

File No.: ΑΥΤ. 3/2021
ΕΜΡΤ 1/2021

Ex officio Statement

**of the Commissioner for Administration and the Protection of
Human Rights regarding the detention of a third-country
national at the Aradippou Police Detention Center, until his
return to his country of origin**

Officers who investigated the case: **Katerina Kallitsioni
Kyriacos Kyriacou**

Nicosia, March 3rd, 2021

A. Facts

1. The reason for this Statement was the receipt of an e-mail dated March 2, 2021, in my Office, by which I was notified of a letter from the NGO Cyprus Refugee Council to the Director of the Civil Registry and Migration Department and the Asylum Service.
2. That letter states, that Mr XXX originating in the Democratic Republic of the Congo "*... is under administrative detention at the Aradippou Police Station since 11/11/2020, for a period of **111 days**...*". According to the letter of the Cyprus Refugee Council, "*...his psychological state is vulnerable due to specific events that took place in the Democratic Republic of the Congo...*".
3. In particular, "*...Based on the indications of psychological vulnerability and considering that it is not currently possible to remove Mr... as an asylum seeker...*", the Cyprus Refugee Council asks the recipients of its letter "*... to reconsider his detention in order to be immediately released... "* or alternatively "*... to be transferred to the Menoyia Detention Center for Prohibited Migrants (DCPM) and make sure that the examination of his request begins as soon as possible... "*
4. On the basis of the above-mentioned information that was brought to my attention, it was decided **to carry out immediately and today, March 3, 2020**, an unannounced¹ visit to the Aradippou Police Detention Center, by two Officers of my Office.
5. During the visit, the detention places and conditions at the Aradippou Police Detention Center were inspected and private meetings and conversations were held, both with the person in question, as well as with the people in charge of the detention center.

¹ According to paragraph (1) of article 5 of L.2 (III) / 2009, as amended by L. 3 (III) / 2021

B. Investigation

6. It is noted that the subject of this Statement, based on my responsibilities as a National Mechanism for the Prevention of Torture² and as a National Human Rights Institution³, is only the ongoing administrative detention of Mr. XXX at the Aradippou Police Detention Center from November 11, 2020.
7. The general findings from the visit to this Detention Center, in my capacity as National Prevention Mechanism, which is my third visit in a row, as the visits of July 24, 2019⁴ and February 17, 2020 have preceded, are evaluated separately by the Office and will be the subject of my subsequent Report.
8. During the visit, the Officers of my Office had a meeting and talked with Mr. XXX, who told them that he did not know the reason for his prolonged detention in the Police Detention Center. He also expressed dissatisfaction with his detention for such a long time in this Detention Center, a fact which, as he told the Officers of my Office, aggravated his already shaken mental state and brought him an intense emotional charge.
9. The emotional charge and the shock of Mr. XXX's mental state were evident during the confidential interview that the Officers of my Office had with him.
10. In this regard, Mr. XXX was asked if he receives and / or has requested any psychological support or other medical assistance for the matter. He told the Officers that he has not asked for any relevant help or support until today, except for the fact that he asked the Police, and he was taken to the Larnaca General Hospital for examination by a dentist to deal with a dental problem, which was confirmed by the inspection of the relevant file kept at the said Police Detention Center.
11. He added that after the visit he had on February 19, 2021, by Officers of the Cyprus Refugee Council, he has started to receive psychological support by phone from a psychologist of the Cyprus Refugee Council.

² The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Optional Protocol) (Ratification) Law [N. 2 (III) / 2009]

³ Article 5 of the Law on the Commissioner of Administration from 1991 to 2014

⁴ Relevant is the Report no. ΕΜΠ 2/14 dated 30 August 2019.

12. Regarding the conditions in the detention center, Mr. XXX stated that he does not face any particular problem, both with the Heads of Detention Center and with the rest of his inmates, except in some cases when the uninterrupted supply of hot water is interrupted. In addition, Mr. XXX noted that due to the medication he is currently receiving (antibiotics) to treat his dental problem, the amount of food provided to him is not satisfactory.
13. He noted, however, that the Head of Detention Center provides him, whenever he requests, with painkillers to treat his dental problem.
14. The impressions gained by my Office Officers from their conversation with Mr. XXX were positive. He is a polite and very low-key person, with a high level of education, as he holds a degree in Medicine.
15. The Managers of the detention area, during their meeting with the Officers of my Office, mentioned, in relation to Mr. XXX that he is fully cooperative, does not create any problem and is a person of low tones.
16. They added, however, that in general, on the issue of the detention of administrative detainees in these Detention Center for long periods of time, they have repeatedly reported this to the Administration, with their last letter dated 16 February 2021.
17. It is reiterated that regarding the visit to the Aradippou Police Detention Center, a separate report will follow.

C. Legislative Framework

• Administrative Detention

18. As I have repeatedly pointed out in my previous reports submitted following my visits to Police Detention Centers, on the basis of my responsibilities as a National Prevention Mechanism, based on the Principles established, *"any person detained for the purpose of returning to his country or in another country, is transferred to DCPM if his return is not foreseen or it is not possible to do so within 24 or 48 hours from the time of their arrest... as well as "held separately from the other detainees.."*.
19. Based on the above remarks, the Chief of Police informed the Police Directors and the Director of the Aliens and Immigration Service and drew their attention to the relevant Instructions (SAG no. 293282), according to which *"all deported foreigners are transferred directly to the Menogeia Detention Center, unless they are to be deported very soon and no later than 48 hours. Detention of deportees of foreigners in Police Detention Centers beyond 48 hours is allowed only in exceptional cases and with the prior approval of the Assistant Commander."*⁵
20. At the same time, the Chief of the Police requested the faithful application of the following:
- An effort should be made for the immediate transfer of all returning third country nationals to DCPM and "if this is not possible, these persons should be transferred to Detention Centers where there is a possibility of separation into wards; if this is not possible either, all possible measures should be taken for implementation of a program by the Head of the Area, so that the two categories of detainees do not come into contact".
 - Until the transfer of the returned third country nationals to DCPM, a program should be implemented at the Police Stations so that criminal and administrative detainees can use the outdoor

⁵ Letter from the Chief of Police to the Police Directors of the Provinces and the Commander of the Aliens and Immigration Service, dated 16 December 2019

exercise area for at least one hour daily and in a way that they do not come into contact with each other.

- The detention of a person who will be detained for up to 24 hours, can be done in a detention center that has an outdoor exercise area.

21. It is noted that the CPT in its Report published on 26 April 2018, after its visit to Cyprus in February 2017, had pointed out that the Police Stations are not suitable places to accommodate detained third-country nationals, and therefore every effort must be made to reduce to a minimum the amount of time remaining in such facilities (e.g., up to 24 hours). It also noted that detention at police facilities carries an increased risk of ill-treatment, and that police stations are not the appropriate environment for detaining people for more than a few days.

- ***International Covenant on Civil and Political Rights and the Principle of Proportionality***

22. The protection of human dignity during the detention of a person is a primary obligation of the state and every person deprived of his liberty is treated with humanity and respect for inherent human dignity.⁶

23. Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, adopted on 11 January 2006, stipulates, inter alia, that "... *restrictions on persons deprived of their liberty shall be limited to what is be proportionate to the lawful purposes for which they were imposed...*".

24. In accordance with the **principle of proportionality**,⁷ in order to determine that the limitations imposed on a fundamental right are tolerable, the administration should: **(a)** take into account and weigh all those directly involved in the case, **(b)** the restrictive measure imposed on the exercise of a right necessary to serve a lawful purpose and the least burdensome or mildest possible, **(c)** the measure chosen to be appropriate and appropriate to serve the intended purposes; and **(d)** the need to serve the intended purpose is not manifestly asymmetric or disproportionate to the need to protect the infringed right. In this context, the principle of proportionality imposes in a nutshell

⁶ UN International Covenant on Civil and Political Rights, Article 10

⁷ Article 52 of the Law on General Principles of Administrative Law

the finding of the necessary measure in imposing restrictions on the fundamental rights of the governed, so that, as has been very cleverly said, "*the police shoot the sparrows with cannons*".

25. The Principle of Proportionality is not an option but a constitutional requirement, which is derived from the rule of law and is superior to the common legislator. It must therefore be taken into account and enforced whenever the question of the legal restriction of an individual right may arise.
26. As is clear from the case law of the European Court of Human Rights (ECHR), "***the limits of the restriction of individual rights also follow from the principle of proportionality***".
27. The ECHR emphasizes that, although the need to protect public order and security may lead the state to introduce different detention regimes for special categories of detainees, **the implementation of the measures imposed in such cases should do not subject detainees to discomfort of such magnitude as to outweigh the unavoidable inconvenience inherent in detention.**⁸

D. Conclusions

28. It is clarified again that the main object of my present position is the **detention of Mr XXX at the Police Detention Center of Aradippou instead of DCPM** (as an administrative prisoner) and namely his long-term detention in this area from 11 November 2020, i.e., **for a period of almost four months.**
29. It is noted that, as I mentioned above in the context of my previous Placement dated September 4, 2020⁹, the conditions of detention in DCIM compared to those in Police Detention Centers, they are more flexible as detainees have access to more facilities. In each wing of DCPM, personal computers, internet service and Skype have been installed to facilitate the communication and contact of the detainees

⁸ Kudla v. Poland [GC], no.30210/96, §§92-94, ECHR 2000-XL, Van Der Graaf v. The Netherlands, no. 8704/03, decision as to the admissibility, dated. 1/6/2004.

⁹ File No. EMPT. 5/2020, AYT. 21/2020

with their own persons. Furthermore, the cells are not secured but are kept open at night and detainees can enjoy activities such as painting, music and physical education.

30. Mr XXX is an administratively detained person, who based on the above mentioned, should be transferred to DCPM.
31. Any restrictions on individual rights invoking practical reasons, such as the lack of available beds in DCPM, cannot be accepted. Since, as is clear from the case law of the ECHR, restrictions on the rights of detainees must be justified on the basis of the principles of legality, necessity and proportionality. Therefore, imposed measures restricting individual rights should be prescribed by state laws that are compatible with international human rights standards, have proven to be absolutely necessary to achieve a legitimate, democratic society, to be proportionate, that is, to be as less intrusive as possible, for the purposes of achieving the objective pursued.
32. In addition, **it does not comply with the provisions of the Constitution and international standards to detain a person, especially an administrative detainee, for such a long period of time in Police Detention Centers which have not been declared Prisons and do not meet the minimum standards for decent treatment. It is noted that the Aradippou Police Detention Center do not have an external courtyard area.** Once again, it is stated that the authorities were not concerned with the application of the Principle of Proportionality, as a Constitutional requirement, derived from the Rule of Law and there do not seem to be specific factors that justify the prolonged detention of this detainee in Police Detention Centers instead of the DCPM.
33. It is clear that the detention of this person in Police Detention Centers is not the least cumbersome or mildest possible measure, but on the contrary, it is a prohibited measure, as detention in detention facilities for more than 48 hours is not permitted under certain conditions. conditions.
34. In addition, I am particularly concerned about Mr. XXX's emotional burden, which has been exacerbated by his prolonged detention in the area, which may have made him a vulnerable person in need of immediate and specialized support.

E. Recommendations

- 35.** In the light of the above, I suggest that the **competent authorities immediately provide the appropriate specialist support to Mr XXX to prevent any unpleasant event** and to take all appropriate measures for its transfer to DCPM and take all appropriate measures to prevent any unpleasant incident as they formally take all appropriate measures to lift his detention in that detention facility.
- 36.** My current position as a National Mechanism for the Prevention of Torture is submitted to the Minister of Justice and Public Order, as the competent authority, in accordance with article 9 of Law 2 (III)/2009 and to the Chief of Police for his own actions to be implemented of my suggestion above.

Maria Stylianou-Lottides

**Commissioner of Administration
and the Protection of Human Rights (Ombudsman)**

National Mechanism for the Prevention of Torture

National Human Rights Institute