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OMBUDSPERSON

REPORT WITH RECOMMENDATIONS

NATIONAL MECHANISM FOR PREVENTION OF TORTURE

from the visit

to

THE DETENTION CENTRE FOR FOREIGNERS IN VRANIDOLL

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Pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 17 of Law No. 05 / L-019 on the Ombudsperson, the Ombudsperson's National Mechanism for Prevention of Torture visited the Detention Centre for Foreigners in Vranidoll.

Prishtina, 2 May 2018

Introduction

The National Mechanism for Prevention of Torture (hereinafter "NPM") of the Ombudsperson can, under Article 17 of the Law No. 05/L-019 on the Ombudsperson, visit at any time and without prior notice, all places where people deprived of liberty are held, including therein places for foreigners deprived of liberty, and whose stay in the Republic of Kosovo contradicts applicable laws, and who are subject to forced removal from the Republic of Kosovo.

Based on this mandate, the NPM on 7 March 2018 visited the Detention Centre for Foreigners (hereinafter referred to as "DCF"). The Detention Centre for Foreigners functions within the Department of Citizenship, Asylum and Migration (DCAM) of the Ministry of Internal Affairs (MIA). According to Article 2 of Regulation (MIA) No. 03/2014 on Operation of the Detention Centre For Foreigners (hereinafter Regulation"), the foreigners who are subject to forced removal and those found in violation of public security are held at this centre, in order to verify their identity or for other reasons. The centre was opened in 2010. The capacity of this centre is 76 persons.

The purpose of this visit was to monitor the adherence of foreigners' right, who are held in DCF, as provided by the Law on Foreigners, Law on Asylum, Regulation on the Operation of the Detention Centre for Foreigners and international standards. The monitoring team consisted of a legal advisor, a physician and a psychologist.

During the visit were addressed particularly the issue of reception, informing the foreigners of their rights, treatment and accommodation, healthcare provided, genuine contacts to the outside world, DCF personnel and security personnel, treatment and adequate preparation of those working with this category of people, disciplinary measures that can be imposed against foreigners in DCF and the mode of implementation of such measures, the right to appeal against such measures and other aspects.

During the visit to DCF, the Centre's personnel provided NPM its full cooperation. The team was granted, without delays, access to all areas of the Centre. Furthermore, all information necessary to perform its duties were provided to the team, and they were allowed to interview the detained persons without the presence of security officials and other DCF officials.

Based on the findings of the visit, the Ombudsperson's NPM recommended the competent authorities to undertake actions within their competences in order to respect the rights of foreigners in DCF in accordance with applicable laws and international standards, particularly the standards set by the European Committee for the Prevention of Torture published in March 2017

Admission procedures

1. Article 7 of the Regulation determines that reception in the Centre is done based on the order for detention of the foreigner to the centre issued by the Directorate for Migration and Foreigners (DMF). When handing a foreigner to the Centre, the DCF must submit: the order for detention to the Centre, the order for Forced Removal, as well as the order for Voluntary Removal, if issued, report of the police official including also the risk assessment, verification for documents and sequestered belongings, as well as personal belongings. Furthermore, according to the Regulation, the Centre confirms the admission of the foreigner to the Centre through the admission letter¹. Based on files of foreigners present, the **NPM has noticed that the authorities have respected the above-mentioned criteria set out in the Regulation.**

Safeguards against ill-treatment

2. NPM has noted that standards determined by the European Committee for Prevention of Torture (hereinafter “CPT”) have expressively ascertained that detained irregular immigrants should, from the very outset of their deprivation of liberty, enjoy three basic rights, in the same way as other categories of detained persons. These rights are: to have access to a lawyer, to have access to a medical doctor, and to be able to inform a relative or third party of one’s choice about the detention measure.²
3. Furthermore, NPM has noted that CPT, on the report regarding the visit to Netherland in 2007, paragraph 36, expressively determines:
*“In the CPT’s view, immigration detainees (whether asylum-seekers or not) should be entitled, as from the outset of their deprivation of liberty, to inform a person of their choice of their situation and to have access to a lawyer and to a medical doctor. Further, immigration detainees should be expressly informed, without delay and in a language they understand, of their rights and the procedure applicable to them. **To this end, all immigration detainees should be systematically provided with a document setting out this information; the document should be available in the languages most commonly spoken by those concerned and, if necessary, the services of an interpreter should be made available. The persons concerned should attest that they have been informed of their rights, in a language they can understand**”.*³
4. Based on the provisions of the Law No. 04/L-219 on the Foreigners of the Republic of Kosovo, a detainee accommodated at the Centre shall be notified in written form, in one of the official languages and in English, for his/her detainment at the detention centre, which shall contain the reasons for the detention, the detention period, the right to provide him/her with legal protection and the right to contact his/her relatives.⁴

¹ Article 7 of the Regulation on the Detention Centre for Foreigners.

² European Committee for the Prevention of Torture, 19th General Report of the European Committee for the Prevention of Torture, paragraph 81, at: <http://hudoc.cpt.coe.int/eng#%7B%22CPTSectionID%22:%7B%22p-standards-inf-2009-27-part-en-3%22%7D%7D>, (14.3.2018)

³ See: <http://hudoc.cpt.coe.int/eng#%7B%22CPTSectionID%22:%7B%22p-nld-20070607-en-14%22%7D%7D>, (14.3.2018).

⁴ Law 04 / L-219 on Foreigners, Article 108.

5. With regard to the foreigner's right to contact the consulate or the embassy of the state, the NPM noted that the Law on Foreigners has determined the right of the foreigner to inform the diplomatic or consular representative for his/her detention.⁵ Furthermore, CPT in the 19th General Report considers the right of the foreigner to contact the consulate of his country as a fundamental right.⁶
6. According to the Regulation and the Law on Foreigners, the foreigner accommodated at the centre has the following rights: information concerning the right of appeal for the detention in the Centre, the right to free legal aid, the right to an interpreter in his/her language or in a language he/she understands, the right to communicate with relevant local authorities and international and non-governmental organizations.⁷
7. NPM observed that there are security cameras operating in all corridors of the Centre which are continuously operational. According to the notice of the officials, the security camera video recordings are retained up to two months. In the report on the visit to Ireland in 2010, the CPT has considered the presence of CCTV cameras as a safeguard against physical ill-treatment in Centres where persons deprived of liberty are accommodated.⁸
8. Regarding the right of being informed in one's language or in a language that detained foreigners understand and the right to the services of an interpreter, the Centre notified the NPM that the MIA has a list of interpreters that provide interpretation services in other foreign languages in addition to English language.
9. **NPM during the visit has noticed that foreigners in the DCF are informed of their rights via leaflets in most widely recognized languages, but DCF does not possess a document that contains all these rights in writing and in which the foreigners confirm to have been informed of their rights in a language they understand.**

Ill-treatment

10. During the NPM visits there were 5 foreign detained persons present at the centre. NPM has checked their files and conducted interviews at the rooms where detainees were accommodated without the presence of DCF officials and security personnel. NPM has not received any complaint by the interviewed persons of physical ill-treatment, excessive use of force or violent behaviour by DCF officials and security officials, which would be a breach of human dignity.

The incident of 19th of January 2018

11. While checking records and files of persons accommodated at the centre, the NPM observed that on 19 January 2018, one of the detained foreigners had broken the window with his fist and consequently hurt his hand.

⁵ Law 04 / L-219 on Foreigners, Article 114, paragraph 3.

⁶ For more see at: <http://hudoc.cpt.coe.int/eng#%7B%22CPTSectionID%22:%5B%22p-standards-inf-2009-27-part-en-3%22%7D>, (14.3.2018)

⁷ Article 9 of the Regulation (MIA) no. 03/2014 on the Operation of the Detention Centre for Foreigners, Standards of the European Committee for the Prevention of Torture, at: <https://rm.coe.int/16806fbf12>, (13.3.2018)

⁸ CPT's Report on the visit to Ireland in 2010, paragraph 18, published in 2011, at: <https://rm.coe.int/1680696c98>, (15.3.2018).

12. NPM interviewed the person in question, and received no complaint regarding the treatment by the personnel of the DCF and the security personnel. His file verified that the person received medical care in due time.
13. NPM on 8th of March 2018, through electronic mail, has requested the Department of Citizenship, Asylum and Migration, to grant NPM access to security cameras, in order to check the recordings of 19 January 2018, which relate to the concerned incident.
14. During the meeting with DCAM, NPM was told that the Department of Information Technology will be consulted regarding access to security cameras, and if there is the possibility of saving such video recordings for longer periods. **NPM will monitor this issue in the future.**

Free legal aid

15. According to the DCF officials, UNHCR provides free legal aid only to detained foreigners who are potential asylum seekers, but not to others. Furthermore, the applicable regulation grants the Ombudsperson and other relevant international organization access at all times. Based on the documents scrutinised, NPM has noted that domestic non-government organizations also have access to the DCF.
16. During the meeting with the DCAM on 23rd of March 20178, NPM was informed that the State Agency for Free legal Aid is another option for free legal aid. However, according to the responsible officer of the DCF, this agency has not visited DCF lately. On 26 of March 2018, NPM communicated with the NGO Civil Rights Program Kosovo (CRPK) who stated that foreigners at the DCF are provided with free legal aid only if the foreign detainee is a potential candidate for requesting political asylum, otherwise no assistance is provided.
17. On 28 March 2018, NMPT contacted the Agency for Free Legal Aid to verify if the agency has been involved in the provision of legal aid to foreign detainees who are subject to forced return. According to the officials of the agency, the Agency under the Law on the Agency for Free Legal Aid can provide free legal aid to foreigners with a temporary residence permit in the Republic of Kosovo, but so far there have been no cases of providing legal aid to foreign detainees.
18. **NPM has noticed that Article 9, paragraph 1.2 of the Regulation foresees the right to free legal aid for foreigners at the detention centre for foreigners.**
19. Furthermore, according to this Regulation, upon admission of the foreigner in the Centre, the officer of the Centre informs the foreigner on the rules of the DCF. Centre shall ensure all the information leaflets in foreign languages on the rights and duties of the foreigner in the Centre. NPM has noted that the Centre has leaflets in different languages such as: Arabian, French, Turkish, and English with the purpose of informing foreigners of their **rights**.

Material Conditions

20. During the visit at the Centre, NPM visited two facilities where foreigners are held, including all areas such as: interview rooms, solitary confinement rooms, sleeping rooms, family rooms, adult activities rooms - equipped with a TV, playing cards, chess-board, and there was a library in a corner with a small number of books, children activity room that was equipped

with toys and designed by standards, room for religious activities, the kitchen that was fully refurbished, and a laundry room sufficiently supplied for the capacities of the Centre. All rooms provided dignified accommodation, heating and sufficient natural lightening. **NPM considered that the centre fulfilled all conditions for accommodation of foreigners.**

21. During the visit, the NPM was informed that the DCF was not being supplied with water because of technical defects that emerged due to the flooding. NPM was informed that the centre faced a lack of water supply for almost 5 days. NPM noted that some areas of the DCF smelled, and humidity could be noted in a part of the hall, because of the damage caused to the pipes. According to the director of the centre, they have tried to manage the situation with those little water reserves available, which were insufficient to cover the needs of both detained persons and personnel.
22. Following the visit, the NPM has contacted the Regional Water Supply Company to be informed regarding the situation. The Directorate of the Water Supply Company assured he will undertake immediate action to avoid technical problems and supply the DFC regularly with water. On 9 March 2018, the Head of DFC informed the NPM that the issue of water has been solved. **NPM highly praises the immediate engagement of the Regional Water Supply Company, as the competent authority in this case, to supply the DFC with water.**

Regime

23. Article 24, paragraph 1 of the Regulation stipulates that each detained foreigner in the centre has the right to walk at least two (2) hours a day in the outdoors environments of the centre. For health purposes, the Head of the Centre may extend the time of airing. Furthermore, Article 23, paragraph 3 determines that during the airing time cultural and sports activities can be developed by detained foreigners
24. NPM has observed that the centre has a small sport field which is not equipped with associated elements where foreigners would be able to do concrete sports activities, such as basketball, football and other sports. **NPMT, similar to the Recommendation Report published after the visit to the DCF in 2016, encourages relevant authorities to step up their attempts of providing opportunities for concrete sports activities and other activities for foreigners in this centre.**
25. The CPT, in the standards determined in March 2017 regarding the detention of foreigners because of migration, emphasises the importance of a regime that contains more activities. **According to CPT, the longer the period for which persons are held, the more developed should be the activities which are offered to them.**⁹
26. During the meeting with the Director of DCAM, the NPM was informed that tendering procedures for supply with accompanying equipment have been opened, so that detained foreigners at the DFC are provided with more activities.

⁹ For more see on: <https://rm.coe.int/16806fbf12>, (14.3.2018)

Personnel of the Detention Centre for Foreigners

27. The personnel of the Centre are comprised by the Head of the centre, two officials for admission and registration of foreigners, and the security personnel. During the visit, NPM was informed that the security personnel is trained to perform the task of physical protection of the facilities and property, but they have not been trained to work with persons deprived of liberty, who under the Law on Foreigners are subject to forced return. **In this regard, the NPM on 23rd of March 2018 conducted an official meeting with the Director of the Department for Citizenship, Asylum and Migration, whereby he was informed that the security personnel have not attended adequate training to work with this category of detained foreigners.**
28. With regard to personnel required in such centres, NPM has observed that CPT's standards published on March 2017 on detention centre for foreigners specifically emphasise that the supervising personnel in these centres should be selected with due diligence and must be trained appropriately.
29. In addition to having developed skills in the field of inter-personal communication, the concerned personnel should also be familiarised with the different cultures of detainees and at least some of them should have relevant language skills. Furthermore, they should distinguish possible symptoms of reacting to stress which appear among detained persons and take appropriate measures.
30. Furthermore, CPT emphasises ethos of an immigration detention setting should not be carceral, which means that staff working within immigration detention facilities should **not** be equipped with batons, handcuffs or *pepper spray* and recommended that such equipment are not kept openly for the foreigners to see¹⁰
31. According to DFC officials, the security personnel in DFC have, within their equipment, handcuffs and rubber batons. During the visit, NPM has observed that the security personnel carries the equipment available in such a way that they cannot be visibly seen by detained foreigners

Healthcare

32. Standards set forth by CPT regarding the rights of the foreign detainee determine the right to receive services from a physician as a fundamental right and as one of the safeguards against ill-treatment.
33. Article 10 of Regulation (medical examination) expressly determines that professional medical personnel perform general medical examination for foreigners after their placement in the centre. **The Regulation further determines that a tuberculosis test should also be conducted, performing also an X-ray for lungs to all foreigners placed in the centre who are over 5 years old.**

34. According to the responsible officer of DFC, such examinations of foreigners are conducted in accordance with the Regulation, except cases that are immediately deported. Additionally, preliminary examinations are also conducted by the Kosovo Police, before bringing foreigners at the DFC.
35. **However, upon checking all foreigners' files at the DFC, NPM did not find any facts proving actions in accordance with Article 10 of the Regulation.**
36. Regarding foreigners with limited mental and/or physical disabilities who manifest symptoms of mental disorder, the Regulation determines that they shall be provided psychological treatment and professional medical counselling. According to Regulation, these screenings may be also offered by relevant Non-Governmental Organisations based on the request from the foreigner.
37. NPMT was informed that medical services are administered to foreigners in this centre by the Family Medical Centre in Prishtina and the University Clinical Centre.
38. Additionally, on 23rd of March 2018, the NPM had an official meeting with the Director of the Department for Citizenship, Asylum and Migration, who informed that the Non-Governmental Organization, which used to provide free-of-charge psychological services, has stopped the provisioning of such services.

Importance of medical screening at DFC upon admission

39. CPT¹¹ emphasises that any new admission to the Detention Centre, should benefit from the option of a comprehensive medical examination (including infectious diseases) by a physician or a qualified nurse, which reports to a qualified physician as soon as possible, following the admission of foreign persons.
40. Furthermore, the CPT in its Country Reports and General Reports has constantly emphasised the crucial importance of medical screenings particularly in newly-arrived foreigners, not only for detecting transmissible diseases and preventing suicides, but also for contributing to the prevention of ill-treatment through the proper recording of injuries.¹²
41. NPMT during its last visit on 7th of March 2018 was informed that newly-arriving foreigners in this Centre are not subject to general medical screenings, except if they require for one, although that is expressly foreseen under Article 10 of the Regulation. In cases when a foreign person during his or her stay in the Centre needs a doctor, an officer of the Centre calls the Emergency to provide the healthcare services. **In cases when a foreign person is subjected to medical therapy, the same is administered by non-competent officers (security personnel and other officers), as there is no medical staff within the Centre.**

¹⁰ European Committee for Prevention of Torture, Immigration Detainees, standards published in 2017, at: <https://rm.coe.int/16806fbf12>, (15.3.2018)

¹¹ CPT, Migrants Detained [CPT / Inf (2017) 3], paragraph 9, on: <https://rm.coe.int/16806fbf12> (13.3.2018)

¹² European Committee for the Prevention of Torture, report on the visit to Kosovo in 2015, published in 2016, paragraph 62, in: <https://rm.coe.int/16806a1efc>, (6.3.2018). European Committee for the Prevention of Torture, 26th overall report, paragraph 72, on: <https://rm.coe.int/168070d0c8>, (6.3.2018).

42. NPM has observed that all data related to medical services provided to the foreigner are kept in his/her personal file. The officers of the Centre have access to his/her personal file. **CPT¹³ emphasises that medical confidentiality must be respected in the same manner as in the community, particularly medical records should not be accessible to non-medical personnel, and should rather be kept locked by the nurse or the doctor.**
43. Therefore, the NPM considers that the DFC should have at least one qualified nurse who will conduct the initial medical examination of the newly admitted detainee, receive necessary requests for a visit from the doctor, administer therapy, oversee medical records, and supervise the general hygiene conditions. Foreign detained persons should also be provided with psychological assistance and psychiatric care if needed.

Disciplinary measures and means of restraint

44. Regulation determines that in cases when the foreigner's behaviour constitutes a danger to themselves, for other foreigners in the centre, personnel of the centre, third persons, security and order and also for centre's material goods, the following measures could be imposed: the use of physical force which should be lawful and proportionate. This measure is the last resort to be used and is used only when preliminary measures fail to succeed. **In addition, Regulation determines that within these measures handcuffing or feet-cuffing could be applied.¹⁴**
45. According to Regulation, disciplinary measures which can be imposed on a foreigner are: verbal or written warning, obligation for maintaining and cleaning the centre, deprivation of the right to free activity, recreation, TV, internet, sports or cultural activities in duration of five (5) days, and isolation up to 48 hours.
46. During the control of registers and files of persons accommodated at the centre, NMP has observed that on 19th of January 2018, one of the detained foreigners, while trying to break the window, has suffered an injury. **For the disciplinary violation of destruction or purposeful damage of movable and immovable property of the Centre, the Head of the Centre has imposed the disciplinary measure of isolation for 48 hours.¹⁵** NMP has observed that the Regulation does not contain any provisions that oblige DFC to provide a copy of the decision on the disciplinary measure of isolation to the foreigner, but rather only stipulates that the decision is attached to files of the foreigner.
47. In the report for the visit to Ukraine 2009, CPT has **recommended to the Ukrainian authorities to provide foreign nationals subject to a segregation measure with a copy of the relevant decision and information on the possibilities to appeal the measure to an outside authority**, and guarantee foreigners subjected to such measure regular access to showers and review the regime of foreigners subjected to such disciplinary measure. According to CPT, steps must be taken in ensuring access to yard, which must be equipped

¹³ CPT, Migrants due to Migration [CPT / Inf (2017) 3], see link <http://hudoc.cpt.coe.int/eng/?i=p-standards-inf-2009-27-part-en-5>, (13.3.2018)

¹⁴ Article 46 of the Regulation on the Detention Centre for Foreigners.

¹⁵ Article 47 of the Regulation (MIA) no. 03/2014 on the Operation of Detention Centre for Foreigners

adequately equipped for the purpose of airing of at least one hour per day, and provide access to reading materials¹⁶

48. **NPM considers that the Regulation should be subject to amendment in accordance with the recommendations of the European Committee on the visit to Ukraine, Bulgaria and France, respectively to be expressly emphasized in the Regulation that the foreigner to whom a disciplinary measure is imposed shall be served with a copy of the decision of the head of DCF or authorized official to impose such a measure in the language which he/she understands or in English language.**¹⁷
49. CPT¹⁸ emphasizes that it is in the interest of foreign detained persons and personnel to have the house rules written in all premises of the Centre and copies to be made available in an appropriate language. The house rule should address a wide range of issues, rights and duties related to the daily routine. The house rules should also include disciplinary procedures and ensure to the persons detained the right to be heard in relation to a violation allegedly committed and have the opportunity to appeal to another independent authority against any sanction imposed. Without such rules, there is a risk that the unofficial (and uncontrolled) disciplinary system will be developed. **The NPM during the visit noted that, in addition to information brochures, there was no specific document on house rules and knowledge of disciplinary procedures.**

Complaint procedures

50. Effective system of filing complaints is a basic safeguard against ill-treatment in places where persons deprived of their liberty are held. Persons accommodated in these centres should have the possibility to file a complaint within the Centre and have access to the appropriate authority with confidentiality.
51. Article 19 of the Regulation stipulates that the foreigners have the right to appeal to the head of the Centre in regard to their conditions of admission in the Centre and personnel behaviour. The complaint will be submitted to DCAM within 7 days.¹⁹
52. NPM has noted that there is a complaint box in the Centre at the disposal of foreigners placed by the Centre itself.

Contact with the outside world

53. CPT considers that foreign detainees should have every opportunity to be in touch with the outside world (including opportunities to make phone calls and receive visits) and their

¹⁶ See at: <http://hudoc.cpt.coe.int/eng#%7B%22CPTSectionID%22:%5B%22p-ukr-20090909-en-17%22%5D%7D>, (14.3.2018).

¹⁷ For more details, see the 19th CPT General Report, paragraph 88, at:<http://hudoc.cpt.coe.int/eng#%7B%22CPTSectionID%22:%5B%22p-standards-inf-2009-27-part-en-4%22%5D%7D>, CPT report on visit to Ukraine in 2009, paragraph 71, on: <http://hudoc.cpt.coe.int/eng#%7B%22CPTSectionID%22:%5B%22p-ukr-20090909-en-17%22%5D%7D>, CPT report on visit to Bulgaria, in 2008, paragraph 44, on: <http://hudoc.cpt.coe.int/eng#%7B%22CPTSectionID%22:%5B%22p-bgr-20081215-en-12%22%5D%7D>, CPT report on visit to France in 2006, paragraph 76, on: <http://hudoc.cpt.coe.int/eng#%7B%22CPTSectionID%22:%5B%22p-fra-20060927-fr-14%22%5D%7D>, (14.3.2018)

¹⁸ [CPT/Inf(2017)3] ; see on: <http://hudoc.cpt.coe.int/eng?i=p-standards-inf-2009-27-part-en-4>, (13.3.2018)

¹⁹ Article 19 paragraphs 2 and 3 of the Regulation on the Detention Centre for Foreigners.

freedom of movement within the detention centre should be limited as little as possible.²⁰ The Regulation stipulates that the foreigner in this Centre has the right to hold correspondence, receive packages and other items.

54. Also, the Regulation stipulates that the foreigner has the right to make phone calls as needed in duration of 5 minutes starting from 09:00 till 16:00. According to the Regulation, the foreigners are also enabled phone calls from outside. The foreigners accommodated in this Centre are also allowed to have visits. **During the visit, NPM has not received any complaints in regards to the right of contacts with the outside world.**

Therefore, based on the findings during the visit, NPM recommends to the Ministry of Internal Affairs that:

- **DCF must have at least a nurse available who would carry out the medical checks of the newly accommodated detainees, distribute the therapy and take care of the medical files of the foreigners within the DCF, as well as, a psychologist as stipulated by the Regulation.**
- **The centre should maintain protocols as follows: Protocols for loneliness, bodily injury, self-harm, attempted suicide, sexual abuse and deaths.**
- **Security personnel should undergo adequate training to work with this category.**
- **For all their rights and obligations, foreigners shall be notified through a special document in the language they understand and in which they prove that they have understood their rights and obligations.**
- **The Regulation shall contain a special provision which provides that a foreigner to whom a disciplinary measure is imposed shall be served with a copy of the decision in a language which he / she understands.**
- **Detained foreigners shall be provided with the free legal aid in accordance with the Regulation.**

Best regards,

|Hilmi Jashari
Ombudsman

²⁰ European Committee for the Prevention of Torture, see on: <https://rm.coe.int/16806fbf12>, (14.3.2018).