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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

**REPORT OF THE
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE
CONCERNING
THE VISIT TO THE PRE-DETENTION CENTRE IN MITROVICË**

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**Copy to: Mrs. Duda Balje, President
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Prishtinë, 15 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 are held, including police detention, remand detention facilities, prisons, places where foreigners deprived of liberty are located, whose stay in the Republic of Kosovo collide with the 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 on 29 July 2021 visited the Pre-Detention Center in Mitrovicë (hereinafter "*PDCM*").

The purpose of this visit is to assess the respect of rights of detained persons accommodated in this PDCM, which are 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.

PDCM accommodates remand detainees as well as convicts, sentenced less than 20 years of imprisonment and of different nationalities, who are placed in two floors.¹ According to PDCM management, the capacity of this center is 77 inmates. In the course of the visit conducted by NPMT there were 52 persons accommodated in the PDCM.

Cooperation with NPMT during the visit

1. During the visit made by NPMT to the Pre-Detention Centre in Mitrovicë, the staff of Kosovo Correctional Centre (KCC) and Prison Health Department (henceforward PHD) provided the monitoring team with full cooperation. The team without any delay had access to all places intended to visit and the team was provided with all necessary information to discharge their duty. Pursuant to the Law on Ombudsperson, the team used photo apparatus without being impeded by Center's authorities.

Ill-treatment

2. During the visit to the PDCM, the NPM admitted complaints of physical ill-treatment and excessive use of physical force by correctional officers. The NPMT noted that interactive communication between correctional officers and prisoners generally was at a satisfactory level, but also in some cases tensions were observed in the relation between correctional officers and prisoners. **But, in certain cases, the NPMT obtained allegations of physical ill-treatment and excessive use of physical force.**
3. **With regard to certain allegations of physical ill-treatment and excessive use of physical force, the NPM considers that the PDCM management should be always watchful and refer a clear message to correctional staff that any form of ill-treatment, including verbal abuse, is illegal and is punishable in compliance with applicable Laws.**

¹ Data obtained from official web page of Kosovo Correctional Office, at : <https://shkk.rks-gov.net/institucionet-single/2236>.

4. Furthermore, correctional staff should strictly use only the necessary and proportionate force to bring the prisoner under control and once the prisoner is brought under control, further use of physical force cannot be justified.
5. During the visit, a large number of detainees of Serbian ethnicity refused to meet with NPM representatives, some of whom were not interested to meet the team and in some cases, due to the ethnicity of NPMT members, did not have any trust on NPMT.
6. The NPM expresses its regret for this stand and distrust towards NPMT. As in the past, the NPM will continue to carry out its assignment in accordance with the Constitution of the Republic of Kosovo and the Law on Ombudsperson, continually having professional access and without discrimination to all persons deprived of their liberty, regardless ethnicity, gender, race and according to all other grounds for discrimination, which are provided by the legislation in effect in the Republic of Kosovo and the international standards for fundamental human rights.

Accommodation conditions

7. 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.² 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.”*³ 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.⁴
8. In general, accommodation conditions in the PDCM can be considered suitable, except in certain cases, **in the meaning of living space for a prisoner, where accommodation conditions are not in conformity with the LEPS, with international standards for the protection of prisoners' rights and the Standards of the European Committee for the Prevention of Torture (hereinafter, the CPT).**
9. **From the measurements carried out in cells, it results that some cells are far from the standard set by LEPS and international standards for the human rights of prisoners.**
10. **The NPMT also received complaints from prisoners due to high temperatures in their cells.** The NPM considers that the competent authorities should take action to avoid this shortcoming which occurs during the summer. Concerning this deficiency, the NPMT was informed by the management that the construction of a new Detention Center is planned, but so far no official decision from the Ministry of Justice has been announced.

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

³ 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.

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

Nutrition

11. 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. Additionally, the Law stipulates the liability that the convicted person is provided with the food ordered by the physician.⁵ Further, LEPS stipulates that a convicted person must have drinking water continuously available.⁶
12. Mandela Rules, an important international legal act on the rights of prisoners, determine obligations of authorities to ensure appropriate nutrition to prisoners in order to maintain their health as well as drinking water all the time.⁷ In this direction, European Prison Rules also determine the liabilities of authorities to provide the prisoners with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work. The food shall be prepared and served hygienically, while clean drinking water shall be available to prisoners at all times.⁸ **NPMT did not receive any complaint from the prisoners related to these rights.**

Regime

13. As per regime is concerned, in PDCM approximately 16 convicts are engaged at work. Within the scope of PDCM, 5 workplaces are functional in which convicts can be engaged at work and different trainings. The convicts are entitled to at least 2 hours walking per day.⁹ On detainees disposal is the library, walking path and the gym. Remand detainees are not engaged in work, as engagement in work and other activities is subject to permission from the competent court. **The NPMT received complaints from detainees who, according to their statements as well as of the director, most of their time they spend in their cells (approximately 22 hours).**
14. Concerning remand detainees' regime, Ombudsperson's NPMT, in the past has expressed concern due to the extremely poor regime and recommended that efforts need to be done to increase detainees' involvement in work and other activities, genuinely, as far as such a thing is possible.
15. **In this direction the NPMT considers that the longer the period for which remand prisoners are detained, the more developed should be the regime offered to them.**¹⁰
16. During the visit, the NPM received complaints from prisoners of Serb ethnicity who complained that there is no prison or prison unit of an open type for them, such is

⁵ Law on Execution of Penal Sanctions, Article 39, paragraphs 1 and 2.

⁶ Law on Execution of Penal Sanctions, Article 40.

⁷ Mandela Rules, Rule 22.

⁸ European Prison Rules, Rules 22.1 and 22.6.

⁹ According to Article 37 of the Law on Execution of Penal Sanctions, convicts are entitled to at least 2 hours walking per day.

¹⁰ NPMT, Recommendation Letter on the visit to Pre-Detention Centre in Pejë, published on 16 December 2019. See at: <https://www.oik-rks.org/wp-content/uploads/2019/12/Leter-rekomandim-perkitazi-me-viziten-ne-QP-Peje.pdf>.

Correctional Center in Smrekonica, which do not accommodate prisoners of Serbian ethnicity. In this regard, the NPM considers that all prisoners should be treated without distinction in accordance with the Constitution of the Republic of Kosovo as well as applicable Laws.

Health care

17. Law No. 04/L-149 on Execution of Penal Sanctions, in Article 43 determines that a convicted person has the right to health care free of charge. A convicted person who cannot be offered appropriate medical treatment in the correctional facility shall be sent to a prison hospital, psychiatric institution or another health care institution.¹¹
18. PDCM medical staff consists of a doctor with a regular contract who works every second day, from 07:00 -15.00 as well as is available on call 24 hours. In the health unit there are also available 6 regular nurses, where 5 of them work in the shifts from 24 hours, while the head nurse from 08:00 to 16:00. The Centre also have a psychologist and a contracted dentist who work on certain days and as needed.
19. As per the infrastructure, the Health Unit has a facility where medical examinations, interventions, as well as dental treatments are carried out. There is also a space for phycologist and the head nurse. The NPMT considers that this space is not adequate for the provision of medical services and does not protect the confidentiality of medical services. The health unit possesses ECG, oxygen cylinder, defibrillator, an arterial blood pressure monitor, consumable material and shock-therapy.
20. Other medical services are provided by nearest Family Medicine as well as regional hospitals. Apart this, the health unit owns all relevant medical protocols. **The NPM has received complaints from prisoners of Albanian ethnicity with regard to the fact that the medical staff in this health unit does not speak Albanian and thus communication with the medical staff is difficult and inadequate.**

Importance of medical examinations of newly-arrived prisoners

21. CPT as well as other international legal acts repeatedly point out the importance of medical screening of the newly-arrived prisoners, specifically in institutions which constitute access points to the prison system. Such screening is crucial, especially to prevent suicides and spread of transmissible diseases (such as tuberculosis, hepatitis B/C, HIV).
22. According to CPT, prison health-care services can also make a significant contribution to the prevention of ill-treatment during the period immediately prior to imprisonment, namely when persons are in the custody of law enforcement agencies, through the systematic and timely recording of injuries and, when appropriate, the provision of information to the relevant authorities.¹²

¹¹ Law No. 04/L-149 on Execution of Penal Sanctions, Article 43, paragraph 2.

¹² European Committee for the Prevention of Torture, 26 General Report, paragraph 72, at: <https://rm.coe.int/168070d0c8>.

23. Law No. 04/L-149 on Execution of Penal Sanctions¹³ and Standard Operating Procedure¹⁴ 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.
24. Such obligations are determined also by international acts for protection of rights of convicted persons such as: Mandela Rules¹⁵, European Prison Rules¹⁶ and United Nations Rules for the Protection of Juveniles Deprived of Liberty.¹⁷
25. Based on allegations of detainees as well as relevant medical documents, the newly – arrived detained persons are subject to medical examination within 24 hours, from the moment of arriving in the PDCM.

Confidentiality of medical services

26. Confidentiality of medical services is foreseen by Standard Operating Procedure¹⁸ adopted by the Ministry of Health, the Law on Execution of Penal Sanctions¹⁹, CPT Standards,²⁰ as well as with international acts such as: Mandela Rules²¹ and United Nations Rules for the Protection of Juveniles Deprived of Liberty.²²
27. Moreover, the CPT standards also stipulate that all medical examinations of prisoners must be carried out so that they are not seen and heard by correctional officers, except in cases where the doctor asks for such a thing.
28. Additionally, Article 25 paragraph 3 of Administrative Instruction concerning House Rules in Correctional Institutions determines explicitly: “*The doctor makes the medical visit in terms of confidentiality and in professional ethical norms.*”
29. Based on information provided by health service staff and interviews with prisoners, health services are generally provided without the presence of correctional officers, except when the doctor requires the presence of correctional officers.

¹³ Law No. 04/L-149 on Execution of Penal Sanctions, Article 31.

¹⁴ Standard Operating Procedure, point 1. See at: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standard-te-Veprimit-n%C3%AB-DShB.pdf>.

¹⁵ Mandala Rules, Rule 34. See at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

¹⁶ Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, point 42.1, see at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804c221d>.

¹⁷ United Nations Rules for the Protection of Juveniles Deprived of Liberty, point 27, at: https://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf.

¹⁸ Standard Operating Procedure, point: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standard-te-Veprimit-n%C3%AB-DShB.pdf>.

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

²⁰ CPT Standards, published in 2018, paragraphs 50 and 51. For more info visit: <https://rm.coe.int/16806ce943>.

²¹ Mandala Rules, Rule 26, point 2, at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

²² 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.

Disciplinary measures

30. According to the applicable legislation, prisoners may be subjected to the following disciplinary sanctions: reprimand, deprivation of an assigned privilege, an order to make restitution, and solitary confinement.²³ While remand prisoners may be subjected to the following sanctions: prohibition or restriction on visits or correspondence, except contacts with defense counsel, the Ombudsperson and diplomatic missions. During the visit to the PDCM we did not encounter any incarcerated person to whom the disciplinary measure of solitary confinement has been imposed.
31. NPMT was notified that medical service is excluded from deciding upon the ability of the pre-detained person or of the convicted person to face the disciplinary measure of seclusion. NPMT considers that the medical staff is precisely aware of its role in this aspect. Participation of a doctor on decision making process, who is actually a doctor of a pre-detained or convicted person, will undermine doctor-patient relation, apart in case this measure is undertaken for medical reasons.²⁴
32. During the visit, the NPMT noticed that the convicts with the disciplinary measure of solitary confinement were handed over the copy of the decision which also contains the legal advice for the legal remedy, which can be used against the decision for imposing the disciplinary measure.

Contacts with outside world

33. Legislation at effect²⁵, 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. Apart this, they are entitled to make telephone calls as well.
34. As per telephone calls, Administrative Instruction on House Rules in the Correctional Institutions²⁶ determines that convicted persons may place phone calls to close family members and other persons. According to this Instruction convicted persons or detainee's phone call may not last more than fifteen (15) minutes).
35. The Convicted persons on basic regime shall be entitled to one phone call a week lasting fifteen (15) minutes, while the convicted persons on advanced regime shall be entitled to two phone calls a week within a week fifteen (15) minutes). **The NPM, however, admitted complaints from prisoners of Albanian ethnicity that their calls were limited to 10 minutes. The director of the PDCM has denied these allegations.**
36. On the case of remand detainees, Article 200 of Kosovo Criminal Procedure Code determines that the detainees on remand can receive visits "*within the borders of pre-*

²³ Paragraphs from 101 up to 113 of the Law on Execution of Penal Sanctions.

²⁴ European Committee for the Prevention of Torture in the Report for the Visit conducted to Kosovo in 2015, has requested from the relevant authorities to break the practice of requesting from the doctor the proof that the detainee or convict is able to cope with the measure imposed.

²⁵ Law No. 04/L-149 on Execution of Penal Sanctions, Articles 62-65.

²⁶ Administrative Instruction on House Rules in the Correctional Institutions, Article 54.

detention center rules” the permission of the pre-trial judge and under his/her supervision. Further, the Code stipulates that the correspondence and other visits are subject to decision of the pre-trial judge. Based on interviews with the remand detainees it derives that they are entitled to two visits per month based on Court’s permission as well as one additional visit from the management based on request submitted by the remand detained person in certain circumstances.

37. The Ombudsperson or his/her representatives can conduct visits to remand detainees as well as maintain correspondence with them without prior notification as well as supervision of the pre-trial judge, a single trial judge or presiding judge or other persons appointed by the judge. Letters of remand detained persons sent to the Ombudsperson cannot be read. The Ombudsperson and his representatives may communicate verbally or in writing confidentially with remand detainees. Similarly, the detainees can also address the Ombudsperson’s NPMT through the telephone.
38. In the case of foreigner nationals, they are provided with the opportunity to contact a representative of the liaison office or diplomatic mission of his or her State of nationality in writing or by telephone.²⁷

Facilities where visitor are admitted

39. During the visit, NPMT has visited also facilities where family visits are conducted in the PDCM. Conditions in these facilities remain at the satisfactory level. Furthermore, the room where free visits perform is in good condition, including the toilet as well as other relevant equipment.

Incidents between prisoners

40. According to the Directorate, since the beginning of 2021 and so far, 25 incidents have occurred. The NPM has noticed that these incidents, upon appropriate medical examinations and investigations, have been recorded in the relevant administrative and medical forms.

Procedure of complaint filing

41. 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 as well as have access to relevant authorities in confidential manner.
42. 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.²⁸

²⁷ Law No. 04/L-149 on Execution of Penal Sanctions, Article 33 paragraph 1.

²⁸ 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

43. NPMT observed that on disposal of convicts as well as remand detainees are complaint boxes, placed by the Correctional Service and those placed by the Prison Health Department as well as by Ombudsperson Institution. 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. NPMT did not receive any complaint as per respect of this right.

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:

RECOMMENDS

The Ministry of Justice:

1. Whilst the PDCM is functional, prisoners should be guaranteed accommodation conditions in accordance with the LEPS, international standards for the fundamental rights of prisoners, and the standards of the European Committee for the Prevention of Torture.
2. PDCM management to send a clear message to correctional staff that any form of ill-treatment, including verbal abuse, is illicit and punishable in accordance with applicable laws.
3. The duration of telephone calls to be in accordance with the applicable House Rules.
4. Remand detainees, whenever is possible and the legal criteria is met, to be offered jobs and other appropriate activities.

Ministry of Health:

1. Having in regard the number of prisoners of Albanian ethnicity in Pre-Detention Center in Mitrovica, to make arrangements, so they receive medical services in a language they understand.

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

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.

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