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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

REPORT WITH RECOMMENDATIONS

OF

NATIONAL PREVENTIVE MECHANISMS ON TORTURE OF THE OMBUDSPERSON

**related to
The visit in High Security Prison**

For: Mrs. Dhurata Hoxha, Minister
Ministry of Justice

Mr. Milazim Gjocaj, General Director for Health in Prisons, Ministry of
Health

Mr. Imet Rrahmani, Minister
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Mr. Rasim Selmani, director
High Security Prison

In compliance with Article 135, paragraph 3 of the Constitution of Republic of Kosovo and Article 17 of the Law on Ombudsperson, no.05/L-019, National Preventive Mechanism on Torture of the Ombudsperson Institution has visited High Security Prison.

Prishtinë, on 19.06.2017

Dates of visit and composition of monitoring team

1. Pursuant to Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPM”) of the Ombudsperson on 17, 21 and 31 March 2017 conducted a visit to the High Security Prison (hereinafter “HSP”). The monitoring team was composed of two legal advisors, a physician and a psychologist.

General description of the institution

2. HSP is located in village Gërdoc, municipality of Podujevë, in Prishtinë-Podujevë highway. HSP has become functional in 2014 and at that time admission of high risk convicted persons has started. This prison provides three regimes: basic, standard and advanced regime. HSP's capacity is 390 persons. HSP comprises of sector of administration, infirmary, Wards 1, 2 and 3 as well as related facilities.
3. **At the time when NPM visited HSP, 123 convicted persons were located in it (Ward 1 and 2), 23 detained on remand (placed in Ward 3) and 3 protected witnesses.** European Committee on Prevention of Torture (CPT) has visited HSP during *Ad Hoc* visit to Kosovo in 2015.¹

Cooperation with NPM during the visit

4. During the visit conducted by NPM to the HSP, personnel of Correctional Service and the Prison Health Department staff provided the monitoring team with full co-operation. The team without delay gained access to all prison facilities. The team was provided with all the information needed to carry out the task and enabled conversations with convicted and detained persons without the presence of correctional officers or other personnel. NPM was also allowed to use IT equipment to perform its task in accordance with Article 17 of the Law on Ombudsperson.

Ill-treatment

5. **During NPM visits conducted to HSP a number of detained persons were interviewed and NPM didn't receive any complaint about ill treatment or excessive use of force exercised by any correctional officer.**

Material Conditions

6. Material conditions in HSP are generally good and provide comfort for prisoners; each cell contains only one prisoner. All cells have sufficient natural light, enough space, TV set, clean toilets and the incarcerated there can make shower whenever they want. Cells are equipped with beds, beddings, table, chair and alarming system.
7. As per access of persons with disabilities (even though none of confined persons was of such condition), all elevators were fictional thus their access in any situation will not be a problem. HSP provides hygienic packages to detainees every month as well as cleaning kits for cleaning the Wing where they are located. **No complaint has been filed with NPM concerning accommodation conditions in HSP. Similarly, NPM did not receive**

¹ Report of the European Commission on Torture Prevention on the visit conducted in Kosovo, form 15 up to 22 of April 2015, the Report was published in September of 2016, see at :

any complaint related to the quality of food which is offered to convicted persons as well as those on remand.

8. During the visit, NPM noted that the floor in Wards 1, 2 and HSP infirmary was significantly damaged, also bathrooms in Ward 1 lack proper insulation, water was running and humidity was present on walls. Based on claims of the managerial staff these damages are result of bad quality of works carried out by the company engaged and technically approved. According to the management these damages are result of bad quality of works conducted accomplished by the company engaged, but was technically accepted.
9. As per this issue Prison's Director informed NPM that "*actions have been taken with the intention of redressing the situation and until present three bathrooms have been renovated in Ward 1 while three others remain to be renovated in the coming months.*" **NPM will continue to request updated information by Kosovo Correctional Service related to improvement of these omissions.**
10. During the visit conducted by Committee for the Prevention of Torture (CPT) in the High Security Prison² a problem highlighted was the issue of walls and spaces dedicated for sports activities and walking, constructed from concrete and painted with white color, which results with blinding refecton from the sun, especially during the summer season and the CPT recommends to the Kosovo Republic relevant authorities to redress these omissions. **In the response provided to CPT by Kosovo relevant authorities was stated that budgetary possibilities of Kosovo Correctional Service (KCS) are being reviewed in order to improve these problems during 2016.**
11. During the last visit that NPM undertook in March 2017, witnessed that the problem of walls and spaces dedicated for sports activities and walking still remains a big problem due to blinding refecton from the sun. The same concern has been raised from medical personnel engaged in the HSP claiming that detainees' complaints are grounded and that this situation is very problematic and that a convenient solution ought to be found by relevant authorities.
12. Related to this problem, NPM was notified in writing by the Prison director that "*work is being done as per this issue to paint the walls in a way that causes no reflection. Furthermore, the management has permitted wearing of sunglasses and hats to confined persons with the purpose to facilitate their stay in the playground until due solution is being made*". NPM will persist on its recommendations and follow up KCS plan and activities regarding avoiding of this problem.
13. NPM was notified that since two years incarcerated persons are not provided with daily press. **NPM reiterates that provision of detainees with daily press is a right that is**

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a1efc>

² Report of the European Commission on Torture Prevention on the visit conducted in Kosovo, form 15 up to 22 of April 2015, the Report was published in September of 2016, see at :

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a1efc>, paragraph 36

guaranteed to the prisoners by the Law on Execution of Criminal Sanctions.³

14. NPM has noticed that convicted and those on remand are kept separately in different Wards, in compliance with the Law Execution of Criminal Sanctions.⁴

Regime

15. HSP provides 3 regimes for the prisoners: basic, standard and advanced regime. There are approximately 80 convicted persons involved at work. Greater number of prisoners' engagement at work is during summer. They are mainly engaged to work in kitchen and deal with cleaning. Confined persons can move freely within Wards where they were laced for a certain time, for example, the door remains open till 16:00 to those incarcerated in basic and standard regime, to those incarcerated with advanced regime till 18:00, while for protected witnesses the door remains open till 19:00. Confined persons also are entitled to two hours walk per day.⁵

16. Currently no trainings or courses are being provided even though HSP possesses professional training facilities. According to the management, efforts are being made by them for organizing a computer module, which can be organized upon certification of HSP officer, who further shall be considered responsible for training of detainees in this field.

17. HSP library, according to authorities, is in a possession of approximately 150 copies of books. Lately, as per religious literature is concerned, KCS in cooperation with Islamic Association of Republic of Kosovo have undertaken actions through which religious materials containing extremist ideology have been removed from the library of the Correctional and Detention Centers.

18. As per physical activities is concerned, NPM has visited premises where detainees can conduct physical exercises, three times per week. Gym provides good conditions and sufficient equipment for fitness. The building offers good conditions and sufficient equipment for physical exercises.⁶ But, physical and sports activities in the playground outside Wards cannot be performed due to reflection of white color, as mentioned previously in the Report.⁷

19. NPM was notified that a convicted person is working on alternative energy project, for which licensing has been requesting from competent ministry. **NPM reiterates the importance of offering of satisfactory programs with activities (work, education, sports, etc.) for the psycho-social wellbeing of detainees.**⁸

³ Law on Execution of Penal, Article 87: "A convicted person has the right to have access to the daily and periodical press in his or her mother tongue and other sources of public information."

⁴ Law on Execution of Penal Sanctions, Article 33.7: "Convicted persons shall not be accommodated in the same part of the facility as persons detained on remand"

⁵ According to Article 37 të Law on Execution of Penal Sanctions, convicted persons are entitled on two hours outside closed facilities.

⁶ Article 37 of the Law on Execution of Penal Sanctions determines: "A convicted person has the right to exercise sufficiently in order to remain healthy and to spend at least two (2) hours daily outside closed premises during free time. If the weather permits, a convicted person may engage in physical exercise in the open air. In case the weather is good, convicted person can do physical exercises in open."

⁷ Paragraph 9 of this Report

⁸ See revised KPT standards 2015, paragraph 47.

20. As far as regime of remand detainees is concerned, it remains poor because since their activities are generally conditioned by competent court's permission.⁹ Also, they are entitled to a 2-hour walk during the day. **The NMP encourages competent authorities to increase out of cells activities at the HSP for pre-detainees. CPT in its Reports on visits to different states considers that as long as is the period of keeping the detainees on remand, similarly the regime offered ought to be developed.**¹⁰
21. As per detainees' activities, Prison's Director, answers pointed that "*in recreation facilities, Ping-Pong tables have been placed for detainees and we are in the procedure of ensuring fitness equipment for them*".

Health Care

22. Responsibility for health care in the Correctional Service was transferred from the Ministry of Justice to the Ministry of Health in July 2013. In HSP operates small prison infirmary which provides medical services to prisoners. NPM visited all infirmary premises and found that services provided in HSP are of the infirmary level but do not meet its requirements.
23. Three regular physicians are engaged in HSP and cover services 7 days, 12 hours per day, one cardiologist who is periodically engaged in HSP, one 1 head nurse and 5 nurses who work in 12-hour shifts. Furthermore, psychiatrist and dental services are provided twice per week. HSP has engaged a full time psychologist, who is at the same time acting coordinator for health services.
24. Prison infirmary keeps records as follows: records of self-harming, injuries, suicide attempts, drug abuse, sexual abuse, hunger strike as well as solitary confinements. Simultaneously each physician possessed patients' protocol of visits conducted.
25. The European Committee for the Prevention of Torture in the Report on Kosovo's visit in 2015 emphasized the crucial importance of medical check-ups especially in cases of detainees or newly-received on remand detainees not only for the identification of contagious diseases and suicide prevention, but also through the contribution that is given in terms of preventing torture through proper record of injuries.
26. The HSL informed the NPM team that newly admitted are checked within 24 hours from the moment they arrive at the center. These check-ups imply a general check with questioning about any illnesses, which if agreed, is recorded in his medical file.
27. During the visit several medical files have been verified based on complaints received by the detainees. In the case of the incarcerated person, F.G, NPM has found that HSP' infirmary cannot provide necessary medial service. Furthermore, medical staff within the

⁹ Article 200 of the Law on Execution of Penal Sanctions, stipulates: A detainee may work in the workshop, workshops of the economic units within the respective correctional institution only with the approval of the competent court."

¹⁰ Report of the European Commission on Torture Prevention on the visit conducted in Kosovo, form 15 up to 22 of April 2015, the Report was published in September of 2016, see at :: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a1efc>. Report of European Committee for the visit in Georgia in 2014, published in 2015 at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806961f8>.

HSP confirmed to NPM that they are incapable in providing the detained person with the appropriate medical care based on the nature of his illness.

28. Related with the case of F.G. NPM was informed in written form by the director that after assessment and doctors' recommendation, the above given case has been transferred to infirmary of Dubrava CC.

Confidentiality of medical services

29. During the visit to the prison infirmary, the NMP was informed that medical services are provided to prisoners without the presence of correctional officers, but they remain in the hall and observe the situation through the small window of the infirmary's door. **According to the CPT standards, all prisoners' medical check-ups should be conducted away from hearing and sight of correctional officers, unless otherwise asked by the doctor.**¹¹

Training for the medical services

30. According to medical personnel, many nurses are following trainings in two fields: the first training is related to the mental health and the other is for emergency. Additionally, the NPM was informed that through European Council's project training of several persons from prison medical staff have started, where in the initial phase a working group will be set in order to identify which are the needs on further training for the medical personnel in general. HSP psychologist is engaged in these trainings provided by the Council of Europe. According to information provided by the psychologist, all psychologists engaged with the work at prisons are working on compiling of the battery of psychological tests and protocols in order that they become unique for all prisons.
31. **After the accomplished visit and NPM Report, Prisons' Health Directorate notified NPM in writing that training on emergency, which has lasted 4 consecutive days and was certified by the Board for Sustainable Professional Development, has been finalized and that entire prisons' personnel were trained and certified on this training. The purpose of this training was provision of first aid and in-tubing (oxygen) reanimation with the usage of revival equipment with which prisons infirmaries are equipped. NPM salutes initiatives of medical staff and it will continuously encourage and advance even further medical staff in these institutions.**

HSP personnel

32. Based on the information received from the Directorate, HSP staff consists of 140 officials, including technical and administrative staff. Lately, the KCS has announced vacancy for recruitment of 70 correctional officers who will serve at HSP and the Detention Center in Gjilan. **NPM will request updated information from the KCS regarding this process, which is expected to have positive impact in management of these two correctional centers.**

¹¹ See CPT standards, paragraphs 50 and 51, at: <https://rm.coe.int/16806ce943>.

33. According to the Directorate, HSP at the moment faces with a shortage of a great number of managerial personnel, lack of hazardous payment according to risk level (no distinction of hazardousness level is made in prisons), correctional officers who perform duties of acting officials are not paid according to the duties they perform as well as they do not enjoy accelerated retirement but only are paid as correctional officers.
34. NPM is of the opinion that prison staff should be provided with decent working conditions so that they feel valued and respected for the work performed, the fact that would increase possibilities that they will have the same stand for the incarcerated persons in prison. Decent working conditions are also important for attracting and keeping adequate personnel.

Trainings for correctional personnel

35. During this year, after the issue of Kosovo prisons' radicalization has been assessed, ICITAP (The International Criminal Investigative Training Assistance Program, Department of Justice USA) in March 017 organized a round table with members of KCS and other state bodies, including civil society. The program is focused on training of the members of KCS on management of violent extremism at prisons. According to the organizer, ICITAP plans some other projects which deal with management and rehabilitation of this category of detainees.
36. From social services was stressed also that they need continuous professional training on specific case management, such as persons charged with committing of terrorist acts.

Disciplinary measures

37. Based on legislation at effect the disciplinary punishments that can be imposed on incarcerated are: reprimand, deprivation of an assigned privilege, an order to make restitution and solitary confinement.¹² In the case of pre-detainees, the following punishment may be imposed: restriction or prohibition of visits or correspondence, apart contact with the defense counsel, the Ombudsperson and diplomatic missions. **The NPM has found that HSP keeps records of disciplinary measures imposed, indicating data regarding the imposed measure, reason, time of imposing and termination.** According to the directorate, no case has been recorded on disciplinary measures imposing solitary confinement as well as self-injury cases.
38. The NPM was informed that the medical service does not provide a written opinion regarding the ability of detainees or those on remand to cope with the disciplinary measure of solitary confinement. The NPM considers that doctor's participation in decision-making, who is in fact the doctor of convicted person or on remind, would impair relationship doctor-patient, unless this measure is undertaken for medical purposes.¹³

¹² Paragraphs from 101 up to 113 of the Law on Execution of Penal Sanctions

¹³ European Committee on Torture Prevention in its Report on the visit conducted to Kosovo in 2015, asked from the relevant authorities to terminate the practice of obtaining physician's permission that the convicted or on remind person is capable to cope with the measure imposed.

39. But, NPM exposes its concern that the legislation at effect¹⁴ foresees that prior detainee's placement in solitary confinement, the director of Correctional Institution service to request doctor's opinion which ascertains that detainee's mental and physical health is good. NPM requests from relevant authorities that provisions at force of these acts are amended in compliance with CPT recommendations in Kosovo Report, in conformity with 21st general report of CPT and the Recommendation of the Committee of Ministers of Council of Europe Rec (2006) 2 for Review of European Prisons Rules, through which a provision which required written opinion from the doctor if the prisoner could be subject to this measure, is repealed.

Contact with outside world

40. Legislation at force¹⁵, in case of convicted persons stipulates that convicted prisoners are entitled to unlimited right of correspondence (subject to certain exceptions), are permitted to a one-month visit in a duration of one hour, as well as are entitled to children's and spouses' visits at least once in 3 months with a minimum duration of three hours. Additionally, they have the right to make phone calls.

41. NPM has visited premises dedicated for family visits and other visits and found that these facilities are of very satisfying level.

42. As per telephone calls, Administrative Instruction for the House Rules in Correctional Institutions¹⁶ determines that the convicted person has right on telephone calls with close family members as well as other persons. According to this Direction, telephone call of the convicted person and of that on remand cannot be longer than 15 (fifteen) minutes.

43. In HSP, advanced regime prisoners are allowed on three phone calls per week in duration of 15 minutes, 2 family visits per month in duration of one hour and are entitled to a free visit in duration of three hours each 2 months.

44. In the case of detainees on remand, Article 200 of the Criminal Procedure Code of Kosovo stipulates that the detainees on remand can receive visits "*within the limits of the rules of the detention facility*" based on permission of the pre-trial judge and under his supervision. Further, the Code determines that other correspondence and visits are subject to pre-trial judge's decision.

45. The Ombudsperson or his representatives may visit detainees on remand and may correspond with them without prior notification and without the supervision of the pre-trial judge, single trial judge or presiding trial judge or other persons appointed by such judge. Letters from detainees on remand to the Ombudsperson cannot be examined. The Ombudsperson and his representatives can communicate confidentially with detainees on remand orally and in writing.

46. In case of foreign nationals, they are provided with opportunity to contact the Diplomatic Mission or the relevant office of the State of which he / she is a citizen verbally or in

¹⁴ Article 107 of the Law on Execution of Penal Sanctions and Article 76 of the Administrative Instruction for the House Rules in Correctional Institutions.

¹⁵ Law on Execution of Penal Sanctions, Articles 62-65.

¹⁶ Administrative Instruction for the House Rules in Correctional Institutions, Article 54.

writing.¹⁷ During the visit, NPM interviewed a foreign citizen who had no complaints regarding the enjoyment of the right to contact the Consulate or the Embassy of his state.

47. The convicted S.G, Republic of Serbia citizen, complained to the NPM regarding the issue of family visits, since based on his claims they live in Belgrade and it is difficult for them to visit him in HSP. The complainant complained on lack of books and that those are usually brought from Detention Center in Mitrovica.
48. As per this complaint, the NPM was informed by the HSP's director that the social worker from time to time takes books in Serbian language from the Detention Center in Mitrovica and brings them to HSP. **On the same day, the social worker brought some new titles in the Serbian language in the HSP.**
49. **NPM did not receive any complaints regarding the right for contacts with the outside world either by the convicted persons or those on remand.**

Admission procedures

50. In HSP, personal file is open for the newly admitted persons where data foreseen by law is placed which further are placed in data base of this institution. The newly admitted persons are notified in writing on their rights. In each Ward there is a copy of home rules.

Issues related to the security

51. During the visit, NPM noted that the so-called *pepper spray* remains a part of standard equipment of some correctional officers. **CPT in Reports on Kosovo visits in 2011 and 2015 has requested from relevant authorities termination of above practice having into consideration the harmful effects of substances and that this equipment no longer remains part of the standard equipment of correctional officers.**
52. **In written response delivered by the director was emphasized that “since 2010, pepper spray was part of standard equipment for personal security for the correctional staff, but currently in HSP just a considerable number of staff is in possession of this tool, who are trained for intervention and control of riots”**
53. According to the management no cases of violence have been recorded between prisoners this year in HSP.
54. NPM was notified by the management that 95% of the HSP space is subject to camera surveillance. **NPM reiterates the importance of equipment of wards, corridors and outer spaces with security cameras, which, according to the CPT, actually comprise a guarantee of protection from ill-treatment, but also a guarantee for the correctional officers from false blames for ill-treatment or excessive use of force.**¹⁸ In the Report for Ireland in 2010, CPT encourages relevant authorities to install security cameras as much as possible in places where people deprived of liberty are confined.

Procedure of complaint submission and inspection

55. Efficient system of complaint submission is the basic guarantee against ill-treatment in prisons and in detention centers. People placed in these centers ought to be entrusted with

¹⁷ Law on Execution of Penal Sanctions, Article 33 paragraph 1.

the opportunity to file complaints within the prison or the detention center where they are located and enable their confidential access to responsible authority.

56. Article 91 of the Law on Execution of Penal Sanctions specifies in details the procedure under which pre-detainees and sentenced persons may address a complaint or a request to the director of a particular institution of the Kosovo Correctional Service. The procedure includes also deadlines for reply by the Director and the possibility for the complaint to be addressed to another authority, which in the current case is the General Directorate of the Correctional Service and the Minister of Justice.¹⁹

57. NPM has noticed that complaint boxes placed by Kosovo Correctional Service are on disposal for the confined persons in the HSP as well as special boxes placed from the health care personnel who serve solely for complaints related to health and complaint boxes placed by the Ombudsperson Institution. Complaint boxes placed by the Ombudsperson Institution can be open only by personnel of this institution, the fact which provides the complainant with confidentiality in complaint submission. **NPM did not receive complaints from detainees and those on remand related to the issue of complaint submission or delays to review their complaints within legal tome frame.**

58. In terms of inspection procedures, regular monitoring of KCS institutions is carried out by the NPM of the Ombudsperson Institution and some organizations of civil society.

Based on findings and outcomes achieved during the visit, in compliance with Article 135 paragraph 3 of the Constitution of the Republic of Kosovo, and Article 16 paragraph 4 of Law No. 05 / L019 on Ombudsperson, the Ombudsperson recommends to the:

Kosovo Correctional Service:

- **To undertake necessary actions for repairing damaged floor in HSP infirmary and Wards;**
- **To remove white color which causes blinding reflection to detainees and presents obstacle for activities outside their cells;**
- **To enable access of detainees to daily press;**
- **To put in function premises for professional trainings;**
- **To increase activities for on remand detainees ;**

Sincerely,

Hilmi Jashari
Ombudsperson

¹⁸ CPT, Report on the visit to Ireland, paragraph 18.

¹⁹ Article 91, paragraph 4 of the Law on Execution of Penal Sanctions determines: The director of the correctional facility will respond in the appeal filed in a time period of fifteen (15) days, whereas the Head Office of the Correctional Service in a time period of thirty (30) days. In a written appeal a response in the written form will be issued.