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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

**NATIONAL PREVENTIVE MECHANISM
REPORT ON VISITS TO THE HIGH SECURITY PRISON**

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Introduction

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 detention centers, remand detention facilities, prisons, places where foreigners deprived of liberty are located, whose stay in the Republic of Kosovo collide with laws at force and are subject of forcible return from the Republic of Kosovo, as well as psychiatric and social care institutions.

Based on this mandate, NPMT has visited High Security Prison (henceforward: HSP) on 30 March and 12 of April. Due to the COVID-19 pandemic, the NPMT conducted this visit with a more reduced methodology and in accordance with the situation with COVID-19 in the country.

The purpose of this visit was to assess the respect of fundamental rights of detained persons, 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.

Cooperation with NPMT during the visit

1. During the visit conducted by NPMT at the HSP, the staff of Correctional Centre and Prison Health Department (henceforward: PHD) provided the monitoring team with full cooperation. The team, without any delay, was granted with access to all places intended to visit. The team was provided with all necessary information to discharge their duty and conversation with detainees and convicts without the presence of correctional officers and other personnel was enabled.

Information of convicts on their rights

2. Article 31 paragraph 2 of the Law on Execution of Penal Sanctions (henceforward: LEPS), explicitly stipulates: "*On the occasion of admission to a correctional facility, the convicted person shall be informed in written about the rights and obligations entitled to during the service of sentence. An illiterate convicted person shall be given this information orally*". NPMT has observed that various notices on prisoners' rights were placed on wards' wings as well as information about COVID -19 and measures to prevent its spreading.

Ill-treatment

3. During the visit conducted to this Centre, no credible complaints have been admitted by the NPMT from convicts concerning ill-treatment and excessive use of force by the correctional officers that is opposite with the respect of prisoners' dignity. During the visit, NPMT observed that the level of interactive communication between convicts and correctional officers in on satisfactory level.
4. During the visit, the monitoring team interviewed remand detainees accommodated in the HSP, in order to obtain a clear picture of their treatment by the Kosovo Police and the respect for their basic rights, from the moment of arrest. No complaint has been admitted by NPMT from remand detainees regarding the treatment and respect of their basic rights by the Kosovo Police from the moment of their arrest.

Accommodation conditions

5. LEPS explicitly stipulates that a convicted person has a right to accommodation which corresponds to contemporary hygienic conditions and local climatic circumstances.¹ 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 (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”*.² Furthermore, this Law determines that the premises may not be damp and they must have adequate sanitary installations and other devices necessary for personal hygiene.³
6. Accommodation conditions at HSP are generally at a satisfactory level in most wards and other spaces, in terms of space, cleanliness, and access to natural and artificial light. All cells have TVs, separate toilets and inmates can take showers whenever they want. In addition, the cells are equipped with beds, sheets, desks, chairs and a call system.
7. However, the NPMT has noticed that floor in Ward 2 (wings D and E in the corridors and in the cells) have been severely damaged. Through the Report, the NPMT had recommended to the competent authorities to undertake action in order to repair these damages. **During the visit, the NPMT noticed that repairs have been done to the floor and shortcomings were eliminated in the HSP station.** In terms of access of disabled people, all elevators were functional, which allows access to persons with disability.

Regime

8. During the NPMT visit, 154 prisoners were present, 20 of them were remand detainees, while the official capacity of the HSP is 390 persons. As the Regime is concerned, during the visit NPMT was informed that about 70% of the prisoners are engaged in various jobs, such as maintenance, cleaning of wards, work in the kitchen, in the workplace for production of toilet paper and bags, from where other KCS institutions are supplied.
9. During the visit, the NPMT observed that inmates engaged at work in the kitchen do not have sanitary booklets. **The NPM considers that the competent authorities should take the necessary actions and eliminate this deficiency as soon as possible.**
10. Convicts may move freely inside the wards where they were housed, except in the case of remand detainees. Convicts are entitled to 3 hours of walking per day during the summer, while during winter up to two (2) hours per day outside closed premises.⁴ Also, 10 inmates completed their Anger Management training. At prisoners' disposal is also the fitness facility –gym, which can be used from prisoners of Ward 2 each day, while from others twice a week.
11. Through previous reports, the NPMT has raised concerns regarding the situation of sports fields in HSP, which due to the white coloring, causes strong reflection and prevents prisoners from carrying out activities outside the cell. Through Recommendation Report

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

² Law No. 05/L0-129, on Amending and Supplementing of the Law no. 04/L-149 on Execution of Penal Sanctions, Article 3, paragraph 2.

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

⁴ According to Article 37 of the Law on Execution of Penal Sanctions, convicts are entitled to at least two hours of walking.

published on 25 November 2019 NPMT had recommended to the competent authorities to eliminate this shortcoming. **Notwithstanding, the NPMT during the last visit noted that this problem has not been addressed and that the use of sports fields by prisoners is still a problem due to reflection.**

12. During the visit, the NPMT admitted complaints from remand detainees due to lack of activities and remaining in their cells. In the case of remand detainees, their engagement with work depends on the permission issued by the court. The NPMT observes that, with regard to the remand 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.”*
13. 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.”*
14. Through this Report, NPMT also considers that based on the legislation in effect, as well as international human rights standards, the competent authorities of the Republic of Kosovo should make efforts to increase out-of-cell engagements for detainees, as much as it can be done with respect to this issue.

Health care, personnel and infrastructure

15. Article 4 of Law No. 05/L-129 on amending the supplementing of the Law No. 04/L-149 on Execution of Penal Sanctions establishes the right of convicted persons to the same standards of health care which are available in the community. The convicted person shall have access to the necessary health services free of charge.
16. The staff of the health unit at HSP consists of three regular general practitioners, six nurses, where four of them work 12-hour shifts as well as on call, while the others work from 8 am to 4 pm, a psychologist from 8 a.m. to 4 p.m., every day, while a dentist is engaged with regular schedule (8-16) every day.
17. Additionally, an outsource general cardiologist provides specialized services, as well as two psychiatrists and a laboratory technician coming when necessary. As per trainings for the health personnel, there have been none since the beginning of the COVID-19 pandemic.
18. Generally, supply with anti-COVID-19 protective equipment is satisfactory, apart from the first phase of the pandemic, where they underwent temporary shortages. Psychiatric treatment is provided through specialized services (two psychiatrists available) and in other public health institutions outside the HSP. Through the reviewed documents as well as interviews conducted with the health personnel, it results that 34 prisoners with neurotic syndromes are being treated. **Facilities in which health care is provided are generally adequate** and of a high standard, as well as satisfactory equipped with all necessary equipment.

19. During the visit, the NPM noticed that the prisoner D.O., with a serious state of mental health, was transferred from the Detention Center in Gjilan to the HSP, where he caused serious bodily injuries after setting fire to the cell where he was accommodated. Thanks to speedy response of correctional officers and other services, the worst has been prevented. The NPMT observed that due to his state of health it has been recommended his placement to the Institute of Forensic Psychiatry, but due to lack of capacity, the given institute initially had difficulty accommodating the prisoner.
20. Even through this visit, the NPMT notes that the occasional presence of prisoners with mental illness continues to be a challenge, due to the lack of capacity to accommodate prisoners of this category in relevant institutions.
21. In this direction, CPT standards define 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.*”⁵
22. European Prison Rules, Rule 12.1, determines 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.*”⁶
23. Mandela Rules, Rule 109, stipulate that prisoners with mental health problems should not be kept in prisons, but efforts should be made to transfer them to relevant institutions as soon as possible.
24. The NPMT encourages the competent authorities to make continuous efforts to treat these persons in appropriate institutions, whether in a special psychiatric unit within the prison, in a hospital, or in a civilian psychiatric institution.
25. **With regard to transport of patients outside the HSP**, this is done by ambulance of the health service, which is equipped with all the necessary equipment and the necessary personnel. While in respect of cases for which only consultation is needed, prisoners are sent to other health institutions with KCS vehicles.
26. The NPMT did not receive credible complaints regarding the medical services provided. On the contrary, most of the prisoners spoke in favor of very good medical treatment and respect for the dignity of prisoners.
27. **Prevention of self-harm and suicide** - is done through initial screenings upon admission of a prisoner to a correctional facility, scaled psychological examination, as well as through engagement in work and psycho-social activities. Based on data of the health service in HSP, nine self-injuries, nine bodily injuries, four suicide attempts, eighteen cases of imposing the disciplinary measure of solitary confinement, four cases of hunger strike have been registered in 2020. While in 2021, actually in the period January-February, there was a self-injury in HSP, three bodily injuries, three attempted murders, one case of hunger strike, six cases of imposing the disciplinary measure of solitary confinement and isolation.

⁵ CPT Standards, part of the 3rd General Report, paragraph 43, published in 1993. For more see: <https://rm.coe.int/16806ce943>.

⁶ European Prison Rules, Rule 47.1. See at: <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

28. **With regard to drug, alcohol and tobacco abuse**, systematic control of drug, alcohol and tobacco users and abusers is carried out. Cases are identified in the admission phase, then proceeding through further monitoring and informing them about the consequences of use; adequate therapy is provided by staff trained for this category. They also cooperate with other institutions which deal with the treatment of this category.
29. The NPMT has noticed that the methadone program is available to prisoners, which is implemented according to the protocol set out in the Standard Operating Procedure (hereinafter: SOP), as well as training and support provided by the NGO "Labyrinth" for drugs and treatment of users in accordance with national protocols for newly admitted prisoners who are identified as such, as well as for the treatment of those released from prison and continue with a methadone program. During the reporting period, no inmates were on the methadone program.

Importance of medical check-ups for newly received prisoners

30. The CPT and other international legal instruments have repeatedly emphasized the importance of the medical examination of newly admitted 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).
31. 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 systematic and timely registration of injuries and, where appropriate, by providing information to relevant authorities.⁷
32. The LEPS⁸ and the Standard Operating Procedures⁹ set out the obligation for the newly admitted prisoner to undergo medical examination within 24 hours of being admitted.
33. Such obligations are determined by international acts on the protection of prisoners' rights, such as the Mandela Rules¹⁰, the European Prison Rules¹¹ and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.¹²
34. Based on the prisoners' allegations and relevant medical documentation, the newly arrived detained persons are subject to medical examination within 24 hours of their arrival at the HSP.

⁷ European Committee for the Prevention of Torture, 26th General Report, paragraph 72, at: <https://rm.coe.int/168070d0c8>.

⁸ Law on Execution of Penal Sanctions, Article, 31.

⁹ 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>.

¹⁰ Mandela Rules, Rule 34. See at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

¹¹ Council of Europe, Recommendation (2006) 2 of the Council of Ministers to Member States on European Prison Rules, paragraph 42.1. See at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804c22_I.d.

¹² United Nations Rules for the Protection of Juveniles Deprived of their Liberty, para 27, at: https://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf.

Confidentiality of medical services

35. Confidentiality of medical services is foreseen by Standard Operating Procedure¹³ adopted by the Ministry of Health, the Law on Execution of Penal Sanctions¹⁴, CPT Standards,¹⁵ as well as with international acts such as: Mandela Rules¹⁶ and United Nations Rules for the Protection of Juveniles Deprived of Liberty.¹⁷
36. Furthermore, the CPT's standards also stipulate that all medical examinations of prisoners should be carried out so that they are not seen or heard by correctional officers, unless the doctor so requests.
37. Furthermore, Article 25, paragraph 3, of the Administrative Instruction MoJ-No.07/2015 on House Rules in Correctional Institutions, defines explicitly: *“The doctor makes the medical visit in terms of confidentiality and in professional ethical norms.”*
38. Based on interviews with health personnel and interviews with prisoners, health services are provided without the presence of correctional officers, thus maintaining the confidentiality of medical services. Medicines are also distributed to prisoners by health personnel.

Contacts with the outside world

39. Legislation at effect¹⁸, 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.
40. In addition, they have the right to make phone calls. Based on interviews with convicts, they are entitled to family visits, weekends, and contacts with their families through SKYPE. The NPMT has noticed that communication with SKYPE has also been well accepted by prisoners in the HSP, especially by foreign prisoners. The NPMT therefore encourages HSP to continue with this type of communication.
41. Due to the outbreak of the COVID-19 pandemic, there were restrictions on rights in this regard, which were generally not of a definite and repressive nature and which were in line with the situation in the country, based on law and mandatory for a democratic society.
42. As per telephone calls is concerned, Administrative Instruction on Home Order in Correctional Institutions¹⁹ stipulates that the convict has the right to have phone calls with close family members and other persons. According to this Instruction, conversation through telephone of the convicted and detained person cannot be longer than 15 minutes.

¹³ 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.

¹⁵ CPT Standards, published in 2018, paragraphs 50 and 51. For more info visit: <https://rm.coe.int/16806ce943>.

¹⁶ Mandala Rules, Rule 26, point 2, at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

¹⁷ 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.

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

¹⁹ Administrative Instruction on Home Order in Correctional Institutions, Article 54

43. Convicts enjoy the right to phone calls depending on the regime, while in certain wards calls are unlimited. In the case of detainees, Article 200 of the Criminal Procedure Code of Kosovo stipulates that detainees may receive visits "*within the limits of the rules of the detention facility*" based on the permission of the pre-trial judge and under his supervision.
44. The Code further stipulates that correspondence and other visits are subject to the decision of the pre-trial judge. Based on the interviews with the detainees, it appears that they are provided with two visits per month according to the court permission and an additional visit from the directorate, based on the request submitted by the detainee in certain circumstances.
45. Kosovo Ombudsperson or his or her deputy may visit remand detainees and may correspond with them without prior notification and without the supervision of the pre-trial judge, single trial judge or presiding trial judge or other persons appointed by such judge. Letters from detainees on remand to the Office of the Ombudsperson of Kosovo cannot be examined. The Ombudsperson and his or her deputy may communicate confidentially with detainees on remand orally and in writing. Communications between a detainee on remand and the Ombudsperson and his or her deputy may be done by phone as well.
46. In the case of foreign nationals, they are offered the opportunity, in writing or orally, to contact the diplomatic mission, or the relevant office of the state of which he/she is a citizen.²⁰ During the visit, the NPMT interviewed some foreign nationals, who did not have any complaints regarding the treatment in the HSP, on the contrary, they spoke in favor of very positive relations, both with correctional officers and other prisoners.

Issues related to security

47. During the visit, the NPM noticed that all areas, where such a thing is allowed, are under security camera surveillance, which according to the CPT constitute additional guarantees against the physical ill-treatment of prisoners, but also guarantees for correctional officers against the accusations of false physical ill-treatment or for excessive use of physical force.²¹

Incidents between the detainees

48. Based on the relevant documents, the NPMT has noticed that during this year, actually in January-February period of 2021, three incidents were registered between prisoners.
49. The NPMT has noticed that these incidents have not been included in the relevant forms, medical assistance has been provided as needed and the actions foreseen by the LESP have been taken.

Procedure of complaint filing

50. An effective system for complaint filling is the basic guarantee against ill-treatment in prisons and detention centers. Persons housed in these centers should have the opportunity to lodge a complaint within the prison or to lodge a complaint with the

²⁰ Law on Execution of Penal Sanctions, Article 33, paragraph 1.

²¹ CPT, Report on the visit to Ireland in 2010, paragraph 18.

detention center where they are accommodated and to have confidential access to the appropriate authority.

51. 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.²²
52. The NPMT has noted that complaint boxes are available to prisoners at the HSP, placed by the KCS, by the PHD as well as Ombudsperson Institution. The complaint boxes placed by the Ombudsperson Institution can only be opened by the staff of this Institution, which provides the complainants with confidentiality in filing a complaint. During the visit, the NPMT did not receive complaints from prisoners regarding the right to file claims and complaints.
53. 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 17, paragraph 7, the Law 05/L019 on Ombudsperson, the Ombudsperson:

RECOMMENDS

To the Ministry of Justice:

- **NPMT reiterates the recommendation of undertaking actions on repairing the damaged floor in the corridor and in some cells in the Ward 2.**
- **NPMT reiterates the recommendation on repairing the problem with regard to the reflection of white color in sports fields, which is an obstacle to extracurricular activities.**
- **To undertake actions to develop and implement a comprehensive regime of out-of-cell activities for all prisoners.**
- **Those engaged with work in the kitchen to be provided with sanitary booklets.**

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*

²² 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.*”

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,

Naim Qelaj

Ombudsperson