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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

REPORT WITH RECOMMENDATIONS
OF
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE
ON THE VISIT IN THE HIGH SECURITY PRISON

To: **Mr. Abelard Tahiri, Minister**
 Ministry of Justice

Mr. Qemajl Marmullakaj, General Secretary
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 Ministry of Health

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Prishtina, 25 November 2019

INTRODUCTION

Pursuant to Article 17 of Law No. 05/L-019 on the Ombudsperson, the National Preventive Mechanism against Torture (hereinafter: NPM) of the Ombudsperson Institution may visit, at all times and without prior notice, all places where persons deprived of their liberty are held, including police stations, detention centres, prisons, detentions where foreigners deprived of their liberty, whose stay in the Republic of Kosovo conflicts with applicable laws and are subject to forced return by the Republic of Kosovo, are being held as well as psychiatric and social care institutions.

Based on this mandate, the NPM visited the High Security Prison (hereinafter: HSP) on 10 and 16 July 2019.

The objective of this visit was to review the progress of competent authorities in implementing the NPM recommendations sent through the Report with Recommendations following the HSP visits on 17, 21 and 31 March 2017, which was published on 16 June 2017¹ (hereinafter: Report) and in respecting the rights of prisoners as guaranteed by the Constitution of the Republic of Kosovo, the Law on Execution of Penal Sanctions (hereinafter: LEPS), other applicable laws in the Republic of Kosovo, and international standards for the protection of the rights of persons deprived of their liberty.

The HSP accommodates high and very high risk prisoners. The official capacity of the HSP is 390 prisoners. During the visit by the NPM, there were 153 inmates accommodated, 24 of whom detained on remand. The HSP accommodates prisoners of different ethnic backgrounds.

Composition of the Monitoring Team

1. The Monitoring Team had the following composition:

- Senior legal advisor on torture prevention.
- Legal advisor on torture prevention.
- Doctor.
- Psychologist.
- Social worker.

Cooperation with NPM during the visit

2. During the NPM's visit to the HSP, the Correctional Service and Prison Healthcare Department (hereinafter: PHD) staff provided the monitoring team with full co-operation. The team was allowed access without delays to all prison facilities. The team was provided with all information needed to carry out the task and was allowed to interview the convicted persons without the presence of correctional or PHD officers.

Ill-treatment

¹ Report with Recommendations of NPMT related to the vission in the High Security Prison, published on 16th of June 2017. For more, see: <https://www.oik-rks.org/2018/01/31/raport-i-mkpt-per-viziten-ne-burgun-e-sigurise-se-larte/>.

3. During the visit to the HSP, the NPM received no complaints of physical ill-treatment or excessive use of physical force by correctional officers or in relation to the conduct of correctional or health staff which would constitute a violation of the human dignity of prisoners. On the contrary, the overwhelming majority of respondents of all ethnicities spoke in favour of a very good treatment by correctional officers and PHD staff. In addition, the NPM noted that the level of interactive communication between correctional officers and prisoners was at a satisfactory level.

Material conditions

4. The LEPS expressly stipulates that the convicts have the right to housing, which responds to contemporary hygienic conditions and local climatic circumstances.² The law further states: *“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 Furthermore, this law stipulates that premises must not have humidity, must have adequate sanitary facilities and other means necessary for personal hygiene.⁴
5. The accommodation conditions at the HSP are generally very good and provide comfort to inmates who are placed in solitary confinement. All cells provide adequate natural light, adequate space, have TVs, clean toilets, and inmates can shower whenever they want. The cells are equipped with beds, sheets, desks, chairs and a call system.
6. The NPM noted that, in general, the conditions of accommodation at the HSP are in accordance with the LEPS, with international standards for the protection of prisoners' rights, and with the European Committee for the Prevention of Torture (hereinafter: CPT) standards. With regard to access of persons with disabilities (although there were none), all elevators were functional, which enables the access of prisoners with disabilities.
7. However, the NPM observed that the floors in ward 1, 2, in the stationary and in the admission ward were damaged and continue to be damaged. Through its Report, the NPM **had recommended to the competent authorities that action be taken to remedy these damages**. The NPM was informed by the Director of the HSP that concrete contracts have been signed to remedy these damages and work is expected to commence soon. The **NPM requests the HSP to report on the progress made in this regard**.

Food

8. The LEPS stipulates that a convict is entitled to adequate three meals per day in order to maintain his health and strength, whereby meals must be diverse and nutritious. The food given to the convicted person must be adapted to his age and state of health, nature of work, season and climatic conditions and, as far as possible, to suit his religious and cultural requirements. The law further stipulates that the convicts should be provided with

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

³ Law No. 05/L-129 on Amending Law No. 04/L-149 on Execution of Penal Sanctions, Article 3, paragraph 2.

⁴ Law No. 04/L-149 on Execution of Penal Sanctions, Article 36, paragraph 3.

food prescribed by the doctor.⁵ The LEPS also establishes the right of the prisoner to have access to drinkable water at all times.⁶

9. The Mandela Rules, which is an important international legal act on the rights of prisoners, set out the authorities' obligation to provide prisoners with adequate nutrition for their health as well as drinking water at all times⁷. In this regard, the European Prison Rules also set out the authorities' obligation to provide prisoners with dietary nutrition, considering their age, physical condition, religion and the nature of their work. While food should be prepared and served in adequate hygienic conditions, drinkable water should be available at all times.⁸ **Most prisoners did not complain about the quality and quantity of food.**

Regime

10. The HSP provides 3 regimes for prisoners: basic, standard and advanced regime. There are approximately **70 convicts** who are engaged in work at the HSP. Within the HSP there is a carpentry workshop, in which **four convicts** are engaged and they are currently manufacturing beds for the Correctional Centre in Lipjan. Other workshops cannot be activated at this time, due to lack of competent equipment and trainers.
11. Convicts are also entitled to **at least two hours** walk per day.⁹ The NPM noted that convicts also had access to various play equipment, such as ping pong and table football. The convicts may spend part of their time in certain wards (depending on the regime) by moving freely inside the ward.
12. The NPM received complaints from those accommodated in ward 1 and detainees regarding the regime. According to their claims, they spend most of their time indoors (about 22 hours) and only have access to **outdoor exercise (two hours a day)**. From interviews with these convicts and detainees, it can be concluded that they understand the regime as a punitive regime.
13. The sports fields are covered with white concrete, which impedes the normal development of sports activities, as they cause frequent injuries. The promenades are also surrounded by high walls of the same material and colour, which have dazzling reflection. **Through the Report, the NPM recommended competent authorities to act in order to eliminate such deficiency. During the visit, the NPM was informed by the Director that a contract had been signed to commence work in eliminating such deficiency.**
14. Through this Report, the NPM would like to draw the attention of the competent authorities of the Republic of Kosovo to the CPT Report on the Visit to the Republic of Kosovo in 2015, which was published in September 2016¹⁰, through which the CPT, in addition to the findings, had issued concrete recommendations to the competent authorities regarding the regime at the HSP.

⁵ Law on Execution of Penal Sanctions, Article 39, paragraphs 1 and 2.

⁶ Law on Execution of Criminal Sanctions, Article 40.

⁷ Mandela Rules, Rule 22.

⁸ European Prison Rules 22.1 through 22.6.

⁹ According to Article 37 of the Law on Execution of Penal Sanctions, convicts are entitled to at least two hours of walking.

¹⁰ CPT Visit Report on the Republic of Kosovo in 2015, published on 8 September 2016, paragraph 45. For more see: <https://rm.coe.int/16806a1efc>.

15. Through this report, the CPT had expressed serious concern about the regime offered to most prisoners at the HSP. In this report, the CPT stated: *“Offering concrete activities to prisoners is essential to the well-being and resocialization of every prisoner.”*
16. The CPT has recommended to the competent authorities of the Republic of Kosovo the following: *“The Committee recommends that priority steps be taken to devise and implement a comprehensive regime of out-of-cell activities for all sentenced prisoners at the High Security Prison. The aim should be to ensure that all prisoners are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association). Particular attention should be paid in this context to the situation of long-term prisoners.”*
17. In their response to this recommendation sent to the CPT, the authorities of the Republic of Kosovo stated as follows: *“One of the aims of the SCA in the strategic plan 2016-2020 is to expand the activities of prisoners, particularly in the case of long-term prisoners.”*¹¹ Therefore, the NPM encourages the competent authorities to act in the spirit of the aforementioned recommendation, and in accordance with national and international standards requiring the development of comprehensive programs aimed at resocialization and provision of concrete activities outside the holding cells.
18. In the case of remand detainees, their engagement at work depends on the permission of the court. The NPM observes that, with regard to the pre-trial detainee's work engagement, Article 199, paragraph 2, of the Criminal Procedure Code states as follows: *“Detainees may be allowed to work in activities that respond to physical and mental abilities within the means and conditions available to the institution and provided that it does not prejudice criminal proceedings. A pre-trial judge, single trial judge or presiding judge shall decide on this in agreement with the directorate of the institution.”*
19. In addition, Article 200, paragraph 1, of the LEPS, concerning the detainee's engagement, provides as follows: *“A detainee may work in the workshop, workshops of the economic units within the respective correctional institution only with the approval of the competent court.”*
20. Likewise, the Mandela Rules establish the right of the detainee to work. Mandela Rule 116 explicitly states: *“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.”*
21. In the CPT Report on the Visit to the Republic of Kosovo in 2015, which was published in 2016, with regard to the regime for remand prisoners in Kosovo pre-trial detention centres, the CPT expressed concerns that despite authorities' efforts, they spent most of the time in their cells, except for two hours of walk, watching TV and playing cards.
22. Through this report, the CPT recommended the following to the competent authorities in the Republic of Kosovo: *“The CPT reiterates the recommendation that the authorities commit to increase out-of-cell activities for detainees in all institutions where the CPT visited, and in all other institutions of the Kosovo Correctional Service, where appropriate.”* The CPT further stated: *“The longer the detention period, the more*

¹¹ Response to CPT in English, paragraph 45. For more see: <https://rm.coe.int/16806a1eff>.

advanced the regime offered to them. Actions should also be taken to increase the number of staff where necessary.”¹²

23. The NPM considers that, based on the legislation in force, the Mandela Rules and the CPT's recommendations, the competent authorities should endeavour to increase out-of-cell activities for detainees as much as possible.

Health care

24. Article 4 of Law No. 05/L-129 on amending Law No. 04/L-149 on Execution of Penal Sanctions establishes the right of convicted persons to the same standards of health care available in the community. The convicted person shall have access to the necessary health services free of charge.
25. The staff of HSP's healthcare unit consists of three full-time physicians who work in shifts and also cover weekends, one head nurse and five nurses who work 12-hour shifts. Dental services are provided by the dentist twice a week, and there are consultations by a psychiatrist, a cardiologist and a surgeon. There is a regular psychologist working within the healthcare unit.
26. Other medical services, as needed and on upon recommendation by a physician, are also provided at the University Clinical Centre of Kosovo (UCCCK). All medical services are provided according to protocols and Standard Operating Practice. The healthcare unit maintains the following records: self-harm, attempted suicide, hunger strikes, solitary confinement, and death in prison, sexual abuse and bodily injury. The laboratory is operational within the health unit and two nurses are being trained for these services.

Physical conditions at the HSP healthcare unit

27. During the visit, the NPM observed that physical conditions in a part of the healthcare unit were not good due to floor damage. The floor where the dentist is located working conditions are difficult, as there is building material and dust everywhere around. The living rooms are not functional and are on the same floor as the dental clinic.
28. The healthcare unit has shock therapy, oxygen dispenser, ECG, first aid, laryngeal tube, tensimeter, electroshock, surgical instruments, etc., as well as expendable material for wound healing. **The NPM received no complaints regarding the medical services provided. On the contrary, the prisoners stated that is very good medical treatment and respect for the dignity of the prisoners.**

Importance of medical check-ups for newly received prisoners

29. The CPT and other international legal instruments have repeatedly emphasized the importance of the medical examination of newly received prisoners, especially in institutions which constitute an entry point into the prison system. Such screening is essential, especially to prevent suicide and spread of communicable diseases (such as tuberculosis, hepatitis B/C, HIV).
30. According to the CPT, prison medical services can make a significant contribution to the prevention of physical ill-treatment during the period immediately prior to incarceration, that is, to the period when persons are held by law enforcement agencies through

¹² CPT Report on visit to Kosovo, published in September 2016, paragraph 46. For more see: <https://rm.coe.int/16806a1efc>.

systematic and timely registration of injuries and, where appropriate, by providing information to relevant authorities.¹³

31. The LEPS¹⁴ and the PHD Standard Operating Procedures¹⁵ set out the obligation for the newly admitted prisoner to undergo medical examination within 24 hours of being admitted.
32. Such obligations are also laid down in international acts on the protection of prisoners' rights, such as the Mandela Rules¹⁶, the European Prison Rules¹⁷ and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.¹⁸
33. Based on the prisoners' allegations and relevant medical documentation, the newly received prisoners are checked within 24 hours of their arrival at the HSP.

Confidentiality of medical services

34. The confidentiality of medical services is provided under the Standard Operating Procedures¹⁹ approved by the Ministry of Health; the LEPS²⁰; the CPT standards²¹; and international acts, such as the Mandela Rules²² and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.²³
35. Furthermore, the CPT standards also stipulate that all medical examinations of prisoners should be conducted so as not to be seen and heard by correctional officers, unless the physician so requests.
36. In addition, Article 25, paragraph 3, of the Administrative Instruction on House Rules in Correctional Institutions, expressly states: "*The doctor makes the medical visit in terms of confidentiality and in professional ethical norms.*"
37. Based on information provided by health service staff and interviews with prisoners, health services are generally provided without the presence of correctional officers.

Other issues

¹³ European Committee for the Prevention of Torture, 26th General Report, paragraph 72, at: <https://rm.coe.int/168070d0c8>.

¹⁴ Law No. 04/L-149 on Execution of Penal Sanctions, Article 31.

¹⁵ Standard Operating Procedures, paragraph 1. See: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Veprimit-n%C3%AB-DShB.pdf>.

¹⁶ Mandela Rule 34. See: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

¹⁷ Council of Europe, Recommendation (2006) 2 of the Council of Ministers to Member States on European Prison Rules, paragraph 42.1. See:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804c221d>.

¹⁸ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, paragraph 27, at: https://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf.

¹⁹ Standard Operating Procedures, paragraph 11. See: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Veprimit-n%C3%AB-DShB.pdf>.

²⁰ Law on Execution of Penal Sanctions, Article 49.

²¹ CPT standards, published in 2018, paragraphs 50 and 51. For more see: <https://rm.coe.int/16806ce943>.

²² Mandela Rule 26, paragraph 2, at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

²³ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, paragraph A, Rule 19, at: https://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf.

38. During the visit to the HSP, the NPM has received several complaints from remand detainees of Serbian ethnicity that not all documents were translated into Serbian.
39. The NPM considers that the competent authorities should bear in mind the legal obligation to provide such services in the official languages of the country, as provided by the Constitution and the relevant legislation governing this matter.

Incidents between prisoners

40. The NPM observed that incidents between prisoners were not a major problem in the HSP, although there were incidents this year. Based on the allegations of prisoners involved in incidents, medical and administrative documentation, the HSP authorities have taken all necessary measures provided by law to prevent incidents and protect prisoners.

Disciplinary measures

41. According to the legislation in force, the disciplinary penalties that may be imposed on convicts are: reprimand, deprivation of an assigned privilege, an order to make restitution and solitary confinement.²⁴ In the case of remand detainees, the following penalties may be imposed: restriction or prohibition of visits or correspondence, with the exception of contacts with the Defence Counsel, the Ombudsperson and diplomatic missions.
42. The NPM had in earlier reports expressed concern that the legislation in force²⁵ provides that before the prisoner is placed in solitary confinement, the director of the correctional facility shall request in writing the opinion of the physician who proves that the prisoner is in good physical and mental health conditions to be subjected to the disciplinary measure of solitary confinement.
43. Such action is not prescribed by the PHD Standard Operating Procedures and the medical staffs does not provide written opinions as to whether the prisoner, against whom such disciplinary measure is imposed, is physically and mentally capable of being subject to disciplinary measure of solitary confinement.
44. During the visit to the HSP, the NPM interviewed several prisoners who had been punished with the disciplinary measure of solitary confinement. After interviewing prisoners and reviewing administrative and medical documentation, the NPM found that all their rights guaranteed by the LEPS and international standards were respected and that the procedures provided for by the LEPS and other sub-legal acts have been adhered.

Contact with outside world

45. Legislation at force²⁶, in case of convicted persons stipulates that convicted prisoners are entitled to unlimited right of correspondence (subject to certain exceptions), are permitted to a one-month visit in a duration of one hour, as well as are entitled to children's and spouses' visits at least once in 3 months with a minimum duration of three hours. Additionally, they have the right to make phone calls.

²⁴ Paragraphs 101 through 113 of the Law on Execution of Penal Sanctions.

²⁵ Article 107 of the Law on Execution of Penal Sanctions and Article 76 of the Administrative Instruction on House Order in Correctional Facilities.

²⁶ Law on Execution of Penal Sanctions, Articles 62-65.

46. As per telephone calls, Administrative Instruction for the House Rules in Correctional Institutions²⁷ determines that the convicted person has right on telephone calls with close family members as well as other persons. According to this Direction, telephone call of the convicted person and of that on remand cannot be longer than 15 (fifteen) minutes.
47. In HSP, advanced regime prisoners are allowed three phone calls per week in duration of 15 minutes, 2 family visits per month in duration of one hour and are entitled to a free visit in duration of three hours every 2 months.
48. In the case of detainees on remand, Article 200 of the Criminal Procedure Code of Kosovo stipulates that the detainees on remand can receive visits “*within the limits of the rules of the detention facility*” based on permission of the pre-trial judge and under his supervision. Further, the Code determines that other correspondence and visits are subject to pre-trial judge’s decision. Based on interviews with the detainees, they are allowed two visits per month on a court decision.
49. In case of foreign nationals, they are provided with opportunity to contact the Diplomatic Mission or the relevant office of the State of which he/she is a citizen verbally or in writing.²⁸ During the visit, NPM interviewed a foreign citizen who had no complaints regarding the enjoyment of the aforementioned rights.

Complaint procedures

50. Efficient system of complaint submission is the basic guarantee against ill-treatment in prisons and detention centres. People placed in these centres ought to be provided with the opportunity of filing complaints within the prison or the detention centre where they are located and enable their confidential access to responsible authority.
51. Article 91 of the Law on Execution of Penal Sanctions specifies in details the procedure under which remand detainees and sentenced persons may address a complaint or a request to the director of a particular institution of the Kosovo Correctional Service. The procedure also includes deadlines for reply by the Director and the possibility for the complaint to be addressed to another authority, which in the current case is the General Directorate of the Correctional Service and the Minister of Justice.²⁹
52. The Ombudsperson or his representatives may visit detainees and correspond with them without prior notice and without the supervision of a pre-trial judge, single trial judge or presiding trial judge or other persons appointed by such judge. Detainees' letters sent to the Ombudsperson Institution (OI) cannot be checked. The Ombudsperson and his representatives may communicate orally or in writing confidentially with the detainees. Convicts can also contact the Ombudsperson's NPM by phone.
53. In addition, based on agreements with competent ministries, the HSP may be visited by non-governmental organizations

²⁷ Administrative Instruction on House Order in Correctional Facilities, Article 54.

²⁸ Law on Execution of Penal Sanctions, Article 33, paragraph 1.

²⁹ Article 91, paragraph 4, of the Law on Execution of Penal Sanctions, establishes: “*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.*”

54. The NPM observed that prisoners in the HSP had access to the complaint boxes placed by the Kosovo Correctional Service, the complaint boxes placed by the PHD, and the complaint boxes placed by the OIK. The complaint boxes placed by the OIK can only be opened by the staff of this institution, which provides the complainants with confidentiality in lodging a complaint. The NPM has not received any complaints regarding the observance of this right.

The Ombudsperson, based on the findings and conclusions reached during the visit, pursuant to Article 135, paragraph 3, of the Constitution of the Republic of Kosovo and Article 16, paragraph 4, of the Law No. 05/L-019 on Ombudsperson, hereby

RECOMMENDS

To the Ministry of Justice:

- **The NPM reiterates the recommendation that appropriate steps be taken to repair the damage of the flooring in HSP stationary and wards where they have been damaged.**
- **The NPM reiterates the recommendation to avoid the deficiency of white reflective colour, which is a barrier to out-of-cell activity.**
- **Take action to develop and implement a comprehensive regime of out-of-cell activities for all prisoners.**

Pursuant to Article 132, paragraph 3, of the Constitution of the 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...must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question.*”), we kindly ask you to inform us of the actions you will take regarding this matter.

With respect,
Hilmi Jashari
Ombudsperson