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NATIONAL PREVENTIVE MECHANISM'S REPORT

REGARDING THE VISITS CONDUCTED TO THE PRE-DETENTION CENTRE IN PRIZREN

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INTRODUCTION

National Preventive Mechanism of Torture (*hereinafter NPMT*), based on Article 17 of Law no. 05 / L-019 on the Ombudsperson, may visit, 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. On 19 October 2021, the NPMT visited the Pre-Detention Center in Prizren (*henceforth, PDCP*).

Based on notification on the website of the Kosovo Correctional Service (*hereinafter, KCS*)¹, Pre-Detention Centre in Prizren hosts detainees and convicts sentenced to up to three months. The official capacity of the PDCP is 92 persons, while, at the time of the visit conducted to the PDCP, there were 76 prisoners, of which 60 detainees and 16 convicts.

The purpose of the visit

The purpose of this visit was to conduct a general assessment of the respect of human rights of incarcerated persons, rights guaranteed by the Constitution of Republic of Kosovo, applicable Laws in the Republic of Kosovo as well as international standards on the rights of persons deprived of liberty.

Cooperation of the PDCP with the NPMT during the visit

During the visit made by NPMT to the Pre-Detention Centre in Prizren, the staff of Kosovo Correctional Centre (*hereinafter KCC*) and Prison's Health Department (*henceforward PHD*) provided the monitoring team with full cooperation. The team, without any delay, gained access to all places intended to visit. The team was provided with all necessary information to discharge their duty and conversations, without the presence of correctional officers as well as health medical personnel, have been enabled.

Information on prisoners' rights

1. Administrative Instruction MoJ-No. 07/2015 on the House Rules in the Correctional Institutions (*hereinafter the House Rules*) sets the obligation of correctional establishments to immediately upon admission provide conditions whereby the convicted person is introduced, in written, with his/her rights and duties while serving the sentence.
2. Further, the *House Rules* and the Law on Execution of Penal Sanctions (*hereinafter LEPS*) are on prisoners' disposal all the time. Illiterate convicted person, who cannot read or write, are informed verbally on rights and liabilities.² During the visit, the NPMT was informed that prisoners are informed about their rights and obligations upon admission to the PDCP. The NPMT has also noted that official information regarding the COVID-19 pandemic has been posted in all areas of the PDCP, as well as information on free legal aid.

Physical ill-treatment

3. During the visit conducted to the PDCP, NPMT interviewed a considerable number of inmates and did not receive any complaint regarding ill-treatment and excessive use of

¹ <https://shkk.rks-gov.net/institucionet-single/2233>.

² Administrative Instruction MoJ-No. 07/2015 on the House Rules in the Correctional Institutions, Article 20.

force by the correctional officers or demeanor of the prison authorities that would comprise violation of prisoner's dignity. Apart this, NPMT observed that there is a positive spirit of relations and good interactive communication between detainees and correctional officers.

4. The NPMT admitted a complaint of V.K. concerning ill-treatment by Kosovo police officers in the course of arrest. Regarding these allegations, the NPMT has verified the medical records of the complainants in which no evidence was found regarding the allegations in question. However, the complainants were notified by the NPMT on their right to file a complaint with the Police Inspectorate of Kosovo regarding allegations on ill-treatment by police.

Accommodation conditions

5. LEPS explicitly stipulates that a convicted person has a right to accommodation which corresponds to contemporary hygienic conditions and local climatic circumstances.³ Further the Law stipulates: *"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) square meters of space for single cells and four (4) square meters for the convicted persons in joint cells, and an adequate amount of natural and artificial lighting for work and reading, heating and ventilation"*.⁴
6. In the course of the visit, the NPMT noticed that the cells, where the detainees were accommodated had sufficient natural and artificial lighting, as well as no humidity. As in previous Recommendations Report, the NPMT finds that in some cells, prisoners' living space is not in accordance with the provisions of the LESP and the standards set by the European Committee for Prevention of Torture (henceforward *CPT*).⁵
7. **The NPMT has noticed that not all cells are supplied with new mattresses.** Thus, in some cells the mattresses are old and have not been replaced for a long time and, consequently, in some beds moisture has penetrated. The NPMT has not admitted complaints from prisoners with regard to the lack of hygiene items and materials against COVID-19. In the CDCP, detainees can take a shower twice a week, while convicts have no restrictions.
8. **The NPMT has admitted complaints from some foreign nationals regarding lack of clothing.** The NPMT also admitted allegations from some foreign nationals who practice Islam, that due to lack of adequate clothing, they are unable to perform praying, according to Islamic religious provisions. In this regard, the NPMT notes that Article 41 paragraph 1 of the LEPS expressly provides: *"A convicted person has the right to have free of charge underwear, clothes and shoes which are suited to the local climatic conditions and the time of year"*.
9. Further, the Administrative Instruction MD-NR.07 / 20151 on House Rules in Correctional Institutions in Article 18 stipulates that a prisoner who does not have sufficient underwear, clothes and shoes, is provided with underwear, clothes and shoes

³ Law No. 04/L-149 on Execution of Penal Sanctions, Article 36, paragraph 1.

⁴ Law no. 05/L0-129, Article 3 of the Law on Amending and Supplementing the Law no. 04/L-149 on the Execution of Penal Sanctions.

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

which must respond to climatic conditions and season of the year. The NPM considers that the responsible authorities should act in accordance with the above provisions.

Congestion

10. The official capacity of the PDCP is 92 persons, while during the NPMT visit, the team found 76 prisoners accommodated there. The NPMT, during the visit noticed that there is no overcrowding in the PDCP.

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.⁶

12. Furthermore, the Law stipulates that the convicted person who works in heavier duties, a sick person, a pregnant woman or a woman who has given a birth to a child has the right to food ordered by a physician or dietal nutrition.⁷ 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.⁸

13. NPMT during the visit noticed that the hygienic conditions in the kitchen were at satisfactory level and the kitchen was equipped with the necessary equipment for preparing the food, even though old but well maintained equipment. In addition to the three daily meals, prisoners are also provided with dietary food which is provided according to physician's recommendation.

14. The kitchen staff was provided with sanitary booklets. In addition to the staff, convicts engaged in work were also provided with sanitary booklets. No complaint has been admitted by NPMT from prisoners with regard to the quantity and quality of food served. **The NPMT has observed that those employed in the kitchen do not have appropriate clothing. The NPMT considers that the necessary steps should be taken to avoid this shortcoming.**

Regime

15. In the PDCP, 11 convicts are engaged in work. The convicts are currently engaged in cleaning the premises, in the kitchen and for specific maintaining of the facilities. Convicts have the opportunity to go for a walk all of the time, the doors are open from 7:00 in the morning until 19:00 in the evening.

16. During the visit, some inmates claimed that the newly admitted inmates, are placed in quarantine for 7 days and go for walk 15 minutes in the morning and 15 minutes in the afternoon. As LEPS guarantees that the prisoner has at least two hours of ventilation during the day, the NPMT welcomes PDCP comments regarding this limitation of ventilation time.

⁶ Law on Execution of Penal Sanctions, Article 39, paragraph 1.

⁷ Law on Execution of Penal Sanctions, Article 39, par. 2.

⁸ Law No. Execution of Penal Sanctions, Article 39, paragraph. 3.

17. The prison infrastructure does not allow various activities to take place, which are foreseen by the LEPS. In addition to walking, they have at their disposal a ping-pong table, chess game and dominoes. The TVs were functional and lately the PDCP had installed the TV cable system. **During the visit, the NPMT admitted complaints from some prisoners due to the lack of more book titles in the library and the lack of copies of the Muslim holy book (Quran).**
18. In the case of remand detainees, their engagement in work depends from the Court's permission. NPMT notes that with regard to engagement at work of remand detainees, Article 199 paragraph 2 of the Code of Criminal Procedure provides as follows: *"Detainees on remand may perform work that is necessary to maintain order and cleanliness in their area. To the extent that the institution has the facilities and on condition that it is not harmful to the conduct of criminal proceedings, detainees on remand shall be allowed to work in activities which suit their mental and physical abilities. The pre-trial judge, single trial judge or presiding trial judge shall decide on this in agreement with the management of the detention facility."*
19. While Article 200, paragraph 1 of the LEPS, as per engagement of remand detainees on work, stipulates as follows: *"The detainees on remand may be engaged at work in the warehouses, economic unit warehouses which are close to the area of relevant correctional facility after obtaining the consent of the competent court."*
20. The NPMT considers that, based on the legislation in force, the competent authorities should make efforts to increase out-of-cell engagements for detainees, not only in the PDCP, but also in other detention centers, as far as possible.

Health care

21. Article 43 of Law no. 04 / L-149 on the Execution of Penal Sanctions stipulates that the convict shall enjoy free of charge health services. 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.⁹
22. The health unit of PDCP has a regular, full time doctor. Apart the doctor, there are 5 regular nurses, 4 nurses work 12-hour shifts, while the head nurse works from 08.00-16.00, a regular psychologist from 08:00 -16: 00, a part-time psychiatrist (4 hours). As for dental services, they are provided once a week by the dentist of Correctional Center in Lipjan.
23. Additionally, the radiologist is available twice a month, while for other diseases and consultations detainees and convicts are sent to the Regional Hospital in Prizren, as well as to the HUČSK in Prishtine. The NPMT, in the course of the visit, was informed that in the Prizren Regional Hospital, at PDCP disposal, there is a special room to accommodate prisoners. The therapy is distributed by the health staff as needed, in which case the prisoners' demands to be visited by the doctor are admitted.
24. With regard to the infrastructure where medical services are provided, the NPMT, during the visit, noticed that at health unit's disposal is a room where all health services are performed such as: nursing services where various interventions are performed as well as

⁹ Law No. Execution of Penal Sanctions, Article 43, par. 2.

the doctor performs medical check-ups, and consultations with other medical specialists in case of need are performed.

25. The NPMT, during the visit has noticed that the detector placed at the entrance of the wards can pose a serious obstacle for health personnel to respond to emergencies as it occupies a large space and can pose a serious problem in cases of need to transport the prisoner outside the ward. NPMT welcomes comments from PHD and PDCP directorate regarding this issue of concern of the NPMT.
26. Now, at the psychologist's disposal is the special room to conduct psychological sessions. The presence of mentally ill prisoners continues to be a challenge for detention and correctional facilities. During the visit, the NPMT noticed that there were over 10 cases of psychiatric therapy.

Importance of medical examinations of newly-admitted prisoners

27. Law No. 04/L-149 on Execution of Penal Sanctions¹⁰ and Standard Operating Procedure (hereinafter SOP)¹¹ of the PHD determine the liability that the newly –admitted convicted person is subject to medical examination within 24 hours, from the moment he/she has been admitted.
28. Based on allegations of detainees as well as relevant medical documents, the newly – admitted detained persons are subject to medical examination within 24 hours, in conformity with the LEPS and the Standard Operating Procedure of the PHD.

Confidentiality of medical services

29. Regarding the confidentiality of medical services, the NPMT, based on interviews with prisoners and health personnel, finds that these services are provided under conditions that respect confidentiality, actually are provided without the presence of correctional officers, unless their presence is required by the doctor. Only the medical personnel have access to the prisoner's medical file.

Disciplinary measures

30. According to the applicable legislation, prisoners may be subjected to the following disciplinary measures: reprimand, deprivation of an assigned privilege, order for restitution and solitary confinement.¹² While in the case of remand detainees, they can be subjected to the following sanctions: prohibition or restriction of visits or correspondence, apart contacts with defense counsel, the Ombudsperson and diplomatic missions. During the visit, NPMT was informed by the Director that in PDCP the measure of solitary confinement is not being applied. No complaint has been admitted by the NPMT as per imposing of disciplinary measures by the Directorate of the PDCP.

Contacts with the outside world

31. The NPMT considers that contacts with the outside world, especially visits from family or other relatives, are of crucial importance in the context of social rehabilitation of prisoners.

¹⁰ Law No. 04/L-149 on Execution of Penal Sanctions, Article 31.

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

¹² Paragraphs from 101 to 113 of Law on Execution of Penal Sanctions.

32. Legislation at effect¹³, 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 three months for a minimum of three hours. According to the director of the PDCP, convicts are entitled to a visit per week. Visits, in case of remand detainees are authorized by the competent Court.
33. As per telephone calls, Article 60 of the LEPS determines that the convicted person has the right to make telephone calls. In the case of remand detainees, these calls are authorized by the competent court. Based on the information provided by the PDCP management as well as remand detainees' allegations, they are allowed to one call per week, subject to the permission of the competent court. Whereas, in the case of convicts there are no restrictions.
34. The NPMT received complaints from foreign nationals that they do not enjoy the right to contact their families because they are not allowed to contact their families through SKYPE. Regarding these allegations, the PDCP directorate stated that due to the release of restrictive measures due to the COVID-19 pandemic, SKYPE can no longer be used. However, according to the complainants, the telephone lines to their countries of origin are not functional.
35. Also, the NPMT, during the visit, based on the complaint of a German citizen, recommended to the PDCP directorate to notify the embassy or consulate of his country, as this obligation is defined by LESP, Article 33 paragraph 1, which explicitly defines: *“The correctional facility shall allow the convicted person to call family members immediately after admission. A foreign national shall be 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”*.

The procedure of complaint filing

36. 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.¹⁴
37. The NPMT has noted that complaint boxes are available to prisoners at the PDCP, placed by the Kosovo Correctional Service, complaint boxes placed by the Ombudsperson as well as those placed by the PHD. Complaint boxes placed by Ombudsperson Institution can be opened solely by the staff of this Institution, which provides the complainants with confidentiality in filing a complaint.

¹³ Law No. 04/L-149 on Execution of Penal Sanctions, Article 62-65.

¹⁴ 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.

38. They can also file a complaint to with the Ombudsperson Institution through free telephone-line (information on the telephone line is located in the complaint boxes), through regular mail, which, according to LESP, is not subject to control if addressed to the Ombudsperson Institution of the Republic of Kosovo, as well as through their family members.
39. In the case of foreign nationals, the LESP defines the right of a foreign national to contact and maintain correspondence with the embassy or consulate of his country.¹⁵
40. The NPMT observed that inmates at the PDCP were provided with an adequate opportunity to lodge complaints and requests. The Directorate reviews them and sent responses to prisoners in accordance with the LESP. The PDCP also records all complaints and requests of prisoners in their administrative files. The NPMT received no complaints from prisoners with regard to their right to submit a complaint.

PDCP staff and security related issues

41. With regard to NPM's recommendation to improve the working conditions of correctional officers, the situation remains the same. **In addition to working conditions, correctional officers also face shortages of uniforms and other equipment.** In general, the premises of the PDCP are equipped with security cameras and most of them are functional, which, from NPMT and the CPT point of views, constitute additional guarantees against physical ill-treatment and possible false accusations towards correctional officers.

Based on findings and ascertainments that NPMT gained in the course of the visit, pursuant to Article 135, paragraph 3 of the Constitution of Republic of Kosovo as well as with Article 17, paragraph 7 of the Law 05/L019 on Ombudsperson, the Ombudsperson:

RECOMMENDS

Ministry of Justice:

- **Prisoners to be provided with footwear and clothing, as needed (see paragraph 8 of the Report).**
- **Prisoners engaged in work in the kitchen to be provided with appropriate clothing. (See paragraph 14 of the report)**
- **To increase out-of-cell activities for detainees, in accordance with the Code of Criminal Procedure and the LESP, to the possible extent in the PDCP.**
- **PDCP to be fully supplied with new and quality mattresses.**
- **To create adequate working conditions for correctional personnel, to be supplied with necessary uniforms and work equipment.**

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

¹⁵ Law on Execution of Penal Sanctions, Articles 33 and 57.

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