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**REPORT WITH RECOMMENDATIONS
OF THE
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE
CONCERNING
THE VISIT TO THE PRE-DETENTION CENTRE IN MITROVICË**

For:

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INTRODUCTION

In accordance with Article 135, paragraph 3 of the Constitution of Republic of Kosovo and Article 17 of the Law no.05/L-019 on Ombudsperson, Ombudsperson's National Preventive Mechanism of Torture visited Pre-detention Centre in Mitrovicë

Ombudsperson's 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 foreigners deprived of liberty are located, whose stay in the Republic of Kosovo collide with the Laws at force and are subject of forcible return from the Republic of Kosovo, as well as psychiatric and social care institutions.

Based on this mandate, NPMT on 12 of March 2019 visited the Pre-detention Center in Mitrovicë (hereinafter "PDCM").

The purpose of this visit is to assess the respect of rights of detained persons accommodated in this PDCM which are guaranteed by the Constitution of Republic of Kosovo, applicable Laws in the Republic of Kosovo as well as international standards on protection of human rights of persons deprived of liberty.

PDCM accommodates pre-detainees as well as convicts, sentenced less than 20 years of imprisonment and of different nationalities, who are placed in two floors.¹ According to PDCM management, the capacity of this center is 77 inmates. In the course of the visit conducted by NPMT, 10 pre-detained and 37 convicted persons were accommodated in this Centre.

Admissions procedures, notification of prisoners with their rights, treatment, accommodation conditions, regime, health care, relations between prisoners, contacts with the outside world, procedures of complaint submission as well as disciplinary measures that can be imposed under the Law on Execution of Penal Sanctions (LEPS) and the manner of their application were addressed in the course of the visit conducted.

Composition of the monitoring team

1. The monitoring team was comprised of the following:

- The deputy of the Ombudsperson
- The Head of the NPMT
- Senior Legal Advisor for Prevention of Torture,
- Legal Advisor for Prevention of Torture,
- A doctor-advisor,
- A psychologist- advisor,

¹ Data obtained from official web page of Kosovo Correctional Office, at : <https://shkk.rks-gov.net/institucionet-single/2236>.

- A social worker- advisor

Cooperation with NPMT during the visit

2. During the visit made by NPMT to the Pre-detention Centre in Mitrovicë, the staff of Correctional Centre and Prison's Health Department (henceforward PHD) provided the monitoring team with full cooperation. The team without any delay had access to all places intended to visit. The team was provided with all necessary information to discharge their duty and in conformity with the Law on Ombudsperson, as well as used photo apparatus without being impeded by Center's authorities.

Ill-treatment

3. During the visit conducted to the PDCM, no complaint from detainees and convicts concerning ill-treatment and excessive use of force by the correctional officers of this Centre has been admitted by the NPMT. During the visit, NPMT observed that the level of interactive communication between convicts and correctional officers in on satisfactory level.

Complaint against body search application manner

4. However, NPMT notes that the Ombudsperson admitted complaint of a convicted person I.M. on March 21, 2019 who complained against deeds of correctional officer in the course of body search exercised over him on March 20, 2019. According to complainant's allegations, the correctional officer requested from him to remove all his cloths in the bathroom, in the presence of 4-5 correctional officers and other two incarcerated persons, accommodated in the same cell. Prisoner claimed that he was very embarrassed and humiliated by the strip search conducted over him and when he was requested to sit, cough as well as to move on right and left. ²
5. NPMT deems that all such searches should be conducted exclusively in accordance with Article 35 of the LEPS, paragraph 1 which stipulates explicitly: *"No search of a convicted person shall be conducted in a manner which undermines his or her dignity. The intrusiveness of a search of a convicted person shall be proportionate to its purpose as set forth in the present Article"*.
6. Further, Article 35, paragraph 6 of the LEPS determines that a search by visual check of the convicted person's naked body shall be conducted by two (2) correctional staff of the same gender as the convicted person and in a private area out of sight of other persons, shall never be conducted in the presence of persons of different gender from the convicted person; and shall not involve the undressing of the upper and lower parts of the body of the convicted person at the same time.³
7. Apart LEPS, international legal acts for prisoners' rights also stipulate obligations of responsive authorities that during such searches to have due respect for the dignity of imprisoned person.⁴

² The case initiated for investigations at the Ombudsperson Institution, C. No. 233/2019.

³ Law on Execution of Penal Sanctions, paragraphs 6.1, 6.2, and 6.3.

⁴ European Prison Rules, Rule 15.4. Mandela Rules, Rules 50, 51, 52.

Accommodation conditions

8. LEPS explicitly stipulates that a convicted person has a right to accommodation which corresponds to contemporary hygienic conditions and local climatic circumstances.⁵ Further the Law determines that: *“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.”*⁶ Furthermore this Law stipulates that the premises may not be damp and they must have adequate sanitary installations and other devices necessary for personal hygiene.⁷
9. The NPMT notes that accommodation conditions in PDCM in general are in line with the LEPS, international standards for the protection of rights of prisoners and the European Committee for the Prevention of Torture (hereinafter referred to as the CPT).
10. Notwithstanding, in one part of the PDCM, in several cells the damaged floor was noticed. The NPMT considers that relevant authorities should take actions to repair these defects.

Nutrition

11. 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. Additionally, the Law stipulates the liability that the convicted person is provided with the food ordered by the physician.⁸ Further, LEPS stipulates that a convicted person must have drinking water continuously available.⁹
12. Mandela Rules, an important international legal act on the rights of prisoners, determine obligations of authorities to ensure appropriate nutrition to prisoners in order to maintain their health as well as drinking water all the time.¹⁰ In this direction, European Prison Rules also determine the liabilities of authorities to provide the prisoners with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work. The food shall be prepared and served hygienically, while clean drinking water shall be available to prisoners at all times.¹¹ NPMT did not receive any complaint from the prisoners related to these rights.

⁵ Law No.04/L-149 on Execution of Penal Sanctions, Article 36 paragraph 1.

⁶ Law No. 05/L-129 on Amendment and Supplementing of the Law No. 04/L-149 on execution of Penal Sanctions, Article 3, paragraph 2.

⁷ Law No. 04/L-149 on Execution of Penal Sanctions, Article 36 paragraph 3.

⁸ Law on Execution of Penal Sanctions, Article 39, paragraphs 1 and 2.

⁹ Law on Execution of Penal Sanctions, Article 40.

¹⁰ Mandela Rules, Rule 22.

¹¹ European Prison Rules, Rules 22.1 and 22.6.

Regime

13. As per regime is concerned, in PDCM approximately 13 convicts are engaged at work. Within the scope of PDCM, 5 workplaces are functional in which convicts can be engaged at work and different trainings. The convicts are entitled to at least 2 hours walking per day.¹² The library, walking path and the gym are at disposal of prisoners.
14. Apart involvement in the workplace as well as cleaning the kitchen, during this period in PDCM a training has been organized related to the control of aggressiveness, in which 19 convicts were engaged. This training was supported by NGO -HELP. NPMT has observed that the PDCM is well equipped with premises for organizing of different courses. While in the case of remand detainees, their engagement at work as well as other activities are subject of permit provided by the competent court.

Health care

15. Law No. 04/L-149 on Execution of Penal Sanctions, in Article 43 determines that a convicted person has the right to health care free of charge. 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.¹³
16. Medical staff of the PDCM comprises of 4 regular male nurses who work on shifts, the general practitioner who works full-time as well as is on disposal on call, while the psychiatrist works part-time.
17. During the visit NPMT was informed that at the time of visit, no psychologist was working. Previously, a psychologist was hired from an NGO but currently this NGO does not perform activities in the PDCM. Regarding this situation, NPMT after the visit contacted Head of PHD which informed the NPMT that recruitment procedures for the psychologist are now over and that the psychologist will commence working at PDCM from the 1st of July. NPMT welcomes this development in PDCM.
18. As per the infrastructure, the Health Unit has a facility where medical examinations, interventions, as well as dental treatments are carried out. The NPMT considers that this space is not adequate for the provision of medical services and does not protect the confidentiality of medical services. The health unit possesses ECG, oxygen cylinder, defibrillator, an arterial blood pressure monitor, consumable material and shock-therapy.
19. Other medical services are provided by nearest Family Medicine as well as regional hospitals. Apart this, the health unit owns all relevant medical protocols. NPMT did not receive any complaint regarding the respect of the right to appropriate health care.

Importance of medical examinations of newly-arrived prisoners

20. CPT as well as other international legal acts repeatedly point out the importance of medical screening of the newly-arrived prisoners, specifically in institutions which constitute access points to the prison system. Such screening is crucial, especially to

¹² According to Article 37 of the Law on Execution of Penal Sanctions, convicts are entitled to at least 2 hours walking per day.

¹³ Law No. 04/L-149 on Execution of Penal Sanctions, Article 43, paragraph 2.

prevent suicides and spread of transmissible diseases (such as tuberculosis, hepatitis B/C, HIV).

21. 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.¹⁴
22. Law No. 04/L-149 on Execution of Penal Sanctions¹⁵ and Standard Operating Procedure¹⁶ of the PHD determine the liability that the newly –arrived convicted person is subject to medical examination within 24 hours, from the moment he/she has been admitted.
23. Such obligations are determined also by international acts for protection of rights of convicted persons such as: Mandela Rules¹⁷, European Prison Rules¹⁸ and United Nations Rules for the Protection of Juveniles Deprived of Liberty.¹⁹
24. Based on allegations of detainees as well as relevant medical documents, the newly – arrived detained persons are subject to medical examination within 24 hours, from the moment of arriving in the PDCM.

Confidentiality of medical services

25. Confidentiality of medical services is foreseen by¹ Standard Operating Procedure²⁰ adopted by the Ministry of Health, the Law on Execution of Penal Sanctions²¹, CPT Standards,²² as well as with international acts such as: Mandela Rules²³ and United Nations Rules for the Protection of Juveniles Deprived of Liberty.²⁴
26. Moreover, the CPT standards also stipulate that all medical examinations of prisoners must be carried out so that they are not seen and heard by correctional officers, except in cases where the doctor asks for such a thing.

¹⁴ European Committee for the Prevention of Torture, 26 General Report, paragraph 72, at: <https://rm.coe.int/168070d0c8>.

¹⁵ Law No. 04/L-149 on Execution of Penal Sanctions, Article 31.

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

¹⁷ Mandela Rules, Rule 34. See at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

¹⁸ 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>.

¹⁹ United Nations Rules for the Protection of Juveniles Deprived of Liberty, point 27, at: https://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf.

²⁰ Standard Operating Procedure, point: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standard-te-Veprimit-n%C3%AB-DShB.pdf>.

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

²² CPT Standards, published in 2018, paragraphs 50 and 51. For more info visit: <https://rm.coe.int/16806ce943>.

²³ Mandela Rules, Rule 26, point 2, at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

²⁴ 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.

27. Additionally, Article 25 paragraph 3 of Administrative Instruction concerning House Rules in Correctional Institutions determines explicitly: *“The doctor makes the medical visit in terms of confidentiality and in professional ethical norms”*.
28. Based on information provided by health service staff and interviews with prisoners, health services are generally provided without the presence of correctional officers.

Other issues

29. During the visit in PDCM, the NPMT received concerns of social workers (two social workers engaged at PDCM) related to official documents, which should be handed over to persons deprived of their liberty who are of two ethnic groups, since they receive documents in one language and their official translation without a professional translator is difficult.
30. The NPMT considers that the competent authorities should have in regard the legal obligation that these services are provided in the official languages of the country as defined by the Constitution and the relevant legislation that regulates this issue.

Disciplinary measures

31. 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.²⁵ While remand prisoners may be subjected to the following sanctions: prohibition or restriction on visits or correspondence, except contacts with defense counsel, the Ombudsperson and diplomatic missions. During the visit to the PDCM we did not encounter any incarcerated person to whom the disciplinary measure of seclusion is imposed.
32. NPMT was notified that medical service is excluded from deciding upon the ability of the pre-detained person or of the convicted person to face the disciplinary measure of seclusion. NPMT considers that the medical staff is precisely aware of its role in this aspect. Participation of a doctor on decision making process, who is actually a doctor of a pre-detained or convicted person, will undermine doctor-patient relation, apart in case this measure is undertaken for medical reasons.²⁶
33. NPMT in its previous Reports exposed its concern related to the fact that the legislation at effect ²⁷ foresees that, before imposing the order for solitary confinement; the Director of the correctional institution should receive a written opinion of the doctor, which proves that the convicted person is in healthy physical and psychical condition. The NPMT salutes removing of this provision from the draft of the Law on Execution of Penal Sanctions which is expected to be voted in the Assembly of Republic of Kosovo. The

²⁵ Paragraphs from 101 up to 113 of the Law on Execution of Penal Sanctions.

²⁶ European Committee for the Prevention of Torture in the Report for the Visit conducted to Kosovo in 2015, has requested from the relevant authorities to break the practice of requesting from the doctor the proof that the detainee or convict is able to cope with the measure imposed.

²⁷ Article 107 of the Law on Execution of Penal Sanctions and Article 76 of Administrative Instruction on House Rules in the Correctional Institutions.

NPMT will continue to follow the situation as per review of the draft of the given Law in the Assembly.

Contacts with outside world

34. Legislation at effect ²⁸, on cases of convicted person stipulates that a convicted person has an unrestricted right to correspondence (subject to specific exclusions) 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. Apart this, they are entitle to make telephone calls as well.
35. As per telephone calls, Administrative Instruction on House Rules in the Correctional Institutions²⁹ determines that convicted persons may place phone calls to close family members and other persons. According to this Instruction convicted person's or detainee's phone call may not last be more than fifteen (15) minutes.
36. The Convicted persons on basic regime shall be entitled to one phone call a week lasting fifteen (15) minutes, while the convicted persons on advanced regime shall be entitled to two phone calls a week within a week fifteen (15) minute).
37. On the case of detainees on remand, Article 200 of Kosovo Criminal Procedure Code determines that the detainees on remand can receive visits "*within the borders of pre-detention center rules*" the permission of the pre-trial judge and under his/her supervision. Further, the Code stipulates that the correspondence and other visits are subject to decision of the pre-trial judge. Based on interviews with the remand detainees it derives that they are entitled to two visits per month based on Court's permission as well as one additional visit from the management based on request submitted by the remand detained person in certain circumstances.
38. The Ombudsperson and his/her representatives can conduct visits to remand detainees as well as maintain correspondence with them without prior notification as well as supervision of the pre-trial judge, a single trial judge or presiding judge or other persons appointed by the judge. Letters of remand detained persons sent to the Ombudsperson cannot be read. The Ombudsperson and his representatives may communicate verbally or in writing confidentially with remand detainees. Similarly, the detainees can also address the Ombudsperson's NPMT through the telephone.
39. In the case of foreigners, they are provided with the opportunity to contact a representative of the liaison office or diplomatic mission of his or her State of nationality in writing or by telephone.³⁰ NPMT did not receive any complaint as per respect of above mentioned rights.

Facilities where visitor are admitted

40. During the visit, NPMT has visited also facilities where family visits are conducted in the PDCM. Conditions in these facilities are at satisfying level and there are no obstacles that

²⁸ Law No. 04/L-149 on Execution of Penal Sanctions, Articles 62-65.

²⁹ Administrative Instruction on House Rules in the Correctional Institutions, Article 54.

³⁰ Law No. 04/L-149 on Execution of Penal Sanctions, Article 33 paragraph 1.

might hinder the direct contact between family members and the detainees. Furthermore, the room where free visits perform is in good condition, including the toilet as well as other relevant equipment.

Incidents between prisoners

41. According to the management, during this year, incidents between prisoners were rare and not of serious nature. The NPMT noted that these incidents were recorded in the relevant administrative and medical forms.

Procedure of complaint filing

42. Effective system of complaint filing is a basic guarantee against the ill-treatment in prison and pre-detention centers. Persons accommodated in these centers should have the opportunity to file complaints within the prison or detention center where they are located and that access to relevant authorities is done in confidential manner.
43. Article 91 of the Law on Execution of Penal Sanctions determines in details the procedure according to which the remand detainees and the convicts can address with complaints or request to the director of a certain institution of the Kosovo Correctional Centre. The procedure involves also the deadlines for provision of response by the director as well as the opportunity to address another authority that in the given case is the General Directory of the Correctional Service and the Ministry of Justice.³¹
44. NPMT observed that complaint boxes, placed by the Correctional Service as well as those placed by the Prison Health Department and the Ombudsperson Institution are on disposal to the convicts. Complaint boxes placed by the Ombudsperson Institution can be open solely by the staff of this institution, which provides the convicted person with confidentiality in lodging a complaint. NPMT did not receive any complaint as per respect of this right.

Based on findings and ascertainments achieved in the course of the visit, pursuant to Article 135, paragraph 3 of the Constitution of Republic of Kosovo and Article 16, paragraph 4 of the Law 05/L019 on Ombudsperson, the Ombudsperson recommends:

The Ministry of Justice:

- 1. To renovate damaged floor in prison cells according to the needs.**
- 2. To ensure professional translation in official languages of the Republic of Kosovo in the Pre-detention Centre in Mitrovica.**

³¹ Article 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.

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