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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution**

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## **REPORT WITH RECOMMENDATIONS**

**Ex-officio No. 631/2019**

**with regard to the violation of the right to a safe and healthy environment as a result of  
pollution of the river Graçanka/ Gračanica**

Addressed to: Mr. Blerim Kuqi, Minister  
Ministry of Economy and Environment

Mr. Srđan Popović, Mayor  
Municipality of Graçanicë/ Gračanica

Mr. Shpend Ahmeti, Mayor  
Municipality of Prishtinë/ Priština

Copy for: Mr. Goran Rakić, Minister  
Ministry of Local Government

Mr. Naser Ramadani, Executive Director  
National Institute of Public Health

Prishtinë, 9 June 2020

## Purpose of the Report

1. This Recommendations Report aims to draw attention of the Municipality of Graçanica/Gračanica, of the Municipality of Prishtina, as well as the Ministry of Infrastructure and Environment (MIE, hereinafter the Ministry) on the need to undertake immediate actions, as positive obligations for the protection of the river Graçanka/ Gračanka from pollution, overuse and misuse, as the necessity for protection of citizens' health as well as of the environment.
2. By this Report, Ombudsperson's intention is that through international instruments, constitutional and legal basis, prove on one hand, state's responsibilities on avoiding the impact of harmful effects of the river Graçanka/ Gračanka, and on the other hand, authorities' failure to meet their obligations in preventing the impact of pollution on human rights, the right to a safe and healthy environment, the right to life and the right to privacy
3. The Report is based on information received regarding pollution of the river Graçanka/ Gračanka by media and by central and local responsible authorities, as well as to the field visit of OI representatives.

## Legal bases

4. 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.”*
5. Further, the Law No. 05/L-019 on Ombudsperson, the Ombudsperson has the following powers:
  - *to investigate complaints received from any natural or legal person related to assertions for violation of human rights envisaged by the Constitution, Laws and other acts, as well as international instruments of human rights, particularly the European Convention on Human Rights, including actions or failure to act which present abuse of authority” (Article 16, paragraph 1);*
  - *“to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases” (Article 18, paragraph 1, subparagraph 1.2);*
  - *“to inform about human rights and to make efforts to combat all forms of discrimination through increasing of awareness, especially through information and education and through the media” (Article 18, paragraph 1, subparagraph 1.4);*
  - *“to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination” (Article 18, paragraph 1, subparagraph 1.5);*
  - *“to publish notifications, opinions, recommendations, proposals and his/her own reports” (Article 18, paragraph 1, subparagraph 1.6);*

- *“The Ombudsperson can advise and recommend to the institutions of the Republic of Kosovo for their programs and policies to ensure the protection and advancement of human rights and freedoms in the Republic of Kosovo.” (Article 18, paragraph 3).*

## Summary of facts

Facts, evidences and information in the possession of the Ombudsperson Institution (OI) can be summarized as follows:

6. On 31 July 2019, OI representatives visited the part of the river Graçanka/ Graçanka in the village Llapna Sellë/ Laplje Selo of Graçanica/Graçanica municipality, where as a result of bad administration, pollution from various types of waste was observed, as well as sewage discharges. The river was releasing bad odor and was white colored. From the information received by residents of neighboring settlements, it can be understood that their lives have been made miserable due to the state of the river, as it bad odors all the time.
7. On 6 August 2019, OI representatives met with the Director of the Directorate of Inspectorate of Graçanica/Graçanica Municipality as well as the Responsible Inspector for Environment, and were informed that the river continuously releases awful smell, especially during the summer, due to sewage discharges into the river. In the course of the meeting OI representatives were notified on attempts and actions continuously undertaken by Municipality of Graçanica/Graçanica as per cleaning the river, but according to them, all have resulted without any success because the pollution, as a result of various discharges into the river, is greater compared with municipal’s capacity for maintenance.

The Inspectorate of the Municipality of Graçanica/Graçanica, had estimated that a part of river pollution comes from industrial discharges, outside the territory of Graçanica/Graçanica, conducted by an operator in the village Hajvali, which belongs to Municipality of Prishtina, and the responsibility for this issue rests with Prishtina municipality.

According to the director, the Inspectorate of the Municipality of Graçanica/Graçanica has notified the Municipality of Prishtina and also the Ministry of Environment and Spatial Planning (hereinafter the Ministry) regarding the problem. The Inspectorate of Ministry, through the Report on the inspective supervision of the flow of the river Graçanka/ Graçanka, of 4 July 2019, had estimated great pollution of the river by sewage sanitary discharges and had found that the protection of river beds, etc. is the competence of the municipalities.

8. Since the pollution of river Graçanka/ Graçanka exceeds the competence of a single municipality, on 2 September 2019, OI representatives met with the Secretary General of the Ministry of Local Government Administration (MLGA) and requested from the MLGA to raise the issue at the central level in order to discuss ways to remedy the pollution. She stressed that the MLGA will give due concern and priority to this issue and that will convene a joint meeting with the Ministry and responsible municipalities in order to discuss ways of coordinating actions for problem solving.
9. On 17 September 2019, the former Minister of MLGA, organized a meeting in which pollution of the Graçanka river was discuss, which was attended by the Ombudsperson and the Deputy Ombudsperson, the former Minister, the Chief of Ministry Inspectorate

and the Director of the Urbanism Directorate of the Municipality of Graçanica/Gračanica. Even though representatives of Municipality of Prishtina and the Municipality of Fushë Kosovë / Kosovo Polje were also invited to the meeting, none of them respond to the invitation sent. The Ombudsperson, in the meeting, estimated that the issue in question constitutes a violation of the right to a safe and healthy environment, a violation of privacy and the right to life, rights guaranteed by the Constitution and applicable law, and requested from responsible authorities undertaking appropriate and immediate action to remedy misdeeds. At the meeting, representatives of the above-mentioned authorities agreed that through capital investments, actually through initiation of procedures for the development and implementation of capital projects, to make long-term solutions to river pollution.

10. On 18 December 2019, the OI representative addressed the Division for Water Resources Planning at MESP with a request to receive information regarding actions taken and those planned to be undertaken to remedy the situation of the given river.
11. On 13 January 2020, the OI received a response from the Office of project management at the Regional River Basin Authority (the authority is a body that reports to the Ministry) through which was informed that MESP addressed the municipalities with a request to submit project proposals in the field of water. Consequently, with this request, the municipalities have been asked to present analytically challenges in the field of water and the need to take measures against them, including adjustment, cleaning, rehabilitation of rivers, etc. However, apart this information, the OI was not notified whether the MESP has admitted any project proposal from the municipality of Graçanica/Gračanica for rehabilitation of the river Graçanka/ Gračanka. Also, from the information admitted, the OI was informed that the adjustment of Kravarica stream in the territory of the municipality of Prishtina and Graçanica/Gračanica, has been included in the list of capital projects for 2019, which was accomplished in the same year.
12. Regarding the request for clarification regarding the communication of 13 January 2020, admitted by the Regional River Basin Authority, the Ombudsperson, on 28 January 2020, received the following response (original quote) *“As per river Kravarica in Llapnaselle/Laplje Selo, Graçanica/Gracanica municipality, for accomplishment of this project, measures have been taken as per project realization, the flow of the river has been adjusted, cleaning of the river, a part of the river near the Faculty of Agriculture has been covered due to bad smells coming from the river, it continued with covering of the river up to the new social dwellings, as well as cleaning of the river has continued and the river flow has been adjusted till the church of Llapnasella/ Laplje Selo”*.
13. On 6 February 2020, OI representative through e-mail, addressed the National Institute of Public Health of Kosovo (NIPHK), with the intention to gain information whether this Institution, as final responsible authority on exploring the impact of environmental factors on the health of population, has undertaken concrete actions related to the issue based on the legal competencies entrusted. The Director of the NIPHK informed the representative of the OI that the authority he heads had not received any request from the relevant authorities for the assessment of the sanitary-hygienic condition in the river Graçanka/ Gračanka, so he requested from OI representative additional information and relevant documents in order to undertake immediate action.

14. On 14 February 2020, NIPHK delivered to OI a detailed Report in which it assessed the current sanitary-hygienic and epidemiological situation in the Municipality of Graçanica/Gračanica, from the pollution of the river Graçanka/ Gračanka, in the settlement Llapna Sellë/Laplje Selo. The Report reflects grave state of pollution of the river and recommends that the responsible authorities undertake immediate action within the powers and legal responsibilities entrusted for the regulation and maintenance of the river. The NIPHK team together with the municipal officials during observation of the river flow, in February 2020, have noticed:

- *Lack of maintenance of the river bed*
- *Waste and direct sewage discharges*
- *Residential houses close to the river, many of which are not connected to the sewer system and sewage is discharged directly into the river*
- *Municipality is short of a wastewater treatment system*
- *In this territory, supply of drinking water is done by the central water supply system RWC "Prishtina", and*
- *Collection of waste is done weekly by the company "Pastrimi"*

#### **Legal Instruments applicable in the Republic of Kosovo**

15. Constitution of Republic of Kosovo, in Article 21, stipulates: *“The Republic of Kosovo protects and guarantees human rights and fundamental freedoms [...]”*.
16. Constitution of Republic of Kosovo guarantees to every citizen the right to safe environment. Responsibility for the living environment is stipulated by Article 52 of the Constitution: *“1. Nature and biodiversity, environment and national inheritance are everyone’s responsibility. 2. Everyone should be provided an opportunity to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live. 3. The impact on the environment shall be considered by public institutions in their decision making processes.”*
17. European Convention on Protection of Human Rights and Fundamental Freedoms (ECHR), which according to the Constitution of Republic of Kosovo is a legal document directly applicable in Republic of Kosovo and prevails, in case of conflict over provisions, Laws and other legal acts of public institutions,<sup>1</sup> in Article 13 determines the 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”*.
18. The right to respect for his/her private and family right, is stipulated by Article 8 of the ECHR, *“Everyone has the right to respect for his private and family life, his home and ...”*
19. In order that fundamental rights and freedoms, guaranteed by the Constitution of the country, are interpreted in accordance with the values of an open and democratic society

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<sup>1</sup> Constitution of Republic of Kosovo, Article 22.

and in accordance with the practices of the international bodies which oversee them, the Constitution, Article 53 [Interpretation of Human Rights Provisions], has specified: *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”*

20. Law No.03/L-025 on Environmental Protection, (henceforward referred: Law on Environmental Protection), in Article 1, paragraph 2 determines explicitly: *“The purpose of this law is to promote the establishment of healthy environment for population of Kosovo by bringing gradually the standards for environment of European Union”*. The Law in Article 2 paragraph 2 explicitly stipulates: *“This Law aims [...]improvement of environmental conditions in correlation with life quality and protection of human health [...] coordination of national activities for fulfilling of request concerning to environmental protection; [...]”*.
21. Law No. 04/L-147 on Waters of Kosovo, (hereinafter referred as: The Law on Waters ) which aims to provide sustainable development and utilization of water resources that are necessary for public health, environmental protection and social- economic development, ensure protection of water resources from pollution, overuse and misuse<sup>2</sup>, in Article 1, by providing the character to water resources *as “assets of general interest and property of the Republic of Kosovo that shall be saved and protected by the Law”*, burdens responsible bodies with powers and responsibilities on good administration of waters.
22. Law on Waters specifies some of principles for sustainable management, among others we are recalling only two of them: *“1.2 The attendance principle-if there exist a risk that certain activity can cause harmful effect on waters or detrimental action by the waters, but for which there is no scientific evidence, there shall be undertaken measures based on relevant risk assessment, necessary to ensure high protection level of waters and from waters” and 1.6 principle “pollutant pays “-which means that any person who causes or allows the pollution discharges, will be financially responsible and fined, for all costs arising, including costs for pollution prevention, control measures are needed, costs administrative, repair or compensation expenses, in accordance with this Law;*
23. Law No. 03/L-160 on Air Protection from Pollution (henceforward referred as: Law on Air Protection from Pollution), which aims to regulate and guarantee the right of citizens to live in a healthy and clean air environment, by protecting human health, fauna, flora and natural and cultural values of the environment”, in Article 8 stipulates universal responsibilities of pollution sources: *“1. It is the duty of every natural and legal person to keep the quality of the air, to protect it from pollution caused during the activities they conduct in the territory of Republic of Kosovo [...].*
24. Law No. 04/L-175 on the Inspectorate of Environment, Waters, Nature, Spatial Planning and Construction, in Article 10, paragraph 1 stipulates: *“Inspectorate of Environment protection performs inspection supervision and control through environmental inspection by implementing this law and laws related to the field of environment protection”*, while Article 34 determines: *“The inspector may require the inspection procedure within the opinion and cooperation of relevant institutions, whether it is necessary for fair evaluation of the factual situation”*.

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<sup>2</sup> Special Law No. 04/L-147 on Waters of Kosovo, Article 2. 1 and 2.3.

25. Law No.02/L-109 for Prevention and Fighting Against Infectious, foresees that Protection from infectious diseases is obligatory and is applied by taking the general and specific measures, through Article 8, paragraph 8.2 which stipulates: “*General measures for protection from the infectious diseases are as follows [...]Removing the polluted water and garbage according to manner and under conditions by which is insured the protection from water and land pollution, as well as protection from insects and rodents proliferation [...]*”.
26. Law No.02/L-78 for the Public Health, in Article 6, paragraph 6.1 defines:” *The NIPHK researches the environment factors which harm public health and proposes the protection measures for preventing the health harmful effects*” while paragraph 6.2 stipulates:” *The NIPHK proposes and undertakes professional actions and recommends the competent institutions to eliminate the discovered deficiencies and any other health harmful effects*”.
27. Law on Local Self Government No. 03/L-040, in Article 17, stipulates: “*Municipalities shall have full and exclusive powers, insofar as they concern the local interest, while respecting: [...]*  
*e) local environmental protection;*  
*f) provision and maintenance of public services and utilities, including water supply, sewers and drains, sewage treatment, waste management, local roads, local transport, and local heating schemes,*  
*i) promotion and protection of human rights; [...]*“.
28. Law on Waters of Kosovo, in Article 49, par. 1, stipulates that: “*1. Responsible for the protection of the river basins, water-flow shores, canals, tunnels and water accumulation are:*  
*1.1. within urban areas, municipalities;*  
*1.2. within the borderline of river basins district, Authority.*  
*1.3. Ministry monitors and oversees the work and activities undertaken to protect the shores of water-flow and accumulation.*”
29. Law on Waters of Kosovo, Article 93 explicitly stipulates that: “*Ministry shall implement this Law and other sub-legal acts approved based on this Law.*” While Article 94 of this Law [Inspection Supervision], in paragraph 1 and 2 defines as follows: “*1. Inspection supervision tasks for the implementation of the provisions of this Law and provisions issued based on this Law shall be performed by water Inspectors of the Ministry and authorized waters inspectors of municipalities. 2. Water Inspector performs inspection supervision of the waters in Kosovo level while the authorized inspector performs inspection supervision of waters at the Municipal level*”.

### **Legal analyses**

30. The Ombudsperson assessments and findings regarding the pollution of the Graçanka/ Gračanka river are based on the rights guaranteed by the Constitution of the Republic of Kosovo, the Laws applicable in the country, the ECHR and the case law of the European Court of Human Rights (ECtHR).
31. The Constitution of the Republic of Kosovo (hereinafter referred to as the Constitution) has defined a special place for the environment and its protection, ranking it not only in the chapter on Fundamental Rights and Freedoms, but also among the values on which the constitutional order is based. Article 7 [Values] “*1. The constitutional order of the*

*Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment [...]”.*

32. The Constitution, by giving power to the imperative principle, in Article 52, paragraph 1, explicitly stipulates responsibilities of everyone without exception for protection of living environment, determining that: “*Nature and biodiversity, environment and national inheritance are everyone’s responsibility*”.
33. The Ombudsperson, based on Article 53, [*Interpretation of Human Rights Provisions*], of the Constitution, according to which human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights, finds that the ECHR, while not expressly guaranteeing a right to a safe, peaceful and healthy environment, indirectly provides a certain degree of protection in environmental matters, through the case law of the European Court of Human Rights. (ECtHR). According to ECtHR practice, public authorities are obliged to take concrete measures to ensure that human rights are not seriously affected by harmful environmental factors.
34. The right to privacy, according to which “*Everyone has the right to respect for his private and family life, his home [...]*”, is defined by Article 8, par.1 of the ECHR. According to ECtHR case law, the right to a healthy environment occupies a special place in Article 8. This right means respect for the quality of private life as well as the enjoyment of the conditions of the home "living spaces" of a person<sup>3</sup>. Based on ECtHR case law, severe environmental pollution, from high levels of odor, noise, smoke, toxic emissions, can interfere with a person's peaceful enjoyment of home, even when the pollution does not pose a serious threat to his health.<sup>4</sup> In *Lopez Ostra's* decision against Spain, the Court ruled that "serious damage to the environment could affect a person's well-being and deprive him of his place of residence, damaging his private and family life."
35. The impact of environmental pollution on the well-being of citizens is also reflected in the case of the ECtHR, *Guerra and others versus Italy*. The Court has estimated that environmental pollution can affect the well-being of individuals and prevent the enjoyment of the home, in such a way as to adversely affect private and family life. The Court held that the respondent State has not fulfilled its positive obligation to ensure the right of applicants to respect their private and family life, which is contrary to Article 8 of the Convention.
36. The ECtHR case law, under Article 2 of the Convention [Right to Life], provides the view that the state should establish positive obligations to take the necessary measures to protect citizens ‘lives within its jurisdiction. Article 2 obliges public authorities to take steps to guarantee the rights provided for in the Convention, even when the rights are threatened by other (private) persons or activities that are not directly related to the state. According to the Court, the positive obligation of states can be applied in hazardous activities context, operation of chemical plants with toxic emissions, or waste collection sites, transported whether by the public authorities themselves or by private companies. In

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<sup>3</sup> *Powell & Rayner versus United Kingdom*

<sup>4</sup> *Taşkın and the others versus Tukey*



general, the degree of public authorities' liability depends on factors how such is the impact of hazardous activities and prediction of life risk.

37. Having in regard the state of the river Graçanka/Gracanka, the extreme pollution of the river conducted both by discharges as well as dumping of various wastes, the Ombudsperson considers that the Law on Waters of Kosovo, the purpose of which is to protect water resources from pollution, further exploitation and misuse, through its provisions, has sufficiently provided for the prohibition of river pollution. Article 48, par. 1.2, has specified that *in order to protect the riverbeds, shores, water-flows, canals, tunnels, and water accumulation, it is prohibited: "extraction of sand, gravel, stones, storage of soil, throw of wastes, solid materials and discharge of solid matter into water-flows, lakes, storage and their shores"*.
38. Furthermore, Article 60, par. 1, of the Law arises the imperative message, explicitly stipulating that: *"except by water permit the release of industrial refuses liquid quantity, agricultural and urban wastewater, and oils used in the sewerage or drainage system in the surface and underground water bodies, on the coasts-line of the river and wet lands."*
39. Subsequently, Article 63 [*Throw of substances and waste*], has left no room for the creation of the current state of the river, and space for the neglect of the matter by the competent authorities, specifying that:
1. *"It is prohibited the throwing of wastes and solid, liquid and gaseous substances which due to their physical characteristics, chemical and biological, endangering human health, and quality of surface underground waters, water flora and fauna, hamper the flow of water and endanger water facilities and equipment"*.
  2. *"It is prohibited any kind of transportation of substances, materials and hazardous waste near the water accumulations and protected water zones, except with a special permit."*
  3. *"It is prohibited any kind of construction of the facilities and equipment dedicated for the production of hazardous substances and materials in the vicinity of surface and underground water bodies, including accumulations"*.
40. The Ombudsperson considers that the above provisions, by sufficiently specifying the prohibition on the discharge and disposal of waste of various types in the river, at the same time impose obligations on the competent authorities to take action to prevent and hamper pollution. Consequently, the state of river Graçanka/Gracanka, in its entire flow, is indicator of the failure of Garčanica and Prishtina municipalities, as well as particularly of the Ministry to fulfill effective legal obligations in preventing pollution, through awareness rising measures, those punitive as well as others measures for good water flow administration.
41. The Ombudsperson, finds that the Court in the case of *Dubetska and others versus Ukraine*, in which, due to the failure to find an effective solution for ending pollution by the authorities, found violation of Article 8 and assessed that undoubtedly pollution can adversely affect public health in general, and impair an individual's quality of life, although it is often impossible to determine its effect in each individual case. In this case, it was emphasized that living in an area with distinct exceeding rate of standards allowed by pollution poses a high risk to health.

42. The Law further in Article 49, par. 1, clearly defines that competent body for protection of beds, water banks streams, *1.1 within urban areas, are municipalities*, while, par. 1.2. *within the borderline of river basins district, Authority*. While the burden for overseeing the work and activities to protect waters according to paragraph 1.3. *rests with the Ministry*, which “*monitors and oversees the work and activities undertaken to protect the shores of water-flow and accumulation*”.
43. Furthermore, the duties of the municipality for protection of the environment within its territory have been specified in the Law no. 03 / L-040 on Local Self-Government, which in Article 17, stipulates that Municipalities have full and exclusive competencies, in terms of local interest, “*urban and rural planning, local environmental protection, provision and maintenance of public services and utilities, including water supply, sewers and drains, sewage treatment, waste management, ...protection of human rights ...public health ;*”.
44. The Ombudsperson estimates that despite the sufficient legal basis which clearly defines the competencies of municipal and central bodies in terms of protection and management of water flows, the situation in the field proves that the municipality of Graçanica/Gračanica within its territory, despite claims for investment and maintenance, failed to provide effective protection of the river from pollution, overuse and misuse.
45. Furthermore, the Ombudsperson did not manage to have access to information that would prove that the Municipality of Prishtina has taken any action, taking into account that the river flows through the village of Hajvali, a place in which, according to the claims of the officials of Graçanica/Gračanica municipality the wastewater is discharged, and which is located within the territory of the municipality of Prishtina. The indicator of neglecting this issue by the Municipality in question, is also the imprudence of Graçanica municipality’s request for cooperation, and not responding on MLGA invitation for a meeting.
46. In this regard, despite the alarming situation and the ongoing reaction of citizens regarding river pollution and the impact on citizens’ rights as well as claims of Graçanica/Gračanica municipality’s officials for failing to control the flow of water due to exceeded territorial space, the Ombudsperson, based on the legal analysis, notes that Law on Waters provisions leave no room that would justify the negligence of the Authority / Ministry, and their release from responsibility for producing an alarming state of the river.
47. The Ombudsperson, deems as very concerning the silence of the Ministry as a competent body despite the power entrusted by the legal basis towards the situation created, brings to attention Article 13, the Law on Waters, which specifies that the Ministry has responsibility and obligation “*1.2 implementation of laws and sub-legal acts in the water resources field, including other environmental areas... 1.5. administration and management of all water resources in the territory of the Republic of Kosovo, 1.6. conducting all operations and administrative activities, and professional jobs and other organizational development that are obliged by this Law*”.
48. Article 49, par 1.2, and of the Law on Waters of Kosovo, stipulates “**Authority**”, as responsible body for protection of river basins, water-flow shores, canals “*within the borderline of river basins district*”. **Authority, which according to the law reports to**

**the Ministry**, based on Article 22 of the Law, is obliged to undertake necessary measures for the preservation of surface and underground water 1.6. *develop plans for managing the waters for basin*, 1.8 *attend to implementation of the measures for protection from harmful water impacts in the basin*.

49. Furthermore, the Ombudsperson notes that despite the condition of the river, none of the competent bodies has taken sanctioning measures against pollutants. The Ombudsperson points out that Article 93 of the Law explicitly states that: “*Ministry shall implement this Law and other sub-legal acts approved based on this Law*”, Article 94, par 1 and 2 of the Law on Waters, which stipulates that “*Inspection supervision tasks for the implementation of the provisions of this Law and provisions issued based on this Law shall be performed by water Inspectors of the Ministry and authorized waters inspectors of municipalities. 2. Water Inspector performs inspection supervision of the waters in Kosovo level while the authorized inspector performs inspection supervision of waters at the Municipal level.*”.
50. Given the Ministry's Report, when inspecting the situation on the ground, which may be considered to reflect a lack of interest in resolving the issue, despite legal obligations, with the reasoning that the issue falls within responsibility of the municipality, even though the river exceeded the limits of a municipality, the Ombudsperson, brings to attention Article 97 of the Law on Water of Kosovo, which defines a wide range of responsibilities of the Water Inspector and the authorized water inspector<sup>5</sup>.
51. Further, Article 47, par. 1, of the Law No. 04/L-175 on the Inspectorate of Environment, Waters, Nature, Spatial Planning and Construction, has foreseen that “*Inspection can be performed simultaneously, from more inspection bodies*”.
52. The failure of the authorities to control the flow of the Graqanicka/ Gračanka river is an indication of the failure of the municipal and central bodies to respect the constitutional responsibility for the protection of water resources, and to prevent the impact on the rights of citizens. Taking into account the opinion of the ECtHR that “*living in an area with clear standards exceeded by pollution standards poses a high health risk*”<sup>6</sup>, during the investigation of the case, despite the extreme degradation of the river Graqanicka/ Gračanka, and the possibility of the impact of pollution on the health of citizens, it is noted that the authorities had never requested an official assessment from the National

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<sup>5</sup> Law on Waters of Kosovo, Article 97, Scope of water inspector and authorized water inspector 1. Water inspector and authorized water inspector within the powers defined in this law and other laws, shall have the right to: 1.1. *control and ascertain if the overall water use is achieved in accordance with this Law*; 1.2. *control and ascertain if in the land around the shore is acted in accordance with this Law*; 1.3. *check and ascertain whether legal entities that manage water basins have drafted protection programs from harmful water impacts*; 1.4. *check and ascertain whether legal persons that manage with waters basins, undertake their activities and take measures necessary for protection from harmful water impact*; 1.5. *control the situation of water-flows and international waters*; 1.6. *exercise supervision over the application of this law and provisions issued under implementation of this law and international obligations of Kosovo*; 1.7. *control all the water works system, construction of buildings and all works, which can cause qualitative and quantitative changes in water regime*; 1.8. *control the implementation of water conditions permit*; 1.9. *observe and control the Plans for Management of River Basin*; 1.10. *control of the implementation of plans and programs of the Authority*; 1.11. *control the way of the use of facilities and plants*; 1.12. *control results of the measurements, the quantity and quality of water used and contaminated water, and materials drawn from water-flows*; *control the adjustment and functioning of Plants for water cleaning*; 1.14. *control the adjustment and protection action of water facilities and facilities of water use*; 1.15. *control the adjustment of equipment for determining of the quantity of used water and discharged contaminated waters....*,

<sup>6</sup> *Dubetska and others versus Ukraine*

Institute for Public Health of Kosovo (NIPHK)<sup>7</sup>, for the possibility of impact of pollution on citizens' health and did not even provide evidence for undertaking offense or criminal measures.

53. On 14 February 2020, OI received from NIPHK the Assessment Report on the current sanitary-hygienic and epidemiological situation in the Municipality of Graçanica/Gračanica, in the settlement Llapna Sellë and the surrounding area, from pollution of river Graçanka/ Gračanka. According to the NIPHK, apart OI request, it had not received any request from the relevant institutions for the assessment of the condition of the river. Regarding pollution of the river was reported in 2015, in the Report on the State of Water in the Republic of Kosovo<sup>8</sup>, published by MESP, where is stipulated that: *“the water quality of the river Graçanka/ Gračanka is constantly assessed as polluted as a result of pumping water from Kishnica mines and Artana. It has high values of electrical conductivity and sulfate ion and that during the warm summer season this river runs out.”* Furthermore, NIPHK announced that in November 2018, the Hydro Meteorological Institute of Kosovo (HMIK) received 6 samples for laboratory examination, 3 samples along the river flow and 3 samples from wells close to the river. Samples have resulted in exceeding the parametric values of BOC<sup>9</sup>, and detergents and phosphates confirm chemical contamination of water in the river. According to the results of laboratory analysis and field findings, the Institute found that water pollution is the result of activities that take place near the flow of the river and the direct discharge of untreated water. Among other things, NIPHK was informed by the Director of Health in the Municipality of Graçanica/Gračanica, that in recent years from 5 Municipal Centers of Family Medicine in this municipality increased number of respiratory diseases cases has been reported.
54. The Ombudsperson, in the lack of any argument that would prove the tendency of the competent bodies, especially the inspectorates to cooperate with other institutions to resolve the issue, and based on the information of the NIPH, according to which *“apart OI request NIPHK did not receive any request from the relevant institutions for the assessment of the condition of the river”*, finds that Article 34, of the Law on the Inspectorate of Environment, Waters, Nature, Spatial Planning and Construction, explicitly stipulates that *“The inspector may require the inspection procedure within the opinion and cooperation of relevant institutions, whether it is necessary for fair evaluation of the factual situation”*.
55. Of great concern is the information received by NIPHK, according to which based on data obtained from the Department of Epidemiology, no report of any nature is made by health institutions of the Municipality of Graçanica/Gračanica, with regard to public health problems and in particular contagious diseases. The Institute has expressed concern

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<sup>7</sup>Law No. 02/L-78 on Public Health, Article 6, par. 6.1, *“National Institute for Public Health of Kosovo (NIPHK) is a responsible authority which “researches the environment factors which harm public health and proposes the protection measures for preventing the health harmful effects”*. The Institute according to paragraph 6.2 is responsible that in case of necessity *proposes and undertakes professional actions and recommends the competent institutions to eliminate the discovered deficiencies and any other health harmful effects.”*

<sup>8</sup> MESP, Report on the state of Waters in Republic of Kosovo 2015, p.61, [https://www.ammk-rks.net/repository/docs/Raporti\\_i\\_ujrave\\_i\\_2015\\_shqip\\_\(2\).pdf](https://www.ammk-rks.net/repository/docs/Raporti_i_ujrave_i_2015_shqip_(2).pdf)

<sup>9</sup> Biochemical Oxygen Consumption

about the epidemiological situation in this municipality, especially in the village of Llapna Sellë/Laplje Selo, that according to them, the situation is currently calm but unsafe if this problem is chronic and remains still unresolved. On this occasion, NIPHK has recommended and requested from the Municipality of Graçanica/Gračanica, the Municipality of Prishtina and MESP that within their powers, take necessary actions, as compulsory measures to overcome the current problem and protection of citizens' health, by:

- adjustment and maintenance of the Graçanka riverbed in the whole area;*
- *continuing with the inspections and investigations of wastewater discharges, especially of the substance which on the surface of the river is defined by white color;*
- continuing with regular monitoring of water quality along the course of the river Graçanka/ Gračanka;*
- cleaning the riverbed from debris, remove the shrubberies and remaining layer of sludge, in order to free up space for natural water flow in the river;*
- applying measures for protection of water resources in accordance with applicable legislation on protected sanitary areas;*
- Health Directorate of the Municipality of Graçanica/Gračanica to report contagious and non-contagious diseases in the NIPHK Epidemiology Department; etc.*

Furthermore, NIPHK has given specific recommendations with regard to cleaning of waste, dislocation of waste landfill, creation of a waste management system, etc.

56. Given the information received by the NIPHK, according to which based on data from the Epidemiology Department, no report is made of any kind by health institutions of the Municipality of Graçanica/Gračanica, public health problems and in particular contagious diseases, the Ombudsperson estimates that such inactions are contrary to the interest of the citizens and Article 17 of Law no. 03 / L-040 on Local Self-Government, according to which municipalities have exclusive competence in “*public health*”.
57. Based on the information received from the NIPH, regarding the continuous pollution of the river Graçanka/ Gračanka, the Ombudsperson estimates that the Municipality of Graçanica/Gračanica has failed to provide information to residents of the area affected by pollution about the risks to their health and well-being, as and take appropriate measures to protect the right to enjoy a healthy and safe living environment.
58. The Ombudsperson finds that the ECtHR, in a similar case, *Tătar v. Romania*, with regard to the discharge of wastewater containing sodium cyanide into the river, from a gold processing plant, and the impact on the environment, even though an official document was missing, which would clearly prove the impact of this activity on human and environmental health, the Court, based on studies of the impact into the environment of discharges presented by the respondent State, it concluded that there was a serious and substantial threat to the well-being of applicants, and the State had a positive obligation to take reasonable and sufficient measures to protect rights of interested parties, to provide information about the risks to their health and well-being, in order to respect their private lives, their homes, and in general, to ensure healthy and safe environment. According to

the court “*Applicants must have lived in a state of anxiety and great insecurity by inactive approach of national authorities*” and fears of continuing the activity.”.

59. The ECtHR, in the case of *Guerra and others v. Italy*, concerning the failure of the state to meet its obligations to prevent pollution, has assessed that the respondent State has not fulfilled its positive obligation to ensure complainants’ right to respect their private and family life, which is contrary to Article 8 of the Convention.
60. Even though OI has been notified by the Regional River Basin Authority /Ministry that this authority has initiated a request to the municipalities through which it has requested that the municipalities submit project proposals in the field of water, by analytically including challenges and needs for undertaking measures, OI has not been notified whether the Ministry has admitted project proposal from the municipality of Graqanica/Gračanica.
61. Furthermore, the Authority / the Ministry as a competent body for drafting water management plans <sup>10</sup>, did not provide any information in its response, which would prove the plans to improve the condition of the river Graqanicka/ Gračanka, and especially the plans regarding the construction of wastewater treatment plants, although the Law on Waters, in Article 26, par. 3, [Water regime] specifies that: ... “*Interventions with aim of improvement, rehabilitation and maintenance of the water status are accomplished in accordance with plans for management of river basins*”
62. Although, based on the response of 28 January 2020, received by the Regional River Basin Authority, OI was informed that MESP through the project implemented in 2019, has continued with the cleaning and regulation of river flow till the church of Llapna Sellë/ Laplje Selo, based on the situation on the ground, the Ombudsperson considers that any measure taken so far by the relevant authorities has been unsuccessful for the effective resolution of the case. Additionally, the Ombudsperson considers that the notification received by the Authority, lacked the necessary clarifications, incorrect reference of the legal basis, and was opposite to the situation verified on the ground by the OI officials themselves as well as with the information provided by NIPHK report, of 14 February 2020, which estimates huge pollution of the given river.
63. The Assembly of the Republic of Kosovo on 25 January 2018 approved the resolution on the Objectives for Sustainable Development. The 2030 Agenda for Sustainable Development provides a common plan for peace and prosperity for our people and planet, for now and in the future. 17 Sustainable Development Goals are an urgent call for action for all developed countries for a global partnership in their implementation. Objective 6.3 explicitly emphasizes improving of water quality by halving the proportion of wastewater: “6.3 By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally.”

### **Findings of the Ombudsperson**

64. The Ombudsperson, based on findings and facts gathered, reviews and analyses of

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<sup>10</sup> Law on Waters of Kosovo, Article 22, par. 1.6, Duties and responsibilities of the Authority, “*develop plans for managing the waters for basin;*”

International Instruments, country's Constitution as well as the relevant Laws, which guarantee respect for human rights, and determine the rules for fulfilling positive obligations by the state, finds that the failure to meet the responsibilities by competent authorities for river protection through effective measures, has affected the restriction of the right to safe and healthy environment guaranteed in Article 52 of the Constitution, the right to privacy, preferably violation of the right to life.

65. The Ombudsperson estimates that the municipalities of Graçanica/Gračanica and Prishtina, and in particular the Ministry, have failed to take effective measures to protect and remedy pollution of river Graçanka/ Gračanka and enforcement of applicable law, despite the impact of pollution on sustainable use and growth of the river as well as the impact on public health and the environment.
66. The Ombudsperson, based on the response received by the Authority / Ministry, estimates that the Ministry has failed to fulfill the legal obligation to implement the Law on Water and other Laws in the field of living environment, which would provide protection of the river Graçanka/ Gračanka, and also has failed to prove that it has drafted plans that would guarantee revival of river Graçanka/ Gračanka which it is planned through a special plan.
67. The Ombudsperson, in the absence of evidence that would prove undertaking of inspection measures by inspectorates of both levels, finds the failure to fulfill legal obligations by inspectorates of both levels, despite the wide range of responsibilities set by Law at force.
68. The Ombudsperson deems that the failure of cooperation of two municipalities and the Ministry is sufficient indicator of the lack of interest in finding opportunities to resolve the issue that would guarantee respect for the right to a safe and healthy environment, that is opposite with Article 52 of the Constitution of Republic of Kosovo [*Responsibility for Living Environment*], which determines everyone's responsibility for protection of living environment.
69. The Ombudsperson, by recalling the fact that a safe and healthy environment is necessary for the full enjoyment of human rights, based on Article 135, paragraph 3, of the Constitution of the Republic of Kosovo: “[...] is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed” and pursuant to Article 18 paragraph 1.2, of the Law No 05/L-019, on Ombudsperson:

### RECOMMENDS

1. ***Municipality of Graçanica/Gračanica, that in accordance with the powers and legal authorizations, undertake all necessary and effective actions to stop pollution and clean the river Graçanka/ Gračanka in municipality of Graçanica/Gračanica.***
2. ***Municipality of Prishtina/Priština, that in accordance with the powers and legal authorizations, undertake all necessary and effective actions to stop pollution and clean the river Graçanka/ Gračanka within its territory.***
3. ***Ministry of Infrastructure and Environment, that in accordance with its powers and legal authorizations as well as in cooperation with all relevant municipal***

*authorities to monitor and supervise the works and activities undertaken for protection of the river from pollution.*

**4. Health and Social Welfare Directorate of the Municipality of Graçanica/Gračanica, to report to NIPHK, regarding residents' epidemiological and health condition.**

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”), you are kindly asked to inform us on the actions you will undertake regarding this issue.

Warmly submitted,

Hilmi Jashari

Ombudsperson

Attached:

Report of the National Institute of Public Health, of 14 February 2020, for the assessment of the sanitary-hygienic and epidemiological situation in the river Graçanka/ Gračanka in Llapna Sellë/ Laplje Selo