



REPUBLIC OF ALBANIA

ANNUAL REPORT

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

**January 1st – December 31st
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THE OPENING SPEECH ON THE ANNUAL REPORT OF THE OMBUDSMAN, 2017

The year 2017 has been a year of change for the Ombudsman's Institution. A new stage has begun in our permanent challenge with ourselves and not only, to enhance and strengthen our close relationship with citizens.

One test of this commitment was the acceptance of nearly 5000 complaints for 2017 as well as the increase in efforts to promote and protect human rights wherever the Ombudsman had a voice or an action space.

However, the year 2017 found our constitutional institution - even before the change of the generation of its leaders - involved in important and new processes up to that moment for its role.

Justice Reform was one of the fronts where the Ombudsman, despite the interpretative and budgetary obstacles, successfully fulfilled its task by confirming once more that this institution remains a reference point for its independence, impartiality and justice.

Of course, now a year later, it is the time of analysis. It is the time to review the work done and this report that you have in your hands, is a synthesis of this work analysis. An analysis which our staff conducts with dedication every day.

Beyond the daily work of the people, the struggle to advance their seemingly small personal causes and through them the great cause of building a more just society, is still a place for deep strategic reflection.

This institution lives to fight for people, but what are the reasons that many Albanians today still need to fight for their right?

About 5,000 complaints that they have addressed to the Ombudsman for resolution in relation to the authorities, are just a small fraction of the giant dimension of the complex relationship between the citizen and the authority.

What lies at the origin of this dispute? Why does our authority still demonstrate a worrying scale for the humiliation of its citizen? Why is the citizen's property, schooling, health or

work still not secure? What is resistant to the origin of arbitrariness, incompetence or corruption?

The reasons are several, not easily detectable. The exhaustive finding of the causes or the solution to the consequences that they create, would deserve a Nobel Prize. But in this opening speech I am presenting one of them, for which just a civic will is required to make the change.

Alas, Albania and its society are still under the vanguard of what is known as the language of hate. And it is precisely this language of hatred, which we believe that comprises one of the most disaggregated, visible and less warfare reasons of the situation described above.

Language of hatred generates harmful and dangerous repercussions for almost every aspect of the relationship between the state, the individual, and the society. Disguised as the political contest, the language of hatred is the existence of a permanent war situation between the two camps, and even the guarantee that we all are, without exception, divided into two warring garrisons that want to destroy each other.

The language of hatred against the other, the difference, the foreigner, exists only with the premise that there must exist the other, the different and the foreigner. Usually, this "other", "different" and "foreign" man is none other than just another Albanian.

This language of hatred that is cultivated in a pyramid form from top to bottom, shapes according to its parable even those who take it for reference. The harsh language of hatred in political campaigns, in the Assembly and in institutions, is transferred unchanged, almost in a refrigerator state, even in the offices below, where appointments are often perceived as revancs to the enemy, and where the position is often supposed to be a means of exercising supremacy over the defeated.

These offices and these employees are then the point of the first contact of the citizen with the rudeness of authority. These are the places where the play is played and interpreted in a daily and unstoppable show, the "display" of the language of hatred against the other, the change, the powerless, the defeated and the young.

It is this language and psychology of hatred which then contaminates and poisons even the minds of its followers. It is what is then carried to the poor Albanian families, where the life of women, children, the elderly or the sick is suddenly devaluated. It is this language of hatred that replaces normal communication between people, it is this hateful mentality that transforms them into assassins with the pseudonym "commentators" on social media and not only.

It is thanks to the inspiration by the language of hatred from above, which give rise to severe tragedies below, the monstrous crimes in the cell of society, and the devastating shake of its own foundations.

We had the opportunity to see the language of hatred in action even during an important process where the Ombudsman's Institution was a first-rate actor: it is about the justice reform and the procedures for selecting members of the new institutions.

Have competitors been more than once subject to these denigrating, intimidating target processes of the language of hatred with inspiration and political instrumentation? We really have to feel lucky that in such a gloomy and discouraging scenery, there were still courageous people who surpassed this nerve and patience test. But there is still the curiosity

to see if the devastating bombardment that the frenetic hatred artillery led to the foundations of this reform, has shaken or not its foundation of confidence in the future.

Language of hatred, awareness and recovery from it, remains in our judgment one of our biggest challenges in the years to come. Anyone who holds a state office today, should start thinking about the cure to first save himself/herself from it. Let's be sure that this would be the last instance, an inspirational relieving radius for our own Albania.

Erinda Ballanca

CHAPTER 1

General overview of the human rights situation in Albania for the Year 2017

The Ombudsman in Albania, as an institution for the promotion, prevention and protection against human rights' violations, constitutes an integral part of the system of control and balance, which is today a basic principle of democratic governance throughout the civilized world.

By participating in the large family of institutions established for the protection of human rights, the Ombudsman is a constitutional guarantee for the protection of the freedoms and legitimate interests of the individual, Albanian citizens, foreigners, regular residents or not in Albania, refugees and people without nationality who are in the territory of the Republic of Albania, by illegal and irregular acts or inactions of public administration bodies. It is above all a moral authority which we need so much.

Having an administrative jurisdiction, the protection of the rights and legitimate interests of the individual is carried out within the scope of the public administration activity as well as the third parties acting for its own account, with the exceptions provided by law.

The Ombudsman should be regarded as an institution whose existence is not based on the "state coercive force", but on its universal mission, which conveys the respect of the state towards the individual and the values that the human being carries. His main legal means is the recommendation, which identifies it as a non-penalizing body.

For these reasons, the Ombudsman is part of those institutions which, as envisioned by the Paris Principles, are "guarantors of democracy, the rule of law and human rights".

The Constitution of the Republic of Albania and specifically the Organic Law No. 8454, dated on 04.02.1999 "On the Ombudsman", as amended, defines the mandate and scope of its activity. According to its organic law, the Ombudsman, in addition to the duties assigned to it in this law, may perform other duties as set out in specific laws.

It is the case of the legal package of justice reform, that assigns to the Ombudsman important competencies for the smooth running of procedures related to the organization, administration, verification and management of structures that assist the process of final selection of candidacies by the Albanian Parliament. These procedures are related to the verification of candidacies for members of the institutions for the transitional re-evaluation of judges and prosecutors, verification of formal legal criteria for advocacy candidates, who express interest to the High Judicial Council and the High Council of Prosecutor's Office, as well as for candidates who express interest from the Civil Society, for members of the High Judicial Council and the High Council of Prosecutor's Office. Likewise, an important competence is related to the monitoring of the processes regarding the functioning of the organs administering justice, such as the Council of Appointments in Justice.

Through this executive summary, we aim to provide a transparent presentation of the ascertainments, findings as well as opinions and recommendations prepared during 2017, on the situation and the improvement of the human rights situation in the country.

During 2017, the Ombudsman's Institution has had a number of achievements, among which it can be mentioned, among other things, the successful implementation of the Ombudsman's

commitments in the implementation of the Justice Reform; strengthening the role and partnership in relation to central public administration bodies, particularly with regard to legislative process initiatives; increasing the active presence in international mechanisms that deal with the promotion and protection of human rights; strengthening of cooperation with international partners in the function of institutional strengthening and support of the Ombudsman.

A challenge remains the creation of a more sensitive and accountable public administration as well as more responsive to demands for justice and credibility; creation of a democratic culture of respect for human rights; increasing the credibility of the Ombudsman's Institution to the citizens; establishment and functioning of the necessary mechanisms for the implementation of the Ombudsman's recommendations by the public administration.

During 2017, it turns out that out of 188 recommendations addressed in total, 24 are unanswered; 29 are refused recommendations, 123 received recommendations; the rest are under process of reviewing.

Out of the number of recommendations received, there are 80 implemented or partially implemented recommendations, 19 unapplied recommendations and some other 24 recommendations that have been accepted in principle.

Problematic is the lack of correct replies to the letters for explanations by the state institutions (we recall that in some cases the documents have been sent more than once to the state institutions), thus preventing the administrative investigation being carried out by us.

We also note with concern that in many cases we are not invited to give opinions on draft laws or other normative acts related to Human Rights and Freedoms.

During this year, **a total of 4546 complaints, requests and notices were handled** by the Ombudsman's Institution, (*including those of citizens' reception*). The complaints reviewed by the sections of the Ombudsman's Institution during 2017 were in total 1752.

From the Citizen Reception Office, 2408 complaints were answered promptly, while 386 complaints were answered in the form of written consultations.

From the data, it turns out that 101 complaints were out of the jurisdiction, 163 complaints out of competences, 412 ungrounded complaints, 32 abdicated complaints, 490 complaints received without recommendation (solved in favor of the citizens).

Meanwhile, the complaints reviewed according to the sections are:

Administration Section	604 complaints
Special Section	574 complaints
General Section	412 complaints
Torture Prevention Unit	98 complaints
Child Section	64 complaints

During 2017, the Ombudsman's Institution proactively and at the request of various state institutions, has provided its opinions and suggestions regarding a number of draft laws and other normative acts.

Respect for the rights in penitentiary institutions is a continuously monitored area by the Ombudsman. Detained and convicted persons in the penitentiary institutions partially enjoy

the rights set out in Articles 5, 11, 23-28, 30, 32-42 of Law No. 8328, dated on 16.4.1998 "On Rights and Treatment of prisoners and pre-detainees", as amended.

Generally, the buildings of the institutions for the execution of criminal imprisonment sentences are not designed, constructed or reconstructed in order to meet the requirements for a normal life, with sufficient space for the development of joint activities or for meeting the standards in the premises of staying and sleeping. Particularly disturbing is the continued use of observation and isolation environments, as residential environments for overcrowding or non-compliance.

The legal obligation for sufficient individual, in good conditions as well as clean clothing and other devices which ensure the fulfillment of normal living conditions, is not met in any case.

In the absence of the establishment of a special institution for the purpose and treatment of people with mental health disorders who have committed criminal offenses for which the courts have taken a decision on "compulsory medication in a medical institution", pursuant to Article 46/2 of the Criminal Code, and of people to whom the courts have imposed a coercive measure, "temporary admission to a psychiatric institution" under Articles 46, 232/e and 239 of the Code of Criminal Procedure, the treatment of this category is carried out in prison conditions.

There are inherent problems in providing health and psychosocial services, providing education opportunities, and vocational training courses, as well as problems related to rewarding the work done. In its entirety, the training of pre-detainees and convicts is not in line with the goal of rehabilitation for their reintegration into family, social and economic life, as a result of problems in obtaining rewarding permits, in the missing or curtailed cooperation with the evidence service, social welfare services, local bodies and non-profit organizations in drafting reintegration programs at the verge of being released.

In the respect of rights in the police bodies, there have been problems in the commissariats that are mainly related to the failure to meet the legal obligations for the construction or adaptation of the escorting facilities, according to the standards set out in the Standard Procedures "Technical Rules of Conduct in the Police", as well as failure to comply with the legal requirements for the construction or adaptation of security facilities, according to the standards required and approved by the International Conventions and the Manual of "Standards and Procedures for the Treatment and Security of Arrested and Detained People in Police Units". In some cases, it was ascertained that there are people who slept on the ground, which is an inhuman and degrading treatment. There have also been cases of physical violence, failure to produce copies of minutes for the blocking of items or accompanying documents, as well as failure to provide blocked objects.

There are still problems with the installation or functioning of a monitoring system with observation cameras in corridors of escorting and security rooms, in most of the commissariats, as well as in the citizens interrogation offices in all police stations in the country. In a part of the commissariats, the completion of the registers for the identification of the escorted people, is not carried out with responsibility and accuracy. In general, it is guaranteed access to a physician, attorney, and psychologist.

During monitoring of *respecting the rights at the border crossing points*, it has been noted that there is a need to improve the protection of migrants entering the Albanian territory through a better recognition of their rights. The Ombudsman notes that increased responsibility of the border officers is required to respect the principle of non-returning and increasing the quality of the selection interviews.

There are still many factors that influence the quality of interviews and are related to human resource boundaries, lack of female officers on female migrant cases, limited number of translators in Arabic language, lack of social service from respective municipalities, etc.

There is also a need to improve the medical treatment scheme in border cases by setting up an outpatient medical service at the main border crossing points, not only for foreign migrants or for illegal immigrants returning from the police of neighboring counties, as well as for the treatment of borderline medical cases that need this fast treatment.

In the activity of the criminal prosecution body, as part of the violation of the rights in the criminal process, there were ascertained unjustified prolongation of the investigation of criminal cases initiated on the basis of the case for acts of great social danger, which in most parts are prosecuted by the Judicial Police of the State Police.

There is evidenced a non-compliance with procedural provisions, ascertained as inaction of the proceeding authority and delay until the failure to provide criminal acts; non-review and evaluation of written requests or memos that the parties have submitted to the criminal process, especially during the preliminary investigation phase; failure to notify or delay in notification of the parties to the decisions taken by the Prosecutor's Office, especially the criminal offender mainly in cases of non-initiation of criminal proceedings.

The lack of transparency in communication and the shortcomings in the ethical and professional behavior of the prosecutor with the predicate, and the parties in the criminal process, as well as the start of the investigations in charge of certain people exercising public functions, were followed by our respective recommendations addressed to the Prosecutor General and the respective District Court Prosecutions.

The right to a fair legal process, understood in its element of judgment within a reasonable time by the courts, is handled in appeals for dragged trials. The most disturbing cases are noted in dragging of trials by the Courts of Appeal, the Administrative Court of Appeal and the High Court.

It is mainly recommended to speed up the adjudication of delayed cases by the Tirana Administrative Court of Appeal, which contradict the requirements of Article 48/2 of the Law No.49/2012 "On the Organization and Functioning of Administrative Courts and the Adjudication of Administrative Disputes".

The lack of judges at the High Court and the Constitutional Court, because of the expiration of the mandate and the non-replacement of existing judges with other judges, has resulted in lengthy trials due to the enormous workload existing in these Courts. In this regard, it is important to establish as soon as possible new bodies in the justice system in order to put an end to the dragging of trials and respect of the principle of legality in the activities of these bodies, as this problem is directly related to the protection of Human Rights, and in particular

to the right to a trial within a reasonable time. The Ombudsman believes that there should be an initiative of all factors to legally resolve the problems related to the issues arising from the implementation of the reform.

The process of execution of executive titles by the State or Private Bailiff Service, as well as other authorities charged by law for their execution on a case-by-case basis, within a determined or reasonable time, leads to the fact that they have not been developed in accordance with the principle of legality, and have violated the right to a fair legal process. Authorities charged by law for the execution of executive titles have not performed, or fail to perform, within the set deadline or within a reasonable time, the actions provided for in the law for their execution.

The issue of non-execution of final judicial decisions given by the courts in the Republic of Albania or the European Court of Human Rights in a reasonable time, remains essential for the state as it is related to the establishment, strengthening and development of a credible and respectful judicial system for all.

Access to courts and the concretization of free legal aid for the categories of beneficiary individuals are elements that have faced difficulties in their realization. The implementation of the new legal framework for legal aid, which undertakes to regulate the problems encountered so far, will provide a more realistic approach to the right to a fair legal process.

The right to property, for the category of subjects, whose property was expropriated without compensation, nationalized or confiscated after 1944, has undergone substantial changes with the entry into force of the Law No. 133/2015 "On the Treatment of Property and the Completion of property compensation process". The legal regime provided for in this law has been assessed by the Ombudsman, as previously reported, not in accordance with the Constitution, an assessment which was partially accepted by the Constitutional Court in its decision no.1, dated on 16.01.2017.

The compensation of property owned assets, mainly with financial compensation, has burdened and aggravated the interest of the Albanian taxpayer, especially of that category that is not subject to this right, with the continuation of the payment of hundred-million-euro bills, in the name of the balance of "public interest" to the right of property.

This method introduces another worsening standard of handling the right to property of the owner subject, which is not competitive with the standard of treating this right for people who have benefited from the right to property, according to Law No. 7501/1991 "*On land*", as amended, Law No. 8053/1995 "*On the transfer of ownership without compensation of the agricultural land*", DCM no. 452 / 1992 "*On restructuring of agricultural enterprises*", etc.

Failure to execute the decisions given over the years, with the right to compensation for the recognized property, as well as the failure to complete the review of the 11,000 claims administered by the Property Treatment Agency (PTA) over the years, continues to be an indicator of disrespect of rights to property, as well as violation of the right to a fair legal process. This conclusion is closely related to the fact of non-completion of the respective administrative procedures, for each claim filed, within the legal deadline set for the completion of an administrative procedure, in the Code of Administrative Procedures of the Republic of Albania.

Non-delivery of acts, decisions made in years by the Property Treatment Agency, and not only, at the local property registration offices where the property is located, according to which it is decided to acquire, recognize, change, terminate a right to immovable property or a real right over it, in accordance with Article 196 of the Civil Code, has led to the fact that the process of initial systematic registration of property in those cadastral zones where they are located, is not yet completed.

Request from the local real estate registration office to pay the interest due from the beneficiary subject, due to the late submission for the registration of the title of the property, beyond the legal deadline of 30 days from the date of its production or its final form, comes in violation of Article 196 of the Civil Code as well as constitutes a breach of the right to property and violates the right to a fair trial.

The restriction made for the receipt of a request for recognition of property only during the first 90 days from the entry into force of Law No.133 / 2015, "*On the Treatment of Property and the Completion of the Property Compensation Process*", has deprived and still deprives all the other individuals who have possessed and still possess property documents for certain properties, but who have not been able to respect this deadline for various objective reasons.

In the activity of the **National Territorial Defense Inspectorate (NTDI)** and the **Territorial Defense Inspectorate (TDI)**, there is a lack of transparency in the municipality; repeated cases of property violation without respecting the official notification procedure on the concrete decision-making of the respective subject; NTDI's activity, fragmentary, non-analyzing and non-responsive, in cases when it is required to undertake certain actions by other state institutions which leads to the lack of development of a fair and legal administrative process, often also by causing damage under the conditions provided by law no. 8510, dated on 15.07.1999 "*On the extra-contractual liability of the public administration bodies*", as amended; legal violations that violate the legal rights and freedoms of the individual, while the state of non-reflection on this illegality still continues, by aggravating the legal situation of the subjects that own or possess properties of different legal statuses.

In the activity of **Local Government Bodies**, it is necessary to increase the cooperation between the local government bodies and other state bodies exercising their competences at the local level for the implementation of the requirements of Law No. 9948, dated on 7.7.2008 "*On reviewing the legal validity of the creation of property titles on agricultural land*", of DCM no. 994/2015 "*On the registration procedure of acquiring the land ownership*", as well as DCM no. 337/2015 "*On determining the procedures for conducting the process of transferring agricultural land of former agricultural enterprises owned by beneficiaries*", aiming the final settlement of the process of separation of agricultural land, as well as providing individuals with the act of acquiring the land ownership (AALO), and the registration of the acquisition of the ownership right in the Local Immovable Property Registration Offices (LIPRO).

For the solution of housing problems during 2017, it was recommended to state bodies to draft a full legal framework, aligned with international standards, that responds to the effective realization of the demands of individuals and their families for housing, thus ensuring the provision of a shelter for each category of individuals, families in need, or in economic difficulties.

This legislation should be accompanied by increasing the budget in this area, as well as with the support that central government should provide to local government bodies with social housing projects. Delegating competences from the central government to the local government was not accompanied by financial budgets, which has put the local government in difficulty in responding to the growing demands of citizens. The work in this regard is reflected in the draft law on social housing.

The high level of unemployment, mainly in remote mountainous and rural areas, is due to the lack of municipal projects and funds, the efficiency and utilization of the natural resources that they possess, as well as the lack of investment in particular, and especially in road infrastructure.

Local government bodies need to plan more funds in their annual budgets to solve the problems that disturb the communities in need, carry out investments, and take measures to recruit and train more professional staff to handle vulnerable groups.

For the effective realization **of the right to healthcare**, the supply of adequate medication to health centers and hospitals, mainly in QSUT, Tirana, is needed permanently due to the influx of people from all over Albania.

The lack of specialist doctors in regional hospitals throughout the country remains a problem over the years, and as a result the lack of services or devices leads patients to find alternative ways of treatment, such as patient flow to the capital and QSUT.

A problem remains even the lack of medical devices, or amortization of existing devices in regional hospitals, which further leads to the lack of quality and standards of medical service in these areas.

Regarding **the right to education**, it is noted that, in addition to the infrastructural and spatial infrastructure problems, our education system and the school also face a number of other problems. The implementation of reforms, quality, evaluation, education, violence, bullying, decrease of interest or motive to learning, and failure of students to complete their studies, are among the biggest problems. Of course, to solve all of these problems, it is necessary to have maximum commitment of professionals, time, money and above all will.

What must be worrying about our society, especially teachers, parents, and the Ministry of Education, is the fact that the school is still far from expectations compared to the community of developed countries where we aspire to integrate.

The Ministry of Education should develop policies and draft plans, the implementation of which will make the school a more loving, attractive and stimulating environment for students. This would have a direct impact on raising the quality, increasing interest and achieving more satisfactory results in meeting the concrete objectives.

For the environment and human rights, it is ascertained that the main problem which exists in the field of environmental protection, is the lack of punishment or even the very low fine penalties issued as administrative penalties for those individuals or entities that engage in harmful environment activities. On our side we can ascertain that the main cause of the

polluting source of the environment is precisely the lack of action of the state bodies charged by law to the various subjects that cause environmental pollution.

Problems in the field of environment in Albania still remain; air pollution in large cities of the country, especially in Tirana; waste disposal in rivers and lakes, as well as pouring unprocessed wastewater; lack of world standards for waste collection and recycling; deforestation and eradication of forest masses as a result of the cutting of forests and fires that damage them.

The amount of **economic aid** is very low and almost negligible in relation to the most necessary monthly spending that it takes for a family or a single individual to survive, let alone to talk about dignity and integration into society. It is unjustifiable for the existence of this situation, not to determine a dignified vital minimum, even within the resources of the Albanian state resources, which would undoubtedly give more dignity to every citizen in need.

From the monitoring of the provision of this assistance, it is ascertained insufficient and non-timely information of citizens on the criteria, procedures and completion of the documentation of the benefit of economic assistance; lack of human resources to physically verify the housing and living conditions of beneficiaries; lack of forecast of funds of local government organs, destined for beneficiaries of economic assistance at the rate of 3%; the lack of many social services, which would increase the quality of life of beneficiary citizens of economic assistance and their families; non-attendance at their place of vocational training courses and improvement of their quality; exclusion from the economic aid of people with disabilities in the part belonging to them, when the family is in the condition of benefiting from economic aid; failure to apply social programs where beneficiaries of economic aid are involved by contributing to their work and this will have an impact on increasing their family's income.

The economic aid system can provide the necessary income for the poor, but it does not help them to escape poverty. Many Albanian families live with payments of economic aid, without having any other income in the family. For many of them, economic aid or disability payments are the only living source, and because of their limited physical, psychological and social capabilities, they can not ensure the fulfillment of basic vital needs.

Consumer protection is another area where solutions need to be accompanied by a package of legal changes to prevent the deprivation of poor families or vulnerable individuals from the right to access the necessary electricity supplies to provide them with the minimum possible within a kwh limit of energy. It is necessary to absolutely avoid the cut-off of electricity supply for vulnerable groups, so that everyone can receive basic services, regardless of the social and economic status that citizens of this country may enjoy.

Regarding the problems associated with water sector reform, it is noted that rural areas, in particular, are not supplied with potable water or partially supplied, thus constituting a major difficulty of living and basic services needed for residents. To address this problem, there is a need for subsidies to vulnerable groups and families in need, including and applying for this purpose other necessary criteria to maximize this phenomenon.

As far as **the right to housing** is concerned, it is ascertained that the number of homeless people appears to be twice as high as the number of homeless people who have benefited from social housing. Homeless people remain uninformed in terms of their compliance with the legal criteria for housing benefit. The low-cost housing program is not affordable for the poor and therefore, the poor do not benefit from this program. Banking procedures applicable to this purpose are too long and costly.

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

There is still a lack of notice or delay in the provision of information within the procedural legal deadlines by the relevant state institutions or bodies, in accordance with the provisions of Law No.119 / 2014 "**On the right to information**". The issue of compliance with this right has been problematic during the administrative procedures developed by various public administration bodies.

From monitoring of the respect of **children's rights** in public institutions of residential care for children, Special Schools, Children's Disability Institute etc, have been identified with many dimensional problems and are related to the actions or inactions of these institutions, both at the local level and at the central level.

Lack of capacities and limited financial opportunities in the institutions of education of children with disabilities and the Child Protection Unit (municipal case management structures) make local government not responding to the demands for setting up new pursuit services of the dynamics of children's needs.

There are also noted problems of non-coordination and institutionalization of cooperation between local government, NGOs and other state structures. It is noted that knowledge regarding the implementation of children's rights in everyday practice, is still limited with the trainings that are occasionally provided by various organizations.

Regarding the **rights of people with disabilities**, despite some recommendations sent for their respect, it is ascertained that there are still problematic issues, the lack of accessibility for people with disabilities; non-payment of ticket compensation in urban transport of people with disabilities; failure to obtain reimbursement for fuel and lubricant purchases for paraplegic and tetraplegic invalids; lack of access to public urban transport and non-payment of the ticket; failure to comply with legal provisions on employment; lack of statistics for people with severe mental illnesses; failure to establish residential rehabilitation centers for people with severe mental illnesses; access of people with disabilities to justice, governmental structures at central and local level, media and business; lack of statistics for people with severe mental illnesses; Voting Centers (kindergartens, nurseries and schools) are not accessible to people with disabilities.

Regarding **gender equality and the rights of LGBT people**, it should be noted first that current economic assistance is insufficient to address the needs of women who are heads of household, Roma women or those from other vulnerable groups, as victims of domestic violence or victims of trafficking in human beings.

The failure to declare a minimum of living remains a major obstacle in determining the social policies pursued by the state for vulnerable groups, including women. Coordination and Referral Mechanisms of **domestic violence** cases in the municipalities of the country, need to be strengthened and supported. Local services are lacking such as accommodation, 24-hour telephone lines, rehabilitation programs, etc., hampering the fulfillment of responsibilities by members of the Coordination and Referral Mechanisms of violence cases.

The lack of local legal clinics ranging from regional to post-secondary schools and beyond, and the lack of provision of services from them, have implications for women's access to justice from different districts.

Although it is one of the social objectives guaranteed by the Constitution of the Republic of Albania, **housing** is one of the most acute issues faced by women, especially women in need.

The Ombudsman considers that it is necessary to raise the awareness of local government units on the budgeting of gender priorities. Municipalities need to foresee and apply for funds to support the establishment and functioning of social services for victims of domestic violence, special shelters, psycho-social and legal services for victims, rehabilitation programs for abusers and fulfillment of other obligations defined by law.

LGBTI Community Rights are considered as an inseparable part of human rights integrity, and for this reason, our institution has clearly stated that there should be no legal obstacles for LGBTI people in the realization of the rights enjoyed by the other part of society.

Today in Albania the most basic issue of the LGBTI community is to recognize gender identity. Not being provided by law, their changed identity, the lack of knowledge of coexistence and marriage, leads to failure of enjoying a normal life.

Despite the recommendations initiated by the Ombudsman for the recognition of these rights to date, there have been no concrete initiatives of state institutions for the recognition of these rights.

The situation of **the elderly** in Albania is not good. They constitute one of the largest numerical groups of classes and groups in need. To guarantee and strengthen the rights of the elderly, we have required for years the approval of the bill "On improving the quality of life and meeting the needs of the third age".

There is a positive development in terms of **minority rights** related to the adoption and entry into force of the Law No. 96 / 2017 "On the Protection of National Minorities in the Republic of Albania". However, some of the ongoing issues that remain current, are related to:

- Improving the legal framework for protection against discrimination, focusing on some improvements to Article 1 of Law No. 10221, dated on 4.02.2010 "On protection against discrimination", by including in this article as grounds for discrimination; ethnicity; the stated intention to discriminate; encouraging discrimination and facilitating and encouraging discrimination.

- The beginning and conclusion of the process for the ratification of the European Charter for Regional or Minority Languages.
- Developing a new population census, based on the best international criteria and standards, where minorities would find themselves to be objectively and unconditionally expressed about their existence.

The new territorial administrative division has created problems, in terms of the real presence of the population from the majority one, located in certain areas of the country.

According to this division, in specific cases it results that the new territorial administrative boundary divides communities into two separate parts belonging to the same minority, but which then do not belong to the same administrative territorial unit. From this factual situation now, we consider that there will be problems with the implementation of the provisions of the law, where the enjoyment and the realization of certain rights previously associated with the completion of the terms "substantial number and sufficient requirement" are sanctioned, as well as "over 20% of the total population number of this municipality".

CHAPTER 2

Assessment of the situation on observing human rights according to fields / sectors

2.1. The rights of people deprived of their liberty

Inspections carried out during 2017 have ascertained problems identified over the years with some improvements, but even those improvements are still unfulfilled in accordance with the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

In conclusion, the findings on the issues in the prison system for 2017 are reflected in the following:

- Unjustified negligence by the General Directorate of Prisons (GDP) and the Ministry of Justice to comply with legal obligations and to implement ongoing recommendations of the Ombudsman, in creating appropriate infrastructure conditions and in providing the material basis necessary to guarantee respect for the legal rights of pre-detainees and convicts treated in a considerable number of institutions for the execution of criminal decisions. Especially the extremely degrading material conditions in the internal regimes of the Institutions for the Execution of Criminal Decisions (I.E.C.D.) Zahari Kruja, Special Healthcare Institution of Prisoners (S.H.I.P.), I.E.C.D. Saranda, I.E.C.D. Tepelena, I.E.C.D. Burrel, make it impossible to guarantee the rights of pre-detainees and prisoners sanctioned in international acts and national legislation in force.

Since these findings continue to be ascertained, even with more degraded conditions, the Ombudsman has recommended the immediate closure of I.E.C.D. Zahari Kruja, S.H.I.P. I.E.C.D. Saranda, I.E.C.D. Burrel, I.E.C.D. Tepelena and the transfer of people to other penitentiary institutions.

- Failure to comply with Law no. 44/2012, dated on 08.05.2012 "On Mental Health" for the establishment of a Special Medical Institution for the treatment of people with mental health disorders who have committed criminal offenses for which the courts have taken a decision on "compulsory medication in a medical institution" under Article 46/2 of the Criminal Code, and people to whom the courts have imposed a coercive measure "temporary admission to a psychiatric institution" under Articles 46, 232 and 239 of the Code of Criminal Procedure. Treatment of this category under prison conditions in S.H.I.P. Tirana and I.E.C.D. Zahari, Kruja, and in special care sections created in some prisons, continues to remain illegal.
- Unjustified negligence on the part of the judicial authorities in the implementation of the legal obligation provided for in Article 46, paragraph 1 of the Criminal Code, to review mainly all decisions given for "compulsory medication in a medical institution" after the the one-year term from the day of decision-making, as well as the delivery of decisions to the institutions where the relevant people are treated. The Ombudsman's Institution has recommended to the Minister of Justice the delivery of an order-letter to all courts at the national level, through which the legal obligation provided for in the above provision should be recalled.
- Decrease of overcrowding compared with the previous years from a more appropriate redistribution of prisoners / detainees to I.E.C.D. However, the situation was problematic in the S.H.I.P, where 35 pre-detainees / detainees (33 with mental health problems, of which 2 women, and 2 patients with pathology) slept with the mattress on the ground, a flagrant violation of Article 24 of Law no. 8328 dated on 16.04.1998 "On the rights and treatment of prisoners and pre-detainees", as amended. Overcrowding was also found in I.E.C.D. Lezha, Kruja, Rrogozhina, Tepelena, Drenova and Saranda, which functioned in most of the time on official capacity. As a consequence of overcrowding, a part of the I.E.C.D. had applied the increase in the number of beds, which reduced the number of people who slept on the ground, but caused the violation of space standards and the minimum legal cost per person.
- Infrastructure in most of the I.E.C.D. presents major problems of amortization, humidity, electricity and water supply interruptions, provision of natural lighting and full cell ventilation, presence of insects, conditions out of standards of toilets, kitchens, showers, ventilation rooms, isolation rooms, etc. This does not apply to the new and reconstructed I.E.C.D. which have practically created a two-level system in the Albanian penitentiary system.
- Continuous use of observation and isolation environments as residential environments in case of overcrowding or non-compliance. Flagrant is the use of these environments as residential environments in I.E.C.D.Kruje for people with severe health problems. Meanwhile in I.E.C.D. Saranda even the office of attorney as well as the warehouse were transformed into residential area, in I.E.C.D. Peqin, Drenova and Rrogozhinë, the pre-detainees and detainees were unable to realize the airing and activities according to the legal parameters.

The Ombudsman in his role as a National Mechanism for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment pays special attention to the convicted/pre-detained people held for whatever reason (for disciplinary purposes as a result of their

"dangerous" or "disturbing" conduct in the interest of criminal investigation or for security reasons or at their request) in similar conditions to a prolonged isolation.

The principle of proportionality requires to maintain a balance between the requirements of the case and the implementation of the prolonged-type regime, which may have very harmful consequences for the people concerned. In any case, all segregation forms should be as short as possible, but never more than 20 days. Where such a regime is imposed or enforced at the request of the convicted person for reasons of inadmissibility, although this is not provided for by law or international practice, an essential guarantee is the continued presence of the physician in the segregation facilities, to conduct observation and medical examination of prisoners on a continuous basis.

The results of these examinations, including a description of the physical and mental condition, as well as the foreseeable consequences of continued isolation, must be presented on a regular basis by a written statement from the doctor, the competent authorities on the regime and security issues in the I.E.C.D. None of the above mentioned I.E.C.Ds had implemented these guarantees.

- Lack of joint facilities for the development of rehabilitation activities in a part of the I.E.C.Ds as a result of the return of educational facilities or the exercise of religious rites of sporting activities in residential rooms or the lack of funds for their equipment with didactic materials. Also, the small outdoor air spaces conditioned the type of sporting activities that could be carried out in them. Consequently, in almost all I.E.C.D, there were issues identified as to the possibility of conducting group or individual activities due to the lack of appropriate facilities, material base or incomplete organics in the psycho-social sectors.
- Problems with the provision of educational opportunities and vocational training courses. In I.E.C.D. Kuksi, Tropoja, Lezha, Lushnja, Tepelena, Saranda and Rrogozhina, there were not provided compulsory education in accordance with the existing Agreement between the Ministry of Justice and the Ministry of Education and Sports for the 9-year education. None of the penitentiary institutions, nor the Juvenile Institute in Kavaja did provide secondary education.
- Awards for the work performed in all institutions, except for the I.E.C.D. Burrel, were only reduced by 3.9 days per month for prisoners, whereas for pre-detainees this fact was recorded in the file and in cases when they were sentenced by a final court decision, the calculation for the reduction of the sentence was made. In this context, it should be noted that, although over 19 years have passed since the adoption of the law no. 8328 dated on 16.04.1998, the respective DCM has not yet been approved to determine the criteria for rewarding the work of convicts and pre-detainees for the work they perform in these institutions, despite the recommendations sent by the Ombudsman's Institution to the Ministry of Justice. With them there are no contracts of employment and they are not provided under the legislation in force, which leads to the non-evaluation of working time in the institution as a working time, as well as the denial of a right to the retirement benefit. The convicts are not provided with a workbook nor with social contributions.
- Prison health facilities, excluding new I.E.C.D. such as Vlora, Berat, Fier, Durrsi, and Elbasan, are generally unsuitable for visits or medical interventions, and are not equipped with auxiliary materials.

- Delays and deficiencies in the provision of prisoners / pre-detainees with health booklets or electronic records to the health insurance system in most of the I.E.C.Ds, result in the failure to implement the reimbursement scheme and problems with the supply of medication. Medical supplies are mainly carried out by the General Directorate of Prisons in response to requests for supplies by the I.E.C.Ds themselves.
- Difficulties in conducting specific consultations, examinations and laboratory analyzes as well as surgical interventions, were still noted in some of the prisons for reasons related to the lack of full-time physicians or the lack of ambulances, the resistance of regional hospitals to handle people due to the lack of security conditions in them, etc.
- Problems in delivery of dental service in I.E.C.D., resulting from the lack of equipment and accessories. Dental services, except for extractions, were conducted with difficulties in public polyclinics, or in private clinics at the expenses of the convicts themselves.
- Non-functioning of the central heating systems, almost in all of the I.E.C.Ds, where they were installed as a result of technical defects or lack of fuel. In most cases, prisoners / pre-detainees were not provided with warming according to legal provisions.
- Lack of supply of basic personal hygiene products (toothpaste, toothbrush, shampoo, etc.) and detergents needed to clean the cells, as well as the lack of uniforms and gloves during the distribution of food, were ascertained in most of the I.E.C.Ds.
- Lack of cupboards and lockers lead to the fact that convicts/ pre-detainees kept their clothes in plastic bags or sacks, mainly under the beds. This issue was mainly encountered in I.E.C.D. Lezha, Tepelena, Korca, Saranda, Kuksi and Tropoja.
- Problems regarding the fulfillment of the needs for purchase of various items by pre-detainees and convicts. In the conditions when most of the Institutions were removed from the service of the business unit in the institution, and when the order of the General Directorate of Prisons no longer works in the institutions, the Orders of GDP prot.no. 4629/1, dated on 11.07.2012 "On the supply of prisoners with debit cards in I.E.C.D.", and prot.no. 2399, dated on 01.04.2013 "On the use of the prisoners' cashbox and debit cards for prisoners", had not been implemented.
- Problems with the quality and the lack of food diversity in almost all I.E.C.Ds.
- Difficulties in obtaining rewarding and special permits, mainly related to negative or evasive responses from commissariats. In this regard, the Ombudsman also considers the letter sent to the entire penitentiary by the General Director of the GDP on 18.10.2017 with the subject "Attracting attention to the issues encountered with regard to the rewarding permit practices in the I.E.C.D.", item II of which "Family reception and release of the statement" stipulates that "In any case, at the time of issuing the special and rewarding permit, the convicted person must be expected from at least one of the family members who must submit his identification document. The family member signs a statement, according to the format attached ". The Ombudsman considers the content of

point II of this letter as in non-compliance with the law and as an obstacle to the enjoyment of a right guaranteed by law especially to people who do not have family support.

Review of individual cases.

The level of respect for the rights of the pre-detained and convicted people in the Institutions for the Execution of Criminal Decisions, has been assessed by the Ombudsman also through the review of individual complaints. During 2017, a total of 213 individual complaints related to the rights of pre-detainees / convicts and staff employed therein, out of which 193 have been completed and 20 are still under review.

Of the concluded cases: 68 were solved in favor of the complainant during the review, 4 were concluded with a recommendation addressed to G.D.P and the respective I.E.C.Ds, 5 have resulted out of competence and 116 were not based on the law.

The complaints under review were presented during inspections, as well as by sending by mail, or by telephone call to the institution number. In cases where the complaint has been out of the question, the interested parties are advised of the legal path to be followed. In cases where the complaint is received, it is registered and the complainant has been notified with a letter about the actions during the prosecution process and the contact number of the employee to whom the case has been charged for review.

The largest number of complaints received in the institution during 2017, had as their object the quality of the health service, the refusal of the request to obtain a rewarding permit, or the dragging of the procedure to go with a rewarding permit, the dragging of the procedure to be transferred to another I.E.C.D. or the unjust transfer to another I.E.C.D..

Based on the data collected during the inspections and the prosecution of complaints in the country, we conclude that the still high overpopulation and shortages in medical staff, have resulted in the timely and inadequate response by the prison administration to the requests for medical treatment.

In some I.E.C.Ds, there is a lack of doctors despite their provisions in the staff organigrama, as the benefits derived from the difficulty of the job position, are not applied and hence the employment of doctors or the continuity of their work in the penitentiary institutions, is impossible.

Regarding the complaints related to the determination of the penitentiary institution for serving the sentence, it should be noted that the main legal criterion is the proximity to the residence of the family. From the investigation of cases which were supposed to have delays in the proceedings to send the prisoner to an I.E.C.D. near the residence of the family, it resulted that the cause of the delay was the overcrowding. In cases where the unlawful transfer of the prisoners is alleged, the General Directorate of Prisons has replied that the reason for the transfer of prisoners to a detention center outside a family residence, was his security due to conflicts with other prisoners. On the part of the Ombudsman's institution, it has been difficult to prove whether the reason for the transfer was the prisoner's safety or punishment due to his behavior in the institution.

The rejection of the request for a rewarding permit has been the subject of several complaints reviewed by the Ombudsman's institution. For these cases, the Ombudsman's Institution can not interfere by granting the permission or not, but can verify the procedure for reviewing claims. From the investigation of the complaints, it turned out that the reason for their rejection was the lack of credibility regarding the position of the convicted outside the institution: the institution had no guarantee that the life and health of the convicted (or others) would not be risked while enjoying the permit. To assess this opportunity, the institution received information from the state police and the responses were negative. The Ombudsman has some assessment on the procedure followed by the police stations, but there is still no conclusion on this issue.

Observance of the rights of pre-detainees / prisoners is closely related to the relations between them and the prison staff. In order to ensure a good administration of the I.E.C.D, they should be very careful during their staff recruitment (we recall that during 2017, there was a change of all prison directors in the country): wages and bonuses should attract the interest of professionals; working conditions and economic compensation should be appropriate to the difficulty of working in prisons.

At the end of the investigation of the complaints of prison police officers on non-respect of certain rights provided for by the legislation, the Ombudsman's Institution recommended to the Prime Minister interference with the competent authorities: cases when they do not take the annual leave; increasing the budget of the General Directorate of Prisons for providing employees with uniforms; equal financial treatment of prison police officers with state police employees; as well as increasing the number of prison police officers. *This recommendation was accepted in principle, but it was not implemented with the justification that there are not enough funds.*

While reviewing another complaint filed by some prison police officers, who were transferred in duty from I.E.C.D. Tirana to I.E.C.D. Fier, it was ascertained that the costs of transport were not covered by the employer. According to the legislation in force, Prison Police employees, who are employed in I.E.C.Ds located outside the residential centers, should be provided with a free round transportation from their workplace (I.E.C.D). However, this legal right does not apply since the DCM has not been approved to determine the detailed rules for these cases. The Ombudsman's Institution has recommended to the Ministry of Justice to propose to the Council of Ministers to approve the rules for covering transport costs for prison police officers. *The recommendation has been accepted in principle, but has not yet been implemented.*

Implementation of the recommendations

The General Directorate of Prisons (GDP) and the respective I.E.C.Ds, after being acquainted with the monitoring reports and the suggested recommendations on the above findings, have responded that they accept such findings and it is asserted that appropriate measures will be taken to improve the situation. From the answers received by G.D.P. as well as by the dependent institutions, we have been informed that:

- ✓ *Regarding the Support Services Sector and Projects*, measures have been taken to fulfill the recommendations of the Ombudsman for the category of juveniles, for the creation of material living conditions in the observation and seclusion rooms according to the standards set out in the General Regulation of Prisons. The

General Directorate has carried out the supply of the institutions with the barracks materials and has informed that it will continue supplying to fill the rooms where these materials have been damaged. Regarding the measures to regulate the material conditions and the elimination of humidity in the showers and toilets, funds for the reconstruction of the respective buildings have been provided and the reconstruction is expected to be realized according to the budget of 2018.

- ✓ *Concerning the Health Sector*, measures have been taken to meet the recommendations of the Ombudsman for the regulation of health sector facilities, and measures have been taken to supply these sectors with medical materials, visiting beds, wheelchairs and barrels. The nursing rooms are supplied with medications and emergency supplies. Appropriate efforts have been made to complete the staff with full-time doctors in the I.E.C.D, despite the difficulties in the recruitment process. They have also found implementation and recommendations for the completion of the rooms of dentists and their supply with dental materials from the pharmaceutical warehouse of the General Directorate of Prisons. Since the adoption of the Law on Treatment of Prisoners and Pre-detainees (as amended in April 2014) and DCM 337, dated on 06.04.2011, "On the inclusion of convicts and pre-detainees in an economically inactive category", this category benefits free of charge all the services provided by the health insurance scheme and the implementation of tripartite contracts between the Regional Health Insurance Directorate, I.E.C.Ds and Pharmaceutical Warehouses for the provision and reimbursement of medicines, is underway. In the I.E.C.Ds currently experiencing difficulties in implementing this scheme, the supply of medicines is done by the Pharmaceutical Warehouse of the G.D.P, upon their request.
- ✓ *Regarding the Security Sector*, appropriate measures have been taken to resolve the problems related to overcrowding in the I.E.C.D and respect for the length of stay in the isolation / observation facilities. Also, referring to the Ombudsman's recommendation to regulate the awarding situation for the work of prisoners and pre-detainees, G.D.P. suggests that they are in the process of amending the legal and sub-legal acts for the prison system.

The level of implementation of the recommendations is allegedly dependent to a considerable extent on budget definitions. For this reason, the Ombudsman reviewed the provisions made in the 2018 draft budget for the penitentiary institutions, concluding that a number of emergency issues are not foreseen in the current budget. Specifically:

- ✓ No budget for the establishment of the Special Medical Institution is provided for in Law no. 44/2012, dated on 08.05.2012 "On Mental Health" with the purpose of sheltering and treating people who received from the court the measure "compulsory medication" and "temporary hospitalization".
- ✓ Provisions for reconstruction of facilities for prisons include only the I.E.C.D Lezha, Vaqarr, Peqin, Burrel and the Prison Hospital, while there is no budget for construction / reconstruction of pre-trial detention facilities and punishment for I.E.C.D Zahari Krujë, I.E.C.D. Saranda, I.E.C.D Tepelena, I.E.C.D Kuksi for which the Ombudsman's Institution has recommended **immediate closure** because infrastructure and the degrading material conditions in their internal regimes, make it

impossible to guarantee the rights of pre-detainees and prisoners sanctioned in international acts and national legislation in force.

- ✓ It is provided for a budget for the improvement of the infrastructure of electricity and water supply in some I.E.C.Ds (without specifications), while infrastructure especially in I.E.C.D Kruja, Lushnja, Rogozhina, Saranda, Lezha, Tepelena, Saranda and "Mine Peza" presents serious problems of amortization, humidity, power supply and water supply, provision of natural lighting and full cell ventilation, presence of insects, conditions out of standards of toilets, kitchens, showers, ventilation rooms, isolation rooms, the latter being converted into residential environments as a result of overcrowding. It should be noted that there is also a lack of common facilities for the development of rehabilitation activities in a part of the I.E.C.D as a result of transforming educational facilities or the exercise of religious rites and sports activities into residential rooms. Also, small areas for outdoor air conditioning condition the type of activities that can be developed in them.
- ✓ No special financial fund has been provided for the reward and provision of prisoners and pre-detainees included in the employment lists at the I.E.C.D. In order to guarantee the respect of the legal right to employment and their reward, as provided for in Article 34 of Law no. 8328, dated on 16.04.1998, "On the rights and treatment of prisoners and pre-detainees", as amended, and Articles 54/3 and 54/4 of the General Regulation of Prisons, approved by DCM no. 437, dated on 20.05.2015, we suggest that this fund be part of the budget under the Prison System section.

The prison's rehabilitation function has become a more difficult challenge with the growing of prison's population and the insufficient budget. The security measure "imprisonment" and the prison sentence should be solved as the last alternative in providing and punishing people who commit minor offenses. Improvement of the situation in the prison system would serve as the Assembly's approval of the draft law "On amending the law "On the rights and treatment of prisoners and pre-detainees", as well as the Law "On police prisons", *drafted during 2016 and the first six months of 2017, and forwarded for approval to the Assembly.* These amendments seek to improve the current situation to bring it into line with the European Union standards, the European Prison Rules and the European Convention on Human Rights.

2.2. Respect for human rights by the police bodies

During the inspections conducted by the Ombudsman in the role of the National Mechanism for the Prevention of torture, harsh, inhuman or degrading treatment or punishment in Local Police Directorates and in their respective police stations, there were ascertained:

- Overcrowding of security facilities at the Tirana Local Police Directorate and at the Police Commissariat of Vlora. Overcrowding came mainly as a result of numerous police arrests and arrests for widespread criminal offenses in the recent years, but also due to the capture of convicted people with a final decision, in their absence, for which the General Directorate of prisons delayed their admission to the I.E.C.D. Due to overcrowding and lack of beds, the arrested or detained people slept on the ground and violated the standard of the living space per person.
- Failure to comply with the legal obligations for the construction or adaptation of the escorting facilities according to the standards provided for in the Standard Procedures

"Technical rules of police escorting", approved by the Order of the General Director of the State Police no. 306, dated on 31.03.2016 (3 escort rooms, 1 for adults, 1 for women and 1 for minors), a repeated request on the Ombudsman's recommendations to the relevant authorities. In the majority of police commissariats, including the Police Commissariats of Tirana, the escort rooms did not meet the standards for a dignified treatment of people, as they were few in number and did not create any decent, dignified conditions, supplied with the necessary furniture for staying, in separated parts for women, adults and minors.

- Failure to comply with legal obligations for the construction or adaptation of security facilities according to the standards required and approved by the International Conventions and the Manual of "Standard Rules and Procedures for the Treatment and Security of Arrested and Detained People in the Police Units". The only security environments that meet the standards remain those of the Local Police Directorates of Tirana, Durrës, Gjirokastra, Kuksi, Korça and Fier. Even in the Police Commissariats under the local Police Directorate of Tirana, the security facilities do not meet the legal criteria. In some commissariats that were supposed to result in out-of-function security rooms, it remains to be noted that they were not closed with waxing and minutes. Generally, these rooms were found to be closed or locked.
- Problems with the installation or commissioning of the monitoring system with observation cameras in the corridors of escort and security rooms in most of the police stations, as well as at the interrogation offices of citizens in all commissariats in the country, although this recommendation was in the focus of the Ombudsman, given that the audio-visual monitoring system constitutes a standard according to international acts and one of the most important aspects regarding the prevention of violent acts of police officers against citizens and vice versa, in defense of human rights and fundamental freedoms.
- In a part of the commissariats, the completion of the records of the escorted individuals was carried out with responsibility for the coverage of all the data in the respective columns. While in some commissariats, the rubrics of records were not accurately filled and accountable (e.g names of contacted relatives, phone numbers, etc.).

Referring to recognition, respect and access to rights:

- *Legal Procedure. Time of police arrest / detention.*

According to the information collected during the visits from the monitoring groups, it was found that generally the arrested / detained people were provided with a letter with their rights, with a copy of the detention / arrest record and with a copy of the personal control record. For the escorted in most of the police stations, it was applied the legal obligation provided for in Articles 109/5 and 122/5 of Law no. 108/2014 "On the State Police", as amended, as well as in Chapter VII, point a.3.4 of the standard procedures for filling in and providing a copy of the record for the actions performed with the escorted by the police officers assigned to the task of conducting the verification and handling the relevant case.

Meanwhile, there were ascertained cases where the arrested / detained or escorted people were not equipped with these documents, such as in the Police Commissariat of Lushnja. By comparing two registers, that of the escorted and convicted/detained people, it turned

out that in some police stations, there were cases that the time of arrest or detention of the escorts, was different from the time of their escort and it moved up to 6 hours after the escort.

The Ombudsman considers that this practice is not legal and should be amended. If the arrest or detention of a person escorted to the police bodies, is to be defined, then in the minutes of the arrest in flagrancy or detention, it has to be put the moment (time) of his detention when he was actually deprived of liberty. Based on articles 144 and 250 of the Criminal Procedure Code, marking of the moment (time) of arrest or detention in the minutes, is an important element on the basis of which the effects of pre-trial detention begin to count. Also, pursuant to Article 258 of the Criminal Procedure Code, from the moment (time) of the arrest or detention, the 48 hour deadline begins within which the prosecutor requests the assessment of the security measure at the court of the place where he was arrested or detained.

- *Informing*

During the visits, it was found that in general posters with the rights of the escorted, detained/arrested individuals were posted in the premises of the commissariats (corridors, offices of the judicial police officers) and inside the escorting/security rooms. During interviews with the escorted, arrested/detained citizens, they claimed to have been acquainted with the causes of the escort or arrest/detention and their rights by police officers at the first escort, arrest/detention.

- *Access to a lawyer*

From the contacts and information gathered during the monitoring visits, it was noted that some of the respondents had access to a lawyer since the first deprivation of liberty, enabling the lawyer to be present during the interrogation by the police. However, from the conducted interviews, there were cases ascertained where the arrested/detained did not want to have a lawyer.

- *Notification of family members*

From the information collected during the visits, it was ascertained that the escorted, detained/arrested individuals were generally given the opportunity to speak or notify a family member or relative in the country they were located.

- *Nutrition treatment*

During the monitoring at the commissariats in general, nutrition treatment of the arrested/detained was carried out three times a day with catering services according to the norms for food treatment defined in the Joint Order no. 432, dated on 10.03.2008 of the Minister of Interior and the Minister of Health. There were also commissariats in which this service was carried out by I.E.C.D located close to the Police Commissariats (e.g at the Police Station of Tropoja, Kuksi, Berati and Saranda).

- *Access to a physician*

For the arrested/detained people prior to their accommodation in the security room system, they were subject to an interview and check by the physician for signs of

violence, ill-treatment or various illnesses in accordance with Chapter II, point 7 of the Manual of "Rules and Standard Procedures for the Treatment and Security of the Arrested and Detained People in the Police Units", as cited above.

Also, it was implemented the legal obligation to carry out medical examinations (as desired) by the physician / assistant doctor of the directorate or the police station within 12 hours of the arrest/detention. The right to have access to a physician (including doctors selected by the arrested person) is also included in the Manual, including the right to receive free medical care during the stay in the security rooms (Chapter III, point 1.9, 1.10).

The proper implementation of these provisions is, inter alia, a guarantee of possible abuse by the police. At the Police Commissariats which have undergone reconstructions and meet the standards according to the above-mentioned Manual, there is a special room for the doctor, with a fixed bed, where it is held the register of visits, daily files of the arrested/detained people, where it is defined the date, hour and objective examination, as well as the clinical complaints. It is worth noting that in some Local Directorates of Prisons the physician is missing, but this was supplemented with regional hospital doctors or with assistant doctors.

- *Access to a psychologist*

Pursuant to Article 35 of the Criminal Procedure Code of the Republic of Albania, which states that: "Juvenile defendants shall be provided with legal and psychological assistance in any state and degree of proceedings, with the presence of the parent, legal custodian or of other people wanted by the juvenile and accepted by the proceeding authority", the psychological service at the police stations was provided by psychologists of the directorate/municipality/school in cases of juveniles in conflict with the law.

- *Access to be tried within the legal deadline*

The court hearing for the validation and assignment of the personal security measure for the arrested/detained people by the court, was completed within the legal deadline of 96 hours from the moment of their arrest/detention. The majority of the arrested/detained people were awaiting the conduct of a court hearing for the assessment of the security measure. Also during the inspections, no case of the arrested/detained people was ascertained in the security premises at the police authorities after the imposition of the "imprisonment" security measure or other lighter measures by the court.

Review of individual complaints

The level of respect for the rights of people towards the State Police body has been evaluated by the Ombudsman through the review of individual complaints. During 2017, 91 complaints were administered to the Ombudsman's Institution.

Through complaints citizens have filed claims for violations of their legal rights by the structures or employees of the State Police. There were several scopes of complaints: for inhuman treatment and physical or psychological abuse during the arrest, escorting or interrogation of the police; for non-human treatment in the premises where the escorted or arrested/detained are kept, guarded and treated; for illegal escorting; for failure to take,

administer or prosecute criminal reports or appeals and claims made by them; for imposing unjust administrative measures; for unlawful blockages of personal belongings; for not keeping or failing to record the actions performed by police officers; for not providing information;; for violation of the rights of irregular foreign nationals in Albania; for dismissals from the State Police, etc.

From the review of administered complaints, it turned out that some of them were grounded and concretely for inhumane treatment, for physical violence, for failing to provide copies of minutes for the blockage of items or accompanying documentation, and for not providing blocked items.

Legal Provisions of the Criminal Procedure Code, Law no. 108/2014 "On the State Police" and by-laws that have come to light and for its implementation provide for the obligation of State Police employees to respect the legal rights of the escorted, arrested or detained citizens and their treatment of human beings and with dignity. In addition, these normative acts provide for the obligation of Judicial Police Officers to receive and administer denunciations made by citizens to keep the respective minutes for carrying out the control and seizure or blocking of various items as well as giving their copy to the person, to whom these procedural or police actions are performed.

From the administrative investigation of the cases for which the Ombudsman's institution has evidenced violation of citizens' legal rights, it has been found that some of the causes of these violations by police officers are failure to recognize normative acts regulating the activity of the Police State, as well as negligence for the implementation of legal provisions and for the regular fulfillment of the duty and legal mission. Also, another cause is the lack of control by the supreme structures of the local and central bodies of the State Police.

In cases where violations of citizens' rights have been found, the Ombudsman's institution has made appropriate recommendations to the competent bodies for taking the necessary criminal, administrative and organizational measures with the aim of restoring instead of the violated rights of citizens, the punishment of offenders and generalizing them in order not to repeat in the future.

Implementation of recommendations

From the responses received from the Local State Police Directorates and the General Directorate of State Police, it results that all recommendations made after the inspections were considered fair and accepted in principle. According to the answers:

- ✓ The closure of existing security facilities in some commissariats has been evaluated fairly, but it can not be implemented during 2017, as the existing capacity in the security premises at the Local Police Directorates is limited and not enough for the accommodation of the detained/arrested individuals from their subordinate commissariats.
- ✓ In the draft budget for 2018, it is envisaged the preparation of the "Study-Project" for the reconstruction of the buildings of some commissariats, which includes the premises for the escorted and detained/arrested individuals. Building and creating new escort facilities in some police stations where they are missing, installing a monitoring

system at the offices serving for the interrogation of citizens in the police stations, is currently impossible, because it does not possess sufficient financial resources under the section "Investment", but it will consider the possibility of this investment in the years to come. This issue is interdependent with the opening of the respective funds for the realization of the investments in question.

- ✓ Immediate measures have been taken in some commissariats for completing the escort rooms with the necessary furniture and improving the staying and living conditions in the existing escort and security rooms by repairing and painting them, as well as arranging the respective toilets for the purpose of providing the necessary hygiene.
- ✓ From the Local Police Directorates, the necessary organizational measures have been taken to eliminate the identified weaknesses in the data collection and reporting of the escorted people in the respective register.
- ✓ The central structures of the Department of Public Safety and the Directorate of Professional Standards will plan and carry out checks on local police structures.
- ✓ In cases where the Ombudsman finds deficiencies in the fulfillment of rights of the escorted or detained/arrested individuals, they are analyzed by the heads of the local police bodies and disciplinary measures are given to the responsible people.

The level of feasibility of the recommendations depends to a considerable extent on the budget definitions. For this reason, the Ombudsman considered the provisions made in the 2018 Draft Budget of the Local Police Directorates and subordinate police stations ascertaining that a number of emergency issues do not provide treatment options in the current budget.

More specifically, in the State Police budget for 2018 it is foreseen only the construction of the security block and the reconstruction of the escort rooms in LDP Tirana, as well as the reconstruction of the escort rooms in the Police Commissariats of Tirana and the security and escort block in the Police Commissariat of Laç.

For this reason, following the recurring recommendations, the Ombudsman recommended that the 2018 State Budget should provide for the construction and reconstruction of security blocks and escort rooms in all police bodies where there are no premises according to legal standards.

2.3. Prevention of violence and torture.

Exercising physical and psychological violence against people deprived of their liberty, constitutes one of the most serious violations of fundamental human rights, so as not to subject them to torture, punishment or cruel, inhuman or degrading treatment.

Violence exercised by police officers, which in some cases constitutes torture or arbitrary actions, seriously affects the physical and psychological integrity of the person by leaving consequences to his or her health and in particular cases may also cause loss of life.

Also, these actions severely affect the image of the State Police and the Prison Police, as well

as undermine and shake public confidence in these organs. Some of the causes of violence by police officers are related to:

- ✓ Non-implementation of standard procedures during the conduct of actions;
- ✓ Inappropriate infrastructure of facilities for the deprivation of liberty;
- ✓ Overcrowding;
- ✓ Non-quality health services (the deprived of liberty act violently when no health service is provided and the first person facing this situation is the police staff);
- ✓ Lack of legal knowledge, especially those related to the treatment of people suffering from mental health problems;
- ✓ The pressure of directors to detect at any cost the offenders;
- ✓ Inadequate financial and material handling of police officers;
- ✓ Killing and injuring police officers.

Complaints about physical and psychological violence by the State Police and Prisoners have been reviewed with priority by the Ombudsman's Institution, trying to act quickly and with less bureaucracy even during official hours or on vacation days.

It should be noted that the timely notification of cases of prisons and police commissariats and the immediate onset of their investigation are essential to uncover the event, since the allegations of violence, particularly of psychological violence, are not easy to be proven.

Violence is conducted in closed places, which are not monitored by cameras and without witnesses. Even when there are witnesses, they are afraid to speak or make statements, as they may aggravate relationships with the staff that they observe, which may make it more difficult for them to live in prison. Also, citizens have uncertainties and distrust in the prosecution of violence cases by the police bodies.

During 2017, 29 complaints were filed for physical and psychological violence, of which 10 were complaints against the State Police employees and 19 were complaints against Prison Police officers.

At the conclusion of the investigation of complaints against the State Police, only one case by the Ombudsman's Institution was concluded and it was proven that the fundamental right guaranteed by articles 25 and 28/5 of the Constitution was violated to the detained person and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, *not to be subjected to torture, punishment or cruel, inhuman or degrading treatment*.

The detainee, who was suffering from serious health problems, was locked up behind the civil hospital's bed for security reasons to prevent his possible removal. Referring to the legislation in force, the procedure for arresting or detaining people arrested by state police in hospital conditions, is not based on any normative act.

The European Court of Human Rights, in some of its decisions, has also tackled the problem of using handcuffs to sick arrested people, saying that keeping people in hospital is not always justified by security reasons.

This action is considered as non-human and degrading, especially for people with a serious health condition. After reviewing the case, the Ombudsman's Institution has recommended to

the Police Department of Tirana the adoption of measures for the recognition of police officers with the rules to be applied in such cases.

While the Prosecutor's Office of Tirana Judicial District was recommended to initiate an investigation into the criminal offense of "Torture" in charge of the police officer who ordered the detainee's arrest. LDP Tirana has accepted the recommendation and has taken measures for its implementation. The prosecutor's office has decided not to proceed with the criminal proceeding with the justification that one of the elements of the offense was missing.

In another case, the complaint for violence against police officers was recorded after the arrested person was sent to an I.E.C.D with the "imprisonment" security measure. For the purpose of the investigation, the respective I.E.C.D was asked to send to the Ombudsman's Institution the minutes kept by the waiting committee where it should be noted whether or not signs of violence have been ascertained to the recently arrested prisoner.

This document, which was sent several months after the request, was reflected in the fact that the prisoner had signs of violence, which allegedly had been caused by the State Police employees during his stay in the premises of the police station. Since the I.E.C.D had not implemented the legal obligation to notify the prosecutor's office of the case in question and did not co-operate in time with the Ombudsman's institution, the General Directorate of Prisons was recommended to generalize this case in all I.E.C.Ds and taking the disciplinary measures against the responsible people.

Some prisoners who are suffering from mental health problems, while serving their sentence, perform actions to self-harm, harm the others, or surrounding objects. The behavior of the prison staff for some of these events has been investigated by the Ombudsman's Institution, and at the conclusion of the investigation, it is concluded that these cases are not only monitored by the medical staff, but the situation is left to the assessment of police officers, who apply imprisonment restrictions on the prisoner's bed, or helmets on the head (the latter is verified in one case by the records in the respective register at the I.E.C.D of Fier).

Although the prison legislation permits the use of handcuffs to physically limit the prisoner, the legislation on people with mental health problems requires the use of certain well-defined special restrictions. From the investigation into the country it was ascertained that prisons are not equipped with the prescribed means of physical restraint, the Ombudsman has recommended to the General Directorate of Prisons the purchase of special means of physical restraint in sufficient amount for all I.E.C.Ds. The recommendation has been accepted, but remains unimplemented.

The investigation was also concluded for 19 complains to the Prison Police. In carrying out the investigative actions for the verification of two of them, the Ombudsman was informed that the Prison Internal Audit Service had also investigated these cases and the administered materials were forwarded to the prosecutor's office for prosecution.

The General Directorate of Prisons had implemented the request of the Ministry of Justice for the dismissal of certain employees and the initiation of administrative proceedings for some others. While claims of other complaints have not been proven. However, in two cases, the investigation has highlighted problems, the correction of which could prevent violence in the

future. The above-mentioned recommendations have been accepted by the General Directorate of Prisons and their implementation will be continuously followed.

2.4. Respect for human rights by the Prosecutor's office

During 2017, in 90 cases, citizens filed claims / complaints against the Prosecutor's Office activity, and compared with 2016, there is a **9 percent** decline in complaints. In a grouped manner and according to the importance of violating the rights in the criminal process, citizens' complaints are presented as follows:

Firstly: Unjustified prolongation in investigating criminal proceedings

Citizens' complaints to the prosecution for unjustified delays in investigating criminal proceedings, capture 20% of the total number of complaints. There is an unjustified prolongation of the investigation into criminal cases initiated on the basis of the case for large-scale socially dangerous acts, which are mostly prosecuted by the Judicial Police of the State Police.

According to the answers provided by the Prosecutor's offices of the Judicial District, the reasons for the delays in the investigation of the criminal proceedings have been: the complexity of the case; non-disclosure of acts of expertise of a different nature such as forensic, psychiatric-legal, graphic writing or signing, biochemical of suspected narcotic drugs; in the failure to find the suspected people as the offenders in their residences; failure to reply to the order-letter by the justice authorities of foreign countries; complex procedures that mobile companies have to make available the required data; appointment of the case prosecutor to another prosecutor's office etc.

But in addressing these complaints, we have come to the conclusion that there are subjective reasons for prosecutors, which have caused unjustified delays in investigating criminal proceedings, which are:

- a. Failure to carry out investigative actions by the Judicial Police, which derives even from the failure to control duties left in the order for conducting investigative actions by the prosecutor of the case.
- b. The lack of interest of prosecutors for the rapid performance of various expertise, and the taking of respective acts by relevant institutions such as the Forensic Institute of Tirana, etc.
- c. Failure to carry out investigative actions left by the court after the abrogation of the decisions taken.
- d. by the prosecutor for not initiating the criminal proceedings or dismissing the case.
- e. Failure to prosecute issues by case prosecutors and the lack of proper organization of work by the head of the Prosecutor's Office on cases of delivering letters to the Institute of Forensic Medicine, the Institute of Scientific Police and the General Prosecutor's Office for order-letters addressed to the justice authorities of foreign countries.

- f. Failure to comply with Article 287 of the Criminal Procedure Code for the registration of a specific person attributable to a criminal offense, a justifying action for not taking the decision to extend the term of the investigation and delaying the investigation in some cases up to 1 year.
- g. Delays in the investigation of criminal cases mainly initiated on the basis of the offense for acts such as "murder", "stealing property with violence", etc.

Secondly: Failure to comply with the procedural provisions envisaging the rights of parties to the criminal process, which take up 40 percent of the complaints, and are presented:

- a. *In not issuing various acts seized during the investigation of criminal proceedings*

Citizens have raised concerns that despite the submitted application, the Prosecutor's Office has not made available the acts of the investigation file. As a result of the inactivity of the prosecuting body and the delays in not issuing criminal proceedings in the above cases, there have been delays in the proceedings for appeal to court against the decisions not initiating the criminal proceedings or the dismissal of the criminal case.

- b. *Failure to review and evaluate the requests or written memos that the parties have submitted to the criminal proceedings, especially during the preliminary investigation phase.*

This action contradicts point 2 of Article 110 of the Criminal Procedure Code, by not being expressly stated in a decision within fifteen days, and in many cases without notifying the applicant.

- c. *Failure to notify or delays in notification of the parties to the decisions taken by the Prosecutor's Office especially the criminal offender mainly in cases of decisions for the non-initiation of criminal proceedings (about 25 percent of the complaints)*

This decision was not notified to the parties in some cases immediately as provided in Article 291/2 of the Criminal Procedure Code. Delays in notifying the parties to the criminal proceedings have occurred and in cases when the Prosecutor's Office has taken a decision to dismiss the case.

It is noted that in cases of suspending the investigation, the Prosecution in the majority of cases, does not notify or send the respective decision to the parties, on the grounds that "this obligation is not provided for in Article 326 of the Criminal Procedure Code".

The Ombudsman has insisted on respecting the citizen's right to be informed of the final decisions taken by the Prosecutor's Office, and in addition to the legislative recommendation to the Minister of Justice, an additional provision was made in the Criminal Procedure Code provision, on the right of the appeal that citizens should have in case they want to appeal the decision to suspend the investigation, provided for by Article 326 of the Criminal Procedure Code, but it has not yet been considered by the lawmaker.

In addition to the legal obligation of the proceeding body to enforce the procedural provisions, in some cases when they have not been implemented, there was an intervention among the employees of the Prosecutor's Office (Chancellor, archive staff, or secretary

general) to speed up the procedures for obtaining acts required by citizens. These are achieved after we have found the predisposition and cooperation with these structures, in the District Courts of Tirana, Vlora, Kurbin, Durrës.

Thirdly: For unfair accusation

Fourthly: Change of the qualification of the criminal offense

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

Citizens' requests to the Ombudsman's Institution still continue: for legal aid; for the obligation of the prosecutor's office for the verification of criminal reports within the 30-days deadline and thereafter to make a decision on how to resolve it; for filing claims in court and not criminal charges in the Police, in cases when they appear in the capacity of the injured party under Article 59 and the following of Criminal Procedure Code; on how to formulate a "criminal report" addressed to the prosecution body; to complain to the court of the place where the sentence was served, in case of an appeal for misstatement of the time of serving the sentence, etc.

During 2017, *two recommendations* were made by the Ombudsman's Institution, which are presented as follows:

1. Recommendation dated on 28.02.2017, addressed to the General Prosecutor *"Taking measures with the purpose of speeding up the investigation of criminal proceedings, making available of the acts to the parties in the criminal process and their recognition of the manner of solving criminal charges or the termination of the criminal case"*, by emphasizing transparency in the communication and ethical and professional behavior of the prosecutor with the predicate and parties in the criminal process. The recommendation was evaluated by the General Prosecutor's Office.

2. Recommendation dated on 26.01.2017, addressed to the Prosecutor's Office of the Judicial District of Shkodra, *"Initiation of the investigation against the citizen A.K, as director of the Orphanage for pre-school 3-6-year-olds in Shkodra, a person suspected of committing the criminal offense "Abuse of duty", provided for by Article 248 of the Criminal Code"*. The recommendation was evaluated and accepted, by commencing the criminal proceeding.

There was good understanding and good institutional cooperation with the Office of the General Prosecutor, which was informed and in all cases reviewed the recommendations, then notified in a written form not only the Ombudsman's Institution, but also the Prosecutor's Office of the relevant Judicial District to evaluate and follow the recommendation.

It is ascertained that some of the Prosecutor's Offices of Judicial Districts such as Tirana, Lushnja, etc., did not meet the legal obligation to provide the information requested by the Ombudsman's Institution, exceeding the deadlines set by law for this purpose.

2.5. The Right to a fair legal trial in the Court

The right to a fair legal trial, as provided for in Article 42 of the Constitution, is presented as a guarantee to individuals against unfair and unlawful acts of the state authorities on the one hand, and as an obligation of these bodies that with their activity should not violate the

fundamental rights and freedoms of citizens, while also ensuring the respect and protection of legal procedures.

It should be noted that the Constitutional Court in its practice with decisions no.12/2012 and decision no. 35/2013 regarding the non-compliance within a reasonable time, has determined the finding of a violation of the constitutional right to a fair legal process as a result of non-trial within a reasonable time in flagrant violation of the requirements of Article 42 of the Constitution of the Republic of Albania, and Article 6 of the ECHR. The complaints reviewed by the Ombudsman's Institution regarding the violations found by the Courts of all levels, have been prepared and sent relevant recommendations with a view to resolving the problem and restoring the right violated or affected by the Courts.

During 2017, a total of 147 cases were processed, new incomes and 16 other cases carried from 2016 to the Courts of all levels. These complaints have been the subject of dragging trials by all courts, but more disturbing are the draggings of trials by the Courts of Appeal, the Administrative Court of Appeal and the High Court.

In cases ascertained by us as unjustified delays, case-by-case recommendations have been made as well as various requests seeking acceleration of the trial. Mostly, we have been recommending acceleration of the trial of delayed cases by the Tirana Administrative Court of Appeal, which contradict the requirements of Article 48/2 of the Law No. 49/2012 "On the Organization and Functioning of Administrative Courts and Trail of Administrative Disputes".

In fact, this Court has lengthy trials running normally for up to 2 years, and this delay is justified by the heavy workload as well as the lack of sufficient judges to handle this burden, and to adjudicate as quickly as possible the files filed for review.

Likewise, appeals to court decisions continue to be filed, alleging allegations of various legal violations of justice, and asking our institution to intervene in their demolition.

Analyzing complaints received during 2017, they are divided as follows: in *51 cases* they addressed to the Courts of First Instance; in *15 cases* to the Courts of Appeal; and in *6 cases* they addressed to Tirana High Court. For the violations found during this year we have sent *15 different recommendations*, which prompted the trial to run and the verifications carried out, indicated that they were found right and were received by the Courts.

Regarding the appeals received by the Ombudsman's Institution, against the special judges of the Courts of First Instance and Courts of Appeal, for various legal violations and corruptive actions, on our part, pursuant to the requirements of Article 17/c of the Law No. 08454, dated on 04.02.1999, "On the Ombudsman", have been sent to the High Inspectorate of the High Council of Justice for more detailed verifications.

Likewise, during 2017, there were complaints about: the length of trials due to non-appearance of forensic experts; the lack of the establishment of a special medical institution for people suffering from psychological and mental illnesses and they don't have any criminal responsibility for the criminal offenses committed by them; by not reviewing or failing to respond to requests for pardon for convicted prisoners; failure to reply to the non-payment of financial compensation according to the requirements of law no. 9831, dated on 12.11.2007, by the Ministry of Justice, or the Ministry of Finance and Economy, etc.

A major problem and civic concern recently has been the lack of judges at the High Court and judges at the Constitutional Court, as the term of existing judges has expired and they have not yet been replaced by other judges. It turns out that from 2013 and the following no vacancy has been filled in.

Also, there remains a high concern to the low number of judges in the Courts of Appeal. This has deteriorated and is expected to further aggravate the situation in this regard, with long draggings of trials, which have as another cause the great workload that exists in these courts.

We believe that the implementation of judicial reform as a vital reform for the good functioning of the judicial system will not bring the expected effects in these conditions if the number of judges in the courts of appeal remains unchanged with what exists nowadays.

Despite the identified problems, a positive development could be considered the amendment of the Criminal Procedure Code with the law no. 35/2017 "On additions and amendments to the Law No.1905 dated on 21.03.1995", as amended. These changes provide for: the rights of the victim of the offense as an obligation to be guaranteed by public bodies during the criminal process¹; the organization of courts at the level of the Judicial District Court as well as the Judicial Court of First Instance, anti-corruption and organized crime.

2.6. Execution of the civil and administrative judicial decisions

The process of execution of executive titles by the State or Private Judicial Bailiff Service, as well as other authorities charged by law for their execution on a case by case basis, within a specified or reasonable time frame, during 2017 it turns out that it has not been developed in accordance with the principle of legality. In the process of reviewing a number of complaints from the Ombudsman's Institution, it was found that the violation of the fundamental right to a fair legal process as a result of non-execution of executive titles in a reasonable time, as provided for in Article 42/2, of the Constitution, or in Article 6/1 of the European Convention on Human Rights.

Although the process of executing executive titles carries the same problems as in previous years, the authorities charged by law for their execution have not carried out, or fail to carry out, within the set deadline or in a reasonable time, the actions provided by law for their execution. It is noteworthy that the spirit of law enforcement in the process of mandatory execution of executive titles to the private entity, is more "aggressive" and more efficient than the private debtor subject compared to that of the state. This situation is noted both in the activity of the State and Private Bailiff Service.

¹ Article 58 of the Criminal Procedure Code provides for that the victim of the criminal offense or his representative, has the right to ask for criminal prosecution of the offender, to choose his defender and by case to benefit from the free legal aid by the state according to the legislation in force, to seek compensation of the damage as well as to have his claim accepted in the criminal proceedings.

There are several reasons related to this situation and they are related to:

- ✓ Issues that bear the provisions of the Council of Ministers No. 1, dated on 04.06.2014, "On the manner of execution of the monetary obligations of the general government units on treasury account".
- ✓ Lack of professional quality of judicial bailiffs, which appears in their actions and inactions during the execution process of executive titles.
- ✓ Failure to recognize the civil and procedural legislation by judicial bailiffs.
- ✓ The execution of bailiff actions outside the scope of execution, as well as the misinterpretation of the provision of the judicial decision.
- ✓ Lack of will by judicial bailiffs, on the imposition of sanctions against the subject of the obligated person, by a final court decision, or other people in the execution process, who refuse, irregularly perform, do not respect the deadlines or perform the opposite of what is decided by a court decision.

It is considered necessary to amend Article 529 of the Civil Procedure Code to extend the circle of items on which the sequestration measure can not be imposed, in the execution process of executive titles by the Judicial Bailiff's Service. It is also necessary for the Ministry of Justice to issue an instruction for defining the methodology in determining the value of the sequestered item from the Judicial Bailiff's Service, in accordance with the provisions of Article 7 and Article 11 of Law 114/2016 "On some amendments and additions to the Law No.8116, dated on 29.03.1996, "The Code of Civil Procedure of the Republic of Albania", as amended.

In the process of executing administrative judicial decisions, Law no. 49/2012, "On the organization and functioning of administrative courts and the trial of administrative disputes", as amended, provides that the imposition of sanctions against the deterrent subject, in the case of default within the legal deadline as reflected in the provision of the court decision, are set by the Court and not by the bailiff of the case.

The latter presents the case before the Administrative Court, which, pursuant to the provision of Article 68 of Law no. 49/2012, imposes a fine sanction of 20% of the minimum salary on a national scale, for each day of delay in execution and in cases of finding the non-execution of decisions without justified reasons, requires disciplinary action and, when is the case, also presents a criminal charge against the responsible people.

Regarding this situation provided for in the legal provision, Article 68 of Law no. 49/2012, we estimate that it will increase the effectiveness of bailiff actions in the process of compulsory execution of executive titles other than those provided by the Administrative Court, if it finds a reflection in Article 606 of the Civil Code.

Unlike in previous years, the number of appeals under consideration, which were the subject of non-payment of monetary obligations by the state body, as decided by the court, was very low.

Complaints have also been filed regarding the problems in daily practice, encountered at the stage of the execution of criminal decisions, requesting the assistance and interventions of the Ombudsman's Institution for solving the problem by means of a recommendation for correcting mistakes made by various state organs.

The process of execution of executive titles by the Bailiff's Service, as well as other authorities charged by law for their execution, within a defined or reasonable time, was subject to review during 2017 by the Constitutional Court. The Constitutional Court in five of the cases submitted for review on this issue, has accepted the request of the petitioning entities, expressing in their adjudication for finding the violation of the principle of a fair legal process development, due to the non-execution of the executive title within a reasonable deadline, as well as two cases in the process of adjudicating civil cases.

The fact that the Constitutional Court has evidenced in its decision-making year after year, the violation of the principle for the development of a fair legal process, is indicative that the responsible institutions do not take the appropriate measures to avoid this repeated situation.

This situation, apart from affecting the loss of the individual's confidence in providing justice, generates financial receipts paid by the taxpayer and does not return to him in compliance with the legal provisions of the Civil Code or other subordinate legal acts such as Instruction No. 2, dated on 06.02.2012, of the Minister of Finance, "*On standard budget execution procedures*", (Article 62); Instruction No. 1, dated on 13.06.1997, of the Minister of Finance, according to the Financial Act no.1, dated on 13.10.1997, paragraph 7, according to which the obligation of the head of the debt institution to carry out the audit of the whole process, which has lead to the economic damage, as well as taking administrative measures and commencing civil proceedings, against the people who caused the damage. Failure to comply with the above-mentioned legal acts has brought and will result in the violation of the property interests of any taxpayer in the Republic of Albania.

The issue of violating the principle of a fair legal process by the authorities charged with the execution of executive titles in Albania, has been ascertained by the European Court of Human Rights in its 2017 decisions on issues with numbers 23136/13, 57065/14, 15373/15, 3604/16 and no.49976/13.

The issue of non-execution of final judicial decisions given by the courts in the Republic of Albania or the European Court of Human Rights in a reasonable time, remains essential for the state as it is related to the establishment, strengthening and development of a credible and respectful judicial system for all.

The immediate execution of court decisions is one of the main pillars of democratic society. Failure to execute final court decisions in a reasonable time, by the public administration bodies, in the capacity of the debtor, remains an issue that violates the provisions of Article 142/3 of the Constitution of the Republic of Albania, Article 451 of the Civil Procedure Code, as well as the principles on which the activities of the public administration bodies are conducted.

In the process of reviewing the complaints during 2017, with the object of not executing the executive titles, the Ombudsman considers that the cause of the violation of the right to a fair legal process, is also the problem that the Guidance No. 1, dated on 04.06.2014, of the Council of Ministers, "*On the manner of execution of the monetary obligations of the general*

government units in the treasury account". To improve this situation, the Ombudsman has intervened and will continue interfering with the relevant bodies for its regulation on a case-by-case basis.

Although the Government's objective was and still is the prevention of new debts, expressed also in DCM No. 50, dated on 05.02.2014, "*On approving the strategy for prevention and settlement of arrears and action plan*", it turns out that this objective has not been achieved.

The debtor bodies or institutions, when filing the monetary obligation, as decided by the court, did not perform and do not perform the procedures set forth in the Instruction No. 2, dated on 06.02.2012, of the Minister of Finance "*On Standard Procedures of executing the budget*" (Article 62), or in the Instruction No. 1, dated on 13.06.1997, of the Minister of Finance, according to the Financial Act no.1, dated on 13.10.1997, Paragraph 7.

General Governance Units, Heads of Government as the bodies responsible for the execution of monetary obligations deriving from final court decisions, from the findings of our institution, in any case did not carry out and do not analyze the civil judicial decisions, as well as the search for the issuance of administrative responsibilities.

The situation in which the execution process of executive titles lies for years, with the object; "*Obligation of the body, the state institution for the payment of money*", raises the need for immediate measures taken by the central institution, both in the administrative and civil aspect, according to the degree of responsibility of the responsible individual.

Observance of the procedure as set out in the above-mentioned sub-legal acts, will enable not only the return to the state budget of money paid in pursuance of a civil court decision, but will also reduce the monetary obligations of state institutions.

Other causes of violation of the principle of fair legal process, due to the failure to execute final court decisions within a reasonable time, in the assessment of the Ombudsman's institution, continue to be:

1. Lack of professional quality of bailiffs, which appears in their actions and inactions during the execution process of executive titles.
2. Denial of legislation by judicial bailiffs.
3. Execution of bailiff actions outside the scope of execution, as well as misinterpretation of the provision of the judicial decision.
4. Lack of will by judicial bailiffs, the imposition of sanctions against the subject of the obligated person, by a final court decision, or other people in the execution process, who refuse, perform irregularly, do not respect the deadlines, or perform the opposite of what is decided by a court decision.

In reports of previous years, the Ombudsman has brought to attention the issue of the execution of criminal judgments, with a fine to the subject, which remains unchanged even though it has been recommended to the Minister of Justice with letter prot.No. K2 / I40 -9, dated on 22.02.2016, "*Taking the initiative to change the legislation*". Although the recommendation was accepted in principle by the Minister of Justice, it has not yet been

possible to improve the legal framework related to the process of execution of final criminal court decisions on the basis of which the person has been fined.

Another issue that has not been addressed and resolved within the deadline by the Ministry of Justice is the non-issuance of a guideline for defining the methodology in determining the value of the sequestered item, by the Judicial Bailiff's Service, in accordance with the provisions of Article 7 and Article 11 Law 114/2016 *"On amendments and additions to Law No.8116, dated on 29.03.1996, "The Code of Civil Procedure of the Republic of Albania", as amended.*

Failure to issue a sub-legal act does not allow execution of bailiff actions in the process of mandatory execution of executive titles at the stage for which the bailiff will have to comply with the above-mentioned provisions of Law 114/2016.

2.7. Legal Aid

Issues related to the provision of free legal aid by the state, citizens in need and who have no economic and financial opportunity to choose a private defense lawyer, when they have problems with judicial bodies, have been regulated by law no.10039, dated on 22.12.2008, "On Legal Aid". Based on the provisions of this law, the State Legal Aid Commission was established and operated by the Ministry of Justice, which case by case has reviewed and decided on the criteria for granting this free legal aid from the state.

Within the framework of institutional cooperation with the State Commission of Free Legal Aid by the State, the Ombudsman's Institution has sent to this Commission for further treatment the cases brought to him in connection with the economic and financial inability of the complainants to choose a private lawyer for the purpose of representation at Court.

More specifically, during 2017, a total of 28 requests from different citizens who have requested free legal aid from the state, have been received by the Ombudsman's Institution, and were sent to us for review competence by the State Aid Commission at the Ministry of Justice. From this Commission, these requests were reviewed on a case by case basis and the complainants were informed about the need to fill out some additional documents, such as filling in the relevant form, sending an ID card copy, etc.

Due to the problems in the implementation of this law, some shortcomings in legislation regarding avoidance of access to courts (in justice) of economically disadvantaged people who can not afford court expenses, and in order to guarantee a prompt, fair and orderly access to justice during 2017, started the process of drafting a law in line with the European standards in this area.

During this process, the Ombudsman's Institution gave concrete opinions on its improvement, which reflected in the legal provisions of the Law No.111 / 2017 "On the State Aid Guaranteed by the State", adopted on 14.12.2017 by the Parliament of Albania. The Ombudsman's Institution will follow up with the implementation of this law, which should be emphasized that there is still no relevant budget.

2.8. Right to property

Regarding the respect of the right to property by state bodies and institutions during their activity in 2017, problems have been identified regarding the violation of the right of ownership or the violation of the fundamental right to a fair legal process, guaranteed by Articles 41 and 42/2 of the Constitution, Article 1 of Protocol No. 1, and Article 6/1 of the European Convention on Human Rights.

The issue of property rights for the category of subjects whose property was expropriated without compensation, nationalized or confiscated after 1944, has undergone substantial changes with the entry into force of Law No.133 / 2015 *"On property treatment and termination of the property compensation process"*. The legal regime provided for in this law regarding the treatment of property rights has been assessed by the Ombudsman, as previously reported, not in accordance with the Constitution, an assessment which was partially accepted by the Constitutional Court in its decision no.1, dated on 16.01.2017.

In this decision, the Constitutional Court has decided to repeal points 3 and 5 of Article 6 of the above-mentioned Law and has rejected the request for the repeal of Article 6, point 1, letter "b", and Article 7, point 2, letter "a", and "b", for lack of quorum. The failure to establish the quorum of the panel members in this court, has brought the application of the provisions of the law in question. Meanwhile, we are aware of the fact that the association "Property with Justice" has requested the review of the constitutionality of Article 6, point 1, letter "b", as well as article 7, point 2, letter "a" and "b" in the Constitutional Court.

The Ombudsman emphasized that the issue of compensation of property whose ownership has been recongnized, mainly with financial compensation, has burdened and aggravated the interest of the Albanian taxpayer, especially of that category that is not subject to this right, with the continuation of the payment of financial bill of hundred million euros, in the name of the "public interest" balance to property rights.

Based on the Instruction of the former Ministry of Local Government and Decentralization, No. 3, dated on 18.07.2002, *"On the inventory of real estates of the state by the local government units"*, the Agency for Inventory and Transfer of Public Properties has defined the obligation of local government units to inventory real estates of any kind, according to their cadastral voice. From the data of this inventory we have ascertained that, they are not reflected in the attached to the Law no. 133/2015 *"On the treatment of property and the completion of the process of property compensation"*, at the drafting stage and its review as a draft law.

The solving of the issue of recognizing the property with the right to compensation, relying mainly on the financial compensation according to the manner of financial assessment set forth in this Law, introduces another worsening standard of handling the ownership right of the owner, not competitive with the standard of treating this right for people who have benefited from the right to property, according to the Law No. 7501/1991 *"On Land"*, as amended, Law No. 8053/1995 *"On the transfer of ownership without compensation of the agriculture land"*, DCM no.452/1992 *"On Restructuring of Agricultural Enterprises"*, etc.

We conclude that, evidencing as soon as possible the real estates under the legal regime "State" according to cadastral items, as well as the availability of the Property Treatment Agency (PTA), as a fund for compensation of the property recognized to the owner subject,

can and should be the main form of compensation. Establishment of a Physical Compensation Fund from land, agricultural, non-agricultural, forestry, pasture, as well as making it available to ATP as soon as possible so as to compensate the owner subject, we believe that it is the fairest and fully possible approach to dealing with this issue. After exhaustion of this treatment method, it can then be passed on to the financial compensation method for the owner subject.

Failure to execute the decisions given over the years, with the right to compensate the recognized property, as well as the failure to complete the review of the 11,000 claims administered by the Property Treatment Agency (PTA) over the years, continues to be an indicator of disrespect of property rights, as well as violation of the right to a fair legal process. This conclusion is closely related to the fact that the respective administrative procedures have not been completed, for every request submitted, within the legal deadline set for the completion of an administrative procedure, in the Code of Administrative Procedures of the Republic of Albania.

Another issue that remains current is the disregard of the former Property Restitution and Compensation Commission of the former Owners, the former PRCC (today PTA), of the legal obligation provided for in Article 196 of the Civil Code and Article 38 of Law No.33 / 2012 "*On registration of immovable property*", as amended, for sending for registration to the local office for the registration of immovable property, of all decisions given in years, according to which it is decided to recognize the property with the right of return in nature, or compensation with one of the forms provided for by law. This situation is also found in the case of the issuance of acts by notaries, bailiffs and other state organs, or court decisions containing the acquisition, recognition, alteration or termination of a right to immovable property or an actual right on it.

For those cases where the PTA has taken the decision to recognize the rightfully compensated property in one of the forms provided for by law, it is concluded that the local immovable property registration offices have held and still hold a refusal attitude for their registration, an attitude which has been and still is contrary to the definition set out in Article 196 of the Civil Code.

For the termination of this situation, which does not comply with the legal provisions in force, the Ombudsman, with the document prot.no. K3 / I51-2, dated on 18.10.2016, explicitly recommended to the Minister of Justice "*Enforcement of the obligation to deliver by courts, notaries and other state bodies, in particular by the Property Treatment Agency, of a copy of the decision or act containing the acquisition, recognition, alteration, termination of the right to immovable property or an actual right on it, or which declare as invalid the legal actions for the transfer of previously registered ownership to the local immovable property registration office which administers the register where the immovable property is located*".

To date, there is no response from the Ministry of Justice to this recommendation. Non-delivery of acts, decisions made over the years by the Property Treatment Agency, and not only, at the local real estate registration offices where the property is located, according to which it is decided to acquire, recognize, change the right to property or an actual right on it, has caused the process of initial systematic registration of property in those cadastral zones, where they are located, has not yet been completed until today.

Even in cases where the initial systematic registration of property titles is made possible, problems with the authenticity of their casting on cadastral maps are ascertained, thus producing civil conflicts that could be avoided or are avoided in case of the correct exercise of the functions by the registrars of the local immovable property registration offices, as provided for in Articles 30 and 31 of Law No.33/2012, "*On Immovable Property Registration*", as amended.

Request from the local real estate registration office to pay the late-payment-interests to the beneficiary subject, due to late submission for the registration of the property title, beyond the legal deadline of 30 days from the date of its production or its final form, comes in violation of Article 196 of the Civil Code.

This penalty should not be required to the subject that has produced the title of ownership, according to the legal provision in question. Failure to comply with this legal obligation by all subjects referred to in Article 196 of the Civil Code as well as the failure of the Ministry of Justice to respond to this situation, is unjustified as it constitutes a breach of the right of ownership and violates the right to a fair legal process.

The failure to exercise the authority and control for the implementation of legislation in force, by the Chief Registrar of the Central Registration Office of Immovable Property, or the Ministry of Justice, to these acts and attitudes in violation of the law by the local immovable property registration offices, have been informed in concrete cases by the Ombudsman's Institution.

The restriction made for the receipt of claims for the recognition of property only during the first 90 days from the entry into force of the Law No.133/2015 "*On the treatment of property and the completion of the compensation process*", has deprived and still deprives all the other individuals who have possessed and still possess property documents for certain properties, but who have not been able to observe this term for various objective reasons. The amendment to Article 27, point 1 and 2 of the Law, will enable the resettlement of exercising the right to seek property recognition. It should be borne in mind that both the Council of Europe and the World Bank experts have insisted on finally removing a tax-based deadline for accepting property-recognition claims.

It is noted that the Property Treatment Agency pursuant to Law No.133 / 2015, continues to make decisions for compensation of property known to the owner subject with the right to financial compensation. Although a number of decisions have been made to date, their execution, i.e the cash value submission in favor of the owner subject does not occur, thus creating another problem besides the ones carried over in the years by the Property Treatment Agency.

Another unresolved issue within the stipulated legal deadline, is the non-completion of the review of the legal validity of acquisition acts of immovable property, from the local assessment commissions of property titles at the Prefect of the District.

Likewise, the underdevelopment of procedures by the local government units, the Ministry of Justice, the Ministry of Interior, ALUIZNI, the Local Office of Immovable Property Registration, the Chief Registrar of the Central Office for the Registration of Immovable Property, or PTA, remains problematic for the implementation of DCM no. .608, dated on 05.09.2012, "*On the determination of the procedure for the transfer of ownership of immovable property, built up to 10.08.1991, of their functional land, when there are no property gains, as well as for their registration*", as amended. This situation is also due to the disapproval of the regulatory act, the determination of service tariffs in the process of providing property titles, of possessors of constructions established before 10.08.1991, etc.

Other issues that have been mentioned in years and have not been solved yet, are;

- ✓ Failure to complete the initial systematic registration of property in those cadastral zones where it is decided to recognize and restitute / compensate the immovable property

- ✓ Prolongation of the process of reviewing the self-declarations made by the subjects who have completed the construction of informal objects by ALUIZNI.
- ✓ Prolongation of the process of reviewing the claims for the recognition of property with the right to physical compensation, etc.
- ✓ Prolongation of the process of reviewing property titles, issued pursuant to Law No. 7501, dated on 19.07.1991 "On Land", etc.
- ✓ Non-cooperation and non-operation of public institutions in the process of creating and registering property titles.
- ✓ Failure to comply with local immovable property registration deadlines for the provision of services to the citizen, primarily in the registration of property titles, the issuance of ownership documents or the provision of the required information.
- ✓ Failure to exercise competencies, by the registrars of local immovable property registration offices, as provided for in Article 30 of the Law No.33/ 2012 "On Immovable Property Registration", as amended, for the correction of the cadastral map.
- ✓ Taking possession of the expropriated property from the state body, without first submitting the expropriation value to the expropriated subject.
- ✓ Non-registration and "doubting" by the local immovable property registration offices of the administered judicial decisions.
- ✓ Failure to create a unique, digital map that can provide property information.
- ✓ Failure to guarantee the execution of court decisions of the country, as well as the decisions of the European Court of Human Rights related to the respect of the right of ownership.

The process of suspending the examination of the entities' requests for recognition of property with a right to property restitution or compensation in nature of the property for several years, has lead to a problematic situation, which has not been resolved for years.

ATP administers no less than 11,000 unspecified requests, which are administered from 1993 until today. This situation, although it has been mentioned by the Ombudsman's Institution repeatedly, is not finding any solution. This situation violates the right to a fair trial as provided for in Article 42/2 of the Constitution or in Article 6/1 of the European Convention on Human Rights. Finding ways to get out of this situation has been and still remains an immediate request for state bodies, which have the responsibility and administration of PTA's activity.

2.9. The activity of the National Territorial Defense Inspectorate (NTDI) and the Territorial Defense Inspectorate (TDI) in the Municipality.

The two main bodies that have as the object of their activity, inter alia, respecting the norms, standards, developmental conditions of the territory, and the protection of the territory from illegal constructions, are the National Territorial Defense Inspectorate (NTDI) and the the Territory Defense Inspectorate (TDI) in the municipality. Their jurisdiction and competencies are defined in Law No. 9780, dated on 16.07.2007 "On Inspection and Protection of Territories from Illegal Constructions", as amended.

The nature of the activity of these two bodies in the case of the Territorial Defense Inspectorate in the municipality, lies at the local level, while in the case of the National Territorial Defense Inspectorate, it lies on a horizontal and vertical level of interference and control, both at the central level, as well as at the local level. Both of these bodies emerge with decision-making/executive powers since the imposition of fines, the suspension of construction works, and the destruction of illegal constructions.

During 2017, 27 complaints were filed against the activity of NTDI and TDI, of which 15 are related to the activity of NTDI and 12 others, to the activities of TDI in the municipality. The object of these complaints is related to the violation of legal procedures during the process of demolition of buildings by the NTDI, as well as failure to act in cases where there is a claim for the existence of illegal constructions. In the case of TDI in the municipality, the object of the complaints filed is related to the overcoming of the decision-making power to demolish the object, while the latter is still under the legalization process at ALUIZNI; failure to initiate the procedure for ascertainment and sanctioning of illegal constructions; failure to act in the execution of decisions for the destruction of illegal objects.

Out of a total of 18 complaints for which our review process has ended, which are related to the NTDI or TDI's activities in the municipality, several key issues have been identified as follows:

- ✓ It is noticed a lack of transparency in the activity of these bodies, often referred to by the complainants in their complaints, but also specifically evidenced during our institutional activity.
- ✓ Recurrent cases are found when the complainants have been confronted with the situation of their property violation, by NTDI or TDI's interventions in the municipality, without being informed and without prior notice of an intervention decision which would be completed. This has violated the complainants' right to conduct a fair legal process.
- ✓ Although some of the complaints require combined information, either by the TDI in the municipality, or even by the NTDI, it is ascertained that the TDI's reporting manner to NTDI, on concrete issues remains problematic, as there are delays and often lack of information under the vertical dependence of the legal obligation in this case.
- ✓ The NTDI's activity is fragmented, non-analyzing and non-responsive, in cases when it is required to undertake certain actions by other state institutions. In these cases, the NTDI serves and has to serve also as a filter of the legality of the preliminary decisions of the other bodies, which requires its direct administrative engagement, through the exhaustion

of the relevant administrative procedures, in the framework of the implementation of legality in the field of construction inspection.

Any administrative procedure initiated by the NTDI should not and can not be treated simply as a preliminary decision by another body operating in a jurisdiction similar to that of the NTDI. Concrete administrative procedures, to be developed on a case by case basis by the NTDI, need to have as an indispensable element the active investigation by this body of the circumstances, the evidence, the particularity of the problem presented in order to prevent the violation of the law.

If this mode of action is absent, then we have a lack of development of a regular and lawful administrative proceeding, as it is noticed the lack of cooperation and the necessary harmonization of the activity with other organs operating in the field of urban planning.

- ✓ In the process of demolition of informal constructions, it turns out that in relation to these constructions, the NTDI, as well as the TDI in the municipality, have deficiencies in the process of verifying the existing application procedures at the ALUIZNI's body for the legalization of objects, which have either been interfered by demolition, or have been sanctioned by decisions of destruction. This inaction contradicts the provision made in Article 66/1 of the Code of Administrative Procedures, while it is found that there is a lack of cooperation and necessary harmonization of the activity of NTDI, with other bodies operating in the field of urban planning and protection of territory.
- ✓ Financial damage caused by the NTDI or the TDI in the municipality, during the demolition of buildings constructed with permits that were previously included in the expropriation process for the public interest, but which have not yet received the value of compensation and the informal objects involved in the process of legalization and for which ALUIZNI has not yet provided its final decision, constitutes additional costs that are unlawfully added to the obligations that the state has to pay in these cases to the damaged subjects. This action determines the activity of these bodies in the conditions provided for by law no. 8510 dated on 15.07.1999 "On the extra-contractual liability of the public administration bodies", as amended.
- ✓ In this activity, there are legal violations that violate the lawful rights and freedoms of the individual, while the state of non-reflection on this illegality still continues, by aggravating the legal situation of the subjects that own or possess constructions with different legal statuses.
- ✓ Contrary to the legal definitions provided for in point "c" of article 21 of Law No. 8454, dated on 4.02.1999 "On the Ombudsman", as amended, there has been no reaction by the senior organs of regional directorates of the NTDI or the TDI in the municipality, regarding our recommendations on taking disciplinary measures against the respective inspectors who have been in the conditions of refusing cooperation with the Ombudsman during the review of the appeals by the latter.

As we have informed in the last two previous annual reports, a separate report on the activity of the NTDI for the period September 2014 - May 2015 was prepared by the Ombudsman. This report was sent to the Assembly on 22.12.2015. The report analyzes the activity of the NTDI, specifically for some areas such as Selita, Tirana (where the project of building a new

city ring is being implemented); Udenishti area, Pogradec, (where the rehabilitation project of the segment Lin-Pogradec is being implemented), as well as the area of the road segment Rrogozhinë - Lushnjë.

The Special Report on the activity of the NTDI for the period September 2014 - May 2015, has not yet been discussed in the Assembly, although its problems remain current to the fact that the NTDI's activity still continues to be a problematic issue.

NTDI's activity is also one of the elements of the legal analysis of a special report that was started by the Ombudsman during 2017, regarding the problems encountered in the activity of some public administration bodies during the implementation of the project "Tirana Outer Ring", Lot III (Laying of Lana River and Construction of Parallel Roads, New Martenitë segment, Tirana Outer Ring)".

2.10. Local Government Bodies

During 2017, the Ombudsman paid particular attention to protecting the rights of individuals during the activity of local government bodies. This focus has increased following the implementation of the territorial-administrative reform in 2015, as these bodies already have a wide range of functions, the exercise of which has a major impact on the lives of citizens.

In the framework of the implementation of the National Intersectoral Strategy for Decentralization and Local Governance of 2014-2020, local government bodies have already defined new priorities in close cooperation with central government bodies for further deepening of the decentralization process in accordance with the principle of local autonomy. Good governance, transparency and accountability in the management of public resources in the interest of citizens, increasing the quality of public services offered to citizens, increasing citizen participation in decision-making, within the Recommendation 349 (2013) of the Congress of Local and Regional Authorities of the Council of Europe for the Albanian Government, are a permanent and vital requirement for establishing a stable and reliable relationship with citizens.

During 2017, 365 complaints were submitted to the Ombudsman's Institution against the activity of local government bodies, out of which 80 complaints have as their object the alleged violation of the right to property, 77 complaints have as their object the non-fulfillment of citizens' requests for securing housing for their families, 29 complaints are related to allegations of violations of citizens' rights from illegal and improper TDI's operations to respective municipalities, while 15 complaints are related to illegal actions by the Municipal Police, 12 complaints are related to conservation and protection of the environment, etc.

The largest number of complaints filed in 2017, is related to the way the property is handled. From the administrative investigation and analysis of these cases, it has become necessary to increase the cooperation between local government bodies and other state organs exercising their competences at the local level for the implementation of the requirements of law no.9948, dated on 7.7.2008 *"On reviewing the legal validity of creating ownership titles on agricultural land"*, DCM no. 994/2015 *"On the procedure for the registration of land acquisition acts"*, as well as DCM no. 337/2015 *"On determining the procedures for conducting the process of transferring agricultural land to former agricultural enterprises owned by beneficiaries"*, with the purpose of final settlement of the process of separation of agricultural land, as well as providing individuals with the land acquisition act (LAA), and the registration of the acquisition of the ownership right at the Local Immovable Property Registration Offices (LIPRO).

The Ombudsman's Institution during the complaints' review process has identified problems related to:

- ✓ Unjustified delays in the demands of individuals and lack of competence in the activity of the bodies of the local government units, regarding the fulfillment of the deficiencies of the acts / documents ascertained by LIPRO during the LAA registration process
- ✓ Failure to comply with the legal obligation imposed on these bodies for the actual verification of the land owned by the agricultural families in the case of overlapping or settlement of conflicts between the agricultural families within the legal competences of the decision-making bodies, mainly for the accuracy and confirmation of the planning for

the areas of each property provided with LAA and the written submissions of acts/documents to the LIPRO.

- ✓ Inaccurate administration by the local government body in a separate register of all claims submitted by the actual users of agricultural land, former agricultural enterprises, which are not equipped with LAA.
- ✓ Lack of co-operation between local government units, LIPROs, Regional Directorates of ALUIZNI, the Property Treatment Agency and Land Administration Directorates at District Councils, throughout the whole LAA registration process of agricultural households, etc.

With regard to these issues, after reviewing them, we have recommended to the decision-making bodies and the structures of land administration in the municipalities, taking technical and legal measures for the progress of the LAA registration of agricultural households, according to the obligations stipulated by law. Meanwhile, for cases where have not been in the competence of the treatment by these bodies, we have directed individuals and interested parties to address the court to resolve the ascertained disputes.

A large number of complaints from individuals, families and groups in need or in economic difficulties have been addressed by the Ombudsman's Institution, against local government bodies, for the **non-treatment and solving of the housing problem**.

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

The Ombudsman, in the framework of solving the housing problem, has recommended to state bodies the drafting of a full legal framework aligned with international standards that responds to the effective implementation of the requirements of individuals and their families for housing, thereby ensuring the provision of a shelter for each category of individuals, families in need, or economic difficulties.

It is also considered that the drafting of legislation should be accompanied by increased budgeting in this area, as well as the support that central government should give to local government bodies with social housing projects. If we refer to statistics, with the exception of the Tirana Municipality and any of the major municipalities in the country that could benefit projects from social housing programs, the other local government units lack the capacity to compete in these projects and have no financial opportunities to build social housing for the categories of families in need. In this context, it is worth to appreciate the fact that during 2017, a draft has been drafted and the new law on social housing is currently submitted for approval to the Albanian Parliament.

From the review of the complaints against the activity of **the Municipal Police body**, there were found cases of violation of the provisions of Law No. 8224 dated on 15.05.1997 "On the Organization and Functioning of the Municipal Police", as amended, as well as Law No. 10279 dated on 20.05.2010 "On administrative offenses".

Legislation in force provides that the employees of this body have the power to impose fines in the country, against physical and legal entities that carry out illegal activities within the territory administered by each municipality. Meanwhile, it results that municipal police officers in contravention and exceeding their legal powers, in addition to the fine imposed on the offenders, have taken other additional administrative measures, such as the blocking of assets owned by offending subjects as a coercive measure to force the offender to pay the fine. This action by the employees of the Municipal Police Department in the Ombudsman's assessment, was considered unlawful, so it was recommended to change this practice, which is inconsistent with the legal powers of the Municipal Police employees, as defined in Law No. 8224, dated on 15.05.1997 "On the organization and functioning of the Municipal Police", as amended.

The administrative-territorial reform and the creation of municipalities as a core unit of local government, has basically the vision of enhancing the well-being of individuals and their families through the process of **providing public services closer to the citizens and increasing their quality, and conducting investments in road infrastructure**, in order to improve the quality of citizens' life.

Although several years have passed since the creation of new local government units, as well as some reforms undertaken by the government, citizens continue to complain about the lack of basic services at the centers where they reside. Meanwhile, municipalities are justified by the lack of financial funds, which are quite reduced in providing these services. This situation is also due to the structural changes that the local government units suffered because of the delegation of new competencies by the central government, a delegation that was not accompanied by financial budgets, which has put the local government bodies into difficulties to respond in time to the growing demands of citizens.

Complaints by individuals mainly heads of household are also related to the **inability of providing a job** by the local government units. From the analysis of this phenomenon, it turned out that the high level of unemployment mainly in remote mountainous and rural areas, is due to the lack of municipal projects and funds, for the efficiency and utilization of the natural resources they possess, as well as lack of overall investment and especially in road infrastructure. Also, in these complaints, concerns have also been raised about the lack of proper functioning of municipal work offices, which are far from meeting the demands and needs of individuals for work, as well as meeting the market need for qualified workers.

The new municipal structures, following the implementation of the territorial administrative reform, experienced a redimensioning with regard to **the treatment of vulnerable groups** such as Roma, Egyptians, violated women, children, the LGBTI community. In particular, it is worth mentioning the creation of child protection units, near each local government unit. Nonetheless, there have been no complaints from individuals and civil society organizations working with these communities, whose object is the lack of employment, the problem of child schooling, discrimination in receiving healthcare, differentiated treatment for the benefit of economic aid, problems with housing shortages, registration in the civil status offices, etc.

In this regard, besides reviewing individual complaints, the Ombudsman has paid special attention to the treatment and resolution of problems that concern these communities, recommending to the state bodies at central level the improvement and adaptation of legislation in areas such as education, health, civilian and social housing, based on the problems that these communities carry, as well as the fulfillment of the international standards set forth in the international conventions ratified by the Albanian state.

The Ombudsman has had close cooperation with the municipal social service structures as well as with civil society organizations, with which joint inspections have been organized at their treatment centers, to resolve many cases in favor of these individuals which are part of vulnerable groups. A concern for the well-functioning of these centers remains the low budgeting by the municipalities, the lack of investments and the increase of the capacities of the employees performing these tasks. The Ombudsman has recommended to local government bodies to plan more funds in their annual budgets for solving problems that disturb the communities in need, making investments, and taking measures to recruit and train more professional staff for the treatment of vulnerable groups.

In this context, we bring to attention the Recommendation 349 (2013) of the Congress of Local and Regional Authorities of the Council of Europe. For the implementation of this recommendation, it is necessary to complete the legislation on increasing the local autonomy, strengthening the powers of the decision-making bodies, and providing sufficient financial means for the effective realization of the delegated competences. Meanwhile, we emphasize that the necessary legal improvements have not yet been made to clarify and enhance the district's competences; the specification of the dualistic powers of the District Council and the Prefect's Institution; determining the rules for the participation of representative associations of local self-government in the process of consultation with the Central Government in order to establish a unified administrative structure; lack of appropriate financial, fiscal and budgetary instruments, especially for the Municipality of Tirana, etc.

2.11. The right to health care

The right to health care is one of the human rights provided by the constitution and it is part of the social objectives of the state. Fulfilling this right is directly related to the health, life and quality of life of every member of the society. Being part of the group of positive rights, the method of its implementation depends heavily on the legal, administrative, organizational and financial measures of the state. Health itself is linked and depends on various social, economic, and political factors, as well as the measures taken by the state are diverse and stretched in different areas of life. What they have in common is the impact on each individual's health in society.

A health system should be designed to address the different needs of the population in a fair, efficient and responsible way. Health systems, although greatly varying in how they are organized, managed, and funded, should ensure equality of access, high quality, efficiency and financial sustainability of health care services for the entire population, based largely on the need and not on the ability to pay.

During 2017, the Ombudsman's Institution has reviewed 45 complaints in the field of health in general. Of these 15 were cases with initiatives addressed by us. The objects of the complaints were medical treatment not compliant with standards, requests for treatment abroad, complaints about lack of medicines, mainly in QSUT, employment relationship etc. Out of the total number of complaints received for 40 complaints, the review has been completed, while the other 5 are under review. In the number of complaints reviewed, 30 complaints were solved in favor of the citizen.

Within the scope of its activities, in the protection of human rights and fundamental freedoms, the Ombudsman's Institution has monitored during the reporting year and the following the issues raised, both through various complaints filed at the institution and cases made public in print and online media. In order to improve the quality and standards of the patients' treatment in each hospital or health center, there should be permanent medications that are sufficient, mainly in QSUT, Tirana due to the influx of patients from all over Albania. There are absences carried year after year as it is known in the oncology hospital, because of the specificity and increase of the number of patients treated by this hospital institution in particular.

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

Referring to the most specific complaints reviewed for which recommendations were drafted for 2017, we would mention the complaint of the *Albanian Association of Nurses*, which conveys a concern of Nurses in QSUT. Concretely, they complained about the parking fee of ALL 100 per day, which is required only by nurses and not by doctors who are equipped with electronic cards and are excluded from this payment². Also, the other case has been the problem of the citizen D.XH who suffers from a rare illness not included in medical protocols

² It was recommended to the QSUT the involvement as soon as possible of the medical staff in the list for the exclusion from the daily tariff of parking in hospital premises, the category of nurses in QSUT, based on Article 2 of the agreement dated on January 21st 2013, point 1/c, through the company "Steoalb" shpk and QSUT – Mother Theresa.

resulting in a failure to provide an adequate health and social treatment for this citizen³.

Other cases have been complaints from a group of patients treated with Hemodialysis in QSUT, Mother Theresa. This category of patients has many concerns that they face in their everyday life as patients. Specifically, they require some medicines that are necessary for their health⁴.

A 2017 innovation in the field of health is the USAID project "Transparency in the Health System in Albania", and its aim to improve Albanian health services by supporting the Government of Albania in its efforts to fight corruption, is as indispensable and hopeful.

Also, an added value to this project is the encouragement and cooperation of its independent beneficiary institutions such as the Ombudsman, the Supreme State Audit, the High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest, civil society and the media where each of us is demanding and fighting within the legal framework not only against corruption in health, but also for a better governance of the health system. This project has organized trainings of experts of these institutions, which will continue in 2018.

The monitoring of the right to health should be essential to ensure that the state's obligations deriving from the implementation of the right to health, are respected. The monitoring and accountability of the responsible authorities should be done nationally, regionally and internationally through administrative, political and judicial mechanisms, including a range of actors such as NGOs, constitutional institutions, or citizens themselves.

The Ombudsman, through his recommendations, aims to raise the awareness of the health administration employees for a quality service and standards on the rights of citizens of any social category they belong to, which, inter alia, increases also the trust of citizens to the health system.

Level of respect for the rights of people in psychiatric hospitals

The University Psychiatric Hospital "Xhavit Gjata" at the University Hospital Centre "Mother Teresa", in Tirana, the Mental Health Services with beds in Shkodra, the Psychiatric Hospital in Elbasan and the Psychiatric Hospital in Vlora, have in their function a more specialized and rehabilitated function of people with mental health problems who have exhausted all the existing opportunities to receive such a service in the community, are not able to treat them in outpatient conditions, or need psychiatric consultation from the requirements that come from the emergencies of general hospitals. The monitoring visits to these hospitals, in addition to the general purpose of the visits, were specifically aimed at: assessing the respect of the rights and standards offered to people with mental health disorders in specialized mental health facilities specified in the law no. 44/2012, dated on 08.05.2012 "On Mental Health"; assessment of procedures for performing involuntary injections; restrictive measures and physical restraint; the conditions under which these people are kept, their medical and rehabilitation treatment, and the verification of the

³ It was recommended to the Ministry of Health and Social Protection "Taking the necessary and immediate measures for including in medical protocols the illness of Fibromyalgia, as an obligation of each state institution for respecting human rights provided for by the Constitution and special laws".

⁴ It was recommended to the QSUT "Taking into consideration and solving as soon as possible the issues arising by patients who are treated with Hemodialysis in the University Hospital Centre "Mother Theresa".

implementation of the recommendations presented to these premises during the previous years.

From the findings of the monitoring visits conducted during 2017, in the above-mentioned psychiatric hospitals, the Ombudsman found that although some of the recommendations were repeated over the years, they were not implemented, and requested through special recommendations addressed to the Ministry of Health and Social Protection and the relevant service managers for immediate intervention in problem solving.

Inter alia, it was recommended that the Ministry of Health and Social Protection and the Ministry of Justice take the necessary measures to:

- ✓ Enforcement of Article 28 of Law no. 44/2012 "On Mental Health" by the Ministry of Justice and the Ministry of Health and Social Protection for the establishment of special medical institutions and for the treatment of people with mental health disorders who have committed a criminal offense for which the competent court has imposed compulsory medication in a medical institution, pre-detainees or convicts who exhibit mental health disorders during the serving of the punishment as well as for the treatment of people for whom the court has decided to temporarily be admitted to a special medical institution, according to article 239 of the Criminal Procedure Code, as amended.
- ✓ Finding a quick, effective and sustainable solution for reviewing, mainly within the legal time limits, by the courts of all decisions given for "compulsory medication in a medical institution", as well as for delivering decisions to institutions where relevant people are treated.
- ✓ Adding staff to psychiatric hospitals, nursery caretakers /task force, security staff, sanitation and barbers, in order to provide an appropriate service for the specifics of this mental health service with beds. The Ombudsman considers it as necessary:
 - To increase the number of specialists in Psychiatry in the following years;
 - Reformulation of the employment criteria for the "guardian" and "task force" clinical functions, with nursing education and in-depth knowledge in hospital psychiatric rehabilitation, as well as age and physical abilities for the management of agitation and high risk;
 - Training current employees.
- ✓ Establishment of monitoring system with surveillance cameras in joint premises of psychiatric hospitals.
- ✓ Creation / complete reconstruction of isolation rooms, completing them in accordance with section 4.6 "Isolation Infrastructure", "Physical Limitations on Mental Health Services specialized with beds", approved by Order of the Minister of Health, part of the package of sub-legal acts issued on the basis and for the implementation of law no. 44/2012 "On Mental Health".

- ✓ Provision of hospitals with means of mechanical restraints, in accordance with point 1.2 "Restraints elements", letter b "Mechanical restriction", sub-legal act cited in the above point.
- ✓ Reducing the overcrowding by addressing the problem of treatment as residents of people with intellectual disabilities in violation of the applicable legislation as well as enabling the treatment of abusive people with narcotic substances and / or alcohol in toxicology units suitable for this purpose.
- ✓ Enabling the reorganization of pavilions for acute patients separately.
- ✓ Improvement of conditions in pavilions, heating, showers and toilets in order to provide a more dignified service to people treated in psychiatric hospitals, as well as providing the necessary material base for psycho-social staff.
- ✓ Provision / full functioning of bio-chemical clinical laboratories as well as ECG apparatus.

2.12. The Right to Education

Education is one of the most valuable areas of any society. Through education, societies and nations transmit their knowledge, culture, cultural heritage, values through which society progresses.

The need for more education should be emphasized also in the social context, where the poor level of education and training is directly linked to social exclusion for a number of groups. In general, the image of education in the eyes of citizens is not good, so the quality requirements for education have also increased. This is reflected in public debates and critical media writings on the quality of education. It may be that the requirements for improving the quality of education are also presented in a form that reflects a lack of understanding of the situation in the country and the university system of higher education.

During 2017, the Ombudsman's Institution has reviewed 60 complaints in the field of education in general. Of these, 10 have been cases with initiatives addressed by us. The object of these complaints was mainly the implementation of non-response procedures by Ministrz of Education and Sciences, administrative problems by university staff and administration staff, the lack of assistive teachers for children with appointments, transfers or dismissals of teachers bz DARs, financial problems, etc.

Out of the number of complaints, a review of 50 complaints has been completed and 10 are still under review. In the number of complaints reviewed, 40 complaints are resolved positively.

The main issues that our institution has dealt with in the field of education have been different, but we would highlight the problems of students coming from social classes in need, who have had to face administrative difficulties and unfair exclusion from halving or exclusion from school fees according to the Decision of the Council of Ministers no. 269, dated on 29.03.2017.

Another issue worth mentioning was also the complaint by the Egyptian community leader for the District of Elbasan. His concern was for the Egyptian and Roma community students in the district of Elbasan, for exclusion from paying the tuition fee for higher education in public schools.

University A. Xhuvani, Elbasan requested from the associations the list with the names of the Roma and Egyptian communities referring to document No. 2441 dated on 20.04.2017 of the former Ministry of Labor, Social Affairs and Youth addressed to the Rectors of the Universities and the Ministry of Education and Sport for his information, which sets out the document to be accepted by faculties for the Roma and Balkan-Egyptian students, which should be: *"Notary declaration by students who self-declare their ethnicity"*. If this community had enough income, it would not be excluded by the CM decision from this fee. A recommendation was sent to the Ministry of Labor, Social Affairs and Youth for this issue.

Another issue that took our institution's attention was Decision no. 269, dated on 29.03.2017 "On the determination of categories of individuals that meet the eligibility criteria in a first degree study program, an integrated study program or a professional study program, which are excluded from the annual tuition fee". Point 1 of this decision stipulates that: *"Exclusion from the annual tuition fee applies to students who are admitted to a program of the first cycle of studies in an integrated study program or a program of professional studies in public high education institutions, of the following categories: a) Disabled students, certified by the Medical Council for determining the ability to work..."*.

Also, point 3 of this decision states that: *"Individuals who have completed a study program have the right to attend a same study program of the same cycle. In this case, the candidates afford the full cost of the studies. This rule excludes the excellent students."* As noted above, we conclude that for this category of people compared to the old law of higher education, but also with the abrogated DCM, in the second cycle they paid 50% of the amount to continue their studies in the master and scientific master cycle, while the decision cited above obliges them to afford this cycle itself.

Meanwhile, Article 8 of Law No. 8098, dated on 28.03.1996 "On the status of the blind", states that: *"Education of blind people in the state system is free of charge..."*. This legal definition obliges the public administration to exclude this category of people from the tariffs defined in the DCM. Given the fact that the law prevails over any other sub-legal act, a recommendation has been sent to some universities and the Ministry of Education, Youth and Sports for taking the appropriate measures.

The cases handled by our initiative were mainly cases made public in print and visual media related to infrastructure conditions in different schools of the country, lack of heat in winter months or humidity and lack of basic items for the normal development of a class such as desks, doors and windows, which are problematic in many schools belonging to remote areas.

In addition to infrastructural and space problems, the school faces a number of other problems. Implementing reforms, quality, assessment, education, violence, bullying, falling interest or motivation to learn, and failure to attend college after graduation are one of the major problems in our schools.

What should be a major concern for our society, especially for teachers, parents and the Ministry of Education, is the fact that the school is still far from expectations compared to the developed countries where we aspire to integrate. The Ministry of Education should develop policies and draft plans, the implementation of which will make the school a more loving, attractive and stimulating environment for students. This would have a direct impact on raising the quality, increasing interest and achieving the most important results in meeting the concrete objectives.

2.13. Environment and human rights

The Ombudsman Institution focuses its work on the monitoring of the environmental situation in the Republic of Albania, as well as the implementation of legislation adopted in this area, by central institutions, public entities and local government bodies, as regards the legal and sub-legal acts, as well as the International Conventions and Agreements, ratified by the Republic of Albania.

Beyond the limited opportunities faced by the Ombudsman's Institution, during 2017, we have had a particular focus on the rigorous implementation of the provisions of the legal and sub-legal acts, in order to influence the improvement of the state of the environment in Albania, by guaranteeing the standards of a healthier environment.

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

During the year 2017, the Ombudsman's Institution treated 20 complaints submitted to the public administration bodies charged by the law to protect the environment, as well as to promote a cleaner and more environmentally friendly atmosphere and environment.

Also, the Ombudsman has been active in dealing with various cases at his own initiative. There are 3 initiated cases started by us in order to investigate and verify sensitive issues in this area, from which there are ascertained actions or inactions in violation of the legal provisions in force that violate the right to a clean and healthy environment.

In this context we can emphasize the issues raised regarding the alarming pollution due to the burning of urban waste in the city of Shkodra as well as the cleaning of public spaces in Pogradec Lake so that they can be made available to citizens for usage during the summer season period.

The Ombudsman is pursuing, with interest and priority, the actions undertaken by the Ministry of Environment in the framework of meeting the obligations of the Albanian state, pursuant to the Paris Agreement, as an international act which provides for reduction of levels of pollution by states in order to guarantee and respect a healthier environment, not only for the current population of the world, but also for the future generations. This engagement is also considered as an essential element for respecting the right to a clean and healthy environment.

Concerns and allegations of environmental pollution are evidenced and initiated as cases for review, also within the cooperation of the Ombudsman's institution, with the organizations of

the civic society through districts, which accompany our institution to the concerns of local communities in their cities. It has been ascertained that the cause of the polluting source is precisely the inaction of the state bodies charged by law to various entities that cause environmental pollution.

Of the issues reviewed by us, 14 complaints were solved in favor of the complainants, in two cases the complainants waived their further consideration of their claims, while the other three have passed for review in 2018.

The object of the complaints presented and taken into consideration were: environmental pollution from waste disposal in public places; air pollution from urban waste incineration; activities of entities operating in excess of permits with which they are equipped; as well as acoustic pollution, which in their entirety undermine the quality of health and life of residents living in residential areas affected by such pollution.

Disturbing is still the situation in the coastal line, with regard to the removal of sewage from hotels and residences, such as in the Durres area, or even the southern beaches, mainly during the summer season. The situation on the public beach is contrary to the goal of a healthy and convenient environment for the holidays.

During 2017, there were repeated cases of flagrant pollution in Fierza Lake, from various urban waste, which were avoided by the engagement of various structures of central and local government, but they still remain an existing problem due to the extension of this lake in the spaces between the states, by causing the source of pollution to remain in many cases indistinguishable.

The problems in the field of environment in Albania remain as follows:

- ✓ Air pollution in the major Albanian cities, especially in Tirana, which is due to the increase in the number of cars in circulation and the reduction of green spaces despite the modest projects of certain local government units, or even central government structures, for planting new seedlings in areas that are distinguished for high levels of pollution.
- ✓ Waste disposal in rivers and lakes, as well as shedding of raw sewage.
- ✓ Waste collection in Albania and their recycling is not yet at the consolidated world standards. Waste is not collected almost anywhere in the villages. In this context it should be noted that there are initiatives regarding the process of separation and seclusion of waste, as one of the stages that would serve not only in the quickest collection of waste from their collection, but also in their further specialized treatment, in recycling plants. The Ombudsman believes and still hopes that these initiatives will be efficient in the final solution of the waste treatment problem in Albania.
- ✓ Forest cutting and fires are the main causes for forest deforestation and eradication in Albania, thus damaging one of the valuable sources of conservation of acceptable environmental parameters.

The Ombudsman confirms the importance that needs to be given to the state and protection of the environment in Albania, which are closely attached to respect for human rights. These areas require special attention and cooperation of all factors, in order to guarantee health care

as well as increase the quality of life in the country. The Ombudsman emphasizes that environmental issues are very sharp and require more attention.

2.14. Consumer Protection

Consumer protection is one of the key areas directly related to the protection of human rights. The regulation of this area relies on three main pillars, such as consumer health, consumer protection and the protection of consumer's rights and economic interests.

Law No. 9902, dated on 17.04.2008, "On consumer protection", as amended, constitutes the basic legislation for the protection of consumer's rights. Article 56 of the Law recognizes a special role for the Ombudsman for the protection of legitimate interests and consumer's rights, both in cases of individual complaints and through proactivity in initiating cases with initiatives when the interests of a broader community are violated.

For 2017, a total of 72 complaints were addressed to the Ombudsman's Institution, which are mainly related to claims by operators in the market that offer public services ("OSHEE" sh.a., and "Ujësjiellës-Kanalizime" sh.a), as well as the quality of services provided by them.

Special attention was given to complaints on; the quality and provision of electricity service to households in economic difficulties and; for the payment of arrears of electricity; for families who live in extreme poverty conditions; for families with senior pensioners; families that are members of Roma community, or other families with unemployed, jobseekers and also excluded individuals from the economic aid scheme.

In many cases there are financial liabilities accumulated over the years, where even though the parties have entered into an agreement for installment payment of arrears, for electricity consumption, again family entities have found themselves in the conditions of financial inabilities, even for the payment of a minimum amount of ALL 1000 for the settlement of their obligations.

The right to have some elementary services, such as drinking water supply and electricity supply, is an essential human need, a fundamental right, the lack of which constitutes a serious violation of human rights.

In these circumstances, we have suggested to the Energy Regulatory Entity, finding the most suitable opportunities for vulnerable consumers, with the aim of incorporating seasonal protection policies, where weather conditions can be held as reference, extreme cold temperatures in winter and too hot in summer, and according to which, to stop electricity cuts for consumers, mainly on the 08:00 - 23:00, of the day.

Regardless of drafting the regulation "On specific conditions for the termination of supply of electricity to customers in need" by the Energy Regulatory Entity, which sets out a series of measures regarding the obligations of the Universal Supplier or the procedures to be followed for termination of the electricity supply (in case of non-payment of electricity for more than four months, and in case of non-compliance with the agreement for payment of energy, according to a payment plan agreed with the supplier), we judge that the social and economic protection of these vulnerable groups is not enough and should be considered a priority, because families in extreme need can not afford to survive, let alone to face the payments of these public services.

In the Ombudsman's judgment, this should be accompanied by a package of legal changes to provide immediate solutions so that these families are not deprived of the right to access the necessary electricity supply, to provide them the minimum possible within a limit amount of kwh energy.

It is also necessary to absolutely avoid the disruption of the power supply for these groups, so that everyone can receive basic services, regardless of the social and economic status that citizens of this country can enjoy. Another issue has to do with the reform of the water sector. *Despite the recent indications prove that the water sector reform regarding the return of legality to bill payments, is on the right track, for more quality services and more investment in the future, it has its problems as well.*

A part of Albania's territory, especially rural areas, are not supplied with potable water or are partially supplied, thus constituting a major difficulty in living and basic services needed for residents. To address this problem, there is a need for subsidies to vulnerable groups and families in need, including and applying for this purpose other necessary criteria to maximize this phenomenon.

2.15. Right to Housing

During 2017, the Ombudsman's Institution addressed a total of 77 complaints regarding the housing problem. The problems identified in the examination of issues on the respect of the right to housing, are related to: the lack of housing solutions for homeless people who, due to poverty, can not afford the costs of the liability part, for the rent bonus, or soft loans; the housing dynamic issues of Roma community people, who in some cases have been forcibly displaced by their settlement centers; delaying of administrative procedures by the state structures to social housing requirements, etc.

The number of homeless people appears to be twice as high as the number of homeless people who have benefited from social housing. Homeless persons remain uninformed in terms of their compliance with the legal criteria for housing benefit. The low-cost housing program is not affordable for the poor and therefore, the poor do not benefit from this program.

Also, the banking procedures applicable to this purpose are too long and costly. The rental housing program focuses on low-income families, but people living near or below the poverty line, can not afford this program. The smallest program is that of housing subsidies, while these are seen as a temporary solution to housing problems. Social housing programs need to be further expanded to meet the needs of vulnerable groups and should be reoriented to disadvantaged levels to meet the selection criteria of the poorest.

The Ombudsman has played an active role since February 2016, by engaging in an intensive consultation process with the Ministry of Urban Development and other actors in the field, on drafting amendments to the law no. 9232, dated on 13.05.2004 "On social programs for housing of urban residents", as amended, and then drafting the draft-law "On social housing".

A significant part of the Ombudsman's suggestions and recommendations on the content of the provisions of this draft law, are already included in the draft law approved by the Council of Ministers. Likewise, from official communications with some of the Parliamentary Committees of the Albanian Parliament, we are aware of the process of reviewing and approving this draft law, when during this phase, we have maintained an active attitude.

2.16. The Right to Information

The right to information, as a fundamental right of the individual, affirmed in the Constitution of the Republic of Albania and in the international law, has been paid a special attention by the Ombudsman to the promotion, prevention and violations and protection of this right in case of violations during the activity of the public administration bodies in the country.

The basic legal regime of the right to information is defined by law no.119/2014 "On the right to information", law no.44 / 2015 "Code of Administrative Procedures of the Republic of Albania", as well as a series of other laws and bylaws in force, that complement and specify specific aspects of this legal regime.

The Ombudsman's Institution continued to review and address the complaints filed, which concerned the alleged violations of the right to information, as well as requests for information regarding the institutional activity of the Ombudsman.

In all cases, the procedures followed by us in carrying out the actions for administrative investigation of the complaints, have been in accordance with the Ombudsman's legal powers and in respect of the role and competences of the Commissioner for the Right to Information and Protection of Personal Data, as the responsible public authority in the protection of this right, as stipulated in the Law No.119/2014 "On the Right to Information".

Based on the analysis of the cases presented and the problems evidenced in the Ombudsman's institution during this year, it results that:

- ✓ 24 complaints were filed by the interested parties for the submission of requests by the public administration bodies in violation of the law for information and for the non-availability of official documents from these bodies, as stipulated in the Law No.119 / 2014 "On the Right to Information" and Law No.44 / 2015 "Administrative Procedure Code of the Republic of Albania";
- ✓ 5 complaints have as their object the violation of the right to information regarding the progress of specific legal procedures by the responsible bodies during the administrative procedures set forth in the Law no. 44 / 2015 "Administrative Procedure Code of the Republic of Albania";

- ✓ 30 requests addressed to the institution by the interested subjects to be informed about our institutional activity, according to the legal regime arrangements, as defined by law no. 119 / 2014 "On the Right to Information".

After consideration and intervention by our side of the complaints submitted for inaction or delay noted in the framework of the right to information, the reaction of state institutions in addressing the requests of the interested subjects, was within the legal competences of the responsible body and the time limits, as set forth in the Law No.119 / 2014 "On the Right to Information".

In this context, it is worth noting that the state administration bodies have a more institutional approach and a positive response to law enforcement and resolution of issues raised by individuals.

This is also reflected in the low number of complaints referring to the non-respect of the legal regime for the right to information, according to the provisions of the Code of Administrative Procedures and Law No.119 / 2014 "On the Right to Information". The problems encountered in the right to information, have been addressed in this report even in the context of the complaints reviewed by us, according to other areas of our institutional intervention, which as a main object of treatment, have had a different problem from that of the right to information.

Pursuant to the requirements of Law No.119 / 2014 "On the Right to Information", the Ombudsman's Institution has fulfilled its obligations as a subject of this Law, mainly in supplementing and updating the Transparency Program, its coverage on the official website of the Institution, to be accessible to the interested public, as well as to register the requests and to respond to the interested subjects within the legal deadlines.

CHAPTER 3

Vulnerable groups and respect for their rights

3.1. Economic Aid

Economic aid is a timely and conditional payment, which is given in the form of a monthly reward in ALL for the defined categories. Eligibility criteria for economic assistance are assessed according to needs and take into account the poverty situation, which are assessed jointly by providing clear, objective and transparent specific weights as part of a dotted formula, defined in Law no. 9355, dated on 10.03.2005 "On Social Assistance and Services in the Republic of Albania", as amended, which is the law governing the functioning of economic aid in the Republic of Albania. This law and its subordinate legal acts provide for clear regulation for beneficiaries, criteria, procedures and documentation for obtaining this aid.

The system of benefiting economic aid seems to have created confusion and great concern for the citizens. According to the families in need, the problems start from the unjustly exclusion from economic aid to reducing the amount of money in ridiculous numbers. For families with minimal income for life, economic aid is the only financial source to meet the cost of living.

What constitutes a major and easily evident problem is that: the amount of economic aid is very low and almost negligible in relation to the most necessary monthly expenditures that a family or a single individual needs to survive, let alone to consider for dignity and integration into society.

Unsustainable to the existence of this situation is not the determination of a dignified vital minimum, even within the reach of resources of the Albanian state, which would undoubtedly better meet the needs of every citizen in need. The Government should better program the fulfillment of these needs with regard to the value of the vital minimum.

In 2016, the Ombudsman has conducted the study "Calculating the vital minimum in Albania". Following the public presentation of this study, two recommendations were prepared and submitted to the Minister of Health and the Minister of Social Welfare and Youth, however, no measures have been taken yet to implement the recommendations or to consider the findings given in the above-mentioned study. We understand that there are difficulties in this regard, but perhaps the introduction of a clear plan of increasing these values would have an impact on citizens.

Some of the issues raised by the review of economic aid complaints are:

- ✓ Insufficient information and timely information of citizens on the criteria, procedures and supplementation of the documentation for economic aid benefit.
- ✓ Low amount of benefit received by beneficiaries in general, as well as orphans and victims of trafficking in particular.
- ✓ Lack of human resources to physically verify the accommodation and living conditions of beneficiaries once or twice a year, as provided by law.
- ✓ Lack of forecasting of funds of local government bodies, destined for beneficiaries of economic assistance to 3%, as provided by law.
- ✓ Lack of many social services, which would increase the quality of life of beneficiary citizens of economic aid and their families.
- ✓ Non-occupation of vocational training courses and improvement of their quality.
- ✓ Exclusion from the economic aid of people with disabilities in the part belonging to them, when the family is in the condition of benefiting from the economic aid.
- ✓ Failure to apply for social programs where beneficiaries of economic aid are involved by contributing to their work and this will have an impact on increasing their family's income.

We have the opportunity to point out that the extension of the implementation of the electronic economic aid register throughout the country, will cause problems that were noted during its piloting in the three districts of Tirana, Elbasan and Durres, where its implementation started in June 2014.

Since the economic aid program aims to protect people in need, who are unable to provide a decent living standard for themselves and their family, the Albanian state must take all the necessary measures to achieve the social objectives set forth in the Constitution of the Republic of Albania.

The "Sustainable Development 2015-2030" Agenda, its Objective No.1 links it to the eradication of poverty, stressing among other things the need to take measures to implement the appropriate social protection systems, the program and policy implementation to end poverty in all its dimensions.

3.2. Children's Rights

The activity of the Ombudsman's Institution for children's rights during 2017 has been intertwined in two main functions: the protection and promotion of children's rights.

With the approval and entry into force of law no. 18, dated on 23.02.2017 "On the rights and protection of the child", the Ombudsman enjoys the role of a monitor for the implementation of this law in accordance with Article 34 of this Law, which stipulates that: *"The Ombudsman monitors the implementation of this law in accordance with the Convention on the Rights of*

Children, in accordance with the obligations set forth in Law no. 8454, dated on 4.2.1999, "On the Ombudsman", amended ". According to this law, for the first time, there is set a standard that at least every 3,000 children, should have a child protection worker.

The Ombudsman based on the experience gained during the course of these years, where a number of problems have been identified, assesses that the challenges related to the implementation of the legislation on the protection of children's rights are related to: the real budgeting needed from the perspective of children's rights; the establishment of new services in pursuit of the dynamics of children's needs; the compilation of comprehensive social policies at the local level based on a precise database on the number of families in need and the categories of children with social problems; the consolidation of responsible mechanisms that ensure the effective implementation of the supervision, promotion and protection of children's rights as well as the establishment of an integrated system of protection of children's rights.

In the framework of the implementation of the cooperation agreement between the Ombudsman's Institution and the International Organization "Save the Children in Albania for the implementation of the project "Children Keeping Children Safe", signed in December 2016, the following documents have been drafted:

- ***Guidebook: "On the co-operation of the Ombudsman's Institution with Children and the Civil Society"*** is a guiding and advisory document to assist the Ombudsman's Institution to increase its cooperation with children and with the civil society in Albania. The main purpose of this document is to improve and co-operate with the Ombudsman's Institution with children and the civil society.
- ***The report "Voice of the youth in Albania"*** is a study aimed at assessing the views of children regarding their issues as defined in the Convention on the Rights of the Child. The partnership established through the Ombudsman's Institution and the "Voice of the Youth in Albania", will be the key instrument to advocate and raise awareness of all institutions at the local and central level, national and international level, to fulfill their obligations in respecting children's rights in the country.
- ***The Draft National Plan on Child's Rights Monitoring*** clarifies and defines the mechanisms and relevant institutions for monitoring children's rights based on two main documents: the National Agenda for Children 2017-2020 and Law 18/2017 "On Rights and Protection of Children.
- ***The Draft standard package for children's participation during the monitoring process of children's rights*** aims at drafting the necessary mechanisms and instruments to ensure the participation of children during the monitoring process of institutions providing services for children. This package of standards has been piloted by the Child Protection and Promotion Section in collaboration with local experts in three social care institutions that provide residential social care services for children in need.

In the framework of **cooperation with the civil society**, in March 2017, together with the Terre des Hommes organization, the Ombudsman's Institution organized a workshop with 24 Civil Society Organizations working in the field of the Protection of Children's Rights, in order to coordinate the work and support of the Ombudsman's Institution for the implementation of advocacy plans for the promotion and protection of children's rights.

Following the implementation of the advocacy plans, this network will draft a draft report with recommendations for the institutions at the local and central level which will be proposed to the Ombudsman's Institution for their ongoing implementation.

Increasing the capacities of the employees of the Section for the Promotion of Children's Rights and the Regional Office of the Ombudsman in order to acquire basic knowledge of the national and international children's rights legislation, has been one of the commitments made during the reporting year with the ongoing support of Save the Children. This, with the aim of practical approaches to the needs as well as the creation of opportunities for using the analysis and tools to examine practical challenges in planning and managing a process. The aim is to improve the quality of dedicated childcare services and to provide the necessary budget.

A special focus on the activity of the Ombudsman's Institution has been to ensure the **participation of children in the promotion of their rights**. In 2017, the Children's Rights Committee of the AOMF in the framework of the activities of "French youngsters and their rights", launched as an activity this year "Draw your rights, special rights for migrant Children".

On this basis, the Ombudsman's Institution organized in one of the schools of the capital, a promotional activity on children's rights, participation rights and the rights of migrant children, whose aim was to raise awareness and inform children of their rights, as well as the fact how vulnerable and how sensitive it is to the rights of migrant children.

Also, the Ombudsman together with the Youth Group "16+" has undertaken **the initiative "I choose to give you my peers love"**, whose main purpose is to promote solidarity, volunteering among children in order to directly involve them in creating a better world. The first organized activity in December, at the premises of the Ombudsman's Institution with the Youth Group 16+ together with the children of the World Academy of Tirana, is just the beginning of a good job which will be accompanied in 2018 with the involvement of children in the drafting of the Communication Strategy with children in order to increase the confidence of the role that the Ombudsman has to guarantee the children's rights.

(PHOTO)

During 2017, there are 85 cases treated with the initiative of the Ombudsman with the object of children's rights. Regardless of the number of complaints / claims processed, we note that many of the complaints treated, have been targeted to a certain number of individuals-children, so we can say that a much larger number of people may have benefited from their treatment.

In the framework of statistics, out of a total of 163 complaints, requests or inspections (in public institutions of residential care for children, Special Schools, Institute for children with disabilities), 44 cases have been positively addressed or clarified without recommendation, while drafting 68 recommendations, including cases of juveniles in conflict with the law, of which 44 are under review, 23 received by the administration and 2 rejected.

The issues identified during these inspections / monitoring are multi-dimensional, which have required consideration of factors as promoters and holders of identified problems related to

the actions or inactions of many public administration institutions at the local and central level.

From the reports of inspections carried out in social care institutions that provide residential services to children in need, from the main findings ascertained, it results that:

- ✓ Institutions continue to be focused on the implementation of standards related to physical aspects and have difficulties in implementing standards related to aspects of child psycho-social care, reintegration, parents and relatives' participation in the process of drafting individual plans, community links, etc.

Personnel deficiencies were noted in terms of professional figures and professional capacities / qualifications for the treatment of children by age group, psychological development and according to their special needs.

- ✓ Difficulties have also been identified in the functioning of multidisciplinary teams and in addressing the needs of children in the delivery of new service typologies in their highest interest.
- ✓ The pursuit of legal custody procedures by a court decision, is proceeding at a slow pace due to delays in court proceedings, staff negligence and difficulties in contacting family members of children placed in institutions.
- ✓ In all public social care institutions, new service typologies have not yet been implemented by detailed plans for deinstitutionalization, as the action plan has remained unapproved.
- ✓ Lack of local-level services, lack of coordination and reconciliation of work through structures providing child services, has led to prolonging their stay in residential social care institutions.
- ✓ Lack of financial indexation of food quota with food indexation, as amended by Guideline no. 5, dated on 1.8.2012 "On the level of food expenditure quotas, in public residential and community social care institutions".
- ✓ Lack of starting work to enable the finalization of the decentralization process, referring to Article 52 of Law 121/2016 "On social care services in the Republic of Albania".

Regarding the inspections carried out in the institutions of education of children with disabilities and the Child Protection Unit (municipal case management structures), it was ascertained (i) the lack of capacities (human resources) and (ii) the limited financial possibilities which make the local government not respond to the demands for setting up new services in pursuit of the dynamics of children's needs.

It is also noted the problems of non-coordination and institutionalization of cooperation between local government, NGOs and other state structures. It is noted that knowledge regarding the implementation of children's rights in everyday practice, is still limited with the training that is occasionally provided by various organizations.

For the continuous improvement of the standards of children's treatment in public services (specifically social and educational services) regarding the above findings in order to guarantee the well-being and improve their quality of life, the relevant recommendations have been sent to the Ministry of Health and Social Protection, Ministry Education, Youth and Sports, Municipalities and the State Agency for the Protection of the Rights Children, as well as the institutions where the social care services are provided.

All institutions have taken over their implementation, reflected by official communication. The concern of the Ombudsman's Institution remains the concrete implementation within the deadlines of the recommendations received from the responsible institutions.

3.3. The rights of disabled people

One of the vulnerable groups, which the Ombudsman's Institution has had in its work focus during 2017, is also the protection and promotion of the rights of people with disabilities.

During this year, 30 complaints were filed and processed for this category. 24 complaints have been completed, while 6 are under review. Some of the issues treated during this year, were as follows:

- ✓ The Ombudsman, who according to the law no. 93 / 2014, "*On the inclusion and accessibility of people with disabilities*", is a monitor of the implementation of this law in accordance with the UN Convention "*On the Rights of People with Disabilities*", has ascertained that despite the determination of legal deadlines for issuing sub-legal acts from the entry into force of the law, they have not been issued yet.

On 06.02.2017, we have recommended to the Minister of Social Welfare and Youth *to take measures for the issuance of subordinate legal acts pursuant to article 6 / point 3 (Services for an independent living); Article 7 / point 3 (Supported decision-taking), Article 10 / point 5 (Disability assessment commission and needs for assistance and support), Article 8/ point 3, Article 8/ point 4 (Personal Assistant) of Law No. 93/ 2014, "On the inclusion and accessibility of disabled people".*

In response to our recommendation, we were informed that the re-concept of disability assessment according to the bio-psycho-social model, is part of a reform for which the former Ministry of Social Welfare and Youth has been working for two years. Regarding the supported decision-making, it was necessary to carry out a study and analysis of contemporary international legislation.

Such an analysis has been completed, the conclusions of which will be used to draft the relevant sub-legal act, certainly adapted to the conditions of Albania and in accordance with the current legislation.

- ✓ In the framework of the General Election 2017, in order to create the necessary conditions for people with disabilities to exercise their constitutional right freely, we recommended to the Chairman of the Central Election Commission *to take measures to guarantee the right to vote for disabled people in the territory of Albania.*

- ✓ For failure to provide the full double payment due to blindness. People who enjoy the Status of the Blind were not granted the right to receive the full double payment due to blindness on the basis of the Decision of the Council of Ministers No. 277 dated on 18.06.1997 *"On the benefits from the Status of the Blind"*, as amended. It was provided only the payment for 9 months attendance of the qualification course, the first level, while the payment for the second level of this course was not carried out.

Despite presenting the certification for the second level attendance, they have received verbal answers that they are not given double payment, as they are attending two courses.

After reviewing this case, we concluded that the failure to pay due to blindness, was contrary to the Council of Ministers Decision No. 277, dated on 18.07.1997 *"On benefits from the Status of the Blind"*, as amended, and Guideline No. 2356, dated on 26.1.2008, for the implementation of this decision, which does not limit the right to attend the qualification course for up to 9 months to people who benefit from the status of the blind.

Since the by-laws that came into effect pursuant to Law No. 8098, dated on 28.03.1996 *"On the Status of the Blind"*, were not properly implemented, we addressed to the appropriate Administrative Unit for *providing double payment due to blindness, for a 9-month period until the end of the second level course*. The recommendation was accepted and payment was made at 200% since the birth of the right.

- ✓ For not granting a monthly bonus to a disability pension, as a disability benefit, one month after facing the Assessment Commission for determining the ability to work (ACDAW) for those work invalids who submit a Certificate Type *"For full disability from general sickness"* issued by the Regional Social Insurance Directorate after the legal defined term. By this confirmation, the fact is that the person is the beneficiary of the invalidity pension for a certain period of time and receives the payment as disability benefit according to the invalidity group.

By this certificate they are not provided at the moment of the award of the invalidity benefit decision, but after verifying the seniority of the job, where in the last 5 years of the birth of this right, they should have 12 months insurance. Under these conditions, the Tip certification can be issued even after two and three months after the ACDAW by the Regional Social Insurance Directorates. This practice creates the premise for a violation of the right to benefit under the legal defined term. Under these conditions, invalids do not receive an allowance for disability pension one month after facing the commission, but one month after filing the Tip Certification.

Considering this as a violation of their legitimate rights, as based on the Council of Ministers Decision no. 869 dated on 18.06.2005 *"On the implementation of Law No. 7888, dated on 14.12.1994" On Status of the Invalid" and Instruction No. 1406, dated on 30.07.2008" On the determination of the procedures and documentation necessary for the granting of benefit in implementation of the Council of Ministers' Decision no. 869, dated on 18.06.2008 "On the implementation of Law No. 7889, dated on 14.12.1994" On Status of the Invalid"*, this payment should start one month after facing the commission. Under these conditions, the relevant recommendations have been sent to the Administrators of the Administrative Unit to *take measures for the immediate granting of the monthly bonus on disability pension, as a disability benefit since the birth of this right*. Despite not taking into consideration the

recommendations, the Ombudsman's Institution will continue to further intervene on this issue.

In the Annual Report 2016, we informed that in order to receive the services and integration of disabled people in the social life, the Ombudsman in July 2016 addressed recommendations to 61 mayors *for taking measures for the realization of suitability of public spaces*.

During 2017, the Mayors continued to respond, who stated that they were committed to implementing the recommendations, taking the necessary measures to build the necessary infrastructure, in order to eliminate the physical barriers for disabled people.

The issues that still remain unresolved, are as follows:

- ✓ Lack of construction suitability for disabled people.
- ✓ Non-benefit of the ticket compensation in urban transport of disabled people.
- ✓ Non-granting of the right to receive reimbursement for fuel and lubricant purchasing costs for paraplegic and tetraplegic invalids.
- ✓ Lack of access to public urban transport and non-reimbursement of the ticket.
- ✓ Non-implementation of employment legal provisions.
- ✓ Lack of statistics for people with severe mental illnesses.
- ✓ Non-establishment of residential rehabilitation centers for people with severe mental illnesses.
- ✓ Access for people with disabilities to justice, government structures at the central and local level, to media and business.
- ✓ Lack of statistics for people with severe mental illnesses.
- ✓ Voting centers (kindergartens, nurseries and schools) are not accessible for people with disabilities.

3.4. Gender equality and the rights of LGB People

One of the topics included in the Annual Conference of the Ombudsman's Institution for the year 2017, has been the realization of substantial gender equality in accordance with the provisions of the CEDAW Convention throughout the implementation process of the 2030 Sustainable Development Agenda.

In the system of registration of cases treated at the Ombudsman's institution (complaints, requests, notifications, inspections and cases with initiative), for 2017, there is a significant number of women that are heads of household, unemployed or homeless. Their object is diverse, including those of social / economic claims, labor relations, economic aid, access to justice, problems of non-execution of food obligations imposed by court decisions, etc.

Current economic aid is insufficient to address the needs of women that are heads of household, Roma women or those from other vulnerable groups, as victims of domestic violence or victims of trafficking in human beings. The lack of declaring a minimum living standard remains a major obstacle in determining the social policies pursued by the state for vulnerable groups, including women.

The economic aid program is designed to protect people in need, who are unable to provide a decent living standard for themselves and their family. Thus, it is defined as aid to individuals and groups in need, who can not ensure the fulfillment of basic vital needs, who mainly lack income or vital means altogether or have insufficient ones.

The economic aid system can provide the necessary income for the poor, but it does not help them to escape poverty. Many Albanian families live with payments of economic aid, without having any other income in the family. For many of them, economic aid or disability payments are the only living source, and because of their limited physical, psychological and social capabilities, they can not ensure the fulfillment of basic vital needs.

The Ombudsman estimates that Coordination and Referral Mechanisms of **Domestic Violence** cases in the municipalities of the country need to be strengthened and supported. At the local level, services such as accommodation, 24-hour telephone lines, rehabilitation programs, etc., are missing, thus hampering the fulfillment of responsibilities by the CRM members. The lack of local legal clinics ranging from the county level and beyond, and the provision of services from them, have effects on the access of women from different circles to the justice system.

An innovation during the reporting year regarding violence against women is being made public by the Group of Experts on Measures against Violence to Women and Domestic Violence (GREVIO), the evaluation report in the framework of monitoring the implementation of the Council of Europe Convention "On Prevention and Fighting Violence against Women and Domestic Violence", where Albania is a party.

This report provides an assessment of the implementation measures taken by the Albanian authorities in relation to all aspects of the Convention and has identified several additional areas where improvements are needed in order to fully comply with the Convention obligations. Among others, these are related to the legal definition of domestic violence; allocating appropriate human and financial resources to machinery for combating violence against women both at the municipal and central level; preparation of administrative data

categories reflecting the type of relationship between the victim and the perpetrator for all forms of violence against women; organizing surveys that measure the prevalence of forms of violence against women previously assessed, particularly in relation to sexual harassment, sexual violence, and forced marriage; Inclusion of violence against women in vocational curricula, university study programs and professional development schemes; increased funding for shelter and social services; access to compensation for the victim; protection to prevent forced child marriage and protective measures for victims, including children, during court hearings.

Although it is one of the social objectives guaranteed by the Constitution of the Republic of Albania, **housing** is one of the most acute issues facing women, especially women in need. The Ombudsman considers that it is necessary to raise the awareness of local government units on the budgeting of gender priorities. Municipalities should foresee and apply for funds with the purpose of supporting the establishment and functioning of social services for the victims of domestic violence, special shelters, psycho-social and legal services for victims, rehabilitation programs for abusers and fulfillment of other obligations defined by law.

Institutional priorities have already been identified even in cooperation with the civil society organizations and international organizations, training and capacity establishment will be provided for effective monitoring of women's human rights (Abused women, trafficked women, Roma women, disabled women, asylum seekers, isolated women, women of the third age, unemployed women, etc.).

Implementation of Agenda 2030 "Let's not leave anyone behind" requires the inclusion and partnership of key players at the global, regional, national and local levels, including in particular vulnerable groups - women and girls, people with disabilities, children, young people, the elderly, as well as the Assembly, central and local authorities, private sector, academic institutions, civil society organizations and beyond.

Monitoring of National Reception Centers for Victims of Trafficking / Violence

During 2017, the Ombudsman has enabled the monitoring and inspection of host national centers for victims of trafficking / violence as follows:

- ✓ Inspection of the National Reception Center for Victims of Trafficking in Linza which shelters identified people on the basis of the Standard Action Procedures for Identification and Referral of Victims / Potential Victims of Trafficking, which was conducted in order to assess the treatment conditions of the people sheltered therein.

This inspection showed that the recommendation of the Ombudsman's Institution of 2016 for the reconstruction of the central heating system, was generally implemented. Meanwhile, it was recommended: taking measures to amend the Council of Ministers Decision no. 589, dated on 28.08.2003 "*On the establishment and operation of the Reception Center for Victims of Trafficking*", to anticipate the functional duties of this institution, the services provided therein, as well as the determination of the beneficiaries according to the Standard Action Procedures for Identification and Referral of Victims / Potential Victims of Trafficking; taking measures to secure funds for the completion of works and full reconstruction of the second building as well as some interior facilities of the first building such as kitchens, canteens, etc; taking measures for full-time

employment of lawyers and psychologists; taking measures for providing a health booklet and functioning of the drug reimbursement scheme for all beneficiaries of this center.

- ✓ Inspection of the National Center for the Treatment of Domestic Violence in Kamza, at the end of which, it was recommended to the General Directorate of the State Social Service and the National Center for the Treatment of Victims of Domestic Violence, to take measures: to increase the staff number with several work positions (psychologist, lawyer, full-time social worker); to undertake a legal initiative to amend the normative act which provides for food quotas for the purpose of indexing the daily food quota as a result of the yearly increase in food prices; to provide the necessary financial resources for infrastructure improvement (installation of central heating system, purchase of shelves, lockers, purchase and installation of security cameras, etc.); to establish as soon as possible the register for administering complaints and claims made by beneficiaries of this center.

The answer is that the recommendations have been accepted in principle and some of them have been implemented, while for others related to financial funds, requests have been made to the respective institutions.

- ✓ Inspection of the “Vatra” Psycho-Social Center in Vlora, at the end of which it was recommended to the General Directorate of the State Social Service and the “Vatra” Psycho-Social Center, taking measures for: amending the Instruction of the Minister of Labor, Social Affairs and Equal Opportunities No. 5 dated on 01.08.2012 "On the level of food expenditure quotas, in public residential and community institutions of social care", in order to increase the daily food quota, taking into account the rise in food prices over the years; changing the Decision no. 114, dated on 31.1.2007 "On determining the contribution of people placed in public residential institutions, social care services", as amended, to allow equal treatment for the benefit of the quota ALL 3000 (three thousand) per month for victims of trafficking, potential victims or victims of violence at the “Vatra” Psycho-Social Center, unifying the benefit currently applied only to public entities of the National Reception Center for Victims of Trafficking in Linza.

LGBTI community rights

The rights of LGBTI people are considered as an integral part of the human rights, and for this our institution has clearly stated that there should be no legal obstacles for LGBTI people in the realization of rights, which are enjoyed by the rest of society.

Regarding the statistical data related to complaints addressed to the Ombudsman regarding problems related to the LGBTI community, for 2017 there were only two complaints, not subject to the Medical Service (by military hospital doctors, as well as medical staff of the University Center "Mother Teresa" in Tirana), complaints which after our administrative investigation have proved ungrounded.

Since people belonging to the LGBTI community may be subject to homophobia, transphobia and other forms of intolerance and discrimination because of sexual orientation or gender identity, more specific measures are needed to ensure the full enjoyment of human rights for this category of people. These rights start from the right to live, for security and protection from violence, freedom of expression, employment, health, housing, non-discrimination, etc.

In this context, despite the fact that the Ombudsman has played a proactive role in promoting and supporting the rights of this community and has increased the level of awareness of responsible institutions, there is still a lot of work to be done. Following recommendations and special reports from the Ombudsman's Institution to the public administration institutions at the central level, the New National Action Plan for the improvement of the quality of life for LGBTI people in Albania, was approved by the Council of Ministers in March 2016.

In this regard, the Ombudsman has estimated that Albania is increasingly adapting to international standards in legal and normative terms, it is important that these achievements not only remain on paper, but there should be a serious commitment by public institutions and the government in particular with regard to the effective implementation of the Action Plan.

The Ombudsman, based on the cooperation and co-ordination of work with the civil society organizations that have as their work focus the protection of LGBTI Community rights and ascertains that there is awareness of the public opinion, especially in the larger urban centers, accepting different sexual orientation and consequently accepting and respecting the rights of this community. This ascertainment was best seen on May 13th, 2017, which was organized almost at the same time and place with the rally of opposition with thousands of participants, and there were no issues to be noted.

Civil society organizations play an important role in protecting and promoting LGBTI community rights. It is worth pointing out here that these organizations have been initiated by this community itself and therefore protection and promotion of community rights have been very effective.

Today in Albania the most basic issue of the LGBTI community is to recognize gender identity. By not legally envisioning their changed identity, the lack of knowledge on coexistence and marriage, causes non-continuity of their normal life, despite the recommendations of the Ombudsman for the recognition of these rights addressed to two relevant Ministries in 2016, of which only the Ministry of Justice has had a positive reaction. We have also required the feedback during 2017, but we still have no concrete government initiatives to recognize these rights. Given the non-recognition of these rights, for their solution during 2017, the Ombudsman's Institution has forwarded this concern even to the Council of Europe.

The Ombudsman considers that no one has the right to abuse these rights, as anyone has the right to express his identity and denounce practices against the rights of people who want to be heterosexual.

3.5. The rights of the elderly

The Ombudsman's Institution objectively addressing the problems of the third age, considers that it is necessary to acknowledge and understand the fact that the situation of the elderly in Albania is not good. They are one of the largest numerical groups of social classes and groups in need.

To guarantee and strengthen the rights of the elderly, we have been requesting for years the adoption of the bill "On improving the quality of life and meeting the needs of the third age". For protecting the rights of the elderly, we carried out inspections at the Old People's Homes

of Tirana, Fieri, Gjirokastra, Shkodra, Kavaja and at the Polyvalent Center of Poliçan. After the inspections carried out, we sent recommendations to Mayors, the State Social Service to improve their living conditions and to implement the quality standards of social care for this category.

In the framework of the General Election 2017, in order to create the necessary conditions for the elderly people who are accommodated in residential centers, we are addressing the directors of the Tirana, Kavaja, Shkodra, Fieri and Gjirokastra Homes for the measures taken to enable these people a full and smooth exercise of the right to vote. In response to our requests, we were informed that all the elderly were provided with identification documents and all measures were taken so that they could exercise their right to vote.

3.6. Minority Rights

The protection of minority rights has continued to be one of the priorities of the Ombudsman's Institution's work during 2017. In addition to addressing complaints filed by members of these minorities and mainly related to respect for their individual rights, our proactive approach has taken precedence over investigations carried out "ex-officio".

Recalling once again the Ombudsman's recommendation addressed to the Prime Minister of the Republic of Albania at the end of 2013, on the need to complete the legal framework for the recognition and protection of minorities in our country, in accordance with the provisions of the Convention in the framework of the Council of Europe "On the Protection of Minorities", we conclude that this recommendation has not only been accepted, but has also been implemented. This implementation is concretized with the adoption of the Law No. 96/2017 "On the Protection of National Minorities in the Republic of Albania".

The Ombudsman's Institution has played an active role throughout the drafting process of the draft law, giving remarks and suggestions, which are reflected to a good extent, in the content of the provisions of the Law No.96 / 2017 "On Protection of national minorities in the Republic of Albania ".

Among the comments and suggestions that we have provided during the above mentioned process, we would point out:

First, prior to the adoption of Law No. 96/2017 "On the Protection of National Minorities in the Republic of Albania", two types of minorities (minorities), *national ethnic minorities*, including the Greek minority, the Macedonian minority and the Serbo-Montenegrin minority, as well as *ethno-linguistic minorities*, including the Vlach minority and the Roma minority. Nevertheless, the reality of the Albanian society recognized "de facto" even some other communities, other than the ethnic Albanian population, such as the Bosniak community, the Egyptian community, etc.

In fact, the Constitution of the Republic of Albania in its Article 20, expresses only for people belonging to national minorities, which also creates a debate about the extended recognition by the state of the category of ethno-linguistic minorities. In this context, according to the draft law, the formal admittance and recognition as a "national minority" of all officially recognized minorities (until the adoption of Law No. 96/1701), establishes the logic of the status of these minorities in the country, as it creates compliance with constitutional terms. Likewise, the expansion of the number of national minorities, as provided for in Article 3/2

of the law, has brought about another positive regulatory development by making other historic communities in the country receive the status of "national minority".

Secondly, we have recommended the need to implement a legislative initiative for the adoption of a law defining the definition and criteria of "de jure" recognition of minorities in accordance with the provisions of the Convention in the framework of the Council of Europe for the "Protection of National Minorities", ratified by law no. 8496, dated on 3.06.1999. Article 3/1 of Law No.96 / 2017 already provides for a definition for national minorities, and also for this delicate issue.

Thirdly, among the other issues we raised earlier for discussion, was the question of how could an existing community be known "de jure" as a national minority in Albania? Effectively, the definitions given in Article 4, as well as Articles 6 and 7 of Law No. 96 / 2017, establish a concrete basis (anyway necessary to be further elaborated by other normative acts), for the formal recognition of national minorities in the Republic of Albania.

Fourthly, according to Article 3/2 of Law No.96 / 2017, these national minorities will be officially recognized in Albania; Greek, Macedonian, Vlach / Aromanian, Roma, Egyptian, Montenegrin, Bosnian and Serbian minorities.

Focusing at this moment we want to bring attention to the fact that, one of the special reports that the Ombudsman has filed to the Assembly, in the first months of 2015 (still undisputable) is the Special Report, "On Rights of minorities in the country".

Some of the issues addressed in this report continue to remain current and are related to:

- ✓ *Improving the legal framework for protection from discrimination, focusing on some improvements in Article 1 of Law No.10221, dated on 4.02.2010 "On Protection against discrimination", including in this article as grounds for discrimination; ethnicity; the stated intention to discriminate; encouraging discrimination as well as facilitating and encouraging discrimination.*
- ✓ *Beginning and conclusion of the process for the ratification of the European Charter for Regional or Minority Languages.*
- ✓ *Development of a new population census, based on the best international criteria and standards, where minorities would find themselves to be objectively and unconditionally expressed about their existence.*

Focusing specifically on the census, we think that this development would come to "help" the real implementation of some of the provisions of Law No.96 / 2017 "On the Protection of National Minorities in the Republic of Albania". This is understandable if we refer to the definitions given in Article 13 and Article 15 of the Law No. 96/2017, where the enjoyment and realization of certain rights is related to such terms as "substantial number and sufficient requirement", as well as "...over 20% of the total population of this municipality".

On the other hand, the provisions of the law create a kind of confusion at this point as they express the right of public institutions at central and local level, to collect data related to the identification of people belonging to national minorities (Article 7/1). What will be the basis for collecting this data in 2011, which has not been accepted and contested by organizations

representing minorities or regional "mencensususes" that will be developed on a case-by-case basis? We find that these definitions of law no. 96 / 2017 will encounter difficulties in implementation for the reasons cited above.

Fifthly, the provisions of Law No. 96 / 2017 provide inter alia for the preservation of the linguistic identity (Article 12), the right to education in minority languages (Article 13), the right to express opinions and to receive and disseminate minority language information (Article 14), as well as the use of minority language in some aspects of daily personal and community life, of members of national minorities, including contact and communication with state institutions.

This is a very positive development, but will again recognize the difficulty of implementation in the case of the Egyptian national minority. This is because the Egyptian community in Albania today does not have a language of its own as it happens with the other minorities in the country. The fact is, wherever this community is located throughout the Balkan region, it speaks the language of the host country.

Another issue that has been noted in this context, is the fact that the new territorial administrative division has created problems with regard to the real presence of different population other than the majority one, located in certain areas of the country. According to this division, in specific cases, it results that the new territorial administrative boundary divides communities into two separate parts belonging to the same minority, but which then do not belong to the same administrative territorial unit.

We consider that this factual situation now will create problems with the implementation of the provisions of the law, which sanctions the joy and the realization of certain rights, preliminarily associated with the completion of the terms "substantial number and sufficient requirement", as well as "over 20% of the total number of the population of this municipality".

Currently, this legal framework needs to be supplemented by sub-legal acts, which will detail its implementation. For this purpose, the process of drafting subordinate legal acts has been initiated for the implementation of the Law No. 96 / 2017 "On the Protection of the Rights of National Minorities in the Republic of Albania", by an inter-institutional working group involving state institutions responsible, national minorities associations, civil society, representatives of international organizations in Albania, as well as independent state institutions for the protection of human rights, with the status of the observer. The Ombudsman, as during the process of drafting and approving the Law No.96 / 2017 "On the Protection of the Rights of National Minorities in the Republic of Albania", will play an active role in this process.

The Ombudsman's vision is based on the very good existing spirit of coexistence between the majority and minority populations, and considers that the minorities in Albania, are a precious national asset for the past and future of the country.

CHAPTER 4

Proactive role of the Ombudsman in respect of human rights

4.1. Services to citizens

The Ombudsman's Institution operates with the reception and service office of citizens not only in Tirana, but it is represented by regional offices in seven of the largest administrative centers from north to south of the country and specifically in the municipalities of Shkodra, Kuksi, Berat, Fier, Pogradec, Saranda and Dropull.

Regional Offices are part of the Ombudsman's Institution's vision that focuses on the protection and promotion of citizens' rights through the cultivation of a new culture and the highest standards in the provision and quality of services, as well as in increasing access to citizens to timely address their complaints to the actions and inactions of the public administration, to the institution of the Ombudsman.

During 2017, the regional offices continued to strengthen an appreciable presence of the Ombudsman's Institution closer to the citizens in these regions, through a continuous work of the field representatives, providing citizens with the necessary information on the role and function of the Ombudsman's institution, receiving complaints and sending in time for expert review by sections, as well as responding to citizens within a short and optimal time.

Promotional campaigns and fieldwork of regional representatives, have been an important part of the daily activity of their work, aiming at increasing and strengthening citizens' trust on the Ombudsman, not only as a goal to be achieved, but also as sodisfaxion and responsibility. Field work is based on everyone's preliminary planning, through the compilation and implementation of the monthly plans, highlighting the activity and problems encountered with concrete relationships and photographs.

Following on-the-field work, the regional representatives, based on Article 17/1 of Law 139/2015 "On the Local Self-Government", are oriented to attend Municipal Council's meetings that are open to the public, to be closely acquainted with the problems raised, the approaches and decision-making of the City Council to the benefit of the citizens, in order to inform citizens who do not always have this information and to promote the right of citizens to local decision-making.

The online regional office network has continued to function improving the quality of everybody's performance, considering group communication as an essential tool of effectiveness, encouraging co-operation, creativity and helping to ensure the commitment of all representatives to achieve the right result and reach the targeted goals.

In January 2017, our country was involved in a civil emergency situation, because of the very low temperatures. The regional offices have remained open to monitoring the situation and helping the citizens, based on the internal order of the institution for this case, but also with the moral and civic responsibility of our own representatives.

The intervention of regional office representatives (such as the case of the office representative of Kuksi) has enabled the authorities to handle the emergency cases related to nomad people who even risked their lives due to difficult atmospheric conditions.

During this year, work continued to increase the capacities of the reception office workers in Tirana and in the regional ones. These activities have affected the professional growth, performance growth, improvement of ethics and quality of services to citizens, strengthening a sustainable and continuous communication with citizens, to respond to their concerns about the object of complaints and roads which they have to pursue for solving their alleged right.

The Ombudsman's regional offices have shown to be very effective and in line with the expectations of the Ombudsman's Institution, referring to the promotion of this institution and the protection of human rights in all the geographical areas where these offices operate.

A measuring indicator showing the effectiveness of the Ombudsman's regional offices and consequently increasing citizens' confidence in these offices, is the number of ever-increasing complaints that by the end of 2017, appears to account for about 42% of the total complaints filed this year at the Ombudsman's Institution.

Referring to the object of complaints within the jurisdiction/competence of the Ombudsman's income from the regional offices, to which the citizens mostly complain in these areas, received and handled by specialists of the respective fields of the Ombudsman's Institution, we would mention: problems with the property registration certificate from immovable property registration offices; delays of legalization procedures by ALUIZNI; overbilling of electricity by OSHEE; non-supply with drinking water; non-granting/ delay of financial compensation for damages from natural disasters; services missing from the local government.

Among the same objects of complaints outside the jurisdiction / competence of the Ombudsman for which regional office representatives have provided citizens with legal counseling and guidance on the ways they should follow to resolve their problems, we would point out: complaints about property issues; employment demands; housing demands; non-treatment with economic aid; complaints against social security and KMCAP; as well as issues in court proceedings.

For the whole period of 2017, at the citizens reception office, the regional offices and other means of communication, postal and on-line, 4546 complaints were filed at the Ombudsman's Institution, of which 1752 complaints have been part of the work facility of the Ombudsman's Institution and are termed "within jurisdiction and competence", while 2794 complaints have been treated in the form of "counseling and guidance" on the legal paths that citizens should pursue for the further handling of complaints and institutions that should be addressed.

General state of complaints at the Ombudsman's Institution for 2017, is as follows:

COMPLAINTS 2017		In figures	In percentage
1	Complaints to the People's Reception Office	881	19.38%
2	Complaints from Regional Offices	1918	42.20%
3	Complaints via mail	1026	22.57%

4	Online Complaints (<i>portal, e-mail, social networking</i>)	432	9.50%
5	Complaints by phone (<i>fix, mobile, green number</i>)	279	6.13%
6	Complaints from "Open Days"	10	0.22%
	TOTAL	4546	100%



An important role for the well-functioning and enhancement of the work quality of the institution's staff, was played by the Citizens' Reception and Services Office. Given the content of complaints filed by citizens who are not subject to the Ombudsman's work, specialists have provided citizens with legal advice on the ways they should follow in order to restore their alleged right.

Along with the duty to host the citizens and provide the necessary information on the complaints' reception procedures, the Citizens' Reception and Services Office has served as a "filter" for dividing complaints with the object "within jurisdiction and competence" and on "counseling and guidance", based on the requirements of the law on "the Ombudsman".

The largest number of complaints evaluated outside the scope of the Ombudsman's work, even during 2017, is comprised of complaints by citizens opposing the final decisions of the courts as well as the decisions of the prosecution for the dismissal of certain cases. These complainants were given legal advice to pursue appeal rates according to the scale of the national system.

Also, with regard to appeals with the object of challenging the decisions on dismissal of cases in the prosecution offices of judicial districts, citizens are advised to address their complaints even to the General Attorney. There remains a high number of complaints regarding court proceedings or individual requests for counseling on criminal and/or civil matters that are not within our competence.

Conflict within the family remains a concern for the Albanian society and state. In cases of these complaints, citizens are advised and directed to prevent serious events by closely cooperating with the police and prosecution bodies and in cases of finding delays and draggings by these bodies, they immediately address the Ombudsman to exercise his constitutional and legal rights.

Regarding complaints about the protection of children and women from violence by people inside and outside the family, the complainants are advised to approach the police authorities and further to the court to be provided with protection orders under the law.

A considerable number of citizens are addressed to the Ombudsman with complaints that have different objects such as employment problems, housing, property issues, disruption or lack of economic aids, opposition to regional and central KMCAP's decisions regarding disability payments, etc., for which citizens are advised to address relevant law enforcement institutions, or to address the courts in cases provided by law.

4.2. Legislative changes

During the year 2017, the Ombudsman's Institution has been attentively following the legislative changes in the country, giving comments and suggestions for different draft-laws whenever required by the legislative institutions as well as with initiative of the institution itself.

During the reporting year, opinions and suggestions were provided for the following acts:

• *Draft-Law "On Free Legal Aid"*

Launched by the recommendations of the European Commission Against Racism and Intolerance (ECRI), among which it was recommended that "the Albanian authorities should ensure effective access to justice for victims of discrimination through a system of legal aid that is functional and fully funded", the Ombudsman's Institution in the framework of the discussions of this draft-law, recommended some changes mainly related to:

a. Expanding the criteria and the circle of beneficiaries (categories in need), in order to ensure and guarantee a prompt, fair and orderly access to justice as well as to guarantee the rule of law and human rights in the Republic of Albania;

b. Increasing budget for the legal aid service.

These recommendations were taken into account during the discussion and adoption of this draft-law.

• *The draft-law "On court fees"*

With regard to this draft-law, not only during its drafting process, but also after approval by the Parliament of Albania and sending it for decree by the President of the Republic, to the consultations held with representatives of the presidency and civil society, the Ombudsman's Institution has maintained an attitude that the court fees set are too high considering the living minimum in our country and that in the concrete case, the lawmaker does not take into account the principles of proportionality and progressiveness. This is due to the fact that a category of people approaching the court route, are people with low incomes, economic aid, or social assistance.

After consulting with the civil society, the Ombudsman's Institution expressed the opinion that the law should be returned to the Albanian Parliament for review and re-evaluation of the court fees, with the aim of reducing them because it violates citizens' access to the organs of justice. This recommendation was not taken into account by the Parliament of Albania.

• *Draft-Law "On the Protection of National Minorities in the Republic of Albania"*

Our thoughts and suggestions on the content of the draft-law "On the Protection of National Minorities in the Republic of Albania", drafted on the basis of the contributions of the members of the inter-institutional working group set up for this purpose purpose, with the advice of the Council of Europe's experts, are given into two phases of the process of its discussion and adoption. So, as during the discussion phase of this draft-law in its existing version, in the Council of Ministers, as well as during the discussion and adoption of the draft-law in the Albanian Parliament and specifically in the Commission on Legal Affairs, Public Administration and Human Rights.

Proposed suggestions and recommendations are dealt with in details in Chapter 3, section 3.5 of this report. The Parliament of Albania has thereafter adopted Law No. 96 / 2017, dated on 13.10.2017 "On the Protection of National Minorities in the Republic of Albania".

• **Draft-Law on the State Budget of 2018**

During discussions at Parliamentary Committees of the Albanian Parliament, on the adoption of the draft budget for 2018, the Ombudsman's Institution was invited to provide thoughts and opinions to the relevant parliamentary committees regarding certain areas.

Following the assessment of budgetary forecasts, starting from the follow-up and ongoing treatment of the issues encountered, the Ombudsman's Institution presented to the parliamentary committees some remarks and suggestions regarding the increase or new budget forecasts that were specifically related to the rights of the children, implementation of the law on minorities, health, police and prisons.

4.3. National conference

The focus of the conference with the civil society, that the Ombudsman under his organic law, holds every year in 2017, was the human rights of children, women and nomad people, in the context of Sustainable Development Objectives and UN Agenda 2030. This conference was attended by representatives of the Albanian Parliament, the Council of Ministers, the diplomatic corps, international organizations, the civil society, etc.



The first session was opened by Mrs. Erinda Ballanca, who made a presentation of her vision for the Ombudsman's institution. Among other things she emphasized that as the new Head of the Institution, elected by the Albanian Parliament in June 2017, she will cooperate extensively with all actors and factors for improving human rights and in particular for improving administration services to citizens.

She noted that the institution will cooperate with the civil society organizations, media, human rights' activists and without any doubt even with the international community in Albania and abroad.

The second session was devoted to the rights of children and the need to strengthen the protection of these rights. The engagement of the Parliament and the Parliamentary Group "Friends of Children" in the exercise of the public scrutiny function to the Government's actions, particularly in promoting its program on the rights of children, was considered a primary condition for advancing these rights.

Another speech was held at this session by a representative of the Ombudsman's Institution, who emphasized the situation of juveniles in freedom restraint institutions, seeking forcibly the observance of international standards in this field and the use as widely as possible of alternative measures against the detention of juveniles.

The representative of the Tirana Legal Aid Society, who brought the voice of civil society at this session, focused on the need to strengthen the access of juveniles to justice by giving priority to listening to their voice whenever it comes to decision-making or policy-making that affect their interests. Protecting the child's highest interest was the leitmotif of all speakers who took the floor.

The third session put the focus on gender equality and women's empowerment. From the beginning, it was emphasized that empowering women is equal to empowering the family and strengthening the protection of children's rights.

The main topics addressed were: The role of Parliament in advancing gender equality in Albania and in integrating gender elements in legislative processes; The role of United Nations' agencies in support of the National Human Rights Institutions and the process of monitoring international obligations in the field of human rights.

The conference presented the experience of the Ombudsman on the occasion of Albania's Reporting to the CEDAW Committee on the Situation of Women's Rights and Violence against Women in Albania.

It was emphasized the aid given by UN Women in this process, which was concluded with an alternative report to that of the government which the Ombudsman submitted to this Committee. As noted in the closing remarks of this Committee, the speakers emphasized the counterpart of society and institutions against domestic violence and violence against women.

It was strongly required that institutions act on time and even have a proactive role in preventing violence against women, preventing the precipitating of the situation to their detriment and sometimes even to the detriment of the lives of mothers, daughters, sisters and women.

It was further emphasized that the economic, social and political empowerment of women should be a priority in the work and activity of each state and society structure, in which case it was called for the establishment and functioning of the referral mechanisms of violence in each municipality of the country and for the establishment of multidisciplinary groups in the protection of women's and children's rights.

In a separate section were also addressed the issues of the rights of people in need of international protection. These rights are of particular importance when a large number of people, including women, children, the elderly and the sick, leave their home country due to war or other causes. Albania, as well as many other countries in the region, has faced an influx of people leaving their countries.

The emphasis was on the obligation of the Albanian state to respect the rights of these people in particular for their reception, information on the right to asylum in Albania, provision of information in their language and the services of an interpreter while interviewing them. Even in this session, emphasis was placed on respecting the rights of vulnerable people, such as the sick, the elderly, juveniles, women as well as disabled people who are among them.

The entire conference was dominated by the motto "*Do not leave anyone behind*", which is also the subject of the UN Agenda 2030.

CHAPTER 5

Increasing Institutional Engagements of the Ombudsman

5.1. Justice Reform

The Ombudsman, as an independent institution, expressly provided for in the Constitution, for the protection, prevention of violations and promotion of the rights and freedoms of individuals, has praised the Justice Reform as the mainstay of reforms for the qualitative democratic development and progress of social life, as well as the democracy itself in Albania.

The Ombudsman has been and continues to be in full support of the implementation of the Justice Reform as a vital reform for all Albanians, as many of the issues addressed by citizens, are related to the justice system in the country due to the problems which exacerbate this system.

Appreciating the natural connection of these reforms with the right to good governance, as well as the respect and protection of human rights in our country, the Ombudsman has assessed and considered as the maximum priority in his activity, the progress of the processes that the legislation in force for the implementation of the Justice Reform, entrusts him as a legal responsibility.

Following the completion of the process for the verification and listing of candidates who expressed interest in the positions of members of the transitional re-evaluation institutions of judges and prosecutors, namely for Member of the Commission; Judge of the Appellate Panel, as well as the Public Commissioner, and who was reported in last year's report, the Ombudsman throughout 2017, has shown all his commitment to responsible accountability and independence of all the legal responsibilities provided for in the Law package of the Justice Reform.

The Ombudsman's Institution, pursuant to Law no. 115 / 2016 "On Justice System Governance Bodies", completed the process of verifying the formal legal criteria for advocacy candidates who expressed interest in the High Judicial Council and the High Prosecution Council, as well as for candidates who expressed interest from the Civil Society for the High Judicial Council (HJC) and the High Prosecution Council (HPC).

More specifically, in support of Articles 19-24 and Articles 119-121 of Law no. 115/2016 "On Justice System Governance Bodies", the Ad Hoc Commission chaired by the Ombudsman, started their work with their first meeting on 20.02.2017 and became acquainted with the documentation of the candidates who expressed their interest in the HJC and the HPC.

After verifying the formal legal criteria and following the conduct of hearings, with all the candidates, the Ad Hoc Commission compiled the list with rankings, candidates who met the legal criteria and candidates who did not meet the legal criteria, based on the evaluation form for each candidate from the Ad Hoc Commission. Upon completion of the list, on 17.05.2017, the physical files of all candidates expressing interest for the High Judicial Council, were submitted to the premises of the Parliament of the Republic of Albania by continuing the further legal procedure.

Regarding the process of verifying candidates who expressed interest in the HJC, the process was accompanied by a recall on candidates, as a result of not completing the number of candidates based on the legal criteria. As a consequence, the Candidate Listing for HJC ended on 13.07.2017, accompanied by filing physical files in the premises of the Parliament of the Republic of Albania to undergo the next legal phase.

The Ombudsman's Institution, based on law no. 115/2016 "On the Justice System Governance Bodies" met the legal obligation to verify the fulfillment of the formal legal criteria for civil society candidates who expressed interest in the High Judicial Council and the High Prosecution Council. This process started on 31.01.2017 and ended on 29.12.2017, accompanied by many reclassifications due to the failure to complete the number of candidates as required by the law.

Pursuant to Articles 54-56 and Articles 152-154 of Law no. 115/2016 "On the Justice System Governance Bodies", after verification of the formal legal criteria and public verification of all candidates' files, the Ombudsman's Institution submitted on 24.04.2017 the respective report and the physical files of the candidates who expressed interest in the High Judicial Council, at the Civil Society Commission, for the continuation of further legal proceedings. On 19.06.2017, the Ombudsman submitted to the Albanian Parliament the evaluation report and the complementary documentation of the Civil Society Commission's practice for civil society candidates, who expressed their interest in the High Judicial Council.

Meanwhile, the process for civil society candidates who expressed interest in the High Prosecution Council, was associated during the whole one-year period, with some interest calls, since the criterion required in the law was not met. On 28.12.2017, the Ombudsman's Institution submitted to the Parliament of the Republic of Albania the evaluation report and the supplementary documentation of the Civil Society Commission's practice for civil society candidates for the High Prosecution Council, by marking even the ending of the process.

Also, being aware of the importance of the processes that this reform combines and the role that the Ombudsman can play for transparency and respect for the right to a fair legal process, the Ombudsman in accordance with Article 284, point 6 of the Law no. 115/2016 "On the Justice System Governance Bodies", has monitored the election process of the members of the Justice Appointments Council held on 7.12.2017, in the premises of Parliament of the Republic of Albania.

On the basis of this monitoring, the Ombudsman drafted and published the monitoring report on the lottery procedure for the election of members of the Justice Appointments Council. The Ombudsman has been and continues to be in full support of the implementation of the Justice Reform as a vital reform for all Albanians, important for the progress and quality of democratic development of the social life as well as democracy itself in the country.

While highly appreciating the involvement of our institution as a reference in some aspects of the implementation of the justice reform, the Ombudsman ascertains that the assignment of this task, has not been accompanied by an additional budget or human capacities, even in a temporary way. The above has affected the capacity of the institution to address human rights' issues, which are in the essential mandate of the Ombudsman.

The Ombudsman remains of the opinion that without an independent, efficient and fair justice system, Albania will not build a competitive economy that guarantees domestic and foreign investments, a clean policy, a safe life for its citizens, the Rule of Law.

5.2. Respect for the rights of migrants, refugees and asylum seekers

Based on the provisions of the Albanian Constitution, Law no. 121/2014, "On Asylum in the Republic of Albania", and Law no. 108/2013 "On Foreigners", concerning the respect of the rights of migrants, refugees and asylum seekers, the importance of ensuring adequate reception conditions in the territory of the Republic of Albania and its boundaries as well as obligations to the Government of the Republic of Albania in administering mixed migration flows by respecting human rights standards, the Ombudsman as a protector and promoter of human rights, has conducted a series of monitorings of measures and policies that have been undertaken on immigration issues, the return of Albanian citizens from European countries and their reintegration, as well as the undertaken measures and asylum procedures for potential asylum seekers from war zones.

The Ombudsman's Institution has encouraged the Albanian government for more transparency and readiness for cooperation, so that the needs of all those asylum seekers in Albania, are met in the best way possible, while the treatment of non-asylum seekers be in compliance as much as possible with international standards.

More specifically, the work continued to provide and guarantee maximum access to complaints' procedures, and to address specific issues of migrants, asylum seekers and refugees through ongoing asylum procedures. During this process, it was noted that:

- ✓ Procedures for lawyer representation or a free legal counsel, are complicated by creating unnecessary difficulties which have often led to the inability of asylum seekers for free legal protection and consequently the rejection of their cases.
- ✓ Implementation of the Border Police selection procedure has improved, as it results that there has been an increase in the number of referrals as asylum seekers, but problems are noticed among people who are recidivist irregular migrants.
- ✓ The Asylum Directorate has many limitations on its ability to gather information from asylum seekers and consequently the recognition of the situation in these countries, remains shallow, while decisions lament to excuses.
- ✓ Regardless of the legal provision, decision-making to determine whether a person is a refugee or not, is not done in a collegial manner and consequently even UNHCR is not invited to participate in it.
- ✓ The National Commission on Asylum and Refugees (NCAR), which started its activity in April 2017, during its activity is not open to monitoring by interested organizations, including UNHCR. As during the discussion of the decision-making on the asylum seeker's complaint, no subject can be present except the members of the NCAR, no conclusion can be drawn as to the quality of the discussions that take place within this structure.
- ✓ From the content of decisions and the observation of the stages when interviewing the asylum seeker in front of the NCAR, there is an urgent need for trainings of decision-making members.

The Ombudsman's Institution has been widely involved in monitoring the fulfillment of the Albanian state's obligations towards irregular foreigners, asylum seekers and refugees in Albania by undertaking a number of initiatives, including periodic inspections at the Closed

Center for Irregular foreigners in Kareç, at the Asylum Seekers' Center in Babru, and at border crossing points, with the aim of exercising positive and continuous pressure on the relevant authorities to meet international human rights' obligations and standards, including respect for the rights of refugees.

Given that the referral mechanism and the procedures for the reception and management of the above-mentioned groups must be fully implemented and with a differentiated approach based on the characteristics and individual needs, the Ombudsman's Institution has concluded that the steps taken, still do not fully guarantee this process. From inspections at border crossing points, reception centers for the treatment of irregular foreigners and asylum seekers, and based on information received on the adaptation of the Social Center for Seniors in Gjirokastra to provide housing for asylum seekers with special needs in anticipation of being sent to the National Reception Center in Tirana, it is ascertained that there are still many challenges to be overcome, so that they are conceived as functional centers not only for the short-term enrollment and assistance to the people in need, but also as residential centers who will enable a longer-term approach of people in need for their international protection.

Based on the findings, specific recommendations have been drafted for the relevant authorities, but although the recommendations have been accepted, they have not been implemented due to lack of funds, a trend which is expected to continue in 2018, as there is no fund foreseen in the State Budget for 2018 for the Closed Center of Foreigners in Kareç regarding: the increase of staff with a social worker, a psychologist, a lawyer, a dentist and a sanitary worker; the completion of indoor and outdoor recreational facilities and equipment for sports activities, as well as the construction of a playground for children; commissioning of the external and internal perimeter monitoring system; providing the right to information and keeping contact with the outside by providing cartoons and televisions in the common indoor environment, as well as the connection to the satellite dish to enable foreigners to be informed of events occurring from their countries and around the world in the languages they understand.

During these inspections, the Ombudsman's Institution has dealt with a number of individual cases filed in the form of complaints. Among these issues, it is worth mentioning the case of an Afghan citizen, who was caught by law enforcement officers with a fake identification document, was sentenced by the respective court by being sentenced to imprisonment, and then passed on to a probation service with compulsion, a decision which was not respected as a consequence of keeping the foreign citizen in contravention of the law at the Closed Center. After the intervention of the Ombudsman, the citizen was transferred to the Open Asylum Center in Babru. What is important in this case is that it was made possible to clarify the procedure to be followed in similar cases in order to guarantee the legitimate rights of foreign nationals by a court decision for inclusion in the probation service.

The Ombudsman noted with concern that the provisions of the Law on Asylum (Article 24, point 1, letter C) on the right of asylum seekers for work permits, were not respected in any case by the relevant authorities issuing work permits (Former Ministry of Labor and Social Welfare), who have decided against the law to issue work permits only for refugees. With regard to Mujahideens, there is still no decision on their status.

One of the issues in which the Ombudsman's Institution is strongly invested, in compliance with Directive 2008/115 / EC of the European Parliament, is the monitoring in cooperation

with the Directorate of Border and Migration Police as well as FRONTEX of voluntary and forced repatriation operations of Albanian citizens from EU countries and Schengen states.

Based on the monitoring and information of the responsible state authorities, the Ombudsman has noted the lack of a national strategy for the reintegration of returned Albanian nationals from other European countries, as well as an implementing Action Plan.

In the framework of the establishment and strengthening of cooperation networks with stakeholders, the Ombudsman's Institution deepened its cooperation with the UNHCR and the Department for Border and Migration at the General Directorate of State Police, to address issues related to irregular migrants and with the identification and referral of asylum-seekers and refugees. Likewise, the Ombudsman's Institution has also initiated cooperation with the Directorate for Citizenship and Refugees in the Ministry of Interior as the body responsible for providing refugee rights in Albania.

Along the cooperation with the UNHCR, the Ombudsman's Institution:

- ✓ Has participated in joint trainings or organized by UNHCR.
- ✓ Has carried out joint monitoring at the Kareç Center, border crossing points and border regional directorates as well as in facilities under the control of the border police where irregular foreigners are not subject to a readmission procedure and therefore are not sent to the Closed Center.
- ✓ Has signed an agreement with UNHCR to help the strengthening of border monitoring, the implementation of the selection procedure, as well as the treatment of irregular foreigners in Albania.
- ✓ Has exchanged information and advice regarding the preparation of various documents.

The Ombudsman has given importance to the development of concrete cooperation between member countries of organizations that are countries of origin, transit and destination to strengthen the rights of migrants along the migratory routes and to their possible return to the countries of origin. In this context, through the year 2017, the Ombudsman and his authorized people participated and contributed to 13 international activities aimed at improving the level of respect for the rights of people on the move, with a special focus on vulnerable people.

Likewise actions have been coordinated for the legal transfer of cases to Ombudsman's Institutions, in order to provide a quick and effective response to international and cross-border complaints. Among these, it is worth mentioning the request that the Ombudsman has sent to the French counterpart to investigate the circumstances surrounding the death of the 23-year-old Albanian Florenc Beqiraj, who died in a French hospital on 22.12.2017, due to the injuries received, in circumstances still unclear at the Center de Réention Administratif du Canet, Marseille. The French Party replied that the request had been received and that the case was being prosecuted.

The Ombudsman Institution is widely engaged in awareness raising campaigns on migrants' and refugees' rights. At the peak of this effort was the organization of the annual Conference: "Do not leave anyone behind! Protection, Equality and Empowerment for All" on December 12th, 2017, to celebrate the International Day of Human Rights. The conference focused, inter alia, on the rights of children, women and people moving from one country to another, in the light of the Sustainable Development Objectives / Agenda 2030.

As a result of the efforts and activities of the Ombudsman's Institution regarding migrants and refugees, as well as coordination with other stakeholders in this area and cooperation with the competent state authorities:

- ✓ The Ombudsman's Institution was considered by all stakeholders in this area (UNHCR, US Embassy, etc.) as one of the most reliable partners for cooperation.
- ✓ The Ombudsman's Institution is involved in constant monitoring in the country at the southern border of Albania in order to evaluate the procedures followed during the interview and selection process.
- ✓ In response to the recommendation by the Ombudsman's Institution, the Albanian government (through the Department of Border and Migration Police) has reaffirmed and assumed the implementation of its obligations despite the difficulties to provide housing and assistance to all those who seek this and follow the asylum procedures, as well as are recognized as refugees or people under subsidiary protection in Albania. In the above-mentioned attestation, the number of referrals from border police to asylum-seeking bodies (Directorate of Citizenship and Asylum) has increased, reaching a total of 308 asylum seekers in 2017.
- ✓ The treatment conditions of foreigners have been improved from time to time at the Karreçi Center. The Border Police has become more aware of the difficulties of holding children at the Karreçi Center (including the unaccompanied ones) as well as other people with special needs. Consequently, in most cases since 2014, this category has been accommodated in other centers, including the Babrru Center, despite not seeking asylum.
- ✓ In agreement with border police, asylum authorities and local government, as well as with the support of various donors, have significantly increased reception capacities in the country through:
 - a. Construction of a transit reception center for irregular foreigners caught near the border areas in Gjirokastra.
 - b. Rehabilitation of a social center in Gjirokastra for cases of irregular foreigners and asylum seekers with special needs.
 - c. Increasing / doubling the capacity of the Babrru Center through a new construction in the territory of the center.

5.3. Independent Monitoring of Compulsory Returns of Albanian Citizens

The importance of creating an internal and external system for monitoring forced returns is highlighted in the reports of international organizations and in particular in the general reports of the European Committee for the Prevention of Torture and Punishment or Degrading and Inhuman Treatment (C.P.T). External monitoring during return operations is also envisaged in the EU legislation.

The Directives for Return Operations provide for first of all, that "clear, transparent and fair rules are needed to ensure an effective return policy as a necessary element of a well-managed migration policy". Moreover, Article 8, paragraph 6 of the Directive states that "Member States shall take measures for an efficient system of forced returns". Article 8, paragraph 4, stipulates that the return may be compulsory and involuntary, but it must be performed in accordance with the "fundamental rights and with due respect for the dignity and integrity of the returnees".

These operations should be organized in a humane way and in accordance with the fundamental rights embodied in the relevant international instruments, in particular:

- ✓ the principle of human dignity
- ✓ the right to life
- ✓ the principle of non-delivery
- ✓ the right of asylum
- ✓ the prohibition of torture as well as inhuman, punitive or degrading treatment
- ✓ the right to freedom of choice
- ✓ children's rights
- ✓ the right to personal data protection
- ✓ the right to respect for private and family life

The Association for the Prevention of Torture (APT) also underlined the need for independent monitoring troops in order to oversee the entire process of returning from the host country to the state that is the final destination of the escorted person, to enable a higher level of transparency and accountability regarding the conditions and treatment of the escorted. This includes monitoring the subsequent stages of the process, e.g. places in which people are kept awaiting deportation, transfer process (including airport pickup), custody and security during airport stay and transfer procedures on aircraft. Whenever judged as reasonable, the monitors conduct individual interviews with escorts and other people, including medical staff and escorts.

It is important to understand that the forced return process is part of the scope of action and mandate deriving from the Optional Protocol to the Convention against Torture (OPCAT). During forced returns, migrants are deprived of liberty in the sense of OPCAT. Specifically, Article 4 of the OPCAT provides for authorization for monitoring visits and states that the National Mechanisms for the Prevention of Torture and the Subcommittee for the Prevention of Torture (SPT) have the mandate to monitor forced returns undertaken on land, sea and air. For this reason, many National Prevention Mechanisms in Europe have been involved in monitoring forced returns, including the National Mechanism for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment in the Ombudsman of the Republic of Albania.

During 2017, the Ombudsman in the role of the NMPT, in cooperation with the Directorate of Border and Migration Police as well as FRONTEX, has continuously monitored the forced repatriation operations of Albanian citizens from EU countries and the countries of the Schengen area, in order to transfer according to the rules of the nationals for whom the repatriation decision was taken by the relevant authorities. The NMPT experts were part of the monitoring team of *17 repatriation operations*, co-ordinating with international organizations and national mechanisms of other countries, exercising the legal role as a guarantor, while complying with Directive 2008/115 / EC of the European Parliament on common standards between the EU and third countries, on the independent monitoring by the National Mechanisms of Returns Operations of EU Citizens in the countries of origin. Full monitoring of forced returns includes all stages of return: the pre-return stage, the return stage and the post-return stage (arrival and destination reception).

In fulfillment of their mission, the NMPT experts had a functional duty, in addition to monitoring the respect of the International Charter of Fundamental Rights and Fundamental Freedoms and monitoring the respect of the Constitution of the Republic of Albania which ensure respect for human dignity to all people participating in the repatriation operation. At the end of return operations, observations of the full monitoring process are included in the NMPT reports which are specifically sent to FRONTEX and nationally to the relevant authorities, such as the Border and Immigration Directorate at the Ministry of Interior. During 2017, 17 monitorings of the forced return operations of Albanian citizens from France were conducted. We add that regarding the Albanian citizens returned during these operations, not all were brought by the French police, as in almost every operation there were Albanian citizens brought from Belgium, and in two cases from Neitherlands.

5.4. Monitoring of the General Elections

The elections monitoring process is one of the key elements that the Ombudsman's Institution has had and continues to be attentive to in exercising its activity as an independent constitutional institution in the framework of the defense, guaranteeing and promotion of basic human rights and freedoms in general and guaranteeing the effective exercise of the right to vote in particular.

During 2017, by the Ombudsman's Institution, the monitoring of the electoral process for the general elections in the Albanian Parliament (June 2017) aimed at finding the issues and taking measures in order to guarantee the right to vote. This monitoring was carried out during two phases:

The first phase focused on monitoring and identifying problems before the conduct of the electoral process, taking measures for the exercise of effective voting rights and guaranteeing the necessary infrastructure for the exercise of this right to special categories of individuals such as people with disabilities or people deprived of liberty, without excluding the rest of individuals in general.

During this period, according to the monitoring carried out, some issues have been identified for which the respective recommendations have been drafted to the ministries according to the areas covered and the Municipalities, recommendations for which no response has been received by the authority which they have been addressed to, but there were also recommendations where the institution has found a positive cooperation and attitude. The information on the findings from the monitorings carried out, along with the recommendations sent, were also made known to the Prime Minister through official correspondence addressed to the Deputy Prime Minister Ms. Ledina Mandia.

The recommendations drafted have been addressed to:

- ✓ The Central Election Commission, which was asked to take measures regarding monitoring, oversight and financial audit as well as taking measures to guarantee the right to vote for people with disabilities.
- ✓ All Municipalities, which were asked to rigorously implement the law, with regard to propaganda material display, and only 5 of them have been answered.
- ✓ The former Ministry of Innovation and Public Administration as well as all Municipalities, which were asked to take organizational measures for not involving public and local public administration employees in the electoral campaign during their official working hours. There was no response from this institution, and only 18 of the Municipalities responded.
- ✓ The Ministry of Education and Sports on taking organizational measures for the exclusion of children from the pre-university education system in electoral activities.
- ✓ The Director of State Police for the correct implementation of legal duties by the State Police.
- ✓ The General Director of Prisons, the Director of State Police, the General Director of the Civil Status, on guaranteeing the right to vote for detained and convicted people, where only the General Directorate of Prisons responded.

The second phase consisted in monitoring the voting process during the Election Day. The Ombudsman's Institution set up several working groups to monitor the voting centers in the city of Tirana in schools, kindergartens, nurseries as well as in the Institutions for the Execution of Criminal Decisions.

From the monitorings carried out at the voting centers, the focus was mainly on the verification of the infrastructure for people with disabilities, from which it was found that in some voting centers, the ramps for the people in wheelchairs were functional, while in some other voting centers, although stationed, they were not accessible and in some others were missing. From a general perspective, the infrastructure needed for the independent access of people with disabilities to the voting centers, was absent. Blind people as well as those with other disabilities had to be escorted, thus violating the exercise of the right to vote as a personal right.

Regarding the monitorings performed in the penitentiary institutions mainly: in Durrës, Shënkoll (Lezha), Rrogozhina, Peqin, Elbasan, Kuksi and Tirana (I.E.C.D "Mine Peza", "Ali Demi") and the Special Health Institution of Prisons (SHIP) in Tirana, it turned out that voting facilities in these voting centers were in normal conditions and provided the necessary material basis for the conduct of the voting process.

Regarding the exercise of the right to vote, a considerable number of convicts in these institutions were excluded from the right to vote according to the law on decriminalization.

The working groups also conducted confidential interviews with some convicted and pre-detainees regarding the voting process and the free exercise of the right to vote, where it was shown that no pressure or influence from the administration of the prisons, was exercised against them by voting for certain electoral subjects.

In some I.E.C.Ds, there were delays in sending voters' lists by the Municipalities and for these issues the Ombudsman's Institution recommended:

- ✓ Taking the necessary measures from the Municipalities to submit the voters' lists within the legal deadline provided by the Electoral Code to Institutions that are in their terrestrial jurisdiction;
 - ✓ Taking the necessary measures from the Directorates of IECs, by asking the respective municipalities to send voters' lists to people deprived of their liberty, convicted and detained, in cases when they ascertain that they have not been sent to the institution within the legal deadline and to alert and sensitize several months before the election date, people deprived of their liberty to enable their equipment with identification documents in order to guarantee and exercise the right to vote.
- Election monitoring was also attended by representatives of the Regional Office of the Ombudsman in the districts (Fier, Shkodra, Berat, Saranda, Dropull, Kukës and Pogradec).

CHAPTER 6

Cooperation with domestic and foreign institutions

6.1. Cooperation with Public Administration Institutions and the Level of Implementation of the Ombudsman's Recommendations

The implementation of recommendations by independent institutions from public administration institutions is the best indicator of the implementation of the organic law and the relevant regulatory framework, and consequently the fulfillment of the institutional mission, and, finally, guaranteeing the authority and independence of these institutions.

One of the issues and challenges faced by the Ombudsman's Institution in its everyday practice is the realization of effective institutional cooperation on the level of implementation of recommendations by the public administration bodies. More concretely, the concerns are related to three main elements:

- ✓ *failure to reply to requests for explanations;*
- ✓ *failure to respond to the recommendations;*
- ✓ *failure to comply with recommendations previously received by state institutions.*

Also, the latest Progress Reports of the European Commission services (2014, 2015, 2016) have raised concerns and have commented on the level of implementation of the recommendations of constitutional institutions, such as the Ombudsman, by charging the Albanian Parliament with a specific role to systematically monitor the level of implementation of the recommendations of independent constitutional institutions and those established by law. As noted above, the Ombudsman has requested and suggested:

- ✓ Imposing the obligation to establish responsible internal mechanisms from each institution of the Public Administration (central and local), to identify the issue in question and resolve it as quickly as possible on a case-by-case basis. This suggestion came because, during the day-to-day operation, there was a lack of cooperation not only from institutions at the central level, but also from institutions at the local level. Consequently, this would also help local government units to respect the principles of good governance at the local level.
- ✓ Assessing the possibility that at least once a year the Government should report to the Parliament on the state of implementation of the Ombudsman's recommendations, considering it as an instrument for strengthening the level of implementation of the Ombudsman's recommendations by the public administration and the good governance.

It is considered as very positive the fact that the Albanian Parliament has already adopted Decision No.49 / 2017 "On the Establishment of a Mechanism for Systematic Monitoring of the Follow-up and Implementation of Recommendations of Independent Constitutional Institutions and those established by law", which includes also the suggestions of the Ombudsman.

The Ombudsman is aware that the activity of this institution is very necessary to have an efficient and systematic mechanism for pursuing and fulfilling the recommendations addressed to the public administration.

Also, the Ombudsman estimates that the rigorous follow-up and enforcement of this decision, will increase parliamentary control over the Government to understand why the recommendations of independent institutions from these bodies, are not implemented and, of course, will also improve its parliamentary mechanisms for increasing the information and concern of the institutions in each case for any matter where the Parliament may contribute as a law-making body and the law enforcement controller of the Government.

Level of Implementation of the Ombudsman's Recommendations

During 2017, the Ombudsman's Institution addressed a total of 188 recommendations to the Public Administration bodies, including central and local government. From the total number of recommendations, it results that:

- a. 123 were received
- b. 29 were refused
- c. 24 were unanswered
- d. 12 recommendations were under process.

1. As mentioned above, 123 recommendations are received by the state bodies, of which **80 recommendations have been received and implemented, while 19 recommendations have been received, but have not been implemented. Meanwhile, for 24 recommendations that were received by them**, the responsible institutions did not send information on the progress of their implementation.

2. Out of 188 recommendations addressed in total, it turns out that only 123 of the recommendations received have been fully implemented. So, referring to the report of the recommendations received with the recommendations implemented, **it results that 65% of the recommendations received have been implemented by the respective institutions.**

3. Regarding the unanswered recommendations, it is ascertained that 24 recommendations for 2017 result unanswered by the state institutions. So, according to the report between the unanswered recommendations and the recommendations addressed in total by the Ombudsman, **it results that 12.7% of the recommendations addressed have no answer.**

4. As regards the number of requests for information, it results that for 2017, the Ombudsman's Institution has addressed a total of **2015 requests for information**, of which 60 result unanswered, or **2.9% of requests for information addressed** have not received any response from the relevant institutions.

5. The Ombudsman notes that depending on the importance of the case and the problems it poses, also varies the expected cooperation and offered on a case by case basis by the public administration bodies. The issue of formal responses that are sent to us by the public administration bodies is still problematic, but essentially does not contain the required information, as does the non-disclosure of this information, despite our repeated requests for this purpose.

In conclusion, starting with the analysis of the above statistics, for 2017 it results as well as can be evidenced that there is an increase in the number of recommendations fully received by public administration institutions, as well as a percentage increase of the recommendations implemented. Meanwhile, with regard to unanswered recommendations, there are fewer unanswered recommendations for 2017 compared with 2016.

6.2. International co-operation

The year 2017 was the year of the end of Mr. Igli Totozani's mandate and the election of the new Ombudsman, Mrs. Erinda Ballanca. In addition, in mid-2016 and in the first half of 2017, the Ombudsman was intensively involved in the admissions and pre-selection processes of candidacies for the vetting's bodies. Consequently, the institution's international activity in this period was less intensive compared to the previous periods.

However, during 2017, the Ombudsman's Institution participated in a number of international activities, in the framework of bilateral and multilateral cooperation of the Institution, as follows:

On **March 22-24**, in Serbia, a regional dialogue was organized for the reduction of inequality, exclusion and the fight against homophobia and transphobia in Albania, Bosnia and Herzegovina, the FYROM and Serbia, within the framework of the UNDP project "**Being LGBTI in Eastern Europe.**" The meeting highlighted the fact that LGBTI organizations in all the above-mentioned countries have an ongoing dialogue between them, which can not be said about the dialogue that should exist between the governments of the region countries in this regard. The meeting highlighted the fact that, in fulfilling their duties in protecting human rights, emigrants should cooperate among themselves to promote and protect the rights of the LGBTI people.

On **June 27-28** in Sarajevo, a Conference on Social and Economic Rights of **Forced Displaced People** was held during the conflict in the former Yugoslavia. The organizers of this conference were the Council of Europe and UNHCR. The conference was triggered by the fact that the rights of forcibly displaced persons in this part of the region, were not

respected by the respective states and that, even after all these years, many of these people continue to suffer the negative consequences of unjust and involuntary displacement.

Also in this context and in Sarajevo, on June 29th, the Ombudsman Mrs. Erinda Ballanca attended a regional consultative meeting in the Western Balkans on the **Global Impact of Immigration**. The conference was organized by the International Organization for Migration (IOM).

Of particular importance was the Sixth Forum of Civil Society for the Western Balkans, organized by the European Economic and Social Committee on the panel "**Freedom of Expression and Media in the Western Balkans**", held from **10-11 July** in Sarajevo. In difficult times of global crisis such as the refugee crisis, as a result of rising populism and xenophobia, human rights, and especially freedom of expression, are under pressure from politics. The media, which should be the champion of free speech in many of the Western Balkan countries, is sometimes complexed with politics and business. The meeting highlighted the fact that human rights and the ombudsmen's institutions are about to promote freedom of speech along with freedom of the media.

The Alliance's second global seminar on Reporting on the Performance of Comprehensive Equity and Justice in Society organized by UNDP / UNDOC / UNESCO, was held in Oslo from **7-8 of September**. The increase in social inequality is not only a concern, but also a social injustice, and the seminar highlighted the role that institutions, including human rights, should play to enable vulnerable individuals and groups not to be excluded, but to become participants and beneficiaries of economic, social and political development.

The 9th Conference of **Ombudsmen's Institutions for the Armed Forces** was held in London, **October 8-10th**. Following this was the activity of EUROMIL. Of particular importance, the European Organization of Military Associations (EUROMIL) grants human rights to members of the armed forces. In this context, on December 19th, 2017, Emmanuel Jacob, Head of EUROMIL, held a meeting in the Ministry of Defense in Tirana with the Deputy Minister of Defense, Mr. Petro Koci and the Ombudsman, Mrs. Erinda Ballanca. Special attention at the meeting was paid to the right to organize members of the armed forces.

In Novi Sad, Vojvodina, from 16-17 of November 2017 was held the international conference "**Freedom and Security: Right to privacy**". This conference was organized by the regional Ombudsman of Vojvodina and mostly had the character of a forum for exchanging ideas on the need for balancing measures to strengthen security with that of protecting the rights of the individual's private life, which is increasingly endangering the conditions of increased terrorism and government measures to strengthen security.

During 2017, a number of international activities were held **with a special focus on children**. Specifically:

- ✓ The 21st Annual Conference of the European Network of Ombudsmen for Children's Rights (ENOC), held in Helsinki on **19-21 of September**. The theme of the Conference for this year was: "**Education on Relations and Sexuality - Implementation of Children's Right to Information.**" Throughout the Conference, the emphasis was placed on the need for educating children about the different types of relations that are created in society and more specifically about sexual relationships, so they can be

prepared to protect themselves against abusive behavior, often by close family members. The conference also came up with a resolution addressing governments and, in particular, educational authorities for inclusion of this kind of education in the curriculum. On this occasion, was held the meeting of the General Assembly of ENOC.

- ✓ In Ancona, on November 25th, a meeting of the ombudsmen regarding children was held for the **protection of unaccompanied children**. The meeting which highlighted the risks posed to unaccompanied children also emerged with a statement to governments.
- ✓ The European Commission organized the 11th European Forum on Children's Rights, entitled "**Children deprived of liberty and the detention options.**" The purpose of the forum was to underline the importance of using alternative forms of punishment for juveniles and the use of detention only as a last resort.
- ✓ In Athens, on **November 13-14th**, there was a regional meeting of Ombudsmen for Children on "**Protecting the Rights of Children on the Move in Europe - Challenges of Social Inclusion.**" The emphasis was again on increasing participation in society and social inclusion as the most effective measure for reducing the number of children on the move in European countries.
- ✓ On **November 29-30th**, in Strasbourg, there was a meeting organized with experts about **the means of communication and tools used to inform migrant children** on the rights they enjoy and the procedures to follow.

Activities in the framework of AOM

Within the Association of Mediterranean Ombudsmen (AOM), as President of this Association and in the context of the tasks left by the Tirana International Conference on the rights of people who need international protection, in the capacity of the President of AOM, Mr. Totozani visited the refugee centers in Macedonia. On his visit, which took place on 13-14 of March 2017, Mr Totozani was accompanied by France's Defense Counsel, Jacques Toubon and the Macedonian Ombudsman, Ixhet Memeti. From the camps in Macedonia, all three Ombudsmen called on respective governments and international organizations to engage in the protection of human rights for those in the camps.

Following this visit, in the framework of AOM, another visit was organized in Italy on **April 25-26th**, regarding the situation of refugees' rights. This time Mr Totozani was accompanied by the Spanish Ombudsman, Soledad Becerill, and France's Rights Defender. They were welcomed by Mr. Mauro Palma, the Guardian of the Rights of Detained People or Deprived of Liberty in Italy. Whereas, on **May 15-16th**, an Italian delegation headed by Mr. Palma visited our country in the framework of bilateral co-operation.

On **September 25-26th**, the Turkish Ombudsman held an annual international symposium with ombudsmen from all over the world. The theme of the 2017 meeting was related to the role and functions of the ombudsman in society. On this occasion, the Ombudsman, Mrs. Ballanca delivered a speech about the way how to handle complaints at our institution. Taking advantage of the fact that ombudsmen from member states of AOM, would be present at a conference organized by the Turkish Ombudsman, the AOM secretariat also organized the **AOM structures' meeting** in the afternoon of September 26th in Istanbul.

The training organized by the AOM on "Deontology of the Armed Forces and the Rights of the Migrants: Role of the Ombudsman's Institutions" was held in Kasablanca (Morocco) from **18 - 19 of October**. The training aimed to increase the capacity of the ombudsmen's staff to enable the establishment and consolidation of a democratic culture in the work and practice of the armed forces in order to respect the rights of migrants.

Activities in the framework of the AOMF

On **3-4 of May 2017**, the AOMF meeting was held in Rabat, Morocco. On this occasion, the AOMF organized a seminar on the deontology of the institutions. This seminar served as a cognitive experience with the deontology that should prevail in the institutions of human rights protection.

On **23-24 of November**, in Tunisia, a meeting on "Parliamentarians and Mediators, actors in strengthening the good governance" was organized by the Frankofono Ombudsmen's Association. The emphasis was on the mediating role between citizens and the administration of parliamentarians and mediators / ombudsmen in the function of strengthening the good governance.

AOMF on **4-5 of December** organized a seminar on strategic planning and quality measurement for member countries from the North America and Europe. As for technical staff on **6-7-8 of December**, AOMF organized a seminar on: Relations of Intermediation Institutions with Citizens.

AOMF-AOM organized in Spain a study tour on **18-20 of December** of the Joint Working Group for Children, which also includes a staff member of the Ombudsman's Institution. The focus of the study visit was the rights of migrant children.

Cooperation in the framework of GANHRI AND ENNHRI

During 2017, the Ombudsman attended all activities of GANHRI (Global Alliance of Human Rights Institutions). In this context, the Ombudsman's Assistant Commissioners helped with information and supplementary questionnaires a number of studies undertaken by the alliance in terms of improving promotion and protection of human rights, with priority in preventing violations of these rights.

But the largest activity within GANHRI is developed by the Ombudsman in the framework of the European Network of Human Rights Institutions (ENNHRI) - the GANHRI's subdivision that groups Europe's countries. Thanks to the very pro-active role of the ENNHRI's Secretariat in view of increasing interaction among member institutions, employees of the Ombudsman participated in the Working Group on People with Disabilities, the Working Group on the Rights of the Elderly, the Working Group on Prevention of Ethnic Conflicts, the Working Group on Women's Rights, etc. This participation serves to exchange experiences, but also to improve the capacity and increase the standards of human rights protection.

The ENNHRI's General Assembly for 2017 was held on **28-29-30 of November** in Brussels. In addition to the meeting of the Assembly, a seminar on caring for the elderly, was held on November 28th. Also, there was held a seminar on methods, forms and ways of cooperation between ombudsmen / human rights' institutions and the European Union

structures. The seminar was attended by a number of leaders from relevant structures of the European Union, and the meeting took the form of a conversation about possible ways of cooperation.

Collaboration with UNDP and other United Nations' agencies

During 2017, the Ombudsman's Institution further strengthened its cooperation with UNDP and the United Nations' agencies. With the election of the new Ombudsman, Mrs. Erinda Ballanca, a meeting was held between the Ombudsman's staff and the staff of the United Agencies to see concrete opportunities for cooperation between the parties. A video conference was attended by representatives of the UNDP Liaison Office in Turkey and Head of the Office for Human Rights' Institutions, Regional Mechanisms and Civil Society in Geneva. During the meeting, it was agreed on some possible areas of cooperation and for the establishment of an inter-institutional coordination group.

The first fruit of this cooperation was the joint organization of the Annual Conference of the Ombudsman on the topic: "*Do not leave anyone behind! Protection, Equality and Empowerment for All*". The Conference's focus was on the rights of Women, Children, Vulnerable Groups and the Rights of Migrant People. The conference was attended by the country's authorities, important representatives of the International Community and diplomatic missions as well as a large number of representatives of civil society organizations.

International Activity of the National Mechanism for the Prevention of Torture

The National Mechanism for the Prevention of Torture (NMPT) conducted its international activity in 2017. Thus, on October 3rd in Vienna, Austria was held the European Forum of NMPTs on "**Creating tools that enable comparison of national and international standards, as well as working practices and conditions in detention facilities.**" The European Forum of NMPTs is an informal structure of the Council of Europe to complement the regional NMPT networks. Creating a European network formalized for the NMPTs of the European countries, is an idea that is increasingly gaining ground.

On **14-15 of November**, the Council of Europe organized a meeting in Prague on the "**Normative Competences and Management Capabilities of NMPTs.**" As the title of the meeting states, the emphasis was placed on the competencies of the NMPTs to issue normative acts which improve their work and the need to strengthen their management skills. This meeting was also attended by the Ombudsman, Mrs. Erinda Ballanca.



A Regional Conference on NMPTs of countries affected by the Kosovo refugee crisis (Albania, Kosovo, Serbia, Montenegro, FYROM) was held in Skopje on **20-21 of November**, on the topic: **Integration of Kosovo refugees, sustainable resolutions and voluntary returns.**

In Warsaw on **4-5 of December** there was held an expert meeting on **Monitoring the Prohibition and Treatment Conditions of the Detainees in the Context of Confronting Violent Extremism and Radicalization leading to Terrorism in Prison Institutions.**

On **December 12-13th, 2017**, a meeting of Southeastern Europe NPMTs was held in Belgrade on the topic of "Preventive Visiting Methodology in detention facilities".

6.3. Cooperation in the framework of projects

During November 2017, the Ombudsman reached **an agreement with UNHCR** on border control and refugee protection in line with the best international standards and practices in this area. In this framework, an external expert contracted by the Ombudsman's Institution is located in Gjirokastra, which is present at the moment of reception and interviewing of refugees arriving through this border crossing point. The agreement, which will be effective even during 2018, provides for the promotion and monitoring of access to the territory and asylum procedures for asylum seekers and refugees identified at Albanian borders, enhancing the capacities of the authorities responsible for asylum and human rights, as well as support for the promotion of information on refugees and asylum seekers.

In December 2017, the Ombudsman signed an agreement on cooperation with the **German Agency for International Cooperation (GIZ)** in order to improve social services. The focus of the project is to improve the capacity to deliver social services to vulnerable groups, especially Roma people. In addition to capacity building, the project also provides for the

awareness of beneficiaries of their social rights, including the right to non-discrimination. As the project is regional, of great importance is the exchange of experiences and best practices with the partners that contribute to this field in the countries of the region.

On October 3rd, 2017, the Ombudsman and University Research CO., LLC, signed a **Memorandum of Understanding on the implementation of USAID's "Health System Transparency"** project in Albania. **The United States Agency for International Development (USAID)** is funding a project on health transparency.



The Ombudsman along with the High State Control and the High Inspectorate of Declaration and Audit of Assets and Conflict of Interest are beneficiaries of this project. So far, the project has provided a number of training courses for the Ombudsman's staff, including its regional offices. The aim is to strengthen inter-institutional coordination to fight corruption in the health sector through raising awareness of patients and the public as a whole, as well as the structures responsible for monitoring and supervising the health service and respecting medical standards and protocols. The project will be extended even for 2018.

Within the framework of a program of the **Bulgarian Agency for International Development**, the Ombudsman is the beneficiary of a project for strengthening the administrative capacities of the institution. The project has been finalized at the end of 2017 and will last for 18 months. It provides for strengthening of human resources capacities, public awareness and institutions on the importance of implementing the Ombudsman's recommendations, as well as improving the complaints management system at the institution.

6.4. The Danish project

As previously reported, the Kingdom of Denmark through a grant awarded since 2012 has financially assisted the Ombudsman's institution in fulfilling its constitutional role in the protection of citizens' rights.

Although positive changes have been noted annually in terms of the implementation of the Danish Project "Danish Support to the Ombudsman of Albania - closer to local communities, civil society and the media (2012-2016)", at the end of 2016 still remained unused funds, mainly due to procedures related to public procurements.

However, most of the planned activities are carried out according to the approved plan.

Great efforts have been made to strictly use all funds made available in order to realize as many activities as possible in order to achieve the institutional objectives, but always following and strictly respecting the Albanian legislation in the field of public procurements.

A positive step forward was the decision of the Danish Ministry of Foreign Affairs for a cost-free extension first by the end of 2016 and later by **the end of September 2017**. This gave to the Ombudsman's Institution room to continue to carry out its main activities without any financial constraints to realize its promotional and awareness-raising mission in the areas covered by the project.

Based on this decision, the Ombudsman's Institution drafted and implemented a plan of activities to be implemented during 2017, and despite the major commitments that the Ombudsman had in the process of running the legislation in force for the implementation of the Justice Reform, it charged him with legal responsibility.

In the framework of the realization of activities for 2017, it is worth mentioning the studies conducted through the contracting of non-profit organizations related to the "moral and sexual harassment in the Albanian public administration" (March 2017) as well as the "Determination of the vital minimum" (April 2017), studies which were presented in the activities conducted to make public the findings and recommendations offered to public institutions, the organization of two study visits to Spain and Denmark, the continuation of the publication of the institution's journal, the realization of seminars related to the training of teachers in the field of human rights; further strengthening with literature of the Human Rights Documentation Center; training and strengthening of capacities of the representatives of the regional offices of the Ombudsman; publication of institution reports; launch of drafting process of the new Strategic Plan of the Ombudsman's Institution, etc.

In general, it should be underlined that the Danish Project was a major support to the Ombudsman's Institution in exercising its constitutional role in the protection and promotion of human rights. The project has achieved many results and has significantly increased the capacity of its staff through training, quality inspections, study visits, preparation of professional documents, study reports and other promotional materials.

The Ombudsman's Institution tried to change the culture of human rights' treatment in Albania in these years and the Danish project helped significantly in achieving this goal. The Ombudsman's Institution is now more able to manage projects of this nature and will have the opportunity to step forward the results achieved through the support of the Danish project.

Despite budget constraints, the Ombudsman's Institution will be able to make consistent decisions based on the knowledge gained under this project. For all this contribution provided by the Government of the Kingdom of Denmark in September 2017, the Ombudsman, Mrs. Ballaca, during the visit to Denmark and the meetings held with the Danish Ministry of Foreign Affairs, the Danish Institute for Human Rights as well as the Danish Parliamentary Ombudsman, thanked the Danish institutions for their continued assistance and stressed the importance of further strengthening the cooperation with the Danish Ombudsman and the Danish Human Rights' Institute after the completion of the project as this cooperation is considered decisive for the institution.



As a result of these meetings, it was agreed that the Danish Human Rights Institute will continue to support with expertise the drafting of **the new Strategic Plan (2018-2021)** of the Ombudsman's Institution, in order to continue the work started since 2017. This strategic plan, which is expected to be completed by September 2018, will serve as a useful guide in fulfilling the Ombudsman's commitments to citizens and institutions, as well as improving and expanding the focus of the Institution's activity.

Also, this strategic document will need to include a series of priorities and areas in order to contribute to achieving the vision of the Institution for a society governed by human rights principles, and the state institutions act in a transparent, fair, accountable and effective way.

During October 2017, with the completion of the Danish project, a relevant report was drafted describing progress made in the framework of project implementation during the last phase of its implementation from July 1st, 2016 to September 30th, 2017. This report was prepared by the Ombudsman's institution in cooperation with the Head of project (Mr. Francesco Castellani) and at the same time with the Project Monitoring and Evaluation Advisor at the Danish Institute for Human Rights, a report which was submitted to the Ministry of Foreign Affairs of the Kingdom of Denmark.

Also, pursuant to Article 37 of Law no. 8454, dated on 04.02.1999 "On the Ombudsman", as amended, with the document No. 80, dated on 26.02.2018, information was officially sent to the High State Audit and the Parliament of the Republic of Albania (the Chairman of the Committee on Economy and Finances) on the implementation of the Danish Project for the period January-September 2017.

What should be noted is that the Ombudsman as a constitutional institution that promotes and protects human rights, should have maximum appreciation and the necessary financial support, primarily from the state budget in order to carry out activities that are in the function of protecting citizens from the acts or inactions of the public administration bodies.

This is because the end of this project (September 2017) was accompanied by disapproval of the Albanian Parliament, within the drafting of the state budget for 2018, of the minimum requirements submitted by the Ombudsman's Institution to financially cover a part of the activities previously funded by the Danish Project.

CHAPTER 7

Support Services

7.1 Human and Administrative Resource Management

In a modern public administration, civil servants are considered as part of a well-prepared, professional and elite troupe, who are recruited to serve the public interest and to be accountable for actions taken in the interest of citizens. Human resources management aims at the development of a professional, impartial, independent and merit-based civil service. Also, this management should be oriented to the development of employee skills, support to work, towards democratic leadership approaches aiming at staff involvement and increased commitment to sustainable institutional development and successful performance.

For this reason, the human resources management at the Ombudsman's Institution, is a systematic approach aimed at:

- The continuous development and recruitment of appropriate staff to better serve the organizational and institutional objectives, in accordance with the legislation in the field of civil service;
- Ensuring equal opportunities for career training and development, as well as
- Employee motivation.

A national human rights institution (such as the Ombudsman's Institution) must act according to the "Paris Principles", which define competencies, responsibilities, composition as well as guarantee independence and pluralism. Moreover, the Paris Principles sanction that "A national institution must have an infrastructure that enables a satisfactory direction of its activities"..... Such institutions need a continued political and financial support from parliament and government to continue to carry out their duties in a more effective and independent manner."

With the approval of the law no.130 / 2016, dated on 15.12.2016, "On the approval of the budget of 2017", the number of employees of the institution went to 56 (fifty-six), taking into consideration the proposal submitted by the institution regarding the addition of an employee for the new position "**Librarian/Archivist**", in accordance with the classification of the positions set out in the Council of Ministers Decision no. 142, dated on 12.3.2014, "On the Description and Classification of Positions in State Administration Institutions and Independent Institutions". This position is regulated by the provisions of the Labor Code, and it focuses on the maintenance and restoration of the archive / documentary fund of the institution, the creation of documentation archiving systems in accordance with the relevant law on archives, and the management, direction, and well-being of the Center Human Rights' Information Office established at the Ombudsman's Institution.

One of the reasons proposed for changing the existing structure, is also related to the fact of reviewing law no.10296, dated on 08.07.2010 "On financial management and control", approved by law no. 110/2015 dated on 15.10.2015. Based on this review, the law establishes new criteria for the position of the executing officer, according to which "The first and second level executive officer is the head of the structure responsible for finances, directly dependent on the authorizing officer (the Secretary General) and who has completed second cycle studies in economics (scientific or professional master) and has a working experience of not less than five years in the profession. " Based on the changes in the law, all public entities should take measures to meet these criteria for existing executive officers of all levels, within a two-year transitional period.

By not having the "luxury" of creating two separate directories because of the limited number of human resources that do not meet the required standards in terms of formatting the units of the structure related to the relevant directories and sectors, the best solution was the creation of the Directorate of Human Resources and Services, which mainly covers issues related to human resource management and services provided to the institution, while the Finance and Procurement Sector, maintaining the same number of employees and having the same job description, moved directly to the Secretary General of the institution.

Another change in the institution's structure was the addition of an assistant commissioner to the Section for the Protection and Promotion of Children's Rights. This structure functioned on the basis of format 1 + 2 (a commissioner and two assistant commissioners). Given the role and mission that the institution has in guaranteeing and protecting the rights, freedoms and legitimate interests of children, the promotion and continuous observance of their rights, to promote the guarantee of their well-being and the improvement of their quality of life, as well as the problems encountered in the daily life of respecting these rights, it was considered necessary to strengthen this structure with another assistant commissioner. (*Format 1 + 3, a Commissioner and three assistant commissioners*).

In the situation when the number of assistant commissioners and with the approval of the 2017 budget, remained unchanged, the only solution that was followed in this case was the change of the number of Assistant Commissioners of the General Section from five to four assistant commissioners.

All of the above changes were formalized through the adoption of the Ombudsman's order no. 05, dated on 04.01.2017 "On approval of the structure, organization and categorization of positions of work of the Ombudsman's institution".

Following the amendments carried out in November 2014, Law No. 8454, dated on 04.02.1999 "On the Ombudsman", the Ombudsman's Institution repeated the selection process for two Vacancies for Commissioner (*Commissioner in Section for protection and promotion of children's rights and the Commissioner in the National Mechanism for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment*).

For various reasons, this process failed to be completed, so in respect of point 2 of Article 33/1 of Law No. 8454, dated on 04.02.1999, during January 2017, the Ombudsman's Institution, along with the two vacancies for the above-mentioned positions, announced the launch of the selection process for the candidates for 3 (three) other Sections, respectively:

- a. Commissioner in the Section for central administration, local government and third parties acting on their behalf
- b. Commissioner for Police, Secret Service, Prisons, Armed Forces and Judiciary;
- c. Commissioner at the Section for the Protection and Promotion of the Children's Rights

After the development of an evaluation process, the Ombudsman Mr. Igli Totozani, on 22.05.2017, forwarded to the parliament of Albania the list of candidacies for the above positions.⁵

Subsequently, the Commission on Legal Affairs, Public Administration and Human Rights in the Parliament, invited in a hearing session on November 14th, 2017, the candidates proposed by the Ombudsman, Mr. Igli Totozani, but within 2017 the Parliament failed to make a decision for the election of Ombudsman's Commissioners (this process ended only for two Commissioners in March 2018). It is worth noting that the long absence of Commissioners has made the institution's work difficult.

A very important moment for the institution was the election of the new Ombudsman. The mandate of the previous Ombudsman Mr. Igli Totozani, ended at the end of December 2016. In accordance with the provisions of Law No. 8454, dated on 04.02.1999 "On the Ombudsman", as amended. Mr Totozani was in office until the election of the new ombudsman Mrs. Erinda Ballanca, who on 22 May 2017 was elected by the Parliament as the Ombudsman of the Republic of Albania for a five-year term.

In the framework of law enforcement no. 60/2016 "On Signaling and Protection of Signals", as well as Decision of the Council of Ministers no. 816, dated on 16.11.2016 "On the structure, selection criteria and labor relations of the unit responsible employees in the public authorities", the Ombudsman has approved the internal regulation "On *the administrative*

⁵ Regarding issues ascertained, the Ombudsman through letter prot. no. 369, dated on 20.10.2017, has informed the Parliamentary Commission for Legal Affairs, Public Administration and Human Rights.

investigation of signaling and protection of confidentiality", as well as establishment and functioning of the unit responsible for signaling and protecting the signalers in the Ombudsman's institution.

These adopted administrative acts are designed to prevent and hurt any suspected corrupt practices in the Ombudsman's Institution as well as to promote and protect individuals who signal suspected corruption actions or practices in their workplace.

7.2. Overview on the Income and Expenditures

In support of Law no. 130/2016, "On the State Budget of 2017", Guideline of the Minister of Finance no. 2 dated on 06.02.2012 "Standard Budget Execution Procedures" as well as Supplementary Guidelines of the Minister of Finance no. 8, dated on 13.01.2017, "On the Implementation of the Budget of 2017", the budget product performance for the Ombudsman's Institution, according to the budget program approved for 2017, is as follows:

Program - "Advocacy Service"

Budget allocated to this program (the only program that the Ombudsman's Institution has) has under its Program Policy Statement (PPS) drafted during the 2017-2019 PBA process and aims at achieving the objectives of the defined product approved in the Medium Term Budget Program document (2017-2019).

Report on Program Factual Expenditures according to items for 2017.

With Law no. 130/2016, "On the State Budget of 2017", the funds allocated to the changes made during the year for the functioning of the Ombudsman's Institution according to the articles, are presented in the following tables:

Report on Program Factual Expenditures according to items

Table no. 1

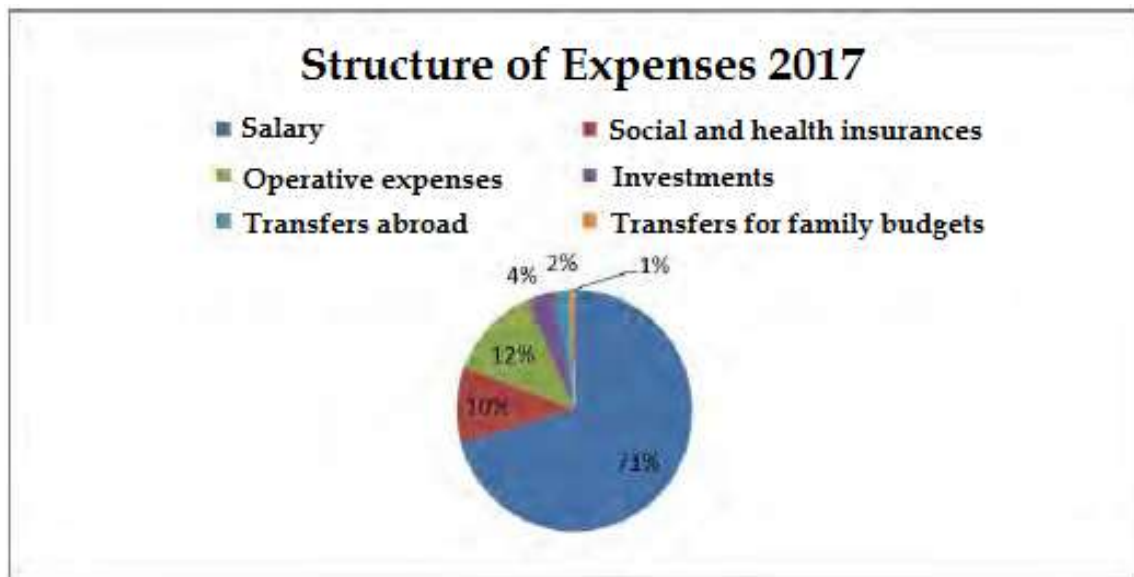
No.	Name	Plan	Addition	Plan	Fact
600	Salary	72.300.000		72.300.000	68.223.048
601	Social insurance	12.200.000		12.200.000	9.623.548

602	Goods and services	16.500.000	- 200.000	16.300.000	12.161.377
605	Current transfers	1.500.000	200.000	1.700.000	1.673.605
606	Transfers for budgets		723.600	723.600	723.600
231	Investments	4.000.000		4.000.000	3.922.047
	TOTAL	106.500.00	723.600	107.223.000	96.327.225

Annual Report on realization of expenditures for 2017

Table no.2

No.	Name	Plan	Fact		Realization
1	Salary	72.300.000	68.223.048	4.076.952	94,40
2	Social Insurance	12.200.000	9.623.548	2.576.452	78,90
3	Goods and services	16.300.000	12.161.377	4.138.623	74,60
4	Current transfers	1.700.000	1.673.605		98,40
5	Transfers for budgets	723.600	723.600		100
6	Investments	4.000.000	3.922.047		98,00
	Total	107.223.000	93.464.397	10.896.375	87,20



1. Staff expenses

The realization of the payroll reflects the structure and organogram, internal and external movements. This fund allocated for 2017, to cover the expenditures on staff salaries is ALL 72.300.000, while the realization is ALL 68.223.048 or 94,40%, as well as the social and health insurances are planned ALL 12,200,000, while the realization is ALL 9.623.548 or at 78.90%. Both items together, staff salaries and social and health insurance (600 + 601) for 2017, are realized at 92.10%. During 2017, the average number of employees was 51.10 employees of 56 employees, which was the limit approved by the above-mentioned law. Failure to realize this item of expenditure is due to the lack of organic structures as a result of vacancies created at the end of 2016 and during 2017, as well as the transfer of our institution's staff to other tasks.

2. Expenses for Goods and Other Services

The Fund allocated for the period January - December 2017 for expenses of goods and services (**item 602**) was ALL 16.500.000 as amended by letter prot. no. 6579/1, dated on 12.05.2017, "Fond transfer for 2017" of 16.300.000 ALL, while the realization is ALL 12.161.337 or 74.60% of the changed budget.

For 2017, operating expenses are used for stationary purchase payments, cleaning materials, supplies of other office materials, newspaper and publishing announcements, expenses for electricity, water, Albtelecom, Vodafone, postal service, vehicle insurance, fuel purchase costs, vehicle maintenance costs, diets within the country and abroad, construction maintenance costs, maintenance costs of equipment and technical devices, costs of hosting foreigners, paid tax expenses.

Fund for current transfers abroad (item 605) for 2017 was ALL 1.500.000, as amended by letter prot. no. 6579/1, dated on 12.05.2017, "Transfer funds for 2017" of ALL 1.700.000, while the realization is ALL 1.673.605 or 98.40% of the changed budget.

For 2017, these funds have been used for the repayment of timely membership fees, where the Ombudsman's Institution is a member of international organizations such as the Association of Ombudsmen and Mediators of the Francophonie (AOMF), the European Ombudsman Institute (EOI), the Association of the European Ombudsman Institute (AOM), the International Ombudsman Institute (IOI), the Global Alliance of National Human Rights Institutions (GANHRI), the European Network of National Human Rights Institutions (ENNHRI) and the European Network of Ombudsmen for Children (ENOC).

The fund for family and individual budget transfers (**item 606**) for the period January - December 2017, is ALL 723,600, while the realization is ALL 723,600 or 100% of the budget.

3.- Investment Expenses

The investment fund allocated from the state budget for 2017 is ALL 4.000.000, while the realization is ALL 3.922.047 or 98% of the revised budget. To improve the conditions of the Ombudsman's institution, there were some investments made as follows (see table below).

in thousands ALL

Project	Project code	Plan	Fact	%
1. Purchase of devices	M660001	1.000	970	97
2. Purchase of vehicles	M660003	3.000	2.952	98
TOTAL		4.000	3.922	98

4. Approval of the Institution's Budget for 2018

Starting from 2013, the Ombudsman's institution is funded by the Danish Project, which has covered a whole range of activities carried out in the function of respecting and protecting human rights. More specifically, within this project, the following has been spent over the years:

YEARS	Institution's Budget (602)		Danish Project	%
	Plan	Realization	Realization	
2013	14.450.000	13.845.607	5.546.110	40,06
2014	15.000.000	12.254.477	8.683.302	70,86
2015	17.000.000	15.243.643	22.219.468	145,76
2016	15.500.000	12.283.991	21.473.401	174,81
2017	16.500.000	12.161.377	8.986.747	73,90

During the above-mentioned years, the funds received from the state budget for the Ombudsman's Institution, have followed the same trend while remaining in the same budget lines as well as maintaining those funding levels set by the Medium Term Budget Program (MTBP), while it was not necessary to present the requirements or needs to change the level of funding of this budget. This applied as long as the main activities related to the protection and promotion of human rights were covered by the Danish project.

Considering the completion of the Danish project (September 2017), within the framework of the preparation of the 2018 Draft Budget, it was initially requested to the Minister of Finance and the Committee on Laws, Public Administration and Human Rights in the Albanian Parliament, a minimal additional fund in the **Operating Expenses (item 602), at the amount of 5 million ALL.**

This request related to covering the activities related to: pursuing and monitoring the acceptance and implementation of the Ombudsman's recommendations by the public administration; producing / publishing special reports, promotional materials, institution's magazine, banners etc; organization of conferences, auditoriums, various trainings, studies in specific fields; inspections and organization of open days.

During discussions in the Law Commission, the request for support of this proposal (for an additional 5 million) was agreed and accepted, while in the report prepared by this Committee for the Economy Commission, it was suggested **only the approval of an additional 2 million ALL**. The Economic Commission did not take into consideration the respective proposal at all, **by not approving any additional funds** for the Ombudsman's institution for 2018.

Compared to the 2017 budget (where for most institutions the Danish project's financial support was still ongoing), the budget of 2018 in Operational Expenses (602), results in an amount of **1 million ALL less**, which affects the normal activity of the institution in the framework of the achievement of the institutional objectives.

7.3. Strengthening of capacities

Strengthening of staff capacities continues to be one of the priorities of the Ombudsman's Institution during 2017. A great contribution in this regard has been the support provided by various donors, where it is first worth mentioning the support provided by the Danish project for strengthening the capacities of the Ombudsman.

This project provided two study trips for two groups of employees. The first study visit was held in Denmark on 10-13 of September 2017. During this visit, the Ombudsman's staff held meetings at the Danish Ombudsman's Office, at the Danish Institute for Human Rights Protection and at the Danish Foreign Ministry.

During this visit, the members of the delegation closely looked at how these institutions functioned and through various presentations were acquainted with the problems encountered and how they were solved.

The second visit was held in Barcelona on September 18-21st, and was dedicated to the institution's supporting staff in order to gain management experience at the Ombudsman of Catalonia. The focus of the visit was on the problems of financial management and human resource management, as well as other issues of institution administration.

Likewise, the EU-funded project, implemented by the Council of Europe for strengthening the effectiveness of human rights' protection and anti-discrimination, provided a study visit to Strasbourg near the Council of Europe and the Human Rights Court.

Participants were closely acquainted with the work of certain CoE structures, such as the protection of minorities, LGBTI people, anti-discrimination, etc. At the premises of the Human Rights Court, participants were acquainted with the issues dealt with by the Court and the manner of its functioning.

Another opportunity for staff training was provided by ENNHRI's Annual Academy, which in 2017 took place in Poznan, Poland from May 29th to June 2nd. The theme of 2017 had two axes: a. Promoting human rights in difficult environments and b. Human Rights and Sustainable Development Objectives (SDG). Both themes were of particular importance regarding the promotional work of the human rights' institution and the deployment of SDGs to the core of the work of the institutions and administration to improve the living standards of the population, particularly vulnerable classes.

Within the framework of the EU / Council of Europe's Joint Program on enhancing the effectiveness of the Albanian System for the Protection of Human Rights and Anti-Discrimination, during November 2011, local and international experts facilitated the implementation of two rounds of training for the staff of the Ombudsman's institution and the staff of the Commissioner for Protection from Discrimination in relation to *amicus curiae*.

During the period October 2017 - January 2017, the Council of Europe, implementing the European Program for Human Rights Education for Legal Professionals (HELP), conducted two online training sessions for a part of the staff of the Ombudsman's Institution and representatives of regional offices with the theme: "Business and Human Rights" and "European Convention on Human Rights and Asylum Seekers".

Their aim was to train the staff of the Ombudsman's Institution: 1. regarding the field of human rights in the private sector, the implementation and respect of human rights by businesses, companies or corporations, as well as the state's responsibility in cases when the private sector does not respect the rights of employees or in cases where the service provided by it, harms the community or the surrounding environment; 2. regarding national and international standards in the area of protection of asylum seekers, administrative procedures and the right of asylum seekers to complain according to the Albanian legislation.

Chapter 8

Figures and facts about complaints and their treatment

8.1. Number of complaints, requests and announcements reviewed

In the Annual Report of the Ombudsman's Institution, a special place is dedicated to the coverage of statistics for the presentation of the number of complaints, requests and announcements reviewed by our Institution for the whole 2017.

Below detailed statistics will be available for 2017, which more clearly reflect the scope of the complaints, their number, and the manner of treatment by the Ombudsman's Institution for 2017. The data presented belong to the period of January 1st - December 31st, 2017. In total, 4546 complaints, requests and announcements (*including those of citizens' reception*) were addressed by the Ombudsman's Institution.

Appeals, requests, announcements during 2017 that were part of the Ombudsman's institution's object are 1752 in total. From the Citizens' Reception Office, 2408 complaints were answered promptly, while 386 complaints were answered in the form of written consultations.

During the review of these complaints made by the Ombudsman's Institution, 1263 complaints were concluded as follows:

- 101 complaints out of jurisdiction
- 163 complaints out of competence
- 412 ungrounded complaints
- 17 complaints with refused recommendations
- 48 complaints with accepted recommendations
- 490 complaints accepted without recommendation (*resolved in favor of citizens*)
- 32 waivering complaints

Graphic presentation No.1 – Handling of complaints



The chart below shows the method of distributing complaints, claims and announcements by sections in the Ombudsman’s Institution, namely:

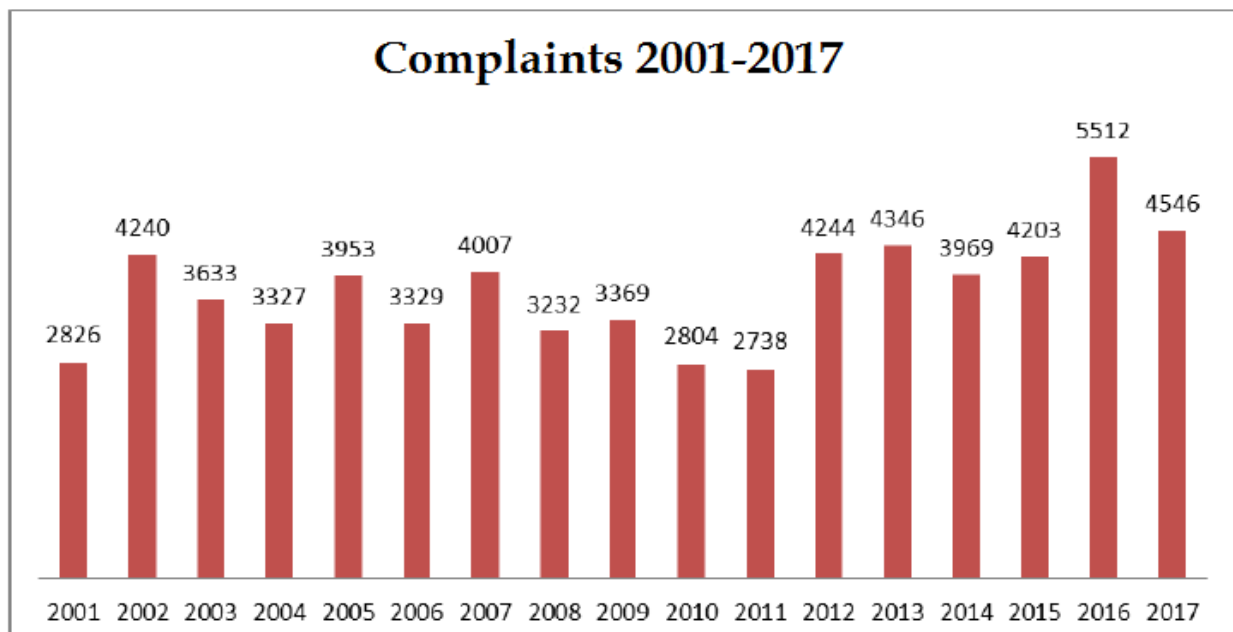
Administration Section	604 complaints
Children Section	64 complaints
Special Section	574 complaints
General Section	412 complaints
Torture Prevention Unit	98 complaints

Graphic presentation No. 2- Complaints’ allocation by sections

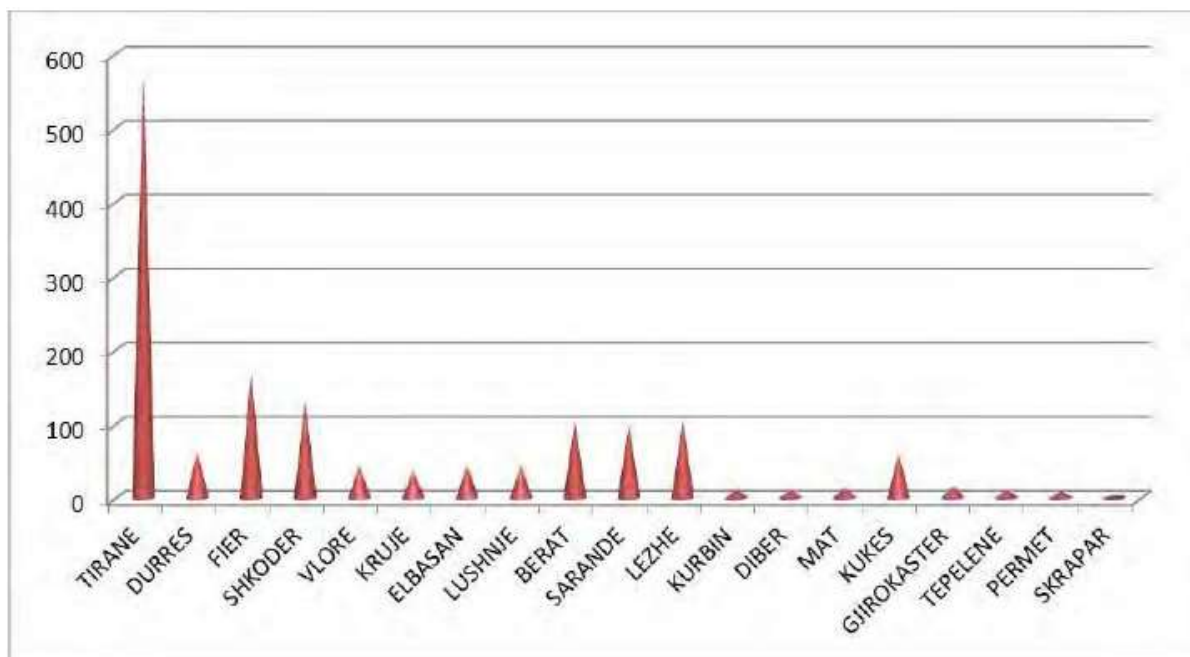


The following tables graphically provide information about complaints that have been dealt with over the years by the Ombudsman’s Institution.

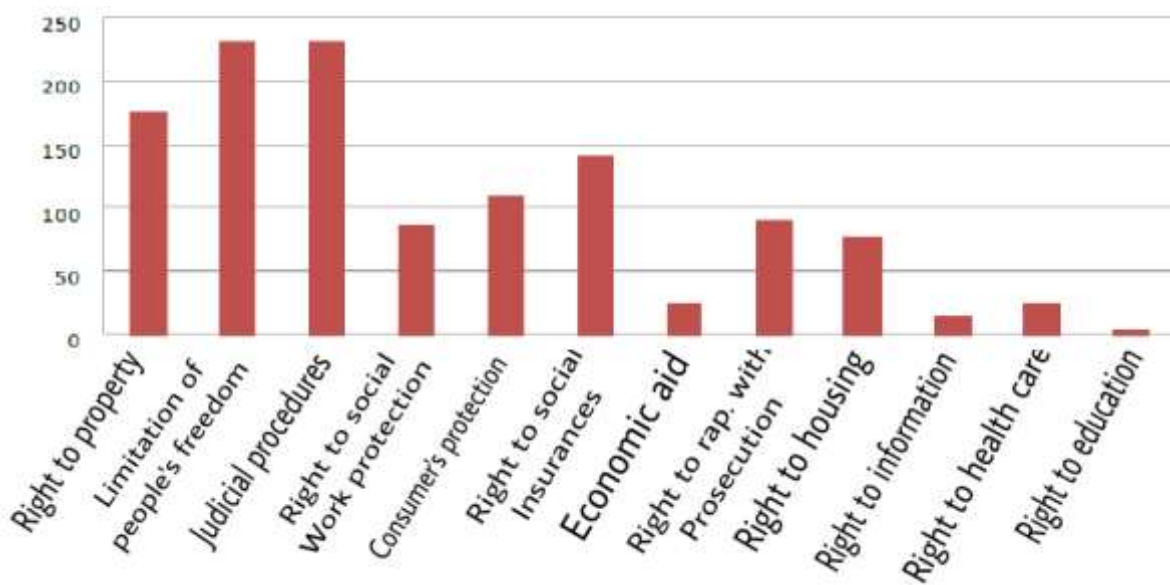
Graphic presentation No.3– Complaints addressed to the Ombudsman’s Institution over the years



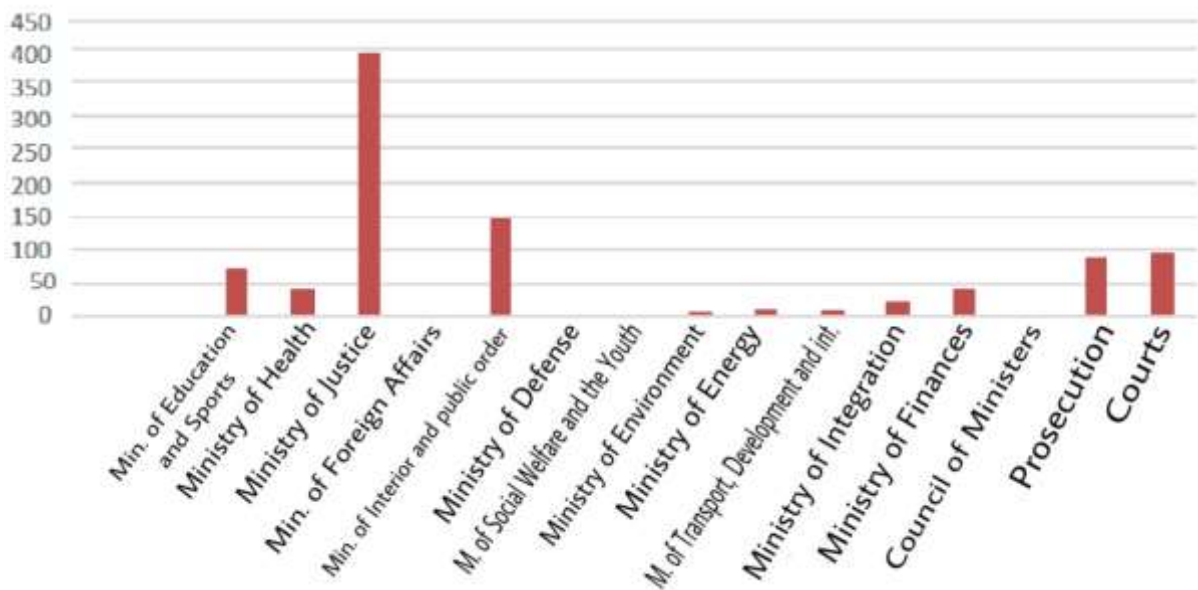
Graphic presentation No. 5 – Allocation of complaints during 2017 by cities



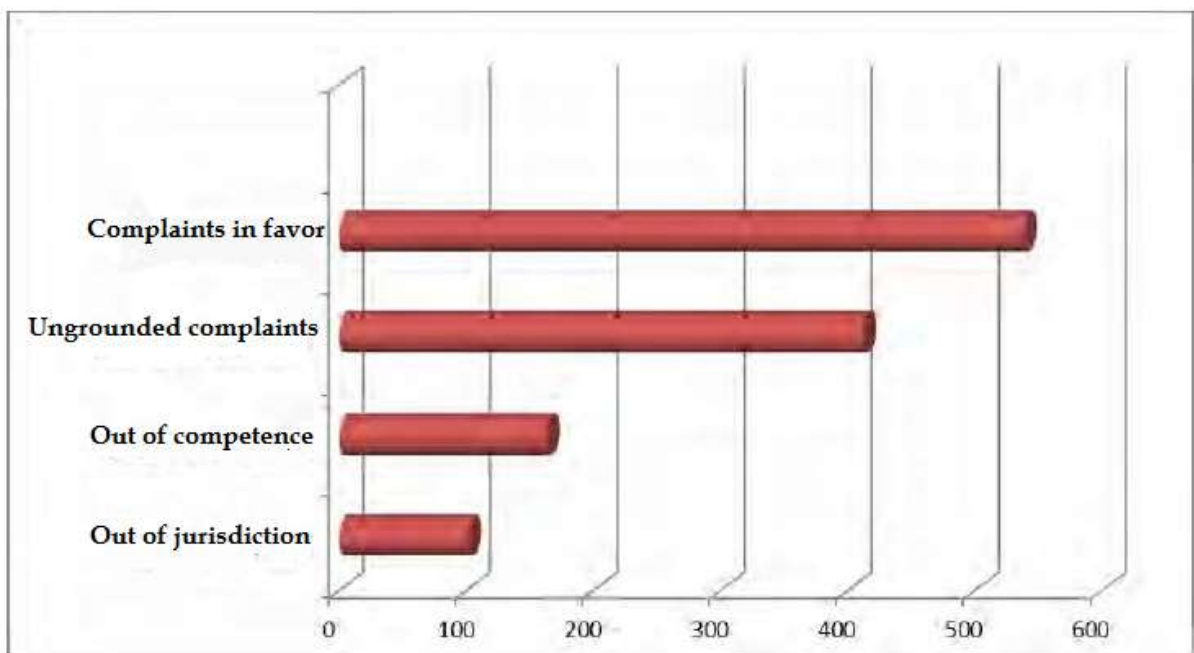
Graphic presentation No.6 - Complaints registered during 2017 according to the violated citizens' right.



Graphic presentation No. 7 – Allocation of complaints addressed to the Ombudsman’s Institution towards State Institutions and their subordinate institutions.



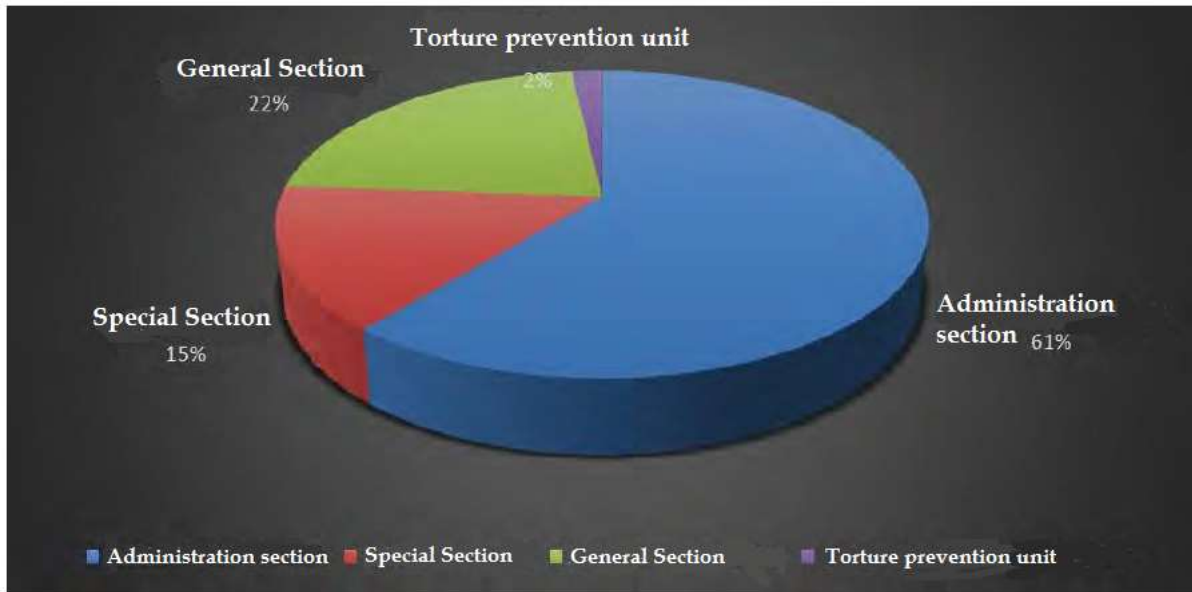
Graphic presentation No. 8 – Division of complaints according to the treatment method and their solution in 2017



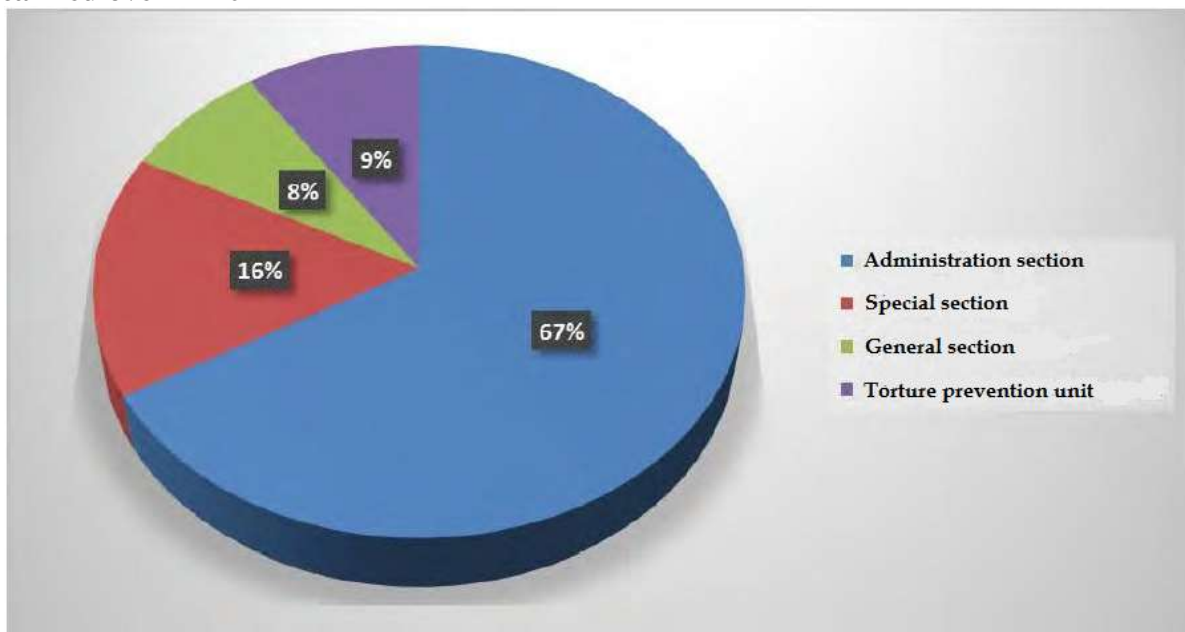
8.2. Cases carried over in years

During 2017, complaints from previous years were carried over which are concluded in 2017. In 2017, 947 complaints are concluded, which are of previous years. The Children Section has no complaints from other years. Below we have presented how these complaints have been resolved according to Sections:

Graphic presentation No. 9 – Solving complaints carried over from other years according to sections and their solution in 2017.



Graphic Overview No. 10 – Recommendations according to sections from complaints carried over in 2017



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