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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

**RECOMMENDATION LETTER
RELATED TO THE VISIT CONDUCTED BY
NATIONAL PREVENTIVE MECHANISM ON TORTURE
TO DUBRAVA CORRECTIONAL CENTRE**

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

Mr. Qemajl Marmullakaj, Secretary General
 Ministry of Justice

Mr. Uran Ismaili, Minister
 Ministry of Health

Mr. Naim Bardiqi, Secretary General
 Ministry of Health

Mr. Milazim Gjocaj,
 Director of Prison Health Department

Mr. Nehat Thaqi, General Director
 Kosovo Correctional Service

Mr. Hivzi Sylja, acting Director
 Dubrava Correctional Centre

Prishtinë, 16 December 2019

The purpose of the visit

Pursuant to Article 17 of the Law 05/L-019 on Ombudsperson, The National Preventive Mechanism of Torture (hereinafter “NPMT”) of the Ombudsperson, from 28 till 30 of October 2019 visited Dubrava Correctional Centre (henceforth “DCC”). The purpose of the visit was to assess the progress of responsible bodies in implementing the NPMT’s recommendations delivered through Recommendation Report of 28 June 2018.¹

Cooperation with NPMT during the visit

During NPMT visit to the DCC, the staff of the Correctional Service and the personnel of Prison Health Department provided the monitoring team with full cooperation. The team without any delay had access to all places of DCC. The team was provided with all necessary information to accomplish their duty and was able to talk to sentenced and remand prisoners without the presence of correctional officers.

Ill-Treatment

During the visits to the DCC, NPMT interviewed a considerable number of sentenced persons and did not receive any reliable complaints for physical ill-treatment or excessive use of physical force by correctional officers. Interactive and friendly communication has been noticed among staff working in this center and the inmates during the visit in this Centre.

Accommodation conditions

During the visit the NPMT noted that renovations have been conducted to certain wards. Accommodation conditions generally are in accordance with the Law on the Execution of Penal Sanctions (LEPS) and the European Committee for the Prevention of Torture (CPT) standards in terms of cell size, natural and artificial lighting, except in certain cases when the living space for a prisoner is not in accordance with the provisions of the LEPS and the CPT standards. As in other correctional and detention centers, there is also a lack of new supplies of quality mattresses in the DCC, which are generally worn-out and thin, so in certain cases, the moisture penetrates on them. The NPMT considers that responsible authorities should take concrete actions to avoid this shortcoming.

Nutrition

During the follow-up visit, the NPMT received a large number of complaints from prisoners regarding the quality and quantity of food served. In this regard, the NPMT, on 11 November 2019, contacted the Food and Veterinary Agency and requested, through official e-mail, its latest inspection report at the Dubrava Correctional Center. Although this Agency confirmed that it has inspected the DCC kitchen, regardless the liability to cooperate with the Ombudsperson Institution, which is foreseen by the Constitution of the Republic of Kosovo and the Law on the Ombudsperson, this institution failed to respond to the request submitted.

Health care

During the visit, the NPMT did not receive sound complaints of violations of prisoners' healthcare rights by the DCC Prison Hospital. Health services which cannot be provided in the DCC are provided in other public health institutions.

¹ Report with Recommendations on the visit in the Dubrava Correctional Center, published on 28 June 2019. For more info visit: <https://www.oik-rks.org/2019/07/04/raport-me-rekomandime-i-mkpt-se-lidhur-me-viziten-ne-qendren-korrektuese-ne-dubrave/>

Regime

The NPMT observed that NPMT recommendation of functionalization of the sports hall, delivered to the competent authorities through a Report with Recommendations of 28 June 2019, has been implemented. The NPMT, during the visit, noted that the sports hall was now operational and provides numerous sports activities for prisoners. Sports activities can also be developed by inmates in outdoor playgrounds in yards.

During its last visit, the NPMT was informed by the Management that approximately 344 prisoners were engaged in paid work. The Management has started to engage inmates on renovation of Wards and other work. Furthermore, there are three training facilities within the DCC, which are actually vocational training centers, where trainings on welding, construction, machinist, carpenter, technical maintenance, water and power installation are organized. Courses are organized in these workshops in duration of three months.

Based on the assistance provided by the NGO HELP, 10 prisoners were provided with professional welding training. Within the Dubrava Correctional Center there is a high school with 44 convicts attending classes. The NPMT noted that efforts have been made to operationalize the economic unit, which is foreseen by the Law on Execution of Criminal Sanctions, but an administrative instruction is expected to be adopted that will specify the work of this economic unit.

The regime for detainees in general remains poor. Their engagement at work or any other activity in most cases depends on competent court's permission. In most cases they have no other option apart going out in the fresh air twice per day as well as watching TV in their cells.

Contacts with outside world

Contacts with the outside world remain at a satisfactory level. Prisoners and remand detainees are entitled to family visits and telephone calls, as well as weekend holidays for convicts who meet the criteria.

NPMT recommendations delivered through Report, published on 28 of June 2018:

1. Adoption of the secondary legislation for fighting corruption, as foreseen with Law on Execution of Penal Sanctions.

Responsible authorities have made no progress in implementing this NPMT recommendation, although the adoption of secondary legislation is foreseen by the LEPS.

2. Necessary refurbishment of Ward 8 to be completed.

During the follow-up visit, the NPMT observed that this recommendation was implemented by the competent authorities. The Ward has been completely renovated and the majority of the work was done by prisoners.

3. Equipment of the kitchen with adequate appliances according to accurate evaluation.

There has been no accurate progress in implementing this recommendation. Moreover, the NPMT during the visit noted that kitchen staff didn't have work uniforms. Plastic bags are used as replacement for work uniforms.

4. Taking appropriate steps in order to end the practice of using unfitting electrical equipment.

Based on the meeting with the Director and interviews with inmates, since there is a hot water in the Centre, inmates have no reason to use such equipment. The Directorate has conducted several searches and has seized such equipment. This was also confirmed through interviews with prisoners.

5. Provision of detainees with closets for placement of their belongings

NPMT has noticed that in renovated Wards the closets for placement of belongings are fixed into the cell walls, while in other Wards the situation generally remains the same as the one found during the previous visit.

6. Putting the gym in function.

The NPMT observed that the NPMT's recommendation concerning putting in function the sports hall, which was delivered to the competent authorities through Report with Recommendations on 28 June 2019, has been implemented. The NPMT, during the visit, noted that the sports hall is operational and provides numerous sports activities for prisoners. Sports activities, inmates, can also develop outdoor playgrounds in yards.

7. Putting economic unit in function.

The NPMT has noted that efforts have been made to operationalize the economic unit, which is foreseen by the Law on Execution of Penal Sanctions, but an administrative instruction, which would specify the work of this unit, is expected to be adopted.

8. Finding adequate solutions in prison hospital for enabling suitable access for patients with disabilities on the second floor of the hospital.

As per NPMT's recommendation in finding adequate solutions in enabling access for patients with disabilities on the second floor of the hospital, NPMT was informed by Directorate that those patients will be placed in Ward 7 where they will be served with appropriate conditions related to their health situation. This situation was noted by the NPMT during the visit to this Ward.

9. Engagement of the necessary correctional staff, as needed.

During this period there was no engagement of additional correctional staff. The NPMT considers that the recommendation on the recruitment of necessary correctional staff was not yet implemented by the competent authorities.

10. Placement of security cameras in places where they were not placed.

During the follow-up visit to the Dubrava Correctional Center, the NPMT observed that in the control room some security rotary cameras, which take HD images, were installed, while the contracted company was in the course of adjusting those which were out of function and placing others where they were missing.

11. Increase of social number staff, based on the number of detainees in the DCC.

During visits to the Dubrava Correctional Center, the NPMT admitted concerns of the directorate and social workers based on the large number of prisoners. Through Recommendation Report on the visit to this center, the NPMT recommended competent authorities to increase the number of social workers, based on the number of prisoners in the DCC. During the last follow-up visit to the DCC, the NPM was informed that there had been attempts to recruit additional social officials but the recruitment procedures had failed.

12. Addressing the needs of correctional officers regarding work conditions and concerns about their status related to the Law on Salaries.

During this visit as well, the NPM received complaints from correctional officers about their status based on the Law on Salaries. The Directorate informed the NPMT that it did not have any specific information to share with the correctional staff regarding the Law in question. During the visit, the NPMT gained the impression that the concern of correctional staff is based more on the lack of precise information concerning the coefficients and categorization under the Law in question. The NPMT has received such concerns from other correctional and detention centers as well.

The Ombudsperson, pursuant to his constitutional and legal powers, sent the Law no. 06 / L-111 on Salaries in Public Sector for the Review of its compatibility with the Constitution.

The Ombudsperson has also requested imposing of interim measures against the implementation of the Law on Salaries in the Public Sector until a final decision by the Constitutional Court is brought, considering that imposing of interim measures is necessary to protect the public interest and to avoid irreparable damages that could be caused by the implementation of this law.

NPMT during this visit also received complaints from correctional officers due to the failure of implementation of the provision of the Law on Execution of Penal Sanctions, which foresees calculation of the benefited work experience.

The NPMT notes that Article 221 of the Law on Execution of Penal Sanctions expressly provides: *“Due to hazard, gravity of work and special working conditions, each twelve (12) months of work by correctional officers, shall be calculated as sixteen (16) months of work experience, and when calculating their salaries an allowance shall be ensured.”*

13. Pepper spray with expiring date to be removed from use

During the reporting period, the NPMT observed that correctional officers have expired *pepper spray* within their equipment. Through its Reports with recommendations, the NPMT recommended to the competent authorities that *pepper spray* with expired date of use should be removed as it can have a very hazardous effect if used indoors such as prisons. Through various visits, the NPMT was informed by the competent officials that the correctional officers were supplied with new *pepper spray*.

However, the NPMT, as recommended in other recommendations reports, reiterates that *pepper spray* should not constitute standard equipment for all correctional officers.

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:

- **NPMT reiterates recommendation of adoption of the secondary legislation for fighting corruption, as foreseen with Law on Execution of Penal Sanctions.**
- **NPMT reiterates recommendation of equipment of the kitchen with adequate appliances according to accurate evaluation.**
- **Suppling of the staff working in the kitchen with work uniforms.**
- **NPMT reiterates the recommendation previously given that the detainees are equipped with closets for placement of their belongings**
- **Increasing of out-of-cell activities for detainees, within DCC possibilities and in accordance with relevant legislation at force.**
- **NPMT reiterates recommendation of putting economic unit in function.**
- **NPMT reiterates the recommendation of hiring necessary correctional personnel according to needs assessment.**
- **NPMT reiterates recommendation of increasing the number of social workers based on number of the DCC detainees.**
- **Accomplishment of necessary refurbishments in Ward 5 and the DCC hospital ward.**

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