is rather inflated compared to the numbers before the Territorial-Administrative Reform, even if we exclude the transfer of new functions (pre-school education, forest administration, maintenance, protection from fire service etc.). That's why municipalities all over the country have failed to pay the social insurances, and address the proclaimed goal of the Territorial-Administrative Reform.

Upon reviewing the case, we addressed 61 mayors to send detailed information on:

the number of employees in the institution they lead and in subordinate institutions for the period 2015-2019;

the number of employees whose social and health insurances have not been paid;

relevant period for which such contributions have not been paid.

Additionally, we requested copies of documents for the periods that such contributions were not paid. More specifically:

Statements of "Payrolls for social and health insurance contributions";

Payment orders for social and health insurance contributions;

Expense order.

The case is still under review, since 20 mayors have not replied yet⁶⁴.

Out of 41 replies, only 7 local governance units had unsettled liabilities with the General Tax Directorate. Municipalities: Has, Kukës, Konispol, Selenica, Mallakstra, Tepelena (from 2009) and Librazhd.

The OP institution deems that the Albanian government, along with other responsible institution, irrespective of their achievements so far, should be more effective when it comes to policies in the field of social insurances.

⁶⁴ Municipalities: Vora, Kavaja, Peqin, Tropoja, Mirdita, Vau i Dejës, Finiq, Delvina, Himara, Saranda, Vlorë, Ura-Vajgurore, Klos, Mat, Gjirokatra, Përmet, Korça, Pogradec, Rrogozhina.

CHAPTER 4

Other institutional engagements

4.1. Special report on “Astir”⁶⁵

This report has been submitted to the Parliament of Albania on 21 October 2019. It has been reviewed by the Parliament through one of the ways provided for on Articles 27 and 28 of Law No. 8454, dated 04.02.1999 “On the Ombudsperson”, as amended.

Failure to respect the right to property, as one of fundamental human rights, remain a concerning phenomenon in the country. In this framework, the Ombudsperson addressed, at its own discretion, the case related to the project titled “Rehabilitation of the Road Segment: The overpass “Pallati me shigjeta”- the Roundabout “Shqiponja”. Concurrently, the Ombudsperson reviewed the petition submitted by 427 residents of the Astir area segment, and 16 individual complaints presented to our institution or on-site, during verification and inspections carried out by institution’s experts.

The whole process was continuously monitored by the Ombudsperson with respect to any announcement or event related to public bodies’ activities and frequent protests of Astir area residents. The report focused on analyzing the decision-making process on the approval of the project that is being implemented by the former Agency for Legalization, Urbanization and Integration of Informal Areas and Buildings (ALUIAB) and continues with the process performed by the Albanian Road Authority (ARA), expropriation procedures, cooperation and role of Tirana Municipality in the process, as well

⁶⁵ This is a summary of the report, whose full version can be found on the official website of the Ombudsperson <https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20p%C3%ABr%20zon%C3%ABn%20e%20Astirit.pdf>

as the role of the National Territory Protection Inspectorate (NTPI), and Territory Protection Inspectorate (TPI) of Tirana Municipality or third parties, which performed actions to demolish dwellings or public works.

Decision-making on approving the project “Rehabilitation of the Road Segment: The overpass “Pallati me shigjeta”- the Roundabout “Shqiponja”

At the start of the procedure, were identified the lack of information or full official announcement, in compliance with the law on the project that was being implemented in the area, the final decision, its total cost, and the planned costs for expropriating residents pursuant to the legal framework regulating the expropriation procedures. This was the first failure of the state administration bodies in this complex issue.

In the framework of this case investigation, we submitted a series of letters to state bodies with administrative responsibilities in the process, such as the National Territorial Planning Agency (NTPA) and Territorial Development Agency (TDA).

The official reply of TDA⁶⁶ clarifies, inter alia, that during the meeting on 20.11.2018, the National Territorial Council approved Decision No. 01, “On Approving the Development Permit for: “Rehabilitation of the Road Segment: The overpass “Pallati me shigjeta”- the Roundabout “Shqiponja”, Tirana municipality”. It must be noted that despite our detailed and frequent requests, the information provided by TDA and ARA regarding clarifications on procedures and deadlines met by ARA for approving requests for the necessary decision-making by NTC on allowing works on: “Rehabilitation of the Road Segment: The overpass “Pallati me shigjeta”- the

⁶⁶ Letter Prot. No. 3116/1, dated 26.12.2018

Roundabout "Shqiponja", Tirana municipality", **was not complete.**

Approval of development permit, namely with the above-cited decision, is a significant moment in addressing this issue, because in line with the legislation in power, the development permit document is a precondition and the foundation for the building permit, but it is the construction permit that is the administrative act, which enables the developing subject to proceed with works pursuant to the approved project.

Based on TDA response and the analysis of the regulatory legislation in power, we concluded that NTC approved the development permit only for: "Rehabilitation of the Road Segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", Tirana municipality", but not a building permit. This building permit was missing as an indispensable administrative act for allowing relevant works in the area of Astir, at the time of drafting this special report. Concurrently, the verification on TDA website,⁶⁷ regarding decisions approved by NTC for requests submitted to it for building permits during 2019, showed that there is still no NTC decision for approving a building permit for "Rehabilitation of the Road Segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", Tirana municipality". In such circumstances, we concluded that all law-enforcement bodies involved in this process failed to stop works conducted without a permit or preparation of construction sites without a permit, by any winner of the tender competition, resulting from tender procedures carried out by ARA.

Law No. 107/2014 "On Territorial Planning and Development", as amended, specifies the

⁶⁷ This was verified on 24.09.2019, on the following website; www.azht.gov.al.

counseling process and public meeting by the authority in charge of drafting the planning document, before any decision-making with regard to planning documents at the central level and general local plan. This process is of significant importance because it essentially maintains the balance between private and public interests combined with decision-making related to planning, development or territorial development control documents.

In no information provided by ARA regarding the preliminary approval process for the project titled "Rehabilitation of the Road Segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", (Lot.1, Lot.2, Lot.3), with the decision of ARA Technical Council, No. 56, dated 04.09.2018, can we find official documents that prove the completion of legal procedures requiring public notices, public meetings, publication of remarks, comments or proposals made by stakeholders regarding the project in question, prepared by "AVE" shpk. subject. This process should have been performed from 04.09.2018 onwards, but there are no data or official publications during this time frame.

Based on continuous inspections and monitoring by us in Astir area, inter alia, we concluded that there have been construction interventions and public property demolition in public areas destined to be green areas, before NTC decision-making. Following our request for explanation addressed to ARA, the latter explicitly provided the following information: "The Albanian Road Authority entered into Contract Prot. No. 7733/5, dated 02.11.2018, for "Rehabilitation of the Road Segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", Lot 2", with "Salillari" company, and Contract No. 7732/5, dated 02.11.2018, for "Rehabilitation of the Road Segment: The overpass "Pallati me shigjeta"-

the Roundabout "Shqiponja", Lot 1", with the Economic Operators Merging "Biba – X" & "DH ALBANIA". Informing tables have been placed by the works contractor pursuant to the above-cited contracts and the relocation of the Eagle object has not been performed by the Albanian Road Authority"⁶⁸.

The signature of implementation contracts as a legal transaction was performed 18 days prior to the development permit. It remains unclear if contracts stipulate that works on the part of the contractor start solely following the NTC decision on issuing the building permit and approving the project for constructing the public work, since ARA did not send full copies of the contracts.

We requested information on such case to the Chief Inspector of the National Territorial Protection Inspectorate (NTPI), and TPI in Tirana municipality.

The response of NTPI⁶⁹ explicitly clarifies that: "Upon letter Prot. No. 9765, dated 05.11.2018, protocoled at our institution with Prot. No. 4287, dated 06.11.2018, the Albanian Road Authority requests support for the removal of all illegal buildings from the construction site, for purposes of implementing the project of the Great Ring Road in the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja". Currently, we are verifying the on-site situation, whilst with respect to the demolition of the Eagle in the roundabout, please be informed that NTPI did not hold a legal procedure and did not take any action for the removal of this monument".

The response of TPI in Tirana municipality⁷⁰, includes inter alia: "The Tirana municipality

Territorial Protection Inspectorate does not have official knowledge of the approval of this project or development permits in the segment from the overpass "Pallati me shigjeta"- the Roundabout "Shqiponja". The Territorial Protection Inspectorate did not partake in the demolition of buildings hampering this project".

The nature of incomplete and contradictory responses by NTPI and TPI in Tirana municipality indicates the will to overlook the law or conduct illegal works, but also to avoid accountability and legal competences implementation. The actions and omissions of these two state institutions ensure material and non-material benefits to building subjects, which performed works without a building permit, and concurrently there has been an overt and flagrant violation of lawful interests of the state and citizens, whose road infrastructure and properties near the road axis have been damaged due to illegal works in the frame of an unapproved project.

The project followed by ARA

In the framework of this case administrative investigation by us, we requested explanations from ARA,⁷¹ former ALUIAB and Tirana Municipality, regarding the claims and concerns of the area residents. In response to our request for explanation, the Director of the Albanian Road Authority informed us⁷² that for purposes of the investment, "AVE" sh.p.k consultant prepared the project "Study, Design and Rehabilitation of the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", according to the Sponsorship Contract No. 3625/2, dated 25.05.2018. In the mean time, it further

Letter No. 10492/1, dated 02.12.2018
Letter No. 4483/2, dated 27.11.2018
Letter Prot. No. 1062, dated 24.01.2019

Letter of the Ombudsperson, No. K3/K45-8, dated 16.11.2018 and Letter of the Ombudsperson, Prot. No. K3/K45-8, dated 16.11.2018, to the Director of ARA
Letter No. 10425/1, dated 26.11.2018

emphasizes that this project has been approved upon Decision No. 56, dated 04.09.2018 of the ARA Technical Council.

Based on the content of the Albanian Road Authority letter and the attached paperwork, we conclude that Tirana Municipality is the solicitor and funder the project "Study, Design and Rehabilitation of the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", whilst ARA is the implementing authority.

Based on the preliminary information by TDA, we concluded that the Albanian Road Authority, in the capacity of the implementing authority of the project "Study, Design and Rehabilitation of the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", has performed concrete actions to the harm of the properties of citizens living in the area of Astir, without having a building permit. In this case, this project affected a high number of residents, who have been owners of dwellings or service buildings for years in the area. Lack of the building permit is a serious and flagrant violation of fundamental citizens' rights, as a result of the intervention to the buildings in Astir area.

Moreover, the official information⁷³ obtained while preparing the report showed that it was ARA, who requested the removal of trees and poles of the Electric Power Distribution Operation from Astir area, without the building permit being issues, which leads to serious violations with administrative and criminal responsibilities.

⁷³ Letter Prot. No. 1071, dated 14.11.2018, of ARA to Tirana Municipality.

Expropriation procedures

Restrictions of the right to private property (expropriation or restrictions equal to expropriation), as a fundamental human right recognized and guaranteed in the Constitution, are legitimated to occur solely on circumstances explicitly defined by law. Thus, the state may deprive individuals from their properties or assets solely upon the fulfillment of a public interest, against a fair reward and in compliance with the right to complaints by the violated individual for the reward value. Thus, the aim of expropriation for public interest should be lawful and reasonable. In assessing public interest, one must always respect the proportionality principle. As per the above, it is clear that intervention to the right to property occurs solely for causes that are exhaustively defined in the law and according to a procedure that respects the fundamental right to a due process of law.

The Ombudsperson did not find a preliminary expropriation procedures, started prior to the implementation stage of the project "Study, Design and Rehabilitation of the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", Tirana Municipality". This happened despite the fact that they are included and includes properties with regular ownership documents, or subjects that declared their dwellings for legalization year ago to ALUIAB, in circumstances where the latter had not issued a final decision for the qualification or exclusion from the legalization process of such dwellings.

One of the essential issues identified by the Ombudsperson is the involvement of certain individuals in the procedures of legal immovable

properties expropriation,⁷⁴ without being informed (i.e. without any official notice from the authority benefiting from the expropriation process), and without following and respecting procedures and deadlines, stipulated by the legal framework in power, on expropriation of properties for public interest⁷⁵.

Regarding expropriation procedures, one must note the fact that the Council of Ministers approved, inter alia, Decision No. 231, dated 17.04.2019 "On Expropriation for Public Interest of Immovable Property, Private Property Owners affected by the Implementation of the Project "Rehabilitation of the Road Segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja".⁷⁶ This decision was approved about six months upon the start of procedures and concrete actions by state authorities to assets and building located in Astir area, where the project "Rehabilitation of the Road Segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", Tirana Municipality" has already started.

Following confusion with the data regarding the number of assets to be affected by the project implementation in Astir area, we concluded that pursuant to DCM No. 231/2019, 209 properties will be subject to the expropriation process, many of which are co-owned. Based on legal criteria on the content of decisions issued by the Council of Ministers in cases of expropriation for public interest, it is concluded that the 11

⁷⁴ This case belongs to the complaint of citizen N.D, registered with the complaint administration system in the Ombudsperson institution, "Doculive", with the number 201802429.

⁷⁵ See Law No. 8561, dated 22.12.1999 "On Expropriation and Temporary Possession of Private Property for a Public Interest", as amended.

⁷⁶ Information obtained by the official website of the Council of Ministers: <https://www.kryeministria.al/nesroom/vendime-te-miratuarane-mbledhjen-e-keshillit-te-ministrave-date-17-prill-2019/>.

paragraphs of DCM No. 231, dated 17.04.2019, does not explicitly define the deadline and manner of paying owners that are expropriated, owners of assets that are devalued, and third parties that are compensated for their rights due to expropriation. This is in clear violation of the law. Likewise, the DCM does not explicitly define the time frame of beginning and completing expropriation, and the time frame of beginning and completing works for the project and investment, or accomplishing the expropriation goal.

Activities of the Agency for Legalization, Urbanization and Integration of Informal Areas and Buildings (ALUIIAB).

The Ombudsperson requested the former General Directorate of ALUIIAB and the former Regional Directorate of ALUIIAB, Tirana – Veri, through several letters⁷⁷, information and explanations whether there has been communication and official requests from other state institutions in the framework of this project, and how ALUIIAB Tirana - Veri was handling the claims and concerns of residents in Astir area.

The obtained information showed that, according to the list submitted to ARA by the former Regional Directorate of ALUIIAB, Tirana – Veri⁷⁸, the total number of subjects, whose buildings are affected by the implementation is 73, whilst the number of decisions of the former Regional Directorate of ALUIIAB, Tirana – Veri, for the disqualification of informal buildings (exclusion from the legalization process) that are

⁷⁷ Letters by means of which we requested the relevant information are as follows: Prot. No. H23-2, dated 19.11.2018; Prot. No. H23-5, dated 04.12.2018; Prot. No. H23-5, dated 04.12.2018; Prot. No. H23-8, dated 04.02.2019; Prot. No. K3/H25-4, dated 06.12.2018; Prot. No. K3/K45-4, dated 09.11.2018; Prot. No. K3/L37-13, dated 25.02.2019; Letter Prot. No. 10981/1, dated 08.11.2018

affected by the implementation of the project, and have been submitted to the Ombudsperson is 90. This discordance in the declared figures is not justified.

Moreover, there have been data inconsistencies with the information sent by the former General Directorate of ALUIIAB, confirming the exclusion from legalization of 78 informal buildings, which are affected by the implementation of the project "Overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", which is in contraction with the number provided by the Regional Directorate of ALUIIAB, Tirana – Veri.⁷⁹

According to the data confirmed by the General Directorate of ALUIIAB, the situation with the buildings, affected by the project implementation, was as follows: 209 building were affected, of which 74 had ownership titles, three plots of land had been transferred under the ownership of subjects that had informal buildings, 26 other buildings were excluded from the process of legalization and 106 were in the process of having self-declarations by owning subjects reviewed. Moreover, we were informed via letters about the exclusion of 78 informal buildings from the process of legalization, and the provision to the Ombudsperson of 90 decisions made on the exclusion of informal building from the legalization process by the Albanian Road Authority, via letter Prot. No. 468/2, dated 15.04.2019, to the Ombudsperson.

Statistical data officially confirmed by the Albanian Road Authority, former General Directorate of ALUIIAB, or former Regional Directorate of ALUIIAB, Tirana-Veri, contain inaccuracies, discrepancies and partial information, which leads to various problems with implementing

the project and serious violation of property interests of owners of immovable properties.

Pursuant to the provisions of Law No. 9482/2006 "On Legalization, Urbanization and Integration of Illegal Buildings", as amended, for every self-declaration for legalization of informal buildings presented by various subjects, ALUIIAB is obliged to issue a decision, whether on the informal building legalization or its exclusion from the legalization process. The decisions presented to the Ombudsperson by the former regional Directorate of ALUIIAB, Tirana - Veri contain the object of excluding informal buildings from the legalization process, and they have been issued from 27.11.2018 to 05.12.2018. More specifically, 87 decisions have been issued on 27.11.2018, 2 decisions on 03.12.2018 and one decision on 05.12.2018. However, the obtained data show that during 2011-2017, 22 legalization permits have been issued for this area.

The legal cause of exclusion from the legalization process according to the acts is that these informal buildings have the conditions stipulated in Articles 35 and 39 of Law No. 9482/2006 "On Legalization, Urbanization and Integration of Illegal Buildings", as amended, but there is no concrete analysis or reasoning of the act on the specific handled case. These elements are clearly defined in Article 109/c of the Administrative Procedure Code.

The activities of the former Regional Directorate of ALUIIAB, Tirana - Veri, in the process of reviewing self-declarations made by the concerned subjects is in violation of the fundamental human right to a due process of law, with one of the causes being related to failure to fulfill the administrative procedure of reviewing all self-declarations within the time frame provided for in Article 49 of Law No. 8454,

⁷⁹ Letter Prot. No. 10981/1, dated 08.11.2018

dated 12.05.1999 "Administrative Procedure Code of the Republic of Albania", as amended. Self-declarations for legalization presented by the concerned subjects, who were owners of informal buildings that are part of the project route, have been submitted during 2005-2006, when there was no approved general local plan or development project in the area. As a result, the General Local Plan of Tirana Municipality was approved in 2017, while the development permit was approved in late 2018, which means that there is no legal justification of failure to issue a decision on the qualification or exclusion from the legalization process by ALUIAB, during this long period of time.

Cooperation of Tirana municipality in the process

During the review process of several complaints lodged by residents, whose buildings were claimed that were to be affected by the project implementation, we requested for information and explanations from Tirana Municipality Institution. Based on the obtained information, we concluded that Tirana Municipality performed its own process of socio-economic evaluation of families to be affected by the project implementation, in the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", which was a partial and deficient process in terms of the approach to the potential forced eviction of families to be affected. The number of buildings that the media shared that would be affected and the number of buildings that have already been or will be demolished indicated a significant number of residents, who will have to move out of the area as a result of a public work construction.

The role of the National Territorial Protection Inspectorate (NTPI) and the Territorial Protection Inspectorate (TPI) in Tirana Municipality.

In a normal process of infrastructural works and of implementing a building permit, which has been approved by the decision-making of the competent authority for the construction of a public work, it is necessary to free and prepare the construction site for purposes of starting with the works.

According to NTPI letters⁸⁰ to the Ombudsperson, we concluded that in official terms, on 27.11.2018, ARA requested NTPI for support in removing illegal buildings from the construction site, for purposes of implementing the project of the Great Ring Road in the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", when the building permit had yet to be approved by NTC. Moreover, on 14.12.2018, ARA made the same request to NTPI, but without officially providing the building permit for the works.

In the mean time, according to letter Prot. No. 1062, dated 24.01.2019 of TPI in Tirana Municipality to the Ombudsperson, we concluded that until 24.01.2019, this body did not partake and as a result, did not perform any procedure for the demolition of buildings situated in the project footprint, for the construction of the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja".

The claimed withdrawn position of Tirana Municipality TPI and NTPI as specialized bodies, which the law has put in charge of independently controlling the legality of construction works, despite ARA requests, inter alia identified by the handling of some individual complaints, presented in this report, does not justify the omission and failure to bring attention to lack of the building permit to these bodies.

⁸⁰ Letters No. 4483/2, dated 27.11.2018 and No. 4726/1, dated 14.12.2018

Any harm to public properties, as occurred with the "Eagle" object in the roundabout with the same name, disruption of public parks for setting up construction sites for the construction companies, contracted by ARA, in addition to the removal of road signs, trees and traffic dividers, which are all public properties, have been performed under the knowledge of these bodies, as is shown by the correspondence with ARA (letter dated 14.11.2018). In such conditions, these bodies should have responded that no action can be taken without the issuance of the relevant act, rather than supporting the demolition of private subjects.

The overt omission of these bodies put their responsible representatives in the circumstances and conditions of criminal responsibility. One cannot deny the responsibility of workers and leaders of these bodies to tell the truth, when it was evident, and not to remain silent to the requests of ARA, when in the above analyzed conditions, ARA requested the demolition of state and private-owned buildings.

The transparency of bodies involved in the process

The issue analyzed in this report shows lack of transparency with the performed activities or "passiveness" of public bodies involved in all procedures related to the process of designing, approving and implementing the project "Rehabilitation of the Road Segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja"(Lot.1, Lot.2, Lot.3)". Lack of transparency has been identified in the relationship of public bodies involved in the process, especially with the residents of Astir area, where the project was to be implemented, and with the Ombudsperson, in the framework of failure to present the requested information or submission of partial and incomplete information.

Lack of transparency in the whole process was an issue raised in the public position of the President of the Republic, after verifications made to the project on the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja".⁸¹The public position of the President of the Republic refers to requests for information he made to some state institutions regarding matters related to their tasks in terms of the project, and some of the did not respond even after the 75-days deadline from the time of request submission.

Failure to provide the requested information reconfirms once again that there was no transparency in the project. In such conditions, lack of transparency present a structural problem, which should not be overlooked or handled like a secondary issue, but it must be considered as an essential issue, as it is directly linked with the process legality and fundamental human rights observance.

In the end of this report, we provided final conclusions and some recommendations, some of which are as follows:

The start of the process and the situation with the implementation of the project "Rehabilitation of the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", with ARA as developing authority, is problematic and in flagrant violation of the law, because every issued act or performed action by public authorities, which are analyzed in this report, have occurred without the relevant decision of NTC on obtaining the

⁸¹ The public position of the President of the Republic of Albania was submitted to the Ombudsperson, via forwarding letter No. 131/1, dated 04.02.2019, of the Secretary General of the President of the Republic institution.

building permit for: "Rehabilitation of the Road Segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", Tirana municipality". Upon decision No. 01, dated 20.11.2018, NTC approved the development permit for the "Rehabilitation of the Road Segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", rather than the building permit. The building permit issued as a legal and valid administrative act by the competent public body (NTC) is the sole act that both enables and allows the beneficiary subject to start implementing the already approved project.

In violation of the legal obligation, ARA did not perform the mandatory public consultation and information process with the residents of Astir area and interested actors, when designing and approving the project "Rehabilitation of the Road Segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja".

Any request that ARA to other public bodies, namely Tirana Municipality TPI and NTPI for freeing the construction site; any notice to vacate, and any intervention to private properties for their demolition or partial damage by any subject; any harm to public properties by any subject that performed or allowed it; any decision-making for exclusion from legalization without the completion of the process of the necessary acts for starting with the construction of the public work; any expropriation procedure; as well as any other conclusive action performed in such circumstances that violated the legal rights and freedoms of Astir area residents, is not

only illegal but also criminally punishable.

The Ombudsperson concludes that ARA has performed actions with are in over violation of the law, which consist in failure to accomplish tasks leading to economic harm of the state and economic and property harm to the affected individuals, due to the uncontrolled demolition of dwellings and private commercial businesses, situated in the road axis to be affected by the project for building the road segment "Rehabilitation of the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja". With respect to this fact, the Ombudsperson recommends

Tirana District Prosecution Office to start investigations for the criminal offense of "abuse of power", stipulated in Article 248 of the Criminal Code, committed by ARA. It must be noted that the illegal activity performed by the state subject ARA is identified through issuance of orders, which are in violation of the law and have caused serious consequences to the state and individuals, whose properties have been damaged if they were built near the road axis.

It is concluded that due to the actions and omissions of NTPI and Tirana Municipality TPI have led to material or non-material profits of the relevant construction subjects, contracted for the project, and concurrently to the overt and flagrant harm to lawful interests of the state and citizens. As a result of works performed without a building permit and approved project, relevant subjects damaged the road infrastructure, and concurrently, the properties of people living near the road axis.

Demolition of some buildings/private properties cited in the report, which are included in the project route which the development permit has been approved for upon decision No. 01, dated 20.11.2018 of NTC for: "Rehabilitation of the Road Segment: Overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", Tirana municipality", is not only illegal and a criminal offense, but it also shows the failure to intervene by Tirana municipality TPI and NTPI in these cases. The subject that demolished the buildings caused a concrete damage to their owners remains unknown, which needs further follow-up by the Prosecution Office. Any decision-making of Tirana Municipality TPI and NTPI for demolishing buildings/properties without a building permit, approved by the relevant decision of NTC, with the justification of freeing the construction site, is an illegal act by these bodies, which puts them in criminal responsibility.

The activity of former ALUIAB (the State Cadastral Agency) still lacks institutional and legal responsibility for failing to handle in due time administrative procedures on reviewing legalization self-declarations, and for not issuing a final decision on a case by case basis. Such fact and decisions for excluding from legalization a series of informal buildings situated in the footprint of the project "Rehabilitation of the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja", by failing to complete the decision-making process for its implementation, add to the responsibilities of this body in such matter and aggravate the consequences.

On 29.06.2018, the Ombudsperson prepared and submitted to the Parliament⁸², a Special Report "On Issues noted in the Activity of some Public Administration Bodies in the Implementation of the Project "Tirana External Ring Road", Lot III (Lana River Bed Arrangement and Construction of Parallel Roads, Segment of the New Maternity Hospital, Tirana External Ring Road"⁸³. As is noted on the above-cited report, in this case we identified the same issues, which shows that failure to timely respond and react to our relevant findings and recommendations has led to illegal activities, in violation of the fundamental human rights on the part of public administration bodies, which were involved in the factual implementation process of the project "Rehabilitation of the road segment: The overpass "Pallati me shigjeta"- the Roundabout "Shqiponja".

The whole spirit, propaganda and communication by the representatives of the public bodies involved in the process, which we analyzed in our report, were not about guaranteeing and observing human rights, and inter alia, showed inappropriate and virtually discriminatory language against individuals.

In the framework of the best protection of lawful rights and freedoms of the individual

Letter No. 256, dated 29.06.2018

The Special Report "On Issues noted in the Activity of some Public Administration Bodies in the Implementation of the Project "Tirana External Ring Road", Lot III (Lana River Bed Arrangement and Construction of Parallel Roads, Segment of the New Maternity Hospital, Tirana External Ring Road" can be accessed on the official website of the Ombudsperson,

[https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20Shkoza%20\(shqip\)\[2\].pdf](https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20Shkoza%20(shqip)[2].pdf)

and good administration of the activities of ARA, ALUIIAB, Tirana Municipality TPI, NTPI, and Tirana Municipality, the Ombudsperson reiterates the stance that it is crucial to implement major projects, as they contribute to country's further development. However, it is necessary to strictly observe and implement the legal framework in power, which is already in place and quite broad, and the proportionality regarding the undertaken actions should be in compliance with the principles of the rule of law.

Recommendations:

Institutional cooperation of state bodies/institutions in every process of public works is indispensable.

Undertaking of legal measures by all competent bodies against people, who violated and violate the law in handling such issues, is a need that reiterate. Impunity and failure to take responsibility on such situations transform these cases into examples of systematic violations of Human Rights, because state administration employees who violated mandatory legal procedures, which allowed the illegal demolition of public and private properties, and violated citizens' legal interests have not take administrative, civil or criminal responsibility.

The Ombudsperson recommends the Prosecution Office to start investigations regarding the activities of ARA, NTPI and Tirana Municipality TPI on the "Abuse of power" criminal offense, stipulated in Article 248 of the Criminal Code, as well as other criminal offenses, which will be found

during the investigation of this process on state or private subjects, referring to legal violations identified by the administrative investigation.

Based on the specifications found when drafting this report and other special reports, which have now been submitted to the Parliament of Albania regarding similar issues, we deem it necessary to amend and improve the legislation, with respect to a reasonable reward for all subjects, who are owners of informal buildings, which are affected by the implementation of projects for building public works. This group should include informal buildings, which the legalization process has started for or other informal buildings, which are proved to exist in time, prior to the approval or implementation of projects for the construction of public works. Reasonable reward must be prepared in the framework of a specific expropriation process in these cases. This conclusion calls for the coherence of stipulations and undertaking of legislative initiative to amend Law No. 8561, dated 22.12.1999 "On Expropriation and Temporary Possession of Private Property for a Public Interest", as amended, as well as to make clarifying amendments to Law No. 9482, dated 03.04.2006 "On Legalization, Urbanization and Integration of Illegal Buildings", as amended.

As was emphasized in the beginning, on 21 October 2019, this Report was submitted to the Parliament of Albania and some other state institutions involved, but no institution reacted on the situation in question. In November 2019, all houses were demolished without providing an effective reward to the individuals, and without any publication on how

the relevant rewards, approved by the Council of Ministers, were allocated. In conclusion, no measure has been undertaken to analyze or implement recommendations provided by the Ombudsperson on this situation.

4.2. Freedom of assembly

Freedom of assembly is closely linked with the freedom of expression, as is stipulated in Article 11 of the Charter and Article 10 of ECHR, which defines that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The right to organization and freedom of expression are fundamental and comprise the foundation of democracy. Protests occur when a society has exhausted all other democratic means and they remain the sole mean, which people can express their opinions and concurrently hold accountable the people they elected in public functions.

Freedom of peaceful gatherings and participation in them is guaranteed by Article 84 of the Constitution of the Republic of Albania, as one of the fundamental human rights. Likewise, this fundamental right is protected by the European for the Protection of Human Rights and Fundamental Freedoms, ratified by the Albanian state by Law No. 8137, dated 31.7.1996, respectively in Article 11⁸⁵.

“1. Freedom of peaceful and weaponless gatherings and participation in them shall be guaranteed.

Peaceful gatherings in squares and public spaces are performed according to procedures stipulated by law”.

1. “Everyone shall have the right to peaceful gathering and organization with others.....

These rights exercise cannot be subject to any other limitations, besides the ones stipulated by law or the ones that are necessary in a democratic society, to the

Referring to the right to peaceful protest and the proportionate use of force, the European Union Resolution of 14 February 2019 stipulates that: *“freedom of organization must be protected, considering that a living civil society and a pluralist media play a vital role in the promotion of an open and pluralist society and public participation in the democratic process, as well as strengthening governments’ accountability.”*

The Ombudsperson deems that the freedom to gather/protest is a right, which should not be limited by state authorities in the form of a preliminary approval. In the framework, the institution focused on the events related to 2019 protests, which were increasingly organized by the united opposition during February - July 2019, and by the civil society, students, residents of the “New Ring Road”, Astir area, “River Bank” Tirana, who protested against the demolition of their homes, as a result of the project for expanding the “New Ring Road” and extending the “Zogu i Parë” Boulevard.

Upon the opposition’s decision to relinquish their MP mandates, their absence in the parliament for not recognizing the governance, increased the constant pressure of massive protests. Thus, starting from February 2019, continuous protests were organized at the national level, mainly before the Parliament, when plenary sessions were held.

Aiming at closely monitoring the situation, the Ombudsperson established ad hoc groups to perform on-site observations and to be present in every organized protest, as well as promptly verify cases where there were tips that state

benefit of national or public security for protecting order, preventing crime, preserving health or moral, and protecting others’ rights and freedoms..”.

authorities committed illegal actions⁸⁶. In the framework of this process, declarations were taken from detained/accompanied/arrested persons, protest participants, and court hearings were monitored in terms of evaluating the legality of arrests and determining the security measure to the persons under investigation. Such activities were carried out with the essential commitment of the whole institution staff because the capacities of the Special Section and NMPT were very limited.

The opposition protests started with the marching in the “Dëshmorët e Kombit” Boulevard, continuing with the protesters staying for a certain period of time before the Prime Minister’s Office or the Parliament, where there were physical fights with the police forces.

In the majority of protests, the State Police used large quantities of tear gas on the protesters. More often than not, tear gas was used even on minors, elderly, women or passersby. Protesters and passersby, who were in the areas where the tear gas was used, increasingly complained about its effects, such as headaches, stomach aches, tearing, and eye burning even days after the protests. It has been recognized that short-term effects of tear gas include irritation and burning of the skin, eyes and respiratory tract, excessive mucus discharge from the nose, disorienting, dizziness, difficulties in breathings, or loss of consciousness.

As far as this case is concerned, the Ombudsperson held its institutional stance, stating that tear gas

⁸⁶ In 2019, the Ombudsperson monitored about 31 protests that were organized by various subjects. Likewise, the institution performed 45 verifications at the police bodies regarding detained protester or the ones who were taken to hospitals and provided with medical care, and it also monitored 6 court hearings on evaluating personal security measures for arrested protesters.

has often been disproportionately used and prevented citizens from exercising their right to peaceful gathering.

Besides protests organized by the opposition, special cases of tear gas use were recorded, such as the ones during operations for demolishing dwellings, as a result of urban planning projects. Such cases include the works performed in building “New Ring Road” segments in Astir area, “River Bank”, Tirana. When residents forcefully opposed the demolition of their homes by the National Territorial Protection Inspectorate, assisted by the State Police, tear gas was used in order to disperse them, for purposes of enforcing decisions on demolishing premises or dwellings. In such cases, the State Police used tear gas indoors, where there people, including children, minors, and women.

The Ombudsperson expressed the strongest of indignation on the behavior of public authorities, especially on the use of the State Police forces to release tear gas in order for residents to forcefully leave their homes. This unprofessional and disproportionate action against small crowds of people, comprising residents/family members, is in complete violation of international acts and national legislation.

Likewise, disproportionate use of tear gas against large crowds of protesters in streets and alleys, with people passing by, has caused great damage, despite the category they represented, whether or not they were protesters, whether or not they had committed illegal acts, and whether or not they could be neutralized in another form.

What was noted by working groups of the Ombudsperson when monitoring the opposition protests was the fact that the quantity of lachrymator agents was high, especially in the

square before the Parliament, grenades were released in alleys, reaching apartments and neighborhoods near the protest area, thus the tear gas radius was broad.

According to international human rights acts and standards, use of force during gatherings/ protests should be in compliance with the principles of legality, necessity, proportionality and accountability. Moreover, it must be used for prevention purposes. Law enforcement bodies are obliged to avoid or minimize the use of force when the right to gather is exercised. Force should be the last resort, even in situations when such gatherings include acts of violence, and only when it is indispensable and proportionate with a legal purpose.

In gatherings, chemical irritants can be used solely for dispersal purposes and only when the level of violence is so high that law enforcement bodies cannot handle threat and they should directly aim at the aggressors.

According to national legislation, use of force by the State Police is direct proportionate action through physical force, other equipment or means, or firearms in compliance with the legislation in power. Police workers use force to fulfill their duties solely when it is indispensable and when other measures have been unsuccessful or impossible in accordance with the principle of proportionality, by selecting the necessary level of forces through scaled options.

We deem that the disproportionate use of tear gas in gatherings organized by citizens caused consequences to the lives and health of protesters. Meanwhile, this may affect the majority of citizens who peacefully protest, preventing them from exercising, hampering or limiting the constitutional freedom of gathering,

as a result of fearing harm to their health.

Findings regarding accompanying/detainment and arresting of protesters, as well as evaluation of their personal security measures

In conclusion of every organized protest, police forces, mainly undercover serious crimes officers, accompanied protesters, but often times the accompanied people claimed that violence was exercised on them, and that the detained people were not protesters. The Ombudsperson addressed several cases and complaints about violence exercise, at its own discretion.

These people were accompanied in various locations, starting from coffee shops, streets, bus stations, etc., but the paperwork that was later prepared by judicial police officers contained "arrested in flagrante delicto".

The Ombudsperson deems that the arresting in flagrante delicto by the state police, not when performing actions or omissions that are considered a criminal offense, but at a later time, after the protests had ended or late at night, does not meet the criteria of arresting in flagrante delicto, as defined by the Criminal Procedure Code and the Constitution of the Republic of Albania.

There were cases when measures implemented by the State Police for taking or guarding people in the hospitals were harsher than the measures taken against arrested or sentenced people, although the citizens in question were only accompanied (S.D. case).

The accompanying reports, drafted by police workers, sometimes reflect accompanying reasons, such as: "Suspected to have participated in the protest", "Accompanied after participating

in the protest", which are not in compliance with Article 109 of Law No. 108/2014 "On the State Police", as amended, indicating the no-one can be accompanied to the police station as a participant in a protest in a democratic country.

The clear definition of the accompanying reason is a legal obligation for State Police workers and concurrently a constant recommendation of the Ombudsperson, as it is related to a sensitive time of freedom deprivation for a limited time frame of up to 10 hours.

The number of accompanied people to the police station after every protest was relatively high, as was the number of arrested people. Based on the correspondence between the Ombudsperson and State Police, the total number of gatherings with or without the approval of the State Police for 01.01.2019 - 31.05.2019 in the jurisdiction of the Tirana Local Police Directorate was **247**, the total number of people accompanied to the police station, who participated in gatherings, was **397**, of which **153** accompanied people have been arrested in flagrante delicto as suspects of criminal offenses during gatherings.

It must be noted that the number of accompanied and arrested people refers to all organized gatherings, rather than the opposition gatherings, although they make up the highest number. It has been observed that the majority of arrested people, who participated in protests and were suspected to have committed criminal offenses, come from poor groups of the society or are students, and in some cases they are people with mental health problems.

In some cases, the premises where the detained/arrested people were held or treated, were inappropriate or had limited/ no capacity for the high number of people.

When communicating with the accompanied/detained people, the working groups noticed that some of them complained about violence, or lack of communication with their families, as they came from remote areas of the country. Their complaints have been collected by experts and treated through the required investigation actions.

More often than not, the drafted paperwork shows the late hours of interrogation by judicial police officers. Moreover, the paperwork includes the same criminal offenses for all arrested people, without any distinction.

The arresting in flagrante delicto minutes referred to some criminal offenses, such as: "*Organization and participation in illegal gatherings and manifestations*", "*Violent objection of public order police workers*", "*Destruction of property*", as well as "*Disruption of public order and tranquility*", committed in cooperation, stipulated in Articles 262, 236/2, 150, 274 and 25 of the Criminal Code, whereas during court hearings held in the Tirana District Criminal Court it was found that the Prosecution Office raised charges on the criminal offense "*Violent objection of public order police workers*", Paragraph 2, Article 236 of the Criminal Code.

Issues have been identified with the time that was reflected on the arresting in flagrante delicto minutes, because the time represented the arresting in flagrante delicto minutes drafting, rather than the accompanying. The Ombudsperson's recommendations for more than ten years both on the handled complaints cases, and the inspections performed by the State Police bodies, have requested that in cases when persons accompanied to police stations are arrested or detained, the arresting in flagrante delicto or detention minutes should

reflect the time of the accompanying, rather than the time when the arresting/detention minutes are drafted.

Recommendations of the Ombudsperson are based not only on universal law and the general principles of our criminal law, but also on specific provisions of the Criminal Procedure Code, respectively Articles 144, 250 and 259. Pursuant to Article 258 of the Criminal Procedure Code, the 48-hour time frame starts from the moment (time) of arresting or detention, when the prosecutor requests the evaluation of the security measure in the court of the city, where the arresting or detention happened.

The Ombudsperson deems that accurate minute taking and identification according to the stipulations of the Criminal Procedure Code and Police records is the only means to ensure bail implementation, according to the provisions of the law. The paperwork drafted by judicial police officers has been forwarded to the Prosecution Office, who presented the claims to the court for evaluating the arrest measures. The proceeding body recorded the criminal proceeding solely for one criminal offense, as is the *“Violent objection of public order police workers”*, stipulated by Article 236 of the Criminal Code. On the other hand, in several cases accompanying as participant in the protest was of concern.

For the most part, in its requests to the court, the Prosecution Office was based on evidence, such as the service reports drafted by the State Police, and in several cases there were claims of photographs and video footage. On the final conclusions, in addition to lawful evaluation of security measures, the Prosecution Office requested the security measure “prison arrest”, failing to reason and provide evidence for the measure of depriving freedom, as well as the

degree of risk of both the criminal offense and the individual.

In the framework of comprehensive investigation, we deem that the proceeding body must investigate cases of repressive approach by the state police against protesters, exceeding competences on the use of force during accompanying, arresting, and in other cases, in security rooms or during interrogation. Cases where there are evident signs of violence against citizens are not always evaluated, although the Prosecution Office must make all necessary verifications and initiate the criminal proceeding.

In such case, the Prosecution Office should be more rigorous and demanding in investigation, for purposes of clarifying the procedural position of the suspect for committing such criminal offenses, and police officers who exercised violence in order to protect their legal interests and rights. On the other hand, investigations should expand to include the criminal offense *“Failure to take measures to stop the illegal situation”* in cases when State Police leaders are present when their subordinates commit illegal actions.

With respect to such concerning issues, we must note some findings and conclusions by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁸⁷, which are on the same line with our institution’s findings. In its published report, CPT recommends that Albanian authorities take the necessary steps for training to relevant prosecutors, in order to ensure:

⁸⁷ The CPT report, published on 17.09.2019, following visits in some freedom deprivation institutions in Albania during 20-30 November 2018. (<https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-alban-3>)

complaints and other information on police maltreatment shall be effectively investigated;

any time prosecutors take complaints or other information indicating maltreatment by the police, they should order a forensic examination.

Generally speaking, CPT expressed their remarks on the fact that the review of claims for police maltreatment had been presented to the same prosecutor, who was responsible for the criminal investigation on the person, who claims to have been maltreated. According to the prosecutor, who the delegation held a meeting with, this was a normal practice in the Albanian judicial system. According to CPT, such dual responsibility may violate the impartiality of the prosecutor in question. Thus, the **Committee recommends** that cases of potential maltreatment by the police shall be investigated by prosecutors, who are not related to criminal investigations against victims, who claim to have been maltreated.

CPT recommends that Albanian authorities take the necessary steps to amend the relevant legislation on the forensic expertise, so that:

the report drafted by forensic doctors in cases of potential maltreatment by the police to comprise:

complete description of objective medical findings based on a thorough examination;

description of maltreatment claims or other statements made by the concerned person, regarding the injury causes;

observations of doctors in the light of (i) and (ii), by showing the compatibility scale between

every claim/declaration and objective medical findings;

persons claiming that they have been maltreated by the police shall have the right (at their own expenses) to a forensic examination by the Forensic Institute, without a preliminary authorization by the police or the prosecutor.

Meanwhile, when monitoring court hearings for evaluating personal security measures, the following was found:

The presence of a high number of detained/ arrested people, with overcrowded rooms, with the number reaching over 40 people at the same time.

The available time to listen to every protester was relatively insufficient, 2-3 minutes for each of them, and often times they were required not to repeat themselves or the lawyer to talk only, thus limiting their right to be heard.

In conclusion, the court deemed legal every arresting in flagrante delicto, although the presented paperwork did not reason the flagrante existence conditions. The "obligation of appearance" was mostly imposed for the majority of them, rather than "prison arrest". The focus of our work during the court hearings was the observance of the right to a due legal process.

Handling and assessment of cases related to the freedom of gathering by the Ombudsperson

Regarding the 2019 protests, 36 cases were recorded at its own discretion and on the basis of

complaints by various subjects, such as natural and legal people (NGOs, trade unions, students, citizen groups, etc.), who had claims against the State Police bodies, and specifically for:

physical violence and psychological or physical maltreatment at the moment of arresting/accompanying or interrogation by police bodies;

prevention of the constitutional right to gathering;

accompanying exceeding the legal time frame;

harming of citizens' health due to the disproportionate use of tear gas during gathering by the State Police.

handcuffing the accompanied people, when taking them to the Trauma University Hospital, etc.

In some cases where violation of citizens' legal rights have been proven, it has been found that central and local structures of the State Police, mainly Tirana Local Police Directorate, had prevented citizens' right to gathering, thus violating one of the fundamental human rights and freedoms; violated the principle of proportionality by exceeding the exerted physical force to citizens and releasing tear gas indoors. Some of the causes of such violations by police workers are lack of information on normative acts, regulating the activities of the State Police, and negligence to implement legal provisions and duly fulfill their legal mission and duties. Moreover, another cause is lack of control by superior structure of local and central bodies of the State Police.

Likewise, the Ombudsperson concluded that there is yet a need to show due care for the means used by the Police in managing protests to guarantee that the media accurately reports the situation. On the other hand, the Police committed unprecedented acts of preventing journalists or other workers of the free media from performing their duties. Prevention of the media from reflecting events with any type of excuse is in violation of the principles of media freedom, as the central pillar of democratic standards of a country. In some situations, the Police was observed to create unreasonable obstacles for representatives of the Ombudsperson, who have the constitutional mandate to timely and effectively collect testimonies of the detainees and injured people in health centers.

As regards cases where citizens' rights violation was observed, the Ombudsperson gave relevant recommendations to competent bodies for taking the necessary criminal, administrative and organizational measures, for purposes of restoring citizens' violated rights in the country, punishing those who violated the law, and generalizing them in order to avoid recidivism in the future.

Some of the cases of such concerning issue are as follows:

The case started at the discretion of the Ombudsperson upon the media notice that Tirana Local Police Directorate refused a peaceful gathering at the "Dëshmorët e Kombit" boulevard, on 24.12.2018, called for by some Diaspora citizens.

The Ombudsperson deems that citizens' right to gathering cannot be unjustifiably limited by authorities, which are responsible by law, to ensure their progress. Referring to the

spirit and purpose of normative acts in power that guarantee and regulate the freedom of gathering, the State Police is tasked with ensuring citizens the freedom of/right to gathering and the freedom of movement safety, as only this way, can it be in compliance with the law. As a consequence, the police bodies must find the modalities to manage both fundamental freedoms and not prevent citizens from exercising them. As regards the case in question, Tirana Local Police Directorate not only failed to guarantee these two fundamental freedoms, as is legally responsible for, but it also prevented Diaspora citizens from organizing their gathering.

In conclusion of the administrative investigation, we recommended to the General Director of the State Police, *to take measures for the State Police to have fair stance and provide the correct implementation of Law No. 8773, dated 23.04.2001, "On Gatherings", in order not to prohibit or limit citizens' organization or participation in peaceful gatherings, for purposes of protecting fundamental human rights and freedoms, as well as the freedom of gathering and free movement.*

Based on the response of the General State Police Directorate, we were informed that our recommendation was welcomed and they took the necessary measures by instructing central and local structures to show a professional behavior in all citizens' gatherings.

Cases that were made public in the media, according to which, in violation of the law, the State Police had used tear gas during the operation of the Tirana Municipality Territorial Protection Inspectorate for the demolition of dwellings in the "River Bank" area and Astir area, in Tirana. According to the residents who protested against

the demolition of their dwellings, police workers released tear gas indoors, where there were people, including minors.

Upon reviewing such cases and referring to legal and sub-legal acts in power, it was concluded that the legislation allows the State Police to use tear gas, even indoors or semi-open premises, as all preliminary measures have been used and lachrymator agents are the last resort for reaching the purpose of the approved operational plan, or when there is a sudden change of circumstances and the use of lachrymator agents prevents the increase of violent actions against police forces. In all situations, one should bear in mind that tear gas use is an added risk to residents' lives and health. As was proven by Astir area residents' testimonies and the footage published on the media, who documented the operation where tear gas was released, the probability to leave from indoors where tear gas was used was low, especially for vulnerable people.

Even people who were in terraces or rooftops, as was the case of the "River Bank" operation, found it difficult to orient under the tear gas effect and they had low vision in order to find a safe route. Moreover, medical teams may delay in finding and assisting injured people in an area where there is a large number of buildings.

We concluded that the State Police did not implement the principle of proportionality in the cases of residents of "River Bank" and Astir areas, as they used tear gas. In both cases, we made the following recommendations to the General Director of the State Police:

Implementation of the legal principle of proportionality when police workers release tear gas;

Responsible structure should analyze cases of tear gas use in Local Police Directorates.

The General State Police Directorate informed us that our recommendations have been submitted to the local police structures for implementation in their future services. Moreover, we have been informed that the police structures, who served in the two operations, have performed relevant analyses of the taken actions.

Some suggestions on legislation improvements

For purposes of improving the legislation in power and guaranteeing the right to gathering, the Ombudsperson reiterates the need for legal amendments of the Criminal Code and Law No. 8773, dated 23.04.2001 "On Gatherings", as amended.

Amendments to the Criminal Code of the Republic of Albania refer to the amendments to Article 262 "Organization and Participation in Illegal Gatherings and Manifestations", which addresses the organization of peoples' gatherings and manifestations in squares and public spaces, as limited by the approval of the police body. The Prosecution Office keeps proceeding protesters on the criminal offense stipulated in this article, although it is in complete violation of the Constitution, international acts and the spirit of the law "On Gatherings". This finding is the task assigned by the relevant report of the European Commission for Albania. Likewise, although it is mainly in compliance with international instructions on the right to organization or freedom of gatherings, the law "On Gatherings", as amended, should address citizens' right to organize and participate in peaceful spontaneous gatherings or counter-protests.

Amendments to Law No. 8773, dated 23.04.2001 aim at further improving the freedom of gatherings, in compliance with international standard, according to the following suggestions:

defining the role and authority of the State Police in relation to notifying on organizing gatherings in squares and public spaces.

Requests for notices on gatherings should be simplified, required information should be reduced and relevant to peaceful gatherings, rather than hampering ones.

In the framework of citizens transparency in all legal and sub-legal acts, policies, decisions and other information related to the right to peaceful gathering should be publicly available and easily accessible.

the legal framework should ensure protection for all citizens, who organize or participate in peaceful gatherings, including spontaneous ones, counter-protests and gatherings without an identified organizer, in compliance with international instructions on the freedom of and right to gatherings.

law "On Gatherings" should provide clarifications and instructions on the process of appealing against state authorities decisions, regarding possible limitations of gatherings.

In the framework of such findings, we believe that we have to do with the violation of rights, stipulated in Articles 3, 5, 6, 10 and 11 of the

ECHR: prohibition of torture or inhuman or degrading treatment or punishment, right to liberty and security, right to a fair trial, freedom of expression and freedom of assembly and association.

4.3. Steps taken by the Ombudsperson in identifying damages caused by the 26 November 2019 earthquake and measures taken by relevant institutions to address them

The tragic earthquake in the morning of 26 November 2019 had considerable human and material consequences, more specifically: 51 victims/casualties, about 17 thousand displaced people, 913 injured people, and considerable material damage. Pursuant to DCM No. 750, dated 27.11.2019 "On Declaring the Natural Disaster State", the Albanian government declared the state of emergency in the areas affected by this natural disaster, and legal and sublegal acts were drafted for the normative regulation of such situations.

Based on the competences defined by the Constitution and the law, the Ombudsperson, *inter alia*, has the mandate to address cases related to the right to good governance and the right to appropriate housing.

In the framework of such activity and upon the public supportive response, working groups established by the Ombudsperson performed monitoring immediately after the natural disaster in the affected municipalities, in order to watch closely the situation and consequences of this disaster. Moreover, they monitored measures taken by state institutions

in an effort to address the consequences of the disaster. More specifically, upon the order of the Ombudsperson, some working groups were established, and they comprised assistant commissioners/experts from several sections, under the supervision of relevant sections commissioners depending on the addressed issues and cases. These groups' work focused on the following municipalities: Tirana, Kamza, Durrës, Kruja, Shijak, Kurbin, Vora and Lezha.

The focus of the monitoring included the following issues:

- measures taken by state structures for housing residents affected by the earthquake (their housing in hotels, accommodation in tents, rent bonus, etc.);

- monitoring of the dwellings damage identification process, followed procedures/encountered issues;

- measures taken for ensuring the necessary living conditions to families affected by the earthquake (food, clothes, health care, education, etc.);

- measures taken for eliminating psychological consequences and trauma, caused by the disaster on children and their family members;

- meetings with representatives of the Operational Office for the management of natural disasters, and local power representatives as well as affected areas residents.

The monitoring was performed based on the following activities of the working groups, such as:

meetings with government representatives,
chairpersons of the Emergency
Headquarters in the relevant regions;

on-site inspection of responsible institutions
at the local level and the settings where
citizens have been accommodated, whose
dwellings have been damaged by the
earthquake, more specifically: community
centers, administrative unit, hotels, tents,
and other housing premises;

accurate assessment and analysis of
information and data, paperwork and
declarations made available by responsible
institutions, in order to clearly identify the
actions and omissions by them.

Moreover, the Ombudsperson reviewed at its own discretion some cases, which have been made public by the written and visual media, and is currently reviewing several complaints submitted by people affected by the natural disaster. These cases are subject to administrative investigation, because we are still waiting for the reply of the responsible institutions, whom we requested information and explanations from, addressing the concerns arisen by complainants on violation of the legal rights and interests. Although we submitted requests for information several times, it must be noted that besides Durrës Municipality, which provided partial information, other responsible institutions did not respond, thus hampering our work.

The Ombudsperson will continue identifying issues in this case and draft a special report, containing relevant findings, conclusions and recommendations for responsible institutions.

However, monitoring groups have preliminarily identified some findings/issues, as follows:

State of emergency situations are stipulated by the Constitution of the Republic of Albania, respectively in Articles 170-176. Article 170, Paragraph 1, explicitly stipulates that emergency measures are imposed, inter alia, as a result of the natural disaster. Furthermore, Paragraph 2 of the same article stipulates that: *“principles of operation of public organs, and the extent of the restriction of human rights and freedoms during the existence of the situations that require extraordinary measures, are defined by law; a law shall define the principles, areas, and manner of compensation for losses caused as a result of the restriction of human rights and freedoms during the period in which extraordinary measures are imposed; actions taken as a result of extraordinary measures shall be in proportion to the level of risk and shall aim at re-establishing conditions for the normal operation of the state as soon as possible”*.

It has been found that upon the Constitution approval in 1998, no complete or unique law has been approved as defined by Article 170 of the Constitution of the Republic of Albania, thus we believe that is a significant constitutional vacuum. However, even though they are not fully compliant with the above mentioned article and they do not address all requirements of the above constitutional norm, the Parliament of the Republic of Albania dwelt upon some elements of addressing this situation in Law No. 45/2019, “On Civil Protection”. It must be noted that this law does not defined Article 170 of the Constitution as its legal basis. We think that this legal vacuum should be filled as soon as possible and the Ministry of Justice should prepare relevant legal initiatives for drafting the relevant legislation, which should essentially address matter of Article 170, Subparagraphs *b* and *c* of the Constitution.

In the monitoring stage, it was found that all sublegal acts, pursuant to the provisions of Law No. 45/2019, "On Civil Protection", had yet to be approved. This law was approved on 18.07.2019 and entered into force on 02.08.2019. This has led to lack of functioning and organization of civil protection structures at the central and local levels, according to the definitions of the legal framework in power. These structures' capacity is minimal and their material basis is not appropriate for effectively managing such events, in terms of search and rescue, as well as identifying dwellings that are unfit for living, in addition to first aid for people who became homeless due to the earthquake. Despite efforts and mobilization, structural and financial gaps of the central and local power were obvious. Although at a lower level, previous experiences were not used to create and ensure an adequate response to such situations. Over the days and upon added mobilization, some aspects of the situation improved. Great work has been done in terms of planning projects for addressing this situation, which will be assessed during project implementation, which were supported. In support of this, a minister without portfolio will be created.

The most sensitive issue that impacted on almost all areas affected by the earthquake, especially the municipalities of Tirana-Kamza, Durrës-Lezha, and Vora-Shijak, was housing.

Data shows that affected families, whose homes suffered serious damages, live in poverty. Housing issues were closely related to the winter weather and affected families were exposed to the cold and rain, without having the necessary protection.

Many municipalities had not approved the rent bonus and had not performed

verification/expertise on the dwellings' state, in order to conclude whether or not they were safe to live in, and which categories would benefit the bonus.

Another concerning problem was low income. The earthquake significantly harmed life in rural areas, which were inclined to poverty since most of them generated income from livestock.

Likewise, educational infrastructure was of concern too. Parents were concerned of the physical safety of school buildings in the relevant municipalities.

The responsibility of state authorities in relation to the population of the affected areas was concerning. The affected population in remote rural areas did not obtain sufficient information or support from competent civil protection bodies, as a response to the earthquake.

Hygiene and sanitation conditions were another problem faced by people, who were housed in adapted premises, such as medical clinics, tents, etc.

In cases of assessed dwellings, there were disputes regarding their assessment, as residents claimed that their homes were not safe to live in, even though the results of the second assessment deemed them safe.

Moreover, many municipalities lacked post-traumatic psychological aid, especially for minors, who make up the most sensitive part of the population and need special treatment.

As per the above, following this investigation, the Ombudsperson will draft and present a special report to the Parliament.

4.4 Acting in the quality of observer during the draw for the selection of the Justice Appointments Council (JAC) members and in the quality of participant in the meetings and activities of this Council⁸⁸

In the framework of 2016 Constitutional amendments, the Ombudsperson obtained a specific mandate, namely **the mandate of observing the procedure of drawing the lot both during the meetings and activities of the Justice Appointments Council**⁸⁹, as detailed by Law No. 115/2016 “On Justice System Governance Bodies”.

Reporting on the observation of JAC activities comprises an important mechanism, not only for effectively presenting findings (as an indicator for the successful fulfillment of this Constitutional and legal task by the Ombudsperson), but also for making key recommendations on the progression of the judicial system reform, from the constitutional and legal perspective. This role may serve as a valuable tool for the dialog among actors and stakeholders in this Reform.

The spirit conveyed by the Constitution provisions regarding the justice reform, refers to and defined “atypical” competences of the Ombudsperson,⁹⁰ which are directly related to

⁸⁸ This title is a summary of the special report of the Ombudsperson on this issue

⁸⁹ See Article 149/d, Paragraph 5 of the Constitution of the Republic of Albania

⁹⁰ Different countries have other practices,

this reform that is significant for our country and consolidation of the rule of law, by combining and complementing them in reforming processes, with the mandate and basic tasks of the Ombudsperson, as defined by Law No. 8454, dated 04.02.1999 “On the Ombudsperson”, as amended.

It must be noted that the current procedure of selecting members of the Constitutional Court and High Justice Inspector, as provided for by the Constitution and Law No. 115/2016 “On Justice System Governance Bodies” is a very serious step for guaranteeing an objective and merit-based selection. This procedure is a significant step forward for regulating the selection of members of the Constitutional Court and High Justice Inspectorate. Various aspects addressed in this report must be viewed in light of possible improvements of these procedures’ implementation in compliance with legal stipulations.

The first task in this process is related to monitoring the drawing of the lot for the selection of Justice Appointments Council members, with relevant reports on the lots of December 2017 and December 2018 raising a series of concerns (the main one being failure to implement legal criteria for drafting candidates lists, presented by proposition bodies, without any explanation; in the mean time, more limited criteria were used for some represented categories and bodies).⁹¹

As regards JAC activities and work, it must be noted that they were voluminous and were performed for the first time, which led to

⁹¹ as is the case of Kosovo Ombudsperson, who has broader competences, since they are a member of the Commission for the Selection of the Constitutional Court

For more information, please see relevant reports on drawing the lot, on the institution’s site

multiple challenges in correctly interpreting criteria, conditions and procedures.

The first issue during 2019 was concerned with the need to regulate JAC activities with other procedural acts. They had to ensure the observance of the due legal process standard and the aim to provide high professional and moral quality in the composition of the Constitutional Court, and High Justice Inspectorate selection.

With the support of Euralius mission in Albania, which prepared the first drafts of such acts, JAC compiled detailed acts on its activities, which had an essentially higher quality than drafts. Needless to say, acts stipulated procedures in the circumstances where the selection process had yet to be effectively conducted, and as a result some issues could have been regulated more in detail, in some aspects. Some of them led to a major crisis in the country and produced a tough and harmful debate, which did not increase citizens' trust to new bodies that were established as a result of the Justice Reform implementation, or to the Constitutional Court.

For purposes of obtaining opinions regarding this issue, the Parliament and the President of the Republic requested the opinion of the Venice Commission, Council of Europe, whose final opinion shall be provided in June, this year. The Ombudsperson showed maximum dedication and commitment in their efforts to constructively contribute to responsibly implementing each task in compliance with the major goals of this reform. On the other hand, despite the great and dedicated work of all JAC members, other meeting participant, legal counselors and JAC secretariat, the process of selecting Constitutional Court members had its shortcomings.

Law No. 115/2016 on JAC stipulates a body which does not hold open meetings, and JAC meetings are closed, without the presence of interested third parties (unlike the activities of the High Prosecution Council or High Judicial Council). The main causes of such selection aimed at having a body, whose decision-making was not politically influenced, where members were free to make the assessment of candidates to become members of the High Court and High Justice Inspectorate, but based on the law defined criteria (see Articles 218 and 229 of Law No. 115/2016).

On the other hand, in order to avoid another major problem that justice system governance bodies had in the past, especially corporatization, the decision was made for the body not to operate behind closed doors and without accountability and the law stipulated various mechanisms and detailed reasoning on decisions that allowed or forbid the candidacy or assessment decision, publication of meetings notices and minutes, as well as presence of the Ombudsperson in the capacity of the participant during the meetings and activities⁹². The results of the regulations approval process were that JAC did not guarantee mechanisms for ensuring satisfactory transparency. On the contrary, upon their approval, this body was even more closed than what was provided for by legal stipulations. This report must note the fact that these acts constrained the presence of the Ombudsperson and other guests solely in one part of the Council activities, and the "Counseling Chamber" concept was introduced to the meetings of this administrative body (which is not stipulated by any law), in violation of the legislator's aim for guaranteeing and protecting transparency in

⁹² See Articles 232, 233, 240 Paragraph 7 of Law No. 115/2016, "On Justice System Governance Bodies"

all JAC activities. Moreover, the final version of the regulation limited Ombudsperson's chance to provide opinions to the Council solely on formal violations of the candidates' verification procedure, rather than the essence of the case or the issue raised for discussion by rapporteurs. Considering that the above stipulation is in violation of the competences of the Ombudsperson, in December 2019, our institution filed a lawsuit to the Tirana Administrative Appeal Court, with the object of revoking some of the articles in three of the approved regulations, by the Justice Appointments Council, which are now under adjudication.

Moreover, the following issues were encountered during 2019: - Failure to timely transcribe minutes of JAC meetings (it took 11 months to transcribe and publish meetings of this body, and the head of JAC refused to provide our institution with the minutes); - irregularities in sending meeting materials (materials were incomplete, and the preliminary delivery deadline was not met).

No participant in the process obtained any type of explanation (neither a public one or on the meeting without third parties presence) on what caused the head of JAC to delay sending the final lists to denomination bodies many days after 21.09.2019 (15 days later to the President of the Republic and 21 days later to the Parliament of the Republic of Albania). The process exceeded deadlines provided for by Law No. 8577/2000 "On the Organization and Functioning of the Constitutional Court in the Republic of Albania", and Law No. 115/2016 "On Justice System Governance Bodies", (the review of practices followed by JAC during 2019 showed that the deadline from the moment of sending the candidates lists from denomination bodies for every vacancy in the Constitutional Court has been considerably exceeded, but we deem

that this issue is related to short legal deadlines stipulated by the legislator, rather than JAC performance in 2019).

Another issue we found was *candidates running for members in the Constitutional Court, for several concurrent vacant positions*. Considering this problem in practice, we think that such situation should be better regulated from a legal perspective.

Moreover, both Parliament vacancies had fewer candidates on the list as compared to that of the President of the Republic, and each of the candidates in the Parliament's lists was included in the President's lists. Thus, there is no chance for the listed materials not to be the same and the decisions not to be reasoned, which shows that there were no objective reasons for the list to be submitted to the Parliament 6 days later than to the President of the Republic.

At the end of the process of reviewing candidates for members of the Constitutional Court and High Justice Inspector, some of the candidate (9 of them) appealed against the JAC decision on prohibiting their candidacy, to the Tirana Administrative Appeal Court. Legal proceedings on such appeals were monitored by the Ombudsperson.⁹³ At the end of these legal proceedings it was found that only one of the filed lawsuits was accepted, whilst the rest were rejected. However, lawsuits identified some issues and another perspective of the candidates regarding how they considered the process, and the concept of "serious procedural violations", which has never been addressed in the framework of this procedure⁹⁴.

⁹³ In one of the lawsuits filed to the court, the Ombudsperson was called as a party in the legal proceedings in the capacity of the «Interested Party» Article 338 of Law No. 116/2016 explicitly stipulates that *Complaints against JAC decision for pro-*

Another essential unsolved problem regarding this process is whether the proposed candidates from the judiciary power should have been passed both levels of the reevaluation process or should have successfully passed one level only. Although JAC was clear that it would be ideal to have candidates from the judiciary power who have passed both levels of the process, its duration would lead to the suspension of the process for the relevant vacancy. On the other hand, it is clear that this complex issue cannot be solved without the benevolent cooperation of the Appeal Chamber and JAC, in order to enable candidates from the judiciary power to be vetoed with priority and their appeal process to be reviewed with priority, regardless of the decision-making of the Special Qualification Commission. The JAC meeting on 24.07.2019 foresaw the review of candidates, who had not completed the transitory reevaluation process for judges and prosecutors in the Republic of Albania. The position of the Ombudsperson, depending on the identified issue in this case, was related to the suspension of the review process of these candidacies and review of Paragraph 112, of Decision No. 4, dated 11.03.2019, of JAC.⁹⁵ In any case, the fact that one of the JAC proposed candidates in one of the vacancies was selected and then dismissed of the position by the Appeal Chamber, which indicates that the process needs to be thoroughly planned and be result of a correct and benevolent cooperation, in order to take the reform forward as a whole, rather than as a fragmented one.

Another finding was that according to Article 7/b Paragraph 2, 7c Paragraph 5 and 7ç Paragraph 1 of Law No. 8577/2000 "On the Organization

hibiting candidacy solely for serious procedural violations are performed only at the Administrative Appeal Court.

Reasoning on the legal basis of this position has been provided in detail on the full report regarding 2019 JAC activities

and Functioning of the Constitutional Court in the Republic of Albania", as amended: «*Public institutions that are related to the justice system, civil society organizations operating in the area of human rights protection or established for purposes of protecting interests of justice system users, may present their opinions on the candidacies to the Justice Appointments Council*». In 2019, the two above-mentioned categories (a. public institutions, b. civil society organizations) are not found to have presented their opinions on the candidacies.

Article 7/ç of Law No. 8577/2000 "On the Organization and Functioning of the Constitutional Court in the Republic of Albania", as amended, defines the selection procedure by the High Court. According to this article: «*The chairperson of the Constitutional Court, according to this law, shall inform the Chairperson of the High Court on the vacancy, who will then announce the opening of the application procedure on public information means and official website*».

By 26 July 2019, the former Chairperson, Mr. Zaganjori, made several announcements on the High Court website, whilst after he left, the current chairperson of this Court, Mr. Ardian Dvorani, who was concurrently head of JAC for 2019, did not only discontinue this process (no more announcements), but he also did not provide any explanation (neither during JAC meetings, nor on the JAC 2019 annual report) on this omission.

Filling vacancies in the Constitutional Court is vital for the country and for ensuring a functional justice system. This high number of vacancies for a long time without an effective court leads to insecurities regarding the practice or jurisprudence of the court. Under such circumstances, even after the number of its

members was complete (it seems difficult for this court to be completed with 9 members within 2020), it will take significant time to consolidate its decision-making as a solid body.

During 2019, JAC had a high work volume, based on drafting the sub-legal framework and reviewing and assessing candidates. The situation of the justice system (especially the dysfunction of the Constitutional Court) led to a very high number of vacant positions candidates, which implies an unexpectedly high work volume for JAC.

Since the legislation on the justice reform is new and is applied for the first time, its practical implementation led to a series of issues, which gave rise to different positions.

In the framework of issues mentioned in this material, as a result of analytically addressing the created situation, the Ombudsperson gives the following recommendations to JAC for 2020:

Regarding the correct implementation of the normative acts in force:

Reviewing the request of the Ombudsperson on competences limitations by JAC in 2019, through Regulations, and more specifically, removing the “counseling chamber”, which is a mechanism that is not stipulated in any normative act (Constitution or law) regulating JAC work.

Drafting a regulation on the manner of communication within JAC (including communication among rapporteurs and the chairperson, rapporteurs and legal counselors, etc.).

Taking measures on arranging JAC archive

in compliance with the stipulations of the legislation on archives.

Regarding requests addressed to JAC, the chairperson of JAC should raise them for discussion during JAC meetings, in compliance with Article 229 of Law No. 115/2016.

Notices for JAC meetings should be performed within the stipulated deadlines by Article 11 of the Internal Regulation on the functioning of Justice Appointments Council. In cases when this deadline is impossible to be met, the reasoning should be provided in line with the relevant stipulation and Paragraph 11 of the above-mentioned Regulation.

Materials for JAC meetings should be timely distributed (at least according to the deadlines stipulated in Paragraph 11 of the Internal Regulation on the functioning of Justice Appointments Council) and they should be preliminarily numbered/inventoried.

Measures should be taken in order to fully meet the due process standards regarding the procedure of candidates' verification, the content of the final report for each candidate, candidate notification, as well as provision of effective chances to oppose relevant findings.

Access should be provided to audio minutes and minutes of meeting participants or guests

Minutes should be kept in line with legal stipulations, essentially ensuring transparency as one of the basic elements.

Legislative recommendations (on amendments to JAC Regulations):

In cases when JAC members are absent in meetings, their absence notice should be associated with justifying paperwork.

Paragraph 13/2 of Regulation No. 1 of JAC, shall be amended, according to which: *“2. If deemed reasonable by them, the Ombudsperson shall partake in all Council meetings. **In their absence, the Ombudsperson may be represented by one of the commissioners**”*. In compliance with provisions regulating the representation institution, the Ombudsperson is free to assign their representative, rather than JAC do that. Such a definition by JAC is not in line with Article 118 of the Constitution because the law did not authorize JAC to defined such matter.

As regards meetings minutes: Specifying the obligation to draft the two following types of minutes on the Internal Regulation on the functioning of JAC: 1. *Full meeting minutes* and 2. *summarizing minutes*.

Other recommendations:

Should JAC deem human and financial resources insufficient for qualitatively and timely performing law-defined tasks and accounts, they shall promptly request the fulfillment of these needs.

Stipulations should be made on proportionally reducing the workload in Courts or Prosecution Offices, where they exercise their functional duties for JAC members in general, but rapporteurs in particular.

As regards 2019 identified issues, which legal amendments are needed for, JAC presented an annual report with relevant findings, which we support in their entirety.

The law should clarify the issue with candidacies for more than one vacant position.

Better deadlines should be stipulated for candidates and the Council with regards to candidacies assessment process.

The legal framework of other law-enforcement bodies should be guaranteed to directly communicate with the Council, or legal stipulations on this regard should be amended, in order for these guarantees/criteria not to be left on paper only.

Review of criteria for the Constitutional Court members in order to ensure the opportunity of individuals' competition in groups of individuals with similar careers, and definition of various assessment criteria for judges and non-judges.

A reasonable deadline must be defined for the period during which candidates will be subject to wealth control.

Unification of the procedure for sending the final list to the denomination body.⁹⁶

Defining the data of the start of the

⁹⁶ In the case of the Constitutional Court members list, it should be stipulated for it to be immediately sent, whilst as regards the High Justice Inspector list, it should be sent within 3 days (see Articles 2 of Law “On Justice System Governance Bodies” and Articles 7b 4 and 7c 4 of Law No. 8577, dated 10.02.2000, «On the Organization and Functioning of the Constitutional Court in the Republic of Albania»

unblocking mechanism deadline for each denomination body (see Article 201 2 f of Law No. 115/2016, “On Justice System Governance Bodies” and Articles 7b 4 and 7c 6).

In conclusion of the above, based on the specific obligations in this process defined by the legislation and as an independent Constitutional institution, with the main pillars of its activity being the protection and prevention of violations and promotion of lawful rights and freedoms of individuals, which are viewed as closely related to the well-functioning and good administration of the justice system, the Ombudsperson ensures that the Justice Reform System continues to be one of the main objectives of our institution’s work.

The Ombudsperson should be considered in the success of this reform implementation process, which in itself has two main goals: fight against “corporatization” and full transparency in decision-making, in order to ensure the expected and necessary reliability to the justice system in the country. We consider vital for the Albanian society to regain trust in the justice system in the country, thus we are trying to contribute in monitoring many processes in the framework of the Justice reform.

4.5. Monitoring certain aspects of the transitional re-evaluation of judges and prosecutors process in the Republic of Albania

The Ombudsperson has paid special attention to the implementation of the justice reform in general, and the establishment of institutions for the transitory reevaluation of judges and

prosecutors and the functioning of these institutions. The Ombudsperson plays a dual role in this reform; **Firstly:** As a Constitutional Institution in protecting and guaranteeing Human Rights and Freedoms, and **Secondly:** As an institution, which the Constitution of the Republic of Albania and the Legislation on the Justice Reform granted a certain role and competences in this process to. Moreover, the Ombudsperson, as a national human rights institution, ensures the observance of the highest state standards of respecting human rights, with a primary role being played by the judicial system, which citizens can turn to in order to realize their rights. The essential goal of the justice reform is restoring citizens’ trust in the justice system, which is one of our work’s priorities.

In the framework of this constitutional and legal role, our institution followed and monitored the implementation of the justice reform in all its components, but in this section we will focus on reevaluation institutions, which have been established for purposes of the transitory reevaluation of judges and prosecutors in the Republic of Albania. More specifically, we followed and monitored with special attention the hearings of the Independent Qualification Commission (hereinafter referred to as IQC), as well as public sessions by the Appeal Chamber (hereinafter referred to as AC), and we also paid great attention to the complaints of the Public Commissioners Institution (hereinafter referred to as PCI).

The 2019 monitoring provided the following data:

Independent Qualification Commission

(IQC) completed the administrative investigation process and reevaluated

126 reevaluation subjects, of which 51 are confirmations, 47 are dismissals, 11 are process discontinuation, because the reevaluation subjects resigned (prior to the start of the process or in advanced stages) and the process has been discontinued, according to stipulations of Paragraph G of the Constitution Annex. In the mean time, a final decision has not been made on 16 cases (as reevaluation subjects have reached the retirement age) and a subject has been suspended, according to the definitions of Paragraph E/1 of the Constitution Annex.

Public Commissioner Institution (PCI) has been informed through IQC notice on 127 decisions during 2019, and in compliance with its institutional and legal duties, it proceeded reviewing these decisions and reaching the following final decisions:

- 13 appeals in 2019
- declaring 114 non-appeal decisions
- 4 decisions in the pipeline
- 361 reports from the public have been lodged to this institution in 2019.

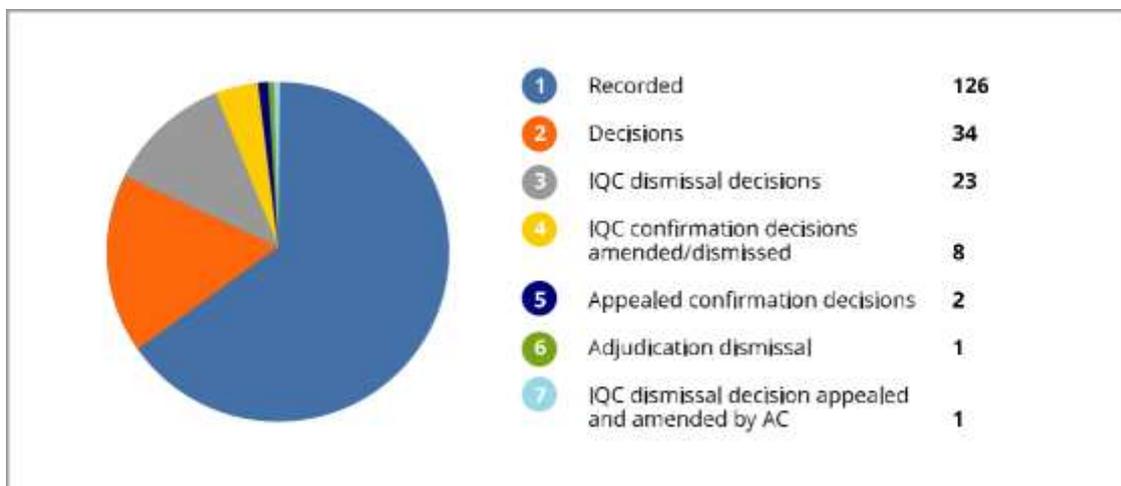
Appeal Chamber (AC) recorded 60 cases in 2019, of which:

- 13 appealed cases by PCI
- 47 appealed cases by reevaluation subjects
- 1 appealed case by both parties.

In 2019, AC made 34 decisions, of which:

- 23 dismissal decisions of IQC have been upheld by AC;
- 8 confirmation decisions of IQC have been changed and AC had rule on the dismissal of the reevaluation subjects;
- 2 IQC decisions on confirmation of reevaluation subjects, appealed by PCI, have been upheld by AC solely upon the request of the Public Commissioner to uphold the decision;
- appeal adjudication dismissal has been ruled on one decision

No dismissal decision of IQC is found to have been amended and AC to have ruled on the confirmation of the reevaluation subject.



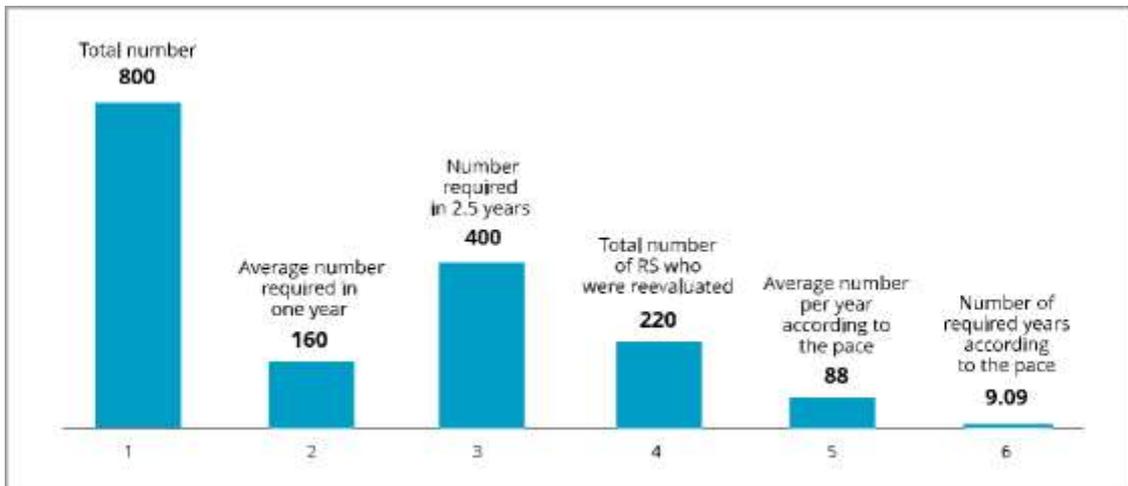
Graphic representation of decisions made by AC in 2019

Monitoring hearings at IQC.

In 2019, 15.75 %⁹⁷ of the total number of reevaluation subjects have been reevaluated, whilst if we refer to 2018, a total of 92 subjects (11.5%) have been reevaluated, which is not a sufficient number to complete the process within the legal deadline, stipulated in the Constitution and Law No. 84/2016 “On the Transitory Reevaluation of Judges and Prosecutors in the Republic of Albania”. Article 70/1 of this law stipulates: “Reevaluation institutions stop functioning according to Article 179/b, Paragraph 9, of the Constitution.”, whilst Article 179/b, Paragraph 8 of the Constitution stipulates: “The mandate of the members of the Independent Qualification Commission and Public Commissioner is 5 years from the date of the start of their functioning”.

400 reevaluation subjects should have been reevaluated, but the real number is 220, which is far from the proportional number.

As was reported above, in 2019, IQC completed the judicial investigation solely on 99 subjects, whereas the remainder 27 subjects have not been subject to a full administrative investigation, because they either resigned or reached retirement age, and for some of them the process has been discontinued at the initial stage. In the best scenario and hypothetically speaking, if the following years see the same progress and if we are lucky enough for other subjects to resign or reach the retirement age, it would take at least 4.6 years for the process to finish. However, if we are realistic and refer to the so far progress with the subjects, whom the administrative review has been completed



IQC was established as an institution and started its official functions in June 2017, i.e. 2 and a half years⁹⁸ and is currently in the middle of its official mandate, which means that by this time, about

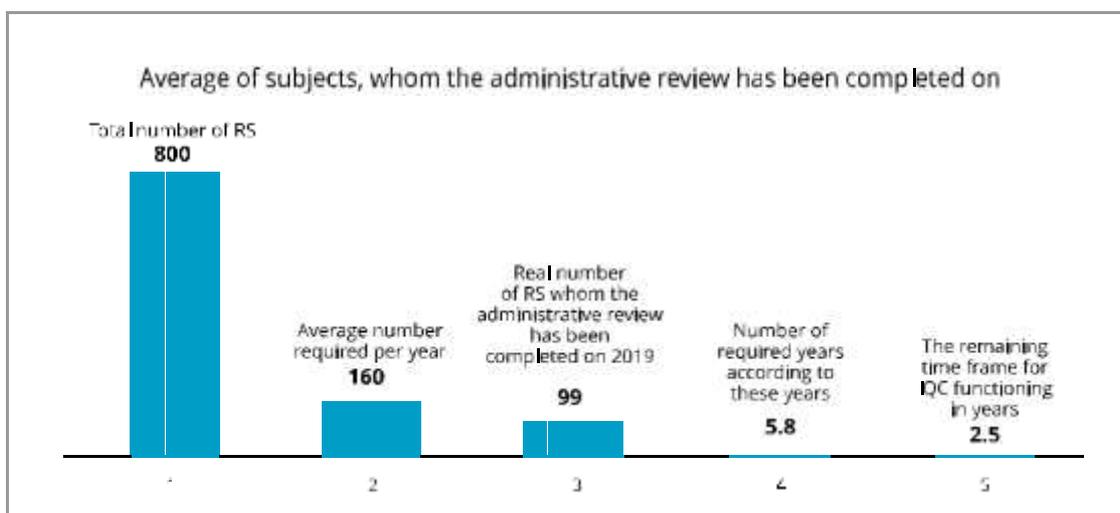
on, it would take at least 5.8 other years for the process to end, should be progress have the same pace as now.

⁹⁷ Every year, the process must be performed by an equal number of 20% of the total number of judges and/or prosecutors.

⁹⁸ The deadline refers to the period until 31.12.2019.

The average if we refer to subjects, whom the administrative review has been completed on.

Total number of RS	The required average per year	Real number of RSs, whom the administrative review has been completed on in 2019	Number of required years according to these years	The remaining deadline for the functioning of IQC, in years
800	160	99	5.8	2.5

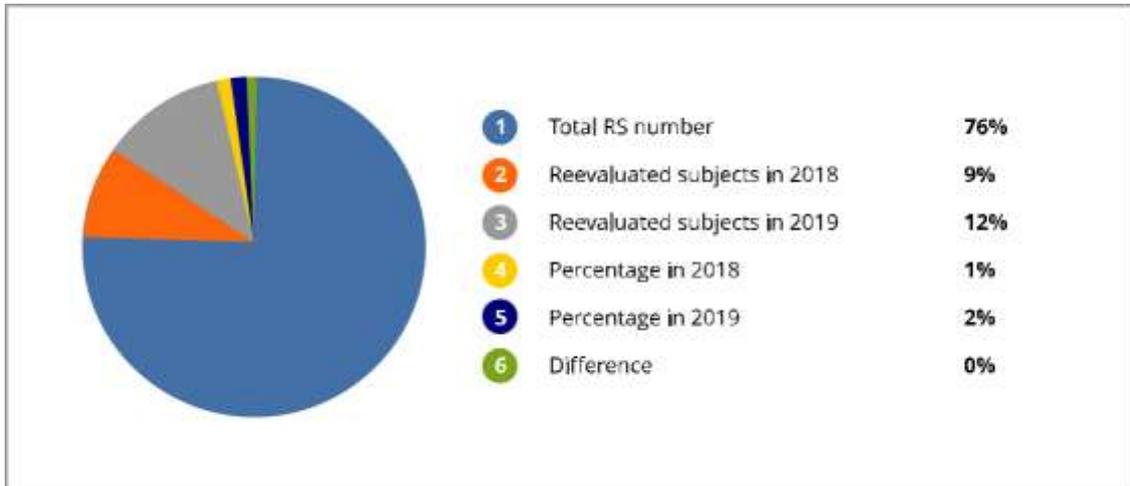


Graphic representation of subjects who have been subject to the administrative review

The pace of the reevaluation process in 2019 is not found to be proportionate with the deadlines defined by law. In addition to that, in 2018, the Independent Qualification Commission made dismissal decisions for **35** reevaluation subjects, confirmation decisions for **42** reevaluation subjects, and discontinued the process according to Article G of the Constitution Annex for **7** subjects, as well as stopped the process, according to Article 56 of Law No. 84/2016 for **8** reevaluation subjects. Thus, in 2018, a total of 92 subjects have been reevaluated. However, in reality, a genuine administrative investigation took place on 77 reevaluation subjects only. If we make a comparison, in 2019 the number increased with 34 subjects. Although higher than that of 2018, this number is still low if compared to the legal stipulation. In 2018, only 11.5% of the total number of subjects have been reevaluated

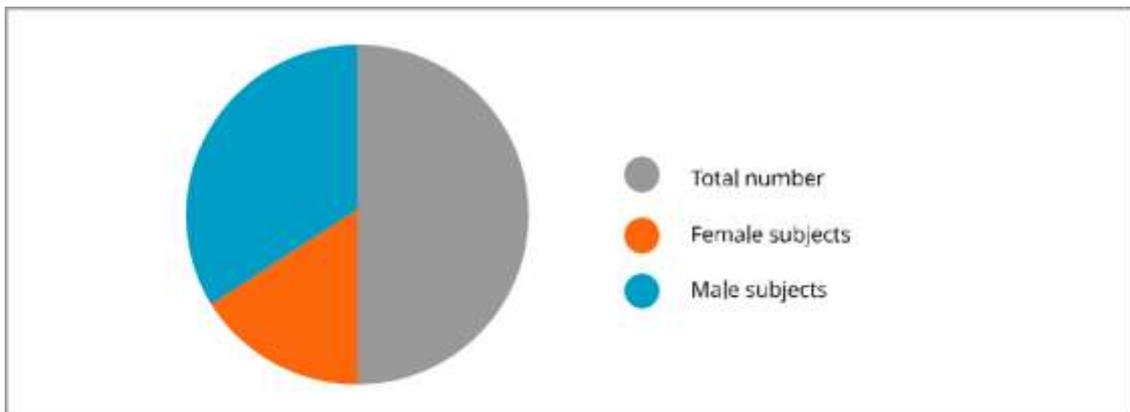
in 2018, whilst in 2019, 15.75 % of them have been reevaluated, which leads to 6.25% more than 2018.

Although higher than that of 2018, this number is still low if compared to the legal stipulation. It must be noted that the extension of the vetting process was subject to the assessment of the Venice Commission in their opinion regarding some aspects of the justice reform. (ref. 2016 Venice Commission Opinion). According to this opinion, the extension of the process may lead to justice system performance aggravation in the country, thus the duration of the process should vary from 3 to 5 years. Upon the constitutional amendments, the Parliament of Albania ruled upon the longest duration, i.e. 5 years, for this process in IQC.



On the other hand, it is clear that the structure and human capacities to be approved by the Parliament was unsuitable to guarantee the process according to the law defined and above-instructed deadline. The Ombudsperson deems that the causes of such pace are complex, and they can be related to the investigation level, or low number of staff or Commissioners of the Special Qualification Commission, but in any case, while IQC is already in the middle of its mandate, the Parliament should prioritize such issue. It is essential to take measures for the process to be successfully and timely completed, ensuring the same investigation standard for all judges and prosecutors in the country, and not to have different bodies or verification standards.

The quick progress of this process, without violating in any case the quality of reevaluation institution decision-making, will help in restoring the justice system, which is apparently operating with a limited number of human resources. One of the reasons for such unsatisfactory reevaluation pace may be the number of the approved staff in this institution's organizational chart, which leads to the claim that the institution was faced with a high work overload in its activities. This may require review of IQC organizational chart and the chance to increase the number of staff, in order to have positive results regarding the conclusion of the process within a reasonable deadline.



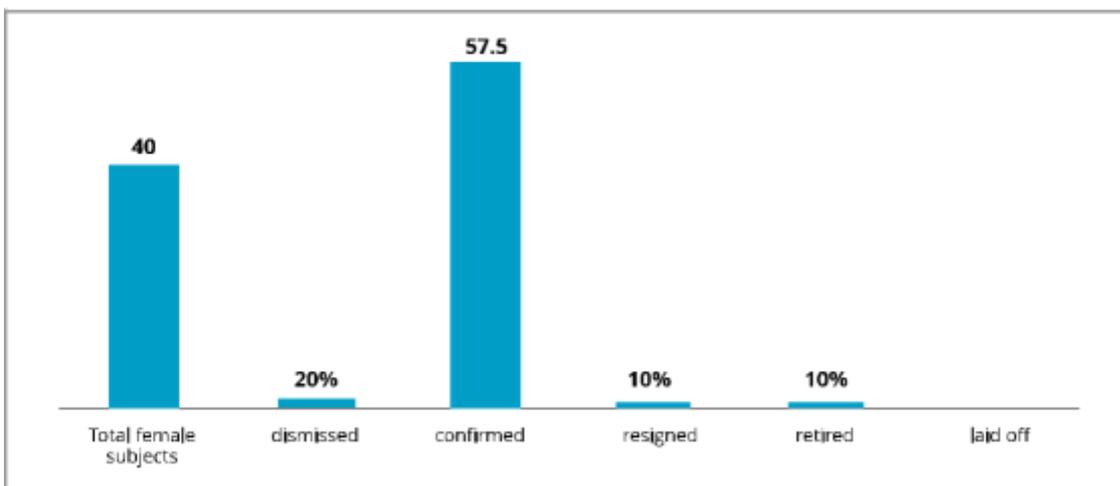
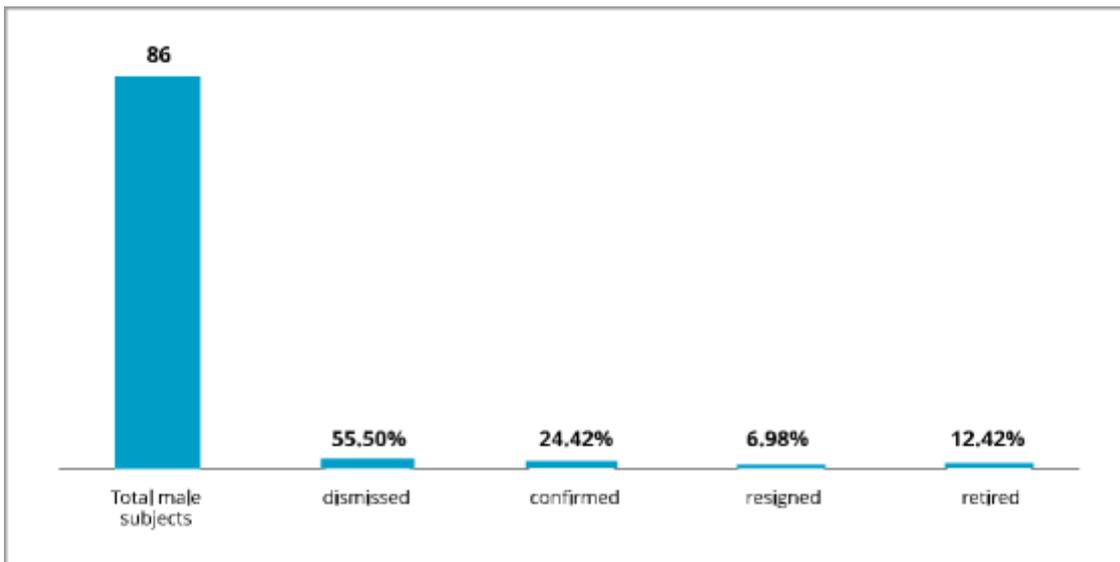
If the above data are presented on a gender basis, it is found that during 2019, IQC has reevaluated (made a decision) a number of 86 male reevaluation subjects and 40 female subjects. This is 68.25% male and 31.75% female subjects.

Of which, 55.5% of male subjects have been dismissed, 24.418% have been appointed, for 12.418% the process has been discontinued/ stopped, because they reached the retirement age, and for 6.976% of them the process has been discontinued according to Article G of the Constitutional Annex.

Whereas as regards female subjects, 20% of them have been dismissed, 57.5% of them have been appointed, for 10% of them the investigation stopped because they reached the retirement age, and for 10% of them the process has been discontinued according to Article G of the Constitutional Annex.

As regards transparency in IQC hearings.

Transparency in hearings was generally satisfactory, since they were open to the public and the media, and data was posted



on the institution's official website. As regards transparency in the administrative investigation, case reporting by adjudication bodies and decision-making, some of the subjects have had some reserves during the hearings. What was found during the hearings was the fact that the case rapporteur presented IQC findings during the administrative investigation in a summarizing manner. Some cases were not identified through the report or decision, rather through the appeal of the Public Commissioner, which shows that case reporting does not present all findings that may affect negative decision-making on the subject. Moreover, there were cases when cases which did not have any impact were included in the report on the subjects, as the facts were clarified. In some cases, the reporting was not clear and it did not reflect all facts and circumstances that led to a certain decision-making, depriving the public from them. Such fact overtly violates the transparency principle, which has not been provided to the public and the media.

In other cases there has been lack of transparency regarding assisting bodies' reports (HIDAACI, CISD and HCJ/HJC). Hearings monitoring showed that during such sessions, the adjudication bodies we based on the HIDAACI reports, as an assisting body.

The report showed that HIDAACI presented the first report to IQC on the wealth criterion, but IQC requested report review, followed by its amendment. During the hearing, adjudication bodies did not reflect the reasons of such amendment and new facts for a second report different from the first one, thus violating the transparency principle to the public. The same method has been applied to several HIDAACI reports, with the adjudication bodies requesting their review or stating that there were no evidence

on the involvement of reevaluation subjects in corruptive acts or their communication with persons involved in organized crime, without giving a reasoning or rationale on such decision-making to the public. For example: In certain cases, the assisting body/CISD reported, inter alia, that there are data raising suspicions on the involvement of reevaluation subjects in passive corruption, but in the end IQC concluded that subjects were not in the conditions referred by DSIK, without providing evidence, facts and reasoning for such decision-making to the public. Meanwhile, in other similar cases where the CISD report concluded that there were tips of passive corruption and communication with inappropriate persons, the jury concluded that they supported CISD findings, without providing evidence and facts for such decision-making although cases were similar.

Thus, IQC did not exhaustively present reasoning on cases when HIDAACI and CISD reports changed or were reviewed. The same shortcomings have been noted in the reasoning of decisions on this case, but they have been made again by the Public Commissioner.

Moreover, in many cases, reevaluation subjects have been evaluated on one criterion only, that is mainly that of wealth, and the two remaining criteria have not made available to the public. We think that evaluation on one criterion only (wealth) would lead to the prejudice of subjects in terms of decision-making and the administrative investigation would be incomplete, and in this case apparently the jury impartiality principle has been violated. This is a fundamental principle for a due process of law in compliance with the requirements of Article 6 of the European Convention of Human Rights. Despite the position of IQC body regarding the fact that evaluation on one criterion only does not violate

the process and that IQC can continue with the evaluation of other criteria in case of a positive final decision-making for that criterion, we are of the opinion that evaluation on one criterion only, in no case guarantees the achievement of this process goal, that is the trust of citizens and persons that are subject to it. Not only should the commission be impartial until evaluating every evidence and circumstance of the case under investigation and decision-making, but it should also look like it.

A very important moment in the process of reevaluating main actors of the justice system is public reporting. Such moment has been granted significant value, involving the public in such an important reform in Albania. Article 53 of Law No. 84/2016 "On the Transitory Reevaluation of Judges and Prosecutors in the Republic of Albania", stipulates: *"Any person informed on facts or circumstances that may serve as evidence regarding the reevaluation criteria shall be entitled to directly informing reevaluation institutions. Reevaluation institutions shall be obliged to check if the information has been provided by a known or anonymous person"*.

The transparency principle is one of the main and vital principles in the functioning of an administrative body in the rule of law, including the principles of a due process of law, equality before the law, and accountability. According to this principle, all stakeholders and the public should have equal access to the data source.

In a democratic country, the behavior of administrative bodies (including IQC as an administrative body/ "Quasi Judicial", which performs a genuine administrative investigation) should be transparent and open. Cases should be kept a secret and confidential in special instances only, where national security is under

threat or similar cases, but even then this fact should be made clear. The transparency principle of the administrative body serves two specific purposes: public interest protection, because the likelihood of bad administration and corruption suspicions are reduced, and individual rights protection. In such conditions, the violation of such principle would lead to the violation of the administrative investigation process. Thus, lack of transparency would lead to the violation of a due process of law, as a fundamental law principle.

As regards the due process of law

Based on the monitoring of hearings, in some cases it was found that the adjudication bodies rejected the requests of reevaluation subjects to present new evidence in the hearing, with the reasoning that they had all the necessary time for presenting them. This has been mainly conditioned by the fact that evidence claimed to be lodged were expertise acts, privately performed by experts contracted by the reevaluation subject and they were in contradiction with the financial analysis of IQC.

Moreover, IQC identified the fact that this evidence could not be accepted or considered by the commission, because the organizational chart of IQC had its own economic/financial counselors, who were sufficient for the process. Rejection of the reevaluation subject request for presenting new evidence/expertise act, prepared by independent, licensed experts, is apparently a violation of the right to a due process of law. Law No. 84/2016 provides for the commission to consider the expertise act, which shall be administered in the capacity of evidence. Article 491/ 1 defines: *"Aiming at determining the situation of facts and circumstances related to the case, the Appeal College or Commission shall be entitled to:*

collect statements by the reevaluation subject, witnesses, experts and the public".² The statement of the witness or expert during a criminal process may be used in the capacity of evidence".

What makes IQC activities concerning in such case is the fact that it never published the methodology they use for the financial analysis of reevaluation subjects regarding the wealth criterion. Lack of transparency in terms of the methodology or criteria used by IQC for the financial analysis of reevaluation subjects on the wealth criterion raised suspicions on their activity in many cases, and it also led to requests by reevaluation subjects to exclude members of the jury.

We deem that IQC should make public the methodology and criteria used for the financial analysis, as this would be to the benefit of the reevaluation process and its activities transparency, as well as guaranteeing a due process of law.

In some cases there was a tight deadline between the date for lodging subjects' counterclaims after the communication of the final report, and the determination of the session date, which may lead to the impression that such final and summarizing materials and explanations are not addressed with the proper attention from all members of the body. On the other hand, in any case, the final decision-making has been announced on different sessions from the hearing, which shows that the body took time to address the case.

Another moment identified by the hearings monitoring and the analysis of decisions reasoned by IQC is that in some cases, evidence were not equally assessed for all reevaluation bodies. In some cases, IQC reasoned that similar evidence are sufficient for proving facts and

ruled on the confirmation of subjects, whilst in other cases IQC considered the evidence as insufficient to prove the claimed fact and rules on the dismissal of subjects. Having different standards seriously harms the process and violates its essence that is restoring public's trust to justice. It is true that the court or the quasi judicial body has discretion in decision-making, which is the result of a long investigation and assessment of more than one specific fact, but in any case the result should be such that it guarantees the trust of everyone who observes the process in terms of decision-making justice.

Moreover, another moment is identified and it is related to the difficulties or inability of some of the reevaluation subjects to present data for a long period of time, such as for 20 years ago, especially when the banking system did not operate in the same way it operates now, and data are required, although the government allowed informality and issues with fulfilling tax obligations (since some documents and even institution archives do not have them, as their storage is limited by certain time frames and evidence can no longer be obtained). The burden of proof obligation seems to go beyond the real opportunities of subjects and the government as well. A natural question is on where one can find evidence that no longer exists in state institutions, because it has either disappeared or burnt during the 1997 events, or it might have been eliminated by the administrative bodies, since their storage time frame has expired.

Inability to collect evidence is found in subjects or affiliated people or other affiliated people, who were emigrants and may have informally/ illegally worked in another country. Evaluation of evidence and the reevaluation person in this case should be performed in proportion with the dictated situation.

Referring to the official website of IQC, as the source of information on the Commission decisions and reasoning, we found that:

In many cases, decisions were identified that were reasoned and published beyond the defined legal deadline. More specifically, of 126 decisions made in 2019, about 55.5% of them exceeded the defined legal deadline, that is 30 days from decision ruling. Of this percentage, 23% of transcribed/reasoned decisions exceeded the 30-day deadline by two weeks, 19% by one month, 9.52% by two months, 4% by three months, one decision has been transcribed 3.5 months later and 2 decisions 6 months later.

Article 55/7 of Law No. 84/2016 defines the following: *“The written decision shall be announced to reevaluation subjects, Public Commissioner and international observers within 30 days from the hearing. The decision shall be published on the official website of the Commission”*. This presumes that the decision is reasoned so that the IQC and the reevaluation subject are introduced to the commission conclusions, in order to consider appeal chances and causes. Cases have been found where the decisions reasoning by the commission and their publication has been performed beyond the 6-months deadline, which exceeds the legal reasoning. Reasoning and announcement of decisions beyond legal deadlines leads to a slower reevaluation process. In the mean time, we should consider the fact that during hearings, there have been cases where adjudication bodies deemed as a violation the decisions reasoning beyond legal deadlines by the reevaluation subjects (judges). Meanwhile, reevaluation institutions should be a good and ideal example to reevaluation

subjects, so that the evaluation can be professionally handled from the moral and legal perspective.

As regards the reasoning of decisions by the commission, although there has been evident improvement, we think that there still may be cases where there is room for improvement without going to the essence of the decision-making.

The good reasoning of decisions aims at proving parties that participate in the process that their voice has been heard and their claims have been objectively evaluated, and public control can be accomplished solely through well-reasoned decisions, i.e. through transparency in presenting evidence and facts. Decisions reasoning is one of the essential elements of a fair decision. It should clearly show in detail the facts that led to such decision-making. ECtHR paid special importance to decisions reasoning, considering it an essential element of a fair decision-making, whilst Article 6 of ECHR obliges courts to reason their decisions. Elements of decisions reasoning should be clarity, comprehension, stable structure, quality of the legal analysis, as well as well and logical reasoning of any circumstance and fact. These elements should be cumulatively positioned in decision reasoning, however they are found to be missing in multiple decisions of the commission. This is significant because the law does not stipulate the chance to publish complaints of reevaluation subjects, but only the complaints of the Public Commissioner. The Ombudsperson deems that such action violates the process transparency. It is understandable that the publication should have been done upon the approval of the reevaluation subject, but we believe that it would significantly increase a fair evaluation both for IQC and AC decision-making, as long as college sessions are held in

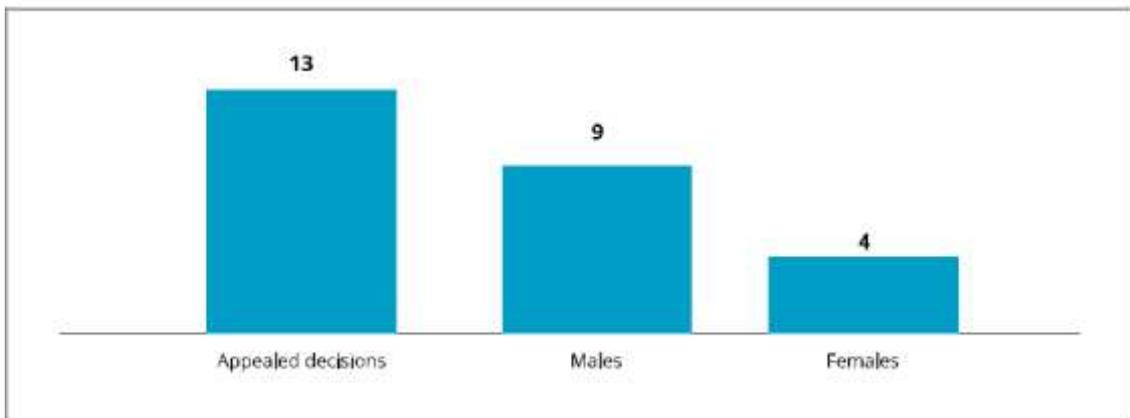
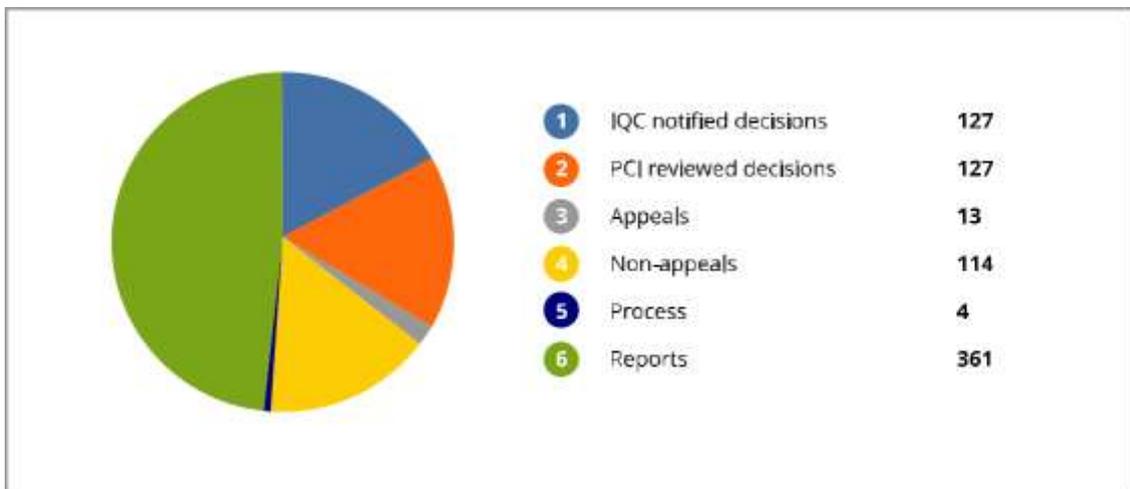
the Counseling Chamber in cases of complaints presented by the reevaluation subjects, despite their request for open and public hearings. We must remember that the review of complaints made by the Public Commissioner is always performed in public sessions and complaints can be accessed by the public.

As regards PCI decision-making on appeals or non-appeals of IQC decisions

As regards PCI activities, the Ombudsperson concludes that in 2019, 127 decisions notified by IQC have been recorded, on which it ruled the appeal of 13 confirmation decisions made

by IQC, and 114 confirmation non-appeals. 127 recorded cases have been reviewed, 4 of them are in the pipeline, and 361 public reports have been recorded.

If divided by gender for purposes of this study, it is found that during 2019, a total of 127 cases have been recorded, of which 87 are male subjects and 40 are female subjects. What must be noted both for IQC and PCI is the fact that regarding confirmation cases, this institution appealed more male cases, because of 13 appeals, 9 are on males and 4 on females, which is respectively 30.8% on females and 69.2% on males.



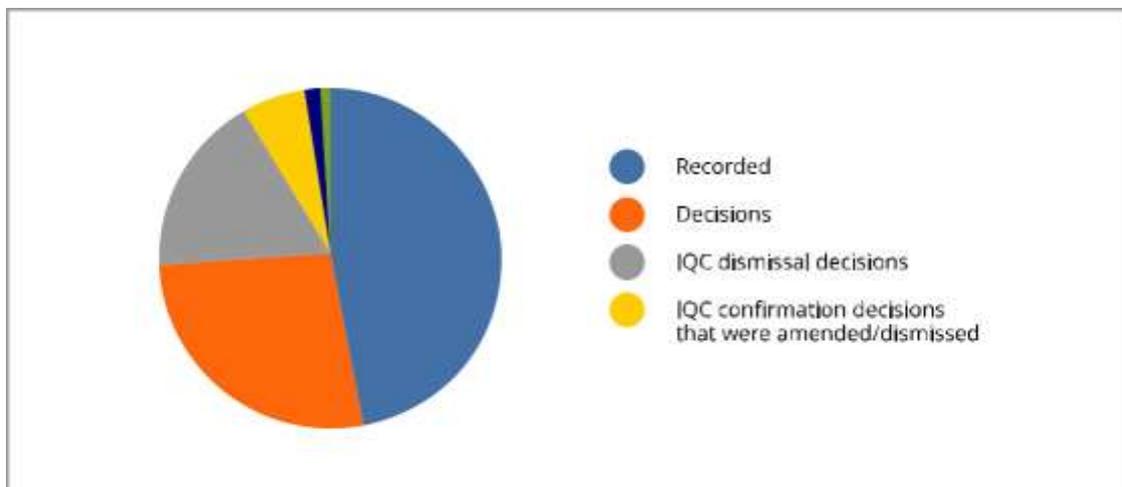
Moreover, it was found that this institution did not publish reasons for non-appeal on IQC decisions, by partially publishing decisions or relevant acts, and also partially introducing the public to such decision-making.

Failure to publish reasons for decisions non-appeal deprives the public from the right to be informed on their report/complaint, and they will also not understand why some decision subjects were subject to appeal, and others were not.

The monitoring of public hearings at AC showed claims on double standards, regarding the appeal of IQC decisions by PCI. Moreover, referring to reasoned decisions of IQC and AC, as well as reporting of appeals during the sessions, it was found that PCI was not rigorous in evaluating the same evidence and facts, because it ruled differently on the appeal or non-appeal of decisions for the same cases. This has led to uncertainties regarding the standard of appeal or decision evaluation, as well as loss of trust to institutions, which were established for implementing the justice reform.

As regards public sessions and transparency in AC

In 2019, AC recorded 60 cases, of which 13 have been appealed by PCI, 47 have been appealed by reevaluation subjects, and it must be noted that one case has been appealed by both parties. Of these cases, about 24% of them are female subjects, whilst 76% are male subjects. In 2019, AC made 34 decisions, of which 23 were dismissal IQC decisions that were upheld by AC, 8 confirmation IQC decisions were amended and AC ruled the dismissal of the reevaluation subjects, 2 IQC decisions on appointing the reevaluation subjects were appealed by PCI and upheld by AC, solely upon the request of the public commissioner, and the adjudication was stopped for one decision. No dismissal decision of IQC, appealed by reevaluation subjects, is found to have been amended and AC to have ruled on the confirmation of the reevaluation subject. Based on the available statistical data, it seems that this reevaluation institution has a very low pace in the process of reevaluating subjects, which will lead to a longer time than what was stipulated on Law No. 84/2016, for finishing the process.



As a matter of fact, it is difficult to make a stipulation on how long the reevaluation process would take considering this pace, because one cannot foresee the number of IQC confirmation decisions, which will not be appealed by PCI, or dismissal decisions that may be appealed by the subjects themselves. One thing is for sure though, that the process is very slowly in this institution. Referring to cases recorded in 2019 (60 cases) and decision-making on 34 decisions, the institution does not have the required pace. In total, from the start of the process, 100 cases have been recorded at AC and 51 decisions have been ruled, i.e. about half of recorded cases have been completed, which is about 51%.

The same as IQC, this institution did not publish the methodology that they used for the financial analysis of reevaluation subjects in terms of wealth criterion, and it also refused providing reevaluation subjects with a detailed financial statement, claiming that it was confidential and it should be internally used by AC solely.

We deem that AC, which has been considered as a court in cases of reviewing complaints submitted by reevaluation subjects, should rigorously implement the requirements of Article 6 of the European Convention of Human Rights, ensuring reevaluation subjects with the right to a due process of law, in compliance with the standards determined by the European Court of Human Rights.

During public sessions of AC, some subjects presented a request to file an expertise act, which presented various data from the institution's financial analysis, and they also demanded independent experts to assess the conclusions of AC employees, who drafted the financial statements regarding wealth criterion. Such requests have been rejected on the reasoning

that the financial statement was already drafted by AC employees, and that was sufficient. We deem that such decision-making is in violation of the principles of a fair and regular judicial process. Law No. 84/2016 stipulates obtaining and accepting evidence by experts.

Moreover, the activity of AC showed some shortcomings in terms of unification of basic criteria and methodology, which the evaluation of reevaluation subjects by IQC, as a lower body, would be based on. We deem that fulfillment of duties by AC, in compliance with the definitions of Law No. 84/2016, on unification of basic criteria and methodology to be implemented for the evaluation of reevaluation subjects, would avoid double standards by IQC and PCI.

The same way as IQC, AC has issues with decisions that have been reasoned and published beyond a reasonable legal deadline. The law does not stipulate a legal deadline for the reasoning and publication of AC decisions, but this matter has been regulated by the internal regulation "On Activities of AC of the Constitutional Court", which stipulates that the head of the jury shall take measures to transcribe the decision, within 60 days.

The delayed reasoning and publication of judicial decisions have often been addressed by the Constitutional Court over the years, which stated that this matter is in violation of the principle of a regular legal/judicial process.

ECtHR has addressed this issue, considering the duration of the decision reasoning as part of the judicial process, from the start to the final reasoning of the decision. An inefficient and delayed justice leads to the violation of citizens' trust to institutions, which have been established for purposes of restoring their trust

to justice institutions. Magna Carta, human rights declaration envisaged that a delayed justice is equal to a denied justice.

Solemnity of hearings and public sessions

Hearings and public sessions at IQC and AC present an optimal solemnity level from the perspective of logistics, communication and work management among coordinators for media in these institutions, as well as reevaluation, media and the public.

Sessions are public in both reevaluation institutions. Moreover, adjudication bodies present satisfactory professional and communication ethics with reevaluation subjects, media and the public. The administrative and judicial process has been satisfactory in terms of directing halls, yet there is room for improvement as regards judicial and public debate. In multiple cases, chairpersons of sessions apparently did not contain the positions of some of the observers, which overtly went beyond competences defined by law. Rules for having a public session that ensures an objective decision-making and effective hearing apply to any participant with the right to speak.

As regards premises where hearings are held at IQC, they are satisfactory and acceptable. On the other hand, AC does not fulfill the standards of a normal setting, because the room is very small and it may limit the number of participants and it may lead to overcrowding.

The submission of this concise report as part of the annual report on the work of the Ombudsperson during 2019 was necessary, since the justice reform is concretely reaching its goals. With the establishment of 90% of the new justice system bodies and the High Justice

Inspector has been appointed, it is the start of the concrete evaluation of its functioning, i.e. justice that should fulfill the principles of impartiality, responsibility, accountability and transparency, and serve as a model of the state mechanisms well-functioning. The efforts and investment of our society should fully justify citizens' trust. This trust should be guaranteed in every day of the activities of the justice system new bodies in general, but also the bodies of the transitory process of verification, as bodies that can be considered as consolidated in exercising their mandate, which they have shown with a high level of responsibility, thus clearly gaining trust that investigations will be comprehensive and holistic, without leaving aside any aspect of the verification process subjects. It is understandable that this is a difficult task with many responsibilities, but it should continue, show and guarantee that accountability is not only the task of reevaluation subjects, but this and the implementation of the same standards should become the culture of any justice system body in the country.

These preliminary findings and statistical data are being presented in this report, aiming at presenting and collecting as many data and opinions in order to ensure the rigorous implementation of the Justice Reform and to protect its major goal, that is restoring citizens' trust in the justice system and the reform, which has gained a broad consensus in the country.

High standard of law enforcement, established by the transitory reevaluation bodies for the violation or non-violation of public trust, should unavoidably be proven for the members of these bodies themselves, rather than third parties only. Since it was embraced by the national and international public opinion, this standard should become a lifestyle for the whole Albanian

society and people who exercise monitoring mandates in the country. On the other hand, the professional level and in-depth knowledge in the relevant area of the majority of qualification subjects, put more obstacles in this challenge, which can be overcome solely through high and unviolated integrity. This is a very complex and in-depth reform, which will lead to multiple debates. It is time to perform a practical evaluation of its results, analyzing whether or not we have better justice and higher guarantee to fight impunity, and to ensure the rights and freedoms of the individual, or we simply eroded the independence of the justice system.

The work of the institution will continue and results will be presented to you in the form of a special report.

4.6. Synthesis report on child rights protection

In 2019, the Ombudsperson drafted several synthesis reports on child rights and protection, as follows:

Children in emigration from the perspective of Albania as a transition/destination country.

Procedures followed by inclusive institutions at the central and local level for the treatment of children victims of sexual abuse.

Treatment of minors in conflict with the law, victims and/or witnesses, by institutions in charge of juvenile criminal justice administration.

Synthesis report for migrant children

The Ombudsperson is part of the Children's Rights Ombudspersons' Network in South and Eastern Europe (CRONSEE). The mission of this network is promoting and protecting child rights according to the Convention on Child Rights⁹⁹. In 2019, the joint work topic was "Migrant Children Rights". This topic was selected by the network as a result of the vulnerability of this target group in Europe. This group faces challenging and complex procedures according to the assessment of their requests for protection, based on the national and international legislation.

The Ombudsperson performed several inspections in asylum-seeking centers (part of the inspections were human resources ensured by the cooperation agreement, between the Ombudsperson and UNICEF, at the end of which our institution addressed recommendations to state administration institutions at the central and local level¹⁰⁰.

It must be noted that the approximation of the migration legislation with the EU acquis and international conventions ratified by Albania continues. Our country has a very high level of ratified international conventions¹⁰¹ in the area

⁹⁹ Approved upon Law No. 7531, dated 11.12.1991 "On the Ratification of Child Rights Convention".

The National Host Center of Asylum-Seekers at the Local Border and Migration Directorate in Gjirokastra, and the border emigrants host point in Kakavija, Gjirokastra.

Albania ratified the following conventions in the area of migration:

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 2007;

Convention on the Refugee Status, 1992; Convention on the Right of the Child (CRC), 1992; ILO Migration for Employment Convention (Revised), 1949 (No. 97), 2005;

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), 2006;

of migration, although their implementation and impact on migrants' rights is still low.

Among the main findings of the report, we may mention the following:

Child protection system in Albania is still fragmented¹⁰², which reduces results for sustainable, systematic and inclusive child protection;

lack of special services for this category;

existing services do not respond to the needs of unaccompanied migrant children and they are not tailored to their individual needs;

lack of human resources capacities, who work in child protection system, according to the definitions in the national and international legislation on child protection and their best interest;

lack of ongoing education activities for the professional development of professionals working with children in the child protection system.

In their main recommendations for the responsible state institutions on migrant children situation, the Ombudsperson paid special attention and requested taking measures for:

Conventions on Statelessness, 2003;
European Convention on the Legal Status of Migrant Workers, 2007;
European Convention on Foreigners Participation in the Public Life at the Local Level, 2005

The system is based in two important mechanisms, namely the child protection mechanism, focusing the abused children or children at risk of abuse, and the national referral mechanism, which fo-cuses on child victims/potential victims of trafficking. These mechanisms do not cooperate or coordinate work according to the legislation in power.

defining the responsible structure in the national legislation, which will enable the role of the legal guardian, as a guarantee for the realization of unaccompanied migrant children rights;

correct and de facto practical implementation of Law No. 111/2017 "On Legal Assistance guaranteed by the State" for providing legal assistance to state administration institutions for asylum-seekers;

guaranteeing the right to education for migrant children;

drafting and approving Standard Operational Procedures for unaccompanied migrant children;

establishment and functioning of the National Ongoing Education Center and the National Center for Quality, Security and Accreditation of Institutions;

establishment of specialized services for unaccompanied migrant children at the national level;

inclusion in the staff structures of Local Border and Migration Directorates of social sciences specialists (psychologists, social workers);

standardized protocols during the initial reception of unaccompanied children for their referral to inclusive services for their best interest.

Report on monitoring the work of competent juvenile criminal justice bodies in the framework of the cooperation agreement for 2019 between the Ombudsperson and UNICEF

In compliance with international standards on juvenile criminal justice administration, to the service of guaranteeing and respecting children's best interest during the criminal process, a special law was approved, namely the Juvenile Criminal Justice Code, which contains special regulations regarding juvenile criminal responsibility, procedural rules in terms of investigation, criminal prosecution, judicial process, execution of the criminal sentence decision, rehabilitation or any other measure that involves a minor in conflict with the law, a minor victim and/or witness of the criminal offense.

Juvenile Criminal Justice Code entered into force on 1 January 2018 and its time frame, stipulated in the law on approving the package of sub-legal acts, has been considered an added issue due to failure to correctly implement the Code. This concern of ours has been constantly presented in the 2018 report of the Ombudsperson, and round tables organized by state institutions, civil society or international organizations. Now, this concern applied to 2019 as well, but from a different perspective, that is the de jure approval of the majority of acts pursuant to the Code and the de facto lack of their practical applicability."

After that¹⁰³ some of the institutions treating minor under freedom deprivation conditions were inspected, such as: Tirana Local Police Directorate and 6 police stations included by this directorate at the local level, as well as IECD Shën

Koll (Lezha) and IECD Kavaja at the national level. The main findings of the monitoring are as follows:

During May-June 2019, it was found that a total of 33 minors were taken to these institutions, 27 minors were deprived of their freedom, more specifically 24 minors are subject to "prison arrest" measures, and 3 minors have been sentenced via a final decision by the judicial district court;

The list of procedural representatives of the minors in conflict with the law has not been displayed¹⁰⁴;

The period of detention is short and it varies from 3 to 4 hours;

The pre-detention period is usually longer (starting from 3 months to one year), leading to many minors in conflict with the law to suffer their sentence, while they are waiting for the final decision in pre-detention;

There is total separation from adults;

Such separation is ensured through administration offices or other solutions in some of the police stations;

In IECD Shën Koll (Lezha) the section for minors deprived of their freedom has been closed, pursuant to the Ombudsperson recommendation in 2016¹⁰⁵;

¹⁰³ Pursuant to the cooperation agreement with UNICEF, Prot. No. 276, dated 31.05.2019, aiming at performing activities of the Action Plan of the Section for Children's Rights Protection and Promotion 2019-2020, during May - June 2019.

¹⁰⁴ As is stipulated in Article 49, Paragraph 4 of Law No. 18/2017, "On Children's Rights and Protection".
¹⁰⁵ Ombudsperson report "The Voice of Minors deprived of their Freedom", page 61, December 2016.

IECD Kavaja ensure a full, even gender, separation;

According to the data obtained from interviewed employees, minors are allowed to contact their family members¹⁰⁶;

Absence of a special register, where data on minors are kept¹⁰⁷;

Ensuring meals or potable water;

Based on interviews with IECD Kavaja staff and paperwork check, it was found that minors deprived of their freedom had a good behavior. During this time, there were no cases of minors' aggressive behavior towards one another or IECD Kavaja employees, which would lead to various disciplinary measures¹⁰⁸. Moreover, based on the legislation in force¹⁰⁹ for guaranteeing education to minors in conflict with the law at IECD Kavaja, specifically upper secondary education, this process has not been performed. This was the result of lack of human resources at IECD Kavaja, who would take minors to education institutions, as well as non-consolidated relations with the Kavaja educational office.

The Ombudsperson is concerned that the "Center for the Prevention of Juvenile and Youth Crimes" has yet to be de facto established and function¹¹⁰. Likewise, the institution of Juvenile

¹⁰⁶ In IECD Kavaja, children are allowed to use Skype.

¹⁰⁷ In compliance with the best practices and standards of work in EU member states.

¹⁰⁸ Article 125 of Law No. 37/2017, "Juvenile Criminal Justice Code".

¹⁰⁹ Order No. 3348/1, dated 18.04.2018, of the Minister of Justice and Minister of Education, Sport and Youth.

¹¹⁰ Pursuant to Paragraph 4 of Article 133, Law No. 37/2017 "Juvenile Criminal Justice Code", DCM No. 314, dated 15.05.2019, was approved, but it has yet to be implemented.

Education and Rehabilitation has not started functioning¹¹¹, in addition to the Electronic Data System of Juvenile Criminal Justice¹¹².

It must be admitted that freedom deprivation should be solely used as a last resort and for a short period of time. The end goal of pre-detention is rehabilitation, reeducation and integration on the minor in the society. Thus, more work should be done towards such important process.

In conclusion, in the framework of the new legislation on child protection and juvenile criminal justice administrations, aiming at intersectoral cooperation, alignment and coordination at the central and local level for the correct implementation of this legislation, the Ombudsperson addressed the following recommendations to competent juvenile criminal justice administration:

Police stations do not have specific necessary spaces for interviewing and keeping children in compliance with international standard procedures¹¹³. These facilities should ensure the required standards or natural lighting, airing, hygiene and heating, as well as special conditions for vulnerable children or children in need, especially girls.

Police stations should be equipped with a special register, solely for minors in conflict with the law.

¹¹¹ Decision of the Council of Ministers No. 233, dated 17.4.2019, "On determining special rules re-garding the functioning of their security level environments and standards of education and rehabilitation programs in cases of minors' freedom limitation".

¹¹² See Article 136 of Law No. 37/2017, "Juvenile Criminal Justice Code".

¹¹³ Such procedure should be performed in cooperation and coordination of work in compliance with the definitions of Article 35 of Law No. 37/2017.

Minors should have more access to written or visual materials for increasing self-esteem and informative materials on institutions protecting their rights.

Functioning of the Center for the Prevention of Minors and Youth Crimes¹¹⁴, Minors Education and Rehabilitation institution¹¹⁵, and the Electronic Data System of Juvenile Criminal Justice.

Meanwhile, pursuant to the Ombudsperson recommendations on implementing the cooperation agreement among the Ministry of Education, Sport and Youth, Ministry of Justice¹¹⁶ and Ministry of Finance and Economy, to guarantee lower and/or upper secondary education for minors in conflict with the law, as well as approval of the joint instruction¹¹⁷, between the Ministry of Health and Social Protection and Ministry of Justice on the criteria and procedures for selecting procedural representatives of children in conflict with the law, children victims and witnesses in the criminal process¹¹⁸, these recommendations have been fully implemented by the responsible state bodies.

What is constantly required by the Ombuds-person in all their recommendations, not

¹¹⁴ Pursuant to DCM No. 314, dated 15.05.2019 and Article 6 of Law No. 90/2012, "On the Organization and Functioning of the State Administration"

¹¹⁵ Decision of the Council of Ministers No. 233, dated 17.4.2019, "On determining special rules regarding the functioning of their security level environments and standards of education and rehabilitation programs in cases of minors' freedom limitation".

¹¹⁶ Approved upon joint order No. 3348/1, dated 18.04.2018, of the Minister of Justice and Minister of Education, Sport and Youth.

¹¹⁷ Pursuant to Paragraph 4, Article 49 of Law No. 18.2017 "On Child Rights and Protection"

¹¹⁸ This recommendation of the Ombudsperson led to the approval of Instruction No. 650, dated 13.09.2019, of the Minister of Justice and Minister of Health and Social Protection. This instruction should be introduced to state police local structures, prosecution's office and the relevant judicial district court and appeal court.

only in the framework of implementing the juvenile criminal justice administration, is that the government should dedicate sufficient and special budget in order to guarantee the functioning of child protection integrated system. Moreover, as regards institutional cooperation, coordination and alignment, justice system professionals in social services and people working on accommodation and health services, should work together and find joint solutions for minors in conflict with the law.

Prison arrest as the last resort for minors in conflict with the law should not be viewed as a punitive or penalizing approach. Rehabilitation and reintegration programs should be part of the work of professionals working with these children, aiming at consolidating a system that raises and develops them as responsible citizens, who follow norms.

4.7. Monitoring report on disbursement of economic assistance and the upholding of disabled persons rights

The Report of Monitoring the Economic Aid Distribution and Observance of Persons with Disabilities is one of the novelties of the Ombudsperson and it is considered information, which shows the consolidation of cooperation with the civil society¹¹⁹ in 2019.

¹¹⁹ The Albanian Legal and Territorial Research Institute (ALTRI) cooperated with the Ombudsperson, in the framework of the project "Monitoring and Promotion of Equal Distribution of Groups in Need Social Rights at the National and Local Level". Such cooperation aimed at improving social services for groups in need at the local level, by means of strengthening the monitoring role of the OP institution and including groups in need in the process.

In the context of monitoring of social services provision for groups in need at the local level for Kukës, Elbasan, Librazhd, Fier, Berat and Pogradec, the report contains concrete findings, identifies issues faced by citizens with the provision and distribution of economic aid by local power bodies, and it also offers specific recommendations for central and local governance bodies on adequately addressing and overcoming the identified issues.

Recommendations for local governance bodies consist of the following:

Informing and raising the awareness of citizens on the criteria, procedures and completion of the paperwork for benefiting economic aid.

Facilitating the application process to be part of the economic aid benefit scheme, by increasing cooperation of local structures with the groups in need.

Taking all necessary steps and measures for local power bodies to timely profit/ provide economic aid.

Improving informative tools on appeal mechanisms for reporting issues with economic aid provision.

Taking measures to timely and appropriately address citizens' complaints on economic aid benefit.

Strengthening and increasing human resources capacities to physically verify the beneficiaries' dwellings and living conditions once or twice a year, as stipulated by the law.

Avoiding cases of exclusion from economic aid benefit of families who claim that they have a person with disabilities as their member.

Timely distribution of beneficiaries' economic aid from the limited fund on the block economic aid, to the value of 6%.

Providing social services, which would increase the life quality of citizens and their families, who benefit economic aid.

Supporting and guiding citizens who are part of the economic aid scheme to apply to social programs, with the inclusion of economic aid beneficiaries by contributing with their work and influencing their families' income increase.

Recommendations for the Ministry of Health and Social Protection, as the main institution in charge of drafting and monitoring the implementation of individuals and groups in need protection, care and integration are as follows:

Reviewing the whole application form, according to the scoring system, specifically for the category of persons above the working age, who do not benefit any type of elderly pension (60-70 years old).

Increasing transparency and equality, and determining objective selection criteria for individuals benefiting economic aid.

Increasing the economic aid amount for purposes of affording necessary monthly expenses that a family or single individuals needs for surviving.

The need for providing vocational education courses in compliance with the labor market demands for persons, who are part of the economic aid scheme and improvement of their quality¹²⁰.

It must be brought to attention that the above-cited recommendations have been considered by state administration bodies at the local level, whilst at the central level, a lack of the latter commitment for their implementation is noted.

4.8 Annual conference

The 2019 Annual Conference of the Ombudsperson was organized on the 20th of December, with the support of the Council of Europe Office in Tirana, in the framework of the joint EU and Council of Europe program “The Horizontal Facility for the Western Balkans and Turkey 2019-2020”.

Since nowadays there has been an increase of hate speech, which action may be required for, implying applicability of responsibility according to the civil and administrative legislation or the criminal law, in addition to other initiatives, the OP institution deemed it reasonable to address the following topic during the 2019 annual conference: “*Freedom without hate, freedom of expression against other human rights*”.

Free speech is not simply the pillar of democratic societies, but one of the fundamental human rights, which enables them to form, develop and share their opinions. However, freedom of expression is not absolute, as it can be subject to

certain limitations. Most of democratic countries impose limitation to certain forms of expression, depending on the political and historic context. Although Article 19 of the Universal Declaration of Human Rights and Article 10 of the European Convention of Human Rights define that “*anyone has the right to expression*”, these same article stipulate the chance of certain interventions to this right, so that states can legally impose limitations to protect other rights or more essential interests.

In this context, the matter of discussion is the form and degree of exercising the freedom of expression without crossing the line to hate speech? What are the limitations to freedom of expression? Personalities, experts, guests and other researchers share their opinions and experience in this respect during the Annual Ombudsperson Conference.

The Conference was started by the Ombuds-person *Ms. Erinda Ballanca*, who emphasized the importance of the freedom of expression in a democratic society and the risks of controlling it. The President of the Republic of Albania, *Mr. Ilir Meta*, during his remarks stressed that “*Freedom of Expression and Access to Information are not only fundamental constitutional rights, but they are also closely related to building a democratic state. Thus, freedom of expression is an indicator of the level of democracy, good governance and public accountability in the county*”. In his speech, the Speaker of the Parliament of Albania, *Mr. Gramoz Ruçi*, emphasized inter alia that “*the expanding access and democratization of the media, which is supported by advanced technology, is one of the greatest achievements of today’s civilization, but democratization of media and technology, in addition to untold values and benefits to the society and development, have some risks to the society*”.

¹²⁰ This matter is recommended to the Ministry of Finance and Economy.

and citizens, which are caused by the irresponsible use of such public goods." In this framework, Mr. Ruçi emphasized "...the importance of the media market self-regulation, which cannot guarantee the protection of rights, freedoms and dignity of citizens without being regulated by the state..."

Head of the Council of Europe Office in Tirana, Ms. Jutta Gützkow greeted participants and focused on the latest initiative of the legal package on the media, emphasizing that "*Despite the rationale behind this initiative, tools introduced in this package raise a concern on the compatibility with standards of Council of Europe or European practices...*", and she also reiterated that the Council of Europe is willing to provide legal opinions on the legal framework under "The Horizontal Facility for the Western Balkans and Turkey".

Mr. Brian Williams, UN Resident Coordinator focused on the danger of hate speech against minorities, sharing an interesting perspective on the notion of the freedom of expression. "*Another common phenomenon in Albania is violence against women. Hate speech against women is violence against them. Hate speech is direct harm to target women, perhaps by causing psychological harm, hampering their opportunities, causing a feeling of self-censuring actions, which is discouraging. Likewise, hate speech creates an environment for real violence to occur. In Albania, there are insufficient data on hate speech against women. We would like to see the Government, the office of the Ombudsperson, civil society and others undertaking more actions*", he said.

The Conference was greeted by the chargé d'affaires of the US Embassy in Albania, Mr. Daniel Koski, who emphasized that "*...freedom of expression is not a license for us to say whatever we want despite the consequences. It is not easy*

to set the line between acceptable language and a language that provokes violence, that is why we are here today to survey the limits of the freedom of expression...".

The activity continued with discussions during two sessions, which aimed at analyzing and enabling more in-depth approaches on the notion of the fight against hate speech from the anti-discrimination perspective. The first session of the Conference was started by Mr. Dorian Pavli, Judge in the European Court of Human Rights, and the panel consisted of Ms. Klotilda Bushka, Secretary of the Commission on Legal Affairs, Public Administration and Human Rights in the Parliament of Albania, Mr. Sami Nezaj, Deputy Chairperson of the Audiovisual Media Authority, and Mr. Kloreto Cukali, Head of the Albanian Media Council. In this context, participants tackled important issues related to the freedom of speech and regulating and self-regulating media mechanisms, by referring to the jurisprudence of the Strasbourg Court on the matter. One of the matters elaborated by the panelists was the anti-defamation package, which was approved by the Parliament of Albania, despite multiple debates and oppositions by journalists associations, civil society and international organizations.

The second session focused on the fight against hate speech, and the discussion was started by Ms. Vasilika Hysi, Deputy Speaker of the Parliament of Albania/member of Albania in the European Commission against Racism and Intolerance (ECRI), and the following personalities delivered their speeches during this session: Mr. Hilmi Jashari, Ombudsperson of the Republic of Kosovo, Mr. Robert Gajda, Commissioner for the Protection Against Discrimination, Mr. Pablo Zapata, UNHCR Representative, and Ms. Mirela Arqimandriti, head of the Gender Alliance for Development.

In the framework of the joint EU and Council of Europe program “The Horizontal Facility for the Western Balkans and Turkey 2019-2020”, at the end of the Conference the *Cooperation Agreement for the Establishment of the “Alliance against Hate”* was signed among:

The Ombudsperson, represented by the Ombudsperson Ms. Erinda Ballanca; the Commissioner for the Protection Against Discrimination, represented by the Commissioner, Mr. Robert Gajda; the Audiovisual Media Authority, represented by the Deputy Chairperson, Mr. Sami Neza, and the Association “The Albania Media Council”, represented by the Chairperson, Mr. Koloreto Cukali.

Such cooperation aims at engaging main actors involved in various aspects of hate speech prevention, in order to coordinate and joint efforts to raise awareness and advocate as a front against this phenomenon.

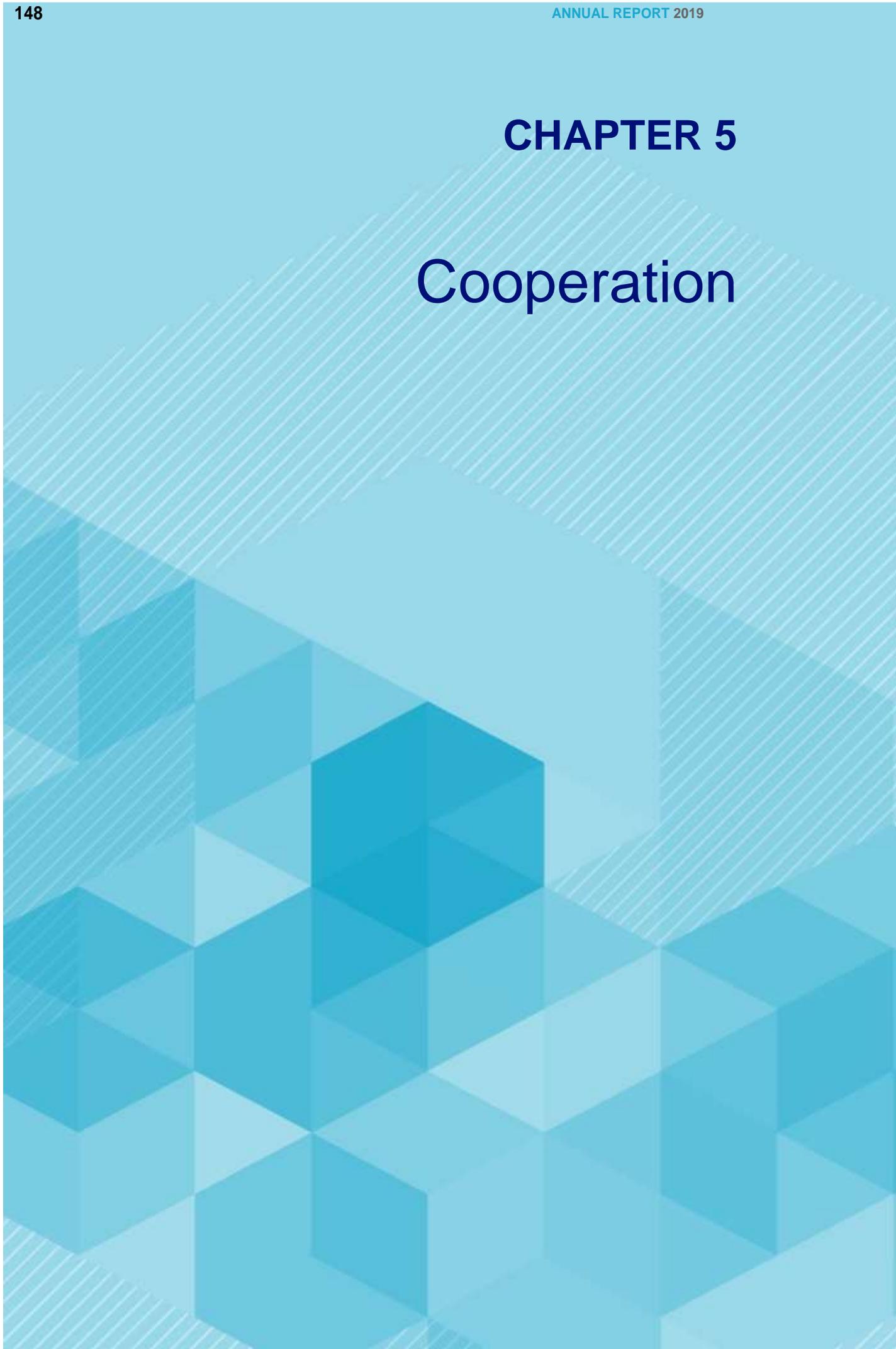
More specifically, the main objective of the Agreement was raising awareness, informing and contributing to dialog among youth, especially on the fight against hate speech, cooperation with the civil society and public bodies. In its activity, the Alliance will be involved in the promotion of the freedom of expression in a democratic society, facilitating an open and awareness raising debate for the public, in order to correctly and fair promote news, as well as performing research and making recommendations in cooperation with other national and international actors, in order to find out the impact of hate speech in individuals and social groups.

The Alliance aims at fully aligning the civil and criminal legislation against discrimination, raising the awareness of employers and employees both in the public and private sector, increasing teachers’ professional skills, and strengthening efforts in the educational environment against the negative phenomena of hate speech.

Alliance against hate speech will be steered in rotation for a period of six months by each signatory of the Agreement.

CHAPTER 5

Cooperation



5.1. Cooperation with the Public Administration Institutions and level OP recommendations implementation

The level of recommendations implementation by public administration institutions was and is a constant concern of the OP institution. Besides positive steps and initiatives over the years, there is still a lot of work ahead, not only for public administration bodies at the central and local level (especially in terms of recommendations implementation), but also for the Parliament of Albania as the legislative body, where reports drafted by the Ombudsperson are presented and discussed. This is the reason why the Ombudsperson constantly monitored and monitors the level of the implementation of recommendations, which are addressed to public administration bodies via preparing updated information, which are included in periodic or annual reportings. In addition to the data presented below, we would like to identify the fact that the institution's work is often hampered by non-cooperative positions of various state institutions, which provide partial and unclear information, that delays replies, thus leading to the non-fulfillment of our administrative investigations deadlines, eroding citizens' trust in our institution for efficient activities. Considering the role of our institution as very important, we intensified our work in order to increase the quality of our recommendations and reasoning, and also replies to citizens in cases when no violations have been identified or the case is settled without any recommendation. Unfortunately, we did not obtain the same response from institutions in cases when our recommendations were rejected.

For **January-December 2019**, the OP institution addressed a total of **213 recommendations**¹²¹ to Public Administration bodies at the central and local levels. The level of acceptability and applicability of these recommendations is reflected below:

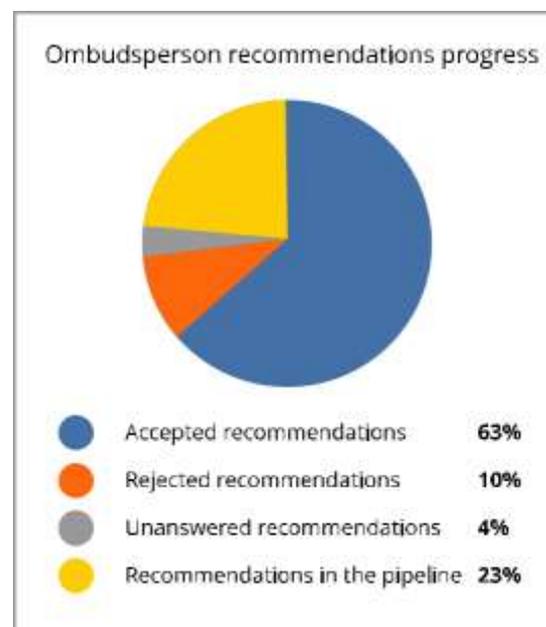
134 recommendations or 63% of them have been accepted;

21 recommendations or 10% of them have been rejected;

8 recommendations or 4% of them have been unanswered;

50 recommendations or 23% of them are in the pipeline.

Below you can find the data graphic representation:



Further information on the objective of recommendations, their status and institutions they were addressed to, can be found on the following link: <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandimet%20e%20derguara%20nga%20institucioni%20i%20AP%20per%20viten%202019.pdf>

Based on the above data, it is found that the number of recommendations for 2019 is 213, but 50 of them are in the pipeline, which means that *procedural deadlines have not expired for these recommendations*, to consider whether they have been accepted or rejected, implemented or not, answered to or not, since they have been submitted in late 2019 or early 2020, for inspections performed in 2019.

Under such circumstances, in order to enable accurate data reporting, the estimation of recommendations applicability will be performed in two ways: (1) based on factual recommendations **(163 recommendations)**, which were effectively submitted to relevant subjects and procedural deadlines have been covered within the reporting period to conclude on their acceptance or implementation by the institutions, (2) based on the total number of addressed recommendations **(213 recommendations)**

Of the total number of addressed recommendations, which the procedural deadlines for replying have expired for (163), it is found that:

- 134 or approximately 82% of recommendations have been accepted
 - 33 of the accepted recommendations, or approximately 25%, have been fully implemented;
 - 89 of the accepted recommendations, or approximately 66%, have been partially implemented;
 - 12 of the accepted recommendations, or approximately 9%, have not been implemented;
- 21 of the recommendations, or approximately 13%, have been rejected;

8 recommendations, or approximately 5%, have not received any reply

From the total number of recommendations addressed, including those the procedural deadlines for reply of which have not yet ended (213), it was found that:

- 134 or approximately 63% of recommendations have been accepted
 - 33 of the accepted recommendations, or approximately 25 %, have been fully implemented;
 - 89 of the accepted recommendations, or approximately 66%, have been partially implemented;
 - 12 of the accepted recommendations, or approximately 9%, have not been implemented;
- 21 of the recommendations, or approximately 10%, have been rejected;
- 8 recommendations, or approximately 4%, have not received any reply
- 50 or approximately 23% of recommendations are pending.

The reasons of noncompliance with the recommendations or their rejection are several. In our judgment, these reasons relate to the lack of administrative willingness to cooperate with the OP Institution by the bodies receiving recommendations; the unjust consideration and lacking assessment of findings and observations made by the OP Institution through the recommendations provided; lack of professionalism of the relevant public administration body employees.

In many instances, failure to implement recommendations, or partially implementing recommendations, is due to lack of

required budgetary funding, particularly for recommendations regarding infrastructure improvement or those with direct financial impacts (improvement of prison conditions, pre-detention conditions, residential centers etc.).

Cooperation for sharing opinions/comments for draft-acts

In the activity of the OP Institution during 2019, special attention was dedicated to its institutional engagement and involvement in the external consultation phase for draft-acts proposed by the line ministries and the involvement in the legislative process of sharing opinions or suggestions regarding various draft-acts. Namely, the institution contributed by sharing opinions/comments on:

Draft law “On the finalization of transitional ownership processes in the Republic of Albania”;

Draft law “On some Amendments and Addenda to Law No. 8561, dated 22.12.1999 “On expropriation and temporary takings of private property for public interest”, as amended.

Draft law “On Youth”

Draft law “On Social Assistance in the RoA”

Draft law “On Encouraging Employment”

Draft Decision of Council of Ministers “On measures for protecting children from accessing illegal and/or harmful Internet content”

Draft Decision of Council of Ministers “On the approval of election procedures for

the National Minorities Commission Chair, Vice-Chair and members”.

Additionally, the OP Institution¹²² in view of its right to make legislative recommendations, has addressed the relevant recommendation to the Ministry of Health and Social Protection regarding the improvement of the social protection legislation, specifically, including this category in Law No. 57/2019 “On Social Assistance in the Republic of Albania”, for the purpose of ensuring social security contributions for personal assistants, in particular the personal assistants of children, in consideration of their best interest¹²³.

Cooperation in view of the European integration process

The European Union is based and developed on a real commitment to protect and promote human rights, democracy and rule of law. Guaranteeing the fundamental rights is one of the core principles of this organization. The development of human rights has significantly progressed from the European Court of Justice to the most important documents addressing these issues.

In compliance with its constitutional mandate, the OP Institution, as one of the key actors in the national human rights protection system, has maximally abode by this process by

Paragraph “a”, Article 24 of Law No. 8454, dated 4.2.1999, “On Ombudsperson” as amended, which explicitly provides as follows: “...**recommend to the organs vested with legislative initiative to propose amendments and improvement to the statute...**”

Based on the official information provided by this institution pursuant to this recommendation, the OP institution was informed that the issue of guaranteeing social security contributions for personal assistants, will be regulated by bylaws in compliance with the aforementioned law.

cooperation with all public structures vested with following and implementing obligations, through significant contributions that play an important role in observing human rights and strengthening the rule of law, as premises for accession to the European Union.

The OP Institution continues to contribute throughout this process via direct participation in Inter-institutional Working Groups (IWG) established in accordance with the Acquis chapters, namely the commitment and contribution provided in view of Chapter 23, which covers certain areas under the general umbrella of the *Judiciary and Fundamental Rights*. It is an integral chapter regarding the accession efforts and bears special importance during membership negotiation, wherein are defined strict conditions and stages together with monitoring carried out by the European Union. Additionally, participation and real contributions have also been provided in view of Chapter 19 (Social Policy and Employment) and 24 (Justice, Freedom and Security).

Upon Ombudsperson Order, was established the Working Group for following and monitoring issues related to the European integration process, that is composed of representatives from various structures of the institution. This Working Group is led by one of the Commissioners and is responsible for coordinating the entirety of the activity and contributions of the institution towards this process and for informing, guiding and advising the Ombudsperson on any decision-making. During 2019, there were real contributions provided and active participation in meetings held in the framework of this process, such as the: EU-Albania Subcommittee for Justice, Freedom and Security; the Stabilization-Association Committee; Progress Reports; the Special Group for Public Administration Reform etc.

The Ombudsperson has also been active as regards meetings and reporting conducted by the National European Integration Council (NEIC) as the highest national European integration advisory structure operating in the Parliament, for the purpose of encouraging and guaranteeing comprehensive collaboration between political forces, public institutions and civil society and increasing decision-making transparency regarding integration. During September 2019, the Ombudsperson reported to the National European Integration Council on the progress of addressing the recommendations made by the European Commission in the Albania Report 2019 and the EU - Albania Subcommittee for Justice, Freedom and Security 2018-2019.

Another important issue that bears mentioning in this report is the membership of Albania in the European Union Fundamental Rights Agency (FRA). The Ombudsperson has consistently recommended the membership in this agency and has welcomed the ratification of the Agreement by the Albanian Parliament¹²⁴. Pursuant to Article 2 of Law No. 66/2019 through which the Parliament ratified this agreement: *"The representative of the Republic of Albania in the European Union Fundamental Rights Agency Management Board shall be appointed by the Minister of Justice, in compliance with the Council of Europe Regulation No. 168/2007"*.

Based on the scope of work of the Ombudsperson Institution, and in view of the practices of our counterpart institutions (both regionally and beyond), where it results that other countries

¹²⁴ The Note Exchange Agreement between the Republic of Albania and the EU-Albania Stabilization and Association Council on the participation of the Republic of Albania in the capacity of observer for the European Union Fundamental Rights Agency work, ratified by the Albanian Parliament with Law No. 66/2019

have elected to appoint the Ombudsperson as their representative in the European Union Agency for Fundamental Rights, it was officially proposed to the Minister of Justice to take into consideration appointing the Ombudsperson as *the representative of the Republic of Albania in the European Union Agency for Fundamental Rights Management Board*.¹²⁵

Not only does such an appointment comply with the essence and provisions of the Council Regulation No. 168/2007 regarding the method of participation, but it fully complies with the scope of work and objectives of the OP institution, as an independent and decision-making institution in the field of human rights with the vastest competences and knowledge in the country.

Despite the repetition of such request at the start of 2020¹²⁶, thus far there has been no official reply by this institution.

5.2 Cooperation with the civil society

In Article 30 of the Law “On Ombudsperson”, as amended, it is provided that *“The Ombudsperson shall perform his/her duties in close cooperation with nongovernmental organizations and shall regularly request their opinion on the human rights and freedoms situation. The Ombudsperson, in cooperation with non-governmental organizations, shall organize, at least annually, a national activity on the situation of human rights and freedoms in the Republic of Albania.”*

¹²⁵ Letter with Protocol No. 494, dated 18.11.2019, with subject: *“On appointing the representative of the Republic of Albania in the European Union Agency for Fundamental Rights Management Board”*

¹²⁶ Letter with Protocol No. 30, dated 16.02.2020, with subject: *“On the lack of reply to our two letters”*

As regards the above, the OP institution continues to play a proactive role in view of the cooperation with civil society. The focus has been on carrying out meetings not solely with civil society representatives operating in Tirana, but particularly organizing tables and strengthening contacts with civil society in various regions of the country.

The Ombudsperson participated in many of the activities organized by civil society, but also many representatives of these associations were regularly invited to the table of the Ombudsperson in order to discuss various issues regarding human rights protection and promotion by remaining in regular contact for problems concerning the citizens and causes of public importance.

Civil society organizations have always been a part of the activities organized by the OP institution in Tirana and other cities in the country, including the National Conference organized in December 2019.

As a result of this cooperation, it was made possible to monitor and map the joint reports in different fields. Namely:

The cooperation with the Albanian Legal and Territorial Research Institute (ALTRI) for the implementation of the “Monitoring and promoting equal distribution of social rights for vulnerable groups at national and local level” project. Such cooperation aimed at improving social services for groups in need at the local level, by means of strengthening the monitoring role of the OP institution and including groups in need in the process.

The cooperation and activities organized jointly with the “Together for Life” association

and “Tirana Legal Aid Society”, organizations that operate towards protecting patient’s rights. Participation in and organization of various tables, seminars and conferences has positively impacted the number of complaints for reviewing joint cases with these association in view of observing patient’s rights and addressing their concerns in the health institutions responsible.

Organizing the consultation meeting on drafting the integrated law to combat violence against women and girls, as per the GREVIO recommendations. This table was made possible through the UNDP support and participation of 38 attendants, representatives of civil society organizations that operate in the field of women’s rights and gender equality. The discussion in this table was focused on the need to draft an integrated law to combat violence against women and girls, as per the Istanbul Convention standards, ensuring that the measures taken in compliance with said convent address all forms of violence against women in a comprehensive and encompassing manner, and the relevant measures to be taken by all state institutions, independent institutions monitoring human rights and civil society organizations in view of their joint work to improve legislative measures against gender-based violence.

Moreover, pursuant to the GREVIO recommendation on strengthening the role of the OP institution as a protector of victims of violence against women, with the support of UNDP, was held a consultation meeting with 32 representatives of public administration, private sector, civil society and unions titled “Principles, policies and standards of a safe workplace environment”.

The discussion during this meeting was focused on the necessity of drafting policy and procedural documents by various public institutions and private subjects as regards sexual harassment for the purpose of ensuring workplace safety.

The discussion table with civil society organizations on issues to be addressed in the Universal Periodic Report (UPR) of Albania.

The cooperation with several civil society organizations for drafting the Action Plan of the OP institution in view of the Strategic Plan 2019-2022.

The cooperation with the LGBTI Shelter, resulting in 5 (five) information/awareness sessions held in the municipalities of: Tirana, Shkodra, Korça, Durrës and Gjirokastra during September - November 2019, which focused on raising awareness about the rights set forth in the relevant legislation, institutions to turn to when such rights are not observed or are denied, the provisions of the legislation in force on their protection, etc.

In view of the above, another activity was that of an open day organized by the institution, titled “LGBTI rights are human rights”, attended by representatives of all relevant organizations, guests from foreign embassies and international organizations operating in the field of LGBTI rights protection and guaranteeing.

The Cooperation of the OP Institution (National Mechanism for the Prevention of Torture) with Civil Society Organizations, such as the Albanian Helsinki Committee etc.,

that resulted in joint inspections of a multi-disciplinary and in-depth character, as well as auditoriums, conferences and seminars organized for the purpose of highlighting the issues observed in prisons and police stations, and the discussion for addressing such issues.

Moreover, in the frame of its promoting mandate, during 2019, the OP institution, in cooperation with civil society organizations, organized a significant number of promotion activities and awareness campaigns towards observing women's and minority rights, etc., while simultaneously informing on the highest standards of such rights provided for in international conventions ratified by our country. Among the most important activities are the following:

The discussion forum with civil society organizations in Vlora, focusing on the legislation and rights stipulated therein as regards preventing and combating domestic violence against women and their practical implementation and noting the issues related to the functioning of the Coordination Mechanism for Referral Against Violence (CMR) of Vlora Municipality.

The discussion forum with students in view of the national campaign of 16 days against gender-based violence and domestic violence in collaboration with UN Women, organized in the facilities of the Student City (Qyteti Studenti), which focused on gender-based and sexual violence, and learning of the domestic and international legislation in this regard.

The discussion forum with the Roma and Egyptian NGOs network that operates in the

Korça Region, for the purpose of recognizing minority rights in the framework of human rights.

5.3. International Cooperation

The international approach of the OP Institution, in cooperation with domestic and foreign factors, constitutes one of the most important aspects of the institutional engagement towards fulfilling the constitutional mission of protecting and promoting human rights. During 2019, OP Institution representatives participated in a series of international activities in the framework of the bilateral and multilateral collaboration, as follows:

Cooperation in the framework of the Global Alliance of National Human Rights Institutions (GANHRI) and the European Network of National Human Rights Institutions (ENNHRI)

This reporting year has been significant regarding the engagements and international activities of the OP institution. Due to the Ombudsperson, Mrs. Erinda Ballanca, being selected as an ENNHRI Board and GANHRI Bureau member, the following highly important organization activities and meetings were attended:

The Ombudsperson's attendance in the annual GANHRI meeting held on **4-6 March 2019** in Geneva, Switzerland. In view of the 63rd session of the Commission on the Status of Women, GANHRI prepared a report on the role of National Human Rights Institutions in preventing and eliminating all forms of violence against women and girls. In this context, the Ombudsperson,

Mrs. Ballanca, addressed issues concerning the advancement of women's rights in Albania and the fight towards equality carried out by the institutions and activists of this cause in our country.

The participation of the OP institution representatives in the seminar organized by ENNHRI on **25-29 March 2019** in Mostar, Bosnia-Herzegovina, regarding capacity development in the area of economy and social rights. In this regard, was also organized a regional meeting for Western Balkan countries, focusing on the economic and social rights primarily in post-conflict countries.

The attendance of the Ombudsperson, Mrs. Ballanca, in the capacity of board member in the first ENNHRI Board meeting, held during **15-16 May 2019** in Brussels, Belgium, with primary focus on reviewing the 2020 Plan, the financial report etc.

The participation of the OP institution representatives in the meeting organized by ENNHRI and Equinet on **14-15 May 2019** in Bratislava, Slovenia, with primary focus on the "Education system and the role of human rights, equal treatment and protection of children's rights in the Roma community for a quality education".

The attendance of the Ombudsperson, Mrs. Ballanca, in the capacity of board member in the second ENNHRI Board meeting, held on **1-3 July 2019** in Dublin, Northern Ireland.

The participation of the Ombudsperson institution representatives in the seminar organized by ENNHRI, on **29-31 October**

2019 in Zagreb, Croatia, titled: 'Exploring the Role of NHRIs in Peacebuilding'.

The attendance of the Ombudsperson, Mrs. Ballanca and the Commissioner Mrs. Erjona Canaj in the Annual ENNHRI Conference held on **12-15 November 2019** in Brussels, Belgium, with primary focus on economic and social rights, raising awareness regarding the role and importance of National Human Rights Institutions (NHRIs) for realizing economic and social rights in Europe etc. The Ombudsperson, Mrs. Ballanca, *led the panel on the challenges faced by these institutions in the social and economic aspect.*

The attendance of the Ombudsperson, Mrs. Ballanca, in the GANHRI Board meeting and the Human Mobility Seminar organized by ENNHRI on **20-22 November 2019** in Medellin, Colombia, with special focus on migration issues as one of the most concerning global phenomena.

Cooperation in the framework of the Association of Mediterranean Ombudsmen (AOM)

2019 marked the conclusion of the 3-year AOM Presidency led by the Albanian Ombudsperson, Mrs. Ballanca. On **12 March 2019**, in Tirana, was held the scheduled meeting of the AOM governing bodies organized by the OP Institution in collaboration with AOM, a meeting that also consisted in the succession of the AOM chair to the Greek Ombudsperson. The Albanian Ombudsperson continues to hold the Vice President position of the Organization. As regards this association, the following activities bear mentioning:

The attendance of the Ombudsperson, Mrs. Ballanca in the regional seminar held on **17-19 June 2019** in Cairo, Egypt, titled: "The Role of National Human Rights Institutions (NHRIs) in legal assistance and addressing complaints".

The participation of the Ombudsperson institution representatives in the seminar organized by AOM, on **9-11 December 2019** in Nicosia, Cyprus, focused on the "Venice Principles".

The participation of the Ombudsperson institution representatives in the training organized by AOM, held on **26-27 November 2019** in Rabat, Morocco, focused on the cooperation between the representatives of Human Rights Protection Institutions and gaining technical-level experience from the best AOM Network experts.

Ombudsperson Institution's Activities as regards its Preventive Mechanism Role

In the framework of international cooperation in this area were carried out the following activities:

The attendance of the NPM Section Commissioner Mrs. Ermonela Xhafa and the Special Section Commissioner Mrs. Ermonela Ruspi, in the Conference held on **5 June 2019** in Vienna, Austria, titled "Effective Multilateralism in the Fight against Torture": Trends in the OSCE region and the way forward".

The attendance of the NPM Section Commissioner Mrs. Ermonela Xhafa, in the first Nafplion Group meeting that took place on **8-9 October 2019**, on the "Monitoring Systems of Forced Return to EU". This

meeting was organized by the National Guarantor for the Rights of Persons Detained or Deprived of Liberty of Italy, supported by the Council of Europe.

The attendance of the Ombudsperson, Mrs. Ballanca and the NPM Section Commissioner Mrs. Ermonela Xhafa in the international meeting of the National Preventive Mechanisms of the Council of Europe member states, held on **4-5 November 2019** in Strasbourg, France. The organization of this meeting coincided with the 70th anniversary of the Council of Europe and the 30th anniversary of the European Committee for the Prevention of Torture.

The specific objective of this meeting concerned the identification of challenges and best practices from participant countries regarding monitoring and implementation of measures when citizens are detained by the police and the promotion and exchange of experiences amongst the mechanisms of different countries regarding effective supervision of said measures.

4. **Ombudsperson Institutions' Activities in the framework of protecting and promoting children's rights**

The participation of the Protection and Promotion of Children's Rights Section Commissioner Mrs. Neila Peka in the seminar organized by ENOC and BBC, held on **9-10 May 2019** in Manchester, England, titled "Children's Rights in the Digital Environment". This activity aimed to build capacities regarding child protection policies in the digital environment. The key focus was on strengthening and improving the work of independent institutions for the protection of children's rights, regarding

the guarantee and observation of their rights in a safe digital environment and improving general child protection policies related to the General Data Protection Regulation, media and youths from ENOC member institutions.

- Ombudsperson institution representatives participated in the ENYA forum that took place on **25-26 June 2019** in Brussels, Belgium, which concerned the challenges faced by youths in the digital environment. ENYA is a project supported by the European Network of Ombudspersons for Children.
- On **17 October 2019**, in Tirana, the OP Institution organized the scheduled meeting of the South East Europe Children's Rights Ombudspersons Network (CRONSEE), focusing on the protection of migrant children's rights. During this meeting, based on the qualitative and quantitative data gathered by the participant countries of this network and based on their experiences, were prepared 15 recommendations of independent institutions for children's rights, part of the South East Europe Children's Rights Ombudspersons Network (CRONSEE)¹²⁷
- The participation of the Protection and Promotion of Children's Rights Section Commissioner Mrs. Neila Peka in the Council of Europe Conference "The power of inclusion: Combating child poverty and social exclusion and promoting equal opportunities to all children" held on **13-14**

November 2019 in Strasbourg, France.

- The participation of the Protection and Promotion of Children's Rights Section Commissioner Mrs. Neila Peka in the International Conference carried out on **26-27 November 2019** in Kiev, Ukraine, titled "Protection of the rights of the child during armed conflicts", organized by the Commissioner for Human Rights of Ukraine.
5. **Other international activities**
- The attendance of the Ombudsperson, Mrs. Ballanca in the Conference organized in light of the 20th anniversary of the Greek Ombudsperson establishment, held on **21-22 February 2019** in Athens, Greece. This Conference touched upon the objectives and contribution of all parties towards the protection of human rights and consolidation of the rule of law. In this event, the Ombudsperson held a speech on the "Freedom of Speech in the Internet Era".
 - The attendance of the Ombudsperson, Mrs. Ballanca in the meeting organized by the United Nations Economic Commission for Europe (UNECE) on **21-22 March 2019** in Geneva, Switzerland, in view of the support UNECE provides to European countries for the implementation of the Sustainable Development Goals (Agenda 2030). The Ombudsperson, Mrs. Ballanca held a speech on: "Connecting peace, justice and development through good governance in SDG16".
 - OP Institution representatives participated in the European Network of Ombudsmen

¹²⁷ The official letter with Protocol No. 63, dated 7.2.2020, addressed to the Albanian Parliament regarding the recommendations approved in the Regional Conference of the CRONSEE network, organized by the Ombudsperson and CPPCR in Tirana.

Conference carried out on **8-9 April 2019** in Brussels, Belgium, organized in the European Parliament for the purpose of including citizens in policy-making.

The attendance of the Ombudsperson, Mrs. Ballanca in the first meeting of the "Regional Committee on Increasing Women's Access to Employment" held on **28 May 2019** in Prishtina, Kosovo, organized by the Democracy for Development Institute (D4D) and the Gender Alliance for Development Center (GADC).

The attendance of the Ombudsperson, Mrs. Ballanca in the Conference of the 25th anniversary of the European Commission against Racism and Intolerance (ECRI) held on **25-26 September 2019** in Strasbourg, France, titled "On the Road to Effective Equality - New responses to racism and intolerance". This activity was organized by the Council of Europe under the leadership of the French Presidency of the Committee of Ministers.

Ombudsperson Institution representatives participated in the "Peer Review" seminar organized on **23 September 2019** in London, England, by the Parliamentary Ombudsperson of the United Kingdom and IOI.

OP Institution representatives participated in the seminar on Communication held on **3-4 October 2019** in Vienna, Austria, organized by the European Union Fundamental Rights Agency (FRA).

OP representatives attended the Regional Conference held on **9 October 2019** in Skopje, North Macedonia in the framework

of the joint 'Horizontal Facility for the Western Balkans and Turkey' program.

The participation of the Special Section Commissioner, Mrs. Ermonela Ruspi in the 11th International Conference of the Ombudsperson for the Armed Forces (ICOAF) that took place on **27-30 October 2019** in Sarajevo, Bosnia-Herzegovina.

OP Institution representatives participated in the 2nd International Conference organized by the Ombudsperson of Turkey on **18-19 November 2019**, titled "Technical Assistance for Empowerment of the Role of Ombudsperson in the Protection and Promotion of Human Rights".

The attendance of the Ombudsperson, Mrs. Ballanca in the High-Level Conference for the occasion of the 15th anniversary of the Armenia's Human Rights Defender Institution, carried out on **26-27 November 2019** in Yerevan, Armenia.

The Ombudsperson, Mrs. Ballanca, on 7 September 2019, in the framework of the Universal Periodic Report (UPR), provided an overview on the condition of human rights in Albania through a video message addressed to the United Nations Human Rights Council.

Moreover, during the reporting year, the OP Institution intensified the cooperation with regional Ombudspersons. In consideration of the need for a joint commitment for concrete actions to the interest of the citizens in their respective countries and in compliance with the best international practices and standards regarding human rights, on **31 October 2019** in Vlora, was signed the Cooperation Agreement between

Kosovo's, Albania's and North Macedonia's Ombudspersons and the Albanian and North Macedonian Commissioner for Protection from Discrimination. This Cooperation Memorandum marks a significant milestone in the bilateral inter-institutional relations and will serve as a solid base for the coordination of activities related to the protection and promotion of Albanian (but not only) citizens' rights in the respective countries. The signatory parties agreed to intensify cooperation, experience exchange and mutual assistance and to jointly request that the Albanian language become an official language in the regional meetings their respective institutions attend.

the number of cases addressed by the OP institution; initiate the dialog with the Ministry of Education, Youth and Sports to include information on the Ombudsperson and Human rights institutions in school curriculum and texts; assess the implementation of recommendations made by the Ombudsperson regarding the monitoring of conditions and treatment of children deprived of liberty and encourage public dialog on the implementation of the Children Code by the Serious Crimes Court. The total amount obtained from this agreement is ALL 2.213 thousand, of which, ALL 1.489 thousand were spent during 2019 for carrying out activities and paying the two external experts.

5.4. Collaboration in the framework of projects

The Ombudsperson has implemented the **Cooperation Agreement with UNHCR** regarding the monitoring of migrant crossing points and strengthening the observation of their rights. In this regard, aside from assigning two Ombudsperson representatives in Gjirokastra and Shkodra, during 2019 it was also decided to assign an Ombudsperson representative in Kapshtica border crossing in Korça. The total amount obtained from this agreement for the reporting year equals to ALL 5,597 thousand.

In May 2019, the Ombudsperson signed a **Cooperation Agreement with UNICEF** for the purpose of guaranteeing and protecting children's rights. The focus of this Cooperation Agreement concerns the organization of promotional activities in schools and communities, supported by the Ministry of Education, Youth and Sports, aiming to increase

In view of the **Grant Agreement between the Republic of Bulgaria Embassy in Tirana and the Albanian Ombudsperson (a Fund amounting to EUR 30 thousand)**, the Ombudsperson was awarded a project for strengthening administrative capacities. The project concerned the strengthening of staff capacities, raising the public and institutional awareness on the importance of implementing the Ombudsperson's recommendations and improving the complaint addressing system in the institution. Its term was for the January 2018 - August 2019 period. During the reporting year, an amount of ALL 2,251 thousand from this project has been used primarily for promotion activities, information technology upgrading and staff training.

In September 2019, the Ombudsperson became part of the project **funded by the Justice Program of the European Union titled "Component B - Boosting Competences in Penitentiary Staff in Europe"**, that will be implemented in coordination with six other European institutions. This project's duration is 24 (twenty-four months) and its value for

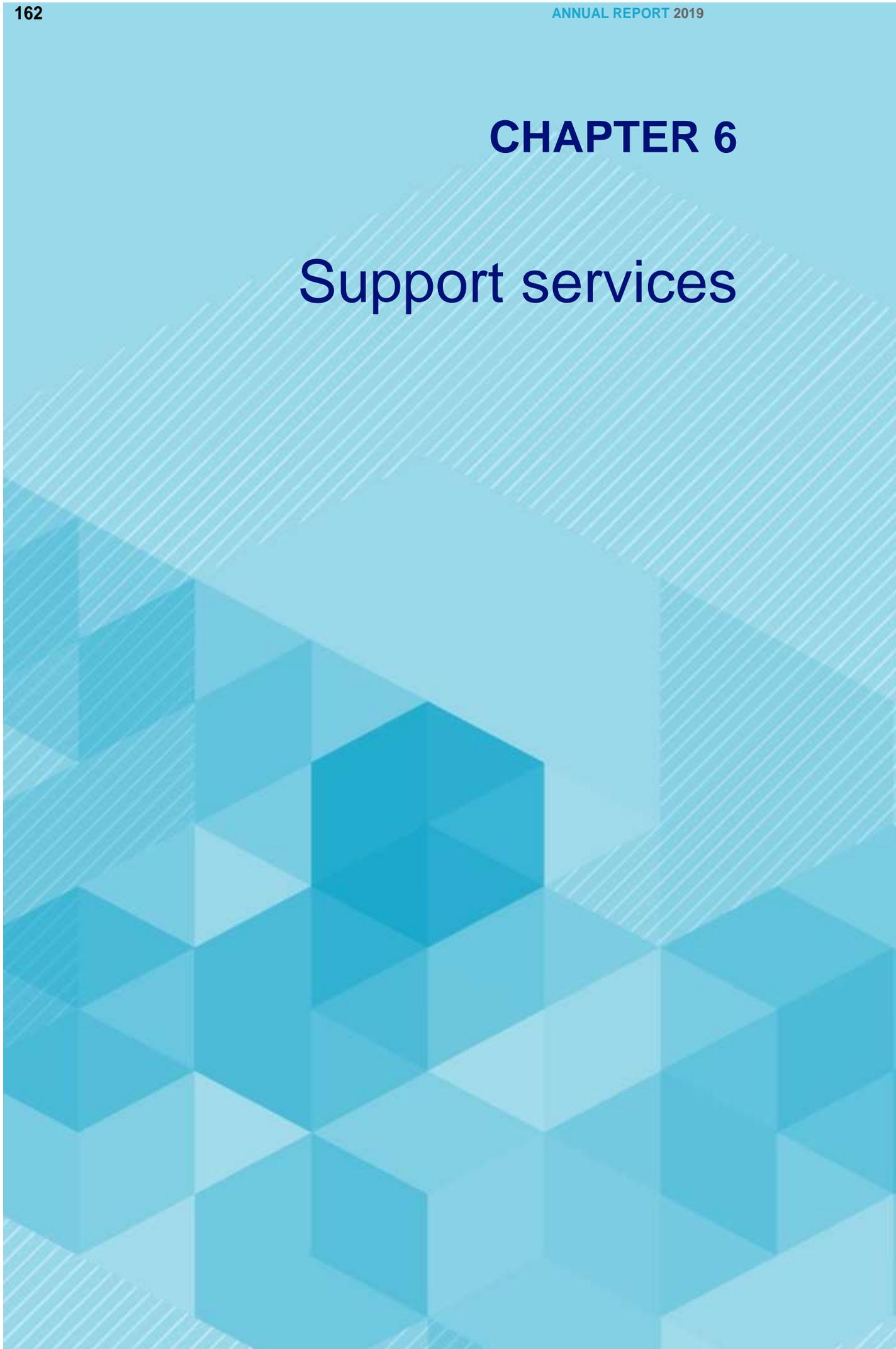
the OP institution is ALL 3.728 thousand. The general goal of this project is raising awareness and boosting the capacities of the civil staff in prisons as regards an issue of great importance to the European Union: managing cultural diversity in compliance with the EU legislation and standards on the rights of foreign prisoners. This goal will be achieved through the Train-the-Trainers program, sharing and combining the best practices, awareness activities and practical multi-lingual tools.

In December 2016, the Ombudsperson signed a **Cooperation Agreement with the “Save the Children” International Organization**

in Albania for implementing the “Children Keeping Children Safe” project with the financial support of the Swedish Embassy. The main purpose of this Agreement is to support and strengthen the Children’s Rights Promotion and Protection Section in the Ombudsperson Institution to increase efficiency and participation of children in monitoring their rights and ensuring initiatives for building capacities for children’s rights monitoring and observation, child protection from abuse and violence, child protection policies and establishing a database to document children’s complaints. The amount for the activities carried out by the Ombudsperson in 2019 is ALL 568 thousand.

CHAPTER 6

Support services



6.1 Human and Administrative Resources Management

Management of human resources by way of creating a professional, sustainable, effective and accountable civil administration is one of the greatest challenges for any public institution, aiming at enhancing and approximating the human and administrative resources management with the best European standards and practices. First and foremost, this implies the constant improvement of the civil service system, through the merit-based recruitment principle strengthening, mobility increase, career development within the civil service, and training system enhancement.

Designation of the administrative structure by the institution itself is considered a crucial factor of its autonomy. The institution's ability to set up its own structures and flexibility to adapt them, so that they can accomplish their functions and tasks is significant for the efficient functioning of an autonomous constitutional institution, as is the Ombudsperson.

Having an efficient structure for achieving institutional and legal objectives and commitments has been and is one of the main goals of the Ombudsperson. Since the establishment of the institution (2000), its structure and Organizational Chart have been subject to frequent changes, aiming at efficiency improvement and adaptation to the rules and procedures stipulated by the legal framework on civil services.

In 2019, the Ombudsperson approved Order No. 252/40, dated 05.04.2019 "On Approval of the Structure, Organizational Chart and

Job Classification of the Ombudsperson", as amended. In its entirety, the new approved structure applies the same principles and standards, which must be followed when drafting organizational structures of state administration institutions, and is in full compliance with Decision No. 893, dated 17.12.2014 "On Approving Rules of the Organization and Functioning of the Support Cabinets of the Internal Organization of State Administration Institutions, and Detailed Procedures on the Preparation, Proposal, Consultation, and Approval of the Internal Organization".

The approved structure met the need for strengthening the capacities of the reception office for citizens in terms of information provision and statistical data processing, which are periodically required by various partners and are employed to hierarchically report to the institution and the Parliament of Albania.

The *Manual on the Complaint Handling Mechanism addressed to the Ombudsperson* was approved upon the Order of the Ombudsperson No. 222, dated 31.08.2019. This manual was drafted in response to the need for improving the complaint management process efficiency, which is addressed to the Ombudsperson by individuals, groups of individuals or non-governmental organizations claiming that their lawful rights, freedoms and interests have been violated by illegal and unlawful actions or omissions of the public administration bodies.

This manual's main objective is defining internal and standardized procedures for efficiently addressing complaints to the Ombudsperson and providing practical solutions to arising challenges, in order to successfully and effectively handle public complaints. This manual entails a written guide and a series of practical tools to assist the Ombudsperson in performing

such process, and increasing transparency and accountability in handling complaints.

As we previously informed, with the support of the Danish Ombudsperson and the Danish Institute for Human Rights, the Ombudsperson started drafting the institution's 2019-2022 Strategic Plan. By way of the Strategic Plan, the Ombudsperson aims at encouraging and developing a good governance culture, which implies good administration, transparency and accountability of the public administration before the citizens of Albania, as well as the overall strengthening of the rule of law, which are essential elements to the functioning of democracy and integration to the European Union. The Ombudsperson approved the "2019-2022 Strategic Plan and Action Plan of the Ombudsperson" upon Order No. 184, dated 24.06.2019¹²⁸. Implementing all the components of the Strategic Plan requires great financial support from the state budget and considerable human resources.

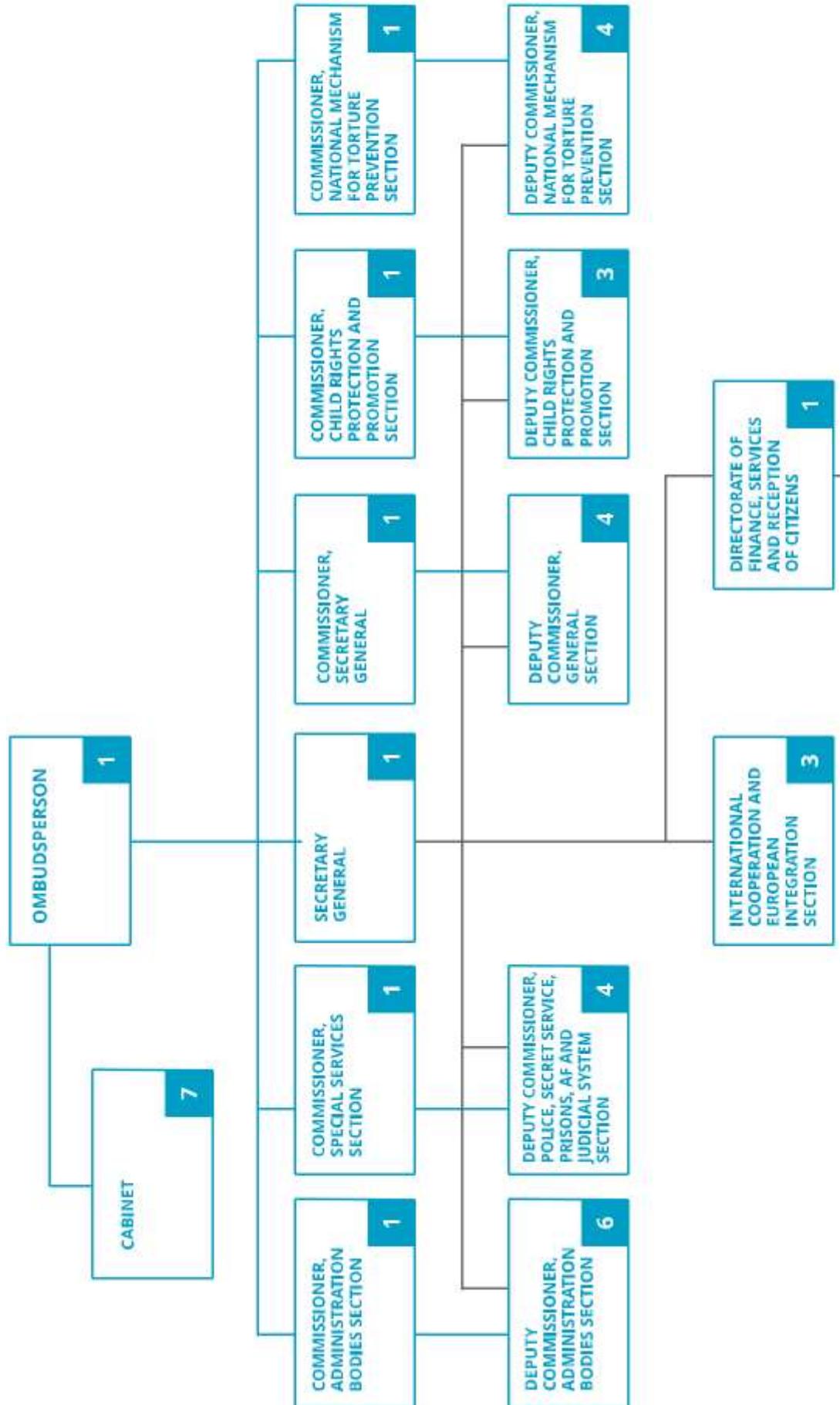
In 2019, the new Risk Management Strategy of the Ombudsperson was approved upon Order No. 224, dated 31.08.2019. The aim of this strategy is ensuring that the risk management notion is the foundation of the organizational culture, by reducing and assessing risk for every activity performed by the Ombudsperson. The Risk Management Strategy provides for a comprehensive and structured approach to identifying, assessing and managing institution's risks, and it also aims at encouraging development based on regular reviews and assessment updates.

For purposes of improving the assignment of specific rights and areas of responsibility to be performed by assistant commissioners, and considering the broad mandate as the national institution for the prevention, protection and promotion of human rights, in addition to the typology and nature of complaints, the Ombudsperson approved Order No. 110, dated 16.04.2019 "On Assigning Areas of Responsibility and Specific Rights to be performed by the Assistant Commissioners of Sections at the Ombudsperson".

Structure and Organizational Chart

Upon the amendments made with Order No. 252/40, dated 05.04.2019 "On Approval of the Structure, Organizational Chart and Job Classification of the Ombudsperson", as amended, the structure and organizational chart of the institution is as follows:

¹²⁸ The Strategic Plan of the Ombudsperson can be accessed on: www.avokatipopullit.gov.al/botime



Function	Number of employees (56)	Category/Class
Ombudsperson	1	Law No. 8454, dated 04.02.1999, as amended
Cabinet (7)		
Cabinet Director	1	DCM No. 187, dated 08.03.2017, as amended
Counselor	5	I-b
Secretary	1	DCM No. 187, dated 08.03.2017, as amended
Secretary General	1	I-a
Section on the bodies of the central administration of the local power and third parties acting on their behalf (7)		
Commissioner	1	Law No. 8454, dated 4.2.1999, as amended
Assistant commissioner	4 2	II-a II-b
Section on police, secret service, prisons, Armed Forces and judicial power (5)		
Commissioner	1	Law No. 8454, dated 4.2.1999, as amended
Assistant commissioner	2 2	II-a II-b
General Section (5)		
Commissioner	1	Law No. 8454, dated 4.2.1999, as amended
Assistant commissioner	3 1	II-a II-b
Section on child rights protection and promotion (4)		
Commissioner	1	Law No. 8454, dated 4.2.1999, as amended
Assistant commissioner	2 1	II-a II-b
Mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (5)		
Commissioner	1	Law No. 8454, dated 4.2.1999, as amended
Assistant commissioner	2 2	II-a II-b
Directorate of Finance, Services and Reception of Citizens (18)		
Director	1	II-b
Sector of Human Resources and Services (10)		
Head of sector	1	III-a
Human resources specialist	1	III-b
Protocol specialist	1	III-b
Archivist/Librarian	1	Class VIII

Driver of the chairperson	1	Class VI
Driver	2	Class IV
Medium technician of various specialties	1	Class VI
Cleaning staff	2	Class I
Sector of Finance and Procurement (3)		
Head of sector	1	III-a
Finance specialist	1	III-b
Procurement specialist	1	III-b
Sector of IT and Citizens' Reception (4)		
Head of sector	1	III-a
Citizens' service specialist	3	III-b
Sector on International Cooperation and European Integration (3)		
Head of sector	1	III-a
Specialist	2	III-b

Overview of revenue and expenditures

Pursuant to Law No. 99/2018, dated 03.12.2018, "On 2019 State Budget", Instruction of Minister of Finance No. 2, dated 06.02.2012 "Standard Procedures for Budget Implementation", as amended, as well as the Complementary Instruction of the Minister of Finance No. 1, dated 17.01.2019, "On 2019 Budget Implementation", as amended, the budget performance for the Ombudsperson, according to the 2019 approved budget program, is as follows:

"Advocacy Service" program

The allocated budget for this program (the sole program of the Ombudsperson) is based on the Program Policy Statement (PPS), which was drafted during the 2019-2021 MTB process and aims at reaching the defined output objectives, approved on the Mid-Term Budget Program paper (2019-2021).

Report of factual expenditures of the program per item for 2019

Upon Law No. 99/2018 "On 2019 State Budget", the allocated funds with the amendments made over the year for the functioning of Ombudsperson activities per items, are as follows:

Report of factual expenditures of the program per item

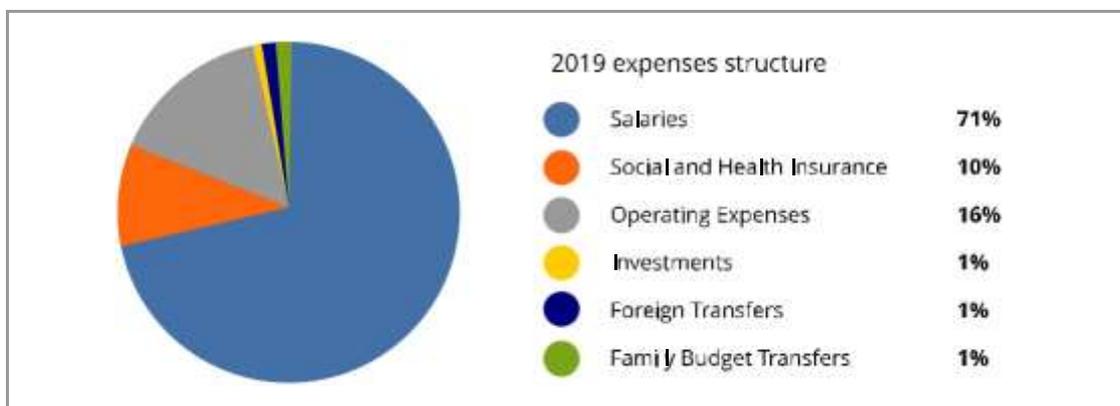
Table No. 1

Account No.	Name	Initial plan	Addition & reduction	Amended plan	Fact
600	Salary	90,800,000	(6,000,000)	84,800,000	80,492,112
601	Social and Health Insurance	13,700,000	0	13,700,000	11,157,532
602	Goods and other services	16,500,000	6,000,000	22,500,000	17,978,717
605	Foreign current transfers	1,600,000	10,000	1,610,000	1,605,206
606	Family budget transfers	500,000	938.908	1,438,908	1,438,908
231	Investments	2,000,000		2,000,000	870.000
	TOTAL	125,100,000	948.908	126,048,908	113,542,475

Annual report of expenditures implementation in 2019

Table No. 2

Account	Name	Amended plan	Fact	Difference	Implementation in %
1	Salary	84,800,000	80,492,112	4,307,888	94.90
2	Social and health insurance	13,700,000	11,157,532	2,542,468	81.44
3	Goods and other services	22,500,000	17,978,717	4,521,283	79.91
4	Foreign current transfers	1,610,000	1,605,206	4.794	99.70
5	Family budget transfers	1,438,908	1,438,908	0	100
6	Investments	2,000,000	870.000	1,130,000	43.50
	Total	126,048,908	113,542,475	12,506,433	90.10



Graphic representation of 2019 expenditures

Implementation of operating expenses item and investments, in particular, would have reached higher levels, but due to the natural disaster (26th November earthquake), upon DCM No. 750, dated 27.11.2019, "On Declaring the Natural Disaster State in Durrës and Tirana Regions", as well as letter of the Minister of Finance No. 21920, dated 02.12.2019, "On Priority of Payments in the Conditions of the Natural Disaster State", the suspension of all public procurement procedures for 2019 was confirmed. This led to failure to implement several procurement procedures foreseen by the institution related to working conditions improvement (office equipment, repair/purchase of electronic devices).

Staff expenses

Implementation of the salary fund reflects the structure and organizational chart, as well as internal and external turnover. The allocated fund for 2019 for covering staff salary expenses was 90,800,000 ALL, changed with letters Prot. No. 3845/1, dated 20.03.2019, "2019 Fund Transfer" in 84,800,000 ALL, whilst the **implementation was 80,492,112 ALL or 94, 90%**, of the changed budget, and social and health insurance were foreseen to be 13,700,000 ALL, whilst their **implementation was 11,157,532 ALL or 81.40% of the budget**. Both items, staff salary and social and health insurance (**600 and 601**) for 2019 have been **implemented at 93% of the changed budget**. In 2019, the average staff number was 52,80 employees out of 56, which was the limit approved by the above-mentioned law. The failure to implement this expense item was caused by the failure to fill in organization structures as a result of commissioner's vacancies and our institution's staff transfer to other positions, set up in late 2018 and during 2019.

The staff number approved by law for 2019 has not been fulfilled across all of constituent structures during such periods.

During the first four months, the institution lacked the following staff:

- 1 Commissioner in the "Section on the bodies of the central administration of the local power and third parties acting on their behalf";
- 1 Counselor;
- 1 Assistant Commissioner in the "Section on the bodies of the central administration of the local power and third parties acting on their behalf";
- 1 Assistant Commissioner in the "Section for child rights protection and promotion";
- 1 Specialist in the "Section of human resources and services";
- 1 Specialist in the "Sector of finance and procurement";
- 1 Specialist in the "Sector for international cooperation and European integration".

During the second four months, the institution lacked the following staff :

- 1 IT specialist in the "Sector of IT and citizens' reception",
- 1 Specialist of "Citizens' services",
- 1 Specialist in the "Sector for international cooperation and European integration".

During the third four months, the institution lacked the following staff:

- 1 Assistant Commissioner in the "**National Torture Prevention Mechanism**";
- 1 Specialist in the "Sector of finance and procurement" (partially);**

1 Specialist in the “Sector for international cooperation and European integration” (partially)

Expenditures on goods and other services

The allocated fund for January - December 2019 for expenditures on goods and other services (item 602) was 16,500,000 ALL, changed by letter Prot. No. 3845/1, dated 20.03.2019, “2019 Fund Transfer”, at 22,500,000 ALL, whilst the implementation was **17,978,717 ALL or 79.90%** of the changed budget.

For 2019, operating expenses were employed for purchasing stationery items, cleaning materials, office equipment, notices and publications in

newspapers and magazines, electricity and water bills payments, Albtelecom, Vodafone, post services, vehicle insurance, gas, institutions vehicles maintenance expenses, per diems in and outside the country, construction maintenance, technical equipment and devices maintenance, expenses for hosting foreigners, expenses for executing judicial decisions, expenses for partaking in events, and expenses for paying taxes.

The fund for foreign current transfers (item 605) for 2019 was 1,600,000 ALL, changed by letter Prot. No. 3078/1, dated 28.02.2019, “2019 Fund Transfer”, in 1,610,000 ALL, whilst the implementation was **1,605,206 ALL or 97.70%** of the changed budget.

No.	Organization name	Value per year						
		Currency	2014	2015	2016	2017	2018	2019
1.	Association of Mediterranean Ombudsmen (AOM)	Euro	750	750	750	750	750	1,000
2.	Association of Ombudsmen and Mediators of the Francophonie (AOMF)	Euro	650	650	650	750	900	900
3.	European Network of National Human Rights Institutions (ENNHRI)	Euro	3,000	3,000	3,000	3,000	4,000	4,000
4.	European Network of Ombudspersons for Children (ENOC)	Euro	0	0	1,100	1,100	1,100	1,100
5.	European Ombudsperson 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.	International Ombudsperson Institute (IOI)	Euro	750	750	750	750	750	750

In 2019, the funds were employed for the timely settlement of obligations of membership quota to international organizations, such as: Association des Ombudspersons et Mediateurs del a Francophonie (AOMF), European Ombudsperson Institute (EOI), Association of Mediterranean Ombudsperson (AOM), International Ombudsperson Institute (IOI), Global Alliance of National Human Rights Institutions (GANHRI), European Network of National Human Rights Institutions (ENNHRI) and European Network of Ombudspersons for Children (ENOC).

The fund for individuals and family budget transfers (item 606) for January - December 2019, was 500.000 ALL, changed via letters

No. 3078/1, dated 28.02.2019, "2019 Fund Transfer" and "Fund Allocation for Payment after Termination of the last Function" No. 4422/1, dated 01.04.2019 in 1,438,908 ALL, whilst the implementation is **1,438,908 ALL or 100% of the changed budget.**

Expenses for investments

The investment fund allocated by the state budget for 2019 stood at ALL 2,000,000, with **ALL 870.000 or 43.50% of the state budget being realized.** In order to improve the working conditions, the OP institution has made the following investments (see table below).

ALL thousand

Project	Project code	Plan	Fact	%
1. Air conditioner purchase	M660001	1.000	870	87
2. Office furniture purchase ¹²⁹	M660001	1.000	0	0
TOTAL		2.000	870	43.5

6.2.4 Approval of the institution state budget for 2020

The OP institution, in line with international standards, has been given an extensive mandate as a national institution to prevent violations to and promote the protection of human rights. Given the institutional organization, legal expectations of the public are high in terms of the OP institution activity.

In order for the institution activity to meet public expectations and the legal provisions in force along with the international standards defined by the Paris Principles and Venice Commission, the

OP institution should be financially supported by the state budget at an adequate amount that will enable full realization of its constitutional mandate.

This is why the 2020 draft budget was projected by the institution taking into account the mission for protection of rights, freedoms and legal interests of the individual from illegal and undue actions or omissions of public administration bodies and third parties acting on its behalf; the recommendations and standards of

¹²⁹ As highlighted above, this line was not realized given the state of emergency due to the natural disaster (earthquake) and procurement procedure suspension

international institutions; RoA recommendations and the analysis and management of human and financial resources in Albania given the multiple activities developed by the OP institution for 2019.

In line with the relevant legal procedure on the review of the draft law "On 2020 budget", representatives of the OP institution presented before the Committee on Legal Affairs, Public Administration and Human Rights the overall analysis of impacting factors in the hearing session dated **19 November 2019**, by reasoning the specific proposals brought forward on changing the 2020 budget, which consisted in some financial additions in human resources. In the end of the exhaustive analysis presented to the Committee on Legal Affairs, Public Administration and Human Rights, the latter consented that the institution was allocated an additional fund for the line 602 (operating expenses) and line 231 (investments).

Upon approval and entry in force of the law no. 88/2019, dated 18.12.2019 "On 2020 budget", the OP institution reviewed the final 2020 budget. In opposition to what the Committee on Legal Affairs, Public Administration and Human Rights verbally consented and approved in the hearing session of 19 November 2019 in terms of fund addition, a further reduction of the budget allocated to our institution was noted.

We would like to bring to your attention that the 2020 budget approved for the OP institution is the first budget in the history of the OP institution operation that was reduced below the final ceiling of expenses approved by relevant DCMs. The budget was reduced by 2.33% as compared to the one approved by DCM No. 523, dated 25.07.2019 "On approval of final ceilings of

expenses for the 2020-2022 MTBF" and by 7.5% as compared to the previous year.

The budget will have a negative impact in the re-accreditation Status "A" (to be concluded in 2020), since one of the evaluating criteria guiding the accreditation process is the adequate financial support from the state budget so as to enable the smooth and progressive realization of activities carried out by the national institutions in the framework of complying with their mandate. *We would like to highlight that according to Paris Principles, funding from external sources (donors) cannot replace the funds originating from the state budget, since it's the responsibility of the latter to ensure the minimum budget for the activity of this national institution on human rights so that it may normally carry out its functions in the framework of complying with its mandate.*

The approved budget does not support our vision as a national institution for the protection and promotion of human rights and it is in flagrant opposition to the recommendations included in all international bodies' reports (including the European Commission reports, the Sub-Committee on Accreditation reports in 2014, and recommendations made in the framework of the Universal Periodic Review (UPR) in 2014), which have reiterated in their assessments, both individually and collectively, the fact that the OP possesses limited human and financial resources to effectively exercise its constitutional mandate and that a broader support is needed by the state budget in this regard.

On a comparative approach, the budget of the institution for the 2014-2020 period was as follows:

ALL thousand

No.	Period	Approved					
		600–601	602–606	231	No. of employees		Total
		Salary + insurances	Operating expenses	Investments	Assistant commissioner	Total	
1	2014	75,500	16,000	4,000	45	50	95,500
2	2015	75,500	16,000	4,000	46	51	95,500
3	2016	84,500	17,000	4,000	48	55	105,500
4	2017	84,500	18,000	4,000	48	56	106,500
5	2018	94,500	17,500	4,000	48	56	116,000
6	2019	104,500	18,600	2,000	48	56	125,100
7	2020	98,500	17,000	1,000	48	56	116,500

6.3. Regional offices operation

As highlighted previously, article 32 in the Law No. 8454, dated 04.02.1999 “On Ombudsperson”, as amended, defined among others the OP right to appoint his/her local representative and the obligation of the local power to provide accommodation in the office and enabling the necessary working conditions for the implementation of all requirements under the law.

Regional offices have continued to strengthen the OP presence closer to the citizens in these regions through their representatives’ continuous work on site, thus providing the citizens with further information on the OP role and functioning, complaint submission and timely review by experts according to sections, and reply to citizens within a short and optimal period of time. Regional representatives’ promotional campaigns and on-site work have been significant components to their daily activity, thus aiming at the enhancement and

increase of citizen trust in the OP, not only as an objective to be achieved, but also as a satisfaction and responsibility. For the January-December 2019 period, the number of complaints/requests submitted was 1844 or 44% of the total for 2019.

During 2019, in the framework of the Cooperation Agreement with the Commissioner on Protection from Discrimination, it was agreed that local offices in the geographical locations they were established and made operational could be used to support each-other in receiving requests/complaints from complainants and forwarding them for review and addressal according to the infringed right. Both institutions will engage in conducting joint trainings on professional enhancement of local office representative, aiming at establishing a new culture and setting higher standards in service quality provision.

In the framework of the evaluation and serious analysis of OP local offices functioning and reorganization, their functioning and performance improvement, geographic expansion, current level of cooperation and issues encountered by local power units, level

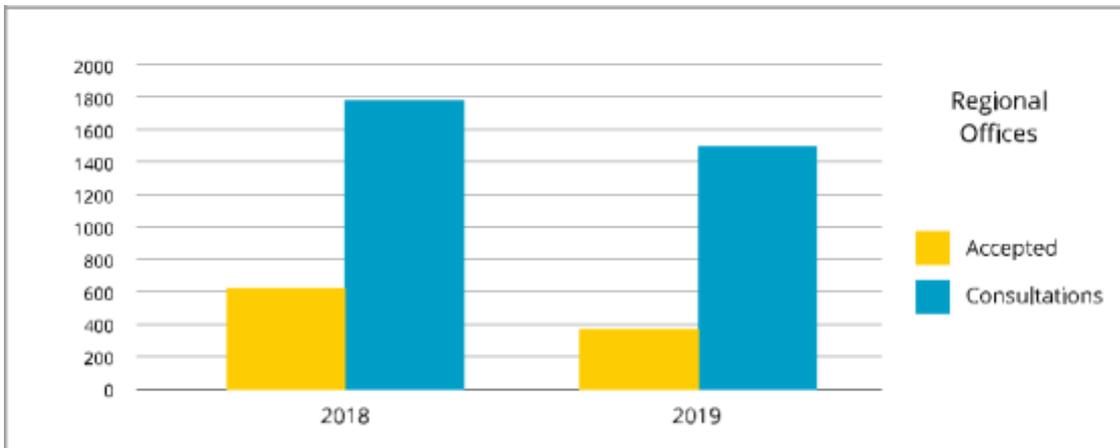
and standard these units should meet as part of a national human rights institution, the OP deemed reasonable to close and prevent the Fier Regional Office from functioning, by displacing it in Vlora municipality, with the mayor of which the Cooperation Agreement has been already signed.

As previously highlighted, we deem that if the OP regional offices would be located within the relevant municipal buildings or nearby, the citizen accessibility would have been much easier and the visibility much higher, thus

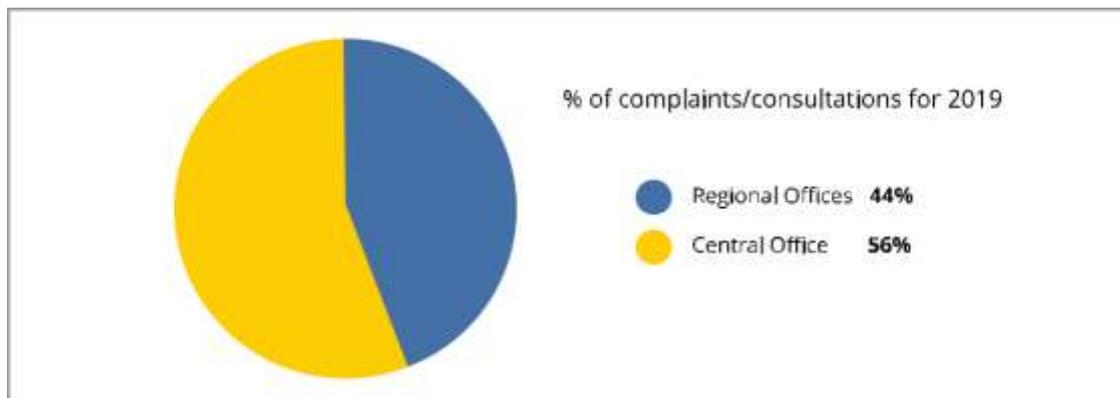
impacting in the enhancement of the inter-institutional cooperation and the trust of citizens in this institution. This concern has been raised during the Parliament discussion as well through previous reports, but the situation of regional offices in several municipalities they operate is still the same (Pogradec, Berat and Saranda Regional Offices).

We are presenting below the comparative approach towards complaints filed with the Local Offices for 2018 and 2019.

Graphical representation of the number of complaints and consultations for 2018 and 2019



Graphical representation of complaints/consultations in the OP institution Central and Regional Offices



Chapter 7

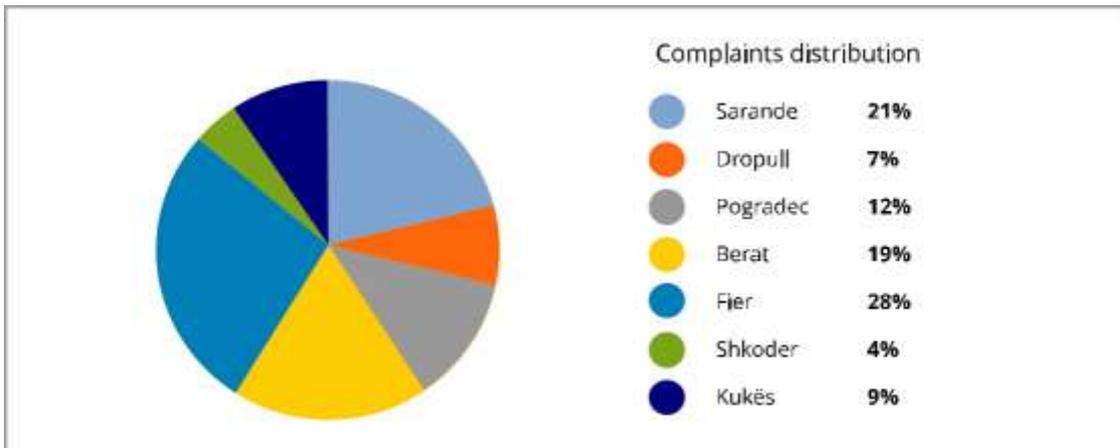
Figures and facts related to complaints and complaint review

The OP institution handled **4171 complaints** in 2019. Out of these, 1384 complaints were considered as falling under the OP jurisdiction and competence upon expert assessment, while 2327 complaints were handled in the form of consultations and guidance on the legal procedures citizens should resort to in order to have their issue solved. Citizens submitted their complaints by appearing in person at the OP Central or Regional Offices, and through different means of communication such as mail, social networks, email, mobile applications, telephone etc.

Verbal and written consultations submitted with the OP central office are as follows:

- 617 complaints/consultations in the Central Reception Office
- 861 complaints by mail
- 349 complaints over the phone
- 111 complaints by mail
- 118 complaints/consultations through the application
- 271 complaints/consultations through social networks

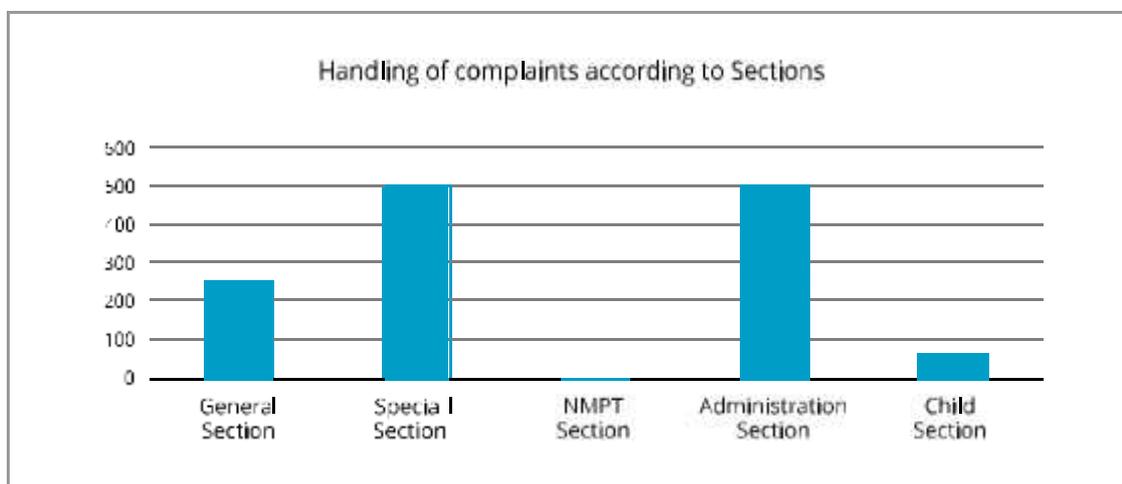
1844 complaints and consultations have been filed in 2019 with the 7 OP Regional Offices, as presented in the following chart:



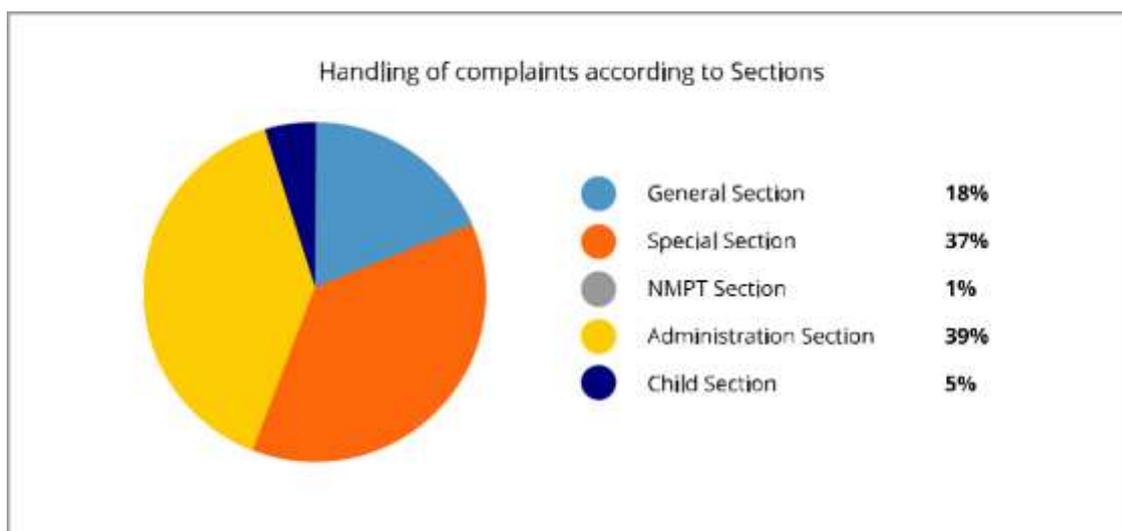
Graphic representation of complaints/consultation distribution in the 7 Regional Offices

Total of 1384 complaints handled by the OP institution according to the relevant sections are distributed according to the following table:

Section	Number of complaints under review
General Section	255
Special Section	519
Administration Section	537
Section of National Mechanism for Prevention of Torture ¹³⁰	8
Section of Child Rights Promotion and Protection	65



Graphic representation of handling of requests according to the relevant sections

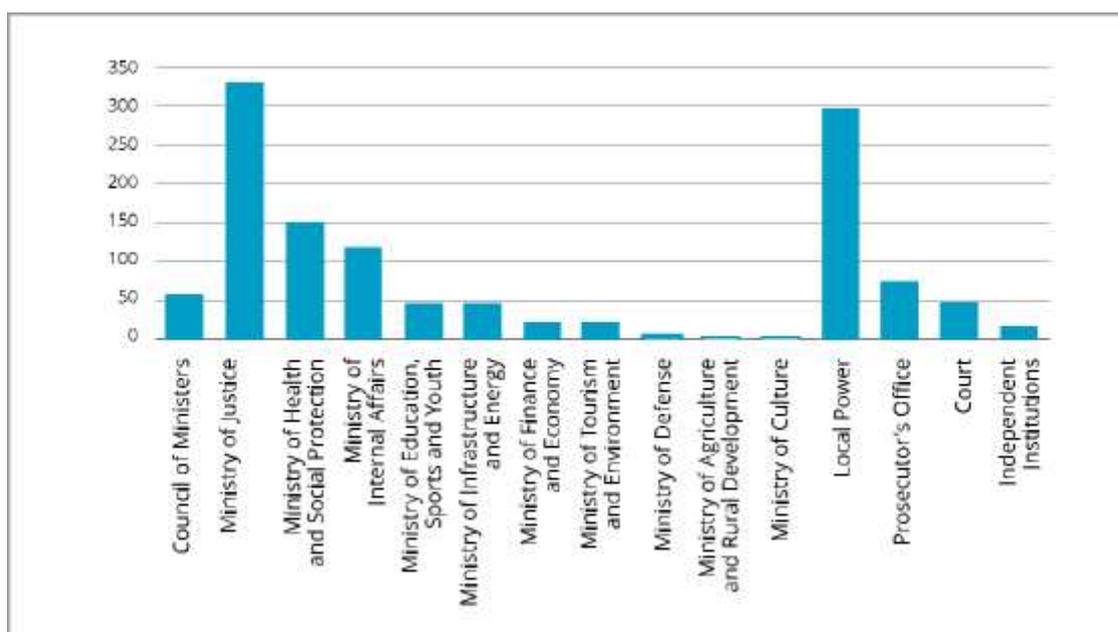


¹³⁰ Given the special and specific nature of its work, the NMPT Section does not handle individual complaints

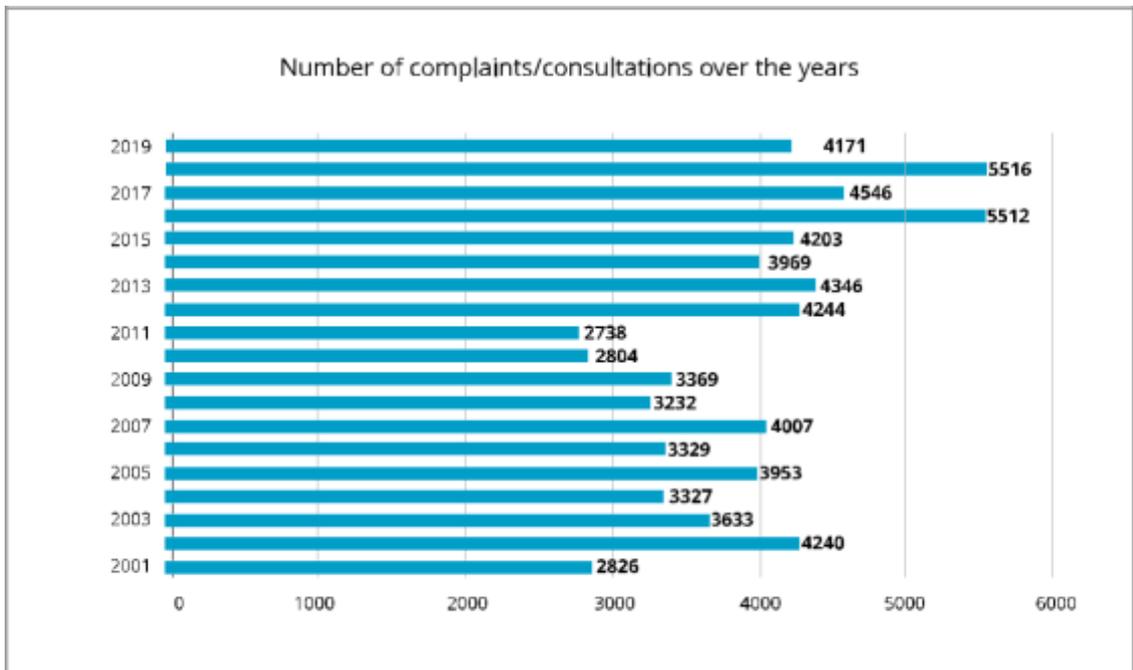
Distribution of complaints to state institutions and their subordinate institutions is as follows:

Institutions	Number of complaints
Council of Ministers	56
Ministry of Justice	330
Ministry of Health and Social Protection	149
Ministry of Internal Affairs	119
Ministry of Education, Sports and Youth	49
Ministry of Infrastructure and Energy	47
Ministry of Finance and Economy	23
Ministry of Tourism and Environment	23
Ministry of Defense	9
Ministry of Agriculture and Rural Development	4
Ministry of Culture	3
Local Power	297
Courts	47
Prosecutor's Offices	75
Independent institutions	19

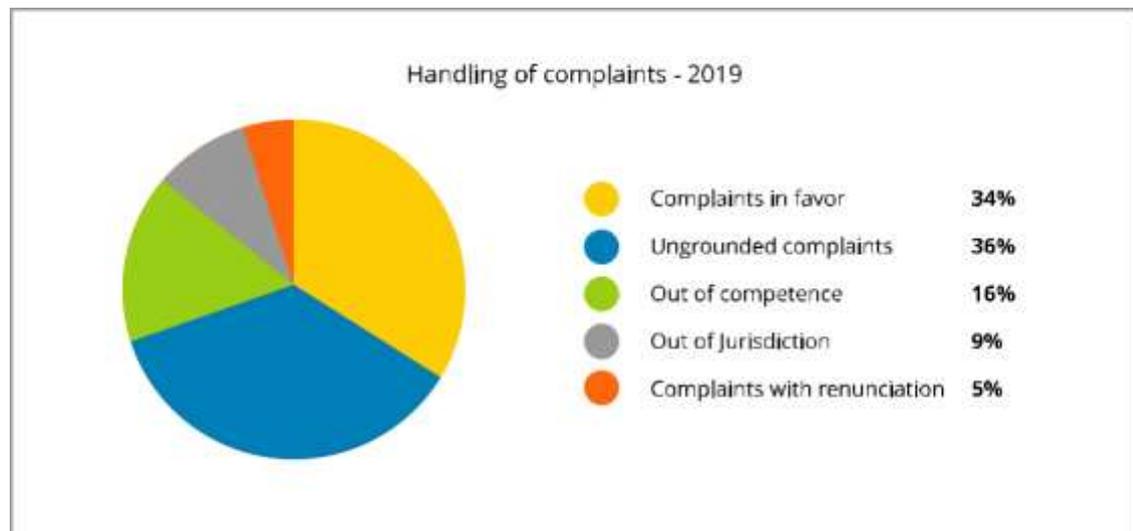
Graphic representation of complaints distribution to state institutions and their subordinate institutions



Graphic representation of complaints distribution according to Institutions



Graphic representation of complaints filed over the years with the OP institution



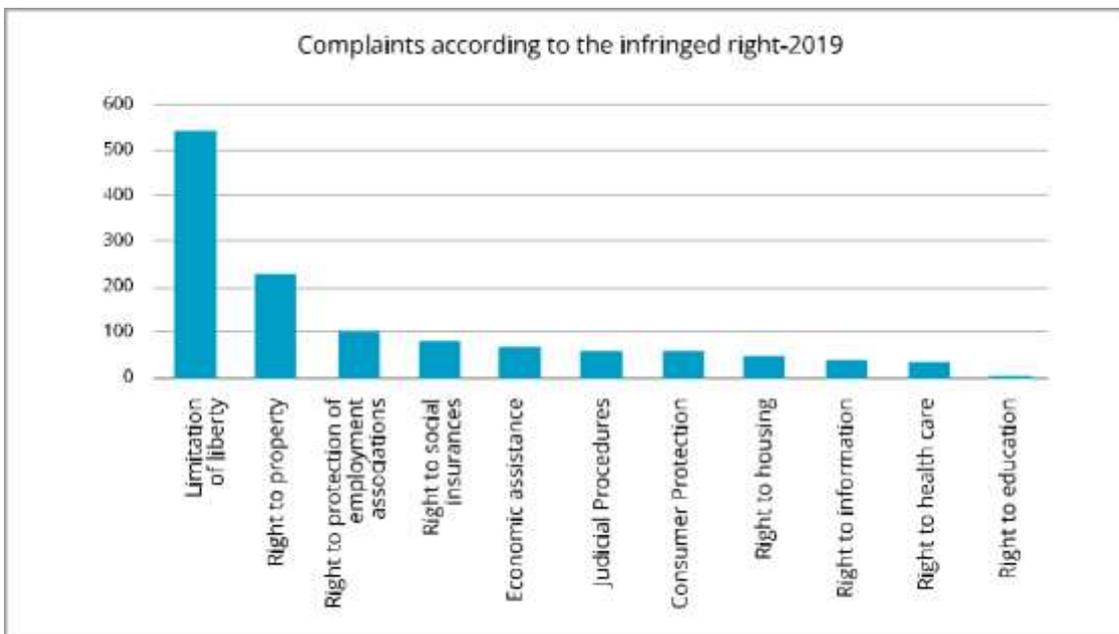
Graphic representation of handling of complaints for 2019

Complaints handled by the OP institution for 2019, according to the infringed right are as follows:

Limitation of liberty	539
Right to property	225
Right to protection of employment	104
Right to social insurances	78

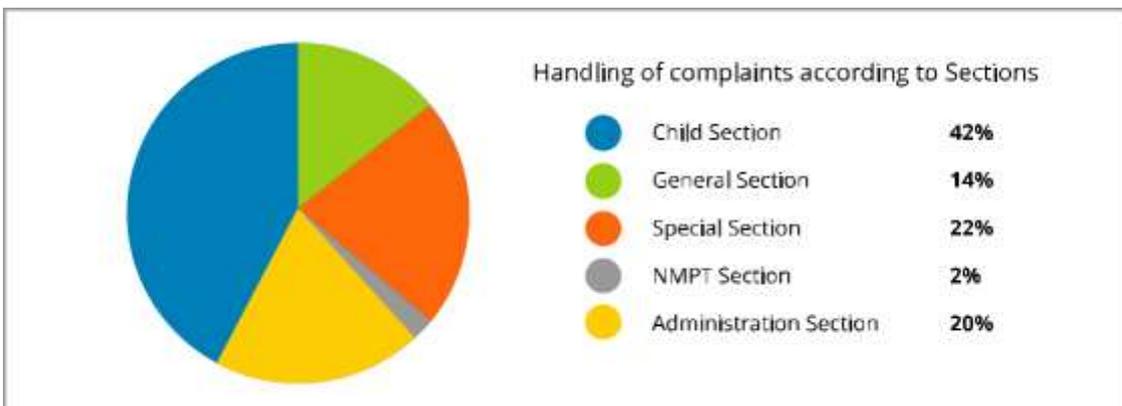
Economic assistance	67
Judicial Procedures	59
Consumer Protection	56
Right to housing	43
Right to information	35
Right to health care	33
Right to education	3

Graphic representation of complaints registered in 2019 according to the infringed right

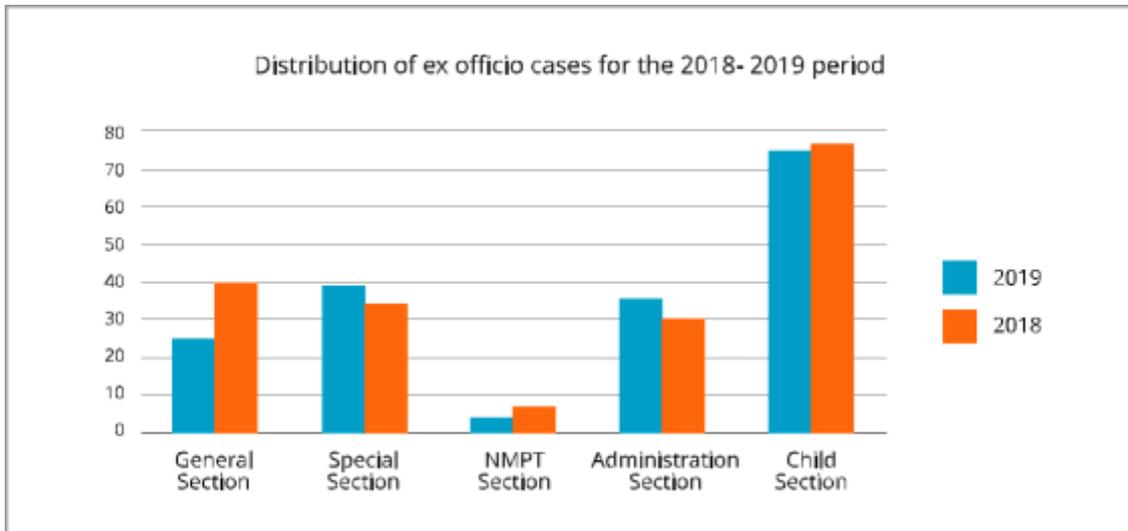


As regards the ex officio cases for 2019, the OP institution reviewed 178 made public by the media, investigative TV shows, social networks

etc. In all handled cases, the OP institution has faced with the infringement of citizen rights.



Graphic representation of handling of ex officio cases according to sections for 2019



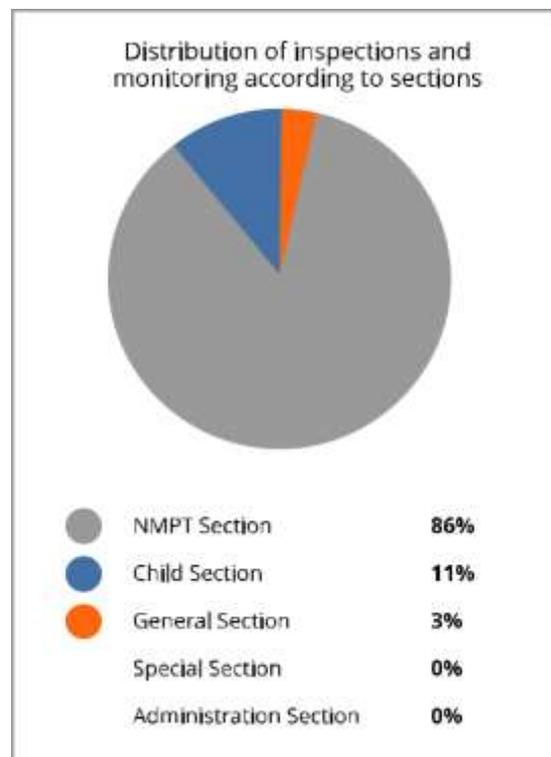
Graphic representation of distribution of ex officio cases according to sections for the 2018-2019 period

As regards the monitoring and inspection exercises in 2019, the OP institution has increased their overall number with 77% in comparison to the previous year. Monitoring and inspections made were mainly:

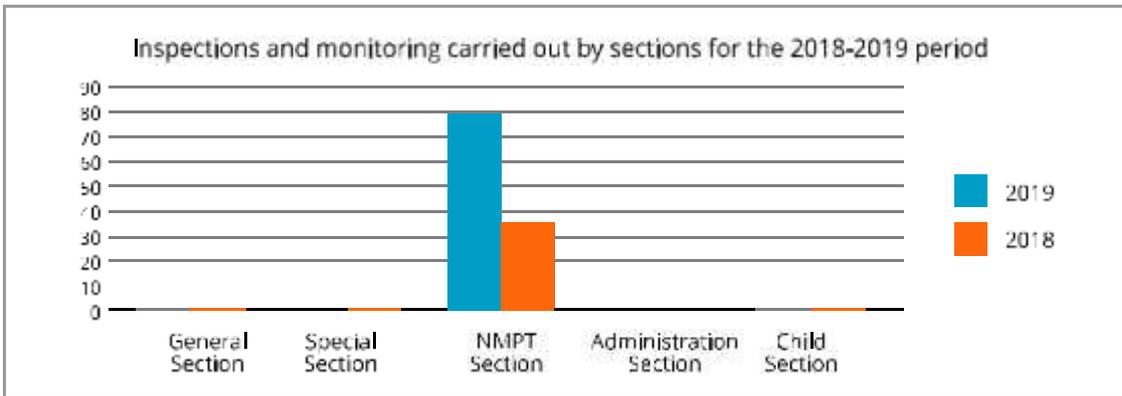
- Monitoring and inspection of repatriation operations
- Monitoring or protests¹³¹
- Monitoring at Police Directorates
- IECDs inspection
- Inspection at Police Stations
- Inspection at Military Units
- Inspection at Border Police Stations
- Inspection in Development Centers for persons with disabilities
- Inspection at the National Emergency Center QSUT for ambulances
- Inspection at the Institute of Minors
- Inspection at Psychiatric Hospitals in the country
- Inspection at Asylum Seekers Centers
- Inspection at Centers for Victims of Trafficking

¹³¹ Monitoring of protests, due to limited resources, has been carried out with the participation of all institution sections

Inspection at Center for Foreigners
Inspection at Retirement Homes



Graphic representation of inspections and monitoring according to sections

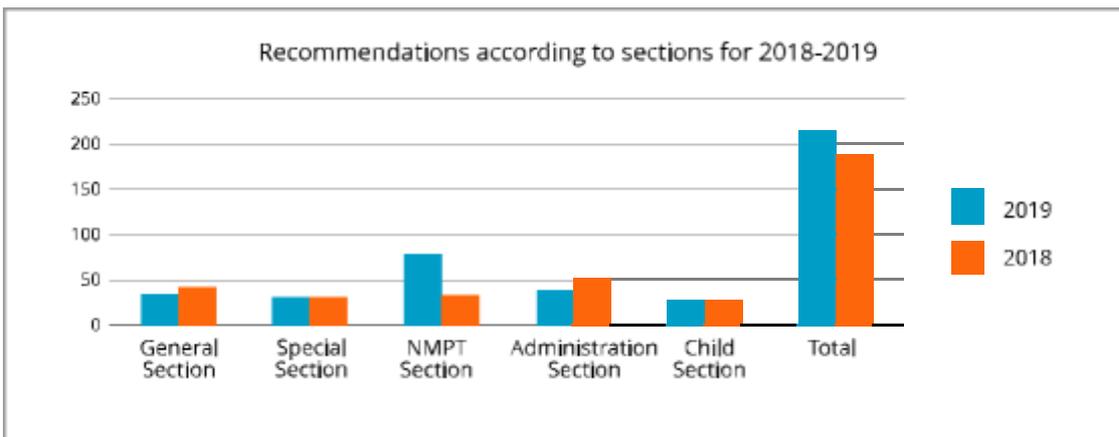


Graphic representation of inspections and monitoring carried out for the 2018 and 2019

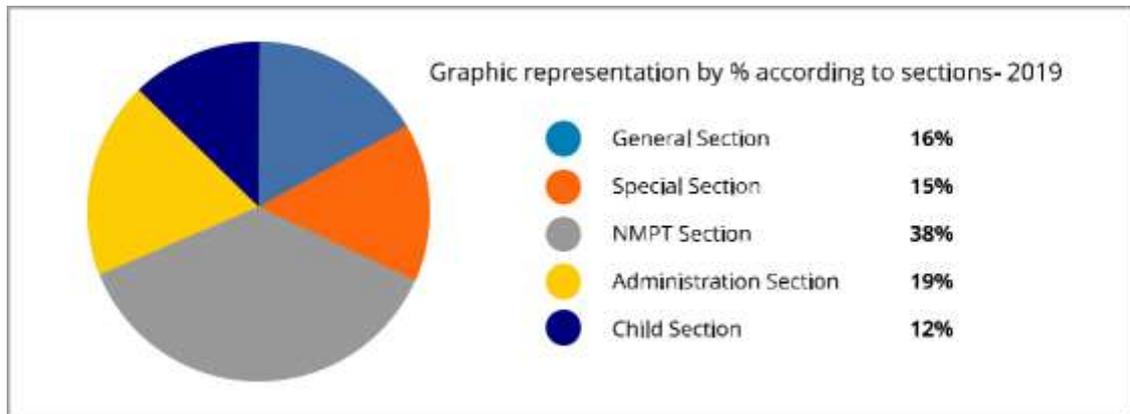
In 2019, the OP institution drafted 213 recommendations, while in 2018 the number stood at 185. Otherwise put, 28 recommendations or 15.1% more than in 2018

Distribution of number of recommendations for 2019 according to sections:

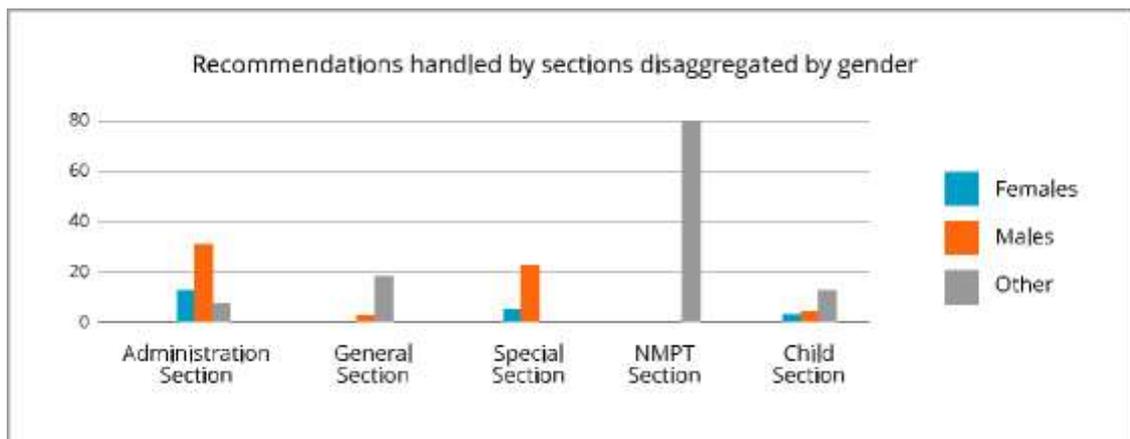
General Section	35
Special Section	32
NMPT Section	80
Administration Section	40
Child Section	26



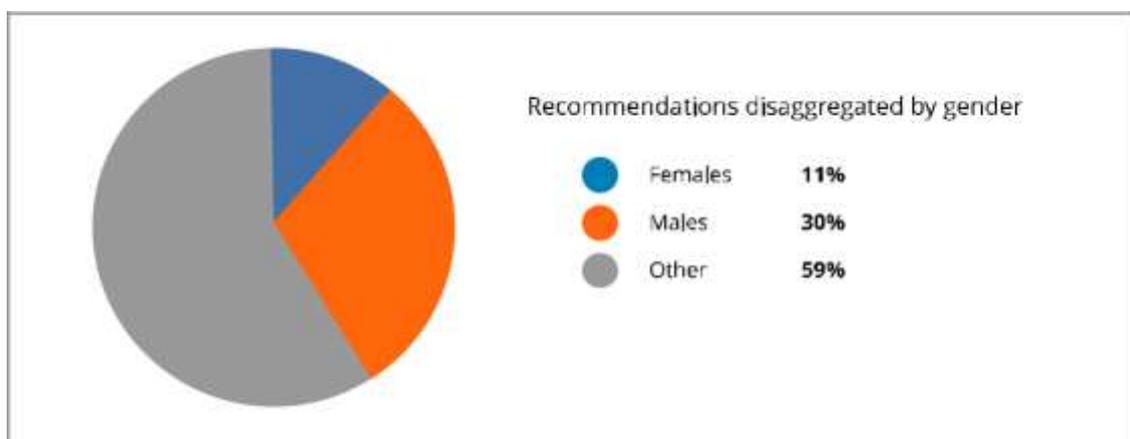
Graphic representation of recommendations according to sections for the 2018-2019 period



Graphic representation by % of recommendations according to sections for 2019



132 Graphic representation of recommendations handled by sections with data disaggregated by gender



Graphic representation of recommendations handled by the institution in 2019 disaggregated by gender

Others representing recommendations for different stakeholders with both genders benefiting.



