



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

REPORT WITH RECOMMENDATIONS
OF
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE
CONCERNING
THE VISIT TO THE CORRECTIONAL CENTER IN SMREKONICË

For:

Mr. Abelard Tahiri, Minister
Ministry of Justice

Mr. Uran Ismaili, Minister
Ministry of Health

Mr. Nehat Thaqi, General Director
Kosovo Correctional Service

Mr. Milazim Gjocaj, Director
Prison Health Department

Mr. Xhevdet Maqastena, Director
Correctional Centre in Smrekonicë

Prishtinë, May 16, 2019

Introduction

Pursuant to Article 135, paragraph 3 of Constitution of the Republic of Kosovo and Article 17 of Law 05/L-019 on Ombudsperson, Ombudsperson's National Preventive Mechanism against Torture, on 6 February 2019 visited the Detention Centre in Smrekonicë.

National Preventive Mechanism of Torture (henceforth "NPMT"), based on Article 17 of the Law No. 05/L-019 on Ombudsperson, can conduct regular and unannounced visits to all places where people deprived of their liberty are held, including police detention, remand detention facilities, prisons, places where detained foreigners are located as well as psychiatric and social care institutions.

Based on this mandate, NPMT on 6 February 2019 visited Correctional Centre in Smrekonicë (henceforward "CCS"). CCS is an open type correction facility where convicts are sentenced up to 2 years of imprisonment and are subject to open regime. The CCS's official capacity is 200, while at the time of the visit conducted there were 135 convicts accommodated there.

Purpose of the visit

The purpose of this visit was general assessment of respect of rights of incarcerated persons, of healthcare services provided to those imprisoned as well as accommodation conditions in compliance with local standards as well as those international for protection of persons deprived of liberty.

Composition of the monitoring team

1. The monitoring team comprised of two Legal Advisors on Prevention of Torture, a psychologist- advisor, a doctor-advisor, and a social worker- advisor.

Cooperation with the NPMT during the visit

2. During the visit made by NPMT to the Detention Centre in Smrekonicë, the personnel of Correctional Service and staff of Prison's Health Department provided the monitoring team with full cooperation and the team without any delay had access to all places intended to visit. The team was provided with all necessary information to accomplish its duty and the team has been enabled to conduct conversation with convicted and detained persons without the presence of correctional officers as well as healthcare personnel.

Ill-treatment

3. During the visit conducted to the CCS, NPMT interviewed a considerable number of convicted persons and received no complaints from detainees and convicts concerning ill-treatment and excessive use of force by the correctional officers of this Centre. NPMT has observed that there is a positive climate of relations and good interactive communication of convicted and correctional officers.

Material conditions

4. Law No. 04/L-149 on Execution of Penal Sanctions explicitly determines that a convicted person has a right to accommodation which corresponds to contemporary hygienic

conditions and local climatic circumstances.¹ Further the Law stipulates: “*The premises in which a convicted person lives and works must be of sufficient space for each convicted person to have at a minimum eight (8) cubic meters of space, when is possible and nine (9) cubic meters for the convicted in joint cells and four (4) cubic meters for single cells, and an adequate amount of natural and artificial lighting for work and reading, heating and ventilation*”.² Furthermore this Law determines that the premises may not be damp and they must have adequate sanitary installations and other devices necessary for personal hygiene.³

5. NPMT has observed that cells in which the convicts reside, in terms of size and natural and artificial lighting are in accordance with the standards established by the Committee for the Prevention of Torture⁴ (hereinafter CPT) and the Law on Execution of Criminal Sanctions⁵. Apart in one case, where the NPMT found that 7 people were located in one cell while the size of the cell was 25m². The size of the cell and the number of persons placed in it, are not in compliance with the Criminal Sanctions Execution Law as well as CPT Standards. The NPMT considers that the competent authorities should undertake action to avoid these omissions.
6. While as far as showers and toilets on Wing D and C is concerned, NPMT noted that they were not in satisfactory level. Further the cleanliness within showers and toilets in this part was not at the desirable level. The NPMT considers that the competent authorities should take action to avoid these failings.
7. On the second floor of the building, NPMT observed that there is an urgent need for renovation of the roof, from which leaks the water from rain and due to it, some of cells’ ceiling have dump on them.

Nutrition

8. The Law on Execution of Penal Sanctions determines the right of a convicted person on food suitable for him or her to maintain good health and strength in three (3) meals each day, which must be varied and nutritious. The food provided to a convicted person shall take into account his or her age and health, the nature of his or her work, the season and climatic conditions and, as far as possible, his or her religious and cultural requirements.⁶
9. Additionally, the Law stipulates that a convicted person who works in heavier duties, a sick person, a pregnant woman or a woman who has borne a child has the right to food ordered by a physician.⁷ A physician or other expert shall check and advise the director of

¹ Law No. 04/L-149 on Execution of Penal Sanctions, Article 36, paragraph 1.

² Law No. 04/L-149 on Execution of Penal Sanctions, Article 36, paragraph 2.

³ Law No. 04/L-149 on Execution of Penal Sanctions, Article 36, paragraph 3.

⁴ European Committee for the Prevention of Torture, Living space per prisoner in prison establishment, for more info visit: <https://rm.coe.int/16806cc449> .

⁵ Law No. 04/L-149 on Execution of Penal Sanctions, Article 36, paragraph 2.

⁶ Law No. 04/L-149 on Execution of Penal Sanctions, Article 39, paragraph. 1.

⁷ Law No. 04/L-149 on Execution of Penal Sanctions, Article 39 paragraph. 2.

the correctional facility on the quality of meals before delivery and shall record his or her findings in an appropriate book.⁸

10. During the visit, the NPMT noted that hygienic conditions in the kitchen were at satisfactory level. The kitchen staff is provided with sanitary booklets. In addition to the staff, the prisoners engaged in work in the kitchen are also equipped with sanitary booklets. The NPMT did not receive complaints from prisoners regarding the quantity and quality of food served.

Regime

11. According to the management, 75 convicts are generally engaged at work. In general, the convicts are engaged in cleaning, in kitchen and maintaining of the certain premises, whereas during the summer, they are more significantly engaged on plant growing work since there is a greenhouse in this center where vegetables are grown. In addition to this, within prison perimeter, there is also areas with agricultural land, where different cultures are cultivated. According to the directorate, one of the prisoners is engaged with a work in a company outside the CCS and after the end of working hours he returns to the CCS.
12. At prisoners' disposal is well-equipped fitness room, a library equipped with a large number of books, tables, chairs as well as there is a room, where prisoners can perform religious rituals. In addition, prisoners' rooms are equipped with cable TV. Prisoners can move freely within the perimeter of CCS throughout the day. CCS courtyard offers a very nice view and is very well arranged.
13. However, it is regrettable that the available premises for conducting vocational trainings cannot yet be used because of the lack of responsible persons who would oversee the work of the convicts from a professional point of view. The NPMT considers that competent authorities should undertake measures to make these premises functional, which would enable convicts engagement in genuine activities.

Health care

14. Article 43 of the Law on Execution of Penal Sanctions determines that a convicted person who cannot be offered appropriate medical treatment in the correctional facility shall be sent to a prison hospital, psychiatric institution or another health care institution.⁹

Medical services

15. Medical staff in CCS is comprised of: one full time, regular practitioner working from 8:00 to 16:00, as well as on call 24 hours. Within medical services there are four (4) male nurses, one head male nurse working from 08:00 to 16:00, while three work on shifts. It is worth mentioning here that night's shifts hardly can be covered by the health care staff. The psychologist works full-time, from 08:00 up to 16:00. The dentist is available once per week. Other specialist health services are regulated so that they are provided by consultants of various specialties, as needed in Family Medical Center or secondary and

⁸ Law No. 04/L-149 on Execution of Penal Sanctions, Article 39 par. 3.

⁹ Law No. 04/L-149 on Execution of Penal Sanctions, Article 43, paragraph 2.

tertiary services. The pharmacy is well supplied with medications, consuming and hygienic materials.

Prisoners' complaints regarding medical services

16. During the visit the NPMT received a number of complaints from convicts regarding delays in providing medical services, lack of medical services during night in case they are needed as well as complaints alleging that the psychiatrist is rarely present at CCS to provide necessary medical care services. Such allegations were admitted also by the management, which exposed concern about the lack of greater presence of the psychiatrist, with reasoning that there are prisoners in the CCS who need psychiatric services. Through this report, the NPMT requires from Prison Health Department (henceforth referred to as PHD) to provide with comments on these allegations.

Importance of medical examinations of newly-arrived prisoners

17. NPMT repeatedly points out the importance of medical screening of the newly-arrived prisoners, in institutions which constitute access points to the prison system. Such screening is crucial, especially to prevent suicides and spread of transmissible diseases (such as tuberculosis, hepatitis B/C, HIV).

18. According to CPT, prison health-care services can also make a significant contribution to the prevention of ill-treatment during the period immediately prior to imprisonment, namely when persons are in the custody of law enforcement agencies, through the systematic and timely recording of injuries and, when appropriate, the provision of information to the relevant authorities.¹⁰

19. Law No. 04/L-149 on Execution of Penal Sanctions¹¹ and Standard Operating Procedure¹² of the Ministry of Health determines the liability that the newly –arrived convicted person is subject to medical examination within 24 hours, from the moment he/she has been admitted.

20. Such obligations are determined also by international acts for protection of rights of convicted persons such as: Mandela Rules¹³, European Prison Rules¹⁴ and United Nations Rules for the Protection of Juveniles Deprived of Liberty.¹⁵

21. NPMT team has been notified by the management of the Correctional Center that newly – arrived prisoners undergo medical screening within 24 hours, from the moment they

¹⁰ European Committee for the Prevention of Torture, 26 General Report, paragraph 72, at: <https://rm.coe.int/168070d0c8>.

¹¹ Law No. 04/L-149 on Execution of Penal Sanctions, Article 31.

¹² Standard Operating Procedure, point 1. See at: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Veprimit-n%C3%AB-DShB.pdf>.

¹³ Mandela Rules, Rule 34. Visit at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

¹⁴ Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, point 42.1, see at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804c221d>.

¹⁵ United Nations Rules for the Protection of Juveniles Deprived of Liberty, point 27, at: https://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf.

arrive in the CCS. These imply a general check-up, according to Prisons Health Department's Standard Operating Procedure. This claim was verified by the monitoring team through checking of medical files and interviews with prisoners.

Confidentiality of medical services

22. As per the confidentiality of medical services, NPMT, based on interviews conducted with the detainees as well as medical staff, finds that these services are provided under terms which respect the confidentiality, actually are provided without the presence of correctional officers, apart in cases when such presence is required by the doctor. While only medical staff is entitled to have access into medical file of the convicted person. Confidentiality of medical services is foreseen with Standard Operating Procedure¹⁶ adopted by the Ministry of Health, Law on Execution of Penal Sanctions¹⁷, standards CPT,¹⁸ as well as international acts such as Mandela Rules¹⁹ as well as United Nations Rules for the Protection of Juveniles Deprived of Liberty.²⁰

Disciplinary measures

23. According to the applicable legislation, prisoners may be subjected to the following disciplinary sanctions: reprimand, deprivation of an assigned privilege, an order to make restitution, and solitary confinement.²¹ While remand prisoners may be subjected to the following sanctions: of prohibition or restriction on visits or correspondence, except contacts with defense counsel, the Ombudsperson and diplomatic missions. During the visit, the NPMT was informed by CCS management that measure of solitary confinement is not being applied in CCS.

Contacts with outside world

24. NPMT is of the opinion that contacts with outside world, with the main emphases visits done by family members or any other close persons are of crucial importance in context of social rehabilitation of the convicted person.

25. The applicable legislation²² in the case of prisoners stipulates that a convicted person shall have unlimited right of correspondence (subject to specific exceptions), to receive a visit at least once each month for a minimum of one (1) hour, and at least one visit by his or her child, spouses one in three months a minimum duration of three hours. According to CCS Directorate the convicted persons are entitled to have up to four visits per month.

26. As per telephone calls, Article 60 of the Law on Execution of Penal Sanctions stipulates that the convicted person has the right to make telephone calls. In order to facilitate

¹⁶ Standard Operating Procedure, point 11. See at: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Veprimit-n%C3%AB-DShB.pdf>.

¹⁷ Law No. 04/L-149 on Execution of Penal Sanctions, Article 49.

¹⁸ CPT Standards, published at 2018, paragraphs 50 and 51. For more info see at: <https://rm.coe.int/16806ce943>.

¹⁹ Mandela Rules, Rule 26, point 2, at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

²⁰ United Nations Rules for the Protection of Juveniles Deprived of Liberty, point A, Rule 19, at: https://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf.

²¹ Paragraphs from 101 up to 113 of the Law No. 04/L-149 on Execution of Penal Sanctions.

²² Law No. 04/L-149 on Execution of Penal Sanctions, Articles 62-65.

contacts with the family, the Kosovo Correctional Service (KCS) in 2018 has prepared the Standard Operating Procedure for virtual communication in the correctional facilities. Based on this document, strives will be undertaken to enable virtual communications through SKYPE application at the CCS and Correctional Educational Center in Lipjan, to prisoners of certain categories. The NPMT welcomes this idea, as well as requests from KCS to be notified about further steps related to the implementation of this communication program.

27. The NPMT visited also the facility of family visits, which provides satisfactory conditions for receiving family visits, and provides the prisoner with the opportunity to have a direct contact (no obstacles between them) with the family member or the person that is visiting him/her.

Admission procedures

28. All newly-arrived prisoners at the CCS are required to undergo an admission procedure which lasts between seven and 28 days. During this procedure, the convicted person is kept admission Ward and after this period, is sent to appropriate Ward, dependently from the conviction or correctional -educational measure imposed. NPMT has observed that the CCS keeps complete information for each detainee or prisoner, in which every single detail for the convicted person is registered.

Procedure for filing complaints

29. CPT standards emphasize the importance of an effective complaint filing system and consider it as a fundamental safeguard against ill-treatment in prisons and detention centers.
30. Article 91 of the Law on Execution of Penal Sanctions provides for a detailed procedure by which detainees and prisoners may address complaints or requests to the Director of a specific Kosovo Correctional Service establishment. The procedure includes deadlines for responses by the Director, and the possibility to refer a complaint under certain circumstances to a higher authority, in particular the General Directory of the Correctional Service and the Minister of Justice.²³
31. NPMT observed that there are complaint boxes available for the accommodated persons in DCL placed by the Kosovo Correctional Service and the complaint boxes placed by Ombudsperson Institution. Complaint boxes placed by Ombudsperson Institution may be opened only by the personnel of this institution, which provides confidentiality for complainants in filing complaints.
32. Additionally, those accommodated in the CCS can also file a complaint with the Ombudsperson through a free-of-charge telephone line (telephone line information is located in the box and complaints), regular post, which according to the Law on

²³Article 91, paragraph 4 of the Law No. 04/L-149 on Execution of Penal Sanctions, stipulates: The director of the correctional facility will respond in the appeal filed in a time period of fifteen (15) days, whereas the Head Office of the Correctional Service in a time period of thirty (30) days. In a written appeal a response in the written form will be issued..

Execution of Penal Sanctions is not subject to control, if addressed to the Kosovo Ombudsperson, as well as through their family members.

33. The NPMT has observed that the CCS management provides adequate opportunities for lodging complaints and requests, reviews them and delivers responses to convicts in this Center, in compliance with the Law No. 04/L-149 on Execution of Penal Sanctions. NPMT received no complaints from detainees as per their right to submit complaints.

Complaints against Release on Parole Panel

34. The NPMT has received a considerable number of complaints from convicts in the CCS against the Release on Parole Panel. Complaints relate to not informing about Panel's sessions and not submitting the Ruling related to the request for conditional release. Apart in CCS, the NPMT received such complaints in all other Correctional Centers. The NPMT, through this Report, requires from the Release on Parole Panel to provide comments regarding such prisoners' complaints.

Based on findings and outcomes achieved during the visit, in compliance with 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 repair the roof of the Ward where convicts are accommodated.**
- **To functionalize facilities for conducting vocational trainings in the CCS.**

In compliance with 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 regarding this issue.

Warmly submitted,

Hilmi Jashari

Ombudsperson