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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

**NATIONAL PREVENTIVE MECHANISM
REPORT ON VISITS TO THE DETENTION CENTRE IN PEJË**

Addressed to: Mrs. Albulena Haxhiu, Minister
Ministry of Justice

Mr. Arben Vitia, Minister
Ministry of Health

Mr. Albert Zogaj, Presider
Kosovo Judicial Council

Mr. Jetish Maloku, Presider
Kosovo Prosecutorial Council

Copy to: Mrs. Duda Balje, President
Committee on Human Rights, Gender Equality, Missing Persons
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Mr. Habit Hajredinaj, Director
Prime Minister Office - Office of Good Governance

Mr. Rasim Selmanaj, General Director
Kosovo Correctional Service

Mr. Milazim Gjocaj, Director
Prison Health Department

Mr. Samedin Mehmeti, Director
Kosovo Police

Mr. Jeton Mehmetaj, Director
Detention Centre in Pejë

Prishtinë, 03 September 2021

1. Pursuant to Article 17 of Law no. 05 / L-019 on Ombudsperson, the National Preventive Mechanism against Torture (NPMT) of the Ombudsperson, visited the Detention Center in Peja (DCP) on 25 May 2021.
2. Prisoners are placed in wings A, B, C and D. The official capacity of the DCP is for 80 people. At the time of the visit to this center by NPMT, there were 71 prisoners, 12 of whom were convicts.

Composition of the team

3. The monitoring team comprised of:
 1. NPMT Director.
 2. Senior Legal Advisor of Torture Prevention.
 3. Legal Advisor of Torture Prevention.
 4. Counselor – Medical doctor.
 5. Counselor- Social worker.
 6. Counselor-Psychologist.
 7. Council of Europe official, in the capacity of observer

Purpose of the visit

4. The main purpose of the visit was to assess the observance of fundamental human rights of prisoners accommodated in the DCP, in accordance with the legislation in effect in the Republic of Kosovo and International Standards for protection of the rights of persons deprived of their liberty.

Cooperation with the NPMT during the visit

5. During the visit conducted by NPMT at the DCP, the staff of Kosovo Correctional Service (herein: KCS) 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 within DCP. 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.

Treatment of convicts

6. During visits to the DCP, NPM interviewed a number of remand detainees and convicts and did not admit any complaints of physical ill-treatment or excessive use of physical force by correctional officers. Interactive communication between prisoners and correctional officers is at a satisfactory level.
7. The NPMT received a small number of complaints with regard to ill-treatment by Kosovo police officers in the course of arresting process. Concerning these allegations, NPMT has reviewed medical records of the complainants in which no evidence was found regarding given allegations. However, the complainants were notified by NPMT about their right of complaint filing with the Police Inspectorate of Kosovo concerning allegations of police ill-treatment.
8. The NPMT has received complaints from remand detainees about the duration of detention and inaction by the competent prosecution. Without prejudice to whether these

complaints are grounded or not, the NPMT, through this Report, without prejudice to complainants' allegations, deems it reasonable and necessary to notify the competent authorities of the complaints received by prisoners.

9. The NPMT has received a complaint from the convict Z.Q., who stated that he is assessed for danger every six months, while the complainant claims that he continues to be in the same category (high risk) for 7 years, despite the fact that the complainant didn't have any disciplinary measures within these 7 years. He also claims that due to the offense for which he has been convicted, since his accommodation in the DCP two years ago, he remains locked in a cell without any other engagement or activity.
10. The complainant also pointed out that prison library lacks sufficient literature titles. Further on, the complainant complained that all the books he had brought from home were confiscated, on the grounds that they were not included in the booklist approved by the prison.
11. The same prisoner said that the searches in his room are done by a correctional officer and that during the time when he is not in the room. With regard to prisoners' rooms searching, the NPM, without prejudice to the prisoner's claim, reminds DCP authorities that in cases of searches conducted in prisoners' rooms, this should be done in compliance with the Law on Execution of Penal Sanctions (LEPS).

Accommodation conditions

12. During the visit conducted, the NPMT visited a number of cells and assessed that the accommodation, lighting and ventilation spaces do not comply with the LESP¹ nor with the standards set by the European Committee for the Prevention of Torture (CPT).²
13. During the visit, the NPMT observed that prisoners' rooms were whitewashed, as part of the efforts of the DCP to create better accommodation conditions for prisoners. However, the NPMT has noticed that despite the whitewashing, some rooms still had dampness. During the visit, the NPMT was informed that the DCP had been supplied with new mattresses, sheets and pillows. Prisoners can take a shower twice a week, while those who are engaged in work can take a shower every day. However, during the visit it was noticed that the spaces where the prisoners take a shower and the sanitary facilities are in a very bad condition and renovation of these facilities is a must.
14. Regarding accommodation conditions in the DCP, Ombudsperson's NPMT, through the Recommendations Report for the visit to the DCP, conducted on 4 October 2018, which was published on 22 November 2018, had recommended to the Ministry of Justice the following: *"Accommodation conditions, as long as this center is in use, to be in compliance with the minimum standards provided for by the Law on Execution of Penal Sanctions; with the CPT standards and other international standards for the protection of prisoners' rights."*
15. The NPMT has noted that the situation remains almost the same since the last visits, as the DCP is an old building, which dates from the 60s and no significant changes can be

¹ Law No. 05/L0-129, Article 3 on Amending and Supplementing the Law No. 04/l-149 on the Execution of Penal Sanctions

² European Committee for the Prevention of Torture, Living space for one inmate, see: <https://rm.coe.int/16806cc449>.

expected in terms of infrastructure, but renovation of some certain spaces can be done in order to provide accommodation conditions in compliance with national and international standards for fundamental human rights.

16. The NPMT considers that the competent authorities should have a plan regarding the future of the DCP, as the accommodation conditions in this center are considered inadequate. Apart Recommendation Reports published by Ombudsperson's NPMT, this situation is also pointed out in CPT Reports, in the course of visits accomplished in the Republic of Kosovo in 2007 (see paragraph 58), 2015 (paragraph 41).³

Congestion

17. During the visit NPMT has noticed that this Center does not face overcrowding and that the number of accommodated prisoners is below the official capacity of the DCP.

Regime

18. Presently at the DCP 8 detainees and three convicts are engaged at work. Detained on remand can go out for a walk twice a day for a period of one hour.⁴ DCP has a very small area for walking, where only a table tennis is placed.
19. The CPC does not have the opportunity to offer detainees on remand and convicts other activities than walking and watching TV in their cells. Thus, remand detainees and convicts most of their time spend locked in their cells. During the visit, the NPMT team admitted complaints from prisoners due to the small number of television channels available to prisoners.
20. The NPMT deems that the regime for remand detainees remains poor, despite Management's efforts to provide more activities for remand detainees. Moreover, in the case of remand detainees, permission from the competent court is often required in order for them to engage in work or any specific activity.
21. The NPMT through previous Reports on visits conducted to places where persons deprived of their liberty are held has stressed the need to provide a comprehensive regime for prisoners (including remand detainees) in order to ensure that all prisoners spend a reasonable time outside their cells involved in activities such as: work, education, sports, recreation or socializing with other prisoners.⁵

Contacts with outside world

22. Legislation at effect⁶, 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

³ For more information, see the full Reports at: <https://rm.coe.int/16806a1efc> for the 2015 visit and at: <https://rm.coe.int/168069727c> for the 2007 visit.

⁴ Mandela Rules, Article 23. European Prison Rules, Article 27.1. Standards of the European Committee for the Prevention of Torture, paragraph 48, published in 2015. According to Article 37 of the Law on the Execution of Criminal Sanctions, convicts are entitled to at least two hours of walking in a day.

⁵ Report of National Preventive Mechanism of Torture for the visit to the High Security Prison, published on 19 June 2017, paragraph 20. Visit at: <https://oik-rks.org/en/2017/06/09/report-of-npm-related-to-the-visit-in-high-security-prison/>

⁶ Law on Execution of Penal Sanctions, Article 62-65.

three months for a minimum of three hours. Besides this they have the right to make telephone calls.

23. Regarding phone calls, Administrative Instruction on House Rules in the Correctional Institutions⁷ determines that convicted persons may have phone calls to close family members and other persons. According to this Instruction, phone calls of convicts and remand detainees shall not last more than 15 (fifteen minutes).
24. In the case of remand detainees, Article 200 of Criminal Procedure Code of Kosovo determines that the detainee on remand 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/her supervision. Further the Code stipulates that correspondence and other visits are subject to the decision of the pre-trial judge.
25. Ombudsperson or his representatives may visit the detained persons and contact 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 from such judge. Letters of the detained person sent to the Ombudsperson Institution cannot be controlled. The Ombudsperson and his representatives may communicate verbally or in writing in a confidential manner with the detained person.
26. In the case of foreign nationals, they shall be provided with the opportunity to contact a diplomatic representation in writing or verbally or the relevant office of his or her State of nationality.⁸ During the visit, the NPM noted that due to the outbreak of the COVID-19 pandemic, the authorities were forced to ban and restrict family visits. However, to alleviate this restriction, prisoners were allowed more phone calls and communication through SKYPE. Also, these measures were constantly reviewed from time to time depending on the situation with the COVID-19 pandemic and the recommendations of the competent health authorities.
27. Even through this Report, the NPMT encourages the competent authorities to continue to provide the opportunity of communication through SKYPE, especially in the case of prisoners, whose families, due to economic reasons cannot visit them as well as in case of foreigner citizens.

Health care

28. With regard to medical staff available in the DCP, during the visit NPMT has noticed that the health unit consists of a full-time doctor (08: 00-16: 00) and on call. There are also 6 nurses with a 12-hour schedule, while the head nurse with a working hours from 08:00-16:00. Consultations with a psychiatrist and psychologist are available once a week. For other medical services, prisoners are sent to other public health institutions as recommended. The NPMT has not received complaints from remand detainees and convicts regarding health care.
29. However, the infrastructure where medical services are provided does not meet even the minimum requirements, lacks natural light, has no separate room for patient visits or application of the therapy. Hygiene is maintained by the nurses themselves. Transport of

⁷ Administrative Instruction on House Rules in the Correctional Institutions, Article 54.

⁸ Law on Execution of Penal Sanctions, Article 33 paragraph 1.

prisoners to obtain medical services in other health institutions outside the DCP is done with vehicles of the Correctional Service.

Registers

30. The health unit in the DCP has evidenced all the necessary protocols. The NPMT has noticed the following registers: patient medical file, shift nurse register, therapies, complaints or requests for the next visit to the doctor, sending the patient for treatment outside the prison ambulance, self-injury, bodily injuries, sexual abuse, hunger strike, attempted suicide, on solitude and death in prison.

Medical examinations of newly-arrived prisoners

31. Law No. 04/L-149 on Execution of Penal Sanctions⁹ and Standard Operating Procedure¹⁰ 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. Based on the interviews conducted with the prisoners and the review of relevant medical documents, the NPMT has observed that the health unit in the DCP conducts medical screening of newly-admitted prisoners, in accordance with the above-mentioned provisions.

Confidentiality of medical services

32. Confidentiality of medical services is foreseen by Standard Operating Procedure¹¹ adopted by the Ministry of Health, the Law on Execution of Penal Sanctions¹², CPT Standards,¹³ as well as with international acts such as: Mandela Rules¹⁴ and United Nations Rules for the Protection of Juveniles Deprived of Liberty.¹⁵

33. The NPMT, based on interviews conducted with prisoners and health personnel, finds that these services are provided in conditions that respect confidentiality, actually are provided without the presence of correctional officers, except in cases where their presence is required by a doctor. While only the medical staff has access to prisoners' medical files.

Complaint filing procedure

34. Effective system of complaint filing is a basic guarantee against the ill-treatment in prison and pre-detention centers. Persons accommodated in these centers should have the opportunity to file complaints within the prison or detention center where they are located and that access to relevant authorities is done in confidential manner.

35. NPMT observed that at DCP are placed complaint boxes by Correctional Service as well as by Ombudsperson Institution, which serve and are on convicts' disposal to file their complaints and requests. Complaint boxes placed by the Ombudsperson Institution can be

⁹ Law No. 04/L-149 on Execution of Penal Sanctions, Article 31.

¹⁰ Standard Operating Procedure, point 1. See at: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Veprimit-n%C3%AB-DShB.pdf>

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

¹² Law No. 04/L-149 on Execution of Penal Sanctions, Article 49.

¹³ CPT Standards, published in 2018, paragraphs 50 and 51. For more info visit: <https://rm.coe.int/16806ce943>.

¹⁴ Mandela Rules, Rule 26, point 2, at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

¹⁵ 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.

open solely by the staff of this Institution, which provides the convicted person with confidentiality in lodging a complaint.

36. The NPMT has not received complaints from remand detainees and convicts regarding the issue of filing complaints or delays in reviewing their complaints within the legal deadline.

Based on ascertainties and findings of the NPMT during the visit, in conformity with Article 135, paragraph 3, of the Constitution of the Republic of Kosovo and Article 17, paragraph 7, of the Law 05 / L-019 on Ombudsperson, the Ombudsperson

RECOMMENDS

The Ministry of Justice:

- **To enable appropriate working conditions and space for medical staff.**
- **Accommodation conditions in DCP, as long as this center is in use, to be in compliance with the minimum standards provided for by the Law on Execution of Penal Sanctions as well as with CPT standards and other international standards for the protection of prisoners' rights.**
- **Ministry of Justice to inform the Ombudsperson about its plan in the future for the DCP.**

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