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REPORT WITH RECOMMENDATION

Ex officio

Case No. 698/2020

on the access to health care services for people affected by the Human Immunodeficiency Virus (HIV) and Tuberculosis (TB), during the COVID-19 pandemic in Kosovo

To: Mr. Armend Zemaj, Acting Minister of the Ministry of Health

Mr. Valbon Krasniqi, Acting General Director of the Hospital and University Clinical Service of Kosovo

Pristina, on 27 January 2021

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Background and Purpose of the Report

1. The COVID-19 pandemic continues to challenge the normal flow of life in the entire world. The measures taken to control COVID-19 and redirection of health resources to combat this pandemic have made it difficult to work on preventing, treating and providing care to vulnerable groups, such as people affected by the Human Immunodeficiency Virus (HIV) and Tuberculosis (TB). This has threatened the progress achieved towards the global goals for the eradication of these diseases and has had a negative impact on their rights.
2. Poor investment in the health system has reduced the ability to respond to this pandemic and, at the same time, has affected the non-provision of other health services. COVID-19 is showing that the application of universal health coverage (UHC)¹ must be an imperative of the future.² This will be achieved only when countries have established sustainable health services that are able to respond to their citizens' basic needs equally, fairly and without discrimination, leaving no one behind. To this end, national human rights institutions, such the Ombudsperson Institution (OI) in Kosovo, have a crucial role in monitoring the actions of the state, in achieving universal access for these groups.

This report has two key purposes:

- (1) To assess the provision of health care services, from a human rights-based approach and without discrimination, to people with HIV/AIDS and TB in Kosovo during the COVID-19 pandemic, in relation to the universal health coverage, as an objective of the 2030 Agenda for Sustainable Development.³
- (2) To draw attention of the importance of treatment for people with HIV/AIDS and TB, considering the harmful consequences of not treating them continuously, and provide recommendations on the actions that need to be taken by the responsible authorities to improve the current situation, focusing on fully respecting human rights.

Competencies of the Ombudsperson

3. The Constitution of the Republic of Kosovo (hereinafter: Constitution), in Article 132, paragraph 1, defines: "*The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public*

¹ According to the World Health Organization, Universal Health Coverage (UHC) means that all people and communities can use promotional, preventive, curative, rehabilitative, and palliative health services they need, of adequate quality to be effective, also ensuring that the use of these services does not expose the user to financial difficulties.

² The United Nations Secretary-General, Policy Brief on Human Rights and COVID-19, available at: https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf, page 4

³ 2030 Agenda includes 17 Sustainable Development Goals (SDG). They are an urgent call for action to all developed countries and those in development for a global partnership in implementing them. The primary aim of the goals is to end poverty and other deprivations, by developing and undertaking strategic actions that improve health, education, reduce inequality and encourage economic growth. The Assembly of the Republic of Kosovo unanimously adopted the SDG Resolution on 25 January 2018.

authorities.” Whereas in paragraph 3, it defines that: *“Every body, institution or other authority exercising legitimate power in the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information.”* On the other hand, according to Law No. 05/L-019 on the Ombudsperson, the Ombudsperson has, among others, the following competencies and responsibilities:

- *“Draw attention to cases when the authorities violate human rights and to make recommendation to end such cases and, when necessary, to express their opinion on attitudes and reactions of the relevant institutions relating to such cases.”* (Article 18, paragraph 1, subparagraph 1.2).
- *“Make recommendations to the Government and other competent authorities of the Republic of Kosovo on matters related to the promotion and protection of human rights and freedoms, equality and non-discrimination.”* (Article 18, paragraph 1, subparagraph 5).
- *“Publish notices, opinions, recommendations, proposals and reports thereof.”* (Article 18, paragraph 1, subparagraph 6).
- *“Recommend promulgation of new laws in the Assembly, amendments of laws in force, and promulgation or amendment of sub-legal and administrative acts by the institutions of the Republic of Kosovo.”* (Article 18, paragraph 1, subparagraph 7).
- *“Develop 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.”* (paragraph 18, par. 1, subparagraph 8).
- *“Recommend the Assembly to align legislation with international standards for human rights and freedoms and their effective implementation.”* (Article 18, paragraph 1, subparagraph 9).

Upon submitting this Report to the competent institutions and publishing it, the Ombudsperson seeks to fulfil these constitutional and legal responsibilities.

Description of the Case

4. This report was initiated ex-officio by the Ombudsperson given the role of the Ombudsperson Institution in monitoring the fulfillment of state obligations in terms of observing granted rights, in particular the circumstances created as a consequence of the COVID-19 pandemic, and focusing on the most vulnerable persons or groups. The investigations conducted for this Report also took into account the discussions⁴ developed in the meeting of the Advocacy Group⁵ of the HIV Prevention Program, consultation

⁴ Meeting held on 27 October 2020, also attended by the OI representative.

⁵ HIV Program in Kosovo is focused on preventing HIV, and, among others, aims to strengthen and develop adequate policies and mutual advocacy between stakeholders, civil society and relevant structures. This program, under the framework of the HIV and TB Coordinating Mechanism, has established the technical group known as the Programme Advocacy Group (PAG), consisting of representatives of people living with HIV and key populations (men who have sex with men, injecting drug users, and sex workers), public, governmental and nongovernmental institutions, and international institutions, which will work on legal, regulatory or cultural

meetings with organizations working on the rights of people living with HIV and TB in Kosovo, and the importance of their access to health services even in times of pandemic, the Ombudsperson report on the treatment of people with HIV and AIDS in Kosovo⁶, as well as the findings from the ex-officio investigations related to this Report.

Actions of the Ombudsperson Institution (OI)

5. On 4 December 2020, Ombudsperson representatives held a working meeting with the Coordinator of the National TB Control Program at the Ministry of Health (MoH), with whom they talked about providing health services to people with TB during the COVID-19 pandemic. She informed them that in the health institutions of Kosovo, services are provided to all individuals affected by TB, specifying that Kosovo has a tradition in treating this disease. According to her, the health service system that deals with TB is well-organized at three levels of health care (primary, secondary and tertiary), from the first patient-doctor contact to the final treatment of the disease. In this regard, she highlighted that TB is treated in the Pulmonology Clinic, in general hospitals that have pulmonary departments, as well as in anti-tuberculosis dispensaries (ATD), that operate under MFMCs, namely primary health care facilities. In terms of TB treatment, according to the coordinator, in recent years, medication has been reduced to six-months treatment (two months in clinical/hospital treatment, and four months in outpatient treatment). The same stated that there is no lack of health services for this disease and relevant laboratories with the required diagnostic equipment, that are provided in hospitals/clinics. She claimed that TB treatment and diagnosis is provided for free to all patients, medications are free, and they are ensured for 2021. With regards to human resources, she informed that the number of pulmonologists in Kosovo is around 61, adding that the specialization of 28 other specialty doctors has been approved. In terms of statistics, she stated that three years ago, the electronic Tuberculosis patient registration system, called ETS (Electronic Tuberculosis System) was functionalized, therefore patient statistics can be extracted (including data on ethnicity) from 2019 onwards. With regards to people deprived of freedom who are affected by TB, the Coordinator of the National TB Control Program at the Ministry of Health highlighted that the Correctional Center has two rooms with all the required equipment for research/treatment of TB cases, but currently there are no active TB cases in prisons. In terms of TB progress, she stated that the charts/graphs available indicate that the TB disease has marked a decrease over the years, by around 3.4%, while in 2019 it decreased by nearly 5.2% (611 cases affected by TB), whereas the number of new cases for 2020 will be announced in the first 2021 trimester, so, according to her, there is a declining trend in the number of people infected with TB, not only in Kosovo but throughout Europe. In this meeting, she also confirmed that, as a result of the pandemic, new cases and their contacts in the field were not tracked, therefore there is a

barriers, to develop efficient interventions. PAG started its work in mid-2017 and, so far, a series of meetings and workshops have been held with its representatives, to enhance the group's agenda, focusing on improving services for key populations. legal gaps, reducing stigma and discrimination related to HIV and TB.

⁶ Ex-officio Report No. 305/2019 on the rights of people with HIV and AIDS in Kosovo, available at: <https://www.oik-rks.org/en/2019/05/15/report-with-recommendation-ex-officio-case-no-3052019-regarding-the-treatment-of-persons-with-hiv-and-aids-in-kosovo/>

decline of new cases in 2020. Regarding the situation with TB in Roma, Ashkali and Egyptian communities, she suggested that they may be vulnerable groups as a result of their lifestyle (for example: Plemetin village in the municipality of Obiliq, which has several TB cases), but so far this information has not been processed by the MoH. In our request for information about the treatment of TB patients in pulmonology clinics/departments during the pandemic, where COVID-19 patients were and are being treated, whether they are using the same toilets, she admitted that this information is solid, and she mentioned that coexistence of these two infectious agents⁷ can have fatal consequences for a TB patient. In the end, she explained that, based on the agreement between the health authorities of the Republic of Kosovo and the Republic of Albania two years ago, 72 patients from Albania were treated in the Hospital of Prizren but, according to her, this issue is over.

6. On 4 December 2020, OIK representatives met with the MoH HIV and AIDS Program Coordinator in Kosovo, with whom they talked about the treatment of and service delivery to people with HIV and AIDS in Kosovo during the pandemic. She informed that, currently, around 36 persons infected with this disease were being treated in health institutions in Kosovo (Infectious Disease Clinic), then she mentioned that in 2020, two new HIV cases were identified. In addition, she stated that in the Voluntary Counseling and Testing Center (VCTC) of the Infectious Disease Clinic (IDC), tests were performed only in January and February 2020, and she specified that MoH had ensured the necessary tests and therapy for this category of people. According to her, there is a sufficient amount of methadone in all hospitals, while there are 220 people in methadone treatment.⁸ In response to OIK representatives who said that there are indications that VCTC at the IC has not been functional since the pandemic started, she said that she does not have such information. She also claimed that there is no information about the distribution of medication to people with HIV and AIDS in Kosovo, since MoH only ensures the medication, while IDC distributes them. Further, she informed that procurement procedures have been developed to ensure medication for 2021, while, regarding the number of active HIV and AIDS patients in prisons, she said that at the time there were no people of this category in prisons.
7. On 11 December 2020, OIK representatives met with the head of the non-governmental organization (NGO) “Kasnecët e Ardhmërisë” (KeA), with whom they talked about the treatment of TB patients during the COVID-19 pandemic in Kosovo. He talked about the organization of institutions dealing with the detection, diagnosis and treatment of people with TB at primary, secondary and tertiary level and, according to him, closing the anti-tuberculosis dispensaries in Malisheva and Skenderaj was not the right decision. In response to the OIK representatives’ question about the TB situation in non-majority communities (Roma, Ashkali and Egyptian), he informed that, in Kosovo, the majority population (Albanians) comprises the main vulnerable group of TB, adding that the proportion in Kosovo is 40 TB patients in 100,000 citizens, while in some neighborhoods

⁷The term infectious agents refers to living organisms or molecules that enter the human body and cause infectious disease..

⁸ Methadone is a substance used in replacement therapy for drug addicts.

of the United Kingdom it is 100 persons in 100,000 citizens. He also informed that in the Pulmology Department in Peja General Hospital (GH) there are no hospitalized TB patients, since COVID-19 patients started being treated/hospitalized in this department. He specified that as a consequence of the situation created by COVID-19, the number of TB infections is expected to triple in the following years in Kosovo. Further, as an expert of the field, he assured that TB prevention is only possible with early detection and treatment, by avoiding the risk of drug-resistant TB and its variations. According to him, BCG vaccine⁹ does not prevent the spread of the disease, but only prevents its severe variations. In addition, he highlighted that pulmonology departments have turned into departments of health care for COVID-19 patients, therefore TB patients were dismissed to continue their treatment at home, but without proper monitoring, treatment or even necessary examinations. Consequently, he considers that the risk from drug-resistant TB is evident. He explained that the statistics clearly indicate that from the beginning of 2020 until 11 December 2020, there were 360 people diagnosed with TB, i.e. 50% less than in 2019. Regarding the equipment and laboratories for TB diagnosis, he pointed out that the laboratories in GHs in Peja, Pristina, and Prizren have GeneXpert machines, while before turning pulmonology departments into departments for COVID-19 infections, there were around 157 patients in hospital treatment for TB.

8. On 16 December 2020, OIK representatives met with the Executive Director of the “Labyrinth” NGO, with whom they talked about the issue of key populations, namely drug users, and health service delivery during the pandemic for the people who frequented this NGO or received services from it. He stated that this organization deals with the prevention of drug and alcohol abuse, treatment of drug and alcohol addiction, as well as mitigating the damages related to drug injection, adding, among others, that during the COVID-19 pandemic, requests for methadone increased and, as a result of movement restrictions, the number of domestic violence cases increased. Further, he explained that there are no people infected with HIV and TB among those treated at this center, but there are increased cases of people with Hepatitis C, which for him was quite concerning and, according to him, requires a quick response by the responsible authorities.
9. On 16 December 2020, OIK representatives met with the Executive Director of the Centre for Social Group Development (CSGD) NGO, with whom they talked about the situation of the LGBT community in Kosovo during the COVID-19 pandemic, to whom they provide services. He informed that during the pandemic this NGO performed 50% less rapid tests for the LGBT community, which implies a risk of increased HIV infections, as a consequence of their non-detection. Regarding case treatment, he explained that during the pandemic there were enough medications for people infected with HIV who are taking therapy, which were distributed by the NGO “Kosovo Association of People Living with HIV/AIDS in Kosovo”.

⁹ Bacillus Calmette–Guérin (BCG) is a vaccine against Tuberculosis.

10. On 16 December 2020, OIK representatives met with the Executive Director of the Kosovo Association of People Living with HIV/AIDS in Kosovo (KAPHA)¹⁰, with whom they talked about providing health services to people with HIV and AIDS during the COVID-19 pandemic in Kosovo. He informed that during the pandemic they provided treatment to 56 persons, while there are 35 people on anti-retroviral therapy (ARV)¹¹ in Kosovo. Further, he stated that there are indications that in 2020 two new HIV cases appeared, but they do not have information about them yet. According to him, the latest estimation of the viral load and CD4 tests were performed in March 2020, although KAPHA had provided the opportunity of collecting blood samples and sending them to the relevant laboratory. He further added that on 23 April 2020, KAPHA signed an agreement with the Infectious Diseases Clinic (IDC) to deliver medications to patients (deliver medication at home, at the border, in quarantine, etc.). According to him, KAPHA has been in continuous contact with its clients throughout the pandemic to obtain information about their physical and psychological health, and he highlighted that they managed to meet their requirements, especially in providing psychological services.
11. On 16 December 2020, OIK representatives met with the Head of the Microbiology Department at the National Public Health Institute of Kosovo (NPHIK), with whom they talked about performing laboratory tests for HIV and AIDS patients in Kosovo. He informed that the latest tests for CD4 and viral load were performed on 12, 13, 15 and 23 March 2020, and highlighted that, regardless of the COVID-19 situation, they had been willing to perform these tests even during the pandemic, but they did not receive a request from the IDC. He further stated that they have the relevant equipment, with adequate reagents as well as other necessary equipment to perform these tests and they are ready to perform them whenever required by the IDC.
12. On 18 December 2020, the OIK representative communicated with the Head of the Patient Rights Association of Kosovo (PRAK) about the eventual complaints that PRAK may have received, in terms of non-provision of health services to people affected with TB and HIV/AIDS during the COVID-19 pandemic in Kosovo. He informed that in 2020 they did not receive any such complaints, but he explained that they did receive health complaints of different kinds. According to him, the statistics from the Kosovo Agency of Statistics indicate a higher number of death in 2020 (not from COVID-19), which, according to him, could be an indication that these people died because of other chronic diseases.
13. On 18 December 2020, the OIK representative communicated with the Communications Officer of the Kosovo Agency of Statistics, who was asked to give information on death statistics for 2020. She informed that the quarterly newsletter published in October 2020, which presented statistics for January-September 2020, clearly indicates an increase in the mortality rate from July, August and September 2020 up to 100% compared to the same period in 2019 and 2018.

¹⁰ Kosovo Association for People living with HIV AIDS.

¹¹ Anti-Retroviral Therapy (ARV) refers to drugs used in treating and preventing HIV infection.

14. On 21 December 2020, the OIK representative talked to some HIV and AIDS patients, whom he asked about their opinions on health care before and after the COVID-19 pandemic. They were granted data confidentiality, therefore they freely expressed their concerns and attitudes about the issue. Some of the main complaints against the IDC were: *“This category of people (with HIV) is neglected, offended and mistreated by health workers; they are not medicated/treated, but rather take medications without knowing why and whether they need them; they do not feel safe there; they do not receive any service, counseling, treatment or anything else from the IDC, except from medications; the treatment room (Room No. 2 of Department A) where HIV and AIDS patients are treated is always full of nurses who perform other tasks there (data recording not related to HIV), and this continuous entry/exit of the staff violates their privacy; ARV therapy is not ensured for a sufficient time and they often buy the medications. There are others who stated that in previous years they were left without medications for two months (some said they bought the medications themselves while there were others who did not have the financial means to do so); they have never seen laboratory results for their tests (they are not given the results, one of them said that they asked the doctor to provide a copy of the results, but he never provided those copies, saying: “you do not understand these results”, “what do you need them for”, etc.), therefore they suspect that their blood was thrown away and was never tested”*. There were statements like the following: *“they cannot contact their doctor because they often do not respond, they were given therapy that was about to expire (in August they were distributed tablets that were going to expire in September)”*; and there were other statements: *“During the pandemic, IDC’s care towards them was equal to zero and, had it not been for the KAPHA organization, maybe they would not have even survived at all”*. With regards to the pre-pandemic period, there were also complaints, with statements like: *“The medical staff looks at them differently, they avoid HIV patients, in some cases they asked the patients about how they got the infection, when it happened, with whom it happened and similar questions. It happened (last year) a patient heard one of the doctors, while he was hospitalized at the IDC, telling one of the interns “do not go that way because you can get infected with HIV”. So, these patients specified they feel offended, discriminated, ignored and neglected by the IDC’s medical staff.”* It is their requirement, as HIV patients, to have their tests and specialist visits performed more often, to end entries and exits of other staff in the room where these patients are treated, and to maintain contacts with the IDC, as there has been no contact with them since March 2020.

15. On 22 December 2020, OIK representatives paid a visit to the Pulmonary Clinic (PC) in Pristina, where they met the Deputy Director of this Clinic, with whom they talked about the provision of health services to people affected by TB during the COVID-19 pandemic, and observed the situation closely. He informed them that PC was now a clinic that provides health care to individuals infected with SARS COV-2, adding that this clinic is far from meeting the requirements and needs for treating these cases. He also mentioned an evaluation of some German doctors who, a long time ago, had stated that PC does not meet the basic criteria for the treatment of people infected with COVID-19. With regards to TB patients treated there, according to him, two cases were hospitalized

there from March 2020 until then. He further explained that currently, TB patients are hospitalized at PC only when they are in severe health conditions or when they are also infected with the COVID-19 virus. He highlighted that all suspected or confirmed TB patients are placed in the Dermatology Department in isolated rooms, but shared toilets are used with other patients, including those with COVID-19. According to him, there are no sterile rooms/spaces, special entries, disinfecting filters, etc. in this PC; everyone uses the same entrance, therefore the risk of infection is evident. He further said that in general hospitals too, pulmonary departments have been turned into departments for COVID-19 patients, and therefore TB patients have switched to outpatient treatment. He expressed his concerns about the low number of pulmonologists, saying that 14 pulmonologists work at the PC, while the clinic needs at least 6 more pulmonologists.

16. On 22 December 2020, OIK representatives paid a visit to the IDC in Pristina, whereby they met with the Acting Director of the IDC, with whom they talked about the treatment of HIV and AIDS cases during the COVID-19 pandemic in Kosovo. She explained that, because of the pandemic, they faced challenges in providing care to these cases, saying that there are currently 35 patients on therapy, out of which 33 were from the previous year, while 2 others started receiving therapy this year. Regarding COVID-19 infections, she said that only one HIV patient was infected with COVID-19. She further informed that, in accordance with the recommendations produced by the Ombudsperson in the Ex Officio Report No. 305/2019, Room No. 2 of Department A was finished, however, due to the pandemic, the room and the equipment were used for other needs, not for HIV and AIDS patients. In relation to the claims of HIV and AIDS patients that they are not treated with dignity and are seen with contempt from the IDC staff, she said that these claims are ungrounded, and added that they are well-treated, their confidentiality is maintained, and they have never received any complaints so far. According to her, there are complaint boxes in the halls of the IDC, but she is not informed about who manages them, therefore she suggested that all those who will have complaints in the future should address them anonymously to her. With regards to the delivery of health services to HIV and AIDS patients in March-December 2020, she claimed that none of these patients visited the clinic due to the fear of getting infected with COVID-19, and she confirmed that the Voluntary Counseling and Testing Center (VCTC) was not functional at all and, since March 2020, no tests have been performed to measure CD4 and viral load, despite the fact that the NIPHK had expressed readiness to conduct these tests. Further, she informed that on 23 April 2020, she signed an agreement with the Executive Director of the Kosovo Association of People living with HIV and AIDS in Kosovo to distribute medications to the category of these people, which is still applicable. In terms of ARV drugs, she said that there are sufficient amounts of them and the necessary plans have been developed, and there are sufficient amounts for 2021 as well. With regards to professional staff, particularly pediatric infectious disease specialists, she explained that general infectious diseases specialists treat all age-groups, so there are no professional barriers in the treatment of children.

17. On 22 December 2020, OIK representatives visited Room no. 2 of Department A at the IDC as well as the VCTC. They met with the Head of the VCTC, laboratory technician

and responsible nurses. They informed that no tests, counseling or examination of people with HIV had been conducted at the VCTC since March 2020, and they informed that the VCTC is going to move to a different, yet undefined, premise since the area where it is located now will be turned into an elevator for the ground floor.

18. On 23 December 2020, the OIK representative communicated with the Chief of the Pulmonary Department at the GH in Gjakova and with one of the pulmonologists, who informed him that during the COVID-19 pandemic, 3 TB patients were treated/hospitalized in this department. The pulmonologist informed that, currently, there is an old woman affected by TB and infected with COVID-19 being treated in this department. He further highlighted that the entire focus has shifted to the COVID-19 pandemic, TB patients are kept in the hospital for 4-5 days and longer when it is clinically possible, explaining that they (TB patients) are kept in separate rooms of the pulmonary department, but the toilets are shared with those infected with COVID-19. In terms of shared toilets and risks of infection, he explained that the situation remains the same as before the pandemic, when TB patients put to risk other patients by using shared toilets, whereas now TB patients are put to risk by COVID-19 patients. With regards to field tracking, he explained that they have conducted a few, but he did not provide specific statistics of figures.
19. On 23 December 2020, the OIK representative communicated with the Chief of the GH Pulmonary Department in Prizren, with whom he discussed the issue of TB patient treatment during the COVID-19 pandemic. He informed that in March-December 2020, three TB patients were treated in this department, which were placed in the Dermatology Department and had no contact with COVID-19 patients, either in shared toilets, or other contact in the hospital's premises. With regard to field case tracking, he claimed that the patronage team did not go on the field, but rather invited patients to be tested at the hospital. In terms of the number of pulmonologists in this department, he stated that there are currently seven pulmonologists working, but the hospital needs at least four more. Regarding the non-functioning of the anti-tuberculosis dispensary in Malisheva, he stressed that the Municipality of Malisheva was not willing to create the required premises and treat TB patients in the dispensary, thus the patients of this municipality are treated in Prizren, Gjakova or elsewhere and, according to him, it is not necessary to re-functionalize this center. Regarding the cross-border flow of patients, he pointed out that there are no more cases of TB from Albania being treated in his department, except those with COVID-19 from the area of Kukës or the surrounding area.
20. On 23 December 2020, the OIK representative talked to the Chief of the Prison Health Department under MoH, whom he asked to provide statistics related to the potential number of people in prison/detention being treated for TB and HIV/AIDS. He informed that field data indicate that there are currently no TB patients, whereas one person with HIV was admitted in the Correctional Center in Dubrava, but this person was diagnosed earlier outside of prison and is now in therapeutic regimen.
21. On 20 January 2021, a consultative meeting was held with the respective institutions and non-governmental organizations that deal with the issue of people affected by HIV and

TB. The meeting was very fruitful in discussing the current condition of their access to health care services, the challenges they face and the actions that need to be taken to improve the situation in the future. In this meeting, the National TB Control Program Coordinator of MoH introduced statistics on the trend of TB cases in Kosovo from 2015-2020. According to the document, there were 412 reported TB cases in 2020, a number that has decreased compared to previous years. According to the same document: *“TB detection was negatively impacted by COVID-19, therefore it is necessary to improve emergency response programs to minimize COVID-19 effects in controlling TB and other chronic infectious diseases.”* Meanwhile, statistics on the number of TB cases in 100,000 citizens is as follows: **42** cases in 2015, **41** in 2016, **40.4** in 2017, **39.4** in 2018, **34.3** in 2019, and **23** in 2020. Civil society representatives, on the other hand, stressed the need to activate and legally regulate the issue of community-based services, which would ease the burden of institutions to overcome the situation.

Legal Basis

22. Article 21, paragraphs 2 and 3, of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), stipulate as in the following: *“The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution. Everyone must respect the human rights and fundamental freedoms of others.”*
23. Article 22 of the Constitution stipulates: *“Human rights and freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in case of conflict, have priority over provisions of laws and other acts of public institutions”* while Article 23 stipulates: *“Human dignity is inviolable and is the basis of all human rights and fundamental freedoms.”*
24. Further, Article 24 of the Constitution guarantees equal treatment. It stipulates that *“All are equal before the law [and that] no one shall be discriminated on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.”*
25. Article 26 of the Constitution guarantees the right to personal integrity. It stipulates that: *“Everyone enjoys the right to have his/her physical and psychological integrity respected, which includes:*
 [...]
 (2) *the right to have control over her/his body in accordance with the law;*
 (3) *the right not to undergo medical treatment against his/her will as provided by law.”*
26. Article 36, paragraph 1, of the Constitution stipulates: *“Everyone enjoys the right to have their private and family life protected, the inviolability of residence and confidentiality of correspondence, telecommunication and other communication.”*

27. Article 51, paragraph 1, of the Constitution stipulates: *“Health care and social insurance are regulated by law,”* while paragraph 2 of Article 51 of the Constitution stipulates: *“Basic social insurance related to unemployment, disease, disability or old age is regulated by law.”*
28. Article 53 of the Constitution stipulates: *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted in accordance with the court decisions of the European Court of Human Rights.”*
29. Article 55, paragraph 1, of the Constitution stipulates: *“Fundamental rights and freedoms guaranteed by this Constitution may be limited only by law.”* Furthermore, paragraph 4 of this Article stipulates: *“In cases of limitations of human rights and interpretation of those limitations, all public institutions, in particular courts, must pay attention to the essence of the right being limited, the importance of the limitation purpose, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved, as well as review the possibility of achieving the purpose with a lesser limitation.”*
30. The Constitution makes directly applicable in the legal order of Kosovo a number of instruments and international agreements in the field of human rights. It stipulates: *“These acts are directly applicable in the Republic of Kosovo and, in case of conflict, have priority over the provisions of laws and other acts of public institutions, one of which is the European Convention for Protection of Human Rights and Fundamental Freedoms.”* Paragraph 1 of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention) stipulates: *“Everyone has the right to respect for his private and family life, his home and correspondence,”* while Article 14 stipulates: *“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*
31. Law No. 04/L-125 on Health, in Article 1, clearly defines its spirit, specifying from the beginning that: *“This law has the aim of establishing legal grounds for the protection and the improvement of the health of the citizens of the Republic of Kosovo through health promotion, preventive activities, and provision of comprehensive and quality healthcare services.”* Further, paragraph 1 of Article 4 stipulates: *“Implementation of this law shall be in full compliance with the human dignity, fundamental rights and freedoms set by the Constitution of the Republic of Kosovo, and by international covenants and legislation guaranteed by the Constitution and directly implemented in the Republic of Kosovo.”* Further, paragraph 5 of the same Article stipulates: *“The rights and responsibilities of the citizens, residents, and other healthcare users in healthcare are regulated by the Law on the rights and responsibilities of citizens in healthcare.”*
32. Paragraph 1 of Article 5 of Law No. 04/L-125 on Health stipulates: *“The provision of healthcare is based on the following principles [...].”* While paragraph 1.2 stipulates: *“Inclusiveness and non-discrimination: equal healthcare for all citizens and residents by ensuring the standards during fulfilling the needs at all levels of healthcare, as well as ensuring healthcare without discrimination on basis of gender, nation, race, color,*

language, religion, political preferences, sexual orientation, level of physical or mental abilities, family status and age.” Paragraph 1.3 of the same Article defines: “Quality: applying international standards in organization, development and provision of healthcare with respect to all aspects, including: patient focused treatment, use of resources, organization of work, training, education, licensing, accreditation, ethical guidelines, and protection of interests of users of healthcare services.”

33. Paragraph 1 of Article 12 of the Law No. 04/L-125 on Health stipulates: “Healthcare shall be implemented through the following measures and actions [...] Early detection of communicable diseases and elimination of their causes by changing conditions, which cause epidemics” (paragraph 1.2), prevention and early detection and treatment of drug addictions, sexually transmitted diseases and HIV infection” (paragraph 1.6). Further, paragraph 1.11 of this Article defines: “Measures for prevention and elimination of health consequences caused by emergency conditions.” In addition, paragraph 1.19 stipulates: “Healthcare services of patronage at home for citizens and residents in need, especially for paralyzed people.”
34. Paragraph 2 of Article 13 of Law No. 04/L-125 on Health stipulates: “In implementing healthcare, healthcare institutions, health professionals, legal entities, citizens and residents, within their rights and responsibilities should take the required measures to ensure qualitative and quantitative healthcare standards, defined by a sub-legal act issued by the Ministry.” Further, Article 24 obliges: “In cases when the healthcare institution is unable to provide healthcare services within its scope, it is obliged to refer the citizen to other healthcare institutions able to treat the particular case accompanied with respective medical documentation, while respecting the referral system, from paragraph 3, Article 16 of this law.”
35. Paragraph 2 of Article 52 of Law No. 04/L-125 on Health stipulates: “Healthcare institution from paragraph 1 of this Article is responsible for: a) regular and safe collection, storing and management of the data, b) provision of easy access to data, c) protection and confidentiality of personal data, and d) protection of data from abuse, in compliance with the legislation in power.”
36. Law No. 02/L-78 on Public Health (Article 1, sub-paragraph a) defines public health as: “An independent discipline dealing with identification and solving all community problems from every health aspect, prevention of diseases, research on the etiology of the diseases, health promotion, rehabilitation and re-adaptation of the handicapped, health education and social issues” (Article 1, sub-paragraph e), epidemic is defined as: “The means occurrence of two or more cases of an infective disease, which are closely related in time and with a certain area, with an enormous increase of cases of an infectious disease.” In addition, Article 1, sub-paragraph j, defines: “Disease prevention: means the measure complex in order to prevent disease development, its spread, prevention of the disease progress and its consequences.” Further, **sensitive groups** are defined as (Article 1, sub-paragraph v): “Families with one parent, orphan children, the extremely poor, victims of trafficking, the chronically ill, elderly,

imprisoned, homeless, drug users with injections, mentally sick, especially with PTSD (Post-Traumatic Stress Disorder persons)."

37. Article 1 of the Law No. 02/L-109 on Preventing and Fighting Infectious Diseases stipulates: *"This Law specifies the infectious diseases and regulates the activities for their timely detection, emergence recording, prevention, spreading prohibition and their treatment."* Further, paragraph 1 of Article 3 defines: *"Infectious diseases in the sense of this Law where their prevention and prohibition is in the interest of our country are as follows: [...] [...] A 15-A 19 Tuberculosis of respiratory trachea, bacterio-logically and histologically confirmed, B 20 – B 24, HIV infection, AIDS [...]. J 12–J 15, J84, Viral and bacterial pneumonia (including SARS) [...]"* In addition, paragraph 1 of Article 9 stipulates: *"The general measures and specific measures to protect the population from infectious diseases are applied in accordance with annual programs, mid- and long-term programs which belong to the activities and responsibilities developed by NPHIK and approved by the Ministry of Health."*
38. Article 10 of the Law No. 02/L-109 on Preventing and Fighting Infectious Diseases stipulates: *"In order to timely detect the infection sources and its ways of transmission, the health institutions shall perform the following: [...] Examine the presence of hepatitis markers B and C, HIV virus and syphilis in voluntary blood donors [...]"*
39. Article 19 of the Law No. 02/L-109 on Preventing and Fighting Infectious Diseases stipulates: *"It is mandatory to disinfect suckles, personal items, equipment, rooms and spaces where the person [...] with tuberculosis stayed during the infectiousness period."* Furthermore, paragraph 2 of Article 27 stipulates: *"Persons who are bearers of hepatitis B and C and HIV reagents must receive strict professional information related to their behavior and actions in order not to spread such a disease."* In addition, Article 32, paragraph 1, stipulates: *"Chemic-prophylaxis/protection with medications is mandatory for all persons who are at risk of being infected from these diseases: [...], tuberculosis, [...]."*
40. Paragraph 1 of Article 4 of Law No. 2004/38 on the Rights and Responsibilities of Citizens in Health Care stipulates: *"Every citizen has the right to health care that is conditioned by their health condition. Health care should be adequate, continuously accessible to all, and without discrimination."* Further, paragraph 5 of this Article stipulates: *"Health care is provided without discrimination, when, in the course of receiving health care, citizens are not discriminated on the basis of their social position, political views, origin, nationality, religion, sexual preferences, age, marital status, physical or mental disability, qualification or on any other grounds [...]."*
41. Paragraph 1 of Article 6 of the Law No. 2004/38 on the Rights and Responsibilities of Citizens in Health Care stipulates: *"In the course of medical treatment, the citizen's dignity, private life, personal integrity, and religious beliefs shall be respected,"* while paragraph 2 of this Article stipulates: *"Unless the provisions of this Law provide otherwise, without the consent of the citizen, only the necessary medical treatment interventions can be performed."*

42. Paragraph 1 of Article 9 of Law No. 2004/38 on the Rights and Responsibilities of Citizens in Health Care stipulates: *“Citizens are entitled to receive full information, in an individual form.”* Paragraph 2 stipulates: *“Citizens are entitled to receive detailed information on: a) their health condition, including medical evaluation (...), h) the potential success or failure of any completed examination or intervention, including results that are different from their expectations, and the causes of this (...) j) any other information, relevant to the citizen’s health or their medical treatment.”*
43. Paragraph 1 of Article 20 of Law No. 2004/38 on the Rights and Responsibilities of Kosovo Citizens in the Health System stipulates: *“The citizen has the right to protection of confidentiality and secrecy of their personal data, information related to their health condition, medical treatment and any other information that contains their health documentation.”* Nonetheless, paragraph 2 stipulates: *“A citizen is entitled to make a statement as to who may receive information on their illness and the expected outcome thereof, as well as who is not entitled to be fully or partially informed with the data on their healing.”*
44. Law No. 06/L-082 on Personal Data Protection, stipulates in Article 3, paragraph 1: *“Personal data – any information related to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified directly or indirectly, particularly by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.”* Further, sub-paragraph 4 of paragraph 1 of the same Article defines: *“Classification of Personal Data - marking of personal data to indicate their sensitive nature. Specific conditions should be set for classified data, according to which users shall be able to process them. The classification should be attached to sensitive personal data until their deletion, erasure, destruction or anonymization.”* Sub-paragraph 1.25 of the same Article defines: *“Sensitive Personal Data - personal data revealing ethnic or racial origin, political or philosophical views, religious affiliation, union membership or any data related to health condition or sexual life, any involvement in or removal from criminal or offence records retained in accordance with the law. Biometric characteristics are also considered sensitive personal data if the latter enable the identification of a data subject in relation with any of the abovementioned circumstances in this sub-paragraph.”*
45. Article 1 of the Administrative Instruction No. 01/2019 on the Activity, Structure and Functions of Health Services for HIV/AIDS stipulates: *“This Administrative Instruction regulates the organization, management, structure and operation of health and psycho-social services for HIV/AIDS prevention, treatment and control, which are provided by health institutions, other governmental organizations, as well as non-governmental organizations.”* Further, paragraph 1 of Article 7 of this Instruction defines: *“The rights of people living with HIV include: 1.1 People living with HIV/AIDS shall receive care, support and treatment services in accordance with the rights set forth in Kosovo’s legislation and international best practices.”* In addition, paragraph 1.3 of this Article

stipulates: *“They have the right to personal data protection in accordance with applicable legislation.”*

46. Paragraph 3 of Article 12 of the same Instruction stipulates: *“HIV testing service provider communicates the HIV result only to:*

3.1 A person tested;

3.2 Spouse, wife or partner, parents or legal custodian when the latter is a minor or has lost the ability to act;

3.3 Personnel caring for and treating the infected person in health institutions, education-correctional institutions, residential social care, prisons or detention centers (...).”

47. Article 1 of the Administrative Instruction (Health) No. 04/2020 on Primary Health Care stipulates: *“The purpose of this Administrative Instruction is to define primary health care institutions, standards of the organization, operation, activity of health services as well as the professional staff for providing health services in Primary Health Care as part of the unique health care system in the Republic of Kosovo.”* Furthermore, paragraph 2 of this Instruction stipulates: *“This administrative instruction is applied by all public institutions of Primary Health Care.”* Additionally, Annex 2 – Health Services in Primary Health Care, in paragraph 2, stipulates: *“Immunization and vaccination services as well as other preventive services in primary health care are the following: [...]*

2.8 Prevention and management of STI infections¹², and HIV/AIDS:

2.8.1. Early detection and management of STI, and HIV/AIDS;

2.8.2. Refer as soon as possible for diagnosis and treatment determination and follow-up of confirmed cases;

2.8.3. Information and education on STI/HIV/AIDS.”

Further, paragraph 4 of this Instruction defines: *“Primary health care services for acute and chronic diseases in primary health care are the following:*

4.1. Activities related to diagnosis and treatment;

4.2. Acute conditions (diagnosis, treatment, prevention, referral of these conditions in line with clinical practice guidelines or applicable protocols);

4.2.1. Upper and lower respiratory tract infections;

[...]

4.3. Chronic conditions (diagnosis, treatment, prevention, referral of these conditions in line with clinical practice guidelines or applicable protocols):

4.3.1. Chronic Cough and Tuberculosis (TB);

[...]

¹² STI refers to sexually transmitted infections

4.3.10. HIV/AIDS/STI.”

48. Article 1 of the Administrative Instruction 15/2013, The Charter of Patient Rights and Responsibilities states: *“This Administrative Instruction defines the obligation of health institutions and health professionals in respecting the rights of the patient.”*

International Standards

49. This section will focus on international standards and best practices on topics covered by this Report, related to universal health coverage and access to health care services for people affected by HIV/AIDS and TB, from a human rights based approach.
50. The right to the highest attainable health standard is a human right, recognized in the international human rights law. The International Covenant on Economic, Social and Cultural Rights, deemed as the main instrument for the protection of the right to health, recognizes *“the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”* In Article 12, paragraph 2.3, in order to achieve the realization of this right, the Covenant obliges countries to take steps for the *“prevention, treatment and control of epidemic, endemic, occupational and other diseases.”*¹³
51. Issues related to the treatment of people affected by HIV and TB include a variety of human rights issues. Thus, the protection and promotion of their rights is crucial to preventing the spread of HIV and TB. They have, among others, the right to treatment without discrimination, the right to life, equality before the law, the right to privacy and the right to the highest attainable health standard. Therefore, universal access, without discrimination, to care and treatment and the provision of the necessary medicines are essential for these people’s right to health.

International Guidelines on HIV/AIDS and Human Rights¹⁴

52. In 1996, the Office of the United Nations High Commissioner for Human Rights and the United Nations Joint Program on HIV/AIDS (UNAIDS) published for the first time, the International Guidelines on HIV/AIDS and Human Rights. This document was revised in 2006 and the latest version of these guidelines was published. The purpose of these guidelines is to help states to translate the norms of international human rights law into practical implementation in the context of providing services to people living with HIV.
53. This document provides some Guidelines for states to respect, protect and promote the rights of people living with HIV. For the purposes of this Report we will mention only Guideline no. 6, which sets out the standards to be met by states in terms of access to prevention, treatment, care and support, which are listed below:
1. *States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of quality*

¹³ International Covenant on Economic, Social and Cultural Rights, Article 12, available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

¹⁴ Office of the United Nations High Commissioner for Human Rights and United Nations Joint Program on HIV/AIDS, International Guidelines on HIV/AIDS and Human Rights, 2006.

prevention measures and services, adequate HIV prevention and care information, and safe and effective medication at an affordable price.

2. *States should also take measures necessary to ensure for all persons, on a sustained and equal basis, the availability and accessibility of quality goods, services and information for HIV prevention, treatment, care and support, including antiretroviral and other safe and effective medicines, diagnostics and related technologies for preventive, curative and palliative care of HIV and related opportunistic infections and conditions.*
3. *States should take such measures at both the domestic and international levels, with particular attention to vulnerable individuals and populations.*¹⁵

54. Commentary on the revised Guideline 6 notes: “*Universal access to HIV prevention, treatment, care and support is necessary to respect, protect and fulfil human rights related to health, including the right to enjoy the highest attainable standard of health. Universal access will be achieved progressively over time. However, States have an immediate obligation to take steps, and to move as quickly and effectively as possible, towards realizing access for all to HIV prevention, treatment, care and support at both the domestic and global levels. This requires, among other things, setting benchmarks and targets for measuring progress.*” National human rights institutions should be involved in this process.¹⁶

World Health Organization: Consolidated Guidelines for HIV Testing Services

55. These guidelines were published¹⁷ by the World Health Organization (WHO) in 2019. The document introduces existing guidelines relevant to the provision of HIV Testing Services and addresses issues and elements for their effective delivery and advises they should be the same in different social contexts and for different populations.

56. Further, we will summarize some of the key obligations recommended to states by these guidelines, in order to introduce policies and practices in line with WHO objectives in this area.

HIV Testing Services

57. This section of the guidelines is about essential testing and re-testing services. Some basic services are provided before testing in all cases, regardless of the approach chosen for HIV Testing Services. Activities/obligations that arise for countries in this section are as follows:

¹⁵ Office of the United Nations High Commissioner for Human Rights and United Nations Joint Program on HIV/AIDS, *International Guidelines on HIV/AIDS and Human Rights*, 2006, page 18, available at: <https://www.ohchr.org/documents/publications/hivaidsguidelinesen.pdf>

¹⁶ Office of the United Nations High Commissioner for Human Rights and United Nations Joint Program on HIV/AIDS, *Guidelines on HIV and Human Rights for National Institutions*, 2007, page 7, available at: https://www.unaids.org/sites/default/files/media_asset/jc1367-handbookhiv_en_0.pdf

¹⁷ World Health Organization, *Consolidated Guidelines on HIV Testing Services*, available at: <https://www.who.int/publications/i/item/978-92-4-155058-1>

- a) All HIV testing services should adhere to WHO's essential 5 Cs (Consent, Confidentiality, Counselling, Correct test results, Connection/linkage to prevention, care and treatment services)¹⁸.
- b) Testing services should be voluntary. Everyone who is provided the test should be informed of their right to refuse it and that they should give informed verbal consent to be tested. Mandatory HIV testing is never appropriate.
- c) Providers conducting HIV Testing services should be properly trained and monitored.
- d) All HIV Testing Services should have **standard operation procedures (SOP)** and codes of conduct that protect patient information and ensure confidentiality, which they should adhere to.
- e) Clients who undergo testing should be given clear and accurate information before testing, as necessary. Those diagnosed with HIV **should be offered post-test counselling**.¹⁹

Retesting Services

58. The main purpose of retesting is to enable those who have been previously tested HIV-negative to continue being HIV-negative and to identify as soon as possible those who are HIV-positive, so that they can start treatment, therefore WHO recommends:

- a) **Annual retesting** for sexually active individuals in high HIV burden settings and people who have ongoing HIV-related risks.
- b) **More frequent testing every 3-6 months** may be warranted based on individual risk factors and as part of broader HIV prevention interventions. Those who are most frequently retested include individuals taking pre-exposure prophylaxis (PrEP) who require quarterly HIV testing, or those from groups of key populations who present to services with a sexually-transmitted disease.
- c) **Retesting in special groups**, in certain situations, individuals who have been tested for HIV in the past can be retested. These include:
 - Individuals presenting with a diagnosis or receiving treatment for sexually transmitted diseases or viral hepatitis.
 - Individuals with confirmed or presumptive TB diagnosis.
 - Outpatients presenting with clinical conditions or symptoms indicative of HIV.
 - Individuals with recent HIV risk exposure or who are concerned that they may have been exposed.
- d) Retest all pregnant women with unknown or HIV-negative status is advised to be done in the **last trimester** of pregnancy. An additional retest for women of unknown

¹⁸ In English: 5Cs: consent, confidentiality, counselling, correct results and connection

¹⁹ World Health Organization, Guidelines on HIV Testing Services, page 93, available at: <https://www.who.int/publications/i/item/978-92-4-155058-1>

or HIV-negative status in the **post-partum** period can be considered, especially for mothers from places with high HIV burden or incidence and among women from key population or who have partners with HIV who are not virally suppressed.²⁰

World Health Organization: Guidelines on HIV and COVID-19

59. People living with HIV, especially those with low CD4 cell counts and high viral load and those not taking antiretroviral therapy have a generally increased risk of infections and related complications. Therefore, in terms of their treatment while facing the COVID-19 pandemic, WHO recommends:

- a) Provide early testing, implement preventive measures, **ensuring continuity of taking antiretroviral therapy**, to maintain an effective HIV response even during the pandemic.
- b) To prevent the potential for disruptions to the supply for antiretroviral therapy and other essential medications, WHO recommends **dispensing sufficient quantities for up to 6 months of treatment**.
- c) As soon as movement restrictions are lifted, catch-up campaigns should be considered to improve coverage of testing, prevention and treatment interventions.
- d) National programs should develop **standard operation procedures** to guide service providers on how best to successfully locate and re-enroll clients into care, especially if their treatment has been interrupted due to the pandemic.²¹

International Guidelines on TB and Human Rights

60. According to the Declaration of the Rights of People Affected by Tuberculosis²², states have legal obligations established by international human rights law to respect, protect and fulfil the human rights of people affected by TB. This Declaration defines:

- a) **Obligation to respect:** States must refrain from interfering with the enjoyment of the human rights of people affected by TB.
- b) **Obligation to protect:** States must take measures to prevent third parties, including non-state actors, such as private health care providers, private health insurance companies, pharmaceutical and diagnostic companies, and others, from interfering with the enjoyment of the rights of people affected by TB.
- c) **Obligation to fulfil:** States must adopt legislative, administrative, budgetary, promotional and other measures, to the maximum of their available resources, towards the full realization of the rights of people affected by TB.

²⁰ Ibid

²¹ World Health Organization, Maintaining essential health services – operational guidance for the Covid-19 context, page 39, available at: <https://www.who.int/publications/i/item/WHO-2019-nCoV-essential-health-services-2020.1>

²² Stop TB Partnership, Declaration of the Rights of People Affected by Tuberculosis, Article 24, available at: <http://www.stoptb.org/assets/documents/communities/FINAL%20Declaration%20on%20the%20Right%20of%20People%20Affected%20by%20TB%2013.05.2019.pdf>

International Guidelines on TB and COVID-19

61. Since the end of 2019, the COVID-19 pandemic has had serious health, social and economic impacts. Even after mitigating some of these impacts, there will be medium or long term consequences. In the context of the global TB epidemic, COVID-19 has threatened to reverse recent progress towards the achievement of global TB targets.²³ To ensure prevention and care towards TB in the context of the COVID-19 pandemic, which may cause hundreds and thousands of new deaths from TB due to the interruption of essential TB services and access to care, the 2020 Report of the United Nations Secretary-General called for a series of measures to be taken by states, with special emphasis on TB prevention, diagnosis and treatment, which should continue as essential health services in the context of emergencies, with measures of infection control and prevention for health institutions and affected families.²⁴
62. According to WHO, the actions that authorities need to take to ensure sustainability of TB essential services during the COVID-19 pandemic are as follows:
- a) **All measures should be taken to ensure continuity of services** for people who need preventive and curable TB treatment. Health authorities should continue supporting essential TB services, including during emergencies like COVID-19. Patient-centered services for TB prevention, diagnosis, treatment and care services should be provided along with COVID-19 response.
 - b) **Prevention:** Measures should be introduced to limit TB and COVID-19 transmission in living environments and health care facilities, according to WHO guidelines. Although the modes of transmission for the two diseases are different, administrative, environmental, and personal protection measures apply to both (e.g., basic infection prevention and control, cough guidelines, **patient treatment rooms**). The provision of preventive TB treatment should be maintained as much as possible.
 - c) **Diagnosis:** Accurate diagnostic tests are essential for both TB and COVID-19. Tests for both diseases are different and both should be made available to individuals with respiratory symptoms, which may be similar for both diseases.
 - d) **Treatment and Care:** TB program staff, with their experience and capacities, including active finding of cases and contacts, can share knowledge, expertise and provide technical and logistic support. Outpatient and community-based care are strongly preferred over hospital treatment for TB patients (unless if serious conditions require hospitalization) to minimize possibilities of transmission. Anti-tuberculosis treatment, in line with the latest WHO guidelines, should be provided to all TB patients, including those in COVID-19 quarantine and those with confirmed COVID-19. Adequate stocks of TB medicines should be provided to all patients to take home to ensure treatment is completed without having to visit treatment centers to take medication. Using digital health technologies should be intensified to support patients

²³ Report of the United Nations Secretary-General, Progress towards the achievement of global tuberculosis targets and implementation of the political declaration of the high-level meeting of the General Assembly on the fight against tuberculosis, 16 September 2020, available at: [33-3.2 2020 UNSG Report on TB.pdf \(stoptb.org\)](#)

²⁴ Ibid, recommendation no. 9.

and programs through improved communication, counselling, care and information management, among others. In line with WHO recommendations, technologies such as electronic medication monitors and video-supported therapy can help patients in completing their TB treatment.

- e) **Proactive planning, procurement, supply and risk management:** Adequate planning and monitoring are key to ensure that procurement and medication supply and TB diagnosis are not interrupted.
- f) **Human resources:** Pulmonologists, pulmonology staff at all levels, TB specialists and health workers at primary health care level should be referral points for all patients with pulmonary complications caused by COVID-19. They should be familiarized with the latest WHO recommendations on supportive treatment and control of COVID-19. Detection and effective supportive treatment can reduce the spread of the disease and mortality from both COVID-19 as well as most forms of TB.²⁵

Legal Analysis

63. The Constitution, the highest legal act in the Republic of Kosovo, protects and grants fundamental human rights and freedoms, therefore the practical implementation and realization of these rights is in the interest of the functioning of the state of law. Constitutional guarantees serve to protect human dignity, which is the foundation of all other rights and the functioning of the state of law. The Constitution, in Article 21, explicitly defines the obligation of all bodies to respect the freedoms and rights of others, therefore this principle is imperative and must be respected by all, including health institutions.
64. In Article 25, paragraph 1, the Constitution stipulates: *“Every individual enjoys the right to life.”* This paragraph clearly indicates that the right to respect the citizen’s life is at the heart of the constitutional system of protecting human rights, and the right to life (its inviolability) is an absolute human right, which cannot be limited by any circumstances, and it is not allowed to deviate from this right. The Ombudsperson notes that the Constitution clearly defines that everyone has the right to respect for their physical and psychological integrity, that when it comes to, inter alia, the right to personal integrity, the right to health and the right to life, the state has a **positive obligation** to take all measures to protect the inviolability of people’s physical and medical integrity, particularly when someone’s integrity and life is threatened. The Constitutional Court of the Republic of Kosovo, in Judgment IR 41/12, found that the right to life was violated in cases when the competent state bodies did not provide sufficient protection to citizens and when this was required by the circumstances of the case. **The Constitutional Court, while handling this category of rights, claimed that the right to life is the most important right of all human rights, from which all other rights derive²⁶, and**

²⁵ World Health Organization, Information Note: Tuberculosis and COVID-19, 12 May 2020, available at: https://www.who.int/docs/default-source/hq-tuberculosis/covid-19-tb-clinical-management-info-note-dec-update-2020.pdf?sfvrsn=554b68a7_0

²⁶ Constitutional Court, Judgment IC 41/12, Article 57

clarifies that the authority bodies have positive obligations to take preventive and operational measures to protect the lives of everyone exposed to risk.

65. The Constitutional Court, on 31 March 2020, announced that it had issued a Judgment in the case OR 54/20, filed by the President of the Republic of Kosovo, regarding the constitutional review of Decision No. 01/15 of the Government of the Republic of Kosovo, dated 23 March 2020, for which the Claimant claimed that it is not in accordance with the provisions of the Constitution of the Republic of Kosovo, with Article 2 of Protocol No. 4 of the European Convention on Human Rights, Article 13 of the Universal Declaration of Human Rights, and Article 12 of the International Covenant on Civil and Political Rights. The constitutional issue in this case was the compatibility of the challenged Government Decision with the Constitution, i.e. whether by issuing it, the Government had restricted the fundamental rights and freedoms guaranteed or had gone beyond the authorizations provided by law. While reviewing this case, the Constitutional Court found that the limitations contained in the challenged Government Decision regarding the aforementioned fundamental rights and freedoms, are not “defined by law”, and therefore contradict the guarantees contained in Articles 35, 36 and 43 of the Constitution related to the relevant Articles of ECHR, and Article 55 of the Constitution, which in its first paragraph clearly defines that **the fundamental rights and freedoms granted by the Constitution may be restricted only by law.**
66. The Ombudsperson reminds that, in accordance with Article 53 of the Constitution, fundamental human rights and freedoms, granted by this Constitution, are interpreted in line with the court decisions of the European Court of Human Rights (hereinafter: European Court).
67. Based on the practice of this Court, in the context of medicine, positive operational obligations to protect lives arise only in unusual circumstances:
- 1) When life is ‘*knowingly endangered through denial of access to life-saving treatment*’.
 - 2) when ‘*systematic or structural non-functioning of hospital services results in depriving the patient of access to life-saving emergency treatment, and the authorities have known or should have known that this risk exists and have failed to take the necessary measures to prevent the risk from materializing...*’²⁷

Therefore, when making evaluations and implementing policies to protect people from life threats posed by COVID-19, States should also be aware of their obligations according to Article 2 to **provide access to life-saving treatment for other diseases as well.**²⁸

68. In the case of *Khudobin v. Russia*, the European Court found: “*Lack of qualified and timely medical assistance, adding the authorities’ rejection to provide an independent medical examination of the health condition, comprises a degrading treatment within the*

²⁷ The AIRE Centre, Covid-19 and the Impact on Human Rights, page 26, and ECoHR, the case of Lopes De Sousa Fernandes vs. Portugal.

²⁸ Ibid.

*meaning of Article 3 of the ECHR.*²⁹ What constitutes “adequate medical assistance” is the most difficult element to define. The Court concluded that the authorities should make sure that “*the diagnosis and care are quick and accurate*”³⁰, and that “*where it is deemed necessary by the nature of the medical condition, supervision must be regular and systematic and include a comprehensive therapeutic strategy aimed at curing the patient's health problems and preventing their deterioration*”.³¹

69. Article 3 of the Convention also imposes an obligation on the State that no one may be subjected to torture or to inhuman or degrading treatment or punishment. The Convention must be understood from the perspective of its "objective and purpose", as set out by the European Court, in order to protect individual human beings within the meaning of the values of a democratic society, which means that its provisions must be interpreted and implemented to provide practical and effective protection. Article 3 of the Convention contains substantial and procedural aspects, such as the obligation to investigate prima facie allegations of torture and other inhuman treatment. According to the case law of the European Court, Article 3 of the Convention can be violated both by premeditated ill-treatment and by negligence or inaction in taking specific steps or failing to ensure appropriate standards of care. This article imposes both negative and positive obligations, namely an obligation not to commit a particular offense, as well as obligations to take positive steps to ensure individuals that their rights are respected and to protect them from mistreatment. By analogy, the case being addressed by this report clearly shows the negligence of the health authorities, passivity or failure to ensure proper standards of care for people with TB and HIV/AIDS during the COVID-19 pandemic, therefore these actions of the authorities lead to violation of Article 3 of the Convention.

70. Article 8 of the European Convention of Human Rights grants the right to respect for private and family life. In this sense, personal data protection is very important for the private life, and creates positive obligations for the state to protect them, particularly in cases of sensitive data on health conditions. On this issue, the European Court defines, in the case of *I vs. Finland*: “*Maintaining medical data confidentiality is an essential principle...especially in protecting information confidentiality of people infected with HIV. Therefore, the state must ensure practical and effective protection and exclude any possibility of unauthorized access to personal health information.*”

71. As mentioned several times in the reports of the Ombudsperson, it should be emphasized again that when it comes to the case-law of the European Court, especially in cases of health care delivery, the practice of this court reinforces that the state has a duty to provide adequate occupational systems, with employees capable of protecting lives, e.g. in hospitals, which should take adequate measures to protect patients’ lives³², not deny health care availability (provide health care)³³ and provide adequate (appropriate)

²⁹ ECoHR, Khudobin vs. Russia.

³⁰ ECoHR, Hummatov vs. Azerbaijan.

³¹ ECoHR, Sarban vs. Moldova.

³² ECoHR, Vo vs. France.

³³ ECoHR, Cyprus vs. Turkey.

medications.³⁴ The Court found that Article 2 had been violated in the case when a child died in the emergency since he was not admitted by the hospital and was transferred to other institutions, due to the lack of specialized equipment³⁵, and in cases when due to malfunctions of the hospital departments led to the absence of emergency medical staff, which eventually ended with a death. The Court also found in this case that this action constituted a violation of Article 2 of the Convention.³⁶ Therefore, based on this practice on the one hand, and the issues being tackled by this report on the other hand, it is clearly indicated that health authorities in cases like those of HIV/AIDS as well as those of TB, did not provide services based on the proper care standards, thus these actions of the authorities can lead to violation of Article 2.

72. The human rights based approach, with regards to people with HIV/AIDS, has been clarified in the case of *Kiyutin v. Russia*, which for the first time enabled the European Court to deal with the relationship between the HIV/AIDS status and the European Convention on Human Rights. In this case, the European Court was asked to apply the principle of prevention of discrimination in conjunction with Article 8 of the European Convention, which concluded: "*The Court considers that people living with HIV are a vulnerable group*"; and also that HIV infection enters into "*other status*" in the text of Article 14 of the European Convention when listing protected grounds, which could potentially constitute discrimination. Consequently, justifications for stigma and prejudice regarding people living with HIV/AIDS and keeping them in an unfavourable position cannot be accepted as reasonable or legitimate.
73. Based on the 2030 Agenda and the Sustainable Development Goals, adopted by the United Nations on 25 September 2015, the Assembly of the Republic of Kosovo, on 25 January 2018, passed a Resolution adopting the Sustainable Development Goals (or 2030 Agenda) based on the Resolution of the General Assembly A/RES/70/1, adopted by 139 leaders from around the world. The 2030 Agenda for Sustainable Development includes Sustainable Development Goals, which are a new leading point of the global development agenda. It includes, inter alia, the issue of good health and wellbeing. Built on universal consensus, the 2030 Agenda, under Goal 3, indicator 3.3, explicitly defines: "*By 2030, end the epidemics of AIDS, tuberculosis (...)*."
74. Nonetheless, the COVID-19 pandemic has hampered efforts to achieve these goals, which is why UNAIDS, among others, recommends that the following actions need to be taken for TB and HIV:
- 1) Give a new impetus to the response to TB and HIV by impelling political and civil society leaders to champion the universal right to live free from TB and HIV, building on existing rights and health and social movements.
 - 2) Empower communities to demand their right to health. Affected communities must call on governments to improve living standards, including by accessing nutritious

³⁴ ECoHR, Panaitescu vs. Romania.

³⁵ ECoHR, Asiye Genç vs. Turkey.

³⁶ ECoHR, Mehmet Şentürk dhe Bekir Şentürk vs. Turkey.

food, breathing clean air, completing their education and fostering an enabling economic environment, all of which will help to reduce the burden of TB/HIV.

- 3) Ensure rights-promoting and non-discriminatory service delivery for all, especially for the people at higher risk of TB and HIV, such as children and marginalized populations, to protect them against catastrophic health expenditures in the context of universal health coverage. Thus, duty of care extends beyond health to include safe workplaces and places of detention.³⁷

75. According to the World Health Organization, Universal Health Coverage (UHC) means that all people and communities can use promotional, preventive, curative, rehabilitative, and palliative health services they need, of adequate quality to be effective, also ensuring that the use of these services does not expose the user to financial difficulties.³⁸ UHC is an integral part of the 2030 Agenda for Sustainable Development and reflects the commitment of states to leave no one behind. Improving the state of health services coverage and health outcomes depends on the availability, access and capacity of health workers to provide quality, integrated and people-centered care. Investing in quality primary health care will be the foundation for achieving UHC worldwide. The competent health authorities in Kosovo need to take all the necessary actions towards achieving universal health coverage for all citizens without discrimination, focusing on marginalized groups.

76. Law No. 04/L-125 on Health defines in the initial Articles the basic principles on which health care should be based in health institutions, guided by the inclusivity and non-discrimination principle, in order to ensure equal standards in health care for all citizens. The Law sets out that while responding to the requests of citizens in providing health services at all levels of health care, health care should be provided without discrimination on grounds of gender, nation, race, color, language, religion, political opinion, social condition, sexual orientation, degree of physical and mental ability, family and age status or any other grounds. In addition, it defines that citizens shall be provided quality health care and international standards shall apply during their treatment, in organizing, developing and providing health care on all aspects, including: patient-focused treatment, use of resources, organization of work, training, education, licensing, accreditation, ethical guidelines and protection of the interests of health service users. It can be understood from what was previously said that health care in health institutions should be guided by the principle of inclusivity and non-discrimination, focusing on ensuring equal standards in health care for all citizens. However, the COVID-19 pandemic in Kosovo led to all active TB and HIV cases being treated at home, contrary to the protection of interests of the health care service users. WHO recommendations defined that health authorities should continue their support for essential TB services, including during emergencies like COVID-19, specifying that people-centered services for TB prevention,

³⁷UNAIDS, Breathe – Let's End TB and AIDS by 2030

https://www.unaids.org/sites/default/files/media_asset/Breathe_LetsEndTBandAIDSby2030_en.pdf

³⁸ WHO, Universal Health Coverage, available at: [https://www.who.int/news-room/fact-sheets/detail/universal-health-coverage-\(uhc\)](https://www.who.int/news-room/fact-sheets/detail/universal-health-coverage-(uhc))

diagnosis, treatment and care services should be provided along with the response to COVID-19 (see paragraph 63).

On HIV and AIDS Issues

77. The Ombudsperson, on 15 May 2019, published the Ex. Officio Report No. 305/2019, which was sent to the competent authorities and dealt with the treatment of people with HIV and AIDS in Kosovo. It produced eleven specific recommendations for the relevant authorities³⁹ and received the answer that all recommendations had been implemented. The Report found violations regarding the fulfillment of constitutional and legal obligations towards people with HIV and AIDS in Kosovo, especially due to the non-functioning of equipment for CD4 and viral burden testing, reagent supplies, lack of therapy and pediatric treatment for children, obligating patients for mandatory HIV testing before surgeries in all clinics in Kosovo. This report will make an interrelation on the progress achieved on this issue and the situation created on the field, as well as challenges faced during the COVID-19 pandemic. Given that in the Ex. Officio Report No. 305/2019 we analyzed a wide array of the legal basis and international standards, this time we will mainly focus on the WHO Guidelines on HIV and COVID-19, as well as findings from investigations.
78. Despite the fact that Kosovo has a strong constitutional framework for the protection of the rights of people with HIV and AIDS, and a relevant number of laws and policies, few achievements have been made in this context, however the progress has not been equal to the challenges interrupting their proper implementation, and these are related to the health system in general, including low budgetary contributions for health, poor implementation of laws and policies, poor coordination between sectors and authorities, poor monitoring, poor accountability and participation of key populations, including marginalized groups, in developing policies related to HIV/AIDS in Kosovo. The investigations conducted

³⁹ Recommendations for the Ministry of Health: In accordance with the legal competencies and authorizations, allocate special budget lines from the general budget of the MoH for the financing/treatment of HIV/AIDS cases in Kosovo; Supervise through the competent bodies the application of the guidelines for voluntary testing and counseling; Develop guidelines/protocols for the treatment and management of HIV cases, with standard operating procedures; Take all necessary measures regarding antiretroviral therapy supplies for all ages; Take all necessary actions to ensure that the CD4 and Viral Load measuring devices in the NIPHK are operational at all times, so that cases of malfunction are not repeated in the future.

Recommendations for the Health Inspectorate: In accordance with the legal competencies and authorizations, inspect the issue of obligating patients for mandatory laboratory treatment related to HIV testing, HbsAg and HCV before undergoing elective surgeries in surgical clinics, cesarean surgeries in gynecological clinics, as well as in other public and private health institutions; Address the issue of the lack of antiretroviral drugs for children at the Infectious Diseases Clinic in Prishtina; In cooperation with other responsible authorities, inform the private health institutions, which perform the tests of people with HIV, that they have the obligation to report cases that result in HIV positive to the NIPHK, in accordance with the Law.

Recommendations to the Hospital and University Clinical Service of Kosovo: Issue a written decision and inform all subordinate units that they have the duty and obligation to cooperate with the Ombudsperson and provide all the required information, including the full or partial case file, in accordance with the Constitution of the Republic of Kosovo and Law No. 05 / I-019 on the Ombudsperson; Take all necessary measures in accordance with the legal competencies and authorizations and ensure the presence of the clinical psychologist in Department A of the Infectious Disease Clinic in Prishtina; In cooperation with the subordinate units, take the necessary measures that Room no. 2 of Department A in the Infectious Disease Clinic in Prishtina to be equipped with the necessary inventory and the monitor for monitoring the patient's vital signs (Spo2, Pulse, TA, Temp, Ekg) for the treatment of people with HIV / AIDS.

helps analyze very easily that privacy and confidentiality are not adequately respected by health professionals, actions that violate not only the human right to privacy, but it is also a disappointing act for those asking for services from public health professionals in Kosovo.

79. Given the above, International Guidelines on HIV/AIDS and Human Rights set out the standards that states should respect with regards to access to safe and supportive prevention, care, support and treatment with an affordable price for people living with HIV. They give clear guidelines for actions to be taken by countries to respect the rights of these people, with special focus on vulnerable individuals and populations. Despite this, the pandemic caused by COVID-19 caused VCTC in the IDC not to work at all from March 2020 and, consequently, we have shortages in testing, detection of new cases, their treatment and cure. This is against the above standards, so it is necessary to take immediate measures to improve this situation to prevent the risk to their lives that may be caused by not treating these persons.
80. Despite the fact that the WHO Consolidated Guidelines on HIV Testing Services contain relevant existing guidelines on providing HIV testing services and address issues and elements for their effective delivery in different social contexts and for different populations, this report points out that they are not being implemented in practice, since the situation created by COVID-19 mobilized all IDC services in preventing and treating the cases of this disease, therefore HIV cases were left with no proper attendance.
81. WHO standards in HIV cases during the COVID-19 pandemic establish that people living with HIV, especially those with a low CD4 cell count, those with a high viral load and those not taking antiretroviral therapy are at increased risk of infection and related complications. Therefore, with regards to their treatment during the COVID-19 pandemic, WHO recommended to ensure early testing, implement protection measures and ensure continuity of anti-retroviral therapy, by dispensing it in sufficient quantities for up to 6 months of treatment. These standards clearly indicate that the Kosovo authorities were far from applying these standards and, if we exclude the assistance of the KAPHA NGO, we can easily conclude that this category of people rightly claim that during the pandemic they did not receive any kind of services from the IDC.
82. When speaking of viral load and CD4 tests in HIV and AIDS patients, it should be noted that while the Ex. Officio Report No. 305/2019 expressed different attitudes towards the NIPHK on the failures of these tests and the lack of necessary reagents, it should be noted that this time, despite the great influx of COVID-19 infections and work overload, NIPHK was ready to perform these tests, but the matter got stuck at the IDC. KAPHA NGO also expressed its willingness to deliver blood samples of the patients to the NIPHK for tests, but it was not supported by the IDC. This action of NIPKH and KAPHA is to be welcomed and shows high professionalism and commitment to their work.
83. According to the Kosovo legislator, the purpose of drafting Law No. 2004/38 on the Rights and Responsibilities of Citizens in Health Care was to define the rights and responsibilities of citizens in health care, as well as to establish mechanisms for the protection and provision of these rights and responsibilities. The law obliges health

institutions to pay attention to the patient's health at all times while they are in health institutions, in accordance with ethical and professional rules. This law contains more rights in relation to the provision of health services, obliging health institutions to respect the rights of citizens for quality health care, the right to choose a health professional, the right to human dignity, the right to communication, the right to leave the institution, the right to be informed, the right to personal decision, the right to privacy, etc. Based on what was said above, it is clearly indicated that in this case the health institutions, during the health treatment of people infected with HIV/AIDS, have failed to implement and respect the rights and responsibilities of citizens for quality health care in relation to the provision of health services in cases of HIV and AIDS, either before or during the pandemic.

On TB Issues

84. At the beginning of the analysis on this issue, it should be noted that in the context of the global TB epidemic, COVID-19 has threatened the recent progress towards achieving the global goals for a world with no TB. The 2020 Report of the United Nations Secretary-General reiterated the need to ensure TB prevention and care in the context of the COVID-19 pandemic, which could cause hundreds of thousands of new TB deaths due to the interruption of essential TB services and access to care. He therefore called for a series of measures to be taken by states, with particular emphasis on TB prevention, diagnosis and treatment, which should continue as essential health services.
85. Despite the fact that the MoH considers that Kosovo has a very well organized system and has created the necessary infrastructure to accelerate progress towards achieving the goal of ending the tuberculosis epidemic by 2030, in accordance with the WHO standards, apparently the pandemic COVID-19 was a challenge in this regard. According to the Declaration of the Rights of People Affected by Tuberculosis, states have legal obligations under the international human rights law to respect, protect and fulfill the human rights of people affected by TB. However, based on what was said above and the field investigations, it is clear that there is a discrepancy between what is required in the Declaration and the legislation applicable in Kosovo related to the actions of health authorities, especially during the COVID-19 pandemic.
86. According to WHO, authorities should ensure sustainability of essential TB services during the COVID-19 pandemic, by **ensuring continuity of services** for people who need preventive and curative treatment for TB, take **preventive measures** to limit the transmission of TB and COVID-19 in their living environments and health care facilities, conduct **accurate diagnostic tests**, whereas in terms of **treatment and care** it is necessary to engage in active case tracking and finding contacts. These international guidelines strongly prefer **outpatient care** over hospital treatment for TB cases (unless serious conditions require hospitalization) to minimize possibilities of transmission. Furthermore, WHO also recommends providing TB medications, with the ability for patients to take medications at home, as well as **using digital health technologies**, such as electronic medication monitors and video-supported therapy, to monitor their

treatment. With regards to human resources, WHO recommends that pulmonologists, TB specialists and health care workers at the primary health care level be reference points for COVID-19 patients with pulmonary complications, as detection and effective supportive treatment may reduce the spread of the disease and mortality from both COVID-19 and most forms of TB.

87. As previously mentioned, it is clear that during the COVID-19 pandemic, all necessary measures should be taken by the authorities to treat people with TB with dignity and without discrimination and to avoid contact with COVID-19 patients as much as possible. Field investigations indicated that, as a result of the COVID-19 pandemic, the entire focus of health care services shifted to preventing and treating COVID-19 infections and, consequently, there were up to 50% less new cases in 2020. Thus, as mentioned in previous paragraphs (see paragraph 7), upon the emergence of the COVID-19 pandemic, the need arose to shift pulmonary departments and their staff into departments for COVID-19 patients, therefore about 157 patients were forced to leave hospital treatment and undergo outpatient treatment. Furthermore, in March-December 2020 new cases/contacts were not tracked in the field, therefore health experts predict that in the upcoming years TB cases will triple in Kosovo⁴⁰. According to experts, TB prevention is possible only with early detection and treatment, by avoiding the risk of drug-resistant TB and its forms, which present higher risk for health in later stages.

Findings of the Ombudsperson

88. Based on the findings presented and the facts summarized, as well as the analysis of relevant laws defining the rights of people infected with HIV/AIDS and TB in Kosovo, the Ombudsperson **finds violations of fundamental human rights and freedoms**, as the relevant authorities failed to fulfil constitutional and legal obligations towards people infected with HIV/AIDS and TB, as a result of the situation created by the COVID-19 pandemic.
89. The Ombudsperson finds that it is positive that Kosovo continues to have a low increase of people infected with HIV/AIDS and decrease of TB cases, however discrimination and stigma surrounding key populations and non-provision of proper health care services constitutes a violation of human rights of these people. The situation may be more serious based on the assertions of some citizens receiving HIV and AIDS services at the IDC.
90. The Ombudsperson finds that, regardless of the established legal infrastructure on the treatment of HIV/AIDS in Kosovo, health authorities have – at least so far – failed to meet the expectations of their patients. The Ombudsperson also raises concerns about the non-functioning of the VCTC at the IDC since March 2020, regarding the non-performance of tests and written communication of results for viral load and CD4 tests, regarding the lack of contact between IDC and HIV and AIDS patients during the pandemic, the Ombudsperson finds that the most sensitive part of this report are the statements of HIV and AIDS patients, who feel despised, insulted and neglected by health professionals. Apparently, health professionals do not have the required training on

⁴⁰ Information from a meeting with the Executive Director of KeA

approaching this category of people, therefore it is necessary to increase the required capacities and establish control mechanisms as well as give patients an opportunity to express their concerns.

91. The Ombudsperson finds that, regardless of the great influx of testing for COVID-19, NIPHK was available the entire time to perform the required tests, however this was not materialized by the IDC. It is also important to mention that KAPHA NGO had expressed willingness to collect blood samples on the field by its clients, but this was not approved by the IDC. Thus, both in the first and second case, the IDC did not cooperate with the respective authorities and, as a result, patients stated that they have been receiving “loose therapy”. WHO guidelines define that people living with HIV, especially those with a low CD4 cell count and high viral load and those not taking antiretroviral therapy have a generally increased risk of infections and related complications. As previously said, it is evident that IDC, irrespective of work overload and inability to perform this task itself with regards to people with HIV, had technical and operational abilities to find other forms of their treatment, perform these analyses and recommend adequate therapy.
92. The Ombudsperson finds that MoH should strengthen control mechanisms through its divisions, and ask all health workers, especially at the IDC, to respect the rights of people living with HIV/AIDS, defining that these people should receive care, support and treatment services in line with best international practices, and the principle of confidentiality should be preserved at all stages of their treatment. It is also necessary to increase the required professional capacities and train the staff that works with people living with HIV/AIDS.
93. The Ombudsperson considers it is essential to create conditions and protection equipment for the medical staff and other staff that is part of the chain of service delivery and medical treatment for infective diseases, but also in other segments where infections, either viral or bacterial, are predisposed to occur more often.
94. With regards to TB issues tackled by this report, the Ombudsperson finds that regardless of the MoH claims that there is a well-organized TB system since after the war, field investigations indicate that the situation is different. The situation was not good before the pandemic, which aggravated during the COVID-19 pandemic. Regarding the pre-pandemic period, it should be noted that people with TB that were hospitalized, due to the lack of special sanitary infrastructure in pulmonology clinics/hospitals were a source of risk of infecting other TB patients (as all shared the same spaces), while during the COVID-19 pandemic, TB patients were at risk from COVID-19 patients, as the co-existence of TB and COVID-19, according to WHO recommendations, could be lethal.
95. The Ombudsperson finds that during the COVID-19 pandemic there was a lack of pulmonologists at the Pulmonology Clinic and in some general hospitals (see paragraph 15), and this situation emerged as a result of MoH inaction in drafting proper personnel policies. Further, based on the statements of health professionals in different regions of Kosovo, this reports brings to light a variety of issues regarding the management of TB case treatment by the doctors, as in some cases TB patients were not hospitalized at all, sometimes only serious cases were hospitalized, while other times, when possible, they

were hospitalized for a few days or weeks to supervise the action of anti-tuberculosis drugs. A variety of issues was also found in field case detection, while some health institutions received the confirmation that the tracking of people with TB was not done at all, whereas some claimed they had called these people to come to health institutions for testing, while in other regions it was claimed that patronage teams conducted the testing in different periods. Thus, the lack of a roadmap for treating TB cases during the COVID-19 pandemic by MoH led to different attitudes/actions of field professionals.

96. The Ombudsperson notes that the MoH provided adequate stocks of TB medications for all patients to ensure treatment is completed, but did not use digital health technologies to support patients and programs through improved communication, counseling, care and information management and video-supported therapy, in line with WHO recommendations.
97. The Ombudsperson finds that, in spite of the OIK request for access in TB case statistics for 2020 sent to the MoH Coordinator, no data were provided, with the excuse that they cannot be processed until March 2021, but OIK managed to ensure these data from TB MIS (TB Medical Information System), through the Community Development Fund (CDF). The database is maintained by KeA but access is also provided to MoH – on TB, CDF – on the TB program, and other anti-tuberculosis institutions. These statistics clearly indicate that there were 611 new TB cases in Kosovo in 2019, and 364 new TB cases in Kosovo in 2020. In terms of regions, it should be noted that Pristina was the region with the highest number of cases in 2019 (240 cases), and Gjakova with the lowest number (27 cases), while in 2020, the issue of TB infection cases in terms of regions remains the same, apart from the number of new cases which decreased significantly, therefore Pristina had 143 new cases in 2020, while Gjakova had only 10 cases.
98. Considering what was previously said, it can be concluded that it is necessary that relevant health institutions analyze the impact of the COVID-19 pandemic on the health of people affected by HIV and TB. Considering the negative effects that barriers to access to services may have on the health of these people, they should see this health crisis as an opportunity for a new approach, in accordance with the most advanced standards and the spirit of guarantees provided by the constitutional and legal framework in Kosovo in terms of the rights and treatment of people affected by HIV and TB.

Given what was previously said, the Ombudsperson, in accordance with Article 135, paragraph 3 of the Constitution of the Republic of Kosovo, “*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.*” Within the meaning of Article 18, paragraph 1.2 of Law No. 05/L-019 on the Ombudsperson, the Ombudsperson “*(...) has the responsibility to draw attention to cases when institutions violate human rights and make recommendations to stop such cases (...)*”; as well as “*recommend (...) promulgation or amendment of administrative and sub-legal acts by the Institutions of the Republic of Kosovo.*” (Article 18, paragraph 1.7).

Therefore, the Ombudsperson

RECOMMENDS

1. Ministry of Health:

- *Through the Office of HIV and AIDS Program Coordinator, supervise the treatment of people with HIV and AIDS, so that they do not feel discriminated, neglected or ignored during treatment at the Infectious Disease Clinic and other health institutions.*
- *Functionalize the Voluntary Counseling and Testing Center in the Infectious Disease Clinic, by ensuring that patients receive all the required services in accordance with the best international standards.*
- *Through the Office of TB Program Coordinator, ask respective clinics/departments to create the required conditions/infrastructure during hospital treatment of TB patients, so that they are not a source of infection for other patients and vice versa.*
- *Undertake all the necessary measures to increase the number of pulmonologists at the Pulmonology Clinic and other general hospitals, as necessary.*
- *Functionalize the digital system of monitoring the treatment and therapy of TB patients (digital and video-therapy monitors, in line with WHO guidelines).*
- *Ask responsible departments to functionalize patronage teams for tracking new cases in the field, focusing on preventing the spread of TB.*

2. Hospital and University Clinical Service of Kosovo:

- *Undertake all actions to increase the professional capacities of the staff of the Infectious Disease Clinic, that works with HIV and AIDS patients, in terms of practically implementing the law and respecting the fundamental human rights and freedoms.*
- *Develop written circular and inform all subordinate units that work with HIV and AIDS patients, regarding their obligation to announce to patients their test results in written, in accordance with the law.*
- *In cooperation with the subordinate units, take the necessary measures so that Room No. 2 of Department A (intended for the needs of treatment of people with HIV and AIDS) in the Infectious Disease Clinic in Pristina to be used only for the needs of their treatment, so that they do not feel hindered by third parties.*

Pursuant to Article 132, paragraph 3 of the Constitution of the Republic of Kosovo (“All bodies, institutions or other authorities exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested

documentation and information in accordance with the law”), and Article 28 of Law No. 05/1-019 on the Ombudsperson (“Authorities to which the Ombudsperson has addressed recommendation, request or proposal to undertake concrete actions, including disciplinary measures, must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue concerned”), we kindly ask you to inform us on the actions taken about the issue concerned.

Sincerely,

Naim Qelaj
Ombudsperson