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## RECOMMENDATION REPORT

*Ex-officio No. 69/2021*

**concerning**

**Lack of harmonization of the Law no. 04 / I-032 on Pre-University Education in the  
Republic of Kosovo with the Law no. 05 / L-087 on Minor Offenses**

Addressed to: Mrs. Arbërie Nagavci, Minister  
Ministry of Education, Science, Technology and Innovation

Prishtinë, 28 April 2021

## PURPOSE

1. The purpose of this Recommendation Report is to draw attention of the Ministry of Education, Science, Technology and Innovation (hereinafter: MESTI) to take appropriate action to amend and supplement the relevant provisions of Law no. 04 / 1-032 on Pre-University Education in the Republic of Kosovo, respectively its harmonization with Law no. 05 / L-087 on Minor Offenses.

## LEGAL BASES

2. The Ombudsperson, according to the Constitution of the Republic of Kosovo<sup>1</sup> (henceforward: *Constitution*), and the Law No. 05/L-019 on Ombudsperson<sup>2</sup>, Official Gazette of Republic of Kosovo/ No. 16/26 June 2015, Prishtine (hereinafter: Law on Ombudsperson), among others has the following powers and responsibilities:

3.1 *“The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities; (Article 132, paragraph 1, of the Constitution).*

3.2 *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.” (Article 135, paragraph 3 of the Constitution).*

3.3 (...) *on his own initiative (ex officio)...(...) 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; (Article 16, paragraph 4, of the Law on Ombudsperson).*

3.4 *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; (Article 18, paragraph 1, subparagraph 1.5, of the Law on Ombudsperson).*

3.5 *to publish notifications, opinions, recommendations, proposals and his/her own reports;; (Article 18, paragraph 1, subparagraph 1..6, of the Law on Ombudsperson).*

3.6 *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.” (Article 18, paragraph 1, subparagraph 1.7, of the Law on Ombudsperson).*

## FACTS AND CASE CIRCUMSTANCES

3. In September 2011, Law no. 04 / 1-032 on Pre-University Education in the Republic of Kosovo has been promulgated, Official Gazette of the Republic of Kosovo<sup>3</sup> / No.17 / 16 September 2011, Prishtina (hereinafter: *LPUERK* ).

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<sup>1</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

<sup>2</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10922>

<sup>3</sup> <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2770>

4. While in September 2016 the Law no. 05 / L-087 on Minor Offenses has been promulgated, Official Gazette of the Republic of Kosovo / no.33 / 8 September 2016, Prishtina<sup>4</sup> (hereinafter: LMO).
5. On 25 January 2021, representative of the Ombudsperson Institution (OI) requested information from MESTI if there were any cases when parents were convicted for minor offenses under Article 15 - Attendance of school and Article 47 - Home schooling, of the LPUERK. If this has occurred, on which basis of legal provision the minor offense sanction has been imposed.
6. On 26 January 2021, the representative of MESTI informed OI representative that *Administrative Instruction no. 13/2005 on Measures towards parents, whose children are not registered or attended the compulsory education* (hereinafter: *Administrative Instruction no. 13/2005*) regarding the paragraph 4 of Article 15 of LPUERK, is in force. But, based on the data in the possession of MESTI, this provision, as well as paragraphs 1 and 3 of Article 47, has not been applied in any case. So, MESTI is not aware of reporting on any case of initiation of procedure for minor offenses by the municipalities<sup>5</sup>.
7. On 8 February 2021, the Ombudsperson initiated investigations on his own initiative (*ex-officio*) based on Article 16, paragraph 4<sup>6</sup> of the Law on Ombudsperson.

#### **LEGAL ANALYSES OF THE CASE**

8. LPUERK regulates pre-university education and training from 0 to 4 levels, according to *International Standard Classification of Education – ISCED*, including education and training for children and adults taking qualifications at these levels<sup>7</sup>.
9. LPUERK, in Article 15 – Attendance at School, has determined that compulsory schooling for the student is the main responsibility of the parent. In cases when the parent does not enroll the child in school or does not make alternative arrangements for the child without any reasonable and / or unavoidable reason, then that parent violates the law.<sup>8</sup> Exceptionally, the law stipulates that the director of the educational institution deems it appropriate and in the best interests of the pupil, he/she may, upon receipt of a written application from the parents of a pupil, grant individual pupils leave of absence from attendance for up to two (2) weeks in any school year.<sup>9</sup> According to LPUERK, if a pupil with no reason fails to enroll, fails to attend or interrupts compulsory education, his or her parents shall be punished for violation if the absence is a result of deliberate action or negligence by the parents. In such cases, the municipality shall inform the Ministry in

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<sup>4</sup><https://gzk.rks-gov.net/ActDetail.aspx?ActID=12839>

<sup>5</sup> E-mail from MESTI, 26 January 2021.

<sup>6</sup>The Ombudsperson has the power to conduct investigations either to respond to the submitted complaint or on his own initiative (*ex officio*), if from the findings, evidence and facts presented in the complaint, or from the knowledge acquired in another way, there is a basis that the authorities have violated human rights and fundamental freedoms defined by the Constitution, laws and other acts, as well as international human rights instruments.

<sup>7</sup>LPUERK, Article 2, paragraph 1, subparagraph 1.21: “ISCED - *the International Standard Classification of Education adopted by UNESCO in the General Conference at its 29th session in November 1997 as amended over time.*”

<sup>8</sup> LPUERK, Article 15 (2)

<sup>9</sup> Ibid, Article 15 (3).

writing.<sup>10</sup> Paragraph 6 obliges the MESTI to prepare instructions to assist municipalities and educational and training institutions to deal effectively with drop out.

10. Further, LPUERK, in Article 47 - Home schooling, has defined the responsibility of the municipality to assess whether the child is not receiving suitable education,<sup>11</sup> either by regular attendance at school or otherwise, and is not the subject of permanent expulsion under this Law.<sup>12</sup> This Article defines also the procedure to be followed by the municipality, where it initially sends a written remark to the parents and asks them to convince the municipality that the child is being educated at home or elsewhere, within the set time limit. If the parents do not respond to the municipality within the time limit specified in the note, the municipality shall proceed with the case in the *minor offense procedure*.<sup>13</sup> However, if the parents respond that the child is being educated outside the formal education system, the arrangements made by the parents, and the inspection arrangements, shall be subject to the approval of the Ministry, having consulted the relevant municipality.<sup>14</sup>
10. Law on Minor Offences was published in Official Gazette of Republic of Kosovo on 8 September 2016 and entered into force in January 2017.<sup>15</sup> This Law regulates, among others, the conditions for determining minor offences and sanctions on minor offences, parties and responsibility on minor offences, minor offence procedures, special procedures for juveniles and minor offence sanction. Thus, the law regulates the general material part of the minor offense law and the minor offense procedure as a whole.
11. Article 2 of the LMO defines the notion of offence, as: *“Minor offence shall be the behaviour by which there are violated or jeopardized the public order and peace as well as social values guaranteed by the Constitution of the Republic of Kosovo, the protection of which is impossible without minor offence sanctioning.”*
12. Further, the LMO in Article 3 - Principle of legality, stipulates that no person shall be convicted for a minor offence nor impose a minor offence sanction for an offence which was not defined as an offence by law or acts (municipal regulation) of the Municipal Assembly before the omission, and for which a minor offence sanction was not determined. This principle is very important for the fact that a person can be punished for a minor offence only for the offense that is provided by the legal norm as a minor offence and only by a sanction that was previously provided for a certain minor offence.
13. Minor offences and sanctions on minor offences can be prescribed by law and acts (municipal regulations) of the Municipal Assembly and the body authorized to prescribe minor offences and sanctions on minor offences may not delegate this authority to other bodies.<sup>16</sup> Description of minor offence actions is disseminated in many other laws and

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<sup>10</sup> Ibid, Article 15 (4).

<sup>11</sup> Suitable education according to LPUERK means efficient full-time education suitable to the child's age, ability and aptitude and to any special educational needs the child may have.

<sup>12</sup> LPUERK, Article 47 (1).

<sup>13</sup> Ibid, paragraphs 1 and 3.

<sup>14</sup> Ibid, paragraph 4.

<sup>15</sup> LMO, Article 171: *“This Law shall enter into force in January 2017.”*

<sup>16</sup> LMO, Article 7.

provisions, as violations of certain rights and tasks. Usually in the special part of the provisions the punitive provisions of the respective minor sanctions are distinguished.

14. LMO has foreseen types of minor offence sanctions: “1.1. *reprimand*; 1.2. *fine*; (...)”<sup>17</sup>, as well as amounts for sanctions with fines<sup>18</sup>. On certain minor offences determined under the Law or Regulation of the Municipal Assembly, the minor offence proceeding may be held, and minor offence sanctions may be imposed, by the state administration body, or the body holding a public authorization to supervise the implementation of the law, which foresees minor offences.<sup>19</sup> LMO has foreseen also that provisions on minor offences, which are not in accordance with this law, shall be brought into compliance within one (1) year from the day when this law enters into force.<sup>20</sup> LMO has entered into force on January 2017<sup>21</sup>. Finally, LMO stipulates explicitly that with the entry into force of this Law, the applicable law on minor offence shall cease to apply.<sup>22</sup> More than four years have passed since the LMO has entered into force.

## FINDINGS

15. The Ombudsperson notes that the LMO stipulates that no one shall be convicted for a minor offence for an offence which was not defined as an offence by law or acts (municipal regulation) of the Municipal Assembly before the omission, *and for which a minor offence sanction was not determined*. Furthermore, the Law on Minor Offences obliges that the provisions for minor offenses that are not in accordance with it, including the relevant provisions of the Law on Pre-University Education in the Republic of Kosovo are harmonized within one (1) year from the day of entry into force of the Law on Minor Offences.

16. The Ombudsperson notes that more than four years have passed since the entry into force of the Law on Minor Offences.

17. The Ombudsperson considers that LPUERK, respectively Article 15 - Attendance at school; and Article 47 - Home schooling, are not in accordance with the provisions of the LMO, as they are not regulated by clear sanctions of minor offenses.

18. The Ombudsperson also notes that Articles 15- Attendance at School and 47- Home Schooling of the Law on Pre-University Education in the Republic of Kosovo have not been implemented in any case.

19. The Ombudsperson, based on what has been stated above, pursuant to Article 135, paragraph 3 of the Constitution of Republic of Kosovo: “...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.” Within the meaning of Article 18, paragraph 1.2, of the Law No. 05/L-019 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 (...)” “as well as”

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<sup>17</sup> Ibid, Article 27.

<sup>18</sup> Ibid, Article 29.

<sup>19</sup> Ibid, Article 55 (4).

<sup>20</sup> Ibid, Article 167.

<sup>21</sup> Ibid, Article 171.

<sup>22</sup> Ibid, Article 170.

*to recommend (...) promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo” (Article 18, paragraph 1.7).*

Therefore, the Ombudsperson

## RECOMMENDS

### **To the Ministry of Education, Science, Technology and Innovation:**

- **Amendment and supplementing of the Law no. 04 / I-032 on Pre-University Education in the Republic of Kosovo, actually harmonization of Articles 15 and 47 with the Law no. 05 / L-087 on Minor Offenses.**

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 ... 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 regarding this issue.

Warmly submitted,

Naim Qelaj  
Ombudsperson

Copy: Mr. Habit Hajredini, Head of the Office of Good Governance, Office of Prime Minister