



**Non-governmental organization Emancipimi Civil Ma Ndryshe  
EC MA NDRYSHE**

*8 August 2017, Prizren*

**OPINION  
Justice for Xheneta**

The Basic Prosecution in Prizren on 13 July 2017 has announced that it has filed an indictment against the accused B.E., due to criminal offenses, causing general danger and not avoiding the risk. According to the indictment, the accused B.E. in the capacity of the responsible person at the Municipality of Prizren, respectively director of the Emergency and Security Directorate in the Municipality of Prizren, has negligently failed to take measures for the installation of protective equipment around the houses before the collapse in "Marin Barleti" street in Prizren to avoid the risk, and as a result on 06.06.2016, around 15:30 minutes, the child Xh.G., born on 07.08.2012, while she was playing on the street, died from the received injuries on the head and body from the collapsed house. According to the Prosecution, with these actions, the accused B.E. has committed the criminal offenses causing the general danger from Article 365 paragraph 9 in relation with paragraphs 6 and 2 of the CC and not avoiding the danger from Article 370 paragraph 1 of the CC.

Without wanting to interfere in the Prosecution's work, as an independent body, EC Ma Ndryshe wants to express some of its opinions on the current case. The opinion has to do with the fear that whether this indictment is sufficient to establish full justice in the case of Xheneta Gashi's death.

**I. Delays in prosecuting the case**

According to the Indictment of the Basic Prosecution of Prizren, this Prosecution on 14 July 2016 received the criminal report from the Regional Directorate of Prizren Police. Following the undertaking of investigative actions, the Prosecutor's Office on 8 August 2016 issued a decision to initiate investigations against N.K. (Former Director of Urbanism), B.B. (Former director of inspectorates) and B.E. (Director of ESD), all three senior officials in the Municipality of Prizren, due to reasonable suspicion, the co-perpetrators have committed the criminal offense of causing general danger and not avoiding the risk. Therefore, the decision to initiate investigations against 3 senior officials of Prizren Municipality was taken 2 months after the tragic case.

After the investigations conducted, on 13 July 2017 the Prosecution initiated an indictment against the official with initials B.E., while according to the Prosecution, in the absence of evidence against the defendants: N.K. (Director of Urbanism) and B.B. (Director of inspectorates) it was decided on pausing the investigations. Thus, the indictment has been filed after more than one year have passed since the tragic case in "Marin Barleti" street and almost a year since the decision was taken to commence investigations.

EC notes the fact that the Criminal Procedure Code foresees an investigation to be completed within two years from its inception. However, EC considers that due to the great interest of the public on this case (argument that was mentioned in the media by the Prosecution Officers

themselves), the prosecution should have been more mobilized in shortening the indictment deadline in this case.

## **II. Analysis of responsibilities**

The first thing that EC considers at this point is that with the act of the Prosecution, the Municipality of Prizren is accused of being responsible for the tragedy in question, as in this case a Municipal Director is charged which is appointed by Mayor Ramadan Muja based on the Law on Local Self-Governance. However, according to the legislation in force, public security and the protection and development of the Historic Centre of Prizren are separate responsibilities of the two levels of governance, where besides the Municipality of Prizren, the line ministries such as the Ministry of Culture (MCYS) and the Ministry of Environment (MESP) also have direct obligations.

Regarding the local level, according to the decision on internal organization, systematization, description and classification of jobs in the Administration of the Municipality of Prizren among other things, the Emergency Department (ESD) is responsible for risk assessment, based on Factual data on planning and undertaking preventive measures to prevent, reduce and eliminate the consequences of natural and other disasters. Whereas the Directorate of Urbanism (DUSP), among other things, has a duty to define the conditions for the conservation and preservation of objects with special value. According to the aforementioned decision, the Inspectorate (ID), respectively the construction inspection, among others, is obliged to inspect the conditions and safety measures related to the security of the building and other surrounding buildings, as well as the safety measures for the traffic around facilities. Furthermore, on February 2, 2016 Mayor Ramadan Muja, through a conclusion approved the proposal of the Inspectorate Directorate to allow intervention on facilities that pose a danger for the citizens in the territory of the Municipality of Prizren, permitting the announcement of the respective tender. Prior to January 2016, Mayor Muja has formed and appointed the Commission for the evaluation of objects that pose a danger for the citizens of the Municipality of Prizren, with two members from ID, one from DUSP and one from ESD.

Based on these data, EC considers that in this case, the level of responsibility of Mayor Muja, as well as the heads of ID of the DUSP, should be analysed in an independent and detailed manner also without amnesty of the ESD. This is because public security policy in principle requires interaction between sectors. This is confirmed by the decision taken from the Mayor for the establishment and appointment of the Commission for the evaluation of the objects that pose danger for the citizens of the Municipality of Prizren, with two members from ID, one from DUSP and one from ESD on 12 January 2016. Whereas according to the data in the indictment it appears that in the report of 18 January 2016, this commission has ascertained that the houses in "Marin Barleti" street have been classified as high-risk objects for passers-by and neighbouring residents and that the report was submitted to ID, DUSP and ESD. A concern in this regard is why these municipal bodies did not act timely and properly when the Commission warned that objects are at high risk. In this regard, we should not forget the responsibilities of the Mayor, who, according to Article 58 of the Law on Local Self-Government, "appoint and dismiss his members who assist him in the performance of duties" and "organizes the work and directs the policy of municipality", while according to the Statute of the Municipality of Prizren, respectively Article 50," appoints the directors of the municipal directorates to assist in the performance of their duties "and" assigns and coordinates the temporarily duties and responsibilities between the directorates as necessary and based on a specific area or project, "as well as taking care of the implementation of the legal provisions related to the responsibilities of the municipalities. As for five months ID, DUSP and ESD

did not take any action in "Marin Barleti" street. The Mayor of the Municipality as the Chief Executive Officer of the Municipality had to take care of them to carry out their task, or to dismiss the directors of these directories if failing to do so.

In this regard, due to the failure to implement public security policies, EC considers that neither of the directorates responsible for this field should be amnestied, and neither the mayor of the municipality, who manages the municipal executive and its administration.

On the other hand, line ministries such as MCYS and MESP also have direct obligations regarding the Historic Centre of Prizren (the area where the tragedy occurred) and therefore they can not be left out of responsibility before law.

MCYS, since it administers the list of cultural heritage monuments under legal protection, has a dual responsibility, as in relation to the Historic Centre, which has the status of the cultural heritage site in permanent protection of the Republic of Kosovo as well as the objects on the road "Marin Barleti", which have legal protection status and are part of the Nënkalaja Complex, Pantelia and Potok Mahalla, being part of the Cultural Heritage List under Temporary Protection. MCYS was also required to carry out its legal obligations in relation to the facilities on this road, and in the absence of action they must be brought to justice. Despite the fact that the Regional Centre for Cultural Heritage in Prizren has long established and informed the MCYS about the danger of the facilities in "Marin Barleti" Street, the latter did not allocate budget for intervention for at least the last four years.

Similarly, the responsibility of MESP should be analyzed as this Ministry has sponsored the Law on the Historic Centre of Prizren and the Law on Special Protective Zones. In this regard, MESP is responsible for having legal obligations to ensure that the Municipality, KTK, the Office for the Historic Centre have been provided with the resources necessary for the protection, management and development of the Historic Centre.

### **III. Investigations and unproductive indictments**

In parallel with what has been said above, EC would like to remind also that in the last years, the Prosecution has initiated several investigations related to the destruction of objects in the protected area of the Historic Centre, and cases of indictments, but that were not finalized by convicting verdicts by the Court. One of such fresh cases is that of Hanit të Mullafazlive, where the Basic Prosecution of Prizren filed an indictment against two Prizren municipal officials, but of the lowest rank in ID and DUSP (not distinguished by political power), where after the trial the Basic Court stated that could not prove that they committed the criminal offense that they were charged of. Of course, EC considers that in this procedure the Court's decision was fair, as the two officials were not responsible for the criminal offenses that were committed in this case. However, the conclusion that can be drawn from this trial is that in this case the justice bodies have committed the procedure cycle and none of the institutional officials has been convicted while the criminal offense against the cultural heritage object has been committed. On the other hand, for the same case there is another case in the proceedings before this court, where the accused is the investor who has committed the demolition of the object. There is no public information as to whether a court hearing has been conducted in this case, whereas this delay is another indication of judicial prolongations in bringing justice.

So, even in those few cases of initiation of criminal proceedings for deliberate damage to cultural heritage, there seemed to be no interest in prosecuting decision-making officials, and even the Prosecution, despite the indictments filed, has also failed to bring evidence before the Court.

EC does not want to believe that the same model has been applied to the investigation of the death of Xheneta Gashi in "Marin Barleti" street. However, so far, indications suggest that the procedure developed will not be sufficient to establish full justice for this tragic case. While in the previous cases the cultural heritage objects have suffered and these criminal offenses have remained unpunished, such a practice should not happen also in the case of Xheneta Gashi, for the fact that this 3-year-old has lost her life in a public space, as a consequence of the failure to act by the institutions who have legal responsibility, and it is therefore a duty of the justice authorities to ensure full justice in this case.

#### **IV. conclusion**

EC expresses suspicion that the indictment filed in this case could not bring full justice to the tragic case of Xheneta Gashi. Our suspicion is based on these facts:

- The indictment has taken more than a year, despite the fact that it was a case of great public interest,
- Past cases of prosecution of criminal offenses within the Historic Centre are prolonged investigative processes and have never produced punitive verdicts,
- The analysis of institutional responsibility in relation to public safety and the protection and management of the Historic Centre concludes that a large number of institutions and officials are responsible for the case (both at the local and central level)
- Despite the fact that some senior municipal officials have been investigated during the investigation phase, the Prosecutor has failed to express why the investigations have been suspended for the other two investigated directors,
- The indictment filed against only one municipal director who has no political power and comes from a minority party, a small part of the local coalition, and the amnesty of two other directors, senior officials of the ruling party in the municipality, is a clear indicator of political influence in the judicial system,
- Even in those few cases of termination in court, indictments for criminal offenses within the Historic Centre have been extremely unproductive, challenging the judges in making punitive decisions.