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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

**REPORT WITH RECOMMENDATIONS
OF
NATIONAL MECHANISM FOR PREVENTION OF TORTURE
OF THE OMBUDSPERSON**

**on visit to
Detention Centre in Prizren**

**To: Mr. Abelard Tahiri, Minister
Ministry of Justice**

**Mr. Uran Ismaili, Minister
Ministry of Health**

**Mr. Milazim Gjocaj,
Director of the Prison Health Department**

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

**Mr. Hamit Ademaj, Director
Detention Centre in Prizren**

Pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 17 of the Law on Ombudsperson No. 05 / L-019, the National Mechanism for the Prevention of Torture of the Ombudsperson visited the Detention Centre in Prizren

Prishtina, on 25 January 2018

Date of visit and composition of the monitoring group

1. Pursuant to Article 17 of Law No. 05/L-019 on the Ombudsperson, the National Mechanism for the Prevention of Torture (hereinafter referred to as "the NPM") of the Ombudsperson on 31 October 2017 visited the Detention Centre in Prizren (hereinafter referred to as "DCP"). The monitoring group consisted of two lawyers, one doctor and one psychologist.

Brief history of the institution

2. The building of the DCP was built in 1964; initially it operated under UNMIK administration until February 2005 where full management competencies were taken over by local staff. The DCP is dedicated for the detainees of the regions nearby Prizren, as well as it receives persons for serving the sentence imposed by the Basic Court for up to three months. This Institution has the capacity for 92 detainees, it has a total of four wings, in three wings are placed remand prisoners and in one wing are placed the sentenced prisoners with short sentences.¹

General description of the institution

3. The prisoners are placed in wings A, B, C, D. The total capacity is for 92 persons. **At the time of the NPM visit to DCP, there were 100 prisoners accommodated, of whom 22 were sentenced prisoners.** The European Committee for the Prevention of Torture visited DCP in 2010.²
4. During the visit in the DCP, the monitoring team was informed that the construction of a new detention centre in Prizren is planned, but the procedures have stagnated and no progress has been made in this regard.

Cooperation with NPM during the visit

5. During the visit of NPM in the DCP, the monitoring group received very good cooperation by the Correctional Service staff and the Prisons Health Department staff. The team without delay had access to all areas of the DCP. The team was provided with all the information needed to carry out its task and was able to speak in private with remand and sentenced prisoners, without the presence of correctional officers or other personnel.

Ill-treatment

6. **During the visits in the DCP, the NPMT interviewed a considerable number of detainees and sentenced prisoners and did not receive any complaints about ill-treatment or excessive use of physical force by correctional officers.**

Material conditions

Accommodation conditions

7. Official capacity of DCP is 92. During the visit in the DCP holding cells, the NPM the number of prisoners was 100. The NPM visited a number of cells and verified whether

¹ Data from the Kosovo Correctional Service website, at: <http://shkk.rks-gov.net> (31.10.2017)

² See: <https://rm.coe.int/16806972c7> (14.11.2017)

the living space was in compliance with the standards set forth by the European Committee for the Prevention of Torture.³ Based on this standard, the living space for remand or sentenced prisoners in cells should be at least 4m² per prisoner for a multiple-occupancy cell, excluding the annex of toilets.

8. The Law on Execution of Criminal Sanctions also stipulates that each prisoner should have 4m² of space in a common cell.⁴ During the visit, the NMPT noted that in some cells due to the lack of space, some remand and sentenced prisoners were sleeping on the floor in an old mattress and without adequate covers. **Therefore, the NPM concludes that the DCP faces overcrowding which should be avoided as soon as possible and cannot provide accommodation space in accordance with the standards established by the European Committee for the Prevention of Torture and the Law on Execution of Criminal Sanctions.**
9. During the visit in some cells, the NMPT noticed that prisoners lack the storage space for placing necessary personal belongings. In addition, in the two cells where the remand prisoners were accommodated, the toilets did not have doors and thus the privacy of the remand prisoners was not observed.⁵ Rule 15 of the Mandela Rules, adopted by the General Assembly of the United Nations on 29 September 2015, stipulates that:

“Sanitary installations shall be adequate and enable every prisoner to comply with the needs of nature necessary and in a clean and decent manner”.
10. During the visit, the NMPT noted that the cells were generally warm, had enough lighting, generally there was no humidity (except for cell A3 where there was little humidity), while the showers were in good condition. Also the prisoners dining halls were clean, had natural light and ventilation. **The NPM has concluded that cells generally need to be painted.**
11. Regarding the supplies, the NPM was informed that there was a lack of toilet papers, lack of bed sheets, blankets, where according to the directorate they were not supplied for a long time. Usually the prisoners are allowed to receive the bed sheets from their family members. During the conversation with the prisoners, the NPM has received complaints about the lack of hygienic kits, while regarding water, this problem was fixed. **Authorities should provide the detainees with hygienic products that enable them to clean the cells and maintain the hygiene adequately.**⁶
12. The NMPT was informed that detainees can take a shower twice a week, which is in accordance with the European Prison Rules.⁷ **The NMPT did not receive complaints from detainees and convicts regarding this right.**

³ European Committee for the Prevention of Torture, Living Space per Prisoner, see: <https://rm.coe.int/16806cc449> (14.11.2017)

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

⁵ European Prison Rules, Article 18.1.

⁶ The Law on Execution of Criminal Sanctions, Article 38.2 defines: *“In order to ensure the hygiene of convicted persons and the hygiene of premises, convicted persons shall be provided with sufficient cold and hot water, and appropriate toilet and cleaning articles. Installations and devices for personal hygiene shall assure sufficient privacy and shall be well-maintained and clean”.*

⁷ European Prison Rules, paragraph 19.4.

Kitchen

13. During the visit in DCP, the NPM also visited the kitchen where the prisoners are fed, which had all the necessary equipment. The NPM was also informed that the kitchen staff and the prisoners employed in the kitchen possessed sanitary booklets. The NPM did not find any expired food. During the visit in the cells, the NPM did not receive complaints regarding the quality of food. According to kitchen staff, the kitchen faces occasional lack of dietary food for certain categories of detainees and prisoners, depending on their health condition. **The NPM reminds the authorities on the obligation to provide dietary packages for prisoners for whom such a food is necessary for health reasons.**⁸

Regime

14. The following regimes exist in the DCP: the basic, standard and advanced regime. In the DCP for the time being there are about 13 prisoners engaged at work. The prisoners can have outdoor exercise twice a day for a period of one hour.⁹ The remand prisoners can have outdoor exercise all the time. According to the directorate, 4 remand prisoners are engaged at work. Remand prisoners spend the rest of the day, except outdoor exercise, in their cells which are equipped with a TV set. Also, there is a lack of the hall and equipment for sports and fitness activities. The possibilities of prisoners to move around are little because the space in the DCP does not provide for this. Also, within the DCP the library is functional as well. According to the assessment of the social worker at the DCP, there are requests for reading by remand and sentenced prisoners. The library of the DCP needs books with scientific titles and novels.
15. The regime for remand prisoners remains poor, despite the efforts of the directorate to provide more activities for the detainees. **The NMPT considers that the longer the period of detention is, the more developed should be the regime provided.**

Health care

16. During the visit at DCP, the NPM has visited the Health Services Unit, which is composed of the health care staff as follows: a full time doctor, 4 + 1 nurses, accounting for work in shifts for 24 hours. A full time psychologist and a psychiatrist who is engaged part-time every day.
17. The healthcare service in the DCP meets the minimum conditions for providing healthcare by also offering the possibility of treatment outside the DCP according to doctor's preliminary assessment. The absence of the dentist is compensated by sending the prisoners to receive dental healthcare services at Lipjan Detention Centre every Friday. The medical service in DCP also stressed out the lack of transportation - ambulance.
18. During the visit it was noted that the space used for healthcare is insufficient and does not meet the minimum needs. There is one room in use that is used for all primary care

⁸ Mandela Rules, Article 22. European Prison Rules, Article 22.2. of the Law on Execution of Criminal Sanctions, Article 39.1.

⁹ Mandela Rules, Article 23. European Prison Rules, Article 27.1. Standards of the European Committee for the Prevention of Torture, paragraph 48, published in 2015. Pursuant to Article 37 of the Law on Execution of Penal Sanctions, convicts are entitled to at least two hours of walk.

needs by the prison doctor, nurses, psychologist when there are cases to treat, and is a permanent stay place of the health personnel.

19. Lack of special space for the psychologist who provides psychological services for cases with various problems such as cases of attempted suicide, self-injury, emotional problems, smokers, alcoholics, drugs users, it interferes the work of a psychologist and does not provide comfort for prisoners in need of psychological services.
20. The NPM also noticed a space that serves as a warehouse for currently used medicines and accommodation of packages with expired medicines. It is also mentioned a small space that is already filled with multiple packs with expired medicines. The medical service has submitted a request for their removal and disposal but has not yet received any response. Whereas the necessary medical equipment for the provision of healthcare services are in compliance with the standards of the MoH (Ministry of Health). During the conversation with the Head of PHU in the DCP, it was said that the healthcare staff has made systematic visits of health personnel.

Registers

21. The prison hospital keeps the following records: the medical file of the doctor, the register of the nurse with shifts, therapy, complaints or request for the next visit to the doctor, sending the patient for treatment outside the prison clinic, self-injury, bodily injuries, sexual abuses, hunger strike, attempted suicide, solitary confinement, death in prison.
22. The NPM considers that a record of the medical file should be kept in cases when the patient goes for treatment outside the prison healthcare (which is given to the patient when the same is sent out of the DCP for other medical services) and also evidence should be kept in case of returning of the patient to the DCP. This way of evidencing enables keeping of the medical file in entirety and it is important for the prisoner even upon being released from prison. It is also important that in cases of death in prison there is documentation which will remain as evidence by the relevant bodies about the death of the patient.

Medical examination

23. The European Committee for the Prevention of Torture in its report on the visit in Kosovo in 2015 emphasized the essential importance of medical examinations especially in cases of newly-arrive remand or sentenced prisoners, not only for the identification of infectious diseases and the prevention of suicides, but also through the contribution that is given in terms of preventing torture through the proper identification of injuries.
24. The DCP informed the NPM team that the newly-arrived prisoners are examined within the 24 hours period from the moment they arrive at the centre. These examinations imply a general examination during which the prisoner is asked whether he has any illness which, if declared, it is recorded in his medical file.

Medical confidentiality

25. The NPM is interested if the medical personnel provide medical services to the prisoners and detainees in the DCP in the presence of correctional officers. During the visit, the NPM found that medical services at the prison healthcare unit are provided without the presence of correctional officers and the correctional officers have no access to prisoners'

medical files. **The NMPT supports such an attitude and practice of non-presence of security officers while the medical services are provided.**¹⁰

Trainings for medical service

26. According to the notification of the PHD, medical staff during the year had some relevant training which is related to their work.

Other issues

DCP Personnel

27. Based on the information received from the directorate, the DCP personnel consist of 17 civilian personnel and 82 correctional officers. The NPM during the visit noted that the working conditions of KCS staff are not in satisfactory level because there is a lack of proper spaces and accompanying inventory. DCP also faces a lack of sufficient staff.
28. During the visit, the NMPT was informed that at the moment the centre faces the lack of various materials for office, inventory, computers, printers, toners and some of these devices are out-dated. **The NPM concludes that KCS should undertake all necessary actions in order for the DCP to be supplied with all necessary materials for work.**

Disciplinary measures

29. According to the relevant legislation, sentenced prisoners may be subjected to the following disciplinary sanctions: reprimand, deprivation of an assigned privilege, an order to make restitution, and solitary confinement.¹¹ Whereas in the case of remand prisoners, the following sanctions may be imposed: prohibition or restriction on visits and correspondence (except contacts with defence counsel, the Ombudsperson, diplomatic missions.
30. . The NPM concluded that the DCP maintains a register of the disciplinary measures imposed, indicating data regarding the imposed measure, reason, time of impose and the ending of sanction.
31. The NPM was informed by the Directorate of DCP that self-injury at this centre is not considered a disciplinary violation. **The NPM welcomes such a standing because self-injury is not included in the group of disciplinary offenses set forth in Article 102 of the Law on Execution of Criminal Sanctions.**
32. The NPM was informed that the medical service does not take part in decision-making whether a remand or sentenced prisoner is fit to undergo solitary confinement. **The NMPT considers that for the medical personnel are aware of its role is clear in this regard.** The doctor's participation in decision-making, which is actually the doctor of a remand or sentenced prisoner, would undermine the relation doctor-patient, unless this measure is undertaken for medical reasons.¹²

¹⁰ The European Committee for the Prevention of Torture in the report about Kosovo after the visit in Kosovo in 2015 had remarks regarding the provision of medical services in the presence of correctional officers and recommended the termination of such practices.

¹¹ Paragraphs 101 to 113 of the Law on Execution of Criminal Sanctions.

¹² The European Committee for the Prevention of Torture in the report about the visit in Kosovo in 2015 has asked the relevant authorities to discontinue the practice of requesting a medical certificate confirming that the detainee or convict is able to withstand with the measure and amend the applicable legislation in compliance with this recommendation.

33. However, the NPM expresses the concern about the fact that the legislation in force¹³ provides that before the prisoner is placed in solitary confinement, the director of the service of the correctional facility must ask in writing the opinion of the doctor who certifies that the prisoner is in good physical and psychological health. **The NPM requests relevant authorities to amend the applicable provisions of these acts in accordance with the recommendation of CPT in the Report about Kosovo, in accordance with the 21st General Report of the CPT and the Recommendation of the Committee of Ministers of the Council of Europe Rec (2006) 2 about the Review of European Prison Rules, whereby it was requested the doctor's written opinion that the prisoner is fit to undergo this measure, was removed.**

Contact with the outside world

34. Legislation in Force¹⁴, in the case of sentenced prisoners, stipulates that sentenced prisoners are entitled to unlimited right of correspondence (subject to certain exceptions), are entitled to one visit per month which shall last for a minimum of one hour, as well as a visit by children and their spouses at least once in 3 months with a minimum duration of three hours. In addition, they have the right to make phone calls.

35. Regarding the telephone calls, the Administrative Instruction on House Rules in Correctional Institutions¹⁵ stipulates that the convicted person is entitled to telephone conversations with close family members and other persons. According to this instruction, the telephone conversation of a convicted person and detainee cannot be longer than 15 (fifteen minutes). **The NPM did not receive any complaints from remand and sentenced prisoners regarding this right.**

36. In the case of detainees, Article 200 of the Criminal Procedure Code of Kosovo stipulates that detainees may receive visits "within the limits of the detention centre rules" based on the permission of the pre-trial judge and under his supervision. Further, the code determines that correspondence and other visits are subject to the decision of the pre-trial judge. **The NMPT did not receive any complaint regarding this right from the detainees.**

37. The Ombudsperson or his representatives may visit the detainees and correspond with them without prior notice and without the supervision of the pre-trial judge, single trial judge or presiding judge or other persons appointed by such judge. The letters of the detainees sent to the Ombudsperson cannot be checked. The Ombudsperson and his representatives may communicate verbally or in writing confidentially with the detainees.

38. In the case of foreign nationals, they are entitled to contact verbally or in written with the diplomatic representation or the relevant office of the state whose national he is.¹⁶ During the visit, the NMPT interviewed the Turkish citizen U.T. who did not have any complaints regarding the exercise of this right and other rights of detained persons. **The NMPT has not received any complaints by remand and sentenced prisoners regarding the right to contact with the outside world.**

Security-related issues

¹³ Article 107 of the Law on Execution of Penal Sanctions and Article 76 of the Administrative Instruction on House Rules in Correctional Institutions.

¹⁴ Law on Execution of Criminal Sanctions, Articles 62-65.

¹⁵ Administrative Instruction on House Rules in Correctional Institutions, Article 54.

¹⁶ Law on Execution of Penal Sanctions, Article 33 paragraph 1.

39. The NMPT was informed by the directorate that all pavilions and facilities of the DCP are equipped with security cameras which, according to the CPT, constitute one of the safe-guards against ill-treatment.¹⁷
40. **In addition, the NPM advises relevant authorities that provide technical possibilities that the data recorded by security cameras to be retained for a longer period of time, since it can enable more effective investigations of possible allegations of ill-treatment or excessive use of physical force.**

Complaint procedures

41. The effective complaints procedure is the fundamental safeguard against ill-treatment in prisons and detention centres. Persons placed in these centres should have the opportunity to file a complaint within the prison or detention centre where they are accommodated and to enable them the access to the appropriate authority confidentially.
42. Article 91 of the Law on Execution of Penal Sanctions specifies in detail the procedure under which the remand and sentenced prisoners may address with a complaint or a request the director of a particular institution of the Kosovo Correctional Service. The procedure also includes deadlines for response from the director and the possibility of appealing to a higher authority, which in the present case is the General Directorate of Correctional Service and the Minister of Justice.¹⁸
43. The NMPT noted that complaints boxes placed by the Kosovo Correctional Service and the complaints boxes placed by the Ombudsperson in DCP, are available for the prisoners. The complaints boxes placed by the Institution of Ombudsperson may only be opened by staff of this institution, which enables the complainants to lodge their complaints confidentially. .
44. The directorate of the DCP informed the NPM that the complaints received were reviewed in the shortest possible time, even within 24 hours. The sentenced and remand prisoners told the NMPT that the DCP Directorate usually reviews their complaints very quickly and sends written responses.
45. **The NPM did not receive complaints from remand or sentenced prisoners regarding the right to lodge complaints or delays to review their complaints within the legal deadline.**

Based on the findings made during the visit, pursuant to Article 135, paragraph 3, of the Constitution of the Republic of Kosovo and Article 16, paragraph 4, of the Law No. 05/L019 on the Ombudsperson, the Ombudsperson recommends:

To the Ministry of Justice:

- **The Ministry of Justice shall notify the Ombudsperson about the planning for construction of the new Detention Centre in Prizren.**
- **To provide adequate working conditions for medical personnel.**

¹⁷ CPT, report on the visit to Ireland in 2010, paragraph 18.

¹⁸ Article 91, paragraph 4 of the Law on Execution of Penal Sanctions stipulates: To the complaint filed, the director of the correctional facility shall respond within a period of fifteen (15) days whereas the Central Office of the Correctional Service within thirty (30) days. The written complaint will be answered in the written.

- **The number of detainees accommodated should be in accordance with the official capacity of the DCP, and the issue of overcrowding should be resolved as soon as possible.**
- **To take appropriate measures to ensure that the privacy of detainees is observed (see paragraph 9 of this report).**
- **To paint the cells as needed (see paragraph 10).**
- **To improve the working conditions of correctional officers.**

In conformity with Article 132, paragraph 3 of 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 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 undertaken about the issue in question”), You are kindly asked to inform us on actions to be taken by you about this issue.

Sincerely,

Hilmi Jashari
Ombudsperson