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**REPORT OF THE  
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE  
CONCERNING  
THE VISIT TO THE CORRECTIONAL CENTRE IN SMREKONICË**

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

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

**Mr. Habit Hajredinaj, Director  
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**Mr. Ali Gashi, acting General Director  
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**Mr. Xhevdet Maqastena, Director  
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Prishtinë, 18 October 2021

## 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 reside, including police detention, remand detention facilities, prisons, places where foreigners deprived of liberty are located, as well as psychiatric and social care institutions.

Based on this mandate, the NPMT, on 28 July 2021, visited the Correctional Center in Smrekonica (hereinafter CCS). CCS is an open type correctional institution where convicts sentenced -up to three years' imprisonment are accommodated and are subject to the open regime. The official capacity of CCS is 200 persons, while at the time of the visit conducted, the team found 115 convicts accommodated there.

### The purpose of the visit

The purpose of this visit was general assessment of respect of rights of convicts, of healthcare services provided to those imprisoned as well as accommodation conditions in compliance with local standards as well as those international for protection of persons deprived of liberty. Also, another aim of the visit was implementation of NPMT recommendations addressed to the Ministry of Justice through Recommendations Report, published on 19 May, 2019.<sup>1</sup>

### Cooperation of the CCS with the NPMT during the visit

1. During the visit made by NPMT to the Detention Centre in Smrekonicë, the personnel of Correctional Service and staff of Prison Health Department (henceforward PHD) provided the monitoring team with full cooperation and the team without any delay had access to all places intended to visit. The team was provided with all necessary information to accomplish its duty and the team has been enabled to conduct conversation with convicted and remand detainees without the presence of correctional officers as well as healthcare personnel.

### Ill-treatment

2. NPMT, during the visit conducted to the CCS, interviewed a considerable number of convicted persons and received no complaints from them concerning ill-treatment and excessive use of force by the correctional officers of this Centre. NPMT observed that there is a positive climate of relations and good interactive communication of convicts and correctional officers.

### Accommodation conditions at CCS

3. Law on Execution of Penal Sanctions (LEPS) explicitly stipulates that a convicted person has a right to accommodation which corresponds to contemporary hygienic conditions and local climatic circumstances.<sup>2</sup> Further the Law determines that: "*The premises in which a convicted person lives and works must be of sufficient space for each convicted*

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<sup>1</sup> For more info visit: <https://oik-rks.org/2019/05/21/raport-i-mkpt-per-viziten-ne-qendren-korrektuese-ne-smrekonice/>

<sup>2</sup> Law No.04/L-149 on Execution of Penal Sanctions, Article 36 paragraph 1.

*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.*<sup>3</sup> Furthermore this Law stipulates that the premises may not be damp and they must have adequate sanitary installations and other devices necessary for personal hygiene.<sup>4</sup>

4. NPMT has observed that cells in which the convicts reside, in terms of size and natural and artificial lighting are in accordance with the standards established by the Committee for the Prevention of Torture<sup>5</sup> (hereinafter CPT) and the Law on Execution of Penal Sanctions<sup>6</sup>. In addition, the ward, which was until present used as quarantine after the outbreak of the COVID-19 pandemic, is now available to inmates for housing and will provide even additional living space for inmates.
5. During the visit accomplished to the CCS on 6 February 2019, NPMT observed that in the second floor of the establishment, an urgent renovation of the roof is a must, which causes rain penetrating and due to it, some of cells' ceiling have dump.
6. As per this shortcoming, the NPM, through the Report with Recommendations for the visit to CCS published on May 16, 2019, recommended to the Ministry of Justice to avoid this shortcoming. However, during the visit mentioned above, it was found that this recommendation has not been implemented yet.

## **Nutrition**

7. The Law on Execution of Penal Sanctions determines the right of a convicted person on food suitable for him or her to maintain good health and strength in three (3) meals each day, which must be varied and nutritious. The food provided to a convicted person shall take into account his or her age and health, the nature of his or her work, the season and climatic conditions and, as far as possible, his or her religious and cultural requirements.<sup>7</sup>
8. Additionally, the Law stipulates that a convicted person who works in heavier duties, a sick person, a pregnant woman or a woman who has borne a child has the right to food ordered by a physician.<sup>8</sup> A physician or other expert shall check and advise the director of the correctional facility on the quality of meals before delivery and shall record his or her findings in an appropriate book.<sup>9</sup>
9. During the visit, the NPMT noticed that the facility used as kitchen for food preparing and serving is a temporary solution and that very soon the appropriate facility for this purpose will be functional and will provide significantly better conditions. The kitchen staff and the convicts engaged in work in the kitchen, were provided with sanitary

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<sup>3</sup> Law No. 05/L-129 on Amendment and Supplementing of the Law No. 04/L-149 on execution of Penal Sanctions, Article 3, paragraph 2.

<sup>4</sup> Law No. 04/L-149 on Execution of Penal Sanctions, Article 36 paragraph 3.

<sup>5</sup> European Committee for the Prevention of Torture, Living space per prisoner in prison establishment, for more info visit: <https://rm.coe.int/16806cc449> .

<sup>6</sup> Law No. 04/L-149 on Execution of Penal Sanctions, Article 36, paragraph 2.

<sup>7</sup> Law No. 04/L-149 on Execution of Penal Sanctions, Article 39, paragraph. 1.

<sup>8</sup> Law No. 04/L-149 on Execution of Penal Sanctions, Article 39 paragraph. 2.

<sup>9</sup> Law No. 04/L-149 on Execution of Penal Sanctions, Article 39 par. 3.

booklets. The NPM did not receive complaints from prisoners regarding the quantity and quality of food served.

### **Regime**

10. According to the management of Correctional Centre in Srekovnice, generally during summer, almost all convicts are engaged with work with agricultural land, maintenance as well as with workshop which are functional within CCS. Apart this, within prison's perimeter there is an area of agricultural land where different crops are cultivated, where prisoners are engaged with work.
11. There is well-equipped fitness room on prisoners' disposal, a library supplied with a large number of books, as well as there is a room, where prisoners can perform religious rituals. In addition, prisoners' rooms are equipped with cable TV. Prisoners can move freely within the perimeter of CCS throughout the day.
12. Through the Recommendations Report on the visit conducted to CCS, published on 19 May 2019, the NPM recommended to the Ministry of Justice to put in function the workshop in CCS in order to increase engagement of prisoners in various activities. During the visit, the NPMT noted that this recommendation was implemented. In these workshops are now engaged 4 convicts who have the necessary professional skills.

### **Health care**

13. Article 43 of the Law on Execution of Penal Sanctions determines that a convicted person has the right to health care services free of charge. Convicted person to whom cannot be offered appropriate medical treatment in the correctional facility shall be sent to a prison hospital, psychiatric institution or another health care institution for treatment.<sup>10</sup>
14. Medical staff in CCS is comprised of a full time, regular practitioner working from 8:00 to 16:00, as well as on call 24 hours. Within medical services there are three (3) male nurses, who work on shifts for 12 hours as well as the head nurse who works every day from 08:00 to 16:00.
15. Nurses in the CCS may not be present during the weekends sometimes, however they are on call 24 hours. At the disposal of the health unit in CCS are also psychologist and psychiatrist, who work on certain days and if necessary can be engaged more often.
16. In terms of available infrastructure, it is at a satisfactory level and meets the needs of the health unit to provide the necessary medical care. The health unit is equipped with ECG, other first aid kits, anti-shock therapy, Ultrasound (EHO), defibrillator, sphygmomanometer, sterilizer, oxygen cylinders, etc. Other more specialized services can be provided at the nearest family medicine center, regional hospital and the University Clinical Center of Kosovo. The NPM did not receive complaints from prisoners regarding provision of health care.

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<sup>10</sup> Law No. 04/L-149 on Execution of Penal Sanctions, Article 43, paragraph 2.

## **Importance of medical examinations of newly-arrived prisoners**

17. Law No. 04/L-149 on Execution of Penal Sanctions<sup>11</sup> and Standard Operating Procedure<sup>12</sup> 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.
18. During the visit, the NPM noticed that the newly arrived are examined within 24 hours from the moment of arrival at the CCS. These imply a general control, according to the PHD Standard Operating Procedures (SOP). This statement has been confirmed by the monitoring team through the control of medical records and through interviews with prisoners.

## **Confidentiality of medical services**

19. Based on interviews conducted with prisoners as well as medical staff, NPMT ascertained that health service are generally provided in circumstances that respect confidentiality, actually are provided without the presence of correctional officers, except when that is required by the doctor.
20. While only medical staff has access to prisoners' medical files. Confidentiality of medical services is foreseen by Standard Operating Procedure<sup>13</sup> adopted by the Ministry of Health, the Law on Execution of Penal Sanctions<sup>14</sup>, CPT Standards,<sup>15</sup> as well as with international acts such as: Mandela Rules<sup>16</sup> and United Nations Rules for the Protection of Juveniles Deprived of Liberty.<sup>17</sup>

## **Contacts with outside world**

21. The NPMT considers that contacts with the outside world, especially visits from family or other relatives, are essential in prisoners' social rehabilitation context.
22. Legislation at effect<sup>18</sup>, on cases of convicted person stipulates that a convicted person has an unrestricted right to correspondence (subject to specific exclusions) to receive a visit at least once each month for a minimum of one (1) hour, and at least one visit by his or her child, spouses one in three months a minimum duration of three hours. According to the CCS Director, prisoners are entitled to up to 8 visits per month, as well as an extra visit based on the request submitted to the CCS Directorate.
23. Concerning telephone calls, Article 60 of the LEPS stipulates that the convicted person has the right to make telephone calls. Prisoners in CCS are entitled to unlimited calls, they can communicate through the SKYPE system (10-15 PC are available to prisoners).

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<sup>11</sup> Law No. 04/L-149 on Execution of Penal Sanctions, Article 31.

<sup>12</sup> 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>.

<sup>13</sup> Standard Operating Procedure, point: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Veprimit-n%C3%AB-DShB.pdf>.

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

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

<sup>16</sup> Mandela Rules, Rule 26, point 2, at: [https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf).

<sup>17</sup> 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](https://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf).

<sup>18</sup> Law No. 04/L-149 on Execution of Penal Sanctions, Articles 62-65.

24. With the outbreak of the COVID-19 pandemic, there were restrictions and bans on family visits and weekends. However, communication with the outside world was enabled through *online* communication with SKYPE.
25. The NPM also visited the family visiting room, which offers satisfactory conditions for receiving family visits, as well as offers the opportunity for the prisoner to have direct contact (there are no barriers between them) with the family member or the visiting person.

### **Procedure of complaint filing**

26. The CPT's standards emphasize the importance of an effective complaint system and consider it as a fundamental guarantee against ill-treatment in prisons and detention centers.
27. 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.<sup>19</sup>
28. NPMT observed that on disposal of convicts in the CCS are complaint boxes, placed by the Correctional Service, by Ombudsperson Institution (OI), as well as those placed by the Prison Health Department as well. Complaint boxes placed by the Ombudsperson Institution can be open solely by the staff of this Institution, which provides the convicted person with confidentiality in lodging a complaint.
29. They can also file a complaint to the Ombudsperson via free of charge telephone line (information on phone line is located in the complaint boxes), by regular mail, which, according to the Law on Execution of Penal Sanctions, is not subject to control if addressed to Ombudsperson Institution of the Republic of Kosovo, as well as through their family members.
30. The NPM noted that the Director of the CCS provides an adequate opportunity to file complaints and requests, review them and send responses to prisoners in this center, in accordance with the Law on Execution of Penal Sanctions. NPMT did not receive complaints from prisoners regarding the right to file a complaint.

Based on findings and ascertainties achieved by the NPMT in the course of the visit, pursuant to Article 135, paragraph 3 of the Constitution of Republic of Kosovo and Article 17, paragraph 7 of the Law No. 05/L019 on Ombudsperson, the Ombudsperson:

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<sup>19</sup> 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.

## RECOMMENDS

### Ministry of Justice:

- **To renovate the ceiling of the ward where convicts are accommodated.**

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,

Naim Qelaj  
Ombudsperson