



Republika e Kosovës • Republika Kosovo • Republic of Kosovo
Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

REPORT WITH RECOMMENDATIONS
OF
THE NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE
on
the visit to Peja Detention Center

To: Mr. Abelard Tahiri, Minister
Ministry of Justice

Mr. Uran Ismaili, Minister
Ministry of Health

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

Mr. Nehat Thaçi, General Director
Kosovo Correctional Service

Mr. Sami Gashi, Director
Peja Detention Center

Prishtina, on 22 November 2018

Pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 17 of the Law on Ombudsperson no. 05 / L-019, the National Mechanism for the Prevention of Torture of the Ombudsperson has paid a visit to the Detention Center in Peja.

Visit dates and composition of the monitoring group

1. Pursuant to Article 17 of Law No. 05 / L-019 on Ombudsperson, the National Mechanism for the Prevention of Torture (hereinafter referred to as "the NMPT") of the Ombudsperson, on 4 October 2018 has paid a visit to the Detention Center in Peja (hereinafter referred to as "PDC"). The monitoring group consisted of two lawyers, one doctor and one psychologist.

Brief background of the institution

2. The PDC was built around 1960-1961. It originally operated under the administration of UNMIK and KFOR until February 2005, when full management powers were handed over to the national staff. The PDC is dedicated to the detainees of Peja nearby regions, as well as admits persons to serve the sentence imposed by the Basic (Municipal) Courts up to three months. This Institution has an official capacity of 86 persons; it has a total of four wings - detainees are placed in three wings, and on the fourth wing are placed convicts with short sentences.¹

General description of the institution

3. The prisoners are accommodated in wings A, B, C and D. The total capacity is for 86 prisoners. At the time when the NMPT visited the center, there were 89 prisoners accommodated in the Center, 7 of which were convicted. The European Committee for the Prevention of Torture has visited the PDC in 2007 and 2015.²

4. During the visit, the NMPT was informed by the Directorate that they were verbally informed that they should begin the preparations for the closure of the PDC and to transfer the detainees and convicts to the Dubrava Correctional Center. However, the Directorate has not yet received a concrete written decision from the Kosovo Correctional Service Directorate.

5. According to the Directorate, the main reason for the closure of the PDC is the recommendation of the European Committee for the Prevention of Torture (hereinafter referred to as "CPT") that this center is to be closed due to non-compliance with the standards for accommodation conditions.

6. The NMPT notes that the CPT in its report on the visit to Kosovo in 2007 and 2015 describes the conditions of accommodation as very bad.

Purpose of the visit

7. The main purpose of the visit was to assess the physical and material conditions in the Peja Detention Center, as well as to assess whether these conditions are in compliance with

¹ Information from the webpage of the Kosovo Correctional Service, at: <http://shkk.rks-gov.net> (08.10.2018)

² See: <https://rm.coe.int/16806972c7> (14.11.2017), CoE-CPT Report on the visit in Kosovo in 2007, published in 2009. For more, please refer to the link: <https://rm.coe.int/168069727c> (15.10.2018).

the Law on Execution of Penal Sanctions, the standards established by the CPT and international standards for the protection of rights of persons deprived of their liberty.

Cooperation with the NMPT during the visit

8. During the NMPT visit to the PDC, the Correctional Service staff and the Prison Health Department staff provided full cooperation to the monitoring team. The team without delay had access to all areas of the PDC. The team was provided with all information needed to perform the task and enabled interviews with convicted and detained persons, without the presence of correctional officers or other personnel.

Physical mistreatment

9. During the visits to the PDC, the NMPT has interviewed a large number of detainees and convicts and did not receive any complaints about physical mistreatment or excessive use of physical force by the correctional officers.

10. However, the NMPT has received one complaint by the detainee E. A., who alleged that he was physically mistreated by the Kosovo Police at the time of arrest. According to the complainant's allegations, he was arrested on 13 September 2018 and was taken to the police station in Prizren. The complainant alleged that at the station he was cuffed to the radiator, punched and kicked.

11. Therefore, the NMPT, through an official letter, requested from the Police Inspectorate of Kosovo (PIK) to investigate the case in question and to notify the NMPT of the Ombudsperson on the outcome of investigation.

Material conditions

Conditions of accommodation

12. The official capacity of the PDC is for 86 persons. During the visit to the PDC cells, the NMPT noted that currently the number of prisoners had reached to 89 persons. The NMPT has visited a number of cells and has verified that the accommodation space, lighting and ventilation are not in compliance with the standards set by the European Committee for the Prevention of Torture and the Law on Execution of penal Sanctions.³

13. The NMPT has noticed that shared bathrooms on the wing B are damaged, the walls are moist, and smells on mold, the sanitary equipment are damaged. Regarding the area of residence, the CPT has determined that the space for detainees or prisoners in the cell must be at least 4m² per person in a space accommodating more than one person, excluding the annex of toilets.

14. Also, the Law on Execution of Penal Sanctions provides that each inmate shall have 4m² of space in a shared cell.⁴ During the visit, the NMPT noted that in some cells, due to lack of space, some detainees and convicts sleep on the floor in an old and moldy mattress, without adequate cover sheets.

³ European Committee for the Prevention of Torture, Living space for one inmate, see: <https://rm.coe.int/16806cc449> (14.11.2017)

⁴ Law no. 05/L0-129, Article 3 of the Law on Amending and Supplementing the Law no. 04/L-149 in Execution of Penal Sanctions.

15. As stated in paragraph 3 of this report, the CPT has visited the PDC twice. Regarding accommodation conditions, the CPT in the report on Kosovo's visit in 2007 described these conditions as very bad, and concluded that the size of the cells is not in compliance with the standards set by this committee. In addition, the report states that cells do not have proper ventilation and lighting.⁵

16. Also, the CPT in its report on Kosovo's visit in 2015 considered that accommodation conditions did not improve and generally remain as noted in the report of the visit in 2007. Moreover, during this visit, the CPT was notified by the relevant authorities of the Republic of Kosovo on the plan to close this center. The CPT in the report in question encouraged the authorities of the Republic of Kosovo to close the Peja Detention Center as soon as possible. Further, the CPT concluded: *“For as long as this center is in use, efforts must be made to ensure that sanitary annexes are kept in an acceptable condition in terms of physical conditions and that prisoners are provided with 4m² of space per person in cells accommodating more than one detainees”*.⁶

17. European Prison Rules, in Rule 18.1 and 18.2, stipulate the obligation of the authorities to provide prisoners with the accommodation respecting human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18. Also, Rule 13 of the Mandela Rules, adopted by the United Nations, establishes: *“All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation”*.

Overpopulation

19. The NMPT was notified by the directorate that the official capacity of the Peja Detention Center is for 86 persons. During the NMPT visit were accommodated 89 persons. Due to the inadequate size of cells and the inadequate number of people accommodated there, overpopulation becomes even more pronounced. The NMPT considers that the relevant authorities should take action to avoid this situation.

Kitchen

20. The NMPT considers that the kitchen does not meet the basic requirements as its space is too small, without natural light, the working tools are out-dated, damaged and improvised by the food workers themselves. The food was stored in a special and long-term use room. The NMPT has noted that all workers in the kitchen possess valid sanitary booklets. According to the kitchen staff and NMPT findings, the kitchen also contains dietary food for certain categories of detainees and convicts, depending on their health condition.

⁵ CPT Report on the Kosovo's visit in 2007, published in 2009, at: <https://rm.coe.int/168069727c> (15.10.2018).

⁶ CPT Report on the Kosovo's visit in 2015, paragraph 41. For more, please refer to: <https://rm.coe.int/16806a1efc> (15.10.2018).

Regime

21. For the time being there are eight detainees and three convicts engaged in the PDC. Detainees can go out in the air (for strolling) twice a day in the duration of 1 hour.⁷ The Peja Detention Center possesses a very small promenade, with only one tennis table. The PDC is unable to provide detainees and convicts with other activities, except for strolling and watching TV in the cells. Thus, detainees and convicts spend most of their time locked in their cells.

22. The NMPT considers that the regime for detainees remains poor, despite the efforts of the directorate to provide more activities for detainees. Moreover, in the case of detainees often is required permission from the competent court to engage in work or any other specific activity.

23. The NMPT considers that the longer the period of detention, the same should be developed the regime provided.

Contacts with the outside world

24. Legislation in force⁸ for the case of convicted persons stipulates that convicted prisoners have unlimited right of correspondence (subject to certain exceptions), are entitled to one visit per month, which lasts at least one hour, as well as a visit by their children and spouses, at least once every 3 months, with a minimum duration of three hours. In addition, they have the right to make phone calls.

25. Regarding the phone calls, the Administrative Instruction on Domestic Order within Correctional Institutions⁹ stipulates that the convicted person is entitled to telephone conversations with close family members and other persons. According to this instruction, the telephone conversation of a convicted person and detainee cannot be longer than 15 minutes. The NMPT has not received any complaints from detainees and convicts regarding this right.

26. In the case of detainees, Article 200 of the Criminal Procedure Code of Kosovo stipulates that detainees may receive visits "within the limits of the detention center rules", based on the permission of the pre-trial judge and under his / her supervision. Further, the Code stipulates that correspondence and other visits are subject to the decision of the pre-trial judge.

27. The Ombudsperson or his representatives may visit the detainees and correspond to them without prior notice and without the supervision of the pre-trial judge, single trial judge or presiding judge or other persons appointed by such pre-trial judge. The detainees' letters sent to the Ombudsperson Institution cannot be checked. The Ombudsperson and his / her representatives may communicate confidentially, verbally or in writing, with the detainees.

28. In the case of foreign nationals, they are given the opportunity, in writing or verbally, to contact the diplomatic mission or the relevant office of the State, as a holder of the

⁷ Mandela Rules, Article 23. European Prison Rules, Article 27.1. Standards of the European Committee on Prevention of Torture, paragraph 48, published in 2015. Pursuant to Article 37 of the Law on Execution of Penal Sanctions, convicts are entitled to at least two hours per day of strolling.

⁸ Law on Execution of Penal Sanctions, Articles 62-65.

⁹ Administrative Instruction on Domestic Order within Correctional Institutions, Article 54.

citizenship of that state.¹⁰ The NMPT has not received complaints from convicts or detainees regarding the right to contacts with the outside world.

Health care

29. The NMPT has not received complaints from detainees and convicts relating to health care. The NMPT has noted that medical services in the Peja Detention Center are provided in accordance with the detainees' requirements and needs. Within the health unit there is a regular full-time medical practitioner, seven nurses, one of whom is a chief nurse, while other six nurses work 12 hours a day in shifts. As needed, the psychologist comes from the Dubrava Correctional Center, while the psychiatrist is engaged for a shortened schedule, and according to the information, comes as needed. While dental services are also provided at the Dubrava Correctional Center.

30. Nevertheless, the infrastructure where the medical services are provided does not meet the minimum requirements; there is no natural light, no special room for patient visit or application of therapy. Hygiene is maintained by the nurses themselves.

31. Transport of prisoners to receive medical services in other health institutions outside the PDC is done by a Correctional Service vehicle.

Registers

32. The Health Unit in the PDC has all the appropriate protocols recorded. The NMPT has noted the following registers: the patient's medical file, the nursing register with shifts, the therapies, complaints or requests for a next visit to the doctor, sending of the patient for treatment outside the prison ambulatory center, of self-injuries, sexual abuse, hunger strikes, attempted suicide, solitary, death in prison.

Medical examination

33. The European Committee for the Prevention of Torture, in its report on Kosovo's visit in 2015, stressed the essential importance of medical examinations, especially in cases of newly imprisoned or detained persons, not only for the identification of infectious diseases and prevention of suicides, but also through the contribution that is made in terms of preventing torture through proper evidence of injuries.

34. The PDC has notified the NMPT team that newly received are examined within 24 hours from the moment they arrive at the Center. These examinations imply a general examination during which the inmate is being asked for any illness which, if declared, is recorded in his medical file.

Confidentiality of medical services

35. The NMPT is curious to know whether medical staff provides medical services to convicts and detainees in the PDC in the presence of correctional officers. During the visit, the NMPT found that medical services at the prison ambulatory center were provided without the presence of correctional officers, and correctional officers did not have access to the

¹⁰ Law on Execution of Penal Sanctions, Article 33, paragraph 1

prisoners' medical files. The NMPT supports such stand and practice that security officials are not present when providing medical services.¹¹

Security-related issues

36. The NMPT was notified by the directorate that all pavilions (wards) and facilities of the PDC are equipped with security cameras, which, according to the CPT, constitute one of the guarantees for protection against mistreatment (abuse).¹²

37. The NMPT, as in other reports, advises relevant authorities to create technical possibilities for longer-term storage of data recorded by security cameras, as this would allow for more effective investigation of possible claims for mistreatment (abuse) or excessive use of physical force.

Procedure for filing complaints

38. An effective complaint filing system is a fundamental safeguard against mistreatment in prisons and in detention centres. Persons accommodated in these centres should have the opportunity to file a complaint within the prison or detention center where they are accommodated and to confidently provide access to the appropriate authority.

39. Article 91 of the Law on Execution of Penal Sanctions provides in detail the procedure under which detainees and convicted persons may address a complaint or a petition to the director of a particular institution of the Kosovo Correctional Service. The procedure also includes deadlines for response from the director and the possibility of appealing to a higher authority, which in the present case is the General Directorate of Correctional Service and the Minister of Justice.¹³

40. The NMPT has noticed complaints boxes in the PDC placed by the Kosovo Correctional Service and complaints boxes placed by the Ombudsperson Institution, that serve to prisoners. Complaints boxes placed by the Ombudsperson Institution may only be opened by the staff of this institution, which provides complainants with confidentiality in filing a complaint.

41. The NMPT has not received complaints from detainees and convicts regarding the issue of filing complaints or delays to review their complaints within the legal deadline.

¹¹ European Committee for the Prevention of Torture in its report on Kosovo's visit in 2015 had remarks regarding the provision of medical services in the presence of correctional officers and recommended the termination of such practices.

¹² CPT report on the visit in Ireland in 2010, paragraph 18

¹³ Article 91, paragraph 4 of the Law on Execution of Penal Sanctions stipulates: In the filed complaint, the director of the correctional institution shall respond within a period of fifteen (15) days, while the Central Office of the Correctional Service shall respond within thirty (30) days. On the written complaint, response shall be given in writing.

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

To the Ministry of Justice:

- **The Ministry of Justice shall notify the Ombudsman about the claims of the PDC employees that this Center will be closed down.¹⁴**
- **To create adequate conditions and working space for the medical staff.**
- **The number of detainees accommodated should be in accordance with the official capacity of the PDC and to resolve as soon as possible the issue of overpopulation.**
- **Accommodation conditions, as long as this center is in use, shall be in compliance with the minimum standards provided for by the Law on Execution of Penal Sanctions; with the CPT standards and other international standards for the protection of prisoners' rights.**

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

Respectfully,
Hilmi Jashari
Ombudsperson

¹⁴ On 3 October 2018, the Ombudsperson has received a complaint from the Peja Detention Center staff, claiming that the center will be closed down and the staff will be transferred to the Dubrava Correctional Center.