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REPORT WITH RECOMMENDATIONS
OF THE
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE
Concerning
THE VISIT TO THE EDUCATIONAL – CORRECTIONAL CENTRE IN LIPJAN

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INTRODUCTION

Ombudsperson's National Preventive Mechanism against Torture (hereinafter "NPMT") based on Article 17 of the Law on Ombudsperson No. 05/L-019, can visit at any time and without prior notification all places where persons deprived of their liberty are located, including police stations, detention centers, prisons, places where foreigners deprived of their liberty are placed, as well as psychiatric institutions as well as those of social care.

Based on its mandate, NPMT visited the Educational-Correctional Center in Lipjan (henceforth "ECCL") on July 2, 2019.

NPMT observed that the United Nations Rules for the Protection of Juveniles deprived of liberty, stipulated that open detention facilities for juveniles should be established. Open detention facilities are without security measures or with minimal security measures. The number of those accommodated in these pre-trial detention facilities should be as low as possible.¹

ECCL implements middle and low degree of security and control necessary to protect juveniles from causing harm to themselves or causing harm to staff or others². The capacity of the ECCL is 40 beds, while during NPMT visit, 15 male juveniles with educational measures imposed were accommodated there.

Article 29, paragraph 1, of the Code No. 06/L-006 Juvenile Justice Code stipulates that the court shall impose the measure of committal to an educational-correctional institution when a juvenile who has committed a criminal offence punishable by imprisonment of more than three (3) years requires specialized education and when such measure is in the best interest of the juvenile. Paragraph 4 of this Article foresees that the term of this measure may not be less than one (1) year or more than five (5) years.

The purpose of an educational measure is to contribute to the rehabilitation and proper development of a minor offender, by providing protection, assistance and supervision, by providing education and vocational training and by developing his or her personal responsibility, and thereby to prevent recidivist behavior.³

According to Internal Domestic Order of ECCL, internal composition and programmatic organizing intends accomplishment of the aim of juvenile's rehabilitation, having in consideration juveniles rights' to privacy, visual stimulation, possibility to be in the society with other juveniles, general and vocational education, appropriate medical care, nutrition according to their age needs, as well as participation in sports, cultural and entertainment activities.⁴

The purpose of the visit

The purpose of this visit was to monitor the respect of the rights of juvenile deprived from liberty, who reside in this center in accordance with the Juvenile Justice Code, the applicable

¹ Paragraph 30 of the United Nations Rules for the Protection of Juveniles Deprived of Liberty. http://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf

² Article 4, paragraph 2, Internal Domestic Order of the Educational-Correctional Center in Lipjan.

³ Article 22, of the Code No. 06/L-006 on Juvenile Justice Code .

⁴ Article 4, paragraph 3, of Internal Domestic Order of the Educational-Correctional Center in Lipjan

laws in the Republic of Kosovo, as well as international standards for protection of the rights of persons deprived of their liberty, as well as monitoring implementation of the NPMT recommendations that this Mechanism has delivered to responsible authorities through a Recommendations Report published on 7 September 2018.⁵

Composition of the monitoring team

1. The monitoring team was composed of two Torture Prevention Legal Advisors and a social worker- a counselor.

Educational Correctional Centre in Lipjan

2. Article 208 of the Law on Execution of Penal Sanctions determines the types of correctional institutions. In the group of these institutions, the given Law foresees also educational correctional institutions for the execution of educational measures of committal of a minor offender to an educational-correctional institution.
3. Educational-Correctional Centre in Lipjan is a semi-open and open type of institution. According to the Law on Execution of Penal Sanctions (LEPS) the semi-confined correctional facilities have no physical and material security elements that prevent the escape of convicted persons. Behavior towards convicted persons is based on their own discipline and personal responsibility, while correctional staff oversees the movement and work of convicted persons.⁶
4. Further, Article 6 of the Regulation (GRK) no. 14/2016 on the Establishment of Correctional Institutions for the Execution of Penal Sanctions in the Republic of Kosovo defines establishment of Educational -Correctional Center in Lipjan, on execution of educational measures, which is of semi-open and open type.
5. Article 84, paragraph 1, of the Code No. 06/L-006 Juvenile Justice Code explicitly stipulates that: *“The educational measure of committal to an educational-correctional institution shall be executed in an educational-correctional institution established for this purpose. An educational-correctional institution is a correctional facility of the semi-opened and opened type.”*

Admission procedures in the ECCL

6. According to Article 5 of Internal Domestic Order of the ECCL, admission of juveniles to the ECCL is done in accordance with Article 31 of the LEPS, with this Internal Domestic Order and appropriately with the Administrative Instruction on Admission of Prisoners as well as with the Decision of the General Director.
7. Immediately upon admission, the juvenile undergoes medical examination by medical staff within 24 hours and the medical file is open containing facts about the juvenile.⁷ After the admission, the juvenile is interviewed by the social worker, who will serve as case manager, as well as by the psychologist, who shall draft the initial social report and initial evaluation psychologist report.

⁵<https://www.oik-rks.org/2018/09/07/raport-me-rekomandime-i-mekanizmit-kombetar-per-parandalim-te-tortures-lidhur-me-viziten-ne-qendren-edukuese-korrektuese-ne-lipjan/>

⁶ Law on Execution of Penal Sanctions, Article 209.

⁷ Standard Practice of Action, document of Prison Service Department, Procedures of admission in the prison for the first time – first medical check-up.

8. The admission office is located within the ECCL where currently, in the absence of admission officer, the admission procedure is conducted by the legal officer. At the time of admission, the juveniles are informed on Internal Domestic Order as well as on their rights and liabilities.

Cooperation of ECCL with NPMT during the visit

9. During the visit made by NPMT to the ECCL, 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.

Treatment of juveniles

10. The NPMT, during the visit to ECCL conducted in-person and group interviews with a significant number of juveniles and admitted no allegations of physical ill-treatment or excessive use of physical force exercised by correctional officers or demeanor of the prison authorities that would comprise violation of prisoner's dignity. NPMT observed that there is a positive spirit of relations and good interactive communication between detainees and correctional officers.
11. Correctional official in the ECCL have non-uniform clothing and NPMT noted that the Committee on Prevention of Torture (CPT), on its standards set for juveniles deprived of liberty, encourages such practices where in such premises the custodial staff do not wear a uniform.⁸

Accommodation conditions

12. NPMT observed that rooms where juveniles reside, as per the size as well as natural and artificial lighting, comply with standards set by the CPT as well as the Law on Execution of Penal Sanctions.⁹ Rooms have showers, toilets and cabinets and there is sufficient room for placement of their belongings. NPMT in general considers that the accommodation conditions in the ECCL go beyond minimum standards and reach the level of desirable standards for accommodation of juveniles with educational measure.

Nutrition

13. NPMT notes that the Law on Execution of Penal Sanctions stipulates that the convicted person has the right to 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. This Law determines also the liabilities that the convicted person is ensured the food ordered by a physician.¹⁰
14. The United Nations Rules on the Protection of Juveniles deprived of their liberty point out that every detention facility shall ensure that every juvenile receives food that is

⁸ European Committee for the Prevention of Torture, part from 24 General Report of the CPT, published on 2015. For more info visit: <https://rm.coe.int/16806ccb96>.

⁹ Law No. 04/L-149 Execution of Penal Sanctions, Article 36, paragraph 2.

¹⁰ Law on Execution of Penal Sanctions, Article 39, paragraphs 1 and 2.

suitably prepared and is served at normal meal times and of a quality and quantity to satisfy dietary, hygienic and health standards and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

15. During the visit to ECCL, the NPMT was informed that the food for juveniles in ECCL is still being prepared at Pre-Detention Center in Lipjan. According to the notification obtained from the Director, works on kitchen renovation are on the final stages. When the work is completed, the food will be prepared in the ECCL kitchen, which is equipped with necessary appliances for food preparation. The NPMT visited the kitchen and noted that the works will be soon completed and that the kitchen is supplied with necessary appliances for food preparation. The NPMT requested from the Director of ECCL to officially inform when works on kitchen renovation come to the end.
16. Juveniles were dissatisfied with the quality and quantity of food. The Director is aware of these dissatisfactions and intends to improve the quality of food when the kitchen in ECCL becomes functional.
17. NPMT, through Recommendation Report, published on September 7, 2018, recommended competent authorities to undertake actions so that: **“Juveniles are provided with enough and appropriate food in accordance with calories required for juveniles’ growth and development.”** The NPMT appreciates the progress made by the competent authorities in implementing this recommendation and encourages authorities to do everything on their power to implement this recommendation completely.

Regime

18. According to the Internal Domestic Order of the ECCL, juveniles have access to and are allowed to attend outdoor facilities for airing or sports activities according to the schedule determined by the Director of ECCL, which is not less than 3 hours per day. Juveniles, who are under the disciplinary measure of isolation, can undertake outdoor walking, separately from other juveniles, according to the schedule set specifically for them.
19. During the visit to the ECCL, the NPMT was notified by juveniles that they are allowed to spend at least three (3) hours daily in open environment within the institution, that is in compliance with Article 86 of the Juvenile Justice Code.¹¹ Educational-Correctional Center in Lipjan owns Information Technology room which contains computers, a library which possesses several various titles and novel, printing cabinet equipped also with appropriate printing machinery for t-shirts and cups; tailor and hairdresser's rooms, which are also equipped with adequate working tools.
20. During this year, professional trainings for plumbing, electrician, construction as well as computer were organized in the ECCL as well as tailoring, hairdressing, English language courses have been provided at Correctional Center in Lipjan. From documents admitted from ECCL it can be seen that 12 sessions for juveniles were organized by NGO¹², in the course of which, different themes from daily life have been discussed. CARITAS KOSOVA enabled organizing of art and theater therapy for juveniles, of a concert as well as EQUIP program is ongoing.

¹¹ Article 102, paragraph 3, of the Juvenile Justice Code goes on to say that the juvenile has the right to spend at least three (3) hours daily in open environment within the institution.

¹² These discussion sessions with juveniles were organized by “Arra” Non-Governmental Organization.

21. However, it is disappointing that, due to non-availability of appropriate trainers, available rooms for conducting different activities, apart from computer and hairdressing room, are not sufficiently used.
22. According to the director, it is planned to engage convicts who can assist on making functional some of the rooms for different activities in ECCL and provide concrete activities for juveniles.
23. Through Report with Recommendations, published on 7 September 2018, NPMT recommends responsible authorities: **“To increase activities for juveniles as well as to put in function existing rooms for different activities and engage appropriate instructors.”** The NPMT highly evaluates Director's efforts to implement this recommendation and the progress made in this regard. NPMT notes also that the situation has not been improved at desirable level, related to the functionality of all ECCL available rooms for different activities.
24. The NPMT observed that some juveniles accommodated at ECCL were sent to watch a play in the theater. Visits to memorial complexes were organized also, while carrying out of some other visits to institutions, tourist parks and memorial complexes are planned.
25. ECCL has the sports court, which is very modern and well equipped with necessary equipment for playing football and basketball, as well as well-equipped fitness hall. NPMT during the visit noted that sports and fitness halls are used by juveniles, one hour on daily bases.
26. NPMT observed that the number of activities, trainings and courses at ECCL during this year have increased significantly compared to the previous year. Therefore, the NPMT considers that the competent authorities have implemented the recommendation regarding increase of the number of activities and trainings for juveniles in the ECCL.

Contacts with outside world

27. The NPMT considers that contacts with the outside world, in particular visits from the family or other relatives, are of crucial importance in the context of the social rehabilitation of prisoners.
28. Article 88, paragraph 1, of the Juvenile Justice Code stipulates that the juvenile shall have the right to receive a visit at least once a week for a minimum of one (1) hour by his parent, adoptive parent, guardian, spouse, child, adopted child, and other relatives by blood in a direct line or in a collateral line to the fourth degree. While paragraph 2 A determines that the juvenile shall have the right to receive a visit at least once per month by other persons who will not have a negative influence on execution of the measure.
29. According to Director as well as juveniles' claims, they are allowed a visit during the week and an additional visit if they make a request to the director of ECCL. In addition, juveniles are also provided with phone for which ECCL provides the sim cards for making calls. Juveniles can make calls whenever they want and they are not restricted by the Director. The NPMT welcomes starting implementation of contacts with the outside world through the SKYPE program.
30. In addition, the NPMT noted Director's willingness to increase the number of family visits to ECCL, and to allow juveniles to go outside the ECCL jointly with their parents,

etc. The NPMT welcomes these plans, given that the regime in such institutions should not be like in prison.

31. In this regard, the NPMT notes that the CPT standards, concerning maintaining contacts with outside world for juveniles deprived of their liberty, can be a good reference for responsible authorities in their aims to increase juveniles' benefits in terms of contacts with the outside world.¹³

Health care

32. Article 43 of the Law on Execution of Penal Sanctions 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. Furthermore, this right for the juvenile is guaranteed also with the Juvenile Justice Code.¹⁴ Within the scope of ECCL functions health care comprised of a doctor and a nurse.
33. In addition, medical services for juveniles may be provided by Healthcare Units in Pre-Detention Center in Lipjan and in Correctional Center for Women and Juveniles in Lipjan as well as other public health institutions. The NPMT did not receive any complaints from juveniles regarding the medical services provided at ECCL.

Incidents between juveniles in ECCL

34. Based on the claims of the Director, reviewed documents, as well as allegations of the interviewed juveniles, incidents between juveniles do not appear to be a serious problem for ECCL. Cases of incidents between juveniles generally relate to verbal quarrels, while two cases of physical fighting have been registered during the year, for which the director has taken measures to prevent further exacerbation of situation and has imposed disciplinary measures in accordance with the legislation at effect. The incidents are recorded in appropriate administrative and medical records.

Disciplinary measures

35. According to the legislation at force, disciplinary measures which can be imposed to the convicted are: reprimand, deprivation of an assigned privilege, an order to make restitution; and solitary confinement¹⁵. In the case of pre-trial detainees, the following punishment may be imposed: the restriction or prohibition of visits or correspondence, apart contacts with the defense counsel, the Ombudsperson and diplomatic missions.
36. Article 90, paragraph 1, of the Juvenile Justice Code stipulates that provisions on the disciplinary procedures and punishments applicable to persons sentenced to imprisonment set forth in the Law on Execution of Penal Sanctions shall apply mutatis mutandis to a juvenile subject to a measure of committal to an educational-correctional institution, unless this Code specifies otherwise. Furthermore, Article 90, paragraph 2 explicitly stipulates that: **“A juvenile may not be subject to solitary confinement as a disciplinary punishment.”**

¹³ European Committee for the Prevention of Torture, from CPT 24 General Report, Part – Contacts with outside world, published in 2015. For more info visit: <https://rm.coe.int/16806ccb96>.

¹⁴ Code No. 06/L-006 of Juvenile Justice Code, Article 105, Point 1.6.

¹⁵ Paragraphs from 101 up to 113 of the Law of Execution of Penal Sanctions.

37. Article 42, paragraph 2, Internal Domestic Order of the ECCL states that disciplinary measures which can be imposed on juveniles at the ECCL are: exemption from special, joint activities, up to 3 days, exemption from going outdoors in groups but no longer than 5 days, Exemption from all joint activities up to 10 days.
38. As per the disciplinary measure of solitary confinement, Article 42, paragraph 7 of the ECCL Internal Domestic Order states that solitary confinement is prohibited as a disciplinary measure against juveniles, while stipulates that isolation as disciplinary measure is imposed only in exceptional cases when other sanctions have not been effective. This isolation is set for a fixed period of time, which cannot be longer than 15 days.
39. The regime of this isolation should guarantee the continuation of the educational program, vocational training, employment, human contacts, reading materials and provide at least an hour of outdoor walk for airing or physical activity each day in case weather conditions permit. NPMT was notified by the Director that no case has been recorded this year where the measure of isolation has been imposed.

Procedure for filing complaints

40. Article 95 of the Juvenile Justice Code goes on to say that “*Provisions of the Law on Execution of Penal Sanctions on the submission of complaints and petitions by convicted persons sentenced to imprisonment shall apply mutatis mutandis to the submission of complaints and petitions by juveniles subject to the educational-correctional or committal to a special health care facility*”.
41. 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 authority, that in the current case is the General Directory of the Correctional Service and the Minister of Justice.¹⁶
42. The NPMT noted that complaint boxes are available to those residing in the Educational Correctional Center in Lipjan set by the Kosovo Correctional Service as well as complaint boxes placed by the Ombudsperson Institution and Prison Health Department. Complaint boxes located by the Ombudsperson Institution may only be opened by staff of this institution, which provides complainants with confidentiality in filing complaints with this Institution.
43. Further, those accommodated in this Center can address their complaints to the Ombudsperson through free of charge telephone line (telephone line information is placed in the complaint box), regular post which according to the Law on Execution of Penal Sanctions is not subject to control if it is addressed to the Ombudsperson of Kosovo as well as through their family members.

¹⁶ Article 91, paragraph 4 of the Law No. 04/L-149 on Execution of Penal Sanctions reads: “*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.*”

44. In addition, ECCL can also be visited by international and local non-governmental organizations.

45. NPMT observes that the ECCL Management provides adequate opportunity for filing complaints and requests, and after revising them, provides response to those juveniles accommodated in this center, pursuant with the Law on Execution of Penal Sanctions. No complaint has been lodged with the NPMT related to the right of complaint filing.

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:

- **NPMT reiterates the recommendation that juveniles are provided with sufficient and appropriate amount of food in accordance with calories required for juveniles' growth and development.**
- **To put in function rooms dedicated to different activities which are still out of function.**
- **To engage skilled trainers for work in these rooms dedicated to different activities.**

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