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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

REPORT WITH RECOMMENDATIONS
OF
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE
Concerning
THE VISIT CONDUCTED TO THE PRE-DETENTION CENTRE LIPJAN

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. Arif Beqa, Director
Pre-Detention Centre in Lipjan

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INTRODUCTION

Pursuant to 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 (NPMT) on 29 of May 2019, visited the Pre-Detention Centre in Lipjan (henceforward PDCL).

Ombudsperson's National Preventive Mechanism of Torture, 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, prisons, places where detained foreigners are located as well as psychiatric and social care institutions.

Apart detainees on remand, Pre-Detention Centre in Lipjan, accommodates a small number of convicts as well. During the visit conducted in the PDCL, the NPMT was informed that 89 prisoners are accommodated in the center (68 detainees on remand and 21 convicts).

The purpose of the visit

The purpose of this visit was to conduct a general assessment of the respect of human rights of incarcerated persons, rights that are guaranteed by the Constitution of Republic of Kosovo, applicable Laws in the Republic of Kosovo as well as international standards on rights of persons deprived of liberty.

Composition of the monitoring team

1. Monitoring team composed of a Senior Legal Adviser on Torture Prevention, a Legal Adviser on Torture Prevention, a Psychologist- advisor, a Doctor-advisor, a Social worker- advisor.

Cooperation with the NPMT during the visit

2. During the visit made by NPMT to the PDCL, the staff of Kosovo Correctional Service (henceforth KCS) and the Prison's Health Department (PHD) provided the monitoring team with full cooperation. The team, without any delay, gained unhindered access to all places intended to visit and was provided with all necessary information to accomplish its mission as well as communication with remand detainees and convicts, without the presence of correctional officers and healthcare staff, was enabled.

Information regarding prisoners' rights

3. Administrative Instruction MoJ-No. 07/2015 on the House Rules in the Correctional Institutions (hereinafter the *House Rules*) sets the obligation of correctional establishments to immediately upon admission provide conditions whereby the convicted person is introduced, in written, with his/her rights and duties while serving the sentence. Further, the *House Rules* and the Law on Execution of Penal Sanctions are on prisoners' disposal all the time. Illiterate convicted person, who cannot read or write, will be informed verbally.¹ NPMT, in the course of the visit, observed that *House Rules* as well as other relevant documents, through which the prisoners are notified on their rights and liabilities, are on prisoners' disposal.

¹ Administrative Instruction Mo J-No. 07/2015 on the House Rules in the Correctional Institutions, Article 20.

Ill-treatment

4. During the visit in the PDCL, NPMT interviewed a considerable number of inmates and did not receive any complaint regarding ill-treatment and excessive use of force by the correctional officers or demeanor of the prison authorities that would comprise violation of prisoner's dignity. Apart of this, NPMT observed that there is a positive spirit of relations and good interactive communication between detainees and correctional officers.

Accommodation conditions

5. Law on Execution of Penal Sanctions (hereinafter LEPS) stipulates explicitly that the convicted person has the right to accommodation, which corresponds to contemporary hygienic conditions and local climatic circumstances.² Further this 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.”*³
6. The NPMT observed that the first floor of the PDCL was renovated completely and currently provides very good accommodation conditions for the prisoners. Additionally, working conditions for correctional officers and staff of the PHD have been significantly improved on this floor. In addition to the first floor, the transport unit facility, the premises of family visits and control room were also renovated.
7. NPMT observed that cells in which the convicts reside, in the first floor of the PDCL, have natural and artificial lighting, and do not have moisture. Related to prisoners' living area, the NPMT finds that in general the living space is in accordance with the provisions of the LEPS and the standards set by the European Committee for the Prevention of Torture (henceforth CPT).⁴ Further, the NPMT during the visit to the PDCL did not observe congestion.
8. However, accommodation conditions on the second floor differ significantly from those on the first floor and renovations in this floor are needed as soon as possible. According to the director, investments are expected on this floor by competent authorities of the PDCL. Showers and toilets are generally in good technical condition and available to remand detainees every second day of the week, with no restrictions for convicts.
9. As in majority of Correctional Centers, in the PDCL as well, the NPMT noticed that the mattresses are worn out and have not been replaced for a long time; therefor as a consequence, the moisture has penetrated on some of the beds. The management of PDCL is aware of this problem and has addressed a request to the responsible body in the KCS.
10. Prisoners also expressed their concern that there are no refrigerators in their cells, and that during the summer, as temperatures rise, there is a permanent risk of food decaying and

² Law on Execution of Penal Sanctions, Article 36, paragraph 1.

³ Law no. 05/L0-129, Article 3 of the Law on Amending and Supplementing the Law no. 04/l-149 on the Execution of Penal Sanctions.

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

they can get diarrhea because of that. The NPMT brought this matter on Director's attention and was informed that the management was aware of this issue and is seeking an adequate solution. The NPMT will continue to monitor the situation regarding this issue in the future.

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.⁵
12. Furthermore, the Law stipulates that the 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.⁶ A physician or other expert shall check and advise the director of the correctional facility on the quality of meals before delivery and shall record his or her findings in an appropriate book.⁷
13. During the visit, the NPMT observed that the hygienic conditions in the kitchen satisfy and that the kitchen was equipped with necessary equipment for food preparing. The kitchen staff was provided with sanitary booklets. In addition to staff, convicts engaged in work were provided with sanitary booklets as well. PDCL has a nutrition menu with necessary products and sufficient nutrition calories. Further, the Centre also provides dietary food for prisoners, as recommended by the doctor. NPMT received no complaints from prisoners regarding the quantity and the quality of food served.

Regime

14. 23 convicts and only four detainees on remand are engaged with work in the PDCL. Inmates can be engaged in kitchen work, cleaning, facility maintenance, laundry and the PDCL garden, where 4 inmates were currently engaged at work. Prisoners are entitled to two and a half hours of daytime walking. Two sports fields are also available, which are paved with concrete, and due to that, prisoners often suffer injuries during games.
15. Sports activities can be performed while prisoners go for a walk. In terms of training and education courses, at present, the EQUIP program is being developed at PDCL, within the scope of which 6-7 prisoners are engaged. Inmates' rooms are equipped with TVs, but the cable TV system has not been installed yet, although according to the director, this is planned.
16. In the case of detainees on remand, their engagement at work depends on the court's permission. NPMT notes that with regard to their engagement at work, Article 199 paragraph 2 of the Code of Criminal Procedure provides as follows: "*Detainees on remand may perform work that is necessary to maintain order and cleanliness in their area. To the extent that the institution has the facilities and on condition that it is not harmful to the conduct of criminal proceedings, detainees on remand shall be allowed to work in activities which suit their mental and physical abilities. The pre-trial judge,*

⁵ Law on Execution of Penal Sanctions, Article 39, par. 1.

⁶ Law on Execution of Penal Sanctions, Article 39, par. 2.

⁷ Law on Execution of Penal Sanctions, Article 39, par. 3.

single trial judge or presiding trial judge shall decide on this in agreement with the management of the detention facility.”

17. While Article 200, paragraph 1 of the LEPS, as per engagement of remand detainees on work stipulates as follows: *“The detainees on remand may be engaged at work in the warehouses, economic unit warehouses which are close to the area of relevant correctional facility after obtaining the consent of the competent court.”*
18. Further, Mandela Rules determine the right of remand detainee to be engaged at work. In Rule 116 of Mandela Rules is explicitly stipulated: *“An untried prisoner shall always be offered the opportunity to work, but shall not be required to work. If he or she chooses to work, he or she shall be paid for it.”*
19. In CPT Report on the visit conducted to Republic of Kosovo in 2015, which was published in 2016, as per the regime for remand detainees, it exposed its concern that apart authorities’ efforts, most remand prisoners still remained locked in their cells for most of the day, with very little to do besides watching TV, reading and playing board games, except walking hours per day.
20. Through this Report, CPT recommended relevant authorities of Republic of Kosovo as follows: *“The CPT reiterates its recommendation that the authorities strive to enhance the out-of-cell activities available to remand prisoners in all the establishments visited and, where appropriate, in other KCS establishments; the longer the period for which remand prisoners are detained, the more developed should be the regime offered to them. To this end, steps should also be taken to ensure that staffing levels are, where required, increased accordingly”*⁸
21. The NPMT considers that based on the legislation at force, the Mandela Rules and the CPT recommendations, the competent authorities should make efforts to increase out-of-cell engagements for detainees on remand, not only in the PDCL but also in other Detention Centers, insofar as much as such thing is possible.

Incidents between prisoners

22. Prison authorities have positive obligations to prevent violence between prisoners for which they are responsible. Based on relevant documentation, during this year, six incidents among prisoners were recorded in the PDCL. In general it concerns the fight between prisoners. From documents review it arise that the Director, after examining the cases, has taken actions foreseen by the LEPS and has imposed disciplinary measures, for which, in case of remand detainees, the competent court was notified as well.

Health care

23. 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.⁹

⁸ CPT Report for the visit conducted to Republic of Kosovo, published on September 2016, paragraph 46. For more info visit: <https://rm.coe.int/16806a1efc>.

⁹ Law on Execution of Penal Sanctions, Article 43, par. 2.

24. The medical staff at PDCL consists of a regular doctor who works full time schedule and is also available on call, a head nurse and five nurses, where three of them work in 12 hours shift and a psychologist who works full-time (8 hours). The dentist is available once a week and comes from the Correctional Center of Women and Juvenile. As per other specialist services, they are carried out in coordination with family medicine centers, regional hospitals and relevant clinics of the University Clinical Center of Kosovo (UCCK).
25. The NPMT during the visit noted that the Centre is short of staff with secondary education (one nurse currently conducts safeguarding in the three Correctional Centers in Lipjan). As per the infrastructure, the health unit has a room where medical visits are handled, ECG doctor's facility, oxygen cylinders, defibrillator, arterial blood pressure monitor, consumable material and anti-shock therapy.
26. With regard to the infrastructure where medical services are provided, after renovations conducted in the first floor, working conditions of PHD staff have improved significantly. Therefore, the NPMT considers that its recommendation to provide better working conditions for health personnel has been implemented. No complaint has been filed with the NPMT regarding the right to medical services from prisoners.
27. According to the Director of this Centre, random presence of mentally ill confined persons remains a challenge, due to the lack of capacities to accommodate this type of prisoners within relevant institutions.
28. In this spirit, CPT Standards stipulates as follow: "*A mentally ill prisoner should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system.*"¹⁰
29. European Prison Rules, Rule 12.1, determines as follows: "*Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose.*"¹¹
30. Mandela Rules, Rule 109, determines that the prisoners with mental disabilities should not be detained in prisons and arrangements should be made to transfer them to mental health facilities as soon as possible.
31. The NPMT encourages the competent authorities to make ongoing efforts that these persons are treated within relevant institutions, whether in a special psychiatric Unit within a prison, a hospital, or a public psychiatric institution.

Importance of medical examinations of newly-arrived prisoners

32. CPT 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).

¹⁰ CPT Standards, Part from the 3rd CPT General Report, paragraph 43, published at 1993. For more info: <https://rm.coe.int/16806ce943>.

¹¹ European Prison Rules, Rule 47.1. See at: <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

33. According to CPT, prison healthcare 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.¹²
34. Law No. 04/L-149 on Execution of Penal Sanctions¹³ and Standard Operating Procedure¹⁴ 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.
35. Such obligations are determined also by international acts for protection of rights of convicted persons such as: Mandela Rules¹⁵, European Prison Rules¹⁶ and United Nations Rules for the Protection of Juveniles Deprived of Liberty¹⁷
36. Based on the prisoners' allegations and relevant documents, the newly –arrived convicted person is subject to medical examinations within 24 hours in accordance with the LEPS and the PHD Standard Operating Procedure

Confidentiality of medical services

37. As per the confidentiality of medical services, the NPMT, based on interviews conducted with confined persons, as well as health personnel, finds that these services are provided under conditions that respect the confidentiality, actually are provided without the presence of correctional officers, except in cases where the presence of them is required by the doctor. While convicts and detainees' medical files are accessible solely for healthcare personnel.
38. Confidentiality of healthcare services is foreseen with Standard Operating Procedure,¹⁸ adopted by the Ministry of Health, the Law on Execution of Penal Sanctions¹⁹, CPT Standards,²⁰ as well as with International acts, such as: Mandela Rules²¹ and United Nations Rules for the Protection of Juveniles Deprived of Liberty.²²

Disciplinary measures

39. According to the applicable legislation, prisoners may be subjected to the following disciplinary sanctions: reprimand, deprivation of an assigned privilege, an order to make

¹² European Committee for the Prevention of Torture, 26 General Report, paragraph 72, at: <https://rm.coe.int/168070d0c8/>

¹³ Law on Execution of Penal Sanctions, Article 31.

¹⁴ Standard Operating Procedure of the Prison Health Department, point 1. See at: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Vepimit-n%C3%AB-DShB.pdf/>

¹⁵ Mandela Rules, Rule 34. See at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf/

¹⁶ 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:

¹⁷ United Nations Rules for the Protection of Juveniles Deprived of Liberty, point 27, at: https://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf/

¹⁸ Standard Operating Procedure, point 11. See at : <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Vepimit-n%C3%AB-DShB.pdf/>

¹⁹ Law on Execution of Penal Sanctions, Article 49.

²⁰ CPT Standards, published at 2018, paragraphs 50 and 51. For more info see at: <https://rm.coe.int/16806ce943/>

²¹ Mandela Rules, Rule 26, point 2, at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf/

²² 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/

restitution, and solitary confinement.²³ 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, the NPMT was informed by the Management that no disciplinary measure of seclusion was applied in the PDCL. NPMT did not receive complaints from prisoners regarding disciplinary measures imposed by the PDCL Directorate.

Contacts with the outside world

40. 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.
41. The applicable legislation,²⁴ in the case of convicts, 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 and spouse, one in three months in a minimum duration of three hours. According to PDCL Directorate the convicted persons are entitled to have one visit per week. Visits on the case of remand detainees are authorized by the competent court. From interviews with remand detainees and review of relevant documentation, it comes that detainees on remand generally receive one visit per week, authorized by the competent court.
42. 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 case of detainees on remand these calls are authorized by the competent court. Based on the information provided by the PDCL directorate and the allegations of remand detainees, they are allowed to have two calls per week, subject to the permission by the competent court. Whereas, in the case of convicts there are no limitations.
43. 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.

Procedure for filing complaints

44. 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.²⁵
45. Article 91 of the Law on Execution of Penal Sanctions provides for a detailed procedure by which detainees on remand and convicts 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 to a higher

²³ Paragraphs from 101 up to 113 of the Law No. 04/L-149 on Execution of Penal Sanctions.

²⁴ Law No. 04/L-149 on Execution of Penal Sanctions, Articles 62-65.

²⁵ European Committee for the Prevention of Torture, 27 General Report, paragraph 68. For more info visit: <https://rm.coe.int/16807bc668>.

authority, that in the current case is the General Directory of the Correctional Service and the Minister of Justice.²⁶

46. NPMT observed that complaint boxes are available for the accommodated persons in the PDCL placed by Kosovo Correctional Service and the complaint boxes placed by Ombudsperson Institution as well as those by PHD. Complaint boxes placed by Ombudsperson Institution may be opened only by the personnel of this institution, which provides confidentiality for complainants in filing complaints.
47. Additionally, they 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 Execution of Penal Sanctions is not subject to control, if addressed to the Kosovo Ombudsperson, as well as through their family members.
48. The NPMT noted that the Directorate of the PDCL provides adequate opportunity to file complaints and requests, reviews them and provides with response the convicts and remind detainees at the center in accordance with the LEPS. The PDCL also records all complaints and requests of prisoners in their administrative files. The NPMT did not receive complaints from prisoners regarding the right to file a complaint.

Staff of the PDCL and Security-interrelated issues

49. According to the director, the PDCL faces understaffing since some correctional officers are attending trainings at the Academy for Public Safety. According to the director of the PDCL, some correctional officials underwent trainings within the twinning project with the Finnish Correctional Service, trainings which have been organized by the Council of Europe, UNICEF and the Netherlands Helsinki Committee. Apart these trainings, some correctional officers were trained in the United States. Of America.
50. As in other Correctional Centers, the NPMT noted that the so called *pepper spray* is still a part of standard equipment of correctional officers in PDCL, with the expired date. In general, the premises of the PDCL are equipped with security cameras and most of them are functional, and in the view of the NPMT and the CPT, cameras are additional safeguards against physical abuse and possible false allegations against correctional officers. According to the Director of the PDCL, requests for additional cameras have been addressed to competent bodies of KCS.

²⁶ 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.

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

Ministry of Justice:

- **To increase activities outside cells for the remand detainees in conformity with Criminal Procedure Code and LEPS insofar as much as such thing is possible in the PDCL.**
- **To supply the PDCL with new and qualitative mattresses.**
- **To conduct renovation of the second floor of the PDCL so that accommodation conditions of confined persons comply with the LEPS and international standards on rights of imprisoned persons.**
- **To notify NPMT on the issue of the use of *pepper spray* beyond expiration date.**

Ministry of Health

- **To increase the number of technical-secondary personnel in the healthcare unit of the PDCL, according to the needs.**

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