



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

# Registry Practice Direction on Detainees

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## Discipline

<b>Adopted by:</b>	<b>The Registrar, Kosovo Specialist Chambers</b>
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**CHAPTER I      GENERAL PROVISIONS****Article 1      Purpose and scope**

1. The Registrar has adopted this Practice Direction on Discipline ('Practice Direction') pursuant to Detention Rule 63 in order to set forth how discipline is administered in the Detention Facilities, as well as the procedural rights of Detainees subject to any disciplinary proceedings.
2. Pursuant to Detention Rule 59, this Practice Direction shall apply to a Detainee's conduct at the Premises of the Specialist Chambers, including in the Detention Facilities, during transit to and from the Premises of the Specialist Chambers, and during court proceedings. Otherwise, this Practice Direction shall exclusively apply to matters within the scope of the Rules of Detention.
3. This Practice Direction shall not in any way affect judicial control of courtroom proceedings pursuant to Rule 61 of the Rules of Procedure and Evidence.

## Article 2 Definitions

In addition to Detention Rule 2, the following definitions shall apply:

Administrative Office	The Administrative Office of the Detention Management Unit of the Registry;
Confinement	An exceptional sanction in which a Detainee is confined to his or her personal cell or to a confinement cell;
Disciplinary Decision	Any disciplinary decision of the Chief Detention Officer, in accordance with Article 12 of this Practice Direction;
Private Visits	This term shall have the same meaning as that set forth in the Practice Direction on Visits and Communications, adopted pursuant to Detention Rule 63;
Incident Report	A written report to the Chief Detention Officer on the Staff Incident Report Form (F1) alleging a disciplinary offence by a Detainee;
Solitary Confinement	Confinement of a Detainee for twenty-two (22) hours or more per day without meaningful human contact.

## Article 3 Application

This Practice Direction shall be interpreted and applied in a manner consistent with the Law, the Rules of Procedure and Evidence, and the Rules of Detention.

## Article 4 General principles

1. Disciplinary proceedings shall be applied as a last resort. Methods of restoration and mediation shall be used, whenever possible, to prevent disciplinary offences or resolve conflicts.
2. Disciplinary proceedings shall be non-arbitrary and conducted in accordance with the principles of fairness, impartiality, and due process. There shall be no discrimination on any ground.
3. A Detainee who commits a disciplinary offence shall be subject to disciplinary sanctions. No Detainee shall be sanctioned except pursuant to this Practice Direction. Disciplinary sanctions shall be proportionate to the seriousness of the offence.
4. Before imposing disciplinary sanctions, the Chief Detention Officer shall, in consultation with the Medical Officer, consider whether the mental health or disability of a Detainee may have contributed to the conduct underlying the disciplinary offence. No sanction shall be imposed if the Chief Detention Officer, on advice of the Medical Officer, considers that the disciplinary offence directly resulted from the Detainee's mental illness or disability.

## Article 5 Humane treatment

1. In accordance with Detention Rule 5, all Detainees shall be treated humanely and with respect for the inherent dignity of the human person, and no disciplinary sanction shall amount to torture or to other cruel, inhuman, or degrading treatment or punishment.
2. The following practices, *inter alia*, are forbidden as punishment:
  - a. Solitary Confinement;
  - b. placement in a dark or constantly lit cell;
  - c. corporal punishment;
  - d. reduction in a Detainee's access to food or water; and
  - e. collective punishment.

## Article 6 *Ne bis in idem*

No Detainee shall be subject to disciplinary proceedings and sanctions more than once for the same offence.

## Article 7 Disciplinary offences

1. Only conduct that constitutes a threat to good order, safety, or security in the Detention Facilities shall be defined as a disciplinary offence and subject to disciplinary sanctions under this Practice Direction.
2. A Detainee commits a disciplinary offence if he or she:
  - a. disobeys the Rules of Detention or any practice direction or instruction adopted by the Registrar or issued by the Chief Detention Officer pursuant to Detention Rule 4;
  - b. disobeys any order of the Chief Detention Officer or a Detention Officer;
  - c. is present in an area where Detainees may not be without authorisation;
  - d. is disrespectful or verbally abusive to a Detention Officer or any other person;
  - e. engages in gambling;
  - f. is violent or aggressive towards another person, including by fighting with or assaulting that person, threatening to do so, or exercising coercive control over that person;
  - g. wilfully or recklessly damages or destroys any part of the Detention Facilities or any property that is not his or her own;
  - h. commits theft or is in possession of stolen property;
  - i. offers, gives, or accepts a bribe or reward and thereby threatens good order, safety, or security in the Detention Facilities;
  - j. is in possession of money in the form of notes or coins;
  - k. is in possession of or deals in a prohibited item as defined in Detention Rule 25, including any prohibited substances without the authorisation of the Medical Officer pursuant to Detention Rule 27;
  - l. escapes, attempts to escape, or performs any preparatory action for the purpose of escaping from custody;
  - m. intentionally obstructs a Detention Officer or any other person working at the Detention Facilities in the proper execution of his or her duties;
  - n. intentionally interferes with the administration of justice and thereby threatens good order, safety, or security in the Detention Facilities;

- o. creates or participates in a disturbance or commits any other act that is prejudicial to good order, safety, or security at the Premises of the Specialist Chambers, including within the Detention Facilities; or
- p. conspires or attempts to commit any offence set forth in this Article, or assists, incites, or attempts to incite another person to commit any such offence.

## CHAPTER II DISCIPLINARY PROCEEDINGS

### Article 8 Initiation of proceedings

1. Disciplinary proceedings are initiated by an Incident Report detailing the offence a Detainee is suspected of having committed.
2. Any Detention Officer who witnesses or suspects that a Detainee has committed a disciplinary offence shall promptly submit to the Chief Detention Officer an Incident Report using the Staff Incident Report Form (F1), which shall specify the time, date, place, and relevant details surrounding the alleged offence.
3. The Administrative Office shall keep a record of all Incident Reports.

### Article 9 Caution

1. Where the Chief Detention Officer considers a caution sufficient to maintain good order, safety, and security in the Detention Facilities, he or she may issue a caution to a Detainee. The caution shall inform the Detainee of the specific conduct giving rise to the alleged offence.
2. The caution shall be documented in the Detainee's Personal Record.
3. A caution is an alternative to a disciplinary proceeding. It is a reminder to a Detainee of the applicable Rules of Detention and any practice direction or instruction adopted or issued pursuant to Detention Rule 4.
4. A caution is not a disciplinary sanction and may not be complained of or appealed against.

### Article 10 Calculation of time limits

1. Time limits applicable to this Practice Direction shall be calculated by calendar days.
2. A month shall equal 30 calendar days.
3. Time limits shall run from the first working day after the date of receipt of a written decision or appeal, as applicable.
4. If the last day of a time limit falls on a weekend or official holiday, the next working day shall be considered the last day of that time limit.
5. Time limits shall not run until a Detainee has received a written translation of the relevant decision of the Chief Detention Officer or the Registrar, as applicable, in a language the Detainee understands.
6. The authority in charge of the appeal may, *proprio motu* or upon a showing of good cause, recognise as valid any appeal submitted by a Detainee after the expiration of the relevant time limit.

## Article 11 Investigation

1. If a caution is not sufficient to maintain good order, safety, and security in the Detention Facilities, the Chief Detention Officer shall promptly initiate an investigation into the alleged disciplinary offence.
2. The Chief Detention Officer shall interview the reporting Detention Officer and any other person who witnessed the Detainee's alleged conduct.
3. The Chief Detention Officer shall offer the Detainee an opportunity to explain his or her conduct with the assistance of an interpreter, if required.
4. If the alleged disciplinary offence concerns a refusal by a Detainee to obey any order pursuant to Article 7.2.b of this Practice Direction, the Chief Detention Officer shall determine whether the Detainee was justified in refusing to obey the relevant order.
5. If, following the investigation, the Chief Detention Officer determines that there are reasonable grounds to suspect the Detainee has committed a disciplinary offence, the Chief Detention Officer shall promptly inform the Detainee, in writing, that a hearing shall be conducted.
6. Where the Chief Detention Officer has reported the incident, he or she shall delegate the authority to conduct the investigation and disciplinary hearing to his or her deputy.

## Article 12 Disciplinary hearing

1. The Chief Detention Officer shall conduct a disciplinary hearing and render a Disciplinary Decision without undue delay.
2. The disciplinary hearing shall occur not later than three (3) days following the Detainee's receipt of written notice of the hearing. In exceptional circumstances, the Chief Detention Officer may postpone or adjourn the hearing until the next working day unless it would unfairly prejudice the Detainee's interests. The Chief Detention Officer shall record and notify the Detainee in writing of the reasons for postponement or adjournment.
3. A Detainee shall have the right to be heard and is entitled to the assistance of an interpreter. If a Detainee refuses to attend the hearing, the Chief Detention Officer shall inform the Detainee that the hearing will proceed in his or her absence and record the Detainee's refusal to attend.
4. At the hearing, the Detainee shall be informed of the allegations against him or her in detail and in a language the Detainee understands.
5. The Detainee shall be given a reasonable opportunity to prepare his or her defence and to defend him or herself in person. If the Chief Detention Officer determines that the interests of justice so require, the Detainee may be assisted by Counsel in presenting his or her defence.
6. The Detainee shall be given a reasonable opportunity to request the attendance of witnesses and have them examined on his or her behalf, to hear and present evidence, and to make submissions, including submissions regarding potential sanctions.
7. Having considered all of the relevant information, the Chief Detention Officer shall promptly issue a Disciplinary Decision to the Detainee, in writing and in a language the Detainee understands, which shall set forth the reasons for the decision. If the Detainee is found to have committed a disciplinary offence, the Disciplinary Decision shall also set forth the disciplinary sanction imposed pursuant to Article 13 of this Practice Direction.
8. The Chief Detention Officer shall inform the Detainee that he or she has the right to appeal a Disciplinary Decision to the Registrar in accordance with this Practice Direction. Notification to the Detainee of the right to appeal shall include the time limit for submitting an appeal.

9. The Administrative Office shall keep a record of the disciplinary hearing, including the Disciplinary Decision and any sanctions imposed, in accordance with Article 16 of this Practice Direction.

### Article 13 Disciplinary sanctions

1. Having found a Detainee responsible for a disciplinary offence, the Chief Detention Officer may impose any of the following disciplinary sanctions, or combination thereof, proportionate to the responsibility of the Detainee:
  - a. a written warning;
  - b. reduction or removal of privileges for a period of up to one (1) month;
  - c. loss of allowances, if applicable, for a period of up to three (3) months;
  - d. a fine from the account of the Detainee referred to in Detention Rule 28;
  - e. exceptionally, Confinement, in accordance with Article 14 of this Practice Direction.
2. Privileges shall include, *inter alia*, access to television, radio, educational programs, and other recreational activities made available to Detainees. Privileges shall not include general living conditions that apply to all Detainees without exception, including those relating to light, ventilation, temperature, sanitation, nutrition, drinking water, access to exercise in the fresh air, personal hygiene, health care, and adequate personal space. Visits and communications other than Private Visits shall not be considered privileges subject to removal under paragraph 1.b. If video visiting is authorised by the Registrar and made available to Detainees, it shall be considered a privilege subject to unqualified removal. Disciplinary sanctions shall never result in the total deprivation of family contact.
3. If the disciplinary offence concerns the possession of money in the form of notes or coins, any fine imposed as a disciplinary sanction shall be a percentage of the value of the money found.
4. In the event of multiple disciplinary offences arising from the same incident, sanctions shall be determined for each offence first, in accordance with this Practice Direction, and a cumulative disciplinary sanction shall be imposed that aggregates the individual sanctions for all offences.
5. The use of instruments of restraint shall never be applied as a sanction for a disciplinary offence.
6. Segregation shall not be used as a disciplinary sanction.
7. The Administrative Office shall keep a record of all disciplinary sanctions imposed.

### Article 14 Confinement

1. Exceptionally, after every other precaution has been taken, the Chief Detention Officer may impose the disciplinary sanction of Confinement. Confinement shall be to the personal cell of a Detainee or to a confinement cell that shall have at least ten (10) cubic meters of space, a sanitary device, access to natural light, drinking water, a bed with bed sheets, a table, a chair, artificial light, ventilation, and heating.
2. The exceptional sanction of Confinement shall be for as short a time as possible and, in any event, shall not exceed a continuous period of seven (7) days.
3. In the event of multiple disciplinary offences resulting in a cumulative disciplinary sanction, the total period of Confinement shall be for as short a time as possible and, in any event, shall not exceed a continuous period of fourteen (14) days.
4. The Chief Detention Officer shall promptly inform the Registrar and the Medical Officer of any decision imposing the exceptional sanction of Confinement. The Medical Officer shall visit the Detainee as soon as practicable thereafter.

5. A Detainee shall be informed prior to the application of the sanction of the conditions and length of Confinement. A Detainee in Confinement shall:
  - a. have the same hygienic and health conditions as other Detainees and shall be permitted at least one (1) hour per day of walking or other suitable exercise in the open air;
  - b. have the opportunity to have more than two (2) hours per day of meaningful human contact within the Detention Facilities;
  - c. have access to writing and reading materials, including books, newspapers, and periodicals;
  - d. have access to other means of recreation and occupation that are compatible with good order, security, and safety in the Detention Facilities and the interests of justice;
  - e. be entitled to visits and communications with Counsel under the same conditions as other Detainees;
  - f. be entitled to visits and communications with a religious or spiritual advisor under the same conditions as other Detainees;
  - g. be entitled to engage in written correspondence and telephone communications under the same conditions as other Detainees; and
  - h. be entitled to one (1) visit from a Close Relative during the period of Confinement, subject to necessary and proportionate restrictions in accordance with the Practice Direction on Visits and Communications.
6. The Medical Officer, in accordance with Detention Rule 31, shall make regular visits to a Detainee in Confinement, as well as other medical staff, as available. A Detainee in Confinement is permitted to request additional visits from the Medical Officer or other medical staff at any time. The Medical Officer shall promptly advise the Chief Detention Officer, the Registrar, and the Competent Panel if termination of Confinement is necessary to safeguard the physical or mental health of the Detainee. Upon recommendation of the Medical Officer, Confinement shall be terminated.
7. As set forth in Article 12.8 and Article 17 of this Practice Direction, a Detainee has the right to appeal any Disciplinary Decision, including a decision imposing Confinement. A Detainee may also at any time request that the Registrar review or modify the conditions of Confinement, to which the Practice Direction on Complaints shall be applicable.

## **Article 15      Suspension or termination of sanctions**

1. The Chief Detention Officer may decide to suspend the imposition of any disciplinary sanction, other than a written warning, for a period of up to three (3) months.
2. The Detainee shall receive written notice of a suspended sanction, and the Administrative Office shall keep a record of all suspended sanctions.
3. If the Detainee commits a new disciplinary offence during the period of suspension, the suspension for the prior disciplinary offence shall be revoked. Any new disciplinary sanction shall be determined for the new offence, and a cumulative disciplinary sanction shall be imposed that aggregates the individual sanctions for both the prior and new offences.
4. The Chief Detention Officer may terminate the execution of any disciplinary sanction before it is completed when its purpose has been achieved, or upon advice of the Medical Officer in accordance with Article 4.4 and Article 14.6 of this Practice Direction.



## Article 16 Record of proceedings

1. At the latest within two (2) working days of the Disciplinary Decision, a record of all disciplinary proceedings shall be submitted to the Administrative Office by the Chief Detention Officer using the Disciplinary Procedure Form (F2).
2. The record shall, at a minimum, contain the Incident Report, the alleged facts, a summary of the evidence presented at the disciplinary hearing, the names of any witnesses, the Disciplinary Decision, and the disciplinary sanction(s), if any, to be imposed.
3. The Disciplinary Procedure Form shall be included in the Detainee's Personal Record under Detention Rule 9.

## Article 17 Right to appeal

1. A Detainee shall have the right:
  - a. to appeal any Disciplinary Decision before the Registrar, in accordance with Article 18 of this Practice Direction; and
  - b. to appeal any decision of the Registrar pursuant to paragraph 1.a before the Competent Panel, in accordance with Article 19 of this Practice Direction.
2. The Detainee shall be provided with a standard form to appeal either decision, which shall be completed by the Detainee in a language he or she understands.
3. At the latest within three (3) days following receipt of a written appealable decision, the Detainee shall submit an appeal to the appropriate authority through the Administrative Office, either by directly handing the document to a Detention Officer or depositing the document in any other manner designated for this purpose.
4. An appeal shall be clearly marked with the date of receipt by the Administrative Office.
5. The Administrative Office shall keep a log of all appeals, including relevant translations.
6. Upon receipt, the Administrative Office shall transmit the appeal to the Registrar within twenty-four (24) hours and in accordance with the relevant procedures and instructions.
7. Appeals shall not be censored in any way by Detention Officers or any other person.

## Article 18 Appeal before the Registrar

1. The Registrar shall promptly acknowledge receipt of any appeal pursuant to Article 17.1.a of this Practice Direction in writing.
2. The Registrar shall render a reasoned decision on the appeal, in writing and in a language the Detainee understands, at the latest within seven (7) days of its receipt, unless there are circumstances that justify a longer decision-making period. In such a case, the Registrar shall inform the Detainee accordingly and shall keep him or her informed of what action is being taken.
3. Where an appeal concerns the exceptional sanction of Confinement, the Registrar shall decide on the appeal within seventy-two (72) hours of receipt.
4. In considering the appeal, the Registrar shall take account of all relevant material and shall seek the views of all relevant persons or bodies within the Detention Management Unit or the Prison. The Chief Detention Officer shall transmit to the Registrar all information relevant to the appeal. The Detainee shall be permitted to communicate freely and without censorship on the matter with the Registrar during this period.
5. The Registrar shall inform the Detainee that he or she has the right to appeal the Registrar's decision in accordance with Article 19 of this Practice Direction.

6. An appeal before the Registrar shall not stay the execution of the Disciplinary Decision, unless otherwise decided by the Registrar.

### Article 19 Appeal before the Competent Panel

1. The Registrar shall promptly acknowledge receipt of any appeal pursuant to Article 17.1.b of this Practice Direction in writing.
2. Upon receipt of an appeal, the Registrar shall promptly file it before the Competent Panel in accordance with the relevant practice direction on filings before the Specialist Chambers. Counsel for the Detainee shall be notified of the filing. If there is more than one Competent Panel, the Registrar shall promptly refer the matter to the President for assignment in accordance with Articles 25 and 33 of the Law.
3. The Registrar shall transmit the entire record of the appeal to the Competent Panel in accordance with the relevant practice direction on filings before the Specialist Chambers.
4. An appeal before the Competent Panel shall not stay the execution of the Registrar's decision, unless otherwise ordered by the Competent Panel.
5. The decision of the Competent Panel on the appeal shall be final.

### Article 20 Restitution for damage caused

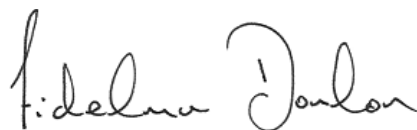
1. A Detainee found responsible for a disciplinary offence may be ordered to pay restitution, in whole or in part, for damage caused intentionally or by gross negligence to the Premises of the Specialist Chambers, including the Detention Facilities, or to any property used by the Specialist Chambers in connection with its function and purpose.
2. The Chief Detention Officer shall inform the Detainee of the amount of restitution to be paid and the period in which it shall be paid from the Detainee's account by, *inter alia*, applying the procedure set forth in Detention Rule 28.

## CHAPTER III FINAL PROVISION

### Article 21 Amendments

1. An amendment to this Practice Direction shall enter into force on the date of its signature.
2. An amendment to this Practice Direction shall not apply retroactively.

The Hague, Netherlands  
23 September 2020



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Dr Fidelma Donlon  
Registrar