



**REPUBLIC OF SERBIA  
PROTECTOR OF CITIZENS**

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**NATIONAL MECHANISM FOR PREVENTION OF TORTURE**

# 2015 Annual Report

Belgrade, 2016

*Dear All,*

*This is the fourth Annual Report of the Protector of Citizens on the Activities of the National Preventive Mechanism in the Republic of Serbia.*

*Prevention of torture is one of the obligation the Republic of Serbia has when it comes to its citizens and in line with the international conventions it is a signatory state to.*

*In the course of 2015, the total of 117 visits were conducted to the places where the persons deprived of their liberty are placed, and based upon the determined irregularities observed in the operations of the state authorities the total of 265 recommendations were issued.*

*Presenting the findings and common and specific recommendations for the improvement of the state of affair, the Report offers clear and easy access to a society free of torture as an ideal objective. However, the Report clearly shows that steps towards hard-to-reach ideal are not covered by fog, hard-to-reach, or even too difficult or expensive.*

*It is up to us to make them as fast as possible, with no excuses and exceptions. For the sake of victims of torture, but also for the sake of all of us. In those places where one human being is exposed to inhumane treatment, no one's dignity can be complete.*

*We hereby extend our thanks to all state authorities, associations of citizens and individuals we used to cooperate in the course of the reporting period while performing activities of the National Mechanism for Prevention of Torture.*

*Miloš Janković*

*Deputy Protector of Citizens*

*Saša Janković*

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## 1. Introduction

### 1.1. General assessment of prohibition of torture and other cruel, inhumane or degrading treatments and punishments in the Republic of Serbia <sup>1</sup>

In the course of discharging of its mandate set under the Optional Protocol to the UN Convention against torture<sup>2</sup>, National Prevention Mechanism (NPM) found that status of persons deprived of their liberty was improved and that there is no torture as an organized and stimulating phenomenon by state authorities.

Despite the fact that the aforementioned is encouraging, the competent authorities should strive towards improving the fight against torture, taking into account that the torture is of situational character, as well as any other ill-treatment, and the fact that those deprived of their liberty are the persons most exposed to that risk.

In the course of the reporting period certain progresses were observed when it comes to torture prevention. Throughout the previous years, when visiting prisons, particularly visits conducted to the closed prisons, a large number of interviewed persons deprived of their liberty stressed that ill-treatment is almost a “common phenomenon”. However, in the course of unannounced visits to the penitentiary institutions (Penal Correctional Institution /PCI/ Požarevac – Zabela, PCI Niš, District Prison /DP/ Leskovac and DP Belgrade) paid in the course of 2015, NPM representatives conducted unsupervised conversations with more than 200 persons deprived of their liberty, without presence of any prison staff, in the course of which not a single person mentioned that he/she had been physically ill-treated by officers or other convicts, i.e. inmates<sup>3</sup>. Likewise, no one had any visible injuries. From the aforementioned, a general assessment that there is no torture in Serbia cannot be made, but what encourages is the fact that possible individual torture and other ill-treatment cases do not constitute any systemic phenomenon.

Several prisoners, who were, before being committed to prison, detained for 48 hours in the police detention, mentioned that they were “slapped several times” in the course of hearing, and that police inspectors insulted them, but they did not have any possibility to prove that, since they were not inflicted any visible injuries. It would be therefore, for the sake of further prevention of torture and implementation of more efficient fight against impunity of torture in the police station, necessary to ensure special premises for hearings, which should be audio and visually recorded, and the application of police authorities should also be recorded. A positive step forward is the established practice of the Public Prosecutor’s Office to ask people that are brought before them how the police officers treated them, i.e. whether they were subject to any kind of torture or degrading treatment.

Regarding the fight against impunity for torture, the attitude of the Committee for the Oversight of Security Services of the National Assembly of the Republic of Serbia that the Protector of Citizens is not authorized to act in the cases already being subject to criminal prosecution is indicative. The mentioned has seriously put the prevention against torture and fight against impunity for torture under a threat and it represents an attempt to discredit and

<sup>1</sup> For more details, see the Section 6 of this Report.

<sup>2</sup> Adopted on December 18, 2002 at the 57th session of the General Assembly of the UN in line with the Resolution A/RES/57/199, entered into force of June 22, 2006

<sup>3</sup> All terms, notions, nouns, adjectives and verbs in this Report used in the masculine gender, refer with no discrimination to the persons of feminine gender

disable the external oversight and supervision by an independent entity, either through conducting a procedure upon filed complaints or upon its own initiative, or via NPM activities. Regarding the mentioned issue, the UN Committee Against Torture stressed in its Concluding Observations of the Second Periodical Report on the Republic of Serbia (item 21.) that the state is obliged to ensure efficient and independent work of the Protector of Citizens and to enable it to exercise its mandate, irrelevant of the fact whether criminal proceedings were instigated or not.

Taking into account that the Protector of Citizens is also discharging NPM mandate, it is necessary that competent state authorities enable NPM to smoothly conduct its activities in terms of allowing them to pay visits to all institutions, to access all data and to interview the persons selected by NPM, irrelevant whether there is another procedure conducted by some other state authority.

The current accommodation and other living conditions of persons deprived of their liberty are not in many respects in line with regulation and applicable standards, which due to continuity is gaining a character of inhumane or degrading treatment.

Current defects in terms of organization and behaviour towards persons deprived of liberty, such as inadequate accommodation conditions, lack or non-implementation of procedures, lack of adequate psycho-social treatment and staff, may, particularly in continuity, lead to inhumane or degrading treatment of persons deprived of liberty.

As the NPM had already stressed in its previous reports, prisoners are not allowed to spend the available time during a day outside their cells, in the common premises with the other prisoners with who, there is no prohibition of contact by a court decision. However, the efforts directed towards the improvement of capacities intended for placement of prisoners are encouraging. DP Belgrade planned to form, in each block, separate rooms for daily stay, which would be at the same time used by prisons who do not have prohibited contact. Project design for the construction of a new facility in the DP Leskovac also plans common premises within the detention unit. What still causes problem is the fact that prisoners in the most of the cases are not allowed to be engaged in work, nor are involved in social and cultural activities. In addition, there are no sufficient conditions for physical activities, particularly in the course of poor weather conditions.

NPM, alike in its previous reports, indicated the problem that a relatively small number of women in one detention unit were, while serving their time, placed in isolation often for unacceptably long time. Even though the isolation / solitary confinement represents special, i.e. disciplinary measure, within the system of the enforcement of criminal sanctions, which should be timely restricted, in the current practice, certain prisoners serve their detention measures that way, which indicates to the negative aspect of the women detention system.

Many of prison capacities still do not apply principle of joint enforcement of sentence. Namely, in the course of a day convicts do not spend the available time with fellow-convicts in the common rooms, but are all the time isolated in their cells (alone or in smaller groups).

Convicts are not sufficiently engaged in work, however an extreme advocacy for the improvement status is evident. Lack of cultural activities is also evident. Procedure for classification of convicts is not sufficiently transparent. Convicts are not sufficiently explained criteria for promotion, teachers are primarily dealing with administrating questionnaires. Mechanisms for promotion in line with the current criteria imply difficult transfer of convicts into the more favourable correctional groups, which result in the fact that many convicts are released from prison from the same correctional group they were assigned right upon admission to the prison.

Prison capacities intended for minors and women<sup>4</sup> are the central (only) institutions, where 200 persons are placed. In these institutions, particularly in those intended for children, strong informal systems are created, which generates impossibility of an adequate treatment. The problem in these central institutions is that certain convicts are so far away from their residences, which significantly makes contact with family more difficult.

Deficiencies of the health care provided in the prisons are still numerous. As a rule, the first medical check-ups are provisional, convicts are not checked-up without clothing, nor are there any protocols regulating the content of such medical check-up. In the practice, they do not conduct periodical medical check-ups of the convicts. Non-medical staff is generally present during these check-ups. Lack of drugs is noticeable.

In general, doctors do not play their role in the protection against torture. In certain cases, they omit to determine and describe in detail all observed injuries, and generally do not issue their opinion on causal connection with the applied coercive measure or explanation how these injuries were inflicted – with injuries directly observed in the course of a check-up.

Convicts with mental disorders are placed under the regular prison regime, which does not correspond to their needs and thereby creates significant safety-related risk for those persons and their environment, and at any rate, that places a huge burden on the staff members who are not trained to treat these persons.

Deficiencies of the Law on the Protection of Persons with Mental Disorders<sup>5</sup> are not corrected. It is prescribed that local services for mental health should be organized as additional activities of the current psychiatric institutions and health-care centres, which do not have adequately trained staff nor are interested in that regards. In line with such a solution, all activities related to deinstitutionalization are hard-to-be observed in Serbia. The Law has introduced isolation measure for psychiatric patients, which not only is incompliant with the current standards, but it has not been applied in Serbia for many years. Besides, the Law stipulates the competence of the police officers regarding maintenance of order within the psychiatric hospitals, which is in contravention with the applicable standards, taking into account that police officers are uniformed and armed persons.

The existing psychiatric hospitals are balky, and have several hundred patients staying in them. They are to the great extent assuming the asylum character, for many of their patients are segregated from the community for more than one month, and a large number of them for more than ten years, and some of them even for a lifetime. A phenomenon that a large number of persons are kept in hospital primarily for socially-related reasons, because there is no form of support for their treatment within the community is very common.

Court decisions on forced hospitalization of persons with mental disorders are mainly based on the expertise provided by doctors working in hospitals proposing these measures. Besides, many cases were observed in which consents for hospitalization were given by police officers who had brought these persons in agitated conditions, despite the fact that statements given under such circumstances cannot be regarded as legally relevant.

NPM believes that it is necessary to intensify activities in order to improve the current legislation, as well as treatment of persons with disabilities placed in the social protection institutions of a home character. Namely, a large number of persons with mental and intellectual disorders are placed in dislocated, and often in robust institutions, far from their community and their social environment. Besides, material conditions of accommodation are in many of them very poor, not meeting necessary level of psycho-social treatment. All these

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<sup>4</sup> Correctional Institution for Women in Požarevac, Juvenile Correctional Institution in Valjevo and Correctional Institution in Kruševac

<sup>5</sup> Official Gazette of the RS, no. 45/13

institutions lack staff, which then causes adverse consequences for both staff members and beneficiaries.

The NPM conclusion is that among persons deprived of liberty, persons with mental and/or intellectual disorders placed in the social-protection institutions of a home type or psychiatric hospitals are in the most disadvantaged position, as well as those persons in the institutions for the enforcement of criminal sanctions<sup>6</sup>.

In the course of 2015, NPM paid a special attention to monitoring the status of a large number of refugees and migrants, who, in the course of the refugee crisis went through the Republic of Serbia. According to the data of the Ministry of the Interior, in the course of 2015 almost 600,000 refugees/migrants were registered and issued certificates of having expressed the intention to seek asylum. Majority of them did not express the intention to get asylum in the Republic of Serbia, but the police officers despite that fact issued them certificates on the expressed intention to seek asylum (almost all those persons left the territory of the Republic of Serbia in a two-day time).

Besides the aforementioned, another huge problem was the fact that transition of refugees through Serbia was not organized in an efficient way and that in such a situation risks of corruption and actions by informal groups were very big.<sup>7</sup>

In the course of 2015, state authorities took a liberal approach for treatment of refugees in transit. That implied no deprivation of liberty, and lack of any other restrictive measures. Refugees were enabled a smooth entry to Serbia, and upon registration, they were let to freely pass through Serbia taking the roads to the borders with Hungary and Croatia. Such a liberal approach opened a room for actions of informal groups to take advantage of a difficult position of refugees for their personal interest.

## **1.2. The most important data on the activities of the Protector of Citizens regarding the NPM activities in 2015<sup>8</sup>**

In the course of 2015, NPM conducted 117 visits to institutions where persons deprived of their liberty were placed. The total of 55 reports were composed, and the total of 265 recommendations were issued to the competent authorities by the way of these reports.

As a part of the regular visits, the visits were conducted to the total of 61 institutions, specifically: 40 police stations, 10 prisons, 2 psychiatric hospitals and 2 centres for mental health, 3 institutions of social protection of a home type, and 4 visits to the airport "Nikola Tesla". Based on the preformed visits, all institutions were provided with the reports on visits, containing recommendations for rectifying all deficiencies observed in their work which might have led to or were causing ill-treatment.

With the support by UNHCR, in the course of 2015, NPM, in cooperation with the Belgrade Centre for Human Rights, conducted 59 thematic visits to the institutions competent to deal with asylum seekers and refugees. The total of 30 reports on these visits were composed, and

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<sup>6</sup>Persons serving measure of compulsory psychiatric treatment and stay in the health-care institutions, measures of detention and prison sentence

<sup>7</sup>Analysis: Difference in treatments of refugees passing the Balkan route, no. 71-120/15 from 02/09/ 2016

<sup>8</sup> For more information, see section 5 of this Report



all of them contained the total of 36 recommendations for rectifying all deficiencies observed issued to these intuitions.

In the course of 2015, NPM carried out seven thematic visits with the aim of questioning the allegations on torture. The four visits were conducted to the penal correctional institutions (PCI Niš, CI Požarevac – Zabela, and detention unit DP Belgrade) and three visits to the headquarters of the police administration (PA Niš, PA Leskovac and PA Požarevac). These visits were all unannounced and were conducted in the evening hours. With no presence of the members of the public authorities, the total of 210 persons deprived of their liberty were interviewed and none of them stated any allegations on torture.

Special attention was paid to monitoring actions taken in line with the recommendations of the European Committee for the Prevention of Torture, issued in the previous reports on the conducted visits to the Republic of Serbia.

In line with the mentioned, NPM carried out four visits to: The Special Prison Hospital in Belgrade, Penal Correctional Institution in Požarevac – Zabela, Clinic for Psychiatric Diseases “Dr. Laza Lazarević” and to the Special Hospital for Psychiatric Diseases “Gornja Toponica”.

Monitoring the forced return of persons whose requests for asylum were rejected represents significant element in the protection from torture and other cruel, inhumane and degrading treatment.

In 2015, NPM initiated monitoring the forced return of the Serbian citizens from the European Union countries whose asylum requests had been rejected. NPM representative monitored the actions of police towards persons who were returned from Dusseldorf to Serbia via charter flight. Forced return was conducted in cooperation with the police forces of Germany, Netherlands, Belgium and Serbia, and in organization of the European Border and Coast Guard Agency (FRONTEX) and on that occasion no irregularities in the actions taken by authorities were observed.

Towards promotion and protection of persons deprived of liberty and prevention of torture, NPM representatives participated in numerous conferences, roundtables, workshops, seminars and training sessions in the course of 2015.

## 2. Prohibition of torture

### 2.1. National legislation

The Constitution of the Republic of Serbia<sup>9</sup> guarantees human dignity, inviolability of human life, inviolability of physical and mental integrity, and it strictly prohibits torture<sup>10</sup>.

*Constitution of the Republic of Serbia, Article 25, paragraph 2*  
Nobody may be subjected to torture, inhuman or degrading treatment or punishment, nor subjected to medical and other experiments without their free consent.<sup>11</sup>

<sup>9</sup> “Official Gazette of the RS”, no. 98/2006

<sup>10</sup> Constitution of the RS, Articles 23, 24 and 25.

<sup>11</sup> Taken from Article 5 of the Common Declaration on the Human Rights, Article 7 of The International Covenant on Civil and Political Rights and Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms

Prohibition of torture is envisaged by other legislation, inter alia, by the Law on Criminal Proceedings<sup>12</sup>, Law on Police<sup>13</sup> and Law on the Enforcement of Criminal Sanctions<sup>14</sup>. The Criminal Code<sup>15</sup> determines torture and ill-treatment as a separate criminal act<sup>16</sup>.

*Criminal Code of the Republic of Serbia, Article 137*

(1) Whoever ill-treats another or treats such person in humiliating and degrading manner, shall be punished with fine or imprisonment up to one year.

(2) Whoever causes anguish to another with the aim to obtain from him or a third party information or confession or to intimidate him or a third party or to exert pressure on such persons, or if done from motives based on any form of discrimination, shall be punished with imprisonment from six months to five years.

(3) If the offence specified in paragraphs 1 and 2 of this Article is committed by an official in discharge of duty, such person shall be punished for the offence in paragraph 1 by imprisonment from three months to three years, and for the offence specified in paragraph 2 of this Article by imprisonment of one to eight years.

## 2.2. International instruments

Serbia is a signatory country to all most important conventions concerning prohibition, i.e., prevention of torture. The International Covenant on Civil and Political Rights<sup>17</sup>, which in its Article 7 took the provision on prohibition of torture referred to under Article 5 of the Universal Declaration of Human Rights<sup>18</sup>, ratified in 1971<sup>19</sup>.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment<sup>20</sup> (Convention against torture) was ratified in 1991<sup>21</sup>. It constitutes one of the most important international instruments in the area of torture prohibition.

*Convention against torture, Article 1, paragraph 1.*

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

<sup>12</sup> "Official Gazette of the RS", no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 и 55/2014

<sup>13</sup> "Official Gazette of the RS", no. 6/2016

<sup>14</sup> "Official Gazette of the RS", no. 55/2014

<sup>15</sup> "Official Gazette of the RS", no. 85/2005, 88/2005-испр., 107/2005-испр., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014

<sup>16</sup> Convention against Torture, Article 4.: (1) Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. (2) Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature

<sup>17</sup> Signed on 12/19/1966 in New York

<sup>18</sup> Adopted by the General Assembly of the United Nations on December 10, 1948, in Paris

<sup>19</sup> "Official Gazette of SFRY", no. 7/71

<sup>20</sup> Adopted on 10.12. 1984, in New York

<sup>21</sup> "Official Gazette of SFRY – International treaties", no. 9/91

Besides the fact that it provides us with the most comprehensive definition of torture, the Convention against torture contains a set of other most important provisions for eradication of torture.

*Convention against torture, Article 2, paragraph 1*

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

The Convention against torture also contains provisions prohibiting expulsion or extradition of persons to the state where such a person was exposed to torture.

*Convention against torture, Article 3, paragraphs 1 and 2*

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

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.

The Convention against torture is bounding State Parties to ensure that introduction and information about the prohibition of torture be integral part of training dedicated to officials, medical workers, holders of public offices, as well as any other person who in any other way is in contact with persons deprived of their liberty<sup>22</sup>.

*Convention against torture, Article 12*

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

In that regards, each State Party is obliged to provide to every person believing to have been subject to an act of torture the right to file complaint before the competent authority which is obliged to promptly and impartially investigate the case, thereby providing the protection to the person who filed the complaint and the witness from any harmful treatment or any other intimidation caused by filed complaint or given statement<sup>23</sup>.

*Convention against torture, Article 14, paragraph 1*

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.<sup>24</sup>

Each State Party ensures that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made<sup>25</sup>.

The Convention against torture established the Committee against torture<sup>26</sup>. The State Parties submit to the Committee reports on the measures they have taken to give effect to their undertakings under this Convention. The Committee reviews each report, and when it deems

<sup>22</sup> Convention against torture, Article 10, paragraph 1.

<sup>23</sup> Convention against Torture, Article 13.

<sup>24</sup> Convention against Torture, Article 14.

<sup>25</sup> Convention against Torture, Article 15.

<sup>26</sup> Convention against Torture, Article 17.

necessary, it issues comments to the report and submit them to the interested State Party, and the State Party may answer to these comments<sup>27</sup>. The Republic of Serbia submitted its reports to the Committee, and the Committee sent the comments thereto<sup>28</sup>.

The Republic of Serbia is a Member State to the Council of Europe. European Convention of Human Rights and Fundamental Freedoms<sup>29</sup> and European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>30</sup> (European Convention for the Prevention of Torture) were ratified in 2003.<sup>31</sup>

The European Convention for the Prevention of Torture established the European Committee for the Prevention of Torture.<sup>32</sup> The state is obliged to allow the Committee to visit all places where the persons deprived of their liberty are placed.<sup>33</sup> The State is obliged to enable Committee the access to its territory and traveling throughout the country with no restrictions, as well as access to complete information about the places where persons deprived of their liberty are held, including the right to free movement at those places and the right to communicate freely with persons deprived of liberty without witnesses present, as well as with any person believed to possess relevant information.<sup>34</sup> After each visit the Committee composes its report about the facts found during the visits.<sup>35</sup> By the end of the year of 2015, the Committee conducted visits to Serbia four times, specifically in the years of 2004, 2007, 2011 and 2015.<sup>36</sup>

### 3. Optional Protocol to the Convention against Torture

By the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or degrading Treatments and Punishments<sup>37</sup> (the Optional Protocol) all State parties confirmed that ill-treatment is prohibited and that it constitutes severe violation of human rights<sup>38</sup>.

By the Optional Protocol all State Parties agreed to establish the system of regular visits to the places where persons deprived of their liberty are held by independent international and national bodies, in order to prevent torture or any other cruel, inhuman or degrading treatment or punishment.<sup>39</sup>

The intention of the Optional Protocol to enable all visits, i.e., permanent presence of the mechanism for the prevention of torture in the institutions where persons deprived of their liberty are held is caused by the fact that the underlying problem of the closed institutions is precisely the fact that they are closed and all developments in them are far from the eye of the public.

<sup>27</sup> Convention against Torture, Article 19, paragraph 1.

<sup>28</sup> Comment to the Report of the Republic of Serbia made by the Committee against Torture from the 41<sup>st</sup> session held on 11/21/2008

<sup>29</sup> Composed on 4.11. 1950 in Rome

<sup>30</sup> Signed on November 26, 1987 in Strasbourg

<sup>31</sup> "Official Gazette of the SCG - International Treaties ", no. 9/2003, 5/2005 and 7/2005 - correction and the Official Gazette of the SCG - International Treaties, no. 9/2003)

<sup>32</sup> European Convention for the Prevention of Torture, Article 1.

<sup>33</sup> European Convention for the Prevention of Torture, Article 2 and Article 7, paragraph 1.

<sup>34</sup> European Convention for the Prevention of Torture, Article 8.

<sup>35</sup> European Convention for the Prevention of Torture, Article 10, paragraph 1.

<sup>36</sup> Report on the visits paid to the Republic of Serbia and the Answers of the Government of the Republic of Serbia may be seen at the web page of the European Committee for the Prevention of Torture [www.cpt.coe.int/en/states/srb.htm](http://www.cpt.coe.int/en/states/srb.htm)

<sup>37</sup> Adopted on December 18, 2002 in New York, at the 57<sup>th</sup> session of the General Assembly of the United Nations Entered into force by the Resolution A/REC/57/199 on June 22, 2006

<sup>38</sup> Optional Protocol, preamble

<sup>39</sup> Optional Protocol, Article 1.

All State Parties to the Optional Protocol are obliged to allow visits paid by the mechanisms established under the Optional Protocol to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or approval (places of detention).<sup>40</sup>

### 3.1. Sub-Committee on Prevention of Torture<sup>41</sup>

The Optional Protocol established Sub-Committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment and Punishment<sup>42</sup>.

Sub-Committee on Prevention of Torture is authorized to visit all detention places and issue its recommendations to the State Parties in relation with the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment.<sup>43</sup>

The State Parties to the Optional Protocol undertake:

- to receive the Subcommittee on Prevention in their territory;
- to allow unrestricted access to all detention places, its installations and facilities, as selected;
- to allow to conduct private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;
- to enable it unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location, unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention, as well as to provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- to examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.<sup>44</sup>

The Sub-Committee on Prevention of Torture has not yet visited Serbia.

### 3.2. National Mechanism for Prevention of Torture (NPM)

The Optional Protocol stipulated that Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment<sup>45</sup>.

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<sup>40</sup> Optional Protocol, Article 4, paragraph 1.

<sup>41</sup> [www2.ohchr.org/english/bodies/cat/opcat/](http://www2.ohchr.org/english/bodies/cat/opcat/)

<sup>42</sup> Optional Protocol, Article 2, paragraph 1.

<sup>43</sup> Optional Protocol, Article 11, item (a)

<sup>44</sup> Optional protocol, Article 12. and 14.

<sup>45</sup> Optional protocol, Article 3.

NPM is entitled to:

- have access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location;
- have access to all places of detention and their installations and facilities, as it chooses;
- have the opportunity to conduct private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information<sup>46</sup>.

NPM is authorized to regularly check the treatment of persons deprived of their liberty in the places of detention, and to issue its recommendations to the competent authorities with the aim of improving treatment and status of persons deprived of their liberty and of preventing torture or other cruel, inhuman or degrading treatment or punishment, taking into account all relevant norms of the United Nations, as well as to submit all proposals and issue its opinions in line with the current or proposed laws<sup>47</sup>.

The State undertakes to guarantee the functional independence of the NPM, as well as independence of its staff<sup>48</sup>.

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way<sup>49</sup>.

The State Party undertakes to make available the necessary resources for the functioning of the national preventive mechanisms<sup>50</sup>.

Relation between the NPM and state authorities is based on the principle of trust and cooperation.

The competent authorities are obliged to examine the recommendations of the NPM and enter into a dialogue with it on possible implementation measures<sup>51</sup>.

The competent authorities are obliged to publish and distribute Annual Reports of the NPM.

### 3.3. Establishment of the Serbian NPM

Serbia signed the Optional Protocol on September 25, 2003, and ratified it on December 1, 2005<sup>52</sup>.

Serbia became State Party to the Optional Protocol<sup>53</sup> on September 26, 2006.

<sup>46</sup> Optional protocol, Article 20.

<sup>47</sup> Optional protocol, Article 19.

<sup>48</sup> Optional protocol, Article 18, item 1.

<sup>49</sup> Optional protocol, Article 21, item 1.

<sup>50</sup> Optional protocol, Article 18, item 3.

<sup>51</sup> Optional Protocol, Article 22.

<sup>52</sup> "Official Gazette of the SAM - International Treaties", no. 16/2005, amendments 2/2006

Serbia was four years late in the fulfilment of its obligation to have, designate or introduce an independent mechanism for prevention of torture at the national level, which each state is supposed to do in a year time after the Optional Protocol entered into force or after its ratification or accession by the state.<sup>54</sup>

NPM was established in Serbia under the Law on the Amendments to the Law on the Ratification of the Optional Protocol, adopted on July 28, 2011.<sup>55</sup>

In line with the consensus reached in the course of the public debate, no new NPM entity was established in Serbia, but an authentic, complex model of the NPM was chosen, which implied that all NPM tasks would be performed by the existing independent state authority in cooperation with the other decentralized units and civil sector.

The Protector of Citizens is performing the tasks of the NPM in cooperation with the Autonomous Province Ombudsmen and associations whose statute envisages improvement and protection of human rights and freedoms<sup>56</sup>.

In the course of selection of the complex NPM model in Serbia, all principles related to the status and functioning of the national institutions for the improvement and protection of human rights were taken into account<sup>57</sup>.

The Constitution of the Republic of Serbia<sup>58</sup> determines the Protector of Citizens as an independent state authority in charge of the protection of the rights of citizens and of monitoring the work of the public authorities and bodies to which public powers have been delegated<sup>59</sup>. The Law on the Protector of Citizens<sup>60</sup> stipulated that the Protector of Citizens is an independent and autonomous authority in performing his/her task, who protects and takes care of the improvement of the rights of citizens<sup>61</sup>. In April 2010, it was recognized as an entity that based its activities on the Paris Principles<sup>62</sup>.

The Protector of Citizens is an independent and autonomous state authority, the Protector of Citizens of the universal competence, accredited as a national institution for the human rights with the "A" status before the International Coordinating Committee (ICC).

The Protector of Citizens is authorized under the Law on the Protector of Citizens to pay visit to all institutions where persons deprived of their liberty are placed, to personally talk with them and with all staff of that institutions, and also to have access to all data relevant for the attainment of the goal of the prevention activities, irrelevant of the degree of secrecy<sup>63</sup>.

<sup>53</sup> By submission of the ratified enactment to the Secretary General of the UN

<sup>54</sup> Optional Protocol, Article 17.

<sup>55</sup> Law on the Amendments to the Law on Ratification of the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment, "Official Gazette of the RS - International Treaties" no. 7/11

<sup>56</sup> Law on the Amendments to the Law on Ratification of the Optional Protocol, Article 2a.

<sup>57</sup> Optional Protocol, Article 18, item 4.

<sup>58</sup> "Official Gazette of the RS", no. 98/2006

<sup>59</sup> Constitution of the Republic of Serbia, Article 138, paragraph 1.

<sup>60</sup> "Official Gazette of the RS", no. 79/2005 and 54/2007

<sup>61</sup> Law on the Protector of Citizens, Article 1, paragraphs 1 and 2 and Article 2, paragraph 1.

<sup>62</sup> [http://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_NIs.pdf](http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf)

<sup>63</sup> Law on the Protector of Citizens, Article 21, paragraphs 1 and 2 and Article 22.

Competencies of the Protector of Citizens in the area of the protection of the rights of persons deprived of liberty prescribed by the Law on the Protector of Citizens coincide with the mandate of the NPM envisaged under the Optional Protocol.

The explanations to the proposed law establishing the NPM<sup>64</sup> envisaged ensuring all material conditions necessary to fulfil the mandate of the NPM, specifically for the employment of necessary number of officers within the Technical Service of the Protector of Citizens, as well as securing necessary funds as earmarked line within the budget of the Protector of Citizens<sup>65</sup>.

## 4. Methodology, resources and organization of the NPM in the course of 2015

### 4.1. NPM Methodology

Serbian NPM exclusively has preventive approach when performing its activities. NPM does not oversee legality or regularity of the work of the competent authorities in certain cases, it rather timely informs the organizational unit of the Protector of Citizens which acts upon the complaints filed by persons deprived of their liberty.

Serbian NPM pays visits to the institutions where persons deprived of their liberty are placed, in line with the methodology set in advance.

Methodology of the work of the Serbian NPM is based on the provisions of the Optional Protocol that set the NPM mandate for frequent visits to the institutions where persons are or may be deprived of their liberty.

NPM methodology recognizes the following three types of visits: regular visits so as to make follow-up as per compliance with the recommendations (*follow-up visits*), thematic and extraordinary visits (*ad hoc visits*). Visits may be announced and unannounced.

The Serbian NPM Methodology pays special attention to the application and realization of unannounced visits to the institutions where persons are or may be deprived of their liberty.

After the initial period, for which the objective determined under the Methodology was to pay regular visits to all institutions, the plan for the subsequent period was to increase the number of the follow-up visits. Monitoring of the state of affairs determined during the previous regular visits is thus enabled, particularly actions of the competent authorities taken in line with the issued NPM recommendations.

The methodology of the Serbian NPM is focused on follow-up visits to the places of detention.

As a part of the preparation for a visit to an institution, the available information about such institution are being considered. All tasks are then assigned, in a way that a team to pay the visit, as a rule, is divided into four thematic groups – the first one is in charge of the accommodation conditions (group for observation of accommodation conditions), the second one considers fulfilment of the legal protection within the institution (legal group), the third group is considering treatment of persons deprived of their liberty (treatment group), and the

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<sup>64</sup> Law on the Amendments to the Law on Ratification of the Optional Protocol against Torture

<sup>65</sup> Proposal to the Law on the Amendments to the Law on Ratification of the Optional Protocol, Explanation



fourth group examinees provision of health care to persons in the institution (health-care group). With the aim of increasing the efficiency of relevant data collection in the course of one visit, all team members are provided with the working material in advance (questionnaires, structure and the model parts of the report), which serve them as a guiding tool.

NPM teams conducting visits to the institutions where persons deprived of their liberty are placed are multidisciplinary teams, and as a rule, those teams are formed of experienced lawyers, psychiatrists, forensic medical examiners and psychologists.

Regular visits are as a rule conducted in line with the stages set in advance. The first stage consists of interviews with the management team of the institution, the second is joint tour of the facility. The third stage, representatives of the thematic groups of the NPM team (legal, treatment and health-care group) conduct interviews with heads of the relevant services and examine documentation. In the fourth stage, they conduct interviews with persons deprived of their liberty, and in the fifth stage, after a brief meeting with the thematic groups, they conduct closing interview with the management team of the institution where they share their preliminary impressions concerning the visits and observed conditions. Complying with already set stages is not mandatory, it depends on the type of visit and other circumstances. The common practice is to omit certain stages in other types of visits.

For the purpose of more efficient and systematic work, questionnaires that team members use, i.e. fill in the course of any visit are composed, as well as compendiums of excerpts from all relevant regulations and standards in certain spheres of their work.

In line with the working methodology, reports are as a rule composed in accordance with the structure set in advance. However, depending upon the type of visit and data to be collected in the course of that specific visit, the structure of the report set in advance may be, upon the proposal made by a team members, changed and adapted to the character of such visit.

In the reports on the conducted visits to the institutions where persons deprived of their liberty are placed, NPM determines omissions and issues recommendations to rectify all defects that might cause or cause torture or ill-treatment. When a deficiency is determined, i.e., irregularity in the work, along with the issued recommendation, relevant pieces of legislation and standard to harmonize the current conditions, i.e. actions are stated.

All reports are sent to the visited institution and to the competent ministry, that, as a rule, are given the time limit to express their opinion about their compliance with the issued recommendations, with an invitation for a dialogue so as to review the implementation of the recommendations.

The NPM Methodology envisages initiation of a dialogue with the visited institution and the competent ministry for the purpose of the implementation of issued recommendations.

The objective of the dialogue with the visited institutions and competent ministries is to observe the conditions within the visited institution and the system as a whole, primarily with the view to find the best possible way to implement the recommendations the NPM issued after the conducted visit.

With a view to strike the balance between the confidentiality and transparency of the work, NPM report on the carried out visit to an institution, where all personal data are redacted, are published when the competent authorities express their opinion in relation with the recommendations presented within the report. All reports and answers of the competent authorities thereto are published on the web page of the Protector of the Citizens and sub-web page of the NPM.

The NPM Methodology envisages that special attention should be paid to the protection of persons deprived of their liberty, staff working in the detention institutions, as well as to all other persons who had contact with the NPM, who provided the information about treatment of persons deprived of liberty or indicated to the ill-treatment acts.

The Serbian NPM pays special attention to the prevention of retaliation in a way to protect all sources of information, i.e. data on persons who provided these information. In case their identity is disclosed, NPM then plays its preventive activities in a way that it then pays subsequent visits to those persons and monitors their status, i.e. the way staff members working in those detention institutions treat them. Besides, all responsible persons are informed that any retaliatory action undertaken against persons who cooperated with the NPM constitutes the most severe form of ill-treatment.

The NPM Methodology envisages intensive activities with the aim of fighting against impunity of torture, or any other form of ill-treatment. All competent authorities are informed about these acts, i.e. activities that constitute torture, i.e. ill-treatment, along with the expectation that all available measures and activities falling under their competence would be undertaken so as to determine the accountability of the staff members.

The Serbian NPM pays special attention to all activities of the competent authorities with the aim of fighting against impunity of torture, and establishing both individual and objective responsibility.

## **4.2. Material conditions and financial independence of the NPM**

For the purpose of fulfilment of the NPM tasks in line with the mandate set under the Law on the Ratification of the Optional Protocol, it is necessary to secure required funds for work complying with its financial independence.

The total of RSD 7,510,543.00 (around EUR 62,587.00) were allocated from the total budget adopted for the Protector of the Citizens for the year of 2015 for the NPM activities.

In the course of 2015, the NPM staff members used two offices within the building of the Protector of the Citizens, as well as a van for transport of team members to the institutions. The NPM staff members had all necessary office equipment as well as all other necessary equipment and material (computers, printers, laptops, photocopy machines, distance meters and humidity meters, and similar).

## **4.3. Special NPM unit and its functional independency**

By the end of 2015, the National Assembly of the RS adopted the Decision on Consent to the Rulebook on the Internal Organization and Job Classification within the Secretariat of the Protector of the Citizens no. 48-709/14 of 22 October 2014, which envisages establishment of a special unit in charge of the NPM affairs - the NPM Secretariat. In line with the provisions contained in the Rulebook, the NPM Secretariat does not form a part of the Secretariat of the Protector of the Citizens and it is directly responsible for its work to the Protector of the Citizens, i.e., Deputy Protector of the Citizens in charge of the NPM affairs.

The envisaged number of the staff is not sufficient for the improvement of the work of the National Mechanism for the Prevention of Torture.

The envisaged number of officers working in the NPM Secretariat (one senior advisor, one independent advisor and two advisors) is not sufficient, taking into account its mandate and needs to efficiently perform all tasks. It is therefore necessary to form a special sector within the Protector of Citizens institution that would be headed by a NPM Secretary, who would be at the level of the Secretary General of the Secretariat of the Protector of Citizens. Two assistants would assist a NPM Secretary in his/her work (one in charge of monitoring and the other in charge of cooperation, reporting and improvement of regulations). In addition, it is necessary that the assistant and other staff members in charge of monitoring, taking into account the character of the work they perform, have all the rights as those working in the inspection authorities, police officers and staff working in the Service for the Enforcement of Criminal Sanctions who have direct contact with convicts. In order to comply with the NPM mandate, it is necessary to set a special budget line within the budget of the Protector of Citizens. For the purpose of ensuring conditions for efficient performance of the NPM activities, it is necessary to adopt special Law on the NPM with no delay or amend the current Law on the Protector of Citizens that would regulate the organization and ways to fulfil the NPM mandate.

#### **4.4. Participation of the Provincial Protector of Citizens within the NPM activities**

Representatives of the Provincial Protector of Citizens took part in 25 conducted visits in the course of the year of 2015.

In keeping with the conclusions of the Memorandum on Cooperation, the Protector of Citizens continued its cooperation with the Provincial Protector of Citizens of the AP Vojvodina (Provincial Protector of Citizens) when paying the visits to the places of detention located in the territory of the AP Vojvodina in the course of the year of 2015.

In February, the visits to the Police Administration in Kikinda were conducted and to the Police Station forming part of the PA Kikinda, so as to determine regularities and legalities of all actions taken towards persons deprived of their liberty, as well as towards refugees /migrants. On that occasion, the visit was carried out to the Regional Border Police Centre nearby Hungary, specifically to the Police in Kikinda, Nakov, Horgoš, Đala and Martonoš.

The Protector of Citizens, when performing NPM tasks, together with the Provincial Protector of Citizens - Protector of Citizens paid visits to Kanjiža and Subotica so as to monitor the way competent authorities treat refugees / migrants. Reception centre for migrants in Kanjiža, Centre for Social Work in Kanjiža, Police Station in Kanjiža, border crossing points Horgoš 1 and Horgoš 2, and the Regional Border Police Centre nearby Hungary, Police Administration in Subotica, District Prison in Subotica, Centre for Social Work in Subotica and informal place of grouping of migrants - brick works in Subotica, were visited on that occasion.

At the beginning of August 2015, the Provincial Protector of Citizens - Protector of Citizens independently conducted a visit to the Municipality of Kanjiža and on that occasion, he met with a President of the Municipal Assembly of Kanjiža, representatives of the Centre for Social Work Kanjiža and UNHCR, Red cross and Police Station in Kanjiža, to observe how the competent authorities treat refugees who had fled from the war stricken countries and who continued their journeys towards the West European Countries.

The Provincial Protector of Citizens - Protector of Citizens, with the approval by the Protector of Citizens, as a part of its NPM activities, independently visited the Home for Mentally Ill

Persons “1. Oktobar” in Stari Lec, and to the Special Hospital for Mental Diseases “Dr. Slavoljub Bakalović” in Vršac.

#### **4.5. Participation of the civil sector in the NPM activities**

With the aim of performing NPM activities, in course of 2015, the Protector of Citizens continued its cooperation with the non-governmental organisations in line with the Agreement on the Amendments to the Agreement of Cooperation with the Associations, specifically with: Belgrade Centre for Human Rights (area of application of the police authorities and treatment of the asylum seeker), Lawyer’s Committee for Human Rights (detention), Helsinki Committee for Human Rights (enforcement of criminal sanctions), International Aid Networks (right of persons with mental disorders in detention), Mental Disability Rights Initiative (rights of persons with disabilities within the social protection institutions), Victimology Society of Serbia (rights of women in the prison system), Centre for Human Rights in Niš (rights of persons with disabilities in the prison system), Dialogue and Committee for Human Rights in Valjevo (minors in the prison system).

In the course of the reporting period and in line with the NPM Methodology, representatives of the associations the Agreement on Cooperation in performing NPM Actives was signed with actively participated in visits to the detention institutions, presentation of reports and recommendations.

With the support provided by the Group 484, NPM representatives took part in several training sessions in the following areas: asylum, migration, discrimination and international human rights.

One NPM representative deliver a speech in the course of the conference “Life in community – fundamental human right“, organized by the association Helsinki Committee for Human Rights in Serbia. Besides the focus on the stay within the institutions, treatment, working engagement of patients, insufficient number of medical staff, stigmatization of psychiatric patients outside psychiatric hospitals and application of measures for restraint of patients, the NPM representative stressed as the underlying problem the perennial (sometimes life time) stay of patients in the institutions, who in the course of time become incapable of living outside the institution, i.e. they lose basic living skills.

Within the organization of the Youth Initiative for Human Rights and partners from Montenegro and Albania, representatives of the NPM were in the study visit to Albania, where they visited prisons. Likewise, within the organization of the Helsinki Committee for Human Rights, representatives of the NPM also was in the study visit to the Netherlands and then they visited the Probation Service, Ministry of Security and Justice and Forensic Institution INFORSA in Amsterdam.

#### **4.6. Participation of external experts in the NPM activities**

The NPM teams for visits to the institutions where persons are deprived of their liberty should have multidisciplinary character.

The representatives of the Protector of Citizens, Provincial Protector of Citizens and associations within the teams are mainly lawyers, and therefore for an efficient work of the NPM it is necessary to engage external experts in other fields.

Experts in the forensic medicine, psychiatry, psychology, special prevention and internal medicine are also engaged in the NPM work.

In the course of 2015, the following experts participated in the NPM activities: professor Đorđe Alimipijević, PhD, specialist in the forensic medicine, Medical School of the University of Belgrade; professor Dragan Ječmenica, PhD, specialist in the forensic medicine, Medical School of the University of Belgrade; Professor Vladimir Jović, PhD, psychiatrist, Faculty of Philosophy of the University of Priština / Kosovska Mitrovica and PhD Radomir Samardžić, psychiatrist.

Technical contribution of the engaged external experts contributed towards the improvement and elevation of the NPM work, primarily in the composition of the reports and numerous recommendations issued so as to eliminate the observed deficiencies.

#### **4.7. Training of the NPM staff**

In the course of 2015, representatives of the NPS took part in several seminars and trainings in the asylum, migration, discrimination and international human rights law.

With the aim of improving the work and professional development, representatives of the NPM took part in two study visits – study visit to Albania, where they visited prison facilities, as well as the study visit to the Netherlands, where they visited Probation Service, Ministry of Security and Justice and Forensic Institution INFORSA in Amsterdam.

More attention should be paid to the professional development of the NPM staff in the future work of the NPM.

#### **4.8. Other forms of cooperation**

In the course of 2015, the cooperation was established with the Committee on Labour, Social Issues, Social Inclusion and Poverty Reduction, for the purpose of exchange of information on the state of affair and current problems regarding placement of refugees and migrants, with the special focus on vulnerable categories, such as women, children, persons with disabilities, elderly persons, etc. In line with the aforementioned, Deputy Protector of Citizens and NPM representatives attended the sessions of the Committees covering the topic “Placement of asylum seekers in Serbia”, organized due to the increased inflow of refugees from the war stricken territories.

The intensive cooperation with the UNHCR Office in Serbia was continued, as well as the cooperation with the association Belgrade Centre for Human Rights and Group 484, all with the aim of the implementation of the activities focusing on the improvement and protection from ill-treatment of refugees / migrants in Serbia.

## 5. Fulfilment of the NPM mandate in the course of 2015

### 5.1. Visits to the institutions where persons are deprived of their liberty

In the course of 2015, the NPM team conducted the total of 117 visits to the institutions where persons are deprived of their liberty.

The total of 40 visits to the police administrations and police stations were performed, with 11 reports composed and 129 recommendations issued. Out of the stated number of visits, three visits were follow-up visits to monitor the compliance with the issued recommendations (PA Bor, PA Zaječar and PA Niš).

The total of 10 Facilities for the Enforcement of Criminal Sanctions were visited and the total of 80 recommendations to rectify the observed deficiencies were issued through the reports on visits. In the course of 2015, Juvenile Detention Centre in Valjevo, DP Kraljevo and DP Novi Sad were also visited with the view to follow the compliance with the already issued recommendations.

The NPM conducted visits to two specialized psychiatric hospitals (“Dr. Laza Lazarević” and “Gornja Toponica”), as well as to the two centres for mental health (in Kikinda and Vršac). Two regular visits were also performed to the social protection institutions of the home character (Home for Elder Persons “Tešice” and Centre for Asylum in Zemun), and 20 recommendations for rectification of the observed deficiencies were issued, and one visit to follow the implementation of the previously issued recommendations (Home “Veternik”).

With the support of UNHCR and in cooperation with the Belgrade Centre for Human Rights, the NPM conducted 59 visits to the institutions in charge of treatment of asylum seekers and refugees / migrants. The total of 30 reports on these visits were composed and 36 recommendations for rectification of the observed deficiencies were issued.

In the course of 2015, the NPM conducted seven thematic visits in order to examine the allegations on torture. Four visits were conducted to the institutions (CI Niš, CI Požarevac – Zablea, DP Leskovac and Detention Unit in the DO Belgrade) and three visits to the headquarters of the police administrations (PA Niš, PA Leskovac and PA Požarevac). These visits were unannounced and were conducted in the evening hours. The total of 210 persons deprived of their liberty were interviewed with no presence of the law enforcement representatives, and no one mentioned any allegation on torture.

The NPM paid special attention to monitor the compliance with the recommendation of the European Committee for the Prevention of Torture, sent through the previous reports issued on the visits to the Republic of Serbia. Out of the total number of the mentioned visits, four were conducted in order to follow the recommendations previously issued by the European Committee for the Prevention of Torture to the Republic of Serbia, and specifically visits to the Special Prison Hospital, Penal Correctional Institution for Psychiatric Diseases “Gornja Toponica”.<sup>66</sup>

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<sup>66</sup> For more information, please see ANNEX II

Overview of the compliance with the Plan for visits for 2015:

<b>VISITS</b>	<b>Visits planned in 2015</b>	<b>Visits conducted in 2015</b>
Police stations	55	81
Prisons (including detention units)	5	10
Psychiatric institutions	5	4
Institutions for social protection of home type	5	3
Homes for elderly persons and gerontological centres	4	0
Monitoring of reception in readmission procedures	1	1
Regional centre of the Border Police of the MoI	1	5
Centre for placement of asylum seekers	5	4
Reception centre for migrants	0	6
MoI reception centre for foreigners	1	1
Institutions for placement of minor foreigners	1	2
<b>TOTAL</b>	<b>83</b>	<b>117</b>

The number of visits compared to the number of the visits conducted in the previous year increased by 50%, the NPM had conducted 79 visits in the course of the year of 2014, and 117 in the year of 2015.

## **5.2. Cooperation between the public authorities and the NPM in the course of the visits to the institutions**

In the course of the year 2015, the NPM was enabled unhindered access to all institutions where persons are deprived of their liberty, conversation with persons deprived of their liberty and the staff, as well as the access to all documentation.

In the course of the NPM visits conducted to the institutions where persons are deprived of their liberty conducted in 2015, all competent authorities and institutions acted in line with Article 20 of the Optional Protocol.

The mentioned behaviour of the competent authorities represents multiannual continuation in enabling to the NPM unhindered fulfilment of its mandate.

### 5.3. Reports on the visits to the institutions

In the course of 2015, the NPM composed 55 reports on the visits conducted to the institutions where persons are deprived of their liberty.

After each visit, in line with the set methodology and practice, the NPM composes reports on these visits with recommendations for rectification of the observed deficiencies, with the applicable legislation and standard the NPM applied when establishing the current deficiencies in the work of the institution.

The difference in the number of the visited institutions (117) and composed reports (55) lies in the fact that in certain cases a consolidated report was composed for the visits conducted to several institutions so as to observe a certain problem in a systematic manner.

All team members took part in the development of the report on the carried visits, i.e., observed state of affair, specifically staff members of the Protector of Citizens, Provincial Protector of Citizens of the AP Vojvodina and associations, as well as engaged experts.

### 5.4. Recommendations for elimination of the observed deficiencies

In the reports on the visits to the institutions where persons are deprived of their liberty, the NPM sends to the competent authorities recommendations for elimination of the deficiencies.

In the course of 2015, the NPM issued 265 recommendations to the competent authorities so as to eliminate all observed deficiencies.

Along with the issued recommendation, besides the established facts, i.e. deficiencies in the operations, established violations of the rights of persons deprived of their liberty, all relevant pieces of legislation and standards the NPM applied when establishing all deficiencies in the operations of the institutions are mentioned, with which the visited institution should harmonize the current situation, i.e. their operations.

However, due to the outbreak of the refugee crises, the NPM was forced, due to lack of the complete legal framework that would be fully applicable to the newly created situation, to develop its own standards and *ad-hoc* working methodology in the field of monitoring the compliance with the rights of refugees / migrants.

Composed reports with the recommendations for elimination of the observed deficiencies are submitted to the visited institutions and competent ministries.

The reports are submitted to the competent ministries to inform them about the deficiencies in the operations of the visited institution and for the purpose of monitoring the implementation of the recommendations.

All recommendations are sent to the visited institutions / competent ministries are in the part of the Report - ANNEX I.



#### **5.4.1. Actions of the competent authorities taken in line with the recommendations of the National Assembly of the Republic of Serbia**

By its conclusions, the National Assembly<sup>67</sup> has obliged the competent authorities to comply with the NPM recommendations, and to inform the National Assembly of their implementation in writing. In line with the information available to the NPM, in the course of the reporting period the competent authorities did not act in line with the recommendations of the National Assembly.

### **5.5. Dialogue with the public authorities**

In order to implement all recommendations, presented in the reports on the visits conducted in the course of 2015, and taking into account that in the past four years the NPM visited all police administrations in the Republic of Serbia, the joint consideration of the set recommendation was performed with the representatives of all police administrations in the Republic of Serbia. Besides discussions about the further implementation of the NPM recommendations, the topic of the dialogue was also acting in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, sent in the past reports on the visits. Dialogue was organized in the cooperation with the Ministry of the Interior and Organization for Security and Cooperation in Europe (OSCE).

For the purpose of the improvement of the health care protection in the prisons and fulfilment of the role of the doctors in the prevention of torture, as well as for the purpose of the implementation of the recommendations issued in the reports on the visits to the institutions for the enforcement of criminal sanctions, the NPM organized technical meeting dedicated to the training of the medical staff.

### **5.6. Organization of events and promotions of the NPM/ prevention of torture**

In order to promote and protect the rights of the persons deprived of their liberty, the NPM representatives participated in numerous conferences, roundtables, seminars and training sessions in the course of 2015. Deputy Protector of Citizens took part in the 25<sup>th</sup> session of the European Committee for the Prevention of Torture held in Strasbourg. The objective of that session, besides presentation of the past experience of the Committee, was presentation of challenges awaiting all State Parties signatories to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment in the future.

For the purpose of the improvement of the health-care protection in prisons, as well as of the strengthening the role in the prevention of torture, the NPM organized technical convention covering the topic "Role of a doctor in the health-care system in Serbia", where doctors and other medical workers working in the institutions for the enforcement of criminal sanctions gathered for the first time. The convention was dedicated to the training of the medical staff working in prisons in standards for the protection of human rights and prevention of torture in prisons, and it was also a single opportunity for doctors from different institutions to exchange their opinions, experience and doubts regarding the work with the prison population.

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<sup>67</sup> Conclusions of the National Assembly of the RS are presented in the part of the Report ANNEX II

The NPM representative took part in the training of teachers and had a role of a lecturer organized for the representatives of the Juvenile Penal Correctional Institution in Valjevo and Penal Correctional Home in Kruševac. On that occasion, compliance with the recommendations issued to the institutions through the reports on the visits to the NPM were presented.

The web page of the NPM (<http://npm.rs>) contains news, reports on the visits and responses of the authorities regarding their compliance with the recommendation, as well as any other news regarding the NPM in Serbia, both in English and Serbian.

## **5.7. Cooperation with the UN Committee against Torture, UN Sub-Committee for the Prevention of Torture and the European Committee for the Prevention of Torture**

In the course of 2015, the Serbian NPM continued cooperation with the UN Committee against Torture, UN Sub-Committee for the Prevention of Torture and the European Committee for the Prevention of Torture.

By the end of 2014, the UN Committee against Torture sent the list of questions to the NPM containing questions concerning the implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Serbia. In February 2015, the NPM submitted to the Committee its observations<sup>68</sup>. Likewise, in its Conclusions regarding the Second periodical Report on the Republic of Serbia, the UN Committee against Torture stressed under the item 21 that the state is obliged to ensure efficient and independent work of the Protector of Citizens and to enable it to exercise its mandate, irrelevant of the fact whether criminal proceedings were instigated or not, and stressed its concern about insufficient funds and permanent staff of the Protector of Citizens so as to effectively perform the NPM mandate.

Every year, the NPM submits to the Sub-Committee for the Prevention of Torture its annual report. Besides regular annual reporting for the year of 2014, the NPM submitted to the Sub-Committee certain individual reports on the visits to the places of detention with the issued recommendations, translated into English, which were sent to the public authorities to improve treatment of refugees/migrants.

In the course of the fourth periodical visit by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in the Republic of Serbia (from 25 May to 5 June 2015), members of delegation of the Committee met with the NPM representatives before the beginning of the visit, and they presented them the most important NPM findings, current state of affair and the status of persons deprived of their liberty in the Republic of Serbia. The Reports on the Thematic NPM Visits to follow the compliance with the recommendations of the European Committee contained in the Report on the Visit to Serbia in 2011, as well as in the previous reports (on the visits to Serbia in 2004 and 2007), together with the other information that were of importance for the work, the NPM submitted to the European Committee before their visit. The NPM representatives also took part in the concluding meetings of the Committee with the competent state authorities, where the preliminary findings of the visit were presented. At the end of their visit, a separate meeting between the members of the Committee and the NPM representatives were organized in the premises of the Protector of Citizens, where the main topics were authorities and competences of the NPM, cooperation with the competent authorities, as well as problems and challenges

<sup>68</sup> Link of the report downloaded for the NPM web-page:

[http://www.npm.ils.rs/attachments/085\\_Observations%20on%20Implementation%20of%20the%20CAT.pdf](http://www.npm.ils.rs/attachments/085_Observations%20on%20Implementation%20of%20the%20CAT.pdf)

the NPM encounters in the course of its activities. The representatives of the Committee praised the work of the NPM and stressed the significance of all tasks they perform despite the fact that they are understaffed. In the subsequent period, the NPM will continue to monitor the compliance with the recommendations from the reports of the Committee.

## 5.8. Cooperation with other NPM

In the course of 2015, the Serbian NPM continued the cooperation within the South-East Europe NPM Network.

As a continuation of the cooperation within the South-East Europe NPM Network, a representative of the NPM participated in the meeting of the Network in Tirana, dedicated to development of a special methodology for monitoring in the context of the refugee crisis and migrations. Likewise, a conference on the topic "Asylum seekers, migrants - treatment in the South-East Europe" that grouped representatives of the NPM Network was held in Tirana. On that occasion, a representative of the NPM Serbia presented the work pertaining to the monitoring of the competent authorities dealing with refugees / migrants.

## 5.9. Distribution of the Annual NPM Report

The Republic of Serbia ensured, alike in previous years, printing and distribution of the annual NPM reports.<sup>69</sup> The NPM was the one in charge of printing and distribution.

The NPM Report for the year of 2014 was submitted to the National Assembly, sectoral ministries, as well as to associations and experts the NPM cooperated with in different areas. In order to inform the general public, the Report was also posted on the web page of the Protector of Citizens<sup>70</sup>. In addition, the publication in both Serbian and English language is available.

The report in English language was submitted to the UN Sub-Committee for the Prevention of Torture (*SPT*), UN Committee against Torture (*CAT*), European Committee for the Prevention of Torture (*CPT*), Association for the Prevention of Torture (*APT*) and to the other relevant international organizations.

## 5.10. Deliberation about the Annual NPM Report

The National Assembly of the Republic of Serbia, and its competent Committee, did not deliberate about the recommendations stemming from the NPM Report for the year of 2014.

Despite the fact that the practice was established that the National Assembly of the Republic of Serbia and its competent committees deliberate about the annual reports of the NPM, in the course of 2015 until the submission of this Report, the NPM Report for the year of 2014 was not deliberated upon, neither by the National Assembly nor by its competent committees.

The NPM indicates that the obligation of the competent authorities is to deliberate on the recommendations under the Annual NPM Report<sup>71</sup>.

<sup>69</sup> Optional protocol, Article 23.

<sup>70</sup> [http://www.zastitnik.rs/attachments/2902\\_izvestaj\\_%20NPM\\_%202012.pdf](http://www.zastitnik.rs/attachments/2902_izvestaj_%20NPM_%202012.pdf)

<sup>71</sup> Optional protocol, Article 22.

Deliberation about the recommendations from the NPM for the year of 2014 would also be an opportunity to consider actions of the competent authorities taken in line with the conclusions of the National Assembly of 23 October 2014 concerning the recommendations from the NPM Report for the year of 2013<sup>72</sup>.

## 6. Condition and activities of the NPM per areas in 2015

In the course of discharging of its mandate set under the Optional Protocol to the UN Convention against torture<sup>73</sup>, National prevention mechanism (NPM) found that status of persons deprived of their liberty was improved and that there is no torture as an organized and stimulating phenomenon by state authorities.

Despite the fact that the aforementioned is encouraging, the competent authorities should strive towards improving the fight against torture, taking into account that the torture is of situational character, as well as any other ill-treatment, and the fact that those deprived of their liberty are the persons most exposed to that risk.

In the course of the reporting period certain progresses were observed when it comes to torture prevention. Throughout the previous years, when visiting prisons, particularly visits to the closed prisons, a large number of interviewed persons deprived of their liberty stressed that ill-treatment is almost a “common phenomenon”. However, in the course of unannounced visits to the penitentiary institutions (Penal Correctional Institution /PCI/ Požarevac - Zabela, PCI Niš, District Prison /DP/ Leskovac and DP Belgrade) conducted in the course of 2015, NPM representatives conducted unsupervised conversations with more than 200 persons deprived of their liberty, without presence of any prison staff, in the course of which not a single person mentioned that he/she had been physically ill-treated by officers or other convicts, i.e. inmates<sup>74</sup>. Likewise, no one had any visible injuries. From the aforementioned, a general assessment that there is no torture in Serbia cannot be made, but what encourages is the fact that possible individual torture and other ill-treatment cases do not constitute any systemic phenomenon.

Several prisoners, who were, before being committed to prison, detained for 48 hours in the police detention, mentioned that they were “slapped several times” in the course of hearing, and that police inspectors insulted them, but they did not have any possibility to prove that, since they were not inflicted any visible injuries. It would be therefore, for the sake of further prevention of torture and implementation of more efficient fight against impunity of torture in the police station, necessary to ensure special premises for hearings, which should be audio and visually recorded, and the application of police authorities should also be recorded. A positive step forward is the established practice of the Public Prosecutor’s Office to ask people that are brought before them how the police officers treated them, i.e. whether they were subject to any kind of torture or degrading treatment.

Regarding the fight against impunity for torture, the attitude of the Committee for the Oversight of Security Services of the National Assembly of the Republic of Serbia that the Protector of Citizens is not authorized to act in the cases already being subject to criminal prosecution is indicative. The mentioned has seriously put the prevention against torture and

<sup>72</sup>[http://ProtectorofCitizens.npm.rs/index.php?option=com\\_content&view=category&layout=blog&id=108&Itemid=71](http://ProtectorofCitizens.npm.rs/index.php?option=com_content&view=category&layout=blog&id=108&Itemid=71)

<sup>73</sup> Adopted on December 18, 2002 at the 57th session of the General Assembly of the UN in line with the Resolution A/RES/57/199, entered into force of June 22, 2006

<sup>74</sup> All terms, notions, nouns, adjectives and verbs in this Report used in the masculine gender, refer with no discrimination to the persons of feminine gender

fight against impunity for torture under a threat and it represents an attempt to discredit and disable the external oversight and supervision by an independent entity, either through conducting a procedure upon filed complaints or upon its own initiative, or via NPM activities. Regarding the mentioned issue, the UN Committee Against Torture stressed in its Concluding Observations of the Second Periodical Report on the Republic of Serbia (item 21.) that the state is obliged to ensure efficient and independent work of the Protector of Citizens and to enable it to exercise its mandate, irrelevant of the fact whether criminal proceedings were instigated or not.

Taking into account that the Protector of Citizens is also discharging NPM mandate, it is necessary that competent state authorities enable NPM to smoothly conduct its activities in terms of allowing them to pay visits to all institutions, to access all data and to interview the persons selected by NPM, irrelevant whether there is another procedure conducted by some other state authority.

The current accommodation and other living conditions of persons deprived of their liberty are not in many respects in line with regulation and applicable standards, which due to continuity is gaining a character of inhumane or degrading treatment.

Current defects in terms of organization and behaviour towards persons deprived of liberty, such as inadequate accommodation conditions, lack or non-implementation of procedures, lack of adequate psycho-social treatment and staff, may, particularly in continuity, lead to inhumane or degrading treatment of persons deprived of liberty.

As the NPM had already stressed in its previous reports, prisoners are not allowed to spend the available time during a day outside their cells, in the common premises with the other prisoners with who, there is no prohibition of contact by a court decision. However, the efforts directed towards the improvement of capacities intended for placement of prisoners are encouraging. DO Belgrade planned to form, in each block, separate rooms for daily stay, which would be at the same time used by prisons who do not have prohibited contact. Project design for the construction of a new facility in the DP Leskovac also plans common premises within the detention unit. What still causes problem is the fact that prisoners in the most of the cases are not allowed to be engaged in work, nor are involved in social and cultural activities. In addition, there are no sufficient conditions for physical activities, particularly in the course of poor weather conditions.

NPM, alike in its previous reports, indicated the problem that a relatively small number of women in one detention unit were, while serving their time, placed in isolation often for unacceptably long time. Even though the isolation / solitary confinement represents special, i.e. disciplinary measure, within the system of the enforcement of criminal sanctions, which should be timely restricted, in the current practice, certain prisoners serve their detention measures that way, which indicates to the negative aspect of the women detention system.

Many of prison capacities still do not apply principle of joint enforcement of sentence. Namely, in the course of a day convicts do not spend the available time with fellow-convicts in the common rooms, but are all the time isolated in their cells (alone or in smaller groups).

Convicts are not sufficiently engaged in work, however an extreme advocacy for the improvement status is evident. Lack of cultural activities is also evident. Procedure for classification of convicts is not sufficiently transparent. Convicts are not sufficiently explained criteria for promotion, teachers are primarily dealing with administrating questionnaires. Mechanisms for promotion in line with the current criteria imply difficult transfer of convicts into the more favourable correctional groups, which result in the fact that many convicts are released from prison from the same correctional group they were assigned right upon admission to the prison.

Prison capacities intended for minors and women<sup>75</sup> are the central (only) institutions, where 200 persons are placed. In these institutions, particularly in those intended for children, strong informal systems are created, which generates impossibility of an adequate treatment. The problem in these central institutions is that certain convicts are so far away from their residences, which significantly makes contact with family more difficult.

Deficiencies of the health care provided in the prisons are still numerous. As a rule, the first medical check-ups are provisional, convicts are not checked-up without clothing, nor are there any protocols regulating the content of such medical check-up. In the practice, they do not conduct periodical medical check-ups of the convicts. Non-medical staff is generally present during these check-ups. Lack of drugs is noticeable.

In general, doctors do not play their role in the protection against torture. In certain cases, they omit to determine and describe in detail all observed injuries, and generally do not issue their opinion on causal connection with the applied coercive measure or explanation how these injuries were inflicted – with injuries directly observed in the course of a check-up.

Convicts with mental disorders are placed under the regular prison regime, which does not correspond to their needs and thereby creates significant safety-related risk for those persons and their environment, and at any rate, that places a huge burden on the staff members who are not trained to treat these persons.

Deficiencies of the Law on the Protection of Persons with Mental Disorders<sup>76</sup> are not corrected. It is prescribed that local services for mental health should be organized as additional activities of the current psychiatric institutions and health-care centres, which do not have adequately trained staff nor are interested in that regards. In line with such a solution, all activities related to deinstitutionalization are hard-to-be observed in Serbia. The Law has introduced isolation measure for psychiatric patients, which not only is incompliant with the current standards, but it has not been applied in Serbia for many years. Besides, the Law stipulates the competence of the police officers regarding maintenance of order within the psychiatric hospitals, which is in contravention with the applicable standards, taking into account that police officers are uniformed and armed persons.

The existing psychiatric hospitals are balky, and have several hundred patients staying in them. They are to the great extent assuming the asylum character, for many of their patients are segregated from the community for more than one month, and a large number of them for more than ten years, and some of them even for a lifetime. A phenomenon that a large number of persons are kept in hospital primarily for socially-related reasons, because there is no form of support for their treatment within the community is very common.

Court decisions on forced hospitalization of persons with mental disorders are mainly based on the expertise provided by doctors working in hospitals proposing these measures. Besides, many cases were observed in which consents for hospitalization were given by police officers who had brought these persons in agitated conditions, despite the fact that statements given under such circumstances cannot be regarded as legally relevant.

NPM believes that it is necessary to intensify activities in order to improve the current legislation, as well as treatment of persons with disabilities placed in the social protection institutions of a home character. Namely, a large number of persons with mental and intellectual disorders are placed in dislocated, and often in robust institutions, far from their community and their social environment. Besides, material conditions of accommodation are in many of them very poor, not meeting necessary level of psycho-social treatment. All these

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<sup>75</sup> Correctional Institution for Women in Požarevac, Juvenile Correctional Institution in Valjevo and Correctional Institution in Kruševac

<sup>76</sup> Official Gazette of the RS, no. 45/13

institutions lack staff, which then causes adverse consequences for both staff members and beneficiaries.

The NPM conclusion is that among persons deprived of liberty, persons with mental and/or intellectual disorders placed in the social-protection institutions of a home type or psychiatric hospitals are in the most disadvantaged position, as well as those persons in the institutions for the enforcement of criminal sanctions<sup>77</sup>.

In the course of 2015, NPM paid a special attention to monitoring the status of a large number of refugees and migrants, who, in the course of the refugee crisis went through the Republic of Serbia. According to the data of the Ministry of the Interior, in the course of 2015 almost 600,000 refugees/migrants were registered and issued certificates of having expressed the intention to seek asylum. Majority of them did not express the intention to get asylum in the Republic of Serbia, but the police officers despite that fact issued them certificates on the expressed intention to seek asylum (almost all those persons left the territory of the Republic of Serbia in a two-day time).

Besides the aforementioned, another huge problem was the fact that transition of refugees through Serbia was not organized in an efficient way and that in such a situation risks of corruption and actions by informal groups were very big.<sup>78</sup>

In the course of 2015, state authorities took a liberal approach for treatment of refugees in transit. That implied no deprivation of liberty, and lack of any other restrictive measures. Refugees were enabled a smooth entry to Serbia, and upon registration, they were let to freely pass through Serbia taking the roads to the borders with Hungary and Croatia. Such a liberal approach opened a room for actions of informal groups to take advantage of a difficult position of refugees for their personal interest.

## 6.1. Police / prosecutorial detention

In order to monitor the way police officers treat the persons brought to their premises, arrested and detained persons, the National Prevention Mechanism visited the total 28 police stations in the course of 2015<sup>79</sup>. The total of 11 reports on the visits to the police administrations were composed in the course of 2015. The reports on the visits contain the total of 129 recommendations. Out of the total of 129 recommendations, the competent authorities complied with 73, partially complied with 51, and did not comply with 5 recommendations.

The recommendations related to the improvement of the accommodation conditions within the premises for detention (improvement of the artificial and natural light, inflow of the fresh air and ventilation and improvement of the hygiene conditions) were mainly complied with. On the other hand, the recommendation that required material investments (reconstruction of the space, installation of the heating devices, installation of the CCTV or alarm system for calling police officers and similar) were not implemented, but the competent departments of the Ministry of the Interior were informed about the necessary adaptation of the space and necessary costs thereto so as to decide about the further measures. The lack of financial resources is mainly mentioned as the reasons for noncompliance with the recommendations.

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<sup>77</sup>Persons serving measure of compulsory psychiatric treatment and stay in the health-care institutions, measures of detention and prison sentence

<sup>78</sup>Analysis: Difference in treatments of refugees passing the Balkan route, no. 71-120/15 from 02/09/2016

<sup>79</sup> Within 11 police administrations

In the course of the reporting period, the NPM recommended closure of two rooms for police detention<sup>80</sup>, for the reason that they did not meet the applicable standards in terms of special accommodation conditions and indicated the need to adapt certain rooms for detention<sup>81</sup>, as well as adaptation of the accommodation conditions with the current standards. The responses of the police administration indicated that the rooms in the police stations in Batočina and Kuršumljija were no longer used as rooms for detention, whereas those police stations and administrations that were recommended to adapt and renovate rooms for detention, acted in line with the financial and technical possibilities. In the course of 2015, as well as in the past years, it was observed that in certain police stations<sup>82</sup> due to lack of sufficient number of rooms for detention, persons were occasionally detained in the office of emergency services. Likewise, it is observed that due to lack of adequate rooms for detention in certain police stations<sup>83</sup> persons deprived of their liberty were transferred to other police stations or administrations<sup>84</sup>, which makes their work more difficult and complicated and increases security risks for both detained persons and the acting police officers.

In the course of the NPM visits to certain police administrations and police stations, it was observed that with the assistance provided by the local governments, material conditions in the detention rooms had been improved in the Police Administrations in Kikinda and Kraljevo, Police Stations in Vrnjačka Banja and Lučani in Guča, Aranđelovac, Lapovo and Bela Palanka and Traffic Police Station in Čačak. Police Station in Knjaževac improved its accommodation conditions within its detention premises after the recommendations of the Protector of Citizens had sent them. However, there are still a lot of police detention premises that are unsuitable.

Another observed deficiency in the Police Stations Kragujevac, PS Lapovo, PCI Čačak, PS Lučani, PS Bela Palanka, is that the area around sanitation fixture is also covered by CCTV which constitutes violation of privacy of detainees and disrespect for their dignity. Certain police stations<sup>85</sup> acted in line with the recommendation and they eliminated the mentioned deficiency. Certain police administrations and stations<sup>86</sup> stated that they would comply with the recommendations in line with their financial possibilities, whereas some of them<sup>87</sup> stated that they did not have technical possibilities to comply with this recommendation.

After NPM recommendation issued in 2015 to the visited police administrations<sup>88</sup>, detainees are being served with the written explanations about the rights, and the signed copy of the document is stored within the file on detention. Likewise, in the course of 2015, after the NPM recommendations, the Ministry of the Interior translated the forms on the rights into the minority languages, specifically into: Hungarian, Albanian, Romani and Romanian languages. It was observed that certain police administrations<sup>89</sup> where persons were detained in line with the Law on Criminal Procedure in the prison premises, did not present the transcripts on detention neither for inspection nor for signature upon completion of detention. The police administrations acted in line with the NPM recommendations, except in the PA Bor that stated that it is not able to give the transcript on detention for signature to those persons detained in line with the LCP.

Despite the fact that in line with the new Law on Criminal Procedure detention is to be ordered by a Public Prosecutor, as a rule it is still the Ministry of the Interior that bears all costs related

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<sup>80</sup> Rooms for detention in the PS in Batočina and PS in Kuršumljija

<sup>81</sup> Rooms in the headquarters of the PA Leskovac, PA Niš, PA Prokuplje, PA Zaječar, PA Bor, PA Raška, PA Babušnica, PA Dimotovgrad, PA Blace, PA Soko Banja, PA Negotin and PA Kladovo.

<sup>82</sup> PA Čačak

<sup>83</sup> PS Majdampek

<sup>84</sup> In the rooms of the PA Bor

<sup>85</sup> PS Bela Palanka

<sup>86</sup> PCI Čačak, PS Lučani in Guča

<sup>87</sup> PA Kragujevac and PS Lapovo

<sup>88</sup> PA Čačak, PA Kikinda, PA Kragujevac, PA Niš, PA Bor PA Zaječar and PA Prokuplje

<sup>89</sup> PA Čačak, PA Pirot, PA Prokuplje, PA Zaječar, PA Bor



to the ex-officio engagement of defence counsel. Only in the PA Pirot and PA Prokuplje, the Ministry of Justice bears all costs related to the ex officio engagement of defence counsel.

In certain number of cases, the NPM found that reports doctors composed after the use of means of coercion did not contain any information about the allegations of persons subject to check-up in relation with the origin of possible injuries, nor they contained doctors' opinion about the way these injuries might have been inflicted. That report, as a rule, does neither contain any information about the fact whether a check-up was conducted in the presence of a police officer. In order to be able to conduct a procedure for control and justification of the use of means of coercion in as objective and valid fashion as possible, the NPM issued a recommendation that it was necessary to annotate all relevant and necessary information regarding the circumstances of the use of means of coercion. After the recommendations sent by the NPM, police officers of certain police stations<sup>90</sup> no longer hold the medical documentation within their police files, but give it to the detainee, taking into account that such a medical documentation constitutes particularly sensitive personal data.

Despite the fact that in the past three years the NPM kept on indicating the necessity to change the Instructions on Treatment of Brought-in and Detained Persons<sup>91</sup>, Ministry of the Interior failed to undertake any activity in order to harmonize it with the applicable legislation and standards. After the recommendations issued to the police officers not to have handcuffed all persons brought in the police station, but to do that in line with their assessment, certain police stations<sup>92</sup> did change their practice and use handcuffs only after having cautious consideration of all specific circumstances indicating the necessity to handcuff that person, particularly in all those cases stipulated by the law. The current Instruction stipulates the mandatory presence of a police officers in the course of a medical check-up of detainees.<sup>93</sup> After the sent NPM recommendations, in certain police administrations<sup>94</sup> police officers are present in the course of medical check-up of detained persons only upon the request of a doctor.

The standpoint of the NPM is that there is a need to amend with no delay certain provisions<sup>95</sup> of the Instruction on treatment of brought in and detained persons which stipulate obligatory use of handcuffs when transporting persons to be brought in to the police and obligation of police officer to be present in the course of a medical check-up of a detainee.<sup>96</sup>

Police officers in certain police stations<sup>97</sup>, in line with the NPM recommendations, get written statement from the persons who had been subjected to means of coercion about the circumstances related to the use of means of coercion and possible infliction of injuries, in order to have a more complete insight into all circumstances related to the case, so as to assess the justification and regularity of the use of means of coercion in the most objective way.

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<sup>90</sup> Report on the visit to PA Kikinda no. of the case 71-8/15, Report on the visit to PA Kragujevac no. of the case 71-34/15, Report on the visit to PA Leskovac, no. of the case 71-32/15, Report on the visit to PA Pirot no. of the case 71-50/15, Report on the visit to PA Požarevac no. of the case 71-5/15, Report on the visit to PA Prokuplje, no. of the case 71-51/15

<sup>91</sup> Instruction on treatment of detained and brought in persons, 01 no. 7989/12-10 from 12/10/2012

<sup>92</sup> PA Kikinda, PA Kragujevac

<sup>93</sup> Instructions on treatment of detained and brought in persons, 01 no. 7989/12-10 from 12/10/2012, item 26 paragraph 3.

<sup>94</sup> Report on the visit to PA Čačak, no. of the case 71-13/15, Report on the visit to PA Kragujevac, no. of the case 71-34/15, Report on the visit to PA Kraljevo, no. of the case 71-12/15, Report on the visit to PA Leskovac no. of the case 71-32/15, Report on the visit to PA Niš, no. of the case 71-40/15, Report on the visit to PA Pirot, no. of the case 71-50/15

<sup>95</sup> Item 13, paragraph 2 and item 26, paragraph 3.

<sup>96</sup> Please see, for instance, judgment of the European Court of Human Rights in the case *Berlinski vs. Poland* (applications number 27715/95 and 30209/96), paragraph 59.

<sup>97</sup> PA Čačak, PA Kikinda, PA Kragujevac, PA Kraljevo, PA Pirot, PA Prokuplje, PA Zaječar and PA Bor

**GENERAL RECOMMENDATION  
FOR REMEDYING THE IDENTIFIED SHORTCOMING**

**Detention rooms in the police station should be in line with the applicable standards, and therefore it is necessary to secure necessary funds for these purposes.**

**Instructions on treatment of persons brought in and detained persons should be aligned with the applicable regulations and standards.**

**When bringing in persons to a police station, police officers shall not handcuff every person, but shall do so only due to justified reasons and when such an action is necessary, and in the cases stipulated by the laws.**

**Police officers shall not be present in the course of the medical check-ups of detainees, unless doctor explicitly requires so. Police officer shall timely provide a doctor with all available information which are relevant for decision on presence of a police officers in the course of a medical check-up of a detainee.**

**It is necessary to provide for continuous training sessions for police officers in prohibition of ill-treatment and in standards of treatment of brought-in persons, arrested persons and detained persons, and particularly the organized training in the exercise of police powers towards persons with mental disorders, i.e., in the police officers' treatments in line with the provision of the Law on the Protection of Persons with Mental Disorders.**

## **6.2. Enforcement of pre-trial detention**

In the reporting period, the NPM conducted 5 visits to pre-trial detention units in the DP Kraljevo, DP Leskovac, DP Novi Sad and it 2 visits to DP Belgrade. In that regards, the total of 36 recommendations for elimination of found deficiencies were issued. The total of 25 recommendations were complied with, 2 were not complied with at all, whereas the compliance with 9 recommendations still needs to be monitored.

Acting in line with the NPM recommendations, in the renovated pre-trial detention blocks of the DP Belgrade its biggest sleeping rooms were rearranged and equipped with all necessary equipment, thereby enabling to all detainees to spend a part of a day in the common daily rooms. The space for common daily room dedicated to detainees in all accommodating blocks and their equipping with necessary equipment shall be realized in the course of the current reconstruction of the institutions. Likewise, under the plan for construction of a new building in the DP Leskovac in 2016, common rooms for daily stay of detainees are also planned.

However, in the most of the institutions, detainees are not allowed to spend their time outside their cells, in the common rooms with the other inmates with whom they are not prohibited to have contact under the court decision, which is in contravention with the applicable standards and NPM recommendations.

In line with the NPM recommendations, DP Belgrade improved its health-care in a way that the first check-ups when admitting new detainees to the institution are, as a rule, done with no presence of non-medical staff. Exceptionally, in line with the request of a competent doctor and by recording the facts justifying the reasons for a decision of that kind, medical check-ups are done in the presence of non-medical staff. In the course of the first medical check-up, check-up of the whole body is done for a possible establishment of injuries and descriptions of them, as well as for the purpose of doctors' conclusion on the correlation of circumstances under which these injures were inflicted. Further on, work of the health-care service is organized during weekends, when a medical technician is present in both shifts, and in the afternoon the on-call doctor's shifts were introduced.

Detainees are still not allowed to be engaged in work and to be involved in the social and cultural activities.

Despite the NPM recommendations, engagement of detainees in working activities is still not allowed, nor are they involved in any social or cultural activities. Likewise, there are no sufficient conditions for physical activities, particularly during the poor weather conditions. The NPM, alike in the previous reports, stressed the problem related to the system for the enforcement of detention measures in Serbia, i.e., the fact that detainees are locked in their cells/ sleeping rooms for the whole day, without any possibility to take part in any other activities.

Material accommodation conditions in most of detention units are still not harmonized with the applicable standards.

As also stressed in the previous reporting period, material accommodation conditions and other living conditions of detainees in certain detention units are still not aligned with the applicable standards, they are not allowed a space in sleeping rooms of at least eight cubic meters and four square meters. Certain rooms within the detention units are in the extremely poor condition, with ruined toilet fixtures, dirty, non-aired rooms with insufficient inflow of natural light and unsatisfactory artificial lighting.

In line with the NPM recommendations, DP Belgrade moved its female detainees in one of the two blocks, thereby enabling them more adequate accommodation conditions and fulfilment of their right to information.

In the course of the visit to DP Belgrade, NPM established that the female detainees were in particularly poor position, primarily due to very poor accommodation conditions. Besides, due to some technical problems, they could not use TV or radio, which constituted violation of their right to information. Complying with the recommendations of the NPM, DP Belgrade moved its female detainees in one of two blocks where they can use TV and radio, which also has more adequate accommodations conditions. Besides, while complying with the NPM recommendations, DP Belgrade rectified the problem related to inadequate hygiene packages dedicated to women.

The scenario that due to a small number of female detainees they mostly spend their detention measures in solitary confinement, i.e. in isolation is still common.

Due to a relatively small number of female detainees in certain detention units, they are very often isolated, i.e., are placed in solitary confinement for a longer period of time. By doing so, what constitutes a disciplinary measure for persons serving their prison terms, it very often for women detainees constitutes the way they serve their detention measures.

**GENERAL RECOMMENDATION  
FOR REMEDYING THE IDENTIFIED SHORTCOMING**

**It is necessary to improve current unfit capacities of detention units, i.e., align them with the applicable legislation and standards.**

**The Administration for the Enforcement of Criminal Sanctions shall undertake all measures to enable female detainees to spend available time outside their cells, in the common rooms with the other female inmates, who were not issued any prohibition of contact under the court decision.**

**The Administration for the Enforcement of Criminal Sanctions shall undertake necessary activities in order to amend and supplement the Rulebook on the enforcement of detention measure, which shall closely regulate the way detainees spend their available time outside their cells during a day, in the common rooms with those who do not have any prohibition of contact issued by court decision, and shall closely regulate ways to fulfil the rights of detainees to be engaged in working activities and involved in the social and cultural activities.**

**The Administration for the Enforcement of Criminal Sanctions should enable all detainees to be engaged in working activities and be involved in social and cultural activities.**

**It is necessary to undertake activities so as to ensure that female detainees, due to their paucity in detention units, are not actually placed in solitary confinement, i.e., isolation.**

**Female detainees with severe disabilities who are in detention units should be provided with conditions for adequate accommodation, treatment and rehabilitation.**

### **6.3. Enforcement of criminal sanctions**

In the course of 2015, the NPM carried out visit to 10 institutions for the enforcement of criminal sanctions. After all visits, the total of 9 reports were composed. The total of 80 recommendations were issued under the mentioned reports. Out of the total number of issued recommendations, the competent authorities complied with 56 recommendations, the compliance with 20 recommendations still need to be followed, and 4 recommendations are not complied with.

In DP Leskovac, adaptations within the pavilion A were made, and they plan to construct a new facility with the capacity to accommodate 200 persons deprived of liberty in the course of 2016. Likewise, the renovation and adaptation of the Juvenile PCI facilities in Valjevo, DP Belgrade and Special Prison Hospital were made. The Administration for the Enforcement of Criminal Sanctions composed the Plan for reconstruction of accommodation capacities for persons deprived of liberty in all institutions forming part of the Administration's system, and its one part refers to the Plan for reconstruction of blocks for accommodation of persons deprived of liberty within the DP Belgrade facility, in line with which the reconstruction of the whole facilities, i.e., its accommodation blocks would be gradually made and finalized by 2019.

In line with the NPM recommendations, the PCI Sombor partitioned the semi-opened department, thus enabling the convicts and misdemeanour offenders to be placed in separated sections.

Despite the fact that in the course of the reporting period adaptations of some accommodation capacities were made in line with the material and other living conditions stipulated under the applicable standards, there are still a large number of ruined rooms in the institutions for the enforcement of criminal sanctions.

A large number of persons serving their prison terms are still not engaged in working activities. Number of staff engaged in the training and recruiting activities, i.e., instructors of the Service for training and recruitment, do not respond to the needs of convicts and

misdeemeanour offenders to engage them in working activities. There is a need to further intensify active, individual and collective treatment work of teachers with convicts. It is necessary to improve the system of subsequent classification of convicts so as to create possibilities to transfer convicts to more favourable correctional group due to their proper conduct, and thereby reduce a large number of convicts released from prison directly from closed departments.

It was found that a large number of persons serving their prison terms, detained in the closed departments (of cell type) were not allowed to spend their available time outside their sleeping room in common rooms with other fellow convicts during a day.

In the course of the reporting period, and in line with the NPM recommendation, some security procedures in the institutions were improved to the certain extent. Namely, in PCI Požarevac – Zabela convicted persons were forced to upon leaving their cells and entering the corridor of the pavilion stand against the wall, facing the wall, with hands crossed on their backs and heads bent towards the floor. In line with the recommendations of the NPM, the Institution ceased to use this practice and introduced new security procedures which do not violate dignity of convicts, in the described way. Likewise, acting in line with the recommendation of the NPM, the Administration for the Enforcement of Criminal Sanctions sent instructions to all institutions about the way to conduct search and other procedures towards persons coming to visit persons deprived of their liberty, in a way to respect their dignity and preserve items and personal integrity of visitors. Also, body cavity search should be exclusively done by prison staff, with no presence of other persons, fully respecting mental and physical integrity of visitors.

The reporting period was characterized by a problem in the operations of the institutions caused by insufficient number of staff, which adversely impacted on the overall status and fulfilment of the guaranteed rights of the persons deprived of their liberty. However, a positive example is the fact that Administration for the Enforcement of Criminal Sanctions, in line with the NPM recommendations, undertook activities in order to recruit around 40 new officers to be employed in the Security Service of the DP Novi Sad, taking into account that due to the lack of staff, the operations of this institutions were made more difficult.

Alike in the previous annual reports, the NPM also indicated on this occasion to the circumstance that the enforcement of the juvenile prison sentence or correctional measure by sending to correctional home was exclusively enforced in one single institution (in Valjevo, and in Kruševac, respectively), where a large number of persons were accommodated. Such a situation benefitted to the creation of informal system which diminished the effects of the treatment work. This way, the principle to serve the sentence in the institution closest to the place of residence is jeopardized, which then makes the contact of these persons with their family and close persons more difficult. Serving the prison sentence in the institution closest to the place of residence is neither enabled to women, for they are exclusively placed in the PCI for women in Požarevac.

In the previous reports, the NPM used to draw the attention to numerous deficiencies in the provision of health-care to persons serving their prison sentence. Medical check-ups upon admission to prison are mainly approximate and are not based on a consolidated protocol. The aforementioned is in the most of the cases caused by insufficient number of medical staff, primarily doctors, both general practitioners and specialized doctors. The situation in the Specialized Prison Hospital in Belgrade is particularly worrisome. In the course of 2015, 5 doctors employed in the Prison Hospital retired. The Administration for the Enforcement of Criminal Sanctions resolved this understaff problem by new recruitments, but the problem related to insufficient number of doctors working in the Hospital still remains.

Besides the aforementioned, the problem related to the use of necessary drugs and therapies was not resolved, neither did bad practices that non-medical staff distribute drugs and provide therapy. In addition, it is still common that non-medical staff members are present during the

medical check-ups even when not requested by a medical worker, which only violates the privacy of convicts and the right to secrecy of data on their health condition.

Persons with mental impairment serving their prison sentence are still placed within the regular prison regime which is inadequate for their treatment and their psycho-social treatment.

The NPM standpoint is that persons with severe mental disabilities should be displaced in adequate health-care institution, or placed in the Special Prison Hospital, i.e. the stationed health-care unit within the institution with adequate conditions for their treatment.

Measures of compulsory psychiatric treatment and care are rarely converted in the extramural mandatory psychiatric treatment, primarily because of the fact that family is not in a position to care about the patient. Around 25% of patients who were imposed compulsory psychiatric treatment and confinement in the Specialized Prison Hospital may be discharged, but they don't have where to go, for they do not enjoy the support of the community. The worrisome fact is that the number of psychiatric patients is solely reduced by their death. Despite the adoption of the Law on the Protection of Persons with Mental Disabilities ("Official Gazette of the RS", no. 45/13) and the Rulebook on Conditions for the Application of Physical Restraints and Isolations of Persons with Mental Disabilities Treated in Psychiatric Institutions ("Official Gazette of the RS", no. 94/13) which provisions are bounding for the work of Hospital, in the course of the visit it was determined that the staff working in the Hospital did not act in compliance with the mentioned regulations. Namely, it happened that patients were continuously restrained for several days.

Programs designed to provide social support and aid to the convicts after being released from prison, do not still have the adequate level of quality, and the efficient cooperation between correctional services of the institution and the offices for the enforcement of alternative sanctions has not yet been established, and therefore all convicts after being released from the prison are left to themselves.

Alternative sanctions in the Republic of Serbia do not function in the planned capacity and scope and are totally dependent upon the prison system. This relates to both technical support, and to the support by staff. The offices for alternative sanctions are opened in every town, as a part of the Higher Courts, but so far only 24 commissioners were employed. However, five offices still do not have their commissioner (in Sombor, Zrenjanin, Šabac, Čačak and Vranje). Also, work of a commissioner is now solely reduced to the enforcement of alternative sanctions, i.e., commissioners are least engaged in treatment of convicted persons, their resocialization or post-penal reception.

**GENERAL RECOMMENDATION  
FOR REMEDYING THE IDENTIFIED SHORTCOMING**

**The Administration for the Enforcement of Criminal Sanctions should continue with its activities related to the harmonization of accommodation conditions within institutions for the enforcement of criminal sanction with the applicable standards.**

**Institution for the enforcement of criminal sanctions should enable to all persons serving their prison sentences to spend their available time outside the sleeping room during a day, in the common rooms with the other convicts.**

**Institutions for the Enforcement of Criminal Sanctions should continue to improve conditions for engagement of persons serving their prison sentences in the working activities.**

**Institutions for the Enforcement of Criminal Sanctions should ensure sufficient number of medical workers, particularly doctors, necessary quantity of drugs and therapies and to improve the health-care provision.**

**The Administration for the Enforcement of Criminal Sanctions should provide for continuous training sessions for its staff working in institutions in the prohibition of ill-treatment, standards for treatment of persons deprived of their liberty, and particularly in doctors' activities in line with the Istanbul Protocol.**

**The Administration for the Enforcement of Criminal Sanctions should improve the enforcement of alternative sanctions in the Republic of Serbia.**

**It is necessary to improve the system for support to convicts after completion of their prison sanctions.**

**The Administration for the Enforcement of Criminal Sanctions should ensure that persons with mental impairment serving their prison sentences be displaced from the regular prison regime and be provided health-care corresponding to their disease and be provided with adequate drugs within the stationary health-care units within institution, in Special Prison Hospital or any other adequate health-care institution.**

**Ministry of Justice should undertake all measures under its competence so as to adopt regulations that would enable that prison sentences for women and minors, as well as correctional measures of committing to correctional homes, are not enforced in only one institution, in order to enable them to serve their sentences in the place closest to their place of residence.**

**Ministry of Justice should undertake necessary measures so that Inspection Department becomes special organizational unit of that Ministry, outside the Administration for the Enforcement of Criminal Sanctions.**

**Ministry of Justice should undertake necessary measures so that services providing health-care to persons deprived of their liberty in the institutions for the enforcement of criminal sanctions become organizational parts of the Ministry of Health or separate organizational unit within the Administration for the Enforcement of Criminal Sanctions.**

#### **6.4. Detention of persons with mental disorders to the psychiatric hospitals**

In the course of 2015, with the aim of monitoring the compliance with the recommendations given under the Report on the Visit of the European Committee for the Prevention of Torture to the Republic of Serbia conducted in 2011, NPM visited to the Specialized Hospital for Mental Diseases "Gornja Toponica" and to the Clinic for Psychiatric Diseases "Dr. Laza Lazarević" in Belgrade.

A positive step forward in the Special Hospital for Psychiatric Diseases "Gornja Toponica" reflects in the fact that in the cases of forced hospitalizations they exclusively engage expert witnesses who are not doctors working in the Hospital, which is not the practice in the other hospitals. However, a large number of patients (around 760) are hospitalized in the Special Hospital for Psychiatric Diseases "Gornja Toponica", but the number of patients placed in the Hospital without their consent is reduced to 15% of the total number of patients.

In the course of the reporting period it was determined that the number of patients in the Hospital for Psychiatric Diseases "Dr. Laza Lazarević" in Belgrade was reduced, for they were implementing the programme for treatment in the community, which implied services of tertiary prevention whose objective was to strengthen the linkages of a patient, his/her family and cousins in the treatment, on one side and the community on the other side, so as to prepare a patient to leave the institution and continuous care. All of these things contribute towards reduction of the duration of hospital treatment and number of re-hospitalizations and increases

the number of check-ups in dispensaries. However, a large number of patients are still hospitalized in the most of the other psychiatric hospitals<sup>98</sup>.

Certain facilities, within the hospitals for psychiatric diseases, are still old, dilapidated buildings which are maintained with a lot of difficulties, and sleeping rooms with big capacities are not converted into smaller rooms. Accommodation conditions are particularly poor in the Special Hospital for Psychiatric Diseases "Kovin", where a large number of facilities where patients are placed are dilapidated. In certain hospitals, there are no separate rooms for visits, but the visits are organized in the corridors of departments and in common rooms, and if whether conditions and patient's condition allow, in the garden of the Hospital. Certain hospitals do not have separate rooms to place restrained patients, but those patients are placed in the rooms with the other patients. One of the important problems in the psychiatric hospitals is insufficient number of medical staff and occupational/working therapists, and insufficient staff structure leads to the fact that the work of the staff is not fully in line with the needs of patients.

In the course of the reporting period, centres for the protection of mental health in Kikinda and Vršac worked on the part of the project activities related to the development of the system for protection of mental health within a community and related to the reform of the forensic psychiatry, and the actors responsible for these temporary character activities were special psychiatric hospitals "Sveti Vračevi" and "Dr. Slavoljub Bakalović". In addition, counselling in Kragujevac functioned under the similar principle. However, functioning of the centre for the protection of mental health is conditioned with the duration of all these activities. The fact that there are no adequate services for the protection of mental health within a community, which might take care of patients after hospital treatment, inhibits continuous care or adequate psycho-social rehabilitation. This increases the possibility of worsening the main disease and accelerates deterioration of personality, while the duration of patient hospitalization, with no medical reasons, represents by itself inhuman treatment.

In line with the previously issued NPM recommendations, Ministry of Health composed leaflets on the patients' rights, dedicated to patients and their families. Likewise, in the course of the reporting period, Ministry composed a large number of instructions and forms<sup>99</sup> with the aim of harmonizing the treatment of persons with mental disorders and improvement of the quality of health-care and submitted them to all psychiatric hospital.

**GENERAL RECOMMENDATION  
FOR REMEDYING THE IDENTIFIED SHORTCOMING**

**It is necessary to intensify all activities related to decentralization in terms of abandoning the practice of long-term holding of patients in the robust, dislocated hospitals, and with the aim to care and treat them within a community.**

**Is it necessary to improve provisions of the Law on the Protection of Persons with Mental Disorders, particularly those related to the establishment of units in charge of activities aiming at protection of mental health within a community; procedures of voluntary and forced hospitalization; role of the police in regards persons with mental disorders; physical restraint; and particularly provision envisaging measure of patient's isolation.**

**Ministry of Health should undertake measures so as to reconstruct certain accommodation capacities in big psychiatric hospitals.**

**Ministry of Health should undertake measures so as to engage additional medical staff**

<sup>98</sup> Specialized hospital for psychiatric diseases "Dr. Slavoljub Bakalović", Special hospital for psychiatric diseases „Sveti Vračevi“, Specialized hospital for psychiatric diseases "Gornja Toponica" and Specialized hospital for psychiatric diseases "Kovin"

<sup>99</sup> Forms for forced and voluntary hospitalization; forms for decision on detention in the course of involuntary hospitalisation; forms for individual treatment plan; house rules of the institutions for treatment of persons with mental disorders and the others.



**(medical technicians and psychiatrists) and work therapists, in order to raise the level of the provision of health-care and improve activities related to the psycho-social rehabilitation.**

**It is necessary to provide for continuous training of doctors and other staff in prohibition of torture, and particularly in doctors' treatment in line with the Istanbul Protocol.**

## 6.5. Detention of persons in the social welfare homes

In the course of 2015, the NPM conducted visits to 3 social welfare institutions homes, in order to monitor the status of beneficiaries placed there. Two reports on the visit to these institutions in 2015 were composed and one report<sup>100</sup> on the visit conducted in 2014. In these reports on the visits, the competent authorities were issued 20 recommendations. Out of this number, the competent authorities complied with 13 recommendations, failed to comply with 1 recommendation, and regarding the remaining 6 recommendations, their implementation shall be monitored.

In the course of the reporting period, the controlling visit was carried out to the Home "Veternik" and a Commissioner for Human Rights of the Council of Europe was there as well. The aim of the visit was to make follow-up of the compliance with previously issued recommendation, as well as to show to the Commissioner the accommodation conditions and treatment of beneficiaries. It was found on that occasions that recommendations regarding displacement of persons with intellectual and mental disorders from the Home "Veternik" were not complied with, neither were complied with those recommendations regarding provision of adequate protection and support to their full inclusion into a community nor those recommendations regarding the number of beneficiaries in the Home in line with the limit set under the regulations.

NPM, in its Report for the year of 2014, in the Chapter 6.5. "Detention of persons in the social protection institutions", indicated to the Ministry of Labour, Employment, Veteran and Social Affairs and the Provincial Secretariat for Health, Social Policy and Demography all deficiencies in the operations observed in the Home "Veternik" and the need to displace most of beneficiaries from the Home in the course of two coming years; provision of supports and/or accommodations within a community, as well as the reduction of the capacities of the home type to no more than 50 beneficiaries, if the children are to be placed there, or 100 beneficiaries if the beneficiaries are adult persons, as envisaged under the applicable regulations and standards.

Ministry of Labour, Employment, Veteran and Social Affairs sent their comments to the aforementioned statement from the NPM Report for the year of 2014<sup>101</sup>. The Ministry deliberated upon the NPM findings composed in line with the visits to the social protection institutions and inter alia, focused on the current situation in the Home "Veternik" making comparison with the year 2013 when the NPM had conducted its first visit to the Home. In line with the Ministry's explanation, in the period between 2013 and 2015, social protection inspectors from the Ministry of Labour, Employment, Veteran and Social Affairs conducted six supervision visits to the Home "Veternik" so as to oversee the number of beneficiaries placed there and they issued orders that Home and the competent centres for social work review their plans for protection of beneficiaries who did not fall under the group of mentally impaired beneficiaries of the Home. In the course of the last inspection supervision made to the Home,

<sup>100</sup> Report on the visit to Gerontological Centre in Šabac and the responses of the competent authorities thereto are available at:

<http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/4202-2015-07-01-12-27-58>

<sup>101</sup> Report of the NPM for the year of 2014 and the responses of the Ministry are available at:

[http://Protector\\_of\\_Citizens.npm.rs/index.php?option=com\\_content&view=article&id=528%3A-2013&catid=113%3A2015-12-14-12-11-29&Itemid=117&lang=sr](http://Protector_of_Citizens.npm.rs/index.php?option=com_content&view=article&id=528%3A-2013&catid=113%3A2015-12-14-12-11-29&Itemid=117&lang=sr)

held on 14<sup>th</sup> of December 2015, it was found that 538 beneficiaries were placed in the Home, out of which 49 were minors. Likewise, paralyzed beneficiaries had been transferred from the upper floors to the ground floor of the pavilion “B”, and the rooms for “intensified supervision” in the pavilions “A2” and “A1” were renovated in line with the NPM recommendations. Regarding the recommendations that are focused on ensuring the sufficient number of staff working in the Home “Veternik”, the Ministry stated that as long as the Decree on the Prohibition of Employment in the Public Sector was in force, they would not have any possibility to increase the number of the staff working in the Home.

In the course of 2015, the NPM conducted visit to the Gerontological Centre “Jelovac” in Aleksinac – Working unit for placement of adult persons and seniors with intellectual and mental disorders in Tešinci<sup>102</sup> and to the Centre for placement and day stay for disabled children and youth – Infirmary for autism in Belgrade.<sup>103</sup> The NPM sent recommendation to the visited institutions through the NPM report on the visits, and they relate to provision of cabinets where personal things may be placed in the institutions for social protection, ensuring the privacy of beneficiaries, as well as to organizing training sessions for the professional staff in order to improve the provision of rehabilitation services. The institutions complied with all these recommendations. In the Report on the visit to the Gerontological centre in Šabac<sup>104</sup>, the NPM recommended that one room may house at the most four beneficiaries, to paint certain rooms in the Centre and to improve their hygiene, as well as to ensure nurse alert system for all rooms for urgent situations (SOS Mechanism for nurse calling). In order to protect and preserve privacy of beneficiaries, it was recommended to partition showering space and to put in use the current folding screens. In order to improve the number of thematic activities, it is recommended to undertake adequate rehabilitation activities adapted to the dependant beneficiaries. Further on, it is recommended to set the records on submitted applications, complaints and claims. When presenting its explanations, the Centre has recently stated that all recommendations were accepted and complied with.

In the course of the reporting period, the NPM did not find any improvements in the area of accommodation for persons placed in the social welfare homes, nor were significant steps made in terms of deinstitutionalization. Large social protection institutions still house a large number of beneficiaries particularly due to the reasons that there are not conditions for their accommodation in a community and due to the fact that they are deprived of work capacity. Families and guardians of these beneficiaries usually do not enjoy any support in providing for them. Beneficiaries in the social protection institutions still have restricted movement outside the institution, despite the fact that there are no legal grounds or procedures to regulate their detention in the institution. In regards to restriction of movement of beneficiaries placed in institution of social protection NPM sent recommendation to the Ministry of Labour, Employment, Veteran and Social Affairs so as to undertake measures falling under their competence and thereby regulate this issue. However, the Ministry failed to act in line with the proposed procedure.

The UN Committee on the Rights of Persons with Disabilities made reference in its Concluding observations due to the Report of the Republic of Serbia on the implementation of the Convention of the Rights of Persons with Disabilities referring to the recommendations of the NPM and urged the State to prohibit all state authorities to use all forms of coercive treatments against adults and children with disabilities, including physical and chemical restraints, excessive antipsychotic therapy and isolation, which are considered to be cruel, inhuman or degrading treatment. The Committee also urged the State party to adopt a comprehensive strategy and measures for effective deinstitutionalization so that all persons with disabilities be

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<sup>102</sup> Report, answers of the authority and competent Ministry are available at:

<http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/4368-2015-10-14-09-13-19>

<sup>103</sup> Report on the visit no. 71–81/15

<sup>104</sup> 71-81/14

enabled to live independently and to enjoy support in a community based on their own choices and desires.<sup>105</sup>

**GENERAL RECOMMENDATION  
FOR REMEDYING THE IDENTIFIED SHORTCOMING**

**It is necessary to intensify activities focused on deinstitutionalization in terms of abandoning the practice of a long-term holding of persons with disabilities in a robust, dislocated social welfare homes, with the aim of providing for them and allowing them to have their lives in a community.**

**Social welfare homes should abandon the practise to isolate beneficiaries.**

**It is necessary for the regulations to envisage conditions and procedures for restriction of movement and physical restraints of beneficiaries of social welfare homes.**

**It is necessary to undertake measures so as to ensure a sufficient number of staff (doctors, pedagogists and caretakers) in the institutions of social welfare homes.**

**It is necessary to ensure that children are not placed together with adult beneficiaries in the institution of social welfare homes.**

**It is necessary to ensure continuous training sessions for the staff of the social welfare homes in prohibition of torture, standards related to physical restraints of beneficiaries, and in particular in the treatment by medical staff in line with the Istanbul Protocol.**

## **6.6. Treatment of refugees / migrants and overview of the refugee crisis**

In the course of 2015, the NPM made special attention to monitoring the status of a large number of refugees and migrants, who in the course of the refugee crisis passed through the Republic of Serbia. Out of a large number of visits conducted, 59 were with the purpose to examine whether the treatment of refugees and migrants by competent authorities was in line with the applicable regulation and international standards. The following authorities were visited: police administration and police stations in their composition; regional centres of border police; asylum centres; reception centres; Reception Centre for Foreigners in Padinska Skela; Airport "Nikola Tesala"; reception units for accommodation of minor unaccompanied foreigners; centres for social work and correctional and educational institutions. Out of the total number of visits, 50 visits were announced, whereas 9 visits were with no previous notice sent to a public authority. Based on the visits, the total of 30 reports were composed, and the total of 36 recommendations were issued in them. Out of the total number of recommendations issued, competent authorities acted in line with 24, 2 recommendations were not complied with, and the compliance with the remaining 10 is still being followed.

According to the data of the Ministry of the Interior, in the course of 2015, almost 6,000 refugees / migrants were registered and they were issued a certificate of the expressed intention to seek asylum. Majority of them did not express that they wanted asylum in the

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<sup>105</sup> Concluding observations of the UN Committee on the Rights of Persons with Disabilities to the Report of the Republic of Serbia on the implementation of the UN Convention on the Rights of Persons with Disabilities, adopted on the 15<sup>th</sup> session of the Committee, paragraph 28 and 40, pages 5 and 6. Concluding observations are available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fSRB%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fSRB%2fCO%2f1&Lang=en)

Republic of Serbia, however, police officers despite that fact issued them these certificates of the expressed intention to seek asylum (almost all of those persons left the territory of the Republic of Serbia in a two-day time). By the actions of competent authorities of the Republic of Serbia, a wrong impression was made about the number of persons expressing their intention to seek asylum. At the same time, it took a lot of time to have these certificates issued, and the NPM stressed this fact.<sup>106</sup> After the recommendations of the NPM, in the Reception Centre in Preševo<sup>107</sup> the procedure of issuance of certificates of expressed intention to seek asylum was expedited, and at the Airport "Nikola Tesla"<sup>108</sup> all persons who were issued certificated of the expressed intention to seek asylum were being photographed and fingerprinted, which ensured that all migrants / refugees entering the territory of the Republic of Serbia were registered.

Despite the fact that the Government of the Republic of Serbia had adopted the Decision on issuance of the certificate upon arrival to the territory of the Republic of Serbia to those migrants coming from the countries where their lives had been put under danger<sup>109</sup>, in the course of 2015, not a single certificate was issued in line with the mentioned Decision. With such a certificate, persons may stay in Serbia for 72 hours, and may use bank services, stay in the facilities providing accommodation and get necessary medical aid.

Despite a large number of the issued certificates of the expressed intention to seek asylum in the Republic of Serbia, in the course of 2015, only 699 persons were registered, and 586 persons submitted the application for asylum, and 16 of them were granted refuge, and 14 subsidiary protection, applications for asylum of 29 persons were rejected, 11 persons were denied their application for asylum, and the procedure was discontinued for 547 persons.

In 2015, the total of 11,360 persons (total capacities of the asylum centres were 1,060 places) were received in the asylum centres. Out of that number, the total number of women amounted to 2,294, accompanied minors to 1,284 and unaccompanied minors to 1,278. At the same period, the total of 10,615 persons left asylum. It can also be concluded from the aforementioned that persons transiting Serbia did not have real intention to seek asylum in the Republic of Serbia, for as their number increased, the number of persons coming to the asylum centres reduced, and the persons received in the asylum centres did not stay there for a long period of time, i.e., almost all of them at their free will left the centres and continued their journeys.

The main refugee transit route towards the countries of the Western Europe was passing through Hungary, until September 15, 2015, when Hungary closed its border-crossing points towards Serbia. Then, thousands of refugees stayed at the border crossing points Horgoš 1 and Horgoš 2, trying to cross the border. After the construction of wall and closure of border, several days after, at Horgoš 1, police officers of the Hungarian Police received five persons every hour. As a rule, their applications were rejected, and after issuance of the decision on denial of stay, persons were brought outside the fence, that separated Hungary from Serbia without any request for readmission sent to the Republic of Serbia and without any approval of the Serbian competent authorities that these persons would be received.

Despite the fact that it was obvious that the border with Hungary would be completely closed, officers of the Regional Centre of the Border Police towards Hungary did not receive any official notification or instruction of the Ministry of the Interior instructing for their actions, and the NPM expressed its opinion in that regards that the Ministry of the Interior should act proactively and instruct the work of its organizational units, submitting them all relevant data

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<sup>106</sup>Until the opening of the Reception Centre in Preševo, Police Station in Preševo was overburdened with work. For the sake of comparison, in May the total of 853 certificates of the intention to seek asylum were issued, and in June 7,141, whereas only for the first seven days of July, they issued 3,207 certificates.

<sup>107</sup> Visits to the Reception Centre in Preševo were paid on 24<sup>th</sup> of November and 12/07/2015

<sup>108</sup> The NPM Report on the visit to the Airport "Nikola Tesla", no. 71-59/15 of 07/03/2015

<sup>109</sup> "Official Gazette of the RS", number 81/15

and guidelines necessary for their operations, even before the occurrence of a crisis situation for which there was a possibility to occur.

The transit route of the refugees through Serbia was redirected towards Šid. As of the closure of the border with Hungary, only in ten days, the total of 49,509 refugees passed to the Republic of Croatia, which then caused destabilization of the relationships between the two countries and led to the closure of all border crossing points. Refugees entered the surrounding fields in the no-man-land between Serbian-Croatian borders and stayed there until the Croatian police officers let them enter the territory of Croatia. After that, the Agreement between the Ministry of the Interior of Serbia and the MoI of Croatia on Cross-Border Cooperation was signed. As a result of the signed Agreement, a direct line from Serbia (Šid) to Croatia (Slavonski Brod) was established for the transport of refugees.

## 1. Organizing of transit trough Serbia

Transit of refugees through Serbia was not organized in a sufficiently efficient manner and in that process the risks of corruption and actions of informal groups were quite serious.<sup>110</sup> Namely, refugees used to cross, on foot, the Serbian-Macedonian border using dirt roads going towards Miratovac. Certain part of that road, vulnerable categories of these persons (disabled persons, pregnant women, women with children, sick and exhausted persons) were forced to cross on their own so as to reach the vehicles that would take them to the Camp in Miratovac. Besides, despite the fact that the vans of the International Organization for Migration (IOM) and of the UNHCR were transporting vulnerable categories from the camp in Miratovac to the reception Centre in Preševo, these vehicles were not able to transport all persons falling under the vulnerable category of persons. The access to the camp in Miratovac was allowed only the vans of the IOM and UNHCR, but not to the other buses that would transport refugees / migrants free of charge. As a large number of them were passing the route from Miratovac to the village of Miratovac on foot, and therefrom were transported by buses free of charge to the Reception Centre in Preševo, the NPM recommended to allow the access to the camp in Miratovac to all those vehicles that transport refugees free of charge to the Reception Centre in Preševo. From Preševo, refugees, on their own expenses, used private carrier buses, but also taxis to transport them to the Reception Centre in Adaševci, and from there to Šid, where they would embark on the train, that would take them to Croatia. The bus ticket was EUR 35 per persons, and they paid in that foreign currency, with no invoice issued. Buses were mainly overcrowded, but no inspections controlled them.

## 2. Accommodation and reception conditions

All state authorities and non-state authorities, Commissariat for Refugees and Migrations, Ministry of the Interior, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Health, Ministry of Defence, international and non-governmental organizations were involved in the reception and provision for activities. Huge challenge was to establish coordination and harmonize activities of all participants.<sup>111</sup> Due to a large inflow of people and insufficient number of the engaged staff in the reception centres, it occurred that material conditions of accommodation, particularly hygiene – sanitary conditions were very poor.<sup>112</sup> Likewise, in order to protect persons with disability, the NPM sent the recommendation to the Reception Centre in Preševo, to ensure gradual reconstruction of rooms for an adequate accommodation of all persons.<sup>113</sup> In line with the NPM recommendations, an adequate canopy was set in front of the Reception Centre in Preševo, so that people waiting in queue could have shelter from unfavourable weather conditions. Likewise, acting in line with the NPM recommendations, all reception centres put on a visible places house rules, translated into

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<sup>110</sup>Analysis: Differences in treatment of refugees in the Balkan route, no. 71-120/15

<sup>111</sup> Analysis: Differences in treatment of refugees in the Balkan route, no. 71-120/15

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

languages refugees and migrants understand, and different leaflets on their rights and obligations and other relevant information were also made available for them. Besides numerous leaflets being distributed to them, they were also provided with a mobile application through which these persons may inform themselves on how to seek asylum and about their rights, as well as on any other practical information in the course of their stay in Serbia (situation on the border-crossing points, bus schedules and similar information).

### 3. Treatment of minors (unaccompanied minors)

In the course of 2015, the total of 172,965 certificates for minors were issued, whereas the total of 10,645 certificates were issued for unaccompanied minors. The Asylum centres housed the total of 1,278 unaccompanied minors, who soon voluntarily left the centers, whereas according to the data available to NPM, the total of 100 unaccompanied children were in the centres for minor foreigners in Belgrade and Niš.<sup>114</sup>

Institutional provision for unaccompanied children is performed in the institutions of opened type and it often occurs that they leave voluntarily the institutions they are placed in, with no further control of the competent authorities.

Ministry of Labour, Employment, Veteran and Social Affairs, in the new circumstances, amended the valid regulations by a special Instruction on Procedure of Guardianship Authority<sup>115</sup>. However, the envisaged procedures are mainly focused on formalities.

The police officers in the Reception Centre in Preševo do not take photos of minors under the age of 14 when issuing certificated on the expressed intention to seek asylum. In the most of the cases, a parent or a guardian of minor is deemed to be a person that introduced him/her as such (in case s/he does not have any IDs to prove that, and the most of the cases are such). Taking into account the aforementioned, in the possible cases of child abuse, where criminal offenders are foreigners introducing themselves as parents or guardians of minors, photos of minors under the age of 14 would be useful to the competent authorities. In the Reception Centre in Preševo, there is no reliable way to determine whether minors are accompanied or not. A large number of refugees / migrants pass through Centre, and a large number of children are among them. Procedure for issuance of certificate of expressed intention to seek asylum to refugees / migrants is performed very quickly. Due to expedited issuance, it happens that police officers, when issuing certificates, make incorrect assessment whether minors are accompanied or not.

For the sake of the protection, the NPM sent recommendations to the Ministry of the Interior that all minors be photographed when being issued certificate of the expressed intention to seek asylum, as well as when issuing certificates, in the field other data and remarks, to enter first and last name of persons who accompanied them, as well as the number of certificate issued to these persons.<sup>116</sup> However, these recommendations were not complied with.

In addition, for the purpose of smooth conduct of confidential interviews by the employees of the Centre for Social Work engaged in the reception centres, the NPM recommended equipping special offices for these purposes.<sup>117</sup>

### 4. Misdemeanour sanctions imposed on refugees

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<sup>114</sup> Report on the NPM visit to Vasa Stajić, no. 71-64/15 of 15. 7. 2015 and the Report on the NPM visit to the Children and Juvenile Correctional Institution in Niš, no. 71-65/15 from 07/15/2015

<sup>115</sup> Instructions on procedure of centres for social work and institutions for social protection dedicated for accommodation of beneficiaries when providing protection and accommodation of minor unaccompanied migrants, no. 110-00-00469/2015-14 from 07/10/2015

<sup>116</sup> Report of the NPM visit to the Reception Centre in Preševo, Kasma in Miratovci, police stations in Preševo and Bujanovac, Regional Centre of Border Police towards Macedonia and Centre for Social Work in Perševo, no. 71-85/15 from 09/21/2015

<sup>117</sup> *Ibid.*

In the course of the reporting period, the total of 14,343<sup>118</sup> motions to institute misdemeanour proceedings were filed due to illegal border crossing and the most of the motions were filed by the PA Kikinda (6,018) and PA Subotica (5,784). In order to stop practices of misdemeanour sanctioning of persons who fled from the war stricken counters, the NPM sent its recommendation<sup>119</sup> to the Ministry of the Interior to stop with the practice of filing the motions to instigate misdemeanour proceedings due to illegal border crossing and illegal stay. After the sent recommendation, the number of filed motions to instigate misdemeanour proceedings was significantly reduced, and in November the total number of filed motions amounted to 36, whereas in December to 41. Complying with the NPM recommendations, the DP Subotica, where a large number of misdemeanour offenders were, abandoned the practice to inform diplomatic and consular missions without an explicit consent by a foreigner serving his/her prison term for a committed misdemeanour.

**GENERAL RECOMMENDATION  
FOR REMEDYING THE IDENTIFIED SHORTCOMING**

**It is necessary to improve the current regulations regulating the status of a foreigner and asylum seeker in the Republic of Serbia.**

**It is necessary to compose a Plan for providing for refugees / migrants who are stranded or returned to Serbia; Plan on how to treat those who were not granted any protection in Serbia; as well as a Plan for integration of those who were granted asylum in Serbia.**

**The Ministry of the Interior shall separate the Office for Asylum from the Border Police Administration and establish an efficient asylum system.**

## **6.7. Reception of returnees in the readmission procedure**

In the course of 2015, the NPM conducted 6 visits to the Airport "Nikola Tesla". In the course of these visits, police officers were waiting for the groups of returnees upon the landing of an airplane, and, then they informed them in the language they understand about their rights and the way to exercise them. In case of a need, they, with no delay provided them with urgent medical protection. After that, they conducted interviews in the rooms of the Office for Readmission of the Commissariat for Refugees and Migrations. On that occasion, they gathered all personal and health-related data on returnees with their consent for giving this information. Then, they provided them with the information on the readmission procedure and their rights and obligations; questionnaires on their needs were filled in so as to provide them with necessary assistance in the coming period. They were enabled to call their cousins and friends, and they were also informed that they could address to the Commissariat for Migrants and other services at the local level for further assistance. In the case they do not have any money for transport to their residence places, they were provided with the transport.

Returnees who do not have any family or any other type of support and accommodation, are sent to the centres for emergency reception, established in Šabac, Bela Palanka and Zaječar. In these centres, they are provided with accommodation and food in duration of 14 days.

All officials at the Airport "Nikola Tesla" in Belgrade (representatives of the Police Border Station and Office for Readmission of the Commissariat for Readmission of the Commissariat for Refugees and Migrations) established the cooperation with the NPM, as envisaged by law,

<sup>118</sup> Data received from the MoI.

<sup>119</sup> Report on the NPM visits to the Regional Centre of Border Police towards Hungary, Police Administration in Subotica, Polices Station in Kanjiža and Centres for Social Work in Kanjiža and Subotica, no. 71-88/15 form 10/07/2015

and provided it with necessary information. Based upon the found state of affairs, no form of ill-treatment of persons returned through the readmission procedure was observed.

In the course of 2015, the NPM initiated monitoring of forced return of the citizens of the Republic of Serbia from the EU countries, where their application for asylum had not been accepted. Representative of the NPM monitored the way police officers treated persons who were returned by a special charter flight from Dusseldorf (Germany) to Serbia on November 25, 2015. Throughout the monitoring, no irregularities in actions taken by state authorities were observed, and the cooperation with the police was extremely good. Forced return was conducted in cooperation with the police forces of Germany, Netherlands, Belgium and Serbia, all under the organization of the European Border and Coast Guard Agency (*FRONTEX*). The total of 65 persons were returned to Serbia, specifically: 53 persons from SR of Germany, 9 from the Kingdom of Netherlands and 3 from Belgium.<sup>120</sup>

In the course of 2015, in line with the Agreement on Readmission, the Republic of Serbia received around 5,500 foreign citizens, and most from Hungary (around 5,240). Most of them were from Syria (3,955), Iraq (511) and Afghanistan (220). Return of the citizens of third countries in the readmission procedures to the neighbouring countries was realized only with Bulgaria, whereas the Agreement on Readmission with Macedonia was not even implemented in the course of 2015. In the course of the mentioned period, the total of 119 citizens of third countries were returned to Bulgaria, and most of them in the first half of the year, and they were mainly citizens of Syria (53), Afghanistan (33) and Iraq (31).

In the course of November not a single citizen from the war stricken territories was returned under the implementation of the Agreement, whereas in December only 6 foreigners coming from the war stricken territories were returned. Despite the fact that there were no returns of the citizens of third countries in the readmission procedure, by the end of the year, the issue of "informal return" from the migrant route of so called "economic migrants" became topical.

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<sup>120</sup> Report on the NPM on the monitoring of the readmission procedure on an organized flight from Dusseldorf, no. 71-115/15, from 12/16/2015



## ANNEX I

### NPM recommendations issued to the public authorities of the Republic of Serbia

#### *I-1 - Recommendations issued to the Police Administrations and Police Stations*

##### **Police Administration Požarevac<sup>121</sup>**

PA Požarevac shall undertake certain measures and activities so as to adapt and equip rooms for detention in line with the applicable standards.

PA Požarevac shall provide first aid kits and organize training session of its staff in providing the first aid.

Police officers of the PA Požarevac shall ensure that reception of forms on personal rights be confirmed by a detainee's signature on the second copy, which is kept under the file on detention, and in case a detainee refuses to receive the notification or to confirm the reception of the form on his/her rights, it shall be noted that a person has refused to sign the form.

In the PA Požarevac, the case files formed due to deprivation of liberty or detention of a person shall contain no medical documentation, composed for that person in relation with the check-ups made in the course of his/her detention. Exceptionally, information on health-related conditions of a detainee shall be accessible to police officers only if that is of relevance for such specific case. In other words, police officers should have access to the data on health conditions of persons deprived of their liberty only to the extent necessary to perform their job. Police officers should get a written report from a doctor containing all information relevant for their further actions: opinion of a doctor whether a person is in a health condition that allows him/her to be detained in the police, notes on any injury or health problem, whether s/he needs any care in the course of detention (for instance, therapy, special food and similar), the way to provide it, and so forth.

##### **Police Administration Kikinda<sup>122</sup>**

The Ministry of the Interior shall translate and send to the Police Administration in Kikinda standardized forms on the rights of detainees in Hungarian language.

PA Kikinda shall ensure that all persons detained in line with the Law on Criminal Procedure receive written notification on the rights of persons brought in or detained, in line with provisions under item 4 of the Instructions on Treatment of Persons Brought-in or Detained, as a special form made in the language that person understands. All arrested and detained person in line with the LCP, shall be served a special form, in line with provision of the LCP.

The documentation - case files composed for the reason of depriving of liberty or detention of persons shall contain no medical documentation for that person, the documentation composed after medical check-ups due to detention. Exceptionally, information on health-related conditions of a detainee shall be accessible to police officers only if that is of relevance for such specific case. In other words, police officers should have access to the data on health conditions

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<sup>121</sup> Report on the visit to PA Požarevac 71 - 5/15

<sup>122</sup> Report on the visit to PA Kikinda 71 - 8/15

of persons deprived of their liberty only to the extent necessary to perform their job. Police officers should get a written report from a doctor containing all information relevant for their further actions: opinion of a doctor whether a person is in a health condition that allows him/her to be detained in the police, notes on any injury or health problem, whether s/he needs any care in the course of detention (for instance, therapy, special food and similar), the way to provide it, and so forth.

Each detained person in the PA Kikinda shall be presented the transcript of his/her detention for insight, which shall be confirmed by a signature of a detainee, and in case a detainee refuses to sign, a statement that a person has refused to sign the transcript shall be noted in the transcript. Medical check-ups of detained persons and provision of medical help to these persons shall be noted in the transcripts of detention.

The Ministry of the Interior shall amend the Instructions on Treatment of Persons Brought-in or Detained in a way to prescribe that all restraint devices shall be used only if really necessary, and not in the course of transport, i.e. transport of each person being brought-in, as it is the case now. The police officers of the PA Kikinda shall not, when bringing persons in their official vehicles handcuff every person, but shall do so only due to justified reasons, and in the cases stipulated by law.

The NPM standpoint is that in the future work, police officers of the PA Kikinda should get written statements from persons subject to coercive measures in relation with circumstances surrounding the use of coercive measures and infliction of possible injuries so as to have more complete insight in all circumstances of the case, in order to assess justification and regularity of the use of coercive measures in the most objective fashion.

PA Kikinda shall undertake measures so as to regularly maintain hygiene of toilet fixtures, used by detained persons.

PS Kanjiža shall undertake all adequate measures in order to enable that detention places have sufficient natural and artificial light as well as to ensure adequate inflow of fresh air to the detention room. PS Kanjiža shall undertake painting of detention rooms and shall regularly maintain their hygiene.

PS Kanjiža shall undertake all necessary measures so as to secure that all video recordings are kept and archived at least 30 days and notifications about CCTV should be placed in the visible places in the facility.

PS Novi Kneževac shall enable that detention rooms be sufficiently illuminated by artificial light, shall paint detention rooms and regularly maintain hygiene. PS Novi Kneževac shall undertake all adequate measures to allow all detainees have adequate toilet fixtures, which shall be placed either in the room or in its close vicinity.

PS Novi Kneževac shall undertake all necessary measures to cover the room with the CCTV system. Video recordings shall be kept and archived for a period not less than 30 days and notifications about CCTV should be placed in the visible places in the facility.

PS Senta shall paint its detention rooms and shall regularly maintain their hygiene. PS Senta shall undertake all adequate measures to allow all detainees have adequate toilet fixtures, which shall be placed either in the room or in its close vicinity.

PS Čoka shall ensure that detention rooms have inflow of fresh air, heating element and shall paint all detention rooms. Their hygiene shall be regularly maintained. PS Čoka shall undertake all adequate measure to allow all detainees have adequate toilet fixtures, which shall be placed either in the room or in its close vicinity.

PA Kikinda shall secure first aid kits for the headquarters of the Administration and for all police stations in its composition.

PA Kikinda shall improve fire system in a way that it shall place evacuation plan and instructions in case of fire in all visible places in the building of the Administration, all with the aim of protection of physical integrity of detainees. PA Kikinda and PSs in its composition shall organize and conduct adequate trainings of police officers in fire protection.

### **Police Administration Kraljevo<sup>123</sup>**

PA Kraljevo and police stations in its composition shall give to the persons detained in line with the LCP written notifications on their rights as stipulated under the current LCP and on the rights envisaged under item 4 of the Instructions.

Police officers shall be present in the course of medical check-up only upon an explicit request of a doctor, who shall compose the official note wherein s/he shall in a clear way present all reasons for the presence of a police officer. Police officer is obliged to warn a doctor about all security aspects relevant for issuance of doctor's decision on the presence of non-medical staff during medical check-up.

PA Kraljevo shall in its future actions give the decision on detention to detainees for their signature, and in case a person refuses to sign a decision, a written statement thereto shall be entered saying that a person has refused to sign the decision. In the PS Raška, detainee shall be enabled to keep given decision on detention, and all other relevant documentations (forms on the rights, confirmation of seized items and similar) with himself/herself in the course of detention. Likewise, conditions for composing an appeal against the decision on detention shall be enabled, as well as using any other legal remedies.

In the headquarters of the PA Kraljevo detention time under the LCP shall be calculated from the moment of deprivation of liberty, and not from the moment of the issuance of a decision on detention.

In the PS Rašča, every detainee shall be given for their insight transcript of detention, which shall be confirmed by his/her signature, and in case detainee refuses to sign the transcript, the statement that a person has refused to sign transcript shall be entered.

The Ministry of the Interior shall amend the Instructions on Treatment of Persons Brought-in or Detained in a way to prescribe that all restraint devices shall be used only if really necessary, and not in the course of transport, i.e. transport of each person being brought-in, as it is the case now. The polices officers of the PA Kraljevo shall not, when bringing persons in their official vehicles handcuff every person, but shall do so only due to justified reasons, and in the cases stipulated by law.

The NPM standpoint is that in the future work, police officers of the PA Kikinda should get written statements from persons subject to coercive measures in relation with circumstances surrounding the use of coercive measures and infliction of possible injuries so as to have more complete insight in all circumstances of the case, in order to assess justification and regularity of the use of coercive measures in the most objective fashion.

PS Raška shall paint all detention rooms and shall regularly maintain hygiene there. PS Raška shall undertake all measures in order to ensure sufficient inflow of natural light in these rooms as well as ventilation – inflow of fresh air. Heating system shall be installed in the rooms of the PS Raška.

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<sup>123</sup> Report on the visit to PA Kraljevo 71 -12/15

PS Raška shall place notification that the room is under the video surveillance in a visible place within the detention units.

PA Kraljevo and PSs in its composition shall organize and conduct adequate training of police officers in fire protection. Likewise, PS Raška and PS Vrnjačka Banja shall improve fire system in a way that they shall place evacuation plan and instructions in case of fire in all visible places in their buildings all with the aim of protection of physical integrity of detainees.

### **Police Administration Čačak<sup>124</sup>**

In PA Čačak, PS Ivanjica and PS Lučani in Guča, a written notification on the rights, as stipulated under item 4 of the Instructions, shall be issued to detainees in line with the Law on the Road Traffic Safety and the Law on Misdemeanours. PA Čačak and police stations in its composition shall serve persons two written notifications on the rights of the detained in line with the LCP. One written notification shall contain all rights stipulated under the LCP, whereas the other shall contain all rights stipulated under item 4 of the Instructions. PA Čačak and police stations in its composition shall compose these written notifications in two copies, one to be served to a detainee, and the other to be placed in the case file on detention. Both copies of the written notification about the rights must be signed by detainees or the statement that a person has refused to sign them shall be written on them.

The Ministry of the Interior shall amend the valid Instructions on Treatment of Persons Brought-in or Detained and harmonize them with the Council of Europe standards, which shall then stipulate that police officer shall not be present in the course of a medical check-up of detainees, unless a doctor making a check-up requires so. Police officer is obliged to warn a doctor about all security aspects relevant for issuance of doctor's decision on the presence of non-medical staff during medical check-up. If a doctor requires their presence, police officers shall make written statement thereto and shall be present in the course of medical check-up in a way that they shall not be able to hear the conversation between a doctor and a detainee.

In the PA Čačak and police stations in its composition a transcript of detainee shall be composed, and it shall be to the possible extent in line with the Rulebook on police authorities.

In the PS Ivanjica every detainee shall be served transcript of detention, which shall be confirmed by a detainee's signature, and in case a detainee refuses to sign a transcript, it shall be stated on the transcript that a person has refused to sign it.

The NPM standpoint is that in the future work, police officers of the PA Čačak should get written statements from persons subject to coercive measures in relation with circumstances surrounding the use of coercive measures and infliction of possible injuries so as to have more complete insight in all circumstances of the case, in order to assess justification and regularity of the use of coercive measures in the most objective fashion.

In the PS Lučani in Guča confirmation of items returned shall be served to a detainee. A copy of a confirmation to be kept under the file shall be signed by a detainee, and in case a detainee refuses to sign the confirmation, that shall be stated in writing on the confirmation.

PA Čačak shall undertake measures falling under its competences so as to finish the adaptation of the detention room in line with the standards and shall cease to use the practice of police detention within the official offices.

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<sup>124</sup> Report on the visit to PA Čačak 71 - 13/15

PA Čačak shall undertake measures in order to improve fresh and artificial illumination inflow to the detention rooms and enable adequate fresh air inflow.

PA Čačak shall undertake all necessary measures to improve the CCTV system in the Traffic Police Branch Office (TPBO) in the detention room and ensure privacy of detainees, in a way that space around toilet shall not be clearly visible (for instance, a part of picture shall be blurred).

PA Čačak shall install in TPBO, in the premises for police detention, a button for on-duty police officer alert call.

PS Gornji Milanovac shall undertake all necessary measures to improve natural and artificial illumination and ensure ventilation in the detention rooms. PS Gornji Milanovac shall paint detention rooms and shall maintain them regularly.

PS Gornji Milanovac shall undertake all adequate measures to allow all detainees have adequate toilet fixtures, which shall be placed either in the room or in its close vicinity.

PS Gornji Milanovac shall post the notification of the video surveillance in the detention room.

PS Gornji Milanovac shall install a button for on-duty police officer alert call in the premises for police detention.

PS Ivanjica shall paint all detention rooms and shall maintain their hygiene regularly.

PS Ivanjica shall undertake all adequate measures to allow all detainees have adequate toilet fixtures, which shall be placed either in the room or in its close vicinity.

It is necessary to ensure that premises for police detention, entrance to station, as well as all corridors used to take a detainee in the PS Ivanjica be covered by the CCTV, and to enable recording and storing of the recorded material, for the reason of the protection of security of detainees and reduction of the risk from violence and other possible events that might jeopardize security. PS Ivanjica shall install a button for on-duty police officer alert call in the premises for police detention.

PS Lučani shall undertake all necessary measures to improve the CCTV system in the detention room and ensure privacy of detainees, in a way that space around toilet shall not be clearly visible (for instance, a part of picture shall be blurred).

PA Čačak shall secure first aid kits for the TPBO Čačak, as well as for all police stations in Gornji Milanovac, Ivanjica and Guča.

PA Čačak shall improve fire system in a way that it shall place evacuation plan and instructions in case of fire in all adequate and visible places in the buildings of the police stations, all with the aim of protection of physical integrity of detainees. PA Čačak and PSs in its composition shall organize and conduct adequate trainings of police officers in fire protection.

#### **Police Administration Leskovac<sup>125</sup>**

PA Leskovac shall serve to all persons detained in line with the LCP a written notification of the rights stipulated under the valid LCP and a form of the rights envisaged under item 4 of the Instructions.

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<sup>125</sup> Report on the visit to PA Leskovac 71 -32/15

The case files composed for the reason of depriving of liberty or detention of persons shall contain no medical documentation for that person, the documentation composed after medical check-ups due to detention. Exceptionally, information on health-related conditions of a detainee shall be accessible to police officers only if that is of relevance for such specific case. In other words, police officers should have access to the data on health conditions of persons deprived of their liberty only to the extent necessary to perform their job. Police officers should get a written report from a doctor containing all information relevant for their further actions: opinion of a doctor whether a person is in a health condition that allows him/her to be detained in the police, notes on any injury or health problem, whether s/he needs any care in the course of detention (for instance, therapy, special food and similar), the way to provide it, and so forth).

Police officers shall be present in the course of medical check-up only upon an explicit request of a doctor. Police officer is obliged to warn a doctor about all security aspects relevant for issuance of doctor's decision on the presence of a police officer during medical check-up. In case a doctor requests a police officer be present in the course of a medical check-up, s/he shall compose the official note thereto and a police officer shall be present in the course of a medical check-up in a way that s/he cannot hear a conversation between a doctor and a detainee, but shall solely be able to visually monitor a check-up of a detainee.

In the PA Leskovac a detention time shall be calculated from the moment of deprivation of liberty, and not from the moment of the issuance of a decision on detention.

PA Leskovac shall secure fresh air inflow to detention rooms, as well as adequate illumination. Likewise, it shall improve hygiene conditions in its detention rooms.

PA Leskovac shall improve fire system in a way that it shall place evacuation plan and instructions in case of fire in all visible places in the building all with the aim of protection of physical integrity of detainees. PA Leskovac shall secure first aid kits.

#### **Police Administration Kragujevac<sup>126</sup>**

In the PA Kragujevac and police stations in its composition a written notification on the rights, as stipulated under item 4 of the Instructions, shall be issued to detainees in line with the Law on the Road Traffic Safety and the Law on Misdemeanours. PA Kragujevac and police stations in its composition shall serve persons detained in line with the LCP two written notifications on the rights. One written notification shall contain all rights stipulated under the LCP, whereas the other shall contain all rights stipulated under item 4 of the Instructions. PA Kragujevac and police stations in its composition shall compose notifications about the rights in two copies, one shall be served to a detainee and the other shall be filed in the case file on detention. One copy of the written notification on the rights, to be filed under the case file on detention, must be signed by a detainee or shall contain a statement that a person has refused to sign it.

PA Kragujevac and police stations in its composition shall not file under the case file on detention any medical documentation with sensitive data on a detainee.

The Ministry of the Interior shall amend the valid Instructions on Treatment of Persons Brought-in or Detained and harmonize them with the Council of Europe standards, which shall then stipulate that police officer shall not be present in the course of a medical check-up of detainees, unless a doctor making a check-up requires so. Police officers of the PA Kragujevac and police stations in its composition shall not be present in the course of a medical check-up of

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<sup>126</sup> Report on the visit to PA Kragujevac 71 - 34/15

detainees, unless a doctor making a check-up requires so. Police officers are obliged to warn a doctor about all security aspects relevant for issuance of doctor's decision on the presence of non-medical staff during medical check-up. If a doctor requires their presence, police officers shall make written statement thereto and shall be present in the course of medical check-up in a way that they shall not be able to hear the conversation between a doctor and a detainee.

PS Knić and PS Arandjelovac shall allow to detainees to keep with themselves a decision on detention and other relevant documentation (confirmation of seized items, form on the rights and similar).

The NPM standpoint is that in the future work, police officers of the PA Kragujevac should get written statements from persons subject to coercive measures in relation with circumstances surrounding the use of coercive measures and infliction of possible injuries so as to have more complete insight in all circumstances of the case, in order to assess justification and regularity of the use of coercive measures in the most objective fashion.

PS Lapovo and PS Knić shall give to every detainee to see the transcript of detention, which shall be confirmed by a detainee's signature, and in case that a detainee refuses to sign the transcript, the transcript shall contain statement that a person has refused to sign it.

The Ministry of the Interior shall amend the Instructions on Treatment of Persons Brought-in or Detained in a way to prescribe that all restraint devices shall be used only if really necessary, and not in the course of transport, i.e. transport of each person being brought-in, as it is the case now. The police officers of the PA Kragujevac and police stations in its composition shall not, when bringing persons in their official vehicles handcuff every person, but shall do so only due to justified reasons, and in the cases stipulated by law.

PA Kragujevac shall undertake all necessary measures to improve the CCTV system in the detention rooms and ensure privacy of detainees, in a way that space around toilet shall not be clearly visible (for instance, a part of picture shall be blurred).

PS Arandjelovac shall post the notification of the video surveillance in the detention room.

PA Kragujevac shall undertake all measures and activities to ensure one more detention room in the PS Arandjelovac.

PS Lapovo shall undertake all necessary measures to improve the CCTV system in the detention room and ensure privacy of detainees, in a way that space around toilet shall not be clearly visible (for instance, a part of picture shall be blurred). PS Lapovo shall post the notification of the video surveillance in the detention room.

PS Batočina shall undertake all adequate measures and activities to renovate and adapt the detention room in line with the applicable standards.

PA Kragujevac shall undertake all measures and activities to ensure one more detention room in the PS Rača.

PA Kragujevac shall secure first aid kits for the headquarters of the Administration, as well as for police stations in its composition.

PA Kragujevac shall improve fire system in a way that it shall place evacuation plan and instructions in case of fire in all visible places in the building of the Administration and in police stations within its composition all with the aim of protection of physical integrity of detainees. PA Kragujevac and police stations in its composition shall organize and conduct adequate trainings of police officers in fire protection.

### **Police Administration Niš<sup>127</sup>**

Police officers of the PA Niš shall besides verbal notification on their rights, serve to persons detained in line with the LCP, Law on Police, Law on Misdemeanours and Law on Road Traffic Safety a written form "The rights of person brought-in and detained". Reception of the form on the rights shall be confirmed by a signature of a detainee signed on the second copy, which shall be kept under the case file on detention, and in case a detainee refuses to sign the confirmation of the receipt of the forms on the right, the statement that person has refused to sign it shall be written on the form.

In the PA Niš, all detainees shall with no delay be served with decision on detention, as well as all other relevant documentation (form on the rights, confirmation of seized items, and similar), i.e., detainees shall be enabled to keep with themselves all the aforementioned documentation in the course of their detention.

The Ministry of the Interior shall amend the valid Instructions on Treatment of Persons Brought-in or Detained and harmonize them with the Council of Europe standards, which shall then stipulate that police officer shall not be present in the course of a medical check-up of detainees, unless a doctor making a check-up requires so. Police officer is obliged to warn a doctor about all security aspects relevant for issuance of doctor's decision on the presence of non-medical staff during medical check-up. If a doctor requires their presence, police officers shall make written statement thereto and shall be present in the course of medical check-up in a way that they shall not be able to hear the conversation between a doctor and a detainee.

PA Niš shall undertake all adequate measures and activities to adapt and equip detention rooms in line with the applicable standards.

PA Niš shall undertake all adequate measures to allow all detainees have adequate toilet fixtures, which shall be placed either in the room or in its close vicinity.

PA Niš shall install a button for on-duty police officer alert call in the premises for police detention.

PA Niš shall put notification that the detention room is under video surveillance in the visible place.

PA Niš shall organize and conduct adequate training of polices officers in providing first aid and ensure first aid kits.

### **Police Administration Pirot<sup>128</sup>**

PA Pirot and police stations in its composition shall serve persons detained in line with the LCP two written notifications on the rights. One written notification shall contain all rights stipulated under the LCP, whereas the other shall contain all rights stipulated under item 4 of the Instructions.

The PS Bela Palanka shall not file medical documentation containing sensitive data on a detainee in the case file on detention.

Police officers of the PS Bela Palanka shall not be present in the course of a medical check-up of detainees, unless a doctor making a check-up requires so. Police officers are obliged to warn a doctor about all security aspects relevant for issuance of doctor's decision on the presence of

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<sup>127</sup> Report on the visit to PA Niš 71 - 40/15

<sup>128</sup> Report on the visit to PA Pirot 71 - 50/15



non-medical staff during medical check-up. Police officers in the PS Bela Palanka shall in cases a doctor requires their presence, be present in the course of medical check-up in a way that they shall not be able to hear the conversation between a doctor and a detainee. Police officers of the PA Pirot and police stations in its composition shall, in case when medical check-up of a detainee is made, state in writing whether a police officer was present at a medical check-up or not. The Ministry of the Interior shall amend the valid Instructions on Treatment of Persons Brought-in or Detained and harmonize them with the Council of Europe standards, which shall then stipulate that police officer shall not be present in the course of a medical check-up of detainees, unless a doctor making a check-up requires so.

PS Bela Palanka shall enable its detainees to keep given decision on detention, and all other relevant documentations (forms on the rights, confirmation of seized items and similar) with himself/herself in the course of detentions.

In the PA Pirot and police stations in its composition, transcript of detention shall be given to a detainee for insight and signature if detained in line with the LCP.

Police officers in the PA Pirot and police stations in its composition shall not use restraints every time when transporting persons, but shall do so only after having cautiously observed specific circumstances which indicate to the need to handcuff certain person, and in the cases stipulated by law. The Ministry of the Interior shall amend the Instructions on Treatment of Persons Brought-in or Detained in a way to prescribe that all restraint devices shall be used only if really necessary, and not in the course of transport, i.e. transport of each person being brought-in, as it is the case now.

The NPM standpoint is that in the future work, police officers of the PA Pirot should get written statements from persons subject to coercive measures in relation with circumstances surrounding the use of coercive measures and infliction of possible injuries so as to have more complete insight in all circumstances of the case, in order to assess justification and regularity of the use of coercive measures in the most objective fashion.

Taking into account that the Law on the Protection of Persons with Mental Disorders prescribes police assistance, as well as bringing in of persons to a health care institution for the purpose of check-up (when there is a doubt that a person with mental impairment are concerned), the NPM standpoint is that it is necessary to organize training for police officers of all PA in the Republic of Serbia in treatment of persons with mental disorders.

PS Babušnica shall ensure adequate inflow of fresh air in its detention room.

PA Pirot shall undertake all necessary measures to install CCTV system in the detention room in the PS Babušnica, and to keep/archive recordings for a period not less than 30 days.

PS Bela Palanka shall undertake necessary measures and improve its CCTV system, so as to ensure that all video recordings are kept / archived for a period not less than 30 days. PS Bela Palanka shall undertake all necessary measures to ensure privacy of detainees in detention room, in a way that space around toilet shall not be clearly visible on the screen (for instance, a part of picture shall be blurred).

PS Dimitrovgrad shall undertake suitable measures so as to ensure that detention units are adequately illuminated with artificial light.

PA Pirot shall undertake necessary measures to ensure the detention room in the PS Dimitrovgrad is covered by CCTV and to keep and archive all video recordings for a period not less than 30 days.

PA Pirot shall improve fire system in a way that it shall place evacuation plan and instructions in case of fire in all visible places in the building of the Administration and police stations in its composition all with the aim of protection of physical integrity of detainees. PA Pirot and police stations in its composition shall organize and conduct adequate trainings of police officers in fire protection.

### **Police Administration Prokuplje<sup>129</sup>**

PS Žitorađa and PS Blace shall serve a written notification on the rights of persons detained in line with the Law on Road Traffic Safety, Law on Police and the Law on Misdemeanours. PA Prokuplje and police stations in its composition shall serve persons detained in line with the LCP two written notifications on the rights. One written notification shall contain all rights stipulated under the LCP, whereas the other shall contain all rights stipulated under item 4 of the Instructions. PA Prokuplje and police stations in its composition shall compose these written notifications in two copies, one to be served to a detainee, and the other to be placed in the case file of detention. Both copies of the written notification on the rights must be signed by a detainee or the statement that a person has refused to sign them shall be written on them.

Case files on detention of persons in the headquarters PA Prokuplje and in PS shall not contain medical documentation with sensitive data on a detainee.

PS Kuršumljija shall allow to detainees to keep with themselves a decision on detention and other relevant documentation (for instance, medical reports, confirmation of seized items, form on the rights and similar).

Transcript of detention in the PA Prokuplje and police stations in its composition shall be given for insight to persons detained in line with the LCP.

The NPM standpoint is that in the future work, police officers of the PA Prokuplje should get written statements from persons subject to coercive measures in relation with circumstances surrounding the use of coercive measures and infliction of possible injuries so as to have more complete insight in all circumstances of the case, in order to assess justification and regularity of the use of coercive measures in the most objective fashion.

Taking into account that the Law on the Protection of Persons with Mental Disorders prescribes police assistance, as well as bringing in of persons to a health care institution for the purpose of check-up (when there is a doubt that a person with mental impairment is concerned), the NPM standpoint is that it is necessary to organize training for police officers of all PA in the Republic of Serbia in treatment of persons with mental disorders.

TPBO Prokuplje shall undertake suitable measures so as to ensure that detention units are adequately illuminated with artificial light.

PS Žitorađa shall undertake adequate measures to resolve moist related problems on the wall around toilet fixture and shall regularly maintain hygiene. Likewise, a toilet fixture flushing button shall be installed in the detention room.

PS Kuršumljija shall with no delay cease to use detention room. PA Prokuplje shall undertake measures and activities in order to ensure adequate detention room in the PS Kuršumljija.

PS Blace shall undertake adequate measures to enable that detention room is adequately illuminated with both natural and artificial illumination.

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<sup>129</sup> Report on the visit to the PA Prokuplje 71 - 51/15

PA Prokuplje shall undertake measures to ensure that detention room in the PS Blace is covered by CCTV and to keep and archive all video recordings for a period not less than 30 days.

TPBO Prokuplje and PS Žitorađa shall undertake necessary measures to ensure that all video recordings are kept / archived for a period not less than 30 days. Likewise, TPBO Prokuplje and PS Žitorađa shall put notification about video surveillance in visible place of detention room.

PA Prokuplje shall improve fire system in a way that it shall place evacuation plan and instructions in case of fire in all visible places in the building of the Administration and police stations in its composition all with the aim of protection of physical integrity of detainees. PA Prokuplje and police stations in its composition shall organize and conduct adequate trainings of police officers in fire protection.

### **Police Administration Bor<sup>130</sup>**

The standpoint of the NPM is that a written notification of rules should be also translated in Romanian language.

PA Bor and police stations in its composition shall give to the persons detained in line with the LCP written notifications on their rights as stipulated under the current LCP and on the rights envisaged under item 4 of the Instructions. In the PS Majdanper detained persons shall be served a form of notification on the rights, and a copy of the notification to be kept in the case file shall be signed by a detainee or shall contain statement that a person has refused to sign it.

In the PA Bor and police stations in its composition, case files on detention shall not contain medical documentation with particularly sensitive data on a detainee. Police officer in the PA Bor and police stations in its composition shall put in the case file on detention only finding and opinion of a doctor about whether there are some difficulties for a person to be detained or eventually about inflicted injuries, and which may be of relevance for his/her detention.

Police officers shall not be present in the course of a medical check-up of detainees, unless a doctor making a check-up requires so. Police officers are obliged to warn a doctor about all security aspects relevant for issuance of doctor's decision on the presence of non-medical staff during medical check-up. Police officers shall in cases a doctor requires their presence, be present in the course of medical check-up in a way that they shall not be able to hear the conversation between a doctor and a detainee. Police officers in case when medical check-up of a detainee is made, state in writing whether a police officer was present at a medical check-up. The Ministry of Interior shall amend the valid Instructions on Treatment of Persons Brought-in or Detained and harmonize them with the Council of Europe standards, which shall then stipulate that police officer shall not be present in the course of a medical check-up of detainees, unless a doctor making a check-up requires so.

PA Bor shall provide food for detainees in the PS Negotin, in a way to avoid the current practice that police officers purchase food for detainees with their money.

PA Bor and police stations in its composition shall allow to detainees to keep with themselves a decision on detention and other relevant documentation. The PS Kladovo and PS Majdanpek shall in their future operations put a copy of a decision on detention in the case file on detention, and in case a person refuses to sign the decision, a statement thereto shall be entered in the case.

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<sup>130</sup> Report on the visit to PA Bor 71 – 109/15

In the PS Kladovo detention time under the LCP shall be calculated from the moment of deprivation of liberty, and not from the moment of the issuance of a decision on detention.

Police officers in the PA Bor, PS Negotin and PS Majdanpek shall compose a transcript of detention for persons detained in line with the Law on Police, Law on Misdemeanours and Law on Road Traffic Safety using a standard form, and a signed copy shall be filed in the case file on detention. The procedural practice in relation with the composition of a transcript of detention using the standard form after termination of the detention measure shall be standardized for all police stations. In the PA Bor and police stations in its composition transcript of detention shall be composed on a standard form and shall be given for signature and insight to a person detained in line with the LCP.

In the PS Majdanpek police officer shall not every time when transporting persons use restraints, but shall do so only after having cautiously observed specific circumstances which indicate to the need to handcuff certain person, and in the cases stipulated by law. The PS Majdanpek shall harmonize their procedure in relation with the use of restraints with the PA Bor and other police stations in its composition. The Ministry of the Interior shall amend the Instructions on Treatment of Persons Brought-in or Detained in a way to prescribe that all restraint devices shall be used only if really necessary, and not in the course of transport, i.e. transport of each person being brought-in, as it is the case now.

The NPM standpoint is that in the future work, police officers of the PA Bor should get written statements from persons subject to coercive measures in relation with circumstances surrounding the use of coercive measures and infliction of possible injuries so as to have more complete insight in all circumstances of the case, in order to assess justification and regularity of the use of coercive measures in the most objective fashion.

Taking into account that the Law on the Protection of Persons with Mental Disorders prescribes police assistance, as well as bringing in of persons to a health care institution for the purpose of check-up (when there is a doubt that a person with mental impairment are concerned), the NPM standpoint is that it is necessary to organize training for police officers of all PA in the Republic of Serbia in treatment of persons with mental disorders.

PA Bor shall also undertake measures in cooperation with the Ministry of the Interior, and shall install a button for on-duty police officer alert call.

PA Bor shall undertake adequate measures in cooperation with the Ministry of Interior in the PS Negotin and shall ensure detention rooms are in line with the applicable standards. Likewise, it shall undertake measures to adapt a toilet fixture.

PA Bor shall in cooperation with the Ministry of the Interior undertake measures to adapt detention rooms in the PS Kladovo in line with the applicable standards.

PA Bor shall in cooperation with the Ministry of the Interior undertake measures to form a detention room in the Police Department of the PS Majdanpek in Donji Milanovac in line with the applicable standards.

### **Police Administration Zaječar<sup>131</sup>**

PA Zaječar and police stations in its composition shall serve all detainees with written notification on their rights. A copy of notification to be filed in the case file shall be signed by a detainee or shall contain a statement that a detainee has refused to sign it. PA Zaječar and police stations in its composition shall serve to all persons detained in line with the LCP a

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<sup>131</sup> Report on the visit to PA Zaječar 71 - 111/15

written notification of the rights stipulated under the valid LCP and a form of the rights envisaged under item 4 of the Instructions.

PA Zaječar shall provide food for detainees in the evening hours, in a way to avoid the current practice that police officers purchase food for detainees with their money.

All detainees in the PA Zaječar and police stations in its composition shall be allowed to keep with themselves written document throughout their detention.

PA Zaječar and police stations in its composition shall make transcript of detention and shall give it for insight and signature to persons detained in line with the LCP.

The NPM standpoint is that in the future work, police officers of the PA Zaječar should get written statements from persons subject to coercive measures in relation with circumstances surrounding the use of coercive measures and infliction of possible injuries so as to have more complete insight in all circumstances of the case, in order to assess justification and regularity of the use of coercive measures in the most objective fashion.

Taking into account that the Law on the Protection of Persons with Mental Disorders prescribes police assistance, as well as bringing in of persons to a health care institution for the purpose of check-up (when there is a doubt that a person with mental impairment are concerned), the NPM standpoint is that it is necessary to organize training for police officers of all PA in the Republic of Serbia in treatment of persons with mental disorders.

PA Zaječar shall undertake suitable measures so as to ensure that detention units are adequately illuminated with artificial light.

PS Sokobanja shall ensure adequate inflow of fresh air and natural illumination in its detention room.

PA Zaječar shall undertake measures and activities to rehabilitate detention rooms in the PS Boljevac in line with the applicable standards.

PA Zaječar and police stations in its composition shall undertake all necessary measures to have audio / video recordings recorded and kept / archived for a period not less than 30 days. PA Zaječar and PS in its composition shall put notification that the detention room is under video surveillance in the visible place.

## ***I-2 - Recommendations issued to penal correctional institutions and district prisons***

### **Penal Correctional Institution in Požarevac - Zabela<sup>132</sup>**

The NPM expects that the Institution shall undertake with no delay all measures in order to create all conditions so that convicts placed in the Pavilion VII can spend their available time during a day with the other convicts for a period no less than 8 hours.

The NPM expects that the Institution shall undertake with no delay measures to involve convicts placed in the Pavilion VII in all sporting, cultural, educational and other social activities. Likewise, it is necessary to ensure systemic, organized, continuous individual and

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<sup>132</sup> Report on the visit to CI in Pžarevac 71 -4/15

group work of teachers with convicts, along with the provision of all necessary psychological and social support.

The NPM expects that the Institution shall undertake with no delay measures to stop using previously described humiliating methods and set the procedures that will not violate dignity of convicts, without jeopardizing security.

The NPM expects that the Institution shall broaden the CCTV coverage in the Pavilion VII, and ensure that the recorded material (desirably audio as well) be routinely kept on the hard disks (or on any other capacities) for at least 30 days.

The NPM expects that the Institution shall undertake, in cooperation with the Administration for the Enforcement of Criminal Sanctions, measures to harmonize the number of convicts with the current capacities of the Institution. The NPM expect that the Institutions shall also immediately stop using "three level beds".

The NPM expects that the Administration for the Enforcement of Criminal Sanctions shall undertake all available measures under its competence to comply with the CPT recommendation which relates to the regime applied on the convicts placed in the Special Department of the Penal Correctional Institution Zabela Požarevac, in way that it shall be fundamentally changed; individual plans should be developed and appropriate activities put in place aimed at providing appropriate mental and physical stimulation for prisoners.

The NPM expect that the Administration for the Enforcement of Criminal Sanctions shall with no delay employ a sufficient number of medical nurses / technicians so as to ensure their continuous (during working days, weekend and national holidays) - 24/7 -presence in a sufficient number in the Institution.

The NPM expects that the Administration for the Enforcement of Criminal Sanctions shall with no delay employ doctors so as to ensure a favourable relationship between the number of patients treated by one doctor, and to create conditions that a doctor be present in the Institution during a part of a day on a weekend and national holidays.

The NPM expects that the Institution shall ensure conditions to have exclusively medical staff giving to a convict a therapy (drugs) prescribed by a doctor.

The NPM expects that the Institution shall abandon with no delay a practice of presence of non-medical staff, particularly of representatives of the Security Service, in the course of medical check-ups. Their presence should represent an exception, and exclusively if a doctor requires so, having an obligation to enter reasons for such a request into the records on medical check-up.

The NPM expects that the Administration for the Enforcement of Criminal Sanctions shall undertake measures falling under its competence so as to ensure more active participation of the Ministry of Health when it comes to the issues of recruiting medical staff, their professional development, assessment of medical malpractice, issuance of certificates and inspection.

### **Penal Correctional institution in Niš - Pavilion II<sup>133</sup>**

The PCI Niš shall adapt its room - dormitory no. 12, as well as other dormitories on the ground floor of the Pavilion II, which are not in line with the applicable standards.

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<sup>133</sup> Report on the visit to 71 - 20/ 15\_CI Niš

PCI Niš shall install in all dormitories of the Pavillion II toilet fixtures, which shall be completely separated by walls and doors from the rest of the room, and shall have ventilation.

PCI Niš shall ensure that convicts spend their available time during a day (in the morning and afternoon hours) outside the room – dormitory, in the common rooms with the other fellow inmates.

PCI Niš shall enable all convicts placed in the Pavillion II to use TV and radio, in a way that it will secure socket outlets / socket inlets in all dormitories.

PCI Niš shall not place smokers and non-smokers in the same dormitory.

Rooms in the basement of the Pavilion II shall not be used for placement of persons deprived of their liberty.

PCI Niš shall check allegations that non-medical staff attend medical check-ups of convicts accommodated in the basement rooms of the Pavilion II and shall ensure that such a practice is abandoned if there is such a practice in place. Non-medical staff may be present in the course of medical check-ups only upon a request of a medical worker, and in such cases medical workers are obliged to note the presence of non-medical workers in the medical documentation.

A doctor in the PCI Niš shall submit to a warden adequate reports in writing, as well as findings and recommendations – periodical reports on the health conditions of convicts; report whenever it is established that a physical or mental condition of a convict was harmed or damaged due to extension or the way s/he served his/her prison sentence, as well as recommendation how this person should be treated; findings and recommendations regarding improvement of hygiene conditions in the institution and hygiene of convicts, state of sanitary conditions and devices, heating, illumination and ventilation in the rooms where the convicts are; findings and recommendations regarding necessary physical activities of convicts.

A warden of the PCI Niš shall undertake with no delay measures recommended by a doctor.

PCI Niš shall inform its convicts on the offer of products in the canteen and on their prices.

#### **District Prison in Leskovac<sup>134</sup>**

DP Leskovac shall ensure that convicts spend their available time during a day (in the morning and afternoon hours) outside the room – dormitory, in the common rooms with the other fellow inmates.

DP Leskovac shall within the prison department – Pavilion 3 ensure a common room for a daily stay of convicts with sufficient number of chairs and adequate number of tables, as well as all technical conditions so they can regularly follow radio and TV programme.

DP Leskovac shall ensure a necessary space to accommodate convicts within its Intake Department, in a way that each convict has at least eight cubic meters and four square meters of the space in the room - dormitory. A sufficient number of cabinets for storing personal items shall also be ensures in the Intake Department.

All suspects in the DP Leskovac shall be enabled to spend at least two hours in the open.

DP Leskovac shall remove surplus of beds from the room – dormitory, besides the Pavilion II where misdemeanour offender are placed, in a way that in case of full capacity each person in the room – dormitory has eight cubic meters and four square meters of space.

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<sup>134</sup> Report on the visit to DP Leskovac 71 – 33/15

DP Leskovac shall rehabilitate walls from moist and then paint all the rooms – dormitories used by persons deprived of their liberty.

DP Leskovac shall use all available measures and activities so as to make all convicts maintain hygiene of the space they spend time in.

DP Leskovac shall replace dilapidated sanitary devices that are part of toilet fixtures and common bathrooms.

DP Leskovac shall ensure to all persons deprived of their liberty have adequate beds and shall replace the old and worn out mattresses.

DP Leskovac shall allow to all persons deprived of their liberty to be suitably nourished so as to maintain their good health condition and strength. DP Leskovac shall place menus in its dining room, as well as in all prison departments at the latest on the last day in a week for the next week.

DP Leskovac shall undertake with no delay measures to improve the coverage of the prison with the CCTV system. A written notification about video surveillance shall be placed in all rooms covered by the CCTV system. All recordings shall be kept for a period not less than 30 days.

DP Leskovac shall undertake with no delay measures to equip rooms for placement of convicts with a button for guard alert call.

A doctor in the DP Leskovac shall, in writing, report on a check-up conducted, and in relation to the use of coercive means shall obligatory enter 1) allegations of a person subject to a coercive measure about how the injuries were inflicted and 2) opinion on linkage between the used measure and inflicted injuries.

Teacher in the DP Leskovac shall not enter any proposal for a measures to be imposed, in their opinion about a conduct of a convict which they give in the course of a disciplinary procedure, for in that way the outcome of such disciplinary procedure is being prejudiced and the impact made on issuance of a decision on a disciplinary responsibility of a convict. Issuance of a decision whether a disciplinary measure is to be imposed or not, and decisions on the type and the amount of a disciplinary measure is exclusively under the competence of an authority conducting disciplinary procedure.

DP Leskovac shall undertake measures and compose program of needed education for staff engaged in treatment and resocialization of convicts with aim of improving the quality of educational work focused towards a more successful reintegration and rehabilitation of convicts.

The NPM standpoint is that when setting the procedure programme and assignment of convicts to groups and departments, besides security risks, more attention should be paid to other circumstances (assessment of personality traits and behaviour of convicts in the course of observation in the Intake Department) which are important for their assignment directly upon arriving to serve their sentence.

Individual forms of educational – correctional work in line with the needs and interests of convicts should be intensified in the DP Leskovac.

DP Leskovac shall undertake measures to increase the number of training sessions and courses in the Institution. Likewise, participation in training sessions and courses shall be enabled to all



convicts in line with the set needs and potentials under the treatment programme, and not solely to convicts assigned to education groups "A" and "B".

DP Leskovac shall undertake measures to offer to all convicts a possibility to be engaged in working activities, in line with the assessment of their work capacity and the degree of risk.

DP Leskovac shall in future issue a written confirmation to convicts for the purpose of sending their letters via registered mail.

DP Leskovac shall ensure rooms that would be adapted to disabled convicts, i.e., accommodation adequate to the type and degree of their special needs.

DP Leskovac shall undertake measures to employ sufficient number of medical technicians so as to ensure continuous (on working days, weekends and national holidays) - 24/7 - presence of at least one person with medical qualifications in the Institution.

The existing medical equipment in the DP Leskovac ambulance should be renewed. It is necessary that lacking stretchers and wheeling chairs be purchased.

### **District prison in Novi Sad<sup>135</sup>**

The Administration for the Enforcement of Criminal Sanctions shall undertake all available measures to ensure that convicts spend their available time during a day outside rooms - dormitories in the common rooms together with their fellow inmates who were not imposed prohibition of contact by a court decision.

Taking into account that search is not sufficiently regulated under the applicable legislation, the Administration for the Enforcement of Criminal Sanctions should send instructions to all institutions for the enforcement of criminal sanction about the way to conduct search of visitors, i.e. to what extent, and in which way and within which limits the search of visitors should be conducted, taking into account the balance between safety and protection of the visitors' right to privacy.

Room no. 6 does not meet the applicable standards in term of its size, and thereby shall not be used for the enforcement of a disciplinary measure of placing a convict to a solitary confinement (or a special measure of isolation), and the remaining rooms shall be adapted (painted, sanitary appliances will be replaced and similar) and they shall have only one bed.

The Administration for the Enforcement of Criminal Sanctions shall undertake all necessary measures to increase the number of teachers in the Institution, and the Institution shall send a reasoned request on the needed staff. DP Novi Sad shall send the reasoned explanation to both Administration for the Enforcement of Criminal Sanctions and the Protector of Citizens.

It is necessary that the Institution designs a programme for systemic education of all the staff of the Service for Treatment and it shall be forwarded to the Administration for the Enforcement of Criminal Sanctions. The Administration for the Enforcement of Criminal Sanctions shall undertake measures in line with the assessed needs of the Service for Treatment staff so as to ensure education of the staff of that Service.

DP Novi Sad is re-urged to compose a programme of needs of convicts regarding certain trainings and to undertake, in cooperation with the Administration for the Enforcement of Criminal Sanctions certain measures to help convicts to master certain practical skills while serving their sanctions.

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<sup>135</sup> Report on the visit to the DP Novi Sad 71 - 41/15

It is necessary the Institution undertakes further activities to enable higher employment of convicts.

The Institution shall create all conditions to make the visit to convicts last one hour. The Administration for the Enforcement of Criminal Sanctions shall create conditions to employ the number of currently lacking members of the Security Service in the Institution, and the Institution shall send a reasoned request on the needed workers. DP Novi Sad shall send the reasoned request to both Administration for the Enforcement of Criminal Sanctions and Protector of Citizens.

The Administration for the Enforcement of Criminal Sanctions shall ensure all conditions that Institution recruits sufficient number of medical technicians so as to ensure continuous (during working days, weekend and national holidays) - 24/7 - presence of at least one person with medical qualifications in the Institution. In addition, the Institution shall send a reasoned request on the need of workers. DP Novi Sad shall send the reasoned request to both Administration for the Enforcement of Criminal Sanctions and Protector of Citizens.

The Administration for the Enforcement of Criminal Sanctions shall ensure necessary materials and other necessary conditions for engagement of a psychiatrist so as to ensure an integrate approach to a health-care through a continuous participation of a psychiatrists in the multidisciplinary team of the Institution.

At least the following columns should be incorporated in the current book of injuries: number (enter consecutive numbers as of the beginning of the calendar year), date and time (hour and minute) of check-up, first and last name of a patient, anamnesis containing all data on the way certain injury was inflicted (according to a patient's statement), medical findings, assessment of linkages between the allegation on the way the injury was inflicted and set findings, note and signature of a doctor that conducted a check-up.

The Administration for the Enforcement of Criminal Sanctions shall, within the given deadline, send to the NPM the Equipment Purchase Plan listed under a "list of priorities" the Institution had sent to the Administration in its annual requisition for the years of 2014 and 2015 in a way that the Administration shall clearly state deadlines for purchase.

DP Novi Sad shall change the form „General medical check-up sheet“, in its chapter 5 envisaged for recording "current disease and objective check-up at admission", in the sub-chapter "Objective check-up", in a way that printed text implying and prejudicing a regular finding shall be eliminated.

Taking into account all available professional resources of the Service for Health Protection and other services whose participation is necessary for the periodical medical check-ups of persons deprived of their liberty, the Institution is re-urged to make a plan and start with regular (periodical) check-ups of persons deprived of their liberty.

The Institution is re-urged to ensure timely escorting of persons deprived of their liberty to scheduled specialized check-ups and other medical interventions within the health-care institution outside the Institution. Likewise, the Institution shall within the set deadline for answer, send to the National Mechanism for the Prevention of Torture the report on number of (a) planned and (b) realized escorts for the period from January 1, 2015 to May 31, 2015, for each month separately. The report shall state monthly number of planned and realized escorts of persons deprived of their liberty outside the Institution presented in the following way: (1) escorts to the court; (2) escorts to specialized check-ups and other medical interventions in other health-care institutions outside the Institution; (3) escorts due to transfer to the other Penal Correctional Institutions; (4) other reasons for escort.

The Institution shall perform regular dental examination within the periods not exceeding 12 months. The Administration for the Enforcement of Criminal Sanctions shall with no delay, inform DP Novi Sad on their procedure in line with the request for approval of the Decision on the Dental Service fee in DP Novi Sad the warden of the Institution adopted on 15. 02. 2015.

The Institution is re-urged to transfer with no delay all convicts with severe mental impairment to the Specialized Prison Hospital or any other adequate health-care institutions and within the given deadline for action inform the National Mechanism for the Prevention of Torture by submitting it the following data – list of persons deprived of their liberty with severe mental disorders (Patients with chronic psychotic disorders from the group F20 - F29 according to the tenth revision of the International Classification of Diseases of the World Health Organization) with the date of their transfer to the Special Prison Hospital or any other adequate health-care institution, along with the data on the institution.

A warden of the Institution shall with no delay undertake measures recommended by a doctor and within the given deadline for answer shall submit a written explanation to the National Mechanism for the Prevention of Torture about the reasons for not having immediately complied with the recommendations of a doctor and for failing to, within its competences, create conditions and/or order compliance with the recommendations of a doctor and separately for each of the listed items, giving adequate explanation for non-compliance.

#### **Juvenile Penal Correctional Institution in Valjevo<sup>136</sup>**

JCI in Valjevo shall with no delay adapt the building of the Department of Intensified Surveillance, as well as a building of a medium security, in order to ensure accommodation conditions set under the applicable regulations and standards.

JCI in Valjevo shall in its facility “Boarding School” within its department form a special room dedicated for a day stay of persons deprived of their liberty with sufficient number of chairs and adequate number of tables, as well as all other technical conditions to follow radio and TV programmes.

JCI in Valjevo shall undertake with no delay measures to cover the Institution with the CCTV system.

Areas under the video surveillance shall have visible signage.

#### **Detention Unit of the District Prison in Belgrade<sup>137</sup>**

A medical check-up in the DP Belgrade shall not be made in the presence of non-medical staff. Presence of non-medical staff should represent an exception, and particularly if required by a doctor, with an obligation of a doctor to write down all reasons being decisive so as to make such a request (for a specific person). The Institution shall inform all doctors and members of the Security Service on these recommendations.

The first medical check-up of detainees must include check-up of all bodily parts, i.e., check-up of a nude patient, and for the purpose of discovering possible bodily injuries that might be in connection with the actions taken against person deprived of liberty. As regards this check-up, adequate statement must be entered in the medical documentation – that the overall bodily check-up was made in the course of which no bodily injuries were found, i.e., when such injuries are found they must be described in detail.

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<sup>136</sup> Report on the visit to CI Valjevo 71 - 57/15

<sup>137</sup> Report on the visit to the Detention Unit of the DP Belgrade no. 71 - 77 / 15 and the Report on the visit to the Detention Unit of the DP Belgrade 71-122/15

A doctor in the DP Belgrade shall in all cases of bodily injuries, either concerning injuries found in the course of the first check-up or in the course of subsequent medical check-ups, irrelevant of the circumstances under which they were inflicted, describe, in line with the medical ethics, all bodily injuries in detail in the prescribed medical documentation. Likewise, a doctor shall obligatorily write in the medical documentation – medical record and reports composed in relation with the bodily injuries his/her conclusion on correlation of circumstances under which injuries were inflicted (in line with the anamnesis data obtained from a patient) and set findings.

The Administration for the Enforcement of Criminal Sanctions shall undertake all necessary measures to secure funds for rehabilitation / renovation of rooms – dormitories and common bathrooms in the blocks on the second floor.

DP Belgrade shall not place smokers and non-smokers in the same room.

DP Belgrade shall improve quality, diversity and quantity of food. A doctor shall regularly oversee nutrition, and submit findings and recommendations on quantity and quality of food to a warden.

DP Belgrade shall undertake with no delay measures to install, in all detention units, alert buttons – to alert security guards in case of incidents. The Administration for the Enforcement of Criminal Sanctions shall undertake all necessary measures to ensure funds to install alert buttons – to alert security guards in case of incidents.

DP Belgrade shall install outlets through the socket inlets in all dormitories in 2.2.2. block so as to, inter alia, enable the use of TV and radio equipment.

Rooms – dormitories in the women block shall be rehabilitated / renovated in line with the applicable standards. The Administration for the Enforcement of Criminal Sanctions shall undertake adequate measures to secure funds for rehabilitation / renovation of the rooms – dormitories in the women block in line with the applicable standards.

DP Belgrade shall increase quantity of sanitary napkins in hygiene packages and consider possibility to broaden the assortment of different hygiene napkins in the canteen.

DP Belgrade shall consider possibility to improve the ways to cut and care for hair of women in prison.

DP Belgrade shall provide foreign citizens who do not understand Serbian or English with information in the language they understand, which are relevant for exercise of their rights within the Institution.

Doctors in the DP Belgrade shall enable exercising of the rights of male and female convicts to be informed about findings contained in their medical records and with the content of their medical records. Likewise, they shall provide them with the information related to their health condition, course of treatment and drugs they are prescribed.

All areas dedicated to spend time in the open air (promenades) within the Detention Unit of the DP Belgrade shall be covered by canopies of dimensions adequate for all persons going for a walk to find shelter from precipitations. The Administration for the Enforcement of Criminal Sanctions shall undertake adequate measures to ensure canopies and open gym equipment.

DP Belgrade shall form an area for a daily stay of convicts in all blocks and shall equip them with necessary equipment (refrigerator, hot plate and similar). The Administration for the

Enforcement of Criminal Sanctions shall secure funds to form a room for daily stay in all blocks of the Detention Unit of the DP Belgrade, as well as funds for their equipping.

### ***I-3 – Recommendations issued to the social care intuitions of a home type***

#### **Gerontological Centre “Jelenac” – working unit for placement of mentally ill persons in Tešica<sup>138</sup>**

The Institution shall equip all rooms where beneficiaries are placed with cabinets for storing their personal items.

The Institution shall undertake measures and ensure conditions where privacy of beneficiaries when taking shower is guaranteed, fully respecting the needs of beneficiaries.

The Institution shall enable to all beneficiaries for whom it believes that there is no need to restrict their freedom, to freely leave the Institution area complying with the house other. The Institution shall submit within 15 days the information to the Ministry of Labour, Employment, Veteran and Social Affairs about the problems it faces in terms of restricting free movement of beneficiaries outside the Institution, and shall send one copy of that letter to the Protector of Citizens. The Ministry of Labour, Employment, Veteran and Social Affairs shall submit to all institutions for accommodation of beneficiaries of a home type information about the legal grounds to restrict movement of its beneficiaries outside the institutions of a home type within 60 days, and shall send the instruction on the procedure to restrict movement outside the Institution. When composing the aforementioned enactment, the Ministry of Labour, Employment, Veteran and Social Affairs shall pay special attention to prevent current practices in line with which persons deprived of legal capacity may have restrictions in terms of free movement, i.e., the fact that someone is deprived of legal capacity does not constitute the grounds to restrict his/her freedom of movement. The Ministry of Labour, Employment, Veteran and Social Affairs shall submit a copy of the letter to the Protector of Citizens.

The NPM team assesses that it is necessary the staff of the Institution make additional efforts to improve and intensify contacts of their beneficiaries and their relatives, all with the aim of developing and maintaining positive relationships with relatives and their reintegration into a community.

#### **Centre for Accommodation and Day Stay of Children and Youth with Disabilities – Infirmary for Children and Youth Suffering from Autism<sup>139</sup>**

The Institution shall submit to the Ministry of Labour, Employment, Veteran and Social Affairs information about the need to install canopy in the yard in a size sufficient to protect beneficiaries from precipitations, and the Ministry shall secure necessary funds so as to install the mentioned canopy.

The expert team shall, when adopting a decision on assigning male/female beneficiaries to the groups in the Infirmary for Autism, take into account their preferences, i.e., shall actively involve them in the decision-making process. This means that the professional staff of the Infirmary shall provide to the female / male beneficiaries information that he / she can understand and express their will and desire. The professional staff shall keep records on all undertaken activities when a male/female beneficiary was informed, i.e., how they learned

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<sup>138</sup> Report on the visit to the Gerontological Centre “Jelenac”, Aleksinac – Working Accommodation Unit for adult and elderly persons with intellectual and metal disabilities in Tešinci 71-48/15

<sup>139</sup> Report on the visit to the Centre for accommodation and day stay of children and youth with disabilities – Infirmary for Children and Youth Suffering from Autism 71-81/15

about their preferences. In the cases when the expressed preference is not taken into account, the professional staff members are obliged to explain the reason thereto, separately for each male/female beneficiary.

Individual plans for male/female beneficiaries shall contain detailed and clear description of activities to be or that have been done with them, as well as attained goals.

The Institution shall identify the needs of male/female beneficiaries of the Infirmary and in line with these specificities it shall organize training programmes for professional staff, that will stimulate involvement (active participation) of male/female beneficiaries in their treatment, i.e., by which they will improve provision of rehabilitation services.

The Ministry of Labour, Employment, Veteran and Social Affairs shall undertake all measures falling under its competencies to regulate statutorily terms and ways to implement physical restraint measures in the institution of social protection of a home type.

The Institution shall ensure presence of a doctor every working day, whereas during weekends and outside working hours, it shall ensure having a doctor on call.

The standpoint of the NPM is that the implementation of the methods falling under the alternative pharmaco-therapy should be intensified, and when used to make annotation on their use in the individual case files of beneficiaries.

#### ***I-4 - Recommendations sent to all public authorities to improve treatment of refugees / migrants***

##### **Police Administration Kikinda<sup>140</sup>**

Taking into account overwhelming and excessive scope of work caused by intensified inflow of refugees and migrants to the territory of the PA Kikinda, the standpoint of the NPM is that the Ministry of the Interior should consider request of the PA Kikinda regarding provision of additional vehicles.

The Ministry of the Interior should undertake measures falling under its competencies so as to prevent filing motions to instigate misdemeanour proceedings due to illegal border crossing and illegal stay against persons who fled from the war stricken countries.

##### **Airport "Nikola Tesla" in Belgrade<sup>141</sup>**

The NPM standpoint is that the Belgrade Border Police Station at the airport "Nikola Tesla" should undertake measures to set and keep records on persons placed in the Airport room, as well as on all important events, i.e., facts relevant for their stay in that room.

Border Police Station in Belgrade at the airport "Nikola Tesla" shall fingerprint and make photos of all foreigners who express intention to seek asylum and shall enter these data in the adequate records.

The airport "Nikola Tesla" shall ensure adequate room to place foreigners who do not meet conditions for entry, in line with the applicable standards, as well as an adequate room for physical recreation under the open air.

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<sup>140</sup> Report on the visit to PA Kikinda 71-9/15

<sup>141</sup> Report on the visit to the Airport "Nikola Tesla" 71 - 59/15

### **Centre for Asylum in Krnjača<sup>142</sup>**

The NPM standpoint is that the staff of the Centre should pay in the future special attention when accommodating foreigners in the accommodation units of the Centre, as well as to separate them in case they learn that relationships among foreigners accommodated in the same accommodation unit are disturbed and that a conflict might arise.

An authorized person within the Centre shall inform the Office for Asylum about any case a foreigner violates the house rules in the Centre for Asylum, so that it undertakes adequate measures in line with the Law on Asylum.

### **Shelter for Foreigners Padinska Skela<sup>143</sup>**

In the coming period, the Ministry of the Interior should consider a possibility to engage professionals to provide psychological assistance to persons waiting to be deported.

Shelter for Foreigners shall improve hygiene of its rooms, toilet fixtures and bathrooms used in the annex of the Shelter, intended for accommodation of males.

Police officers of the Shelter for Foreigners shall compose full reports on the use of coercive means after each case of use of coercive measures, and records shall be kept thereto.

Persons with serious health problems and mental disorders should not be accommodated in the Shelter, rather a statutory possibility should be used and these persons should be provided with the adequate accommodation.

### **Centre for Asylum in Banja Koviljača<sup>144</sup>**

Commissariat for Refugees and Migrations and Centre for Asylum in Banja Koviljača shall ensure continuous presence, i.e., availability of translators in the Centre, so as to have smooth conversation with all foreigners accommodated in the Centre.

Commissariat for Refugees and Migrations and Centre for Asylum in Banja Koviljača shall ensure that the officials in the Centre work in shifts or shall have officers on duty, so that officers are permanently present and may respond to the needs of the foreigners accommodated in the Centre.

Centre for Asylum in Banja Koviljača, in cooperation with the Commissariat for Refugees and Migrations, shall undertake adequate measures so as to ensure that persons with damaged health conditions accommodated in the Centre be provided with another adequate accommodation and with adequate rehabilitation.

Office for Asylum shall ensure that search of females accommodated in the Centre for Asylum in Banja Koviljača be done by female police officers, i.e., shall undertake measures to engage at least one female police officer in the Centre for Asylum in Banja Koviljača.

### **Centre for Social Work in Loznica<sup>145</sup>**

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<sup>142</sup> Report on the visit to the Centre for Asylum Krnjača 71 – 72/15

<sup>143</sup> Report on the visit to the Shelter for Foreigner 71 – 73/15

<sup>144</sup> Report on the visit to the Centre for Asylum in Banja Koviljača, Centre for Social Work and Police Station in Loznica 71 – 80/15

<sup>145</sup> Report on the visit to Centre for Asylum in Banja Koviljača, Centre for Social Work and Police Station in Loznica 71 – 80/15

Ministry of Labour, Employment, Veteran and Social Affairs shall undertake measures to ensure efficient procedure for placing minor unaccompanied foreigners under guardianship when accommodating them in the Asylum.

The standpoint of the NPM is that the Ministry of Labour, Employment, Veteran and Social Affairs should engage a person in the CSW in Loznica to solely be involved in the guardianship related affairs concerning foreign unaccompanied minors accommodated in the Centre for Asylum in Banja Koviljača.

### **Reception Centre in Preševo and Camp in Miratovac<sup>146</sup>**

The standpoint of the NPM is that it is necessary the WG responsible for resolving problems of the mixed migration flows, in cooperation with the Ministry of the Interior, Ministry of Labour, Employment, Veteran and Social Affairs and the Commissariat for Refugees and Migrations improve coordination in the Reception Centre and appoint a person to manage and be responsible for the overall operations of the Reception Centre.

Officials of the Ministry of the Interior shall make photos of all minors when issuing them a certificate of the expressed intention to seek asylum.

Officials of the Ministry of the Interior shall, when issuing a certificate of the expressed intention to seek asylum to accompanied minors, state in the part of the mentioned certificate regarding other data and remarks, the first and the last name of the person accompanying the minor, as well as numbers of certificates being issued to these persons.

The Ministry of the Interior shall ensure staff and technical capacities necessary to conduct efficient procedure for issuance of certificates of expressed intention to seek asylum in the Republic of Serbia.

A notification about the possibility to report corruption in English, Arabic and French shall be placed in visible place of the Reception Centre.

House rules in English, Arabic and French shall be placed in a visible place in the Reception Centre.

Commissariat for Refugees and Migrations shall undertake adequate measures so as to, in cooperation with the Municipality of Preševo, ensure cleaning and maintenance of hygiene of public areas surrounding the Reception Centre, placement of canopies above the entrance to the Reception Centre so that refugees waiting to enter could find shelter from precipitations, as well as placement of mobile toilets.

Commissariat for Refugees and Migrations shall ensure adequate room for placement of persons with disabilities.

Ministry of Labour, Employment, Veteran and Social Affairs shall undertake measures to adequately train representatives of the CSW engaged in the Reception Centre in treatment of foreign unaccompanied minors.

Ministry of Labour, Employment, Veteran and Social Affairs shall undertake measures to set adequate procedures and develop mechanisms for efficient identification of unaccompanied minors, as well as other particularly vulnerable categories of persons who are in a need of additional assistance and attention.

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<sup>146</sup> Report on the visit to the Reception Centre in Preševo, Camp in Miratovac, Police Stations in Preševo and Bujanovac, regional Centre of Border Police towards Macedonia and Centre for Social Work in Preševo 71 - 85/15



Commissariat for Refugees and Migrations shall provide a separate office within the Reception Centre in Preševo for performance of undisturbed and confidential conversations between CSW officials and beneficiaries.

The Ministry of the Interior and the Ministry of Labour, Employment, Veteran and Social Affairs shall enable the access to the Camp in Miratovac to all vehicles that transport free of charge refugees from the Camp to the Reception Centre in Preševo.

#### **Regional Border Police Centres towards Hungary<sup>147</sup>**

The Ministry of Interior should act proactively and instruct the work of its organizational units, sending them all relevant data and necessary guidance for work even before the outbreak of a crisis situation for which there is probability for outbreak.

#### **District Prison in Subotica<sup>148</sup>**

DP Subotica shall make available to all foreigners who do not understand Serbian or English all information in the language they understand, which relate to exercise of their rights within the Prison.

DP Subotica shall inform diplomatic and consular missions exclusively with the consent of a person who was admitted to serve prison sentence.

#### **Reception Centre Principovac<sup>149</sup>**

Commissariat for Refugees and Migrations shall undertake measures to set and keep the records on the number of persons present in the Reception Centre, with the basic data on their age and gender structure.

The house rules in English, Arabic and French shall be posted in the visible places in the Reception Centre.

In order to improve accommodation conditions in the Reception Centre, the Commissariat for Refugees and Migrations shall undertake all available measures to capacitate itself for the use of heating system, as well as for functioning of the laundry room.

#### **Penal Correctional Institution in Sombor<sup>150</sup>**

The Administration for the Enforcement of Criminal Sanctions and CI Sombor shall undertake all measures and activities to have misdemeanour offenders placed in the separate unit (department), apart from the convicts.

#### **Centres for Social Work in Pirot and Dimitrovgrad<sup>151</sup>**

Ministry of Labour, Employment, Veteran and Social Affairs shall amend the Instruction 43 in a way that it will additionally regulate the procedure to determine personal characteristics and capabilities needed to perform a duty of a guardian of unaccompanied minor migrant.

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<sup>147</sup> Report on the visit to the Regional Border Police Centre towards Hungary 71 – 88/15

<sup>148</sup> Report on the visit to the DP Subotica Subotica 71 – 90/15

<sup>149</sup> Report on the visit to the Reception Centre in Principovci 71 – 91/15

<sup>150</sup> Report on the visit to the Correctional Institution in Sombor 71 – 98/ 15

<sup>151</sup> Report on the visit to Regional Border Police Center towards Bulgaria, Border Police Station Pirot, Police Administration in Pirot and Centres for Social Work in Pirot and Dimitivgrad 71– 102/15

The Ministry shall issue instructions on procedures of centres for social work and institutions for social protection for those cases when it is not possible to determine for a person who agreed to be a guardian, whether there are some difficulties to perform all guardianship related duties.

## **ANNEX II**

### **Conclusions of the National Assembly of the Republic of Serbia**

Pursuant to Article 8, paragraph 1 of the Law on National Assembly ("Official Gazette", No. 9/10) and Article 238, paragraph 5 of the Rules of Procedure of the National Assembly ("Official Gazette of RS", No. 20/12 - consolidated text),

On the Fourth Sitting of the Second Regular Session in 2014 held on 23 October 2014, The National Assembly hereby passes this

#### **C O N C L U S I O N BASED ON A REVIEW OF THE REPORT ON ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM FOR 2013**

1. The National Assembly finds that in his report on the activities of the National Preventive Mechanism for 2013, the Protector of Citizens comprehensively presented activities of the Protector of Citizens in capacity of the National Preventive Mechanism in the field of protection and improvement of human and minority freedoms and rights.

2. With regard to the findings of the Protector of Citizens that as a rule detainees do not have an opportunity to spend free time during the day outside their cells in communal rooms with other detainees in cases where no court-ordered contact restrictions apply; that in most cases they do not have an opportunity to do productive work, nor are they included in social and cultural activities; that detainees are not grouped together according to the type of criminal offence of which they are indicted, the National Assembly orders the Administration for the Enforcement of Penal Sanctions of the Ministry of Justice to improve treatment of detainees, i.e. to allow them to exercise all their rights in accordance with the applicable regulations and standards.

3. With regard to the assessment of the Protector of Citizens that women in detention are mostly and commonly isolated for long periods because their number in detention units tend to be low, whereas this is meant to be a disciplinary or a special measure of strictly limited duration for men in the penal enforcement system, the National Assembly orders the competent authorities to exercise increased caution with the aim of reducing isolation of female detainees for a long periods during detention.

4. With regard to the findings of the Protector of Citizens that many convicts in closed units do not have an option to spend free time during the day in communal rooms with other convicts, including in particular persons under increased supervision, the National Assembly orders the Administration for the Enforcement of Penal Sanctions of the Ministry of Justice to enable all convicts, except to those in solitary confinement or isolation, to spend free time during the day in communal rooms with other convicts.

5. With regard to the assessment of the Protector of Citizens that there are significant shortcomings in active, individual and collective correctional work of correctional officers with convicts, the National Assembly orders the Ministry of Justice to improve treatment of convicts in penal facilities in terms of more intensive and effective work of correctional officers with

convicts, increasing their work engagement where possible, education and the highest level of exercise of religious rights and to pass new or modify the existing regulations without delay, which would ensure implementation of the law in accordance with the applicable standards in that regard.

6. With regard to the assessment of the Protector of Citizens that there are numerous illegalities and irregularities in the treatment by competent authorities of irregular migrants and foreigners who expressed their intention to seek asylum in the Republic of Serbia, the National Assembly, endorsing all recommendations the Protector of Citizens gave to the Ministry of Internal Affairs and the Commissariat for Refugees and Migration in that regard, orders the authorities to which those recommendations were given to fully implement them without delay, particularly to register all migrants who entered into the territory of the Republic of Serbia, to keep migrants under full control of the competent authorities pending final resolution of their status, i.e. deportation in accordance with the applicable regulations, as well as to pass decisions on asylum requests in an expedited procedure, while thwarting all attempts to abuse rights, with full respect for all minimum rights of irregular migrants and asylum seekers, in accordance with the rules of the international law and the applicable standards.

7. The National Assembly endorses the recommendations the Protector of Citizens gave in the capacity of the National Preventive Mechanism to the competent public authorities with the aim of improving the position of persons deprived of liberty, i.e. to prevent abuse, and orders the competent authorities to implement these recommendations without delay, as well as to notify the National Assembly thereof in writing by 31 December 2014 at the latest.

8. This Conclusion is to be published in the "Official Gazette of the Republic of Serbia".

RS No. 72

Done in Belgrade, on 23 October 2014

**NATIONAL ASSEMBLY OF THE REPUBLIC OF SERBIA**

PRESIDENT

Maja Gojković

Pursuant to Article 8, paragraph 1 of the Law on National Assembly (“Official Gazette”, No. 9/10) and Article 238, paragraph 5 of the Rules of Procedure of the National Assembly (“Official Gazette of RS”, No. 20/12 - consolidated text),

On the Fourth Sitting of the Second Regular Session in 2014 held on 23 October 2014, The National Assembly hereby passes this

**C O N C L U S I O N**  
**BASED ON A REVIEW OF THE REPORT ON ACTIVITIES OF**  
**THE NATIONAL PREVENTIVE MECHANISM**  
**FOR 2013**

1. The National Assembly finds that in his report on the activities of the National Preventive Mechanism for 2013, the Protector of Citizens comprehensively presented the activities of the Protector of Citizens in the capacity of the National Preventive Mechanism within his scope of his powers under constitution and law and assessed the situation and the quality of exercise and protection of the rights of persons deprived of liberty, highlighting the necessary improvements of the situation and prevention of torture and other forms of abuse.

2. With regard to the assessment of the Protector of Citizens that the competent public authorities fail to comply with their duties in the fight against impunity for torture, that they do not always conduct timely and detailed procedures to determine whether the rights of persons deprived of liberty were violated, that individual responsibility for violation of these rights and responsibility for omissions in work and organization of work was apportioned to responsible persons only in few cases, as well as that few persons responsible for violation of these rights were punished, and particularly having in mind that the Protector of Citizens and the Constitutional Court identified certain cases of abuse, the National Assembly orders the competent public authorities to fully comply with their duties in the fight against impunity for torture, to take all necessary measures and activities to prevent abuse and, in accordance with the law, to conduct timely and detailed procedures to investigate all substantiated allegations of abuse and apportion subjective and objective responsibility and to punish those responsible.

3. With regard to the assessment of the Protector of Citizens that many existing detention rooms in police stations are not compliant with the minimum standards of the European Committee for the Prevention of Torture regarding necessary accommodation conditions, the National Assembly orders the Government to allocate necessary funds for construction or refurbishment of detention rooms in police stations in accordance with the applicable standards in budget proposal for 2015.

4. With regard to the assessment of the Protector of Citizens that the Instructions on Treatment of Arrested and Detained Persons are not compliant with the applicable regulations and standards and decisions of the European Court of Human Rights (use of physical restraint, presence of non-medical staff during physical examinations, lack of duty to install alarms, authorizations of control mechanisms etc.), which results in dilemmas for police officers regarding exercise of police authorities and divergent practices in their actions, the National Assembly orders the Ministry of Internal Affairs to make the Instructions on Treatment of Arrested and Detained Persons compliant with the applicable regulations, standards and decisions of the European Court of Human Rights.

5. Due to significant shortcomings, pointed out by the Protector of Citizens in his Report, regarding active individual and collective correctional work of correctional officers with convicts, work engagement of convicts and their education, use of a system of subsequent reclassification of convicts which enables convicts to progress into a more favorable correctional group in case of good behavior, preparation of convicts for release and establishing of cooperation with social welfare organizations, the National Assembly orders the

Administration for the Enforcement of Penal Sanctions of the Ministry of Justice to improve treatment of convicts in order to rectify the said shortcomings and emphasizes the duty to pass regulations for implementation of the law in accordance with the applicable standards without delay.

6. It is particularly important to amend regulations on enforcement of penal sanctions for organized crime without delay, in accordance with the recommendation of the European Committee for the Prevention of Torture, which assessed the existing penal enforcement system as borderline inhuman and degrading.

7. The National Assembly orders the Administration for the Enforcement of Penal Sanctions of the Ministry of Justice to improve its treatment of convicts in terms of provision of health care, in accordance with the applicable regulations and standards. This is based on the assessment of the Protector of Citizens that there are serious shortcomings in the provision of health care to convicts in penal facilities, particularly regarding the provision of necessary medicinal products and therapy, medical examinations after prison intake procedure, lack of unique medical examination protocols, failure to perform periodic medical examinations of convicts and daily medical examinations of patients, inclusion of non-medical staff, placement of convicts with mental disorders in regular prison regime, failure to submit compulsory periodic reports on health condition of convicts, sanitary and hygiene conditions in institutions, the quality of food, physical activities of convicts etc., stipulated by the Law on Enforcement of Penal Sanctions.

8. Taking into account that the Protector of Citizens repeated his assessments stated in all previous annual reports that competence for health care services in penal facilities should be transferred from the Administration for the Enforcement of Penal Sanctions of the Ministry of Justice to the Ministry of Health, which is one of the preconditions for efficient investigation of allegations of violent treatment of persons deprived of liberty, the National Assembly emphasizes it is necessary for the Government to consider this issue as soon as possible and propose to the National Assembly amendments to the relevant legal arrangements.

9. With the aim of ensuring more efficient and comprehensive control over the work of the Administration for the Enforcement of Penal Sanctions, the National Assembly advises the Ministry of Justice to consider the recommendations of the Protector of Citizens on activities that should be undertaken to separate the supervision unit from the Administration for the Enforcement of Penal Sanctions, so that the work of institutions and the Administration is overseen by the supervision unit as a separate organizational unit of the Ministry of Justice, and also to propose appropriate amendments of laws and other regulations in that regard.

10. The National Assembly endorses the recommendations the Protector of Citizens gave in the capacity of the National Preventive Mechanism to the competent public authorities with the aim of improving the position of persons deprived of liberty, i.e. to prevent abuse, and orders the competent authorities to implement these recommendations without delay and to notify the National Assembly thereof in writing by 31 December 2014 at the latest.

11. This Conclusion shall be published in the "Official Gazette of the Republic of Serbia".

RS No. 73

Done in Belgrade, on 23 October 2014

**NATIONAL ASSEMBLY OF THE REPUBLIC OF SERBIA**

PRESIDENT  
Maja Gojković

Pursuant to Article 8, paragraph 1 of the Law on National Assembly ("Official Gazette", No. 9/10) and Article 238, paragraph 5 of the Rules of Procedure of the National Assembly ("Official Gazette of RS", No. 20/12 - consolidated text),

On the Fourth Sitting of the Second Regular Session in 2014 held on 23 October 2014, The National Assembly hereby passes this

**C O N C L U S I O N**  
**BASED ON A REVIEW OF THE REPORT ON ACTIVITIES OF**  
**THE NATIONAL PREVENTIVE MECHANISM**  
**FOR 2013**

1. The National Assembly finds that in his report on the activities of the National Preventive Mechanism for 2013, the Protector of Citizens comprehensively presented the activities of the Protector of Citizens in the capacity of the National Preventive Mechanism in the field of child rights.

2. With regard to the assessment of the Protector of Citizens that many children are still placed in residential social welfare institution because conditions have not been provided for their community care; that those children are excluded from the normal social environment for unacceptably long periods, and thus they do not acquire or over time lose social and other skills necessary for living outside the institutions; that financial and other living conditions in such institutions are not compliant with the applicable standards and that understaffing is a pressing issue; that the number of children placed in those institutions significantly exceeds the statutory maximum and that in many cases, contrary to regulations, children are placed together with adult users; and that the existing shortcomings of the institutional child care system display elements of inhuman or degrading treatment, the National Assembly orders the competent public authorities to intensify activities on deinstitutionalization, i.e. reduction of capacities of the existing residential social welfare institutions and their phasing out, while ensuring full community child care and providing comprehensive support.

3. With regard to the assessment of the Protector of Citizens that in residential social welfare institutions a number of children with mental disorders and/or intellectual disabilities are isolated, and having in mind the position of the UN Committee against Torture that isolation of persons with severe or acute mental disorder is not allowed, as well as the position of the UN Special Rapporteur on Torture that isolation of such persons, regardless of its duration, constitutes cruel, inhuman or degrading treatment, the National Assembly orders the competent public authorities to take all available measures to prevent residential social welfare institutions from isolating children with mental disorders and/or intellectual disabilities.

4. The National Assembly endorses the recommendations the Protector of Citizens gave to the competent authorities in the capacity of the National Preventive Mechanism with the aim of improving the position of convicted persons placed in the Juvenile Penal Correctional Institution Valjevo, as well as users placed in the Centre for Children and Youth with Disabilities "Veternik".

5. This Conclusion shall be published in the "Official Gazette of the Republic of Serbia".

RS No. 74

Done in Belgrade, on 23 October 2014

**NATIONAL ASSEMBLY OF THE REPUBLIC OF SERBIA**

PRESIDENT  
Maja Gojković

## ANNEX III

### *III - 1 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that those rights derive from the inherent dignity of the human person, Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms, Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment, having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975 (resolution 3452 (XXX)), Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world, Have agreed as follows:

#### PART I

##### Article 1

1. For the purposes of this Convention, torture means any act by which severe pain or suffering, hether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

##### Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

##### Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. 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.

#### **Article 4**

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

#### **Article 5**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
  1. When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
  2. When the alleged offender is a national of that State;
  3. When the victim was a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in Paragraph 1 of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

#### **Article 6**

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present, shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, to the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said State and shall indicate whether it intends to exercise jurisdiction.

#### **Article 7**

1. The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.



3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

#### **Article 8**

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offenses. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested state.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

#### **Article 9**

1. States Parties shall afford one another the greatest measure of assistance in connection with civil proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

#### **Article 10**

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

#### **Article 11**

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

#### **Article 12**

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

#### **Article 13**

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

#### **Article 14**

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law.

#### **Article 15**

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

#### **Article 16**

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.

### **PART II**

#### **Article 17**

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.
3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical

order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

#### **Article 18**

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

#### **Article 19**

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

### **Article 20**

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

### **Article 21**

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;
  - (a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
  - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
  - (c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;
  - (d) The Committee shall hold closed meetings when examining communications under this article;
  - (e) Subject to the provisions of subparagraph (e), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for

in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

## **Article 22**

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

#### **Article 23**

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### **Article 24**

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

### **PART III**

#### **Article 25**

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### **Article 26**

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### **Article 27**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

#### **Article 28**

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

### **Article 29**

1 . Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering an d voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

### **Article 30**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

### **Article 31**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of- the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

### **Article 32**

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

(a) Signatures, ratifications and accessions under articles 25 and 26;

- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

### **Article 33**

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

## **APPENDIX - Law on Ratification of the Convention**

### **Article 3**

The Assembly of the Socialist Federal Republic of Yugoslavia gives the following statement:

"- Yugoslavia recognizes, in accordance with Article 21, paragraph 2 of the Convention, the jurisdiction of the Committee against Torture to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this Convention;

- Yugoslavia recognizes, in accordance with Article 22, paragraph 1 of the Convention, the jurisdiction of the Committee against Torture to receive and consider communications submitted to them by individuals or submitted on behalf of individuals who are under its jurisdiction, and who claim to be victims of violations of the provisions of the Convention by some Member States. "

### **Article 4**

About carrying out the provisions of this Act shall ensure the Federal Secretariat for Justice and Administration.



### **III - 2 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

**Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006**

#### **PREAMBLE**

The States Parties to the present Protocol, Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights, Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment, Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction, Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures, Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures, Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention, Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

#### **PART I General principles**

##### **Article 1**

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

##### **Article 2**

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

### **Article 3**

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

### **Article 4**

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

## **PART II Subcommittee on Prevention**

### **Article 5**

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

### **Article 6**

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.

(a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

#### **Article 7**

1. The members of the Subcommittee on Prevention shall be elected in the following manner:
  - (a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;
  - (b) The initial election shall be held no later than six months after the entry into force of the present Protocol;
  - (c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;
  - (d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.
  
2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:
  - (a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;
  - (b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;
  - (c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

#### **Article 8**

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

#### **Article 9**

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

#### **Article 10**

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, *inter alia*, that:

- (a) Half the members plus one shall constitute a quorum;
- (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
- (c) The Subcommittee on Prevention shall meet *in camera*.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

### **PART III**

#### **Mandate of the Subcommittee on Prevention**

##### **Article 11**

1. The Subcommittee on Prevention shall:

- (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) In regard to the national preventive mechanisms:
  - (i) Advise and assist States Parties, when necessary, in their establishment;
  - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
  - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
  - (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- (c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

##### **Article 12**

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

- (a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;
- (b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;
- (d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

##### **Article 13**

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

#### **Article 14**

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

#### **Article 15**

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

#### **Article 16**

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

## **PART IV**

### **National preventive mechanisms**

#### **Article 17**

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

#### **Article 18**

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

#### **Article 19**

The national preventive mechanisms shall be granted at a minimum the power:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- (c) To submit proposals and observations concerning existing or draft legislation.

#### **Article 20**

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

- (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Access to all places of detention and their installations and facilities;

- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;
- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

#### **Article 21**

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.
2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

#### **Article 22**

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

#### **Article 23**

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

### **PART V Declaration**

#### **Article 24**

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

### **PART VI Financial provisions**

#### **Article 25**

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

#### **Article 26**

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

## **PART VII**

### **Final provisions**

#### **Article 27**

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

#### **Article 28**

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

#### **Article 29**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

#### **Article 30**

No reservations shall be made to the present Protocol.

#### **Article 31**

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

#### **Article 32**

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

#### **Article 33**

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other



States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

#### **Article 34**

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

#### **Article 35**

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

#### **Article 36**

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

#### **Article 37**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.