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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

REPORT WITH RECOMMENDATIONS

Ex officio

Case no. 575/2016

Related to the Right on Education of persons deprived of liberty – failure to comply with legal deadline for commencement of educational process in the Correctional Centre in Lipjan

For:

**Mr. Arsim Bajrami , Minister
Ministry of Education, Science and Technology**

Mr. Imri Ahmeti, Mayor of Lipjan Municipality

Prishtinë, 5 September 2017

I. The purpose of the Report

1. Pursuant to enforcement of legal and constitutional competencies, the Ombudsperson, through this Report aims to draw attention to one of fundamental human rights, such as the right to education, namely provision of this right to juveniles of the Correctional Center in Lipjan (CCL). In this regard, the issue of delays and other omissions related to the organizing of educational process in CCL will be addressed, and based on findings, recommendations will be provided for competent institutions of the Republic of Kosovo, in particular for the Ministry of Education, Science and Technology (MEST) and the Municipality of Lipjan, to undertake necessary measures for efficient implementation of educational process in CCL.
2. Through regular visits to the CCL conducted by Ombudsperson Institution officials (hereinafter OI), as well as information provided by other sources, the Ombudsperson has been continuously informed about the challenges and problems on implementation of the educational process in CCL. Therefore, through this Report, concise analysis of this problem is intended.
3. According to current problems which arise from overseeing and evaluation of educational process in CCL, violation of juveniles' right to education during their confinement in the correctional center and after their release, considering education as a from of fundamental rights of convicted persons, the Ombudsperson's main purpose is to:
 - to conduct analyses of the legal basis for implementation of the right to education for juveniles in CCL, recalling the liability of the responsible institutions deriving from the legislation at force of the Republic of Kosovo, and by highlighting the standards set out in the international acts in this regard.

to draw attention on main problems that currently follow implementation of this right for juveniles in CCL. Due concern will be given to delays in commencement of school year, as defined by the legislation in effect, problems related to budget allocated by MEST, with the aim of organizing efficient educational process at CCL, coordination between competent institutions, providing school documentation upon release from CCL, etc.
 - to give particular recommendations within the scope of constitutional and legal authorizations for the efficient implementation of the right to education of juveniles in CCL through organization of lessons within this correctional facility or even in public schools outside the institution.

II. Legal bases

4. This Report with Recommendations dealing with the right to education as a fundamental right as per organization of educational process for juveniles in CCL is based on the Constitution of the Republic of Kosovo (hereinafter the Constitution), respectively Article 132, para. 1-3, where it is determined that:

“1. The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.”

2. *The Ombudsperson independently exercises her/his duty and does not accept any instructions or intrusions from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo.*

3. *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 135, *parag.3* which reads that: *“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.”*

Furthermore, Law No. 05/L-019 on Ombudsperson, Article 18, *paragraph 1* stipulates that Ombudsperson, among others, has also the following responsibilities:

- *“to investigate alleged violations of human rights and acts of discrimination, and be committed to eliminate them” (point 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” (point 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” (point 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” (point 5);*
- *“to publish notifications, opinions, recommendations, proposals and his/her own reports” (point 6);*

and Article 17, *para.2 (2.1)*, where within the scope of National Preventive Mechanism of torture and other cruel, inhuman and degrading treatments and punishments (NPMT), the Ombudsperson is obliged to *“undertake regular and unannounced visits to all places where people deprived of liberty are being hold of deprivation of liberty “*

III. Summary of facts and initial actions of the Ombudsperson Institution

5. This Report has been initiated upon publishing of Koha Ditore’s article with the title *“Teaching process again fails to start in the Correctional Centre in Lipjan”* dated on 29 September 2016.
6. On 16 October 2016, OI, respectively NPMT officials within their mandate to inspect palaces where people deprived of their liberty are being hold (in compliance with *Optional Protocol to the Convention Against Torture (OPCAT)*), visited CCL in order to be informed regarding delays on commencement of the school year. After they met with

the director of CCL they have been notified on belated start of school year compared with regular schools and engagement of 8 teachers by MEST in educational process in CCL.

7. On 1 November 2016, the OI representative also met with the Education Officer in the Municipality of Lipjan, on which occasion was informed on one-month belated start of the school year. The municipal officer pointed out that there has been cooperation between the MEST and the Municipal Directorate of Education in Lipjan in the past, while currently the municipality has no access to the educational process at CCL. Furthermore, as per school documentation for followers of educational process at the CCL, the municipal officer stressed that previously this documentation was issued by the MED, but this may present problem in the future due to their inaccessibility to this process.
8. On November 1, 2016 the OI representative, through the official address requested information from CCL regarding the case. From the information received on 3 November, 2016 by the Employment and Program Coordinator in CCL, it has been confirmed that educational process in CCL has begun on 26 September 2016, and that lessons are attended by 45 students in combined classrooms.
9. On 2 November 2016, the OI representative met with Mr. Alush Istogu, MEST Acting General Secretary, who confirmed that in order to overpass this situation and find a solution for the start of the school year at LLC, teachers with temporary contracts were engaged until an Administrative Instruction is issued which will determine the competencies and responsibilities of public institutions on the issue of education at the Correctional Centers.
10. On 16 of November 2016, OI representative met with director of MED in Lipjan, Mr. Rasim Hasani, who pointed out the fact that he has addressed MEST several times with the request to resolve this situation, but MEST did not take any action to overcome the situation until the time when they engaged eight (8) teachers to lecture further at CCL. So far educational process in CCL was developed by having a good inter-institutional cooperation where educational process in CCL was managed by MED and all the documentation as well as the students' diplomas were issued by two authorized schools in Lipjan municipality, one lower secondary school and the other higher secondary school. Now, since this has not been regulated by law and in the lack of budget and the employees, for MED is impossible to cover teachers' salaries, and while MED does not manage the educational process at CCL, it will not be able to even issue diplomas or other student documents in the future.
11. On 18 November 2016, OI representative received files which have been sent by MEST concerning educational process in CCL. Furthermore, on 18 November 2016, OI representatives has also received files that CCL has delivered to the MEST the decision of the date 23.09.2016 for teachers' engagement, decision no.294/01B, of the date 22.10.2012 for setting of two remote classes in CCL, file of the date 09.09.2016 on students' number, the number of classes and the manner of their arrangement in CCL as well as information for not issuance of the school documents for released students from CCL.

12. On 21 November 2016, OI was informed from persons in charge in Lipjan MED that the Correctional Center in Lipjan is a remote class of Primary and Lower- Secondary School "Ismail Luma" and Secondary Vocational School "Adem Gllavica" in Lipjan. The same day, OI representative had a meeting with in-charge school person in CCL and was informed that working contracts have not been provided to teachers engaged.
13. On 25 November 2016, OI representatives requested additional information from MEST regarding issuance of sub-legal acts and working contracts for the engaged teachers. On 30 November 2016, MEST has provided with the information concerning the educational process in the CCL.

IV. The right to education for incarcerated juveniles deprived of liberty as their fundamental right- international standards and legislation of Republic of Kosovo

a) International standards

14. Initially the Ombudsperson reiterates that education of convicted juveniles, who are placed in correctional institutions, is one of crucial liabilities of responsible institutions of Republic of Kosovo, liability which derives from Constitution, laws at force as well as international legal instruments. As such, this institution's liability to accomplish one of fundamental human rights, such as provision of the possibility for access to education for juveniles, cannot be disregarded for those residing in correctional centers, as is the case in CCL. Furthermore, the Ombudsperson draws attention that this right for convicted juveniles ought to be allowed within CCL or even outside the institution, respectively on regular public schools.
15. International acts on UN as well as on European level, which regulate rights for persons deprived of liberty, provision of the possibility for education, determine as an obligation for the country and specifically for juveniles deprived of liberty.
16. In this direction, "**United Nations Rules for the Protection of Juvenile Deprived of their Liberty**" adopted in 1990 (Rules),¹ 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 programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty....(Article 38).* Determining the right to education as one of fundamental preconditions of resocialization for juveniles deprived of liberty and pointing out, as special objective, provision of education outside correctional institutions. This document also determines that "*Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized*".
17. In the same spirit are also the "**European Prison Rules**" which have been adopted by Committee of Ministers in 2006 (EPR), which pay special attention to the right on

¹ See <http://www.un.org/documents/ga/res/45/a45r113.htm>.

education, determining that: “Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.”(28.1), as well as determination that: “A *systematic programme of education, including skills training, with the objective of improving 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.*”

18. Other provisions also give priority to education of juveniles deprived of liberty, stipulating that: “Particular attention shall be paid to the education of young prisoners ...”(28.3), while another provision systematized on the part of juveniles residing in correctional centers, their education is defined as a right which ought to be mandatory provided, where it is predicted that: “*Every prisoner who is a child and is subject to compulsory education shall have access to such education.*”
19. Furthermore, Recommendation No. **R(89) 12 on Education in prison**, adopted by the EU Committee of Ministers in 1989, determines the right to education as fundamental as well as one of the crucial manners which facilitate reintegration of convicted persons into the society.²
20. Regarding enforcement of the right to education for juveniles residing in CCL, the Ombudsperson specifically draws attention related to the standards set by European Convention on Human Rights (ECHR) and its Protocols³ and the decisions of ECtHR.
21. On this direction, of special importance is **Protocol No.1 of ECHR**, respectively its 2nd Article, which determines 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 education guaranteed by this provision is applicable for persons deprived of liberty as well.
22. On basis of this the ECtHR has ascertained that those lawfully incarcerated continue to enjoy all fundamental rights and freedoms guaranteed by the Convention, with the exception of the right to liberty. Accordingly, they have the right to education guaranteed by Article 2 of Protocol No. 1. Refusal to register a prisoner at a prison school constitutes a violation of this provision (***Velyo Velev vs Bulgaria, 27 May 2014***). Surely, the right to education does not imply the obligation of the state to organize ad hoc classes only due to individual requests, and the inability to meet these requirements does not constitute a violation of Article 2 of Protocol No. 1 of the ECHR (***Epistatu v. Romania, 24 September 2013***).
23. From what was said 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

²See [http://pjp.eu.coe.int/documents/3983922/6970334/CMRec+\(89\)+12+on+education+in+prison.pdf/9939f80e-77ee-491d-82f7-83e62566c872](http://pjp.eu.coe.int/documents/3983922/6970334/CMRec+(89)+12+on+education+in+prison.pdf/9939f80e-77ee-491d-82f7-83e62566c872).

fundamental right for juveniles residing in CCL also. In addition, the Ombudsperson reiterates that such an obligation is clearly enshrined in the domestic legislation as well.

b) Kosovo Republic Legislation

24. The right to education as a fundamental human right is also defined with the legislation of the Republic of Kosovo. In accordance with the spirit and the text of international acts mentioned above, as well as domestic legislation, the right to education is guaranteed also for persons deprived of their liberty and subsequently for juveniles confined in CCL.
25. Firstly, the right to education due to the importance that it has, is determined in the Constitution, where Article 47 stipulates that: 1. *“Every person enjoys the right to free basic education...”*(para.1) and that: *“Public institutions shall ensure equal opportunities to education for everyone in accordance with their specific abilities and needs.”* (para.2).
26. In compliance with the ECHR standards regarding the right to education and ECtHR decisions cited above, this right enshrined in the Constitution is not limited to persons who, according to the law, are deprived of their liberty. The Ombudsperson emphasizes that this standard applies even more for juveniles, respectively for those juveniles detained in LLC. Respecting of this human rights standard and its non-limitation in cases of deprivation of liberty is supported by Article 14 of the ECHR which foresees 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, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or **any other status.**”*
27. Therefore, the Ombudsperson draws attention that the decisions of Kosovo Republic institutions, in particular MEST, should be in **the best interest of juveniles**, even when it comes to organizing of educational process in CCL. This principle is also defined in the Constitution, respectively Article 50, paragraph 4 which reads 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 also in the **Convention on the rights of Child**,⁴ where **Article 3** in its *para.1* determines 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.”*
28. In addition, the right to education for persons deprived of liberty, moreover for those who reside in correctional centers such as CCL, is guaranteed also by some other laws which regulate this right.
29. Hence, the Law on Pre-University Education⁵, Article 5, para.15 for this purpose MEST’s obligations are defined as follows: *“The Ministry, in cooperation with relevant ministries,*

³ In accordance with the Constitution of republic of Kosovo, ECHR is directly applicable in Republic of Kosovo and prevails, in case of conflict, over provisions, laws and other acts of public institutions (Article 22).

⁴ The Convention was adopted by the General Assembly of the United Nations on 20 November 1989. This convention is directly applicable to the Republic of Kosovo, just as the ECHR (Article 22 of the Constitution).

⁵ Law no. 04 / L-032 on Pre-University Education in the Republic of Kosovo was adopted by the Assembly of the Republic of Kosovo on 29 August 2011.

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 it continues further in paragraph 16, which determines that: *"The Ministry shall issue sub-legal acts in any area of its responsibility under this Law or other applicable laws."* This definition expresses the legal obligation that the MEST has to issue sub-legal acts regarding the definition of conditions and criteria related to the organization of the educational process in CCL. This aspect will be further addressed in this Report.

30. Further **Law on Execution of Penal Sanctions (LEPS)**⁶, in Article 83, *paragraph 1*, reads: *"A convicted person has the right to primary and secondary education which shall be in accordance with the law ..."* and according to *paragraph 3* *"The Ministry competent for education is responsible to provide primary and secondary education within correctional facility"* (in this case the MEST), while Kosovo Correctional Service is responsible for setting location and the infrastructure where educational process will take place (*para.2*). *Paragraph 7* also determines 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."* Further, Article 86 of the LEPS stipulates 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"*, respecting in this way the principle that diplomas and educational certificates awarded while being in detention should not differ from those awarded from outwards schools.
31. Further, **Juvenile Justice Code (JJC)**⁷ on its Article 119 determines 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 basis that in cases when the educational process cannot be conducted in the correctional center, juveniles to attend school outside correctional facilities at schools, an alternative that the Ombudsperson considers necessary to be applied for juveniles who are in the CCL, when timely and qualitative educational process within the correctional center fails to be organized.

V. Problems in organizing of educational process in CCL.

a) Delays on starting of educational process

32. Related to the deadline of commencement of the educational process in CCL, based on Article 3, para. 1 of the Administrative Instruction No. 14/02 (MEST), for the calendar school year 2016/2017, where is stipulated that *"The first semester begins on 1st*

⁶ Law No.04/L-149 on Execution of Penal Sanctions was adopted by the Assembly of the Republic of Kosovo on 29 July 2013.

⁷ Code No. 03/L-193 on Juvenile Justice was adopted by the Assembly of Republic of Kosovo on 10 July 2010.

September 2016 and ends on 23rd of December, 2016". OI notes that the first semester was belated approximately one month, precisely it has started on 26 September 2016 (the date when educational process has started in CCL).

33. Data provided from the survey conducted by OI officials, reveals that delays at the beginning of the educational process at CCL occurred in previous years as well. These delays occurred due to lack of timely coordination between responsible institutions, namely MED in Lipjan and MEST, lack of teachers, lack of budget allocation (specific grants) from MEST etc.
34. In this regard, it should be stressed here that the Mayor of Lipjan municipality expressed concerns regarding the budget circular for 2016, and has notified Mr. Arsim Bajrami, Minister of MEST, Avdullah Hoti, Minister of the Ministry of Economy and Finance and Mr. Hajredin Kuqi, Minister of the Ministry of Justice, that if the specific education grant remains under the 2016 budget projection, Lipjan Municipality will not be able to continue to organize educational process in CCL (*Letter No.1-400-25795, dated 25 May 2015*).
35. Also, from the letter of Mr. Alush Istogu, Director of the Department for Policy of Pre-University Education at MEST, addressed to the Permanent Secretary of the Ministry of Justice and the Director of MED in Lipjan, it is noted that delays in commencement of the school year occurred in previous years in CCL as well, pointing out that school year for 2015 has not started yet (letter dated 20 October 2015) and that this was due to the financial and budgetary constraints that the CCL and the Lipjan Municipality have (*Letter with Reference No. 3857, dated 20 October 2015*). Similarly, one of the findings in this letter is that: "*We consider that submissions sent by CC in Lipjan and MD of Lipjan to the relevant Ministries, MEST and MoJ, are reasonable requirements and necessary needs in problem solving, with the aim to provide juveniles in the Correctional Center the opportunity to attend school even in these circumstances*".
36. Despite these requirements and findings of 2015, as noted above, problems of organizing the educational process within the set deadline continued in 2016 as well. This problem is emphasized also in the letter dated 2016 that the CCL Director addressed to the Secretaries of MEST and of the Ministry of Justice, who were notified on problems related to the commencement of school year 2016/2017 (*Letter No.548, of 6 September 2016*).
37. From letters received by OI it is noted that MDE in Lipjan has required from MEST to increase the number of teachers engaged in educational process in CCL (beyond specific education grant) as specific facility, as well as it has been requested promulgation of sub-legal acts for managing of remote class in CCL from the Minister of MEST.

b) Problems regarding issuance of school documents diploma

38. One of other challenges which juveniles who have attended lessons in CCL encounter concerns the problem of not providing school documentation, certificates or diplomas after being released from CCL.

39. The Ombudsperson reiterates that this is a legal right that juveniles deprived of liberty are entitled to, as has been mentioned in this Report that diplomas and other certificates ought to be the same with those awarded to students who attend lessons in regular schools. OI has been informed from the communication between CCL and the MEST that: *“none of students, who have attended lessons last year, have been provided with documents. Currently, a number of such students (juveniles) were released from Correctional Centre and are requesting awarding of documents by our school in order to continue their education in their birthplaces but we have no possibility to award them with these documents due to the fact that Professional Secondary School “Adem Gllavica” in Lipjan does not issue documents for these students.” This is reasoned by the fact that currently MED and schools have no access in organizing of education process at CCL and consequently have no possibility for issuing documents for students.*
40. As per this issue, the IO was also informed from the parties who have been damaged because they were not provided with school certificates upon releasing from CCL. *Thus, according to the information received on 18 November, 2016 by CCL, the juvenile of L.J. was released from the LLC on 30 of June 2016 and has requested grade certificate in order to undergo Matura Exam in August at the school where he had attended his lesson. Due to inability to obtain documents on attending education process in CCL, the student in question could not undergo the state Matura exam.*
41. With regard to this case, other cases as well which have been released by CCL and were not been awarded with the documents, the Ombudsperson exposes his concern and finds out that this constitutes violation of the right to education. Additionally, while lessons lost due to delays in commencement of educational process in CCL may be substituted, violation conducted towards the juvenile L.J. has even bigger consequences since he missed the opportunity to undergo a state Matura exam, which is organized only after the end of the school year.
42. Furthermore, OI on 18 November 2016 received a complaint from juvenile’s father FL⁸, *who claims that his son was released from CCL on 11 of November 2016 and since he was not awarded with the appropriate school certificate, was not in the position to continue his education in high secondary school.*
43. One another problem which is interlinked with school documents obtaining and especially the possibility of attending schools outside after the release from CCL, also is related with alteration of profiles, where according to the Administrative Instruction No. 16/2011, dated 30.12.2011, is stipulated that: *“The request to be removed from one education profile to the other, is done by the student in the first semester of the school year (05-20 December), or before the beginning of the next school year, (15 -20 August)”(Article 4, para.1).* This occurs as a problem because the number of students in CCL cannot be planned since it is unknown when and from which educational profile will juveniles come in CCL, therefore, consequently deadlines determined in the above given

⁸ Rasti A.nr.813/2016.

Instruction cannot be applied. Due to this the Ombudsperson gives his thoughts on altering of the Administrative Instruction.

c) *Problems related to teachers' engagement from MEST*

44. In order to overcome the situation that has been created, MEST has issued a Decision No.2-9540 on 23 of September 2016, for engagement of educational staff in the CCL for the school year 2016/17, according to which eight (8) teachers are to be engaged, while *paragraph 2* determines that: *"The above given staff will enter into employment contracts according to the Labor Law no. 03 / L-212 and Administrative Instruction no. 10/2015 of the 01.09.2015 on employment contract for pre-university education teachers."*
45. Referring to the provisions of the Law on Labor, respectively to the Article 10, para. 1 it derives that: *"An employment contract shall be concluded in written form and signed by the employer and employee....."*, while according to Administrative Instruction No.10/2015, Article 1, determines that *"The purpose of this Administrative Instruction is creation of legal bases for the Labor Contract for pre-university education teachers and definition of terms and criteria for signing the contract between Municipality Directorates of Education as employer and teachers as employees."* Furthermore, Article 5 decisively reads that: *"Municipal Directorates of Education shall prepare and sign contracts for all teachers engaged in the educational process."* Based on these provisions, the Ombudsperson notes a collision of two acts, since according to this Instruction *"working contract is signed between MDE as an employer and the teacher as employee"*, while in the current case, teachers are being engaged by MEST. According to the information obtained from MEST on 30 November 2016, working contracts for engaged teachers have been signed on 23 November 2016.
46. With regard to the organization and the flow of the educational process in CCL, the Decision No. 294 / 01B of the Minister of MEST, of 22 October 2012 is of great importance, according to which Lipjan Municipality is allowed to open 2 (two) remote classes in CCL, one remote classroom within Primary and Lower Secondary School "Ismail Luma" for level 1 and 2, as well as 1 remote classroom within the Upper Secondary Vocational School "Adem Gllavica" in Lipjan. From information received by OI this decision is still at force.⁹ Thus, according to this decision it can be concluded that remote classrooms in Primary and Lower Secondary School "Ismail Luma" and Upper Secondary Vocational School "Adem Gllavica" in Lipjan ought be managed by MED of Lipjan as an employer. Hence, based on this the Ombudsperson considers of great importance that MEST and the Municipality of Lipjan cooperate within the meaning of implementation of their responsibilities pertaining to efficient management of educational process in CCL, especially inclusion of MED of Lipjan in this process.
47. Lastly, as per engagement of teachers with temporary contracts from MEST, the Ombudsperson deems that this represents a special measure concerning development of the educational process in CCL as well as in other correctional centers, but MEST's liability is to issue sub-legal acts in order to adjust this issue and clarify institutional

⁹ Information received from MEST No.3-5069, date 30.11.2016.

responsibilities regarding organization of the educational process for persons deprived of their liberty. In this regard, it has been noticed that there were delays by MEST in accomplishing these legal obligations.

Ombudsperson's main findings

48. One of fundamental human rights, the right to education, from the aspect of the enjoyment of this right by persons deprived of their liberty, has been treated by this Report. Specifically, the Report was focused on problems concerning organization of educational process in CCL for juveniles deprived of their liberty and who are confined in this correctional center.
49. From the analysis **of the right to education** in relation to international acts (in particular with the ECHR and the standard established by the ECtHR), the Constitution and Laws of the Republic of Kosovo, the Ombudsperson concludes that this right is guaranteed also for persons deprived of liberty. Moreover, provision of this right is a constitutional and legal obligation for Kosovo Republic institutions, when it comes to juveniles who are deprived of their liberty, as is the case with juveniles residing in CCL.
50. Pertaining organizing of educational process for juveniles in the CCL, the Ombudsperson finds that:
- Educational process was belated in continuance. In the school year 2016/2017, lessons started on 26 of September 2016, approximately with 1 month's delay.
 - Another problem is inability of issuance of school documents for students (juveniles), actually certificates and diplomas after they are released from CCL. To this effect, some juveniles who have been released from CCL have been denied of their right to continue their education in other school or even undergo State Mature Exam. Based on these facts, the Ombudsperson finds that this constitutes violation of the right to education.
 - Delays on commencement of educational process and deny of the right for attending lessons and accomplishing of schooling after release from CCL (**cases of juveniles L.J and F.L.**), are in contradiction with Constitution (Article 47, parag.2), ECHR (Article 2 of Protocol No.1) and standards set by ECtHR, etc.
 - With regard to commencement and the flow of the educational process in CCL, appropriate coordination between responsible institutions, specifically of MEST and Lipjan municipality, was missing.
 - MEST has failed to perform its legal obligations on time regarding commencement and the flow of the educational process of juveniles in CCL. In particular, with regard to the issuance of sub-legal acts for this purpose, clear definition of competencies in relation to MED in Lipjan, allocation of sufficient budget, provision of timely and sufficient number of teachers.
 - As a conclusion, the Ombudsperson considers as mandatory that MEST, as well as other responsible institutions, undertake timely actions, in compliance with legal and constitutional responsibilities, that these policies are not repeated in the future

and to guarantee the right to education for juveniles residing in CCL as well as other institutions where people deprived of liberty are incarcerated.

Ombudsperson's recommendations

Based on the case analysis and the findings determined, pursuant to *Article 135, paragraph 3 of the Constitution of the Republic of Kosovo, Article 16, paragraph 4 of the Law no. 05 / L-019 on Ombudsperson*, the Ombudsperson recommends:

- **MEST**, on the bases of its legal and constitutional responsibilities, undertake necessary measures:
 - to issue sub-legal acts as provided by law related to organization of the educational process for persons deprived of their liberty, including juveniles residing in CCL by addressing their needs. In this context, it is necessary to amend also *paragraph 1 of Article 4 of Administrative Instruction no.16 / 2011, of the date 30.12.2011*, in order to find a solution for request on altering of educational profiles for students in CCL beyond deadlines that are currently set out in this instruction.
 - through sub-legal acts, responsibilities which are entrusted to MEST and municipalities, in this case municipality of Lipjan for the regular flow of educational process, to be clearly defined.
 - to allocate on time and according to needs the budget related to organizing of educational process in CCL as well as other correctional facilities. In cooperation with Municipality of Lipjan as well as relevant ministries to ensure sufficient budget for teachers' engagement in CCL.

- **Lipjan municipality**, that:
 - Based also on the Decision of the Minister of MEST No.294/01B of the date 22 October 2012, and in cooperation with MEST, without further delays, to undertake all necessary measures to provide juveniles with school documents when released from CCL.
 -

In compliance with Article 132, paragraph 3 of Constitution of the Republic of Kosovo (*"Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law"*) and Article 28 of the Law No. 05/L-019 on Ombudsperson (*"Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions, 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 actions taken by You regarding this issue.

Sincerely,

Hilmi Jashari

Ombudsperson

Copies to:

- Office of Good Governance within Prime Minister’s Office of Republic of Kosovo;
- Mrs. Dhurata Hoxha, Minister
Ministry of Justice