

OMBUDSPERSON INSTITUTION



FIRST ANNUAL REPORT OF NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE

Prishtina, 2017

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This report covers the period of December 2016 to May 2017

Contents

Introduction	5
Methodology.....	7
National Preventive Mechanism against torture and other cruel, inhuman and degrading treatments and punishments	8
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	9
PART I.....	10
PART II.....	13
PART III	18
Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.....	21
Preamble	21
PART I.....	21
PART II.....	22
PART III	25
PART IV	27
PART V	29
PART VI.....	29
PART VII.....	30
The NPM reports published during December 2016-May 2017	33
REPORT WITH RECOMMENDATIONS	34
Concerning the monitoring of Correctional Centre for Females and Juveniles in Lipjan	34
REPORT WITH RECOMMENDATIONS	42
Concerning the monitoring of the Detention Centre in Lipjan	42
REPORT WITH RECOMMENDATIONS	49
Concerning the monitoring of the Dubrava Correctional Centre.....	49
REPORT	62
on visit to the Detention Centre for Foreigners in Vranidoll	62
REPORT	67
on visit to Asylum-Seekers Centre	67
REPORT	71
on visit to the Regional Police Custody Centre in Prishtina.....	71
REPORT	74
on visit to Border Crossing Points:Prishtina International Airport “Adem Jashari”; Border crossing point “Hani i Elezit”; Border crossing point “Vërmicë”	74
REPORT WITH RECOMMENDATIONS	77

concerning the visit to Special Institute in Shtime.....	77
REPORT WITH RECOMMENDATIONS	83
on the visit to Centre for Integration and Rehabilitation of Chronic Psychiatric Sick People in Shtime.....	83

Introduction

National Preventive Mechanism against Torture (NPM), pursuant to Law on Ombudsperson, for the first time presents the Annual Report.

The Republic of Kosovo is not a signatory party of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading since it is not yet a member of the United Nations.

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 apply directly to the Republic of Kosovo and, have priority in case of conflict, over the provisions of laws and other acts of public institutions. One of the Conventions foreseen in this Article is also United Nations Convention against Torture and Other Cruel, Inhuman and Degrading treatment and punishment.

The Assembly of Republic of Kosovo adopted the Law no. 05/L-019 on Ombudsperson on 26 June 2015.

This Law foresees establishment of a specific mechanism within the Ombudsperson Institution, which shall accomplish all functions of a National Preventive Mechanism against Torture. The staff engaged in this mechanism, apart from legal officers ought to involve professionals of different fields, particularly physicians, psychologists and experienced social workers in this field. During accomplishment of NPM functions, the Ombudsperson and his representatives have the right to access information on health condition of persons deprived of liberty, including access to their medical files, upon their consent, as well as personal data of these persons.

Article 17 of the Law on Ombudsperson, foresees that the Ombudsperson acts as National Preventive Mechanism against Torture and other cruel, inhuman and degrading treatments and punishments. On 16 of January the Ombudsperson signed the decision for establishment of National Preventive Mechanism against Torture.

The Law determines the responsibilities of this Mechanism, which are: to visit places where persons deprived of their liberty are held, including police detention, detention on remand, stay at health institutions, Customs detention, immigration detention and every other place when there is a suspicion of a violation of human rights and freedoms. During this year NPM has worked towards completing the team with the compulsory staff. At this moment, NPM is comprised of: the Head of the NPM (lawyer), legal officer, psychologist and a physician. In the future it is expected that a legal officer and a social worker would join the team.

Regarding the situation of persons deprived of liberty, the Ombudsperson and the Council for the Protection of Human Rights and Freedoms (CPHRF) and the Kosovo Rehabilitation Center for Tortured Victims (KRCT), based on the agreement of 10th of May 2011, has even previously published a Report. This *Task Force* (OIK, CPHRF and KRCT) upon accomplishment of visits conducted in the Correctional Center in Dubravë, Correctional Center in Lipjan as well as Detention Centre in Lipjan, in 2013 and 2014, has published a

Report with recommendations for relevant authorities. The *Task Force* has advocated to authorities on the role and importance of NPM, the obligation of the state to establish this mechanism as well as held numerous trainings and workshops; conducted visits abroad within institutions where people deprived of their liberty are placed with the intention to gain best possible practices on this matter.

Notwithstanding the fact that this mechanism is being established as a special structure within the Ombudsperson Institution, there is no doubt that the cooperation with civil society will also continue in the future.

The NPM for a very short time has managed to achieve a very important place in our society and its responsibilities and the mandate have been acknowledged to authorities, whether through meetings or workshops held with them.

NPM functions in accordance with the principles of international instruments such as: the European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols; Convention against Torture and Punishment, or other Cruel, Inhuman or Degrading Treatment; Optional Protocol of the Convention against torture and other inhuman and degrading punishment (OPCAT); European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Furthermore, the following local legislations such as: The Constitution of the Republic of Kosovo; Law on the Ombudsperson; Criminal Code of the Republic of Kosovo; Criminal Procedure Code of the Republic of Kosovo; Law on Execution of Penal Sanctions; Law on Police and Administrative Instructions related to this field, regulate NPM functioning.

The above-mentioned instruments together with other recommendations of the European Council constitute the bases for NPM work.

During 2016, the NPM managed to carry out visits to places where persons deprived of their liberty are held and 11 of those visits have been finalized and Reports with recommendations have been generated. In the future, we expect a great deal of work in order to enable NPM to continuously improve, to develop and to achieve the objective of Optional Protocol of the Convention against Torture with the main objective: torture prevention and other forms of cruel, inhuman and degrading treatments and punishments.

We are thankful to the institutions for the cooperation provided during monitoring and providing our institution with all the required information as well as invite them to seriously consider NPM recommendations, since only with cooperation and involvement of all stakeholders, we can reach desirable standards and hope for a country without torture.

Hilmi Jashari
Ombudsperson

Shqipe Ibraj Mala
Head of NPM

Methodology

NPM has to follow certain steps during visits conducted within the premises where the confined people deprived of liberty are placed.. Based on the institution the mechanism is visiting the visit initially may last one day, or even more– respectively up to three days.

First step

NPM members meet with the aim to coordinate and assign working tasks and appoint the head of the group. The visit within the places where people deprived of liberty are located is always unannounced and firstly meeting with director of the institution or his deputy is requested, in order to notify him on the purpose of the visit, mandate and the responsibility of NPM, freedom of choosing people to talk with, whether that be confined people or the personnel, inspection of all premises in the center, cameras as well as protocol records in the possession of institution.

Second step

In order to accomplish the visit in bigger location/involving many buildings, NPM members can be divided into groups. The visit is conducted with the intention to inspect conditions of placement of deprived people, such as toilets, working premises, walking and recreation facilities, learning premises, facilities of medical check and examinations, premises of meeting with their attorneys, family or other official persons, special meeting room, etc. Particularly, the NPM will inspect whether each person deprived of liberty has bed with beddings, its capacity, the hygiene level, lighting, heating, ventilation, etc.

Third step

During the visit and inspection of conditions within the premises, simultaneously the NPM conducts meetings with persons deprived of liberty, by making random choice on people selected. The talk is carried out in the absence of officials and is confidential. It may happen that the said talks could be done in a group if more than one person occupies the room, but upon requests, the conversation can be done separately. The conversation will take place in compliance with appropriate templates respective to the institution visited.

Forth step

The conversation conducted with the staff of the institution visited, is based on templates which layout the question order for the employees. The forms are specific for institution planned to be visited.

Fifth step

NPM pays specific importance to checking of the records and protocols of people deprived of liberty, based on questionnaires for the institution that is visited.

Sixth step

Upon accomplishment of the inspection, NPM team gathers to discuss findings and to decide on collection of findings and issues of emergency, which ought to be presented to the head of the team.

Seventh step

The visit ends with a final discussion with the Head of the Institution, with whom they met initially in the beginning of the visit, by presenting initial findings and informing that he will be notified in details about findings, through Report with Recommendations, which will be delivered to the Institution and the Ministry.

If during the inspection, the NPM team comes across extraordinary situation or a situation that they want to share information, the team can meet at any time to discuss the issues of specific importance.

National Preventive Mechanism against torture and other cruel, inhuman and degrading treatments and punishments

1. The Ombudsperson acts as National Preventive Mechanism against torture and other cruel, inhuman and degrading treatments and punishments (hereinafter NPM).
2. Within responsibilities as NPM, the Ombudsperson is obliged to:
 - 2.1. Undertake regular and unannounced visits to the places of deprivation of liberty, including police detention, detention on remand, stay at health institutions, customs detention, prohibition of emigration and every other place when it is suspected that there are violations of human rights and freedom;
 - 2.2. A specialized mechanism shall be set up at the Ombudsperson's Institution that will be tasked with functions of the NPM. The staff of this mechanism in addition to jurists shall include a variety of professionals of different fields, including medical doctors, psychologists and social workers with relevant experience in this field.
3. Specialists and experts contracted by the Ombudsperson for the needs of NPM shall have the same rights and duties as other staff of the Ombudsperson, including the right to visit places of deprivation of liberty and with the right to take pictures and make sound and video recording, enjoy protection against interference in their activities, as well as the right not to give evidence and explanations on facts that were disclosed to them in the process of exercising their functions.
4. When exercising functions of the National Preventive Mechanism, the Ombudsperson and his/her representatives shall have the right to access information about the health condition of any person held in places of deprivation 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.

5. The Ombudsperson can make recommendations on compatibility of laws, and other sub-legal or administrative acts, guidelines and applicable practices in Kosovo in line with the Constitution of Kosovo and international standards as concerns the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

6. The Ombudsperson shall further co-operate with international, regional and other national bodies in charge of prevention of torture and other cruel, inhuman and degrading treatment or punishment.

7. The Ombudsperson can make observations and recommendations to responsible persons and institutions where the persons deprived of liberty are held, regardless type or facilities and circumstances of their retention in order to improve their treatment and conditions. there are kept the persons deprived of their liberty in all types of facilities and circumstances on how to improve the treatment and conditions of the latter.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1)

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.
3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.
6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.
7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
 - (a) Six members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party

concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (e), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph I and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

- 1 Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering an d voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

(a) Signatures, ratifications and accessions under articles 25 and 26;

(b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

(c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Preamble

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures, Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention, Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

PART I

General principles

Article 1

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, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.
2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II

Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.
2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2. (a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties, during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention; 4

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

a) Half the members plus one shall constitute a quorum;

b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall

meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III

Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

b) In regard to the national preventive mechanisms:

i) Advise and assist States Parties, when necessary, in their establishment;

ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short followup visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

PART IV

National Preventive Mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention; 8

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

PART V Declaration

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

PART VI Financial provisions

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII
Final provisions

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International

Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.
3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and

Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

The NPM reports published during December 2016-May 2017

REPORT WITH RECOMMENDATIONS
OF
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE
OMBUDSPERSON

Concerning the monitoring of Correctional Centre for Females and Juveniles in Lipjan

To:

Mrs. Dhurata Hoxha, Minister
Ministry of Justice

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

Mr. Imet Rrahmani, Minister
Ministry of Health

Mr. Sokol Zogaj, acting General Director
Kosovo Correctional Service

MrHeset Loku, Director
Correctional Centre in Lipjan

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

Prishtina, 20 December 2016

Dates on the visit and the composition of the monitoring team

1. In conformity with Article 17 of Law 05/L-019 on Ombudsperson, Ombudsperson's National Preventive Mechanism against Torture (hereinafter "NPM"), on 7 and 19 October 2016 visited the Correctional Centre for Females and Juveniles in Lipjan. The monitoring team was composed of: Deputy of Ombudsperson / Head of NPM, one psychologist, one doctor and two legal advisors.

Correctional Centre in Lipjan

2. Lipjan Correctional Centre is located on the right side of the highway Lipjan-Magura in the first kilometre of the road which on the north borders the river Sitnica, in the South the road to Magure, while in the West, the Detention Centre in Lipjan. Lipjan Correctional Centre was built in 1978 as a correctional institution for juveniles and females, in the beginning was populated only by juveniles while from 1981 it started to be populated also by females.¹
3. Lipjan Correctional Centre for Females and Juveniles is a semi-open type institution, the only one in the Republic of Kosovo where several categories of prisoners are placed, such as: juveniles with educational measure, convicted juveniles and detained juveniles as well as convicted females, detained females and female juveniles.
4. During the visit, NPM was informed by the Directory that currently at the Centre there were 36 juveniles with educational measure, 9 convicted juveniles, 4 detained juveniles, 3 female juveniles, 2 convicted and 1 detained, 34 adult females (of them 6 detained) and 10 offenders.

European Committee for the Prevention of Torture visited this Centre during their visit in Kosovo in 2015.²

Cooperation with NPM during the visit

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

Ill-treatment

6. During the visit to this centre, NPM received a number of complaints from juveniles concerning the excessive use of force by some of the correctional officers. NPM observed that there was a tense situation among juveniles and correctional officers and among the juveniles themselves.

NPM informed the Director of Lipjan Correctional Centre concerning the allegations of juveniles, about the concerns expressed and requested to investigate allegations on the excessive use of force by some of correctional officers. NPM also requested to be informed about the investigation results.

7. NPM received no complaints about ill-treatment or excessive use of force from the convicted, detained and juvenile females accommodated in this centre. **NPM highly appreciates the engagement and commitment of Directory of Lipjan Correctional Centre to decrease the tensions among the juveniles and their interest to provide as much psycho-social activities as possible.**

Material conditions

1 Website of Ministry of Justice, at: <http://www.md-ks.net/?page=1,71> (18.10.2016).

2 European Committee for the Prevention of Torture, Report from the visit in Kosovo published on 8 September 2016, at: <http://www.cpt.coe.int/documents/kosovo/2016-09-08-eng.htm>. (18.10.2016)

Material conditions in the blocks where juveniles are accommodated

8. NPM observed that conditions in which **male gender juveniles** were accommodated were not good, especially toilettes were old, damaged and were stinking, there was humidity and hygienic conditions were not on a good level. NPM observed that juvenile beds lacked bedclothes, mattresses were not of good quality and blankets were too thin and old. Cells where juveniles were accommodated were huge and had sufficient light, but walls were not painted, in some cells, windows were damaged and could not close properly, due to which the accommodated persons were complaining that it was cold during the night. In addition, **NPM encourages relevant authorities to ensure heating depending on atmospheric conditions and to invest for improving the accommodation conditions of the juveniles.**

Material conditions in the blocks where females are accommodated

9. Accommodation conditions in these blocks were good and it could be observed that there were new investments done, especially in toilettes which were in very good condition. **NPM observed no overpopulation in the blocks where juveniles and females were accommodated in this centre.** There was sufficient light in the cells. NPM in some cases received allegations from convicted females accommodated in this centre that during winter, in some cells of the ground floors which are located at the corners of premises humidity is present, which could also be observed during the visit made by NPM. **NPM will monitor the situation regarding the issue of heating in this centre and will request from the relevant authorities to be informed on these complaints.**

Transfer of juveniles in the New Correctional Centre

10. NPM was informed by the Directory of Lipjan Correctional Centre that the new Correctional Centre for juveniles with educational measure has been built, but there is no specific date when will the transfer of juveniles with educational measure be done in this Centre. NPM will monitor the situation regarding this issue.

Food

11. NPM received no complaints from the accommodated persons regarding the quality and quantity of food. During the kitchen inspection, NPM observed that personnel do not use gloves during dissemination and preparation of food. During the visit, they claimed that their sanitary booklets were sent to National Institute of Public Health. According to the allegations of the kitchen chef, hand swab was not taken during laboratory analysis.

Regime

12. Lower secondary school and upper secondary school functions in Lipjan Correctional Centre within the public education system. Following the contacts with Ministry of Education, Science and Technology (MEST), Ombudsperson was informed that lessons started in this centre as of 26 September 2016.
13. According to Directory, although lessons are on-going, there are considerable problems with the division of juveniles into classrooms of different levels, which seems to be inappropriate due to the contents of educational curricula. NPM was also informed that Ministry of Education, Science and Technology (MEST) engaged 8 regular teachers in employment relationship in this centre.
14. According to Directory, there are currently the following professional training offered for hydro installation, electro installation and construction. From the statistics sent by Directory, it is observed that there are different programmes, training courses and training organised such as EQUIP programme, and sports and cultural activities. While in the case of accommodated females, NPM observed that females are in general engaged in kitchen and cleaning and they attend courses such as: tailoring and hairdressing (there were 2 juveniles included in the hairdressing course, while in tailoring there were 5 convicted females).

15. The detainees are currently not engaged at all. Their engagement can be done only on the competent court permit. **NPM encourages relevant authorities to step up engagements outside the cell also for detainees. Moreover, the longer the period of accommodation in detention, the longer the regime developed provided.**
16. NPM was informed from convicted females that they are enabled to take a walk outside their cell, twice a day, for one hour, which is in accordance with Article 37 of Law on Execution of Penal Sanctions. Article 139 of Juvenile Justice Code stipulates that a minor has the right to spend at least three (3) hours daily in open environment within the institution. **NPM received no complaints regarding the respect of this right neither from minors nor from convicted females.**
17. Lack of free of charge daily press has been on-going for more than a year now. Juveniles and females have TVs in their rooms, but are very old and new supply is needed. Books and literature is satisfactory, although the religious literature, except Quran and Bible were removed following an order from Central Directory of KCS.

Health care

18. The responsibility for healthcare in the Correctional Service was transferred from Ministry of Justice to Ministry of Health in July 2013.

Composition of medical personnel

19. Medical personnel in the Lipjan Correctional Centre are comprised of: three general practitioners (doctors) (one of them has been specialising in paediatrics, one in gynaecology), one regular dentist and one gynaecologist who is engaged time after time, and 6 nurses (5 females and 1 male). General practitioners are active at work from 08:00 to 16:00. There is also one full-time psychologist engaged in this centre.

Medical screening

20. European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 paid particular attention to the medical screening, especially of newly-arrived prisoners or detainees, not only for detecting (transmissible) diseases and preventing suicides, but also for contributing to the prevention of torture through the proper recording of injuries³.
21. Correctional Centre informed the NPM that the newly-arrived are screened within a 24 hour time from the moment of their arrival at Correctional Centre for Females and Juveniles. These mean a general screening during which anamnesis is taken from the prisoner whether he/she has any disease to declare, which is recorded in his/her medical file. However, Correctional Centre and other centres where detainees and prisoners are accommodated still have no possibilities to conduct systematic screening for tuberculosis and transmissible diseases such as: TB, HBS, HCV and HIV.

NPM encourages relevant authorities to take serious actions to enable such systematic screenings for convicted persons, detainees and personnel in order to detect such diseases on time and to conduct comprehensive medical screening⁴ on the newly-arrived persons.

22. NPM observed that medical service maintains the following records: Records on attempts of committing suicides, body injuries, hunger strikes, sexual abuse, prison deaths, and self-injuries.

NPM encourages medical service to include more details on the records regarding the cause of body injuries and self-injuries, including photos together with the date of the occurrence.

³ *Ibid*,

⁴ Such an action was recommended by the European Committee for the Prevention of Torture in the reports for Kosovo during the previous visits made to such institutions in Kosovo.

Confidentiality of medical services

23. NPM has been interested whether medical personnel are providing to the accommodated persons in Lipjan Correctional Centre with medical services in the presence of correctional officers. According to medical personnel, medical services are administered without the presence of correctional officers, but they observe from the outside.

NPM encourages such an attitude and practice of non-presence of security officers during the administration of medical⁵ services. In addition, NPM encourages medical service that medical services should be administered outside the observation and hearing of correctional officers to maintain confidentiality and the doctor-patient relation, except in specific cases.

Self-injuries

24. In Lipjan Correctional Centre, during the screening of medical documentation and conversations with authorities and accommodated persons, NMPT observed that there are cases of self-injuries. The main tool used for causing body injuries and self-injuries appears to be the shaving tool known as "BIC".

NPM considers that this shaving tool should be removed from use and relevant authorities should provide another alternative.

Other issues

Personnel of Correctional Centre for Females and Juveniles

25. Personnel of Correctional Centre are comprised of 135 uniformed persons and 25 civilian personnel, of this number, 46 are from female gender. In addition, the Centre has also engaged 2 social workers.

Disciplinary sanctions

26. According to the applicable legislation, prisoners may be subjected to the following disciplinary sanctions: reprimand, deprivation of an assigned privilege, an order to make restitution, and solitary confinement⁶. Remand prisoners may be subjected to the following sanctions: prohibition or restriction on visits or correspondence, except contacts with defence counsel, the Ombudsperson and diplomatic missions. Article 122, par. 1 of Juvenile Justice Code stipulates that, the provisions on the disciplinary procedures and punishments applicable to persons sentenced to imprisonment set forth in the Law on Execution of Penal Sanctions shall apply mutatis mutandis to a minor subject to a measure of committal to an educational-correctional institution.
27. Further, Article 122, par. 2, expressly stipulates that: **"A minor may not be subject to solitary confinement as a disciplinary punishment"**. During the visit, NPM was interested to see the cell where minors are held when they are at isolation. According to the explanation of the Director of this Centre, this does not constitute disciplinary sanctions of solitary confinement, but only those of isolation in specific situations, which lasts only for some hours.
28. Article 122 of Juvenile Justice Code stipulates that a minor may be accommodated in a special unit of the educational-correctional institution as a disciplinary punishment under the following conditions: The period of accommodation in a special unit may not exceed fifteen (15) days, the minor shall not be accommodated alone in the special unit, the minor shall be entitled to exercise his or her right to spend at least three (3) hours daily outside closed

⁵ European Committee for the Prevention of Torture in the report for Kosovo after the visit made to Kosovo in 2015 had remarks regarding the provision of medical services in the presence of correctional officers in some Correctional Centres and recommended to put an end to such practices.

⁶ Paragraphs from 101 to 113 of Law on Execution of Penal Sanctions.

premises during free time, the minor shall have access to textbooks and other books, and, the minor shall be visited by a medical officer and educator once a day and by the director of the educational-correctional institution twice a week.

29. **However, from the inspection of one of the cells where they are accommodated or isolated in those situations, the impression is made that Lipjan Correctional Centre, when accommodating minors in a special unit, cannot satisfy the requirements set forth by Article 122 of Juvenile Justice Code. The isolation of the minor in such conditions is more of a resemblance to the imposing of disciplinary sanctions of solitary confinement, since in the inspected cell (for isolation), the accommodation conditions do not satisfy the minimum standards of accommodation and there is no space for accommodating more than one minor.**
30. NPM expresses its concern due to the fact that self-injury is also considered a disciplinary violation in the Correctional Centre for Females and Juveniles in Lipjan.

NPM recalls that self-injury is not considered a disciplinary violation according to Law on Execution of Penal Sanctions.⁷

Contact with the outside world

31. Article 120 of Juvenile Justice Code stipulates that a minor shall have the right to receive a visit at least once each week for a minimum of one hour by his or her parent, adoptive parent, guardian, spouse, child, adopted child, and other relatives by blood in a direct line or in a collateral line to the fourth degree. A minor shall have the right to receive a visit at least once per month by other persons who will not have a negative influence on execution of the measure.

NPM received no complaints from minors regarding this right.

32. NPM considers that contacts with the outside world, especially victims made by the family or other relatives, are of an essential importance in the context of social rehabilitation of convicted persons.
33. In relation to phone calls, Article 60 of Law on Execution of Penal Sanctions stipulates that a convicted person has the right to place telephone calls.

NPM received no complaints from minors regarding this right.

Admission procedures

34. All newly-arrived prisoners to Lipjan Correctional Centre are required to undergo an admission procedure lasting between seven and 30 days, during which the prisoner is accommodated in the reception block and after this period, the minor is sent to the adequate lock depending on the punishment or the educational-correctional measure imposed. Lipjan Correctional Centre keeps a record with complete information for each detainee or prisoner accommodated at this centre.

Security-interrelated issues

35. During the interview with minors and the conversation with Directory of Lipjan Correctional Centre, NPM observed that there are tensions among juveniles, and time after time, these tensions are associated with physical violence among them.
36. European Committee for the Prevention of Torture in the report on the visit made to Serbia in 2015 (25 May to 5 June 2015), regarding the violence among prisoners stressed the state's responsibility to protect prisoners from other prisoners whose intention is to harm them.⁸

⁷ European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 stressed the concern due to the fact that in some Correctional Centres in Kosovo, self-injury is considered a disciplinary violation.

37. Further, European Committee for the Prevention of Torture stresses that addressing the issue of violence among prisoners requires that the prison personnel is well-trained to intervene and manage with such situations. The existence of positive relations among prisoners and prison personnel is a decisive factor in this context; this will depend considerably on personnel's abilities for inter-personal communication. It is also clear that the purpose of an effective strategy for treating this issue should be the guarantees that prison personnel are in a position to exercise their authority in proper manner. In addition, the prison system as an entirety needs to develop capacities to guarantee that potential incompatible categories of prisoners should not be accommodated together.
38. Further in the report, the Committee invited Serbian authorities to provide necessary resources and instructions to prison managers to guarantee a more proactive approach regarding the security of all prisoners. In addition to the increase of the number of personnel, the existing expertise and skills should be expanded in the provision of further specialised training.
39. Moreover, the Committee recommended Serbian authorities that in the light of these recommendations they should develop a national strategy for the prevention of violence and intimidation among prisoners.
40. **Therefore, in the light of above-mentioned comments and recommendations, NPM encourages relevant authorities in Kosovo to take actions and to implement more professional psycho-social programmes, which would help decrease tensions and violence among the juveniles. NPM considers that such a thing, taking occasional tensions and violence into consideration, should be a priority for relevant authorities.**

Procedure for filing complaints

41. European Committee for the Prevention of Torture in the report for the visit made to Kosovo in 2015 stressed that effective system of filing complaints is basic safeguards against ill-treatment in prisons and detention centres. Persons accommodated in these centres should have avenues to file complaints, within the prison or the detention centre and be entitled to confidential access to an appropriate authority.
42. Article 91 of the Law on Execution of Penal Sanctions provides for a detailed procedure by which detainees and prisoners may address complaints or requests to the Director of a specific Kosovo Correctional Service establishment. The procedure includes deadlines for responses by the Director, and the possibility to refer a complaint under certain circumstances to a higher authority, in particular the General Directory of the Correctional Service and the Minister of Justice.⁹
43. NPM observed that there are complaint boxes available to the accommodated persons in Lipjan Correctional Centre placed by the Kosovo Correctional Service and the complaint boxes placed by Ombudsperson Institution. Complaint boxes placed by Ombudsperson Institution may be opened only by the personnel of this institution, which provides confidentiality for complainants in filing complaints. In addition, the accommodated persons may address complaints to Ombudsperson through free telephone line (information on telephone lines are placed on complaint boxes).

8 European Committee for the Prevention of Torture, report from the visit made to Serbia in 2015, published on 24 June 2016, at: <http://www.cpt.coe.int/4C35B9F6-3F66-4397-9F20-2C16F5199D93/FinalDownload/DownloadId-9489844769FDABA923BB0B064C85DADA/4C35B9F6-3F66-4397-9F20-2C16F5199D93>, (25.10.2016)

9 Article 91, paragraph 4 of Law on Execution of Penal Sanctions stipulates: The director of the correctional facility will respond in the appeal filed in a time period of fifteen (15) days, whereas the Head Office of the Correctional Service in a time period of thirty (30) days. In a written appeal a response in the written form will be issued.

44. NPM observed that Directory of Lipjan Correctional Centre provides adequate possibilities for filing complaints and submissions; it reviews them and submits a response to the accommodated persons in this Centre.

Therefore, Ombudsperson's NPM recommends:

Ministry of Justice and Kosovo Correctional Service

- **To step up engagements outside the cell for detained persons.**
- **To investigate allegations for excessive use of force by correctional officers.**
- **To improve material accommodation conditions in the blocks where detained juveniles are accommodated and in other blocks when such a thing is necessary.**
- **Decrease of these tensions and putting an end to acts of violence among the juveniles should be a priority for relevant authorities.**
- **Taking into consideration that the current shaving tool (BIC) has become a frequent phenomenon for causing self-injuries, we recommend that relevant authorities should provide another alternative – to engage a barber**

Ministry of Health

- **To implement more professional psycho-social programmes and group treatments for juveniles that would help decrease tensions and violence among juveniles.**

Sincerely,

Hilmi Jashari
Ombudsperson

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

Concerning the monitoring of the Detention Centre in Lipjan

To:

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

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

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

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

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

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

Prishtina, 21 December 2016

Dates on the visit and the composition of the monitoring team

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

Detention Centre in Lipjan

Introduction

2. Detention Centre in Lipjan (DCL) is located in the third kilometre of the Town of Lipjan, at the junction connecting the Town of Lipjan with Magura, which is next to the Correctional Centre of Lipjan. Detention Centre in Lipjan was built in 2003 and at the time was managed by UNMIK. This Centre closed in September 2004 due to technical damages suffered, and it got repaired and opened again in October 2006, which has continued to operate further under the management of Ministry of Justice, namely Central Directory. In 2006, powers were handed over to the local¹⁰ managing staff.
3. DCL accommodates detainees and a small number of convicted persons accommodated at a special wing.¹¹ During the visit, on 7 September 2016, the team was informed by the DCL Directory that at the moment of their visit, there were 133 detained persons and 8 convicted persons accommodated there.
4. While, during the visit made on 19 October 2016, NPM was informed that the transfer of accommodated persons had started in the Correctional Centre in Dubrava and by that time, 40 accommodated persons had already been transferred.

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

Cooperation with NPM during the visit

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

Ill-treatment

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

Material conditions

7. NPM observed that conditions, where convicted persons are accommodated were better than in the part where detainees were accommodated. During the visit made to the part where convicted persons were accommodated, NPM observed that one to a maximum of two persons were accommodated in one cell. **During the inspection, NPM observed no overpopulation.**
8. Cells are equipped with TVs (are not property of DCL) and lockers for keeping their clothes. Convicted persons informed NPM that bedclothes are brought from their homes because they were not provided by DCL. The convicted persons may take a shower as many times as they

¹⁰ Website of Ministry of Justice, at: <http://www.md-ks.net/?page=1.72#?page> (8.09.2016).

¹¹ Convicted persons are accommodated in Block “A” of Detention Centre in Lipjan.

wished, while bathrooms and toilettes were generally in good condition. **During the visit, NPM observed that there is no humidity¹² in the cells in the block where convicted persons are accommodated.**

9. NPM observed that in the parts of DCL where detainees were accommodated, water was leaking in some cells and they needed painting. The monitoring team during the visit to DCL encountered no overpopulated cells and a maximum of 3 persons were accommodated in them. While, toilettes and bathrooms were in good condition. DCL Directory informed NPM that closing of this Centre and accommodation of detainees in the new facility in Hajvali is being planned. **In relation to the announcement that this Centre is to be closed, NPM will monitor this situation and will seek updated information from competent authorities.**

Food

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

Regime

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

Health care

13. The responsibility for healthcare in the Correctional Service was transferred from Ministry of Justice to Ministry of Health in July 2013. During the visit, NPM concluded that there were few improvements concerning the infrastructure conditions of medical personnel compared to previous visit. Medical personnel fears that water will be leaking again in their offices and their work conditions will worsen with the coming of autumn and winter. **NPM concluded that the areas where medical services are administered are not appropriate and are small.**
14. Medical personnel expressed their concern concerning the delays to responses by courts in the cases of recommendations submitted and submissions for court permits to send detainees and convicted persons for treatment outside DCL. The NPM team was informed that this issue is regulated based on the categorisation of urgencies for treatment. Category "A" includes detainees whose situation requires urgent sending to another health institution and no court permit is expected for this, but the court is informed in writing regarding the case. Category

¹² During the visit made to DCL, NPM was informed that this Centre is to be closed and the accommodated persons and personnel will be moved to Detention Centre in Hajvali (Prishtina). This Detention Centre has not been operational to date.

“B” means detainees who should be given health treatment outside DCL within a 24 hour time. This category requires court permit and medical personnel expressed their concern regarding the delays to responses by courts and regarding the failure to take doctor’s recommendations into consideration.

15. Category “C” includes detainees who should be given medical treatment within a week and a permit by the competent court is needed. Category “D” includes detainees who are to receive specific medical service within a month and also a court permit is needed. According to medical personnel, a problem is presented by the obligation to return the detainee to DCL, in case the clinical centre where the patient was sent to earlier for treatment cannot offer service and he/she is to be sent to another clinical centre. For such a transfer, a court permit is needed again.

16. Medical personnel and Directory expressed their concern because of the fact that detainees with mental problems are accommodated in DCL due to the lack of space for accommodation in Forensic Psychiatry Institute or in another adequate place. During the visit, NPM was informed that at that moment there were 2 detainees with mental problems accommodated in DCL, while 7 were being treated in the psychiatric ward in the University Clinical Centre of Kosovo (UCCCK).

Ombudsperson’s NPM recommended relevant authorities to take necessary actions for accommodation of these persons in special establishments in compliance with European Prison Rules adopted by Council of Europe¹³ and Law on Execution of Penal Sanctions.

Composition of medical personnel

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

A hunger strike case from one detainee

18. During the visit made on 7 September 2016, in DCL, the NPM team was informed that the detainee B.TH went on hunger strike as a sign of dissatisfaction with the decision taken by a competent court to extend the detention measure till 1 October 2016. NPM was informed by the medical personnel on the actions being undertaken to provide the detainee with the necessary medical care. **From the documents presented by the medical personnel and the allegations of the detainee on strike, the NPM team concluded that the detainee on strike was provided with adequate medical treatment.**

19. During each visit, medical personnel informed the detainee on his health situation and eventual consequences. NPM concluded that medical personnel have been undertaking actions regarding the detainee on strike, in compliance with the Declaration of Malta on Hunger Strikers.¹⁴ **NPM will continue to monitor this case through visits and contacts with the DCL Directory.**

Medical screening

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

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

20. European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 paid particular attention to the medical screening, especially of newly-arrived prisoners or detainees, not only for detecting (transmissible) diseases and preventing suicides, but also for contributing to the prevention of torture through the proper recording of injuries.
21. DCL informed the NPM that the newly-arrived are screened within a 24 hour time from the moment of their arrival at DCL. These screens mean a general screening during which the detainee is asked whether he/she has any disease, which if declared, is recorded in his/her medical file. However, DCL and other centres where detainees and prisoners are accommodated, still have no possibilities to conduct systematic screening for tuberculosis, hepatitis and AIDS. **NPM recommends that relevant authorities should take serious actions to enable such systematic screenings in order to detect such diseases on time and to conduct comprehensive screening¹⁵ on the newly-arrived persons.**
22. NPM observed that medical service maintains the following records: Records on an attempt for committing suicide, body injuries, hunger strikes, sexual abuse, prison deaths, observations, self-injuries and internal medical protocols, such as: the psychiatrist and psychologist's protocol. In addition, medical service is in possession also of the form entitled "**Standard practice of actions on hunger strikes**", which recorded data regarding health situation of detainee or the prisoner on strike.
23. NPM observed that medical personnel keeps satisfactory record regarding medical screenings conducted and keeps records with proper descriptions in cases of body injuries or self-injuries.

Confidentiality of medical services

24. NPM has been interested whether medical personnel are providing the detainees and prisoners in DCL with medical services in the presence of correctional officers. During the conversation with medical personnel it could be learned that in specific cases, correctional officers are observing through a small window, while the medical service was administered, but do not stay inside. However, the chief doctor was determined that medical services should not be administrated in the presence of correctional officers because the patient-doctor relation is compromised in this way. **NPM encourages such an attitude and practice of non-presence of security officers during the administration of medical¹⁶ services.**

Other issues

DCL personnel

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

Disciplinary sanctions

26. According to the applicable legislation, prisoners may be subjected to the following disciplinary sanctions: reprimand, deprivation of an assigned privilege, an order to make restitution, and solitary confinement¹⁷. Remand prisoners may be subjected to the following sanctions: of prohibition or restriction on visits or correspondence, except contacts with defence counsel, the Ombudsperson and diplomatic missions. **NPM observed that DCL**

¹⁵ Such an action was recommended by the European Committee for the Prevention of Torture in the reports for Kosovo during the previous visits made to such institutions in Kosovo.

¹⁶ European Committee for the Prevention of Torture in the report for Kosovo after the visit made to Kosovo in 2015 had its remarks regarding the provision of medical services in the presence of correctional officers and recommended to put an end to such practices.

¹⁷ Paragraphs from 101 to 113 of Law on Execution of Penal Sanctions.

keeps records on the disciplinary sanctions imposed where data recorded regarding the measure, reason, and time of impose and completion are recorded.

27. NPM was informed by the DCL Directory that self-injury in this Centre is not considered a disciplinary violation. **NPM hails such an attitude since self-injury is not included in the group of disciplinary sanctions set forth by Article 102 of Law on Execution of Penal Sanctions.**¹⁸
28. NPM was informed that medical service does not participate in decision-making regarding the ability of detainee or the convicted person to face disciplinary sanction of solitary confinement. NPM considered that medical personnel's role is clear in this aspect. The doctor's participation in decision-making who as a matter of fact is the doctor of the detained or convicted person would compromise the doctor-patient relation, unless this sanction is taken for medical reasons.¹⁹
29. DCL Directory has also expressed its concern that there are no adequate conditions for persons accommodated at solitary confinement regarding the prevention of self-injury.

Contact with the outside world

30. Article 200 of the Criminal Procedure Code stipulates that remand prisoners may receive visits "within the limits of the rules of the detention facility" with the permission of the (pre-trial) judge and under his or her supervision. Further, it is stated in the same Article that correspondence and other contacts are also subject to a decision by the (pre-trial) judge.
31. The applicable legislation²⁰, in the case of prisoners stipulates that a convicted person shall have unlimited right of correspondence (subjected to specific exceptions) to receive a visit at least once each month for a minimum of one (1) hour, and at least one visit by his or her child, spouse once in three months a minimum duration of three hours. NPM received no complaints regarding this issue.

Admission procedures

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

Procedure for filing complaints

34. Effective system of filing complaints is basic safeguards against ill-treatment in prisons and detention centres. Persons accommodated in these centres should have avenues to file complaints, within the prison or the detention centre and be entitled to confidential access to an appropriate authority.
35. Article 91 of the Law on Execution of Penal Sanctions provides for a detailed procedure by which detainees and prisoners may address complaints or requests to the Director of a specific Kosovo Correctional Service establishment. The procedure includes deadlines for responses by the Director, and the possibility to refer a complaint under certain circumstances to a higher

¹⁸ European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 stressed the concern due to the fact that in some Correctional Centres in Kosovo, self-injury is considered a disciplinary violation.

¹⁹ European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 required from relevant authorities to put an end to the practice of the request made by the doctor to confirm that detainee or the prisoner is in a situation to face the sanction.

²⁰ Law on Execution of Penal Sanctions, Articles 62-65.

authority, in particular the General Directory of the Correctional Service and the Minister of Justice.²¹

36. NPM observed that there are complaint boxes available for the accommodated persons in DCL placed by the Kosovo Correctional Service and the complaint boxes placed by Ombudsperson Institution. Complaint boxes placed by Ombudsperson Institution may be opened only by the personnel of this institution, which provides confidentiality for complainants in filing complaints.
37. DCL keeps a complete record of requests and complaints of detainees and prisoners. **NPM received no complaints from detainees and prisoners regarding the issue of filing of complaints or delays to review their complaints within a legal time.**

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

The Ministry of Justice and Kosovo Correctional Service

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

Ministry of Health

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

Sincerely,

Hilmi Jashari
Ombudsperson

²¹ Article 91, paragraph 4 of Law on Execution of Penal Sanctions stipulates: The director of the correctional facility will respond in the appeal filed in a time period of fifteen (15) days, whereas the Head Office of the Correctional Service in a time period of thirty (30) days. In a written appeal a response in the written form will be issued.

REPORT WITH RECOMMENDATIONS
OF
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE
OMBUDSPERSON

Concerning the monitoring of the Dubrava Correctional Centre

To:

Mrs. Dhurata Hoxha, Minister
Ministry of Justice

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

Mr. Imet Rrahmani, Minister
Ministry of Health

Mr. Sokol Zogaj, acting General Director
Kosovo Correctional Service

Mrs. Zyrafete Imeraj, acting Director
Correctional Centre in Dubrava

In conformity with Article 135, paragraph 3 of Constitution of the Republic of Kosovo and Article 17 of Law 05/L-019 on Ombudsperson, Ombudsperson's National Preventive Mechanism against Torture visited the Dubrava Correctional Centre.

Prishtina, 26 January 2017

Dates on the visit and the composition of the monitoring team

1. In conformity with Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPM”) of the Ombudsperson, visited the Dubrava Correctional Centre (hereinafter “DCC”) on 21, 22 and 23 November. The monitoring team comprised from two legal advisors, one doctor and one psychologist.

A brief background of the Institution

2. The construction of the DCC began in 1976 and was completed and opened in 1986. At that time the capacity was for approximately 1,000 convicted persons and there was a sub-branch of the DCC in Gurrakoc, where convicted persons with short-term confinement were concentrated and worked, having in mind that there was a chicken farm, workplace for machinist, etc.²²
3. After the war, with the entrance of KFOR troops and UNMIK Administration, this institution began to be administered by UNMIK and was rebuilt thanks to foreign donations. Initially, Blocks 2,3,7 and 8 were constructed and it started its work in June 2000.

General description of Institution

4. DCC is a high security level institution composed of several different sectors. Inside place is divided into two parts where one of them is the area for development of agriculture as well as other purposes, and inhabited part, where adult prisoners are incarcerated.
5. Generally prisoners are placed in 8 residential blocks, but during the visit, NPM was informed that block 5 has been renovated, while in the Hospital Ward are accommodated patients who are provided medical assistance, except severe cases which are sent to public hospitals. Whereas, outside the prison wall there is semi-open block where low risk prisoners are accommodated who are escorted minimally. The capacity of DCC is 1183 beds. **At the time when NPM visited this centre, there were 840 convicted persons accommodated there. NPM was informed that due to the preparations for the closure of the Detention Centre in Lipjan (DCL), there were 40 detainees accommodated in DCC transferred from DCL.** European Committee for the Prevention of Torture visited DCC in 2007, 2010 and 2015.

Cooperation with NPM during the visit

6. During the visit made by NPM to the DCC, the personnel of Correctional Service and personnel of Prison’s Health Department provided the monitoring team with full cooperation. The team, without any delay, had access to all places intended to visit. The team was provided with all necessary information to accomplish their task and the team was provided with the possibility to talk to convicted and the detained persons without the presence of correctional officers or other personnel. In addition, NPM was also allowed to use photo cameras.

Ill-treatment

7. Before the visit to this centre, NPM received a complaint from a prisoner S.Z with the allegation that on 24 October 2016 he was physically and severely ill-treated from correctional officers. Concerning this complaint, the NPM team visited the prison hospital, checked the complainant’s file and interviewed the complainant. NPM conducted examination of the person in question starting with the medical documentation and the records of all protocols (History of disease and all other protocols), but his name was recorded only in the self-injury protocols. In addition, a physical examination was done to the complainant. From the examination, it was concluded that the only injury seen on the complainant’s body was caused as a result of self-injury (confirmed also by the patient’s anamneses).
8. Concerning the health care, NPM concluded that the complainant was offered all possibilities for treating the injury as well as stitching of the injury, which was refused by the complainant. The

²² Data from the website of Ministry of Justice of the Republic of Kosovo, at: <http://www.md-ks.net/?page=1.70> (31.10.2016).

complainant also rejected the medication treatment for this injury. After committing self-injury, the complainant was sent for a medical treatment without his will, since he was bleeding.

9. In this regard, NPM interviewed the social worker who claimed that he had seen the complainant bleeding as he committed self-injury, but he didn't see any correctional officers abusing him physically. In addition, there were a number of correctional officers interviewed claiming that they simply sent the complainant for a medical treatment without his will, since he was bleeding after committing self-injury.
10. **Based on what was said above, NPM concluded that the complainant was not psychically abused and no excessive force was used against him by correctional officers, but the complainant was sent to the prison's hospital without his will, since after committing self-injury, the complainant was bleeding.**
11. **During the visits made to DCC, NPM interviewed a considerable number of prisoners and received no other complaints for physical ill-treatment or excessive use of force from correctional officers.**

Material conditions

Kitchen

12. During the visit made to DCC, NPM also visited the kitchen where prisoners working outside the prison perimeter and the personnel of the correctional centre get their meals, while to other prisoners, the food is served into their cells. During the visit made to the blocks, NPM received no serious complaints concerning the food quality. NPM was also informed that the kitchen staff and the prisoners employed in the kitchen possess sanitary booklets. NPM checked refrigerators where food is kept, and checked the food expiry dates. NPM did not encounter any food with expired dates.
13. NPM was informed from the chef that the kitchen faces lack of equipment for cooking and baking. In addition, there is lack of inventory, uniforms, work gloves, while available equipment had defects. NPM was informed that some of the appliances (baking ovens), which were purchased for the needs of the kitchen, due to the failure to meet standards, were never used and cannot be used now either, appliances are placed in the warehouse for a long time. **NPM expresses its serious concern concerning this issue, since the purchase of such appliances is done with the Kosovo Republic taxpayers' money and at the same time, such a situation constitutes misadministration and misuse of the public money. NPM, therefore, requires from relevant authorities to investigate the purchase procedure of these expensive appliances, which cannot be used at all, due to inadequacy.**

Block 1

14. This block accommodates convicted persons and detained persons transferred from DCL. Regimes in this block are as follows: basic, standard and advanced. NPM observed that the block has been renovated, toilets and showers were in good condition, cells contained no humidity, they were painted and clean. NPM was informed that hot water was missing in certain parts of the block. Such thing was also confirmed by correctional officers. In general, cells were warm, with sufficient lights and ventilation. **Authorities should act as soon as possible to provide hot water for the convicted persons in this block and to enable them to keep their hygiene in an adequate manner.**²³
15. In this block, in the V2 wing are accommodated 37 detained persons, who have been transferred from DCL. NPM observed that detained persons were accommodated in cells which contained

²³ Law on Execution of Penal Sanctions, Article 38.2 determines: "In order to ensure the hygiene of convicted persons and the hygiene of premises, convicted persons shall be provided with sufficient cold and hot water, and appropriate toilet and cleaning articles. Installations and devices for personal hygiene shall assure sufficient privacy and shall be well-maintained and clean".

no humidity, with sufficient natural light, showers and toilets were in good condition, but there was no hot water.

16. It could still be observed that convicted persons were using plastic bags to place their items, since they were lacking lockers.
17. NPM was informed by the incarcerated persons that daily press has not been distributed for two years now. **NPM reiterates that the provision of daily press is a right which is guaranteed by the Law on Execution of Penal Sanctions.**²⁴ According to the Directory of this centre, concerning the provision of daily press to the convicted persons, competent bodies are working on the tendering procedures and the press will soon be available to the convicted persons.

Block 2

18. NPM visited block 2 in which the standard regime is offered. Due to the preparations for the closure of DCL, there were 25 detained persons transferred to this block. **NPM observed that detained persons and convicted persons were accommodated in the same wing and they could contact each other without any problem.**²⁵ According to authorities, the detained persons brought here will be staying for a short period of time and then will be transferred to adequate centres for the detained persons.²⁶ According to the head of the block, there are no cases of violence among the convicted persons. The last case occurred in January 2015. According to the convicted persons and correctional officers, heating is not at a satisfactory level; the heating system is old and is facing technical problems. There is lack of administrative material and technical problems with photocopy machines and lack of inventory for the convicted persons and correctional personnel. Wing V1 needs painting and intervention on sanitary water knots. **NPM was informed by the directory of correctional centre that renovations are soon planned in this block. NPM will monitor the situation concerning the planned renovations.**

Block 3

19. In this block are accommodated the advanced convicted persons. The capacity of the block is 168, while during the visit made by NPM there were accommodated 144 convicted persons. NPM was informed that there was no lack of hot water and the convicted persons could take a shower 3 times a week. There were 2, 4 and 6 persons accommodated in one cell. Cells offered appropriate light and ventilation. NPM observed that in V1 wing of this block, showers and taps were damaged to a certain degree.

Block 4

20. In this block, convicted persons with standard regime are accommodated. The capacity of the block is 168, while at the time of the visit made by NPM there were 163 convicted persons accommodated. NPM observed that this block needs renovations. In the first floor it could be observed that humidity had penetrated into the cells where convicted persons were accommodated, cells had sufficient light and ventilation, showers and toilets were in bad condition. During the visit, NPM observed that in one cell there was humidity and water was leaking. **According to the announcement from the directory, the renovation of this block is soon to start. NPM will monitor the situation concerning the planned monitoring and will also request updated information from relevant authorities.**

Block 5

²⁴ Law on Execution of Penal Sanctions, Article 87: “A convicted person has the right to have access to the daily and periodical press in his or her mother tongue and other sources of public information”.

²⁵ Law on Execution of Penal Sanctions, Article 33.7: “Convicted persons shall not be accommodated in the same part of the facility as persons detained on remand”.

²⁶ UN Minimal Rules for the Treatment of Prisoners, Article 8.b: “Untried prisoners shall be kept separate from convicted prisoners”. European Prison Rules, Article 18.8: “Untried prisoners are kept separately from sentenced prisoners”.

21. This block has been renovated and the technical handover of the facility is expected. There are currently no convicted persons or detained persons accommodated here.

Block 6

22. Convicted persons with advanced regime were accommodated in this block. The capacity of the block is 134, at the time of the visit by NPM there were 129 persons accommodated. According to block supervisors, about 60-70 of convicted persons were engaged at work. Conditions in the block were good, cells have sufficient light and ventilation, they contain no humidity, they have hot water and the convicted persons are engaged at work and can take a shower every day, while others 3 times a week.

Block 7

23. The capacity of this block is 20, while during the visit of NPM, there were 18 convicted persons accommodated, heating was at sufficient level, there was hot water, cells provided light and appropriate ventilation. Convicted persons have fitness equipment. The block has been painted from persons confined there and some small renovations have been made. Bathrooms and showers are in good condition. The block possesses a kitchen which is used by the convicted person to cook, but food is brought to them from the kitchen of correctional centre.

Block 8

24. NPM visited block no. 8 where 40 persons were accommodated. In this block are accommodated the newly arrived persons who are accommodated here from 7 to 28 days. NPM was informed by the responsible officers that the admission registers and the file of the convicted persons accommodated in this block is held there. NPM checked the admission registers and the files of the newly admitted persons. There were no cases of overpopulation observed in the cells of the convicted persons in this block.

25. During the visit in the cells where the newly arrived persons were accommodated, NPM concluded that these cells need painting. NPM was informed that tendering procedures for painting of the block are under administration. The convicted persons claimed that they can take showers as many times as they wish and their clothes are washed at DCC. In addition, NPM was informed by the convicted persons that they are not provided with beddings and they should bring them from their homes, while blankets are provided by DCC.²⁷ **Relevant authorities should act in accordance with the obligations deriving from Article 16 of Administrative Instruction on House Rules in the Correctional Institutions.**

26. NPM observed that the convicted persons in these cells are obliged to keep their things in plastic bags and carton box, since the areas at their availability do not suffice. European Committee for the Prevention of Torture in its report from the visit conducted to Kosovo in 2015 disclosed the same problem and requested from the relevant authorities to remedy this deficiency.²⁸

27. Relevant authorities in the Republic of Kosovo in their response sent to the Committee on 8 September 2016, emphasised that steps will be undertaken to remedy this deficiency. **NPM will continue to monitor the situation concerning this issue and the resolution of the problem based on the answer of Kosovo authorities.**

Regime

²⁷ Article 16 of Administrative Instruction on House Rules in the Correctional Institutions: *“Each convicted person has his own bed made of specific matrices, pillow with slipcover, two bed sheets, and one or two blankets for summer, respectively two (2) up to three (3) blankets during winter, depending on heating. Each convicted person will be responsible for their bed with all components of the bed and a locker for personal belongings”*.

²⁸ Council of Europe, European Committee for the Prevention of Torture, the report from the visit in Kosovo in 2015, published in September 2016.

28. DCC provides 4 regimes for the convicted persons: basic, standard, advanced and semi-open regimes. In DCC, about 340 convicted persons are engaged at work. The engagement at work is higher during the summer season. Convicted persons are usually engaged at work in the kitchen, cleaning and the centre's farms. The convicted persons may move freely within the establishments where they are accommodated and are entitled to 3 hours of walking per day during summer season, while 2 hours per day during winter season.²⁹
29. In addition, within the correctional centre, function 3 workplaces, which in fact are also vocational training centres, where training on welding, construction, machinery, carpeting, technical maintenance, water and electricity installation are organised. Courses whose duration is 3 months are organised in these workshops. NPM observed that these courses were however available only to a limited number of convicted persons (at the time of the visit of NPM, the number of the engaged persons in these trainings was 10-12 persons). There are 4 convicted persons engaged in these workshops.
30. The officers who met the NPM in these places of work expressed their concern due to the fact that expensive machineries were purchased, which cannot be used as they are not completed technically. **Ombudsperson's NPM, similarly as in kitchen's case, requests from relevant authorities to investigate these cases of supplies with costly machinery and which in fact cannot be used due to deficiencies. All these machineries are in fact paid with money of Kosovo Republic taxpayers and whatever misuses are unacceptable.**³⁰
31. In addition, the secondary school "Rudina" functions in the DCC establishment, which currently engages 17 teachers, teaching is conducted in two shifts, the morning shift and the afternoon shift. Within the school functions library, where convicted persons can borrow books for reading. Except the usual literature, library possesses also religious Islam and Christian literature. Within the school are organised computer and accounting courses.
32. Tailoring is foreseen within the DCC, which has been dysfunctional and lacks working material.
33. In DCC, all the stuff is kept in the Sector of Deposits at the moment of admission at the centre and is handed over when released. Of a great concern is the situation encountered in the warehouse, where sequestered things are stored, since there were a lot of things, which were just thrown and the officers informed us that some of the things may be given to someone in need but no plan exists what will happen with them and how long they will be kept in the warehouse.
34. There is a gym, basketball and football court within DCC establishment. The basketball court at the moment is not used since it needs changing damaged windows and install window meshes, which would prevent damaging the windows caused as a result of thrown balls. A part of the hall, such as toilets and showers were renovated and are in very good condition, while in the other part, works were stopped since the work executor did not comply with technical conditions. The sports hall is dysfunctional.
35. Regarding the regime for detained persons who are brought from DCL, it remains poor, although the directory tries to relax this regime for as much as it is possible, thus enabling them to conduct cleaning work within the block and watching TV for a longer time. They are also entitled to 2 to 3 hours of walking within a day. **NPM encourages competent authorities to increase their activities outside the cell in DCC for the detained persons. NPM considers that the longer the period in detention is, it should correspond to the development and to the regime provided. NPM expects that the detained persons accommodated from DCL in DCC to be transferred as soon as possible to the adequate detention centres.**

Health care

²⁹According to Article 37 of Law on Execution of Penal Sanctions, the convicted persons are entitled to at least 2 hours of walking.

³⁰ See paragraph 13 of this report (kitchen).

36. The responsibility for healthcare in the Correctional Service was transferred from Ministry of Justice to Ministry of Health in July 2013. In Dubrava Correctional Centre prison functions the hospital for the convicted persons where are 6 regular doctors engaged (specialist of the following areas: urology, psychiatry, orthopaedic, family medicine, dermatology, ophthalmology), 26 nurses working in 12 hour shifts. In addition, there is physiatrist services offered twice a week, while the physiatrist is the trained nurse for physiatrist, working every day, full time job. The centre has also engaged one full-time psychologist. While the dentist was regular to date, but since he has started his specialisations, now he works in DCC twice a week. Therefore the centre is supported by the dentist from the Smrekonica Correctional Centre.
37. The programme of middle health personnel is organised as follows: regular personnel working from 08:00 to 16:00 and is comprised by the dentistry technician, the laboratory technician, two nurses and the physiotherapist. While in 12 hours shifts are working 14 nurses of middle personnel divided in the first 7 to 12 hours and in the second 7 to 12 hours, including also 4 nurses working only during the 12 night hours. While, one doctor is available during the 24 hours.
38. As external consultants working once a week are engaged: the psychiatrist, cardiologist, orthopaedist, neurologist, radiologist and the radiology technician, physiatrist, ophthalmologist, otorino-laryngologist, while the general surgeon is invited on need. Currently, there is no urologist.
39. Taking into account the number of self-injuries which is increasing and the number of persons with mental problems, the persons using narcotic substances, NPM expresses its concern due to the fact that there is only one regular psychologist employed in this centre, while the psychiatrist is engaged only once a week. Based on the number of the convicted persons accommodated in this centre, it cannot be expected that only one psychologist can respond to all requests for psychological treatment in an adequate manner.
40. During the visit, NPM observed that there is no proper cooperation between the social service, correctional service and psychologist, where many times the psychologist is facing difficulties at work, since the competent officers do not bring planned cases for treatment in his office. The psychologist has no work supervisor for his work and as a result he is obliged to pay, with his own money, an expert to supervise and assist in his clinical work. **In addition, there is lack of continued professional training for psychologists and social workers.**
41. NPM was informed from the medical service that a worrying problem is presented from the inability to send the convicted persons requiring medical services due to the lack of regular transport. DCC possesses an auto ambulance, which does not meet the conditions, is not fully functional and does not possess the basic things for provision of adequate medical assistance.
42. During the visit, NPM observed that the hospital does not possess an elevator through which the access to the second floor of the convicted persons with disabilities would be enabled. Authorities of the Republic of Kosovo in their response sent to CPT concerning the conclusion in their report for the visit made to Kosovo, that the convicted persons with disabilities lacked adequate access to hospital, emphasized that the issue was addressed to Kosovo Correctional Service to avoid this deficiency and to install an elevator. Further, the authority's answer mentioned that this issue will not occur during this year based on the current budget and based on the plans for reconstruction of Correctional Service. **NPM will monitor the implementation of this CPT recommendation and the commitment of authorities of the Republic of Kosovo to implement the same.**
43. NPM was informed that hospital was renovated last year. However, NPM observed that infrastructure was damaged considerably in the second floor of hospital, (floor tiles and the inventory in the corridor in the dining hall). These damages are a result of non-qualitative work executed by the company engaged which have been technically accepted. **This situation presents a misuse of public money and is an obligation of competent authorities to investigate this issue.**

Hospital records

44. Prison hospital keeps the following records: records for self-injury, record of hunger strike, record of committal of suicides, corporal damages. Each doctor also possessed the protocol of the visit of patients. NPM observed that hospital possessed modern equipment and may provide adequate medical services to the convicted persons. **In general, NPM concluded that prison hospital meets the standards for the provision of medical services, but it encourages medical staff to be more rigorous when filling in medical files.**

Request for interim measures

45. However, during the visit made on 27 September 2016 in this centre, NPM observed four adults in one room in a serious health condition in the second floor of the hospital. During this visit, NPM stayed in the CC Prison Hospital, on which occasion met with persons who were serving their sentence, persons over 85 years of age, immovable persons and without adequate health care.
46. Regarding this situation, on 29 September 2016, the Ombudsperson addressed a request for interim measures to the Ministry of Justice and requested that these convicted persons are **urgently sent for medical treatment in the institutions of the Clinical and University Hospital Service in Kosovo (secondary and tertiary level), in conformity with health needs**, in order to enable adequate health treatment for them. Until the publication of this report, Ministry of Justice has not responded to the Ombudsperson's request, for an interim measure.

Medical screening

47. European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 paid particular attention to the medical screening, especially of newly-arrived prisoners or detainees, not only for detecting (transmissible) diseases and preventing suicides, but also for contributing to the prevention of torture through the proper recording of injuries.
48. DCC informed the NPM team that the newly-arrived are screened within a 24 hour time from the moment of their arrival in this centre. These mean a general screening during which anamnesis is taken from the prisoner whether he/she has any disease to declare, which is recorded in his/her medical file.

Confidentiality of medical services

49. NPM has been interested whether medical personnel in Dubrava Correctional Centre are providing medical services in the presence of correctional officers. During the visit to the hospital, NPM concluded that medical services are administered without the presence of correctional officers in the prison hospital. ***NPM encourages such an attitude and practice of non-presence of security officers during the administration of medical³¹ services.***

Training for medical service

50. In general, NPM was informed that medical personnel is not provided with appropriate training for the work specifics and let alone for the use of sophisticated apparatuses they possess. These apparatuses are mainly applied by external clients of relevant specifics. **NPM requests from relevant authorities to identify the professional training needs for medical personnel.**

Other issues

Personnel of Dubrava Correctional Centre

51. Based on the information obtained from the directory, DCC personnel are comprised of 515 uniformed correctional officers, 81 civilian personnel and 46 medical personnel. Within

31 European Committee for the Prevention of Torture in the report for Kosovo after the visit made to Kosovo in 2015 had remarks regarding the provision of medical services in the presence of correctional officers in some Correctional Centres and recommended to put an end to such practices.

personnel there are 12 social workers and 1 psychologist employed. **During the visit in this centre, NPM received complaints from social officers that the current number of social workers is insufficient, considering the number of convicted persons accommodated in this correctional centre. In addition, a worrying problem was mentioned the non-functioning of the database of social workers (MDSIMB) known as the integrated system for managing convicted persons.**

52. Social services also mentioned that they need continued professional training for the management of specific cases, such as persons who are accused for committing terrorist acts.
53. **During the visit, NPM observed lack of coordination and effective cooperation among social service, health service and security service concerning case management.**
54. During the visit, NPM was informed that at the moment the centre is facing lack of different office material, inventory, computers, printers and cartridges. **NPM encourages relevant authorities to undertake all actions necessary in order that DCC is supplied with all necessary material for work.**

Disciplinary measures

55. According to the applicable legislation, prisoners may be subjected to the following disciplinary measures: reprimand, deprivation of an assigned privilege, an order to make restitution, and solitary confinement³². Remand prisoners may be subjected to the following sanctions: of prohibition or restriction on visits or correspondence, except contacts with defence counsel, the Ombudsperson and diplomatic missions. **NPM observed that DCC keeps records on the disciplinary measures imposed where data regarding the measure, reason, time of impose and completion are recorded.**
56. NPM was informed by the DCC Directory that self-injury in this Centre is not considered a disciplinary violation. **NPM hails such an attitude since self-injury is not included in the group of disciplinary sanctions set forth by Article 102 of Law on Execution of Penal Sanctions.**³³
57. NPM was informed that medical service does not participate in decision-making regarding the ability of detainee or the convicted person to face disciplinary sanction of solitary confinement. NPM considered that medical personnel's role is clear in this aspect. The doctor's participation in decision-making who as a matter of fact is the doctor of the detained or convicted person would compromise the doctor-patient relation, unless this sanction is taken for medical reasons.³⁴
58. However, NPM expresses concern due to the fact that the applicable legislation³⁵ sets forth that before the convicted person is placed to a solitary confinement, the director of the service of correctional institution should request the doctor's opinion in writing which testifies that the convicted person is at good physical and psychological condition. **NPM requests from relevant authorities that the provisions at force of these acts are amended in accordance with the CPT recommendation in the report for Kosovo in compliance with the 21st CPT's general report and the Recommendation of the Committee of Ministers of Council of Europe Rec (2006) 2 for the Revision of European Prison Rules, which required the written opinion that the convicted person may be subject to this measure was removed.**

³² Paragraphs from 101 to 113 of Law on Execution of Penal Sanctions.

³³ European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 stressed the concern due to the fact that in some Correctional Centres in Kosovo, self-injury is considered a disciplinary violation.

³⁴ European Committee for the Prevention of Torture in the report for the visit in Kosovo in 2015 required from relevant authorities to put an end to the practice of the request made by the doctor to confirm that detainee or the prisoner is in a situation to face the sanction.

³⁵ Article 107 of Law on Execution of Penal Sanctions and Article 76 of Administrative Instruction on House Rules in the Correctional Institutions.

Contact with the outside world

59. Legislation at effect³⁶, in the case of convicted persons determines that a convicted person shall have the unlimited right of correspondence (subjected to specific exceptions), shall have the right to receive a visit at least once each month for a minimum of one (1) hour by his or her spouse, child at least once every three months for a minimum of three hours. In addition, they shall have the right to make phone calls.
60. Regarding phone calls, Administrative Instruction on House Rules in the Correctional Institutions³⁷ determines that convicted persons may place phone calls to close family members and other persons. According to this Instruction, phone calls of the convicted person and the detained person shall not last more than 15 (fifteen minutes).
61. Convicted persons on basic regime shall be entitled to one phone call a week lasting 15 (fifteen) minutes, while convicted persons on advanced regime shall be entitled to two phone calls a week lasting 15 (fifteen minutes).
62. In the case of the detained persons, Article 200 of Criminal Procedure Code of Kosovo determines that the detainee on remand may receive visits “within the limits of the rules of the detention facility”, based on the permission of the pre-trial judge and on his or her request. Further the Code determines that correspondence and other visits are subject to the decision of the pre-trial procedures.
63. Ombudsperson or his representatives may visit the detained persons and contact with them without announcing it and without the supervision of the pre-trial judge, single trial judge or presiding trial judge or other persons appointed from such judge. Letters of the detained person sent to the Ombudsperson Institution cannot be controlled. The Ombudsperson and his representatives may communicate verbally or in writing confidentially with the detained person.
64. In the case of foreign nationals, they shall be provided with the opportunity to contact a diplomatic representation in writing or verbally or the relevant office of his or her State of nationality.³⁸ During the visit, NPM interviewed a number of foreign nationals who had no complaints regarding the enjoyment of these rights. **NPM received no complaints regarding the right for contacts with the outside world neither from convicted nor from detained persons.**

Admission procedures

65. In DCC, the newly-arrived persons are required to undergo an admission procedure lasting at most 30 days. During this period, they are assessed and categorised in special cells, before they are accommodated in normal cells. During the visit, NPM observed that DCC possesses a register which records data regarding the convicted person accommodated in the admission block. Regarding the contacts with the outside work and walking during this period, convicted persons declared that they are allowed two phone calls during the period they are accommodated in this block.
66. NPM received no complaints from the convicted persons accommodated in this regime. NPM considers that DCC does not implement a restrictive regime against the convicted persons during the period while they are in the admission block.

Security-interrelated issues

67. During the visit, NPM observed that the so called *pepper spray* is part of standard equipment of correctional officers in DCC. In addition to this, NPM was informed that this *pepper spray* has expired. **CPT in the reports for visits in Kosovo in 2011 and 2015 requested from relevant authorities to put an end to such practise, considering the damaging effects caused by the**

³⁶ Law on Execution of Penal Sanctions, Articles 62-65.

³⁷ Administrative Instruction on House Rules in the Correctional Institutions, Article 54.

³⁸ Law on Execution of Penal Sanctions, Article 33 paragraph 1.

substances and this equipment should not be part of the standard equipment of correctional officers.

68. NPM was informed by the directory that in some blocks and facilities in DCC there are no security cameras. **NPM encourages DCC authorities to equip all corridors of blocks and external areas with security cameras, which according to CPT comprise one of guarantees for protection from ill-treatment.**³⁹ In the report for Ireland for 2010, CPT encourages relevant authorities to install more security cameras in places where persons deprived of liberty are accommodated.
69. **NPM also encourages relevant authorities to provide technical possibilities so that the data recorded by the security cameras are stored for a long time, since eventual allegations for ill-treatment or excessive use of physical force can be investigated more effectively in this way.**

Procedure for filing complaints

70. Effective system of filing complaints is basic safeguards against ill-treatment in prisons and detention centres. Persons accommodated in these centres should have avenues to file complaints, within the prison or the detention centre and be entitled to confidential access to an appropriate authority.
71. Article 91 of the Law on Execution of Penal Sanctions provides for a detailed procedure by which detainees and prisoners may address complaints or requests to the Director of a specific Kosovo Correctional Service establishment. The procedure includes deadlines for responses by the Director, and the possibility to refer a complaint under certain circumstances to a higher authority, which in the current case is the General Directory of the Correctional Service and the Minister of Justice.⁴⁰
72. NPM observed that there are complaint boxes available to the convicted persons in DCC establishment placed by the Kosovo Correctional Service and the complaint boxes placed by Ombudsperson Institution. Complaint boxes placed by Ombudsperson Institution may be opened only by the personnel of this institution, which provides confidentiality for complainants in filing complaints. **NPM received no complaints from detained persons and convicted persons concerning the issue of filing complaints or delays in the review of the complaints within the legal time.**

Based on findings and conclusions reached during the visits, in conformity with Article 135 paragraph 3 of Constitution of the Republic of Kosovo and Article 16 paragraph 4 of Law 05/L019 on Ombudsperson, Ombudsperson recommends:

Relevant authorities to investigate:

- The purchase of expensive kitchen appliances which are out of function, due to inadequacy.
- The purchase of machinery for the workroom, which could not be used and are out of function, as they were incomplete.
- The quality of work accomplished in the second floor of the hospital, as the corridor tiles were badly damaged, only one year after renovation done.

³⁹ CPT, Report on the visit to Ireland in 2010, paragraph 18.

⁴⁰ Article 91, paragraph 4 of Law on Execution of Penal Sanctions stipulates: The director of the correctional facility will respond in the appeal filed in a time period of fifteen (15) days, whereas the Head Office of the Correctional Service in a time period of thirty (30) days. In a written appeal a response in the written form will be issued.

Further, the Ombudsperson recommends the Kosovo Correctional Service (KCS) and the Ministry of Justice:

- To supply with hot water the blocks where hot water is missing;
- To supply with lockers in order that accommodated persons can keep their things;
- Convicted persons should be enabled access to daily press;
- To systemise convicted persons / detained persons;
- To supply with mattresses, beddings and blankets;
- To renovate Block 2 and 4;
- To renovate sanitary knots;
- To put in function the gym and investigate the reasons for its technical non acceptance;
- To increase activities for the detained persons;
- To bring into action tailoring, by providing work material, which could assist in meeting the needs of the centre and even wider;
- Kosovo Correctional Service should provide a solution regarding the access of persons with disabilities to the second floor of the hospital;
- Correctional Service should find a solution about the seized things placed in the warehouse.
- Correctional Service should functionalise MDSIMB database.
- Correctional Service should provide professional training for management of specific cases (for terrorist acts);
- Correctional Service should supply DCC with all necessary material for work: inventory, computers, printers and cartridges, etc.;
- To supplement/amend LEPS and Administrative Instruction on House Rules in the Correctional Institutions, which foresees to request the doctor's written opinion before a disciplinary sanction is imposed to a person;
- To remove the so-called *pepper spray* as standard equipment of correctional officers;
- To install security cameras where they are missing, and provide the technical possibility to store the recorded data for a longer time;

The Ombudsperson recommends the Ministry of Health and Correctional Service:

- Ministry of Health should hire a dentist on regular bases;
- Ministry of Health should hire additional psychologist, since it is impossible to successfully accomplish the overall work in the centre only with one psychologist;
- Ministry of Health should hire one psychiatrist on regular bases;
- Ministry of Health and Kosovo Correctional Service (KCS) should provide adequate and ongoing training for medical personnel, social officers and correctional personnel;
- Ministry of Health should provide auto ambulances to DCC, since the one available scarcely can fulfil the needs of the Centre;
- Ministry of Health and Kosovo Correctional Service should increase the level of coordination and effective cooperation among the social service, medical service (psychologist) and security service concerning case management;

- To undertake necessary steps for accommodation of mentally-ill persons in a special institution in accordance with the European Prison Rules adopted by Council of Europe and Law on Execution of Penal Sanctions.

Sincerely,

Hilmi Jashari
Ombudsperson

REPORT
OF
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE
OMBUDSPERSON

on visit to the Detention Centre for Foreigners in Vranidoll

To: Mr. Skender Hyseni, Minister
 Ministry of Internal Affairs

 Mr. Shpend Maxhuni, General Director
 Kosovo Police

 Mr. Valon Krasniqi, Director
 The Department for Citizenship, Asylum and Migration
 MIA

 Mr. Kushtrim Haliti, Director
 Detention Centre for Foreigners in Vranidoll

Pursuant to Article 135, paragraph 3 of Constitution of the Republic of Kosovo and Article 17 of Law 05/L-019 on the Ombudsperson, Ombudsperson's National Preventive Mechanism against Torture visited the Detention Centre for Foreigners in Vranidoll.

Prishtina, 7 February 2017

Dates on the visit and the composition of the monitoring team

1. Pursuant to Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPM”) of Ombudsperson, on 7 and 12 December visited the Detention Centre for Foreigners (hereinafter DCF) in Vranidollë. The monitoring team was composed of a legal advisor and a psychologist.

Detention Centre for Foreigners

2. DCF was opened in June 2015 and operates within the Department of Citizenship, Asylum and Migration (DCAM) of Ministry of Internal Affairs (MIA). According to Article 2 of Regulation (MIA) No. 03/2014 on Operation of the Detention Centre For Foreigners (hereinafter “Regulation”), foreigners who are subject to forced removal as well as for the foreigners who are considered to have breached public security are held in this centre, in order to verify their identity or for other reasons. Capacity of this centre is 76 persons.

Cooperation with NPM during the visit

3. During the visit made to DCF, personnel of the centre offered NPM full cooperation. The team had access to all areas of the Centre. The team was provided with all necessary information to discharge the duty. During the visit to DCF, there were no foreigners accommodated there.

Ill-treatment

4. During the NPM visit to the centre there were no foreigners. NPM checked the files of some foreigners. During the check-up of registers and files of the accommodated persons in this centre, NPM observed that in September 2015, one Iranian citizen I.P had filed a written complaint alleging that he was physically ill-treated from the security guards. According to the centre officials, the case was investigated by the Kosovo Police. In this respect, **NPM asked Kosovo Police to inform on the results of investigation of complaint filed by the Iranian citizen.**
5. On 15 December 2016, Kosovo Police informed NPM that the case in question had been investigated by the Kosovo Police. Following the completion of investigations, on 11 November 2015, Kosovo Police filed criminal report with the General Department of Basic Prosecution Office in Prishtina.

Safeguards against ill-treatment

6. Based on the legal provisions of the Law on Foreigners, a foreigner who is accommodated in the centre shall be notified in written form, in one of the official languages and in English, for the reasons of his/her detainment at the detention centre, which shall contain the reasons for the detention, the detention period, the right to provide him/her with legal protection, as well as to contact his/her relatives”.⁴¹ **Based on the documentation checked, NPM observed that the authorities of the Centre comply with the above legal provisions. However, since there were no foreigners during our visit, NPM did not have an opportunity to interview the foreigners and obtain their claims regarding these rights.**
7. Furthermore, Article 114 paragraph 3 of Law on Foreigners determines that a foreigner shall enjoy the right for informing the diplomatic or consular representative for his/her detention. NPM was informed by the Centre’s officials that in some cases they are running into difficulties because the states from where some citizens come do not recognise the Republic of Kosovo as an independent state and have not established diplomatic relations with Kosovo. **Based on the documentation we looked at during the visit, the Centre offered the possibility to foreigners to inform embassies or consulates of states where they come from.**
8. According to Regulation and Law on Foreigners, the foreigner accommodated in this centre shall have the following rights: information concerning the right to appeal the detention in the Centre, the right to free legal aid, the right to an interpreter in his/her language or in a language he/she

41 Law 04/L-219 on Foreigners, Article 108

understands, the right to communicate with relevant local and international authorities and with Non-Governmental Organisations.⁴²

9. **NPM was informed that foreigners in this centre are provided with the free legal aid by the Office of the High Commissioner for Refugees (UNHCR). In addition, Regulation in force provides to the Ombudsperson and some other international relevant organisations access at any time. From the documents checked, NPM observed that Non-Governmental Organisations have access to DCF.**
10. Further, according to this Regulation, upon the admission of the foreigner to the centre, officer of the centre informs the foreigner on the rules in the centre. The centre should provide information brochures in foreign languages on the rights and liabilities of the foreigner accommodated in the centre. **Based on the documentation checked, NPM observed that the Centre possesses brochures in different languages in order to inform the foreigners on their rights.**
11. Standards of European Committee for the Prevention of Torture (CPT) regarding the detention of foreigners determine that within the safeguards against ill-treatment, the foreigner should have equal rights as all other categories of detained persons, which means that they are entitled to inform the person of their choice from the moment of detention on their situation and have access to medical services, lawyer, the right to be informed on their legal position in the language they understand, and if necessary to provide them with an interpreter. **NPM was informed by the Centre that MIA possesses a list of interpreters who are providing interpretation services also in other foreign languages in addition to the services in English.** Based on personal files of foreigners accommodated in the centre, the authorities do respect these rights.
12. NPM observed that there are security cameras operating in all corridors of the Centre which are continuously operational. In the report on visit to Ireland in 2010, CPT considered the existence of security cameras as one of safeguards against the physical ill-treatment in the centres where persons deprived of liberty are held.⁴³

Material conditions

13. During the visit to the Centre, NPM visited two facilities where foreigners are held, including all other areas such as interview rooms, isolation rooms, sleeping rooms, family rooms, rooms for the activities of the adults, which were equipped with TV, playing cards, chess-board and there was a library on the corner with a small number of books, room of activities for children equipped with toys and designed according to standards, the room enabling the exercise of religious activities, kitchen equipped with appliances, as well as laundry sufficiently equipped for the capacities of Centre. All rooms offered good accommodation, heating, cleanliness and sufficient natural light. The Centre offered appropriate bathrooms and non-stop hot water, where foreigners can take a shower as many times as they wish. **In general, NPM considers that the Centre meets all conditions for accommodation of the foreign persons.**

Regime

17. Article 24, paragraph 1 determines that each detained foreigner in the centre has the right to at least (2) hours of outdoors exercise per day in the outdoors environments of the centre. For health purposes, the Head of the Centre may extend the time of outdoor exercise. Further, Article 24 paragraph 3 determines that during the outdoor exercise, the detained foreigners can have cultural and sports activities. However, NPM observed that Centre has a small sports field which is not equipped with associated elements where foreigners would be able to do concrete sports activities, such as basketball, football and other sports. **NPM encourages relevant authorities to step up their attempts to providing opportunities for concrete sports activities for foreigners in this centre.**

⁴² Article 9 of Regulation (MIA) no. 03/2014 on Operation of the Detention Centre for Foreigners

⁴³ CPT report on the visit made to Ireland in 2010, published in 2011, paragraph 18.

Health care

18. Standards set forth by CPT regarding the rights of the foreign detainee determine the right to receive services from a physician as a fundamental right and as one of the safeguards against ill-treatment. NPM was informed that medical services are administered to foreigners in this centre by the Family Medical Centre in Prishtina and the University Clinical Centre. Article 10 of Regulation (medical examination) expressly determines that professional medical personnel perform general medical examination for foreigners after their placement in the centre. The Regulation further determines that a tuberculosis test should also be conducted, performing also an X-ray for lungs to all foreigners placed in the centre who are over 5 years old.
19. Regarding foreigners with limited mental and/or physical disabilities who manifest symptoms of mental disorder, Regulation determines that they shall be ensured psychological treatment and professional medical counselling. According to Regulation, these treatments may be offered also by relevant Non-Governmental Organisations based on the request from the foreigner. **During the visit, NPM was informed that no general medical examination is conducted to foreigners accommodated in this Centre, except if they require this. NPM is of the opinion that general examination of foreigners, upon their admission in this centre, is very important due to an early detection of diseases such as tuberculosis, hepatitis, HIV AIDS, which would prevent the spreading of such diseases.**
20. NPM observed that all data regarding medical services offered to the foreigner are kept in his/her personal file.

Other issues

Personnel of the Detention Centre for Foreigners

21. Personnel of the centre are comprised of the head, the registration and admission officer for foreigners and security personnel.

Means of restraint

22. Regulation determines that in cases when the foreigner's behaviour constitutes a danger to themselves, for other foreigners in the centre, personnel of the centre, third persons, security and order and also for centre's material goods, the following measures could be imposed: the use of physical force which should be lawful and proportionate. This is measure is the last resort to be used and is used only when preliminary measures fail to succeed. In addition, Regulation determines that within these measures handcuffing or feet-cuffing could be applied.⁴⁴

Disciplinary measures

23. According to Regulation, disciplinary measures which can be imposed on a foreigner are: verbal or written warning, obligation for maintaining and cleaning the centre, deprivation of the right to free activity, recreation, TV, internet, sports or cultural activities in duration of five (5) days, and isolation up to 48 hours.
24. **During the control of documentation, NPM observed that, isolation measures were imposed in two cases to date. In the case of foreigner I.P. (citizen of the Republic of Iran), NPM observed in his personal file that he had complained about physical ill-treatment exercised by the security guards. The case was investigated by Kosovo Police.**

Contact with the outside world

25. CPT considers that detained persons should have every possibility to be in proper contact with the outside world (including the possibility to make phone calls and receive visits) and their free movement within the centre of their detention should be limited as little as this is possible.

⁴⁴ Article 46 of Regulation on the Detention Centre for Foreigners

Regulation determines that the foreigner in this centre has the right to keep correspondence, receive package and other items.⁴⁵

26. In addition, Regulation determines that the foreigner has the right to make phone calls for free as needed in duration of 5 minutes from 09:00 until 16:00.⁴⁶ According to Regulation, foreigners are also enabled calls from abroad. Foreigners accommodated in this Centre are also allowed to receive visits.⁴⁷

Admission procedures

27. Article 7 of Regulation determines that admission of the foreigner in the Centre shall be done based on the order for detention of the foreigner in the Centre issued by the DDF. DDF when handing-over the foreigners in the centre, must submit the foreigner's file, which contains: the order for detention in the Centre, the order for Forced Removal, as well as the order for Voluntary Removal, if issued, report of the police officer including the risk assessment, verification for documents and sequestered belongings, as well as personal belongings. Further, according to Regulation, the Centre confirms the foreigner's admission through an acceptance sheet.⁴⁸

Complaint procedures

28. Effective system of filing complaints is a basic safeguard against ill-treatment in prisons and detention centres. Persons accommodated in these centres should have avenues to file complaints, within the centre and be entitled to confidential access to an appropriate authority.
29. Article 19 of Regulation determines that the foreigners have the right to appeal to the head of the Centre in regard to their conditions of admission in the Centre and personnel's behaviour. The complaint will be submitted to DCAM within 7 days. Further, Regulation determines that a complaint box shall be installed within the Centre which shall be administered by the Centre. A complaint box shall be installed and administered by the Ombudsperson Institution.⁴⁹
30. NPM observed that there is a complaint box available for foreigners installed by the Centre. In addition, during the visit NPM installed a complaint box which can be accessed only by the Ombudsperson Institution personnel and NPM team, which provides confidentiality to complainants when filing complaints.

Based on the findings during the visit, NPM recommends to relevant authorities:

- **Medical screening should be conducted to foreigners accommodated in the Detention Centre for Foreigners upon their admission, in order to detect early diseases such as tuberculosis, hepatitis, HIV AIDS.**

Sincerely,

Hilmi Jashari
Ombudsperson

45 Article 25 of Regulation on the Detention Centre for Foreigners

46 Article 26 of Regulation on the Detention Centre for Foreigners

47 Article 27 of Regulation on the Detention Centre for Foreigners

48 Article 7 of Regulation on the Detention Centre for Foreigners

49 Article 19 paragraphs 2 and 3 of Regulation on the Detention Centre for Foreigners

REPORT
OF
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE
OMBUDSPERSON

on visit to Asylum-Seekers Centre

To: Mr. Skender Hyseni, Minister
 Ministry of Internal Affairs

 Mr. Valon Krasniqi, Director
 The Department for Citizenship, Asylum and Migration
 MIA

 Mr. Fitim Zariqi, Director
 Asylum-Seekers Centre, Magure

Pursuant to Article 135, paragraph 3 of Constitution of the Republic of Kosovo and Article 17 of Law 05/L-019 on the Ombudsperson, Ombudsperson's National Preventive Mechanism against Torture visited the Asylum-Seekers Centre.

Prishtina, 7 February 2017

Dates on the visit and the composition of the monitoring team

14. Pursuant to Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPM”) of the Ombudsperson, in November 2016 visited the Asylum-Seekers Centre in the village of Magura, Municipality of Lipjan, (hereinafter “Centre”). The monitoring team was composed of one legal advisor and one psychologist.

Asylum-seekers centre

15. Asylum-Seekers Centre in Magura was inaugurated in 2012 and operates within the Ministry of Internal Affairs (MIA). Regulation (MIA) No. 02/2014 on Functioning of the Asylum-Seekers Centre (hereinafter “Regulation”) determines the functioning of the Asylum-Seekers Centre and its management, including the procedure of admission, registration, accommodation and movement of asylum seekers within respectively outside the Centre.⁵⁰ This Regulation also regulates sanitation and hygiene conditions, nutrition, medical assistance, maintenance of order and discipline, as well as other important issues regarding its work.⁵¹

Cooperation with NPM during the visit

16. During the visit made to this Centre, personnel of the Centre offered NPM full cooperation. The team without any delay had access to all places visited. The team was provided with all necessary information to discharge their duty and was able to speak in private with persons deprived of their liberty without the presence of the officers of the Centre.

Ill-treatment

17. During the visit of NPM in this Centre, there were 25 asylum-seekers accommodated, mainly from the Republic of Albania, Algeria, Syria, Morocco and Afghanistan. NPM contacted some of the asylum-seekers accommodated in this Centre. **NPM received no complaints regarding their ill-treatment in this Centre.**

Rights of asylum-seekers according to Law on Asylum

18. Article 19 of Law on Asylum determines that asylum-seeker has the following rights: to reside in the Republic of Kosovo, to basic living conditions, to basic health care, to basic social assistance, to free legal assistance, to education for children asylum seekers, to freedom of thought and religious belief, to employment and professional training. NPM received no complaints from asylum-seekers accommodated in this Centre, regarding the enjoyment of these rights guaranteed by Law on Asylum.

Safeguards against ill-treatment

19. Article 5 of Regulation expressly determines: *“It is prohibited for the Centre staff to discriminate and offend the asylum seekers dignity based on their race, religion, sex, nationality, membership in a particular social group or political affiliation.”* In addition, Article 5 paragraph 2 of regulation determines that: *“Asylum seekers shall not be subjected to torture, inhuman or degrading treatment”*. Article 6.3 of Regulation determines that the officer of the Centre must notify the asylum seeker regarding the rights and obligations as well as the asylum procedure, including the possibility of obtaining free legal assistance and the possibility of contact with representatives of UNHCR or other organizations, which deal with the protection of the rights of refugees in his language or in a language which he/she understands.
20. NPM was informed that asylum-seekers are notified on their rights in different languages through leaflets and brochures. In addition, there is also a list of MIA interpreters available to the Centre. Free legal assistance is offered by the Non-Governmental Organisation CRPK (Civil Rights Program Kosovo). **NPM received no complaint from complainants regarding the non-compliance with the above-mentioned rights.**

⁵⁰ Regulation (MIA) No. 02/2014 on the Functioning of Asylum-Seekers Centre, Article 1

⁵¹ Regulation (MIA) No. 02/2014 on the Functioning of Asylum-Seekers Centre, Article 1, paragraph 2

21. In addition, NPM observed that there are security cameras operating in all corridors of the Centre, which is an additional safeguard against ill-treatment.⁵²

Material conditions

22. During the visit to the Centre, NPM visited the areas where asylum-seekers are held, including all areas such as interview rooms, sleeping rooms, family rooms, rooms for the activities of the adults and minors, which were equipped with TV, a library with a small number of books, room of activities for children equipped with toys and the room enabling the exercise of religious activities, kitchen equipped with appliances, as well as laundry sufficiently equipped for the capacities of the Centre. The Centre also had a playground for children in the courtyard. All rooms offered good accommodation, heating, cleanliness and sufficient natural light. The Centre offered appropriate bathrooms and non-stop hot water, where asylum-seekers can take a shower as many times as they wish. **In general, NPM considers that the Centre complies with all conditions for accommodation of asylum-seekers.**

Food

31. Law on Asylum and Regulation determine the right for asylum-seeker for food. **NPM was informed that asylum-seekers in the Centre are given three meals per day, while asylum-seekers suffering from any disease such as diabetes are given food based on the medical report. NPM observed that the Centre is in possession of a kitchen with all associated appliances and was in good condition and clean. NPM received no complaints from asylum-seekers regarding the food offered in the Centre.**

Health care

32. Standards set forth by CPT regarding the rights of the foreign detainee determine the right to receive services from a physician as a fundamental right and as one of the safeguards against ill-treatment. NPM was informed that medical services are administered to foreigners in this Centre by the Family Medical Centre in Prishtina and the University Clinical Centre. Article 9 of Regulation (Medical examination) expressly determines that the professional medical personnel carries out a general medical examination of the asylum seeker(s) upon arrival at the Centre. Regulation further determines that all asylum-seekers over 5 years old should pass the tuberculosis test, this way performing the Rontgen of lungs.

33. Further, according to Regulation, asylum seekers with mental or physical disabilities are entitled to professional medical care and counselling. NPM was informed that the Centre possesses areas for provision of medical services and it will engage the appropriate medical personnel and the Centre will have its own medical services. **NPM will request updated information regarding this project of the Centre.**

34. NPM was informed that when asylum-seekers are accommodated an x-ray of lungs, laboratory analysis and a general medical examination is conducted to them. Expenses for medicines are covered by MIA. NPM observed that all data regarding the medical services offered to the asylum seekers are held in his/her personal file.

Children

35. During the visit, NPM was informed that an asylum-seeking family with three children was accommodated in a private housing in Ferizaj. The Centre was engaged on the issue of children schooling. While, NPM met a four-year old child in the Centre.

36. Article 13 of Regulation determines that the child's best interest should be taken into consideration during the implementation of this Regulation. According to Regulation, children who have been victims of whatsoever form of abuse, neglect, exploitation, torture or inhuman

⁵² See Standards of European Committee for the Prevention of Torture and the report on the visit to Ireland in 2010.

treatment or they have suffered from armed conflicts will be offered appropriate medical treatment services and qualified counselling when necessary. In addition, children accommodated at the Centre for asylum seekers will be ensured to access entertaining activities and games in accordance with their age. NPM observed that there is a code of games for children in the Centre within the facility and the Centre's courtyard.

37. During the visit, NPM was informed that currently there are no unaccompanied children in the Centre, as well as identified victims of violence and torture.

Disciplinary measures

38. Article 45 of Regulation determines disciplinary measures which can be imposed to the asylum-seekers if an asylum seeker fails to comply with the guidelines set forth in this Regulation: refusal of permission to leave the Centre for a certain period of time, limiting TV Access or internet. If an asylum seeker during his/her stay at the Centre commits violent acts or has aggressive behaviour with which the order and safety are at risks, he/she shall be placed in a separate room and the Centre shall immediately inform police authorities.

Admission procedures

39. Article 6 of Regulation determines that the Department for Citizenship, Asylum and Migration (DCAM), within MIA, decides, based on the relevant documents, whether an individual is to be sheltered in the Centre or elsewhere. The Centre confirms, with an admission sheet, housing the asylum seekers, which is attached to the asylum-seeker's file. Then the asylum-seeker is notified with his rights and obligations, and his//her control and medical examination is conducted.

Complaint procedure

40. The issue of lodging complaints is regulated by Article 19 of Regulation which determines that asylum seekers have the right to complain to the Head of the Centre regarding living conditions and the behaviour of the officials. Complaints shall be forwarded to the DCAM within 7 days.

41. NPM observed that there is a complaint post-box available for asylum-seekers placed by the Centre.

Based on the findings during the visit, NPM, therefore, concludes that:

- **Living conditions are offered to the accommodated asylum-seekers in the Centre for Asylum-Seekers in accordance with international standards and relevant domestic laws.**
- **NPM received no complaints from the accommodated persons on the violation of their rights or regarding the treatment in this Centre.**

Sincerely,

Hilmi Jashari
Ombudsperson

REPORT
OF
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE
OMBUDSPERSON

on visit to the Regional Police Custody Centre in Prishtina

To: Mr. Skender Hyseni, Minister
 Ministry of Internal Affairs

 Mr. Shpend Maxhuni, General Director
 Kosovo Police

Pursuant to Article 135, paragraph 3 of Constitution of the Republic of Kosovo and Article 17 of Law 05/L-019 on Ombudsperson, Ombudsperson's National Preventive Mechanism against Torture visited Regional Police Custody Centre in Prishtina.

Prishtina, 7 February 2017

Dates on the visit and the composition of the monitoring team

23. Pursuant to Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPM”) of the Ombudsperson, on 14 December 2016 visited the Regional Police Custody Centre in Prishtina. The monitoring team was composed of a legal advisor and a psychologist.

Cooperation with NPM during the visit

24. During the visit to Regional Police Custody Centre in Prishtina, Kosovo Police provided NPM with full cooperation. The team without any delay had access to all places visited. The team was provided with all necessary information to discharge their duty and was able to speak in private with persons deprived of their liberty.

Ill-treatment

25. Persons suspected for committing a criminal offence may be detained by the police up to 48 hours before they are sent to the pre-trial judge. Police may detain and collect information from persons found on the spot where criminal offence was committed, who may provide relevant information (maximum period: six hours)⁵³.
26. During the visit of NPM, there were three detained persons in the Centre. NPM checked their files and interviewed these persons. One of the detainees complained to NPM that during the interview in the Police Station in Fushë Kosovë, he was physically ill-treated by two police officers. Regarding this allegation, NPM visited Police Station in Fushë Kosovë. Police officers from this Station denied that they had exercised physical violence against this detainee.
27. Kosovo Police offered full cooperation to NPM during the investigation of this allegation, offering access to the detainee’s file and relevant medical reports. **NPM asked the Kosovo Police Inspectorate to investigate the complainant’s allegation for ill-treatment by two police officers in the Police Station in Fushë Kosovë and inform NPM on the outcome of the investigation.**

Safeguards against ill-treatment

Standards of European Committee for the Prevention of Torture (CPT)

28. According to CPT standards, there are three fundamental rights (the right of the person concerned to have the fact of his detention notified to a third party of his choice, the right of access to a lawyer, and the right to request a medical examination) that should be applied from the very outset of deprivation of liberty. These rights should be implemented not only in the case of persons detained but also in other cases when citizens are obliged to stay at police or with Police for other reasons as well (for example, for identification purposes).
29. Article 13 of Criminal Procedure Code determines that 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, the right to notify or to have notified a family member or another appropriate person of his or her choice about the arrest and these circumstances are applied every time during the period of deprivation from liberty.⁵⁴
30. Regarding the notification of arrest, Article 168 of Criminal Procedure Code further determines that an arrested person has the right to notify or to require the police to notify a family member or another appropriate person of his or her choice about the arrest and the place of detention, immediately after the arrest; notification of a family member or another appropriate person may be delayed for up to twenty-four (24) hours where the state prosecutor determines that the delay is required by the exceptional needs of the investigation of the case. This delay shall not be applied in the case of minor persons.

⁵³ Articles 162, 163, 164 of Criminal procedure Code of the Republic of Kosovo

⁵⁴ See also Articles 29 and 30 of Constitution

31. According to Law on Police⁵⁵ the right to inform the family or other persons on the arrest is also valid for persons under “temporary detention” with the purpose of identification or because of their protection and the protection of others. **NPM received no complaints from arrested persons who were in the Regional Police Custody Centre in Prishtina regarding these rights. In addition, based on the documentation reviewed, it appears that Kosovo Police has complied with these rights. During the visit, NPM observed that there were written information in every cell regarding the rights of persons arrested, in Albanian, Serbian and English. During the visit made to this Centre, NPM encountered no minor arrested.**

Conditions of accommodation in Regional Police Custody Centre in Prishtina

32. This Centre was renovated during 2016. NPM observed that cells were clean, had sufficient space, each cell had clean mattresses and bedclothes, but they had very little natural light and cells were not equipped with calling system. Ventilation system was operating within the centre. Toilets and showers were in good condition and there were also hot water. NPM observed that work conditions of police officers working in this Centre were not good. **NPM considers that relevant authorities should undertake necessary actions for elimination of these deficiencies.**

Regime

42. During the visit, NPM was informed that detained persons who are held in the Centre have no right outdoor exercise. **In the 12th general report published in 2002, European Committee for the Prevention of Torture pointed out that, within possibilities, daily outdoor exercises should be provided to persons who are held in Police arrest for more than 24 hours.**

Health care

43. Medical services are a fundamental right of persons arrested by Police. Medical services are administered by public institutions, such as; Family Medical Centre and University Clinical Centre, depending on the needs for treatment. **NPM received no complaints from persons interviewed, regarding this right. In addition, from the documentation reviewed, it was observed that Police recorded in their personal file the notification on the right to medical services.**

44. NPM observed that all data regarding the administration of medical services to the arrested persons are kept in his/her personal file.

Interview room for minors

45. During the visit to the Police Station “Center”, NPM visited also the room which is financed by UNICEF, where minors are interviewed. NPM got an impression that this room offers comfortable conditions to interview minors, since it is not frightening at all, there is also a furniture and a modest library with a number of book titles.

Based on the findings during the visit, NPM, therefore, recommends relevant authorities:

- **To undertake actions to provide more natural light in this Centre.**
- **Outdoor exercise should be provided, within possibilities, to persons detained and accommodated in this Centre for more than 24 hours.**
- **Calling system should be installed in cells.**
- **The relevant authorities should provide better working conditions for police officers in this Centre.**

Sincerely,

Hilmi Jashari
Ombudsperson

⁵⁵ Law on Police, Article 20

REPORT
OF
NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE
OMBUDSPERSON

**on visit to Border Crossing Points: Prishtina International Airport “Adem Jashari”;
Border crossing point “Hani i Elezit”; Border crossing point “Vërmicë”**

To: Mr. Skender Hyseni, Minister
 Ministry of Internal Affairs

 Mr. Shpend Maxhuni, General Director
 Kosovo Police

 Mr. Shaban Gruda, Director
 Border Department
 MIA

Pursuant to Article 135, paragraph 3 of Constitution of the Republic of Kosovo and Article 17 of Law 05/L-019 on Ombudsperson, Ombudsperson’s National Preventive Mechanism against Torture visited the following border crossing points: Prishtina International Airport “Adem Jashari”, Border crossing point “Hani i Elezit”, Border crossing point “Vërmicë”.

Prishtina, 7 February 2017

Dates on the visit and the composition of the monitoring team

1. Pursuant to Article 17 of Law 05/L-019 on the Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPM”) of the Ombudsperson, during November 2016 visited the above-mentioned border crossing points. The monitoring team was composed of one legal advisor and one psychologist.

Cooperation with NPM during the visit

2. During the visit, police officers who were on duty provided NPM with full cooperation.

Visit to border crossing point Prishtina International Airport “Adem Jashari”

3. NPTM visited the room where temporary detained persons are held who stay there no more than six (6) hours and this detention is made based on a court or prosecution’s order, as well upon International arrest warrant. These persons are held in this room until they are taken from there by the respective unit of the Kosovo Police.
4. The competent police officer informed the NPM that at the airport there is no transit zone. During the to this border crossing point, NPM also visited the areas (2 rooms with 8 beds each) where persons are held or accommodated to whom the entry in the territory of the Republic of Kosovo is denied on different accounts. These persons should return where they came from within 72 hours. If this does not take place within this period of time, they are sent to the Detention Centre for Foreigners.
5. These rooms offer good accommodation conditions, are appropriately clean, with toilets and showers in good condition, and they are also offered access to internet through “WI-FI”, which enables them establish contacts with their families or other persons. NPM considers that these rooms comply with standards set forth by the European Committee for the Prevention of Torture regarding the conditions of detention of persons to whom the entrance into the territory of a specific country is rejected.
6. **During the visit there were no persons accommodated in these rooms, neither there was any person in the room where persons detained are held temporarily based on court orders or public prosecution’s requests.**

Medical services

7. Airport’s medical service personnel is composed of six nurses and three general practitioners (doctors). Medical services are offered 24 hours to detained persons and to Airport personnel. During the visit, NPM observed that this medical Centre is equipped with all necessary equipment, three beds, medicines and two ambulances with equipment.

Border crossing point “Hani i Elezit”

8. During the visit made to this border crossing point with the Republic of Macedonia, NPM was informed that there was a temporary detention room for persons who stay there no longer than 6 hours. Persons are usually detained based on domestic court and public prosecution’s warrants and on the international arrest warrants.
9. **NPM observed that the room for temporary detention in this border crossing point had sufficient space, clean mattresses and bedclothes, heating, and proper ventilation.** According to competent officials in this border crossing point, after persons are detained, the Police immediately inform the respective units of Kosovo Police which takes the detained person and sends him/her to a respective institution. This unit informs the detained person on his/her rights and other procedures.

10. **Regarding medical services, NPM was informed that if necessary these services are requested from the nearest Family Medical Centre.**
11. From the documentation reviewed, it can be observed that files of detained persons are filled in with sufficient data and sufficient documents in this border crossing point regarding detention, the submission to respective unit of Kosovo Police and reasons for detention. **During the visit made by NPM, there were no detained or accommodated persons in the temporary detention room.**

Border crossing point “Vërmicë”

12. During the visit to this border crossing point, NPM was informed that this border crossing point possesses two temporary detention rooms (for 6 hours) and one interview room. Border police had ready-made forms in the official languages and in English, through which detained persons are informed on their rights. While regarding the right to a lawyer, the lawyer is provided by the Kosovo Bar Association and they are usually lawyers from Prizren. According to the officials of this border crossing point, Kosovo Police is in possession of a list of interpreters for European and the Arabic languages.
13. **The temporary detention room was in good condition regarding the area, cleanliness; the room possessed clean mattresses and bedclothes, as well as satisfactory heating.**
14. Medical services are offered by Family Medical Centre in Prizren. **There were complete data in the files of the detained persons regarding their detention and submission to the respective unit of Kosovo Police.**

After the visits, NPM concludes that they comply with standards on the temporary detention of persons who are detained on different accounts.

Sincerely,

Hilmi Jashari
Ombudsperson

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

concerning the visit to Special Institute in Shtime

To: Mr Arban Abrashi, Minister
Ministry of Labour and Social Welfare (MLSW)

Mr Imet Rrahmani, Minister
Ministry of Health

Mrs Lirije Kajtazi, chairperson
Commission on Human Rights, Gender Equality, Missing Persons and Petitions

Mr Xhemajl Dugolli, Director
Special Institute in Shtime

Mr Naim Ismajli, Mayor
Municipality of Shtime

Pursuant to Article 135, paragraph 3 of Constitution of the Republic of Kosovo and Article 17 of Law 05/L-019 on Ombudsperson, Ombudsperson's National Preventive Mechanism against Torture visited Special Institute in Shtime (hereinafter "SISH")

Pristina, 22 February 2017

Dates on the visit and the composition of the monitoring team

1. In conformity with Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPM”) of Ombudsperson, on 13 December 2016 visited the Special Institute in Shtime (hereinafter “SISH”). The monitoring team was composed of one legal advisor, one doctor and one psychologist.

General description of institution

2. Special Institute in Shtime (SISH) is managed by the Ministry of Labour and Social Welfare (MLSW), which is run by the Director of Institute. It is an open-type institution, which provides 24 hour services: food, footwear, health care, work therapy, education, and social treatment. Beneficiaries of services in this institution are mainly persons with mental disabilities – mental development delay.
3. The Capacity of SISH is 64 residents, while during the last visit made, there were 59 residents present, of whom 39 males and 20 females, the average age of whom was 45 years of age.
4. Personnel of SISH are 70 persons in total, divided in several services, such as; medical services, which is composed of: 1 general practitioner, 11 nurses, 1 pharmacy technician, 23 medical assistants, and one hairdresser; technical service is comprised of: 1 chief of service, 1 machinist, 4 launderers, 4 guards, 2 drivers; social service is comprised of: 1 social worker, 1 agricultural technician, 1 professional therapist, 1 craftsman instructor, 1 tailoring instructor, 1 carpentry instructor; catering service is comprised of: 1 chief of service, 4 cooks, 2 cook assistants, 2 dishwashers, 1 medical assistant; administration service is comprised of finance officer, personnel officer, petty cash officer, and storage officer.

Relevant legislation

5. First Law on Mental Health No. 05/L-025 which entered into force in December 2015 aims to protect and promote mental health, prevent the problems associated with it, guaranteeing the rights and improving the quality of life for persons with mental disorders. Article 18 of this Law determines the promulgation of the sublegal act for the treatment of residents who are in the social care institution⁵⁶. To date, no sublegal act or a special Law regulating the treatment of residents in social care institutions was promulgated, which are managed by MLSW and municipalities.
6. These institutions are regulated by two Administrative Instructions: (MLSW) No. 11/2014 for work and placement of residents, persons with mental disabilities – delay in mental development at the Special Institute in Shtime and in homes with community based; and Administrative Instruction No 13/2010 on the provision of services to community – homes for persons with mental disabilities – mental development delay.
7. According to AI (MLSW) No.11/2014 for work and placement of residents, persons with mental disabilities – mental development delay at the Special Institute in Shtime and in

56 Article 18, paragraph 1 of Law No. 05/L-025 on Mental Health determines: “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.” Paragraph 2 of this Article determines: *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 in cooperation with the Ministry of Labour and Social Welfare, adopted by the Government.*

homes with community based determines the treatment of persons who were declared mentally incapable by the Basic Court. NPM of the OI investigated all cases of residents without a court decision and in February 2016 and published a report with recommendations.⁵⁷ During the visit made on 13 December 2016, NPM was informed that OI recommendation was implemented by SISH.

Cooperation with NPM during the visit

8. During the visit made by NPM, personnel of SISH offered full cooperation to the monitoring team. The team without any delay had access to all places where residents were accommodated and was able to discuss with some residents with a slight delay of mental development, who were able to talk.

Living conditions of residents and treatment

9. During 2016, a new facility was constructed in the area of SISH where the administration of this institution was located, while the part where administration was located was adapted for habitation, which facilitated the work of the personnel and enabled categorisation of residents according to sex and health status. Light category of residents was accommodated in the block A, medium category in Block A2 and serious category in Block B.
10. SISH also had activity areas, one room for painting, craftsman and tailoring room, and the recreational hall equipped with equipment, such; chess, domino, playing cards it also had a restaurant, where residents are able to be served with tea at any time. **NPM assesses positively the restructuring of blocks within the Institution, as well as categorisation of residents according to sex and health status, which provides security to residents.**
11. Creating a positive therapeutic environment includes making available crucial sufficient area for patients, such as; light, heating, appropriate airing as well as satisfactory cleanliness. During the visit made by NPM in rooms where residents were accommodated, there were mainly 2 to 3 beds in one room, there was natural light and rooms were warm and clean, and were in compliance with Article 6, paragraph 1.10 of Law No. 05/L-025 on Mental Health.⁵⁸
12. According to standards of European Committee for the Prevention of Torture, attention should be paid to the decoration of patients' rooms and entertainment environments, to offer visual stimulation to patients, the making available of bedside cabinets next to beds and wardrobes is very desirable. During the visit by NPM, in residents rooms there were bedside cabinets for placing clothes and personal belongings, there were also decorations for visual stimulation, e.g., different paintings, painted by residents in cooperation with instructors.
13. In addition, NPM was informed that laundry has been functioning 24 hours in SISH, which is equipped with three washing machines, three drying machines as well as the iron for ironing clothes and bedclothes. **And this has now facilitated the issue of footwear, since the personnel of institution is able to clean the clothes on time and residents' clothes are not swapped, thus each can have their personal footwear.**

⁵⁷ Ex-Officio report: 757/2015 regarding court decisions for waiving and returning the working ability to residents in SISH and in homes based in community, at: http://ombudspersonkosovo.org/repository/docs/150-2016_Raport_me_rekomandime_875017.pdf

⁵⁸Article 6, paragraph 1.10 of Law No. 05/L-025 on Mental Health, determines “*the right to provide appropriate living, hygienic, nutritional and security conditions*”

Kitchen, food

14. During the visit made to SISH, NPM team visited the kitchen where food is prepared and served. Kitchen had proper light and ventilation, cleanliness was on a good level. The kitchen staff possessed sanitation booklets.
15. European Committee for the Prevention of Torture places special attention to the patients' food, which according to them, not only should food be appropriate from the standpoint of quantity and quality, but also should be provided under satisfactory conditions.⁵⁹ During the visit, NPM was informed that Institute was supplied well and properly with food, they also planted the greenhouse with vegetables, which is used for food and is maintained by the staff and one resident. Food is prepared according to menu and is given in three meals.
16. NPM was informed that Institute in Shtime is supplied regularly with potable water, and they have also opened three water wells in order to create water reserves in case there are problems with water. In addition, SISH had a regular contract for the realisation of the 3D services (Disinfection, Disinsection, and Deratisation). **During the visit, NPM encountered no expiry food. NPM hails the engagement of the staff of SISH on the general care and hygiene.**

Treatment

17. According to European Committee for the Prevention of Torture, psychiatric treatment should be based on an individualised comparison, which means drafting a treatment plan for each patient, which should include rehabilitation and therapeutic activities, including individual psychotherapy, group therapy, art, theatre, music and sports. Patients should have regular access to entertainment rooms, appropriately equipped and should have the possibility to do airing workouts on the open sky⁶⁰.
18. During the visit, NPM was informed that, psycho-social activities are advanced in SISH, due to infrastructural possibilities and the number of staff for the execution of recreational activities and occupational therapy, they have engaged professional therapists and realise activities such as painting, tailoring, hand wooden work as well as different games (chess, domino, cards, etc.). According to the Centre's staff about 15 to 20 residents are active in the workshops, such as: tailoring, carpentry and painting. Also, an activity they regularly do is excursions during the year e.g., going nature and sightseeing in some touristic city.
19. NPM was informed that SISH concluded an agreement of cooperation with private College "HEIMERER" which conducts bachelor programmes in the field of health, such as: Nursing, logopaedia, occupational therapy, and professional pedagogy in health. Students of this college started to do a six-month internship in SISH and this initiative helps the SISH staff realise activities and constantly advance the psycho-social area in this social care institution. **NPM welcomes the engagement of staff for the development of psycho-social area and their dedication to residents.**

Health care

20. A regular general practitioner is engaged in SISH, one psychiatrist once a week while dentistry services are provided by the Elderly Care Home in Prishtinë. In case of need, other health and specialist services are provided by Medical Family Centre in Shtime, Regional Hospital in Ferizaj and University Conical Centre in Prishtinë. Unlike other residential institutions of mental health, SISH in 2016 also made regular gynaecology

⁵⁹ Standards of European Committee for the Prevention of Torture, set forth in the 8th general report

⁶⁰ Ibid.

visits to residents. During 2016, Medical Family Centre in Shtime conducted laboratory analysis to residents. Regarding the supply with medicines, there was no complaint from the SISH staff.

21. The clinic where medical personnel was staying, did not meet the conditions due to small and inconvenient areas, there was no sufficient light. **NPM concludes that the area used for medical services does not meet the minimum conditions for administration of these services.**
22. Regarding the staff training, Director of SISH has concluded an agreement of cooperation with the Medical Family Centre in Shtime and Regional Hospital in Ferizaj for continuous education of SISH medical personnel.
23. In SISH, they had several registers, such as; register of neuropsychiatric visits, visits outside SISH, infections, wounds bandaging, register of worries, sterilities, however, death, suicide attempts, injuries, and self-injuries register was missing. **NPM encourages the medical staff to pay attention to files of residents as well as to record special cases of self-injuries, corporal damages, suicide attempts and cases when means of restraint are used.**

Ill-treatment

24. During the visit of NPM to the Centre, a positive climate and good relations could be observed between the residents and the staff. Therefore, **NPM recorded no case of torture or ill-treatment done by the staff to persons with mental disabilities – mental development delay.**
25. During the visit, NPM observed that there were stray dogs within the fences of the institution, which could present a danger for residents. **NPM recommends undertaking of measures for eliminating the problem of the presence of stray dogs in the courtyard of SISH.**

Means of restraint

26. According to European Committee for the Prevention of Torture, the restraint of agitated or violent persons should be as much as possible, not physical (e.g., verbal instruction) and where necessary physical restraint, that should in principle restraint hand control. During the visit made by NPM, staff was interviewed regarding the issue of means of restraint in case of crises, which according to them, residents are usually clam and there is no need to use means of restraint.

Contacts with the outside world

27. European Committee for the Prevention of Torture emphasis that the maintenance of contact with the outside world is essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint⁶¹.
28. Persons who were declared mentally incapable by the Basic Court shall be appointed a legal guardian by Centre for Social Work (CSW) or outside CSW. Article 9 of AI (MLSW) No. 11/2014 for work and placement of residents, persons with mental disabilities – delay in mental development at the Special Institute in Shtime and in community based homes, stipulates: *“Legal custody outside CSW or CSW has the legal right to show interest in the case of sheltering in SISH or community-based homes without impediment”*. During the visit, NPM was informed that the majority of residents

61 Standards of European Committee for the Prevention of Torture, parts from 8th General Report [CPT/Inf (98) 12], *safeguards during placement*, paragraph 54

are without family care, but there are also the cases of lack of family interest to visit the residents. In addition, their legal guardians do not regularly visit the residents accommodated in SISH.

Complaint procedures

29. The Ombudsperson Institution has placed complaint boxes which can be opened only by personnel of this institution. Thus, the confidentiality to lodge a complaint is provided to the family members of residents. Residents with mental development delay accommodated in SISH are not able to file complaints. **NPM has never received any complaint by the staff or family members of residents accommodated in SISH.**

Based on findings and conclusions reached during the visit, pursuant to Article 135, par. 3 of Constitution of the Republic of Kosovo, and Article 16, par. 4 of Law no. 05/L-019 on the Ombudsperson, the Ombudsperson recommends:

Ministry of Health and MLSW

- Promulgation of sub-legal acts pursuant to Article 18, par. 2 of Law No. 05/L-025 on Mental Health.

Ministry of Labour and Social Welfare

- To provide the adequate conditions (areas) for the work of medical personnel.

Special Institute in Shtime

- Creation of special registers of cases of self-injuries, corporal damages, suicide attempts, deaths and cases when means of restraint are used.

Municipality of Shtime

- Undertaking of measures for eliminating the problem of the presence of stray dogs in the courtyard of institution

Sincerely

Hilmi Jashari
Ombudsperson

**REPORT WITH RECOMMENDATIONS
OF THE OMBUDSPERSON'**

NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE

**on the visit to Centre for Integration and Rehabilitation of Chronic Psychiatric Sick
People in Shtime**

To: Mr. Imet Rrahmani, Minister
Ministry of Health

Mr. Curr Gjocaj, General Director
University Clinical and Hospital Service of Kosovo

Mr. Miftar Zeneli, Director,
Center for Integration and Rehabilitation of the Chronic
and Psychiatric Sick People in Shtime

Mr. Naim Ismajli, President
Shtime Municipality

Copy for: Mrs. Lirije Kajtazi, Chairperson
Parliamentary Committee for Human Rights, Gender Equality, Missing Persons and
Petitions.

Pursuant to Article 135, paragraph 3 of Constitution of the Republic of Kosovo and Article 17 of Law 05/L-019 on the Ombudsperson, the Ombudsperson's National Preventive Mechanism against Torture visited the Centre for Integration and Rehabilitation of the Chronic Psychiatric Sick People in Shtime (CIRCPSP)

Pristina, 6 March 2017

Dates on the visit and the composition of the monitoring team

1. Pursuant to 17 of Law 05/L-019 on the Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPM”) of the Ombudsperson, on 26 June 2016 and 13 December 2016, visited the Centre for Integration and Rehabilitation of Chronic Psychiatric Sick People in Shtime (hereinafter “CIRCPSP”). The monitoring team was composed of a legal advisor, a doctor and a psychologist.

A brief background of the institution

2. The Centre for Integration and Rehabilitation of Chronic Psychiatric Sick People in Shtime (CIRCPSP) is as an institution within the Hospital and University Clinical Service in Kosovo (HUCSK), which provides 24 hour services. It is established in 2006, with 3270m², with 4 wards (A1-A4) with a total of 48 rooms, with capacity of up to 80 beds.

General description of institution

3. CIRCPSP is an open type institution, residents to this centre are mainly those diagnosed with psychotic disorders, such as *Schizophrenia*. There were 63 residents in total, of them 36 males and 27 females. The average age was about 54 years old, there were also residents of different nationalities, such as; 43 Albanians, 8 Serbs, 5 Ashkali, 1 Macedonian, and 2 Muslims.
4. CIRCPSP’s personnel is comprised of 39 persons, of them 1 psychiatrist who is also a Director of Institution, nine nurses, 12 medical assistants, one social worker, five kitchen workers and the other part of staff is for technical services and security, etc.

Relevant legislation

5. First Law on Mental Health No. 05/L-025 which entered into force in December 2015 aims to protect and promote mental health, prevent the problems associated with it, guaranteeing the rights and improving the quality of life for persons with mental disorders. Neni 18 paragrafi 2, parasheh nxjerrjen e aktit nënligjor për trajtimin e rezidentëve që gjenden në institucionet e kujdesit social⁶². Article 34 of Law on Mental Health sets forth promulgation of sublegal acts which should be in accordance with this Law⁶³. There is no sublegal act issued to date.

Cooperation with NPM during the visit

6. During the visit made by NPM, personnel of CIRCPSP offered full cooperation to the monitoring team. The team without any delay had access to all places and was to speak in private with some residents who were conscious and able to communicate with them, and the conversation was conducted without the presence of Centre’s personnel.

Living conditions of patients and treatment

7. The Centre is divided into four wards (A1-A4). Ward A1 was on the first floor, which used to be a rehabilitation section, now there are cases placed in this ward requiring enhanced attention, as identified as cases with suicidal ideas, while ward A4 was only for females, where showers and toilets were divided as well, according to sex and this made it easy for the staff to keep residents under control.

62 Article 18, paragraph 1 of the Law No. 05/L-025 on Mental Health, stipulates: “Persons who are in residential social care institutions are offered counseling, treatment, rehabilitation and mental health care equally and according to health standards, approved by the Ministry of Health”. Paragraph 2 of this law stipulates the following: “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 in cooperation with the Ministry of Labour and Social Welfare, adopted by the Government”.

63 Article 34 of Law on Mental Health: “For implementation of this Law, within one (1) year from the date of entrance into force of this law, the Government of Kosovo and respective ministries shall issue respective sub-legal acts foreseen by this Law”.

NPM positively assesses the restructuring of wards within the Institution, as well as categorisation of residents according to sex and risk level, which provides security to residents.

8. Creating a positive therapeutic environment includes making available crucial sufficient area for patients, such as; light, heating, appropriate airing as well as satisfactory cleanliness. During the visit made by NPM in rooms where residents were accommodated, there were mainly 2 to 3 beds in one room, there was natural light and rooms were mainly warm and clean, and were in compliance with Article 6, paragraph 1.10 of Law No. 05/L-025 on Mental Health.⁶⁴
9. According to standards of European Committee for the Prevention of Torture, attention should be paid to the decoration of patients' rooms and entertainment environments, to offer visual stimulation to patients; also the making available of bedside cabinets next to beds and wardrobes is very desirable. During the visit by NPM in residents' rooms, there were bedside cabinets for placing clothes and personal belongings, however, residents lacked personal footwear, and every time they are washed they are changed among residents, there were no decorations for visual stimulation either.
10. In addition, NPM was informed that laundry has been renovated in this Centre, which was equipped with big laundry machines, drying machines as well as ironing clothes and bedclothes.

Kitchen

11. During the visit made to CIRCPS, NPM team visited the kitchen where food is prepared and served. Kitchen was on the ground floor, it lacked proper light and ventilation, and sanitary facilities were very close to the kitchen, while cleanliness was on a good level. During the last visit, NPM observed that the dining hall was equipped with new tables and chairs.
12. European Committee for the Prevention of Torture places special attention to the patients' food, which according to them, not only should food be appropriate from the standpoint of quantity and quality, but it also should be provided under satisfactory conditions.⁶⁵ During the visit, NPM was informed that Centre was supplied well and properly with food, and the kitchen staff possessed sanitary booklets. NPM encountered no expired food. Food is prepared according to menu and is given in three meals. **NPM hails the staff engagement about care and cleanliness in kitchen. NPM recommends relevant authorities to undertake appropriate actions to build a new kitchen.**

Treatment

13. According to European Committee for the Prevention of Torture, psychiatric treatment should be based on an individualised comparison, which means drafting a treatment plan for each patient, which should include rehabilitation and therapeutic activities, including individual psychotherapy, group therapy, art, theatre, music and sports. Patients should have regular access to entertainment rooms, appropriately equipped and should have the possibility to do airing workouts on the open sky⁶⁶.
14. During the visit, NPM was informed that psycho-social activities in CIRCPS are reduced due to the lack of vocational and supporting wards, where recreational activities could take place. According to the staff of the Centre, a regular activity they do is 2-3 excursions a year, e.g. going nature and sightseeing in some touristic city. NPM concludes that in CIRCPS, the treatment offered to residents consists mainly in pharmacotherapy, while effective psycho-social rehabilitation is insufficient. This situation is as a result of the lack of the number of staff and the appropriate environment for the execution of activities. **NPM recommends that in**

⁶⁴Article 6, paragraph 1.10 of Law No. 05/L-025 on Mental Health, determines “*the right to provide appropriate living, hygienic, nutritional and security conditions*”

⁶⁵ Standards of European Committee for the Prevention of Torture, parts from the 8th general report

⁶⁶ Standards of European Committee for the Prevention of Torture, parts from the 8th general report [CPT/Inf (98) 12]

future the Centre should focus on project planning for building a vocational unit, and engaging a clinical psychologist and one additional social worker.

Health care

15. NPM was informed that regular psychiatric services are provided in CIRCPS, and these services are carried out by the Director of the Centre, as he is a psychiatrist by profession, while in case of need, other health and specialist services are provided by Medical Family Centre in Shtime, Regional Hospital in Ferizaj and University Clinical Centre in Prishtinë.
16. The Centre possesses an ambulance, which meets the conditions for the psychiatrist to carry out visits and there was a steriliser and some equipment for small surgical intervention or wound bandaging,
17. NPM visited 4 rooms which were regulated within the Centre thanks to donations, the rooms with serve for isolating cases identified with some contagious disease. NPM was informed that TB test was conducted to some residents, and the team was also informed that vaccination against flu is administered every year. **NPM recommends that regular gynaecology services are offered to females, and all should undergo regular laboratory analysis.**
18. The Centre keeps 19 registers, such as: register of drug addicts, sexual abuses, corporal damages, self-injuries, suicides, deaths, register of workers' damages caused by residents, register for laboratory analysis, dentistry visits conducted outside the Centre, register for sterilisation, vaccination, register on psychiatric and general examinations, and register on injuries and wound bandaging, etc. **NPM encourages the staff to describe the relevant event in detail in registers.**

Ill-treatment

19. During the visit of NPM to the Centre, a positive climate and good relations could be observed between residents and the staff. **NPM recorded no case of torture or ill-treatment done by the staff to persons with mental disorders.**
20. During the register check-up, NPM noticed a high number of injured residents, which the residents caused to one another, self-injuries as well as injuries caused by stray dogs within the fence of the Institution. **NPM recommends undertaking of measures for eliminating the problem of the presence of stray dogs in the courtyard of Institution.**
21. European Committee for the Prevention of Torture points out that it is also essential that appropriate procedures be in place in order to protect certain psychiatric patients from other patients who might cause them harm. This requires inter alia an adequate staff presence at all times, including at night and weekends.⁶⁷ **NPM recommends that in addition to building vocational units, the number of nurses should be increased as well, in order that the staff is able to keep residents under control.**

Means of restraint

22. According to European Committee for the Prevention of Torture, the restraint of agitated or violent persons should be as much as possible, not physical (e.g., verbal instruction) and where necessary physical restraint, that should in principle restraint hand control. During the visit made, NPM interviewed the staff regarding the issue of means of restraint in case of crises, which according to them, no means of restraint is used, other than hand control when some residents become aggressive. And in such cases, all night shift staff are gathered, seek assistance from psychiatrist/director or they call emergency. **During the visit, NPM noted no case of use of instruments of physical restraint or isolation.**

Contacts with the outside world

⁶⁷ Standards of European Committee for the Prevention of Torture, parts from the 8th general report [CPT/Inf (98) 12], *Prevention of ill-treatment*, paragraph 30

23. European Committee for the Prevention of Torture points out that the maintenance of contact with the outside world is essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint⁶⁸. During the visit, NPM was informed that there is an increase of family visits recently, there is interest shown and some of residents are taken home during holidays or weekends. There are minutes filed in by the staff and signed by family when the resident goes home, family members are also given therapy with themselves. NPM was informed that two residents who were at the stage of remission are returned to their biologic families. This is a result of Centre's staff engagement maintaining contacts with family members, Centres for Social Work, encouraging more frequent visits.
24. Each resident possess a file for the use of pensions which is managed by the social worker of CIRCPS. There is a three-member commission for pension use who verifies purchases and stores its verifications in the residents' files.

Complaint procedure

25. Ombudsperson Institution has placed complaint boxes in CIRCPS, which can be opened only by personnel of this institution, which provides confidentiality to complainants in filing complaints. **NPM has never received a complaint from residents or their family members. NPM encourages the staff to inform the family members of residents on the possibility to filing complaints through the complaint boxes placed in this Centre.**

Based on findings and conclusions reached during the visit, pursuant to Article 135, par. 3 of Constitution of the Republic of Kosovo, and Article 16, par. 4 of Law no. 05/L-019 on Ombudsperson, the Ombudsperson recommends:

The Ministry of Health:

- Sublegal acts should be promulgated in accordance with Law on Mental Health
- Ministry of Health should undertake measures to build a vocational unit within CIRCPS
- Ministry of Health should undertake actions to build a new kitchen.
- A clinical psychologist and one additional social worker should be engaged.
- The number of nurses should be increased in this Centre.

The Municipality of Shtime and the CIRCPS:

- To undertake measures for eliminating the problem of the presence of stray dogs in the courtyard of Institution.

The Centre to provide to the residents:

- Regular gynaecological services should be provided.
- Laboratory analysis should be regularly conducted.

Sincerely,

Hilmi Jashari
Ombudsperson

⁶⁸ Ibid, *Safeguards during placement*, paragraph 54

