

Presence of Inmates with Mental Health Problems in Detention and Correctional Centers in the Republic of Kosovo

Niman Hajdari¹

Abstract

Background. Conventions adopted by the United Nations and Council of Europe pay special importance to the treatment of prisoners with mental health problems. Their treatment is closely related to respect for human dignity, and the prohibition of torture, cruel and degrading treatment or punishment. The European Court of Human Rights, in many cases, has ruled that the detention of a mentally-ill person can raise issues under Article 3 of the European Convention on Human Rights and that the lack of adequate medical care can result in treatment in contravention of this article. The Republic of Kosovo is not a member of the United Nations and Council of Europe. However, it has incorporated in its Constitution a number of Conventions adopted by the United Nations and Council of Europe. Also, Kosovo has adopted a legal framework which prohibits torture, cruel and degrading treatment or punishment in accordance with the international human rights standards. The Constitution also provides that human rights and fundamental freedoms guaranteed by the Constitution shall be interpreted in accordance with the case law of the European Court of Human Rights.

Methods. Review of Ombudsperson's, Committee for the Prevention of Torture, Prison Health Department of Kosovo Ministry of Health reports, as well as reports of the NGOs in Kosovo.

Results. The treatment of prisoners with serious mental problems in detention and correctional centers in the Republic of Kosovo remains a serious challenge, despite the efforts of the competent authorities to change this situation and to increase human and institutional capacities. Prisoners with serious mental health problems continue to be accommodated in detention and correctional centers, instead of being accommodated in the

relevant health institutions, which might amount to a violation of article 3 of the European Convention of Human Rights.

Keywords: Human Rights, mentally-ill prisoners, international standards, applicable legislation in Kosovo

Kosovo Legal framework

Kosovo has adopted relevant legislation which protects human rights and fundamental freedoms of persons deprived of their liberty. The Kosovo Constitution, adopted in 2008, includes several articles which protect fundamental rights and freedoms of persons deprived of their liberty. Medical services in prison facilities are provided by the Prison Health Department of the Ministry of Health. The Law No. 05/L-025 on Mental Health was adopted in 2015. The Law on Mental Health, lays down a procedure for admission to mental health establishments of persons who require involuntary treatment. The Law No. 08/L-132 on the Execution of Criminal Sanctions provides that the convicted person will enjoy the same health care standards that are available in the community. If there are suspicions that a convicted person has a mental disorder or emotional distress, appropriate measures shall be taken without delay, in accordance with the relevant legislation and rules regarding psychiatric care and mental health. The Criminal Procedure Code of Kosovo provides that the personality and dignity of a person held in detention on remand must not be abused. The detainee on remand must be treated in a humane manner and his physical and mental health must be protected.

International standards

The UN Standard Minimum Rules for the Treatment of Prisoners, widely known as the Mandela Rules, are among the most important international documents that set standards and obligations for States regarding the treatment and accommodation of prisoners with mental health problems. The Mandela Rules provide that if necessary, prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals. The European Committee for the Prevention of Torture ((hereinafter, the CPT) standards, with regards to treatment of prisoners with mental health problems, provide that mentally ill prisoners should be kept and cared for in a hospital facility which is adequately equipped and has appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system. The European Prison Rules, amongst others, stipulate that when a pris-

1 LL.M in Administrative Constitutional Law. Correspondence to: Email: niman.hajdari@oik-rks.org

oner is diagnosed with mental health problems, he should not be kept in prison, but should be transferred to an adequate psychiatric institution, due to the risk of suiciding and self-harm. The European Court of Human Rights (hereinafter, ECHR), in the case of *Keenan v. United Kingdom*, found a violation of Article 3 of the European Convention on Human Rights, in a case where a prisoner had suicided, with regards to the lack of medical records, lack of psychiatric monitoring and supervision that was not adequate for the treatment of a mentally ill person.

International and local reports on situation of mentally ill prisoners in Kosovo

European Committee for the Prevention of Torture (CPT)

The Republic of Kosovo is not yet a member of the Council of Europe. However, the CPT, visits Kosovo based on a Technical Agreement signed with the United Nations Mission in Kosovo known as UNMIK. The CPT visited Kosovo in 2007, 2010, 2015 and 2020.² The CPT, in its reports on visits to Kosovo expressed concern regarding the presence of mentally ill prisoners in pre-trial and correctional centers, their treatment and the lack of institutional capacities to accommodate them in specialized health institutions outside prison system. According to the CPT report on visit to Kosovo in 2010, the delegation, during the visit, noticed that the psychiatric services have not been reinforced at Dubrava Prison. The CPT report states further that, given the high prevalence of mental disorders in the prison and of problems related to drug addiction, the part-time presence (three times a week) of a psychiatrist is clearly insufficient. In its visit report to Kosovo in 2015, the CPT expressed its serious concern about the inadequate psychiatric care provided to patients suffering from severe mental disorders in the hospital unit at Dubrava Prison. In this reports the CPT, amongst others, states:

“As regards psychiatric care, the psychiatric ward of the hospital unit at Dubrava Prison was accommodating nine patients, six of whom suffered from severe mental disorders (such as psychosis). The care provided to the latter patients appeared to be highly inadequate, there being no meaningful occupational or therapeutic activities, apart from pharmacotherapy and regular consultations with a psychiatrist”. It further states that Forensic Psychiatric Institute in Prishtinë/Priština would offer far more suitable conditions to treat severely mentally ill prisoners and was also operating far below its official capacity (at the time of the visit, there were only twelve forensic patients in the ward for psychiatric treatment with 24 beds).

A similar situation was found by CPT also during their visit to Kosovo in 2020. According to the CPT visit report in 2020:

“...it appeared that more resources were required in order to appropriately address the needs presented by the prisoner population at Prishtinë/Priština where some 60 inmates held in the establishment at the time of the visit were suffering from a mental disorder”. In this report, The CPT further states:

“Despite the recommendation made following the previous visit, the psychiatric care provided to prisoners on the psychiatric ward of the hospital unit at Dubrava Prison remained unsatisfactory. At the time of the visit, the ward was accommodating seven patients with mental disorders, including four with severe mental disorders. The psychiatric care provided to them was still limited to pharmacotherapy and individual consultations with a psychiatrist”. It also states that the transfer of the patients concerned to the Forensic Psychiatric Institute in Prishtinë/Priština is not immediately feasible.

The Ombudsperson's reports

Shortcomings as regards treatment, lack of institutional capacities and human resources available for the treatment of mentally ill prisoners, were also reported by the Ombudsperson Institution of Kosovo through the annual and National Preventive Mechanism visit reports.³ The National Preventive Mechanism (NPM) of the Ombudsperson, during visits conducted to detention and correctional centers in 2019, noticed lack of personnel and institutional capacities, as well as presence of mentally ill prisoners in these institutions, instead of being placed in adequate health institutions. Furthermore, the NPM of the Ombudsperson expressed its concern and recommended that the competent authorities should increase their efforts to provide adequate psychiatric services to prisoners with serious mental disorders, including psychosocial activities and occupational therapy, in addition to regular therapy and consultations with a psychiatrist. According to the Ombudsperson's NPM reports, the situation did not change in 2021 and 2022 as well. The NPM annual report 2023, states that during the visits in 2022, the NPM noticed the presence of prisoners with mental problems in pre-trial and correctional centers. Despite the doctor's recommendations, due to lack of capacities in adequate health facilities, prisoners with serious mental problems continue to be kept in detention and correctional centers.

Kosovo Rehabilitation Center for Torture Victims (hereinafter, KRCT), an NGO, authorized to visit all places of

2 All CPT reports on visits to Kosovo are available at: <https://www.coe.int/en/web/cpt/kosovo> (29.02.2024)

3 All Ombudsperson's National Preventive Mechanism Reports are available at: <https://oik-rks.org/en/national-mechanism-for-prevention-of-torture-nmpt/reports-nmpt/> (29.02.2024)

deprivation of liberty, reported that adequate management of prisoners with mental disorders remains among the main challenges as regards the treatment of prisoners in Kosovo in general. Correctional institutions have no special institution for placement and treatment of prisoners with mental disorders. According to KRCT, such a situation is a result of the failure of authorities to provide to prisoners continuous psychiatric care, lack of adequate facilities and lack of correctional staff.⁴

Based on the above-mentioned situation, the Office of the Council of Europe in Pristina and the Ombudsperson of Kosovo, in 2021 organized round tables and conferences where, together with the competent authorities, the challenges of treating prisoners with mental health problems were discussed, as well as other challenges regarding mandatory psychiatric treatment. During these meetings, the participants agreed that the competent authorities should take adequate action to treat prisoners of this category in accordance with applicable Kosovo legislation and international standards for the Human Rights and Fundamental Freedoms of prisoners. The competent ministries, during these meetings, presented their plans to resolve this situation. In this meeting, the Minister of Justice, amongst others, emphasized that, *“In the correctional institutions there is a considerable number of convicts who are persons with mental health disorders and this presents a great challenge for their management”*. As part of the efforts to improve the condition of prisoners with mental health problems, on February 28, 2023, in Dubrava Correctional Center, a special ward for the treatment of prisoners with special needs was planned to be established. However, the Department of Health in Prisons (henceforth, DHP), which is responsible for the provision of health services in detention and correctional centers, has published its annual report 2023, where it also expressed concern

about the presence of a large number of prisoners with mental health problems in correctional and detention centers, due to lack of capacities to place them at Psychiatric Forensic Institute.

Conclusion

According to reports of Ombudsperson's NPM, CPT reports, Ministry of Health Prison Health Department reports, as well as reports of Kosovo Rehabilitation Center for Torture Victims, presence and treatment of prisoners with serious mental health problems in detention and correctional centers in the Republic of Kosovo remains a serious challenge, despite the efforts of the competent authorities to change this situation and to increase human resources and institutional capacities. Prisoners with serious mental health problems continue to be accommodated in detention and correctional centers, instead of being accommodated in the relevant health institutions, due to the lack of institutional capacities and personnel. These conditions are not in accordance with international standards and applicable legislation in the Republic of Kosovo for the treatment of prisoners with such health conditions.

Recommendation

The Republic of Kosovo must take further steps in order to treat prisoners with mental health issues in accordance with the international Human Rights Standards, CPT and Ombudsperson's recommendations and applicable legislation in the Republic of Kosovo.

Submitted 30th of January 2024

Accepted 3th of March 2024

⁴ Kosovo Rehabilitation Center for Torture Victims, Monitoring Report, 2021, p. 24, available at: https://krct.org/wp-content/uploads/2023/10/Human-Rights-in-Kosovo-Correctional-Institutions_Monitorin-Report_2021.pdf.