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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

REPORT OF THE OMBUDSPERSON'S NATIONAL PREVENTIVE MECHANISM

With regard to the visit conducted to:

- *Police Station in Pejë*
- *Police Station in Istog*
- *Police Station in Klinë*
- *Police Station in Deçan*

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

Mr. Samedin Mehmeti, General Director
Kosovo Police

Copy to: Mrs. Duda Balje, President
Committee on Human Rights, Gender Equality, Missing Persons and
Petitions

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Introduction

Ombudsperson's National Preventive Mechanism of Torture - 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 establishments, remand detention facilities, prisons, places where foreigners deprived of liberty are located, as well as psychiatric and social care institutions.

In accordance with Article 135, paragraph 3, of the Constitution of the Republic of Kosovo and Article 17 of Law 05 / L-019 on Ombudsperson, on 24 and 26 May, Ombudsperson's National Preventive Mechanism against Torture, visited the following Police stations:

- **Police Station in Pejë**
- **Police Station in Istog**
- **Police Station in Klinë**
- **Police Station in Deçan**

Purpose of the visit

The purpose of the visit of above given Police stations was general assessment of respect of fundamental rights of arrested and detained persons, which are guaranteed by the Constitution of Republic of Kosovo, Law no. 04 / L-076 on Police, Criminal Procedure Code and International Standards for the protection of fundamental rights of persons deprived of their liberty.

Cooperation with NPMT during the visits

During the visit conducted by NPMT to the above stated Police Stations, Kosovo Police provided the NPMT monitoring team with full cooperation. The team, without any delay, was granted with access to all places intended to visit in each Police Station. The team was provided with all necessary information to discharge their duty as well as full access to all requested documents and conversation with detainees and convicts without the presence of correctional officers and other personnel was enabled.

Guarantees against ill-treatment

1. The rights of persons arrested by the Kosovo Police are defined and guaranteed by the Constitution of the Republic of Kosovo, the Criminal Procedure Code and International Instruments enshrined in the Constitution of the Republic of Kosovo.
2. The European Committee for the Prevention of Torture (CPT), in its 2nd General Report, published in 1992, emphasized the importance of the three fundamental rights of persons detained by the Police, which are: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities).¹

¹ See: <https://rm.coe.int/16806cea2f/>

3. According to the CPT, these rights are fundamental guarantees against physical ill-treatment and must be enforced from the first moment of deprivation of liberty, regardless of how it is defined within country's legal system.
4. The legislation in effect of the Republic of Kosovo provides for these fundamental rights of persons arrested and detained by the Police authorities in the Constitution of the Republic of Kosovo, in the Criminal Procedure Code and in the Law on Police.
5. Article 13 of the Criminal Procedure Code defines that any person deprived of liberty shall be informed promptly, in a language which he or she understands, of the reasons for his or her arrest; the right to legal assistance of his or her own choice; and the right to notify or to have notified a family member or another appropriate person of his or her choice about the arrest and that these rights apply during the entire time of deprivation of liberty.
6. With regard to the notification of arrest, Article 168 of the Criminal Procedure Code further stipulates that an arrested person has the right to notify a family member or another appropriate person of his or her choice about the arrest and the place of detention immediately after the arrest; notification of a family member or another appropriate person in accordance with paragraph 1 of the present Article may be delayed for up to twenty-four (24) hours where the state prosecutor determines that the delay is required by the exceptional needs of the investigation of the case. There shall be no delay if the arrested person is a minor person.
7. According to the Law on Police ², The right to notify the family or other person of the arrest also applies to persons who are in "*temporary police custody*" for the purpose of identification or for their own protection and the protection of others.
8. According to the Criminal Procedure Code, Article 13, paragraph 2.3, Article 163, paragraph 2, Article 164, paragraph 5, to suspects stipulates that the time of police detention in detention centers should not exceed forty-eight hours (48) from the time of his arrest, unless the pre-trial judge orders otherwise.
9. Pursuant to Article 60 of the Juvenile Justice Code, the provisional arrest of a minor cannot exceed a period of twenty-four (24) hours and on the expiry of that period, the police shall release the minor unless a juvenile judge has ordered detention on remand. ³
10. As far as an attorney is concerned, the arrested/ detained person, according to Article 166 of the Criminal Procedure Code, has the right to the immediate assistance of defense counsel of his or her own choice upon arrest⁴. But if the arrested person does not engage a defense counsel ..., he or she shall be provided with a defense counsel at public expense.⁵ Similarly, the detained person may waive the assistance of defense counsel, this right may be waived under Article 53, paragraph 3, of the Criminal Procedure Code: "*The right to the assistance of a defense counsel may be waived, except in cases of mandatory defense, if such waiver is made following clear and complete information on his right to defense being provided. A waiver must be in writing and signed by the suspect or the defendant*

² Law on Police, Article 20.

³ Juvenile Justice Code, Article 60.

⁴ Criminal Procedure Code, Article 166, paragraph 1.

⁵ Criminal Procedure Code, Article 166, paragraph 2.

and the witnessing competent authority conducting the proceedings, or made orally on video- or audio-tape, which is determined to be authentic by the court.”

11. Persons under the age of eighteen (18) may waive the right to the assistance of defense counsel with the consent of a parent, guardian or a representative of the Center for Social Work, except that in cases of domestic violence involving the parent or guardian, such parent or guardian may not consent to the waiver of such right⁶.
12. With regard to the right to medical screening of arrested/ detained persons, Article 169 of the Criminal Procedure Code defines that an arrested/ detained person has the right, upon request, to be examined by a doctor or dentist of his or her own choice⁷. Similarly if an arrested person displays signs of mental illness, the police may immediately order an examination by a psychiatrist.⁸
13. While when the detained/arrested person is a foreign national, pursuant to Article 167 of the Criminal procedure Code, he or she has the right to notify or to have notified and to communicate orally or in writing with the embassy, liaison office or the diplomatic mission of the state of which he or she is a national or with the representative of a competent international organization, if he or she is a refugee or is otherwise under the protection of an international organization⁹.
14. During visits conducted to the above-mentioned Police establishments, NPMT did not receive any complaints from interviewed arrested and detained persons, with regard to non-compliance with these fundamental rights, which are guaranteed by the Constitution of the Republic of Kosovo, the Law no. 04 / L-076 on Police, the Criminal Procedure Code and International Standards for protection of fundamental rights of persons deprived of their liberty.

Records of the arrested persons

15. Based on the documents reviewed during the visits to the above-mentioned Police Stations, the NPMT observed that all Police Stations own the standard document (arrest / detention record), in which all data related to the detainee are recorded, in accordance with Article 172 of the Criminal Procedure Code of the Republic of Kosovo.
16. In addition, the NPMT noted that in each Police Station visited there were additional specific documents, in which the police authorities had identified any events related to the arrested person. Also, the NPMT has encountered cases when police officers, responsible for detention cells, on their own initiative have developed a computer program for keeping records of arrested persons. This practice is not unique in the country level.

Treatment

17. NPMT, during visits to the above-mentioned Police Stations, encountered persons arrested at the Police Station in Peja and did not admit any complaints regarding the treatment by Police officers and respect for fundamental rights.

⁶ Criminal Procedure Code, Article 53, paragraph 5.

⁷ Criminal Procedure Code, Article 169, paragraph 1.

⁸ Criminal Procedure Code, Article 169, paragraph 4.

⁹ Criminal Procedure Code, Article 167, paragraphs 1 and 2.

Physical conditions in these Police Stations

18. Standard Operating Procedure stipulates that detention centers must comply with the European Convention for the Protection of Human Rights and Freedoms and with the Recommendations of the Committee for the Prevention of Torture based on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁰.
19. NPMT also notes that the CPT in its 2nd General Report, published on 13 April 1992 in Strasbourg, set the standard for the conditions in the cells where detainees are held, which defines out that: *“All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (i.e. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.”*¹¹
20. During the visit to the detention rooms at the **Police Station in Peja**, the NPMT noticed that the natural lighting is poor, there is ventilation and artificial lighting, sheets on the beds were missing and the detainees were not given hygienic means. There were no renovations to this Station for a long time. At the **Police Station in Deçan**, the NPMT noticed that there was not enough natural light, detainees were not given hygienic packages, the walls needed to be whitewashed and there was a strong smell.
21. **Additionally, the problem observed during previous visits at this station remains**, it concerns the lamps placed in the cells, which can be caught by detainees, which poses a risk to detainees, who may attempt to cause self-harm or commit suicide. Moreover, during the visit it has been noticed that the power system in the Detention Center in Deçan had problems, since the lights from time to time went off. The NPMT considers that these technical shortcomings should be avoided as soon as possible.
22. Through the Recommendations Report published on 15 August 2020, the NPMT has recommended to the competent authorities to carry out the necessary renovations at the Police Station in Deçan. Kosovo Police, on 2 October 2020, informed the Ombudsperson that this recommendation is part of the action plan and is expected to be implemented by December 2020.
23. NPMT also visited the interview rooms at the Police Station in Deçan, the physical conditions in these rooms were not good, the inventory was demolished and very old. In general, the NPMT noted that the station needs some renovations and inventory, in order to provide better working conditions for police officers.
24. According to police officials, they are not supplied with hygienic tools. During the pandemic period they have not been supplied with means against COVID-19, such as: protective masks and disinfectants, except during the first two months. Police officers with their own money purchase hygienic means and materials against COVID-19. Given

¹⁰ Kosovo Police, Standard Operating Procedures for Detention Centers, DDO-04/0121/2016, point 1.6, page 4.

¹¹ European Committee on Torture Prevention, 2nd General Report, paragraph 42. For more information visit: <https://rm.coe.int/1680696a3f>.

that the COVID-19 pandemic is still present, the NPMT considers that all police officers and stations should be provided with sufficient material against COVID-19.

25. During the visit to the **Police Station in Istog**, NPMT noticed that presently the ventilation system in the station is functional, which was found as a shortcoming in the report published by the NPMT on 15 August 2020, which included the visit to this station. Worth pointing out that cells in the detention center generally meet the minimum standards for accommodation of detainees, there is natural and artificial light, the size of the cells is in line with the standards of the CPT¹² and the SOP.
26. **During the visit to the Police Station in Klina**, NPMT noticed that the physical conditions and accommodation in this station, in terms of space, natural, artificial lighting and hygiene, are in accordance with the SOP and the standards of the CPT.
27. NPMT also visited the interview rooms in all the above-mentioned Stations and did not observe any objects or strong tools, which are usually confiscated as evidence, which in the past were kept in interview rooms in some Police Stations.
28. **In all visited stations, the NPM has noticed that the detainees are not supplied with personal hygiene items.** The NPMT considers that the relevant authorities should take appropriate actions to supply detention centers with hygienic means.
29. During the visit, the NPMT noticed that none of the visited Stations had a call system. Through an earlier Report published in 2020, the NPMT recommended that the call system is installed in all detention rooms, so that detainees could communicate more easily with police officers in case of need. Concerning this recommendation, the Ombudsperson was informed by Kosovo Police that given recommendation is included in the action plan and is expected to be implemented by December 2020.
30. The NPMT notes that the CPT in Reports on the visit to in 2015, has recommended to Kosovo competent authorities that the cells in the police stations are equipped with a call system, which would enable easier contact of detainees with police officers in case of need.¹³

Health care

31. On the subject of medical services, as a basic right, to persons who are arrested by Police, these services are provided by public institutions, such as: Family Medicine Center and University Clinical Center, depending on the needs for treatment. NPMT did not receive any complaints from the interviewees regarding this right. Further, from the reviewed documents it was noticed that the Police has recorded in their personal files the notification of the right to medical services.
32. Furthermore, the NPMT observed a very positive practice in the Police Station in Klina, in that of Istog and Deçan, where juvenile and adult detainees, before being sent to detention, are sent for medical screening in the nearest Family Medicine Centre.
33. Due to COVID-19 pandemic, the above-mentioned Police establishments also faced with various challenges. During the visit to the Police Station in Peja, NPMT was informed

¹² See: <https://rm.coe.int/16806cea2f> .

¹³ CPT Report for the visit to Kosovo in 2015, authorities response, see at: <https://www.coe.int/en/web/cpt/kosovo> .

that 36 police officers were infected by COVID-19 virus, 2 of them died while 10 others were released due to various diseases. This situation caused difficulties in managing the work and lack of necessary staff. Such problems did not occur at Police Station in Istog, while at the Police Station in Klina, at the first phase some of Police Officers were infected, but not to degree that would hinder and complicate entirely the daily work.

34. In general, during the visit it was noticed the shortage of COVID-19 protection materials, although there were supplies at the beginning of the pandemic.

Nutrition

35. Criminal Procedure Code of Republic of Kosovo defines the liability that if a person detained for more than twelve (12) hours shall be provided with three meals daily.¹⁴ Arrested persons, who are sent to detention, are offered three meals within 24 hours, according to the contract that the Police has with the contracting company.

Complaint submission by arrested persons

36. With regard to treatment of detainees by Kosovo Police, arrested persons are entitled to file complaints at the Police Station where they are located, at the Police Inspectorate of Kosovo, as well as at external monitoring bodies, such as: NPMT and Non-Governmental Organizations, whose visits to places of deprivation of liberty is permitted. In order to provide easier access to the services of this institution and to enable the detainees to file complaints in a confidential manner, the Ombudsperson has placed complaint boxes in the Police Stations where there are cells for keeping detainees. These complaint boxes can only be opened by the designated Ombudsperson Institution staff.
37. In all visited Police establishments, the NPMT has noticed that security cameras were functional, which constitutes additional guarantees against physical ill-treatment and guarantees for Police officers, so that they are not falsely accused of physical ill-treatment by detainees or detainees.

Therefore, based on findings encountered during the visit conducted by National Preventive Mechanism against Torture, the Ombudsperson

RECOMMENDS

To Kosovo Police:

- **NPMT reiterates the recommendation of carrying out, as soon as possible, the necessary renovations in the Detention Center in Deçan,**
- **Detainees to be provided with hygiene items and sheets.**
- **Police Officers and Police establishments to be provided consistently with COVID-19 protective materials.**

¹⁴ Criminal Procedure Code of Republic of Kosovo, Article 170 paragraph 3.

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