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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

OMBUDSPERSON'S REPORT

Ex officio No. 95/2022

**With regard to security cameras installing in some prisoners' cells in the
Correctional Center for Women in Lipjan**

Addressed to: Mrs. Albulena Haxhiu, Minister

Ministry of Justice

Mr. Ali Gashi, Deputy General Director

Kosovo Correctional Service

Copy to: Mrs. Duda Balje, President

**Parliamentary Committee on Human Rights, Gender Equality, Missing
Persons and Petitions**

Mr. Habit Hajredini, Director

Office of Good Governance, Office of Prime Minister

Prishtinë, 24 February 2022

PURPOSE OF THE REPORT

1. The main purpose of this Report is to draw attention of the competent authorities of the Republic of Kosovo in respecting rights of prisoners in accordance with the Constitution of the Republic of Kosovo, relevant legislation in force, and international standards for the protection of human rights.

CONSTITUTIONAL AND LEGAL BASES

2. According to Article 135, paragraph 3, of the Constitution of Republic of Kosovo (henceforward: Constitution): *“The Ombudsperson is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed.”*

3. According to the Law No. 05/L-019 on Ombudsperson, Article 16, par. 4, *“The Ombudsperson has the power to investigate . . . on its own initiative (ex officio), if from findings, testimonies and evidence presented by submission or by knowledge gained in any other way, there is a base resulting that the authorities have violated human rights and freedoms stipulated by the Constitution, laws and other acts, as well as international instruments on human rights”*.

4. Further, the Law No. 05/L-019 on Ombudsperson, Article 18, paragraph 1 stipulates that the Ombudsperson, among others, has the following responsibilities:

- *“to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases”* (point 2);
- *“to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination;”* (point 5);
- *“to publish notifications, opinions, recommendations, proposals and his/her own reports;”* (point 6);
- *“to recommend promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo”* (point 7);
- *“to prepare annual, periodical and other reports on the situation of human rights and freedoms, equality and discrimination and conduct research on the issue of human rights and fundamental freedoms, equality and discrimination in the Republic of Kosovo”* (point 8); and
- *“to recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation”* (point 9).

5. By sending this Report to the responsible institutions, the Ombudsperson intends to fulfill these constitutional and legal responsibilities.

CASE CIRCUMSTANCES

1. Based on the written and electronic media articles published on 7 February 2022, that in the Correctional Center for Women and Juveniles (hereinafter: CCWJ), in some cells where prisoners suffering from serious mental health problems are located, authorities of the Correctional Center have installed security cameras. On 8 February 2022, Ombudsperson's representatives visited the given center in order to collect more detailed information
2. During the visit, the Ombudsperson's officials noticed that security cameras were installed in some cells in which prisoners with severe mental health illnesses were placed, which in principle should be treated in adequate health institutions. In the given case, Ombudsperson's representatives noted that security cameras only covered beds and cell windows, not toilets, showers and sinks. During the visit, representatives of the Ombudsperson were informed that the reason for installing security cameras in these cells was to protect prisoners who pose a risk of self-harm or suicide due to their health condition.
3. During the visit, OI representatives were informed that two CCWJ officials have been suspended regarding the given case. On 9 February 2022, the Ombudsperson requested from the Ministry of Justice to be informed whether, the director of the center took a written decision for the installing of security cameras in prisoners 'cells, what is the legal basis of such decision and if this issue is regulated by the internal acts or procedures of the Kosovo Correctional Service.
4. On 11 February 2022, Ombudsperson's representative had a communication with the official in the Agency for Privacy and Information, who confirmed that on 8 February 2022, they conducted an inspection in the CCWJ, regarding placement of security cameras in some cells where prisoners with serious health problems were placed.
5. On 14 February 2022, representative of the Ministry of Justice, informed the Ombudsperson that: *"there is no Decision from the Director of the CCWJ in Lipjan and the KCS does not have or is not aware that there is any special decision or procedure / sub-legal act etc., which regulates these actions"*.
6. This notice further states: *"KCS, also, on 14.02.2022 has issued a decision with regard to permitting placement of security cameras in correctional facilities for security reasons and specific circumstances - for cases of mental problems, based on the Law on Personal Data Protection"*.

RELEVANT NATIONAL LEGAL ACTS

7. **Article 36 of the Constitution of Republic of Kosovo** explicitly stipulates: *"Everyone enjoys the right to have her/his private and family life respected, the inviolability of residence, and the confidentiality of correspondence, telecommunication and other communication."*

8. Further, regarding the restriction of fundamental rights and freedoms, Article 55 of the Constitution stipulates as follows:
- (1) *Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.*
 - (2) *Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.*
 - (3) *Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.*
 - (4) *In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.*
 - (5) *The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right.*
9. **Law on Execution of Penal Sanctions**, in Article 5, paragraph 4 explicitly stipulates: “*During the execution of a penal sanction, the rights of the convicted person shall always be respected. These rights may be restricted only to the extent necessary for the execution of the penal sanction, in compliance with the applicable law and international human rights standards*”.
10. **Article 4 of the Law No.06/L-082 on Protection of Personal Data (henceforth LPPD)**, sets out the basic principles of personal data processing. Article 4 paragraph 1 stipulates the principle of lawfulness, justice and transparency – personal data are processed in an impartial, lawful and transparent manner, without infringing the dignity of data subjects.¹
11. **While Article 4 paragraph 2 of the LPPD**, stipulates that principle of purpose limitation – data are collected only for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.

RELEVANT INTERNATIONAL LEGAL ACTS

European Convention on Human Rights (ECHR)

12. Article 22 of the Constitution of the Republic of Kosovo stipulates that the ECHR is part of the legal and constitutional system of the Republic of Kosovo. Furthermore, the international acts included in this article have precedence over the decisions of the public institutions of the Republic of Kosovo.

¹ Law No. 06/L-082 on Protection of Personal Data, Article 4 paragraph 1.

13. Above given Convention in Article 8, paragraph 1 explicitly stipulates: “*Everyone has the right to respect for his private and family life, his home and his correspondence.*”. while Article 8, paragraph 2 of the ECHR explicitly stipulates: “*There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*”

LEGAL ANALYSES

14. In this case, in the CCWJ, in some cells where prisoners who suffer from serious mental health problems are located and who due to lack of human capacity are not placed in adequate health institutions, the CCWJ authorities installed cameras security, in order to provide more effective protection of prisoners from self-harm or suicide attempts.
15. The Ombudsperson, believing that the purpose of the authorities in this case was to protect prisoners who pose a risk of self-harm or suicide due to their health condition, reiterates, as he has pointed out in previous reports, that such cases, should be treated in appropriate health institutions.
16. From human rights point of view which are guaranteed by the legislation applicable in the Republic of Kosovo, the ECtHR Decisions and the CPT Standards, placement of security cameras in prisoners’ cells, in principle constitutes an interference with prisoners’ privacy, except when the purpose is to protect the life of the prisoner.
17. Based on European Court of Human Rights Decisions and the Standards of the European Committee for the Prevention of Torture, the issue of installing security cameras in certain cells should be regulated by concrete acts and procedures which provide the necessary procedural guarantees, which protect fundamental human rights and freedoms.
18. With regard to the Decisions of the ECtHR, the Constitution of the Republic of Kosovo, in Article 53, explicitly stipulates that interpretation of the provisions on human rights and freedoms shall be in accordance with the judicial decisions of the European Court of Human Rights.
19. ECtHR in case *Gorolov and others versus Russian Federation*² examined complainants’ complaint, pointed out that in the prison where they were serving their sentence were placed under constant surveillance by security cameras. The Court found violation of Article 8 of the Convention.
20. In this case the ECtHR, in paragraph 83.1 states inter alia: “*Such interference would constitute a violation of Article 8 of the Convention, unless such interference is in accordance with the law and had one or more legitimate purposes provided in Article 2 of that paragraph and was a measure necessary in a democratic society to achieve the aim or goals*”.

² ECtHR, Case *Gorolov and others versus Russia*, 2 July 2019. See at : [https://hudoc.echr.coe.int/spa#{%22itemid%22:\[%22001-194247%22\]}](https://hudoc.echr.coe.int/spa#{%22itemid%22:[%22001-194247%22]}).

21. Paragraph 98, ECtHR, among others, stipulates: “...although the Court is ready to accept, having regard to the ordinary and reasonable requirements of detention, that it may be necessary to monitor certain areas of pre-trial and penal institutions, or certain detainees on a permanent basis, including by a CCTV system, it finds that the existing legal framework in Russia cannot be regarded as being sufficiently clear, precise and detailed to have afforded appropriate protection against arbitrary interference by the authorities with the applicants’ right to respect for their private life”.
22. The Ombudsperson notes that in this case, the court recognized the need for such interventions in certain cases, when there is one or more legitimate purposes. However, the court conditioned this on the provision of adequate procedural guarantees against arbitrary interference with this right, which must be clear and accurate.
23. In this regard, the Ombudsperson notes that the European Committee for Prevention of Torture (hereinafter, *the CPT*), during visits to certain member states of the Council of Europe, has encountered such cases and the competent authorities has recommended concrete actions in order to provide procedural guarantees against arbitrary interference.
24. The CPT is Council of Europe’s mechanism, which monitors implementation of the European Convention against Torture in the member states of the Council of Europe. Places where persons deprived of their liberty are held in the Republic of Kosovo have been monitored by this mechanism since 2004.
25. **Thus, in the Report on the visit to the Republic of Northern Macedonia, in relation to the surveillance by security cameras in the prisoner's cell, CPT stated, inter alia:** “*The CPT is concerned as there was no legal regulation regulating the circumstances under which such an observation would be authorized. Given the intrusive nature of such constant surveillance, it is imperative that there be comprehensive procedures, inter alia, to regulate the basis on which video surveillance can be authorized, the procedure to be followed and the criteria to be used. In addition, the authorization should be in relation to individual cases and should be subject to regular and frequent review. Moreover, security cameras cannot replace the active presence of staff and the interactive communication between staff and prisoners with mental disorders. It is also essential that video surveillance be done in a designated room and by designated officials rather than in a “public” location and that events be recorded in a register at regular intervals.*”.
26. Further, in the Report for the visit conducted to Russian Federation³, CPT among others, emphasized: “*The CPT appreciates that CCTV cameras in cells can be a useful safeguard in particular cases, for example when a person is considered to be at risk of self-harm or suicide or if there is a concrete suspicion that a prisoner is carrying out activities in the cell which could jeopardize security. However, cameras cannot be a replacement for an active staff presence in high risk medical or security situations; the best way of reducing the risk posed by mentally disturbed inmates or high-security prisoners is personal interaction between staff and the relevant prisoners. Video-surveillance is also a gross intrusion into the privacy of prisoners and the decision to impose CCTV surveillance on a particular prisoner should always be based*

³ European Committee on Prevention of Torture, Report for the visit to Russian Federation 2012, paragraph 155. See at: <https://www.coe.int/en/web/cpt/russian-federation>.

on an individual risk assessment and should be reviewed on a regular basis”. Further, CPT points out: *“When CCTV cameras are installed, prisoners must be fully informed of this.”*

27. Additionally, in Report for the visit conducted to Italy ⁴, CPT, with regard to protection of the privacy of prisoners who are subject to this measure, among other things emphasizes: *“Measures should be taken to ensure that prisoners who are subject to surveillance with security cameras are given reasonable privacy when using the toilet, sink and shower.* The Ombudsperson, in the given case, finds that there is no concrete normative act which would regulate the placement of security cameras in the prisoner's cell and which would provide the necessary procedural guarantees from the arbitrary intervention of the authorities.
28. The Ombudsperson welcomes immediate actions of the Ministry of Justice and the Kosovo Correctional Service to investigate the subject matter of this concern and adopt a decision to regulate such cases, but the Ombudsperson notes that this decision does not include all guarantees set by applicable legislation in the Republic of Kosovo, ECtHR Decisions and the CPT Standards.
29. **Therefore, the Ombudsperson considers that a concrete sub-legal act should be adopted, which would include all procedural guarantees provided by the applicable legislation in the Republic of Kosovo, the ECHR Decisions and the CPT Standards, mentioned above.**

Based on the above stated, and in accordance with Article 135, par. 3 of the Constitution of the Republic of Kosovo and Article 18 paragraph 1, sub-paragraph 7 of Law no. 05 / L-019 on Ombudsperson, the Ombudsperson:

RECOMMENDS

Ministry of Justice:

- **To adopt a sub-legal act which would involve all procedural guarantees, against arbitrary intrusion into the privacy of prisoners who are subject to surveillance with security cameras in their cells, provided by the legislation applicable in the Republic of Kosovo, the ECHR Decisions and the CPT Standards, mentioned above.**

Pursuant to Article 132, paragraph 3 of the Constitution of the 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*

⁴ European Committee on Prevention of Torture, Report for the visit to Italy, 2012, paragraph 60. See at: <https://www.coe.int/en/web/cpt/italy>.

undertaken about the issue in question”), you are kindly asked to inform us on the actions you will undertake regarding this issue.

Warmly submitted,

Naim Qelaj

Ombudsperson