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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

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## REPORT WITH RECOMMENDATIONS

**Ex officio 280/2016**

**regarding the continuous violation of the right to a safe and healthy environment, the right to life and privacy, the right to use effective remedies, the right to property, the freedom of movement of the inhabitants of Obiliq and neighbouring municipalities affected by the same problem**

To:

Mr. Kadri Veseli, President of the Assembly of the Republic of Kosovo  
Mr. Muharrem Nitaj, Chairperson of the Committee on Agriculture, Forestry, Rural Development, Environment and Spatial Planning  
Mr. Fatmir Matoshi, Minister of the Ministry of Environment and Spatial Planning  
Mr. Valdrin Lluka, Minister of the Ministry of Economic Development  
Mr. Uran Ismaili, Minister of the Ministry of Health  
Mr. Nehat Idrizi, Chairperson of Kosovo Judicial Council  
Mr. Blerim Isufaj, Chairperson of the Kosovo Prosecutorial Council  
Mr. Xhafer Gashi, Mayor of Obiliq Municipality  
Mr. Shpend Ahmeti, Mayor of the Municipality of Prishtina  
Mr. Ilir Morina, Chief Executive Officer of the Kosovo Environmental Protection Agency  
Mrs. Letafete Latifi, Director of the Hydrometeorological Institute of Kosovo  
Mr. Naser Ramadani, Director of the Institute of Public Health of Kosovo

Prishtina, on 21 December 2018

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## **Introduction**

The Ombudsperson, pursuant to the Law No. 05/L-019 on Ombudsperson, has initiated investigation procedures *ex-officio* since 27 April 2016 with respect to the continuous violation of the right to a safe and healthy environment; the right to life and privacy; the right to use effective remedies; the right to property; the freedom of movement of the inhabitants of the Municipality of Obiliq and the neighbouring municipalities affected by the same problem.

According to the information received through various sources, citizens' complaints, meetings with the Mayor of Obiliq, reports of relevant institutions and agencies on environmental matters, and the media, the Ombudsperson identified a series of environmental problems faced by citizens of the areas in question.

Identified environmental issues are as follows: lack of quality environmental monitoring, lack of access to environmental and health information, increased number of people suffering from respiratory diseases, cardiovascular and malignant diseases, mismanagement of Mirash waste landfill and other landfills, ash landfill, water, air and soil pollution, problems of families located within the part surrounded by KEC in village Palaj, the problems of citizens living near mining area, the houses damaged by excavation, the problems of expropriation of the inhabitants in the area of interest, construction of houses/facilities for the purpose of benefiting from expropriation, non-cooperation of competent authorities to find effective solutions for environmental problems, as well as delays in cases initiated with the court.

### **Purpose of the report**

The purpose of this report is to draw the attention of the state institutions of the Republic of Kosovo, the Assembly of Kosovo, the Parliamentary Committee on Agriculture, Forestry, Environment and Spatial Planning (CAFESP), the Ministry of Environment and Spatial Planning (MESP), the Ministry of Health (MoH), The Kosovo Police (KP), the National Institute of Public Health of Kosovo (NIPH), and the Municipality of Obiliq (MO) for the on-going violations of human rights and freedoms from pollution and environmental impacts of various factors in the areas of the Municipality of Obiliq and other places affected by the abovementioned problems.

During the two-year period of monitoring of the issues evidenced in the report, the Ombudsperson has not noticed many changes with an improvement trend.

This report was drafted based on the information received from the field, based on citizens' complaints addressed to the OI, information received at the request of the Ombudsperson, from the Municipality of Obiliq, the Ministry of Environment and Spatial Planning, the Ministry of Health, Institute of Public Health of Kosovo, from direct meetings with the Parliamentary Committee for Agriculture, Forestry, Environment and Spatial Planning, as well as reports of relevant institutions and agencies on environmental issues.

### **Competence of the Ombudsperson**

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

2. Also, according to Law No. 05/L-019 on Ombudsperson, among others, the Ombudsperson has the following competencies and responsibilities:

- The Ombudsperson has the power to investigate, either to respond to complaint filed or on its own initiative (ex officio), if from findings, testimonies and evidence presented by submission or by knowledge gained in any other way, there is a base resulting that the authorities have violated human rights and freedoms stipulated by the Constitution, laws and other acts, as well as international instruments on human rights" (Article 16, paragraph 4).
- 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, sub-paragraph 1.2).
- 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, sub-paragraph 1.5).
- to publish notifications, opinions, recommendations, proposals and his/her own reports; (Article 18, sub-paragraph 1.6).

### **Actions of the Ombudsperson Institution**

3. On 28 April 2016, the Ombudsperson met with the Mayor of Obiliq, who informed on the environmental problems faced by this municipality and its citizens, as well as the budgetary inability to improve the situation. According to him, the increase in the number of people suffering from respiratory, cardiovascular and malignant diseases is worrisome. Air, water and soil pollution, acoustic pollution, and emissions from KEC are issue in its own. Also, there is a lack of continuous access to environmental information, MESP and operator reports. In addition to the "Mirash" regional waste landfill, in the Municipality of Obiliq there are also landfills with hazardous waste of Trepça and the one of expired drugs in Mazgit village.

4. On 28 April 2016, the Ombudsperson visited the waste landfill in Mirash, where odour and discharge of untreated waters were observed, as a result of poor waste management.

5. On the same day, the Ombudsperson visited the villages near the surface mining. The roads leading from the centre of Obiliq to the surrounding villages were filled with various wastes, inert waste, ash from the energy industry, etc. Coal conveyor belts were not market with warning/signalling signs or protective fences. Within the fence of KEC is located the house and property of the Morina family, whose access was impeded by KEC's security checks. Each member and each visitor of the family was checked at every entry-exit by KEC's security guards. The two children of the family, of age two and three, face chronic problems of respiratory organs, as a result of the direct impact of the pollution caused by the mining. Properties of permanent residents in the villages around the mining were endangered by landslides, while the expropriation process had stagnated for unclear reasons.

6. In the village of Shipitulla, which is also located in the area of interest, were observed many newly built houses, most of them uninhabited.

7. On the same day, the Ombudsperson stated before the media that he would initiate investigations regarding concerns raised on the issue<sup>1</sup>. According to the Ombudsperson, there should be a national strategy, a proper plan for citizens to know what the level of environment pollution is, and whether these parameters are in compliance with applicable laws.

8. On 10 May 2016, the Ombudsperson met with the director of serious crimes and the director of economic crimes in the Kosovo Police, with whom he discussed the problems identified in the Municipality of Obiliq, and requested that the Police initiates investigation proceedings concerning the case.

9. On 14 September 2016, the Ombudsperson attended the meeting organized by the Kosovo Assembly Committee for Agriculture, Forestry, Environment and Spatial Planning, informing the attendees that the institution is conducting an investigation for environmental pollution, and the impact of pollution on the rights of citizens in Obiliq and the surrounding municipalities. Although the mining area is declared as area of national interest, it is not treated adequately. The pollution effect does not affect only the inhabitants of Obiliq, but also other citizens in the surrounding municipalities. The Ombudsperson mentioned before the attendees the case of Morina family, which lives in village Palaj, and their property is located within the area fenced by KEC, and their freedom of movement is hampered by the establishment of the KEC gate. Every entry-exit in that house passes through the checkpoint. The Ombudsperson paid special attention to the problem of diseases of the children of this family: *“The fate of these two children deserves not only the attention of the Committee, but also of the entire Kosovo Assembly to debate what the solutions are”*. As the problem has continued since 2004 to date, this is a complex problem related to the right to life, the right to a safe and healthy environment, to privacy, the right to property, freedom of movement, etc., and as such, it exceeds the power of a governmental department and economic operator to resolve this problem, it has even exceeded the power of a government. According to the Ombudsperson, the most appropriate forum to discuss and find a solution is the Kosovo Assembly.

10. On 22 September 2016, the Ombudsperson addressed a letter to the Mayor of Obiliq, asking him to be informed of the actions taken by the Municipality regarding its legal competencies related to environmental issues within the local level competencies.

11. On 29 September 2016, the Ombudsperson attended the meeting organized by the Kosovo Assembly Committee for Agriculture, Forestry, Environment and Spatial Planning, and stated that the expropriation of the properties of inhabitants of the area of special interest should be done only according to the law.

12. On 3 and 4 October 2016, the OI representative, together with the group consisting of the Ministry of Environment and Spatial Planning, Kosovo Police, with the invitation of the Obiliq Municipality, met the management of "Kosova A", "Kosova B" and "Kosova

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<sup>1</sup> <http://koha.net/?id=8&l=110537>

Thengjilli". In the meeting, it was understood that, in cases where there was recorded excess of pollution, the competent authorities have never informed citizens about the pollution, in order for them to avoid house exits at minimum, due to possible impact on health. Also, it was understood from the same that they have never submitted any request to the Ministry of Health, as well as to the Institute of Public Health in order for them to have scientific data on the health status of the population, despite the rumours that due to pollution, the percentage of people suffering from respiratory, cardiovascular and malignant diseases is increasing.

13. On 4 October 2016, the Ombudsperson addressed a letter to the Minister of Health, asking him to be informed of whether the Ministry has information within the Health Information System (HIS) regarding the increase of the number of citizens affected by diseases of respiratory organs, cardiovascular and malignant diseases for the territory in question, since, according to various information, information from the Obiliq Municipality, it appears that the percentage of citizens affected by the aforementioned diseases is higher compared to other parts of the country.

14. On 4 October 2016, the Ombudsperson addressed a letter to the Executive Director of the Institute of Public Health, asking him to be informed whether the Institute has information regarding the increase in the number of citizens affected by respiratory diseases, cardiovascular diseases and malignant diseases in the territory concerned, as, according to various information, it appears that the percentage of affected citizens is higher compared to other parts of the country.

15. On 6 October 2016, the Ombudsperson received a response from the Mayor of Obiliq, through which OI was informed about the actions taken by the Municipality on issues related to the scope of the review of this report.

16. On 11 October 2016, the Ombudsperson received a response from the Institute of Public Health of Kosovo, which informed him regarding the actions taken within their competencies.

17. On 13 October 2016, the Ombudsperson issued an Opinion regarding the situation in the areas of the zone of special economic interest, according to Decision No. 4/119, dated 3 November 2004 and Decision 02/57, dated 13 March 2009 of the Government of Kosovo, with the proposal for taking effective measures to solve the issue. According to the Ombudsperson, although the environmental situation is far from desirable standards, and pollution norms, according to existing reports, often exceed the allowed limits defined by domestic legislation, with the possibility of negative impact on the health of citizens. The relocation, expropriation or movement of the population from those areas, as a proportional and effective measure to solve the issue, since 2004 has not been carried out, despite the positive obligation of the state to act. Residents are constantly facing and continue to face air, water and soil pollution, noise and vibration from the operation of heavy machinery, while the competent authorities have continued to remain silent, not trying to find solutions against an unclear situation, which sees no improvement, but always tending to deteriorate.

18. On 13 October 2016, the Ombudsperson, on the TV show 'Jeta në Kosovë', titled "*Tokat mbi Qymyr (Lands over Coal)*", regarding the issue of settlements near mining in Shipitulla, gave the opinion that no one can guarantee that there will be no landslides and that

any citizen might lose life, as it can be seen in the water wells in residential properties how the soil has slide. The Ombudsperson stated that wherever people look at, there is degradation of the environment, which is an unacceptable approach by the state, in relation to the area in question, given the location of other landfills, creating an extremely polluted environment that has brought this location to a situation so as to change the name to "Chernobyl".

19. On 14 October 2016, the Ombudsperson received a response from the Ministry of Health, through which was informed regarding the actions taken within their competencies.

20. On 21 October 2016, the Ombudsperson attended the meeting organized by the Kosovo Assembly Committee for Agriculture, Forestry, Environment and Spatial Planning, whereby he reiterated that human rights and freedoms are being violated, and that expropriation should be done according to the law. If it is decided that expropriation be done based on the Resettlement Policy Framework of the Republic of Kosovo for the new mining field, then the document should be given the legal power.

21. On 21 November 2016, the Ombudsperson received a response from MESP, through which he was informed regarding the actions taken within their competencies, according to the questions raised by the Ombudsperson.

22. In the 2016 annual report, the Ombudsperson presented the problems related to the issue of the report.

23. On 13 March 2017, the Ombudsperson attended the meeting organized by the Kosovo Assembly Committee for Agriculture, Forestry, Environment and Spatial Planning, where the decision of the Committee for approving the new law called "Law on Hade" was discussed. The purpose of the Law is to regulate the procedures of compensation, expropriation and resettlement of inhabitants from the area of the zone of special economic interest according to Decision No. 4/119, dated 3 November 2004 and Decision 02/57, dated 13 March 2009. The stand of the Ombudsperson regarding the decision of the Committee on the "Law on Hade" was as follows: There is already a basic law on expropriation. The issuance of a new law would consume time and would further drag this matter. The new law cannot be contrary to the law on expropriations. The Constitution of the Republic of Kosovo and the Law on Expropriation are sufficient basis for carrying out the process of compensation, expropriation and resettlement of the residents of the areas in question". Particularly, we should bear in mind the constitutional obligation deriving from Article 53 of the Constitution of the Republic of Kosovo, according to which human rights and fundamental freedoms guaranteed by the Constitution should be interpreted in line with the decisions of the European Court of Human Rights. The Constitution and the Law on Expropriation provide sufficient answers towards ending the on-going violations of human rights. The Committee has already done its job and it is not within the competence of the Assembly Committee to find a solution, but it is the Government's competence. The Ombudsperson recommended the Committee: to urge the Prime Minister of the Republic of Kosovo to undertake actions, to include the issue of Hade on the agenda at the Government meeting; for the issue to be raised at the Inter-Ministerial Committee on Human Rights, to discuss the actions taken by the Government towards implementing the recommendations of the Ombudsperson Institution; so that the Government

eventually informs the Assembly in plenary session of the actions undertaken to solve the issue.

24. On 14 March 2017, the Ombudsperson addressed to the Kosovo Assembly Committee for Agriculture, Forestry, Environment and Spatial Planning with recommendations for solving the problem of expropriation/resettlement of inhabitants from the area of the zone of special economic interest, addressed to the Kosovo Assembly Committee for Agriculture, Forestry, Environment and Spatial Planning, according to Decision No. 4/119, dated 3 November 2004 and Decision 02/57, dated 13 March 2009.

25. On 28 May 2017, the Ombudsperson with collaborators, accompanied by an expert of the Hydrometeorological Institute of Kosovo, as well as officials of the Municipality of Obiliq, visited the village Dardhishte of Obiliq Municipality, respectively hydraulic discharge points from the thermal power plants "Kosova A" and "Kosova B" into Sitnica River. The visit was conducted for the purpose of observing industrial wastewater closely, to measure the pH level in these two points and to take samples for analysing the pollution level in more detail.

26. On 28 May 2017, the Ombudsperson published a press release, through which informed the public about the findings of discharges of industrial wastewater, respectively hydraulic discharge points from thermal power plants "Kosova A" and "Kosova B" into Sitnica river.

27. On 28 June 2017, the Ombudsperson addressed a letter to the then Minister of Environment, asking her for information regarding the results of the analysis of samples taken on 24 March and 28 May 2017, and the actions taken by the Ministry as a competent institution regarding this issue.

28. In the 2017 annual report, the Ombudsperson presented the problems related to the issue of the report.

29. On 12 January 2018, the Ombudsperson met the then Minister, Mrs. Reshitaj, with whom discussed regarding the issues raised in the report.

30. On 30 January 2018, the Ombudsperson attended the meeting of the Kosovo Assembly Committee for Agriculture, Forestry, Rural Development, Environment and Spatial Planning, attended by institutional representatives for health, environment and spatial planning. In this meeting, it was discussed about the causes of the alarming air pollution in the period December 2017 - January 2018. The Ombudsperson stated that competent institutions are not implementing the Law on the Protection of Air from Pollution.

31. On 30 January 2018, the Ombudsperson addressed a letter to the then Minister of MESP, asking her for information on the results of the analysis of samples taken on 24 March and 28 May 2017, and the actions taken by the Ministry as the competent institution regarding this issue.

32. On 31 January and 1 February 2018, the Kosovo Assembly held an extraordinary session regarding air pollution in the Municipality of Prishtina. During two days, many of the MPs highlighted the part of the annual report that mentions air pollution in the Municipality of Prishtina and Obiliq.



33. On 4 April 2018, the Government of the Republic of Kosovo issued Decision No. 05/39, by which it is established a new technical working group aiming at development of the Mining of the Energy Corporation.

34. On 18 May 2018, the Ombudsperson received a response from the then Minister of MESP.

35. On 4 July 2018, the Ombudsperson attended the meeting held by the Parliamentary Committee on Human Rights, Gender Equality, Missing Persons and Petitions, where he raised the issue of expropriation of the residents' properties of villages Shipitulla and Hade, assessing that human rights and fundamental freedoms have been violated. The Ombudsperson presented his stand that expropriation should be done according to the law.

36. On 15 August 2018, the representative of the Ombudsperson met with the head of the Waste Landfill Management Company in Kosovo, with whom she discussed the issue of Mirash landfill management.

37. On 7 November 2018, the Ombudsperson published the Report with recommendations regarding the failure of competent bodies to meet the obligations for managing asbestos-containing materials within the territory of the country. The Report aims to draw attention of competent authorities, namely the Ministry of Environment and Spatial Planning (MESP) and municipalities for the need to take immediate preventive measures in order to reduce the negative effects on environment and human health.

38. On 22 November 2018, the Ombudsperson organized the roundtable "Preventing and Combating Environmental Problems", the purpose of which was to discuss the reason of hauling environmental cases in the Prosecution and Court. From the discussion, it was understood that neither the prosecutorial system nor the judiciary has any statistics on these cases, it has never been discussed about the issue, and environmental crimes are usually related to cases involving misuse of official duty, and that the number of environmental cases is small.

39. The issue of violation of citizens' rights and freedoms in these areas was raised as a constant concern by the Ombudsperson and its representatives, in meetings held in the Assembly of Kosovo, in other responsible institutions, in activities and in the media.

### **Constitutional and legal basis, and international instruments**

40. The Constitution of the Republic of Kosovo, Article 52 [Responsibility for the Environment] guarantees every citizen the right to a safe and healthy environment, assigning everyone responsibility, without excluding institutions or public enterprises. "Nature and biodiversity, environment and national inheritance are everyone's responsibility".

41. During the analysis of this environmental case, the Ombudsperson assesses that the case in question, concerning the right to a safe and healthy environment, affects the right to life<sup>2</sup>, the right to privacy<sup>3</sup> and family, the right to a fair and impartial trial, the right for legal

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<sup>2</sup> The Constitution of the Republic of Kosovo, Article 25 [*Right to Life*]

<sup>3</sup> Article 36, [*Right to Privacy*]

remedies, the right of access to public documents, the right to property, and the dignity of citizens.

42. Article 23 [Human Dignity]: *“Human dignity is inviolable and is the basis of all human rights and fundamental freedoms”*.
43. Article 24 [Equality Before the Law] *“1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination”*.
44. Article 3, par. 2 [Equality Before the Law]: *“The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members”*.
45. Article 25 [Right to Life]: *“1. Every individual enjoys the right to life”*.
46. Article 31 [Right to Fair and Impartial Trial].
47. Article 32 [Right to Legal Remedies]: *“Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law”*.
48. Article 35 [Freedom of Movement]: *“1. Citizens of the Republic of Kosovo and foreigners who are legal residents of Kosovo have the right to move freely throughout the Republic of Kosovo...”*
49. Article 36 [Right to Privacy]: *“1. Everyone enjoys the right to have her/his private and family life respected, the inviolability of residence, and the confidentiality of correspondence, telecommunication and other communication”*.
50. Article 41 [Right of Access to Public Documents]: *“1. Every person enjoys the right of access to public documents”*.
51. Article 46 [Protection of Property]: *“1. The right to own property is guaranteed. 2. Use of property is regulated by law in accordance with the public interest. 3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated”*.
52. Article 53 [Interpretation of Human Rights Provisions]: *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”*.
53. Article 54 [Judicial Protection of Rights]: *“Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated”*.
54. European Convention for the Protection of Human Rights and Fundamental Freedoms, (hereinafter *the Convention*), Article 2 [Right to Life].

55. Article 6 of the Convention [Right to a fair trial]: *“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”*

56. Article 8 of the Convention [Right to respect for private and family life]: *“Everyone has the right to respect for his private and family life, his home and...”*

57. Article 10 of the Convention [Freedom of expression]: *“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”;*

58. Article 13 of the Convention [Right to an effective remedy]: *“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”.*

59. Article 1, Protocol 1 to the Convention [Protection of property]: *“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law...”*

60. Article 2, Protocol 4 to the Convention [Freedom of movement]: *“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”.*

### **Special economic interest zone of “New Mining Field”**

61. The Ombudsman categorizes the issue of on-going violation of the human rights of residents of the special economic interest zone “New Mining Field” as a major problem.

62. Through the Decision No. 4/119, dated 3 November 2004, the Government of Kosovo proclaimed the lands of the villages Hade, Sibovc, Leshkoviç and Cerna Vodica in the Obiliq Municipality as special economic interest zones. Article 2 of the Decision obliges the Ministry of Environment and Spatial Planning (MESP) and the Municipal Assembly of Obiliq to ban new constructions and overbuilding.

63. On 13 March 2009, the Government of Kosovo issued another Decision No. 02/57, through which the “New Mining Field”, with a surface area of 143,254 km<sup>2</sup> was proclaimed a special economic interest zone, comprising of cadastral zones of Obiliq, Fushë Kosova, Vushtrri and Drenas.

64. The process of resettlement and expropriation of some neighbourhoods in the village of Hade is followed by a lack of information, causing uncertainty for the citizens regarding the expropriation process. The area dedicated to the resettlement of the inhabitants called Hade e Re was never completed with housing infrastructure which would provide and guarantee decent and qualitative living conditions for the residents.

65. New illegal constructions continued uninterrupted both in the village Hade and Shipitullë, with accelerated steps<sup>4</sup>. The Ministry of Environment and Spatial Planning and the Municipality of Obiliq failed to exercise their legal powers for controlling and banning constructions in the special economic interest zone.

66. The Ombudsperson Institution (OI) has continuously received complaints by the citizens living in the special interest zones, claiming that their rights and freedoms are being violated, following the proclamation of their dwellings as special economic interest zone. The subject of complaints is different: damage to property, non-expropriation, ban of construction, noise problems, effect of mining to the health of residents, social problems, etc.

67. Based on the field investigations and other information received from various sources, it can be noticed that the mining activity in villages of Hade and Shipitulla has made the life of residents difficult. Even though the environmental situation is far from desirable standards and the pollution level, as per existing reports, often exceeds the allowed limits determined by the local legislation, with the possibility of having a negative impact in the citizens' health, despite the state's positive obligation, the resettlement, expropriation or movement of the population from these areas, as a proportional and effective measure for the solution of the issue, has not been carried out since 2004.

68. While the residents are constantly confronted and continue to live in anxiety from the possible landslides, property damage, air, water and soil pollution, noise and vibrations from heavy machinery operation, the competent authorities have continued to remain silent, not trying to find solutions to an unclear situation without any improvement, but with a tendency to deteriorate.

69. In addition to the negative impact on the environment, failure to find a solution to the situation with effective measures has negatively affected economic well-being of the residents. The OI notes that the failure of the state and the operator to invest or to invest sufficiently in proportion to the damage caused to the environment and the infrastructure inherited within the areas in question has created an unsafe environment to the citizens' life and health.

70. From the investigation and analyses conducted within the OI, it has resulted that the citizens of these areas are left in a state of *Limbo*, as the state has failed to meet its positive obligation set forth by the Constitution and laws towards the citizens to respect their rights, the right to a safe and healthy environment, the right to life, privacy and enjoyment of home/property etc., even the freedom of movement.

71. The Ombudsperson deems that the said residents are put in an unequal position with other citizens of Kosovo. By failing to find a concrete solution for the said residents, the state has failed to meet its legal obligation, to align economic development and social welfare with

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<sup>4</sup> Decision No. 4/119 of the Government of Kosovo, dated 3 November 2004, Article 2, obliges the Ministry of Environment and Spatial Planning (MESP) and the Municipal Assembly of Obiliq to ban new constructions and upgrades.

the basic principles for environmental protection according to the concept of sustainable development<sup>5</sup>.

72. Even though one of the three principles, through which are implemented environmental rights, the principle of public participation in decision-making, set forth by the Aarhus Convention, and also by the Constitution, in this process was followed by difficulties.

73. The concern of the Ombudsperson is the plan to relocate the residents<sup>6</sup>, through the documents that have no legal power. The document titled Resettlement Policy Framework for the New Mining Field Zone, defines the policies of the Republic of Kosovo in relation to the population resettlement that has to be relocated due to the development of important infrastructure and mining activities, for which the real estate acquisition is indispensable, is a document, which, even though foresees the population resettlement in detail, it does not have the legal power.

74. In the meeting held on 4 July 2018, at the Parliamentary Committee Assembly of Kosovo for Human rights, Gender equality, Missing persons and Petitions of the, the Ombudsperson brought forward the issue of property expropriation for the residents of villages Shipitulla and Hade, by assessing that the human rights and fundamental freedoms have been violated. At the meeting, the Minister of Energy failed to provide a response on who are the members of the working group, appointed according to the Decision No. 05/39 of the Government of the Republic of Kosovo, dated 4 April 2018, aimed at developing the new Mining of the Energy Corporation. According to the Ombudsperson, in order to be effective, every decision for the solution of the resettlement or expropriation issue should be based solely on the law.

### **Air pollution**

75. Despite the on-going complaints by the citizens with regards to air pollution in the Municipality of Obiliq and neighbouring municipalities, especially with regards to KEC discharges, during certain periods of the day and in certain days, despite the obligation set forth by the Law No. 03/L-160 on Air Protection from Pollution<sup>7</sup>, the competent authorities failed to provide quality monitoring, which would present reliable and plausible information on the state of air.

76. Based on the information by the KEPA's Chief Executive Officer, at the Parliamentary Committee on Agriculture, Forestry, Rural Development, Environment and Spatial Planning,

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<sup>5</sup> Law No. 03/L-025 on Environmental Protection, Article 1, *"This law shall harmonize economic development and social welfare with basic principles for environmental protection according to the concept of sustainable development"*.

<sup>6</sup> SPATIAL PLAN 2010 - 2020+ Area of special interest "New Mining Field", *"Settlements in hot spots - preferred to submit to the relocation process. In this group, we are dealing with the settlements that are within the triangle of degrading influences (between hotspots), which directly are affected by the facilities for generating electricity, ash dumps and outside folding as well as the promotion of mineral development and regional waste landfill and highlighted are the following: Krusheci (or Dardhishtë, by about 6.6 km<sup>2</sup> and 2210 inhabitants) – M. Obiliq, Caravadica (or Palaj, by about 7.1 km<sup>2</sup> and 1.150 inhabitants) – M. Obiliq and Neighbourhood of `Berisha` in Lower Graboc– M. Fushë Kosovë"*.

<sup>7</sup> Law No. 03/L-160 on Air Protection from Pollution, Article 33, Monitoring *"1. The Monitoring of air quality shall be done by the Ministry, which ensures permanent monitoring of air quality as well as its impact on environment and the population health"*.

at the meeting held on 13 November 2018, it is concluded that the main pollutant is the energy sector (thermo power plant).

77. Based on KEPA's 2016 report on the state of the environment, the Municipality of Obiliq differs from other locations with 90 days exceeding the MAV within a year, from the heavy pollution from the dust in the form of PM10 and PM2.5<sup>8</sup>. According to the assessments of the TPP "Kosova A" and "Kosova B" emissions for 2015, excess dust emissions were registered in mg/Nm<sup>3</sup>, excess emissions of SO<sup>2</sup> in mg/Nm<sup>3</sup><sup>9</sup>, and NOx emissions in mg/Nm<sup>3</sup><sup>10</sup>, during the whole year.

78. Based on the information received from the MESP, air quality monitoring methodology differs between the Kosovo Hydro-meteorological Institute (KHMI) and KEK. KHMI performs continual monitoring of air quality in 3 stations (Obiliq, Dardhishtë and Palaj), while KEK has a partial system of air quality monitoring for the DCP (Division for Coal Production). Monitoring is conducted by INKOS Institute<sup>11</sup>. There are no on-going measurements of the NOx.

79. The monitoring performed by the operator is conducted by an inadequate methodology and is not aligned with the national and international legislation requirements<sup>12</sup>. There was no case recorded when the information threshold was affected<sup>13</sup>, exceeded or poor air quality defined. Moreover, the competent authorities have not undertaken warning actions to inform the relevant local authorities and the public, despite the legal obligation<sup>14</sup>.

80. The Ombudsperson finds that the ECtHR, in the case *Guerra and Others v. Italy*, reiterated that environmental pollution may affect individuals' wellbeing and prevent them from enjoying their homes in such a way as to affect their private and family life adversely.

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<sup>8</sup> <http://www.who.int/mediacentre/factsheets/fs313/en/>, *PM affects more people than any other pollutant. The major components of PM are sulphates, nitrates, ammonia, sodium chloride, black carbon, mineral dust and water. It consists of a complex mixture of solid and liquid particles of organic and inorganic substances suspended in the air. While, particles with a diameter of 10 microns or less, ( $\leq PM_{10}$ ) can penetrate and lodge deep inside the lungs. Chronic exposure to particles contributes to the risk of developing cardiovascular and respiratory diseases, as well as of lung cancer.*

<sup>9</sup> <http://www.who.int/mediacentre/factsheets/fs313/en/>, *SO<sub>2</sub> can affect the respiratory system and the functions of the lungs, and causes irritation of the eyes. Inflammation of the respiratory tract causes coughing, mucus secretion, aggravation of asthma and chronic bronchitis and makes people more prone to infections of the respiratory tract. Hospital admissions for cardiac disease and mortality increase on days with higher SO<sub>2</sub> levels. When SO<sub>2</sub> combines with water, it forms sulphuric acid; this is the main component of acid rain which is a cause of deforestation.*

<sup>10</sup> <http://www.icopal-noxite.co.uk/nox-problem/nox-pollution.asp>, *NOx mainly impacts on respiratory conditions causing inflammation of the airways at high levels. Long term exposure can decrease lung function, increase the risk of respiratory conditions and increases the response to allergens. NOx also contributes to the formation of fine particles (PM) and ground level ozone, both of which are associated with adverse health effects.*

<sup>11</sup> Information received in the response of the MESP, upon the request of the Ombudsperson, dated 3 October 2016,

<sup>12</sup> Ibid.

<sup>13</sup> Law No. 03/L-160 on Air protection from pollution, Article 2, par.1.23, Threshold of information - - *the level above which danger for human health occurs due to short exposure for which an immediate information is needed;*

<sup>14</sup> Ibid, Article 24, par. 1 "When the alert threshold is exceeded and the smog is defined, Ministry shall announce warning measures and inform the Government, the relevant local authorities and the public.

81. According to the information received by the MESP, the cases initiated with the court against environmental pollutants, following the identification of violations by the Ministry Inspectorate, have been declared time-barred by the Courts.

82. By comparing the responses received through the MESP's response, regarding the Ombudsperson's question, "Has the operator continuously provided reports on the emissions," an attempt is noted to deviate from the response by not receiving a concrete answer: "*The operator is obliged to perform the monitoring and the reporting of monthly emissions*".

83. While, regarding the OI's question "Do you possess the reports submitted by the operator, for the last 3 years? If yes, we kindly ask you to send them to us", the OI received the following response: "*KEPA possesses all the reports submitted by the operator in electronic form and hard copy*", nevertheless, reports were not provided to the OI.

84. With regards to the question "Have there been cases where reports were not provided by the operator?" The OI received the following response: "*From 2013 until 2015 there are no monthly reports missing from KEC*". The Ombudsperson, in addition to concluding that the person who drafted responses has neglected the OI's mandate and powers, it has also forgotten that it is not 2015 but 2016. Nevertheless, at the last moment, prior to finishing, the OI found out that the responses received from the MESP were incorrect, as the Chief Executive Officer of KEPA in the KTV show "Puls", publically stated that: "We as an Agency have filed criminal charges against KEC for not reporting the pollution". During the show, Mr. Morina presented the document proving such a thing.

85. On 30 January 2018, the Ombudsperson attended the meeting of the Parliamentary Committee of the Assembly of Kosovo on Agriculture, Forestry, Rural Development, Environment and Spatial Planning, which was also attended by institutional representatives of health, environment and spatial planning. At this meeting, it was also discussed about the causes of alarming air pollution during the period December 2017 – January 2018. In front of the attendees, the Ombudsperson asked for the reason as to why none of the measures set forth by Article 24 of the Law No. 03/L-160 on Air Protection from Pollution, for overcoming the alert threshold and poor air quality have not been implemented. He also expressed concern on why the provisions for imposing mandatory fines foreseen by the law do not apply.

86. On 1 February 2018, following the two-day session related to the air pollution, the Assembly of Kosovo adopted the resolution against air pollution, composed of 19 points<sup>15</sup>. Having in mind that even 11 months after, the condition of the air remains almost the same, posing a risk to citizens' lives and health<sup>16</sup> it is noted that the resolution is an ineffective legal remedy.

87. The Ombudsperson finds that in the cases *Öneryıldız v. Turkey*, par. 93 and *Budayeva and Others v. Russia*, par. 140, the Court has emphasised that cases, dealing especially with

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<sup>15</sup> <https://www.koha.net/arberi/72950/kuvendi-miraton-rezoluten-per-ndotjen-e-ajrit/>

<sup>16</sup> According to the US Consulate measurements, on 20 December 2018, the PM2.5, 338, was considered dangerous.

dangerous activities, when the public authorities are fully aware of the possible consequences and do not exercise their responsibilities to avoid the risk, by failing to undertake the necessary and sufficient measures in order to avoid the risks that may also cause loss of life, and violation of Article 2 of the ECHR, it is required that those responsible of endangering life are charged with a criminal offence or prosecuted.

88. By expressing the scepticism in relation to the relevance and quality of the abovementioned data and having in mind that the monitoring carried out by the operator, is made through inadequate methodology and not according to the requirements foreseen by local and international legislation, above all, the data obtained by the operator is not controlled by the state and is carried out by an unlicensed institution<sup>17</sup>, the Ombudsperson concluded that the Ministry has failed to provide a secure system for monitoring the activities of the operator, especially emissions that might contain elements posing a risk to the residents' lives.

### **Water pollution**

89. According to the information that OI possesses, the pollution of the Sitnica River is continuing, especially close to the interest zone, from the discharge in its middle stream, from urban discharge and also by the effluent from the TPPs and mining of KEC, which are discharged directly to the river without any adequate pre-treatment, as well as water flows of ash landfills. In addition to this, the rivers receive large volumes of organic matter, since there is no or little wastewater treatment<sup>18</sup>.

90. The biggest users of surface water are the TPP - Kosova A and B, by using also the Llap River. Despite the importance of water protection, the OI noticed that there are no sufficient analyses and information on the treatment of discharged waters.<sup>19</sup>

91. Despite the created situation, but also the surface area occupied by KEC, it is noticed that the *polluter pays and the user pays* principle is not being applied. The operator does not pay for the use of waters and their discharge<sup>20</sup>.

92. On 28 may 2017, the Ombudsperson with associates, accompanied by an expert of the Kosovo Hydrometeorological Institute, as well as officials of the Obiliq Municipality, have visited the village Dardhishta of the Obiliq Municipality, respectively hydraulic discharge points by the TPP - Kosova A and Kosova B into Sitnica River. The purpose of the visit was to closely look at the discharge of the industrially polluted waters, to measure the pH level at these two points and to take samples for more detailed analysis of the pollution level.

93. Even though the Ombudsperson asked for an answer in terms of which measures have been taken regarding this issue, the MESP, as a competent institution, never informed the Ombudsperson in detail about the issue.

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<sup>17</sup> Information received by the representative of the Obiliq Municipality, at the meeting held on 4 October 2016.

<sup>18</sup> SPATIAL PLAN 2010 - 2020+ Area of special interest "New Mining Field"

<sup>19</sup> SPATIAL PLAN 2010 - 2020+ Area of special interest "New Mining Field", and Information received by the representative of MESP, Obiliq Municipality, and KEC management. On 3 and 4 October 2016.

<sup>20</sup> Law No. 04/L-147 on Waters of Kosovo, Article 85, financial resources "1. Funds for administration, management and development of water are provided from, 1.1. payments for the water use; 1.2. payment for the water discharge;



## Soil pollution

94. The right of the citizens to a safe and healthy environment in the territory in question is being limited by the soil pollution and degradation. There is pollution of soil in the area of former industrial energy buildings, in the location near TPP - Kosova A, and disposal of toxic waste production (phenol waste), storage of ash from TPP Kosovo A, as well as, remains of old underground mining works. Main potential sources of contamination of soil and groundwater identified are: discharges of oily substances and other chemical substances, especially in locations of former facilities of gasification and nitrogenation; acid rain, aerosol and suspended particles from power plants, mining activities and ash landfills (previously there were deposits of pollutants from the old plants gasification and nitrogenation); previous and current disposal of waste at the ash landfills, especially in the ash landfill of Kosova A and the old mining (regional sanitary landfill); and discharges of untreated industrial waters and wastewaters<sup>21</sup>.

95. According to the report of 12 April 2014, of the Kosovo Hydrometeorological Institute, produced upon the request of the Ombudsperson, in order to inspect the property of the Kutillovci family, in Dardhishte village, based on the physical and chemical analyses of water running from the ash landfill of KEC-TPP and groundwater, from the analysis of the water samples taken from the discharge canal from the TPP landfill, near railway bridge, the presence of phenols at the level 0.345 mg/L, exceeds the values of all categories provided for in the AI 13/2008, whereas according to the report, the values of nitrite ions are quite undesirable. From the analysis of the water samples taken from the discharge canal of the TPP landfill, near the bridge of Gjigolli neighbourhood, the recorded value of phenols is 0.680 mg/L, as well as the nitrite ions have recorded a high value<sup>22</sup>.

96. According to the MESP Inspectorate, although with regards to the exceeded values, at the Municipal Court for Minor Offenses has been initiated a procedure, and according to their information, the case is time-barred.

97. Since human rights and fundamental freedoms guaranteed by the Constitution shall be interpreted compliant with the court decisions of the European Court of Human Rights (ECtHR)<sup>23</sup>, the Ombudsperson finds that, the court in the case *Tătar v. Romania* highlights that the State should ensure the protection of the citizens, by regulating and authorising, setting up, operating, safety and monitoring of industrial activities, especially activities that pose a risk to the environment and human health.

## Noise

98. One of the continuous complaints of the residents of the areas in question is the violation of right to privacy and the right to a safe and healthy environment from noise and vibrations. In some areas of TPP the noise level sometimes exceeds 85 dB. In the vicinity of the ash pressing, multiple sources of noise, which affect the quality of life of people living in surrounding villages, have been reported. The evidenced noise sources are as follows:

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<sup>21</sup> SPATIAL PLAN 2010 - 2020+ Area of special interest "New Mining Field"

<sup>22</sup> Complaint no. 177/2013, Hetem Kutillovci vs. MESP

<sup>23</sup> Constitution of the Republic of Kosovo, Article 53, [Interpretation of Human Rights Provisions]

excavators, means of transport (vehicles and coal/ash conveyor belts), operating noise of TPPs Kosova A and B, operation of locomotives of the KEC. Noise emissions from the TPPs come mainly from the conveyor belts, quarrying equipment, bins, turbines, generators, fans, compressors, numerous pumps, cooling towers and chimneys. In different areas around blocks of TPP equipment, the noise level may exceed the value of 85 dB (decibels).

99. Despite numerous complaints by the residents about the noise and vibrations caused by the operator, the Ombudsperson notes that the state has failed to find an effective solution, which would be a proportional instrument to balance the interests between the residents and the industry. In the case *Mileva and Others v. Bulgaria*, the ECtHR found violation of Article 8 of the Convention, as the State had failed to handle the issue with due diligence, and thus to perform its positive obligation of ensuring respecting of privacy, of its house and family. The police and the municipal authorities had failed to take action for the protection of the citizen's wellbeing.

100. Situation has been aggravated by the failure to implement the Law on noise protection. Even though problems regarding the implementation of the current legislation have been observed for several years in a row, the draft law regulating the issue of noise has not been adopted yet.

101. As a result of the failure to monitor the noise level<sup>24</sup> by the competent authorities, and to administer situations in cases of residents' complaints, the residents are obliged to initiate court proceedings on their own<sup>25</sup>. However, despite the effect of pollution in human health, the Ombudsperson noticed that the court failed to proceed with the case within the reasonable timeframe. Even after the OI's intervention relating the importance of handling the case according to the deadlines set out in Article 6 of the Convention, the Ombudsperson was informed by the court that the case would be handled accordingly, regardless of the nature of the case. The case No. C.2193/13 monitored by the Ombudsperson, initiated in September 2013, regarding noise and vibration, has not been settled yet at the Basic Court in Prishtina.

102. The Ombudsperson sees the lack of qualitative monitoring as a direct intrusion to human rights. The case *Borysiewicz v. Poland* was proclaimed inadmissible by the Court, according to Article 8 of the Convention, as it failed to prove that the level of allowed noise reached the limit levels to environmental cases, as the party failed to provide the noise monitoring reports, as well as medical reports that would prove the effect of the noise on her health and family. However, the court found a violation of the applicant's right to a fair hearing within a reasonable time according to Article 6.1 (Right to a fair hearing within a reasonable time), as the proceedings were still on-going in the Provincial Administrative Court.

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<sup>24</sup>SPATIAL PLAN 2010 - 2020+ Area of special interest "New Mining Field", *historically there is no data from monitoring noise level near the facilities and equipment, although the level of noise for employees and for residents inside the energy zone, considered a key aspect to be addressed in the framework of EU standards and best practices.*

<sup>25</sup> Complaint 110/2015, Maliq Berisha and others vs. Basic Court in Prishtina

## **Landfills, waste management**

103. Law no. 02/L-30 on Wastes, gives authority to the Ministry and Municipality regarding waste management, while the Law on Local Self-Government leaves the waste management as own and exclusive competence of the Municipality. During the field visit, the Ombudsperson has noticed that the entire area in question is filled by piles of various types of wastes, dumped near residential areas and agricultural land. According to information received by the MESP, 55 illegal landfills were identified in the Municipality of Obiliq in 2016.

104. In the area near Pristina (Dragodan) around the wasteland and the ash dump near Kosovo A, many illegal waste landfills have been found such as: construction waste, other waste from TPPs, old conveyor belts, scrap metal, etc.<sup>26</sup> To the west of the ash landfill, approximately 200 meters from the village of Dardhishte, an old ventilation well was used for the disposal of tar and phenol. Similar practice has occurred in other underground mining. In addition to this, open landfills do not have adequate covers or other land protection equipment and there is no mitigation measure to avoid contamination of water spills from heavy rainfall and storms.

105. During 2018 it was conducted a voluntary action for the collection of wastes, which although has improved the situation, it cannot be an effective tool that will improve the situation.

### **Sanitary waste landfill “Mirash”**

106. For years, the OI has been monitoring the problem of the management of the sanitary waste landfill in Mirash<sup>27</sup>. Despite its obligations deriving from the Law No. 02/L-30 on Waste, which foresees adequate waste management, creation of conditions for the prevention and reduction of waste production and its harmfulness, with the only purpose of protecting human health and environment, the landfill continues to operate with problems.

107. The wastes of 7 municipalities, Prishtina, Drenas, Podujeva, Gracanica, Obiliq and Fushë Kosova are discharged at the Mirash landfill. The landfill continues to face the following problems: waste dispersion that continues to be dispersed unhindered in the air due to the lack of proper coverage, release of gases and continuous smell from their discharge due to lack of proper waste management, especially the organic ones, a non-functional drainage and exhaust system pose a permanent danger to fires, non-management of methane, non-recycling of waste, mixing with inert waste, special and hazardous waste, asbestos, medicinal, organic waste. While the depositing of coal at the edges of the landfill represents a particular and permanent danger of burning and poses a risk for the lives and safety of citizens.

108. Given that 40% of the wastes deposited in landfills are organic waste, there is also untreated medicinal waste, the drainage of untreated waters from the landfill in the Sitnica

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<sup>26</sup> SPATIAL PLAN 2010 - 2020+ Area of special interest “New Mining Field”, Geochemical analysis included analysis of soil samples taken at different depths (from 0.50 to 80 meters) in 11 new wells for determining the pH, calcium, magnesium, potassium, sodium and metal.

<sup>27</sup> Regional sanitary waste landfill in Mirash, is under the responsibility of KLMC and is managed by the KLMC.

River and in underground waters, due to the lack of a functional drainage system, constitutes to be a serious threat to water pollution in the country. The pumping system has been out of operation since 2007.

109. According to the information received from MESP, KEPA, from the continuous monitoring of sanitary waste landfill in Mirash it is concluded that this landfill is not managed in line with the laws and regulations regulating the area in question. *“Irregularities in the management of the landfill have contributed to half of the landfill always being filled with water; failure to cover with soil areas filled with waste has led to odour and to the presence of many stray dogs, rodents and birds as carriers of diseases in the chain of the ecological system<sup>28</sup>”*. According to the information received by MESP inspectorate, the inspectorate has continuously initiated court proceedings for landfill mismanagement and violation of law, and despite the damage caused to environment; case files in the court/s are time-barred<sup>29</sup>.

110. Based on the long monitoring of the proceedings of the environmental cases with the Prosecution and Courts, both by individuals and competent authorities, the Ombudsperson concludes that the said proceedings are not effective remedies, which would improve the situation, as the cases in question are not handled with priority, they become time-barred and dismissed. On 22 November 2018, in relation to the case proceeding with the Prosecution and Courts, it was attended by the Ombudsperson and representatives of prosecutions, courts, competent authorities of central and local level.

111. While, according to the officials of the Obiliq Municipality, despite the situation of the landfill, they have never initiated proceedings with the justice authorities, as they deem themselves as not competent to address the issues to the court<sup>30</sup>, even though the landfill is located in their municipality, the Ombudsperson draws attention to Article 5 a) of the Law No. 03/L on Local Self-Government, which defines the legal status of the municipality. The Municipality shall be legal entity, competent to file a lawsuit, while Article 17, of the law, specifies that Municipalities shall have full and exclusive powers, insofar as they concern the local interest in the following areas e) local environmental protection; and f) waste management.

112. The Ombudsperson notices that unclassified waste disposal is still continuing. During the visit made at the Mirash landfill, during the filming of the TV show ‘Jeta në Kosovë’, the Ombudsperson witnessed an attempt to dispose inert/construction waste.

113. Moreover, based on the investigation in relation to the management of wastes containing asbestos, A. 12/2018, the Ombudsperson noticed that competent authorities failed to meet their obligations for the management of asbestos-containing wastes within the territory of the country. From the information it was understood that none of the

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<sup>28</sup> Information received in the response of the MESP, upon request of the Ombudsperson, on 3 October 2016

<sup>29</sup> Information received in the response of the MESP, upon request of the Ombudsperson, on 3 October 2016,” *This Company is constantly on the inspection agenda. The inspectorate has filed minor offense proceedings in court in 2008, 2009, 2011 for legal violations against this company, but as a rule the cases in court have been time-barred”*.

<sup>30</sup> <https://kallxo.com/video-deponia-e-mirashit/>, the TV show ‘Jeta në Kosovë’, “Mirash Landfill”, 24 May 2018

municipalities (apart from the Municipality of Mitrovica) has designated the locations for the disposal of asbestos-containing materials.

114. The Ombudsperson finds that according to the document of the World Health Organisation (WHO) and International Labour Organisation (ILO), published in 2007, in relation to the development of national programmes for the elimination of asbestos-related diseases: “Exposure to asbestos cause asbestosis, pleural plaques, thickening and effusions, lung cancer, mesothelioma, laryngeal and possibly other cancers with varying latency periods”. While, according to the document of the World Health Organisation, published in 2014 “*Elimination of asbestos-related disease*”, which reviews the negative effects of asbestos exposure to health, it is estimated that at least 107 thousand people die each year from lung cancer, resulting from occupational exposure to asbestos.

115. Within the meaning of Article 2 of the Convention [Right to life], the ECtHR practice considers that the state shall establish positive obligations, in order to take the necessary measures for the protection of citizens’ lives within its jurisdiction<sup>31</sup>. Article 2 obliges public authorities to take measures in order to guarantee the rights of the Convention, even when the rights are threatened by other (private) persons or activities that are not directly linked to the state. According to the Court, positive obligations of states can be applied in the context of hazardous activities, operation of toxic chemicals plants, or landfills, whether transported by public authorities or private companies. In general, the extent of obligations of public authorities depends on factors such as, the impact of hazardous activities and prediction of risk to life<sup>32</sup>.

116. Law on Wastes obliges the government, that in cases when the situation of the waste poses a risk to health and environment, to take swift measures to prevent the situation.

117. In terms of nuisance caused by gas fumes, noise and odours from the landfill located near residential houses, the ECtHR expressed that there was violation of Article 8 of the Convention, and the State was not able to manage adequately the interest of the town’s economic well-being and the citizens’ effective enjoyment of their right to respect their homes, their privacy and family<sup>33</sup>.

118. However, the main concern regarding the issue of the Mirash landfill is the risk of discharge and penetration of contaminated waters from the landfill to the Lepenc River and groundwater. This issue would pose an unresolved problem, environmental catastrophe, affecting citizens' right to life, the right to drinking water, and above all the right to a safe and healthy environment.

119. Therefore, based on the facts mentioned above, the right to life, the right to privacy, the enjoyment of the home, and the right to a safe and healthy environment, and the citizens' right to drinking water has been violated repeatedly due to mismanagement, non-coverage and non-compaction of waste, odour, smoke, uncontrolled discharge and wastewater spills

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<sup>31</sup> *L.C.B. vs. the United Kingdom*, Judgment of 9 June 1998, paragraph 36;

<sup>32</sup> *Öneryıldız vs. Turkey [GC]*, paragraph 73; *L.C.B. v. the United Kingdom*, paragraphs 37-41.

<sup>33</sup> *Lopez Ostra vs. Spain*

due to failure and irresponsibility of competent authorities to take effective measures on the matter.

### **Ash landfill**

120. Ash is the biggest problem in terms of quantity and surface occupied by the existing landfill. Inappropriate treatment of these ash deposits poses a serious social and environmental problem to this special interest zone<sup>34</sup>.

121. Researches carried out found a presence of hotspots with a high level of phenol wastes, phenol waters and the presence of tar in the “Kosovo A” ash landfill; although the landfill was not used on a regular basis for the disposal of these substances. Ash deposited in ash landfills contains elevated levels of heavy metals, but due to the chemical composition of ash, the drainage potential is limited.

122. According to the Municipality of Obiliq, the ash landfill is one of the main air pollutants.

123. The ash landfill is at the rehabilitation faze, while the new ash disposals are being made through the hydraulic system, and there is no dust distribution. Although during 2015, the re-cultivation of ash landfills and wasteland has continued, in the western part of the mining was constructed a green ridge<sup>35</sup>, it is noticed that environmental rehabilitation and improvement, starting with the removal and re-cultivation of disposed ash areas, external folding of the wasteland, continuing with the rehabilitation of degraded areas and mining used, construction of barriers for the protection from flood, erosion, vibrations and noise, and in particular, construction of the surrounding green strip of the mining and the energy generating area in the framework of this process, which are mandatory<sup>36</sup>, is being continued at a slow pace.

### **The inhabited house within the area of KEC**

124. During the visit at the Municipality of Obiliq, the Ombudsperson paid a visit to Morina family in the village Palaj. The property of the family is situated within the fenced KEC area. Despite the constitutional guarantee that “*Everyone enjoys the right to equal legal protection without discrimination*”, all family members and their visitors are constantly being restricted of access to property/home due to the placement of KEC security control gate, on the street 40-50 m in front of their home.

125. Even though the Law No. 04/L-174 on Spatial Planning (Article 1, paragraph 2) “*to provide sustainable governance ... preconditions for balanced economic development sustainable space regulation, ensuring equal treatment, **provision of free movement and adequate access to public services for the citizens***”, the Ombudsperson considers that the family in question is restricted to free movement, as they are constantly being restricted to have unhindered access to their property.

126. According to the Ombudsperson, in addition to the restriction of the freedom of movement by being subject to the persistent, perpetual checks, members of Morina family are

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<sup>34</sup> SPATIAL PLAN 2010 - 2020+ Area of special interest “New Mining Field”

<sup>35</sup> Ibid, M.S. Sibovc- JP, with a length of 1500(m) respectively surface area of S=2 (ha). In total, 1025 seedlings of different varieties were planted

<sup>36</sup> SPATIAL PLAN 2010 - 2020+ Area of special interest “New Mining Field”

also restricted their right to privacy. According to the ECtHR, the use of the coercive powers conferred by the legislation to require an individual to submit to a detailed search of a person, his clothing and his personal belongings, while walking down the street, amounts to a clear interference with the right to respect for private life<sup>37</sup>.

127. Given that the search is conducted in the open, the Ombudsman notes that the ECtHR emphasizes the fact, although the search is undertaken in a public place, this does not mean that Article 8 is inapplicable. Indeed, in the Court's view, the public nature of the search may, in certain cases, compound the seriousness of the interference because of an element of humiliation and embarrassment. Items such as bags, wallets, notebooks and diaries may, moreover, contain personal information which the owner may feel uncomfortable about having exposed to the view of his companions or the wider public<sup>38</sup>

128. Even though the situation lasts for years now, the Ombudsperson noticed that neither of the responsible authorities has been mindful of the fact that, leaving the house within the said area has severely violated the rights of the family members.

129. However, the most serious problems faced by the Morina family are the health problems of the two children of the family. Perhaps as a result of the dust released in the air from mining, they suffer respiratory problems.

#### **Lack of cooperation with other institutions and inspectorates**

130. The Ombudsperson, by monitoring the work of the competent authorities for the implementation of environmental legislation with regards to problems related to illegal constructions in the area of special interest, pollution of air, water and soil, noise pollution, problems identified in the regional and other landfills, and failure to come up with solutions to the problems caused to social settlements caused from the explosion of 2014, has noted that the competent authorities have constantly attempted to attribute their unwillingness to act due to the lack of competence for the implementation of laws regulating particular environmental areas, with a tendency to attribute the responsibility to other authorities.

131. Regarding various environmental issues, the municipal level has justified its lack of action and negligence on grounds of lack of competence by attributing responsibility to the central level.

132. The Ombudsperson finds that the Law No. 03/L-025 on Environmental Protection (umbrella law) in Article 5, paragraph 3.3, authorizes municipalities to “*enforce laws and inspect enforcement of the laws related to the protection of environment and sustainable development within their territory*”. Further, Article 81, paragraph 1, of this Law prescribes that “*Inspective supervision on the enforcement of this law and other acts deriving therefrom, conditions and methods of activities of supervised entities and environmental protection measures foreseen by this law shall be made by the Environmental Protection Inspectorate*”, providing that “*The Ministry may, through a certain authorization, authorize the municipal*

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<sup>37</sup> Gillan and Quinton vs. United Kingdom

<sup>38</sup> [http://www.coe.int/t/dgi/hr-natimplement/Source/documentation/hb11\\_privatelifelife\\_alb.pdf](http://www.coe.int/t/dgi/hr-natimplement/Source/documentation/hb11_privatelifelife_alb.pdf), Protection of the right to respect for private and family life under the European Convention on Human Rights, Council of Europe Human Rights Handbook, p.20.

*inspector for performing” (paragraph 3) and that “Inspection activities may also be carried out by other environmental protection officers authorized by the Ministry, namely the municipality” (paragraph 4).*

133. However, considering situations that cannot be properly managed only by a category of inspectors or competent authorities, the law through a special provision defines the inspectors’ cooperation obligations, specifying that *“In cases when the inspector, conducting an inspection supervision, assesses that, in addition to the violation of the provisions of this law and bylaws issued on the basis of it, the provisions of other laws relevant to environmental protection have also been violated, in addition to taking measures as authorized, he/she shall also notify other competent authority in order to jointly carry out the inspection supervision and to undertake measures provided for by law”*. As such, it does not leave any space for the competent authorities to find justifications in cases of omission.

134. In cases where it is necessary to avoid direct threat to human life and health, to the environment or to special-value property or where necessary due to the complexity of the supervision or the importance of eliminating the deficiencies, the Law No. 04/L-175 on the Inspectorate of Environment, Waters, Nature, Spatial Planning and Construction also sets out a cooperation obligation, envisaging that supervision may be carried out simultaneously by several inspection bodies.

135. Environmental protection is essential for the human well-being, but also for respecting the fundamental rights of citizens, including the right to life. The Ombudsperson considers that central and local level inspectorates have not cooperated sufficiently in order to prevent, prohibit or even terminate hazardous activities to the living environment affecting residents’ rights.

### **Review of environmental cases within reasonable timeframes in prosecution offices and courts and their time-bared**

136. Despite the impact of pollution on human rights, on public health, and the weight of damage caused to the environment, the prosecution offices and courts have failed to establish a strategy that would ensure the review of environment-related cases within reasonable timeframes and the delivery of enforceable decisions based on the law that would be proportionate to the caused damage and at the same time would have the effect of stopping the cause of the damage and require the undertaking of proportional rehabilitation measures. Decision-making within a reasonable timeframe would be an effective tool for preventing environmental problems.

137. The continued time-bared cases initiated by the inspectorates before the prosecution offices and courts are continuous concern of the central and local level environmental inspectorates.

138. Considering that the issue of delays of environmental cases in prosecution offices and courts, as well as their time-bared status, has been raised many times by the central and local level inspectorates, the Ombudsperson requested from all municipalities and MESP information on the number of cases initiated before prosecution offices and courts, but did not get any reply.



139. The Ombudsperson organized a round table titled “*Preventing and Combating Environmental Problems*”. The purpose of this table was to discuss the reason for the delays in the review of environmental case files at prosecution offices and the courts. The discussion revealed that neither, the prosecutorial system nor the judiciary, have any statistics on these cases, that this matter has never been discussed, that environmental crimes usually relate to cases involving abuse of official duty, and that the number of environmental cases is small.

140. Although one of the three principles through which environmental rights are realized, the principle of access to justice or the right to address to the court, provided for in the Aarhus Convention, is integrated into entire environmental legislation, the realization of rights pertaining to environmental matters in courts and prosecution offices in the country is facing numerous difficulties.

141. Based on the aforementioned facts, such as the time-bared status, categorization of environmental pollution and damage as minor offenses, and low fines have proved ineffective and non-proportional measures for the prevention, deterrence and rehabilitation of the created environmental situation, which is a violation of Law No. 03/L-025 on Environmental Protection, whose purpose is to establish environmental standards in Kosovo in line with those of the European Union.

#### **Lack of environmental information**

142. The right to information is guaranteed by the Constitution in Article 41 [Right of Access to Public Documents]: “*1. Every person enjoys the right of access to public documents*”, one of the principles which is based on the Law No. 03/L-025 on Environmental Protection is the principle of public access to information. This Law stipulates in Article 6 (“*All natural and legal persons have rights to be informed on environmental state and participation on decision making process.*”). The Ombudsperson, after investigating, analyzing and reviewing the case, has noted that the **origin of all problems** lies in the lack of concrete and timely information on the environmental situation.

143. As from the field monitoring of the case and also from the response given by the MEST, it is clear that the citizens of the Obiliq Municipality are not provided with information on the environmental situation. Public information, according to the Kosovo Environmental Protection Agency (KEPA), is done through monthly, periodic and annual reports. However, there are no constant and updated information.<sup>39</sup>

144. Despite the legal obligation set forth in Article 54, paragraph 1, of the Law No. 03/L-025 on Environmental Protection, according to which competent institutions should warn the public in cases where the pollution level exceeds normal parameters (“*The Ministry, central institutions, municipalities, authorized organizations and others shall be obliged to regularly, timely and objectively inform the public on the environmental status, namely phenomena monitored in keeping with the monitoring of environmental quality and emission and warning measures or development of the pollution which may pose threat to human life and health, in*

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<sup>39</sup> *The information received in the response of MESP to the Ombudsperson’s request dated 3 October 2016; Question No. 2 Have you taken any precautionary measures ... that could pose a risk to the environment, health and human life?*

*compliance with law.*”), the competent bodies – MESP, MoH, NIPHK, the municipality and the operators – have failed to meet their positive obligations for informing the public about the environmental situation, especially in days when excesses are recorded, as well as about taking preventive measures which are essential to citizens affected by cardiovascular, respiratory and malignant diseases.

145. Although it is a legal obligation to establish a unique and integrated system of health information throughout the health sector, which would be an indicator of the impact of pollution on the health of citizens, such system has not yet been functionalized.

146. The Ombudsperson reminds that Articles 2 and 8 of the Convention imposes state institutions specific positive obligations of providing access to environmental information. This duty of public authorities to provide access to information as a positive obligation should be applied especially with regard to persons whose right to life, privacy, family and enjoyment of property is violated. The Court expressed that states are required, under Article 2 of the Convention, to “*adequately inform the public of any emergency constituting an emergency threat to life ...*”

147. The Ombudsperson considers that, in order to respect the right of every person to environment suitable for his health and well-being, but also to fulfill all duties of protecting and improving the environment for the good of current and future generations, citizens should have access to environmental information, which would guarantee participation in decision-making and access to justice in environmental matters.

148. Improving access to environmental information would have an impact on improving public participation in decision-making, enhancing the quality and implementation of decisions, contributing to citizen awareness on environmental matters and enabling citizens to express their concerns.<sup>40</sup>

149. However, in addition to having sufficient access to environmental information, citizens should also know how to apply such information. In this regard, the importance of using the media and electronic or other forms of communication is significant.

150. Although in the period November-February, the citizens of the Municipality of Obiliq and of the surrounding municipalities, especially those of Prishtina, are facing alarming air pollution, they have no access to convincing and accurate information providing instructions for taking preventive measures.

151. Over the past two years, the Ombudsperson has repeatedly identified information dealing with the condition of the air in the period November-February. Although the information refers to the condition of air in the Municipality of Prishtina, the Ombudsperson considers it relevant to the matter at hand due to the proximity of the two municipalities. On 24 November 2016, citizens were informed through online portals that “*The capital city falls under the red line with air pollution*”, whereas on 29 November 2016 they were informed that “*KEPA said that air quality has improved in Pristina*”.<sup>41</sup> On 1 December 2016, citizens

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<sup>40</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998

<sup>41</sup> <http://koha.net/?id=8&l=144769>, dated 29 November 2016,

were informed that “*Three Pristina neighborhoods face massive hydrogen sulphide contamination*”<sup>42</sup>, on 2 December 2016 “*Prishtina has air harmful for health*”<sup>43</sup>, while on 4 December 2016, that “*Today air in Prishtina is not healthy*”<sup>44</sup>, according to which the air quality monitoring center situated at the US Embassy in Prishtina had reported that the air quality was 146 ppm, i.e., not healthy for vulnerable groups who might experience health effects, but that the general public would not be affected. Adults and active children, as well as people with respiratory diseases such as asthma, should limit prolonged exercise outdoors.

152. A similar situation followed the end of 2017 and the beginning of 2018 and, despite the mobilization of the Government and the Assembly of Kosovo citizens are continuing to face lack of information, and which are not provided by the competent institutions.

153. Although the above information is worrisome as it points to a potential threat to human health and the environment<sup>45</sup>, the Ombudsperson notes that the competent authorities - KEPA or MESP - have not addressed to public immediately and without delay through accessible means of information to notify them about taking preventive measures or measures to mitigate pollution. Recently, although it is noticed deterioration of the situation, there have been reactions through social media from the websites of KEPA and IHMK managers. However, such information has not been provided sufficiently through official websites of the intuitions, which would constitute official and relevant information.

154. The Ombudsperson, based on the official information provided by KEPA, MoH, NIPHK and the WHO document<sup>46</sup>, finds that the competent institutions, due to lack of quality monitoring, are continuously failing to inform the citizens about the situation with air pollution with up-to-date and quality information and through accessible means.

### **Lack of health information**

155. The Ombudsperson notes that, despite the available information<sup>47</sup> on the increase of the number of people suffering from respiratory, cardiovascular, malignant and skin diseases in the concerned territory<sup>48</sup>, the competent authorities have not taken any action to draw up statistics and conduct special research to yield the real number of the above-mentioned categories, which would serve as indicators for undertaking concrete actions to educate and prevent impact on the population.

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<sup>42</sup> <http://koha.net/?id=8&l=145089>, dated 1 December 2016,

<sup>43</sup> <https://koha.net/?id=27&l=145304>, dated 2 December 2016,

<sup>44</sup> <http://koha.net/?id=8&l=145600>, dated 4 December 2016,

<sup>45</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998, Article 5.c

<sup>46</sup> Building a better future for the citizens of Fushë Kosova and Obiliq: Multi-ethnic Participation, Protection and Partnerships for Education, Better Health and Sustainable Housekeeping, The WHO Regional Office for Europe has conducted a mission in Kosovo, October 2012

<sup>47</sup> Building a better future for the citizens of Fushë Kosova and Obiliq: Multi-ethnic Participation, Protection and Partnerships for Education, Better Health and Sustainable Housekeeping, The WHO Regional Office for Europe has conducted a mission in Kosovo, October 2012

<sup>48</sup> [http://apps.who.int/iris/bitstream/10665/204585/1/9789241565196\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/204585/1/9789241565196_eng.pdf?ua=1) "In 2012, this present study estimates, 12.6 million deaths globally, representing 23% (95% CI: 13–34%) of all deaths, were attributable to the environment".

156. According to the information provided by the National Institute of Public Health of Kosovo (NIPHK), it is noted that this Institute had only data based on cases reported by health institutions at the national level, but according to them, such data are incomplete and unreliable, because “*the integrated health information system in Kosovo is in the pilot phase by the Ministry of Health, ... and that the coordinator of HIS at the MCC Obiliq has problems with the collection of data because ...*” .<sup>49</sup>

157. However, the Ombudsperson has not noticed nor possesses any information that the competent authorities have undertaken concrete actions to analyze and assess<sup>50</sup> the situation, despite the reports that the number of people with malignant<sup>51</sup>, cardiovascular and respiratory diseases has increased due to the situation of environmental impact.<sup>52</sup>

158. The Ombudsperson did not come across and was not provided from the competent authorities<sup>53</sup> with any evidence during the investigation of the case, which would testify their positive obligation to investigate the impact of environmental factors on the health of the population in the Obiliq Municipality and the surrounding municipalities, even though the territory of this municipality has been identified as a *hot spot* for years. Such research would pave the way for proposing protective measures to prevent harmful effects on health.

159. In the present case, even though excess values have been recorded for several years and the environmental situation will likely have health consequences for the population<sup>54</sup>, no concrete measures have been taken. The Ombudsperson considers that the state has failed to meet the positive obligation for the protection of life, health and privacy of citizens. The ECtHR has found a violation of Article 2 [Right to life], Article 8 [Right to respect for one's private and family life] of the Convention<sup>55</sup> in cases where the state has failed to meet its

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<sup>49</sup> Information received from the reply of Prof. Dr. Naser Ramadani, NIPHK, to the Ombudsperson's request dated 4 October 2016.

<sup>50</sup> Law No. 02/L-78 on Public Health, Article 4.2” National Institute for Public Health of Kosovo (NIPHK) is a public institution which exercises referral activities in the area of public health as follows...Analysing, evaluating and managing the health protection of special categories of the population with social medical importance as well the malignity, cardiovascular, diabetes diseases and similar.”

<sup>51</sup> <http://telegrafi.com/alarmante-rreth-700-raste-te-reja-kancer-per-7-muaj/>

<sup>52</sup> Information received in the reply of MESP to the Ombudsperson's request dated 3 October 2010, “The excess emissions always pose a risk to the ecological system and man in particular. Numerous studies show that excess emissions pose a risk to the environment in general. Currently, there is no special study on the impact on health from environmental pollution, although it should be carried out by NIPHK. Likewise, Environmental Health and Housing Article 6 6.1 The NIPHK investigates the impact of environmental factors on population health and proposes protective measures for the prevention of harmful effects on health. 6.2 The NIPHK proposes and undertakes professional actions and recommends to competent institutions the elimination of detected deficiencies and any harmful effects on health. 6.3 Within the sphere of activities related to environmental and occupational health, the NIPHK will: a) notify the population regarding the causes of environmental pollution which may threaten health.

<sup>53</sup> *Ibid.*, Environmental Health and Housing, Article 6 6.1, “The NIPHK investigates the impact of environmental factors on population health and proposes protective measures for the prevention of harmful effects on health. 6.2 The NIPHK proposes and undertakes professional actions and recommends to competent institutions the elimination of detected deficiencies and any harmful effects on health. 6.3 Within the scope of activities related to environmental and occupational health, the NIPHK will: a) notify the population regarding the causes of environmental pollution which may threaten health”.

<sup>54</sup> Official statement, prof. Behxhet Mustafa, Euro Tribuna show, part 2, min. 22 <https://www.youtube.com/ëatch?v=eQc2A0Oc11ë>, quote “there will be long-term environmental consequences”

<sup>55</sup> *Brincat and others vs. Malta*

positive obligation to undertake adequate protection measures and to inform of the risk to the health and lives of residents in cases posing a threat.

160. The Ombudsperson finds that the population has not been adequately informed about the impact of environmental pollution that could threaten health<sup>56</sup>.

161. Although it is a legal obligation of the NIPHK to assess the causes and consequences of air pollution and the damage to public health, as well as to propose protective measures, the Ombudsperson has not identified, as of the date of publication of the report, any publication by NIPHK on the impact of these pollutants on human health.<sup>57</sup>

162. The ECtHR notes that when public authorities find that dangerous activities are being carried out which they know that pose a risk and harm to health, they should establish an effective and accessible procedure that enables individuals to seek all relevant and appropriate information. The public should have access to the results of environmental health impact assessment.

163. Based on the paragraphs elaborated above, the Ombudsperson concluded that the state has failed to meet its positive obligation to continuously inform the public about the state of the environment and the impact on public health. The information so far has not been processed effectively to ensure it is accessible at any time.

164. Failure to record any cases of public information through information means in situations where excess pollutants have been recorded and the lack of analysis and research represents a failure to meet the legal obligations and official inaction in relation to the citizens. Lack of information has caused citizens experience anxiety about the environmental situation and their inability to assess the risk from the environment they are exposed to.

## **Conclusion**

The Ombudsperson, based on the facts and arguments presented in this report, concludes that the rights and freedoms of citizens residing in the territory around KEC have been continuously violated due to failure to meet the state's positive obligations for a fair balance between economic development and social welfare with the basic principles for environmental protection under the concept of sustainable development.

Determining that citizens are denied the right to a safe and healthy environment, human dignity, the right to life, the right to a fair and impartial trial, the right to legal remedies, freedom of movement, the right to privacy, the right of access public documents and the right to property, in order for the state to begin to meet its positive obligations, the Ombudsperson, pursuant to Article 135, paragraph 3, of the Constitution of the Republic of Kosovo and Article 27 of the Law No. 05/L-019 on Ombudsperson,

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<sup>56</sup> Information received from MESP representatives, Municipality of Obiliq, and KEK management, dated 4 October 2016.

<sup>57</sup> Pollutants affect human health, statement of Mr. Ilir Morina, CEO of KEPA, before the Kosovo Assembly Committee for Agriculture, Forestry, Environment and Spatial Planning.

## RECOMMENDS

- *MESP/The Hydrometeorological Institute of Kosovo shall take accelerated steps to improve the air monitoring process;*
- *MESP shall undertake educational activities so that citizens are aware of negative impact of polluted air on health, and how to take preventive measures;*
- *MESP/the Kosovo Environmental Protection Agency shall provide updated information on air quality;*
- *MESP shall improve the water monitoring system, find a solution for water treatment and invest in plants;*
- *MESP shall allocate additional funds for the rehabilitation of areas with excess pollution rates and consider the resettlement of residents from areas where there is high excess of pollution with the potential to affect the human health;*
- *MESP shall continue to undertake measures for the relocation of illegal landfills and waste treatment as foreseen by the applicable legislation;*
- *MESP shall take actions to develop policies for classification of wastes according to their content;*
- *KEC shall take actions for the rehabilitation and greening of degraded space, in order to minimize spreading of dust in the air, while the Municipal Inspectorate of Obiliq and the MESP Inspectorate shall continuously monitor the situation in these areas;*
- *The Municipality of Obiliq shall request from KEC to resolve the case of the Morina family (request from KEC to stop unauthorized family checks or relocation or expropriation of the Morina family property);*
- *Kosovo Prosecutorial Council - prosecutors shall, without delay, review all claims of citizens and institutions for criminal offenses of environmental pollution by individuals, public and private companies;*
- *Kosovo Judicial Council - courts shall review all cases related to environmental pollution within legal timeframes and without delay, so as to prevent their time-barred;*
- *The National Institute of Public Health of Kosovo shall conduct research on the impact of air pollution in the health of population in the Municipality of Obiliq and beyond.*

Pursuant to Article 132, paragraph 3, of the 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.*”), we kindly ask you to inform us of the actions you will take regarding this matter.

Respectfully,  
Hilmi Jashari  
Ombudsperson