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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

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**REPORT OF OMBUDSPERSON'S NATIONAL PREVENTIVE MECHANISM  
REGARDING THE VISITS CONDUCTED TO THE FOLLOWING POLICE  
STATIONS:**

- *Police Station in Gjilan*
- *Police Station in Lipjan*
- *Police Station in Prizren*
- *Police Station in Ferizaj*
- *Police Station in Shtime*
- *Police Station in Shtërpçë*
- *Police Station in Rahovec*
- *Police Station in Kamenicë*
- *Police Station in Viti*
- *Police Station in Suharekë*
- *Police Station in Malishevë*

**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**

**Mr. Habit Hajredini, Director  
Office of Good Governance, Office of Prime Minister**

**Pristinë, 22. December 2021**

National Preventive Mechanism of Torture (*hereinafter NPMT*), based on Article 17 of Law no. 05 / L-019 on the Ombudsperson, may conduct visits, at any time and without prior notice, all places where persons deprived of their liberty are held, including police stations, detention centers, prisons, places where foreigners are detained and deprived of liberty, as well as psychiatric and social care institutions.

Pursuant to Article 135, paragraph 3, of the Constitution of Republic of Kosovo and with Article 17 of the Law No. 05/L-019 on Ombudsperson, Ombudsperson's NPMT during November 2021 visited the following Police Stations:

- *Police Station in Gjilan*
- *Police Station in Lipjan*
- *Police Station in Prizren*
- *Police Station in Ferizaj*
- *Police Station in Shtime*
- *Police Station in Shtërpçë*
- *Police Station in Rahovec*
- *Police Station in Kamenicë*
- *Police Station in Viti*
- *Police Station in Suharekë*
- *Police Station in Malishevë*

### **The purpose of the visit**

The purpose of this visit conducted to above given Police Stations was to conduct a general assessment of the respect of human rights of arrested and detained persons, rights which are guaranteed by the Constitution of Republic of Kosovo, the Law No. 04/L-076 on Police, by the Criminal Procedure Code as well as by international standards for protection of fundamental rights of persons deprived of liberty.

### **Cooperation with the NPMT during the visit**

During the visit to the above-mentioned stations, the Kosovo Police provided the NPMT full cooperation. The team, without delay, had access to all premises at each police station. The team was provided with all necessary information to discharge the task and access to all required documents, as well as the opportunity of interviewing arrested persons, without the presence of police officers, was enabled.

### **Guarantees against ill-treatment**

1. Rights of arrested persons by 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. European Committee for the Prevention of Torture (henceforward CPT), in its 2 General Report, published on 1992 attaches particular importance to three rights for persons detained by the police, the rights 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).<sup>1</sup>

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. Kosovo Republic legislation in effect provides for these fundamental rights of arrested and detained persons by police authorities in the Constitution of the Republic of Kosovo, in the Criminal Procedure Code as well as in the Law on Police.
5. Article 13 of the Criminal Procedure Code stipulates that every person deprived of liberty shall be informed promptly, in a language he / she understands, of the right to legal assistance of his or her choice, of the right to notify members of the family or any other person for the fact that he/she has been arrested and that these rights apply throughout the time of deprivation of liberty.
6. With regard to notification of arrest, Article 168 of the Criminal Procedure Code further determines that an arrested person has the right to notify or to require the police 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, the notification of a family member or other person regarding the arrest may be delayed for a maximum of 24 hours when the state prosecutor deems that this is conditioned by the extraordinary needs for the investigation of the case. This delay does not apply in the case of minors.
7. Pursuant to the Law on Police<sup>2</sup>, the right to notify the family or other person on the arrest applies also to persons who are in "*temporary police detention*" for the purpose of identification or for the protection of themselves and others.
8. According to Criminal Procedure Code, Article 13, paragraph 2.3, Article 163, paragraph 2, Articles 164, paragraph 5, under the suspicion of having committed a criminal offence determines that the time of police detention in detention centers should not exceed forty-eight hours (48) from the time of his arrest, unless in the cases when pre-trial judge orders otherwise.
9. Based on Article 60 of the Juvenile Justice Code, the provisional arrest or police detention of a juvenile cannot exceed a period of twenty-four (24) hours. On the expiry of that period, the juvenile shall be released unless a juvenile judge has ordered detention on remand for the juvenile.<sup>3</sup>
10. Concerning the right to a attorney, detained / arrested person under Article 166 of Criminal Procedure Code, has the right to immediate assistance of the defense counsel, at his choice, after his arrest<sup>4</sup>. If the arrested person does not engage a defense counsel and

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

<sup>2</sup> Law on Police, Article 20.

<sup>3</sup> Juvenile Justice Code, Article 60.

<sup>4</sup> Criminal Procedure Code, Article 166, paragraph 1.

no one engages a defense counsel for him or her, he or she shall be provided with a defense counsel at public expense.<sup>5</sup>

11. Additionally, the detained person may waive the assistance of counsel, this right may be waived under Article 53, paragraph 3, of 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 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.”*
12. 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 right<sup>6</sup>.
13. Regarding the right to medical examination of arrested / detained persons, Article 169 of the Criminal Procedure Code stipulates that an arrested person has the right, upon request, to be examined by a doctor or dentist of his or her own choice as promptly as possible after his or her arrest.<sup>7</sup> Additionally, if an arrested person displays signs of mental illness, the police may immediately order an examination by a psychiatrist.<sup>8</sup>
14. Whereas when the arrested person is a foreign citizen, according to Article 167 of the Code of Criminal Procedure, he or she has the right to notify or to have notified and to communicate verbally 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 organization<sup>9</sup>.
15. During the visits to the above-mentioned Police Stations NPMT did not receive 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, 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.
16. On 1 October 2020, Standard Operating Procedures have been approved by Kosovo Police, the purpose of which is to create a basic document, which defines the rules and procedures of the work of the police, which will be in accordance with the Constitution of the Republic of Kosovo and applicable laws, in order to respect human rights of persons detained and held in detention centers.
17. The NPMT welcomes the approval of this important document by the Kosovo Police. This document refers to the international and domestic standards of fundamental human rights of persons deprived of their liberty and of those detained in detention centers.

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<sup>5</sup> Criminal Procedure Code, Article, paragraph 2.

<sup>6</sup> Criminal Procedure Code, Article 53, paragraph 5.

<sup>7</sup> Criminal Procedure Code, Article 169, paragraph 1.

<sup>8</sup> Criminal Procedure Code, Article 169, paragraph 4.

<sup>9</sup> Criminal Procedure Code, Article 167, paragraphs 1 and 2.

## **Files of the arrested persons**

18. Based on the documents reviewed during the visits to the above-mentioned police stations, the NPMT has noticed that all police stations own the standard document (arrest / detention file), 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.
19. Apart this, NPMT has observed that each visited Police Station had additional specific documents, in which any event related to the arrested person was recorded by police authorities.

## **Treatment**

20. The NPMT, during the visits to the above-mentioned Police Stations, where the team encountered arrested or detained persons, did not receive any complaints regarding the treatment by police officers and respect of their fundamental rights.

## **Physical conditions in these police stations**

21. The Standard Operating Procedure (hereinafter, the SOP) stipulates that detention centers must comply with the European Convention for the Protection of Human Rights and Freedoms and the CPT Recommendations based on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>10</sup>.
22. 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 cells where detainees are kept, which sets out: *“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 (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.”*<sup>11</sup>
23. During the visits to the above-mentioned stations, the NPMT has noticed that generally, functional Detention Centers, provide acceptable conditions to accommodate detainees for a period of 48 hours, in terms of space, natural and artificial lighting and cleanliness. NPMT, during the visit to the Detention Center at the Police Station in Malisheva, has noticed that certain renovations are needed due to damage.
24. Furthermore, the NPMT has noticed that the Detention Center of the Police Station in Prizren is damaged and needs renovation, and the mattresses in this center in Prizren are very old and worn-out.
25. Detention Centers in some visited Police Stations are not functional (Lipjan, Kamenica, Shtime), due to technical problems. Consequently, detainees have to be sent to other Detention Centers and this presents often a problem as the staff of these centers have to spend additional time and means for their sending to other centers.

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

<sup>11</sup> European Committee for Prevention of Torture, 2nd General Report, paragraph 42. For additional information please visit: <https://rm.coe.int/1680696a3f>.

26. During the visit to the Police Station in Shtërpce, the NPMT has noticed that immediate renovations are needed as the physical conditions in the station do not provide an appropriate working environment for police officers as well as others.
27. During the visits to the above-mentioned stations, no problems were reported to confirm the presence of defense counsel in cases of arrests or detentions, the presence of a social worker or the provision of health care, as fundamental rights guaranteed by applicable local legislation and international standards for the fundamental rights of persons deprived of their liberty. At all other visited stations, where there are no detention centers, detainees are held for up to 6 hours at the station, then they are sent to other Detention Centers.
28. NPMT also visited the interview rooms in all the above-mentioned stations and did not encounter any objects or strong tools which were confiscated as evidence and in the past in some Police Stations were kept in the interview room.
29. In all visited Police Stations, the NPMT noticed that the security cameras in the Detention Centers are functional, which constitute additional guarantees against physical ill-treatment and guarantees for police officers so that they are not falsely accused of physical ill-treatment by arrested persons or by detainees.
30. NPMT notes that, despite previous recommendations, in some Detention Centers, detainees are not provided with hygienic packages. This condition is opposite to the Standard Operating Procedure (hereinafter, SOP), respectively point 1.9 (D. Procedures). Also, in some Detention Centers the toilets are not separated in such a way as to provide complete privacy for detainees. The NPMT considers that the competent bodies of the Kosovo Police should identify Detention Centers with these shortcomings and take action to avoid them.

### **Health care**

31. With regard to medical services, as a basic right, to persons arrested by the police, these services are provided by public institutions, such as: Family Medicine Center and University Clinical Center, depending on the needs for treatment. No complaint has been served to the NPM from the interviewees regarding this right. Furthermore, from reviewed documents was noticed that the police has recorded in detainees' personal files notification on the right to have medical services.
32. In general, during the visit it was noticed that there is a lack of materials for protection from COVID-19, although there were supplies at the beginning of the pandemic. The NPMT, during the visit was informed that the vast majority of police officers have been vaccinated.

### **Nutrition**

33. The Criminal Procedure Code of the Republic of Kosovo stipulates the obligation that if a person deprived of liberty is held for more than 12 hours, he/she should be provided with three meals of food per day.<sup>12</sup> Arrested persons, who are sent to detention, are offered three meals of food within 24 hours, according to the contract that the Police has with the

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<sup>12</sup> Criminal Procedure Code of Republic of Kosovo, Article 170 paragraph 3.

contracting company. The NPM did not receive any complaints from detainees with regard to fulfilment of this right.

### **Complaint filing by arrested persons**

34. Regarding their treatment by the Kosovo Police, arrested persons have the right to file complaints to the Police Station where they are held, to the Police Inspectorate of Kosovo, as well as to external monitoring bodies, such as: NPMT and non-governmental organizations, who are permitted to conduct visits to places of deprivation of liberty. 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 holding detainees. These complaints boxes are opened only by the staff of the regional offices of the Ombudsperson Institution.

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

### **RECOMMENDS**

#### **Kosovo Police:**

- **To supply detainees on regular bases with hygiene items in accordance with the SOP.**
- **To conduct renovations to the Police Station in Shtërpce according to the needs assessment.**
- **To carry out the necessary renovations in the Detention Center in Prizren and supply it with new mattresses.**
- **To provide police officers and police stations regularly with protective materials against COVID-19.**
- **In cell toilets where more than one detainee is accommodated, the partition walls need to be higher in order to provide complete privacy for detainees.**

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