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Prishtinë, 4 March 2015

## **REPORT WITH RECOMMENDATIONS**

**C. No: 322/2015**

**Samile Pruthi**

**versus**

**Gjakova Municipality**

**To:** Mrs. Mimoza Kusari-Lila,  
Mayor of Gjakova Municipality  
Str. "Nëna Terezë", n.n.  
50000 Gjakovë

**Case:** Report with recommendations regarding the complaint lodged by Mrs. Samile Pruthi and other 15 families, residents of "Haxhi Dërguti" street in Gjakovë, regarding their problem concerning living environment and obstacles to be connected to the city sewage system.

**Legal base:** Constitution of Republic of Kosovo, Article 135, paragraph 3  
Law on Ombudsperson No.05/L-019, Article 18.1.2

## Scope of this Report

The scope of this Report is to draw attention of Gjakova municipality for the need to undertake appropriate actions for application of the right to environment, regarding complainant's case in "Haxhi Dërguti" street in Gjakove.

## Ombudsperson's powers

According to Article 18, paragraph 1.2 of the Law on Ombudsperson No. 05/L-019, the Ombudsperson is entitled to: *"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"*

## Description of the case

This Report is based on the complaint admitted in the Ombudsperson Institution (OI), from Mrs. Samile Pruthi, who complains that *her house and approximately 15 other houses in "Durgut Vokshi" street in Gjakovë, lack access into sewerage system, thus sewage and human feces are deposited on the ground which obviously cause environmental pollution and the threat of contagious diseases.*

## Summary of facts

Facts, proves and information on OI disposal can be summarized as follows:

1. The Ombudsperson, based on the Law on Ombudsperson, on 23 June 2015, has admitted the complaint of Mrs. Samile Pruthi, against the Municipality of Gjakova regarding not undertaking anything to solve the problem of sewage disposal for approximately fifteen families in "Durgut Vokshi" street in Gjakovë.
2. On 26 June 2015, Mrs. Pruthi has lodged a complaint with the OI stating that residents of "Durgut Vokshi" street have submitted a request to the *Mayor of Gjakova municipality as well as to the Directorate of Public Services and Presiding of Municipal Assembly (submissions no.01-352-419-33, no.09-352-419-30, no. 09-352-419-26, all of the same date 25 June 2015).*
3. On 1 July 2015, OI representatives conducted a visit to "Durgut Vokshi" Str. in Gjakovë and met with some residents of this neighborhood. From the visit accomplished it was apparently understandable that inhabitants of this urban location (very close to the city center) live in harsh environmental conditions, under the threat of blast of contagious diseases as house sewage and drain water run freely on the surface, due to lack of sewerage system, and because of this the whole area reeks on feces waste.
4. On 2 July 2015, OI representatives met with the Director of Public Service Directorate in municipality of Gjakova and discussed regarding the issue subject of complaint. He notified OI representatives that they in Directorate are aware of that problem which lasts for more than thirty years. He explained that judicial procedure is ongoing regarding this issue, thus, according to him, they should wait for the court's decision.
5. On 3 July 2015, OI representatives met with the officials of the Directorate for Environment and Environmental Protection (DEEP) in municipality of Gjakova and

discussed with them regarding complainant's issue of concern. OI representative was informed by DEEP officials that a draft proposal containing three proposals has been prepared to remedy this problem, stating that they have proposed provisional solution until regulative plan for this area is drafted.

6. On 10 June 2015, OI was informed that Basic Court in Gjakovë, in the criminal procedure which was taking place regarding the flow of sewage and drain water on the surface, has handled this case as criminal case (*environmental pollution and damage of property*). The Court has brought punishing decisions for some of property owners in this area, who were convicted with conditional punishment for two years, in replacement to 6 months incarceration.
7. On 22 June 2015, OI was informed that response to the petition was provided only from DPS, who informed the residents of the area that: "As per disposal of fecal sewage for which you request solution, DPS has no powers in solving property problem. This power rests with Civil Court. In the moment when this Court ends with (positive) solution, you can address us as a Directorate with the request for canal opening".
8. On 7 September 2015, OI representative met with Director of DPS regarding the flow of complainant's case. The Director informed OI representative that during August 2015 he personally visited the site jointly with the inspectors of the Ministry of Environment and Spatial Planning and some experts from Faculty of Medicine in Prishtinë (Department of Epidemiology) and witnessed the grave living conditions in this neighborhood thus perceived that urgent measures need to be taken to remedy this situation.
9. On 8 October 2015, the Ombudsperson sent a letter to the Mayor of Gjakova municipality regarding the case and requested to be informed regarding the flow of this case in the procedure in front of municipal bodies as well as municipality planes for resolving of this issue but no answer has been provided until the time set, actually until 28.10.2015.

## Legal Base

10. Constitution of Republic of Kosovo, in Article 52, paragraph 1, reads: "Nature and biodiversity, environment and national inheritance are everyone's responsibility", while paragraph 2 of this Article stipulates: "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".
11. European Convention on Protection of Human Rights and Fundamental Freedoms (ECHR) in Article 8, paragraph 1 reads: "*Everyone has the right to respect for his private and family life, his home and his correspondence [...]*".
12. Law on Local Self-governance No. 03/L-040, 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; [...]*".

13. Law on Environmental Strategic Assessment No.03/L-230, Article 1, paragraph 1 reads: *“The purpose of this Law is to ensure through strategic environmental assessment of the plans and programs, high level for protection of the environment and human health.”* While paragraph 2 of this Article stipulates: *” This Law determines the conditions, form and procedures for assessment of impacts on environment, of the certain plans and programs (hereinafter: SEA) through integration of the environmental protection principals in the procedure of preparation, approval and realization of plans and programs”*.
14. Law on the Inspectorate of Environment, Waters, Nature, Spatial Planning and Construction No. 04/L-175, in Article 10, paragraph 1 determines: *“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 reads: *“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”*.
15. Law on Environmental Protection, No.03/L-025, Article 1, paragraph 2 determines: *”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,”* while Article 2, paragraph 2 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 [...]”*.
- The same Law in Article 34, paragraph 1 stipulates: *“When it can be concluded or proved that a person, enterprise or public authority caused **environmental disturbance** by purpose or by negligence results with **environmental devastations**, is obliged to restore the damaging part on the conditions not possessing risk to environment and human health or rehabilitation common capacity, of damaged part”* while Article 50, paragraph 3 determines: *“Municipalities within their responsibilities designated by the law may ensure continual control, following of environmental state in accordance with this law, certain laws and monitoring programs [...]”*.
16. Law on Prevention of Infectious Diseases No. 02/1-109, foresees undertaking of measures for preventing and combating contagious illnesses, through Article 8, paragraph 8.2 which determines: *“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 [...]”*.
17. Law on Public Health No.02/L-78, Article 6, paragraph 6.1 determines: *” The National Institute Public Health of Kosovo (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”*.
18. Law on Expropriation of Immovable Property No.03/L-139, Article 1, paragraph 1 reads: *“The rules and conditions under which the Government or a Municipality may expropriate a Person’s ownership or other rights in or to immovable property ”*

19. Constitution of Republic of Kosovo protects and guarantees human rights and fundamental freedoms, thus implementation and practical accomplishment of these rights is on interest of rule of law functioning. Constitution of Republic of Kosovo in Article 52, paragraph 1, explicitly determines responsibility of all people regarding living environment stipulating that: “*Nature and biodiversity, environment and national inheritance are everyone’s responsibility*”, while paragraph 2 of this Article sets liabilities to public institutions to respect human rights and freedoms of other people, by requesting that “*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.*”, thus these constitutional provisions are imperative principles and shall be respected by all authorities including Gjakova municipality.
20. ECHR, in Article 8, paragraph 1 determines: “*Everyone has the right to respect for his private family life, his home [...]*”. For the purpose of Article 8, it is the role of European Court of Human Rights to give assessment on the fact whether an intervention on one Convention’s right is justifiable on the bases of public interest or when it is evaluated that the State hasn’t done enough to be in compliance with **positive obligation** that this provision contains. In general, within the meaning of Article 8, home is the place where a person resides, or where a person settles, and in scope of this, all places of residence comprise home. Nevertheless, in some circumstances, the Convention asks the States to undertake steps to enable rights to persons according to Article 8 as well as may ask to protect persons from activities of other private persons who hamper them to enjoy effectively their rights. According to the Court, in order to determine if **positive obligation** exists or not, the State shall take in consideration the fact if correct equilibrium has been set between general interest of the community and interest of the person.
21. European Court of Human Rights on the trial of 23<sup>rd</sup> of November 1994 in case **Lopez Ostra versus Spain**<sup>1</sup> ascertains that there has been violation of Article 8 of the Convention determining that environment pollution can impact on individual’s well-being and prevent him/her from enjoying his/her home in such a way that his or her private and family life is damaged. Similar with this case the whole area around complainant’s home can be designated as such, which is exposed to environmental hazards from smelling of sewage which flow on the surface. Inhabitants are also exposed to mosquito stings which, in contact with sewage water, may be resource of infection and all this due to the failure of competent bodies of Gjakova municipality, which, until now, have not achieved to fulfil positive obligations towards citizens of this area.
22. Law on Local Governance No. 03/L-040, in Article 17, stipulates that Municipalities shall have full and exclusive powers, insofar as they concern the local interest, while respecting the standards set forth in the applicable legislation in areas of local economic development, urban and rural planning, land use and development, implementation of building regulations and building control standards, local environmental protection, provision and maintenance of public services and utilities, including water supply, **sewers and drains, sewage treatment**, waste management, and many other

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<sup>1</sup>

CASE OF LÓPEZ OSTRA v. SPAIN (Application No. 16798/90) paragrafi 51



competencies. From what has been stated above, the municipality is responsible for resolving of this issue but until now it did not undertake any action in finding solution for complainant's case claiming municipality's incompetency (see point 7).

23. Law on Strategic Environmental Assessment No.03/L-230, in Article 1, paragraph 1 stipulates that with drafting of this law the lawmakers aimed that through Strategic Environmental Assessment (SEA) of certain plans and programs, to ensure high level of environment and human health protection, while paragraph 2 of this Article explains that through this law are determined conditions, form and procedures for the assessment of the impacts on the environment of certain plans and programs through integration of environmental protection principles in preparation, approval and realization of plans and programs, with the aim of promoting sustainable development. SEA for plans and programs is done when the possibility exists that their accomplishment can cause considerable damages in the environment, in the current case, environmental damages have occurred due to absence of such assessment in the previous years and property owners have been provided with construction permissions without ensuring to them mandatory infrastructure (access to sewerage system for sewers and drains disposal) and unfortunately a SEA is still missing with the urban regulation plan, which would ensure solution for this situation.
24. Law on Environmental Protection, No.03/L-025, aims establishment of environmental standards in Kosovo in compliance with those of European Union, thus Article 1, paragraph 2, determines that the law promotes establishment of healthy environment for population of Kosovo by bringing gradually the standards for environment of European Union, Article 34, paragraph 1 of this Law determines situations when it can be concluded or proved that a person, enterprise or public authority caused **environmental disturbance by purpose or by negligence** results with environmental devastations, **is obliged to restore the damaged part on the conditions not exposing risk to environment and human health** or rehabilitation common capacity, of damaged part, while Article 50, paragraph 3, obliges municipalities that within their responsibilities designated by the law to ensure continual control, follow environmental state in accordance with this law, certain laws and monitoring programs. The Law determines that in cases of possible environmental accidents or a situation which seriously damages the environment or human health, municipalities and Government should issue intervention planes. In the current case, it can be clearly stated, that the environmental damage and environmental disturbance have occurred, despite the fact that the municipality was informed with the situation created and did not undertake any action to solve this problem.
25. Law on Prevention of Infectious Diseases No.02/L-109, foresees undertaking of a set of measures for prevention and combating contagious diseases, while Article 8, paragraph 8.2 determines general liabilities on protection from infectious diseases, demanding removal of 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. This law determines that *source of infection* is the territory which is categorized with the presence of infection source (human or animal) and environmental favorable factors for spreading of infection. Thus initiating from the situation created in the site, as a result of sewage pouring on the land, we can conclude that no protection measures have been ensured by responsible authorities and here we have the situation of possible source of infection
26. Law on Public Health No.02/L-78, Article 6, paragraph 6.1 determines National Institute for Public Health of Kosovo (NIPHK) as a responsible authority to research the environment factors which harm public health and proposes the protection measures for

preventing the health harmful effects, while paragraph 6.2 determines the power that when NIPHK proposes and undertakes professional actions and recommends the competent institutions to eliminate the discovered deficiencies and any other health harmful effects. Inhabitants of this area state that their neighborhood has been visited by health authorities several times but until now recommendations regarding measures to be undertaken for the remedy of this situation are missing.

27. Law on the Inspectorate of Environment, Waters, Nature, Spatial Planning And Construction 04/L-175, in Article 10, paragraph 1 stipulates that 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 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. Regardless Inspectors' competency that they may seek opinion and professional cooperation from other authorities, from the investigation conducted it is obvious that they never addressed the issue to other bodies specifically towards those dealing with health and never requested to alarm this situation, to protect the population from this environmental pollution with the risk of blast of infectious illnesses and never asked to remedy the situation.
28. Law on Expropriation of Immovable Property Nr.03/L-139, Article 1, paragraph 1 stipulates terms and conditions based on which the Government or a Municipality can do expropriation of the property rights or other rights on the immovable property of the person. According to this law the expression **expropriation** shall mean any act by an Expropriating Authority that involves taking of any lawful right or interest held or owned by a Person in or to immovable property, or the compulsory establishment or creation of any servitude or other right of use over immovable property. Expropriating Authority, according to this law, is authorized to do expropriation of the immovable property only when all terms of regular and accurate expropriation are satisfied in order to achieve legitimate public purpose within its competencies determined by the law and in cases when legitimate public purpose cannot be achieved practically without expropriation. In these cases the public benefits to be derived from the expropriation outweigh the interests that will be negatively affected by expropriation thereby the choice of the property to be expropriated has not been made for, or in the furtherance of, any discriminatory purpose or objective. Notwithstanding legal regulations and legal possibilities that the issue of the complainant and of other residents of this neighborhood be resolved according to this law, the municipality has failed to implement the obligations and the rule of law in relation to the public interest by invoking the incompetence (see paragraph 7).
29. Based on what has been stated above the Ombudsperson, in compliance with Article 135, paragraph 3 of the Constitution of Republic of Kosovo: *“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”*. In the meaning of Article 18, paragraph 1.2 of the Law on Ombudsperson, the Ombudsperson *“(…) has responsibility to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases (…)”*.

Thus, the Ombudsperson

## RECOMMENDS

1. *That Gjakova municipality, in accordance with the powers and legal authority and in cooperation with all other responsible authorities, to undertake immediate steps in solving the problem of sewerage system for the residents of "Durgut Vokshi" Street in Gjakova.*
2. *That Directorate for Health and Social Welfare in Gjakova municipality, in accordance with the powers and legal authority, to undertake all necessary actions to detect epidemiologic and health condition of the residents of this area as well as the environmental pollution level. Depending from findings in the site, to draft written report and inform the residents and institutions about the situation and eventual hazards as well as undertake necessary measures for protection of residents' health.*
3. *That Department of Urban and Environmental Protection of the Municipality of Gjakova, in accordance with the powers and legal authority, to initiate procedures of drafting the urban regulatory plan for "Durgut Vokshi" Street in Gjakova through which will be determined necessary environmental infrastructure for the inhabitants of this area, in accordance with relevant standards as the ultimate solution to this problem.*

Pursuant to Article 132, paragraph 3 of the Constitution of Republic of Kosovo and Article 25 of the Law on Ombudsperson No.05/L-019, I would like to be informed on the actions that the Municipality of Gjakova will undertake regarding this issue in response to the preceding Recommendation.

Expressing my gratitude for the cooperation, I would like to be informed regarding this issue within the reasonable time frame, but no later than **4 April 2016**.

Sincerely,

Hilmi Jashari  
Ombudsperson