



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

---

Mr Kadri Veseli, President  
Assembly of Kosovo

Mr Ramush Haradinaj, Prime Minister  
Government of the Republic of Kosovo  
Square “Nëna Terezë”, n.n.  
10000 Prishtina

Mr Fatmir Matoshi, Minister  
Ministry of Environment and Spatial Planning  
Former Palace of the Media “Rilindja”  
10000 Prishtina

Mr Muharrem Nitaj, Chair  
Committee on Agriculture, Forestry, Rural Development, Environment and Spatial Planning  
Assembly of Kosovo

## Report with recommendations

*Ex officio No. 12/2018*

**Ombudsperson Institution**

versus

**Ministry of Environment and Spatial Planning**

as regards to the failure of competent bodies to implement positive obligations to  
manage waste containing asbestos

Prishtina, 18 October 2018

Mr Shpend Ahmeti, Mayor  
Municipality of Prishtina  
Str. "UÇK"  
10000, Prishtina

Mr Ardian Gjini, Mayor  
Municipality of Gjakova  
Str. "Nëna Terezë", n.n  
50000, Gjakova

Mr Lutfi Haziri, Mayor  
Municipality of Gjilan  
60000, Gjilan

Mr Agim Bahtiri, Mayor  
Municipality of Mitrovica  
Str. "Bedri Xhinaj", n.n.  
40000, Mitrovica

Mr Mytahir Haskuka, Mayor  
Municipality of Prizren  
Str. "Remzi Ademaj", n.n.  
20000, Prizren

Mr Gazmend Muhaxheri, Mayor  
Municipality of Peja  
Str. "Mbretëresha Teutë", n.n.  
30000, Peja

Mr Agim Aliu, Mayor,  
Municipality of Ferizaj  
Str. "Dëshmorët e Kombit", n.n.  
70000, Ferizaj

## Purpose of the Report with Recommendations

1. This Report with Recommendations is based on the *ex officio* investigations undertaken by the Ombudsperson with regards to the issue of managing waste containing asbestos in the territory of the Republic of Kosovo.
2. Based on the information available to the Institution of Ombudsperson, it is noticed that despite the risk posed by materials containing asbestos to the life and health of citizens and their impact on environment, various forms of this material are quite present in open, uncontrolled, unmanaged spaces, with no preventive measures that would avoid the negative impact on the environment. Even though the former system – which included Kosovo as well – had signed the Convention of European Economic Council- Directive 76/769/EEC of 27 July 1976 which forbids the use of asbestos,<sup>1</sup> the materials containing asbestos have been used continuously. In addition to its presence in the roof, the asbestos is often noticed in the forms of untreated waste even within settlements, within entire territory and that in contradiction with the criteria set out in the Law on Waste and Administrative Instruction No. 22/2015 for Management of Wastes Containing Asbestos.
3. The aim of this Report is to draw attention of competent authorities, Ministry of Environment and Spatial Planning (MESP) and municipalities on the need to undertake immediate preventive measures in order to reduce the negative effects to the environment and human health.

## Legal basis

4. Article 135, paragraph 3 of the Constitution of the Republic of Kosovo determines that: *“The Ombudsperson is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed”*.
5. Pursuant to the Law No. 05/L-019 on Ombudsperson, the Ombudsperson has the following powers:
  - *„ to investigate complaints received from any natural or legal person related to assertions for violation of human rights envisaged by the Constitution, Laws and other acts, as well as international instruments of human rights, particularly the European Convention on Human Rights, including actions or failure to act which present abuse of authority,, (Article 16, paragraph 1);*
  - *“to investigate alleged violations of human rights and acts of discrimination, and be committed to eliminate them” (Article 18, paragraph 1, sub-paragraph 1.1);*

---

<sup>1</sup> ASBESTOS AS ENVIRONMENTAL AND LEGAL ISSUE, Vanja-Ivan Savića, Hana Fajkovićb, Department for General Theory of Law and State, Faculty of Law, University of Zagreb, Department of Geology, Faculty of Science, University of Zagreb, *“The former Yugoslavia had signed the Convention of European Economic Council- Directive 76/769/EEC of 27 July 1976 which forbids the use of asbestos (firstly mineral crisotyle)”*.

- “to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases” (Article 18, paragraph 1, sub-paragraph 1.2 );
- “to inform about human rights and to make efforts to combat all forms of discrimination through increasing of awareness, especially through information and education and through the media” (Article 18, paragraph 1, sub-paragraph 1.4);
- “to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination” (Article 18, paragraph 1, sub-paragraph 1.5);
- “to publish notifications, opinions, recommendations, proposals and his/her own reports” (Article 18, paragraph 1, sub-paragraph 1.6 );
- “The Ombudsperson can advise and recommend to the institutions of the Republic of Kosovo for their programs and policies to ensure the protection and advancement of human rights and freedoms in the Republic of Kosovo” (Article 18, paragraph 3).

### **Obligation to cooperate with the Ombudsperson**

6. Article 132, paragraph 3 of the Constitution of the Republic of Kosovo decisively foresees the obligation of all institutions to respond to the requests of the Ombudsperson.
  - “Every organ, institution or other authority 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 conformity with the law”.
7. Also, Law No. 05/L-019 on Ombudsperson determined the obligation of all authorities to cooperate with the Ombudsperson. According to Article 18, paragraph 6 of the Law:
 

*“The Ombudsperson has access to files and documents of each authority of the Republic of Kosovo, ...may require any authority of the Republic of Kosovo and their staff to cooperate with the Ombudsperson, providing relevant information, including full or partial file copy and documents upon request of the Ombudsperson”.*
8. Article 25 of the Law on Ombudsperson has foreseen both obligation for cooperation and consequences of refusal.
 

*“1. All authorities are obliged to respond to the Ombudsperson on his requests on conducting investigations, as well as provide adequate support according to his/her request.*

2. *“Refusal to cooperate with the Ombudsperson by a civil officer, a functionary or public authority is a reason that the Ombudsperson requires from the competent body initiation of administrative proceedings, including disciplinary measures, up to dismiss from work or from civil service”.*

9. Moreover, paragraph 3 of the abovementioned Article determines that:

*“3. In case when the institution refuses to cooperate or interferes in the investigation process, the Ombudsperson shall have the right to require from the competent prosecution office to initiate the legal procedure, on obstruction of performance of official duty”.*

### **Actions undertaken by the Ombudsperson**

10. The Ombudsperson, pursuant to Article 16.4 of the Law No. 05/L-019 on Ombudsperson, on 16 January 2018, initiated the investigation procedure *ex officio* in relation to the measures taken by competent bodies to prevent pollution of environment with asbestos.

11. On 18 January 2018, the Ombudsperson addressed the then Minister of MESP with a letter, whereby requesting from her to inform him of measures taken by the Ministry she leads, which is the competent body in charge of administrative supervision of management of waste containing asbestos in order to:

*“-prevent and treat waste containing asbestos;*

*- raise public awareness on the impact of asbestos on their health and life and environment;*

*-raise public awareness on manners for treating the material of this nature;*

*-determine the locations and the place for disposing waste containing asbestos by local authorities;*

*-undertake inspection supervision and what actions have been undertaken; as well as*

*-whether the ministry has any information or research of its own or of any other authority or project, in relation to this issue”.*

12. On 22 January 2018, the Ombudsperson addressed the Mayor of Prishtina with a letter, whereby requesting from him to inform the Ombudsperson about the measures taken by the municipality, as competent authority<sup>2</sup>:

*“-Determining the location and place for disposing waste containing asbestos;*

*-Granting the permit for placing and disposing waste containing asbestos in places where it was considered that the environment is not polluted;*

---

<sup>2</sup> Article 11 of the Administrative Instruction No. 22/2015 for Management of Wastes Containing Asbestos

*-Municipal compulsory supervision of persons managing waste containing asbestos by the municipal inspectorate;*

*-Issuance of permits by competent municipal bodies to determine the location for placing waste by persons licensed by the Ministry of Environment and Spatial Planning;*

*-Raising public awareness on the impact of asbestos on their life and environment and for manners of treating the material of this nature; as well as*

*-The issue whether the municipality has information or research of its own or of any other authority or project in relation to this issue”.*

13. On 22 January 2018, the Ombudsperson addressed the Mayor of Gjilan with a letter, whereby requesting from him to inform of issues related to the management of asbestos.
14. On 22 January 2018, the Ombudsperson addressed the Mayor of Mitrovica with a letter, whereby requesting from him to inform of issues related to the management of asbestos.
15. On 22 January 2018, the Ombudsperson addressed the Mayor of Prizren with a letter, whereby requesting from him to inform of issues related to the management of asbestos.
16. On 22 January 2018, the Ombudsperson addressed the Mayor of Peja with a letter, whereby requesting from him to inform of issues related to the management of asbestos.
17. On 22 January 2018, the Ombudsperson addressed the Mayor of Ferizaj with a letter, whereby requesting from him to inform of issues related to the management of asbestos.
18. On 22 January 2018, the Ombudsperson addressed the Mayor of Gjakova with a letter, whereby requesting from him to inform of issues related to the management of asbestos.
19. On 26 January 2018, the Ombudsperson received a response from the Mayor of Mitrovica, whereby informing him that the management of waste containing asbestos is one of the objectives of the Municipality of Mitrovica.
20. On 6 February 2018, the Ombudsperson received a response from the Mayor of Prizren.
21. On 26 January 2018, the Ombudsperson received a response from the Municipality of Peja.
22. On 7 March 2018, the Ombudsperson, as it received no response from the Mayor of Prishtina, submitted a second letter.
23. On 7 March 2018, the Ombudsperson received a response from the Municipality of Ferizaj.

24. On 8 March 2018, the Ombudsperson, as it received no response from the Minister of MESP, submitted a second letter.
25. On 8 March 2018, the Ombudsperson, as it received no response from the Mayor of Gjilan, submitted a second letter.
26. On 22 March 2018, the representative of Ombudsperson met the Director of the Department for Public Service in the Municipality of Prishtina, and requested information regarding the reason for delaying the response to the request of Ombudsperson, as well as actions taken by municipality in relation to the management of waste containing asbestos. As he was not aware of the issue, he requested from us to address him in written form.
27. On 23 March 2018, the representative of the Ombudsperson met the advisor of the Minister of MESP, and requested information regarding the reason for delaying the response to the request of the Ombudsperson, as well as actions taken by the ministry in relation to the issue of waste containing asbestos, as well as implementation of the applicable legislation
28. On 28 March 2018, the representative of the Ombudsperson addressed via email the Director of Public Services Department in the Municipality of Prishtina in relation to this issue.
29. On 30 March 2018, the representative of the Ombudsperson met the Head of Information Office in the Municipality of Prishtina, whereby requesting information in relation to the reason for delaying the response to the request of the Ombudsperson. As she was not aware of the issue, she requested from us to address her in written.
30. On 16 April 2018, with regards to the issue of asbestos, the Ombudsperson discussed in the TV show "Puls" about the risk posed by improper treatment of the materials containing asbestos and impact on health and environment, as well as human rights.
31. On 23 April 2018, the representative of the Ombudsperson addressed via email the Head of Information Office in the Municipality of Prishtina in relation to this issue. Attached scanned copies of the Ombudsperson.
32. On 24 April 2018, the representative of the Ombudsperson addressed via email the advisor of the Minister of MESP in relation to this issue. Attached scanned copies of the Ombudsperson.
33. On 26 April 2018, the representative of the Ombudsperson met the Mayor of Gjakova, whereby requesting information in relation to the reason for delaying the response to the request of the Ombudsperson, as well as actions taken by the Municipality in relation to the management of waste containing asbestos. The Mayor informed that he was not aware of the issue and will respond to the Ombudsperson under expedited procedures.
34. On 11 May 2018, the Ombudsperson received a response from the Municipality of Gjakova.
35. On 25 May 2018, the Ombudsperson addressed the Minister of MESP with a third letter, whereby requesting urgent response to the Ombudsperson request.
36. On 13 June 2018, the Ombudsperson met the Minister of MESP, whereby requesting the reason for not responding to the letters addressed in relation to the issue of

asbestos. The minister informed that she was not aware of the issue and that she will respond to the request of the Ombudsperson. The Ombudsperson and former minister discussed about the opportunities for cooperation in promotion and education of public in relation to this issue.

37. On 27 June 2018, the representative of the Ombudsperson contacted the advisor of the Minister of MESP and requested from him to inform of the reason for not responding to the request of the Ombudsperson.
38. On 13 July 2018, based on the information received from other sources, the representative of the Ombudsperson contacted the Head of the Non-Governmental Organization “*Pro Vitae*”, who led the project for studying asbestos materials in public buildings in the Municipality of Peja and Municipality of Istog.
39. On 17 July 2018, the Ombudsperson received a response from the Head of the abovementioned project, whereby informing that the project has been implemented in cooperation with MESP, KEPA, Municipality of Peja and Municipality of Istog. The project aimed at studying asbestos materials in all public buildings of these two municipalities. During the implementation of this project, a roof has been removed from a school in Peja and staff has been trained on the how to remove asbestos and dispose residues. According to the Head of the Project, the report and study belong to the MESP; therefore, it has been submitted to the ministry.
40. On 26 July 2018, the Ombudsperson received a response from the Municipality of Gjilan in relation to this issue.

## **Responses of municipalities**

### **Municipality of Mitrovica**

41. Municipality of Mitrovica, with its response dated 26 January 2018, informed the Ombudsperson that the municipality has determined the location for disposing waste containing asbestos.
42. Based on the response, the municipality has drafted the local plan for solid waste from construction, demolitions and waste containing asbestos, which has been submitted for approval to the Municipal Assembly and proceeded the granting of permit to DMMP.
43. Municipality of Mitrovica received no request from persons licensed by MESP to grant the permit to determine the location for disposing waste containing asbestos.
44. With regards to the issue of organizing awareness raising campaigns, the Ombudsperson was informed that the municipality organizes awareness raising campaigns in relation to the waste management, in particular those with asbestos, on annual basis.
45. The letter was not accompanied with factual documents.



### **Municipality of Prizren**

46. Municipality of Prizren, with its response dated 6 February 2018, provided no information in relation to the request of the Ombudsperson on measures taken by the municipality to manage waste containing asbestos; it was focused on providing explanations in relation to the municipal waste management.
47. Even though AI<sup>3</sup> clearly specifies the duties of municipality to determine the location and place for disposing waste containing asbestos, the municipality justifies the failure to take actions in relation to this issue with the lack of actions from MESP, as they had *“no request from MESP, as the main authority responsible for managing hazardous waste or any private operator”*.
48. Municipality of Prizren provided no information in relation to the undertaking of actions to raise public awareness in relation to the impact of waste containing asbestos on environment and human health.
49. The letter was not accompanied with factual documents.

### **Municipality of Peja**

50. Municipality of Peja, with its response dated 6 February 2018, informed the Ombudsperson that the municipality is considering the opportunity for finding a new location, which will serve as a location for asbestos residues. The municipality also informed that it received no request for replacement of any roof, or similar, and that the municipality plans to replace roofs in two schools.
51. Based on the response of the Municipality of Peja, they received no request for replacement of any roof or similar and that municipality plans to replace roofs in 2 schools (one in Peja and one in Baran) in the medium-term period.
52. With regards to the public awareness-raising in relation to the impact of asbestos materials on environment and human health, the Municipality of Peja, even though it informed that it had numerous awareness-raising programmes, provided no information on when and who has undertaken those awareness-raising campaigns. According to the municipality, such campaigns will be organized on on-going basis.
53. Also, this municipality provided no document proving that municipality is not obliged to manage waste containing asbestos.

### **Municipality of Ferizaj**

54. Based on the response received by the Municipality of Ferizaj on 7 March 2018, the Municipality of Ferizaj took no action with regards to the treatment of waste containing asbestos. The treatment of concerned materials was not foreseen neither in municipal waste management plan. Based on the response, the issue for allocating the adequate parcel for treating “this waste” will be discussed in one of the meetings of the Municipal Assembly.
55. The letter was not accompanied with factual documents.

### **Municipality of Prishtina**

56. Based on the response received on 25 April 2018 from the Sector of Public Service of Municipality of Prishtina, the Municipality of Prishtina, regardless of being the largest municipality in the country, and the greatest generator of waste, did not undertake any specific action for managing waste containing asbestos.
57. Municipality of Prishtina, through a letter informs also that the relevant ministry has taken no concrete step, as there are no persons or companies interested to be licensed for treating and managing this type of waste.
58. The response of the Municipality of Prishtina contains no information in relation to the questions of the Ombudsperson on public education with regards to the management of waste containing asbestos in compliance with the applicable legislation.
59. The letter was not accompanied with factual documents.

### **Municipality of Gjakova**

60. Based on the response received from the Municipality of Gjakova on 11 May 2018, the Municipality of Gjakova has determined no location for asbestos residues, as provided for in AI.
61. We also understood that the Municipality of Gjakova is in procedure of obtaining the environmental permit from MESP for constructing the landfill for waste from demolition and construction of buildings, which would also be used for disposing waste containing asbestos. Also, the municipality received no requests from licensed operators. We also understood that the municipality is at the phase of obtaining the environmental permit in MESP for constructing the environmental landfill, which would also be used for residues of asbestos.
62. The letter was not accompanied with factual documents.

### **Municipality of Gjilan**

63. Based on the response received from the Municipality of Gjilan on 26 July, the Municipality of Gjilan has foreseen no location for disposing waste containing asbestos in the Municipal Development Plan 2008-2015 approved by the Municipal Assembly and permitted by the Ministry of Environment and Spatial Planning.
64. Based on the response, the regional landfill in village of Velekinca does not meet the conditions for disposing solid and asbestos residues.
65. Based on the response, the Municipality of Gjilan received only one request for “burying” asbestos residues.
66. Municipality of Gjilan expressed its concern for use of pipes of asbestos for water supply; however, it had no information with regards to the quantity and place of materials containing asbestos.
67. The letter was not accompanied with factual documents.

### **Provisions applicable to this issue**

---

<sup>3</sup> Administrative Instruction No. 22/2015 on Management of Wastes Containing Asbestos, obligations of

68. Law No. 03/L-025 on Environmental Protection, which regulates the integrating system of environmental protection, risk reduction for environmental pollution, life and human health according to the concept of sustainable development-, aims at improving the environmental conditions related to the quality of life and protection of human health.
69. One of the principles on which is based the Law No. 04/L-060 on Waste, and which law aims at preventing negative effects on environment and human health and final storage of waste in acceptable environmental manner, in Article 5,– [Principles for waste management] has foreseen “[ The principle of vigilance and prevention]” - paragraph 3, which obliges authorities to undertake encouraging and preventive measures for waste management:
- “3.1. public authorities when necessary undertake and encourage the prevention action of waste management”.*
70. Article 5, paragraph 5 “[The principle for waste management systemized according to priorities]”, foresees in sub-paragraph 5.1.5. the disposal of waste in landfills, without causing negative impacts to the environment and human health.
71. While, Article 8 of the Law has stipulated that ”[the principle of public access to information]”, determines not only the right of citizens for access to information related to waste management activities, but also their participation in decision-making.
- “8.1. in accordance with the principles contained in the Aarhus Convention, all persons have the right even if there are interested parties; to have access to any information that has to do with waste management activities...”.*
72. But, the Law on Waste Management, in Article 47 – [Management of waste containing asbestos], has regulated precisely the issue of management of asbestos waste, the liabilities of persons managing concerned waste, manner of disposal, conditions for environmental protection and manner for recording the waste.
- “1. Persons who manage waste containing asbestos must be licensed.*
- 2. Waste containing asbestos are collected, packaged, stored or disposed separately in a certain site designated for these waste types, which must be marked.*
- 3. Producer of asbestos products and owner of waste containing asbestos is obliged to take all measures that asbestos fibres and dust, not be emitted in environment.*
- 4. Owner of waste containing asbestos is required to keep records on the amount of waste stored or disposed and such records shall be presented to the Ministry.*
- 5. Minister with sub-legal act, determines manner of packaging, treatment and conditions and criteria on waste disposal”.*
73. Administrative Instruction No. 22/2015 for Management of Wastes Containing Asbestos specifically determines the conditions for the management of wastes

containing asbestos, measures to prevent environmental pollution by asbestos in order to protect human health.

74. The instruction has provided for in details the restrictions when the waste cannot be disposed, prevention of pollution by asbestos, treatment of waste, obligations of persons that manage waste, marking, obligations of competent authorities and inspective supervision.

### **Relevant legal instruments**

75. Environmental protection is listed among the values in which the constitutional order of the Republic of Kosovo is based. Article 7 [Values] of the Constitution of the Republic of Kosovo “...is based on the principles of ... respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment...”.

76. However, the Constitution has provided room and gave special importance to the environment and its protection, by listing it in Article 52, [*Responsibility for the Living Environment*] of Chapter II – Fundamental Rights and Freedoms. The Constitution has obliged “everyone”, without difference between natural and legal persons, to protect environment.

*“1. Nature and biodiversity, environment and national inheritance are everyone’s responsibility”.*

77. The Constitution has guaranteed in Article 25 the right to life,

*“Every individual enjoys the right to life”.*

78. One of international instruments which guarantees human rights and fundamental freedoms foreseen with Article 22 of the Constitution [Direct Applicability of International Agreements and Instruments] is European Convention for the Protection of Human Rights and Fundamental Freedoms;

79. In order for the rights and fundamental freedoms guaranteed with the Constitution of the country to be interpreted in compliance with the values of open and democratic society and in compliance with the practices of international bodies that supervise them, Article 53 [*Interpretation of Human Rights Provisions*] of the Constitutions specifies that:

*“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”.*

80. Even though the European Convention on Human Rights and its Protocols provide for no right for healthy environment, the European Court for Human Rights (ECtHR) has continuously developed its jurisprudence in environmental issues due to the fact that the exercise of certain rights derived from the Convention may be affected by the existence of damages and pollution of environment, and exposure of individuals in risk-posing environments.

81. The Court in its practice has already identified that various environmental issues can have impact on Article 2 [The Right to Life] Article 8 [ The Right to respect private and family life ], Article 6 [The Right to a Regular Process, Fair Trial and Access to Courts], Article 10 [ The right to be informed / Freedom of Expression], Article 13 [ The Right to Effective Complaining] and Article 1 of Protocol No.1[ Property Right].
82. With regards to the impact of environment on human rights, ECtHR has highlighted that public authorities are obliged to take measures to ensure that human rights are not seriously affected by the adverse environmental factors.
83. ECtHR gave significant importance to environmental data, in its interpretation, in terms of the right for safe and healthy environment. The Court has stated that public authorities should respect the fulfilment of requirements related to information and communication, as well as the issue of participation in decision-making processes and access to justice in relation to environmental cases.

### **The situation in the Municipalities**

84. Following the analysis of the situation in the 7 municipalities of Kosovo (the municipalities of Prishtina, Prizren, Peja, Mitrovica, Gjilan, Ferizaj and Gjakova), the Ombudsperson noticed that all the municipalities except for the Municipality of Mitrovica did not undertake actions for waste management containing asbestos, as foreseen in the Law on Waste and the Administrative Instruction No. 22/2015, on Waste Management Containing Asbestos.
85. Even though according to the Law No. 03/L-040 on Local Self-government, the environmental protection and the waste management are defined as exclusive powers of the municipalities; in terms of the management of the waste with asbestos, the municipalities have not taken the appropriate actions and in accordance with the legislation in force. It is also noted that some of the municipalities are not sufficiently clear about their task of managing waste with asbestos content, even though the “Responsibilities and duties of municipalities” are clearly stipulated in the Article 15 of the Law on waste.
86. None of the responses received by the municipalities were accompanied with factual documents that would document municipal plans for collecting, gathering and separating hazardous waste, more precisely, the asbestos waste from other waste<sup>4</sup>. It is concerning the fact that none of the municipalities have evidence of contaminated sites within their territory.
87. In relation to the question of the Ombudsperson, pursuant to the Article 11, paragraph 1 of the Administrative Instruction No. 22/2015, for the management of the waste containing asbestos, the Ombudsperson was notified that none of the municipalities, except for the Municipality of Mitrovica, did assign a location for the storage of waste with asbestos.
88. Even though according to Article 11. Par 1, of the Administrative Instruction, “Obligations of competent authorities, it is foreseen that the municipal authority is obliged to assign the location for the storage of the asbestos waste, none of the

---

<sup>4</sup> Law on Waste, Article 10, par. 6. 7, “*Plan of Republic of Kosovo and Municipalities for waste management*”.

Municipalities (except for the municipality of Mitrovica), did not foresee the location for the storage of the said waste.

89. Additionally, the lack of information in relation to the persons licensed by the Ministry, explicitly brings forth the failure of the local authorities for the implementation of the obligation deriving from the paragraph 4, of the Article 11, of the AI, which stipulates *“Persons licensed by the Ministry that manage with asbestos waste will receive permission from the competent management of the Municipal Assembly for determining the location for placement of waste”*.
90. Even though with Article 15 of the Law on Waste Management, Responsibilities and obligations of the Municipality *“Two or more municipalities, when it is their interest, can reach an agreement on waste management”*. No information has been provided to the Ombudsperson whether any municipality has reviewed the possibility for setting a joint location with other municipality, as a proportional measure, having in mind the high cost for the eligible management of the said type of waste.
91. Even though, according to the Law on Waste, the collection, gathering, transport, treatment, procession, storage, recycling and depositing of waste shall only be performed by a licensed person, similarly according to Article 6, par. 3, of the Administrative Instruction *“The person who manages wastes containing asbestos must be equipped with the waste management License”*, from the responses, it can be observed that no actions have been undertaken in this direction, even though it is being dealt with asbestos, which according to the Law is listed in the group of specific waste<sup>5</sup>.
92. The municipalities failed to present any information on the approval of a location for the placement of waste in question where no environmental pollution is caused.  
*“Depending on the nature of waste with asbestos, the municipal authority may authorize placing or dumping them in places where it is estimated that no environmental pollution is caused”*<sup>6</sup>.
93. From the responses, it is noticed that municipalities have been unable to provide information on whether they have fulfilled their legal obligation to supervise persons managing asbestos.  
*“Municipal authority is obliged that through the municipal inspector to supervise persons that manage wastes with asbestos”*<sup>7</sup>.
94. It is noted that despite the exclusive obligation set forth by the Law on Waste that municipal plans should contain public awareness raising programs and public education regarding waste management, in the case of asbestos waste, in their responses to the Ombudsperson, the municipalities have failed to provide convincing evidence that their plans have also integrated public awareness and education programs, which at this stage in the country would be an effective measure to prevent the impact of asbestos pollution on the environment and human health.

## Legal analysis

---

<sup>5</sup> Law on Waste, Article 38 Management of special waste, par. 4.8. “wastes containing asbestos;”.

<sup>6</sup> Ibid, Article 11, par. 2.

<sup>7</sup> Ibid, Article 11, par. 3.

95. Although in the absence of cooperation of the MESP, as the most competent central level body, the Ombudsperson, bearing in mind that the state is responsible for activities that are harmful to the environment, such as those carried out by public authorities or by a private person or company<sup>8</sup> estimates that state institutions at local and central that are responsible for waste management, specifically in terms of management of asbestos as a specific waste<sup>9</sup>, despite the risk to human life and health<sup>10</sup>, did not undertake concrete actions as a positive obligation, which would be effective measures for waste management with asbestos content.
96. ECtHR, in the case *L.C.B. v. the United Kingdom*, has given the opinion that the countries have a positive obligation to undertake appropriate measures to protect the lives of citizens within their jurisdictions.
97. The Ombudsperson, based on the analysis of the legislation in force that regulates the issue of asbestos waste management, considers that the legislation in force adequately regulates the issue of where the asbestos waste should not be disposed of; steps to prevent the environmental pollution; the manner of treating the waste in question; transport, storage and disposal; the obligations of the authorities; management and record keeping; as well as administrative and inspection oversight.
98. But in two basic documents for waste planning and management, Strategy of the Republic of Kosovo on Waste Management 2013-2022, Plan of the Republic of Kosovo on Waste Management 2013-2017, it can be noticed that not enough importance has been given to asbestos residues. Asbestos, in both documents is mentioned only in the case of “*Cleaning of the river Lepenc from the asbestos waste*”.
99. The Ombudsperson considers that the failure of the Ministry of Environment and Spatial Planning to respond to the Ombudsperson's request with information that would document the measures taken for the management of asbestos waste as specific waste according to the criteria defined by the Law on Waste, is a prove on the failure of the Ministry, as the competent authority, for implementation of the legal provisions of the Law on Waste, which will provide citizens with a safe and healthy environment.
100. The failure of the MESP to provide facts for actions undertaken for treatment of asbestos-containing waste as a preventive measures for the negative impacts of waste on the environment and human health, is sufficient indicator of the failure of expectations that Article 1, par. 1.4, of the Law on Waste, according to which the law aims “*prevention of negative effects of the waste in environment and in human health*” should produce.
101. Moreover, Article 5 of the Law, in par. 3, “The principle of vigilance and prevention.”, emphasized that:
- “public authorities when necessary undertake and encourage the prevention action of waste management”.*
- Having in regard the grounded suspicion on scientific arguments of asbestos impact on human health and environment, undertaking of measures in accordance with the

---

<sup>8</sup> European Social Charter, Chapter I: “Right to protection of health and the environment.

<sup>9</sup> Law No. 04/L-060 on Waste, “Specific waste”, Article 38.

<sup>10</sup> [http://www.who.int/ipcs/assessment/public\\_health/asbestos/en/](http://www.who.int/ipcs/assessment/public_health/asbestos/en/), “*All types of asbestos cause lung cancer, mesothelioma, cancer of the larynx and ovary, and asbestosis (fibrosis of the lungs)*”.

Law from the State would be preventive measure and an effective measure that would keep the situation under control.

102. The Ombudsperson considers that the negligence of Ministry to engage in the issue of waste management has resulted in a lack of information which would testify the work of the ministry towards the implementation of the provisions of the law and the administrative instruction governing the management of asbestos waste. An effective information system would guarantee to the public, participation in decision-making and access to justice.

103. Additionally, despite non fulfilment of the obligations according to the Law and AI, based on information obtained from the Minister Reshitaj, notwithstanding the risk for life, neither the Ministry nor the Municipalities undertook any information activity, as an prevention measure that will raise the awareness of the public on the risk for the environment and the human health from non-professional management of materials contacting asbestos.

104. The Ombudsperson, reiterates that the entire legal basis of the environmental legislation in Kosovo, as well as the Law on Waste itself, has been embedded in the principle of public access to information,<sup>11</sup> which guarantees everyone access to the environment-related information.

*“in accordance with the principles contained in the Aarhus Convention, all persons are entitled, even if they are not involved parties, to have access to any information pertaining to waste management activities as well as the right and possibility of participation in decision-making on waste”.*

105. ECtHR, in the case Öneriyıldız v. Turkey, in relation to the failure of authorities for public information and undertaking effective and preventive measures, had considered violation of Article 2, due to the lack of undertaking appropriate steps by the state to prevent the deaths of nine residents living near a waste landfill. The Court *emphasized the failure to inform the inhabitants of the risk they were taking by continuing to live in that place. According to the court, even if there would be information, the State is responsible since it failed to undertake the necessary practical steps to avoid the risks to the lives of the inhabitants.*

106. The MEST did not managed to inform the Ombudsperson regarding the issue of public awareness on the impact of asbestos on their health and the environment, as well as public awareness on the ways of treatment of given materials, although the law clearly stipulates the principle of vigilance. According to Article 10, para. 6.13 of the Law on Waste, it is determinedly stipulated that the plan of the Republic of Kosovo and Municipal Plans for waste management should also contain *“programs for raising public awareness and education regarding waste management”.*

107. In the case *Dubetska and others v Ukraine*<sup>12</sup>, regarding the chronic health problems of the residents from the impact of environmental pollution, the ECtHR stated that there is no doubt that pollution could adversely affect public health in general and deteriorate the quality of an individual's life, although it is often impossible to determine its effect on each individual case. The court further emphasized that living in a zone, where the permitted pollution safety standards are clearly exceeded, poses a high risk to health. The Court found a violation of Article

---

<sup>11</sup> Law on Waste, Article 5. Par.8 “The principle of public access to information”

<sup>12</sup> *Dubetska and Others v. Ukraine, paragraph 105;*



- 8, since the authorities had not found an effective solution to the situation in order to stop the pollution.
108. According to the World Health Organization-WHO Document and the International Labour Organization-ILO, published in 2007, relating to the development of National Programs for the Elimination of Asbestos - related disease, *“Exposure to asbestos causes asbestosis, pleural plaques, thickening and effusions, lung cancer, mesothelioma, laryngeal and possibly other cancers with different latent periods”*.
109. The Ministry as a competent body has failed also to provide a response to licensed persons, when it is known that it is responsible not only for issuing the license but also for keeping records for licensed persons. The Law in the Article 14, par. 1.4, has determined that one of the *“Responsibilities and duties of Ministry and other relevant institutions: specifies that:*  
*“issuance of license for waste management and keeping records in the registry for license”*.
110. Furthermore, Article 47, par. 1 of the law *“Management of waste containing asbestos, specifies that” Person who manages waste containing asbestos must be licensed”*. The licence issue is also regulated by Article 6, par. 3, of the Administrative Instruction No. 22/2015, for Management of Waste Containing Asbestos.
111. Thus, according to the Ombudsperson, distressing is the fact that competent authorities have failed to prove, provide information whether there are licensed persons for the management of asbestos waste, despite the impact on the health and environment of the given material.
112. The World Health Organization-WHO, in its document published in 2014 *“Elimination of Asbestos-related Diseases”*, which examines the adverse effects on health from the exposure to asbestos, estimates that at least 107,000 people die annually from lung cancer, as a result of exposure to asbestos during the course of their occupation.
113. However, a continuous failure to meet the obligations by the local level bodies, as responsibility for the environment, the MESP as a competent body for waste management involving asbestos did not provide any information on Ombudsperson's request regarding inspecting supervision and the actions undertaken, even though the Law has precisely defined in Article 14, par. 1, of the Administrative Instruction No. 22/2015, for Management of Wastes Containing Asbestos, according to which *“Administrative supervision of waste management containing asbestos shall be performed under Article 61 and 62 of the Law on Waste”*. The Ombudsperson finds that the law has precisely stipulated that *“Administrative supervision for implementation of provisions of this law and provisions issued on its basis shall be performed by the Ministry”*.
114. Article 62, of the Law on Waste has left no room for suspicions in relation to the competencies *“Inspective supervision for the implementation of this law and provisions issued by it, criteria and methods of working conditions of persons being supervised as well as measures of environmental protection from waste pollution, determined by this Law are performed by environmental inspectorate of the Ministry”*.

115. The ECtHR's case law, in the light of Article 2 of the Convention, [The Right to Life], gives the opinion that the State should establish positive obligations to take the necessary measures to protect the lives of citizens within its jurisdiction<sup>13</sup>.

Article 2 obliges public authorities to undertake steps to guarantee the rights of the Convention, even when the rights are threatened by other persons (private) or activities that are not directly connected with the state. According to the Court, State's positive obligation can be applied within the contexts of life-endangering activities, running of chemical factories with toxic emissions, or sites of waste collection, transported whether by public authorities itself or private companies. Generally, the level of public authorities' obligations depends on factors of how much is the impact of hazardous activities and predictability of life threats.<sup>14</sup>

116. Despite the constitutional responsibility for environmental protection, MESP failed to respect the principle of public access to information on documents containing environmental information. It is noted that MESP has not disclosed the NGO report, "Pro Vitae", despite the fact that it contains information on asbestos research in all public buildings in the municipalities of Peja and Istog, although it has failed to justify the restriction on the right of access to information.

117. Further, although the Law on Ombudsperson decisively foresees the right of access of the Ombudsperson, in all files and documents, of any authority of the Republic of Kosovo, the Ministry has refused to provide access to the report conducted concerning asbestos in all public buildings in Peja and Istog of NGO "Pro Vitae".

118. Regarding the ungrounded limitation in the Law on access to public documents, the Ombudsperson brings to attention the Article 41 [Right of Access to Public Documents] of the Constitution, which guarantees everyone the right of access to public documents, "Every person enjoys the right of access to public documents", and decisively stipulates that the limitation of the right can only be made by law, and for certain reasons.

*"Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification".*

119. Regarding the failure of the State to meet its obligation for the information about the impact of asbestos on human health and the environment, in the case *Roche v. the United Kingdom*, the ECtHR found a breach of Article 8 of the Convention in general circumstances since the State had failed to meet its positive obligation to ensure an effective and accessible procedure enabling the applicant to have access to all relevant remedies and appropriate information that would let him evaluate any danger to which he was exposed.

120. Despite the on-going omissions, the Ombudsperson has not found, even through other sources, that the Ministry has guided the policies that the waste management ought to be accomplished according to the eligible environmental methods, by undertaking additional and rapid action as provided for in Article 38, Law No. 04/L-060 on Waste "Management of specific waste".

---

<sup>13</sup> *L.C.B. v United Kingdom judgment of 9 June 1998, paragraph 36.*

<sup>14</sup> *Öneryıldız v. Turkey [GC], paragraph 73; L.C.B. v. the United Kingdom, paragraphs 37-41.*

*“Management of specific waste under Article 4. paragraph 1. sub-paragraph. 1.15. of this Law, is organized by methods, through which there is no risk for human health and the environment.*

*Minister may undertake additional measures for the management of special wastes, if waste and all waste operations may endanger human health and the environment.*

*The Government is obliged to undertake prompt measures for risk prevention, if it is estimated that they may pose a risk to the environment and human health”.*

121. The Ombudsperson finds that the Court in the cases of *Öneryıldız v. Turkey*, par. 93 and of *Budayeva and Others v. Russia*, par.140, has emphasized that the cases specifically dealing with dangerous activities, when public authorities are fully aware of the potential consequences and do not exercise their responsibility to avoid the risk, by failing to take the necessary and sufficient measures to avoid the risks that may cause loss of life, and breach of Article 2 of the ECHR requiring that those responsible for endangering life be charged with a criminal offense or be prosecuted.

### **MESP's failure to cooperate with the Ombudsperson**

122. Although the Constitution of the Republic of Kosovo, in Article 132, paragraph 3, decisively stipulates the obligation of all institutions to respond to the requests of the Ombudsperson, the MESP, despite the continued written requests, electronically, and through direct contacts between the Ombudsperson and the then-Minister, did not provide any answer regarding the issue of waste management with asbestos content.

*“Every organ, institution or other authority 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 conformity with the law”.*

123. Unjustified and incomprehensible remains MEST’s failure to provide information regarding the report of the NGO “Pro Vitae” that pertained to asbestos research in all public buildings of municipality of Peja and Istog, remains unreasoned and incomprehensible, despite the constitutional and legal obligation it did not respond to the Ombudsperson's request to be informed about the case.

124. The Ombudsperson brings to the attention of the competent persons in the Ministry, that the Law on Ombudsperson No. 05/L-019 has set forth the obligation of all the authorities to cooperate with the Ombudsperson. According to Article 18, paragraph 6 of the law, it is stated that: *“ The Ombudsperson has access to files and documents of each authority of the Republic of Kosovo, including medical files of the people deprived from liberty, in accordance with the law and can review them regarding the cases under its review and according this Law, ... may require any authority of the Republic of Kosovo and their staff to cooperate with the Ombudsperson, providing relevant information, including full or partial file copy and documents upon request of the Ombudsperson”.*

125. Whereas Article 25 of the Law on the Ombudsperson has foreseen both the obligation for cooperation, and also the consequences of the refusal.

*“1. All authorities are obliged to respond to the Ombudsperson on his requests on conducting investigations, as well as provide adequate support according to his/her request.*

*2. Refusal to cooperate with the Ombudsperson by a civil officer, a functionary or public authority is a reason that the Ombudsperson requires from the competent body initiation of administrative proceedings, including disciplinary measures, up to dismiss from work or from civil service”.*

126. In particular, the Ombudsperson recalls paragraph 3 of Article 25, which stipulates that situations where the institutions do not cooperate with the Ombudsperson and the right to request from the prosecution to initiate proceedings:

*“In case when the institution refuses to cooperate or interferes in the investigation process, the Ombudsperson shall have the right to require from the competent prosecution office to initiate the legal procedure, on obstruction of performance of official duty”.*

## **Conclusions**

127. Following the review of the case, the Ombudsperson considers that despite the sufficient legal basis, provided for by the Law No. 04/L-060 on Waste and Administrative Instruction No. 22/2015 for Management of Wastes Containing Asbestos, the MESP and Municipalities, despite the fact that they are tasked with law enforcement functions and responsible for protection of living environment, nature and biodiversity,<sup>15</sup> have not taken action to ensure a safe and healthy environment for Kosovo citizens, as an positive obligation deriving from Article 25 [Right to Life] and Article 52 [Responsibility for the Environment], of the Constitution.

128. Based on the information available it is considered that the locations for the disposal of asbestos waste (except for the municipality of Mitrovica) have not yet been determined. None of the bodies (ministry and municipalities) have been able to provide evidence of where asbestos waste is disposed, although according to the AI, for the Management of Waste Containing Asbestos, it is forbidden its disposal without the consent of the competent authorities and also its mixture with other waste.

129. Moreover, it is noted that none of the authorities (ministry and municipalities) has provided information on whether or not they have licensed persons, whether they are aware on the measures undertaken by the users or the users of asbestos-containing products during their activities so that no environmental pollution with the fibre will occur. The authorities have even failed to provide any information whether the persons who manage waste do meet their obligations as provided for in Article 8 of Administrative Instruction No. 22/2015, for the Management of Waste Containing Asbestos.

130. It is deemed as overly worrying the fact that there is a lack of information on the storage, disposal of waste containing asbestos, the safe packaging manner, and the lack of marking with adequate signs.

131. The Ombudsperson considers that failure to obtain information from central and local authorities regarding Administrative and Inspective Supervision, as provided for in Articles 61, 62 and 63 of the Law on Waste, and the Administrative Instruction for the Management of Waste Containing Asbestos, is the result of authorities' negligence to keep control of a material with such a negative impact on the environment and human health.

---

<sup>15</sup> Commentary, Constitution of the Republic of Kosovo, Article 52.1, p. 197

132. The Ombudsperson finds that the lack of any awareness-raising activities and informing of the public about the risk of asbestos-containing material indicates failure and neglect of the competent authorities for the protection of human health and life and at the same time a restriction of the right to secure and healthy environment, and the right to life.
133. Based on all the above facts, the Ombudsperson finds that the failure of the Ministry of Environment and Spatial Planning to prove the undertaken actions regarding the treatment of asbestos materials within the territory of the Republic of Kosovo as foreseen by Law and Administrative Instruction is an indicator of its failure as a competent authority for the implementation of the obligations arising from Article 92 of the Constitution for the exercise of executive power in accordance with the Constitution and Legislation and the implementation of the laws adopted by the Assembly of Kosovo.
134. Having in mind that “*Only the law has the authority to determine the rights and obligations for legal and natural persons*”, with the aim of observing Article 25 of the Constitution, [Right to Life], and Article 52 [Environmental Responsibility], and in order for the authorities to take effective measures to manage effectively the waste that contains asbestos, as well as measures for the prevention of pollution of the environment with asbestos, for the purpose of environmental protection on the basis of the case analysis and conclusions, in accordance with Article 135, paragraph 3, of the Constitution of the Republic of Kosovo, as well as Article 18, paragraph 1.5 and 1.7 of the Law on Ombudsperson, the Ombudsperson:

## RECOMMENDS

1. The Government to undertake immediate measures<sup>16</sup>for management of waste with asbestos content, as foreseen with the Law No. 04/L-060 on Waste.
2. The Ministry of Environment and Spatial Planning (MESP) to undertake additional measures<sup>17</sup>for management of waste containing asbestos;
3. Municipalities, in cooperation with the Ministry of Environment and Spatial Planning, to promptly undertake measures for implementation of obligations deriving from the Law No. 04/L-060 on Waste and the Administrative Instruction No. 22/2015 for the Management of Waste Containing Asbestos.
4. The Ministry of Environment and Spatial Planning to immediately begin, through various forms, information and awareness rising on asbestos impact on human health and environment, as well as on forms of management.
5. The Ministry of Environment and Spatial Planning, with the exception of information restricted by law, to make available to the public the NGO “Pro Vitae” Report on asbestos research of all public buildings in Peja and Istog.
6. The Committee for Agriculture, Forestry, Rural Development, Environment and Spatial Planning of the Kosovo Assembly to seek responsibility from the Minister of MESP for the failure to undertake measures provided for in the Law No. 04/L-060 on Waste, Administrative Instruction No. 22/2015 for the Management of Waste Containing Asbestos

In conformity with Article 132, paragraph 3 of Constitution of the Republic of Kosovo (“Every organ, institution or other authority 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 conformity with the law”) and Article 28 of the Law No. 05/L-019 on Ombudsperson (“Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions,... must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question”), will you kindly inform us on actions to be undertaken about this issue.

Sincerely,

Hilmi Jashari  
Ombudsperson

---

<sup>16</sup> Law No. 04/L-060 on Waste, Article 38 “Management of specific waste”, par. 3, *The Government is obliged to undertake quickly measures for risk prevention, if this case can be presented estimated risk to human health and the environment people*”

<sup>17</sup> Law No. 04/L-060 on Waste, Article 38 “Management of specific waste”, par. 2, *“Minister may undertake additional measures for the management of special wastes, if waste and all waste operations may endanger human health and the environment”*”.

