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## NATIONAL PREVENTIVE MECHANISM

### REPORT ON VISITS TO THE DETENTION CENTRE FOR FOREIGNERS IN VRANIDOLL

**Addressed to: Mr. Xhelal Sveçla, Minister  
Internal Affairs and Public Administration**

**Copy: Mr. Ismet Krasniqi, Secretary General  
Assembly of Kosovo**

**Mr. Habit Hajredinaj, Director  
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**Mr. Valon Krasniqi, Director  
Department for Citizenship, Asylum and Migration**

**Mr. Selman Nimanaj, Director  
Detention Centre for Foreigners**

**Pristina, 13 April 2021**

1. Pursuant to Article 17 of the Law 05/L-019 on Ombudsperson, Ombudsperson's National Preventive Mechanism against Torture (henceforward: *NPMT*) visited the Detention Centre for Foreigners in Vranidoll (hereinafter: *DCF*).
2. NPMT, based on Article 17 of the Law No. 05/L-019 on Ombudsperson, may conduct unannounced visits and at any time all places where people deprived of liberty are held, including therein places for foreigners deprived of liberty, and whose stay in the Republic of Kosovo contradicts applicable laws, and who are subject to forced removal from the Republic of Kosovo.
3. Based on this mandate, the NPMT on 20 January 2021 visited the Detention Centre for Foreigners. DCF functions within the scope of the Department for Citizenship, Asylum and Migration (*DCAM*) of the Ministry of Internal Affairs (*MIA*). According to Article 2 of Regulation (*MIA*) No. 03/2014 on Operation of the Detention Centre For Foreigners (hereinafter "*Regulation*"), the foreigners who are subject to forced removal and those found in violation of public security are held at this Centre, in order to verify their identity as well as for other reasons. Capacity of DCF is for 75 persons, while during the visit to this Centre, NPMT found 11 foreigners located there.

#### **The purpose of the visit**

4. The purpose of this visit was to monitor the adherence of foreigners' right, who are held in DCF, as provided for by the Law No. 04/ L-209 on Foreigners, the Law on Asylum, as well as by the Regulation No. 04/2018 on the Operation of the Detention Centre for Foreigners and international human rights standards as well as their restrictions due to spread of pandemic COVID-19. Also, during the visit the issue of DCF staff and security personnel was addressed, their training and adequate preparation to work with this category, etc.

#### **Composition of the monitoring team**

5. The monitoring team consisted of Senior Legal Advisor for Torture Prevention and a Psychologist-Counselor.

#### **Cooperation of DCF staff with members of NPMT during the visit**

6. During the visit to the DCF, the Centre's personnel provided NPM its full cooperation. The team was granted, without delays, access to all premises of the Centre. Furthermore, all information necessary to perform its duties were provided to the team, and they were allowed to conduct interviews with the detained persons without the presence of security officials and other DCF officials.

#### **Use of DCF as quarantine after Covid-19 virus spreading.**

7. During the visit, the NPM observed that this Center was used as quarantine during COVID-19 pandemic. In 2020, over 100 foreigners were quarantined at this Center. From Director's statements as well as checked documents, it results that during this period there were cases of various incidents, such as self-harm, attempted murders and incidents between foreigners in quarantine. From checked documents, the NPM noticed that in all

cases of incidents, foreigners were provided with the necessary medical services and the cases were handled by the Kosovo Police.

### **Detention of foreigners as a last resort**

8. Related to international human rights standards, detention (keeping of the foreigner on detention) should be a last resort measure taken by the authorities of a state to remove a foreigner, who is subject to forced removal, from their territory.
9. NPMT observes that the Law 04/L-2019 on Foreigners of Republic of Kosovo foresees that alternative measures have priority versus sending them of foreigners in detention.<sup>1</sup> Furthermore, European Committee for the Prevention of Torture (henceforward “CPT”), in standards determined in 2017, stipulates that deprivation of liberty under aliens legislation should only be a measure of last resort and that alternative (non-custodial) measures should be given priority.<sup>2</sup>

### **Safeguards during deprivation of liberty and introduction of rights**

10. Article 8 of the Regulation determines that admission in the Centre is done based on the order for detention of the foreigner to the Centre issued by the Directorate for Migration and Foreigners (DMF). When handing a foreigner to the Centre, the DMF must submit: the order for detention to the Centre, the order for Forced Removal, as well as the order for Voluntary Removal, if issued, the report of the police official including also the risk assessment, verification for documents and sequestered belongings, as well as documents and personal sequestered belongings.
11. Furthermore, according to the Regulation, the Centre confirms the admission of the foreigner to the Centre through the admission letter<sup>3</sup>. Based on files of present foreigners, the NPMT has noticed that the authorities have respected the above-mentioned criteria set out in the Regulation.
12. NPMT has noted that standards determined by the European Committee for Prevention of Torture have expressively ascertained that detained irregular immigrants should, from the very outset of their deprivation of liberty, enjoy three basic rights, in the same way as other categories of detained persons. These rights are: *to have access to a lawyer, to have access to a medical doctor, and to be able to inform a relative or third party of one’s choice about the detention measure.*<sup>4</sup>
13. Based on the provisions of the Law No. 04/L-219 on the Foreigners of the Republic of Kosovo, a detainee accommodated at the Centre shall be notified in written form, in one of the official languages and in English, for his/her detainment at the detention Centre,

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<sup>1</sup> Law No. 04/L-219 on Foreigners, Article 97, paragraph 2.

<sup>2</sup> CPT, Standards published on March 2017 on Detention of Foreigners. For more info please visit: <https://rm.coe.int/16806fbf12>.

<sup>3</sup> Article 8, paragraph 3 of the Regulation.

<sup>4</sup> European Committee for Prevention of Torture, Report 19 of the European Committee for Prevention of Torture, paragraph 81, available at: [http://hudoc.cpt.coe.int/eng#{%22CPTSectionID%22:\[%22p-standards-inf-2009-27-part-en-3%22\]}](http://hudoc.cpt.coe.int/eng#{%22CPTSectionID%22:[%22p-standards-inf-2009-27-part-en-3%22]}).

which shall contain the reasons for the detention, the detention period, the right to provide him/her with legal protection and the right to contact his/her relatives.<sup>5</sup>

14. According to the Regulation, the foreigner accommodated in this Centre has the following rights: *information concerning the right of appeal for the detention in the Center, the right to free legal aid, the right to an interpreter of his/her language or in a language he/she understands, the right to communicate with relevant local authorities and international and non-governmental organizations.*<sup>6</sup>
15. The NPM, during the visit, noticed that foreigners in DCF are informed about their rights, through brochures written in the most common languages and in Arabic. In addition, they are notified of their rights by an Arabic translator hired by the International Organization for Migration (hereinafter, *IOM*).
16. In addition to the brochures in the most common languages, foreigners regarding the notification of their rights, sign the declaration (as an official document) which is written in three languages: Albanian, Serbian and English, where detained foreigners declare that they have been informed of their right.
17. With regard to the foreigner's right to contact the Consulate or the Embassy of the state, the NPM noted that the Law on Foreigners has determined the right of the foreigner to inform the diplomatic or consular representative for his/her detention.<sup>7</sup> Furthermore, CPT in the 19th General Report determines the right of the foreigner to contact the consulate of his country as a fundamental right.<sup>8</sup> NPM did not receive any complaint from foreigners regarding above given rights.

### **Ill-treatment**

18. During the visit of NPM to the Center, 11 foreign detainees were present (9 males and 2 females). The NPM checked their files and conducted group and individual interviews with detainees. The NPM has not received any complaints from interviewees about physical ill-treatment, excessive use of physical force or conduct by security officials and DCF officials, which would not be in line with their respect for their dignity.
19. The NPM has noticed that DFC corridors are monitored by security cameras, which are additional guarantees against physical ill-treatment, as well as protection for staff from false accusations. However, during the visit to DFC, the NPM was informed that not all security cameras are operational. NPM considers that the competent authorities should take concrete actions to avoid this shortcoming.

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<sup>5</sup> Law No. 04/L-219 on Foreigners, Article 108.

<sup>6</sup>Article 11 of the Regulation, Standards of the European Committee on Torture Prevention, at: <https://rm.coe.int/16806fbf12>.

<sup>7</sup> Law 04 / L-219 on Foreigners, Article 114, paragraph 3.

<sup>8</sup> For more info see: [http://hudoc.cpt.coe.int/eng#{%22CPTSectionID%22:\[%22p-standards-inf-2009-27-part-en-3%22\]}](http://hudoc.cpt.coe.int/eng#{%22CPTSectionID%22:[%22p-standards-inf-2009-27-part-en-3%22]}).

## **Incidents in DCF**

20. In Recommendation Report published on 2019<sup>9</sup>, the NPMT has recommended the DCF to maintain protocols as follows: “protocols for on solitude, bodily injury, self-harm, attempted suicide, sexual abuse and deaths”. During the last visit, the NPM noticed that given recommendation has been implemented; the manager has made registers available according to NPM recommendations. Incident reports were substantiated with statements, official police reports and photographs.
21. During NPM visit, registers and files of foreign persons accommodated in this Center were checked; the NPM has noticed that during 2020 there were 9 incidents, of which 4 cases of suicide attempts and others of self-harm. In 21 January 2021, one case of suicide attempt was identified. Based on the health records, 8 foreigners were under psychiatric therapy and was very hard to manage them, therefore the NPM encourages the competent institutions to increase the number of staff in the NPM, to hire at least one nurse, as recommended by the NPM in the Recommendation Report over the years 2018, 2019.<sup>10</sup>

## **Free legal Aid**

22. According to Article 29 of the Regulation, a foreigner is offered counseling, legal representation and, where necessary, judicial assistance. This right can be provided free of charge at the request of a foreigner. The foreigner has the right to contact any NGO, the Legal Aid Agency, which provides free legal aid.
23. The NPM has noticed that free legal aid is provided to foreigners in custody by the Non-Governmental Organization CRPK and the State Agency for Free Legal Aid.

## **Material conditions**

24. NPM considered that the Centre meets all conditions for accommodation of foreigners. All rooms provided dignified accommodation, heating and sufficient natural lightening as well as showers which were in a very good conditions. Foreigners accommodated in the Centre can have access to shower whenever they want.

## **Nutrition**

25. All foreigners are provided with three daily meals. The Regulation stipulates that foreigners in DCF are served special food for persons having health problems and to those with special needs. Also, according to the Regulation, foreigners are served food according to the doctor's recommendation.
26. If religion of the foreigner foresees rules in regard to food, the head of the center ensures their respect.<sup>11</sup> According to the directorate, the MIA has contracted a company, which supplies DCF with food. During the visit, the NPM has noticed that foreigners in custody are provided with food in accordance with the above provisions. NPMT did not receive

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<sup>9</sup> Report with Recommendations for DCF, see the link: <https://www.oik-rks.org/2019/05/03/raport-lidhur-me-viziten-e-mkpt-ne-vranidoll/>.

<sup>10</sup> Ibid.

<sup>11</sup> Article 37 of the Regulation .

credible complaints from foreigners regarding the quantity and quality of food provided in DCF.

### **Regime**

27. Article 24, paragraph 1 of the Regulation stipulates that each detained foreigner in the Centre has the right on walk at least two (2) hours a day in the outdoors environments of the Centre. For health purposes, the Head of the Centre may extend the time of staying out.
28. The CPT, in the standards determined in March 2017 regarding the detention of foreigners because of migration, emphasizes the importance of a regime that contains activities as much as possible. According to CPT, the longer the period for which persons are held there, the more developed activities offered to them should be.
29. Due to the outbreak of COVID-19 and the decisions of the competent authorities to take restrictive measures in order to combat and prevent the pandemic, these rights were from time to time restricted.

### **Personnel of the Detention Centre for Foreigners**

30. With great concern NPM has observed that the DCF faces serious staff shortage. During the NPM visit, DCF had at its disposal only the Director of the Center who performed all the work. In this regard, the NPM, on 3 February 2021 met with the Director of DCAM to whom he expressed serious concern. NPM was informed that with the new MIA Regulation for Internal Organization, DCAM will have available 18 positions to cover the needs in the Asylum Centers and the Detention Center. According to this Regulation, 5 positions shall be dedicated to DCF.
31. During the visits, the NPM noticed that security duties at the center are performed by the Kosovo Police Security Unit, whose staff is not trained to work with foreign persons deprived of their liberty. Through later visits, the NPM, noticed that such duties were now carried out by private security company, which are also not trained to deal with such category.
32. In this regard, the NPM notes that the CPT standards stipulate that security personnel in Detention Centers for Foreigners should be carefully selected and has to undergo appropriate training in order to work with this category.<sup>12</sup>

### **Use of force from Security Service**

33. According to the Regulation, security service may use force only as a last resort if it is necessary for self-defense, safety and security of the foreigner or for protection of general order and security within the Center. The use of force shall be legitimate, proportional and reasonable for required purposes.<sup>13</sup> Further, the Regulation determines that any use of force shall be reported to the head of the Center.<sup>14</sup>

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<sup>12</sup> CPT Standards on Detention of Foreigners, published on 2017, see at : <https://rm.coe.int/16806bf12>.

<sup>13</sup> Article 21, paragraph 1, of the Regulation.

<sup>14</sup> Article 21, paragraph 2, of the Regulation.

34. During the visit, the NPM noticed that police officers, who temporarily performed security duties there, did not have special protocols and did not record data on incidents and cases when they are forced to use physical force.

### **Healthcare**

35. As far as health services is concerned, the Law 04/L-219 on Foreigners determines that the Detention Centre must meet all conditions of human treatment as well as respect for human rights guaranteed by the Constitution of Kosovo and to enable the provision of health services.<sup>15</sup>

36. Further, the Regulation determines that the foreigner during his/her stay in the Center shall have the right to medical assistance. Based on Regulation, medical staff shall perform a general medical examination of the foreigner detained at the Detention Center for Foreigners.<sup>16</sup>

37. Medical services to foreigners held in the DCF are provided by Emergency Medical Centre in Pristina, as needed, are transferred for secondary hospital services in the region or at the University Clinical Center (UCCK), where tertiary health services are also provided, since DCF still does not have medical personnel, although the NPMT, through a Recommendation Report has recommended to have at least one available nurse in DCF.

38. The NPM has noted with concern that in the absence of qualified medical staff, psychiatric therapy was provided to foreigners in Detention by the Director of the Center based on the report written by the competent doctor.

39. With regard to the psychological services, which are foreseen by Article 41 of the Regulation, the NPM has noticed that they are provided by the psychologist contracted by the Jesus Refugee Service.

### **The importance of initial medical screening**

40. Regarding the importance of medical screening, the CPT determines: *“At a minimum, a person with a recognized nursing qualification must be present on a daily basis at all centers for detained irregular migrants. Such a person should, in particular, perform the initial medical screening of new arrivals (in particular for transmissible diseases, including tuberculosis), receive requests to see a doctor, ensure the provision and distribution of prescribed medicines, keep the medical documentation and supervise the general conditions of hygiene.”*<sup>17</sup>

41. The Regulation stipulates that, after placement of the foreigners in the Centre, within 24 hours deadline, the foreigner is transferred for the medical examination in the University Clinical Centre (or any other medical institution) under Police escort. NPMT has observed that these initial medical screening of foreigners in detention are done by emergency services.

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<sup>15</sup> Law 04/L-219 on Foreigners, Article 107, paragraph 2.

<sup>16</sup> Article 13 of the Regulation.

<sup>17</sup> Ibid.

## Medical confidentiality in the DCF

42. The Regulation foresees that all medical findings shall be recorded in the foreigner's file and in the Data Management System. The medical card shall be kept confidential in accordance with the provisions of Law No. 03/L-172 on the Protection of Personal Data.
43. CPT in the standards set for detention because of immigration, stipulates: "*Medical confidentiality should be observed in the same way as in the outside community; in particular, irregular migrants' medical files should not be accessible to non-medical staff but, on the contrary, should be kept under lock and key by the nurse or doctor. Moreover, all medical examinations should be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case.*"<sup>18</sup> The NPM has noticed that health reports, due to the lack of qualified staff, are kept jointly with foreigner's general file. The file is kept in electronic and hard copy.

## Disciplinary measures

44. According to Regulation, disciplinary measures which can be imposed on a foreigner are: verbal or written warning, forcing to do maintaining and cleaning work in the Center, deprivation of the right to free activity, recreation, TV, internet, sports or cultural activities in duration of five (5) days, and isolation up to 48 hours.<sup>19</sup>
45. NPMT has observed that the present Regulation, contrary to the previous one, foresees that the decision for imposition of disciplinary measure is submitted to the foreigner as well, to whom the measure is imposed.<sup>20</sup> Based on this, during previous visits, the NPM has recommended to DCF to register the fact of submission of the copy of decision for disciplinary measure of detained foreigner. During the last visit, the NPM has noticed that DFC owns a special protocol in which data related to this disciplinary measure are recorded.
46. Further, the NPM noted that no disciplinary measure was imposed on placement in special rooms for a period of 48 hours.

## Monitoring and complaint mechanism

47. Efficient complaint filing system is a fundamental guarantee against ill-treatment in places where persons deprived of their liberty are held. The NMPT considers that people placed in these centers should have the opportunity to lodge a complaint within the DCF and, in a confidential manner, be given access to the appropriate authority.
48. Article 19 of the Regulation determines that the foreigners shall have the right to appeal to the Head of the Center regarding the conditions of admission in the Center and personnel behavior. The complaint shall be reviewed by DCAM. Further, a complaint box shall be placed in the Center, which will be administered by DCAM. According to the management, the foreigners through leaflets in different languages are immediately informed on their right to lodge an appeal.

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<sup>18</sup> See at <https://rm.coe.int/16806fbf12>.

<sup>19</sup> Article 44 of the Regulation .

<sup>20</sup> Article 44, paragraph 3, of Regulation.



49. As per monitoring, apart NPMT, foreigners at the Center can be visited at any time by UNHCR, IOM, and European Committee for the Prevention of Torture, the International Committee of the Red Cross, as well as by United Nations Committee against Torture. The Regulation stipulates that the Head of the Center may grant access to the Center to other relevant institutions or organizations.<sup>21</sup>
50. Also, foreigners in detention can direct their complaints to the Ombudsperson. During the visit, the NPM distributed to foreigners booklets in English, Serbian and Arabic, which contain details on how they can contact the Ombudsman and file their complaints.

### **Contact with the outside world**

51. According to CPT Standards, foreign detainees should have every opportunity to be in touch with the outside world (including opportunities to make phone calls and receive visits) and their freedom of movement within the Detention Center should be limited as little as possible.<sup>22</sup> According to Article 25 of the Regulation, foreigner in this Centre has the right to keep correspondence, receive packages and other items. Additionally, detained foreigners are entitled to be visited.<sup>23</sup>
52. The Regulation stipulates that the foreigner has the right to make calls as needed in the duration of 5 minutes, starting from 9:00 to 16:00, every working day.<sup>24</sup> Under the Regulation, foreigners are also allowed to make calls from abroad. During the visit, the NPMT observed that detained foreigners could not make telephone calls abroad due to technical problems. On 3 February 2021, during the meeting with DCAM, the NPM was informed that technical problems have been avoided and that foreigners can now make phone calls in accordance with the provisions of the Regulation.
53. Therefore, based on the findings during the NPM visit, Ombudsperson

### **RECOMMENDS**

#### **Ministry of Internal Affairs and Public Administration:**

- **The NPMT reiterates the recommendation that DCF must have at least one available nurse, who will be in title to give medical therapy to foreign detainees and take care of their medical files at the DCF.**
- **The NPMT reiterates the recommendation that Security personnel should undergo adequate training to work with this category.**

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<sup>21</sup> Article 27 of the Regulation

<sup>22</sup> European Committee on Prevention of Torture, see at : <https://rm.coe.int/16806fbf12>.

<sup>23</sup> Article 27 of the Regulation .

<sup>24</sup> Article 26 of the Regulation.

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 ... 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,

Naim Qelaj

Ombudsperson