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**OMBUDSPERSON INSTITUTION**

**REPORT WITH RECOMMENDATIONS**

**OF**

**THE NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE**

**on the visit conducted to the Dubrava Correctional Centre**

**For:**

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

**Mr. Milazim Gjocaj, General Director of Prison Health Department**  
**Ministry of Health**

**Mr. Uran Ismaili, Minister**  
**Ministry of Health**

**Mr. Nehat Thaqi, General Director,**  
**Kosovo Correctional Service**

**Mr. Jeton Mehmetaj, Acting Director**  
**Dubrava Correctional Service**

Pursuant to Article 135, paragraph 3 of Constitution of the Republic of Kosovo and Article 17 of Law 05/L-019 on Ombudsperson, Ombudsperson's National Preventive Mechanism against Torture visited Dubrava Correctional Service

Prishtinë, 24 August 2018

## INTRODUCTION

Pursuant to Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPMT”) of the Ombudsperson, is entitled to conduct unannounced visits at any time to all places where persons deprived of their liberty are placed, including police stations, detention centers, prisons, places where foreigners deprived of their liberty are held, whose residing in the Republic of Kosovo collide with the laws at force and which are subject of forcible removal from the Republic of Kosovo as well as psychiatric and social care institutions.

Based on this mandate, NPMT on 20 up to 22 of March 2018 visited Dubrava Correctional Centre (hereinafter “DCC”).

Construction of DCC began on 1976 and was completed in 1986 when it started to be functional. At that time the capacity of this establishment was approximately 1,000 convicted persons and there was a sub-branch of the DCC in Gurrakoc, where convicted persons with short-term confinement were located and worked, considering the fact that poultry farm, workplace for machinist, etc. were close to it.<sup>1</sup> After the conflict, with the entrance of KFOR troops and UNMIK administration, this institution began to be administered by UNMIK and was rebuilt by donations coming from abroad. Initially the Wings 2, 3, 7 and 8 were rebuilt and in June 2000 it started to work.

DCC is a high security level institution composed of several different sectors. The internal place is separated into two parts where one of them is the area for development of agriculture as well as other products, and the inhabited part, where mainly adult prisoners are located.

Generally prisoners are placed in 8 residential Wards, but during the visit, NPMT was informed that Ward 4 was in the course of renovation, while Hospital Ward accommodated patients who were provided with medical assistance, apart severe cases which are accompanied to the public hospitals. Whereas, outside the prison wall there is semi-open Ward where low risk prisoners are accommodated who are minimally escorted. The capacity of DCC is 1183 beds.

The purpose of this visit was monitoring the respect of convicted persons’ rights, residing in this center, in accordance with the Constitution of the Republic of Kosovo, applicable laws in the Republic of Kosovo as well as international standards for the protection of the rights of persons deprived of liberty.

During the visit, in particular the issue of admission procedures has been deliberated as well as acknowledgement of detainees with their rights, treatment, accommodation conditions, regime, health care, relations between prisoners, contacts with the outside world, complaint filing procedures and disciplinary measures that may be imposed under the Law on Execution of Penal Sanctions and the manner of their execution.

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<sup>1</sup> Data from the website of Ministry of Justice of the Republic of Kosovo, at: <http://www.md-ks.net/?page=1,70> (31.10.2016).

On May 2018, NPMT had an official meeting with the director of Kosovo Correctional Service, Mr. Nehat Thaçi, on which occasion he was informed on findings and recommendations from the visit conducted.

### **Composition of the monitoring team**

1. The monitoring was composed of NPMT team and observers:
  - 1) Ylber Topalli, Chief inspector of the Inspectorate of Ministry of Justice (observer).
  - 2) Jim McManus (Council of Europe expert, in the capacity of an observer)
  - 3) Trevor Stevens (Council of Europe expert, in the capacity of an observer)
2. **At the time when the NPMT visited this Center, there were 938 prisoners detained there.** European Committee on Torture Prevention visited DCC in 2007, 2010 and 2015.

### **Cooperation with NPMT during the visit**

3. During the visit made by NPMT to the DCC, the personnel of Correctional Service and personnel of Prison Health Department provided the monitoring team with full cooperation. The team, without any delay, had access to all places intended to visit. The team was provided with all necessary information to accomplish their tasks and the team was provided with the opportunity to talk to the convicted and the detained persons without the presence of correctional officers or other personnel.

### **Ill-treatment**

4. During the visit undertaken in this Centre, NPMT did not receive complaints of physical abuse or excessive use of force by correctional officers. The monitoring team received two complaints from two inmates claiming that they were ill-treated by Kosovo Police officers at the time of arrest and were taken to the police stations, where they have been interviewed.
5. In the case of complainant B.D, the complainant claimed that he was physically abused, was punched, by police officers during the interviewing process and transportation at the police station in Prizren. According to the complainant's allegations as per this issue, he informed the pre-trial judge, but no actions have been taken in this regard. The complainant also claimed that he never filed a complaint with the Kosovo Police or the Kosovo Police Inspectorate. The complainant R.S. claimed that he was physically abused in the police station in Ferizaj and that in this respect he had filed a complaint with the Kosovo Police Inspectorate a month earlier.
6. With regard to this complaint, the Ombudsperson's NPMT requests from the Police Inspectorate to be notified on the investigations conducted and findings of this body.

7. The monitoring team also visited the prisoners who were subject of disciplinary measures of solitary confinement and who were placed in certain cells where they were held as a result of the imposed measure. **The NMPT did not receive any complaint of physical ill-treatment, excessive use of force or violation of other rights to which these persons are entitled to.**

### **Complaints related to the corruption and favoritism**

8. Monitoring team received a significant number of claims from prisoners related to the corruption and favoritism which involves not only correctional personnel but also the medical personnel working in the Correctional Centre. According to these allegations, by paying a certain amounts of money, the prisoners may gain preferential treatment as per opportunities for work, family visits, temporary leave outside the institution, medical treatment etc. The NPMT has also received a number of allegations by detainees according to which, certain prisoners of certain categories, are treated with favoritisms compared to other inmates.
9. **Without anticipating whether such allegations are accurate or not, the NPMT considers that the DCC directorate and competent bodies of the Kosovo Correctional Service (KCS) should undertake comprehensive and independent investigations whenever there are allegations of corruption and favoritism in DCC.** The above given authorities should strengthen their efforts to combat these phenomena through preventive measures, education and the imposing of adequate sanctions.
10. Similarly, the NPMT notes that Article 5 paragraph 3 of the Law on Execution of Penal Sanctions explicitly determines adoption of secondary legislation with the purpose of elimination of corruption. Therefore, through this Report, the NPMT will seek from competent authorities to be notified if legislation in question has been approved.

### **Material conditions**

#### **Nutrition**

11. During the visit to the DCC the NPMT received a large number of complaints regarding the quality and quantity of food served to prisoners. **The prisoners claimed that the food served for breakfast and dinner is of poor quality and insufficient quantity.**
12. The NPMT notes that the Law on Execution of Penal Sanctions stipulates that the convicted person has the right to adequate nutrition in order to maintain health and power, that is on three daily meals, which must be various and nutritious. The food provided to a convicted person must be adjusted to the age and health condition, the nature of work, the season and the climatic conditions and, to the extent possible, adjustable to religious and

cultural requirements of the detainees. Similarly, this law determines the obligation that the convicted person is provided with food prescribed by the doctor.<sup>2</sup>

13. During the visit conducted in the kitchen, NPMT observed that six cooks are engaged there with the work, a kitchen chief, a bakery, a warehouse worker together with 34 inmates engaged in other kitchen work, 12 prisoners engaged in the bakery and 3 for cleaning and maintaining hygiene in the kitchen. Those engaged in the work in kitchen, including prisoners, were provided with adequate sanitary cards which were valid until April 2018. The NPMT concluded that the storage for long-term food placement was in good condition and conditions required for food storage with no moisture were on satisfying level. **During the visit, the NPMT noticed a lack of dietary menus for prisoners with diabetes.**
14. **The NPMT reiterates, as in other Reports as well, the liability of the competent authorities to ensure continuous supplies with dietary meals according to doctor's recommendations.** The NPMT was informed that the kitchen faces lack of equipment for food cooking and baking, plastic spoons for prisoners do not suffice, as well as special plates intended for delivering the food to other Words and maintaining the food heat.
15. Food transporting is done with inadequate vehicles and often with tractors. There is also a lack of inventory, uniforms, and work gloves. It has been noticed that neither the staff nor the prisoners have adequate working clothes for the work in the kitchen (use waste bags like pinafore aprons or footwear not to be wet while washing dishes or carrying out kitchen works), there is no liquid soap for maintaining personnel hygiene in the kitchen during the work (washing hands), while available equipment was technically inappropriate.
16. The NPMT has received complaints from prisoners regarding the schedule of food distribution. According to the prisoners, the distance of food distribution is very narrow (breakfast from 8.30 to 9.30, lunch starts from 10.30 till 12 while dinner from 15-16) when food serving is completed. Further, the NPMT considers of great concern the fact that waste containers are removed after 2-3 days, which causes additional problem since unattended dogs spread the garbage all around the area and the waste is spread in the garden behind the kitchen. Bathrooms and shower in the kitchen do not meet the minimum requirements for use. It has been noticed that some appliances in the kitchen cannot be closed properly and often are out of order. Supplying with ingredients for making bread was good, regular and timely.
17. The NPMT observed that the space used for the laundry is in an awful condition; it lacks natural light, lacks ventilation, is with humidity, and odors unpleasantly from the use of various inappropriate chemical means for cleaning. There were problems with worn out equipment and out of order and the laundry workers are forced to repair them and make

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<sup>2</sup> Law on Execution of Penal Sanctions, Article 39, paragraph 1 and 2.

them work in a way. Further, people working in the laundry do not have work clothes, masks, or adequate food for the conditions in which they work.

### **Accommodation conditions in Wards**

18. Accommodation conditions differ from the ward to ward. The NPMT noted that Ward 1 is renovated, toilets and showers are in good condition, the cells lacked moisture, they were painted and clean. The cells were generally warm; with sufficient lighting, and airing. During the visit, the NPMT paid particular attention to prisoners to whom the measure of solitary confinement has been imposed due to disciplinary violations, located in this Ward.
19. In the case of prisoner R.B, in the cell in which the prisoner was placed, the toilet was blocked, there was no sheet on bed's mattress; the cell had enough lighting and no moisture. The team observed the same accommodation conditions in the case of prisoner G.A. who was also punished with disciplinary measure of solitary confinement. The NPMT notes that the Law on Execution of Criminal Sanctions stipulates that the room for the execution of solitary confinement should have a space of at least ten (10) cubic meters, sanitary equipment, natural light, drinking water, bedding with sheets, table, chair and heating<sup>3</sup>. **Thus NPMT considers that the DCC should accomplish these legal criteria in all cases when the convicted persons are the measure of imposed solitary confinement.**
20. Further, European Committee for the Prevention of Torture (hereinafter "CPT"), as per the accommodation conditions in cell where a prisoner, to whom the measure of solitary confinement is imposed is located, points out that such cells used for solitary confinement should meet the same minimum standards as those applicable to other prisoner accommodation. Thus they should be of an adequate size, enjoy access to natural light and be equipped with adequate heating and ventilation. CPT further stresses that such cells should be equipped, as a minimum, with a table, adequate seating for the daytime, and a proper bed and bedding.<sup>4</sup>
21. The NPMT during the visit noted that in Ward 2 needs to be renovated since there were cells and dining halls that held moisture; showers and toilets were also in bad conditions. **During the visit, it was noted that inmates used self-invented electrical equipment for heating the water, which could seriously risk their lives.** The NPMT also notes that the European Committee for the Prevention of Torture during the Kosovo visit in 2015 expressed its concern related to the use of self-invented electric equipment by prisoners at the DCC and requested from relevant authorities of the Republic of Kosovo to take concrete steps to avoid using such equipment.<sup>5</sup>

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<sup>3</sup> Law on Execution of Penal Sanctions, Article 111, paragraph 2.

<sup>4</sup> European Committee for the Prevention of Torture, Part from the 21 General Report, published on 2016, paragraph 38. For additional information visit: <https://rm.coe.int/16806cccc6>, (21.5.2018)

<sup>5</sup> European Committee for the Prevention of Torture, Report from the visit conducted in Kosovo in 2015, published in 2016, paragraph 38. For additional information visit: <https://rm.coe.int/16806a1efc>, (21.5.2018).

22. Also, the NPMT has noted that some cells do not meet the minimum standards established by the Law on Execution of Penal Sanctions and the standards set by the European Committee for the Prevention of Torture regarding the size of the cell and the number of prisoners accommodated there.<sup>6</sup> Ward 4 was under renovation. Accommodation conditions in Ward 7 are generally very good and in accordance with international and national standards. NPMT has noted that in the Ward 6 shared toilets are very much damaged and there is a lack of hot water. **In some cells there are accommodated 6 persons, which comprise cell congestion. The NPMT considers that DCC should take steps to avoid overcrowding by making proper systemization of prisoners.**
23. The NPMT has visited Ward 8 where recently admitted prisoners are accommodated and who undergo a basic regime in duration of 28 days. The accommodation conditions in this ward are very bad and can easily be compared with degrading, humiliation and inhuman treatment. The NPMT notes that Article 36, paragraph 1 of the Law on Execution of Penal Sanctions determines: “A convicted person has a right to accommodation which corresponds to contemporary hygienic conditions and local climatic circumstances”. While in paragraph 3 of this Article is explicitly stipulated that: “The premises may not be damp and they must have adequate sanitary installations and other devices necessary for personal hygiene.”
24. The NPMT expresses serious concern about the fact that part of the Ward 8 is used as a Hospital wing. In wing V1 of the Ward 8, the NPMT interviewed several convicts, two of whom were with chronic psychiatric disorders and one of them nearly three years was placed alone in one cell. This situation is in opposite with Article 6, paragraph 1.10 of Law no. 05 / L-025 on Mental Health.<sup>7</sup>
25. Further, the CPT also states that a mentally ill prisoner should be maintained and cared for in a well-equipped hospital environment with properly trained staff. Such environment may be a civil psychiatric hospital or a psychiatric facility specially equipped within the prison system<sup>8</sup>.
26. The NPMT finds that Ward 8 does not meet the minimum accommodation standards foreseen by the Law on Execution of Penal Sanctions, the Law on Mental Health, the standards set by the European Committee for the Prevention of Torture and other international Convents on the protection of the rights of persons deprived of liberty.

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<sup>6</sup>Law on Execution of Penal Sanctions, Article 36 paragraph 2 stipulates: “The premises in which a convicted person lives and works must be of sufficient space for each convicted person to have at a minimum eight (8) cubic meters of space, when is possible and nine (9) cubic meters for the convicted in joint cells and four (4) cubic meters for single cells, and an adequate amount of natural and artificial lighting for work and reading, heating and ventilation”. Additionally, the European Committee for the Prevention of Torture as per the standards for the minimum cell size set in 2015 sets the minimum standard size of 6 square meters cell for prisoner in single cell and 4 square meters for convicted in common cells. For additional information visit : <https://rm.coe.int/16806cc449>, (21.5.2018).

<sup>7</sup> Article 6, paragraph 1.10 of the Law no. 05/L-025 on Mental Health, stipulates “the right to provide appropriate living, hygienic, nutritional and security conditions;”

<sup>8</sup> CPT Norms, Part of 3<sup>rd</sup> General Report [CPT/Inf (93) 12], paragraph 43

27. During this period, the NPMT was notified from the detainees placed there that the Center does not provide them with beddings and that they are forced to ask their families to provide with them, while blankets are mainly provided by the DCC.<sup>9</sup> **Relevant authorities should act in compliance with liabilities deriving from Article 16 of the Administrative Instruction on House Rules in Correctional Institutions.**
28. The NPMT noted that inmates in almost all wards continue to keep their belongings in plastic bags or carton boxes, since the space on their disposal does not suffice. The European Committee for the Prevention of Torture in the Report on the Kosovo visit in 2015 pointed out this problem and requested from the relevant authorities to do something as to improve this situation.<sup>10</sup>

### **Regime**

29. The DCC provides 4 regimes for prisoners: basic, standard, advanced and semi-open regime. At DCC, according to the directorate, there are about 350 convicts engaged at work. The number of those engaged at work is greater during the summer season. Usually the convicts are engaged at work in the kitchen, cleaning as well as on Center's poultry farm. Convicts can move freely within the Wards where they are located and are entitled to 3 hours of walk per day during the summer season, while during the winter 2 hours a day.<sup>11</sup>
30. Further, there are 3 warehouses within the Correctional Center, which in fact serve as centers for vocational training, where trainings for welding, construction, adjustment, carpentry, technical maintenance, water and electricity installation are organized. Trainings courses in duration of 3 months are organized in these places for the convicts.
31. There is a gym, basketball and football court within DCC establishment. The basketball court at the moment is not used since it needs changing damaged windows and install window meshes, which would prevent damaging the windows caused as a result of thrown balls. A part of the hall, such as toilets and showers were renovated and are in very good condition, while in the other part, the works were stopped since the work executor did not comply with technical conditions. **Thus, the situation in these buildings remains the same as from the visit conducted in November 2016.**

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<sup>9</sup> Article 16 of Administrative Instruction MoJ-No.07/2015 on house rules in correctional institution: *"Each convicted person has his own bed made of specific matrices, pillow with slipcover, two bed sheets, and one or two blankets for summer, respectively two (2) up to three (3) blankets during winter, depending on heating. Each convicted person will be responsible for their bed with all components of the bed and a locker for personal belongings."*

<sup>10</sup> Council of Europe, European Committee for the Prevention of Torture, Report from the visit conducted to Kosovo in 2015, published in September 2016.

<sup>11</sup> According to the Article 37 of the Law on Execution of Penal Sanctions, the convicted persons have the right to at least two hours walk outside closed premises.



32. Additionally, NPMT considers that establishment of economic units will increase activities and engagement of a greater number of the convicted persons. Establishment of economic unit is foreseen with the Law on Execution of Penal Sanctions as well.<sup>12</sup>
33. **Regardless the efforts of the DCC directorate, the NPMT retains the opinion that with the aim to achieve proper resocialization and rehabilitation of convicts, appropriate activities should be increased as well as enabling the possibility to undergo rehabilitation programs which would be available to a large number of convicted persons.**

#### **Health care**

34. Prison hospital functions within Dubrava Correctional Centre for the convicted persons where 6 regular doctors work (one doctor is available during 24 hours) 26 nurses working in 12 hour shifts. In addition, there is psychiatrist services offered twice a week, while the physiotherapist is trained nurse for psychiatrist, working every day, full time job.
35. In its latest report for the DCC<sup>13</sup> published on 26 January 2017, the NPMT recommended to the Ministry of Health (MH) hiring of one additional psychologist, since it is impossible to successfully accomplish the overall work in the Centre only with one psychologist, as well as hiring of a dentist and psychiatrist on regular bases. During the last visit it has been ascertained that the DCC has hired two psychologists on regular bases. **The NPMT welcomes implementation of recommendation on hiring of additional psychiatrist.** While until recently, the dentist was working on regular bases but due to fact the doctor started his specialization, his visits in the Centre are reduced in twice per week.
36. As external consultants working once a week are engaged: the psychiatrist, cardiologist, orthopedist, neurologist, radiologist and the radiology technician, psychiatrist, ophthalmologist, otorino-laryngologist, while the general surgeon is invited on need. NPMT was notified that within health service the program of treatment with Metadon is carried out also.
37. During the visit, NPMT observed that the hospital continues to function without an elevator through which the access to the second floor of the convicted persons with disabilities would be enabled. Authorities of the Republic of Kosovo in their response delivered to the CPT concerning the conclusion in their report on the visit made to Kosovo, that the convicted persons with disabilities lacked adequate access to hospital, emphasized that the issue was addressed to Kosovo Correctional Service to improve the situation as per this issue and to install an elevator. Further, authority's response as per this issue pointed out the fact of impossibility of solving this problem during this year based on the current budget and based on the plans for reconstruction of Correctional Service.

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<sup>12</sup> Law on Execution of Penal Sanctions, Article 212-214.

<sup>13</sup> [http://ombudspersonkosovo.org/repository/docs/27012017,Raport\\_me\\_rekomandime\\_i\\_MKPT\\_-\\_Dubrav%C3%AB\\_101537\\_457637.pdf](http://ombudspersonkosovo.org/repository/docs/27012017,Raport_me_rekomandime_i_MKPT_-_Dubrav%C3%AB_101537_457637.pdf)

38. The NMPT has noted that cleanliness in hospital rooms, in the part where patients were accommodated for psychiatric treatment, was not at the desirable level. Similarly, beds in the hospital rooms as well as blankets were worn-out and dirty. **Patients were accommodated without identified criteria according to their mental and health conditions, the number in the rooms, etc.**
39. During the visit conducted in 2016, NPMT was informed from the medical service that a worrying problem occurs to be the inability of transportation of convicted persons requiring medical services due to the lack of regular transport. During the visit the NPMT team was informed that DCC possesses an auto ambulance, which does not meet the necessary conditions, and is not fully functional and does not possess the basic equipment for provision of adequate medical assistance. On 29 May 2018, the Prison Health Director informed the NPMT that they have been equipped with a new auto ambulance.
40. Even though the prison hospital has been renovated recently, the NPMT has noticed that infrastructure was considerably damaged, (floor tiles and the inventory in the corridor in the dining hall), while the facility divided as a kitchen, to be used from the patients occupying that place, cannot be used. These damages are result of poor quality of work accomplished by the company engaged with the work, which were technically accepted. **The NPMT ascertains that renovations of prison hospital are more than a must.**

#### **Hospital records**

41. Prison hospital keeps the following records: records for self-injury, record of hunger strike, record of suicide committing, corporal damages, and records of death cases in prison as well as sexual abuses. Further, each doctor possesses the patient visit protocol. NPMT observed that hospital possesses modern equipment and may provide adequate medical services to the convicted persons. In general, NPMT concludes that prison hospital staff composition as well as available equipment meets the standards for the provision of medical services, but the premises where mentally ill persons as well as those with organic illnesses are accommodated, is not suitable at all (see paragraphs 23, 24, 25 and 26 of the Report). As per filings and registers as well as recording of other health services, NPMT considers that they are on a satisfactory level.

#### **Confidentiality of medical services**

42. NPMT was interested to obtain the information whether medical personnel in Dubrava Correctional Centre is providing medical services in the presence of correctional officers. During the visit in the hospital, NPMT concluded that medical services are provided without the presence of correctional officers in the prison hospital, apart the cases when the presence of correctional officials is explicitly requested by the medical personnel. ***NPMT encourages such an attitude and practice of non-presence of security officers during medical services provision.***<sup>14</sup>

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<sup>14</sup> European Committee for the Prevention of Torture in the report for Kosovo after the visit made to Kosovo in 2015 had remarks regarding the provision of medical services in the presence of correctional officers in some Correctional Centers and recommended to put an end to such practices.

## Other issues

### Personnel of Dubrava Correctional Centre

43. During this visit NPMT witnessed the concern expressed by the directorate due to the lack of correctional personnel, social workers and the psychologists. Based on the information obtained from the directory, DCC has engaged approximately 60 correctional officers involved on overseeing chronically ill persons hospitalized currently within health institutions and a number of correctional officials who are involved on educational courses in the Academy for Public Security in Vushtrri. DCC lacks approximately 100 correctional officers according to the directory. This number is planned to be increased for 50 new correctional officers, according to the directorate. It is important mentioning the concern of the directorate about the average age of the correctional officers that is 49 years of age.
44. During the visit, the NPMT received many complaints from correctional staff regarding the insufficient number of correctional officers in relation to prisoners and other work conditions. One of many complaints addressed is also the failure to supply with uniforms and other necessary equipment to carry out their work.
45. The NPMT considers that the manner how the personnel perceive the quality of life at work and the way they are treated by their managers and colleagues has a significant impact on the atmosphere in prison and the treatment of prisoners. Correctional officers who feel prized, trustful and respected in their workplace have greater opportunities to apply all of these values in treatment of prisoners. Favorable job circumstances in the prison also are of great importance to attract and retain appropriate personnel to work in the prison.
46. International standards in this regard are well-defined and stipulate that the personnel in prison ought to be full-time appointed, have civil status, as well as have appropriate incomes and favorable employment benefits as well as suitable conditions for accomplishing their tasks. Low salaries, improper working conditions and the lack of other benefits which are necessary to stimulate accomplishment of the work in the facilities such as the prisons, may have negative impact on motivation and accomplishment of liabilities by personnel engaged at work in prisons. Apart this, such circumstances can urge corruption.<sup>15</sup>
47. Similarly, one of the most common complaints which the NPMT receives from the correctional officers is the issue of recognizing of beneficiary length service. NPMT observes that Article 221 of the Law on Execution of Penal Sanctions explicitly stipulates that: *“Due to hazard, gravity of work and special working conditions, each twelve (12) months of work by correctional officers, shall be calculated as sixteen (16) months of*

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<sup>15</sup> Mandela Rules, Rule No. 74. European Prison Rules, Rule 79.1 and Rule 79.2. 10<sup>th</sup> and 11<sup>th</sup> General Report of the European Committee on Prevention of Torture.

*work experience, and when calculating their salaries an allowance shall be ensured*".  
**NPM requires to be notified from the competent bodies regarding this issue.**

48. The NPMT also visited the facility where the Special Intervention Unit is located, which is comprised of 17 members, working on shifts of 12 hours and are on call 24 hours. At the central level, this is the only Unit, and the same performs the following work: conducts special searches, patrolling as per security issues, interventions when there is an escalation of situations in the DCC as well as in other prisons. This Unit also carries out transportation work; searches the goods entering in the DCC, activities which are not written in job description.
49. The NPMT visited also the facilities where practical exercises are conducted. In general, the facility meets the conditions for work and accommodation of the Unit. As per the food and hazard category, this Unit is treated the same as other correctional officers within DCC. For 12 hours of work and practical exercises perform, the Unit receives only one meal (according to their assertions, in the past they also had an extra meal) that is not enough for them.
50. As per the equipment, the Unit uses *pepper spray*, whose deadline has expired approximately 3 years ago, poles and handcuffs. The Unit doesn't possess own vehicle, breathing apparatus, gas-mask and radio-connection. NPMT observed that the members of this Unit do not have identification number on their helmets. The NPMT is of the opinion that it is hard to expect that this Unit, with such composition and with the entire work request from it, can accomplish and achieve every tasks and work requested. As per the use of expired pepper spray, the situation remains the same, as has been found out in the Report with Recommendations, published on 26 of January 2017.<sup>16</sup>

### **Disciplinary measures**

51. According to the applicable legislation, prisoners may be subjected to the following disciplinary measures: reprimand, deprivation of an assigned privilege, order for restitution and solitary confinement<sup>17</sup>. While in the case of pre-detainees they can be subjected to the following sanctions: prohibition or restriction of visits or correspondence, apart contacts with defense counsel, the Ombudsperson and diplomatic missions. During the visit, as per analyzing the situation in this regard, the NPMT reviewed several decisions of DCC directorate by which the detainees have been imposed several disciplinary measures, including the measure of solitary confinement.
52. NPMT ascertained that the DCC keeps registers on imposed disciplinary measures where the data regarding imposed measures are written as well as the reason, the time of imposition and termination of the same. These decisions are also delivered to the prisoners as well in order to be notified on legal remedies on disposal, in case they are unsatisfied with the disciplinary measure imposed.

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<sup>16</sup> [http://ombudspersonkosovo.org/repository/docs/27012017,Raport\\_me\\_rekomandime\\_i\\_MKPT\\_-\\_Dubrav%C3%AB\\_101537\\_457637.pdf](http://ombudspersonkosovo.org/repository/docs/27012017,Raport_me_rekomandime_i_MKPT_-_Dubrav%C3%AB_101537_457637.pdf) (25.5.2018).

<sup>17</sup> Paragraphs from 101 to 113 of Law on Execution of Penal Sanctions.

53. NPMT was informed that medical service does not participate in decision-making regarding the ability of detainee or the convicted person to face disciplinary sanction of solitary confinement. NPMT considered that medical personnel's role is clear in this aspect. The doctor's participation in decision-making, who as a matter of fact is the doctor of the detained or convicted person, would hamper the doctor-patient relation, unless this sanction is undertaken for medical reasons.<sup>18</sup>
54. But, NPMT through this Report as well (the same as in other Reports with Recommendations previously published) exposes its concern on the issue that the Legislation at effect<sup>19</sup> sets forth that before the convicted person is placed to a solitary confinement, the director of the service of correctional institution should request the doctor's opinion in writing which testifies that the convicted person is at good physical and psychological condition to undergo the solitary confinement measure.
- 55. NPMT again requests from relevant authorities that the provisions in force of these acts are amended in accordance with the CPT recommendation in the Report for Kosovo, in compliance with the 21<sup>st</sup> CPT's General Report and the Recommendation of the Committee of Ministers of Council of Europe Rec (2006) 2 for the Revision of European Prison Rules, which required the written opinion that the convicted person may be subject to this measure, was repealed.**

#### **Contacts with the outside world**

56. Legislation in force<sup>20</sup>, in the case of convicted persons determines that imprisoned detainees shall have the unlimited right of correspondence (subjected to specific exceptions), shall have the right to receive a visit at least once each month for a minimum of one hour as well as are entitled to a visit by the spouse and children at least once in three months for a minimum of three hours. In addition, they shall have the right to make phone calls.
57. Regarding phone calls, Administrative Instruction on House Rules in the Correctional Institutions<sup>21</sup> determines that convicted persons may have phone calls to close family members and other persons. According to this Instruction, phone calls of the convicted person and the detained person shall not last more than 15 (fifteen minutes).
58. Convicted persons on basic regime shall be entitled to one phone call a week lasting 15 (fifteen) minutes, while convicted persons on advanced regime shall be entitled to two phone calls a week lasting 15 (fifteen minutes).

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<sup>18</sup> European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 required from relevant authorities to put an end to the practice of the request made by the doctor to confirm that detainee or the prisoner is in a situation to face the sanction.

<sup>19</sup> Article 107 of Law on Execution of Penal Sanctions and Article 76 of Administrative Instruction on House Rules in the Correctional Institutions.

<sup>20</sup> Law on Execution of Penal Sanctions, Article 62-65.

<sup>21</sup> Administrative Instruction on House Rules in the Correctional Institutions, Article 54

59. In the case of the detained persons, Article 200 of Criminal Procedure Code of Kosovo determines that the detainee on remand may receive visits “within the limits of the rules of the detention facility”, based on the permission of the pre-trial judge and on his or her request. Further the Code determines that correspondence and other visits are subject to the decision of the pre-trial procedures.
60. Ombudsperson or his representatives may visit the detained persons and contact with him without prior notification and without the supervision of the pre-trial judge, single trial judge or presiding trial judge or other persons appointed from such judge. Letters of the detained person sent to the Ombudsperson Institution cannot be controlled. The Ombudsperson and his representatives may communicate confidentially verbally or in writing with the detained person. Further, the detainees can address NPMT of the Ombudsperson by phone.
61. In the case of foreign nationals, they shall be provided with the opportunity to contact a diplomatic representation in writing or verbally or the relevant office of his or her State of nationality.<sup>22</sup> During the visit, NPMT interviewed a number of foreign nationals (coming from the Republic of Albania) who compliant to the NPMT regarding the right to use the right for weekends, which for foreign citizens, was suspended by the decision of the Ministry of Justice. Foreign detainees had no other complaints regarding enjoyment of other rights. **NPMT received no complaints regarding the right for contacts with the outside world.**

#### **Facilities where visitors are admitted**

62. During the visit, NPMT has visited also the premises where family and free visits perform. Conditions in these facilities remain on satisfying level, and NPMT did not receive any complaint neither from the detainees nor by the visitors which were at these facilities at the time of the visit.

#### **Admission procedures**

63. In DCC, the newly-arrived persons are required to undergo an admission procedure lasting at most 30 days. During this period, they are assessed and categorized in special cells, before they are accommodated in normal cells. During the visit, NPMT observed that DCC possesses a register which records data regarding the convicted person accommodation in the admission block. Regarding the contacts with the outside work and walking during this period, convicted persons declared that they are allowed to two phone calls as well as two visits during the period they are accommodated in this ward.

#### **Medical check-up during the admission procedure**

64. European Committee for the Prevention of Torture in the Report for the visit in Kosovo in 2015 paid particular attention to the medical check-ups (examinations), especially of newly-arrived prisoners or detainees, not only for detecting (transmissible) diseases and preventing suicides, but also for contributing to the prevention of torture through the proper injuries’ recording.

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<sup>22</sup> Law on Execution of Penal Sanctions, Article 33 paragraph 1.

65. DCC informed the NPMT team that the newly-arrived are screened within a 24 hour time from the moment of their arrival in this center. These mean a general examination during which anamnesis is taken from the prisoner whether he/she has any disease to declare, which is recorded in his/her medical file. All medical service procedures in prisons are in compliance with the Standard Practice of Action. This official document was drafted in cooperation between local experts with field experts from the Council of Europe and started to be implemented since October 2017.

### **Security-interrelated issues**

66. During the visit, NPMT observed that the so called *pepper spray* is still the part of standard equipment of correctional officers in DCC. In addition to this, NPMT was notified that the time limit of this *pepper spray* has expired. CPT in the Reports for visits in Kosovo in 2011 and 2015 requested from relevant authorities to end such practice, having in mind that the damaging effects caused by the substances and this equipment should not be part of the standard equipment of correctional officers. **The NPMT requires from the DCC to submit comments on the use of pepper spray and whether it is standard equipment of each correctional officer or of only of a certain official.**

67. NPMT was informed by the directory that in some wards and facilities in DCC there are no security cameras. **NPMT encourages DCC authorities to equip all corridors of wards and external areas with security cameras, which according to CPT comprise one of guarantees for protection from ill-treatment.**<sup>23</sup> In the report for Ireland for 2010, CPT encouraged relevant authorities to install more security cameras in places where persons deprived of liberty are accommodated.

68. **Through this Report, NPMT encourages relevant authorities to provide technical possibilities so that the data recorded by the security cameras are stored for a long time period, since subsequent allegations for ill-treatment or excessive use of physical force can be investigated more effectively in this way.**

### **Incidents between the detainees**

69. According to the directorate, during this year, four incidents have been recorded so far between prisoners. The NPMT has noted that these incidents have been identified in the relevant forms. In general, the NPMT during the visit noted that the relations between the prisoners are good and there are no tensions between them in almost any ward.

### **Complaint procedure**

70. Effective system of complaint filing is basic safeguards against ill-treatment in prisons and detention centers. Persons accommodated in these centers should have avenues to file complaints, within the prison or the detention center and be entitled to confidential access to an appropriate authority.

71. Article 91 of the Law on Execution of Penal Sanctions provides for a detailed procedure by which detainees and prisoners may address complaints or requests to the Director of a

specific Kosovo Correctional Service establishment. The procedure includes deadlines for responses by the Director, and the possibility to refer a complaint under certain circumstances to a higher authority, which in the current case is the General Directory of the Correctional Service and the Minister of Justice.<sup>24</sup>

72. NPMT observed that there are complaint boxes available to the convicted persons in DCC establishment placed by the Kosovo Correctional Service and the complaint boxes placed by Ombudsperson Institution. Complaint boxes placed by Ombudsperson Institution may be opened only by the personnel of this Institution, which provides confidentiality for complainants in filing complaints.
73. **The NPMT has received complaints from convicts regarding non-response on requests addressed to the directorate. The NPMT considers that, despite the nature of the request, it is important to provide prisoners with the response.**
74. NPMT was notified that the Kosovo Correctional Service, in cooperation with experts of the Council of Europe, within the supporting project for the Kosovo Correctional Service, held several workshops with intention of procedures setting and compiling of detainees' complaint forms.

#### **Complaints against the Panel for Conditional Release**

75. During the visit, monitoring team received a great number of complaints against the decision of the Conditional Release Panel (CRP). **Based on complainants' allegations the CRP does not send to the DCC decisions related to their requests on parole (conditional release).**

Based on findings and conclusions reached during the visits, in conformity with Article 135 paragraph 3 of Constitution of the Republic of Kosovo and Article 16 paragraph 4 of Law 05/L019 on Ombudsperson, the Ombudsperson recommends:

#### **The Ministry of Justice:**

- 1. To inform the Ombudsperson in case the secondary legislation for fighting corruption has been adopted.**
- 2. To improve food quality and increase the quantity.**
- 3. To provide the prisoners with dietary meals according to the recommendation of the competent doctor.**

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<sup>23</sup> CPT, Report on the visit to Ireland in 2010, paragraph 18.

<sup>24</sup> Article 91, paragraph 4 of Law on Execution of Penal Sanctions stipulates: 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.



4. **All cells accommodating prisoners, to whom disciplinary measures of solitary confinement are imposed, are in accordance with the Law on Execution of Penal Sanctions and the recommendations of the European Committee for the Prevention of Torture (see paragraph 19 and 20 of this Report).**
5. **Make necessary repairs based on the findings in this Report, especially the Ward 8.**
6. **Equip the kitchen with adequate appliances according to accurate evaluation.**
7. **Take specific steps in order to end the practice of using unfitting electrical equipment.**
8. **NPMT reiterates the recommendation previously given that the detainees are equipped with lockers for placement of their belongings (see Report with Recommendations, 26 January 2017).**
9. **NPMT reiterates recommendation of putting the gym in function (see Report with recommendation, 26 January 2017)**
10. **Functionalization of economic unit.**
11. **NPMT reiterates the recommendation of lift instalment, which would enable disabled detainees' access in hospital's second floor (see Report with Recommendations, 26 January 2017).**
12. **Necessary renovations in the hospital (see paragraph 40 of this Report).**
13. **Hiring of necessary correctional personnel according to needs assessment.**
14. **NPMT reiterates recommendation of setting security cameras where needed as well as technical possibility of preserving information for a longer time period (see Report with Recommendations, 26 January 2017).**
15. **NPMT reiterates the recommendation to supplement/amend the LEPS and Administrative Instruction on House Rules in the Correctional Institutions, which foresees to request the doctor's written opinion before a disciplinary sanction is imposed to a person (see Report with Recommendations, 26 January 2017).**
16. **To increase the number of social workers based on the DCC detainees number.**
17. **To supply DCC with all necessary equipment and materials needed for daily work.**
18. **To address correctional officers' needs as per working conditions and working tools.**
19. **To inform NPMT regarding the issue of using *pepper spray* and expiring date of the same (see paragraph 67 of this Report)**

**To the Ministry of Health:**

20. **NPMT reiterates the recommendation to the Ministry of Health to hire a dentist on regular bases (see Report with Recommendations, 26 January 2017).**
  
21. **NPMT reiterates the recommendation to the Ministry of Health to hire a psychologist on regular bases (see Report with Recommendations, 26 January 2017).**

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 on Ombudsperson No.05/L-019, “*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.

Respectfully submitted,

Hilmi Jashari

Ombudsperson