**REPORT WITH RECOMMENDATIONS**

**Ex officio 365/2018**

**Against**

**Ministry of Economy and Environment**

***Regarding the issue of lawfulness of the procedures concerning the hydropower plants in the country***

***as well as access to documents related to hydropower plants***

**To:**

**Mr. Muharrem Nitaj Acting Minister**

Ministry of Economy and Environment

**Mr. Bashkim Ramosaj, Mayor**

Municipality of Deçan

**Mr. Bratislav Nikolić, Mayor**

Municipality of Shterpce/ Štrpce

**Mr. Jetish Maloku, Chairman**

Kosovo Prosecutorial Council

**Mr. Skënder Çoçaj, Chairman**

Kosovo Judicial Council

Prishtina, 3 February 2021

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## Background and purpose of the Report

This Report with Recommendations has resulted upon Ombudsperson's investigations, regarding the cases related to the issue of operation of hydropower plants in Deçan and Shterpce. The complaint regarding the legality of the procedures of hydropower plants in Deçan is initiated *Ex Officio* by the Ombudsperson, based on information received from Mr. Adriatik Gacaferi, in the forum organized for sustainable development, on the topic “WATER IS LIFE/ ENVIRONMENTAL CRIMES”. Whereas, investigations regarding the legality of the operation of hydropower plants in Shterpce have been initiated on the basis of the complaint of Mr. Dobrivoje Stevanović on behalf of 1200 other inhabitants of the Municipality of Shtërpce.

The report also includes two complaints related to the restriction of access to documents related to hydropower plants. First complaint was submitted by Mr. Adritik Gacaferi representative of the Non-Governmental Organization, “Environmentally Responsible for Action (ERA)”, against the municipality of Deçan, while the other one by Mrs. Albulena Nrecaj, on behalf of the NGO "INPO" against the Ministry of Environment and Spatial Planning, now the Ministry of Economy and Environment.

The Ombudsperson, during the investigations as in the case of Deçan, as well as Shterpce, has noticed uncertainty regarding the legality of the operation of hydropower plants, as a result of lack of transparency and accountability of the competent bodies. While the dissatisfaction and reactions of citizens and civil society have increased, the authorities have never managed to provide clear explanations with regard to the legality of hydropower plants operation.

The Ombudsperson, although a supporter of the development of various forms of renewable energy provision as an inevitable process and a requirement for sustainable development, through this Report with Recommendations, seeks to draw attention that the fundamental human rights and freedoms are inviolable and the basis of the legal order in the Republic of Kosovo.

The Ombudsperson, noting the shortcomings regarding the process of operation of hydropower plants, citizens' dissatisfaction, and above all the impact on the environment of hydropower plants, through the report seeks the attention of the state to balance public with economic interests, carefully assessing the interest in between the importance of energy production through hydropower plants in the country in relation to the impact on the environment that can be severe and irreparable. In particular, given the insufficient amount of water in the country, the government should have a preventive approach in order to avoid irreparable damage.

This Recommendation Report aims to draw attention of the Ministry of Economy and Environment, the Municipality of Decan and the Municipality of Shterpce, as well as other competent authorities on respecting of the right on informing the citizens by providing access to the documents related to hydropower plants, as well as respecting the right of the public in decision making processes and access to justice..

The Ombudsperson, through the Report with Recommendations, has presented the legal and constitutional basis, as well as international instruments, which guarantee the right of citizens to information, decision-making and access to justice regarding state decisions on issues affecting the environment. The constitutional and legal basis presented in the report also stipulates the obligation of the authorities to provide the public with access to information, public participation through proper public hearing processes, and access to justice.

The Ombudsperson through this report brings to the attention of the competent bodies the Constitutional and legal obligation for cooperation with the Ombudsperson.

## Legal basis for the action of the Ombudsperson

According to Article 135, par. 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”*

Also, Law no. 05/L-019 on Ombudsperson, Article 18, par. 1 stipulates that Ombudsperson, among others, has following responsibilities:

* *“to investigate alleged violations of human rights and acts of discrimination, and be committed to eliminate them” (item 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” (item 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” (item 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” (par 5);*
* *“to publish notifications, opinions, recommendations, proposals and his/her own reports” (item 6);*
* *“to prepare annual, periodical and other reports on the situation of human rights and freedoms, equality and discrimination and conduct research on the issue of human rights and fundamental freedoms, equality and discrimination in the Republic of Kosovo” (item 8);*

By sending this report to the responsible institutions, the Ombudsperson intends to fulfil following legal responsibilities.

## Ex officio case no. 365/****2018**** against the Ministry of Environment and Spatial Planning (now the Ministry of Economy and Environment)

1. The Ombudsperson based on the Law No. 05 / L-019 on Ombudsperson, in June 2018 Ex officio has initiated the investigative procedure, regarding the degradation of the river Lumbardhi, in Deçan, as result of interventions without criteria to the environment that are undertaken by the company "Kelkos". The case was initiated based on information received from Mr. Adriatik Gacaferi, in the forum organized for sustainable development, on the topic "WATER IS LIFE / ENVIRONMENTAL CRIMES".
2. According to the information received on 23 July 2018, in the OI, from the MESP inspectorate, the OI was informed that the company "Kelkos", has the relevant operating permits.
3. On 12 September 2018, the representative of the Ombudsperson, met the director for the investigation of serious crimes in the Kosovo Police, with whom he discussed the issue of environmental degradation in Deçan, from the operation and indiscriminate interventions in the environment of hydropower plants.
4. On 13 September 2018, the representative of the Ombudsperson addressed in writing to the Director for the Investigation of Serious Crimes in the Kosovo Police, to be informed what actions have been taken by the Kosovo Police regarding the case.
5. The Ombudsperson, in the questions addressed via e-mail on 13 September 2018, to the Chief of the Inspectorate of MESP, regarding the indiscriminate interventions with negative impact on the environment, by the company "Kelkos", on 19 September 2018, received following answers:

*(The questions presented below represent the questions posed by the OI, while the answers are the answers received by the inspectorate).*

1. What is the legal basis of the activity of the company "Kelkos"?

*The legal basis for the operation of the hydropower plant is Law no. 03 / L-025 on Environmental Protection, Law no. 03 / L-235 on Nature Protection, Law no. 04 / L-110 on Construction, Law no. 03 / L-214 on EIA, etc.”.*

1. Has the Environmental Impact Assessment been done for the project in question?

*“Yes, an Environmental Impact Assessment has been done for the Project in question”.*

1. Has the principle of public participation in decision-making been respected?

*“Yes, it is respected in accordance with legal requirements”.*

1. Is the activity in accordance with the permits that the company possesses?

*“Yes, it is in accordance with the Permits it possesses”.*

1. Has there been ongoing project supervision?

*“Yes, there was constant supervision during the implementation of the project”.*

1. Have actions been taken by the operator to remedy the situation?

*“The project as a whole is in the final stages of construction; the rehabilitation is in the process of completion while after the completion of the rehabilitation the recultivation process begins”.*

1. On 24 October 2018, the Ombudsperson received a response from the Kosovo Police, through which it was announced that they have held meetings with the MESP Inspectorate, the Inspectorate of the Municipality of Deçan, the Independent Commission for Mines and Minerals (ICMM), with various citizens and activists from the municipality of Deçan, as well as with the owners of the company *"Kelkos-energy".* According to the Kosovo Police*, “after the visit to the scene in the Deçan Mountains, to the place called "Zalli i Rupës" as well as to the four hydropower plants "Lumbardhi", then to the "Lumbardhi II", "Bellaja" and "Deçani", it was not noticed that there are degradations of the environment, with the exception of the place called "Zalli i Rupës" where sand (gravel) was taken for the regulation of roads and the construction of hydropower plants. According to the project that was presented, in "Zalli i Rupës" it was planned to build a dam/water intake for water accumulation for hydropower plants, but based on the results of geotechnical research and feasibility study, the implementation of the dam was not reasonable and feasible, so another alternative location is envisaged as another option. In that location it is true that sand was taken / exploited due to the increase of water volume, but there was a project to build a dam there and that for this project and for the whole project, the company "Kelkos-Energy" has environmental approvals, building permit as well as water permit. Regarding the use of sand, the company has a letter / approval of 2012 from the former EU Special Representative in Kosovo, Mr. Pieter FEITH. Regarding the part of place "Zalli i Rupës" where sand is taken, the company "Kelkos-Energy", is obliged to rehabilitate/re-cultivate that area within three years (three-year phase), so the company is obliged to afforest that area and somehow return it to its previous state (there is still time to do the recultivation).*  According to the Police, ".... *from the findings and the collection of information in the field, no evidence has been found that any criminal offense related to environmental degradation has been committed, however, they are continuously conducting other investigative actions in the" Bjeshkët e Nemuna " with special emphasis on the municipality of Deçan”[[1]](#footnote-1).*
2. On 16 July 2019, based on the information received in the media from the public statements of the Minister of MESP, regarding the lawsuit initiated by MESP, against the company "*Kelkos*", the representative of the Ombudsperson, requested information from MESP, regarding the lawsuit initiated by MESP, against the aforementioned company.
3. On 17 July 2019, the Ombudsperson, received from MESP, a copy of the Request for initiation of minor offense procedure that was initiated by MESP, against "Kelkos-energy", on 29 September 2016.
4. On 17 July 2019, the Ombudsperson addressed a request for an Interim Measure to the Minister of MESP, considering that the issue of operation of the above-mentioned hydropower plants is being followed with great uncertainty, due to the lack of the transparency of the institutions responsible for the legality of their operation, as well as due to the shortcomings regarding the process of public participation in decision-making. According to the Ombudsperson, the responsible institutions have never managed to be clear enough about the legality of the operation of hydropower plants and their actions have continued to remain weak in terms of resolving the issue, while the reactions and dissatisfaction of citizens and civil society are growing. All the efforts of the bodies to address the problem and the dissatisfaction of the citizens have been shown to be ineffective means of solving the problem.

Noting that this particular case has to do with the impact on the environment and water, the Ombudsperson, based on Law no. 04/L-147 on Waters of Kosovo, and the Purpose of this Law shall be to ensure protection of water resources from pollution, overuse and misuse, which clearly states that the Ministry of Environment and Spatial Planning, now the Ministry of Economy and Environment, is responsible for implementation of laws and of sub-legal acts in the field of water resources, including other laws in the field of environment, has assessed that the Ministry is the competent body which should provide clear clarifications on this issue.

The Ombudsperson, based on Article 18, paragraph 5, of Law no. 05/L-019 on Ombudsperson, considering that the situation could have irreparable consequences on the environment, recommended the Ministry of Environment and Spatial Planning to suspend the activities of hydropower plants in Deçan and Shterpce, until an explanation is given on the legality of the operation of the hydropower plants in question, as well as clarifications on the competencies between the responsible authorities.

The Ombudsperson decided to make a recommendation after a long time of monitoring the situation and evaluating the substantive criteria, and in this regard has recommended the suspension of such activities which in this case are clearly necessary. The reason for the recommendation to suspend the activities of the hydropower plants in question is the clear impact on the degradation of the environment and water of the country; impact on the right to a safe and healthy environment, a right guaranteed by Article 52 of the Constitution of the Republic of Kosovo [Responsibility for the Environment] and international human rights instruments, which are directly applicable in the Republic of Kosovo.

According to the Request, the Interim Measure will last until the Ombudsperson evaluates the receipt of sufficient clarifications from the Ministry of Environment and Spatial Planning and other relevant bodies regarding the legality of the operation of the hydropower plants in question, as well as clarifications on competencies between responsible authorities.

Although the deadline for response was August 17, 2019, the Ombudsperson did not receive response within the deadline.

1. On 18 August 2019 the Ombudsperson was informed by the Basic Court in Prishtina, General Department, Minor Offenses Division, that on 14 February 2019, the court through Decision K.no.62311/16, has concluded that due to the absolute statute of limitations, there is no legal basis for further development of minor offence proceeding, and based on Article 42, par. 4 of the Law on Minor Offenses, the procedure has been suspended. After having accessed the case file, the representative of the Ombudsperson noticed that apart from the Decision, taken by the court to suspend the case, no other action related to the case was taken by the court.
2. On 23 September 2019, the Ombudsperson received a written response from Minister in charge of MESP, through which he informed that “*he requested the collection of all relevant documentation for the legality of hydropower plants that began construction years ago in Kosovo, and will soon be handed over to the Ombudsperson within a reasonable time*”. Further, the Minister emphasized that *“Due to the political situation in the country, the uncertainty created regarding the decisions that can be taken by the Ministers of this Government, as a Minister I cannot make decisions which can later be considered contrary to the Constitution of the country ".*
3. On 26 September 2019, the Ombudsperson, through the portal "Kallxo.com", was informed that the outgoing Minister of Environment and Spatial Planning, Mr. Fatmir Matoshi, had decided to let go and allow works on hydropower plants without meeting two of the reasons that had led to the suspension of works for hydropower plants that were destroying rivers. The decision was taken through official communication, where the minister at the request of the Secretary General, on September 6, 2019, who had asked Minister Matoshi to take action on the issue in accordance with applicable law, saying that the agreement to which Reshitaj referred is no longer in force, after the dissolution of parliament, the Minister of MESP, has suggested the following: *“Based on the fact that in the letter of the former Minister Reshitaj, which you received via e-mail dated 23.04.208, where you were asked not to take any steps to issue them and in accordance with the explanations given by you I suggest that you and the responsible departments focus on the implementation of the legal framework provided for the review of claims in such cases and act in accordance with this legal regulation in force, taking care that the treatment is as transparent and supervision should be done as required by law ”[[2]](#footnote-2).*
4. On 04 April 2020, the representative of the Ombudsperson addressed the Deputy Minister of the Ministry of Infrastructure and Environment, with a request to be informed about the actions taken after the request for interim measure.
5. On 05 April 2020, the OI received a response from the Deputy Minister of Infrastructure and Environment, who announced that despite numerous problems, the projects are at an advanced stage, some of the hydropower plants are already in function, some are nearing completion and some others have just begun work. According to the Deputy Minister, the worst situation is in the Lepenci River, where the largest number of licenses were issued between 2014 and 2016. In the period March and April 2020, due to lack of staff due to the Covid-19 pandemic and the political situation, interventions have become more aggressive, and monitoring on a regular basis has been impossible.
6. On 14 August 2020, in order to address the irregularities and uncertainties related to the operation of hydropower plants in the country, the Assembly of Kosovo established the Parliamentary Inquiry Commission for the Process of Licensing, Operation, Supervision and Operation for Hydropower Permits. The work of the commission is ongoing.
7. On 02 December 2020, the Ombudsman addressed a letter to the Minister of the Ministry of Economy and Environment, requesting to be informed about the actions taken by the ministry following the request for interim measure by the Ombudsperson. The Ombudsperson also asked to be provided with the documentation related to the issue in question and to be informed of actions taken and for those planned to be taken in relation to this issue.
8. On 21 December 2020, the representative of the Ombudsperson, addressed a request for information to the responsible official of the Parliamentary Commission of Inquiry for the Process of Licensing, Operation, Supervision and Operation for Hydropower plant Permits.
9. Even though in the response admitted on 23 September 2019 the Ombudsperson was informed by the Minister of that time that he has “requested collection of all relevant documents with regard to the lawfulness of the hydropower plants, construction of which has been initiated several years ago in Kosovo, and that within a reasonable time limit the response will be provided to the Ombudsperson” but until publication of this Report, the Ombudsman did not receive a response from the MEE.

## Complaint no. 82/2019 Dobrivoje Stevanović and 1200 others against the Ministry of Environment and Spatial Planning (now the Ministry of Economy and Environment)

1. The Ombudsperson pursuant to Article 16, paragraph 1, of Law no. 05 / L-019 on the Ombudsperson, on January 31, 2019, received the complaint of Mr. Dobrivoje Stevanović on behalf of 1200 others, filed against the Municipality of Shterpce, due to their dissatisfaction with the construction of the hydropower plant on the river Kalogjerka in Shterpce.
2. According to the information received from the party and through sources, it is understood that the citizens of Shterpce, through a petition, addressed the Municipality of Shterpce with a request to terminate the operation of the company "Matkos" in the river Kallogjerka, due to environmental impact and their privacy. Furthermore, the party claimed that the citizens were not involved in the decision-making process through a public hearing. On 31 January 2019, the representative of the Ombudsperson, contacted the director of Serious Crimes Investigations in the Kosovo Police, from whom he requested that the representative of the 1200 citizens of Shterpce be heard regarding their complaints. Kosovo Police, accepted and interviewed Mr. Stevanović on the same day.
3. On 03 May 2019, the representatives of the Ombudsperson met with the head of the Directorate of Urbanism in the Municipality of Shterpce, from whom no information was obtained regarding the issue of the hydropower plant in Shterpce. While, the Director of Urbanism of the Municipality of Shterpce refused to meet with the Ombudsperson's representatives.

Although at the time when the representatives of the Ombudsperson were in the building of the Municipality of Shterpce, the dissatisfied citizens at the same time held protests. The officials of the municipality with whom the meeting took place, although they were aware, did not inform the representatives of the Ombudsperson.

After going to the place of operation of the company "*Matkos*", several Kosovo Police vehicles were present, police officers from the Shterpce Police Station unit and the ROSU team, from the Ferizaj region. The head of the Shterpce Police Station announced that the protest of the citizens of Shterpce, who opposed the construction of the hydropower plant, had just ended there. According to the allegations received from the ROSU team, Ferizaj region, they had gathered there at the invitation of the mayor of Shterpce.

It should be stressed that the works for the construction of the hydropower plant were carried out very close to the houses.

1. On 14 June 2019, the Ombudsperson addressed a letter to the Mayor of Shterpce, with a request to be informed about the legality of the operation of hydropower plants in Shterpce. Until the day of publication of the Report with Recommendations, the Ombudsperson did not receive any response from the Mayor of Shterpce.
2. On 17 July 2019, the Ombudsperson addressed a request for an Interim Measure to the Minister of MESP, considering that the issue of operation of hydropower plants in Shterpce and Deçan, is being pursued with great uncertainty, due to lack of of the transparency of the institutions responsible for the legality of the operation, as well as due to the shortcomings related to the process of public participation in decision-making. As of the date of publication of the Report, the Ombudsperson has not received any response.
3. On 26 September 2019, the Ombudsperson, through the portal *"Kallxo.com",* was informed that the outgoing Minister of Environment and Spatial Planning, Mr. Fatmir Matoshi, had decided to let go and allow works on hydropower plants without meeting two of the reasons that had led to the suspension of works for hydropower plants that were destroying rivers. The decision was taken through official communication, where the minister at the request of the Secretary General September 6, 2019, who had asked Minister Matoshi to take action on the issue in accordance with applicable law, saying that the agreement to which Reshitaj referred, is no longer in force, after the dissolution of parliament, the Minister of MESP, has suggested the following: *“Based on the fact that in the letter of the former Minister Reshitaj, which you received via e-mail dated 23.04.208, where you were asked not to take any steps to issue them and in accordance with the explanations given by you, I suggest that you and the responsible departments focus on the implementation of the legal framework provided for the review of claims in such cases and act in accordance with this legal regulation in force, taking care that the treatment is as transparent and supervision to be done as required by law”[[3]](#footnote-3).*
4. On 05 November 2019, after the representative of the Ombudsperson went to the field, she noticed that the riverbed along the road to Shterpce was empty, without any water droplets.
5. On 04 April 2020, the representative of the Ombudsperson addressed a request to be informed about the actions taken after the request for an interim measure, to the Deputy Minister of the Ministry of Infrastructure and Environment.
6. On 05 April 2020, the OI received a response from the Deputy Minister of Infrastructure and Environment, who announced that despite numerous problems, the projects are at an advanced stage, some of the hydropower plants are already in operation, some are nearing completion, and some others have just begun work. According to him, the worst situation is in the Lepenci River, where the largest number of licenses were issued between 2014 and 2016. According to him, the interventions became more aggressive in March and April due to lack of staff due to the pandemic, and monitoring on a regular basis has been impossible.
7. On 14 August 2020, in order to address irregularities and uncertainties related to the operation of hydropower plants in the country, the Assembly of Kosovo established the Parliamentary Inquiry Commission for the Process of Licensing, Operation, Supervision and Operation for Hydropower plants Permits. The work of the commission is ongoing.
8. On 02 December 2020, the Ombudsperson addressed a letter to the Minister of Economy and Environment, asking him to be informed about the actions taken by the ministry following the request for the interim measure by the Ombudsperson. The Ombudsman also asked to be provided with the documentation related to the issue in question and to be informed of actions taken and for those planned to be taken in relation to this issue.
9. On 21 December 2020, the representative of the Ombudsperson addressed a request for information to the responsible official of the Parliamentary Commission of Inquiry for the process of Licensing, Operation, Supervision and Operation for Hydropower plants Permits.
10. As of the time of publication of the Report, the OI has not received a response from the MEE.

## Complaint no. 753/2018 Adriatik Gacaferi Environmentally Responsible for Action” (ERA) against the Municipality of Deçan

1. The Ombudsperson (OI), pursuant to Article 16, paragraph 1, of Law no. 05 / L-019 on the Ombudsperson, on October 2, 2018, received the complaint of Mr. Adriatik Gacaferi, on behalf of the NGO "Environmentally Responsible for Action" (ERA), filed against the Municipality of Deçan, which has to do with not responding to his request for access to public documents. According to information received from Mr. Gacaferi, NGO "*Environmentally Responsible for Action - ERA*", on May 28, 2018, through letter no. 15203, addressed to the Municipality of Deçan with a request for access to:
2. Contractual agreement between the Municipality of Deçan and Kelkos-Energy LLC, concluded on 16 March 2012, for the use of immovable property of the Municipality of Deçan, according to the Servitude contract for the construction and operation of hydropower generating units "Belaja" , "Deçan" and "Lumbardhi II";
3. Contract on Servitude, concluded on 16 March 2012, between the Municipality of Deçan and Kelkos-Energy LLC;
4. Copies of the Plan for HPP "Belaja", issued by the Directorate of Cadastre and Geodesy of the Municipality of Deçan, on December 23, 2011;
5. Copies of the Plan for HPP "Deçani", issued by the Directorate of Cadastre and Geodesy of the Municipality of Deçan, on December 23, 2011;
6. Copies of the Plan for HPP "Lumbardhi", issued by the Directorate of Cadastre and Geodesy of the Municipality of Deçan, on December 23, 2011;
7. Decision on giving consent for the development of the project for construction of new water generation capacities, which will be located in the locations "Lumbardhi II", "Belaja" and "Deçani", in the municipality of Deçan, issued on February 25, 2011, from MA Deçan;
8. Consent from the Monastery of Deçan, on January 30, 2011.

According to the party, he had never received a response from the Municipality of Deçan regarding this request.

1. On 12 December 2018, the Ombudsperson addressed a letter to the Mayor of Deçan, requesting information on the reason for the restriction of the party's right of access to public documents.
2. On 14 March 2019, the Ombudsperson addressed a repeated letter to the Mayor of Deçan, to be informed about the case.
3. On 05 June 2019, the Deputy Ombudsperson held a meeting with the responsible officials in the Municipality of Deçan, who notified that the request of the party will be addressed and the same will be offered a response.
4. On 13 June 2019, the representative of the Ombudsperson Institution, talked to the responsible officials of the Municipality of Deçan regarding the issue, who informed that the party will be offered access to the required documents.
5. On 16 August 2019, the OI representative was informed by the party that he had not been provided with access to the required documents.
6. On 16 August 2019, the OI representative spoke with the official responsible for access to public documents in the Municipality of Deçan, regarding the issue, who was also informed about the constitutional and legal obligation for cooperation with the Ombudsman Institution.
7. On 19 August 2019, the OI representative, after a conversation with the official responsible for access to public documents in the Municipality of Deçan, realized that the municipality did not take necessary actions in order to address the party's request for access to public documents, in accordance with applicable law.
8. On 21 December 2020, the Ombudsperson Institution was informed by the complainant that the Municipality of Deçan did not reply and did not provide any reason for restricting the right of access to public documents.

## Complaint no. 576/2019 Iniciativa per Progres / INPO against Ministry of Environment and Spatial Planning (now the Ministry of Economy and Environment)

1. The Ombudsperson (OI), pursuant to Article 16, paragraph 1, of Law no. 05 / L-019 on Ombudsperson, on 23 July 2019, received the complaint of Mrs. Albulena Ndrecaj, on behalf of the NGO Iniciativa per Progres "INPO", filed against MESP, which has to do with not responding to her request for access to public documents, namely permits, licenses and other consents in the competence of MESP to build hydropower plants on the Lepenci River.
2. According to the information received from Mrs. Ndrecaj, Iniciativa për Progres "INPO", on 08 July 2019, via e-mail, addressed to MESP - Division for Public Communication, with a request for access to permits, licenses and other consents that are under the competence of MESP for the construction of hydropower plants on the Lepenci River, but have not received a response.
3. On 19 July 2019, INPO made a public reaction to MESP, regarding the restriction of access to the files of hydropower plants on Lepenci river.
4. On 06 August 2019, the Ombudsperson addressed a letter to the Minister of MESP, requesting information on the reason for the restriction of the party's right of access to public documents. So far, the OI has not received a response on the issue.
5. On 16 August 2019, MESP, has provided partial access to INPO, in the following documents:

1. Environmental Consent for the construction of the hydropower plant Lepenci 2 2 (N0.16/2036/1-ZSP)

2. Environmental Consent for the construction of the hydropower plant Soponica 2. (N0.16/2844/1-ZSP)

3. Decision on declaring the completion of the administrative proceeding for the construction of the hydropower plant on the river Strazha (No. 16/4166/2 – ZSP)

4. Decision on approval of the request for environmental consent for the construction of the hydropower H3 Vica (No.13/1016/3-ZSP).

1. INPO, on 16 August 2020, addressed a request to MESP, from which it requested other documents that are in the competence of the Department of Water and that of the Inspectorate (water permits and consents issued by MESP for hydropower plants in Lepenci).
2. Until the publication of the report Iniciativa per Progres / INPO, has not received any response on the issue.

## Announcement of the Ombudsperson regarding the reaction of the citizens for the construction of the hydropower plant in Lumbardhi

1. On 25 February 2019, the Ombudsperson, after closely monitoring the reactions, dissatisfaction and protests of citizens regarding the construction of the hydropower plant on the Lumbardhi River, through a press release, considered it more than necessary for the institutions to seriously consider the citizens' request for protection of the river / environment as a single and inalienable one, in order to strike a fair balance between the interests of citizens for environmental protection, sustainable development and hydropower development.

The Ombudsperson reminded everyone through the press release that the right of public participation in decision-making is a right guaranteed by the country Constitution and international standards a process that enables everyone to influence decisions for the environment in which he/she lives, and that institutions, in particular, must respect the right of citizens to information on environmental issues, as an inevitable process, which must precede any project with an impact on the environment.

The Ombudsperson is conducting investigations regarding the restriction of the right of access to documents related to the Deçani A. 753/2018 hydropower plants, and also regarding the restriction of the right of access to documents related to hydropower plants of Shterpce A. 576/2019.

**Constitutional and Legal Basis**

1. The Constitution of the Republic of Kosovo, in Article 7, [Values], in one of the values on which the Constitutional order of the country is based, in addition to other principles, has listed the environment;

 *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...”.*

1. Furthermore Article 52, par. 1, [*Responsibility for the Environment*], *“Nature and biodiversity, environment and national inheritance are everyone’s responsibility.”*
2. The right of access to justice, for the citizens of the country in justice is guaranteed by Article 31, par. 1 of the Constitution [Right to a Fair and Impartial Trial]

 *” Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers”,* in Article 31.2, provides for a fair public hearing, within a reasonable time. “The right to a fair trial within a reasonable time is a principled constitutional guarantee. It provides the basis and framework for legal solutions related to court proceedings, which at the same time ensures the efficiency of the judicial protection of human rights and fundamental freedoms.

1. Although the Aarhus Convention has not been ratified in our country, its principles such as access to environmental information, public participation in decision-making and access to justice are quite well integrated not only in the Environmental Legislation, but also in the Constitution of the country.
2. The principle of access to information, which guarantees everyone access to public documents is provided by Article 41 of the Constitution, [*Right of Access to Public Documents*],

 *“Every person enjoys the right of access to public documents”.*

1. Article 52, par. 2 of the Constitution *[Responsibility for the Environment]*, specifying the obligation of Public Institutions to guarantee everyone the opportunity to influence decisions related to the environment in which he/she lives, automatically means informing preliminary citizens;

 *“Public institutions are committed to guaranteeing everyone the opportunity to influence decisions regarding the environment in which he / she lives*”.

1. Law no. 03/L-025 on Environmental Protection, in Article 6, par.12. has precisely provided [*Principle of Public Access to Information*], guaranteeing every legal or natural person the right to be informed about the state of the environment and to participate in decision-making. The same article, in par. 11, has provided principle of access to justice:

*Principle of Protection of the Right on Court – any physical and legal entity as well as the public, if they are suffering material damage or are under a serious threat of suffering material damage attributable to a particular activity or source of pollutions that is in violation of the present law or a subsidiary normative act issued pursuant to the present law, shall have the right to file a claim or request the competent court or public authority to protect its rights”.*

1. Article 50, par. 8 of the law in question, provides that: *“Every concerned party shall have right on every time approach to the registers or evidences of Ministry contains information’s and recordings in accordance with the law”.*

 Through a separate Chapter, Article 54 of the above-mentioned law, obligatorily defining the responsibilities of the competent bodies of the central and local level for environmental information, guarantees the right of the public to information;

*“Ministry, Central Institutions, municipalities, authorized organizations and others shall be obliged to regularly, timely and objectively inform the public on the environmental status....* *which may pose a risk to the environment, human health and life, in accordance with the law. 2. The public is entitled to access of statutory registers or records containing the information and data in compliance with law”.*

1. Further, the Law in Article 57, regulates the issue of participation *of public in decision-making “1. Decision-making authorities ensure the participation and active role of public during the take decision process on; 1.1. strategic impact assessment; 1.2.. environmental Impact assessment; 1.3. process of water license issuing and integrated license; 1.4. issuing legislation. 2. The public shall be informed by public medias of the procedure for decision-making and shall take part in the process by submitting opinion, comments and suggestions to the competent authority and shall be timely informed about the decision in accordance to the law”.*
2. Article 3 of Law no. 04 / L-147 on Kosovo Water, [*Access to Information*] specifying not only the issue of access to information, but also the process of public participation in decision-making, leaves no room for the authorities to deviate from providing information related to the operation of hydropower plants.

 Access to information *“Regulates the issues regarding:*  *access to information related to waters, public participation in the decision-making process related to water management, impact assessment of various strategies, plans and programs on environment, impact assessments of certain projects, prevention and control of failures with presence of the hazardous materials, integrated ecological permits for installations that affect in the water environment.”*

 Further, the Law in Article 6, *[Principles of sustainable management] par.* *1.10. has provided*

P*rinciple of public participation and access to information-which means that competent authorities have obligation to take in consideration and provide information access for the interest of all stakeholders, in decisions taking regarding the water resources;”.*

1. Principles on which Article 4, of Law No. 04/L-174 on Spatial Planning is based are:
2. *Article 4. Par. 1.2. promotion of democratic process of public participation...*
3. *Article 4, par. 1.3, “promotion of transparency in the process of planning and decision making, by providing public access to data, maps, charts, rights and in all spatial planning documents for interested parties”.*
4. *Article 4, par. 1.8. promotion of public participation in drafting of spatial planning documents;*
5. In continuation, the Ombudsperson finds that one of the principles on which is based Law no. 04 /L- 10 on Construction is also transparency in administrative procedures.
6. The issue of access to information has also been foreseen by Article 28 of Law no. 03/L-214 on Environmental Impact Assessment, *[Information and public participation].*

*“1. The Ministry shall be sure that the public is informed about the proposed project through at least one local daily newspaper edited in the territory that will be affected by the planned project, and through electronic media.*

*2. The public concerned shall be given early and effective opportunities to participate in all phases of the EIA procedure, including the decision-making process”.*

1. The Ombudsperson, in particular, demands attention in the new Law no. 06 / L-081 on Access to Public Documents, does not allow any possibility to restrict access to documents containing environmental data. Chapter V, *[Refusal of Access to public documents]*, Article 17, Allowed basis for refusing access to public documents, in. 3, has provided that:

*“Access to public documents shall always be granted if:…*

*3.3. the requested public document relates to the environment, waste, hazardous substances or information of environmental safety reports as provided for by the relevant environmental protection law”.*

1. Law no. 06/L-054 on Courts, in Article 7, par. 2, also guarantees everyone without distinction access to courts, and fair trial within a reasonable time..*“* *Every person shall have equal access to the courts and no one shall be denied due process of law or equal protection of the law. Every natural or legal person has the right to a fair trial within a reasonable timeframe.”.*

## Case analyses

**Access to Environmental Information, Public Participation in Decision Making, Access to Justice**

1. The Ombudsperson, given that the concrete cases are related to the legality of hydropower plant operations and their impact on the environment, points out that the Constitution of the Republic of Kosovo, not only has defined the protection of the environment as the responsibility of everyone, [*Nature and biodiversity, living environment and national heritage are the responsibility of each*], but also Value[[4]](#footnote-4) on which the constitutional order of the *Republic of Kosovo* is based *; [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..]”.*
2. From the overall analysis, the Ombudsperson notes that the process of licensing and operation of hydropower plants in the country has been followed by ongoing shortcomings, in terms of three-dimensional procedural aspect, access to information, public participation in decision-making and access to justice. The process has been followed by a lack of transparency[[5]](#footnote-5) . of the institutions responsible for the legality of the operation, as well as ambiguity regarding the procedures for organizing public hearings as forms of public participation in decision-making.
3. The Ombudsperson brings to attention Article 41 of the Constitution which guarantees access to public documents, but also Article 52, par. 2 of the Constitution, which leaves no room for deviation from the obligation of the competent bodies to ensure public participation in decision-making. *[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. ].* So, Article 52, par. 2, of the Constitution, ambitious provision in the field of environmental democracy, obliges the institutions that in cases of decision - making that are directly related to, or that are related to the environment, the interests of the citizens who may be affected by the decisions of the institutions should be taken into account.
4. Taking into account the obligation arising from Article 53 of the Constitution [Interpretation of the Provisions on Human Rights], 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”,* the Ombudsperson finds that the European Convention on Human Rights and Fundamental Freedoms (ECHR), although not explicitly guaranteeing a right to a healthy, peaceful and healthy environment, indirectly through the ongoing case law of the European Court of Human Rights (ECHR) provides a degree of protection with regard to environmental issues. The court practise, in cases related to the environment, has assessed that the authorities during the decision-making process for processes related to the environment, should respect the procedural aspect such as access to environmental information, participation in decision-making processes and access to justice in environmental cases.
5. The Ombudsperson brings to attention the Rio Declaration on Environment and Development, which specifies that each individual should have adequate access to information at the national level, relating to the environment and held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States should enable and encourage public awareness and participation by making information widely available.
6. The Ombudsperson notes that the responsible institutions at the central and local level, despite the obligation for good governance and transparency, have never managed to be clear enough regarding the legality of the operation of hydropower plants. While a wide and comprehensive debate has been held in public on the issue of the impact of the construction of hydropower plants on the environment, the degradation of river beds, exceeding the use of the allowed percentage of river water, non-fulfilment of contractual obligations by operators[[6]](#footnote-6), and the impact on the ecosystem, the actions of the institutions have continued to remain weak in terms of resolving the issue. All the efforts of the bodies so far to address the problem, including the dissatisfaction of the citizens, have been shown to be ineffective means of solving the problem.
7. As a result of the uncertainties regarding the legality of the operation of hydropower plants in the country, and the continuous reactions and dissatisfaction of citizens and civil society, the Assembly of Kosovo on August 14, 2020 formed the Parliamentary Inquiry Commission for the Licensing, Operation, Supervision and Operation Process for Permits of Hydropower Plants,[[7]](#footnote-7) which is expected to identify and address these HPP phenomena at the national level. The work of the Commission failed to be accomplished due to political developments in the country.
8. The Ombudsperson estimates that lack of transparency of the authorities and the created ambiguity, in addition to the impact on the environment of hydropower plants, arbitrary degradation of the environment, leaves room for doubts within the public debate to integrate doubts about arbitrariness, misuse and failure of institutions to monitor the situation.
9. The Ombudsperson, from the analysis of the case notes that the responsible institutions have continuously avoided the obligation to provide information regarding the processes within the competencies related to the hydropower plants. From the facts set out in the report regarding complaints no. 753/2018 and no. 576/2019, it is noticed that MESP, now MEE and the municipality of Deçan by not providing access to the required documents, denied the right of civil society to access public documents.
10. Moreover, despite the Constitutional and legal obligation for cooperation[[8]](#footnote-8) with the Ombudsperson, which obliges “*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,* MESP, now MEE, and the municipalities of Deçan and Shterpce have so far not provided a response to the Ombudsman's requests.
11. The ECHR, in the case of *Guerra and Others vs. Italy*, has assessed that the freedom to obtain information under Article 10 of the European Convention on Human Rights prohibits public authorities from restricting a person's right to receive environmental information that others want or may be willing to convey to him or her.
12. The Ombudsperson considers that the lack of information and non-provision of access to relevant documentation related to the legality of hydropower plants (consent, permits, licenses, environmental impact assessments) by the responsible authorities is a concern for citizens and civil society. Citizens' dissatisfaction with the issue, especially from interventions without criteria and environmental degradation by operators, and the current state of water in Kosovo, has also been expressed in the form of protests.[[9]](#footnote-9)
13. The Ombudsperson finds that ECHR in the case *Ta*ş*k*ı*n and Others v. Turkey* has highlighted the importance of public access to information and research findings that assess environmental effects in advance. The Court considers that such information would enable individuals to assess the risk to which they are exposed.
14. Considering that the authorities have never managed to provide a reasoning based on the law, which would sufficiently justify the restriction of access to information regarding the legality of the operation of hydropower plants, the Ombudsperson draws the attention of the above-mentioned ministry and municipalities, Article 41, par. 2 of the Constitution of the country, which specifies that *“Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification..”*
15. According to the ECHR Decision, in the case *Steel and Morris v. the United Kingdom* the right to receive and impart information and ideas is guaranteed under Article 10 of the European Convention on Human Rights. In the specific context regarding the environment, the Court has found that there is a strong public interest in enabling individuals and groups to contribute to public debates by disseminating information and ideas on issues of general public interest.
16. Moreover, Article 55 of the Constitution specifies the ways and extent of restriction of Fundamental Rights and Freedoms]

*“1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.*

*2. Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfilment of the purpose of the limitation in an open and democratic society.*

*3. Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.*

*4. In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation. 5. The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed rights”.*

5. *The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right.*

1. ECHR, in the case *Vides Aizsardzības Klubs v. Latvia*, has argued that restrictions on the right of access to information and ideas, including environmental issues, should be established by law and pursue a legitimate aim. Measures related to this right must be in proportion to the legally prescribed purpose and therefore a fair balance must be struck between the interest of the individual and the interest of the community as a whole.
2. The issue of access to documents with environmental content has been precisely specified by Article 17, par. 3 [Allowed basis for refusing access to public documents], of Law no. 06 / L-081 on Access to Public Documents, which does not allow any possibility to restrict access to documents which contain environmental data.

*“Access to public documents shall always be granted if:…*

*3.3. the requested public document relates to the environment, waste, hazardous substances or information of environmental safety reports as provided for by the relevant environmental protection law.”.*

1. The Ombudsman finds that the MESP and the municipalities of Deçan and Sherpce, in restricting the right to provide access to information regarding the legality of the operation of hydropower plants, have acted in violation of the Constitution and applicable laws which citizens have guaranteed the right to be informed about the environment. The sufficient legal basis mentioned above, which ensures the public's right to environmental information, has not achieved the purpose of the law, to maintain the situation regarding hydropower plants through transparency.
2. Further the Ombudsperson, based on the information of the Ex officio cases 365/2018 and Complaint no. 82/2019, as well as other information estimates that the organization of public hearings as the only guarantee of respect for the right of public participation in decision-making, and the only step through which citizens are enabled to be informed about the decisions of institutions that affect the environment where he lives or works, and their rights, has been very vaguely conveyed by the competent authorities. The claims of the parties for non-participation in public debates, restriction of the right to participate in decision-making, have never been refuted through factual arguments, neither by MESP, nor the Municipality of Shterpce.
3. ECHR, in the case *Hatton and Others v. the United Kingdom* [GC], stressed that one aspect of the ECHR investigation, in cases involving decisions by public authorities affecting environmental issues, is the review of the decision-making process, in order to ensure that due importance is given to interests of the individual. Furthermore, according to the decision, public institutions in cases of making decisions related to the environment, must take into account the interests of individuals who are affected, and in this context, it is important that the public to be able to be represented to public authorities. The court is obliged to consider all procedural aspects of the process until the decision in question, including the type of policy or decision involved, the degree to which the views of individuals were taken into account throughout the decision-making procedure. The court further emphasized that where public authorities have complex environmental issues and economic policies to determine, the decision-making process should include appropriate research and studies to anticipate and assess the effects on the environment in advance and to enable the assessment of a balance of right between different interests in conflict.
4. Although, the Decision of the Basic Court in Prishtina, dated 8 December 2020, to Postpone the execution of decisions issued by the Ministry of Economy and Environment regarding the operation of hydropower plants[[10]](#footnote-10), and also the same has taken a Decision to Postpone the execution of decisions issued by the Energy Regulatory Office[[11]](#footnote-11), until the Court decides with a final court decision regarding the claimant's claim, according to the Ombudsperson, represents a step forward of the judicial system towards raising the standard of exercising the right to [Right to Fair and Impartial Trial], the realization of rights related to environmental problems still remains a challenge.
5. Suspension of the procedure by the Basic Court in Prishtina regarding the Request of MESP, addressed to the Basic Court in Prishtina on September 29, 2016, for initiating the minor offence proceeding, against “Kelkos Energy”, pursuant to article 42, par. 4 of the Law on Minor Offenses, occurred due to absolute statute of limitations, and therefore this court concluded that due to the absolute statute of limitations there is no legal basis for further development of minor offence proceeding, according to the Ombudsperson, an ineffective legal remedy for resolving the case has been shown.
6. ECtHR in the case of Hatton *and Others v. the United Kingdom*, emphasized that one aspect of the ECtHR investigation, in cases involving decisions by public authorities affecting environmental issues, is the review of the decision-making process, in order to ensure that due importance is given to the interests of the individual. This means that in such cases the Court is obliged to consider all the procedural aspects of the proceedings and the procedural remedies available, which means whether the individuals in question can challenge the decision before the courts or any other independent body, if they believe their interests were not properly taken into account.
7. Therefore, the Ombudsperson considers that the failure of the Court to take action in relation to the case mentioned in the preceding article is not only an indicator of non-compliance with the right to a fair and impartial trial specified in Article 31, paragraph 1 of the Constitution by which *“Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers”*. Also, in this regard, the Ombudsperson brings to attention the constitutional guarantee, defined in paragraph 2 of the same article, for a trial within a reasonable time, which also provides the basis and framework for legal solutions related to court proceedings, which at the same time ensures the efficiency of the judicial protection of human rights and fundamental freedoms.
8. The right of Law no. 06/L- 054 on Courts, in Article 7, paragraph 2, also guarantees everyone without distinction access to courts, and a fair trial within a reasonable timeframe. *“Every person shall have equal access to the courts and no one shall be denied due process of law or equal protection of the law. Every natural or legal person has the right to a fair trial within a reasonable timeframe”. “Every person has the right to pursue legal remedies against judicial or administrative decisions that infringe on his or her rights or interests, in the manner provided by Law.”*
9. Regarding the positive obligation of states to protect and respect the rights of citizens, the European Court of Human Rights (ECtHR) in the case of *Assanidzé v. Georgia*, had emphasized that States in addition to undertaking obligations to respect human freedoms and rights, they must also take the necessary measures in order to ensure the unimpeded enjoyment of human rights by the citizens, so that the higher state authorities must take care in avoiding or correcting the possible violations of human rights by the lower state authorities, thus respecting the obligations arising from the Convention itself.[[12]](#footnote-12)

## Findings of the Ombudsperson

1. The Ombudsperson states that MESP and municipalities as competent bodies, despite the impact on the environment of hydropower plants, dissatisfactions, protests and reactions through various forms, discontent and protests of citizens and civil society, have failed to provide accurate and complete information on legality operation of hydropower plants and respect the principle of public participation in decision-making.
2. The Ombudsperson, based on Article 52.2, of the Constitution of Kosovo, as a sufficient provision which provides the obligation of the responsible institutions to engage in ensuring and guaranteeing the process of public participation in decision-making finds that failure to provide access to documents directly related to, or related to, hydropower plants is unconstitutional, and illegal.
3. The Article in question, in principle defining the obligation of institutions to create conditions and procedures through which they would enable the public to participate unhindered in decision-making processes, has integrated in itself the right of the public to access the information in question. The above-mentioned provisions of the laws,[[13]](#footnote-13) according to the Ombudsperson, are sufficient indicators of the irresponsibility of the above-mentioned bodies for the implementation of the law. Furthermore, the legislator in Law no. 06/L-081 on Access to Public Documents, has eliminated any dilemma by specifying with a separate article that there is no basis for restricting access to documents containing environmental data;
4. Also, the Ombudsperson considers that the failure of MESP, now MEE and the Municipality of Shterpce to argue the organization of public hearings, or the denial of citizens' claims for denial of the public right to participate in decision-making, discloses the failure of the competent bodies in the proper development of the initial procedures for licensing of hydropower plants.
5. At the same time, the Ombudsperson considers that the judicial system in the country, not only in this case, but also in all cases related to the environment, is not managing to meet the principle of legal certainty, as an important element of rule of law, to ensure a fair trial and within a reasonable time. Cases initiated in courts by both natural and legal persons are not shown to be effective remedies. The lack of implementation of the above-mentioned laws has affected the failure to achieve the effect of legal expectation, which should have been produced by the provisions in question.
6. The Ombudsperson, given the fact that Kosovo compared to neighbouring countries has the least water, and also in general, has a low level of water resources disposal, which makes Kosovo very vulnerable to climate change, [[14]](#footnote-14) expresses concern regarding the negligence of the authorities on the issue, and at the same time reminds those responsible that the Constitution of the Republic of Kosovo, in Article 21, paragraphs 2 and 3, stipulates that: “*The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution. Everyone must respect the human rights and fundamental freedoms of others”.*
7. Therefore, based on case analysis and the legal basis, the Ombudsman finds that the process of licensing and operation of hydropower plants in the country has been followed by ongoing shortcomings in terms of three-dimensional procedural aspect, that is access to information, public participation in decision-making and access to justice

## Recommendations of the Ombudsperson

1. The Ombudsperson, in order for the information regarding the operation of hydropower plants in the country to be made public, for the Judicial and Prosecutorial Council to take measures to deal with cases related to the case of this nature, and which have to do with the environment. priority, referring to the above arguments, in accordance with Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 16, paragraph 4 of Law no. 05/L-019 on the Ombudsperson.

**RECOMMENDATIONS GIVEN**

**to the Ministry of Environment and Spatial Planning:**

* To make public all the documentation concerning hydropower plants in the country;

**to the Municipality of Decan**

* To make public all documentation concerning hydropower plants in the municipality of Decan;

**to the Municipality of Shterpce**

* To make public all documentation concerning hydropower plants in the municipality of Shterpce;

**to the Kosovo Judicial Council**

* To take measures to prioritize cases related to hydropower plants;

**to the Kosovo Prosecutorial Council**

* To take measures to prioritize cases related to hydropower plants.

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 Law no. 05/L-019 on Ombudsperson (“*Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions, including disciplinary measures, must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question*”), please kindly inform us about the actions you will take in relation to this issue.

Respectfully,

Naim Qelaj

Ombudsperson

1. An e-mail from Kosovo Police received on 24 October 2018 [↑](#footnote-ref-1)
2. https://kallxo.com/gjate/vendimi-skandaloz-para-zgjedhjeve-ministri-i-zhbllokon-lejet-per-hidrocentrale/ [↑](#footnote-ref-2)
3. https://kallxo.com/gjate/vendimi-skandaloz-para-zgjedhjeve-ministri-i-zhbllokon-lejet-per-hidrocentrale/ [↑](#footnote-ref-3)
4. Constitution of the Republic of Kosovo, Article 7, Values. [↑](#footnote-ref-4)
5. KOSID, Legal analyses, LEGAL VIOLATIONS DRIVING RIVERS, November 2020 [↑](#footnote-ref-5)
6. Contractual Agreement no. 937, dated 16.03.12, concluded between the Municipality of Deçan, Republic of Kosovo, with Kelkos Energu LLC, regarding the use of the immovable property of Deçan according to the Servitude Contract for the construction and operation of the hydropower generating unit “Belaje ”,“ Deçan ”and“ Lumbardhi II ”, p. 9, Article 5, par. I, Obligations of Kelko LLC, “Providing a new construction of the reservoir of Lake Lumbardhi II,…” [↑](#footnote-ref-6)
7. http://www.kuvendikosoves.org/shq/komisionet/ [↑](#footnote-ref-7)
8. Constitution of Republic of Kosovo, Article 132 paragraph 3. -All authorities have the obligation to respond to the Ombudsperson in his requests for the conduct of investigations, as well as to provide adequate assistance at his request "; 2. “The refusal to cooperate with the Ombudsperson by a civil servant, official or public authority constitutes a reason for the Ombudsperson to request from the competent body the initiation of administrative procedure, including issuance of disciplinary measures, up to dismissal from the work or service. civil ”; 3. “In case the Institution refuses to cooperate or interfere in the investigation process, the Ombudsperson has the right to request from the competent prosecution initiation of legal proceedings, for obstruction in performing official duties. [↑](#footnote-ref-8)
9. Law on Ombudsperson, Article 24, paragraph 4 and 5 defines that: “Refusal or failure to respond to the requirements of Ombudsperson is considered obstruction of Ombudsperson’s work. This does not prevent the Ombudsperson to issue his conclusions and recommendations” : “The Ombudsperson may report the actions foreseen in paragraph 4 of this Article in his reports”,

Ex Officio Report No. 773/2019 - Investigations initiated by Ombudsperson Institution -Kosovo Police, based on information received from Koha Net, on 9 October 2019, regarding use of force by police officers against residents of the village Biti, Municipality of Shtrpce who held protests to oppose hydropower plant construction. [↑](#footnote-ref-9)
10. Official Face book page, KOSID.eu, dated 8 December 2020: on 8 December the Basic Court in Prishtina has taken a Decision to POSTPONE the execution of decisions issued by the Ministry of Economy and Environment such as: 1. Water Permit for HC Belaja, L.U. 13, 4981/20, dated 03.11.2020; 2. Decision for Environmental Permit for HPP Deçani, L.U. 14, 4982/20 dated 04.11.2020; Decision on Environmental Permit for HPP Belaja, 19/5837/ZSP, dated 06.11.2020; and 4. Decision on Environmental Permit for HPP Deçani, 19/5837/ZSP, dated 06.11.2020, until the Court decides with a final court decision regarding the claim of the plaintiff. [↑](#footnote-ref-10)
11. Ibid, Also, the same has taken a Decision to POSTPONE the execution of decisions issued by the Energy Regulatory Office, such as: 1. Decision V\_1303\_2020, dated 12.11.2020; 2. Decision V\_1304\_2020, dated 12.11.2020; 3. License for the Production of Electricity for HPP Deçani, Li 49/20, dated 12.11.2020; and 4. License for the Production of Electricity for HPP Deçani, Li 50/20, dated 12.11.2020, until the Court decides with a final court decision regarding the claim of the claimant. [↑](#footnote-ref-11)
12. *Jean-Francois and Akandji-Kombe, Positive obligations under the European Convention on Human Rights, "Guidelines for the use of the European Convention on Human Rights", Human Rights Manuals no. 7, Council of Europe, 2007, p.15* [↑](#footnote-ref-12)
13. Law no. 03/L-025 on Environmental Protection, Law no. 04/L-147 on Waters of Kosovo, Law no. 04/L-174 on Spatial Planning, Law no. 04/L - 110 on Construction, Law no. 03/L-214 on Environmental Impact Assessment. [↑](#footnote-ref-13)
14. *World Bank Group 2018, “|Water Security Outlook for Kosovo”, p. 10* [↑](#footnote-ref-14)