



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

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Mr. Craig Mokhiber  
Officer-in-Charge  
Development and Economic and Social Issues Branch  
United Nations High Commissioner for Human Rights  
Palais des Nations  
CH- 1211 Geneve 10

12 April 2011

Dear Mr. Mokhiber,

On 24 February 2011, the Ombudsperson Institution of the Republic of Kosovo has received a request to respond to nine questions submitted by the representative of the Office of High Commissioner for Human Rights. In the paragraph 31, the General Assembly Resolution 65/182 requested the Secretary General to submit a report on the implementation of this resolution including the situation of the rights of older persons in all regions of the world. Paragraph 30 of the Resolution invites the States and relevant bodies and organizations of the United Nations system including relevant human rights mandate holders, treaty bodies and the regional commissions, as well as inter-governmental and relevant non-governmental organizations with an interest in the matter, to provide contributions.

Republic of Kosovo is not yet a member of the United Nations and it is not included in its system. However, in the Republic of Kosovo, the Ombudsperson Institution established in 2000 is the only state body which acts in the capacity of a state body for human rights.

Regarding the questions submitted on 24 February 2011 by your office the Ombudsperson Institution of the Republic of Kosovo provides the following explanations:

**Question 1: Please provide information on the current situation of human rights of older persons, including particular challenges and threats that may prevent the full realization of their rights.**

- Within the Ministry of Labour and Social Welfare there is the Social Service Department which aims at institutional care of persons with disabilities and older persons in Kosovo;
- The services are provided by the governmental and non-governmental institutions regardless of gender, age or any other difference. Such treatment is also guaranteed by the Anti-Discrimination Law. Within the Government of Kosovo the Agency for Gender Equality is established.
- One of the challenges that this social category is facing is related to the non-refunding of the pension and invalid funds from Serbia. No agreement to return the fund back to Kosovo has been reached yet. As a consequence, all persons who in the past were contributing to the fund cannot enjoy these rights. This problem is more of political nature, but it also affects the life of this social category. The retirement age in Kosovo is 65 years old.
- The lack of the law on health care directly affects the realization of several rights for the persons of this social category. Only primary health care for retired persons is provided free of charge.
- The Law on Public Health no. 02/L-78, date..... has included older persons among sensitive groups. It is worth noting that this social category is discriminated as regards the employment.

**Question 2: Please provide information on existing legislation, policies and programmes to protect and promote the human rights of older persons.**

- In Kosovo, the issue of equality before the law for all citizens regardless of age, religion, ethnic background, freedoms and human rights is guaranteed by the Constitution of the Republic of Kosovo.
- In line with the abovementioned, on February 2004, the Anti-Discrimination Law was adopted. The law aims at ensuring the right to equality before the law and equal protection to everyone, equal opportunities to enjoy and exercise the rights as well as effective protection from any kind of discriminative treatment or any treatment that incites discrimination.

**Question 3: Please provide information on existing legislation, policies and programmes to address discrimination against older persons, including measures to address multiple discrimination (e.g. discrimination based on age and gender).**

- The legal framework lacks a basic law that will regulate the issues in a fair manner and provide the basis that such social category is no longer discriminated. Though the Law on Anti-discrimination regulates the issue when situations of discrimination bases in age happen, there is no instruction or order on the procedures to be followed for the initiation of the cases, the responsible authority for reviewing the discrimination cases as well as the

competent body for the execution of the relevant sanctions. As a result of this, there are no cases of discrimination being filed at the national courts.

**Question 4: Please provide information on existing legislation, policies and programmes to address violence and abuse against older persons in the private and public spheres.**

- Regarding policies and programmes to address violence and abuse against older persons, in Kosovo, this issue is regulated by the Constitution of the Republic of Kosovo and the international instruments for human rights incorporated in it as well as by the Law no. 03/L-182 on Protection from Family Violence.

**Question 5: Please provide information on existing legislation, policies and programmes to addressing old age-sensitive services and facilities , such as those related to mobility , age-adequate design, long term care, primary health care and adult and continuous education.**

Up to date, there is a list of laws adopted which directly or indirectly affect the rights of older persons:

- The Law no. 2003/15 on the social assistance scheme,
- The Law no. 2003/19 on occupational safety and health protection,
- The Law no. 2004/4 on health,
- The Law no. 03/L-182 for protection from family violence,
- The Anti-Discrimination Law no. 2004/3,
- The Law no. 02/L-17 on social and family services,
- The Law no. 03/L-019 on vocational ability, rehabilitation and employment of persons with disabilities,
- The Law no. 2003/23 on pensions for persons with disabilities in Kosovo,
- The Law no. 03/L-164 on financing special programs for housing,
- The Law no. 2002/1 on the methodology for setting the Level of Basic Pension in Kosovo and determining the commencement Date for Provision of Basic Pensions.

Regarding policies for protection of older persons, it is worth mentioning that in the Government's programme and social issues strategies it is foreseen a series of actions which are undertaken continuously by the governmental institutions and services provided in the light of these actions are offered to all older persons without distinction. One of Government's programme on the institutional care which provides accommodation for older persons in the community house, 24 hours a day.

**Question 6: Please provide information on existing legislation, policies and programmes concerning social protection measures as well as the right to work and the right to social security with regard to older persons.**

- The pension schemes are currently based on the principle of comprehensiveness which means that all persons above the age of 65 are entitled to basic pension. The Government of Kosovo entitles all persons over 65 years old the right to rise in retirement income in

case they are able to provide evidence that they were insured, they paid contributions based on the employment relationship and have over 15 years of working experience. Having in mind that during the war in Kosovo a large part of the documentation has been lost or disappeared, some of the citizens have difficulties to provide evidence on their working experience. This matter has largely affected some of the employees of the former public enterprises since they couldn't be included in the pension rise as they could not prove that they have over 15 years of working experience.

- In 2005 the Ministry of Labour and Social Welfare has drafted a law on pension and invalidity insurance, but up to date this law is not yet adopted by the Government.

**Question 7: Please provide information on existing legislation, policies and programmes and capacities to systematically collect, update and analyze information disaggregated by age.** In the Republic of Kosovo there are a series of laws adopted that directly or indirectly affect the rights of older persons:

- The Law no. 2002/1 on the methodology for setting the level of basic pension in Kosovo and determining the commencement date for provision of basic pensions,
  - The Law no. 2003/15 on the Social assistance scheme in Kosovo,
  - The Law no. 02/L-17 on social and family services,
  - The Law no. 03/L-019 on vocational ability, rehabilitation and employment of persons with disabilities,
  - The Law no. 2003/23 on pensions for persons with disabilities in Kosovo,
  - The Law no. 03/L-164 on financing special programs for housing.
- As regards data systematization, a part of them are systemized within the Ministry of Labour and Social Welfare, at the Social Services Department, whose main function is institutional care for older persons and persons with disabilities. The abovementioned department process the monthly and annual data on the number of persons whom benefit from different services as foreseen by the law. Such data are published in the annual report of the Ministry of Labour and Social Welfare.

**Question 8: Please provide information on existing legislation, policies and programmes to enhance participation and active engagement of older men and women in community, political and cultural life.**

- In the Republic of Kosovo, except the Anti-Discrimination Law, there are no specific laws which enhance the active participation and engagement of older persons in political and cultural life. As regards minorities in Kosovo, the Law for promotion of the rights of communities and their members has been adopted. This piece of legislation guarantees effective equality before the law for all citizens of Kosovo. This law ensures that the necessary measures in order to promote effective equality in all areas, as well as in the political and cultural life are undertaken.

**Question 9: Please provide information on existing legislation, policies and programmes to ensure access to justice and judicial remedies for violations of rights of older persons,**

**including references to specific mandates of institutions such as national human rights institutions to address their rights.**

- Article 32 of the Constitution of the Republic of Kosovo guarantees the right to judicial protection and the right to pursue effective legal remedies in case of violation or denial of any right guaranteed by the Constitution or law to all citizens.
- The penal, civil and administrative legislation guarantee the possibility to pursue legal remedies against judicial and administrative decisions which infringe the citizen's rights or interests, as it is provided by the law, but there is no legal norm that specifies exercising of the right to legal remedies for older persons.
- The Law no. 03/L-199 on Courts in the Article 7 paragraph 3 states that "Every person has the right to address the court in order to protect and enforce his or her legal rights. Every person has the right to pursue legal remedies against judicial and administrative decisions that infringe his or her rights or interests, as it is set in the law". Yet again this essential judicial law has no legal norm as regards the exercise of right for legal remedies in the case of older persons.
- A general problem for all the citizens especially for older persons regarding legal remedies are lengthy judicial procedures in handling the cases which occurs as a result of big number of unsolved cases in the courts. In December 2010 the number of unsolved cases in the courts was 233.462. The Ombudsperson argues that there are no reasons for such lengthy procedures in civil contests; as such the citizens should wait for a decision even longer than 5 years. 'Justice delayed is justice denied'.
- The main concern of the Ombudsperson regarding the right to pursue legal remedies is the fact that the judicial system has not been functional in some parts of territory . After the declaration of independence of the Republic of Kosovo, on 20 February 2008, the District and Municipal Court of Mitrovica, District and Municipal Prosecution Office as well as Offences Court in Mitrovica, Offences Court in Zubin Potok and Leposaviq are out of the jurisdiction of Kosovo Judicial Council.
- Many complaints lodged by the citizens are not handled by the aforementioned courts and prosecution offices and this presents serious violation of human rights and freedoms. The situation remains unchanged and it is a big challenge for the authorities of the Republic of Kosovo to ensure rule of law, democracy and respecting of the human rights.
- Although in the formal legal aspect, the right to pursue legal remedies is guaranteed to all citizens, there are no specific legal norms for older persons. Practical implementation of this right is very difficult because of the above-mentioned reasons. Older persons are particularly affected by this situation, their monthly incomes do not exceed 85€. Due to the lengthy legal procedures it may even happen that they die before the court issues a decision on their unsolved cases.
- The Ombudsperson finds that the legal remedy in terms of the Convention will be effective (Article 13) if the violations of human rights and freedoms are avoided by making decisions within the legal time limit by respective bodies and by providing compensation if such rights have been violated. Therefore, this right is not implemented in accordance with the international standards and domestic legislation.

I hope that we have provided you with the necessary responses to the questions posed. In case you find that there are still certain ambiguities, I am ready to assist you on any matter.

I would like to renew the assurances of my highest consideration and looking forward to the continuity of our cooperation.

Yours sincerely,



Sami Kurteshi  
Parliamentary Ombudsman  
Republic of Kosova