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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

REPORT
OF THE
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE

Related to the visits conducted to the following Police Stations:

- 1. Police Station in Klinë**
- 2. Police Station in Istog**
- 3. Police Station in Deçan**
- 4. Police Station in Pejë**

For: Mr. Ekrem Mustafa, Minister
Ministry of Internal Affairs
Mr. Rashit Qalaj, General Director
Kosovo Police

Pursuant to Article 135, paragraph 3 of Constitution of the Republic of Kosovo and Article 17 of the Law 05/L-019 on Ombudsperson, Ombudsperson's National Preventive Mechanism against Torture (hereinafter the NPMT) visited the above mentioned Police Stations.

Prishtine, 17 October 2018

Dates of visits and composition of the monitoring team

1. NPMT visited the abovementioned police stations on the following dates:

- 1. Police Station in Klinë, on 11 July 2018.**
- 2. Police Station in Istog, on 11 July 2018.**
- 3. Police Station in Deçan, on 12 July 2018.**
- 4. Police Station in Pejë, on 12 July 2018.**

2. The monitoring team consisted from a Legal Adviser, a Psychologist, a Medical Doctor, two members of Kosovo Rehabilitation Center for Torture Victims (KRCT), and two Experts of Council of Europe (in the capacity of observers).

Cooperation with NPMT during the visit

3. During NPMT visit to the above mentioned establishments, the Kosovo Police provided the monitoring team with full cooperation. The team without any delay had access to all places of visit. The team was provided with all information needed to perform the task and access to all requested documents as well as interviews with arrested persons, without the presence of police officers, were enabled.
4. According to the legislation at force in the Republic of Kosovo, persons suspected of committing a criminal offense can be held by the police up to 48 hours before being brought in front of the pre-trial judge. The police may keep and gather information from people who were in the place where the criminal offence has been committed, who can provide relevant information (maximum time period: six hours)¹.

Guarantees against ill-treatment

5. The European Committee for the Prevention of Torture (hereinafter referred to as "the CPT") in its 2nd General Report published in 1992, emphasized the importance of three fundamental rights of persons arrested by the police: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate of the native country in case he/she is a foreigner), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities).²
6. These rights should be applied not only in the case of arrested person but also in other cases when citizens are forced to stay in the police establishment or with police officer for other reasons (for example, for identification purposes).
7. They are, in the CPT's opinion, fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned.

¹ Articles 162, 163, 164 of the Criminal Procedure Code of Republic of Kosovo.

² See: <https://rm.coe.int/16806cea2f> (15.11.2017).

8. Also, these fundamental rights are foreseen also with the Constitution of the Republic of Kosovo, the Criminal Procedure Code and the Law on Police.³
9. Article 13 of the Criminal Procedure Code stipulates that any person deprived of liberty must be immediately notified in a language that he / she understands on the right to legal aid as he / she wishes, the right to notify family members or any other person for the fact that he was arrested and that these rights apply throughout the time of deprivation of liberty.⁴
10. As per notification for arrest, Article 168 of the Criminal Procedure Code further reads that an arrested person has the right to notify a family member or another appropriate person of his or her choice about the arrest and the place of detention, immediately after the arrest; notification of a family member or another appropriate person may be delayed for up to twenty-four (24) hours where the state prosecutor determines that the delay is required by the exceptional needs of the investigation of the case. This delay is not applied in cases involving juveniles.
11. According to Law on Police⁵ the right to notify the family or other person for the arrest also applies to persons who are in "temporary police custody" for the purpose of identification or because of their protection and protection of others.
12. During the visit to Klinë and Istog police stations, NPMT did not encounter any arrested persons. The NPMT met arrested persons at the police station in Deçan and in Pejë, whom NPMT interviewed and did not receive complaints regarding their rights. Also, based on document reviewed, it derived that these rights have been respected by Kosovo Police. During the visits, the NPMT found that each cell contained written information regarding the rights of the arrested persons. During the visits, the NPMT did not meet arrested juveniles.
13. During the visit, NPMT has been notified by the Police officers that during interviewing of arrested persons electronic (audio and/or video) recoding of interviews is not applied. The European Committee of Torture Prevention (CPT) considers that:

“The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. The CPT is pleased to note that the introduction of such systems is under consideration in an increasing number of countries. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic

³ Constitution of Republic of Kosovo, Articles 29 and 30. Criminal Code of Republic of Kosovo, Article 13. Law no. 04/L-076 on Kosovo Police,

⁴ See also Articles 29 and 30 of the Constitution.

⁵ Law on Police, Article 20.

*recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions”.*⁶

14. In the Report for the visit to Ireland in 2006, CPT points out:

“The findings during the 2006 visit suggest that audio-video recording in the interrogation rooms of Garda stations may have been a significant contributing factor to reducing the amount of ill-treatment alleged by persons detained”.

15. **Ombudsperson’s NPMT, as well as in the Recommendation Report provided to the Kosovo Police on 25 January 2018, encourages Kosovo Police to consider the possibility of applying such a system of audio and video recordings in accordance with the findings of the CPT and for this to notify the Ombudsperson.**

16. The NPMT found that in police stations in Deçan, Istog, Klinë and Pejë, security cameras are functional within stations’ premises as well as in cells where the arrested persons are held.

17. In addition, the NPMT also observed that at each police station owned specific documents in which police authorities have entered accurately records of any event concerning the arrested person.

Physical ill-treatment

18. During the visit to the police station in Pejë, NPMT encountered five arrested persons, two of which were in the course of cross-examining by Prosecution while three others were interrogated by NPMT. During questioning there were some allegations of ill-treatment by police officers at the time of arrest. NPMT reviewed files of arrested persons where was pointed out that the detained persons were visited by the doctor and that medical check-up files contained notes on vital signs measurement, while only in one case pain killer medication has been recommended.

19. In this direction, Law no. 04/L-076 on Kosovo Police stipulates that: *“A Police Officer is authorized to use force only when strictly necessary and only up to the level intended to achieve the legitimate police objectives”.*

20. **Ombudsperson’s NPMT considers that all officers of Kosovo Police should be acquainted with the fact that all forms of physical ill-treatment of arrested persons are unacceptable and that all police officers will be subjected to legal sanctions in case of performing such deeds. They should be aware that excessive use of force, beyond what is necessary in the course of arrest, is banned and that when the arrested person has been put under control, justification for using force simply cannot exist.**

Physical conditions of visited police establishments

21. **At the Police Station in Istog,** the cells in which arrested persons were placed provided good accommodation conditions, including sufficient natural light, cleanliness and

⁶ European Committee of Torture Prevention, Extract from the 12th General Report, paragraph 36. For more information see: <https://rm.coe.int/16806cd1ed> (24.11.2017).

airing. Worth mentioning that cell sizes are in compliance with the standards set by the CPT.

22. **Police Station in Klinë generally meets the minimum standards for accommodation of arrested persons.** Cells accommodating arrested persons have natural and artificial light, cell size complies with CPT⁷ standards, and each cell had mattresses and clean sheets.
23. **In Police Station in Pejë,** NPMT observed that the cells were in very bad condition, there was no natural light, and the artificial light was poor. The NPMT witnessed building's moisture and mold odor while the hygiene was not at appropriate level. Cells where detainees were located were deficient of sheets, pillows, hygienic means etc. **This station needs renovation in the premises where the arrested persons are located as well as in premises where the police officers work.**
24. **In Police Station in Deçan** the NPMT noted that cells, where the arrested persons were located, were in a very bad condition and immediate renovations need to be taken as soon as possible. Worth mentioning that detainees are short of natural light as well as lighting in cells. As a result of this situation, the NPMT interviewed an arrested person in full darkness. The monitoring team, during the visit conducted to the cells where the arrested persons were placed, observed various insects. **Such a situation at the police station in Deçan can be compared to degrading, humiliating and inhuman treatment.**
25. **The NPMT considers that, however short may be the period of police detention, conditions in the cells must meet some basic requirements.** The NPMT notes that the CPT in its 2nd General Report, published on 13 April 1992 in Strasbourg, has defined the standard regarding the conditions in cells where the arrested persons are placed, which stipulates that: *"All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets"*.⁸
26. **In all stations visited, the NPMT observed that the arrested persons were not supplied with personal hygienic means.** The NPMT considers that the relevant authorities should take concrete steps to supply on hold facilities with hygienic means.

Calling system

27. **None of the Police stations visited have a call system.** The NPMT finds that the CPT report on Kosovo visit in 2015 has recommended competent authorities in Kosovo that

⁷ See: <https://rm.coe.int/16806cea2f> (16.8.2018).

⁸ European Committee of Torture Prevention, 2nd General Report paragraph 42. For more info see: <https://rm.coe.int/1680696a3f>, (16.8.2018).

cells at the police stations get equipped with a call system, which would enable easier contact of arrested persons with police officers in case of a need.⁹

Regime

28. In its 12th General Report published on 2002, the European Committee of Torture Prevention (CPT) stipulates that persons held in police custody for 24 hours or more should, as far as possible, be offered outdoor exercise every day.¹⁰ **At the police establishments visited, police officers informed NPMT that the arrested persons are not offered any outdoor walking or exercise, consequently neither upon their staying longer than 24 hours, since their physical conditions do not permit such activity.** The NPMT considers that, in accordance with the CPT's recommendation, the competent authorities should, whenever possible, provide the detainees with outdoor walking or exercise outside the cell.

Health care

29. Medical services are fundamental right of people arrested by the police. NPMT was notified that at the police station in Istog, every arrested person is initially visited by the doctor and then is placed in the cell. Medical services are provided by public institutions such as the nearest Family Medicine Centers and the University Clinical Center, depending on the treatment needs. **The NPMT did not receive complaints from the interviewed persons regarding this right. Also, from the documents reviewed NPMT observed that the notification on the right to have medical services, have been recorded in their personal files by the police.**

30. NPMT observed that all information related to the medical services provided to the arrested persons is written on personal file of the same.

Thus, based on findings during the visit conducted, NPMT recommends to the Ministry of Internal Affairs as well as to the Kosovo Police:

- **To conduct necessary renovations at police stations in Deçan as soon as possible.**
- **To undertake necessary renovations in on hold police station in Pejë as well as to equip the station with necessary materials (see paragraph 23 of this Report).**
- **In all cells of police establishments, where on hold rooms are located, call system to be installed.**

⁹ CPT Report on its visit to Kosovo in 2015, authorities' response. See at:

<https://www.coe.int/en/web/cpt/kosovo> (16.8.2018).

¹⁰ General 12th CPT Report, paragraph 47, at: <https://rm.coe.int/16806cd1ed> (16.8.2018).

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

Warmly submitted,

Hilmi Jashari
Ombudsperson