



Република Македонија
НАРОДЕН ПРАВОБРАНИТЕЛ

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O M B U D S M A N
Republic of Macedonia

Issues submitted to the Committee against Torture (CAT)

Ombudsman - National Preventive Mechanism considers the next issues as critical for the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the rights guaranteed thereto, thus they shall be addressed in the next periodic report concerning Macedonia:

Issues relating to the functioning of the prison system:

1) Healthcare

As stipulated in the Law on Health Insurance, compulsory health coverage is provided to all the persons serving a prison sentence, but from the visits carried out so far in the correctional penitentiary facilities the NPM team found that the inmates have no health insurance.

According to the amendments to the Law on Execution of Sanctions from 06.12.2013 the healthcare services in the correctional penitentiary facilities are provided by health professionals from the public health institutions for primary health care based on the territory of the headquarters of the institution, but this envisaged system of providing healthcare services does not work in every facility.

The team of the National Preventive Mechanism found that in “Idrizovo” - the largest penitentiary correctional facility in the country, the healthcare services are provided by persons employed in the institution or engaged with a contract. At the same time they found that the number of medical staff is insufficient and that the healthcare services thereby are at unsatisfactory level.

Given this, NPM team believes that one of the issues that should be in the focus of the next periodic report shall be the dysfunction of the envisaged healthcare system.

1) Corruption

NPM detected widespread evidence of corruption in the prison system in the country.

They found that in PCI “Idrizovo” there is widespread belief among the prisoners that “everything has its own price and there is nothing money can’t buy”.

After talks with the inmates, NPM team concluded there is well-organized system of corruption which functions from top to bottom, including prison officers, prisoners and outsiders.

Considering that corruption is the key for emergence of torture or ill-treatment of the prisoners, NPM team considers it necessary the corruption in the prison system to be addressed in the next periodic report.

2) *Overcrowding*

Overcrowding is another issue in the correctional penitentiary facilities, particularly in PCI “Idrizovo” where the number of inmates exceeds twice the capacity of the facility, which along with the poor housing conditions directly imply to humiliating and inhumane treatment of these prisoners.

3) *Lack of staff*

NPM expresses serious concern over the denial for new hiring having in mind there is huge number of vacancies, as this seriously jeopardizes the regular operation and directly affects the prisoners’ treatment and therefore violates their rights and alludes to torture and other cruel, inhumane and degrading treatment or punishment.

Namely, in PCI “Idrizovo” there is lack of staff in all departments, mostly in the security department (prison guards), medical staff and the resettlement department. Furthermore, there is also lack of experts in the resettlement department in the penitentiary correctional facility in Struga which is an open facility and therefore the role of the educators is considered as of utmost importance.

4) *Violence among the prisoners*

Violent incidents among the prisoners are common in all prison systems and contain wide range of phenomena, from subtle forms of harassment to explicit threats and physical attacks.

As NPM team has spoken with the inmates, it was found that the violent incidents are more frequent mostly in the units that are overcrowded.

The inmates pointed out that the issue of overcrowding along with lack of recreational activities often cause tensions even for some trivial reasons and escalate into violent incident i.e. verbal attacks and fights.

The small number of security guards who are responsible for maintaining order and discipline in the prison leads to majority of incidents not to be registered, as the prisoners are told - "to settle the issues themselves, without reporting".

The NPM team has spoken with the inmates and found that some of them are subject to insults, verbal threats, harassment, humiliation and even physical attacks by other prisoners because of the nature of the crime they are sentenced for. As these incidents have been reported and no measures have been undertaken towards enhanced security, but rather contributed these persons to become target of more frequent attacks, they fear even more for their own safety.

Issues relating to the migrant / refugee crisis and the treatment of migrants / refugees:

Right after the official closure of the borders and the so-called Balkan route(08.03.2016), NPM found a newly established practice of returning the irregular migrants intercepted on the territory, back to the country they came from (mostly to Greece), without any formalities and without taking an official record of it.

Besides the informal return, especially concerning is the fact they are returned to a country against which the European Court of Human Rights has issued rulings for mistreating asylum seekers, and there are numerous reports of relevant international organizations noting the mass return of migrants / refugees by Greece.

Such actions directly contravene Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires States to not expel, return or extradite a person to another State if there are "substantial grounds" for believing that the person would be in danger of being subjected to torture and "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".

NPM in its reports relating to the visits noted the unlawful and prolonged detention of large numbers of migrants in inhuman conditions in the Reception Center for Foreigners in Gazi Baba. Despite the commenced activities towards renovation and improvement of the housing conditions as well as reducing the number of persons who are detained in the Center, however NPM still expresses serious concern over the grounds for detention of these persons and the degree of realization of the rights they are entitled to according to the laws and bylaws.

The factual basis of detention in the Reception Center is they are needed as witnesses in criminal proceedings before the court against third parties, which as such is legally unfounded, while the legal basis referred to in the detention order is establishment of identity.

The detention of migrants in the Reception Center for Foreigners in order to establish identity is in compliance with the law only if it's based on court decision, not by decision of an organizational unit within the Ministry of Interior, which is why the legitimacy and legality of the detention orders are questioned.

Meanwhile, NPM found that the persons accommodated in the Reception Center for Foreigners are prevented access to an interpreter; they cannot right to go outside, as well as other fundamental rights enshrined in the laws and bylaws.

NPM believes that all these allegations of mistreatment of the migrants / refugees in the country shall be addressed in the next periodic report as well.

Issues relating to the police services:

1) Material conditions

Another issue which requires attention to be paid to in the next periodic report concerning Macedonia is with regard to the police services and the material conditions in the police stations.

NPM team found that in several police stations (primarily those that were not included in the project for renovation), the conditions in the detention facilities do not meet the minimum standards for detention of persons and therefore recommended not to use those police stations for detention anymore. At the same time, the poor material conditions in the following police stations (PS "Chair", PS "Struga" and etc.) affect the daily work activities of the police officers and thus increase the potential risk of torture and other cruel, inhuman or degrading treatment or punishment.

2) Police brutality

Besides the material conditions, the police brutality i.e. the excessive use of force by the police officers is crucial as well. As a case dealt by the Ombudsman which deserves to be mentioned, we would point out the use of force or instruments of restraint against the persons that took part in the demonstrations against the massive wiretapping affair in Macedonia and the use of force against the defendants in the case "Diva naselba".

3) Ineffective investigation in cases of excessive use of force

Ombudsman - NPM expresses serious concern over the lack of efficient and effective investigations in cases of complaints of excessive use of force by police officers.

The lack of an effective investigation in cases of police brutality is noted in the judgments of the European Court of Human Rights against the Republic Macedonia, which is why the Ombudsman in several occasions stressed that is necessary for the Ministry of Interior and the Public Prosecutor to act timely and efficiently on the charges of violation of the rights and freedoms of the citizens by the police officers.

Therefore, the lack of an effective investigation, the monitoring over the work of the police services and the impunity of the police officers remain as issues that shall be addressed in the next periodic report.

Issues related to the residents in the Social Care Center for persons with severe physical and mental disabilities:

1) Process of deinstitutionalization

NPM concluded that the established practice of the “Public Institution for Social care - Special Institute – Demir Kapija” to accommodate new patients each year contravenes the policy and the principle of deinstitutionalization envisaged in the “National Strategy for deinstitutionalization in the social care system in the Republic of Macedonia 2008-2018” as well as the commitments set out in the Memorandum of Understanding signed back in June 2000 by the Ministry of Labor and Social Policy, UNICEF and the World Health Organization, according to which there shall be no reception of new patients in the social care centers.

This practice means return of the old system of institutional treatment of persons with mental disabilities, which has been abandoned in the all developed and modern countries, and also violates the human rights of the persons with mental disabilities, as well as the policies and commitments that the Republic of Macedonia has assumed in the last 20 years.

In addition, the employees indicated that no person has been discharged from the institution for four years which speaks for itself that the process of deinstitutionalization is not being implemented. Moreover, the practice of returning back in the institution the patients who were discharged years ago, at the beginning of the process of deinstitutionalization, is deeply concerning.

2) Material conditions

NPM found that in certain departments of the “Public Institution for Social Care - Special Institute – Demir Kapija” the housing conditions are extremely bad and the

hygiene is at very low level and therefore amounts to degrading treatment of the patients in this institution.

3) *Lack of staff*

Besides the problem of the dysfunctional process of deinstitutionalization within the “Public Institution for Social Care - Special Institute – Demir Kapija”, the institution is also facing lack of staff, leading to numerous unfilled vacancies.

Especially concerning is the fact that the institution has a shortage of caregivers whose primary duty is accommodation and immediate care of the patients with the most severe mental disabilities, which directly affects the treatment of the patients.