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Center for Torture Victims

STATE OBLIGATIONS FOR THE TREATMENT OF PERPETRATORS WITH MENTAL DISORDERS

KRCT POLICY BRIEF

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The Kosova Rehabilitation Centre for Torture Victims (KRCT) is an independent, nongovernmental and non-profit organization, established in 1999 with the mission of providing treatment and rehabilitation services to victims of torture and ill-treatment during the Kosovo war.

KRCT is also committed to promoting, respecting and advancing human rights for all ethnicities in Kosovo, as well as to preventing and abolishing torture and any other form of ill-treatment through monitoring of human rights in places of detention in Kosovo.

The Kosova Rehabilitation Center for Torture Victims (KRCT), this year marks the 25th anniversary of its establishment. Throughout its existence, KRCT has over 17 years of experience in monitoring places of deprivation of liberty, where it has conducted over 250 monitoring visits and has interviewed over 4000 individuals deprived of liberty.



1 STATE OBLIGATIONS FOR THE TREATMENT OF PERPETRATORS WITH MENTAL DISORDERS

Executive summary

The right to access mental health services for perpetrators with mental disorders accused or convicted of criminal offenses continues to remain one of the main challenges faced by the institutions of the Republic of Kosovo. Despite the legal obligations of state institutions to ensure adequate treatment and the increase in their awareness and commitment over the past years, a significant number of perpetrators of criminal offenses with mental disorders still face major challenges in terms of mental health care, resulting in severe consequences for their well-being and treatment contrary to human rights standards.

The principle of equivalence is an essential aspect that must be respected, as it prevents state institutions from providing inferior health services in places of deprivation of liberty compared to those available in the community. It explicitly prohibits any deterioration of the health of individuals due to difficult conditions and inadequate medical services within the prison premises.¹ Considering the fundamental nature of the right to health without any form of discrimination, especially for persons deprived of their liberty, the principle of equivalence obliges state institutions to support and protect the well-being of individuals in the prison system.²

In response to the identified challenges, this policy paper advocates for a paradigm shift in the treatment of perpetrators with mental health disorders in places of deprivation of liberty, emphasizing the urgency of addressing systemic challenges. Further, it identifies the shortcomings in adequate treatment for perpetrators with mental health problems in correctional institutions of the Republic of Kosovo, elaborates international standards and their importance and the legal obligations of state institutions for undertaking concrete actions. On the basis of these researches, starting from the perspective of human rights and the necessity to preserve dignity and ensure the well-being of persons deprived of liberty, the document also presents the relevant recommendations for state institutions.

1 Treatment of People with Mental Disorders in Kosovo's Correctional Institutions

Since 2007, the Kosova Rehabilitation Center for Torture Victims (KRCT) has been dedicated to the advancement of human rights in countries of deprivation of liberty throughout Kosovo, as part of its mandate to combat torture. The unique mandate of the KRCT focuses on combating torture through monitoring, documenting human rights violations, and proposing reform policies for state institutions. Preventive activity is carried out through regular and thematic monitoring visits to detention and correctional institutions, with multidisciplinary teams composed of medical professionals, psychologists, social workers, and lawyers. The monitoring visits of the KRCT focus on the treatment of prisoners within correctional institutions, starting with categorization and regimes, social and health services provided to prisoners, and procedural guarantees for addressing potential violations.

¹ *Khudobin v. Russia*, No. of application 59696/00 (ECtHR October 26, 2006) para. 93.

² Convention on Economic, Social and Cultural Rights (1966) Article 12; Convention on the Elimination of All Forms of Racial Discrimination (1965) Article 5; Convention on the Rights of Persons with Disabilities (2006) Article 25.

In this regard, a problem observed by the KRCT in Kosovo correctional institutions and detention centers is the inadequate treatment of perpetrators of criminal offenses with mental disorders. This finding of KRCT has been noted by the European Committee for the Prevention of Torture (CPT) and by the National Mechanism for the Prevention of Torture (NMPT), considering it one of the ongoing challenges in the correctional service.³

According to the World Health Organization (WHO), mental disorders include depression, bipolar disorder, schizophrenia and other psychoses, dementia, and developmental disorders, including autism.⁴ The WHO has pointed out that placing a person in a closed institution is very likely to have a negative impact on mental health as a result of overcrowding, eventual violence, solitary confinement, lack of privacy, insufficient activities, uncertainty about the future, and inadequate mental health services. To address these circumstances, WHO recommends taking measures to detect, prevent, and effectively treat mental disorders within correctional institutions.⁵

During 2021, nine deaths have been recorded in Kosovo's correctional institutions, of which three were suicides. All three suicides were committed by people with mental disorders. According to the evaluations of the KRCT, these suicides occurred in three institutions where perpetrators with mental disorders should not be placed. Inmates who committed suicide suffered from severe mental health problems, and the institutions where they were located did not have the capacity to provide even the minimal conditions for the adequate treatment of persons with mental disorders.⁶

After these events, KRCT alerted state institutions about the seriousness of the situation regarding the treatment of persons with mental disorders in correctional institutions. KRCT has been advocating for years for the need to create adequate facilities in terms of infrastructure and professional staff for the placement of perpetrators with mental disorders who are in conflict with the law.

3 Report of the Committee for the Prevention of Torture (CPT), (2021) page 38 < <https://rm.coe.int/1680a3ea32> >; Annual report of the National Mechanism for the Prevention of Torture (2022) page 33 < <https://oik-rks.org/2023/04/24/raporti-vjetor-i-mkp-se-2022/> >.

4 World Health Organization < <https://www.who.int/news-room/fact-sheets/detail/mental-disorders> >.

5 Council of Europe *White paper regarding persons with mental health disorders* (2022) pages 8-10 < <https://rm.coe.int/pc-cp-2021-8-rev-6-white-paper-regarding-persons-with-mental-health-di/1680a69439> >

6 KRCT *Human Rights in Correctional Institutions in Kosovo* (2021) pages 21, 24, 25 and 26.

2 HOW IS THE DECISION MADE REGARDING THE INSTITUTION WHERE PERPETRATORS OF CRIMINAL OFFENSES WITH MENTAL DISORDERS SHOULD BE KEPT?

2.1 Legal Framework

The primary domestic legislation is drafted in accordance with European standards and is considered to be quite advanced, especially in terms of defining human rights and determining the responsibilities of state institutions. This legal framework consists of the Law on Mental Health, the Law on the Execution of Criminal Sanctions, the Criminal Code, the Criminal Procedure Code and the Juveniles Justice Code.

The Law on Mental Health is the special law for the legal regulation of mental health in the Republic of Kosovo. Although in force since 2015, it remains an unenforceable document since none of the by-laws for its implementation have yet been drawn up. This law defines the obligation for equal health treatment for individuals with mental disorders in institutions for serving criminal sentences, according to the standards approved by the Ministry of Health. Mental health services, supervised by the Ministry of Health, are responsible for providing the necessary assistance in the diagnosis, treatment, and rehabilitation of patients within institutions for the execution of criminal sanctions.⁷

The Law on the Execution of Criminal Sanctions (LECS) is the law that regulates the execution of criminal sanctions, compulsory treatment measures, and pre-trial detention.⁸ The LECS, among others, specifies medical protocols and responsibilities within correctional institutions for perpetrators of mental disorders. After admission to the institution, each person must be examined by a doctor to assess his or her physical and mental health, followed up with subsequent examinations as needed. If mental disorders are suspected, the institution is obliged to take immediate measures in accordance with the relevant legislation and the rules of psychiatric care.⁹ The doctor is obliged to notify the director of the correctional institution of any deterioration of the health of the person convicted due to the conditions of imprisonment and to take steps for the best possible treatment of health diseases according to the standards that are also applied to community health institutions.¹⁰

The Criminal Code and the Criminal Procedure Code are the main legal acts that determine the obligations of state institutions for trial, sentencing, and determining the institution for serving the sentence or the measure for compulsory treatment for the perpetrators with mental disorders.

The Criminal Code recognizes cases where a mentally incompetent person or someone with reduced mental capacity commits a criminal offense and requires that these circumstances be taken into account by the court when imposing the sanction or the measure and their duration. The Criminal Code reiterates the obligation that the perpetrator with a mental disorder must *be treated with humanity and respect for the inherent dignity of the person*.¹¹

⁷ Law No. 05/L -025 on Mental Health (2015) article 28 < <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=11229> >.

⁸ Law NO. 08/L-132 on the Execution of Criminal Sanctions (LECS 2022) < <https://gzk.rks-gov.net/ActDetail.aspx?ActID=61303> >.

⁹ *ibid* article 46.

¹⁰ *ibid* 49.

¹¹ Code NO. 06/L-074 Criminal Code of the Republic of Kosovo (2019) article 18 and 83 < <https://gzk.rks-gov.net/ActDetail>.

The decision on which institution should be placed a person with mental disorders who has run afoul of the law belongs to the competent judge. According to the Code of Criminal Procedure, when there is suspicion that the person has mental disorders, the judge is obliged to request a specialist medical examination. In the event that the mental disorder is proven, such a person ***shall be detained in a health care institution***. In the case where detention is assigned to a person for whom no indications have been raised during the court procedure that there may be mental disorders, but the same is observed in the correctional institution by the medical staff, the judge is immediately asked to order a psychiatric examination.¹² As long as this procedure is implemented without delay, it may be considered that the implementation of legal requirements for the treatment of perpetrators with mental disorders is appropriate.

In practice, there are also several other situations in which state institutions do not follow the requirements set out by the legislation in force. From the monitoring carried out by KRCT, numerous cases of inadequate placement of perpetrators with mental disorders have been found. The most frequently identified cases are:

- ✔ In cases where the stay in the Kosovo Forensic Psychiatric Institute (KFPI) has ended, a mental disorder has been established, and a request has been submitted to the court to issue a decision to send the person for detention to a health care institution or for the imposition of the measure of mandatory psychiatric treatment with custody, but until the decision is issued, the court takes a longer time, and the person is kept on the premises of correctional institutions;
- ✔ A significant number of prisoners manifest mental disorders during the time they are serving their sentence. These are adjudicated cases, and in addition to being sent for temporary treatment to a health care institution, they are forced to spend the rest of the time on the premises of correctional institutions;
- ✔ In correctional institutions, there is also the category of persons who occasionally show symptoms of mental disorders and who, apart from regular services within correctional institutions, do not have any other specific treatment. In certain cases, prisoners in this category are placed in the same environment as other prisoners who do not have health problems;
- ✔ When the court decides that pre-trial detention should be kept in the KFPI, but there are no vacancies in the KFPI, the person is sent for pre-trial detention in a detention center. KRCT raised this concern, asking detention centers that the persons for whom the court has ordered to be sent to IFPK, not be accepted as they violate the requirements implied by the Code of Criminal Procedure.

aspx?ActID=18413 >.

12 *ibid* article 509.

2.2. Kosovo's specialized institutions for perpetrators with mental disorders

Perpetrators of criminal offenses with mental disorders, when assigned the detention measure or imprisonment sentence based on the legal framework as well as the practice monitored by KRCT, are placed in correctional institutions and detention centers, at the Kosovo Forensic Psychiatric Institute (KFPI), as well as at the Health Institution for the Treatment of Persons with Special Needs (HITPSN) at the Correctional Center in Dubrava. Only KFPI and HITPSN meet the infrastructural and professional conditions for accommodation and treatment in this category.

Kosovo Forensic Psychiatric Institute (KFPI)

KFPI is a specialized health institution for examinations, psychiatric expertise, and treatment of perpetrators with mental disorders, based on court orders. In the ward of mandatory psychiatric treatment with custody, which has a capacity of 12 beds, the treatment of psychiatric patients is done by order of the courts.

In the psychiatric treatment and evaluation ward, with a capacity of 12 beds, examinations of persons according to court orders are carried out in order to evaluate the psychiatric assessment of persons suspected of committing criminal offenses and for whom the pre-trial detention measure has been imposed. The people in this ward can stay for up to two weeks, while their stay may be extended for another two weeks at the request of the evaluation team.

Although it is a specialized institution for the treatment of perpetrators with mental disorders, KFPI does not possess sufficient capacity, as it has only 36 beds. Apart from a lack of capacity, KFPI still does not have its legal status regulated. This institution was established based on UNMIK Regulation 2004/34, and despite legal developments in the Republic of Kosovo, its status is still not regulated. This problem has also been identified by CPT, which assesses that non-regulation of the legal status of the KFPI significantly affects its proper functioning.

Healthcare Institution for the Treatment of Persons with Special Needs (HITPSN)

During 2023, Pavilion D at QK Dubrava, now known as the Healthcare Institution for the Treatment of Persons with Special Needs (HITPSN), was opened. According to public data, this institution consists of 5 different units, with a total capacity of 60 beds, including the unit for the treatment of acute mental illness, the unit for the treatment of persons with addiction disorders, and the unit for the treatment of chronic illnesses

Despite the initiative to adapt Pavilion D, the situation remained almost the same throughout 2023. KRCT, during monitoring visits in 2022 and 2023, found that in many correctional facilities, prisoners with mental disorders were accommodated.

As a result of the monitoring, KRCT raised concerns about the treatment of patients with mental health issues at the Women's Correctional Center in Lipjan, where women with mental disorders are placed together with other pre-trial detainees and convicted individuals, while the available healthcare services for them do not meet adequate conditions. Apart from the possibility of transfer

to the KFPI, there is no adequate space for this category. In ward C of the KFPI, there are two double rooms designated for women and minors, but in most cases, they are used for accommodating males, while in cases where women are placed in these rooms, they cannot use the spaces for activities because they are not separated from men.

The infrastructural environments in correctional institutions do not even provide the minimum conditions for accommodating individuals with mental disorders, and the correctional staff lacks adequate professional training for their treatment. The healthcare services that can be provided by medical staff in correctional institutions are very limited, both in terms of adequate programs and the sufficient number of medical staff. These situations, besides constituting violations of human rights, are very difficult to manage due to the specific needs of this category of inmates and consequently have the potential for implications in terms of the security of the institutions.





3 INTERNATIONAL STANDARDS FOR THE TREATMENT OF PERPETRATORS WITH MENTAL DISORDERS

In this section are outlined the international standards regarding the treatment that should be provided to perpetrators with mental disorders and the state's obligations towards this category. Some of these requirements are of a nature of minimum standards that must be respected, while the requirements arising from the European Convention on Human Rights (ECHR) and the practice of the European Court of Human Rights (ECtHR) are directly applicable in the Republic of Kosovo.

The European Prison Rules (EPR) provide a comprehensive framework of standards regarding the management and treatment of individuals within prisons. Rule 12 of the EPR recommends that persons with mental disorders should be kept in specialized facilities created for this purpose, and if they are held in correctional institutions, it emphasizes the need for appropriate conditions to address their specific needs.¹³

The European Committee for the Prevention of Torture and Inhuman Treatment or Punishment (CPT), has continuously addressed the management of individuals with mental disorders in its monitoring visit reports, offering specific recommendations to improve the treatment of this category.

According to the CPT, it is imperative that prisoners with mental disorders have continuous access to professional healthcare services by placing them in specialized institutions.¹⁴ Untreated mental illnesses can lead to marginalization and may result in potentially inhumane and degrading treatment. Therefore, the CPT continuously recommends that state institutions ensure a wide range of measures, including the creation of adequate spaces, continuous access to healthcare services, regular provision of psychotropic therapies, and ongoing training of medical personnel to diagnose and manage mental health disorders.¹⁵ The CPT considers it highly important to train all correctional officials in mental health, psychology, suicide prevention, bullying, cultural awareness, etc., in order to be able to interact and provide support to prisoners with mental disorders.¹⁶

¹³ European Prison Rules < <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae> >.

¹⁴ Third General Report of the KPT (1993) Part 12 para. 43.

¹⁵ Report of the KPT from the visit to Turkey (2005) 18 para. 83.

¹⁶ KPT report from the visit to the United Kingdom (2008) para. 75; Report of the KPT from the visit to Romania (2022) 06 para 67.

After its last visit to Kosovo in 2021, the CPT requested that prisoners with severe mental health problems be placed in a suitable therapeutic environment, accompanied by an individualized treatment plan, ensuring continuous therapeutic, rehabilitative services, and recreational activities.¹⁷

The ECtHR emphasizes that states must ensure that conditions of detention for prisoners, especially those with mental illnesses, do not result in hardships that exceed the necessary inherent suffering in imprisonment.¹⁸ According to Article 3 of the Convention, the ECtHR affirms that the continued detention of a person without proper medical supervision and treatment constitutes inhuman and degrading treatment, especially for prisoners with severe mental disorders and suicidal tendencies.¹⁹ Vulnerability and ability to communicate complaints should be taken into account when assessing the compatibility of pre-trial detention conditions with the standards of the European Convention on Human Rights and Freedoms.²⁰ According to the ECtHR, the state is obliged to take effective measures, including specialized treatment and appropriate pre-trial detention conditions, for individuals with mental disorders and to transfer them to suitable environments if necessary.²¹

The ECtHR also links the legality of the deprivation of liberty of prisoners under Article 5 with the conditions of their treatment, emphasizing the importance of appropriate environments for individuals with mental disorders.²² The court assesses the appropriateness of treatment by taking into account the opinions of healthcare professionals, decisions of state authorities, and general findings regarding the provision of healthcare in prisons. The ECtHR considers whether an individualized and specialized approach is accessible for the treatment of specific disorders and aims at reintegrating individuals into society. Violations under Article 3 have been identified in cases where prisoners with mental illnesses were subjected to disciplinary sanctions without supervision and necessary treatment.²³

17 Report of the Committee for the Prevention of Torture (n 3) page 38.

18 Kudla v. Poland No. of application 30210/96 (ECtHR October 26, 2000).

19 Rivière v. France No. of application 33834/03 (ECtHR July 11, 2006).

20 Roman v. Belgium No. of application 18052/11 (ECtHR January 31, 2019); Murray v. Netherlands No. of application 10511/10 (ECtHR April 26, 2016).

21 Murray v. Netherlands No. of application 10511/10 (ECtHR April 26, 2016).

22 Ilseher v. Germany No. of application 10211/12 27505/14 (ECtHR 4 December 2018).

23 Roman v. Belgium No. of application 18052/11 (ECtHR January 31, 2019).

4 RECOMMENDATIONS FOR STATE INSTITUTIONS FOR TREATMENT ACCORDING TO THE STANDARDS FOR PERPETRATORS WITH MENTAL DISORDERS

In light of the above elaborations, the following actions are recommended to be considered urgent measures for the institutions of the Republic of Kosovo to address the deficiencies in the treatment system of perpetrators with mental disorders:

» Urgent increase in the capacities of specialized institutions

Urgent increase in the capacities of specialized institutions State institutions should develop policies to expand the capacities of the Institute of Forensic Psychiatry. In addition to increasing capacity, there should also be legal regulation of the functioning of this institute. This is considered a highly necessary measure to avoid potentially life-threatening delays for individuals with severe mental disorders in correctional institutions and pre-trial detention centers.²⁴

As for the accommodation spaces, state institutions should urgently address the creation of suitable spaces for the treatment of women with mental disorders and female detainees suspected of or convicted of criminal acts.

» To prohibit the placement in correctional institutions/detention centers of persons with mental disorders

Courts and other state institutions should base decision-making on a human rights-centered approach, harmonizing policies and practices with international standards to protect the dignity and well-being of individuals with mental illness in pre-trial detention. The practice of placing individuals in pre-trial detention centers based on the rationale of a lack of space in psychiatric hospitals should be prohibited.

The responsible institutions (the Judicial Council of Kosovo, the Prosecution Council of Kosovo, the Ministry of Justice, the Ministry of Health and other relevant institutions) must urgently take measures to create special institutions for the placement and treatment of perpetrators with mental disorders.

To achieve this, continuous training programs for judges and prosecutors should be designed and implemented to raise their awareness about perpetrators with mental disorders and the health and legal risks of placing them in institutions without adequate treatment and healthcare facilities.

Of particular importance is the training of correctional staff in mental health, psychology, suicide prevention, etc. This would directly impact the strengthening of capacities to provide more adequate treatment for individuals with mental disorders in institutions of deprivation of liberty.

²⁴ Council of Europe Project: Improving the Treatment of Persons Deprived of Liberty Evaluation report on mental health care provisions in all places of detention and mental health protocols of the Prison Health Department in Kosovo, including Standard Operating Procedures (December 2022) page 5.

» Continuous access to professional healthcare services

In cases where individuals with mental disorders, contrary to legal requirements, are placed in correctional facilities, they should be ensured continuous supervision and monitoring by healthcare professionals. In correctional facilities, the majority of individuals with mental disorders are provided with pharmacological treatment, lacking other options such as psycho-social treatments, rehabilitative therapy, and occupational therapy. It is essential that these and other alternative programs be developed and implemented in correctional facilities and pre-trial detention centers.



5 CONCLUSION

The legal framework of the Republic of Kosovo recognizes the obligation of state institutions to provide proper healthcare treatment to individuals with mental disorders, especially professional mental health services, at the same level as the services available to individuals at liberty. Additionally, through established standards, the ECtHR emphasizes specific requirements for state institutions when it comes to the treatment of individuals with mental disorders. State institutions are obligated to ensure an appropriate level of professional treatment for individuals with mental disorders at every stage. The ECtHR has set very high standards, to the extent that when a person deprived of liberty is not provided with continuous medical supervision and professional treatment, it can be concluded that the state violates Article 3 of the Convention, finding the treatment to be inhumane and degrading.²⁵ Now that the Republic of Kosovo has submitted its application for membership in the Council of Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, as well as the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, will be even more relevant. During the evaluation process for the fulfillment of the required standards, the Council of Europe will pay particular attention to the reflection of these conventions and the practice of the ECtHR in domestic legislation, especially in terms of implementation in practice.

Based on the issues addressed in this document, it can be concluded that institutions in the Republic of Kosovo do not fully implement the legal requirements for the assessment and placement of individuals with mental disorders. There is insufficient access to mental health services in correctional institutions and pre-trial detention centers; individuals with mental disorders are placed for long periods in correctional institutions, often in the same environments as those without mental health issues; and there is a significant lack of capacity in specialized healthcare institutions for the placement and treatment of individuals with mental disorders.

By aligning policies with human rights principles, accurately implementing legal requirements, and adopting comprehensive strategies for mental health care to address the unique needs of individuals with mental disorders, a fairer and more humane correctional system can be encouraged that respects the inherent dignity of all individuals, regardless of their legal status and health condition.

²⁵ *Rivière v. France* No. of application 33834/03 (ECtHR July 11, 2006).



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