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**REPORT WITH RECOMMENDATIONS**  
**OF**  
**NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE**  
**OMBUDSPERSON**

**concerning**  
**The Monitoring of the Detention Centre in Lipjan**

**To:**

**Mrs. Dhurata Hoxha, Minister**  
**Ministry of Justice**

**Mr. Milazim Gjocaj, General Director**  
**Prison Health System, Ministry of Health**

**Mr. Imet Rrahmani, Minister**  
**Ministry of Health**

**Mr. Sokol Zogaj, acting General Director**  
**Kosovo Correctional Service**

**Mr. Arif Beqa, Director**  
**Detention Centre in Lipjan**

In conformity with Article 135, paragraph 3 of Constitution of the Republic of Kosovo and Article 17 of Law 05/L-019 on Ombudsperson, Ombudsperson's National Preventive Mechanism against Torture, on 7 September and 19 October 2016 visited the Detention Centre in Lipjan.

Prishtina, 21 December 2016

## **Dates on the visit and the composition of the monitoring team**

1. In conformity with Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPMT”) of Ombudsperson, on 7 September and 19 October 2016, visited the Detention Centre in Lipjan. The monitoring team was composed of one legal advisor, one psychologist and one doctor-surgeon.

## **Detention Centre in Lipjan**

### **Introduction**

2. Detention Centre in Lipjan (DCL) is located in the third kilometre of the Town of Lipjan, at the junction connecting the Town of Lipjan with Magura, which is next to the Correctional Centre of Lipjan. Detention Centre in Lipjan was built in 2003 and at the time was managed by UNMIK. This Centre closed in September 2004 due to technical damages suffered, and it got repaired and opened again in October 2006, which has continued to operate further under the management of Ministry of Justice, namely Central Directory. In 2006, powers were handed over to the local<sup>1</sup> managing staff.
3. DCL accommodates detainees and a small number of convicted persons accommodated at a special wing.<sup>2</sup> During the visit, on 7 September 2016, the team was informed by the DCL Directory that at the moment of their visit, there were 133 detained persons and 8 convicted persons accommodated there.
4. While, during the visit made on 19 October 2016, NPMT was informed that the transfer of accommodated persons had started in the Correctional Centre in Dubrava and by that time, 40 accommodated persons had already been transferred.

**NPMT was informed that DCL had never been visited by the European Committee for the Prevention of Torture.**

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

5. During the visit made by NPMT to the Detention Centre in Lipjan, the personnel of Correctional Service and personnel of Prison’s Health Department provided the monitoring team with full cooperation. The team without any delay had access to all places visited. The team was provided with all necessary information to discharge their duty and the team has been made possible to talk to convicted and the detained persons without the presence of correctional officers or other personnel.

### **Ill-treatment**

6. During the visit made to this centre, NPMT received no complaints from detainees and convicted persons concerning ill-treatment and excessive use of force by the correctional officers of this Centre. In addition, during the visit made, the monitoring team received no complaints about violence among the persons accommodated in this Centre, neither in the part where detainees nor in the part where convicted persons are accommodated.

### **Material conditions**

7. NPMT observed that conditions, where convicted persons are accommodated were better than in the part where detainees were accommodated. During the visit made to the part where convicted persons were accommodated, NPMT observed that one to a

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<sup>1</sup> Website of Ministry of Justice, at: <http://www.md-ks.net/?page=1,72#?page> (8.09.2016).

<sup>2</sup> Convicted persons are accommodated in Block “A” of Detention Centre in Lipjan.

maximum of two persons were accommodated in one cell. **During the inspection, NPMT observed no overpopulation.**

8. Cells are equipped with TVs (are not property of DCL) and lockers for keeping their clothes. Convicted persons informed NPMT that bedclothes are brought from their homes because they were not provided by DCL. The convicted persons may take a shower as many times as they wished, while bathrooms and toilettes were generally in good condition. **During the visit, NPMT observed that there is no humidity<sup>3</sup> in the cells in the block where convicted persons are accommodated.**
9. NPMT observed that in the parts of DCL where detainees were accommodated, water was leaking in some cells and they needed painting. The monitoring team during the visit to DCL encountered no overpopulated cells and a maximum of 3 persons were accommodated in them. While, toilettes and bathrooms were in good condition. DCL Directory informed NPMT that closing of this Centre and accommodation of detainees in the new facility in Hajvali is being planned. **In relation to the announcement that this Centre is to be closed, NPMT will monitor this situation and will seek updated information from competent authorities.**

### Food

10. Food was disseminated to the accommodated persons into their cells. Kitchen where food is prepared for the accommodated persons in DCL and the personnel is new and provides good conditions. NPMT was satisfied with the storages where food is kept, and encountered no expired foods and no unstamped meat. In addition, NPMT observed that the food menu is enriched with vegetables and brown bread. **NPMT recommends that the dietary packages should be more enriched for persons with different diseases.**
11. The engaged persons in the kitchen were equipped with adequate sanitary booklets (cards). **However, NPMT recommends that the engaged persons in the kitchen should be more careful by using gloves during preparation and dissemination of food and recommend that when competent institution is doing analysis, they should undergo completed analysis, including hand swab.**

### Regime

12. In DCL, the detainees can work only if they are granted permit by the competent court. They are provided with 1 hour walk before noon and 1 hour walk in the afternoon during the summer season, while this schedule is reduced to 45 minutes during the winter season. Detained and convicted persons during this period may do sports such as basketball, football and running, while the gym hall is activated only during the winter season. **However, DCL is not able to provide training courses and training neither for convicted persons nor for detainees. NPMT encourages competent authorities to step up the activities outside the cell of DCL for detainees. NPMT considers that the longer the period of accommodation in detention, the longer the regime developed provided.**

### Health care

13. The responsibility for healthcare in the Correctional Service was transferred from Ministry of Justice to Ministry of Health in July 2013. During the visit, NPMT

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<sup>3</sup> During the visit made to DCL, NPMT was informed that this Centre is to be closed and the accommodated persons and personnel will be moved to Detention Centre in Hajvali (Prishtina). This Detention Centre has not been operational to date.

concluded that there were few improvements concerning the infrastructure conditions of medical personnel compared to previous visit. Medical personnel fears that water will be leaking again in their offices and their work conditions will worsen with the coming of autumn and winter. **NPMT concluded that the areas where medical services are administered are not appropriate and are small.**

14. Medical personnel expressed their concern concerning the delays to responses by courts in the cases of recommendations submitted and submissions for court permits to send detainees and convicted persons for treatment outside DCL. The NPMT team was informed that this issue is regulated based on the categorisation of urgencies for treatment. Category “A” includes detainees whose situation requires urgent sending to another health institution and no court permit is expected for this, but the court is informed in writing regarding the case. Category “B” means detainees who should be given health treatment outside DCL within a 24 hour time. This category requires court permit and medical personnel expressed their concern regarding the delays to responses by courts and regarding the failure to take doctor’s recommendations into consideration.
15. Category “C” includes detainees who should be given medical treatment within a week and a permit by the competent court is needed. Category “D” includes detainees who are to receive specific medical service within a month and also a court permit is needed. According to medical personnel, a problem is presented by the obligation to return the detainee to DCL, in case the clinical centre where the patient was sent to earlier for treatment cannot offer service and he/she is to be sent to another clinical centre. For such a transfer, a court permit is needed again.
16. Medical personnel and Directory expressed their concern because of the fact that detainees with mental problems are accommodated in DCL due to the lack of space for accommodation in Forensic Psychiatry Institute or in another adequate place. During the visit, NPMT was informed that at that moment there were 2 detainees with mental problems accommodated in DCL, while 7 were being treated in the psychiatric ward in the University Clinical Centre of Kosovo (UCCK).

**Ombudsperson’s NPMT recommended relevant authorities to take necessary actions for accommodation of these persons in special establishments in compliance with European Prison Rules adopted by Council of Europe<sup>4</sup> and Law on Execution of Penal Sanctions.**

### **Composition of medical personnel**

17. Medical personnel is comprised of two general practitioners (doctors) full-time engaged and are at a 24 hour duty shift in case of need, one consultant psychiatrist coming at DCL once a week, one psychologist full-time engaged and 6 nurses. The dentist is regular and provides his/her services for two Correctional Centres in Lipjan (KCL & DCL). **Doctors expressed their dissatisfaction regarding the payment they receive for over-time work.**

### **A hunger strike case from one detainee**

18. During the visit made on 7 September 2016, in DCL, the NPMT team was informed that the detainee B.TH went on hunger strike as a sign of dissatisfaction with the

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<sup>4</sup> *European Prison Rules, rule 12.1* “Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose”, at: [http://www.coe.int/t/dgi/criminallawcoop/Presentation/Documents/European-Prison-Rules\\_978-92-871-5982-3.pdf](http://www.coe.int/t/dgi/criminallawcoop/Presentation/Documents/European-Prison-Rules_978-92-871-5982-3.pdf) (9.09.2016).

decision taken by a competent court to extend the detention measure till 1 October 2016. NPMT was informed by the medical personnel on the actions being undertaken to provide the detainee with the necessary medical care. **From the documents presented by the medical personnel and the allegations of the detainee on strike, the NPMT team concluded that the detainee on strike was provided with adequate medical treatment.**

19. During each visit, medical personnel informed the detainee on his health situation and eventual consequences. NPMT concluded that medical personnel have been undertaking actions regarding the detainee on strike, in compliance with the Declaration of Malta on Hunger Strikers.<sup>5</sup> **NPMT will continue to monitor this case through visits and contacts with the DCL Directory.**

### Medical screening

20. European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 paid particular attention to the medical screening, especially of newly-arrived prisoners or detainees, not only for detecting (transmissible) diseases and preventing suicides, but also for contributing to the prevention of torture through the proper recording of injuries.
21. DCL informed the NPMT that the newly-arrived are screened within a 24 hour time from the moment of their arrival at DCL. These screens mean a general screening during which the detainee is asked whether he/she has any disease, which if declared, is recorded in his/her medical file. However, DCL and other centres where detainees and prisoners are accommodated, still have no possibilities to conduct systematic screening for tuberculosis, hepatitis and AIDS. **NPMT recommends that relevant authorities should take serious actions to enable such systematic screenings in order to detect such diseases on time and to conduct comprehensive screening<sup>6</sup> on the newly-arrived persons.**
22. NPMT observed that medical service maintains the following records: Records on an attempt for committing suicide, body injuries, hunger strikes, sexual abuse, prison deaths, observations, self-injuries and internal medical protocols, such as: the psychiatrist and psychologist's protocol. In addition, medical service is in possession also of the form entitled "**Standard practice of actions on hunger strikes**", which recorded data regarding health situation of detainee or the prisoner on strike.
23. NPMT observed that medical personnel keeps satisfactory record regarding medical screenings conducted and keeps records with proper descriptions in cases of body injuries or self-injuries.

### Confidentiality of medical services

24. NPMT has been interested whether medical personnel are providing the detainees and prisoners in DCL with medical services in the presence of correctional officers. During the conversation with medical personnel it could be learned that in specific cases, correctional officers are observing through a small window, while the medical service was administered, but do not stay inside. However, the chief doctor was determined

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<sup>5</sup> Adopted by the 43<sup>rd</sup> Assembly of World Medical Assembly, St. Julians, Malta, November 1991 and which was reviewed by the 44<sup>th</sup> Assembly of World Medical Assembly, Marbella, Spain, in September 1992 and was reviewed by the 57<sup>th</sup> Assembly of WMA General Assembly, Pilanesberg, South Africa, in November 2006, at: <http://www.wma.net/en/30publications/10policies/h31/> (9.09.2016).

<sup>6</sup> Such an action was recommended by the European Committee for the Prevention of Torture in the reports for Kosovo during the previous visits made to such institutions in Kosovo.

that medical services should not be administrated in the presence of correctional officers because the patient-doctor relation is compromised in this way. **NPMT encourages such an attitude and practice of non-presence of security officers during the administration of medical<sup>7</sup> services.**

## Other issues

### DCL personnel

25. DCL personnel are comprised of 130 uniformed persons and 18 civilian personnel. NPMT was informed that three social officers were currently employed in this Centre. **During the visit, a number of correctional officers expressed their dissatisfaction regarding work conditions in general.**

### Disciplinary sanctions

26. 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<sup>8</sup>. Remand prisoners may be subjected to the following sanctions: of prohibition or restriction on visits or correspondence, except contacts with defence counsel, the Ombudsperson and diplomatic missions. **NPMT observed that DCL keeps records on the disciplinary sanctions imposed where data recorded regarding the measure, reason, and time of impose and completion are recorded.**
27. NPMT was informed by the DCL Directory that self-injury in this Centre is not considered a disciplinary violation. **NPMT hails such an attitude since self-injury is not included in the group of disciplinary sanctions set forth by Article 102 of Law on Execution of Penal Sanctions.<sup>9</sup>**
28. NPMT was informed that medical service does not participate in decision-making regarding the ability of detainee or the convicted person to face disciplinary sanction of solitary confinement. NPMT considered that medical personnel's role is clear in this aspect. The doctor's participation in decision-making who as a matter of fact is the doctor of the detained or convicted person would compromise the doctor-patient relation, unless this sanction is taken for medical reasons.<sup>10</sup>
29. DCL Directory has also expressed its concern that there are no adequate conditions for persons accommodated at solitary confinement regarding the prevention of self-injury.

### Contact with the outside world

30. Article 200 of the Criminal Procedure Code stipulates that remand prisoners may receive visits "within the limits of the rules of the detention facility" with the permission of the (pre-trial) judge and under his or her supervision. Further, it is stated

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<sup>7</sup> European Committee for the Prevention of Torture in the report for Kosovo after the visit made to Kosovo in 2015 had its remarks regarding the provision of medical services in the presence of correctional officers and recommended to put an end to such practices.

<sup>8</sup> Paragraphs from 101 to 113 of Law on Execution of Penal Sanctions.

<sup>9</sup> European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 stressed the concern due to the fact that in some Correctional Centres in Kosovo, self-injury is considered a disciplinary violation.

<sup>10</sup> European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 required from relevant authorities to put an end to the practice of the request made by the doctor to confirm that detainee or the prisoner is in a situation to face the sanction.

in the same Article that correspondence and other contacts are also subject to a decision by the (pre-trial) judge.

31. The applicable legislation<sup>11</sup>, in the case of prisoners stipulates that a convicted person shall have unlimited right of correspondence (subjected to specific exceptions) 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, spouse once in three months a minimum duration of three hours. NPMT received no complaints regarding this issue.

### **Admission procedures**

32. In DCL, newly-arrived prisoners are required to undergo an admission procedure lasting between seven and 28 days during which they are assessed and categorised in a segregation cell/unit before being allocated to an ordinary cell.
33. NPMT observed that DCL keeps files with complete information for each detainee or prisoner who other than in the file they are also recorded in the computerized system (database).

### **Procedure for filing complaints**

34. Effective system of filing complaints is basic safeguards against ill-treatment in prisons and detention centres. Persons accommodated in these centres should have avenues to file complaints, within the prison or the detention centre and be entitled to confidential access to an appropriate authority.
35. Article 91 of the Law on Execution of Penal Sanctions provides for a detailed procedure by which detainees and prisoners may address complaints or requests to the Director of a specific Kosovo Correctional Service establishment. The procedure includes deadlines for responses by the Director, and the possibility to refer a complaint under certain circumstances to a higher authority, in particular the General Directory of the Correctional Service and the Minister of Justice.<sup>12</sup>
36. NPMT observed that there are complaint boxes available for the accommodated persons in DCL placed by the Kosovo Correctional Service and the complaint boxes placed by Ombudsperson Institution. Complaint boxes placed by Ombudsperson Institution may be opened only by the personnel of this institution, which provides confidentiality for complainants in filing complaints.
37. DCL keeps a complete record of requests and complaints of detainees and prisoners. **NPMT received no complaints from detainees and prisoners regarding the issue of filing of complaints or delays to review their complaints within a legal time.**

Based on the above-mentioned findings during the inspection, Ombudsperson's NPMT recommends :

### **The Ministry of Justice and Kosovo Correctional Service**

- **should make attempts to provide the convicted persons and detainees with training courses, training and activities outside their cells.**

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<sup>11</sup> Law on Execution of Penal Sanctions, Articles 62-65.

<sup>12</sup> Article 91, paragraph 4 of Law 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.

- to take necessary actions for accommodation of persons with mental problems in special establishments in compliance with European Prison Rules adopted by Council of Europe and Law on Execution of Penal Sanctions.
- Ombudsperson's NPMT should be informed about the process of the closure of the Detention Centre in Lipjan and about the transfer of accommodated persons in the Detention Centre in Prishtina
- should take serious actions to enable systematic screenings of accommodated persons in order to detect diseases on time, such as: tuberculosis, hepatitis, AIDS.
- should create adequate conditions for work for medical and correctional personnel.

**Ministry of Health**

- should take serious actions to enable systematic screenings of accommodated persons in order to detect diseases on time, such as: tuberculosis, hepatitis, AIDS.
- should create adequate conditions for work for medical and correctional personnel.

Sincerely,

Hilmi Jashari  
Ombudsperson