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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

ANNUAL REPORT OF THE NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE

2019

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Ombudsperson's Foreword

Since my appointment in the position of the Ombudsperson of Republic of Kosovo, this year as previous ones, my pleasure is introducing to you the following Annual Report of the National Preventive Mechanism of Torture (NPM). The Law no. 05 / L-019 on the Ombudsperson, which entered into force on 26 June 2015 stipulates that the Ombudsperson acts as a National Preventive Mechanism of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The NPM was instituted in accordance with the provisions of the Optional Protocol to the Convention against Torture, which is a part of the legal and constitutional system of the Republic of Kosovo and prevails, in case of conflict, over provisions and laws and other acts of public institutions.

The main purpose of the given Protocol is to establish a system of regular visits, carried out by independent international and national bodies, to places where persons deprived of their liberty are placed, aimed at preventing torture and other degrading and inhuman treatment and punishment. In addition, this Protocol stipulates that the NPM shall be a multidisciplinary team composed of professionals in different fields, such as legal officers, doctors, psychologists, etc. NPM's present composition is in full compliance with the provisions of the Optional Protocol to the Convention against Torture and the Law on the Ombudsperson. Regular and unannounced visits to all places where persons deprived of their liberty are held, including police detention, detention on remand, stay in health facilities, customs detention, detention in immigration centers and any other places where suspects of violation of human rights and fundamental freedoms is likely to happen, are NPM liabilities determined by the Law on the Ombudsperson.

During the reporting period, the NPM accomplished 86 visits to places where persons deprived of their liberty are held, the team published 13 Reports with Recommendations while 75 recommendations have been delivered to responsible authorities of the Republic of Kosovo, with the aim to improve situation of human rights of persons deprived of their liberty. It is my pleasure to disclose to you the fact that none of NPM's recommendation provided was rejected by authorities to whom they were addressed, on the contrary, very constructive cooperation and dialogue even during this period is ongoing with all authorities responsible for institutions where persons deprived of liberty are located. This Report reflects challenges, but at the same time the progress of responsible institutions of the Republic of Kosovo in respecting fundamental rights of persons deprived of their liberty.

During this period as well NPM continued its international cooperation, by participating in meetings organized within the scope of South-East Europe NPM Network (SEE- Network), as well as in the Working Group on Asylum and Migration within the European Network of National Human Rights Institutions (ENNHRI). In addition, the work of NPM in 2019 was accompanied by various successes. One of these successes is the Closing Conference of the Council of Europe's Project for Strengthening of NPM Capacities, organized by the Council of Europe and the NPM in April 2019. The Closing Conference was honored with the presence of the President of the European Committee for the Prevention of Torture, Mr. Mikola Gnatovsky, His Excellency the Ambassador of Switzerland in Republic of Kosovo Jean-Hubert Lebet, representatives of the Embassy of Kingdom of Norway, representatives of the Council of Europe, Office in Prishtina, representatives of Kosovo Republic institutions and various local and international organizations.

On this occasion, based on the experts' assessment, the project on strengthening NPM's monitoring capacities was closed with the ascertainment of Council of Europe's officials that the NPM, among others, is the best preventive mechanism of human rights violation in the Republic of Kosovo, the NPM of the Republic of Kosovo is the leading NPM in the Western Balkans. Signing a Memorandum of Understanding with the Swiss National Commission on Prevention of Torture on common monitoring of forced return operations of citizens of the Republic of Kosovo through airlines constitutes also a significant achievement for the NPM and the Ombudsperson Institution. On this occasion, I was pleased to sign the above-mentioned Memo of Understanding with his Excellency, the Ambassador of Switzerland in the Republic of Kosovo.

On this occasion, I would also like to express my appreciations to responsible institutions of Republic of Kosovo, to international organizations, Council of Europe, as well as IPA Project for Strengthening the Ombudsperson and local Non-Governmental Organizations, with whom we have had productive cooperation during this period.

Hilmi Jashari
Ombudsperson

I. National Preventive Mechanism against Torture (NPM)

The Republic of Kosovo is not a signatory party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to this Convention, since it is not yet a member of the United Nations. However, Article 22 of the Constitution of the Republic of Kosovo determines that human rights and fundamental freedoms guaranteed by international agreements and instruments are guaranteed by this Constitution. These international agreements and instruments are directly applicable in the Republic of Kosovo and, in case of conflict, have priority over the provisions of laws and other acts of public institutions. One of the conventions foreseen in this Article is also the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted on 10 December 1984 and entered into force on 26 June 1987.¹

On 18 December 2002, the United Nations General Assembly, at its fifty-seventh (57) session, with the Resolution A/RES/57/199, adopted the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This protocol entered into force on 22 June 2006.² The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhumane or degrading treatment or punishment.³

Law No. 05/L-019 on Ombudsperson, which entered into force on 26 June 2015, stipulates, in Article 17, paragraph 1, that the Ombudsperson acts as National Preventive Mechanism against Torture and other Cruel, Inhuman and Degrading Treatments or Punishments (hereinafter *NPM*).⁴

Regular and unannounced visits to places of deprivation of liberty, including police detention, detention on remand, stay at health institutions, customs detention, detention at immigration centres and every other place when it is suspected that there are violations of human rights and freedoms are NPM tasks defined by the Law.⁵

According to the Law on Ombudsperson, when exercising functions of the NPM, the Ombudsperson and his/her representatives shall have the right to access information about the health status of any person deprived of liberty, including access to relevant medical records, as well as, with consent of the person, they shall be entitled to access to his/her personal data.⁶ NPM was officially established by the decision of the Ombudsperson on 16 January 2016.

¹Office of the United Nations High Commissioner for Human Rights, at: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

²Office of the United Nations High Commissioner for Human Rights, at: <https://www.ohchr.org/en/professionalinterest/pages/opcat.aspx>.

³Article 1 of the Optional Protocol to the Convention against Torture.

⁴Law No. 05/L-019 on Ombudsperson, Article 17, paragraph 2.2.

⁵Law No. 05/L-019 on Ombudsperson, Article 17, paragraph 2.

⁶Law No. 05/L-019 on Ombudsperson, Article 17, paragraph 4.

NPM's visit methodology

NPM's visit methodology consists of observation, documentation and interviewing of the persons deprived of liberty, correctional and police officers as well as healthcare providers. This methodology includes preparation of the visit, determination of the type of the visit, actions taken upon arrival at the institution being visited, conversations with the head of the institution, division into groups, etc. Article 17 of the Law on Ombudsperson stipulates that NPM conducts unannounced visits to places where persons deprived of their liberty are held.

Initial conversation with the head of the visited institution means presentation of NPM mandate in an effective and professional manner, presentation of the monitoring team members, the visit purpose etc.

After that, interviews are made with persons deprived of liberty and with correctional officials and health personnel. The monitoring team assures the prisoner that the conversation will be confidential and without the presence of the officials of the institution being visited. Prior to the final meeting with the Director of the Institution, the NPM organizes a meeting between the monitoring team in order to agree on the issues to be discussed with the Director.

The monitoring team also visits the health unit of each correctional or detention centre, in order to verify that prisoners are provided with the medical services provided by the legislation in force in the Republic of Kosovo and international standards on the rights of prisoners.

The final conversation with the head of the institution focuses on the most important concerns, such as: relations between personnel and the prisoners, incidents amongst prisoners, accommodation conditions, inadequate health care, and failure to apply the procedural safeguards (access to an attorney, the right to health services, contacts with family, etc.). During the final conversation with the Director, the monitoring team uses constructive language and respects the work of the institution's officials.

NPM's composition during 2019

NPM's current composition is multidisciplinary and in compliance with the provisions of the Law No. 05/L-019 on Ombudsperson, which foresees that within the NPM there should be personnel of different occupations, including lawyers, medical doctors, psychologists and social workers with experience in this field. The current composition of the NPM is as follows:

1. Deputy Ombudsperson, in charge of the NPM
2. NMP Director
3. Senior Legal Advisor on Prevention of Torture
4. Advisor on Prevention of Torture
5. Advisor-medical doctor
6. Advisor-psychologist
7. Advisor-social worker

Visits conducted during 2019

During the reporting period, NPM conducted 86 visits (general visits, *Ad-Hoc* visits and follow-up visits) to various institutions:

1. Correctional Centre in Dubrava (hereinafter, *CCD*)
2. High Security Prison (hereinafter, *HSP*),
3. Correctional Centre for Women and Juveniles in Lipjan (hereinafter, *CCWJL*),
4. Educational-Correctional Centre in Lipjan (hereinafter, *ECCL*),
5. Correctional Centre in Smrekonica (hereinafter, *CCS*),
6. Detention Centre in Gjilan (hereinafter, *DCGJ*),
7. Detention Centre in Peja,
8. Detention Centre in Prizren,
9. Detention Centre in Lipjan (hereinafter, *DCL*),
10. Detention Centre in Prishtina,
11. Detention Centre for Foreigners (hereinafter, *DCF*),
12. Centre for Asylum Seekers (hereinafter *ASC*),
13. Border crossing point Prishtina International Airport “Adem Jashari” in Prishtina,
14. Regional Detention Centre in Prishtina
15. Police stations in: Gjakova, Shtime, Rahovec, Vushtrri, Deçan, Pejë, Border Crossing Point “Vërmicë”, Podujeva, Regional Border Department “Veri” Lluzhan, Lipjan.
16. Centre for Integration and Rehabilitation of the Chronic and Psychiatric Patients in Shtime (hereinafter, *CIRCPP*).
17. The Institute of Kosovo Forensic Psychiatry (hereinafter, *IKFP*).
18. Department of Psychiatric Intensive Care within the Psychiatric Clinic of the University Clinical Centre of Kosovo (hereinafter, *UKIP*).
19. The Home of Children with Mental Disorders (hereinafter, *HCMD*).
20. Special Institute in Shtime (hereinafter, *SISH*).
21. House of Elderly Persons without Family Care in Prishtina (hereinafter *HEPFC*).
22. Integrated Community Homes (hereinafter, *ICH*).
23. Community-Based Homes for Persons with Mental Disabilities (hereinafter, *CH*).
24. Centre for Mental Health (hereinafter, *CMH*), in Ferizaj, Prizren, Mitrovica and Prishtina.

Reports with recommendations published during 2019⁷

During the reporting period, NPM published reports with recommendations for the visits to the DCF, HCMD, Border Crossing Point International Airport “Adem Jashari” in Prishtina, CCS, DCM, CCWJL, CCD, DCP, DCL, ECCL, Detention Centre in Prishtina, Detention Centre in Peja and HSP. In addition, during the reporting period, the NPM published recommendation letters regarding visits to the Detention Centre in Peja, DCGJ, CCD and the visit to the police stations in Peja, Deçan, Gjakova, Fushë Kosova, Rahovec, Shtime, Vushtrri, Border Crossing Point “Vërmicë”, Lipjan and Regional Detention Centre in Prishtina.⁸ Through these reports with recommendations and recommendation letters, the NPM sent 75 recommendations to the competent authorities. So far, the competent authorities implemented 17 recommendations, 5 recommendations were partially implemented, while others are pending implementation. During the reporting period, no NPM recommendation was rejected by the competent authorities.

Cooperation of visited institutions with the NPM

During NPM’s visits to the institutions where persons deprived of liberty are held, officers of the institutions visited generally offered to the monitoring team full cooperation and immediate access. The team immediately had access to all visited premises. The team was provided with all information necessary to carry out the task and was given the opportunity to have interviews with detained, detained on remand and convicted persons, without the presence of correctional officers, police officers, health personnel and psychiatric institutions’ personnel and social care personnel.

⁷ All reports with recommendations on the visits of the NPM, published during 2019 in Albanian, Serbian and English can be found at: <https://www.oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/> .

⁸ All NPM’s Reports with recommendations and recommendations letters sent to competent authorities during 2019 can be found by clicking the following link: <https://www.oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>.

II. Kosovo Police

Physical ill-treatment

During the visits to places of deprivation of liberty, the NPM received no complaints from arrested or detained persons at the time of the visit for physical ill-treatment or failure to respect the fundamental rights guaranteed to persons deprived of their liberty 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.

During its visits to the correctional and detention centres, while interviewing the prisoners, NPM was interested in their treatment by the Kosovo Police and the respect of their fundamental rights from the moment of arrest. The vast majority of interviewees stated that they were treated correctly by Kosovo Police and that their basic rights were respected, except in some cases.

During its visits to the correctional and detention centres, the NPM received allegations by some detainees that they were physically abused by the Kosovo Police during their arrest and detention. Most of the allegations refer to the moment when they were arrested by the police and the period of being questioned by police investigators.

In such cases, the NPM has analysed relevant health documentation compiled on the occasion of the admission of prisoners to detention centres and correctional centres. In some cases, the NPM observed that bodily injuries were recorded in their medical records.

Moreover, during the visit to DCC, the NPM received allegations from prisoner E. Xh⁹, who alleged that he was physically abused by Kosovo Police officers at the time of his arrest and while he was taken to the police station where he was interviewed. The NPM observed signs of bodily injuries to the prisoner (eye hematoma, traces of punches on different parts of the back), which were recorded through a photo camera. After examining the data collected, including the analysis of the prisoner's medical record, the NPM referred the matter in question to the Police Inspectorate of Kosovo (hereinafter, *PIK*) for further investigation.

On 11 November 2019, PIK informed the NPM that the matter was investigated by the relevant PIK department and, since no criminal offense elements were found, it was sent for further processing to the Kosovo Police Professional Standards Directorate to investigate whether in this case there were disciplinary violations by police officers. The NPM will continue to monitor this case until the final decision of the competent authorities.

Also, during the visit to the DCC, the NPM received the allegation from the prisoner F.S.¹⁰ for being physically abused by police officers at the time of his arrest. After analysing the allegations of the prisoner concerned and analysing the health documentation, the NPM recommended it to the PIK for further investigation based on the mandate of the PIK. On 27 November 2019, following the NPM request, PIK

⁹ Case registered at the Ombudsperson Institution A.no. 169/2019, after an investigation by PIK, was forwarded to the Kosovo Police Professional Standards Directorate for further investigation..

¹⁰ Case registered with the Ombudsperson Institution A.nr. 388/2019, which, after an investigation by PIK, was referred to the Kosovo Police Professional Standards Directorate for further investigation into possible disciplinary violations.

informed the NPM that it had investigated the case and, since it did not find any elements of a criminal offense, it referred the matter to the Professional Standards Directorate for further investigation of possible disciplinary violations.

During the reporting period, electronic media in the Republic of Kosovo published a video showing footage of an arrested citizen who was physically abused and treated in a humiliating and degrading manner by police officers at the Gjakova police station. In the present case, on 19 November 2018, the representative of the Ombudsperson visited the Detention Centre in Peja and received a complaint from a citizen seen in the published video. Since bodily injuries were noticed in the complainant, after analyzing the medical documentation and the complainant's statement, the NPM, on 30 November 2018, through an official note, requested from the PIK to investigate this matter in accordance with its mandate. On 19 December 2018, the PIK notified the NPM that it had commenced a preliminary investigation into the complainant's allegations.

On 10 November 2019, the PIK notified the NPM as follows: *“In accordance with PIK law, as part of the investigative procedure, the Police Inspectorate of Kosovo recommended to the Kosovo Police the suspension of six police officers of the Gjakova Police Station (one major, one captain, one sergeant and three police officers) until the conclusion of this criminal investigation. These video recordings (some of which have already been published in the media) were analysed by PIK investigators and, in consultation with the competent prosecutor, after undertaking many investigative actions, on 9 September 2019 PIK filed a criminal report with the competent prosecution office regarding this case, on the suspicion that police officers committed the criminal offense of "Mistreatment during exercise of official duty or public authorization" some of them in co-perpetration, and one of them committing the criminal offense of "Abuse of official duty or public authority" .*

Further, PIK informed the NPM that: *“In accordance with PIK law, following the filing of a criminal report, PIK has assessed that they do not impede the investigative procedure and has recommended the Kosovo Police to terminate the suspension measure for these six police officers (one major, one captain, one sergeant and three police officers)”*.

The NPM highly appreciates the commitment of the PIK to fulfil its legal mandate, not only in this case but also in other cases recommended by the NPM for further investigation. However, the NPM considers that PIK's recommendation to return the officials concerned back to work is not an appropriate action and, if these officials continue performing their duties without having the procedures initiated with the competent authorities completed, the image of the Kosovo Police would be damaged this would create a negative impression on citizens.

NPM notes that the CPT, in its report on the visit to Serbia in 2015¹¹, in paragraph 38 regarding police officers under criminal investigation¹², among others, highlights: *“In the CPT's view at a minimum, officers under criminal investigation for an act of alleged ill-treatment should, while the case is on-going, be assigned to duties which do not involve direct contact with the public or detained persons”*.

¹¹ For more information, see: <https://rm.coe.int/1680697c94>

¹² According to the CPT report, the official who was under criminal investigation for physical ill-treatment was still in service.

During the reporting period, the Ombudsperson Institution (OI) has opened 2 *Ex Officio*¹³ cases and opened 15 cases for further investigation based on complaints received from citizens of the Republic of Kosovo against the Kosovo Police, based on suspicion that police officers exercised physical ill-treatment, excessive use of physical force, or exceeded legal authorization during the arrest. After preliminary analysis, in 4 cases, the PIK was recommended to conduct further investigations into the allegations of citizens and to inform the OIK of the outcome of the investigations.

In general, the NPM, based on this year's visits and earlier visits, the review of complaints received, as well as ex officio investigations, assesses that there is no systematic or widespread physical ill-treatment by the Kosovo Police, but these are isolated cases.

Safeguards against ill-treatment

European Committee for the Prevention of Torture (hereinafter referred to as the *CPT*), in its 2nd General Report, published in 1992, emphasized the importance of the three fundamental rights of persons detained by the police, which 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).¹⁴ They are, in the CPT's opinion, three fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system of a country.

The CPT further states that these rights should apply not only in the case of detained persons but also in other cases where citizens are obliged to stay in the police or with the police for other reasons (for example, for identification purposes).

The fundamental rights of persons arrested and detained by police authorities are also provided by the Constitution of the Republic of Kosovo, the Criminal Procedure Code and the Law on Police.¹⁵

Local legislation on these rights remains unchanged. Article 13 of the Criminal Procedure Code stipulates: *“Any person deprived of liberty shall be informed promptly in a language which he or she understands of the right to legal assistance of his or her own choice and the right to notify or to have notified a family member or another appropriate person of his or her choice about the arrest, and that these rights apply throughout the period of deprivation of liberty.”*¹⁶

¹³ *Ex Officio* 784/2019, OI v. Kosovo Police. *Ex Officio* 773/2019 OI v. Kosovo Police. Regarding the case *Ex Officio* 773/2019, on 12 December 2019, PIK informed the Ombudsman that after preliminary investigations the case was referred to the Professional Standards Directorate for further investigation for disciplinary violations. Whereas, in case 784/2019, PIK, after preliminary investigations recommended to the Kosovo Police the suspension of the officials involved. This recommendation was implemented on 9 October 2019. On 8 November 2019, the PIK filed a criminal charge against the officials in question with the Basic Prosecution in Ferizaj.

¹⁴ See: <https://rm.coe.int/16806cea2f/>

¹⁵ Constitution of the Republic of Kosovo, Articles 29 and 30. Criminal Code of the Republic of Kosovo, Article 13. Law No. 04/L-076 on Kosovo Police.

¹⁶ See also Articles 29 and 30 of the Constitution.

Regarding notification of the arrest, Article 168 of the Criminal Procedure Code further foresees that the arrested person has the right to: notify the family member or other person of his or her choice of arrest and place of detention immediately after the arrest; the notification of the family member or other person regarding the arrest may be delayed by up to 24 hours at the latest when the state prosecutor considers that this is conditioned by the urgent need to investigate the case. This delay shall not apply in the case of minors.¹⁷

According to Law No. 04/L-076 on Police,¹⁸ the right to notify the family or another person of the arrest also applies to persons who are in "temporary police custody" for the identification purpose or for their own protection and the protection of others.

Video and audio recording of the interviews as additional safeguards against physical ill-treatment

During the reporting period, the NPM was informed by the Kosovo Police that it had requested several police stations to designate interview rooms in which equipment for video and audio recording the interviews with the detainees is expected to be installed. On 22 November 2019, the NPM, through official email, requested from the Kosovo Police to be informed about the progress achieved in the implementation of this project.

On 2 December 2019, the Kosovo Police informed the NPM by email: *“that all Regions have identified the interview offices where surveillance (video/audio) cameras should be installed, and also forwarded requests to DITK-GD. In the next project, DITK - Camera Unit has planned to provide these offices with surveillance (video/audio) cameras; while DITK is also in the process of preparing technical specifications and that they have planned in the medium term to install surveillance (video/audio) cameras in about 30 interview offices in all Regions”*.

The NPM notes that the CPT considers that the electronic (audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees and the protection of police officers against false allegations of physical ill-treatment.¹⁹

During its visits, the NPM concluded that Kosovo Police respects the three basic rights of arrested persons. Kosovo Police have standard forms whereby detainees are informed of their rights and who, upon signing them, confirm that they have been informed of these rights. The NPM has also noted that the Kosovo Police generally keeps sufficient evidence and documentation of any event related to persons in police custody. These standard forms are compiled in Albanian, Serbian and English language.

In addition, the NPM has noted that in every cell where detainees are held, information on their rights compiled in Albanian, Serbian and English language is available. During the visits and interviewing of the arrested persons, the NPM received no complaints regarding the observance of these rights.

¹⁷ Criminal Procedure Code of the Republic of Kosovo, Article 168, paragraphs 1, 2, 3, 4.

¹⁸ Law on Police, Article 20.

¹⁹ European Committee for the Prevention of Torture, extract from 12th General Report, paragraph 36. For more, see: <https://rm.coe.int/16806cd1ed/>

Physical conditions of the visited police stations

Regarding the physical conditions in the spaces where persons deprived of their liberty are held in police stations, the NPM has observed that most of the visited police stations meet the conditions necessary to accommodate arrested persons. However, NPM has noted that renovations are needed at the police stations in Gjakova, Deçan, Peja and Fushe Kosova. During a visit to the Rahovec Police Station, the NPM noted that renovation work in the detention rooms was on-going. On 6 December 2019, based on the NPM's request for information, the Kosovo Police, through an official email, informed the NPM that the detention centre at this station is now operational.

On 20 September 2019, the NPM visited the Police Station in Fushe Kosova and observed that this station faces severe infrastructure conditions and minimum working conditions for police officers. During the visit to the station, the NPM observed that the station was facing water shortages for many days, which made the work of police officers even more difficult.

On 14 May 2019, during a visit to the Deçan Police Station, the NPM noted that the NPM's recommendation to renovate the detention rooms at this station as soon as possible was not implemented, which was sent to the competent authorities through the report with recommendations on the visits to police stations in Klina, Istog, Peja and Deçan on 17 October 2018.²⁰

Through the report in question, the NPM, in paragraph 24, stated the following: *“The NPM has noted that the rooms where the detainees are held are in very poor condition and in need of immediate renovations, with no natural or artificial light. As a consequence of this situation, the NPM has interviewed in full darkness a detainee. Such a situation at the Deçan police station can be compared to inhumane or degrading treatment or punishment”*. Also, the CPT 2007 report on the visit to Kosovo, published in 2009, expresses particular concern regarding the situation in the Deçan police station regarding the conditions of accommodation.²¹

Also, during a visit to the Peja Police Station on 14 May 2019, the NPM observed that the NPM's recommendation to carry out the necessary renovations at this police station in order for the detention rooms to have sufficient natural and artificial light was not implemented. The NPM also noted a lack of mattresses, pillows and hygiene kits.

On 16 December 2019²², the NPM addressed the Kosovo Police with a recommendation letter recommending that the necessary renovations be carried out at the aforementioned police stations so that the physical conditions of accommodation for detainees at these stations is in compliance with the CPT standards and the legislation in force in the Republic of Kosovo.

²⁰ Report with recommendations on the visit to police stations in Klina, Istog, Peja and Deçan. For more information, see: <https://www.oik-rks.org/en/2018/10/17/report-of-the-npmt-related-to-the-visits-conducted-to-the-following-police-stations/>.

²¹ CPT Report on Visit to Kosovo in 2007, published in 2009, paragraph 35. For more information, see: <https://rm.coe.int/168069727c>

²² The NPM's recommendation letter on visits to various police stations in Kosovo. See: <https://www.oik-rks.org/en/2019/12/17/recommendation-letter-to-the-police-stations/>.

Through this report, the NPM again recommends the competent authorities to take all necessary actions to avoid these shortcomings and that the detention rooms in this police station comply with the provisions of the Constitution of the Republic of Kosovo, local legislation and international standards on the protection of the rights of persons deprived of their liberty.

With regard to the regime, NPM has noticed that most of the police stations visited do not provide the detainees, who stay more than 24 hours in detention, with the opportunity to go out and take some fresh air, as they do not have adequate space.

With regard to medical services, as a fundamental right of persons detained by the police, these services are provided by public institutions such as the Family Medicine Centre and the University Clinical Centre, depending on the treatment needs. NPM did not receive complaints from the persons interviewed regarding this right. Also, the reviewed documentation shows that the police have recorded in their personal files the notice of the right to have medical services.

With regard to the right to file a complaint, regarding their treatment by the Kosovo Police, the detainees have the right to file a complaint with the police station where they are being held as well as with the Police Inspectorate of Kosovo. In addition, the detainees can file a complaint with the Ombudsperson. In order to provide the detainees with easier access to the services of this institution and to enable them to file a complaint confidentially, the Ombudsperson has installed complaint boxes at police stations where there are detention cells. The Ombudsperson has regional offices in each city of Kosovo and regional officials visit police stations, open complaint boxes and handle individual complaints.

III. Correctional and detention centres

During the reporting period, the NPM conducted general, *Ad Hoc* and follow-up visits to all correctional and detention centres, as well as to the HSP (high security prison). The purpose of these visits was to assess the progress of the competent authorities in implementing the NPM recommendations sent through earlier reports with recommendations, as well as respect of rights of prisoners guaranteed by the Constitution of the Republic of Kosovo, Law No. 04/L-149 on Execution of Penal Sanctions (hereinafter *LEPS*) and the Law No. 05/L-129 on Amending and Supplementing the Law No. 04/L-149 on the Execution of Penal Sanctions, as well as international standards on the rights of prisoners.

During this period, NPM sent 54 recommendations to the Ministry of Justice regarding the visits to correctional and detention centres. So far, competent authorities implemented 12 recommendations and partially implemented 4 recommendations. During the reporting period, no NPM's recommendation was rejected by the competent authorities.

Physical ill-treatment

During the visits to correctional and detention centres, in 2019, NPM did not receive credible complaints from prisoners on physical ill-treatment or excessive use of physical force by correctional officers. On the contrary, most of the prisoners expressed that they receive a very good treatment. Furthermore, NPM has observed a positive interactive communication between the prisoners and correctional officers.

Inter-prisoner violence

During the reporting period, generally speaking, no serious incidents between the prisoners have been observed. During the visits, NPM noted that any such incidents were recorded in the relevant forms, as well as in adequate protocols of the healthcare units. However, on 21 November 2019, Prison Healthcare Department (hereinafter *PHD*), notified NPM that in the hospital of the CCD, a prisoner asked for medical treatment since, according to him, he was beaten several times by some prisoners. The medical staff, during the examination of the prisoner, noticed bodily injuries which were then recorded in medical protocols in compliance with the Standard Operating Procedure²³ (hereinafter, *SOP*) and notified of this situation the CCD Directorate. On 25 November 2019, NPM required from the CCD Directorate to inform them on actions undertaken related to this case.

On the same day, the CCD Directorate informed the NPM that the mentioned prisoner was taken immediately to the prison hospital where the medical treatment is on-going and the Kosovo Police was informed, which then attended the scene and initiated the investigation. NPM, while highly appreciating the actions undertaken by medical staff of PHD and CCD Directorate, reminds, through this report, the authorities of their obligation to prevent violence among prisoners they are responsible for.

This responsibility includes the obligation to take care of and adopt preventive measures to reduce the risk of violence as well as to protect the most vulnerable prisoners. Overall, the NPM, during its visits in 2019,

²³ Standard Operating Procedure of PHD. For more information, see: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Veprimit-n%C3%AB-DShB.pdf>

has noted that the relations among the prisoners are positive and there are no tensions, and that the incidents among the prisoners do not appear to be a major issue for the correctional and detention centres.

Accommodation conditions in correctional and detention centres

During the reporting period, NPM recommended renovations in block number 8 of CCD, so that the accommodation conditions for the prisoners are in compliance with the LEPS²⁴ and standards set out by CPT.²⁵ During the follow-up visit to the CCD, from 28 to 30 October 2019, the NPM observed that block No. 8 was fully renovated and the prisoners who were accommodated into this block were engaged to renovate it. NPM noted that renovations are needed in the block of prison hospital and in block No. 5. Thus, through the recommendation letter, sent on 16 December 2019²⁶, the NPM recommended to the Ministry of Justice to carry out the necessary renovations to block No. 5 and CCD hospital block.

Also, during the reporting period, the NPM recommended to the competent authorities to take action to discontinue the use of improvised electrical equipment by the prisoners in the CCD to heat water, as this may risk their lives.

During the follow-up visit, NPM noted that the directorate has carried out a series of searches and seized such equipment. This was also confirmed through interviews with prisoners. The NPM noted a positive practice in the CCD, where flowers in the garden in the front of all blocks at this centre have been planted, thus having a positive impact to the prisoners, therapeutically.

Concerning the NPM's recommendation to find adequate solutions to provide access for patients with disabilities to the second floor of the hospital, the Director informed the NPM that such patients are sent to block 7 where there are adequate conditions for such patients.

Through the report with recommendations on the visit to CCS, published on 16 May 2019²⁷, the NPM recommended to the Ministry of Justice to renovate the roof of block where the detainees are accommodated. On 4 December 2019, the CCS Director informed NPM that this recommendation has not yet been implemented and addressed to the central directorate of the Kosovo Correctional Service (hereinafter KCS) with the request to avoid this shortcoming, and this is expected to occur next year. NPM will monitor the implementation of this recommendation in the future by conducting visits to this centre.

During the visit to CCWJL, on 23 and 24 January 2019, NPM noted that renovations are necessary in the spaces where male juveniles are accommodated. Through the report with recommendations published on 24 May 2019 it was recommended to the competent authorities to improve the accommodation conditions in

²⁴ Law on Execution of Penal Sanctions, Article 111, paragraph 2.

²⁵ European Committee for the Prevention of Torture, Living space per prisoner in prison establishments, published on 15 December 2015. For more information, see: <https://rm.coe.int/16806cc449>

²⁶ NPM, Letter of recommendation on the visit to CCD, published on 16 December 2016. See at: <https://www.oik-rks.org/en/2019/12/17/recommendation-letter-dubrava-correctional-centre/>

²⁷ NPM, Report with recommendations on the visit to Correctional Centre in Smrekonica. For more information, see: <https://www.oik-rks.org/en/2019/05/21/report-with-recommendations-correctional-centre-in-smrekonice/>.

blocks wherein detained juveniles are held as well as in other blocks where such a thing is necessary.²⁸ Through *Ad Hoc* visits to this centre carried out during 2019, NPM noted that renovations have commenced and that most of the work is being done by the prisoners.

During the visit to DCM, NPM noted that the accommodation conditions at this centre, in general, are in compliance with the LEPS, international standards for the protection of human rights of prisoners and CPT standards, except in some cells where the renovation of damaged floors was needed. Through the report with recommendations published on 28 June 2019²⁹, NPM recommended to the competent authorities to renovate the damaged floors of several cells, as needed. On 4 December 2015, the Directorate of the Detention Centre in Mitrovica informed the NPM that the works for renovating the floors have been finalized.

Through the report with recommendations on the visit to DCP³⁰, NPM, regarding the accommodation conditions, recommended to the competent authorities to supply the prisoners with hygiene items, in compliance with LEPS, avoid technical deficiencies in the operation of showers, as needed, and supply this detention centre with new and quality mattresses. On 11 September 2019, the Directorate of DCP informed the NPM that the prisoners are being supplied with hygiene items in compliance with LEPS. The announcement further states that, regarding the supply with new and quality mattresses, the KCS General Directorate has informed them that they will soon have new mattresses.

Through the report with recommendations on the visit to DCL³¹, NPM, regarding the accommodation conditions, recommended to the competent authorities to renovate the DCL second floor, so that the accommodation conditions for the prisoners are in compliance with the LEPS and the CPT standards. On 27 November 2019, the DCL Directorate informed the NPM that the works for renovating this floor are almost finalized.

Regarding the accommodation conditions at the HSP, the NPM, in the report with recommendations, published on 22 November 2019³², concluded as follows: “*NPM noted that, in general, the accommodation conditions at HSP are in compliance with the LEPS, international standards for the protection of human*

²⁸ NPM, Report with recommendations on the visit to Correctional Centre for Women and Juveniles in Lipjan. For more information, see: <https://www.oik-rks.org/en/2019/05/24/report-with-recommendations-correctional-centre-for-women-and-juveniles-in-lipjan/>.

²⁹ NPM, Report with recommendations on the visit to the Detention Centre in Mitrovica. See at: <https://www.oik-rks.org/en/2019/07/04/report-with-recommendations-of-the-national-preventive-mechanism-against-torture-concerning-the-visit-to-the-pre-detention-centre-in-mitrovice/>.

³⁰ NPM, Report with recommendations on the visit to Detention Centre in Prizren. See at: <https://www.oik-rks.org/en/2019/08/06/report-with-recommendations-of-national-preventive-mechanism-against-torture-concerning-the-visit-conducted-to-the-pre-detention-centre-in-prizren/>.

³¹ NPM, Report with recommendations on the visit to Detention Centre in Lipjan. See at: <https://www.oik-rks.org/en/2019/08/19/report-with-recommendations-of-national-preventive-mechanism-against-torture-concerning-the-visit-conducted-to-the-pre-detention-centre-lipjan/>.

³² NPM, Report with recommendations on the visit to High Security Prison. See at: <https://www.oik-rks.org/en/2019/11/25/report-with-recommendations-high-security-prison/>.

rights of prisoners and CPT standards. Regarding the access of persons with disabilities (although there were none), all elevators were functional, which enables the access of prisoners with disabilities.”

However, NPM noted that the floors in blocks 1, 2, in the stationary and in the admission block have been damaged and continue to be damaged. Through the report with recommendations sent to the competent authorities on 22 November 2019, NPM recommended the competent authorities to take actions to avoid these deficiencies. On 4 December 2019, the HSP Directorate informed the NPM that the HSP stationary was fully renovated and then the renovation of floors in the other facilities will continue.

In the report with recommendation on the visit to ECCL³³, NPM ascertained that rooms where the juveniles were staying, in terms of their size and natural and artificial lighting, were in compliance with standards set forth by CPT and LEPS. Moreover, rooms and toilets dedicated to persons with special needs offer good and adequate accommodation. NPM considers that, in general, the accommodation conditions in ECCS exceed the minimum standards and reach the level of desirable standards for the accommodation of juveniles against whom an educational measure was imposed.

During the reporting period, NPM has visited the DCGJ. In the course of this visit, NPM noted that the accommodation conditions at this centre still remain at a very satisfactory level and are in compliance with standards set forth by CPT and LEPS.

However, during the visit, NPM has also noted that its recommendation to asphalt the part of unpaved road, which can pose serious difficulties to perform the work in accordance with LEPS during winter season and rainfall, has not been implemented yet, despite the efforts of the Directorate and KCS to cooperate with municipal authorities in this regard. Therefore, in the recommendation letter submitted to the Ministry of Justice on 16 December 2019³⁴, NPM reiterated the abovementioned recommendation.

As regards the accommodation conditions at the Detention Centre in Pejë, during the last follow-up visit carried out on 15 November 2019, NPM has visited a number of cells and has ascertained that the living space of a cell per prisoner, lighting and ventilation are not in line with CPT standards and LEPS. On 16 December 2019, NPM has recommended to the Ministry of Justice through a recommendation letter that the accommodation conditions, while this centre is in use, be in line with the minimum standards set forth by LEPS, CPT standards and other international standards on the protection of the prisoners' rights.³⁵

During the reporting period, NPM visited the Detention Centre in Prishtina.³⁶ As regards accommodation conditions, NPM has noted that the cells where the prisoners are accommodated have sufficient natural light

³³ NPM, Report with recommendations on the visit to the Educational-Correctional Centre in Lipjan. See at: <https://www.oik-rks.org/en/2019/09/25/report-with-recommendations-of-the-national-preventive-mechanism-against-torture-concerning-the-visit-to-the-educational-correctional-centre-in-lipjan/>.

³⁴ NPM, Recommendation letter on the visit to the Detention Centre in Gjilan, published on 16 December 2019. For more information, see at: <https://www.oik-rks.org/en/2019/12/17/recommendation-letter-pre-detention-center-in-gjilan/>.

³⁵ NPM, Recommendation letter on the visit to the Detention Centre in Peja. See at: <https://www.oik-rks.org/en/2019/12/17/recommendation-letter-pre-detention-center-in-peje/>.

³⁶ NPM, Report with recommendations on the visit to the Detention Centre in Prishtina, published on 22 November 2019. For more information, see at: <https://www.oik-rks.org/en/2019/11/25/report-with-recommendations-pre-detention-centre-in-prishtina/>.

and living space which goes beyond the standards set by the LEPS and standards set by CPT. In addition to this, NPM has noted that there are two cells adequate and available for prisoners with disabilities.

Food

As regards the quality and quantity of food, NPM, during the reporting period, received complaints by the prisoners at the Educational-Correctional Centre in Dubrava and by juveniles accommodated at the Educational Centre in Lipjan. In this regard, on 11 November 2019, NPM has contacted the Food and Veterinary Agency and, via the official e-mail, has requested the latest report of this agency in order to carry out an inspection at the Correctional Centre in Dubrava.

Notwithstanding the obligation to cooperate with the Ombudsperson Institution, which is provided for by the Constitution of the Republic of Kosovo³⁷ and Law on Ombudsperson³⁸, this institution did not respond to the submitted request.

Through the report with recommendations on the visit to the Educational-Correctional Centre in Lipjan, NPM has recommended the competent authorities that the food for juveniles is ample and appropriate, according to calories required for the growth and development of juveniles.³⁹ On 19 September 2019, the Directorate of the Educational-Correctional Centre notified the NPM that juveniles in this centre are currently being served according to the menu for convicts and detainees and within the KCS budget.

In this regard, NPM has noted that CPT, in its report on the visit to Estonia from 30 May until 6 June 2012, which was published on 21 January 2014⁴⁰, regarding the food for juveniles, in paragraph 73 states as follows: *“The food provided to prisoners should be sufficient to ensure their well-being. This is particularly important for young persons, who may not have reached their full growth potential. In such a case, the consequences of inadequate nutrition may become evident more rapidly – and be more serious – than for those who have reached full physical maturity.”*

Further, CPT has provided the following recommendation to the Estonian authorities: *“The Committee recommends that the relevant authorities carry out a full review of the food provided to juveniles and young offenders at Viru Prison in order to ensure that it is sufficient not only in terms of quality but also in terms of quantity.”* NPM encourages competent authorities to act in the spirit of this recommendation regarding the food for juveniles.

Supplying prisoners with dietary nutrition is the obligation of the competent authorities provided for by LEPS⁴¹ and international standards on the rights of prisoners⁴². In general, NPM, during the reporting

³⁷ Constitution of the Republic of Kosovo, Article 132, paragraph 3.

³⁸ Law no. 05/L-019 on Ombudsperson, Article 25.

³⁹ Report with recommendation on the visit to the Educational-Correctional Centre in Lipjan, published on 26 August 2019. For more information, see at: <https://www.oik-rks.org/en/2019/09/25/report-with-recommendations-of-the-national-preventive-mechanism-against-torture-concerning-the-visit-to-the-educational-correctional-centre-in-lipjan/>.

⁴⁰ CPT, Report with recommendations on the visit to Estonia, paragraph 73. For more information, see at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069576a>

⁴¹ Law no. 04/L-149 on Execution of Penal Sanctions, Article 39, par. 2.

⁴² CPT standards. For more information, see at: <https://www.coe.int/en/web/cpt/prison-health-care>

period, has noted that prisoners are provided food in line with the recommendation of physicians, except in specific cases where there was a temporary lack of such food.

During the follow-up visit to CCD, NPM has noted that its recommendation to supply the CCD's kitchen with adequate appliances according to needs assessment was not implemented. Moreover, during this visit, it also noted that the kitchen staff did not have work uniforms. Through the recommendation letter on findings during the follow-up visit to CCD, the NPM has recommended that the kitchen be equipped with adequate appliances for work and that kitchen staff be equipped with work uniforms.⁴³

Overcrowding

During the reporting period, the NPM has noted that overcrowding is not a problem for the correctional and detention centres. Moreover, there is sufficient unused space at the Detention Centres in Prishtina and in Gjilan and in the HSP, due to the lack of inventory and correctional personnel to accommodate a large number of prisoners. In rare cases, it has been noted an extremely symbolic overpopulation in periods of renovations in certain blocks but which has been eliminated without much delay.

Regime

Through the reports with recommendation, the NPM has recommended the competent authorities that efforts need to be made in order to include as many prisoners as possible in work, education, training sessions, and other meaningful activities so that the most successful re-socialization of prisoners is achieved. During the reporting period, the NPM has noted improvements in the regime of the correctional centres. During the visit to the CCS, the NPM has noted that 75 convicts, in general, have been engaged in work. The convicts are engaged in cleaning, kitchen work and certain maintenance of the facility. The work engagement is significantly increased during the summer as the CCS owns greenhouses where vegetables are cultivated and there are areas of agricultural land within the perimeter of the prison where different crops are cultivated as well.

Through the report with recommendations on the visit to the CCS, the NPM has recommended to the competent authorities to take actions for functionalization of workshops available to this centre so that the prisoners can benefit from the opportunity for vocational training sessions.

On 24 July 2019, the Directorate of CCS informed the NPM that the auto mechanic and welding workshops were fully operational and the professional staff together, with a group of prisoners, were servicing vehicles within the KCS. Moreover, the Directorate informed the NPM that efforts are being made to engage professional officers in holding the welding workshop.

On 20 November 2019, the KCS published a notice emphasizing that seven convicted persons accommodated in CCS have started to work outside this correctional institution upon the approval of the Administrative Instruction on the Work of Prisoners Outside the Correctional Institution.⁴⁴

⁴³ NPM, Recommendation letter on the follow-up visit to CCD. See at: <https://www.oik-rks.org/en/2019/12/17/recommendation-letter-dubrava-correctional-centre/>.

⁴⁴ For more information, see at: https://shkk.rks-gov.net/al/lajmi_single/2757

During the visit to CCD (from 28 until 30 October 2019), the NPM has noted that its recommendation to functionalize the sports hall, which was submitted to competent authorities through the report with recommendations of 28 June 2019, has been implemented. Further, during the visit, the NPM has noted that, upon the functionalization of the sports hall, numerous sports activities for prisoners are enabled. Prisoners can also develop sports activities in the sports areas within the CCD's yard.

During the last visit, the Directorate has informed the NPM that around 344 prisoners in CCD are engaged in paid work. The Director has started to engage the prisoners in work regarding the renovation of blocks and other works. Furthermore, there are three workshops functionalized within the CCD, which in fact are also vocational training centres, where training sessions on welding, construction, machinery, carpeting, technical maintenance, water and electricity installation are organised. Courses whose duration is three months are organised in these workshops.

Based on the assistance provided by the NGO "HELP", 10 prisoners were provided with vocational training sessions for welding, who were also certified. Within the CCD, there is a high school with 44 convicts attending classes. The NPM has noted that efforts have been made to operationalize the economic unit provided for by the LEPS, but an administrative instruction that would specify the work of this economic unit is expected to be approved.

Whereas, at the half-opened block in CCD, all the convicts are engaged in agriculture and livestock. During the visit, the NPM has noted that in the yard of the concerned block there is a garden and greenhouse in which fruits and vegetables are cultivated and used for food in CCD.

During the reporting period, the NPM, through the report with recommendation on the visit to ECCL, has recommended to the competent authorities to functionalize the cabinets that exist within the centre, but which are not being used due to the lack of professional trainers. On 19 September 2019, the Directorate of ECCL has informed NPM regarding the efforts it is making to train the adequate personnel to provide courses of vocational training sessions for juveniles by using these cabinets.

On the other hand, through the visits carried out during this year, the NPM has noted that training sessions for water supply, electricity, masonry, haircut, English language courses, and other courses, were organized at the ECCL. From the documentation received from ECCL, it is seen that an NGO has organized 12 sessions with juveniles, where different topics from everyday life have been addressed. CARITAS KOSOVA has enabled the organization of the art therapy and theatre therapy for juveniles, and a music concert was also organized and the EQUIP program which is dedicated to stress and anger management is still operational.

The CCWJL has a lower secondary school and high secondary school within the public education system. Through the visits carried out during the reporting period, the NPM has noted that different psycho-social programs organized by local and international non-governmental organizations, were available to juveniles. Among them, there are also art therapy and theatre therapy, and an exhibition was organized, where the juveniles' works from visual arts were presented. Sports activities, EQUIP program and work engagement, which is at a greater level during the summer as CCWJL owns a greenhouse whereby prisoners can be

engaged to work, are also available to juveniles and adult prisoners. According to the Directorate, vocational training sessions on hydro-installers, electric-installers, and construction services are being delivered.

During the visit to the DCM, where convicts are accommodated as well, the NPM has noted that around 13 convicted persons were engaged in work. Five workshops where convicts can be engaged in work and in various training sessions are held within the DCM. A library, promenade, and fitness room are also at the availability of prisoners. During the reporting period, in addition to the engagement in workshops, cleaning and kitchen works, DCM also organized training for aggression control in which 19 prisoners participated. This training was supported by the non-governmental organization “HELP.” The NPM has noted that the DCM was well-equipped with premises for the organization of various courses.

During the visit to the HSP, the NPM has noted that around 70 convicted persons were engaged in work. Within the HSP, there is also a carpentry workshop in which four convicted persons are engaged and now they manufacture beds for ECCL.

Other workshops currently cannot be functionalized due to the lack of adequate equipment and competent trainers. The NPM has noted that different equipment for playing games such as table tennis and table football are at the availability of convicted persons. Convicted persons may spend a part of their time in certain blocks (depending on the regime) by being free to move within the block.

The NPM received complaints by the prisoners in block 1 and by the detained persons in HSP regarding the regime. According to their claims, they spend most of their time indoors (about 22 hours) and are able to walk in fresh air two hours per day only. From the interviews with these convicted and detained persons, it can be concluded that they understand their regime as a punitive regime.

During the reporting period, the NPM has noted that sports halls in HSP are laid down with white concrete, which impedes the normal development of sports activities since frequent injuries can occur. Moreover, the promenades are fenced by high walls with the same material and colour with dazzling reflection.

Through the report with recommendations published on 22 November 2019, the NPM has recommended the competent authorities to avoid the issue of using the white reflective colour, which is a barrier for activities outside the cell. On 5 December 2019, the Directorate of HSP informed the NPM that, related to this recommendation, KCS concluded a contract with a company which has repaired the damaged promenades and painted the walls with anti-reflective colour.

However, the regime provided to the detained persons in all the detention centres still remains a concern for the NPM. In this regard, the NPM, following the visits to all detention centres, through the reports with recommendations⁴⁵, has recommended the Ministry of Justice to step up efforts in providing the prisoners a

⁴⁵ Report with recommendations on the visit to the Pre Detention Centre in Prishtina, published on 22 November 2019, paragraphs 15-21. See at: <https://www.oik-rks.org/en/2019/11/25/report-with-recommendations-pre-detention-centre-in-prishtina/>. Report with recommendations on the visit to the High Security Prison, published on 22 November 2019, paragraphs 12-23. For more information, see at: <https://www.oik-rks.org/en/2019/11/25/report-with-recommendations-high-security-prison/>. Report with recommendations on the visit to the Pre Detention Centre in Lipjan, published on 16 August 2019. For more information, see at: <https://www.oik-rks.org/en/2019/08/19/report-with-recommendations-of-national-preventive-mechanism-against-torture-concerning-the-visit-conducted-to-the-pre-detention-centre-lipjan/>. Report with recommendations on the visit to the Pre Detention Centre in Prizren, published on 5 August 2019. For more information, see at: <https://www.oik->

regime through which, besides walking in a fresh air twice per day for a period of one hour, other daily activities would also be enabled. The NPM has noted that their engagement in work is very rare and this is because their engagement is subject to obtaining permission by the competent court.

However, the NPM has noted that Article 199 paragraph 2 of the Criminal Procedure Code stipulates that *“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.”*

While Article 200 of paragraph 1 of the LEPS, related to the engagement in work of the detained persons stipulates as follows: *“A detainee may work in the workshop, workshops of the economic units within the respective correctional institution only with the approval of the competent court.”*

In its report on the visit to the Republic of Kosovo in 2015, which was published in 2016, the CPT, regarding the regime for the detainees, expressed its concern that despite the efforts of authorities, the detainees, besides two hours of walking per day, spend most of their time in their cells watching TV and playing cards.⁴⁶

Through this report, the CPT provided the following recommendation to the competent authorities of the Republic of Kosovo: *“The CPT reiterates its recommendation that the authorities strive to enhance the out-of-cell activities available to remand prisoners in all the establishments visited and, where appropriate, in other KCS establishments.”* Further, the CPT stated that: *“the longer the period for which remand prisoners are detained, the more developed should be the regime offered to them. To this end, steps should also be taken to ensure that staffing levels are, where required, increased accordingly.”*

NPM considers that based on the applicable legislation and CPT's recommendations, the competent authorities should make efforts to increase the number of activities outside the cell for the detainees in other detention centres, as far as possible.

Contact with the outside world

Applicable legislation⁴⁷, in the case of convicted persons, stipulates that convicted prisoners have unlimited right of correspondence (subject to certain exceptions), are entitled to a visit per month, which lasts for at least one hour, as well as a visit from children and their spouses at least once every three (3) months, for minimum of three (3) hours. In addition, they have the right to place telephone calls.

Regarding phone calls, the Administrative Instruction on House Rules in Correctional Institutions⁴⁸ stipulates that the convicted person is entitled to place phone calls to close family members and other

rks.org/en/2019/08/06/report-with-recommendations-of-national-preventive-mechanism-against-torture-concerning-the-visit-conducted-to-the-pre-detention-centre-in-prizren/.

⁴⁶ The CPT's report on the visit to Kosovo, published in September 2016, paragraph 46. For more information, see at: <https://rm.coe.int/16806a1efc>.

⁴⁷ Law on Execution of Penal Sanctions, Articles 62-65.

⁴⁸ Administrative Instruction on House Rules in Correctional Institutions, Article 54.

persons. During the visits in correctional and detention centres, NPM has not received complaints by the detained and convicted persons with regard to this right.

In the case of detainees, Article 200 of the Criminal Procedure Code of Kosovo stipulates that the detainees may receive visits “*within the limits of the detention centre rules,*” based on the permission of the pre-trial judge and upon his/her supervision. Further, the Code stipulates that the correspondence and other visits shall be subject to the decision of the pre-trial judge.

The Ombudsperson or his/her representative may visit detainees and may correspond with them without prior notice and without the supervision of the pre-trial judge, single trial judge or presiding trial judge or other persons appointed by such judge. Letters from the detainees submitted to the Ombudsperson Institution may not be controlled. The Ombudsperson and his/her representative may communicate confidentially with the detainees orally and in writing.

In the case of a foreign national, he/she shall be provided with the opportunity to contact a diplomatic representation or relevant office of his/her State of nationality in writing or by telephone.⁴⁹ During the reporting period, NPM did not receive complaints from the convicted and detained persons regarding the right to contact with the outside world. In addition to this, the NPM has noted that the communication tool “SKYPE” through which the prisoners can communicate with their families has started to be applied in CCS and ECCL.

Visiting facilities

The facilities where prisoners receive visits, in general, are in a satisfactory condition. However, the visiting rooms for the convicted persons provide the possibility of direct contact between the convicted person and visitors. While in the case of detainees, the situation is different as there are barriers between the detainee and visitor that prevent direct contact.

In this regard, NPM has noted that CPT, in its report on the visit to Ukraine⁵⁰, addressed the issue of closed visits, whereby the prisoner and the visitor are physically separated by Plexiglas. On this occasion, the CPT recommended Ukrainian authorities to amend the relevant regulations in order for all prisoners, including the detained persons, to be able to receive visits at a reasonable time and with no barriers, while the utilization of closed facilities for visits should be more of an exception than a rule.

Further, the CPT emphasized that the closed-type visits must always be well-grounded and well-justified, and must be based on the individual assessment of the potential risk posed by a particular prisoner. The NPM, through the report with recommendations, encouraged the competent authorities to, in the spirit of

⁴⁹ Law on Execution of Penal Sanctions, Article 33 paragraph 1.

⁵⁰ CPT, Report with recommendations on the visit to Ukraine in December 2017, published on 6 September 2018, paragraph 102. For more information, see at: <https://rm.coe.int/16808d2c2a>.

this recommendation, consider opportunities for such visits to take place in more open conditions and based on the individual risk assessment of specific prisoners.⁵¹

The issue of translation into official languages at the Detention Centre in Mitrovica

During the visit to DCM, the NPM acknowledged the concerns of social workers regarding the official documentation which shall be submitted to persons deprived of their liberty, who are of two ethnic backgrounds, and which is accepted only in one language and is not translated into official languages due to the lack of a professional translator.

In the report with recommendations on the visit to the Detention Centre in Mitrovica, the NPM emphasized: *“NPM considers that the competent authorities must take into account the legal obligation for these services to be provided in the official languages of the country, as defined in the Constitution and relevant legislation that govern this issue.”* The NPM, through this report, recommends the competent authorities to ensure the professional translation into the official languages of the Republic of Kosovo.

On 4 December 2019, the DCM informed the NPM that the issue of translation into official languages of the Republic of Kosovo is regulated by using the services of the CCS's official translator.

Secondary legislation on fighting corruption provided for by LEPS

Concerning recommendations of NPM related to adoption of secondary legislation for elimination of corruption as foreseen by Article 5, paragraph 3, of the LEPS, NPM ascertains that the situation remains unchanged and that responsible authorities fail to meet this liability.⁵² However, during the reporting period, the KCS, in order to fight corruption in the correctional and detention centres, has transferred the correctional officers to work in other correctional and detention centres.

NPM recommendations regarding the LEPS⁵³

In previous reports, the NPM has expressed concerns that the applicable legislation⁵⁴ provides that, before the prisoner is placed in solitary confinement, the director of the correctional institution shall request in writing the opinion of the physician, who confirms that the convicted is in a good physical and mental health condition to be subject to the disciplinary measure of solitary confinement.

In this regard, the NPM, during the visits to the correctional centres and detention centres, has noted that the PHD personnel refuses to implement this legal provision and acts in line with the SOPs⁵⁵ approved by the

⁵¹ NPM, Report with recommendations on the visit to the Detention Centre in Prishtina, published on 22 November 2019, paragraphs 45-47. See at: <https://www.oik-rks.org/en/2019/11/25/report-with-recommendations-pre-detention-centre-in-prishtina/>.

⁵² Report with recommendations on the visit to Dubrava Correctional Centre, paragraph 9, published on 28 June 2019.

⁵³ NPM, Report with recommendations on the visit to CCD, published on 28 June 2019. See at: <https://www.oik-rks.org/en/2019/07/04/report-with-recommendations-of-the-national-preventive-mechanism-against-torture-on-the-visit-to-dubrava-correctional-centre/>.

⁵⁴ Article 107 of Law on the Execution of Penal Sanctions, and Article 76 Administrative Instruction on House Rules in Correctional Institutions.

⁵⁵ Standard Operational Procedure of DSHB, approved by the Ministry of Health. See at: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Veprimit-n%C3%AB-DShB.pdf>

Ministry of Health. This issue is regulated by point 6, paragraphs 2 and 3 of the SOP. Paragraph 2 of point 6 of SOP explicitly states: *“The authorized panel of prison administration shall decide on sending any prisoner to solitary confinement as a consequence of disciplinary violations.”* While paragraph 2 of point 6 of the SOP stipulates that: *“The panel for evaluating the disciplinary violation or any other non-health-related action shall decide, without the presence of the medical staff, on whether to send the prisoners in solitary confinement or not.”*

In this regard, the NPM notes that the CPT, in its report on a visit to the Republic of Kosovo in 2015, expresses concerns since the applicable legislation (LEPS, Article 107 and the Administrative Instruction on House Rules in Correctional Institutions, Article 76) stipulates that, in order for a prisoner, which is convicted with a disciplinary measure of solitary, to be subject to the concerned measure, the following shall be required *“a written medical opinion which states that the convicted person is in a physical and psychological condition and capable to endure a period of time of solitary confinement.”*

An emphasis in this report is that CPT has noted that the medical staff ceased to require such a thing, and further states that physicians at the correctional and detention centres act in the capacity of personal physicians of detainees, and maintaining the physician-patient relationship is a key factor to maintain the health of prisoners. Such practice of written medical confirmation which certifies that the prisoner is physically and psychologically capable to undergo this disciplinary measure can undermine this physician-patient relationship. The CPT, through this report, stated that the medical staff should never be involved in the decision-making process where the imposition of any measure of solitary is taking place, unless in cases when this measure is imposed due to medical reasons.

Through the concerned report, the CPT has recommended the competent authorities in the Republic of Kosovo to amend the applicable legislation in line with this recommendation.⁵⁶ The NPM, through the reports with recommendations, recommended that the applicable legislation in the spirit of the CPT's recommendations and other relevant international acts on prisoners' rights must be amended.

Living space per prisoner according to applicable LEPS

The NPMs notes that Article 3 of the Law 05/L-129 on Amending and Supplementing Law no. 04 / L-149 on the Execution of Penal Sanctions, regarding living space per prisoners, stipulates the following: *“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) cubic meters of space, when is possible and nine (9) cubic meters for the convicted in joint cells and four (4) cubic meters for single cells, and an adequate amount of natural and artificial lighting for work and reading, heating and ventilation”.*

The NPM notes that this provision and the repealed LEPS provision as well, do not determine whether this space is calculated without including the toilets annexes. In this regard, the NPM notes that the CPT's

⁵⁶ CPT, Report with recommendations on the visit to the Republic of Kosovo in 2015, published in 2016, paragraph 76. See at: <https://rm.coe.int/16806a1efc/>. See also CPT's reports on the visits to Kosovo in 2007 at: <https://rm.coe.int/16806972c2> and the visit in 2010 at: <https://rm.coe.int/16806972c7>

standards for personal living space per prisoner determine minimum standards, always not including therein the space of the toilet annexes.⁵⁷

NPM considers that the LEPS should comply with the aforementioned standard for personal living space for prisoners, i.e. that the LEPS should determine the personal living space for prisoner, excluding the sanitary annexe.

Complaints for discriminatory treatment

During the reporting period, the NPM has received complaints from prisoners convicted of terrorism-related offenses, who claimed to be discriminated against by authorities in terms of benefits, despite fulfilling the legal criteria. The NPM has noted that in certain cases, convicted persons under this category have received these benefits, albeit in very small numbers. In this regard, the NPM notes that Article 92 of LEPS stipulates that the Director of a Correctional Facility may allocate particular privileges to a convicted person who is behaving well and is working hard, following the motion of the team for planning on holding sentence. This issue is further regulated by the Administrative Instruction on House Rules in Correctional Institutions (Articles 60-63), which provides the conditions and ways to be considered by the department when approving a request. The NPM notes that this house rule provides that the decision of the director is final, i.e. the case is ultimately at the discretion of the director.

Complaints against the Conditional Release Panel

During the reporting period, the NPM received complaints from the convicts against the Conditional Release Panel (hereinafter the CRP) for not-submitting the Rulings to the Convicts who submitted their application and their case was reviewed by this body.

Regarding these complaints, the NPM has, based on the complaints received, requested additional information from CRP and recommended the CRP to comply with the obligations towards the applicants for conditional release deriving from the Regulation on the Organization and Functioning of the CRP.

Law no. 05/L-129 on Amending and Supplementing the Law no. 04/L-149 on Execution of Penal Sanctions defines the composition of CRP. Pursuant to Article 18, paragraph 2, CRP is comprised as follows: one (1) judge from Supreme Court delegated by the President of the Supreme Court; one (1) judge from Appeal Court delegated by the President of the Appeal Court, and one (1) judge from Basic Court in Prishtina, delegated by the President of the Basic Court. With the aforementioned changes, the CRP now comprises of a fully judicial composition. The NPM reiterates that the Ombudsperson has no jurisdiction over court decisions, except in cases of delay in proceedings⁵⁸. Also, the Regulation on the Functioning and Organization of CRP expressly states that the decisions of the CRP cannot be appealed.

Pardon by the President

Pardon by the President means the extraordinary executive power of the President to forgive a convicted person of his or her criminal offence and to relieve him or her of the punishment imposed by a court's

⁵⁷ CPT - CPT's minimum standard for personal living space for prisoners, published on 15 December 2015, paragraphs 5-11. For more information see: <https://rm.coe.int/16806cc449>

⁵⁸ Law No. 05/L-019 on the Ombudsperson, Article 16.8.

judgment and sentence.⁵⁹ Pursuant to the Law on Pardon, the pardoning is the President's right intended not as a regular remedy, but as a seldom-used tool to reward extraordinary displays of character and conduct or to address serious humanitarian concerns⁶⁰. Even during the reporting period, the NPM has received complaints from convicts regarding the President's pardon. NPM also received complaints from convicts because no convicted person was pardoned by the President. During the reporting period, the President promulgated the Decree 250/2019, pardoning three prisoners. Among them there was no convicted person.

The NPM, recognizing the full discretion of the President to decide on the matter, nevertheless considers that when pardoning, the principles of gender equality and non-discrimination, provided by the Law on Gender Equality and the Law on Protection from Discrimination, should also be taken into account.

The NPM meeting with KCS General Director

On 13th of December 2019, the Director of the NPM and its associates, were hosted in a business meeting by KCS General Director, Mr. Nehat Thaçi. During this meeting, both parties, in a very collegial and understanding atmosphere, discussed the findings and recommendations of NPM during 2019. In addition, the KCS challenges and plans for the future were discussed.

Health care in correctional and detention centres

Health services in the correctional and detention centres are managed by the Ministry of Health, respectively since 2013 by PHCD, because until then this service was managed by the Ministry of Justice. Health services for prisoners are provided in the PHCD health units in all correctional and detention centres, and in public health institutions, as needed. Within the CCD, also operates the prison hospital.

Personnel, treatment and infrastructure

During the reporting period, the NPM noted that in all correctional and detention centres, the number of medical personnel (general practitioners and specialists) was adequate. Regarding the nursing personnel, NPM, through its report with recommendations for the visit conducted to the DCL⁶¹, has recommended the Ministry of Health to increase the number of middle personnel in the health unit of DCL, as needed. On 2 July 2019, the PHCD, through an official letter, agreed with the recommendation in question and informed NPM that efforts shall be made to increase the number of personnel, as required under this recommendation.

During the visit conducted to the DCM, on 12 March 2019, NPM was informed that there was no psychologist employed at the centre. In this regard, NPM, after the visit, contacted the Director of the CCD, who informed him that the recruitment procedures for the regular psychologist have been completed and that the selected candidate shall start working from 1st of July 2019.

Regarding drug addiction, methadone treatment is offered at all correctional and detention centres. Psychiatric treatment of prisoners is provided at the CCD hospital and other public health institutions.

⁵⁹ Law no. 03/L-101 on Pardon, Article 2

⁶⁰ Law no. 03/L-101 on Pardon, Article 3, paragraph 1.

⁶¹ Report with recommendations on the visit conducted to the Pre Detention Center in Lipjan, published on 16 August 2019. For more information see: <https://www.oik-rks.org/en/2019/08/19/report-with-recommendations-of-national-preventive-mechanism-against-torture-concerning-the-visit-conducted-to-the-pre-detention-centre-lipjan/>.

However, NPM during the visits noted that the psychiatric treatment in the CCD hospital is based mainly on regular therapy and consultation with the psychiatrist, but not on genuine psychosocial activities and occupational therapy. The NPM also considers that, based on the large number of prisoners, one psychologist is not enough to provide psychological services at the CCD. Psychiatric services are also provided at KFPI. However, NPM notes with concern that this institute has only 12 beds available to the KCS.

During the reporting period, safe rooms were made operational in three UCK units, whereas, in the regional hospitals the safe rooms were renovated. This will increase the capacity to provide medical services outside the correctional and detention centres.

During a visit conducted to the KFMC, the NPM interviewed the juvenile L.L and analysed his medical file. In this regard, the NPM on 15 January 2019 recommended to PHCD that the juvenile be immediately placed under permanent surveillance until a decision by the healthcare authorities. The response of the PHCD and the KFMC Directorate was immediate to implement this recommendation and in the meantime, the juvenile concerned has been sent for further treatment to the KFPI.

The NPM considers that competent authorities should increase their efforts to provide adequate psychiatric services to prisoners with serious mental disorders, including psychosocial activities and occupational therapy, in addition to regular therapy and consultations with a psychiatrist. In addition, the competent authorities should increase efforts to enhance the capacities of institutions in which prisoners with such disorders are treated.

The second floor in the hospital of CCD was renovated. However, the NPM has noted that there aren't sufficient sheets for hospitalized patients and that hygiene level is not adequate. Regarding this situation, the PHCD informed NPM on 16 July 2019 that there is a lack of space for the treatment of prisoners, lack of furniture for placing the patient's clothes and that the first floor of the hospital is expected to be renovated. Among other things, the PHCD informed NPM that the difficulties in managing patients are creating the lack of a special institution for the treatment of prisoners with special needs.

During the visit to the CCP, the NPM has noted that the space used for health care is insufficient and does not even comply with the minimum needs. Operational is a room that is used for all primary care needs by the prison doctor, nurses, psychologist when there are cases to treat, as well as a permanent space for healthcare personnel to stay. Despite the NPM's recommendations to establish adequate working conditions for the medical personnel, the situation remains the same during the reporting period.⁶² The same situation was noted at the Detention Centre in Peja. Through its Report with Recommendations, the NPM has recommended competent authorities to establish adequate working conditions for the medical personnel.⁶³ Since the same situation was found even during the reporting period, the NPM reiterated this

⁶² Report with recommendations on the visit conducted to the Pre Detention Center in Prizren, published on 5 August 2019, paragraph 31. For more information see: <https://www.oik-rks.org/en/2019/08/06/report-with-recommendations-of-national-preventive-mechanism-against-torture-concerning-the-visit-conducted-to-the-pre-detention-centre-in-prizren/>.

⁶³ Report with recommendations on the visit conducted to the Pre Detention Center in Peja, published on 22 November 2018, paragraph 30. For more information see: <https://www.oik-rks.org/en/2018/11/22/report-with-recommendations-of-the-national-mechanism-for-the-prevention-of-torture-on-the-visit-to-peja-detention-center/>.

recommendation in its recommendation letter sent on 16 December 2019⁶⁴. Such deficiencies were also noted in the NPM report on the visit conducted to the DCM.⁶⁵ This situation also conflicts with the principle of confidentiality of medical services.

During the visit conducted to the HSP, the NPM noted that physical conditions in one of the parts of the health unit were not good due to damages in the floor. In the floor where the dentist is located, services are provided under difficult conditions, as there is dust and construction material all over. The halls are not functional and are located in the same floor as the dental clinic. Through the report with recommendations published on 22 November 2019, the NPM recommended competent authorities to avoid these deficiencies. On 4 December 2019, the HSP informed the NPM that these deficiencies were avoided, in accordance with the recommendation sent.

Medical examinations of newly arrived

European Committee for the Prevention of Torture in its report on the visit conducted to Kosovo in 2015, has emphasized the essential importance of medical examinations, especially in cases of newly admitted prisoners or detainees, not only for identifying infectious diseases and suicide prevention, but also through the contribution that is given to the prevention of torture through the proper identification of injuries.⁶⁶

Law on Execution of Penal Sanctions⁶⁷ and SOP⁶⁸ of PHCD, determine the obligation for the newly admitted prisoner to undergo medical examination within 24 hours of admission. Such obligations are also determined in international acts on the protection of prisoners' rights, such as: the Nelson Mandela Rules⁶⁹, European Prison Rules⁷⁰. During the reporting period, the NPM noted that all newly admitted prisoners were provided with medical examinations within 24 hours of their admission.

Medical confidentiality

Confidentiality of medical services is foreseen by the SOP,⁷¹ approved by the Ministry of Health, with LEPS⁷² and the Administrative Instruction on House Rules in Correctional Institutions,⁷³ as well as relevant international acts on the rights of prisoners.⁷⁴

⁶⁴ NPM Recommendation Letter on the visit conducted to the Pre Detention Center in Peja, published on 16 December 2019. For more information see: <https://www.oik-rks.org/en/2019/12/17/recommendation-letter-pre-detention-center-in-peje/>.

⁶⁵ Report with recommendations on the visit conducted to the Pre Detention Center in Mitrovica, published on 28 June 2019, paragraph 18. For more information see: <https://www.oik-rks.org/en/2019/07/04/report-with-recommendations-of-the-national-preventive-mechanism-against-torture-concerning-the-visit-to-the-pre-detention-centre-in-mitrovica/>.

⁶⁶ CPT, Report on visit conducted in Kosovo in 2015, published in 2016, paragraph 62. See: <https://rm.coe.int/16806a1efc>

⁶⁷ Law no. 04/L-149 on Execution of Penal Sanctions, Article 31

⁶⁸ Standard Operation Procedures, point 1. See: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standard-te-Vepimit-n%C3%AB-DShB.pdf>.

⁶⁹ The Nelson Mandela Rules, Rule 34. See: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

⁷⁰ Council of Europe, Recommendation (2006) 2 of the Council of Minister for Member States on European Prison Rules, point 42.1. see at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804c221d>.

⁷¹ Standard Operation Procedures, point 11. See: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standard-te-Vepimit-n%C3%AB-DShB.pdf>

⁷² Law on Execution of Penal Sanctions, Article 49.

During the visit conducted to the DCP, NPM observed a disturbing practice involving blood taking samples, which were placed in test tubes and then sent to the laboratory of the Family Medicine Centre by the nurse or correctional officer. Regarding this practice, NPM, ad hoc recommended the termination of such practice, which is not in compliance with medical rules and violates the confidentiality of medical services. Through the report with recommendations⁷⁵, the NPM notified the PHCD of the issue and recommended the termination of such practices. The PHCD has informed the NPM that this recommendation was implemented by introducing the laboratory manual whereas in cases when samples as transferred outside DCP, this shall not be done by the correctional officer but rather by the nurses.

The NPM, based on interviews with prisoners and medical staff finds that in general these health services are provided under conditions that respect confidentiality, i.e. are provided without the presence of correctional officers, unless the medical staff expressly requests such a thing in certain cases. Only the medical personnel have access to the prisoner's medical file.

Staff of correctional and detention centres

The NPM, through reports with recommendations for the visits to correctional and detention centres, has recommended competent authorities, to engage additional correctional staff and social workers, where deemed necessary.⁷⁶ Correctional personnel were recruited at the Detention Centre Gjilan, whereby the number of staff increased by 51 officials. In CCD, there was no increase in correctional staff and social workers, although this was deemed necessary and recommended by the NPM.

Complaints procedure at the correctional and detention centres

An effective complains filing system is a fundamental guarantee against ill-treatment in prisons and detention centres. Persons accommodated in these centres should have the opportunity to file a complaint within the prison or detention centre where they are accommodated and be provided with access to the appropriate authority confidentially.

Article 91 of the LEPS details the procedure according to which the detained and convicted persons shall be entitled to address a complaint or petition to the director of a certain KCS institution. During the reporting period, the NPM did not receive credible complaints from prisoners with regard to KCS competent body's failure to respond to complaints and claims. In addition to the NPM, prisoners may also file complaints with non-governmental organizations that visit places of deprived under an agreement they have with the relevant ministry.

⁷³ Administrative Instruction on House Rules in Correctional Institutions, Article 25, paragraph 3.

⁷⁴ The Nelson Mandela Rules, European Prison Rules, CPT Standards, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty

⁷⁵ Report with recommendations on the visit conducted to the Detention Center in Prizren, published on 5 August 2019, paragraph 30. For more information see: <https://www.oik-rks.org/en/2019/08/06/report-with-recommendations-of-national-preventive-mechanism-against-torture-concerning-the-visit-conducted-to-the-pre-detention-centre-in-prizren/>.

⁷⁶ Report with recommendations for a visit to Dubrava Correctional Center, published on June 28, 2019. For more information see: <https://www.oik-rks.org/en/2019/07/04/report-with-recommendations-of-the-national-preventive-mechanism-against-torture-on-the-visit-to-dubrava-correctional-centre/>.

Security-related issues

While considering that equipping premises with security cameras, in places where persons deprived of their liberty are held, constitutes an additional guarantee against physical ill-treatment and protection for security officials from false allegations of physical mistreatment, the NPM, through its report with recommendations for visiting CCD,⁷⁷ DCGJ and other correctional and detention centres, recommended competent authorities to install security cameras in the areas where there are no camera installed.

During the follow-up visit to the CCD, the NPM has noted that some rotating security cameras which obtain HD images were installed in the control room, whereas the contracted company fixed those that were not operational and added security cameras where they were missing. The DCGJ also implemented the NPM recommendation regarding the provision of security cameras.

During the reporting period, the NPM has observed that correctional officials possessed expired *pepper spray* within their equipment⁷⁸. Through its reports with recommendations, the NPM has recommended competent authorities to remove the expired *pepper spray* as it can have a very detrimental effect if used indoors such as prisons. Through various visits, the NPM was informed by the competent officials that the correctional officers were supplied with new pepper spray.

Moreover, the NPM, as recommended in other recommendations reports, reemphasizes that pepper spray should not constitute standard equipment for all correctional officers.

Disciplinary measures

During its visits to correctional and detention centres, the NPM focused on assessing the respect for the rights of prisoners who were subject to the disciplinary measure of solitary confinement. In general, the NPM noted that authorities respected the fundamental rights of prisoners against whom this measure was imposed, such as: accommodation conditions should be in accordance with LEPS standards and international standards on the prisoners' rights, such as: the right to regular medical care, access to clean air, maintaining contacts with family, showering etc. Also, the NPM has also noted that all prisoners against whom this measure was imposed were provided with a copy of the decision of Director of Correctional Facility to impose this measure, through which they were advised of the legal remedy against the same.

Foreigners in detention and correctional centres

During visits to the detention and correctional centres, the NPM has interviewed a number of foreign nationals. The NPM has not received complaints regarding failure to respect rights guaranteed by the LEPS and international standards on prisoners' rights. The NPM has noted very good interactive communication between this category of prisoners with correctional officers and other inmates.

⁷⁷ Report with recommendations for a visit to the Dubrava Correctional Center. For more information see : <https://www.oik-rks.org/en/2019/07/04/report-with-recommendations-of-the-national-preventive-mechanism-against-torture-on-the-visit-to-dubrava-correctional-centre/>.

⁷⁸ Related to this, see reports of visits to Dubrava Correctional Center, Prizren Detention Center and Lipjan Detention Center For more information see: <https://www.oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/>.

IV. Centre of Asylum Seekers

During the reporting period, the NPM visited the Centre for Asylum Seekers 3 times. The NPM has not received any complaints about physical ill-treatment or the behaviour of centre's officials, including therein the security staff, which would be in violation of the dignity of asylum seekers, or in violation of their fundamental rights guaranteed under the Law on Asylum.⁷⁹ The concerned law guarantees asylum seekers the following basic rights: The right of stay in the Republic of Kosovo, right to basic living conditions, health care, social assistance, free legal aid, education for children applicants, the right to freedom of thought and religious belief, the right to employment and the right to professional training.

During the reporting period, there was an increase in the number of asylum seekers seeking asylum in the Republic of Kosovo. According to the directorate of Centre for Asylum Seekers, so far, 1642 asylum seekers have been registered, while in 2018 there were 594 registered asylum seekers.

Accommodation conditions at the Centre for Asylum Seekers continue to be of a very good standard. There is also a child-friendly centre, playground and indoor playground at the centre. During this period, 23 unaccompanied children were admitted to the centre, the NPM has noted, during its visit, that requests to assign legal guardians have already been done.

On 16th of December 2019, the Ombudsperson, accompanied by the Head of the UNHCR Office in Pristina, conducted a direct meeting with asylum seekers at the centre, whom he informed of OIK's mandate and listened to their complaints and claims. With the purpose of facilitating communication and informing asylum seekers of the role and mandate of the Ombudsperson, leaflets in different languages were distributed to asylum seekers during the visit.

Legal aid free of charge

Free legal aid, as a fundamental right, continues to be provided by the NGO CRPK- (Civil Rights Program Kosovo). Whereas, besides the Ombudsperson, access is also guaranteed to international organizations such as: UNHCR, CPT, the International Red Cross, and local NGOs based on the agreement.

⁷⁹ Law No. 06/L-026 On Asylum, Article 26.

V. Detention Centre for Foreigners

During the reporting period, the NPM has conducted 3 visits to the DCF, has published a report with recommendations on the visit to this centre and has issued 6 recommendations to competent authorities.⁸⁰ In terms of international human rights standards, detention on remand of a foreigner (detaining a foreigner) should be a last resort measure taken by the authorities of a state to remove a foreigner, who is subject to forced removal, from their territory.

During 2019, 11 foreigners were accommodated at the DCF and stayed there for a short period of time until their deportation from the territory of the Republic of Kosovo after the Ministry of Internal Affairs and the International Organization for Migration (IOM) signed a Memorandum of Understanding on Assisted Voluntary Return and Reintegration.⁸¹ In general, the NPM notes that competent authorities are more frequently applying alternative measures in relation to the measure of detention.

The NPM also notes that Law No. 04/L-219 on Foreigners of the Republic of Kosovo⁸² provides that other alternative measures prevail over sending a foreigner to detention. Even the CPT, in the standards set in 2017⁸³, specifies that detention of a foreigner under the law on foreigners should be a last resort and that other alternative measures should be given priority.

Treatment and accommodation conditions at the DCF

The NPM has not received any complaints from the foreigners about physical ill-treatment or the behaviour of centre's officials, including therein the security staff, which would be in violation of human dignity. The NPM has also noted that all of the rooms where foreigners are accommodated at the DCF provide dignified accommodation, sufficient natural and artificial lighting, and showers are in good conditions. The NPM considers that accommodation conditions at the DCF are at a very good level.

Notification on rights and obligations

Foreigners in DCF are informed about their rights and obligations through brochures written in the most popular languages such as Arabic, English, French, Italian, Turkish, etc. The NPM has noted that these brochures provide foreigners at the MDC with information on agencies, NGOs and institutions they may contact about their rights. The NPM regretfully notes that these brochures contain no information about the Ombudsperson Institution as a national institution for protection of fundamental human rights in the Republic of Kosovo, who receives complaints of violations of fundamental human rights by natural and legal persons. Also, there is no word on the NPM as a national mechanism for prevention of torture which regularly visits all places where persons deprived of their liberty are held.

⁸⁰ Report with recommendations for a visit to the Detention Centre for Foreigners, published April 23, 2019 For more information see: <https://www.oik-rks.org/en/2019/05/03/report-with-recomandation-related-to-the-visit-to-the-detention-centre-for-foreigners-in-vranidoll/>.

⁸¹For more information see: <https://kosovo.iom.int/news/iom-kosovo-and-ministry-internal-affairs-sign-mou-avrr>

⁸² Law no. 04 / L-219 On Foreigners, Article 97, paragraph 2.

⁸³ CPT, Standards published in march 2017 on the detention of foreigners. For more details see: <https://rm.coe.int/16806bf12>.

Regime and contact with the outside world

Article 24, paragraph 1, of the Regulation provides that every detained foreigner detained in the Centre shall have the right to walk at least (2) hours a day in the outdoor environments of the Centre. For health purposes, the Head of the Centre may extend the time of airing.

The CPT, in the standards on detention of foreigners for immigration purposes determined in March of 2017, emphasises the importance of a regime that contains as much activities as possible. According to the CPT, the longer the period of detention, the more activities provided to them should be developed. The DCF now has a sports field equipped with accompanying elements where foreigners can play football and basketball, which was also a recommendation of the NPM.

According to the CPT standards,⁸⁴ detained foreigners should have every opportunity to be in genuine contact with the outside world (including the possibility of making phone calls and receiving visits) and their freedom of movement within the detention centre must be limited as little as possible. According to Article 25 of the regulation, a detained foreigner has the right to maintain correspondence, receive packages and other items. Also, detained foreigners are allowed to receive visits.

The regulation defines that a foreigner has the right to make phone calls as needed for up to 5 minutes, from 09:00 to 16:00h every working day. According to the Regulation, foreigners are allowed calls from abroad. During the visits, the NPM has not received any complaints by foreigners accommodated at the DCF with regard to their contacts with the outside world.

NPM recommendations and the authorities' progress in their implementation

During the reporting period, the NPM has sent the following recommendations to the competent authorities:

- The DCF should have at least one nurse available who would carry out the medical examinations of the newly-admitted patients, distribute therapy and take care of the medical files of foreigners in the DCF. The emergency team conducts a medical check-up for newly-admitted patients. However, there has been no progress on NPM's recommendation to hire at least one nurse who would perform medical examinations of the newly admitted, distribute the therapy and take care of the medical files of foreigners in DCF.
- The DCF should maintain the following protocols: Protocols on solitude, bodily injury, self-inflicted injury, attempted suicide, sexual abuse and deaths. The NPM has noted that relevant data are kept in the file of foreigners accommodated in the DCF for all events related to foreigners accommodated in the DCF and that the MIA electronic register is used.
- Security personnel should undergo adequate training in order to work with this category. The security personnel were not provided with trainings on working with this category, despite the efforts of the competent authorities to find a solution to this issue.
- Foreigners should be informed of all their rights and obligations through a separate document, in a language that they understand and in which they certify that they have understood their rights and obligations. The NPM has noted that foreigners are informed of their rights and obligations through

⁸⁴ For more information see : <https://rm.coe.int/16806fbf12>

brochures in various languages. However, the document has not yet been drafted as per the recommendation of the NPM.

- Foreigners who have the disciplinary measure of isolation imposed against them should be allowed to enjoy their rights in accordance with the standards set by the NPM. According to the Director of DCF, the revision of the current Regulation is in process. The NPM has requested that the draft Regulation in question be submitted for eventual commenting with regard to compliance with international human rights standards.
- A formal disciplinary Regulation should be adopted, which will specify the disciplinary procedures and the foreigner rights against whom such a measure is imposed. The NPM notes that, unfortunately, there has been no progress in implementing this recommendation. The adoption of a formal disciplinary Regulation would be an additional guarantee for the protection of the fundamental rights of foreigners in the DCF.

VI. Visit to Prishtina International Airport “Adem Jashari”⁸⁵

During the reporting period, the NPM has, under the observation of experts of the Council of Europe, on 7 May 2019 visited Prishtina International Airport “Adem Jashari”. The purpose of the visit was to make a general assessment on whether the rights of foreigners, who based on the Law on Foreigners and other relevant laws cannot enter the territory of the Republic of Kosovo, who are subject to return to their countries of origin or are temporarily held in the detention facilities at the Prishtina International Airport (PIA), are respected.

Detention facilities at PIA entry point

Foreigners who want to cross the border of the Republic of Kosovo but do not meet the legal criteria, and the air carrier is unable to make their immediate return, are held in separate facilities at PIA, for up to 72 hours. These facilities are also known as detention facilities at the entry point in airports. During the NPM's visit to PIA, there were no foreigners accommodated in these facilities.

Regarding the accommodation conditions in these facilities, the NPM has noted that they provide good accommodation conditions, with sufficient inventory for personal belongings, cleanliness at an adequate level, toilets supplied with toiletries, showers at very good condition and with enough artificial light. As far as contacts with the outside world are concerned, foreigners have access to the internet through “*Wi-Fi*”. With regard to medical services, the NPM has observed that PIA’s medical personnel provides 24 hours medical services for the personnel, detainees and other travellers.

Information on the legal status and their rights

During the visit, the NPM observed that in rooms accommodating foreigners who cannot cross the border of the Republic of Kosovo, there is no information posted on whom, and how, they can address if they have complaints regarding treatment by police officers or if they want to know about their legal status and their rights. Based on this, the NPM, through its post-visit recommendation report, recommended the following to the competent authorities:

- Detention facilities at PIA entry points should be provided with relevant information in various languages, through which foreigners are informed of their rights, their legal status, as well as the right to contact human rights defence mechanisms.
- The NPM should be informed of cases where foreigners are accommodated at entry points for detention in PIA and of cases of expulsion from the territory of the Republic of Kosovo.

On 11 December 2019, the NPM, through official email, requested the competent officers of the Kosovo Border Police to be informed of the progress made in implementing the above recommendations. Despite

⁸⁵ Report with recommendations of the NPM regarding the visit to Prishtina International Airport, published on 7 May 2019. For more information, see: <https://www.oik-rks.org/en/2019/05/08/report-with-recommendations-of-the-npm-regarding-the-visits-to-the-border-crossing-point-of-pristina-international-airports/>.

the obligation to cooperate with the Ombudsperson Institution, which is provided by the Constitution of the Republic of Kosovo⁸⁶ and the Law on the Ombudsperson⁸⁷, the NPM received no response.

Monitoring forced return operations through airlines

During the reporting period, the NPM monitored two forced return operations at the Prishtina International Airport of citizens of the Republic of Kosovo by the Swiss authorities. This monitoring is based on the Memorandum of Understanding signed between the Ombudsperson Institution and the Swiss National Commission for the Prevention of Torture⁸⁸. During the monitoring of these operations, the NPM observed that the forced returnees were treated in a humane manner by the police authorities of the Republic of Kosovo.

⁸⁶ Constitution of the Republic of Kosovo, Article 132, paragraph 3

⁸⁷ Law no. 05/L-019 on the Ombudsperson, Article 25.

⁸⁸ Memorandum of Understanding between the Ombudsperson Institution and the Swiss National Commission for the Prevention of Torture for the monitoring of forced return operations signed on 24 April 2019. For more information, see: <https://www.oik-rks.org/en/2019/04/25/signing-of-memorandum-of-understanding-between-switzerland-and-kosovo-on-prevention-of-torture-and-common-monitoring-of-forced-return-operations/>.

VII. Mental health institutions

During the reporting period, the NPM visited the KFPI - Emergency and Psychiatric Intensive Care Ward (hereinafter, EPICW), Mental Health Centres, Integrated Community Homes, Centre for Integration and Rehabilitation of Chronic Psychiatric Patients in Shtime (hereinafter, CIRCPP), Special Institute in Shtime as well as Community-Based Homes. The purpose of the visits was to assess the progress of the competent authorities in implementing the NPM recommendations made through previous reports with recommendations.

Kosovo Forensic Psychiatric Institute (KFPI)

The Forensic Psychiatry Institute was opened in August 2014, and is currently under the management of HUCSK (the Hospital and University Clinical Service of Kosovo). The capacity of this institution is 36 beds (12 beds in each ward). Pursuant to the Law on Mental Health, KFPI is an organizational unit of HUCSK. Under the applicable law, it provides tertiary services for the whole country (the only one in Kosovo)⁸⁹. The relevant legal basis is found in the Criminal Code⁹⁰ of the Republic of Kosovo, the Criminal Procedure Code⁹¹, the Law on Execution of Criminal Sanctions⁹² and the Law on Mental Health.

The KFPI accommodates perpetrators who have committed a criminal offense while in a state of mental incompetence or substantially diminished mental capacity, who are subject of a competent court's order for a mandatory psychiatric treatment⁹³, as well as persons who are subject to a court order for psychiatric assessment for a ruling on custody in a health care institution⁹⁴.

Through its report with recommendations on the visit to the KFPI published on 28 August 2018⁹⁵, the NPM recommended the following to the competent authorities:

Ministry of Health:

- Ombudsperson's NPM should be notified of the legal status of IKPF.

Hospital and University Clinical Service of Kosovo:

- Regularly supply the IKPF with medicines and other necessary things for carrying out the work.
- Implement the recommendation of the European Committee for the Prevention of Torture, as regards the content of the Guide to the use of means of restraint.
- Increase psycho-social activities.

⁸⁹ Law no. 05/L-025 on Mental Health, Article 13 paragraph 1.2.

⁹⁰ Criminal Code of the Republic of Kosovo, Article 18 and Articles 87-90.

⁹¹ Kosovo Criminal Procedure Code, Articles 506-508.

⁹² Law on Execution of Criminal Sanctions, Articles 174-180.

⁹³ Criminal Code of the Republic of Kosovo, Article 89.

⁹⁴ Kosovo Criminal Procedure Code, Article 508 paragraph 4.

⁹⁵ Report with recommendations concerning the visit conducted to the Institute of Kosovo Forensic Psychiatry, published on 28 August 2018. See: <https://www.oik-rks.org/en/2018/08/28/report-with-recommendations-of-the-npm-concerning-the-visit-conducted-to-the-institute-of-kosovo-forensic-psychiatry/>.

- Install the KPFI system (a complaint box) which makes it possible for the complaints of patients to be addressed by the management in a confidential manner, and only the assigned staff should have access to the complaint box.
- Medical staff should not perform security-related tasks (see paragraph 45 of this Report).
- KFPI security personnel should be carefully selected and undergo adequate training before undertaking such security-related tasks.

On 4 September 2018, the Ministry of Health informed the Ombudsperson that relevant departments within this ministry have started drafting a plan to address the aforementioned recommendations and that the Ombudsperson will be notified of this plan.

Through its report with recommendations on the visit to the Psychiatric Clinic⁹⁶ of the University Clinical Centre of Kosovo, the NPM recommended the following to the authorities:

- Appropriate renovations should be made at the Psychiatric Clinic.
- The number of genuine psychosocial activities should be increased.
- The multi-disciplinary team in the wards of the Psychiatric Clinic should be functionalized.
- Uninterrupted medicine supply of the Psychiatric Clinic should be provided.
- Guidelines for the prevention of suicide should be compiled.
- Adequate training for the personnel should be provided.
- The number of personnel should be increased according to assessment and need.
- Informed approval for treatment from the patient should be obtained in accordance with the Law on Mental Health.
- Patients should be informed of their rights in a written form.
- A special register for patients who are subject to isolation measures should be compiled and used.
- Psychiatric Departments in other regional hospitals should activate special rooms for the treatment of urgent psychiatric cases.

Based on the NPM's request, on 2 December 2019, HUCSK sent a report on the recommendations sent by the NPM and the progress made in their implementation. However, based on the visits, the NPM noted that there was no significant progress in the implementation of the NPM recommendations in this institution. Moreover, the NPM observed that these institutions faced a shortage of medicines. The NPM, during the reporting period, did not receive complaints from patients in these institutions regarding human treatment and non-compliance with other fundamental rights.

⁹⁶ Report with recommendations of NPM on the visit to the Psychiatric Clinic of the University Clinical Centre of Kosovo, published on October 26, 2018. For more information, see: <https://www.oik-rks.org/en/2018/10/26/report-with-recommendations-psychiatric-clinic-of-the-university-clinical-center-of-kosovo/>.

Also, during the reporting period, the NPM visited the Centre for Integration and Rehabilitation of Chronic Psychiatric Patients in Shtime (hereinafter, CIRCPP). The NPM has noted that in the CIRCPP, ward “A” has been renovated to accommodate women, day care and ambulance. The rooms where residents are accommodated are now decorated with photographs of the activities carried out by residents themselves, which provide proper visual stimulation, and have a good therapeutic effect on the residents. In general, the NPM considers that accommodation conditions at this institution are of a high standard now.

Integrated Community Homes

During the reporting period, the NPM visited the Integrated Community Home in Bresje, Drenas, Ferizaj, Peja, Gjilan, Mitrovica, Gjakova and Prizren. These institutions are managed by the Hospital and University Clinical Service of Kosovo (hereinafter, HUCSK).

Relevant legislation

The relevant legislation is contained in Law no. 05/L-025 on Mental Health and Administrative Instruction (Health) no. 07/2009 on Professional Mental Health Service in the Republic of Kosovo. Based on the provisions of the aforementioned legal acts, the Integrated Community Home (hereinafter, *ICH*) provides long-term health care for the rehabilitation and social reintegration of clients with chronic mental illness and disorders⁹⁷. The placement of residents is done based on the criteria set out in the administrative instruction and the decision of the relevant assessment commission. Paragraph 7 of the Administrative Instruction no. 07/2009, states that at ICH, only clients with chronic psychotic illnesses and disorders are admitted into remission. At ICH, cases of mental retardation, dementia of all kinds, dependency diseases and social cases are not admitted.

Treatment and accommodation conditions

Each ICH has a capacity of 10 persons, except for Mitrovica which has two ICHs with 10 beds, a total capacity of 20 persons. In all ICHs, accommodation conditions are generally good with adequate lighting, heating and ventilation. Sanitary facilities allow privacy for residents and personnel of the institution. Also, each resident in these homes has their own closet to keep personal belongings. During its visits, the NPM observed that there was no overcrowding in any of the Homes. NPM, during the reporting period, was informed that another ICH with capacity of 10 persons was built in Peja region, specifically in Deçan.

Food

The food of the patients is another important aspect of living conditions. The CPT highlights the special importance of food for this category. According to the CPT, food must not only be adequate in terms of quantity and quality but also be provided in satisfactory conditions⁹⁸. NPM has observed that in each ICH, food is prepared by personnel together with the residents. During its visits to these institutions, the NPM received no complaints regarding food, except at the ICH in Mitrovica, where there were shortages of supplies.

⁹⁷ Administrative Instruction (in Health) no. 07/2009 On Professional Service of Mental Health in the Republic of Kosovo, Article 9 paragraph 1

⁹⁸ TPM, Part from 8th General Report, published in 1998. See at: <https://rm.coe.int/16806cd43e>

Treatment and activities

During the visit, the NPM observed a close and friendly approach of the personnel to the residents and a generally positive climate within the homes visited. Residents looked good in terms of clothing and hygiene. The NPM did not encounter any signs of bodily injury to residents. The NPM has interviewed residents and received no complaints of any form of maltreatment or behaviour of personnel that infringes on the dignity of residents.

During its visits to the ICHs, the NPM observed that activities varied from institution to institution. In general, activities such as walks twice a year in nature, chess, table tennis, handicraft, music listening, drawing, etc. are carried out in the MHC, whereas at the ICH in Gjilan, residents work in the ICH's greenhouse.

The CPT standards provide that psychiatric treatment must be based on an individualized approach, which means developing a treatment plan for each patient. It should include a wide range of rehabilitation and therapeutic activities, including access to occupational therapy, group therapy, individual psychotherapy, art, theatre, music and sports. Residents must have regular access to suitably equipped entertainment rooms and have the opportunity to go out for fresh air on a daily basis. It is also desirable to provide them with adequate education and work⁹⁹.

The NPM expresses concern that the visited ICHs do not have an individualized treatment plan with residents' involvement. Therefore, the NPM encourages the ICH personnel to work in this regard, which in turn will facilitate the work of the personnel.

Medical care

The NPM observed that the ICHs provide regular psychiatric services, which are provided by the psychiatrist of MHCs in those regions, and, if needed, other health and specialist services are provided by the Family Medicine Centres. NPM has noted in their health files that residents in these homes are mostly diagnosed with psychotic disorders but are in the remission phase and treated with pharmacotherapy. Based on the files analysed by the NPM, it results that residents have regular laboratory tests.

Personnel

Integrated Homes are led by the Director of MHCs of the respective regions. MHCs are daily open centres that have professional personnel such as psychiatrists, psychologists and nurses who also assist ICHs.

The NPM has noted that the number of personnel varies across regions and that some homes lack the necessary number of personnel, which makes work difficult and as a result, only one nurse is usually on call during the night. NPM encourages HUCSK to increase the number of personnel as needed.

Means of restraint

Regarding the means of restraint, Article 27 of Law No. 05/L-025 on Mental Health, defines that the physical limitation of persons with mental disorders applies to mental health institutions specialized with

⁹⁹ European Committee Standards for the Prevention of Torture, Part from the 8th General Report [CPT/Inf (98)12]

beds and according to the respective protocol, includes the following elements: keeping the person with force, forceful use of medicines, immobilization, insulation.

According to the personnel statements, residents and their files, no physical restraints mechanisms are used in these houses, rather only pharmaco-therapeutic interventions, and also isolation measures are not used.

Regarding visits and findings in these institutions, the NPM will publish a special report with recommendations, which will outline the specific findings and recommendations on certain issues and will be forwarded to the bodies managing these institutions.

Community-Based Homes (hereinafter CBH)

The CBHs continue to be regulated by two Administrative Instructions: (MLSW) no. 11/2014 on the work and placement of residents, persons with mental disabilities-delay in mental development at the Special Institute in Shtime (hereinafter, SISH) and in community based homes, and AI no. 13/2010 for the provision of services in community-home for persons with mental disabilities-delay in mental development.

As of January 2016, the CBHs are managed by the Municipal Directorates of Health and Social Welfare. During, 2019, the NPM has visited 7 CBHs: the CBH in Shtime, Ferizaj, Vushtrri, Deçan, Kamenica, Gracanica and Lipjan.

Material conditions in the homes visited

During the reporting period, the NPM was informed by the Ministry of Labour and Social Welfare (MLSW) that two more community-based homes were built in Prizren and Novo Brdo, which will be operational by 2020. Also, during the NPM visit, the community-based home in Shtime was being renovated. The official capacity of the CBH is 10 residents. However, the NPM, during a visit to the CBH in Vushtrri, noted that there were 13 residents accommodated, while 12 residents were accommodated in the CBH in Kamenica.

During the visits carried out, the NPM observed that, in terms of accommodation conditions, CBHs are generally at a satisfactory level, with the exception of CBH in Ferizaj and Vushtrri. Rooms and spaces where they are accommodated and carry out their activities have adequate lighting, heating and ventilation. Also, rooms and sanitary facilities provide residents with proper privacy.

However, the NPM noticed that the CBH in Ferizaj lacked good accommodation conditions, some appliances in the kitchen, such as the dishwasher, were not functioning, showers were damaged, and there was no large washing machine as this category of residents depends entirely on staff. In addition, staff does not have a room for staying and do not have adequate space for providing therapy or injections. Often they are faced with problems related to the supply of medicines, clothing and blankets. In certain cases clothing has been supplied by various Non-Governmental Organizations. CBH in Vushtrri had average conditions, lacked adequate space in the backyard and space where residents could stay.

NPM noted that in the CBH in Lipjan, attention was also given to the decoration of daily stay spaces with works done by the residents themselves, in order to give them visual stimulation.

Patients' food is another aspect of their living conditions that is of particular importance to the CPT. Food should not only be adequate in terms of quantity and quality but also given in satisfactory conditions¹⁰⁰. The NPM has observed that staff prepared the food at each CBH. NPM has not received any complaints regarding the quality and quantity of food.

Physical ill-treatment and incidents between residents

The NPM has not observed any indication that physical ill-treatment is exercised by the staff in the homes visited. On the contrary, in all the homes that were visited, the NPM noted the staff's commitment to treat residents humanely. Furthermore, good communication between residents and staff was noted.

By analysing the medical and administrative documentation at the CBHs in Ferizaj and Vushtrri, the NPM has observed that there were cases of incidents between residents and cases of self-inflicted injuries. The NPM considers that the authorities' obligation to care for these residents also includes the responsibility of protecting them against other residents who may physically assault them.¹⁰¹

Treatment and activities

With regard to activities in general, in most of the homes visited, the NPM was informed that residents usually listen to music, watch TV, make drawings, and go out in the city, while in some CBHs they carry out excursions to distant places, either in nature or to other cities, twice a year. The NPM encourages the leaders of these institutions to attach importance to the development of educational and training work therapy, psychosocial and recreational activities and to have an individualized treatment plan according to the needs and abilities of residents.

Health care

The NPM was informed that in the CBHs, health services are provided by Family Medicine Centres. In the CBH in Ferizaj, one resident has severe disorders. Based on his medical record, the resident has been using the same psychiatric therapy for years, has not been visited by a psychiatrist for several years, and his mental state has not been reassessed. Psychiatric services in this institution have not been available for almost 5 years and this makes it difficult for nurses to work.

According to the staff, regular psychiatric services cannot be obtained at the Mental Health Centre in Ferizaj. In relation to this situation, the NPM talked to the Director of the CBH in Ferizaj, who stated that they were awaiting engagement of a psychiatrist. There were also problems with the supply of medicines to this House.

The NPM notes that Article 18, paragraph 1 of the Law No. 05/L-025 on Mental Health states: "*Persons who are in residential social care institutions are offered counselling, treatment, rehabilitation and mental health care equally and according to health standards, approved by the Ministry of Health*". Whereas paragraph 2 of this Article reads: "*The way of organization and provision of services, as provided in paragraph 1. of this Article shall be determined by special sub-legal act proposed by the Ministry of Health*".

¹⁰⁰ Ibid, paragraph 35.

¹⁰¹ For more information, see the CPT Report on Visit to Bulgaria, published on 6 October 2017, page 75, paragraph 153, at: <https://rm.coe.int/16807c4b74>

in cooperation with the Ministry of Labour and Social Welfare, adopted by the Government". Notwithstanding the NPM's recommendation to adopt the sub-legal acts pursuant to the Law on Mental Health, which was sent to the competent authorities through a report with recommendations on a visit to the Special Institute in Shtime¹⁰², which was published on 22 February 2017, the NPM noted that there was no progress in implementing this recommendation.

During the reporting period, the NPM visited the Special Institute in Shtime (hereinafter *SISH*) and the Home of Children with Mental Disorders (HCMD) in Shtime, which are managed by MLSW. At the orphanage in Shtime, the NPM conducted follow-up visits, and it was found that all NPM recommendations sent to the competent authorities through the report of recommendations on 23 April 2019 have been implemented.¹⁰³ However, during the follow-up visit on 5 November 2019, the NPM noted that this institution lacks adequate space for physiotherapy.

During the reporting period, the NPM has visited the Home for Elderly People without Family Care in Graçanica, which has been operating since 2014. This institution has been managed by the Municipal Directorate of Health and Social Welfare since 2016. This home has a capacity of 10 residents and during the visit it was found that there are 8 residents present. Accommodation conditions are very good. In terms of the staff, this house has 17 employees (one nurse, four medical assistants, six custodians and 5 persons providing security to the facility). Based on medical records, there were no cases of dementia. NPM has not received any complaints from residents regarding the treatment or failure to respect their rights.

Home for the Elderly People without Family Care

The Home for the Elderly without Family Care (hereinafter "HEPWFC") is an institution of social character and operates within the MLSW. The official capacity of this institution is 110 persons. During the last follow-up visit on 29 August 2019, the NPM was informed that there were 74 residents present.

NPM recommendations submitted through the report published on 25 January 2018¹⁰⁴:

- Urgently make investments based on the needs assessment, in the old building and areas where the medical and dental services operate.

During the follow-up visit, the NPM concluded that progress has been made in this regard, whereby the internal premises where residents live and areas where health services are provided were painted. The NPM was told by the officials of the concerned institution that the dentistry and physiotherapy service will be relocated from the ground floor to the first floor. The NPM encourages MLSW to continue its efforts of fully implementing the NPM's aforementioned recommendation.

- Residents should be provided with adequate inventory in their rooms.

¹⁰² For more, see at: <https://www.oik-rks.org/en/2017/02/24/raport-i-mkpt-instituti-special-ne-shtime-en/>.

¹⁰³ Report with Recommendations on the visit to Children's Home with Mental Disabilities, published on 23 April 2019. For more information, see at: <https://www.oik-rks.org/en/2019/04/25/report-with-recommendations-visit-conducted-to-childrens-home-with-mental-disabilities-in-shtime/>.

¹⁰⁴ Report with recommendations for home visits for the Elderly and without Family Care, published 25 January, 2018. For more see at: <https://www.oik-rks.org/en/2018/01/25/report-with-recommendations-elderly-and-people-without-family-care-home/>.

During the visit, the NPM noted that there was progress in this regard and that new cabinets and mattresses were brought to the residents' rooms.

- Supply the institution with an auto-ambulance.

In the response sent by the MLSW, it is stated that the recommendation will be fulfilled under the budget planning of 2018, or by seeking assistance by donors. During the last follow-up visit on 28 August 2019, the NPM found that this recommendation was not yet implemented.

- The medical service must apply protocols for self-inflicted injury, bodily injury, hunger strike, sexual abuse, suicide, and deaths at the institution.

During the visit, the NPM has noted that this institution now has all the records whereby self-inflicted injuries, bodily injury, hunger strikes, sexual abuse, suicides, and deaths in the institution are recorded.

- Organize staff-specific training in accordance with resident treatment needs.

The NPM has received a written response from MLSW stating that trainings organized by the Special Institute in Shtime are also attended by the HEPWFC staff. They have also applied before the accreditation agency at MEST with adequate training programs for the staffs which provide services to clients, and will soon begin these trainings. During its last visit, the NPM found that the HEPWFC's personnel have attended several trainings organized by the Special Institute in Shtime.

- Increase the number of staff based on the needs assessment of the health service.

During the visit, NPM noted that progress was made in this regard, i.e. now the number of middle staff increased to 3 persons.

VIII. NPM activities during 2019

The NPM, in cooperation with the EC office in Prishtina, during 2019 has implemented a number of activities. On 15th of February 2019, the Ombudsperson's NPM, supported by the Council of Europe in cooperation with the NPM, organized a roundtable discussion on the “*Role and Mandate of the National Mechanism for Prevention of Torture*”.



Roundtable discussion on the role and mandate of the NPM in the prevention of torture.

The Director of the NPM, during the reporting period, was part of the working group on drafting standard practice of the Kosovo Police which was developed in close cooperation with the Council of Europe’s experts. On 12th of April 2019, the NPM and the Council of Europe Office in Prishtina organized a roundtable discussion with the Kosovo Border Police with the topic: *The Role and Mandate of the National Mechanism for Prevention of Torture*”.



Round table discussion with the Border Police of the Republic of Kosovo on the role and mandate of the NPM.

On 15 April 2019, the Ombudsperson and representatives of the NPM at the Academy for Public Safety in Vushtrria, before the cadets of the Police Inspectorate of Kosovo, presented the work and mandate of the Ombudsperson Institution and the NPM. On 26th of June, on the occasion of the International Day in Support of Victims of Torture, NPM organized a Conference with the aim of presenting NPM's second annual report, and discuss recommendations addressed to the authorities, as well as challenges of the NPM in general and those of other responsible institutions as well.



26 June 2019. Conference to mark the International Day in Support of Torture Victims - presentation of the second annual report of the NPM.

In September 2019, in the framework of the cooperation agreement between the Ombudsperson of Albania and Kosovo, the NPMs of these two states conducted a joint monitoring activity at the Institute of Forensic Psychiatry of Kosovo. The purpose of the activity was to gain concrete experience in monitoring the fundamental rights of persons who, based on the decision of the competent body, are placed in psychiatric institutions.



Joint meeting between the NPM of the Republic of Kosovo and Republic of Albania

During the reporting period, the NPM participated in a conference on "Mental Health in Correctional and Detention Centres", organized by the Civil Society Networks and Criminal Justice Reforms, held on 27 September 2019 in Prishtina.

On 5 November 2019, the Deputy Ombudsperson in charge of the NPM attended a roundtable organized by the Kosovo Police, namely the Directorate for Investigation of Trafficking in Human Beings, supported by *Terre des Hommes*, to strengthen inter-institutional cooperation, including religious communities, in preventing human trafficking in Kosovo.

On 11 November 2019, the Deputy Ombudsperson attended a conference organized to mark the 20th anniversary of the Kosovo Rehabilitation Centre for Torture Victims (KRCT).

The ceremony marking the 20th anniversary of the Kosovo Correctional Service was held on 26 November 2019, and was attended by representatives of the institutions of the Republic of Kosovo, foreign embassies in the Republic of Kosovo, and representatives of international and local organizations. Participants in this ceremony, at the invitation of the Kosovo Correctional Service, were also the Deputy Ombudsperson and the Director of the NPM. On this occasion, the Ombudsperson Institution was awarded with a Certificate of Acknowledgment by the Kosovo Correctional Service for the partnership and cooperation toward a common goal.

NPM in electronic and printed media

During the reporting period, the NPM made public statements, in electronic and printed media, in 13 cases related to the issue of respecting fundamental rights of persons deprived of their liberty.

Table depicting public appearances of NPM in electronic and printed media

KTV	2
RTK	1
RTK2	1
Radio Kosovo	1
T7	5
Klan Kosova	1
Oath for Justice	1
TV Dukagjini	1
TOTAL	13

International cooperation

During the reporting period, NPM continued its international cooperation by attending the meetings organized by the South East Europe NPM Network, in the working group on Migration and Asylum of the European Network of National Human Rights Institutions (ENNHRI). Also, NPM continued the cooperation with the relevant international organizations by responding to the questionnaires sent regarding the condition of persons deprived of liberty and issues related to asylum and migration.

During the reporting period, the NPM had good cooperation with the International Red Cross Office in Prishtina. Two meetings were held in the light of this cooperation, whereby in one of the meetings was addressed the issue of missing persons in Kosovo while in the second meeting was discussed about the adherence of fundamental human rights of persons deprived of liberty, based on visits to places of deprivation of liberty by both parties. The NPM representative attended the workshop organized by Migration, Asylum, Refugees Regional Initiative, on the topic: "*Strengthening regional dialogue and cooperation on migration*", held on March 28, 2019, in Prishtina.



Upon the completion of the Council of Europe's project for strengthening the NPM, on 16th of April 2019, the Council of Europe and the Ombudsperson Institution organized a closing conference, which was honoured by the presence of the President of the European Committee for the Prevention of Torture, Mr. Mykola Gnatovsky. Furthermore, the Officials of the Council of Europe, at this conference, presented the project's conclusions, whereby *inter alia* Kosovo's NPM was recognized as the leading NPM in the Western Balkans.



Closing conference of the Council of Europe and the NPM on the project on strengthening the NPM.



Mykola Gnatovsky, President of the European Committee for the Prevention of Torture, with NPM officials and representatives of public institutions of the Republic of Kosovo during the closing conference.

A Memorandum of Understanding between the Swiss National Commission for the Prevention of Torture and the Ombudsperson Institution for joint monitoring of forced return operations between Switzerland and Kosovo was signed on 24th of April 2019. This agreement sets out the mutual terms and obligations with regard to monitoring the observance of fundamental rights of forcibly returned persons. Based on this agreement, the NPM so far monitored two forced return operations by Swiss police authorities through Adem Jashari International Airport in Prishtina.



Signing of a Memorandum of Understanding with the Swiss National Commission for the Prevention of Torture.

The NPM's representative attended the regular meeting of the Working Group on Asylum and Migration within the European Network of National Human Rights Institutions (ENNHRI) on 25th and 26th of April 2019, whereby he presented the situation in the Republic of Kosovo and the work of the Ombudsperson and the NPM in this regard.



Zagreb. 26 April 2019. The next meeting of the Group on Asylum and Migration within the European Network of National Human Rights Institutions.

The NPM, in the light of cooperation with the South East Europe NPM Network, attended the meeting organized by the Ombudsperson of Northern Macedonia in Skopje, on the topic “*National Strategy of the Mechanisms for Prevention and Protection against Reprisal*”. On this occasion, the NPM representatives gave a presentation on the NPM methodology against reprisals and the situation in places of deprivation of liberty in the Republic of Kosovo.



Participation in Skopje on the topic “*National Strategy of Preventive Mechanisms for Prevention and Protection from Reprisals*”.

From 5 to 12 September 2019, the director of the NPM attended a training organized by the Netherlands Helsinki Committee on the topic ‘*Matra Rule of Law Training Programme - Detention and Alternative Sanctions*’, held in The Hague.



From 5 - 12 September, participation in Matra Rule of Law Training Programme - Detention and Alternative Sanctions’

On 2 and 3 October 2019, the NPM representatives attended the second meeting of the South-East European NPM Network, organized by the Ombudsperson of Northern Macedonia, with the support of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Skopje, on the topic “*Specific needs of children in places of detention - the situation and challenges*”, where they gave a short presentation on the situation in the Republic of Kosovo.



Training of NPM personnel during 2019

During 2019, in the framework of the Council of Europe’s project for strengthening the NPM, three training were organized with the aim of capacity building. The training on the topic “*Treatment of women deprived of their liberty*” was a training that combined theory and practice.



The NPM, in the framework of the practical training, and under observation of the Council of Europe experts, visited Correctional Centre for Women and Juveniles in Lipjan. The training on the topic “*Visits to detention centres for foreigners*” was also a training that combined both the theoretical and the practical part. In the framework of the practical part of the training, the NPM, under the supervision of Council of Europe experts, visited the Detention Centre for Foreigners, Centre for Asylum Seekers and Border Crossing Point at the Prishtina International Airport “Adem Jashari”.



Asylum-Seekers Centre in Magurë



Detention Centre for Foreigners

Finally, the training on “*The Istanbul Protocol*” for Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was held in April 2019.

