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## **OMBUDSPERSON INSTITUTION**

### **REPORT WITH RECOMMENDATIONS OF THE NATIONAL PREVENTIVE MECHANISM**

#### **ON THE VISIT TO THE DETENTION CENTRE IN GJILAN**

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

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

**Mr. Milazim Gjocaj,  
Director of Health Department in Prisons**

**Mr. Rasim Selmani, acting General Director  
Kosovo Correctional Service**

**Mr. Shefik Sylejmani, Director  
Detention Centre in Gjilan**

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 visited Detention Centre in Gjilan

**Prishtinë, 27 March 2018**

## **DATES OF THE VISIT AND THE COMPOSITION OF THE MONITORING TEAM**

1. Pursuant to Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism (hereinafter “NPM”) of the Ombudsperson, on 22 February 2018, visited the Detention Center in Gjilan (hereinafter “DCG”). The monitoring team was composed of two legal advisors (one of them Deputy Ombudsperson), a medical doctor and a psychologist.

## **BRIEF DESCRIPTION OF THE INSTITUTION**

2. DCG has become functional in 2016. Its official capacity is 300 inmates but due to some technical circumstances, lack of supply and of correctional staff, its current operational capacity is 80. Until final inauguration, opening of this center has faced with some technical problems as per water supply. In this center are accommodated sentenced and remand prisoners. During the visit, NPM noticed that **a part of the street leading to the DCG, precisely the street to the main entrance, has not been asphalted yet, and in bad weather conditions it may cause serious troubles in development of daily activities of this institution.**

## **COOPERATION WITH NPM DURING THE VISIT**

3. During the NPMT visit to the DCG, the staff of the Correctional Service and the personnel of Prison Health Department provided the monitoring team with full cooperation. The team without any delay had access to all places of DCG. The team was provided with all necessary information to discharge their duty and was able to talk to sentenced and remand prisoners without the presence of correctional officers or other personnel. **After the visit, NPM has requested from the Prison Health Department (PHD) and the Directory of DCG comments and additional information, which were immediately provided.**

## **Ill-Treatment**

4. NPM during the visits to the DCG interviewed a considerable number of sentenced and remand prisoners and did not receive any complaints of ill-treatment or excessive use of physical force by correctional officers. Also, no complaints were received as regards conduct of the correctional officials which would comprise a treatment that is opposite to the respect of human dignity of the prisoners. An interactive and friendly communication has been noticed among staff working in this center and the inmates. It is worth mentioning that NPM received no allegations on corruption from sentenced and remand prisoners.

## **Material conditions**

### **Accommodation**

5. On the day of NPM visit, there were 49 remand and 25 sentenced prisoners accommodated at DCG. During the visit the NPM noted that sentenced and remand prisoners were divided in compliance with the Law on Execution of Penal Sanctions and other relevant international instruments.<sup>1</sup> The NPM has visited a number of cells and verified whether the accommodation space is in line with the standards set forth by the European Committee for the Prevention of Torture.<sup>2</sup> Based on this standard, the space for sentenced and remand

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<sup>1</sup>Law on Execution of Penal Sanctions, Article 33 paragraph 7. Mandela Rule, Rule No. 11, point b). European Prison Rules, Rule 18.8. Pact for civil and Political Rights, Article 10.2, point b).

<sup>2</sup> European Committee on Torture Prevention, Living space for prisoners in prison establishments, see at: <https://rm.coe.int/16806cc449> (27.2.2018)

prisoners in cells should be at least 4m<sup>2</sup> per prisoner in a multiple-occupancy cell, excluding the annex of toilets, and 6m<sup>2</sup> in single- occupancy cell, plus sanitary facility.

6. Also, the Law on Execution of Penal Sanctions foresees that each prisoner must have 4m<sup>2</sup> in a multiple-occupancy cell.<sup>3</sup> During the visit NPM noticed that the cells accommodating sentenced and remand prisoners, as per the size, are beyond the minimum standard and are in compliance with standards set forth by the European Committee on Torture Prevention.
7. Cells where the detainees are accommodated are sufficiently lightened; there is no humidity, heating and cleanness are on satisfactory level. Each cell accommodates one or two prisoners. Each cell is equipped with TV set. During the visit, NPM noticed that **DCG is not overcrowded at all**. However, the NPM noticed that DCG possesses an extensive unused space. **NPM considers that the competent authorities should undertake concrete steps in order to create technical and administrative circumstances for utilization of this space.**
8. NPM was informed that sentenced and remand prisoners may take shower twice per week which complies with the European Prison Rules.<sup>4</sup> NPM received no complaints from sentenced and remand prisoners related to this right.
9. **As regards access of persons with disabilities in the premises of DCG, NPM has noticed that in the location of DCG, where the medical services are provided, the elevator is out of use.**

#### **Relations between the prisoners**

10. According to the management, only two incidents between prisoners were recorded last year. Otherwise, the NPM noticed a very positive climate in relations between the prisoners. It is worth pointing out that in the location where the detainees were placed, there were also some detainees of Serbian ethnicity, who did not exposed any remark or complaint as regards treatment and relations between prisoners accommodated in DCG. NPM has noted that documents and responses to the requests, submitted by detainees of Serbian ethnicity, are delivered by DCG administration in Serbian language as well.

#### **Kitchen**

11. During the visit conducted to the kitchen, the NPM noticed engagement of 4 cooks and 4-5 detainees occupied in in other work in the kitchen. Those engaged in the work in the kitchen, including detainees, are equipped with adequate sanitary cards which are valid until Aril 2018. NPM found that the storage facility for placement of long-term food is in a good condition and is equipped with conditions needed for food storage and the place is dry without moisture. According to kitchen staff, there is a lack of vegetables due to tendering procedures as well as a lack of diet menus for people suffering from diabetes. **NPMT reiterates, as it has done several times in previous reports, the liability of responsible authorities to ensure ongoing supply with dietary food according to doctor's recommendations.**<sup>5</sup>

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<sup>3</sup> Law No. 05/L0-129, Article 3 of the Law on Amending and Supplementing the Law No. 04/I-149 on the Execution of penal Sanctions.

<sup>4</sup> European Prison Rules, paragraph 19.4.

<sup>5</sup> Law on Execution of Penal Sanctions, Article 40.2 expressively stipulates: "*The medical suitability of food and water, the application of dietary scales and the preparation of meals shall be regularly monitored by the medical service in each correctional facility*". Mandela Rules, Rule No. 22.

12. NPM has noticed that the kitchen establishment lacks sufficient light and the appliances are in a bad condition. NPM did not receive any complaint as per the quality and the quantity of meals served to the detainees. The level of cleanliness was on satisfactory level and warm water all the time.

## Regime

13. DCG provides 3 regimes for the prisoners: basic, standard and advanced regime. At the moment 16 prisoners are involved at work. Sentenced and remand prisoners can have two hours of daily outdoor exercise per day, which is in compliance with the Law on Execution of Penal Sanctions and other relevant international instruments.<sup>6</sup>

14. In general, prisoners are involved in work in cleaning, kitchen, laundry and other specific temporary work. **Otherwise, for NPM is very concerning the fact that there are no recreational, cultural, sport activities or programs for rehabilitation and resocialization of prisoners. The NPM has noticed also that sports fields are not equipped with the necessary amenities for development of sports and recreational activities.** Law on Execution of Penal Sanctions and other international instruments, relevant for protection of prisoners' rights, determine obligations of the authorities to provide proper activities, as well as rehabilitation programs for the detainees<sup>7</sup>.

15. United Nation Sub-Committee on Torture Prevention, in its Report on the visit in Maldives, has clearly pointed out the importance of activities for the inmates: *“From the SPT’s viewpoint, lack of activities can have serious consequences for the health and well-being of persons deprived of their liberty. Work and education are also important elements in preparing the prisoners for life outside prison. In addition, programs and activities for prisoners play an important role in ensuring safety of prisoners and staff, and are thus key elements in prevention of ill-treatment. The SPT recommends that the authorities make more concerted efforts to provide programs and activities, including work and education, for all prisoners”*.<sup>8</sup> DCG has a library where different books in Albanian and Serbian language can be found, but according to the management, all books that the library contains date from before the war time, and no new books have been brought to it.

## Health care

### Staff and premises

16. Health services in the DCG, as well as in all prisons and other detention centers) are responsibilities of the Ministry of Health - Prison Health Department. **The areas visited where medical services are provided, in general, are of a good standard. The**

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<sup>6</sup> Mandela Rules, Rule No 23. European Prison Rules, Article 27.1. Standards of European Committee on Torture Prevention, paragraph 48, published in 2015. According to Article 37 of the Law on Execution of Penal Sanctions, convicted persons are entitled to at least two hours of walking.

<sup>7</sup> Article 88.1 of the Law on Execution of Penal Sanctions: *“Cultural, recreational and sport activities, as well as other activities aimed at the development of the convicted person’s personality, shall be organized inside correctional facilities with the assistance of public and private entities interested in reintegrating convicted persons in the community”*. Mandela Rules, Rule 104. European Committee on Torture Prevention, 11<sup>th</sup> General Report, paragraph 32, published in 2000: *“The activities provided should be as diverse as possible (education, sport, work of vocational value, etc.)*. European Committee on Torture Prevention, extract from 3<sup>rd</sup> General Report, paragraph 43 [CPT/Inf (93) 12]. European Prison Rules, 25.1: *“The regime offered for all convicted persons should provide a balanced program of rehabilitation activities”*.

<sup>8</sup> United Nation Sub-Committee on Torture Prevention, Report on the visit to Maldives, CAT/OP/MDV/1, paragraph 223, 26 February 2009, at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fMDV%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fMDV%2f1&Lang=en), (5.2.2018)

**available staff providing health services is at a satisfactory level. During the visit, NPM received no complaints from prisoners as regards health treatment in the DCG.**

17. Based on the data provided by the chief nurse, a physician (a pulmonologist) is employed in DCG health care unit, who works part-time and starts the work at 2 pm, while is available 24 hours on call, the psychologist is engaged full-time, 1 part-time psychiatrist (4 hours, twice a week), but without fixed working hours. The health care unit at the DCG does not provide dental services, but for such services the inmates are sent to the Family Medicine Center. The composition of the medical staff is as follows: one chief nurse who works full-time and other 5 nurses.
18. On the day when we visited the DCG only the chief nurse was present. NPM is concerned as on the visit day at the DCG was present at the health care unit only the chief nurse. One cannot expect that only one nurse provides appropriate medical services for the number of inmates present in the DCG. This health unit does not possess an auto-ambulance, but according to the head nurse, health unit has a good cooperation with local health institutions which assist as per this issue in case of a need.
19. The Health care unit has a lab which has been adapted for that purpose and it does not meet the minimum laboratory conditions. It operates once per week, but in case of a need it can be functional more frequently, particularly when there is a suspicion of transmitted diseases. **During the visit, the NPM found two expired reagents for lab examination.** According to the chief nurse, only particular lab examinations are conducted in this lab, even though she was unable to specify which lab examinations are conducted there.
20. The health unit possesses the following medical instruments: ECG, Defibrillator, stethoscope, sphygmomanometer, pulse oximeter, small oxygen cylinders, sterilizer, small sterilization vessels, three beds in one room for all examinations conducted while one is used in case of ampoule therapy treatment. One room is used by chief nurse who claimed that due to internet unavailability, she is unable to keep records electronically. Documents are only in hard copies. **NPMT did not notice that sterilizing strips are available for the health unit in DCG.**
21. According to the head nurse, currently there are no prisoners with transmitted diseases (hepatitis B, C, HIV, TB, syphilis, skin infections). According to the psychiatrist's records and prison management, a number of prisoners who are addicted to drugs are accommodated in DCG, while during January / February 2018 period, 14 prisoners, drug abusers have been recorded, while 19 inmates are under psychiatric medications (due to mental disorders), which can be managed, according to the head nurse.
22. On 7 March 2018, PHD submitted to the NPM explanations and required comments stating that for the time being the doctor is engaged only part time and that the working hours will be revised with the full functionalization of DCG capacities. PHD has informed the NPM that the dental services at DCG can be provided twice a week but the problem is the lack of an adequate place for placement of the dental chair. According to PHD, activities in adjustment of this issue have been initiated by the competent ministry but have not yet been completed.

## **Records**

23. NPM has found that health unit is in a possession of the following protocols: Protocol of self-injuries, protocol of corporal injuries, protocol of attempt suicides, protocol of hunger strike, protocol of sexual abuse, and protocol on deaths in prison. Psychologist, psychiatrist and physician possess own special records of the work with patients.

## **The importance of medical screening**

24. European Committee on Torture Prevention (CPT) in its reports on the visits to States and general reports, continuously has emphasized the essential importance that the medical check-ups have, especially in case of imprisoned or newly-admitted remand prisoners, not only for identification of contagious diseases and prevention of suicide committing, but also through the contribution which is given as per torture prevention through proper injury recording.<sup>9</sup>
25. Based on the Standard Operation Procedure and the Law on Execution of Penal Sanctions, newly-admitted prisoners undergo medical examination within 24 hours from the time of admission to the DCG, whereby the medical file is open and the health problems and injuries or occasional injuries endured prior to admission in the DCG are recorded.

## **Confidentiality of medical services**

26. NPM was interested to know whether medical personnel in DCG provide medical services to the prisoners in the presence of correctional officers. During the visit NPM concluded that medical services in the prison infirmary are administered without the presence of correctional officers and that medical staff has no access to the medical files of the inmates. NPMT encourages such an attitude and practice of non-presence of security officers in the course of medical service provision, the fact which complies with the recommendations of the European Committee on Torture Prevention<sup>10</sup>.

## **Relations between the health care unit and prison administration**

27. The prison management informed the NPM that contacts between the directorate and the health care unit at the DCG are not at desirable level and there is a lack of coordination of activities, which could directly affect prisoners' rights, which are guaranteed by local laws and relevant international conventions. **As per this issue, DCG and PHD have delivered their comments.**
28. The NPM considers that good relations and effective coordination of actions between PHD staff and DCG authorities is for the benefit for all parties, and particularly will impact on effective observance and protection of the rights of persons deprived of their liberty, which are guaranteed by laws at effect and international conventions. **The NPM will continue to monitor this issue.**

## **Staff of DCG**

29. Based on the information obtained from the management, the staff of DCG is comprised of 16 civil personnel and 68 correctional officials. NPM during the visit has noticed that working conditions of the DCG are on a satisfactory level.
30. There is a psychologist and social worker working in DCG. Mandela's Rules<sup>11</sup> emphasize that in order to support the prison staff in their endeavors, sufficient number of specialists such as psychiatrists, psychologists, social workers, and teachers should be hired.

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<sup>9</sup> European Committee on Torture Prevention, Report on the visit conducted in Kosovo in 2015, published in 2016, paragraph 62, at: <https://rm.coe.int/16806a1efc>, (6.3.2018). European Committee on Torture Prevention, 26 General Report, paragraph 72, at: <https://rm.coe.int/168070d0c8>, (6.3.2018).

<sup>10</sup> European Committee on Torture Prevention, in Kosovo Report after the visit conducted in Kosovo in 2015 disclosed its remarks regarding provision of medical services in the presence of correctional officials and recommended termination of such practices.

<sup>11</sup> Mandela Rules, Rule, 74, 81 (*Recruitments*).

31. A special location is provided for the psychologist where individual sessions with the inmates are being held. The psychologist conducts the initial interview with each prisoner or newly-admitted prisoner and provides a general brief overview of the psychological condition of the inmate.
32. During the visit, NPM was notified that at the moment the center lacks various office materials, computers, furniture, printers, cartridge and some of this equipment is worn-out. **NPMT finds that the Kosovo Correctional Service (KCS) ought to undertake all necessary actions so that DCG is supplied with all working materials necessary for the work.**

### **Disciplinary sanctions**

33. Based on the applicable legislation, the disciplinary sanctions that can be imposed to inmates are: reprimand, deprivation of an assigned privilege, an order to make restitution and solitary confinement<sup>12</sup>. In the case of remand prisoners, the following punishment may be imposed: restriction or prohibition of visits or correspondence, apart contact with the defense counsel, the Ombudsperson and diplomatic missions. The NPM has found that DCG keeps records of disciplinary measures imposed, indicating data regarding the imposed measure, reason, time of imposing and termination.
34. NPM was informed by the management that prior to imposing to the detainee the measure of solitary confinement, doctor's opinion is requested regarding health condition of the given prisoner. In the absence of the doctor of health care unit in the DCG, NPM could not verify exactly whether it is about the request from the doctor to ascertain whether the prisoner is fit to undergo disciplinary measure of solitary confinement or only doctor's opinion is requested about health condition of the prisoner.
35. On 7 March 2018, PHD informed NPM as follows: *"the doctor visits the patient in the solitary confinement only after the decision has been brought, in conformity with Standard Operation Procedure (SOP) and never in other circumstances"*.
36. The NPM reiterates that eventual participation of the doctor in decision-making, who is in fact the doctor of remand or sentenced prisoner, would impair doctor-patient relationship, unless this measure is undertaken for medical purposes.<sup>13</sup>
37. Also, the NPM exposes its concern due the fact that applicable legislation<sup>14</sup> foresees that prior to detainee's placement in solitary confinement, the director of Correctional Institution requests doctor's opinion in writing to ascertain that detainee's mental and physical health is in the level that can cope with the measure of solitary confinement. **NPM requests from relevant authorities to amend current legislation in force in compliance with CPT recommendations in Kosovo visit Report, in conformity with 21<sup>st</sup> general report of CPT and the Recommendation of the Committee of Ministers of Council of Europe Rec (2006) 2 for Review of European Prisons Rules, through which a provision which required written opinion from the doctor if the prisoner could be subject to this measure, is repealed.**

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<sup>12</sup> Paragraphs from 101 up to 113 of the Law on Execution of Penal Sanctions.

<sup>13</sup> European Committee on Torture Prevention, in its Report on the visit conducted in Kosovo in 2015 requested from relevant authorities to terminate the practice of requesting from the doctor confirmation that the remand detainee or convicted person is able to cope with the measure and to amend the legislation at force in accordance with this recommendation.

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

## Contacts with the outside world

38. Legislation at force<sup>15</sup>, in case of sentenced prisoners stipulates that convicted prisoners are entitled to unlimited right of correspondence (subject to certain exceptions), are permitted to a one-month visit, which lasts one hour, as well as are entitled to receive visits from their children and spouses at least once in 3 months with a minimum duration of three hours. Additionally, they have the right to make phone calls.
39. As per telephone calls, Administrative Instruction for the House Rules in Correctional Institutions<sup>16</sup> determines that the sentenced prisoner has the right on telephone calls with close family members as well as other persons. According to this Administrative Direction, telephone calls of sentenced and remand prisoners cannot be longer than 15 (fifteen) minutes. **NPM did not receive any complaint from the sentenced and remand prisoners regarding this right.**
40. In the case of on remand prisoners, Article 200 of the Criminal Procedure Code of Kosovo stipulates that remand prisoners can receive visits “*within the limits of the rules of the detention facility*” based on permission of the pre-trial judge and under his supervision. Further, the Code determines that other correspondence and visits are subject to pre-trial judge’s decision. **NPM did not receive any complaint from the pre-detainees regarding this right.**
41. The Ombudsperson or his representatives may visit detainees on remand and may correspond with them without prior notification and without the supervision of the pre-trial judge, single trial judge or presiding trial judge or other persons appointed by such judge. Letters from detainees on remand to the Ombudsperson cannot be checked. The Ombudsperson and his representatives can communicate confidentially with on remand detainees orally and in writing.
42. In case of foreign nationals, they are provided with opportunity to contact the Diplomatic Mission or the relevant office of the State of which he/she is a citizen verbally or in writing.<sup>17</sup> During the visit, NPM interviewed a citizen of Republic of Macedonia, who had no complaints regarding the enjoyment of this right as well as other rights of remand prisoners.
43. Additionally, the NPM has visited premises dedicated for family visits of remand and sentenced prisoners, as well as premises where they meet their attorneys. Visits for the sentenced prisoner are of an open type, equipped with chairs and tables, while in case of remand prisoners, visits are of a close type and physical contact is forbidden.

## Security related issues

44. NPM was notified by the management that all wings are subject to CCTV surveillance, which according to the NPM is one of the safeguards against ill-treatment.<sup>18</sup>
45. However, according to the directory and verification conducted by the NPMT, external environments are currently not under camera surveillance, respectively they are not installed at all. More ever, the DCG Director expressed concern over the shortage of supplies with regard to security-related materials in the DCG.

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<sup>15</sup> Law on Execution of Penal Sanctions, Articles 62-65.

<sup>16</sup> Administrative Instruction on House Rules in Correctional Institutions, Article 54.

<sup>17</sup> Law on Execution of Penal Sanctions, Article 33 paragraph 1.

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



## Complaint procedures

46. Effective system of complaint submission is the basic safeguard against ill-treatment in prisons and in detention centers. People placed in these centers ought to be entitled with the opportunity to file complaints within the prison or the detention center where they are accommodated and enable their confidential access to responsible authority.
47. Article 91 of the Law on Execution of Penal Sanctions specifies in details the procedure under which pre-detainees and sentenced persons may address a complaint or a request to the director of a particular institution of the Kosovo Correctional Service. The procedure includes also deadlines for reply by the Director and the possibility for the complaint to be addressed to higher level authority, which in the current case is the General Directorate of the Correctional Service and the Minister of Justice.<sup>19</sup>
48. NPM has noticed that at DCG are placed complaints by the Ombudsperson Institution, which can be opened solely by the staff of this Institution, thus providing the prisoners with the opportunity to submit their complaint confidentially.
49. On 7 March 2018, the directorate of DCG informed NPM that the complaint boxes of the Kosovo Correctional Centre were placed in the DCG.
50. The NPM has also noted that on inmates' disposal, in case of complaints related to provision of medical service, is placed a box by the PHD which has been located in the premises of Health Unit and which can be opened only by the official, appointed by PHD.
51. **NPMT did not receive complaints from sentenced and remand prisoners related to the issue of complaint submission or delays to review their complaints within legal time limit.**

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

### Ministry of Justice:

- **To provide information to the Ombudsperson regarding arrangements for making use of unoccupied space in the DCG;**
- **To inform the Ombudsperson regarding the delays in finding appropriate place for placement of dental chair;**
- **To provide cultural and sports activities as well as rehabilitation and resocialization programs for sentenced and remand prisoners.**
- **The part of street which is not asphalted and which can cause serious problems during the winter and raining periods for accomplishing DCG activities in compliance with the LECS, to be asphalted as soon as possible.**
- **To supply DCG with necessary working materials.**

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

- **To install security cameras for surveilling the external part of the Wards and DCG yard.**
- **To put in function the elevator in the part where the medical services are provided.**

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.

Sincerely,

Hilmi Jashari  
Ombudsperson