



Republika e Kosovës • Republika Kosovo • Republic of Kosovo  
Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

---

Ex officio

Case No. 355/2016

## RECOMMENDATION REPORT OF THE OMBUDSPERSON OF THE REPUBLIC OF KOSOVO

*Related to the*

*Civil rights of Albanians from Presheva, Medvegja and Bujanoc, displaced in the Republic of  
Kosovo*

Addressed:

**To: Mr. Flamur Sefaj, Minister of the Ministry of Internal Affairs**

**A copy for: Mr. Ramush Haradinaj, Prime Minister**

Prishtinë, on 16 March 2018

## **Purpose of the Report**

1. This Report aims to draw attention of responsible state authorities of Republic of Kosovo regarding the civil rights for the status and lawful residence as well as supply with personal documents of Albanians from Presheva, Medvegja and Bujanoc, displaced in Kosovo.

## **Legal bases of the Ombudsperson's action**

2. According to Article 135, paragraph 3 of the Constitution, "The Ombudsperson is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed".

Also, Law No. 05/L-019 on Ombudsperson, Article 18, para. 1 stipulates that the Ombudsperson, among others, has the following responsibilities:

- *"to investigate alleged violations of human rights and acts of discrimination, and be committed to eliminate them"* (point 1);
- *"to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases;"* (point 2);
- *"to inform about human rights and to make efforts to combat all forms of discrimination through increasing of awareness, especially through information and education and through the media;"* (point 4);
- *"to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination;"* (point 5);
- *"to publish notifications, opinions, recommendations, proposals and his/her own reports;"* (point 6);
- *"to prepare annual, periodical and other reports on the situation of human rights and freedoms, equality and discrimination and conduct research on the issue of human rights and fundamental freedoms, equality and discrimination in the Republic of Kosovo"* (point 8);

Through delivering this Report to the responsible authorities the Ombudsperson aims to accomplish the following legal and constitutional responsibilities.

## **Description of the case**

3. On 7 June 2016, the Ombudsperson initiated *ex-officio* investigation No. 355/2016, based on the information provided by Citizens movement "Vatra", supported by additional information of daily newspapers' articles: Koha Ditore, dated 10 January 2017, with the theme *"Those displaced from Presheva Valley, awaiting to be officially registered"*, Newspaper Zëri, dated 28 January 2017 *"Serbia keeps as "hostages" those who have graduated in Kosovo"* and the same on 19 January 2017, with the title *"Serbia doesn't admit them, Kosovo denies the citizenship to them"*.

4. Since 2001, a significant number of Albanians from Presheva, Medvegja and Bujanoc, due to various reasons, have been displaced in the territory of the Republic of Kosovo, residing mainly in the cities of Gjilan, Fushë Kosovë and Pristina, while a small number of them resided in other cities in Kosovo.
5. In 2011 the Government of Republic of Serbia adopted the Law on Temporary and Permanent Residence in Serbia, published in the Official Gazette of RS, No. 87/2011, which has entered into force on 29.11.2011. This Law regulates the registration and deregistration of permanent residence and the registration and deregistration of temporary residence abroad, the jurisdiction and way of properly keeping the records.<sup>1</sup> Within the meaning of this law, the right to permanent residence in the Republic of Serbia enjoys all citizens of the Republic of Serbia who live permanently in the territory of the Republic of Serbia.<sup>2</sup> Entrance into force of this law has negatively affected and created difficulties for Albanian population from Serbia regarding their right on recognition of their identity before the law, namely to be provided with personal documents such as identity cards and passports issued by the Ministry of Internal Affairs of Serbia. Consequently, this Law conditions the citizens with issuance of personal documents, by requesting proves and conducting inspections according to the Article 18, whether they continue to live in the registered residing place or addresses.
6. This issue has resumed the most complex problems in the Republic of Serbia. The 2015<sup>3</sup> European Commission Report for Serbia refers to the issue of inaccurate figures of the population, which has resulted from the boycott of the Albanian census in 2011. Therefore, it is about a large number of citizens of the municipalities of Presheva, Medvegja and Bujanoc, towards whom the sanction of removing from the register was undertaken or are in the course of this process, through a widely spread actions undertaken by the Serbian police, who claim that this community mainly doesn't live in the registered addresses, even though it is about the community who owns citizenship of Republic of Serbia, have their properties in these municipalities and pay taxes to the state for their properties. People who have been removed from the register for the reasons mentioned above, the right to be equipped with personal documents is denied, thus accordingly they are deprived of the right in accomplishing their fundamental rights.
7. According to the statements of citizens who have been affected by this Law, actually of Albanians from Presheva, Medvegja and Bujanoc, the legal provision of Article 18 of the Law on Permanent and Temporary Residence in Serbia, which regulates the procedures for permanent and temporary registration and deregistration of residence, is being implemented only towards Albanian population who currently lives in Kosovo. This action undertaken by the Republic of Serbia is considered as purely discriminatory by Albanians from Presheva, Medvegja and Bujanoc.

---

<sup>1</sup> Law on Temporary and Permanent Residence in Serbia, (original title: *O Prebivalištu i Boravištu Građana*), No. 87/2011, Article 1, [http://www.paragraf.rs/propisi/zakon\\_o\\_prebivalistu\\_i\\_boravistu\\_gradjana.html](http://www.paragraf.rs/propisi/zakon_o_prebivalistu_i_boravistu_gradjana.html)

<sup>2</sup> Ibid, Article 2.

<sup>3</sup> European Commission, "Commission Staff Working Document, Serbia 2015 Report", Page 58, found at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2015/20151110\\_report\\_serbia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_serbia.pdf).

8. Great number of citizens of the given municipalities, who have been displaced in Kosovo due to security reasons or social and economic aspects, because of the lack of personal documents, for a long time face the issue of being without the status and legal residence, without effective citizenship and personal identification documents, within the territory of Republic of Kosovo.
9. Based on information available to the Ombudsperson, there are still no official statistics or any form of census about the exact number of Albanians displaced from Serbia to Kosovo, but if we refer to informal information it has been claimed that there are approximately 3500 persons without any document of the Republic of Kosovo.
10. According to the information from the Citizens movement "Vatra" addressed to the Ombudsperson, Albanian displaced population from Serbia has not been able to obtain identification documents of the Republic of Kosovo for more than 17 years and has failed to acquire the right of citizenship due to the lack of relevant documentation of the country where they came from.
11. On 7 June 2016, representatives of the Ombudsperson Institution visited the Office of the Citizenship Unit within the Ministry of Internal Affairs of Kosovo in the course of which they discussed the problems of acquiring citizenship with naturalization for those coming from Presheva, Medvegja and Bujanoc. The head of this Unit informed the OI representative about the situation created about the legal status and their resending in our country.

#### **Legal bases and Ombudsperson's findings**

12. Ombudsperson's assessments and findings on this issue are based on the rights guaranteed by the Constitution of the Republic of Kosovo (the Constitution), the Laws, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (ECHR) and the practice of the European Court of Human Rights (ECtHR).
13. According to the Constitution, Article 22, human rights and freedoms are guaranteed by international agreements and instruments, in particular with the ECHR, which, according to this provision, is directly applicable in Kosovo and prevails in the case of conflict over provisions and acts of other public institutions.
14. Article 53 of the Constitution determines that human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.
15. Article 21 of the Constitution guarantees that Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.
16. Acquisition, loss and reacquisition of citizenship of the Republic of Kosovo is regulated with the Law No.04/L-215 on Citizenship of Kosovo. Criteria for application for acquisition of citizenship for foreigners, is determined by this law. Law No. 04/L-219 on foreigners regulates the conditions of entry, movement, residence and employment of

foreigners in the territory of the Republic of Kosovo. Based on this Law, every natural person who is not a citizen of the Republic of Kosovo is considered a foreigner.

17. Article 93 of the Law on Foreigners, apart others explicitly determines as follows: “1. *Foreigners shall be considered to have resided illegally in the territory of the Republic of Kosovo when: 1.1. they are not in possession of a valid visa required for entry and residence in the Republic of Kosovo; 1.3. have no valid residence permit or residence permit has been annulled or revoked; 1.5 they are found working in violation with the conditions laid down under this law and other laws in effect.*”. Based on this Article, legitimately those who are living in Kosovo, in the current case those displaced from Presheva, Medvegja and Bujanoc, due to the lack of civil status, are not residing lawfully in the Republic of Kosovo. This Article, in paragraph 2, also determines that: “A *foreigner who is residing illegally in the territory of the Republic of Kosovo must immediately leave the territory of the Republic of Kosovo, except the foreigner who has applied for international protection and is awaiting a decision on his status*”.
18. The phrase “*Illegal Residence*” in the Kosovo Law on Foreigners, [Article 3 – Definitions, point 1.10], is defined with the meaning: “– *the presence on the territory of the Republic of Kosovo, of a foreigner who does not fulfill, or no longer fulfills the conditions for entry, residence or residence in the Republic of Kosovo*”. Theoretically the practice of European Union, respectively of the Council of Europe now supports the phrase “*Irregular Residence*” instead of “*Illegal Residence*”. The same phrase “*Irregular Residence*” is used in the Law No.108/2013 on Foreigners of the Republic of Albania, defined with this concept: “Irregular residence - is the presence in the territory of the Republic of Albania of a foreigner who does not meet, or no longer meets the conditions for entry, residence or residing in the territory of the Republic of Albania”.
19. Consequently, since some of them do not possess valid personal documents, due to reasons mentioned above, it has become impossible for them to follow the procedures for acquiring the citizenship of the Republic of Kosovo, even though they reside in Kosovo more than 15 years. In principle, this group of people is facing a lack of lawful residing status, statelessness, whether of Serbia or of Kosovo, of both States which legally recognize dual citizenship.
20. The Ombudsperson finds very concerning the way how Albanian population from Presheva, Medvegja and Bujanoc exists and lives due to inability to acquire regular residence in the Republic of Kosovo. The Ombudsperson further estimates that facing with difficulties is inevitable for this community in order to have a normal life and enjoyment of the fundamental rights, guaranteed by the Constitution of the Republic of Kosovo and international human rights standards.
21. On 6 June 2013, the Assembly of Republic of Kosovo, adopted the Resolution No. 04-R-011, related to the rights of Albanians of Presheva, Medvegja and Bujanoc, through which it is requested from the Assembly of Republic of Kosovo to have more attention and comprehensive consideration for improvement of the situation of Albanians in Presheva, Bujanoc dhe Medvegja, who have been displaced in the Republic of Kosovo by guaranteeing

to the full and equal rights.<sup>4</sup> Apart others point 4 of this Resolution explicitly determines establishment of facilities for this community: *“There should be created facilities of movement, education, cultural promotion, provision with relevant documents as well as other facilities, including the suspension of discriminating fee.”*

22. European Court of Human Rights (ECtHR), in the case of Kurić and Others versus Slovenia, found violation of the right for the respect of “private or family life” or of both (Article 8 of the Convention), the right for effective remedy (Article 13) and prohibition of discrimination (Article 14, related with Article 8) as per removal from permanent residents’ register by Slovenian Authorities, which has resulted with loss of legal status of applicants: Mr. Kurić, Mrs. Mezga, Mr. Ristanović, Mr. Berisha, Mr. Ademi dhe Mr. Minić. As a consequence, not only applicants on this case, but also a great number of other people were in the past and continue to be a subject of infringement by this measure. ECtHR found that the breach initially has started with the long-lasting failure of Slovenian authorities to regulate the residing status of the applicants after they have been illegally “erased” from the register of permanent residents and to offer them convenient solution. The Court further states that the applicants, may claim to be the “victims”, according to Article 34 of the Convention, for the stated violations of their rights set forth in the Convention.<sup>5</sup>

23. ECtHR has decided that Article 8 of the ECHR contains procedural guarantees to prevent arbitrary interference on the right to private and family life. This point influences and supports persons, regardless the fact that they have entered alone in the certain state, have established a private and family life. Irregularities in the procedural aspects of the decision-making process under Article 8 may result as a violation of paragraph 2 of this Article.<sup>6</sup>

---

<sup>4</sup> The Assembly of Republic of Kosovo, 6 June 2013, Resolution, No. 04-R-011, On the rights of Albanians of Presheva, Medvegja and Bujanoc 1. *Government of the Republic of Kosovo should condition the relations with Serbia, through the attention and national consideration for the improvement of situation of Albanians in Presheva, Bujanoc and Medvegja regarding their civil, political and ethnic rights; 2. Government of the Republic of Kosovo should have more attention and better treatment for the Albanian citizens of Presheva, Medvegja and Bujanoc who have moved to Kosovo by guaranteeing them full and equal rights; 3. Government of the Republic of Kosovo should open an office in Prishtina and Gjilan for the citizens of Presheva, Bujanoc and Medvegja with the aim of protection and improvement of their situation and of the citizens who have moved from there, according to International norms; 4. There should be created facilities of movement, education, cultural promotion, provision with relevant documents as well as other facilities, including the suspension of discriminating fee; 5. Government of the Republic of Kosovo should request from International and relevant institutions to release the political prisoners including the so-called group of Gjilan that are victims of an instigated political process; 6. Government of Kosovo should request a full reciprocity with the rights of minority Serbs in the north of Kosovo; 7. Assembly of the Republic of Kosovo shall support the initiative for the establishment of a Public University in Albanian language and call the political and institutional representatives to take a legislative initiative; 8. Assembly of the Republic of Kosovo shall support the establishment of development fund for Presheva, Bujanoc and Medvegja with the initiative of the Government of Kosovo and in coordination with International and European institutions; 9. Assembly of the Republic of Kosovo calls Council of Europe and other International organizations to engage in the imposition towards the Republic of Serbia to respect all the rights arising from the International Conventions; 10. Government of Republic of Kosovo should establish the inter-ministerial group for implementation that includes even the possible visit of the Parliamentary Committee on European Integration and Ministry for European Integration.*

<sup>5</sup> ECtHR, Decision, Kurić and the Others versus Slovenia, (case no. 26828/06), Strasbourg, 12.03.2014.

<sup>6</sup> European Court of Human Rights, the case Kuric versus Slovenia, dated 12 March 2014, no. application 26828/06.

24. Positive obligations may arise from the effective respect of family life, and this particularly in the case of long-term immigrants and the difference in treatment between foreigners who have a certain nationality from those who do not have that, constitutes discrimination contrary to Article 14 of the ECHR in relation to Article 8.<sup>7</sup>
25. Affirmative measures and positive measures for action (*or the term used "positive discrimination"*) are defined in relation to a particular basis for discrimination and with a concrete goal of promoting equality. In cases of direct discrimination, the reason for its occurrence is due to the fact that the same rule is applied to all without taking in consideration relevant changes. In order to amend and prevent this kind of situation, governments should ensure that steps are taken to amend their rules and practices for considering such changes, which means that current measures and policies should be adapted. In United Nations context, these are labeled as "special measures" while the context of EU law refers to it as "specific measures" or "positive actions". By undertaking special measures, the governments are able to guarantee "real equality", i.e. equal enjoyment of the opportunities for benefits available in the society, and not simply "formal equality". In case special measures are not taken into account, there is a risk in progress that current rules and practices will constitute indirect discrimination.<sup>8</sup> Measures taken for reasonable adjustment cannot be considered as unreasonable and unequal treatment. It is the opposite, since the absence of such measures can be considered as discrimination.
26. ECtHR has stated that "the right not to be discriminated against the enjoyment of rights guaranteed by ECHR is breached also when States fail to treat persons in different manner, whose situations are significantly different".<sup>9</sup>
27. Universal Declaration on Human Rights in Article 6 explicitly stipulates that, everyone has the right to recognition everywhere as a person before the law. While Articles 15.1 and 15.2 of this Declaration explicitly stipulates that everyone has the right to a nationality, and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.
28. A functional system of civil registration is an important instrument in securing human rights of national and international citizens. Civil registration contributes in many ways to normal society functioning. If the state deems important to improve family organizing in order to guarantee social order; to guarantee human rights; to promote public health and to make available better information on the basis of planning and development, improvement of civil registration should consider very important and hastily issue.
29. Based on the human rights and freedoms guaranteed by Chapter II of the Constitution of Republic of Kosovo, and the rights derived from the International Instruments<sup>10</sup> directly

---

<sup>7</sup> European Court of Human Rights, the case *Benhebbba versus France*, dated 10 July 2003, no. application 53441/99.

<sup>8</sup> Council of Europe, *Handbook on European Non-discrimination Law*, page 28, June 2010.

<sup>9</sup> ECtHR, *Thlimenos versus Greece* [GC] (No. 34369/97), 6 April 2000, paragraph 44 (No. 34369/97). Ibid. ECtHR, *Priti versus United Kingdom* (No. 2346/02), 29 April 2002, paragraph 88.

<sup>10</sup> Constitution of Republic of Kosovo, Article 22, Direct Applicability of International Agreements and Instruments, Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions: (1) Universal Declaration of Human Rights; (2) European Convention for the

applicable in the Republic of Kosovo, everyone has the right, apart others: on personal identity, freedom of movement, the right to education, protection of property, the right to marriage and family, the right to work and exercise of profession, the rights of the child, health and social protection, civil and political rights, judicial protection of rights, etc. the exercise of which directly depends on civil registration and the residence status regulated by law. The lack of fulfillment of the state obligation for regulation of the status of lawful residence for the citizens of Presheva, Medvegja and Bujanoc, displaced in Kosovo, directly prevent them from enjoyment of the fundamental human rights listed above.

30. Based on universal consensus, Agenda 2030 of the Sustainable Development Goals<sup>11</sup> within the Goal 16,<sup>12</sup> goal 9 explicitly stipulates: “By 2030, provide legal identity for all, including birth registration”. According to this consensus, vital statistics are essential component for monitoring implementation of the Agenda 2013 and assessing progress in implementation of the objectives for sustainable development. According to the United Nations recommendations given in this global initiative, the system of regular, reliable and accurate statistics depends on full civil registration and reporting on the occurrence of all vital events. The role of civil registration goes beyond the source of vital statistics, since it is essential to ensure legal identity and protection of human rights.
31. The spirit of implementation of human rights standards is that these are not enjoyed by only a limited part of the citizens of one state. They are valid for any person, regardless of ethnicity or nationality, such as asylum seekers, refugees, migrant workers and other persons who are in the territory of another state or are under its jurisdiction.

Based on these findings and pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo, Article 16, paragraph 4 and Article 18 paragraph 1, sub-paragraph 1.2, 1.4 and 1.7 of the Law on Ombudsperson No. 05/L-019, the Ombudsperson recommends to the Government of Republic of Kosovo, actually to the Ministry of Internal Affairs to:

- 1. To conduct outlining of exact number of citizens from Presheva, Medvegja and Bujanoc, who are residing in the territory of the Republic of Kosovo without lawfully defined status.**
- 2. To undertake necessary measures for adjustment of legal framework that would enable enjoyment of fundamental and basic human rights to these citizens.**

Pursuant to Article 132, paragraph 3 of the Constitution of Republic of Kosovo (“Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is

---

Protection of Human Rights and Fundamental Freedoms and its Protocols; (3) International Covenant on Civil and Political Rights and its Protocols; (4) Council of Europe Framework Convention for the Protection of National Minorities; (5) Convention on the Elimination of All Forms of Racial Discrimination; (6) Convention on the Elimination of All Forms of Discrimination Against Women; (7) Convention on the Rights of the Child; (8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

<sup>11</sup> In September 2015, World leaders adopted the 2030 Sustainable Development Agenda. This agenda includes 17 Sustainable Development Objectives (SDGs) and 169 targets that need to be achieved by 2030. This is a universal call for action to end poverty, to protect the planet and to ensure that all people enjoy peace and prosperity. Even though Kosovo is not a member of the UN General Assembly, it has joined with global efforts to end all forms of poverty, to fight inequalities and address environmental issues with regional partners. List of Goals and Targets for Sustainable Development by Agenda 2030: <https://sustainabledevelopment.un.org/content/documents/11803Official-List-of-Proposed-SDG-Indicators.pdf>

<sup>12</sup> Goal 16 stipulates “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”.

*bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law”*) and Article 28 of the Law on Ombudsperson No.05/L-019, “Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions, including disciplinary actions must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question”), You are kindly asked to inform us on steps to be undertaken in the future by You regarding this issue.

Warmly submitted,

Hilmi Jashari

Ombudsperson