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**REPORT WITH RECOMMENDATIONS
OF THE
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE
ON
THE VISIT TO DUBRAVA CORRECTIONAL CENTRE**

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INTRODUCTION

Pursuant to 135, paragraph 3 of the Constitution of Republic of Kosovo and Article 17 of the Law no.05/L-019 on Ombudsperson, National Preventive Mechanism of Torture visited Dubrava Correctional Centre.

National Preventive Mechanism of Torture (henceforth “NPMT”), based on Article 17 of the Law No. 05/L-019 on the Ombudsperson, can conduct regular and unannounced visits to all places where people deprived of their liberty are held, including police detention centers, 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, from February 27, 2019 up to March 1, 2019 visited Dubrava Correctional Center (hereinafter in the text “DCC”).

The aim of this visit was assessment and verification of implementation of NPMT recommendations, which were addressed to responsible authorities through Recommendation Report, for the visit conducted to the DCC accomplished from March 20 up to 22 March.¹ Apart this, the purpose of this visit is to assess the respect of rights of detained persons 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.

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 Head- Director of NPMT ,
- Senior Legal Advisor for Prevention of Torture,
- Two Legal Advisors for Prevention of Torture ,
- A doctor/physician -advisor,
- A psychologist- advisor,
- A social worker- advisor

¹ Report with Recommendations from the visit in Dubrava Correctional Centre, published on 24 August 2018. For more info visit: <https://www.oik-rks.org/en/2018/08/27/ombudsperson-institution-report-with-recommendations-of-the-national-preventive-mechanism-against-torture-on-the-visit-conducted-to-the-dubrava-correctional-centre/>.

Cooperation with NPMT during the visit

2. During the visit made by NPMT at the DCC, 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 conversation with detainees and convicts without the presence of correctional officers and other personnel was enabled. Apart this, the team in conformity with the Law on Ombudsperson, used the camera without being impeded by authorities of the DCC.

Ill-treatment

3. During the visit conducted to the DCC, 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.
4. The monitoring team during interviewing of prisoners was interested in their treatment by the Kosovo Police and respect of their fundamental rights since the moment of arrest. The vast majority of those interviewed claimed that they were treated fairly by the Kosovo Police and that their fundamental rights have been respected.
5. But, the NPMT received a complaint from the prisoner E.XH, alleging that he was physically abused by Kosovo Police officers in the course of handcuffing and taken to the police station where he was interviewed. The prisoner claimed that he was arrested on 24 February 2019. According to the complainant's claims, during the arrest and while driving him to the police station no. 4, he was physically abused and verbally insulted with mean words. The NPMT has noted signs of injuries on inmate's body (hematoma close to eye, signs of beating on different parts of inmate's back), which have been recorded by camera.
6. Upon evaluating facts gathered as well as including the review of medical file of the incarcerated person, NPMT addressed the given case to the Kosovo Police Inspectorate (KPI) for further investigation. At the same time NPMT requires from KPI to be informed on results of investigations after they have been accomplished.
7. The NPMT reiterates that all Kosovo Police officers should be aware of the fact that any form of police misconduct and brutality exposed towards arrested persons is unacceptable and that all police officers exercising this conduct towards persons arrested will be subject of legal sanctions. Police officers should bear in mind that they cannot use excessive force beyond the force necessary while handcuffing and when the arrested person is put under control, no justification can exist for exercising of force.
8. Monitoring team also visited imprisoned persons to whom the measure of seclusion has been imposed and who were accommodated within specified cells, and were kept within as a result of measure imposed. NPMT did not receive any complaint for physical ill-treatment or excessive use of force or violation of human rights in relation to given persons.

Complaints for corruption and preference

9. Concerning recommendations of NPMT related to adoption of secondary legislation for elimination of corruption as foreseen by Article 5, paragraph 3, of the Law on Execution of Penal Sanctions, NPMT ascertains that the situation remains unchanged and that responsible authorities fail to meet this liability.

Material conditions

Food

10. The NPMT notes that the Law on Execution of Penal Sanctions stipulates that the convicted person has the right to adequate nutrition in order to maintain health and power, that is on three daily meals, which must be various and nutritious. The food provided to a convicted person must be adjusted to the age and health condition, the nature of work, the season and the climatic conditions and, to the extent possible, adjustable to religious and cultural requirements of the detainees. Further, the Law determines the obligation that the convicted person is provided with food prescribed by the doctor.² Additionally, the Law on Execution of Penal Sanctions stipulates the right of detainees to have in disposal drinking water all the time.³ According to the management, the water that is available to imprisoned persons is drinkable.
11. Mandela Rules determine obligations of authorities to ensure appropriate nutrition to prisoners in order to maintain their health as well as drinking water all the time.⁴ 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.⁵
12. NPMT has observed that currently DCC provides prisoners with dietary nutrition according to doctor's recommendations, even though not always, due to occasional problems. Food is served in sufficient amount but is not of good quality (it contains a lot of fat, no taste, and the meat is of unpleased smell). While drinking water is available to prisoners all the time.
13. In general, the NPMT received significantly smaller number of complaints regarding the quality and quantity of food served to prisoners compared to the visit conducted in March 2018 during this follow-up visit to the DCC.

Kitchen

14. The NPMT considers that the situation in the kitchen, the location, cleanliness, size, infrastructure and number of staff working in the kitchen are elements that generally reflect the general conditions in prison.

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

³ Law on Execution of Penal Sanctions, Article 40.

⁴ Mandela Rules, Rule 22.

⁵ European Prison Rules, Rule 22.1 up to 22.6.

15. NPMT observed that six cooks are engaged to work in the kitchen, a kitchen chief, a baker, a warehouse worker together with 34 inmates engaged in other kitchen work, 12 prisoners engaged in the bakery and 3 for cleaning and maintaining hygiene in the kitchen.
16. Those engaged in work in kitchen, including prisoners, were provided with adequate, valid sanitary cards. NPMT noted that the storage for long-term food placement was in good condition and contains conditions required for food storage with no moisture. During the visit it has been noted that there is still lack of uniforms, appropriate footwear and gloves for work.
17. It has been noted that neither the staff nor the prisoners have adequate working clothes for the work in the kitchen (they use waste bags like pinafore aprons or footwear not to be wet while washing dishes or carrying out kitchen works). The kitchen is equipped with drying machine of a bad quality, with liquid soap of poor quality that generally impacts negatively on maintaining personnel hygiene in the kitchen during the work.
18. NPMT was notified that there is a lack of tablecloths while food is serving (they are worn-out, torn and they cannot be washed properly). The place where the prisoners should clean their hands before eating is not supplied with soap and dryer, while the sink was blocked with food waste and other equipment with some technical defects. Also, the center continue to be short of special equipment dedicated for sending food to another Ward and which keep the food warm.
19. NPMT noted that tables in the dining room were arranged in a way that would enable hygienically maintaining the floor. Also, the kitchen has been supplied with some appliances for preparation of the food.
20. NPMT did not receive frequent complaints related to schedule of food distribution, during the follow-up visits. Further, NPMT considers of great concern the fact that waste containers are removed only after 2-3 days from the garden behind the kitchen and, on the time of the visit conducted, the garbage was spread out all around by dogs.
21. Supply with ingredients for making bread was good, regular and timely but not qualitative (problems during baking the bread due to poor quality of flour). NPMT has observed that some appliances have been repaired and due to this cleaning has been made easier.
22. NPMT has noted that the space used for the laundry has not undergone any improvement or renovation but, it remains on same conditions as seen in the last visit or even worse. Also, there is lack of natural light and ventilation and there is humidity. NPMT noticed unpleasant smell from the use of various inappropriate chemical means for cleaning. Many plastic bags were therein filled with dirty clothes or maybe with other different things (we didn't see what was in there). Further, people working in the laundry do not have work clothes, masks, or adequate food for the conditions in which they work, apart milk as an addition to the daily meal.

Accommodation conditions

23. The accommodation conditions differ from Ward to Ward. During the NPMT visit, Ward 4 and 6 were under renovation. During the Ad Hoc visit, conducted on 3 May 2019, the NPMT concluded that the renovations in these Wards have been completed and that the prisoners were accommodated in them. Certain renovations were also carried out in the prison hospital, which was also NPMT recommendation, provided through a Report with Recommendations related to the visit conducted in 2016 and 2018. The cells in general were warm with enough lighting, and ventilation.
24. During the visit NPMT paid special attention to prisoners, to whom the measure of solitary confinement is imposed due to violation of the discipline. The NPMT notes that the Law on Execution of Criminal Sanctions stipulates that the room for the execution of solitary confinement should have a space of at least ten (10) cubic meters, sanitary equipment, natural light, drinking water, bedding with sheets, table, chair and heating.⁶
25. Further, European Committee for the Prevention of Torture (hereinafter “CPT”), as per the accommodation conditions in cell where a prisoner, to whom the measure of solitary confinement is imposed, points out that such cells used for solitary confinement should meet the same minimum standards as those applicable to other prisoner accommodation. Thus they should be of an adequate size, enjoy access to natural light and be equipped with adequate heating and ventilation. CPT further stresses that such cells should be equipped, as a minimum, with a table, adequate seating for the daytime, and a proper bed and bedding.⁷
26. NPMT has observed that accommodation conditions in these cells at present are obviously much better than those found during the visit conducted in March 2018 and the current conditions fulfil standards set by the Law on Execution of Criminal Sanctions and standards set by the European Committee for the Prevention of Torture.⁸ Therefore, NPMT welcomes implementation of its recommendation addressed to responsible authorities, through Report with recommendations for the visit conducted in the DCC in March of 2018, related to the accommodation conditions in cells where detainees to whom the measure of seclusion is imposed.
27. The NPMT noted that in Ward 8 there was no renovation conducted, as recommended by the NPMT through a Recommendations Report for the visit to the DCC, accomplished in March 2018. The NPMT noted that in this Ward, moisture has partly penetrated in one of the wing, while radiators leak due to technical defects and because of that no appropriate heating was available to the detainees of this Ward.
28. During the visit, it was noted again that inmates used self-invented electrical equipment for heating the water, which could seriously risk their lives. According to allegations of

⁶ Law on Execution of Criminal Sanctions, Article 111, paragraph 2.

⁷ European Committee for the Prevention of Torture, Part from the 21 General Report, published on 2011, for additional information visit : <https://rm.coe.int/16806cccc6>, (21.5.2018)

⁸ CPT Standards concerning accommodation conditions for the prisoners to whom the measure of solitary confinement is imposed are determined throughout 21st General Report. For more info visit: <https://rm.coe.int/16806cccc6>.

the detainees, in the lack of warm water they are forced to use such kind of improvised devices. NPMT ascertains that the recommendation addressed to authorities for undertaking appropriate measure to end with such practice, has not been implemented.

29. The NPMT also notes that the European Committee for the Prevention of Torture during the Kosovo visit in 2015 expressed its concern related to the use of self-invented electric equipment by prisoners at the DCC and requested from relevant authorities of the Republic of Kosovo to take concrete steps to avoid using such equipment.⁹
30. During this period, the NPMT was notified from the detainees placed there that the Center does not provide them with beddings and that they are forced to ask their families to provide with them, while blankets are mainly provided by the DCC.¹⁰ NPMT considers that relevant authorities should act in compliance with liabilities deriving from Article 16 of the Administrative Instruction on House Rules in Correctional Institutions.
31. The NPMT noted that, in almost all Wards inmates continue to keep their belongings in plastic bags or carton boxes, since the space on their disposal does not suffice. The NPMT ascertains that the recommendation given that all prisoners ought to be supplied with closets for placing their belongings, has not been implemented.
32. During the visit the NPMT has observed that in Ward number 7 two rooms are temporary used by healthcare service. In these rooms classified patients were placed, as patients, to be managed easier, but without separation according to the nature of the disease. The place dedicated for walking was small and insufficient to develop outdoor physical activities. Also, the NPMT has noted that the rooms are maintained and cleaned by the patients themselves, which is not good practice.
33. As per the maintenance of the rooms by the patients themselves, the NPMT notes that the CPT in its Report on the visit to Kosovo in 2015 has criticized such a practice and has called upon to stop that practice immediately, considering that maintaining the room is very inadequate for the inmates who are ill.¹¹

Regime

34. As per Regime is concerned, in DCC, according to the management there are about 300 convicts engaged at work. The number of those engaged at work is greater during the summer season. They are mostly engaged at work in the kitchen, cleaning as well as on Center's poultry farm. Within the DCC runs the secondary school in which 28 convicts attend their lessons. Convicts can move freely within the Wards where they are located and are entitled to 3 hours of walk per day during the summer season, while during the

⁹ European Committee for the Prevention of Torture, Report from the visit conducted in Kosovo in 2015, published in 2016, paragraph 38. For additional information visit: <https://rm.coe.int/16806a1efc>.

¹⁰ Article 16 of Administrative Instruction MoJ-No.07/2015 on house rules in correctional institution: "Each convicted person has his own bed made of specific matrices, pillow with slipcover, two bed sheets, and one or two blankets for summer, respectively two (2) up to three (3) blankets during winter, depending on heating. Each convicted person will be responsible for their bed with all components of the bed and a locker for personal belongings."

¹¹ CPT Report for the visit conducted to Kosovo, published on September 2016, paragraph 61, visit at: <https://rm.coe.int/16806a1efc>.

winter 2 hours a day.¹² Nevertheless, during the interviews conducted it derived that they are permitted to 45 minutes' walk two times per day. NPMT is of the opinion that competent authorities should respect convicts' right for outdoor exercise during the winter; the right guaranteed with the Law on Execution of Penal Sanctions and should be undertaken twice per day and lasting one hour each.

35. Further, within DCC are functional three workplaces (warehouses), which in fact serve as centers for vocational training, where trainings for welding, construction, adjustment, carpentry, technical maintenance, water and electricity installation are organized. Trainings courses in duration of 3 months are organized in these places for the convicts. NPMT was notified that, at the moment there are no trainings due to the weather, since there is no heater in the workplace. NPMT is of the opinion that initiation of trainings in the workplaces is important for rehabilitation of incarcerated persons and provision of appropriate activities outside prison cells.
36. During *Ad Hoc* visit accomplished on 3 May 2019, the NPMT was informed by the DCC management that the international organization HELP will provide welding training for 10 inmates.
37. There is a gym and football field within DCC establishment. Imprisoned persons can undertake fitness exercises two times per week in duration from 45 minutes while the football court can be used by them once or twice per week in duration of 45 minutes, dependently by the Regime, to which the prisoner is subjected. The prisoners accommodated in Ward D undertake sports activities that can take place in sports field of the Ward within walking time, which lasts for 45 minutes and there is not time scheduled specifically to sports activities.
38. During the *Ad Hoc* visit on 3 May 2019, NPMT was informed that this Ward at the moment was closed and that the prisoners were transferred in renovated Wards.
39. The basketball court at the moment is not used since it needs changing damaged windows and install window meshes, which would prevent damaging the windows caused as a result of thrown balls. Therefore, the situation in these premises remains the same as in the visit conducted in November 2016 and March 2018. Therefore, NPMT concludes that the recommendation for putting in function of the sports field remains not to be implemented.
40. Additionally, NPMT was informed that the economic unit has not been yet put in function, which would increase activities and engagement of a greater number of the convicted persons. Establishment of economic unit is foreseen with the Law on Execution of Penal Sanctions as well.¹³ Through the Recommendation Report, after the visit occurred in in March 2018, NPMT has recommended responsible authorities undertaking

¹² According to the Article 37 of the Law on Execution of Penal Sanctions, the convicted persons have the right to at least two hours walk outside closed premises.

1. ¹³ Law on Execution of Penal Sanctions, Article 212-214.

of actions in functionalization of the economic unit, which is also foreseen by the Law on Execution of Penal Sanctions.

Health care

41. Prison hospital functions within Dubrava Correctional Centre, which provides medical services for the confined persons in this Centre, in which 6 regular doctors and a psychiatrist work (one doctor is available during 24 hours) 24 male nurses, from which 6 work in 12 hour shifts, two nurses work within 8-16 schedule, one regular pharmacologist, one physiotherapist and a lab worker, who conducts very often services in other prisons as well, concerning laboratory checkups.
42. There are also services from various specializations according to the needs and requirements for health services, such as from the Neurologist, Psychiatrist, Radiologist (Eho, Rtg), Cardiologist, Pulmonologist, Infectiologist, Surgeon, Ophthalmologist, and Otolaryngologist (ENT). Whereas, Urologist and Orthopedist, have terminated the cooperation with Prison Health Department- PHD. PHD now has a full-time dentist engaged in this healthcare unit, in accordance with the NPMT recommendation. Therefore, the NPMT concludes that the recommendation to engage a regular dentist has been implemented by the competent authorities.
43. In its last Report for the DCC¹⁴, published on 24th of August 2018, NPMT saluted implementation of NPMT recommendation provided concerning hiring of an additional psychologist in DCC, but during the last visit conducted in DCC, NPMT was notified that one psychologist has been transferred in the Correctional Centre in Smrekonicë. NPMT considers that detainees' number in DCC is so big that requirements for psychologist services can hardly be provided solely by one psychologist. The NPMT encourages the PHD to make solution for hiring of additional psychologist in the DCC.
44. NPMT, from collected information observes that healthcare personnel has not been immunized and welcomes PHD comments related to this the issue.
45. During this visit, NPMT observed that, even though the hospital has undergone certain floor renovations of the part where patients are located, it still fails to meet conditions for adequate treatment of hospitalized persons. The hospital is divided into Wings: psychiatric wing and that of organic diseases. NPMT has observed that the rooms are overcrowded with patients; there is no classification according to their illnesses in the psychiatric ward neither in the case of organic illnesses, nor by number in rooms or age as well as those with limited abilities. Beds, mattresses and blankets in hospital rooms are worn-out, dirty, old and grubby. The NPMT has noted that there is no locker for safe keeping clothes or personal belongings. Moreover, there are also food leftover in the rooms.
46. Even during this visit, the NPMT noticed that the hospital continues not to provide an adequate solution regarding the access of disabled patients to the second floor to convicts

¹⁴ For more info visit: <https://www.oik-rks.org/en/2018/08/27/ombudsperson-institution-report-with-recommendations-of-the-national-preventive-mechanism-against-torture-on-the-visit-conducted-to-the-dubrava-correctional-centre/>

with disabilities. According to the management, this issue will be addressed during this year. The NPMT requires from Kosovo Correctional Centre to be notified on advancement as per this issue.

Importance of medical examinations of newly-arrived prisoners

47. 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 prevent suicides and spread of transmissible diseases (such as tuberculosis, hepatitis B/C, HIV).
48. 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.¹⁵
49. Law No. 04/L-149 on Execution of Penal Sanctions¹⁶ and Standard Operating Procedure¹⁷ 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.
50. Such obligations are determined also by international acts for protection of rights of convicted persons such as: Mandela Rules¹⁸, European Prison Rules¹⁹ and United Nations Rules for the Protection of Juveniles Deprived of Liberty.²⁰
51. 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 DCC. These searches mean a general search according to the Standard Operating Procedure of the Prison Health Department (PHD).

Confidentiality of medical services

52. Based on information obtained from health service staff and interviews with prisoners, health services generally are provided without the presence of correctional officers. However, according to the information collected by the NPMT in the ward D the nurse provides prisoners with medical services solely in the presence of correctional officers and in no other way. The NPMT looks forward PHD's comments regarding this issue.

¹⁵ European Committee for the Prevention of Torture, 26 General Report, paragraph 72, at: <https://rm.coe.int/168070d0c8>.

¹⁶ Law No. 04/L-149 on Execution of Penal Sanctions, Article 31.

¹⁷ 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>.

¹⁸ Mandala Rules, Rule 34. See at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

¹⁹ 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>.

²⁰ United Nations Rules for the Protection of Juveniles Deprived of Liberty, point 27, at: https://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf.

53. Confidentiality of medical services is foreseen by Standard Operating Procedure²¹ adopted by the Ministry of Health, the Law on Execution of Penal Sanctions²², CPT Standards,²³ as well as with international acts such as: Mandela Rules²⁴ and United Nations Rules for the Protection of Juveniles Deprived of Liberty.²⁵
54. 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.
55. 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”*.

Personnel of Dubrava Correctional Centre

56. During this visit also, NPMT witnessed the concern expressed by the management due to the lack of correctional personnel, social workers and the psychologists. Based on the information obtained from the management, DCC has engaged approximately 60 correctional officers involved on overseeing chronically ill persons hospitalized currently within health institutions and a number of correctional officials who are involved on educational courses in the Academy for Public Security in Vushtrri. DCC lacks approximately 100 correctional officers according to the management. This number is planned to be increased for 50 new correctional officers, according to the management.
57. During the visit, the NPMT received many complaints from correctional staff regarding the insufficient number of correctional officers in relation to prisoners and other working conditions. One of many complaints addressed is also the failure to supply with uniforms and other necessary equipment to carry out their work. Also, the NPMT during interviews with correctional officers admitted their concerns regarding the Law on Salaries, which was recently approved by the Assembly of the Republic of Kosovo.
58. The NPMT considers that the manner how the personnel perceive the quality of life at work and the way they are treated by their managers and colleagues has a significant impact on the atmosphere in prison and the treatment of prisoners. Correctional officers who feel prized, trustful and respected in their workplace have greater opportunities to apply all of these values in treatment of prisoners. Favorable job circumstances in the prison also are of great importance to attract and retain appropriate personnel to work in the prison.
59. International standards in this regard are well-defined and stipulate that the personnel in prison ought to be full-time appointed, have civil status, as well as have appropriate incomes and favorable employment benefits as well as suitable conditions for

²¹ Standard Operating Procedure, point: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Veprimit-n%C3%AB-DShB.pdf>.

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

²³ CPT Standards, published in 2018, paragraphs 50 and 51. For more info visit: <https://rm.coe.int/16806ce943>.

²⁴ Mandala Rules, Rule 26, point 2, at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

²⁵ 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.

accomplishing their tasks. Low salaries, improper working conditions and the lack of other benefits which are necessary to stimulate accomplishment of the work in the facilities such as the prisons, may have negative impact on motivation and accomplishment of liabilities by personnel engaged at work in prisons. Apart this, such circumstances can urge corruption.²⁶

60. Similarly, one of the most common complaints which the NPMT receives from the correctional officers is the issue of recognizing of beneficiary length service. NPMT observes that Article 221 of the Law on Execution of Penal Sanctions explicitly stipulates that: *“Due to hazard, gravity of work and special working conditions, each twelve (12) months of work by correctional officers, shall be calculated as sixteen (16) months of work experience, and when calculating their salaries an allowance shall be ensured”*. NPMT again requires to be informed from responsible bodies regarding this issue.

Social service in DCC

61. During the visit to the DCC, the NPMT was informed that a serious problem remain to be the small number of social workers, compared to the number of prisoners. According to the management, during this period there was no new recruitment of social workers. The NPMT has noted that social workers feel overburden with administrative work and their contribution on their genuine role is minor. Similarly, they expressed their concern about their situation, based on the Law on Salaries, benefited work experience and nonpayment of hazard. The NPMT considers that, given the important role assigned to social services in prisons with the Law on Execution of Penal Sanctions and other by-laws, the competent authorities should address these problems with due concern.

Disciplinary measures

62. According to the applicable legislation, prisoners may be subjected to the following disciplinary measures: reprimand, deprivation of an assigned privilege, order for restitution and solitary confinement.²⁷ While in the case of pre-detainees they can be subjected to the following sanctions: prohibition or restriction of visits or correspondence, apart contacts with defense counsel, the Ombudsperson and diplomatic missions. During the visit, as per analyzing the situation in this regard, the NPMT reviewed several decisions of DCC directorate by which the detainees have been imposed several disciplinary measures, including the measure of solitary confinement.
63. NPMT ascertained that the DCC keeps registers on imposed disciplinary measures where the data regarding imposed measures are written as well as the reason, the time of imposition and termination of the same. These decisions are also delivered to the prisoners as well in order to be notified on legal remedies on disposal, in case they are unsatisfied with the disciplinary measure imposed. The NPMT during this follow up visit did not receive any complaint from the interviewed detainees who were in seclusion, as per respect of their rights.

²⁶ Mandela Rules, Rule No. 74. European Prison Rules, Rule 79.1 and Rule 79.2. 10th and 11th General Report of the European Committee on Prevention of Torture.

²⁷ Paragraphs from 101 to 113 of Law on Execution of Penal Sanctions.

64. NPMT was informed that medical service does not participate in decision-making regarding the ability of detainee or the convicted person to face disciplinary sanction of solitary confinement. NPMT considered that medical personnel's role is clear in this aspect. The doctor's participation in decision-making, who as a matter of fact is the doctor of the detained or convicted person, would hamper the doctor-patient relation, unless this sanction is undertaken for medical reasons.²⁸
65. NPMT in previous Reports has exposed its concern on the issue that the Legislation at effect²⁹ sets forth that before the convicted person is placed to a solitary confinement, the director of the service of correctional institution should request the doctor's opinion in writing which testifies that the convicted person is at good physical and psychological condition to undergo the solitary confinement measure. The NPMT salutes withdraw of this provision from the draft Law on Execution of Penal Sanctions, which is expected to be voted in the Assembly of the Republic of Kosovo. The NPMT will continue to oversee the situation regarding the review of the draft law in the Assembly.

Contacts with the outside world

66. Legislation at effect³⁰, in the case of convicted persons determines that imprisoned detainees shall have the unlimited right of correspondence (subjected to specific exceptions), shall have the right to receive a visit at least once each month for a minimum of one hour as well as are entitled to a visit by the spouse and children at least once in three months for a minimum of three hours. In addition, they shall have the right to make phone calls. Apart this, they have the right to make telephone calls. Based on interviews conducted with the confined persons, they are entitled to two visits per month as well as one additional visit, based on request submitted in the Directory.
67. Regarding phone calls, Administrative Instruction on House Rules in the Correctional Institutions³¹ determines that convicted persons may have phone calls to close family members and other persons. According to this Instruction, phone calls of the convicted person and the detained person shall not last more than 15 (fifteen minutes).
68. Convicted persons on basic regime shall be entitled to one phone call a week lasting 15 (fifteen) minutes, while convicted persons on advanced regime shall be entitled to two phone calls a week lasting 15 (fifteen minutes).
69. In the case of the detained persons, Article 200 of Criminal Procedure Code of Kosovo determines that the detainee on remand may receive visits "*within the limits of the rules of the detention facility*", based on the permission of the pre-trial judge and on his or her request. Further the Code determines that correspondence and other visits are subject to the decision of the pre-trial procedures. Based on interviews with remand prisoners it

²⁸ European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 required from relevant authorities to put an end to the practice of the request made by the doctor to confirm that detainee or the prisoner is in a situation to face the sanction.

²⁹ Article 107 of Law on Execution of Penal Sanctions and Article 76 of Administrative Instruction on House Rules in the Correctional Institutions.

Law on Execution of Penal Sanctions, Article 62-65.

³¹ Administrative Instruction on House Rules in the Correctional Institutions, Article 54.

derives that they are entitled two visits per month according to the permission from the Court as well as one additional visit, based on remand detained person's request submitted in certain circumstances.

70. Ombudsperson or his representatives may visit the detained persons and contact with him without prior notification and without the supervision of the pre-trial judge, single trial judge or presiding trial judge or other persons appointed from such judge. Letters of the detained person sent to the Ombudsperson Institution cannot be controlled. The Ombudsperson and his representatives may communicate confidentially verbally or in writing with the detained person. Further, the detainees can address NPMT of the Ombudsperson by phone.
71. In the case of foreign nationals, they shall be provided with the opportunity to contact a diplomatic representation in writing or verbally or the relevant office of his or her State of nationality.³² During the visit, NPMT interviewed one foreign national, who did not complain as per treatment by correctional officers as well as relation with other incarcerated persons accommodated in this Centre. On the contrary, he spoke in the favor of very positive relations, whether towards officers as well as to other detainees.

Facilities where visitors are admitted

72. During the visit, NPMT visited also the premises where family visits are admitted in Ward D. Conditions in these facilities are at satisfying level and there are no obstacles that might hinder the direct contact between family members and the detainees. NPMT did not receive any complaint neither from the detainees nor by the visitors which were at these facilities at the time of the visit.

Admission procedures

73. In DCC, the newly-arrived persons are required to undergo an admission procedure lasting at most 30 days. During this period, they are assessed and categorized in special cells, before they are accommodated in normal cells. Due to renovations, currently they are accommodated in one wing of Ward 5. Regarding the contacts with the outside work and outdoor walking during this period, convicts pointed out that they are allowed to two phone calls as well as two visits during the period they are accommodated in this ward. NPMT did not receive any complaint from the detainees as per their right in this phase of serving the punishment.

Security-interrelated issues

74. During the visit, NPMT observed that the so called *pepper spray* is still the part of standard equipment of correctional officers in DCC. In addition to this, NPMT was notified that the time limit of this *pepper spray* has expired.
75. NPMT was informed by the directory that in some wards and facilities in DCC there are no security cameras as well as some of them are out of function. But in some Wards security cameras with HD resolution have been installed and are of rotational type, which provide view of high quality. NPMT salutes this progress. Otherwise, the situation in

other Wards remains generally the same as well as that found during the visit in March 2018. NPMT urges DCC authorities to equip all corridors of wards and external areas with security cameras, which according to CPT comprise one of guarantees for protection from ill-treatment but also a guarantee when they are falsely accused.³³

Incidents between the detainees

76. Based on the relevant documents, the NPMT noted that during this year, 12 incidents have been recorded so far by the prisoners. The NPMT noted that these incidents were recorded in the relevant forms, medical assistance was provided as needed and actions were foreseen under the Law on Execution of Criminal Sanctions.

Complaint procedures

77. 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.
78. 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.³⁴
79. 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.
80. NPMT, comparably with the last year, did not receive any complaint from prisoners persons in this Centre regarding the failure to respond on their complaints or requirements submitted.

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:

³² Law on Execution of Penal Sanctions, Article 33 paragraph 1.

³³ CPT, Report on the visit to Ireland in 2010, paragraph 18.

³⁴ 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.

The Ministry of Justice:

1. **NPMT reiterates recommendation of adoption of the secondary legislation for fighting corruption, as foreseen with Law on Execution of Penal Sanctions.**
2. **NPMT reiterates recommendation of undertaking appropriate renovations in Ward 8.**
3. **To equip the kitchen with adequate appliances according to accurate evaluation.**
4. **NPMT reiterates recommendation of taking appropriate steps in order to end the practice of using unfitting electrical equipment.**
5. **NPMT reiterates the recommendation previously given that the detainees are equipped with closets for placement of their belongings**
6. **NPMT reiterates recommendation of putting the gym in function.**
7. **NPMT reiterates recommendation of putting economic unit in function.**
8. **NPMT reiterates the recommendation that appropriate solution is found in Prison hospital in order to provide access to patients with limited abilities in the second floor of hospital.**
9. **NPMT reiterates the recommendation of hiring necessary correctional personnel according to needs assessment.**
10. **NPMT reiterates recommendation of setting security cameras where needed.**
11. **NPMT reiterates recommendation of increasing the number of social workers based on number of the DCC detainees.**
12. **To address correctional officers' needs as per working conditions and their concerns related to their position as per the Law on Salaries.**
13. **To remove *peper spray* with expiring date from use.**

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