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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

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*Recommendation report*

**C.no. 493/2018**

**Esat Beqiri**

**Versus**

**Ministry of Education, Science and Technology**

**Kosovo Correctional Service**

**For: Mr. Abelard Tahiri, Minister  
Ministry of Justice**

**Mr. Shyqyri Bytyqi, Minister  
Ministry of Education, Science and Technology**

**Mr. Nehat Thaçi, Director  
Kosovo Correctional Service**

**Mr. Hestet Loku, Director  
Correctional Center for female and juveniles in Lipjan**

**Copies for: Mr. Ismajl Kurteshi, President  
Parliamentary Committee for Education, Science, Technology, Culture,  
Youth, Sports, Innovation and Entrepreneurship**

Prishtinë, 23 November 2018

## **THE PURPOSE OF THE REPORT**

1. The main purpose of this Report is to draw attention of competent authorities of the Republic of Kosovo on respect of rights of convicted persons on education in accordance with the Constitution of the Republic of Kosovo, the Law on Execution of Penal Sanctions, as well as international standards on prisoners' rights.

## **CONSTITUTIONAL AND LEGAL BASES**

2. According to Article 135, par. 3 of the Constitution of Republic of Kosovo (hereinafter: "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".
3. Based on the Law No. 05/L-019 on Ombudsperson, Article 16, par. 4, "The Ombudsperson has the power to investigate, ... or on its own initiative (ex officio), if from findings, testimonies and evidence presented by submission or by knowledge gained in any other way, there is a base resulting that the authorities have violated human rights and freedoms stipulated by the Constitution, laws and other acts, as well as international instruments on human rights".
4. Further, Law No. 05/L-019 on Ombudsperson, Article 18, par. 1 stipulates that the Ombudsperson, among others has the following responsibilities:
  - "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;" (point 2);
  - "to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination" (point 5);
  - "to publish notifications, opinions, recommendations, proposals and his/her own reports;" (point 6);
  - "to recommend promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo" (point 7);
  - "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;" (point 8); and
  - "to recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation" (point 9).
5. By submitting this Report to the responsible institutions, the Ombudsperson tends to carry out the following constitutional and legal responsibilities.

## Case facts

6. The Ombudsperson, pursuant to Article 16, paragraph 1 of the Law no. 05 / L-019 on the Ombudsperson, on 5 July 2018, received the complaint of Mr. Esat Beqiri, against the Kosovo Correctional Service (KCS), who complains on behalf of his son V.B., who is serving a prison sentence at Correctional Center in Lipjan (hereinafter "CCL"), due to inability to proceed further with university studies.
7. On 10 July 2018, through on official e-mail, the Ombudsperson requested from CCL Directorate to be informed about the situation based on allegations in complainant's claim.
8. On 10 July 2018, through on official e-mail, the CCL Directorate notified the Ombudsperson on the following: *"The juvenile V.B is at the Correctional Centre in Lipjan since 07/12/2016, from where has accomplished high secondary education. As per university education is concerned, according to article 83 and 84 of LEPS, the Ministry of Education, Science and Technology and the Ministry of Justice have issued Administrative Instruction for secondary education but not for University Education"*.
9. On 18 July 2018, the complainant via e-mail sent relevant documents to the Ombudsperson regarding his complaint. Additionally, the complainant also submitted the medical report of the Prison Healthcare Department (hereinafter "PHD"), claiming that his son is not being provided with appropriate medical services in accordance with the health problems that he suffers.
10. On 19 July 2018, the National Preventive Mechanism against Torture (hereinafter referred to as "NPMT") visited the CCL and discussed the complaint in the Directorate of this establishment. Additionally, administrative file of the given convicted person has been analyzed by the NPMT in the course of the visit. The NPMT was informed by CCL Director that the Ministry of Education, Science and Technology (hereinafter "MEST") has not yet adopted any Administrative Instruction that would clarify the issue of university education of convicted persons.
11. On 24 July 2018, the Ombudsperson requested from PHD to be informed on the health status of the convicted V.B. On 24 July 2018, PHD sent the Ombudsperson the report related to the state of health of the convicted V.B. and the medical treatment provided to him in the CCL. Through this Report, the Ombudsperson, among other things, was informed that the medical treatment of the convicted person was accomplished in continuity according to recommendations of Hematology Clinic. The PHD has paid lab examinations required by this Clinic, which have been sent to France for checking since such read-through cannot be done in Kosovo. Apart this, the PHD informed the Ombudsperson that there was no request for any service from the Clinic of Hematology that PHD cannot perform.
12. On 27 July 2018, the NPMT visited again the CCL in order to address the given complaint. On this occasion NPMT interviewed the convicted V.B., who complained about the provided healthcare treatment and the inability to attend the university education. Directorate of this establishment provided NPMT with the copies of administrative files, as well as medical files of the convicted person were thoroughly analyzed.

13. From the review of medical files of the given juvenile it derives that the PHD has provided all necessary medical services, based on the nature of the health problem and the recommendations of the Clinic of Hematology.
14. During this visit the NPMT received another complaint related to the inability of attending university studies from juvenile, F.C. convicted in this establishment.

**The right to education for juveniles deprived of their liberty as their fundamental right - international standards and legislation of the Republic of Kosovo**

15. The Ombudsperson reminds at the outset that the education of convicted juveniles and adults, residing in Correctional Institutions, is one of the main liabilities of the competent Institutions of the Republic of Kosovo deriving from the Constitution, the laws at force, and the international legal instruments. As such, this institutions' liability to accomplish one of the fundamental human rights, such as providing access to education for young people, cannot be over passed either for minors who are in Correctional Centers, as is the case of CCL. In addition, the Ombudsperson draws attention that this right for prisoners should be provided within CCL facilities or even outside the institution, actually in regular public schools.
16. UN and European level International Acts which regulate the rights of convicted persons, setting of education possibilities determine as an obligation of the State with specific emphases on young people who are deprived of liberty.
17. The right of all persons on education is enshrined in Article 26, paragraph 1 of the Universal Declaration on Human Rights<sup>1</sup>: *“Everyone has the right to education..”*. While paragraph 2 of this Declaration stipulates that: *“Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.”*
18. In this direction, **“United Nations Rules for the Protection of Juveniles Deprived of Liberty”** adopted in 1990 (Rules)<sup>2</sup>, stipulates that: *“Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programs integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty....”*(Article 38).
19. On the same spirit are also **“European Prison Rules”** adopted by Committee of Ministers of Council of Europe in 2006 (EPR), which pay special attention to the right to education, stipulating that: *“Every prison shall seek to provide all prisoners with access to educational programs which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.”*(28.1), as well as determining that: *“A systematic program of education, including skills training, with the objective of improving*

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<sup>1</sup> Universal Declaration on Human Rights at:  
[https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/aln.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/aln.pdf), (15.8.2018)

<sup>2</sup> See <http://www.un.org/documents/ga/res/45/a45r113.htm>.

*prisoners' overall level of education as well as their prospects of leading a responsible and crime-free life, shall be a key part of regimes for sentenced prisoners."*

20. Further, other provisions give additional priority to education of juveniles deprived of liberty, determining that: *"Particular attention shall be paid to the education of young prisoners ..."*(28.3), while another provision given in the part of juveniles' rights who are placed in the Correctional Centers, defines their education as a right that should be mandatory enabled, foreseeing that : *"Every prisoner who is a child and is subject to compulsory education shall have access to such education"*.
21. Also, Recommendation no. R (89) 12 on Education in Prison, adopted by the EC Committee of Ministers in 1989, defines the right to education as fundamental as well as one of main forms of facilitating reintegration of convicted persons into society.
22. With regard to the implementation of the right to education for persons serving the sentence, the Ombudsperson specifically alerts about the standards set forth by the European Convention on Human Rights (ECHR) and its Protocols, as well as the decisions of the ECtHR. In this regard, special emphasis is on Protocol No. 1 to the ECHR, namely Article 2 thereof, which stipulates that: *"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."* As such the right to guaranteed education by this provision stands for those incarcerated as well.
23. On this basis, the ECtHR has ascertained that imprisoned persons continue to lawfully enjoy all fundamental rights and freedoms guaranteed by the Convention, apart the right to liberty. Thus their right to education is guaranteed by Article 2 of Protocol No. 1. Refusal to enroll a prisoner at a prison school constitutes a violation of this provision (*Velyo Velev versus Bulgaria, 27 Maj 2014*). Certainly, the right to education does not imply the obligation of the state to organize ad hoc classes solely on individual's requests and the inability to meet these requirements does not constitute a violation of Article 2 of Protocol no. 1 of the ECHR (*Epistatu versus Romania, 24 September 2013*).
24. From what has been stated above, it results that international standards stipulate the obligation of the institutions of the Republic of Kosovo to guarantee the right to education as a fundamental right similarly for persons serving their punishment. In addition, the Ombudsperson recalls that such an obligation is clearly enshrined in the domestic legislation as well.

### **Legislation of Republic of Kosovo**

25. The right to education, as a fundamental human right, is also defined in the legislation of the Republic of Kosovo. In accordance with the spirit and text of international acts mentioned above, as well as in domestic law, the right to education is also guaranteed for persons deprived of their liberty.

26. Initially, the right to education, due to its importance, is stipulated in the Constitution, Article 47 of which stipulates that: 1. *“Every person enjoys the right to free basic education...”* (paragraph 1) and that: *“Public institutions shall ensure equal opportunities to education for everyone in accordance with their specific abilities and needs.”* (parag.2).
27. In accordance with the ECHR standards regarding the right to education and ECtHR decisions mentioned above, this right enshrined in the Constitution is neither limited to persons who, according to the law, are deprived of their liberty. The Ombudsperson emphasizes that this standard applies even more for young people, i.e. juveniles serving punishments. This standard of respect of human rights and not restriction of it, in cases of deprivation of liberty, also finds support in Article 14 of the ECHR, which stipulates that: *“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”*.
28. Thus, the Ombudsperson draws attention on the fact that decisions of Kosovo Republic Institutions, specifically of MEST, should be on the best interest of young people, even when it comes to educational process organizing in the CCL. This principle is defined in the Constitution as well, actually Article 50, para. 4 where is stipulated that: *“All actions undertaken by public or private authorities concerning children shall be in the best interest of the children.”* Furthermore, the same definition is enshrined in the European Convention on Rights of Child, where Article 3, paragraph 1 reads that: *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*
29. Furthermore, the right to education for persons deprived of liberty, specifically for juveniles imprisoned in Correctional Centers, such as CCL, is also guaranteed by some other laws regulating this right.
30. So, Article 5, para. 15 of the **Law on Pre-university Education**,<sup>3</sup> for this purpose determines the following MEST’s liabilities: *“The Ministry, in cooperation with relevant ministries, shall undertake special measures for the education of individuals in prisons or in young offenders’ institutions, as well as for those confined in psychiatric institutions, or are subject to long-term hospitalization, and for those released from institutions or discharged from hospitals and continuing their education..”* While further, para. 16, foresees that: *“The Ministry shall issue sub-legal acts in any area of its responsibility under this Law or other applicable laws.”* This definition exposes MEST’s legal obligation to promulgate sublegal acts also concerning the definition of terms and criteria, related to the organizing of educational process in CCL.

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<sup>3</sup> Law No. 04/L-032 on Pre-University Education in the Republic of Kosovo has been adopted by the Assembly of Republic of Kosovo on 29 August 2011.

31. Furthermore, Juvenile Justice Code (JJC)<sup>4</sup> in Article 119 stipulates that: *“If there are no lessons of a certain kind or educational level in the educational-correctional institution, a minor shall be permitted to attend lessons outside the educational-correctional institution if such attendance is not harmful to the execution of the educational measure and the decision is justified by the minor’s previous educational progress..”* This provision sets the bases that in cases of inability of performing educational process within Correctional Center, minors may attend the schools in community, an alternative that the Ombudsperson considers as necessary to be applied to juveniles located in CCL and other detainees, when the teaching process within the Correctional Center is not timely and qualitatively organized.
32. Additionally, Law on Execution of Penal Sanctions, in Article 84 paragraph 1 stipulates that: *“The director of the correctional facility shall allow special arrangements to enable the convicted person to receive primary, secondary, university and other education. The convicted person shall pay the expenses of such special arrangements”*.
33. Further, Law on Execution of Penal Sanctions (LEPS), in Article 83, parag.7, stipulates that: *“The education of the convicted persons shall be regulated through a secondary legislation issued by the Minister of Education with the consent of the Minister of Justice.”* While in Article 86 of the LEPS is determined that: *“A document issued upon completion of vocational training or educational courses shall not indicate that the courses were completed while the convicted person was in a correctional facility”*, by respecting corollary the principle that diplomas and certifications of education process accomplishment in Correctional Centers should not differ from those obtained in community schools.
34. According to the CCL Directorate, in the absence of a sub-legal act, which would specify the manner how this right would be realized, they have not been able to provide the opportunity to the convicts’ enjoyment of the right to higher education.
35. Unsurprisingly, in order to provide enjoyment of this right to a convicted person, Correctional Centers may face with security problems which require detailed arrangements and assessments from Correctional Center’s bodies where the convicted person is serving the punishment, as well as the competent authorities KCS.
36. The Ombudsperson considers that it is the responsibility of the Directorate of the designated Correctional Center and the KCS that, prior granting such a right to a convicted person, undertake overall assessment of the security, his/her present re-socialization, the conduct of detained person towards others as well as in case the given juvenile was in conflict with the law and domestic order, and consequently was imposed punitive measures foreseen by the Law on Execution of Penal Sanctions and Domestic Order.
37. On the basis of such assessment, the designated Correctional Center and KCS should seek the most appropriate opportunities to enable exercising of their rights to convicted persons to university education as defined in Article 84, paragraph 1 of the Law on Execution Penal Sanctions.

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<sup>4</sup> JUVENILE JUSTICE CODE No. 03/L-193 was adopted by the Assembly of Republic of Kosovo on 10 July 2010.

## **Ombudsperson's Main Ascertainments**

38. The right to education, as one of the fundamental human rights, has been reviewed in this Report, from aspect of enjoyment of this right by persons deprived of their liberty. Specifically, the Report is focused on organization of higher education for persons serving their imprisonment.
39. From analysis of **the right to education**, in relation to international acts (in particular the ECHR and the standard established by the ECtHR), the Constitution and Laws of the Republic of Kosovo, the Ombudsperson ascertains that this right is also guaranteed for persons deprived of their liberty. Moreover, exercising of this right is a constitutional and legal liability for the institutions of the Republic of Kosovo when it comes to juveniles deprived of their liberty, as is the case with minors residing in CCL.
40. Law on Execution of Penal Sanctions determines the right of the convicted person on university education and obliges that the juveniles deprived of liberty enjoy accomplishment of this right.

Based on these findings and pursuant to Article 135, par. 3 of the Constitution of Republic of Kosovo and Article 18 paragraph 1, sub-paragraph 7 of the Law No. 05/L-019 on Ombudsperson, the Ombudsperson recommends:

### **The Ministry of Education, Science and Technology as well as the Ministry of Justice:**

- **To issue sub-legal act pursuant with the Law on Pre-University Education and the Law on Execution of Penal Sanctions which would stipulate the form of accomplishment of the right to university education for sentenced juveniles and adults.**

Pursuant to Article 132, paragraph 3 of the Constitution of Republic of Kosovo (*“Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law”*) and Article 28 of the Law No.05/L-019 on Ombudsperson, (*“Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions, including disciplinary measures, must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question”*), You are kindly asked to inform us on steps to be undertaken in the future by You regarding this issue.

Warmly submitted,

Hilmi Jashari

Ombudsperson