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**REPORT WITH RECOMMENDATIONS
OF THE
NATIONAL PREVENTIVE MECHANISM ON TORTURE
CONCERNING**

THE VISIT TO THE PRE-DETENTION CENTRE IN PRISHTINË

For:

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Prishtina, 22 November 2019

INTRODUCTION

In accordance with Article 135, paragraph 3 of the Constitution of Republic of Kosovo and Article 17 of the Law no.05/L-019 on Ombudsperson, Ombudsperson's National Preventive Mechanism against Torture (NPMT), on 11 September 2019, visited Pre-Trial Detention Centre in Prishtinë (henceforward *PDCP*).

Ombudsperson's National Preventive Mechanism of Torture (henceforth "NPMT"), based on Article 17 of the Law No. 05/L-019 on Ombudsperson, can conduct regular and unannounced visits to all places where people deprived of their liberty are held, including police stations, remand detention establishments, prisons, places where foreigners deprived of liberty are held, as well as psychiatric and social care institutions.

In PDCP, apart remand detainees, a small number of sentenced persons are accommodated as well. The official capacity is 300. During the visit conducted by NPMT, 103 remand detainees as well as 25 convicted persons were placed in the PDCP.

Objective of the visit

The main objective of this visit is to assess the respect of rights of detained persons accommodated in this PDCP 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.

Composition of the monitoring team

1. The monitoring team was comprised of Senior Legal Advisor for Prevention of Torture, Legal Advisor for Prevention of Torture, a Psychologist- Advisor, and a Social Worker-Advisor.

Cooperation with NPMT during the visit

2. During the visit made by NPMT to the Pre-Detention Centre in Prishtine, the staff of Kosovo Correctional Centre (henceforward KCC) and of Prison 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 was able to speak in private with sentenced and remand prisoners without the presence of correctional officers or medical personnel.

Information on the rights of prisoners

3. Administrative Instruction MD-No. 07/2015 on House Rules in Correctional Institutions (hereinafter *House Rules*) establishes the obligations of correctional establishments to provide conditions immediately upon admission that the prisoner is informed in writing on his or her rights and obligations. Further, the House Rules stipulates that the *House Rules* as well as the Law on the Execution of Penal Sanctions (hereinafter LEPS) are available to prisoners at all times. A prisoner who is illiterate is verbally informed on his

or her rights and obligations.¹ During the visit, the NPMT observed that inmates were provided with House Rules and other relevant documents through which prisoners were informed on their rights and obligations.

Ill-treatment

4. The NPMT, while visiting the PDCP, interviewed a significant number of prisoners and received no complaints of physical mistreatment or excessive use of physical force exercised by correctional officers or conduct of prison authorities which would constitute a violation of the dignity of prisoners. In addition, the NPMT noted that there is a positive climate of relationships and good interactive communication between prisoners and correctional officers, as well as health care staff with prisoners.
5. Also, most of the pre-detainees interviewed by the NPMT spoke in favor of good treatment provided by the Kosovo Police during their arrest and during their detention phase.
6. However, NPMT during the visit conducted, encountered two remand detainees who claimed to have been physically abused by the Kosovo Police in the course of their arrest and detention at the Fushe Kosova Police Station. NPMT observed signs of bodily injuries at the face and the head of remand detainees D.K and D.K. In this regard, NPMT visited the Regional Detention Center in Prishtinë where the team gained relevant documentation. The remand detainees' files show that they underwent medical examinations at the University Clinical Center. They were taken there by police before being admitted to the Regional Detention Center.
7. On 20 September 2019, the NPMT visited the Fushë Kosovë Police Station where additional case related documents have been provided to the team, such as reporting forms for use of physical force, reports of police officers from the scene, as well as medical reports on the case of two police officers, who were at the scene and who faced active resistance from the given detained persons as well as suffered bodily injuries. Based on information provided by police officers and findings prescribed in the medical reports, one of the police officers who was at scene, as a result of injuries sustained, is still on medical leave.
8. NPMT was informed that all relevant documents, supported by the report, were delivered to the Kosovo Police Commission for Review of Use of Force. Through this report, the NPMT requests from the given Commission to be notified on findings of the use of physical force by police officers in the present case.

Conditions of detention

9. LEPS explicitly stipulates that a convicted person has a right to accommodation which corresponds to contemporary hygienic conditions and local climatic circumstances.² Further the Law determines that: *“The premises in which a convicted person lives and works must be of sufficient space for each convicted person to have at a minimum eight*

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

² Law No.04/L-149 on Execution of Penal Sanctions, Article 36 paragraph 1.

*(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

10. The NPMT observed that the cells where inmates were accommodated had sufficient natural light, living space that goes beyond the standard set by the LESP and the standards set by the European Committee for the Prevention of Torture (hereinafter referred to as the CPT).⁴ The NPMT during the visit noted that two cells were appropriate and available for prisoners with disabilities.
11. However, despite the fact that the PDCP is a new building, it has been significantly damaged due to problems with the water system in the building. During the visit, the NPMT noticed that moisture was present in corridors and in cells.
12. In wards where remand detainees are held, in certain wings cells are equipped with showers and remand detainees can take showers whenever they want. In other parts where cells do not have showers but there are shared showers, remand detainees can take showers three times per week. Sentenced persons can take showers whenever they want.

Food

13. 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
14. Further 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 dietary food ordered by a physician.⁶ **During the visit, the NPMT was informed by health personnel that there is a deficiency of dietary nutrition.**

Regime

15. In the PDCP, none of remand detainee is engaged at work. In the case of remand detainees, their engagement at work depends on the court's permission. Whereas, 17 convicted persons are engaged in work in the kitchen, garden and yard, library and maintenance of the premises. The inmates have two hours of walking in a day, as provided by the LESP.⁷ PDCP has four walking paths and two sports fields that are not in use. Remand detainees spend most of their time, actually 22 hours, in their cells, in the lack of working commitments or activities such as sports, education, training etc.

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

⁴ European Committee on Torture Prevention, Living space for the detained person, see: <https://rm.coe.int/16806cc449/>

⁵ Law no. 04/L-149 on Execution of Penal Sanctions, Article 39, par. 1.

⁶ Law no. 04/L-149 on Execution of Penal Sanctions, Article 39, par. 2.

⁷ Law no. 04/L-149 on Execution of Penal Sanctions, Article 37

16. NPMT notes that with regard to engagement at work of remand detainees, 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, 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 related to engagement at work, stipulates 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”*.
18. Further, Mandela Rules determine the right of the remand prisoner to work. Rule 116 of Mandela Rules explicitly stipulate: *“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’s Report for the visit conducted in Republic of Kosovo in 2015, published on 2016, concerning the regime for the remand prisoners, exposed a concern that apart authorities’ efforts, most remand prisoners still remain locked in their cells for most of the day, with very little to do besides watching TV, reading and playing board games.
20. Through this Report the CPT recommends responsible authorities in the Republic of Kosovo as follows: *“CPT, reiterates the recommendation that authorities should do everything to enhance the out-of-cell activities available to remand prisoners in all the establishments visited and, where appropriate in other Kosovo Correctional Service establishments. Further the CPT points out: “the longer the period for which the 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 remand detainees, not only in the PDCP but also in other Pre-Detention Centers, insofar as such thing is possible.**

Inter-prisoner violence

22. Prison authorities have positive obligations to prevent violence between prisoners for which they are responsible. Based on the relevant documentation, claims of the management and of prisoners, no serious incidents were recorded in the PDCP during this year, except verbal disputes, in which cases the directorate used mediation and reconciliation to solve such problems.

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

Health Care

23. Article 43 of the Law No. 05/I-129 on Amending and Supplementing the Law no. 04/L-149 on the Execution of Penal Sanctions stipulates that the convicted person shall enjoy the same standards of health care available in the community. Further the LEPS stipulates that the convicted person shall have access to the necessary health services free of charge. At the PDCP the health unit consists of six nurses and two general practitioners who work full time. Dentist and psychiatrist are available twice a week. In the meantime, the NPMT was informed that Prison Health Department recruited full time psychologist.
24. Other specialist services are provided in health facilities such as regional hospitals and those of the University Clinical Center of Kosovo (UCCK). The NPMT received no complaints from prisoners regarding the medical services provided to them in the PDCP. In addition, the prisoners expressed their gratitude for a very good treatment by the medical staff, both in terms of the medical services provided, as well as in terms of interactive communication and respect for their human dignity.

Prisoners with mental disorders

25. The presence of inmates with mental illness remains a challenge for detention and correctional establishments due to the lack of capacity to accommodate prisoners of this category in relevant health institutions. NPMT during the visit to the PDCP was informed that due to the limited capacities of the Institute of Kosovo Forensic Psychiatry, there are inmates in the PDCP who due to their health situation should not be in the PDCP.
26. According to medical staff, there are seven inmates who cannot be managed in this health unit. Five of them are already at the Institute of Forensic Psychiatry, while very soon another one is going to be transferred there.
27. In this direction, NPMT observes that Article 43 of the Law No. 05/I-129 on Amending and Supplementing the Law no. 04/L-149 on the Execution of Penal Sanctions stipulates: *“Convicted persons who need specialized treatment in the correctional institution shall be transferred to the hospital of the correctional institution, in the appropriate psychiatric institution or any other institution for the health care treatment”*.
28. NPMT observes that CPT standards determine as follows: *“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”*.⁹
29. European Prison Rules, in the Rule 12.1 determine 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”*¹⁰.

⁹ CPT standards, a part of 3rd General Report, paragraph 43, published on 1993, for more information see at: <https://rm.coe.int/16806ce943>.

¹⁰ European Prison Rules, Rule 47.1. See at: <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

30. Mandela Rules, in the Rule 109 stipulates that the prisoners with mental disabilities shall not be detained in prisons but arrangements shall be made to transfer them to mental health facilities as soon as possible.
31. **The NPMT considers that the competent authorities should make a continuous effort to keep these persons in relevant institutions, whether in a separate psychiatric unit within the prison or in a hospital or civilian psychiatric institution.**

Importance of medical examinations of newly-arrived prisoners

32. CPT 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 in preventing suicides and spreading of transmissible diseases (such as tuberculosis, hepatitis B/C, HIV).
33. 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.¹¹
34. Furthermore, CPT standards determine that the newly-arrived convicted person in the prison or the correctional center is subject to medical examination within 24 hours, from the moment he/she has been admitted.¹²
35. 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.
36. 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 Liberty.¹⁷
37. Based on allegations of detainees as well as relevant medical documents, the newly – arrived detained persons are subject to medical examination in conformity with the LEPS and the Standard Operating Procedure of the PHD.

¹¹ European Committee for the Prevention of Torture, 26 General Report, paragraph 72, at: <https://rm.coe.int/168070d0c8>.

¹² European Committee on Torture Prevention, Report for the visit to Sweden, 2015, paragraph 81. See at: <https://hudoc.cpt.coe.int/eng#%7B%22sort%22:%5B%22CPTDocumentDate%20Descending,CPTDocumentID%20Ascending,CPTSectionNumber%20Ascending%22%5D,%22CPTSectionID%22:%5B%22p-swe-20150518-en-25%22%5D%7D>

¹³ Law No. 04/L-149 on Execution of Penal Sanctions, Article 31.

¹⁴ Standard Operating Procedure, point 1. See at: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standar-de-te-Veprimit-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: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804c221d>.

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

Confidentiality of medical services

38. Regarding the confidentiality of medical services, the NPMT, based on interviews with prisoners and health personnel, finds that these services are provided under conditions that respect confidentiality, actually are provided without the presence of correctional officers, unless their presence is required by the doctor. Only the medical personnel have access to the prisoner's medical file.
39. Confidentiality of medical services is foreseen by Standard Operating Procedure¹⁸ 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

40. 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.²³ While in the case of remand 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.
41. During the visit, the NPM was informed by the PDCP Directorate that no disciplinary measure of solitary confinement was applied during this year. NPMT did not receive complaints from prisoners regarding the imposition of disciplinary measures by the CPC Directorate.

Contacts with the outside world

42. The NPMT considers that contacts with the outside world, especially visits from family or other relatives, are of crucial importance in the context of social rehabilitation of prisoners.
43. Legislation at effect²⁴, 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. According to the management of the PDCP, remand detainees can have one visit in two weeks, while convicted persons can have four visits per month in duration of one hour.

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

¹⁹ Law No. 04/L-149 on Execution of Penal Sanctions, Article 49.

²⁰ CPT Standards, published in 2018, paragraphs 50 and 51. For more info visit: <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.

²³ Paragraphs from 101 to 113 of Law on Execution of Penal Sanctions.

²⁴ Law on Execution of Penal Sanctions, Article 62-65.

44. As per telephone calls, Article 60 of the LEPS determines that the convicted person has the right to make telephone calls. In the case of remand detainees, these calls are authorized by the competent court. Based on the information provided by the PDCP management as well as remand detainees' allegations, they are allowed to one call per week, subject to the permission of the competent court. Whereas, in the case of convicts there are no restrictions.
45. The NPMT also visited the Family Visiting Room, which offers satisfactory conditions for receiving family visits. The Family Visiting Room for the convicts offers the possibility of direct contact between the convict and the persons visiting him. Whereas, in the case of pre-detainees, the situation is different, there are barriers between remand detainees and visitors that prevent direct contact between pre-detainees and visitors.
46. In this direction, NPMT observes that the CPT in its Report for Ukraine ²⁵ addresses the issue of close type visits which makes the physical separation between the prisoner and persons who visit him/her through the Plexiglas. On this occasion, the CPT recommends Ukrainian authorities that relevant regulation is amended so that all prisoners, including remand detainees, could receive visits in reasonable and open conditions, while the use of closed premises for visits should be more of an exception than a rule.
47. Further, the CPT pointed out that any decision to impose closed visits must always be well-founded and reasoned, and based on an individual assessment of the potential risk posed by the certain prisoner. **Therefore, NPMT encourages the competent authorities, in the spirit of this recommendation, to consider the possibility of enabling such visits in more open circumstances and on the basis of the individual risk assessment of the particular prisoner.**

Complaint procedures

48. CPT standards point out the importance of effective system complaint filing and consider that as a guarantee against the ill-treatment in prison and pre-detention centers.²⁶
49. 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.²⁷
50. The NPMT has noted that complaint boxes are available to prisoners at the PDCP, placed by the KCS and the PHD. They can also file a complaint to the Ombudsperson through

²⁵ KPT, Raporti me rekomandime për vizitën në Ukrainë në dhjetor 2017, publikuar më 6 shtator 2018, paragrafi 102. Për më shumë shih në: <https://rm.coe.int/16808d2c2a>.

²⁶ Komiteti Evropian për Parandalim të Torturës, Raporti i 27-të i Përgjithshëm, paragrafi 68. Për më shumë shih në: <https://rm.coe.int/16807bc668>.

²⁷ 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 free of charge telephone line (telephone line information is posted in the complaints box), by regular mail, which, according to the LESP, is not subject to scrutiny if is addressed to the Ombudsperson of the Republic of Kosovo, as well as through their family members.

The NPMT observed that inmates at the PDCP were provided with an adequate opportunity to lodge complaints and requests, the Directorate reviewed them and sent responses to prisoners in accordance with the LESP. The PDCP also records all complaints and requests of prisoners in their administrative files. The NPMT received no complaints from prisoners regarding their right to appeal.

PDCP staff and security related issues

51. According to the Directorate, lack of a sufficient number of correctional officers is filled by engagement of correctional staff from other correctional establishments. Correctional and civil personnel are of both sexes. During this year, according to the documentation presented, it turns out that a total of 27 trainings were held for PDCP officials. In addition to relevant trainings held in the Republic of Kosovo, several PDCP correctional officers participated in a study visit to the United States of America where they visited prisons managed by the US Correctional Service.

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

The Ministry of Justice:

- **To increase out-of-cell activities for the remand detainees in the PDCP in conformity with Criminal Procedure Code and the Law of Execution of Penal Sanctions, insofar as such issue is possible.**
- **To provide dietary nutrition to incarcerated persons in the PDCP according to doctor's recommendation.**

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

