



**REPUBLIC OF SERBIA  
PROTECTOR OF CITIZENS**

283- 63 /17  
Belgrade



**Заштитник грађана  
Zaštitnik građana  
Protector of citizens**

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**NATIONAL PREVENTIVE MECHANISM**

# 2016 Report

Belgrade, 2017

*Dear Reader,*

*This is the fifth Annual Report of the Protector of Citizens on the activities accomplished by the Protector of Citizens in discharging the tasks of the National Preventive Mechanism in the Republic of Serbia.*

*Prevention of torture is one of the commitments adopted by the Republic of Serbia towards its citizens and the international convention to which it is a party.*

*In 2016, 92 visits were made to the places accommodating the persons deprived of their liberty and in view of the identified irregularities, 318 recommendations have been addressed to the competent authorities.*

*By way of presenting the findings and general and individual recommendations for the improvement of the current situation, the Report offers a clear and achievable course towards attaining the society free from torture, as an ideal objective. Nevertheless, the report clearly shows that the approach to the unfeasible goal is not in itself blurry or impossible, not even too hard or expensive.*

*It is upon us to accelerate this process, without any excuse or exception, for the sake of the victims of torture but also the dignity of all of us. Where a single human being is exposed to inhuman treatment, nobody's dignity can be guaranteed.*

*I would like to thank to all the bodies, associations of citizens and persons with whom we cooperated during the reporting period, while discharging the operations of the National Preventive Mechanism.*

*Milos Jankovic  
Acting Protector of Citizens*

## Content

### **1. Introduction**

- 1.1. General assessment of prohibition of torture and other cruel, inhumane or degrading treatments and punishments in the Republic of Serbia
- 1.2. The most important data on the activities of the Protector of Citizens regarding the NPM activities in 2016

### **2. Prohibition of torture**

- 2.1. National legislation
- 2.2. International instruments

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

- 3.1. Sub-committee on Prevention of Torture
- 3.2. National Preventive Mechanisms (NPM)
- 3.3. Establishment of NPM in Serbia

### **4. Methodology, resources and organization of NPM in 2016**

- 4.1. NPM Methodology
- 4.2. Material resources and financial independence of NPM
- 4.3. Special NPM unit and its functional autonomy
- 4.4. Involvement of the Provincial Protector of Citizens in NPM activities
- 4.5. Participation of civil sector in NPM activities
- 4.6. Participation of external experts in NPM activities
- 4.7. Training of NPM members
- 4.8. Other forms of cooperation

### **5. Achievements of NPM mandate in 2016**

- 5.1. Visits to institutions accommodating persons deprived of their liberty
- 5.2. Cooperation between authorities and NPM in the course of visits made to institutions
- 5.3. Reports on visits to institutions
- 5.4. Recommendations for elimination of identified deficiencies
  - 5.4.1. Acting of competent authorities upon recommendations of the Republic of Serbia National Assembly
- 5.5. Dialogue with authorities
- 5.6. Organization of events and promotion of NPM/prevention of torture
- 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
- 5.8. Cooperation with other NPMs
- 5.9. Distribution of annual NPM report
- 5.10. Review of annual NPM report for the year 2015

### **6. NPM condition and activities per areas in 2016**

- 6.1. Police / prosecutorial detention
- 6.2. Pre-trial detention
- 6.3. Enforcement of criminal sanctions
- 6.4. Detention of persons with mental disorders in psychiatric hospitals
- 6.5. Detention of persons in social welfare homes
- 6.6. Treatment of refugees / migrants and overview of the refugee crisis

### **ANNEX I**

*- NPM recommendations issued to the public authorities of the Republic of Serbia*

### **ANNEX II**

*II-1 Convention against Torture*

*II-2 Optional Protocol*

*II-3 Model of Cooperation Agreement*

*II-4 Decision on Amount of Remuneration for Discharging NPM Activities*

## 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 several years long mandate of the Protector of Citizens, set forth by the Optional Protocol to the UN Convention against torture<sup>2</sup>, in discharging the activities under the National Preventive Mechanism (NPM), the Protector of Citizens found that the prevention of torture and other forms of abuse and treatment of persons deprived of their liberty, has significantly improved in the Republic of Serbia.

Following numerous visits to places where persons are or may be found deprived of liberty, the NPM concluded that there is no torture as an organized or encouraged phenomenon by state authorities in the Republic of Serbia.

It is encouraging that over the past few years the civil servants who treat persons deprived of their liberty have become aware that torture is absolutely illegal. In this regard, there are numerous testimonies of randomly interviewed persons deprived of their liberty, especially in prisons, that they were not victims of torture.

Nevertheless, this does not mean that there is no torture or other form of abuse in the Republic of Serbia. Individual cases of torture or abuse are always possible and expected to be occurring. The torture, as any other form of abuse, is of a situation-related and the persons deprived of their liberty are therefore exposed to a higher risk for a continuing period.

Other than that, individual cases of the treatment of persons deprived of their liberty have been identified as the result of deficiencies in the system and they represent the poor practice retained until today, deviating from the applicable standards, that might, considering the intensity and duration, grow into, and in some cases they indeed do, a humiliating or inhuman behaviour and prevent the torture.

Moreover, the systemic gaps in the organization and treatment of persons deprived of liberty, such as inadequate accommodation in some prisons, lack of or non-compliance with the procedures, lack of adequate psychological and social treatment, inappropriate health care and inadequate staffing might, particularly where persistent, adopt a character of an inhuman or humiliating behaviour.

NPM has pointed out that the institutions in which the persons deprived of liberty are placed, that were visited by NPM team during the reporting period that were subsequently addressed with its recommendations, were highly cooperative and enabled the NPM to perform its assignment, as mandated by the established Optional Protocol to the UN Convention against torture (both announced and random visits to the detention centres were enabled, as well as the access to all the premises and installations, inspection of all the data including the interviews with all the prisoners, staff and any other persons selected by NPM).

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

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

**However, despite the significant steps towards the prevention of torture and other forms of abuse, including the improvement in the treatment of the prisoners, NPM points out that the internal control, prosecution offices and court instruments require much more improvement in terms of effective and efficient fight against torture. In this respect, it would be recommendable to fully harmonize the provisions of the Criminal Code with the definition of torture referred to in Article 1 of the UN Convention against torture.**

In the course of 2016, NPM visited a number of places where the persons deprived of liberty are placed, such as police stations, international reception centres for foreigners, detention units, prisons, psychiatric hospitals and psychiatric institutions in public hospitals, social welfare institutions used as homes, asylum centres and reception centres for migrants.

In acting upon the NPM recommendations, addressed with the aim to protect and warrant the rights of apprehended and detained persons, as well as to prevent their mistreatment by the police, the visited police departments hand over to the detainees the appropriate written notifications about the rights of the detained persons and maintain due records of detentions.

Although the Instructions on treatment of the detained and brought in persons has still not changed, the police officers of individual police departments ceased with the practice of obligatory presence during medical checkups of all the detained persons, but rather attend only at the request of a doctor, for security reasons. The files formed upon detention of persons no longer include the medical records of the persons while the information about the health condition of the detained person are available to the police officers only to the extent relevant for the treatment of that person upon his/her detention.

A number of detention premises in police stations still do not comply with present standards in terms of material conditions and the recommendations of NPM to improve the conditions in certain detention premises was predominantly not acted upon, stating unacceptable reasons – the lack of material and technical conditions.

NPM has found that the Ministry of Interior failed to organize appropriate trainings for police officers in each police department in the Republic of Serbia about the treatment of mentally impaired persons.

Taking into account the significance of having additional prevention and protection measures against abuse of persons deprived of their liberty, recording of information received from citizens (the interviews) and hearing of suspects, the Ministry of Interior was addressed a recommendation to, in cooperation with the Ministry of Justice, within their legal competences, ensure the funds and required technical equipment for audio and visual recording of hearing processes. However, this recommendation has still not been acted upon.

The position of detainees remained almost unchanged compared to the previous period. There is still a public perception of having the detention measure easily pursued and often accompanied with the violating the principle of the presumption of innocence, that in certain cases the detention represents a punishment before judgement. Despite of NPM's recommendations to the institutions to ensure living room space for detainees and find a way to engage them in work, they continue to spend the most of the day locked in their dormitories, without any purposeful activities organized.

NPM, the same as in previous reports, points to the issue of having the detained women kept in solitary confinement for an unacceptably long period due to a relatively small number of women in one detention unit. Although the system for the execution of criminal sanctions perceives the isolation /solitary confinement as special and/or disciplinary measure strictly limited in time, in practice, for certain female detainees this is the regular measure taken against them, which indicates the negative aspect of women detention system.

During the reporting period, the material conditions have been improved in certain institutions for the enforcement of criminal sanctions. However, three institutions were found to be completely unusable and their refurbishment in accordance with the standards impracticable and therefore, recommendations were addressed to close them and/or to have them moved elsewhere (the district courts in Smederevo and Subotica and Vršac Section of the District Prison in Pančevo).

According to the recommendations of NPM to ensure the prevention of abuse, following the coercive measures against prisoners, the prison doctors enter in their reports on completed checkups, specifying the statements of persons about the manner in which the injuries were inflicted and their opinion about the connection between the coercive measures applied and the injuries, as their legal obligation. In addition to the afore mentioned, acting in line with the recommendations, the institutions have established the Record of Injuries of persons deprived of their liberty, including the practice of making photographs of injuries, while the non-medical staff ceased to attend the medical checkups of the prisoners.

Providing of medical care in institutions is still under the jurisdiction of the Ministry of Justice –Administration for Enforcement of Criminal Sanctions. This is not in accordance with the international best practice and deprives the doctors of their independence, first of all in creating assumptions for determining the cases of torture.

In the reporting period, acting upon recommendations of NPM, the Ministry of Health initiated the regular professional oversight over the work of health services within the institutions.

The shortcoming pointed to by the NPM that is still present, was that the principle of common enforcement of sanction is not achieved. Specifically, during the day, a large number of convicts do not spend time with other convicts in common occupancies, but instead, they are isolated in the cells all the time (either alone or in small groups).

Certain institutions have shown some progress with engaging the prisoners in work, which should be done throughout the entire prison system.

The process of classifying the convicts is insufficiently transparent. The convicts are not being sufficiently familiarized with the criteria for improvements, the tutors are mainly dealing with administration of questionnaires. The mechanism of improvements regarding the treatment against the current criteria, involves the harder transfer of convicts to more favourable tutorial groups, so that many convicts are being released from prison from the same tutorial group to which they were classified immediately upon their admission to prison.

The prison capacities designated for minors and women are the central (exclusive) institutions accommodating 200 persons each. Strong informal systems are being created there, particularly those designated for minors, which makes the adequate treatment impossible. In such central institutions, the problem is that certain prisoners are kept very far from their residence, which considerably obstructs their contacts with families.

During 2016, NPM also dealt with the position of transgender persons deprived of their liberty. The competent authorities were recommended to, upon admission of trans gender persons to the institution, enable them select whether their personal search would be performed only by the officer of a certain gender or whether the combined search and examination will be conducted, whether the officers are to address the trans gender persons in the gender these persons feel they belong to, unless otherwise requested by these persons, as well as to have appropriate training for the staff about the way in which the lesbians, gays, bisexual, transgender and intersex prisoners should be treated.

Special attention should be paid to the deprivation of liberty and treatment of persons placed in social welfare institutions – homes. The improvements primarily need to be made to regulations so as to regulate the issue of restricting the rights of persons placed in home social

institutions, particularly their forced apprehension and keeping, including their physical restraint.

The conclusion of NPM is that among the persons deprived of their liberty, the persons having mental disorders are in the worst position, whether they be placed in social welfare institutions – homes, psychiatric hospitals or in institutions for enforcement of criminal sanctions.<sup>3</sup>

There are numerous acts in which NPM stated that persons with severe mental disorders should not be placed under regular prison regime. Moreover NPM points out that persons suffering from serious mental disorders who committed an offence containing the elements of criminal act, who do not pose particular threat upon the society, should not be processed based on the Criminal Procedure Code, but rather be kept and placed in a psychiatric institution, pursuant to the Law on Protection of Persons with Mental Disorders. It is unacceptable to keep persons having serious mental disorders in custody due to the threats shared over social networks or to keep the persons on the security measure of compulsory medical treatment and care at the health care institution over ten years, due a bicycle theft.

NPM believes that the practice of keeping the persons with mental and/or intellectual disorders at residential institutions (psychiatric hospitals and social welfare institutions – homes) for a prolonged period, for some of them even for life. This is largely the consequence of having no resources to provide care and support to these persons outside the institutions. More specifically, there is no efficient concept of deinstitutionalization in the Republic of Serbia that would provide the living conditions for persons having mental and/or intellectual disorders within the local community, with their close family. The current concept is not comprehensive and is based on providing services and administering of accommodation as a part of care. Instead, it is necessary to establish a unified national care and support concept for these persons and their families and at the level of local communities form multidisciplinary services that shall be fully equipped in terms of staffing, logistics and finance, to provide a continuing support and care for the persons that require this, including to their families. The types of services and form of accommodation must not be administered in advance. They should be defined based on the needs that are subject to changes and that should be the outcome of duly conducted estimates by the multidisciplinary services at the local community level.

The shortcomings of the Law on Protection of Persons with Mental Disorders have still not been eliminated. It has been regulated that the services for protection of mental health in the community are to be organized as the additional activity of psychiatric institutions and health care centres that neither have sufficient human resources nor interest in providing such support. Due to such solution, the deinstitutionalization activities in Serbia are negligible. The Law has introduced isolation measure for psychiatric patients that is not only contrary to the applicable standards, but also to the established practice in Serbia. Furthermore, the Law has prescribed the competence of police officers to maintain order within the psychiatric hospitals, which is not in line with the current standards, considering that these are armed persons wearing uniforms.

The present psychiatric hospitals are huge, each of them accommodates around several hundreds of patients. They have largely adopted the character of asylum centres, as numerous patients are excommunicated from the community for more than one month, many of them as long as for a decade, while some even for life. There is a trend of keeping a large number of persons in hospitals for social reasons, as there is no other form of support and their treatment in the community.

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<sup>3</sup>Persons serving measures of compulsory psychiatric treatment and stay in health care institutions, detention and prison sentences.

The court decisions on compulsory hospitalization of persons with mental disorders are mainly based on expertise provided by doctors employed in hospitals proposing such measures. Moreover, there is a number of cases where the consent to hospitalization was provided by persons who were in an agitated condition after being brought by police officers, although the statements given under such circumstances cannot be regarded as legally relevant.

NPM believes that the activities to improve the current legislation must be intensified, including the treatment of persons with disabilities placed in social welfare institutions – homes. Namely, a large number of persons with mental and intellectual disorders are placed in remote and often huge institutions, far from their community and their social environment. Also, living conditions in many of these occupancies are rather poor and disregarding the required psychological and sociological treatment. All these institutions lack staff, which has an adverse impact on both the staff members and inmates.

Pursuant to the applicable legislation, in the event of economic deprivation of persons, the consent to medical treatment is provided by their guardian who is often not present at the moment when this needs to be administered. Also, it is extremely important to regulate the role of the person having mental and intellectual disorders in making decisions about medical measures, that is, in providing consent to such measures. In this respect, the regulations need to be improved so as to ensure a more effective protection of these persons when applying medical or scientific tests.

In its visit reports, NPM addressed the recommendations to establish procedures regarding the physical restraint of social welfare beneficiaries, introducing of Record maintaining to register the injuries of inmates and engage independent authorized physician who would issue death certificates for patients. The recommendations also addressed the provision of sufficient number of staff to work with the inmates and required number of orthopaedic aids for them. In order to ensure the privacy of inmates, the recommendations were given to ensure the preconditions for their privacy. NPM expresses its concerns, as in certain institutions of social welfare – homes, they identified cases of keeping persons in isolation and some of them in rooms without elementary conditions, comparable to cages, without tap water or available toilet facility. Such treatment is the case of abuse and where prolonged, represents a torture. Also, it was found that in the social welfare institutions – homes, other than isolation, the measure of mechanical restraint with tying of patients is used, although, unlike psychiatric institutions, there are no legal grounds for either of such conducts.

The freedom of movement outside the institutions is still being limited to the beneficiaries, despite the fact that there are no legal grounds for that, nor any procedures in place that would regulate their keeping inside the institution. NPM referred a recommendation to the Ministry of Labour, Employment, Veteran and Social Affairs in order to take action from their own jurisdiction and provide appropriate regulation of such situation.

NPM sent the recommendations in the Reports on visits made to social welfare institutions – homes, to adopt the Regulation that would set forth the issue of providing items for personal needs of inmates placed in homes, to develop a Protocol on acting in the event of an unexpected (sudden) death of beneficiaries, including to ensure the sufficient number of medical, nursing and other staff.

The migrants are now staying in Serbia for a longer time and therefore, the problem of providing the required care to them is by far more complex. Unlike the previous period when they used to transit through Serbia and stay for only couple of days, they are now staying for several months. Some of them wish to seek an asylum in Serbia, but most of them still desire to continue their journey to the developed countries of EU. Bearing in mind that the migrants will stay in the centres for a prolonged period, by the end of the reporting period, NPM sent to the Commissariat for Refugees and Migrations the recommendation to introduce the procedure of



complaints against the work of persons engaged in centres. The uncertainty of continuing the journey, prolonged stay in Serbia, insecure future and not understanding the situation where they have found themselves cause stress among the migrants, that may be recognized during the visits and interviews with them. It is therefore important to provide them the psychological support that is not organized in the majority of visited centres. NPM recommended that the support of professional staff and premises for talking with the migrants are provided.

## **1.2. The most important data on the activities of the Protector of Citizens regarding the NPM activities in 2016<sup>4</sup>**

In 2016, NPM made 92 visits to institutions accommodating persons deprived of their liberty, with overall 318 recommendations addressed to the competent authorities and visited institutions.

Overall 51 institutions were visited as part of the regular visits, in particular: 33 police stations, 8 institutions for enforcement of criminal sanctions, 3 psychiatric hospitals and 7 social welfare institutions of a home type. Following these visits, the visited institutions were presented with the Reports that included recommendations for eliminating the identified deficiencies in their work that may, or actually do, result in abuse.

In 2016, NPM made four visits aimed at monitoring the acting upon previously addressed recommendations, specifically: Police Administration in Novi Pazar and stations operation under it, the seat of Police Administration in Pirot, Police station in Vršac and District Court in Leskovac.

With the support of the UN High Commissioner for Refugees in Serbia (hereinafter: the UNHCR), in the course of 2016, NPM, in cooperation with the Belgrade Centre for Human Rights, made 52 thematic visits to the institutions competent to deal with asylum seekers and refugees. The thematic reports on these visits addressed 72 recommendations for eliminating the identified deficiencies.

In cooperation with the Office of the United Nations High Commissioner for Human Rights OHCHR, The Protector of Citizens organized a round table, to discuss the topic of "Human rights and social involvement of refugees and migrants in the Republic of Serbia", including the two-day meeting in Belgrade, of the NPM Network of South-East Europe, attended by the representatives of the Network members and associations from Serbia. The topic of the meeting was the preventive approach to the prevention of human rights of refugees and migrants in the countries of South East Europe.

In order to inform the migrants about their rights and options for obtaining different ways of protection for themselves in the Republic of Serbia, The Protector of Citizens produced written leaflets in English, French, Arabic, Farsa and Urdu languages, distributed among the migrants during the visits of NPM teams.

To promote and protect the rights of persons deprived of their liberty and prevent torture, the NPM representatives took part in a number of conferences, round tables, workshops, seminars and trainings.

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<sup>4</sup> Please find more details under Item 5 hereof.

## 2. Prohibition of torture

### 2.1. National legislation

The Constitution of the Republic of Serbia<sup>5</sup> guarantees human dignity, inviolability of human life, inviolability of physical and mental integrity, and it strictly prohibits torture<sup>6</sup>.

*Constitution of the Republic of Serbia, Article 25, paragraph 2.*

Nobody may be subjected to torture, inhuman or degrading treatment or punishment<sup>7</sup>.

Prohibition of torture is envisaged by other legislation, inter alia, by the Law on Criminal Proceedings<sup>8</sup>, Law on Police<sup>9</sup> and the Law on Enforcement of Criminal Sanctions<sup>10</sup>. The Criminal Code<sup>11</sup> defines the torture and maltreatment as a separate criminal act<sup>12</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>13</sup>, that in its Article 7, adopted the provision on prohibition of torture referred to under Article 5 of the Universal Declaration of Human Rights<sup>14</sup>, was ratified in 1971<sup>15</sup>.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment<sup>16</sup> (Convention against torture) was ratified in 1991<sup>17</sup>. It constitutes one of the most important international instruments in the area of torture prohibition.

<sup>5</sup> "Official Gazette of RS", no. 98/2006.

<sup>6</sup> Constitution of RS, Articles 23, 24 and 25.

<sup>7</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.

<sup>8</sup> "Official Gazette of RS", no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014.

<sup>9</sup> "Official Gazette of RS", no. 6/2016.

<sup>10</sup> "Official Gazette of RS", no. 55/2014.

<sup>11</sup> "Official Gazette of RS", no. 85/2005, 88/2005-corrigendum, 107/2005-corrig., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014.

<sup>12</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>13</sup> Signed on December 19, 1966 in New York.

<sup>14</sup> Adopted by the General Assembly of United Nations on December 10<sup>th</sup>, 1948 in Paris.

<sup>15</sup> "Official Gazette of SFRY", no. 7/71.

<sup>16</sup> Adopted on December 10, 1984 in New York.

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

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.

In addition to providing 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 a person to the state in which that 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 binds the State Parties to ensure that introduction and information about the prohibition of torture be integral part of training delivered 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>18</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.

To this end, each state party shall ensure that any person believing to have been subjected to torture, is enabled to exercise their right to complain to the competent authority, that shall immediately and impartially undertake to investigate that case and provide protection to the person who filed such complaint and the witness, against any harmful treatment or other form of intimidation due to the filed complaint or the provided statement<sup>19</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.<sup>20</sup>

<sup>17</sup> " Official Gazette of SFRY – International Treaties", no. 9/91.

<sup>18</sup> Convention against torture, Article 10 Para 1.

<sup>19</sup> Convention against torture, Article 13.

<sup>20</sup> Convention against torture, Article 14.

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 the evidence that the statement was made<sup>21</sup>.

The Convention against torture established the Committee against torture<sup>22</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 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>23</sup>. The Republic of Serbia submitted its reports to the Committee, and the Committee sent its comments to the reports<sup>24</sup>.

The Republic of Serbia is a Member State to the Council of Europe. European Convention of Human Rights and Fundamental Freedoms<sup>25</sup> and European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>26</sup> (European Convention for the Prevention of Torture) were ratified in 2003.<sup>27</sup>

The European Convention for the Prevention of Torture established the European Committee for the Prevention of Torture.<sup>28</sup> The state is obliged to allow the Committee to visit all places where the persons deprived of their liberty are placed.<sup>29</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>30</sup> After each visit the Committee composes its report about the facts found during the visits.<sup>31</sup> By the end of 2015, the Committee made four visits to Serbia, in 2004, 2007, 2011 and 2015.<sup>32</sup>

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<sup>21</sup> Convention against torture, Article 15.

<sup>22</sup> Convention against torture, Article 17.

<sup>23</sup> Convention against torture, Article 19 Para 1.

<sup>24</sup> Comment to the Report of the Republic of Serbia made by the Committee against Torture from the 41<sup>st</sup> session held from 3 to 21 November 2008 to the Report of the Republic of Serbia.

<sup>25</sup> Enacted on November 4<sup>th</sup>, 1950 in Rome

<sup>26</sup> Signed on November 26<sup>th</sup> 1987 in Strasbourg

<sup>27</sup> "Official Gazette of Serbia and Montenegro – International Treaties", no. 9/2003, 5/2005 and 7/2005 - corrig. And Official Gazette of Serbia and Montenegro – International Treaties, no. 9/2003).

<sup>28</sup> European Convention for the Prevention of Torture, Article 1.

<sup>29</sup> European Convention for the Prevention of Torture, Article 2 and Article 7, Para 1.

<sup>30</sup> European Convention for the Prevention of Torture, Article 8

<sup>31</sup> European Convention for the Prevention of Torture, Article 10, Para 1.

<sup>32</sup> Reports on visits to RS and Answers of the RS Government may be found on the web page of European Committee for the Prevention of Torture at [www.cpt.coe.int/en/states/srb.htm](http://www.cpt.coe.int/en/states/srb.htm).

### 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>33</sup> (the Optional Protocol) all State parties acknowledged that mistreatment is prohibited and that it constitutes severe violation of human rights<sup>34</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>35</sup>

The intention of the Optional Protocol to enable visits and/or permanent presence of the mechanism for the prevention of torture in the institutions where persons deprived of their liberty are placed, due to the understanding that the major problem of closed institutions is that anything occurring within these institutions is closed to the public.

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>36</sup>

#### 3.1. Sub-committee on Prevention of Torture<sup>37</sup>

The Optional Protocol established Sub-Committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment and Punishment<sup>38</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>39</sup>

The State Parties to the Optional Protocol undertake:

- to receive the Sub-committee on Prevention of Torture 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, whether in person or with the assistance of interpreter, if this is found necessary, including with any other person the Sub-committee for Prevention of Torture believes is able to provide relevant information;
- to enable it unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention, including the number of places and their location, unrestricted access to all information referring to the treatment of those persons and their detention conditions, as well as to provide any relevant information the Sub-committee on Prevention of Torture may request to evaluate the needs and

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<sup>33</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>34</sup> Optional Protocol, Preamble.

<sup>35</sup> Optional Protocol, Article 1

<sup>36</sup> Optional Protocol, Article 4, Para 1

<sup>37</sup> [www2.ohchr.org/english/bodies/cat/opcat/](http://www2.ohchr.org/english/bodies/cat/opcat/)

<sup>38</sup> Optional Protocol, Article 2, Para 1

<sup>39</sup> Optional Protocol, Article 11 Item (a)

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 review the recommendations of the Sub-committee for Prevention of Torture and enter into a dialogue with it about possible implementing measures.<sup>40</sup>

The Sub-Committee on Prevention of Torture hasn't visited Serbia yet.

### 3.2. National Preventive Mechanisms (NPM)

The Optional Protocol stipulated that Each State Party shall set up, designate or maintain at the domestic level one or several national visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishments<sup>41</sup>.

NPM shall be entitled to:

- the access to all data about the number and treatment of persons deprived of their liberty at the institutions where they are placed and the number of institutions and their location;
- access to all detention institutions, their installations and facilities, as randomly selected by it;
- unobstructed interviews with persons deprived of their liberty without the presence of witnesses, either personally or with the presence of an interpreter, where required and any other person NPM may believe could provide relevant information, at their free choice<sup>42</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 aimed at improving the treatment and status of persons deprived of their liberty and preventing torture or other cruel, inhuman or degrading treatment or punishment, taking into account all relevant UN norms, as well as to submit any proposals and deliver its opinions with respect to the current or proposed laws<sup>43</sup>.

The State shall undertake to warrant the functional independence of the NPM as well as the independence of its staff<sup>44</sup>.

No authority or official shall be allowed to order, implement, allow or tolerate any sanction against any person or organization due to their sharing any information with NPM, whether true or not, and no such person or organization shall suffer any other consequences whatsoever<sup>45</sup>.

The State shall make available any resources required for the functioning of NPM<sup>46</sup>.

The relationship between 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>47</sup>.

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<sup>40</sup> Optional Protocol, Article 12 and 14

<sup>41</sup> Optional Protocol, Article 3

<sup>42</sup> Optional Protocol, Article 20

<sup>43</sup> Optional Protocol, Article 19

<sup>44</sup> Optional Protocol, Article 18 Item 1

<sup>45</sup> Optional Protocol, Article 21 Item 1

<sup>46</sup> Optional Protocol, Article 18 Item 3

<sup>47</sup> Optional Protocol, Article 22.

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

### 3.3. Establishment of NPM in Serbia

Serbia signed the Optional Protocol on September 25<sup>th</sup> 2003 and ratified it on December 1<sup>st</sup> 2005<sup>48</sup>.

Serbia became the State Party to the Optional Protocol<sup>49</sup> on September 26<sup>th</sup> 2006

Serbia was four years late with the fulfilment of its obligation to have, designate or introduce an independent national mechanism for prevention of torture to be adopted within a year time following the effective date of the Optional Protocol or after its ratification or accession by a state.<sup>50</sup>

NPM was established in Serbia by the Law on Amendments to the Law on Ratification of Optional Protocol, adopted on July 28<sup>th</sup> 2011.<sup>51</sup>

In line with the consensus reached in the public debate, no new NPM entity was established in Serbia, instead of which a 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 decentralized units and the 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>52</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>53</sup>.

By virtue of the Republic of Serbia Constitution<sup>54</sup>, the Protector of Citizens has been established as an independent state authority protecting the rights of citizens and controlling the work of state administration bodies and other holders of public powers<sup>55</sup>. The Law on Protector of Citizens<sup>56</sup> establishes the Protector of Citizens as an independent state authority, having autonomy in discharging its work that protects and takes care of improving the rights of citizens<sup>57</sup>. In April 2010, it has been recognized as the authority whose actions are based on the Paris Principles<sup>58</sup>.

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

<sup>48</sup> "Official Gazette of Serbia and Montenegro - International Treaties", no. 16/2005, amended 2/2006.

<sup>49</sup> By submitting the ratification act to the Secretary General of UN.

<sup>50</sup> Optional Protocol, Article 17.

<sup>51</sup> Law on Amendments to the Law on Ratification of 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>52</sup> Law on Amendments to the Law on Ratification of Optional Protocol, Article 2a.

<sup>53</sup> Optional Protocol, Article 18 Item 4.

<sup>54</sup> "Official Gazette of RS", no. 98/2006.

<sup>55</sup> Constitution of the Republic of Serbia, Article 138, Para 1.

<sup>56</sup> "Official Gazette of RS", no. 79/2005 and 54/2007.

<sup>57</sup> Law on Protector of Citizens, Article 1, Para 1 and 2 and Article 2, Para 1.

<sup>58</sup> [http://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_NIs.pdf](http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf) .

The Protector of Citizens is authorized under the Law on the Protector of Citizens to visit any institution accommodating the persons deprived of their liberty, to talk in private with them and with any employee of the institution and also to have access to all data relevant for achieving the goal of the prevention, irrespective of the level of secrecy<sup>59</sup>.

The competence of the Protector of Citizens in terms of the protection of rights of persons deprived of their liberty has been set forth by the Law on the Protector of Citizens and coincides with the term of office of NPM provided in the Optional Protocol.

The explanations to the proposed law establishing the NPM<sup>60</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>61</sup>.

## 4. Methodology, resources and organization of NPM in 2016

### 4.1. NPM Methodology

The role of NPM of Serbia activities is exclusively preventive. NPM does not oversee legality or regularity of the work of the competent authorities in certain cases, but instead, it timely informs the organizational unit of the Protector of Citizens acting upon complaints filed by persons deprived of their liberty.

NPM of Serbia makes visits to institutions accommodating persons deprived of their liberty following the prearranged methodology.

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 follow-up visits verifying the compliance with the recommendations, thematic and extraordinary (*ad-hoc*) visits. Visits may be announced and unannounced.

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

Following the initial period, in 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. This enables monitoring of the status determined during the previous regular visits, particularly acting by competent authorities upon the NPM recommendations.

The methodology of the NPM of Serbia is focused on follow-up visits to the institutions where persons deprived of their liberty are placed.

When making preparations for the visits to institutions, the existing information are taken into consideration. The tasks are shared so that by rule, the visiting team is split into four thematic

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<sup>59</sup> Law on Protector of Citizens, Article 21, Para 1 and 2 and Article 22

<sup>60</sup> Law on Amendments to the Law on Ratification of Optional Protocol with the Convention against Torture.

<sup>61</sup> Draft Law on Amendment to the Law on Ratification of Optional Protocol, Explanation.



groups: the first one is to observe accommodation capacities (the group for observing accommodation conditions), the second one reviews the provision of legal protection in the institution (the legal group), the third reviews the treatments administered to the persons deprived of their liberty (the treatment group) while the fourth group examines the achievement of health care provided to individuals kept in the institutions (the health care group) In order to increase efficiency of collecting the relevant information during the visits, the working material is distributed to all the team members in advance (such as questionnaires, structure and templates of the parts of reports) serving as a guiding tool.

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

As a rule, regular visits are scheduled in advance, in specific stages. The first stage is the interview with the management of institution, the second one is the joint tour of the institution. The third stage is planned to include interviews of the NPM thematic group representatives (the legal, treatment and health care group) with the managements of respective services and examination of documents. The fourth stage are the interviews with persons deprived of their liberty while the fifth stage includes a brief meeting of all the thematic groups and the closing discussion with the institution management, at which the preliminary impressions about the visit and the observed conditions are being shared. Acting upon the established stages is not obligatory, it depends on the nature of visit and other circumstances. The common practice is that certain stages are omitted in visits of different nature.

During each visit, in order to achieve a more efficient and systematic performance, the team members use questionnaires that they need to fill in, including the compendiums of excerpts from all relevant regulations and standards related to their specific field of work.

In line with the work methodology, as a rule, the reports are being composed following the prearranged structure. However, depending on the nature of visit and data collected in the course of specific visit, the scheduled structure of report may be changed and adjusted to the nature of the visit, at the proposal of the team members.

The reports on the conducted visits to the institutions where persons deprived of their liberty are placed, NPM stated the omissions and provided its recommendations for eliminating the deficiencies as potential sources of torture or mistreatment. In the event of identifying deficiencies and/or any irregularities in the work, the relevant provisions and standards that the status and actions need to be aligned with are being specified, along with the issued recommendations.

The Reports are being sent to the visited institutions and the competent Ministry, providing, as a rule, the time limit for stating their opinion about their compliance with the issued recommendations, with an invitation for a dialogue to review the implementation of the recommendations.

The NPM methodology envisages initiating the dialogue with the visited institution and the competent Ministry with the aim to ensure the implementation of recommendations.

The purpose of the dialogue with the visited institutions and competent Ministries is to review the conditions found in the visited institution and the system as a whole, primarily to seek for the best method of acting upon the recommendations addressed by NPM after having completed the visits.

In order to concurrently satisfy both the requirement of confidentiality and transparency in work, the NPM Report made upon the visits to institutions, containing all the personal data on that have been redacted, are published after the competent authorities express their opinion about the recommendations presented in the reports. All reports and answers of the competent authorities are published on the web page of the Protector of Citizens and subpage of the NPM.

The concept of the NPM Methodology is to dedicate special attention to the protection of persons deprived of their liberty, of detention centre employees and any other persons who have had contacts with NPM, that notified NPM about the treatment of persons deprived of their liberty or reported the cases of mistreatment.

The NPM of Serbia is particularly focused on the prevention of retaliation in a way to protect all sources of information and/or details about individuals who provided these information. In case their identity is disclosed, as a prevention, NPM makes subsequent visits to these persons and oversees their situation, specifically, the way they are being treated by the staff in the detention centres. In addition, the responsible persons are being cautioned that any retaliation against the persons who cooperated with NPM would represent the worst form of abuse.

The NPM Methodology envisages intensive activities aimed at fighting against impunity of torture, or any other form of mistreatment. Such activities, or any other behaviour representing torture are being signalled to all the competent authorities, with the expectation that in such cases, they will take any available measures and actions under their jurisdiction to investigate the accountability of their employees.

The NPM of Serbia takes note of activities of competent authorities in order to fight the impunity of torture and establish both the individual and objective accountability.

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

In order for NPM to be able to successfully perform its tasks in line with its term of office set forth by the Law on Ratification of Optional Protocol, it is necessary to ensure the required material resources for its work and achieve its financial independence.

The total amount of RSD 10,871,057.00 (around € 87,600.00) have been provided within the adopted budget of the Protector of Citizens, allocated for the provision of the NPM activities in 2016.

In 2016, two offices in the office building of the Protector of Citizens were used by the NPM staff, including the van used for the transportation of the team members to the locations where they made visits. The NPM staff were able to use all the required office and other equipment and material (PCs, printers, laptops, photocopiers, humidity and distance meters etc.).

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

By the end of 2015, the National Assembly of the RS adopted the Decision on the approval of 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 forming a special unit that shall perform NPM activities - the NPM Secretariat. Subject to the provisions of this Rulebook, NPM Secretariat does not operate under 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.

In 2016, the Protector of Citizens hired one more bachelor of law, to perform the job of an independent advisor in the NPM Secretariat, meaning that the NPM activities are now being discharged by four employees.

The projected number of the staff is not sufficient for the improvement of the work of the NPM.

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 the requirement of being efficient with the entrusted tasks. It is therefore necessary to form a special department within the Protector of Citizens institution that would be managed by the NPM Secretary, whose position would be at the same level as that held by the Secretary General of the Protector of Citizens Secretariat. The NPM Secretary would be supported by two assistants (one for monitoring and the other for cooperation, reporting and legislation improvement). It is also necessary that, considering the nature of their work, the assistant and the employee tasked with monitoring, have all the powers of inspection employees, police officers and the employees of the Administration for enforcement of criminal sanctions having direct contacts with prisoners. For the NPM mandate operations it is necessary to form a separate budget line within the budget of the Protector of Citizens. The efficient work of NPM requires the adoption of the Law on NPM without delay, or amendments to the Law on Protector of Citizens, so as to regulate the organization and the NPM mandate implementation scheme.

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

Representatives of the Provincial Protector of Citizens took part in 14 conducted visits in the course of the year of 2015.

In the course of 2016, the Protector of Citizens continued his cooperation with the Provincial Protector of Citizens of AP Vojvodina (the Provincial Protector of Citizens) with the concluded Memorandum of Cooperation, on visiting the detention places located within the Autonomous Province of Vojvodina.

In discharging the NPM operations, the Provincial Protector of Citizens visited the Police Administration in Subotica, District Prison in Subotica, Home for children and adults with mental disabilities "Veternik", Gerontology Center in Novi Sad, Home for persons with mental disabilities Otthon and the Gerontology Center in Vršac.

The representatives of the Provincial Protector of Citizens also attended the thematic visits of NPM, in order to monitor the treatment of refugees/migrants acting by competent authorities. In 2016, together with the Protector of Citizens, the Provincial Protector of Citizens visited the Reception Center in Subotica and Sombor, border crossing points in Horgoš and Kelebija, Reception Centre in Subotica and Sombor, BCPs Horgoš and Kelebija, District Prison in Subotica, Correctional Institution in Sombor and Regional Border Police Centres at BCPs with Hungary and Romania.

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

At the beginning of 2016, pursuant to Article 2a, Para 2 of the Law on Ratification of Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment („*Off.Gazette of Serbia and Montenegro – International Treaties*“, no. 16/05 u 2/06 and “*Official Gazette of RS - International Treaties*“, no. 7/11), the Protector of Citizens made a public invitation to associations whose Statutes envisage improvement and protection of human rights and freedoms, for the purpose of cooperation with NPM activities and in particular, participation of association representatives and partners of associations in the visits to locations where persons deprived of their liberty are placed, drafting of reports, providing recommendations, opinions and other acts and performance other NPM tasks.

Based on the procedure that followed the public call<sup>62</sup>, the Protector of Citizens adopted the Decision<sup>63</sup> whereby 9 associations were selected to participate in NPM tasks: Belgrade Centre for Human Rights, Victimology Society of Serbia, Group 484, Mental Disability Rights Initiative (MDRI-S), Lawyers’ Committee for Human Rights (YUCOM), International Aid Network (IAN), Committee for Human Rights in Valjevo, Helsinki Committee for Human Rights in Serbia and Centre for Human Rights in Niš.

Based on the Decision on the selection of associations, the Protector of Citizens concluded individual cooperation agreements with the above stated associations on performing NPM tasks, defining all the issues relevant for the implementation of cooperation (tasks, activities, rights, obligations, powers, compensation of costs and other).<sup>64</sup>

The Protector of Citizens passed the Decision on fees for performing of NPM activities, based on the Cooperation Agreements<sup>65</sup>. This Decision regulates the amount of cost refund for the Associations providing their support to the Protector of Citizens with the performance of NPM tasks.<sup>66</sup>

#### 4.6. Participation of external experts in s NPM activities

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

The representatives of the Protector of Citizens, Provincial Protector of Citizens and associations within the teams visiting the institutions accommodating persons deprived of their liberty are predominantly formed of lawyers, and therefore, the efficient performance of NPM requires outsourcing of other experts.

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

In 2016, the following persons participated in the work of NPM: 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 Snežana Pavlekić, PhD, specialist in forensic medicine, Medical School of the University of Belgrade, Professor Vladimir Jović, PhD, psychiatrist, Faculty of Philosophy of

<sup>62</sup> Published on January 29, 2016 in the “Official Gazette of RS”.

<sup>63</sup> Number 285-7/16 of February 23, 2016

<sup>64</sup> Model of Cooperation Agreement in ANNEX II of the Report

<sup>65</sup> Reg. no. 6174 of February 24, 2016

<sup>66</sup> Article 2 of the Decision on amount of fee for performing of NPM tasks

the University of Priština / Kosovska Mitrovica and Dr Radomir Samardžić, specialist psychiatrist and Dr Mira Petrović, specialist psychiatrist.

The expertise of the outsourced professionals contributed to the improvement and raising the quality of NPM work, primarily the generated reports and numerous recommendations for elimination of identified deficiencies.

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

In the course of 2016, NPM representatives attended the seminar for *Monitoring of forced return operations*. The two-day seminar was held in Warsaw, in the organization of Border and Coast Guard Agency FRONTEX.

The study visit to the Human Rights Defender in Armenia was also organized. During the visit, the representatives of the Protector of Citizens paid special attention to exercising of rights and protection of rights of persons deprived of their liberty and understanding the *modus operandi* of the National Preventive Mechanism in Armenia. Joint visits were also organized to the institutions where persons deprived of their liberty are being placed (the prison and police detention).

The NPM representative passed the training on migrations and the law on international human right organized by the NGO Group 484 and the Organization for Security and Cooperation in Europe OSCE, tackling the issue of protection for migrants before international courts and the current development of European law in this field.

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

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

In 2016, the cooperation with the Republic of Serbia National Assembly Committee for Labour, Social Affairs, Social Inclusion and Poverty Reduction of the of the Republic of Serbia was established, to exchange information about the status and present problems with providing care for refugees and migrants, with the focus on vulnerable categories, such as women, children, disabled persons, the elderly and other.

The intensified cooperation has been established with UNHCR and associations Belgrade Centre for Human Rights and Group 484 was established, with the aim to implement the enhancement activities and ensure protection of refugees/migrants in Serbia from ill-treatment.

NPM organized a round table with the topic “Human Rights and Social inclusion of Refugees and Migrants in the Republic of Serbia” in order to initiate the dialogue between all relevant actors in achieving specific plans to introduce an adequate and timely inclusion of refugees and migrants in Serbia and protect their rights. The round table was organized within the project “Human rights of Migrants and Refugees: Serbia and the Balkan Route – National Institutions for Protection of Human Rights and International and Legal Activities” jointly implemented by the Protector of Citizens and the United Nations High Commissioner for Human Rights of OHCHR, with the support of the Federal Government of the Republic of Germany.

With the support of the Office of the United Nations High Commissioner for Human Rights OHCHR, NPM held the press conference to mark the 10-year anniversary since the effective date of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or

degrading Treatments and Punishments (OPCAT), and the meeting of the NPM Network of South East Europe in Belgrade. The topic of the meeting was the preventive approach to the protection of human rights of refugees and migrants in the SEE countries. Also, with the support of the Office of the United Nations High Commissioner for Human Rights OHCHR, NPM made several visits to the locations accommodating the migrants and developed flyers on the rights of refugees and migrants and mechanisms for their exercising and protection in the territory of the Republic of Serbia in English, French, Arabic, Farsi and Urdu languages. To ensure the highest possible awareness among the migrants, NPM team distributed the flyers to refugees and migrants during the visits.

## 5. Fulfilment of the NPM mandate in the cours of 2016

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

In 2016, NPM made 92 visits to the institutions where are placed the persons deprived of their liberty.

Overall 33 visits were made to police administrations and police stations operating under the administrations (PA Kruševac and five police stations operating under them; PA Požarevac and seven police stations operating under them; PA Subotica; PA Niš and six police stations operating under them; PA Leskovac and five police stations operating under them; PA Pirot; PA Novi Pazar and two police stations operating under them and PS Vršac). In addition to regular visits, there were five visits made for the purpose of observing the actions taken upon previous recommendations (PA Pirot, PS Vršac and PA Novi Pazar and their stations). The Reports on these visits of competent authorities sent overall 88 recommendations.

NPM visited 9 institutions for enforcement of criminal sanctions (the District Prison in Subotica; The Penal and Correctional Institution in Niš; Penal and Correctional Institution in Belgrade; Penal and Correctional Institution in Padinska Skela; District Prison in Smederevo, District Prison in Pančevo -Vršac Department, District Prison in Vranje, District Prison in Leskovac and the Penal and Correctional Institution in Sombor) and addressed 104 recommendations for eliminating of identified deficiencies. Out of the total number of visits, two were made for the purpose of monitoring of actions taken upon previous addressed recommendations (*follow-up* visits) – visits to District Prison in Leskovac and Penal and Correctional Institution in Niš, four were thematic – visits to District Prison in Vranje and to the Penal and Correctional Institution in Belgrade, Padinska Skela and Sombor, while the remaining three were made within the regular systemic visits to District Prison in Subotica, District Prison in Pančevo -Vršac Department and District Prison in Smederevo.

NPM visited 7 institutions of social welfare of homes (Home for Children and Youth with Disabilities "Veternik"; Home for adult persons Kulina; Gerontology Centre in Novi Sad; Home for elderly persons Veliki Popovac; Home for the Blind "Zbrinjavanje" Home for persons with mental disabilities "Otthon"; Gerontology Center in Vršac<sup>67</sup>) and included 44 recommendations in their report. Only one visit was aimed at monitoring the actions taken upon previous recommendations, in the Home "Veternik".

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<sup>67</sup> Considering that the visit to the Gerontology Center in Vršac was carried out at the end of the year, Report on visit with recommendations was sent at the beginning of 2017, and therefore the referenced recommendations are not listed in this Report.

Additional visits were made to special psychiatric hospitals (Special Hospital in Vršac and Special Hospital for Psychiatric Diseases in Kovin) including 1 visit to the Psychiatric department of the General Hospital in Subotica, that were addressed 8 recommendations on that occasion. Another 2 visits were carried out to special psychiatric hospitals (Special Hospital for Psychiatric diseases in Vršac and 2 visits to special psychiatric hospitals were made (Special Hospital for Psychiatric Diseases in Vršac and Special Hospital for Psychiatric Diseases in Kovin), including 1 visit to the Department of the General Hospital in Subotica, that was addressed 8 recommendations.<sup>68</sup>

In cooperation with the Belgrade Center for Human Rights and the support of UNHCR, 52 thematic visits were made, to monitor the actions taken by competent authorities towards the refugees and migrants transiting Serbia and on that occasion, 72 recommendations for eliminating of identified deficiencies were addressed.

Overview of achievements of the Visits Plan in 2016:

<b>VISITS</b>	<b>Visits planned in 2016</b>	<b>Visits conducted in 2016</b>
Police stations	35	33
Prisons (including detention units)	13	8
Psychiatric hospitals and departments	2	3
home type institutions for social protection	4	4
Homes for elderly persons and gerontology centres	3	3
Regional centres of the Border Police of the MoI	3	4
Centres for placement of asylum seekers	5	4
Reception centres for migrants	6	16
Reception centres of MoI for foreigners	1	2
District Prison – position of migrants	3	3
Institutions for accommodating foreign minors	2	3
Social welfare centres – work with migrants	1	1
Informal places where migrants are gathering	0	6
Border Crossing Points	0	2
<b>TOTAL</b>	<b>78</b>	<b>92</b>

The number of visits compared to the projected plan accounts for almost 117%.

<sup>68</sup> Considering that the visits to special psychiatric hospitals were made by the end of the year, the reports on the visits including the recommendations, were addressed in early 2017 and therefore, these recommendation are not included in this Report.

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

In 2016, the NPM was provided an unhindered access to all institutions where persons are deprived of their liberty are placed and to employees, including the access to full documentation.

In the course of NPM visits conducted to the institutions where persons deprived of their liberty are placed conducted in 2016, the competent authorities and institutions acted in line with Article 20 of the Optional Protocol.

Such acting of competent authorities is the result of a continuing, several years long practice of ensuring the free performance of NPM under its mandate.

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

In 2016, NPM made 54 Reports on visits to the institutions where persons deprived of their liberty are placed.

After each visit, in line with the set methodology and practice, the NPM generates reports on these visits with recommendations for the elimination of identified deficiencies, with applicable legislation and standards observed by NPM when establishing the current deficiencies regarding the operation institutions.

The difference in the number of the visited institutions (92) and the generated reports (54) is due to the fact that some of the reports comprise several institutions, so as to allow a systemic understanding of a particular problem.

The reports on visits and/or the identified status, have been composed by the visiting team members, specifically, the Protector of Citizens, Provincial Protector of Citizens of the AP Vojvodina and associations and the appointed experts.

## **5.4. Recommendations for elimination of identified deficiencies**

The reports on visits to the institutions where persons deprived of their liberty are placed, contain recommendations of NPM for eliminating deficiencies, addressed to competent authorities.

In 2016, NPM issued 318 recommendations for the elimination of identified deficiencies.

The issued recommendations, in addition to the established facts and/or deficiencies in the work, identified violations of the rights of persons deprived of their liberty, also contain relevant legal provisions and standards applied by NPM in establishing any deficiencies related to the work of the subject-matter institutions, with which they need to adjust their operations.

Due to the specific position of refugees and migrants staying within the territory of the Republic of Serbia on their way to developed countries of EU, NPM was forced to, considering the lack of a legal framework that would be fully applicable in the current situation, creates its



own standards and *ad-hoc* methodology of work related to monitoring of the rights of refugees /migrants.

Composed reports with the recommendations for eliminating 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 related to the work of the visited institutions and for the purpose of monitoring the implementation of recommendations.

All the recommendations delivered to the visited institutions /competent Ministries, are provided in the section ANNEX I of the Report.

#### **5.4.1. Acting of competent authorities upon recommendations of the National Assembly of the Republic of Serbia**

By its conclusions, the National Assembly of the Republic of Serbia<sup>69</sup> has obliged the competent authorities to comply with the NPM recommendations, and to inform the National Assembly of their implementation in writing. According to the information available to the NPM, the competent authorities did not act upon the recommendations of the National Assembly.

### **5.5. Dialogue with authorities**

The NPM, in cooperation with the Administration for Enforcement of Criminal Sanctions and association Initiative of Youth for Human Rights, organized the round table titled: "Health care in the prison system of Serbia", that gathered doctors and other medical staff working in the institutions for the enforcement of criminal sanctions. The participants were, in addition to being addressed by the Deputy Protector of Citizens and representatives of NPM, addressed by the head of the Administration for Enforcement of Criminal Sanctions, Head of the Special Prison Hospital and experts in the field of human rights and provision of health care. The objective of the round table was to educate the participants about the standards of offering the health care in institutions and to share the most significant findings and recommendations of the National Preventive Mechanism.

The NPM organized the round table to discuss the topic of "Human rights and social inclusion of refugees and migrants in the Republic of Serbia" in order to start a dialogue between all the relevant actors in achieving the specific plans and ensure an adequate and timely inclusion of refugees and migrants in Serbia, as well as to protect their rights. The round table was organized within the project titled „Human rights of migrants and refugees: Serbia and the Balkan route - National institutions for the protection of human rights and international legal activities" jointly conducted by the Protector of Citizens and the High Commissioner for Human Rights of OHCHR, with the support of the Federal Government of the Republic of Germany.

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<sup>69</sup> Conclusions of RS no. 72, 73 and 74 dated October 23, 2014, available at the NPM website: [http://npm.rs/index.php?option=com\\_content&view=article&id=461:2015-04-08-12-43-10&catid=108:2012-01-18-20-51-23&Itemid=71](http://npm.rs/index.php?option=com_content&view=article&id=461:2015-04-08-12-43-10&catid=108:2012-01-18-20-51-23&Itemid=71)

## 5.6. Organization of events and promotion of NPM/prevention of torture

In order to promote and protect the rights of persons deprived of their liberty, the NPM representatives took part at numerous conferences in 2016, including round tables, seminars and trainings. The Deputy Protector of Citizens participated in the annual meeting of NPMs held in Vienna, organized by OSCE for democratic institutions and human rights associations for the prevention of torture. The meeting was attended by the representatives of European Committee for Prevention of Torture, UN Subcommittee for Prevention of Torture and numerous experts. The objective of the meeting was to point to the achievements and challenges in the work of NPMs, to improve the strategy and efficiency of the NPMs mandates and regional OSCE Missions, as well as the cooperation between them.

By organizing the Press Conference, NPM marked a 10<sup>th</sup> anniversary of the enforcement of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or degrading Treatments and Punishments (OPCAT). The experience with working with persons deprived of their liberty was shared at the conference by the Deputy Protector of Citizens, the resident Coordinator of UN and representative of *UNDP* in Serbia, including the experts of NPM Serbia, Director of the Lawyers' Committee for human Rights, member of NPM Serbia and a representative of the Administration for Enforcement of Criminal Sanctions.

The NPM representatives presented to the students of the Law School at the University of Belgrade, the work method of the NPM. Also, the Initiative of Youth for Human Rights organized lectures for students with the topic of "Monitoring of Prison System", at which the representatives of NPM citizens took part as lecturers.

The representative of NPM participated at the meeting organized by European Union Agency for Fundamental Rights (*FRA*), Council of Europe, European Network of Equality Bodies and European Network of National Human Rights Institutions (*ENNHRI*) for the purpose of developing a 2016 Platform and the work plan for the European Network of National Human Rights Institutions in the area of the protection of rights of refugees and migrants. The work of the Protector of Citizens was presented there, along with the operations carried out in the role of the National Preventive Mechanism in the context of protecting the rights of refugees and migrants. Also, the participants were presented the Declaration on the protection and promotion of the rights of refugees and migrants adopted by Ombudsmen/national institutions for the protection of human rights in Belgrade, November 2015.

The Protector of Citizens and the secretary general of the NPM participated in the workshop organized by Greek Ombudsman in Thessaloniki, the topic of which was "Refugees /migrants and human rights: Regional joint Action Plan of Ombudsman". They adopted the Regional joint Action Plan of Ombudsman Institutions, based on the Belgrade declaration. Also the Protector of Citizens and the secretary general of the NPM participated in the two-day International Conference "Responding to actual challenges in Europe by Ombudsman" in Barcelona, organized by the Ombudsman of Catalonia, chairing the European group of International Ombudsmen Institutes, one of the topics being the "Migrants and Refugees".

The website of the NPM (<http://npm.rs>), in Serbian and English languages contains all the news, reports on visits and answers of authorities about acting upon recommendations, including other NPM activities in Serbia.

## 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 2016, 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.

NPM continued with the common practice of submitting its annual reports to the UN Committee against Torture, UN Sub-Committee for the Prevention of Torture and the European Committee for the Prevention of Torture.

Considering that the Ministry of Health did not provide its answer about acting upon recommendations<sup>70</sup> addressed to the Republic of Serbia by the European Committee for the Prevention of Torture in its 2015 Visit Report<sup>71</sup>, the NPM organized the visit to the Special Hospital for Psychiatric Diseases „Dr Slavoljub Bakalovic“ in Vršac, to ensure a follow-up regarding the implementation of recommendations from the Report on the visit of the European Committee for the Prevention of Torture to the Republic of Serbia in 2015. The report on the above visit that was drafted in the beginning of 2017, the NPM addressed 20 recommendations for eliminating the identified deficiencies, to the Ministry of Health.

## 5.8. Cooperation with other NPMs

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

In 2016, the NPM representatives participated in the meetings organized by South-East Europe NPM Network (the NPM Network), held in Salzburg, Vienna and Zagreb. The topic of the meeting held in Salzburg in April 2016 was the conditions of accommodation and treatment in social welfare institutions with a focus on homes for the elderly persons and deprivation of liberty by overmedication. The topic of the meeting held in Vienna was the homes for the elderly and/or standards in medical care and medication-based deprivation of liberty. The meeting of the Network held in Zagreb in November, had several topics: improvement of monitoring the actions upon recommendations of national mechanisms, implementation of UN Mandela rules, including the role of NPMs in the protection of refugees and migrants.

In mid-December 2016, the NPM of Serbia organized the two-day meeting of NPM Network in Belgrade, attended by the representatives of Network members, including the representatives of associations in Serbia. The topic of the meeting was the preventive approach to the protection of human rights of refugees and migrants in the SEE countries. On the first day of the meeting, the Network members shared their experience from visits to locations where refugees and migrants are staying and the future plans and challenges related to the protection and improvement of the rights of refugees and migrants. After having addressed the meeting, the participants were split into two groups to visit the Asylum Center in Krnjača and informal gathering place of migrants in Belgrade. On the second day, the members of NPM Network shared their impressions and observations from the visits in Belgrade and discussed future

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<sup>70</sup> The Document *Answers and Comments of the competent authorities of the Republic of Serbia to the Report of European Committee for Prevention of Torture and inhuman and degrading Treatments and Punishments, following the fourth interim visit to the Republic of Serbia in the period from 26 May to 5 June 2015*, submitted by the Government to the Committee.

<sup>71</sup> CPT (2015) 60, adopted on November 6, 2015

challenges to be encountered by the Network, after which certain steps of the NPM in the region have been defined, to prevent maltreatment of refugees and migrants.

## 5.9. Distribution of the Annual NPM Report

The Republic of Serbia ensured, as in previous years, that the NPM Annual Report for 2015 is published and distributed.<sup>72</sup> This was directly conducted by NPM.

NPM Annual Report for the year of 2015 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 and NPM<sup>73</sup>. Moreover, the publication is available in Serbian and English languages.

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. Review of the Annual NPM Report for 2015

The National Assembly of the Republic of Serbia and its competent bodies did not deliberate on the recommendations set forth in the NPM Report for the year 2015.

Despite the fact that the practice was established that the National Assembly of the Republic of Serbia and its competent bodies to discuss annual reports of the NPM, in the course of 2016, by the time of submitting this Report, the 2015 NPM Report has not been reviewed by the National Assembly, nor by its competent committees.

The NPM points out that the competent authorities are obliged to review the recommendations from the Annual NPM Report<sup>74</sup>.

Discussing the recommendations from the NPM Report for the year 2015 would concurrently be the opportunity to review the actions taken by competent bodies upon conclusions made by the National Assembly on 23 October 2014, on acting upon recommendations from the NPM Report in 2013<sup>75</sup>.

<sup>72</sup> Optional Protocol, Article 23.

<sup>73</sup> [http://www.zastitnik.rs/attachments/2902\\_izvestaj\\_%20NPM\\_%202012.pdf](http://www.zastitnik.rs/attachments/2902_izvestaj_%20NPM_%202012.pdf) .

<sup>74</sup> Optional Protocol, Article 22.

<sup>75</sup> [http://ombudsman.npm.rs/index.php?option=com\\_content&view=category&layout=blog&id=108&Itemid=71](http://ombudsman.npm.rs/index.php?option=com_content&view=category&layout=blog&id=108&Itemid=71) .

## 6. Condition and activities of the NPM per areas in 2016

In the several years long mandate of the Protector of Citizens, set forth by the Optional Protocol to the UN Convention against torture<sup>76</sup>, in discharging the activities under the National Preventive Mechanism (NPM), the Protector of Citizens found that the prevention of torture and other forms of abuse and treatment of persons deprived of their liberty, has significantly improved in the Republic of Serbia.

Following numerous visits to places where persons are or may be found deprived of liberty, the NPM concluded that there is no torture as an organized or encouraged phenomenon by state authorities in the Republic of Serbia.

It is encouraging that over the past few years the civil servants who treat persons deprived of their liberty have become aware that torture is absolutely illegal. In this regard, there are numerous testimonies of randomly interviewed persons deprived of their liberty, especially in prisons, that they were not victims of torture.

Nevertheless, this does not mean that there is no torture or other form of abuse in the Republic of Serbia. Individual cases of torture or abuse are always possible and expected to be occurring. The torture, as any other form of abuse, is of a situation-related and the persons deprived of their liberty are therefore exposed to a higher risk for a continuing period.

Other than that, individual cases of the treatment of persons deprived of their liberty have been identified as the result of deficiencies in the system and they represent the poor practice retained until today, deviating from the applicable standards, that might, considering the intensity and duration, might grow into, and in some cases they indeed do, a humiliating or inhuman behaviour and even the torture.

Moreover, the systemic gaps in the organization and treatment of persons deprived of liberty, such as inadequate accommodation in some prisons, lack of or non-compliance with the procedures, lack of adequate psychological and social treatment, inappropriate health care and inadequate staffing might, particularly where persistent, adopt a character of an inhuman or humiliating behaviour.

The NPM has pointed out that the institutions in which the persons deprived of liberty are placed, that were visited by the NPM team during the reporting period that were subsequently addressed with its recommendations, were highly cooperative and enabled the NPM to perform its assignment, as mandated by the established Optional Protocol to the UN Convention against torture (both announced and random visits to the detention centres were enabled, as well as the access to all the premises and installations, inspection of all the data including the interviews with all the prisoners, staff and any other persons selected by NPM).

However, despite the significant steps towards the prevention of torture and other forms of abuse, including the improvement in the treatment of the prisoners, the NPM points out that the internal control, prosecution offices and court instruments require much more improvement in terms of effective and efficient fight against torture. In this respect, it would be recommendable to fully harmonize the provisions of the Criminal Code with the definition of torture referred to in Article 1 of the UN Convention against torture

<sup>76</sup> Adopted on December 18<sup>th</sup>, 2002 at the 57<sup>th</sup> session of the General Assembly of the UN based on the Resolution A/RES/57/199, entered into force on 22<sup>nd</sup> June 2006.

In the course of 2016, the NPM visited a number of places where the persons deprived of liberty are placed, such as police stations, international reception centres for foreigners, detention units, prisons, psychiatric hospitals and psychiatric institutions in public hospitals, social welfare institutions used as homes, asylum centres and reception centres for migrants.

In acting upon the NPM recommendations, addressed with the aim to protect and warrant the rights of apprehended and detained persons, as well as to prevent their mistreatment by the police, the visited police departments hand over to the detainees the appropriate written notifications about the rights of the detained persons and maintain due records of detentions.

Although the Instructions on treatment of the detained and brought in persons has still not changed, the police officers of individual police departments ceased with the practice of obligatory presence during medical checkups of all the detained persons, but rather attend only at the request of a doctor, for security reasons. The files formed upon detention of persons no longer include the medical records of the persons while the information about the health condition of the detained person are available to the police officers only to the extent relevant for the treatment of that person upon his/her detention.

A number of detention premises in police stations still do not comply with present standards in terms of material conditions and the recommendations of the NPM to improve the conditions in certain detention premises was predominantly not acted upon, stating unacceptable reasons – the lack of material and technical conditions.

NPM has found that the Ministry of Interior failed to organize appropriate trainings for police officers in each police department in the Republic of Serbia about the treatment of mentally impaired persons.

Taking into account the significance of having additional prevention and protection measures against abuse of persons deprived of their liberty, recording of information received from citizens (the interviews) and hearing of suspects, the Ministry of Interior was addressed a recommendation to, in cooperation with the Ministry of Justice, within their legal competences, ensure the funds and required technical equipment for audio and visual recording of hearing processes. However, this recommendation has still not been acted upon.

The position of detainees remained almost unchanged compared to the previous period. There is still a public perception of having the detention measure easily pursued and often accompanied with the violating the principle of the presumption of innocence, that in certain cases the detention represents a punishment before judgement. Despite of the NPM's recommendations to the institutions to ensure living room space for detainees and find a way to engage them in work, they continue to spend the most of the day locked in their dormitories, without any purposeful activities organized.

NPM, the same as in previous reports, points to the issue of having the detained women kept in solitary confinement for an unacceptably long period due to a relatively small number of women in one detention unit. Although the system for the execution of criminal sanctions perceives the isolation /solitary confinement as special and/or disciplinary measure strictly limited in time, in practice, for certain female detainees this is the regular measure taken against them, which indicates the negative aspect of women detention system.

During the reporting period, the material conditions have been improved in certain institutions for the enforcement of criminal sanctions. However, three institutions were found to be completely unusable and their refurbishment in accordance with the standards impracticable and therefore, recommendations were addressed to close them and/or to have them moved elsewhere (the district courts in Smederevo and Subotica and Vršac Section of the District Prison in Pančevo).

According to the recommendations of the NPM to ensure the prevention of abuse, following the coercive measures against prisoners, the prison doctors enter in their reports on completed

checkups, specifying the statements of persons about the manner in which the injuries were inflicted and their opinion about the connection between the coercive measures applied and the injuries, as their legal obligation. In addition to the afore mentioned, acting in line with the recommendations, the institutions have established the Record of Injuries of persons deprived of their liberty, including the practice of making photographs of injuries, while the non-medical staff ceased to attend the medical checkups of the prisoners.

Providing of medical care in institutions is still under the jurisdiction of the Ministry of Justice –Administration for Enforcement of Criminal Sanctions. This is not in accordance with the international best practice and deprives the doctors of their independence, first of all in creating assumptions for determining the cases of torture.

In the reporting period, acting upon recommendations of the NPM, the Ministry of Health initiated the regular professional oversight over the work of health services within the institutions.

The shortcoming pointed to by the NPM that is still present, was that the principle of common enforcement of sanction is not achieved. Specifically, during the day, a large number of convicts do not spend time with other convicts in common occupancies, but instead, they are isolated in the cells all the time (either alone or in small groups).

Certain institutions have shown some progress with engaging the prisoners in work, which should be done throughout the entire prison system.

The process of classifying the convicts is insufficiently transparent. The convicts are not being sufficiently familiarized with the criteria for improvements, the tutors are mainly dealing with administration of questionnaires. The mechanism of improvements regarding the treatment against the current criteria, involves the harder transfer of convicts to more favourable tutorial groups, so that many convicts are being released from prison from the same tutorial group to which they were classified immediately upon their admission to prison.

The prison capacities designated for minors and women are the central (exclusive) institutions accommodating 200 persons each. Strong informal systems are being created there, particularly those designated for minors, which makes the adequate treatment impossible. In such central institutions, the problem is that certain prisoners are kept very far from their residence, which considerably obstructs their contacts with families.

During 2016, the NPM also dealt with the position of transgender persons deprived of their liberty. The competent authorities were recommended to, upon admission of trans gender persons to the institution, enable them select whether their personal search would be performed only by the officer of a certain gender or whether the combined search and examination will be conducted, whether the officers are to address the trans gender persons in the gender these persons feel they belong to, unless otherwise requested by these persons, as well as to have appropriate training for the staff about the way in which the lesbians, gays, bisexual, transgender and intersex prisoners should be treated.

Special attention should be paid to the deprivation of liberty and treatment of persons placed in social welfare institutions – homes. The improvements primarily need to be made to regulations so as to regulate the issue of restricting the rights of persons placed in home social institutions, particularly their forced apprehension and keeping, including their physical restraint.

The conclusion of the NPM is that among the persons deprived of their liberty, the persons having mental disorders are in the worst position, whether they be placed in social welfare

institutions – homes, psychiatric hospitals or in institutions for enforcement of criminal sanctions.<sup>77</sup>

There are numerous acts in which the NPM stated that persons with severe mental disorders should not be placed under regular prison regime. Moreover the NPM points out that persons suffering from serious mental disorders who committed an offence containing the elements of criminal act, who do not pose particular threat upon the society, should not be processed based on the Criminal Procedure Code, but rather be kept and placed in a psychiatric institution, pursuant to the Law on Protection of Persons with Mental Disorders. It is unacceptable to keep persons having serious mental disorders in custody due to the threats shared over social networks or to keep the persons on the security measure of compulsory medical treatment and care at the health care institution over ten years, due a bicycle theft.

NPM believes that the practice of keeping the persons with mental and/or intellectual disorders at residential institutions (psychiatric hospitals and social welfare institutions – homes) for a prolonged period, for some of them even for life. This is largely the consequence of having no resources to provide care and support to these persons outside the institutions. More specifically, there is no efficient concept of deinstitutionalization in the Republic of Serbia that would provide the living conditions for persons having mental and/or intellectual disorders within the local community, with their close family. The current concept is not comprehensive and is based on providing services and administering of accommodation as a part of care. Instead, it is necessary to establish a unified national care and support concept for these persons and their families and at the level of local communities form multidisciplinary services that shall be fully equipped in terms of staffing, logistics and finance, to provide a continuing support and care for the persons that require this, including to their families. The types of services and form of accommodation must not be administered in advance. They should be defined based on the needs that are subject to changes and that should be the outcome of duly conducted estimates by the multidisciplinary services at the local community level.

The shortcomings of the Law on Protection of Persons with Mental Disorders have still not been eliminated. It has been regulated that the services for protection of mental health in the community are to be organized as the additional activity of psychiatric institutions and health care centres that neither have sufficient human resources nor interest in providing such support. Due to such solution, the deinstitutionalization activities in Serbia are negligible. The Law has introduced isolation measure for psychiatric patients that not only is contrary to the applicable standards, but also to the established practice in Serbia. Furthermore, the Law has prescribed the competence of police officers to maintain order within the psychiatric hospitals, which is not in line with the current standards, considering that these are armed persons wearing uniforms.

The present psychiatric hospitals are huge, each of them accommodates around several hundreds of patients. They have largely adopted the character of asylum centres, as numerous patients are excommunicated from the community for more than one month, many of them as long as for a decade, while some even for life. There is a trend of keeping a large number of persons in hospitals for social reasons, as there is no other form of support and their treatment in the community.

The court decisions on compulsory hospitalization of persons with mental disorders are mainly based on expertise provided by doctors employed in hospitals proposing such measures. Moreover, there is a number of cases where the consent to hospitalization was provided by

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<sup>77</sup> Persons serving measures of compulsory psychiatric treatment and stay in health care institutions, detention and prison sentences.



persons who were in an agitated condition after being brought by police officers, although the statements given under such circumstances cannot be regarded as legally relevant.

NPM believes that the activities to improve the current legislation must be intensified, including the treatment of persons with disabilities placed in social welfare institutions – homes. Namely, a large number of persons with mental and intellectual disorders are placed in remote and often huge institutions, far from their community and their social environment. Also, living conditions in many of these occupancies are rather poor and disregarding the required psychological and sociological treatment. All these institutions lack staff, which has an adverse impact on both the staff members and inmates.

Pursuant to the applicable legislation, in the event of economic deprivation of persons, the consent to medical treatment is provided by their guardian who is often not present at the moment when this needs to be administered. Also, it is extremely important to regulate the role of the person having mental and intellectual disorders in making decisions about medical measures, that is, in providing consent to such measures. In this respect, the regulations need to be improved so as to ensure a more effective protection of these persons when applying medical or scientific tests.

In its visit Reports, the NPM addressed the recommendations to establish procedures regarding the physical restraint of social welfare beneficiaries, introducing of Record maintaining to register the injuries of inmates and engage independent authorized physician who would issue death certificates for patients. The recommendations also addressed the provision of sufficient number of staff to work with the inmates and required number of orthopaedic aids for them. In order to ensure the privacy of inmates, the recommendations were given to ensure the preconditions for their privacy. The NPM expresses its concerns, as in certain institutions of social welfare – homes, they identified cases of keeping persons in isolation and some of them in rooms without elementary conditions, comparable to cages, without tap water or available toilet facility. Such treatment is the case of abuse and where prolonged, represents a torture. Also, it was found that in the social welfare institutions – homes, other than isolation, the measure of mechanical restraint with tying of patients is used, although, unlike psychiatric institutions, there are no legal grounds for either of such conducts.

The freedom of movement outside the institutions is still being limited to the beneficiaries, despite the fact that there are no legal grounds for that, nor any procedures in place that would regulate their keeping inside the institution. The NPM referred a recommendation to the Ministry of Labour, Employment, Veteran and Social Affairs in order to take action from their own jurisdiction and provide appropriate regulation of such situation.

NPM sent the recommendations in the Reports on visits made to social welfare institutions – homes, to adopt the Regulation that would set forth the issue of providing items for personal needs of inmates placed in homes, to develop a Protocol on acting in the event of an unexpected (sudden) death of beneficiaries, including to ensure the sufficient number of medical, nursing and other staff.

The migrants are now staying in Serbia for a longer time and therefore, the problem of providing the required care to them is by far more complex. Unlike the previous period when they used to transit through Serbia and stay for only couple of days, they are now staying for several months. Some of them wish to seek an asylum in Serbia, but most of them still desire to continue their journey to the developed countries of EU. Bearing in mind that the migrants will stay in the centres for a prolonged period, by the end of the reporting period, the NPM sent to the Commissariat for Refugees and Migrations the recommendation to introduce the procedure of complaints against the work of persons engaged in centres. The uncertainty of continuing the journey, prolonged stay in Serbia, insecure future and not understanding the situation where they have found themselves cause stress among the migrants, that may be recognized during the visits and interviews with them. It is therefore important to provide them the

psychological support that is not organized in the majority of visited centres. The NPM recommended that the support of professional staff and premises for talking with the migrants are provided.

## 6.1. Police / prosecutorial detention

In order to monitor the way police officers treat the brought, arrested or detained persons, the National Preventive Mechanism visited overall 33 police stations in 2016.<sup>78</sup> 8 Reports were made on the visits to Police Administrations that were addressed 88 recommendations. Out of this number of provided recommendations, the competent authorities acted upon 44 recommendations, they partially acted upon 40 of them, and failed to act upon 4 recommendations.

Acting upon recommendations of the NPM, addressed in order to protect and exercise the rights of apprehended and detained persons and the prevention of their mistreatment, Police Administrations in Kruševac, Leskovac, Niš, Novi Pazar and Pirot hand over to the detained person's appropriate written notifications about their rights. In line with the recommendations, records of detained persons are duly maintained in the Police Administrations in Kruševac, Niš and Požarevac.

Police officers of Police Administrations in Kruševac, Leskovac and Subotica abandoned the practise of obligatory presence during medical checkups of all the detainees, but currently do so only upon the request of a doctor, for security reasons. Police Administrations in Leskovac and Niš no longer insert medical documents of persons in the files formed upon the detention of persons, while the information about health condition of detained persons is available to police officers solely to the extent relevant for their treatment during detention.

In acting upon the NPM recommendations, persons detained based on the Law on Criminal Procedure in the Penal and Correctional Institution in Niš – Detention Unit in Pirot, are, during the detention time, allowed to stay in fresh air, have shower and elementary items for maintaining hygiene.

After the provided recommendations, the living conditions in the detention premises were improved in several police administrations.<sup>79</sup> Furthermore, in 2016 the police department in Batajnica and the Police Station in Bač were furnished with new detention rooms.<sup>80</sup> Police Administrations in Novi Pazar and Požarevac enhanced their firefighting system in buildings they use. Nevertheless, many detention premises still do not meet the contemporary standards in terms of living conditions provided therein,<sup>81</sup> while the recommendations of the NPM to improve conditions in certain premises for detention have not been complied with, stating the unacceptable justification – the lack of material and technical conditions.<sup>82</sup>

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<sup>78</sup> At 8 Police Administrations (PA Kruševac and five police stations operating under it; PA Požarevac и седам police stations operating under it; PA Subotica; PA Niš and six police stations operating under it; PA Leskovac and five stations operating under it; PA Pirot, PA Novi Pazar and two police stations within its organization, including PS Vršac). In addition to regular visits, five visits were made for the purpose of monitoring the actions upon previous recommendations (PA Pirot, PS Vršac and PA Novi Pazar including stations operating under it).

<sup>79</sup> In the premises of the Police Administration seat in Kruševac and Police Station in Tutin, an improved artificial lighting has been installed and in the premises of the Police Administration seat in Leskovac and Police Station in Lebane, artificial lighting and airing of premises has been improved.

<sup>80</sup> Letter of MoI, 02/5 no.: 251/16-34 of October 27, 2016.

<sup>81</sup> Premises for detention in the seats of Police Administrations in Niš and Novi Pazar; at police stations in Brus, Trstenik, Varvarin, Čičevac, Lebane, Merošina, Svrlijig, Ražanj, Doljevac Aleksinac, Sjenica, Veliko Gradište and Kučevo; police unit in Požarevac.

<sup>82</sup> Detention rooms in police administrations in Niš and Novi Pazar; police stations in Lebane, Merošina, Svrlijig Ražanj, Doljevac, Aleksinac and Sjenica.

In order to duly document any case of using the coercive measures and provide an unbiased evaluation whether their use was justified and proper, the NPM recommended to the Police Administrations in Kruševac, Niš and Požarevac to obtain written statements of persons against whom the coercive measures were taken, with regard to the circumstances of such measures and any injuries inflicted, and these Police Administrations acted accordingly.

For years already, the NPM has been pointing to the necessity of amending the Instructions on treatment of the detained and brought in persons,<sup>83</sup> due to its inconsistency with substantive regulations and standards. Particularly problematic provisions are those laying down the mandatory use of restraints, particularly when transporting the persons, including the obligation of police officers to attend the medical checkup of the detained person. Despite the delivered recommendations, the Ministry of Interior has still not initiated an amendment to the instructions.

According to the information made available to the NPM, the Ministry of Interior failed to organize trainings of officers from all Police Administrations in the Republic of Serbia on the treatment of persons having mental disorders.

An additional and important prevention and protection measure against mistreatment of persons deprived of their liberty is recording the collected notifications from citizens (the interviews) and interrogation of suspects. The Ministry of Interior was addressed with recommendations to, in cooperation with the Ministry of Justice, within the legal powers, ensure funds and required technical equipment for audio and visual recording of interrogation process.<sup>84</sup> However, this recommendation has not been acted upon yet.

#### **GENERAL RECOMMENDATIONS FOR ELIMINATION OF SHORTCOMINGS**

**Police officers should not be present in the course of the medical checkups of detainees, unless this is exceptionally required by the doctor. Police officers need to timely provide any available information to the doctor, where relevant for the doctor do decide about the presence of a police officers in the course of a medical checkup of a detainee.**

**The Ministry of Interior needs to refurbish the existing and provide new premises for the police detention in accordance with the current standards.**

**The Ministry of Interior should align individual provisions of the Instructions on treatment of the detained and brought in persons with the applicable regulations and standards.**

**The Ministry of Interior should organize training for police officers in all police administrations of the Republic of Serbia on the treatment of persons with mental disorders.**

**The Ministry of Interior should, in cooperation with the Ministry of Justice and within the legal powers, provide funds for the required technical equipment for audio and visual recording of the hearing process.**

## **6.2. Pre-trial detention**

In the reporting period, the NPM visited 6 detention units within the institution for enforcement of criminal sanctions, specifically: DP Subotica, DP Leskovac, DP Smederevo, DP Pančevo - Vršac unit, DP Vranje and CPI Sombor. The competent authorities were addressed

<sup>83</sup> 01 no. 7989/12-10 dated December 12, 2012.

<sup>84</sup> Report on visit to Police Administration in Niš, no. 281-24/16, ref. no. 18085 of May 17, 2016 and Report on the visit to Police Administration in Leskovac, no. 281-40/16, ref. no. 23301 of June 20, 2016.

around 50 recommendations to eliminate the identified shortcomings related to exercising of rights of detainees.

The capacities of detention unit of DP Vranje have been expanded and living conditions in accommodation capacities of the district prisons in Leskovac and Vranje have been improved. However, poor condition of premises where detainees are being placed is still present in the majority of institutions.

When making visits to the NPM district prisons in Subotica and Smederevo, that is, after having inspected the files of the detainees, it was stated that there is a rule for the court to issue approval for each visit and define the time of visits. As stated by the detainees, duration of visits is 15 minutes, while the officers point out that the visits last longer, up to half an hour, if the visitor is arriving from remote places. After having talked to the management of institutions, it was concluded that the courts order exclusively short visits in order to be able to accomplish all the registered visits. In both cases the NPM addressed the recommendation to the institutions to ensure that visits to detainees last one hour and notify the competent court about the possibility to enable that such visits to detainees last as prescribed by regulations. The Institutions notified NPM that they would take actions to ensure that the visits are carried out in line with the regulations.

Despite the improvements as regards the increased participation of the persons deprived of their liberty in penal and correctional institutions in work, a large number of them are still not involved in work nor included in other activities. This particularly refers to cases where convicts are split between closed units and custody suits.

Although the NPM addressed recommendations to institutions to provide living rooms for the detainees to stay at during the day, they still spend most of the time locked in their dormitories, without any purposeful activities organized.

The problem that due to a relatively small number of female detainees in detention units causes placing of detained women in isolated, solitary confinements for an unacceptably long period is the problem about which the NPM has been warning for years already, and it has not been resolved. This often equalizes the special disciplinary measure used against persons serving the sentence of imprisonment and the regular detention measure for female detainees.

#### **GENERAL RECOMMENDATIONS FOR ELIMINATION OF SHORTCOMINGS**

**The Administration for enforcement of criminal sanctions should continue with the activities of aligning the accommodation capacities in detention units of the institutions for enforcement of criminal sanctions, with the current standards.**

**Institutions for enforcement of criminal sanctions enable all the detainees to spend time outside dormitories, with other detainees who are not prohibited by the court to have contacts.**

**Institutions for enforcement of criminal sanctions should continue to create conditions for engaging the detainees in work and their inclusion into social and cultural activities.**

**The Administration for enforcement of criminal sanctions shall take the necessary steps to amend the Regulation on enforcement of detention measure, to set forth a more detailed way for the detainees to spend the available time during the day outside dormitories, in common occupancies, with other detainees where there is no court decision prohibiting such contacts and to provide a more detailed regulation for the detainees to exercise their right to work and be involved in social and cultural activities.**

**It is necessary to take steps to prevent that female detainees spend time in isolation and/or confinement, due to their small number.**

### 6.3. Enforcement of criminal sanctions

NPM visited overall 9 institutions for enforcement of criminal sanctions (District Prison in Subotica; Penal and Correctional Institution in Niš; Penal and Correctional Institution Belgrade; Penal and Correctional Institution in Padinska Skela; District Prison in Smederevo, District Prison in Pančevo – Unit in Vršac, District Prison in Vranje, District Prison in Leskovac and the Penal and Correctional Institution in Sombor). Out of the total number of visits, two were made due to monitoring of actions taken upon previous recommendations (the follow-up visits) – visits to District Prison in Leskovac and Penal and correctional Institute in Niš, four were thematic – visits to District Prison in Vranje and penal and correctional institutions in Belgrade, Padinska Skela and Sombor, while the remaining three were regular systemic visits to - District Prison in Subotica, District Prison in Pančevo – Section in Vršac and District Prison in Smederevo. Overall 104 recommendations for eliminating of identified deficiencies were addressed. The institutions acted upon 77 recommendations, 6 were not acted upon while 21 recommendations require subsequent follow-up.

During the reporting period the living conditions of accommodations in district prisons in Leskovac and Vranje, including PCI Niš have improved. The premises designated for visits of close persons of DP Leskovac were renovated and equipped, the kitchen and dining room were refurbished and the damp was eliminated, the majority of common toilets and sanitary facilities were renewed and the hygienic painting of all rooms and corridors in the “old pavilion” was completed.

The District Prisons in Smederevo and Subotica, and the Unit in Vršac of the District Prison in Pančevo, are located in buildings inadequate for the accommodation of persons deprived of their liberty, that do not allow for providing all the rights as laid down by the regulations and standards.<sup>85</sup> Considering that the current shortages cannot be rectified with renovation or refurbishment, the NPM delivered recommendations to the Administration for enforcement of criminal sanctions to provide appropriate buildings for these institutions. The Administration notified NPM that the new Penal and Correctional Institution in Pančevo will be operable as of January 1, 2018 and that they will try to provide funds to build and reconstruct the building of the DP Subotica, about which they will timely notify the NPM.

Bearing in mind that medical checkups conducted in line with the rules of profession and provisions of substantive legislation is an essential precondition for achieving the duty of a state to take measures to prevent impunity for any form of abuse and the significant segment in the prevention of violence against persons deprived of their liberty, the NPM presented to the institutions its recommendations that the doctors also include in their reports made following the medical checkups of convicts if the convict states or any other person declares that violence was inflicted against him/her, and enter the way of inflicting injuries and his/her own opinion about the connection between the allegations about the way the injuries were made and actual injuries, as their legal obligation,<sup>86</sup> including to describe in details and make photographs of the stated injuries. Also, in almost all its reports on visits, the NPM addressed its recommendation to the institutions not to perform the checkups in presence of non-medical staff, other than if the doctor requests so for security reasons, being understood that the members of security service are obliged to notify the doctor about any such reasons. In the event that the non-medical staff member is present at the medical examination, the institution should make sure that the medical examination is not attended by the member of security service who ordered or applied the coercive measures nor any other person indicated to have exerted violence against

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<sup>85</sup> This is best illustrated by the fact that the District Prison in Subotica is located in the building constructed in 1880.

<sup>86</sup> Article 144, Para 4 and Article 115 Item 6 of the Law on Enforcement of Criminal Sanctions, “Official Gazette of RS”, no. 55/14.

him/her. If the doctor requests that non-medical staff is present, this fact needs to be recorded including the data about the present non-medical staff, in the medical records of the convict.

In keeping with the recommendations of the NPM, the doctors of district courts in Leskovac, Smederevo and Subotica, following the medical checkups conducted after applying coercive measures, are entering in their reports the statements of persons against whom they were applied, about the way they were inflicted and the opinion about the connection between the implemented measure and inflicted injuries. In addition to this, DP Smederevo, acting pursuant to the received recommendations, introduced the Record of injuries of persons deprived of their liberty, and the practise to take photographs of injuries, while in DP Subotica, non-medical staff ceased to attend medical checkups of persons deprived of liberty, other than in the situations when the doctor requests so for security reasons.

In the reporting period, the District Prisons in Smederevo and Subotica improved their health care for persons deprived of liberty: actions were taken to maintain a more updated medical records and adequate medical resources, more regular checkups with specialist doctors and psychological support to persons deprived of their liberty.

However, there is still a number of shortcomings with respect to the health care provided in the institutions for enforcement of criminal sanctions: the institutions have insufficient number of medical staff, both general practitioners and specialists, including medical technicians; many institutions have no continuing presence of staff having medical qualifications, due to which the therapy is being administered by a non-medical staff; persons with mental disorders are placed in regular prison regime that is inadequate for providing medical care and psychological and social treatment; problems have been identified with providing the required medications and medical aids; certain institutions do not provide confidentiality of medical examinations and data about the health condition of persons deprived of liberty; health care services of the institution are still the organizational units of the institutions for enforcement of criminal sanctions instead of having the health care of institutions provided by the Ministry of Health or as an interim solution, to have the health care services within the institutions become a part of a unique organizational function in the central office of the Administration.

Although the Ministry of Health generally provides no regular oversight of the work of health services in institutions, during the reporting period, this Ministry conducted the professional oversight over the work of the health care service in DP Smederevo, acting upon the NPM recommendation. This case has shown the significance of such monitoring practise. Among other, the compliance with the requirements for performing specific health care activities at the Outpatient Center was determined, including for the work of the General Practitioner's office, and in order to improve its health care practise, the Institution signed the contracts with the general hospital in Smederevo.

During the visit to DP Smederevo, it was established that the convicts being under special regime of intensified surveillance, are placed in the dormitories used for regular accommodation and that other convicts who are not subjected to these measures are placed in the same dormitories with them. In acting upon the NPM recommendation, the Department corrected this irregularity.

After having received the NPM recommendations, the DP Subotica governor, issued orders to the competent organizational units of the Institution, to rectify these shortcomings and among other, to provide to the prisoners the professional legal assistance with the disciplinary procedure and adequately define the goals within the treatment program to enable the foreigners deprived of their liberty to make telephone calls abroad.

NPM recommended to PCI Belgrade to enable the convicts to spend the available time during the day outside the dormitories, in the common living room area, together with other convicts.

The institution notified the NPM of the steps taken to provide funding for forming the space for the living rooms and that they would immediately initiate the conversion of designation of certain large office areas that will be used for this purpose.

Despite the improvements regarding the work engagement of persons deprived of liberty at the institutions for enforcement of criminal sanctions, there is still a large number of them who do not work and are not involved in any other activities. This particularly applies to convicts split into confined units. Moreover, the social events that are only meagre in number in these institutions are organized for small groups of people. The stated reason for this is the lack of motivation to be engaged in work and be included in activities that could be organized. Nevertheless, the NPM believes that the Institutions for enforcement of criminal sanctions should offer the widest possible range of jobs and purposeful daily activities to persons in prisons and motivate them to take part in them. The positive example is the PCI Niš that considerably improved its work and treatment of persons in prisons and thus became an example of good practise in the work of such institutions. This institution made the significant improvement with the accommodation capacities and offered different forms of activities for the convicts, while out of 1400 convicts in the Institution, around 1000 of them are working.<sup>87</sup>

In 2016, the NPM also dealt with the position of transgender persons deprived of liberty. The competent authorities were recommended to enable the transgender persons to, upon being admitted to the institution, decide whether its personal and body search will be conducted only by the officer of the specific gender or if a combined personal and body search is to be conducted, or to have the officers address the transgender persons in the gender with which they identify themselves other than if the person asks otherwise, as well as to deliver appropriate training for the staff on the treatment of lesbians, gays, bisexual, transgender and intersex prisoners. The NPM received the response that due to the applicable regulations, it is not possible to act as recommended when it comes to personal and body search or addressing the transgender persons, but that the staff is being trained on the mechanisms for achieving the gender equality, standards and principles of equality and non-discrimination with respect to the sexual orientation and gender identity and on the appropriate communication with the LGBT population.

#### **GENERAL RECOMMENDATIONS FOR ELIMINATION OF SHORTCOMINGS**

**The Administration for enforcement of criminal sanctions should continue with the activities of aligning the accommodation conditions in Institutions for enforcement of criminal sanctions with the applicable standards.**

**The Administration for enforcement of criminal sanctions should ensure sufficient number of medical workers, necessary quantity of drugs and medical aids to improve the health care provision at the institutions for enforcement of criminal sanctions.**

**The Administration for 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 within the stationary health care units within institution, in Special Prison Hospital or any other adequate health-care institution.**

**The Ministry of Health should make periodical oversights over the work of health care services at the institutions for enforcement of criminal sanctions.**

<sup>87</sup> "The Prison in Nis started the production of parts for the cars, but there are some convicts who do not want to work" the *Blic*, January 16, 2017, <http://www.blic.rs/vesti/drustvo/u-niskom-zatvoru-pocela-proizvodnja-delova-za-automobile-ali-ima-osudenika-koji-ne/htv2djy>.

**Ministry of Justice and the Ministry of Health should undertake necessary measures so that services providing health care at the institutions for the enforcement of criminal sanctions become organizational parts of the Ministry of Health or, as an interim solution, to become the part of a unique organizational unit in the central office of the Administration.**

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

**Institutions for enforcement of criminal sanctions should continue to improve conditions for engagement of persons serving their prison sentences in the work, as well as be involved in other daily activities.**

**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 enforced in more than one institution.**

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

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

In 2016, the NPM made 2 visits Special Psychiatric Hospitals in Vršac and Kovin, including 1 unannounced night visit to the Department of General Psychiatric Hospital in Subotica, which was followed by 8 recommendations. The Hospital in Vršac was visited as the follow-up of recommendations from the Report on the visit of European Committee for Prevention of Torture to the Republic of Serbia in 2015, while the Hospital in Kovin was visited to verify the compliance with the NPM recommendations from the 2014 Report on the visit.<sup>88</sup> The competent bodies acted upon all the recommendations referred to them. Also, with regard to certain recommendations<sup>89</sup> of systemic nature, the NPM plans to have it discussed with the Ministry of Health in the future, in order to also find the solution for acting upon these recommendations.

During the reporting period, the NPM found no systemic improvement of treatment of persons with limited freedom of movement at psychiatric institutions, but several individual ones were accomplished. In order to improve the treatment of patients, the psychiatric unit of the General Hospital in Subotica and SBPB Kovin, pursuant to the law, follows the procedure of admittance to the psychiatric institution only upon the consent of the patients, while the decision on the detention of patients having mental disorders to the hospital, is made by the consultation committee of psychiatric institution, in compliance with all legal procedures. Also, the patients are being notified about their rights and obligations when admitted to the Hospital, while

<sup>88</sup> Report on the visit to "Kovin" Hospital no. 281-109/16 and Vršac, Report no. 281 - 102/16 with overall 22 recommendations, was addressed in 2017

<sup>89</sup> Recommendations for the improvement of legislation in the part related to the consent of patients to medical treatment pursuant to international regulations and standards, for the persons placed in psychiatric hospitals, serving as recommendations for hiring the sufficient number of medical, nursery and other staff and recommendations about the sources of funding for the psychiatric hospitals. More details provided in the Report on the visit to the Special Hospital for Psychiatric Diseases "Kovin" - monitoring of actions taken upon recommendations from the 2014 Report no. 281-109/16 and the Report on the visit to Special Hospital for Psychiatric Diseases "Dr Slavoljub Bakalović" - Vršac, follow-up with the recommendations from the Report on the visit of CPT to the Republic of Serbia in 2015, no. 281 - 102/16.



when physical restraint is required against a patient, they are being placed in separate rooms, without the presence of other patients.<sup>90</sup>

However, despite certain improvements regarding the treatment of psychiatric patients, the large psychiatric hospitals<sup>91</sup> still, for an extensive period, keep a large number of patients in the accommodation conditions that do not comply with the current standards, the dormitories of high capacity have still not been turned into smaller rooms nor are there separate rooms for the visits to patients. The number of medical, nursery and other staff is still insufficient. Activities that need to provide a way to establish the care outside the institution and provide the support to mentally impaired persons in the community (including to their families) have still not been implemented. The provisions of the Law on Protection of Persons with Mental Disorders<sup>92</sup> and the Rulebook on Conditions for the Application of Physical Restraints and Isolation of Persons with Mental Disabilities Treated in Psychiatric Institutions<sup>93</sup> contain major deficiencies with respect to forming of services for the protection of mental health in the community, procedures of voluntary and forced hospitalization, role of the police with respect to the persons with mental disorders, physical restraint and in particular, those provisions setting forth the isolation measure for the patients.<sup>94</sup> It is necessary to provide a gradual, but systemic and immediate closing of big psychiatric hospitals. The precondition for this is the urgent establishment of efficient mechanisms in local communities for the acceptance, support and care for the persons having mental and intellectual disabilities.

Furthermore, the regulations on providing of the patient's consent have not been improved, particularly for those placed in psychiatric institutions, to medical treatments, pursuant to applicable international regulations and standards. It is necessary to delete the provisions of the Law on protection of persons having mental disorders, who have been ordered the isolation as psychiatric patients. The agitated persons, whether physically restrained or not, should be accompanied with some of the medical staff, since the forced isolation of persons having mental disorders might have detrimental consequences for their psychological condition.<sup>95</sup> In order to protect the persons with mental and intellectual disorders, it is necessary to introduce the general provisions regulating the provision of consents to medical treatment. According to the present legislation, where these persons are economically deprived, the consent to their medical treatment is provided by their guardian who is rarely present at the moment when the treatment is to be administered. It is also crucial to regulate the role of persons having mental and intellectual disorders in making decisions about administering of medical treatment, that is, about providing the respective consent. In this respect, the regulations need to be improved so as to ensure the better protection of these persons when conducting medical or scientific testing.

#### **GENERAL RECOMMENDATIONS FOR ELIMINATION OF SHORTCOMINGS**

**The Ministry of Health should, without delay, carry out the required activities aimed at establishing the community care and support outside the institutions, to persons with**

<sup>90</sup> Report on the visit to Special Hospital for Psychiatric Diseases "Kovin" - monitoring of actions taken upon recommendations from the 2014 Report.

<sup>91</sup> Special Hospital for Psychiatric Diseases "Kovin" and Special Hospital for Psychiatric Diseases "Dr Slavoljub Bakalović".

<sup>92</sup> "Official Gazette of RS", no. 45/13.

<sup>93</sup> "Official Gazette of RS", no. 94/13.

<sup>94</sup> See more at: Milos Jankovic "Freedom and rights of persons with mental disorders", *Crimen*, 1/2015, pages 61-80. Available at: [http://www.ius.bg.ac.rs/crimenjurnal/articles/crimen\\_001-2015/Crimen%202015-01-4.pdf](http://www.ius.bg.ac.rs/crimenjurnal/articles/crimen_001-2015/Crimen%202015-01-4.pdf).

<sup>95</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, para. 83.

[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf).

mental disorders (and to their families), that is, the reorganization of services in secondary and tertiary psychiatric institutions, focusing on the treatment of persons with mental disorders in daily hospitals and outpatient centres, that is, ensure forming of organizational units that perform activities of protection of mental health in the community.

The Ministry of Health should take actions under its competence to enact the law on amendments to the Law on Protection of Persons with Mental Disorders, that is, to improve the provisions on forming the services for the protection of mental health in the community, procedures of voluntary and forced hospitalization, role of the police with regard to the persons with mental disorders, physical restraints and in particular, those who have been ordered the isolation for patients. Such initiative requires the amendments to the Rulebook on Conditions for the Application of Physical Restraints and Isolation of Persons with Mental Disabilities Treated in Psychiatric Institutions.

The Ministry of Health should undertake the refurbishment of accommodation capacities in large psychiatric hospitals.

The Ministry of Health should take measures to hire the sufficient number of medical, nursery and other staff and thus elevate the quality of health care services.

## 6.5. Detention of persons in home type institutions for social protection

In 2016, the NPM visited overall 6 home type institutions for social protection, with the aim to oversee the position of beneficiaries accommodated there, in particular: Home "Veternik", Home for adult persons Kulina; Home for adult and elderly persons "Gvozden Jovančičević", Veliki Popovac, Home for the Blind "Zbrinjavanje", Gerontology Centre in Novi Sad – the working unit Home for the retired and elderly persons in Novo Naselje and Gerontology Center in Vršac. 6 Reports were made, out of which 4 were sent in 2016 and two in the beginning of 2017. The competent authorities were addressed 44 recommendations for the elimination of identified deficiencies in their work. Out of this number, the competent authorities acted upon 27 recommendations, while 8 require further monitoring and 9 are systemic. In the next period, the NPM plans a dialogue with the competent ministries<sup>96</sup> in order to find a common solution to the method of implementing the recommendations and improve the practise in line with the standards.

In its reports on visits<sup>97</sup> the NPM sent its recommendations for introducing the procedures related to physical restraint of social welfare beneficiaries, establishing the Records of injuries of beneficiaries and outsourcing an independent certified who would be issuing death certificates for the patients. Also, the recommendations addressed the requirement to provide the sufficient number of staff for working with the patients, and to provide the required orthopaedic aids for them. Certain recommendations referred to the requirement of respecting the privacy of beneficiaries. The NPM expresses its concern due to the situation in certain home type institutions for social care where the persons having mental and intellectual disorders are placed in isolation for the entire time, some of which being in rooms with no

<sup>96</sup> Ministry of Health and the Ministry of Labour, Employment, Veteran and Social Affairs

<sup>97</sup> Home for adult persons Kulina, Report no. 281-36/16, Gerontology Center Novi Sad, Report no. 281-58/16, Home for adult and elderly persons "Gvozden Jovančičević", Veliki Popovac, Report no. 281-70/16, Home for the Blind "Zbrinjavanje", Report no., 281-80/16.

elementary conditions for staying there, resembling cages,<sup>98</sup> without tap water or available toilet facility. Such treatment is the case of abuse and where prolonged, represents a torture. Also, it was found that in the social welfare institutions – homes, other than isolation, the measure of mechanical restraint with tying of patients is used, although, unlike psychiatric institutions, there are no legal grounds for either of such conducts.

Acting upon received recommendations of the NPM, and in order to improve the treatment of beneficiaries, Home for adult persons Kulina and Gerontology Centre Novi Sad adopted the procedures for implementing the physical restraints - fixations. The Home for adult persons Kulina introduced these improvements by ceasing the measure of the prolonged isolation of one of the beneficiaries. The Records were introduced in the Home for adult and elderly persons "Gvozden Jovančičević", Veliki Popovac and the Home for adult persons Kulina to maintain the log of injuries of beneficiaries, while the expert determination of the cause and time of death of beneficiaries who passed away in these institutions are no longer conducted by doctors employed in these institutions, but the doctors who have been designated by the local self-governments to provide an expert determination of time and cause of deaths, coming from the external health institutions, issuing the death certificates. In order to enhance the living conditions and treatment of beneficiaries, the Home for the Blind "Zbrinjavanje", ensured that the privacy of beneficiaries is respected and provided for a more frequent control of their health condition, particularly of those belonging to vulnerable groups. Also, measures were taken to secure the orthopaedic aids in order to support more effective rehabilitation and care of patients in this Home.

NPM sent the recommendations in the Reports on visits made to home type institutions for social protection,<sup>99</sup> to adopt the Regulation that would set forth the issue of providing items for personal needs of inmates placed in homes, to develop a Protocol on acting in the event of an unexpected (sudden) death of beneficiaries, including to ensure the sufficient number of medical, nursery and other staff. It is encouraging that after the end of the reporting period, at the beginning of 2017, the Ministry of Labour, Employment, Veteran and Social Affairs submitted their answers to the previously addressed recommendations, which indicates their readiness to establish a dialogue in the near future, in order to seek for the best model for implementing the recommendations, primarily when it comes to the enhancement of human rights.

Despite individual improvements towards the better treatment of beneficiaries, the NPM is concerned about the fact that there is still no system in place for providing the care and support to persons with mental disorders, outside the institutions, within the communities, and that there is no systemic concept of deinstitutionalization and no conditions have been met to provide care and support in the local community. Home type institutions for social protection continue to accommodate a huge number of beneficiaries for an extensive period. In addition, the beneficiaries are still being limited their freedom of movement outside the institution, although there are no legal grounds for that, nor any procedures in place laying down their detention in the institutions. The Protector of Citizens addressed the recommendation in relation with the deprivation of free movement of beneficiaries in the home type institutions for social protection to the Ministry of Labour, Employment, Veteran and Social Affairs, in order to take actions falling under its competence and regulate this segment. However, the Ministry did not provide any information to the Protector of Citizens about the legal grounds

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<sup>98</sup> Identified after the visit to the National Prevention Mechanism to the Home for persons with mental disabilities "Otthon" in Stara Moravica, published on October 6, 2016.

<sup>99</sup> Report on the visit Home for adult persons Kulina, Report on the visit to the Home for adult and elderly persons "Gvozden Jovančičević", Veliki Popovac.

for limiting the freedom of movement outside the institutions, nor established any procedure about the limitation or approval of movement of beneficiaries outside the institutions.

It is undoubtedly necessary to impose to certain persons, in their best interest and depending on their mental condition and intellectual capacities, the limited ability to leave the institution. However, such limitations must be precisely regulated.

In order to protect the persons with mental and intellectual disorders, it is necessary to revise the provisions of regulations that provide general approach to providing the consent to a medical treatment. Subject to the applicable regulations, if such persons are economically deprived, the consent to such medical treatment is provided by their guardian who is often absent at the moment when the treatment needs to be administered. Also, it is crucial to regulate the role of the persons with mental and intellectual disorders in deciding about the administration of medical treatment that is, about the consent to it. In this respect, the regulations need to be enhanced so as to ensure more effective protection of these persons when the medical or scientific testing are applied.

#### **GENERAL RECOMMENDATIONS FOR ELIMINATION OF SHORTCOMINGS**

**The Ministry of Labour, Employment, Veteran and Social Affairs needs to, in coordination with other competent authorities, conduct the systemic activities to ensure the deinstitutionalization and/or providing of conditions to offer care and support to persons with intellectual and mental disorders (and their families) in the local community.**

**Ministry of Labour, Employment, Veteran and Social Affairs should take actions from their field of competence to provide appropriate regulation of terms and conditions and the procedure for limiting the freedom of movement and physical restraint for beneficiaries of home type institutions for social protection.**

**Ministry of Labour, Employment, Veteran and Social Affairs should adopt the Rulebook to regulate the issue of providing items for personal needs of inmates placed in homes.**

**Ministry of Labour, Employment, Veteran and Social Affairs should, in cooperation with relevant authorities, develop a Protocol on acting in the event of an unexpected (sudden) death of beneficiaries placed in homes.**

**Ministry of Labour, Employment, Veteran and Social Affairs should take action to ensure hiring of the sufficient number of medical, nursery and other staff and enable the provision of an enhanced level of social welfare services.**

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

In cooperation with the Belgrade Centre for Human Rights and with the support of UNHCR, 52 thematic visits were made, as a follow-up of acting of competent authorities towards refugees and migrants transiting the Republic of Serbia. Visits were made to the Asylum Centres in Krnjača, Bogovađa, Tutin and Sjenica, Reception Centres in Subotica, Sombor, Šid Principovac, Adaševci, Bujanovac and Preševo, Reception Centre for foreigners in Padinska Skela, Police Station in Vršac, Police Administrations in Belgrade, Niš, Leskovac, Novi Pazar and Vranje, Regional Centres of Border Police at the BCPs with Hungary, Romania – North, Bulgaria and Macedonia, Social Welfare Centre in Preševo, social protection institutions offering services of home accommodation to minors in Subotica, Belgrade and Niš, Institutions for enforcement of criminal sanctions in Vranje and Sombor and informal places of gathering of migrants along the BCPs in Horgoš and Kelebija and at several locations in Belgrade. The reports addressed to competent authorities included 72 recommendations for eliminating of

identified deficiencies: 41 recommendations were acted upon, 10 were not while acting upon 21 recommendations require further observation.

Bearing in mind that Hungary and Croatia fortified their control at points of entry to their territory, in order to establish the control over the border with Bulgaria and Macedonia and discourage the migrants from entering the country at the spots where this is not permitted and to prevent smuggling of humans, Serbia formed mixed military - police patrols. These patrols perform the tasks of securing the border and inland territory of the state and they are being under the command of the Serbian Army.

The migrants are currently staying in Serbia for a prolonged period and the issue of providing the care for them is by far more complex. Unlike the previous period when they used to transit Serbia and stay for only couple of days, they are now staying for several months. Some of them wish to seek an asylum in Serbia, but most of them still desire to continue their journey to the developed countries of EU. Having anticipated such situation, in its Annual Report for the year 2015, the NPM sent a proposal to the Government to develop the Plan for providing care to refugees and 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. By the end of the year, the government adopted the Decree on the method of inclusion into social, cultural and economic life of persons who have been recognized their right to Reception Centre,<sup>100</sup> Commissariat for Refugees and Migrations is to provide the integration of these migrants through full and timely provision of information about the rights, opportunities and obligations; learning of Serbian language; learning about the Serbian history, culture and constitution system; assistance with their inclusion into the education system; support with their exercising the rights to health and social protection and assistance with their joining the labour market. Nevertheless, the plans for the treatment of migrants who have found themselves in Serbia or who were returned to Serbia as well as those who have not been approved protection here, still do not exist at the governmental level, and therefore, acting towards the migrants is conditional upon the situation in the field, in different parts of the country. Consequentially, there are diverse rules adopted in reception centres and differences in the treatment by police officers of the migrants who arrived from the war-stricken countries and therefore there are differences in the scope of protection provided to unaccompanied minors. Furthermore, there is an impression that this entire system of providing care for migrants currently depends on the humanitarian aid of national and international organizations of civil society and foreign countries, and the success of the Commissariat with finding donators for different needs. In the long run, such system will prove to be unsustainable and it is necessary to adopt action plans at the national level.

According to the estimates of UNHCR, at the end of the year, there were around 6,400 migrants in the country. Out of this number, as at November 30, 2016, around 5,300 of them were placed in official centres, while the remaining number of people stayed at the informal gathering locations, outside the institutions of the system. The data of the Commissariat showed that in the course of 2016, around 7,000 migrants were admitted to asylum centres only (in Tutin, Krnjača, Sjenica, Banja Koviljača and Bogovađa), most of them to the Asylum Centre in Krnjača: about 4,300.<sup>101</sup>

During 2016, an additional number of reception centres were either opened or adapted for the use as reception centres (Piroć, Dimitrovgrad, Divljana near Bela Palanka, Bosilegrad, Bujanovac and Sombor), while opening of a few more has been announced. The commissariat

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<sup>100</sup> "Official Gazette of RS", no. 101 dated December 16, 2016.

<sup>101</sup> According to the information of the Commissariat, the peak of the inflow of migrants to the Asylum Centres was in the period July - September 2016, when 2,632 of them were admitted, compared to the other quarters when around 1,500 migrants were admitted.

made visible efforts to provide adequate conditions for the accommodation of migrants in all the centres, to provide meals, conditions for maintaining the hygiene, health care, clothes and shoes and satisfying of other elementary needs.

As a part of its monitoring of the treatment of migrants by the competent authorities, the NPM also visited the improvised camps and other informal gathering places of migrants. The conditions for their stay on these locations are unacceptable, they are hazardous for their health and provide no possibility for them to maintain hygiene. The majority of them haven't been registered. In addition, such situations is hazardous for the public health and safety of the parts of residential areas where these camps are located, in addition to not being acceptable for the stay of minors who were spotted during the visits. At the repeated visits of the camps along the border near Horgoš and Kelebija, it was noticed that the number of migrants decreased. The improvised gathering places of migrants being outside the institutions of the system were particularly bad in the abandoned warehouse close to the Belgrade bus station.<sup>102</sup> Following its visits to the park of Luka Čelović (next to the Faculty of Economics of the University of Belgrade) and the Sveti Nikola square (a park near the bus arrival plateau of the Belgrade bus station), the NPM took the position that the measures should be taken to include the migrants in the institutions of the system. The Commissariat for Refugees and Migration notified the NPM that the officers of the Commissariat intensified their activities on providing the information and advising the migrants about the possibilities of their accommodation in the Asylum Centre in Krnjača and that in cooperation with the local self-government, the regular transportation has been organized to Krnjača (4 busses a day).

After the Balkan route closure, the migrants were no longer issued the confirmations of their entry to the territory of Serbia for foreign nationals arriving from the countries where their lives were threatened, based on the Decision of the Government on issuing the confirmations,<sup>103</sup> considering that with such confirmation, they were able to stay in Serbia for 72 hours from the time of its issue. The consequence of stopping with the practise to issue the confirmations was that a significant number of migrants who entered the country, who did not express the wish to seek for an asylum, was not recorded by the Ministry of Interior, but only by the Commissariat for Refugees and Migrations at the moment of their accommodation in the Centres. Keeping of records by the Commissariat involved the entry of personal data of the migrants in the uniform electronic records. In the second half of the year, the Ministry of Interior announced the registration of all migrants staying in the centres, that involved taking of their personal data and photographs and collecting finger prints of migrants above 14 years of age.

On the occasion of visiting the centres for accommodation of unaccompanied minors from foreign countries, placed within the institution for education of children and youth in Niš and Belgrade, the NPM reported that these institutions provide to unaccompanied minors the services of stay, health care and meals, covering the costs of transportation and in order to satisfy the needs of the minors coming from abroad and providing them the social protection, the NPM proposed to the Ministry of Labour, Employment, Veteran and Social Affairs to increase the funds allocated for these institutions. The Ministry notified the NPM that the funds for improving the protection system for unaccompanied minor migrants, strengthening the capacities of social welfare staff and increasing the accommodation capacities in the social welfare institutions were provided, including the vehicles that will be provided for permanent use to the social welfare institutions providing support by admitting unaccompanied minor migrants. In addition to this, the field workers were engaged to provide support to the vulnerable categories of migrants. However, during the visit to the Reception Centre in

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<sup>102</sup> At the beginning of 2017, a large number of migrants was moved to the newly opened Reception Centre in Obrenovac.

<sup>103</sup> "Official Gazette of RS", no. 81 dated September 24, 2015.

Subotica, it was reported that the field workers were insufficiently dedicated to their professional assignment of working with the vulnerable groups. During the visit, it was reported that there is a designated space for children, adequately furnished for the daily stay of children, with professional staff working with them. In the transit zone at the “Nikola Tesla” Airport, mothers with children who were refused the entry into the country are staying in the premises specially designated and furnished for their stay.

During the visits to the Reception Centres in Šid and Adaševci, the migrants had a large number of complaints about acting by the officers of the Commissariat and other persons hired to provide the support to them, of which the officials controlling the work of these centres were unaware. Considering this situation and the fact that the migrants will be staying in the centres for an extensive period, at the end of the reporting period the NPM sent to the Commissariat for Refugees and Migration the recommendation to introduce a procedure for addressing the complaints to the work of the persons engaged in the centres and Commissariat complied with it.

The uncertainty of continuing the journey, prolonged stay in Serbia, uncertain future and lack of awareness about the situation cause stress among the migrants, that may be recognized during the visits and interviews with them. Adding to these circumstances the fact that the migrants have spent much time on this journey during which many of them suffered or witnessed violence and that many of them lost their family members or were separated from them, the present situation in which the migrants are will inevitably make their psychological condition worse and cause conflicts both between them and between the migrants and officers. It is therefore important to provide them the psychological support that is not organized in the majority of visited centres. Such kind of support requires professional staff and premises for talking with the migrants.

The Asylum Office is still the organizational part of the Police Department – the Border Police Administration, meaning that the Office still has no desirable civil character and that not all the preconditions have been fulfilled for the independent management of procedures and making decisions about the requested asylums or revoking of such right. The draft Law on asylum and temporary protection submitted to the Protector of Citizens for providing the opinion, used to provide that the Asylum Office becomes the organizational unit of the Ministry of Interior, whose officers do not belong under the uniformed police forces of the Ministry. The opinion of the Protector of Citizens about this Draft states that it should be specifically regulated that the Asylum Office is not the organizational part of the Police Department and that the staff of that Office are not police officers.<sup>104</sup>

In the course of visiting the Reception Centres, it was reported that the majority of centres accommodate both the migrants who expressed their intention to seek for an asylum and those who did not. Namely, since the Asylum Centre capacities have been filled, as the institutions providing primary accommodation and basic living conditions to the persons seeking asylum, the migrants who expressed this will are directed by the competent police administrations to some of the reception centres reported by the Commissariat for Refugees and Migrations notifies to have free accommodation places. Despite this, the Asylum Office failed to register these persons, issue the identity cards for asylum seekers or enabled the authorized officers to file the application for asylum. After the visit to the asylum centres in Bogovađa, Tutin and Sjenica and the Reception Centre in Adaševci, the NPM recommended to the Asylum Office to take legally prescribed measures for these persons, but these recommendations were not acted

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<sup>104</sup> Opinion of the Protector of Citizens on the Draft Law on Asylum and Temporary Protection, available at: <http://www.ombudsman.rs/index.php/2011-12-11-11-34-45/4944-ishlj-nj-z-sh-i-ni-gr-d-n-n-n-cr-z-n-zilu-i-privr-n-z-sh-i-i>.

upon. The Border Police Administration justified such failure to act upon the recommendations by the fact that they did not receive personal and other data for these persons from the Commissariat for Refugees and Migrations, that these persons do not stay in centres for longer than a couple of days, that there are no available interpreters and that these persons predominantly, after being placed to reception centres, state to the officers of the Commissariat that they do not want the asylum.

In the reporting period, about overall 144,000 migrants were recorded on the territory of the Republic of Serbia with more than one third of minors (54,882) included in that number. According to the data kept by the Ministry of Interior, 12,814 confirmations about the expressed will to seek the asylum were received in 2016. Despite this fact, the Asylum Office registered only 916 persons and the asylum requests were decided for overall 580 persons: 19 of them were approved, the subsidiary protection was provided to 23 persons and 43 asylums were rejected, 39 denied, while the procedures for 466 persons have been suspended.

Considering that the conditions for autonomous conducting of procedures and decision making regarding the asylum applications and the cancellation of such right have not been met, that the Asylum Office fails to take all the legally prescribed activities towards all the persons who expressed their will to seek the asylum in the Republic of Serbia as well as the large number of confirmations of the expressed wills, number of registered persons and the number of those upon whose requests the decision has been adopted, the NPM finds that the Republic of Serbia has still not established the efficient asylum system.

As early as in 2015, the NPM gave warning that the premises at "Nikola Tesla" Airport accommodating foreigners who do not meet conditions for the entry into the country are not appropriate for the stay of persons for more than a day and that there is no possibility for these persons to stay in fresh air.<sup>105</sup> Upon visiting the Border Police Station in the transit zone of the Airport in 2016, it was found that this situation did not change and therefore, recommendations were given to eliminate these deficiencies. The NPM was notified that in November 2016, at the meeting of the Border Police Administration with the representatives of "Nikola Tesla" Airport a.d., all the details and aspects of developing the Project Design for the adaptation of these premises have been discussed.

Following the visits to the Regional Centres of the Border Police at the BCPs with Bulgaria and Macedonia, the Police Administration in Vranje, Reception Centre in Padinska Skela and the Border Police Station in Belgrade at the "Nikola Tesla" Airport, the NPM recommended to the Ministry of Interior to provide written leaflets containing information about the legal status of migrants and their rights, in the languages they would understand, to be distributed by the police officers to the migrants, and that for the sake of a clear and precise communication they provide the translators/interpreters. However, the Ministry informed the NPM that they did not act upon these recommendations due to the lack of funds and human resources, but that in the near future, they would take into consideration the possibility of developing the leaflet.

NPM identified major shortcomings in the organization of health care for foreigners placed in the Reception Centre in Padinska Skela and the confidentiality of their health condition and the prescribed therapy. After the recommendations have been addressed to rectify these omissions, the NPM was informed that the Ministry of Interior has no HR, spatial or financial capacities to ensure the permanent presence of medical staff in the Reception Centre, as well as that they would undertake additional actions to ensure that the nearby Penal and Correctional Institution in Belgrade – Padinska Skela, provides the regular health care to foreign persons.

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<sup>105</sup> Report on the visit to "Nikola Tesla" Airport pages 9 and 10, [http://npm.rs/attachments/513\\_Izvestaj.pdf](http://npm.rs/attachments/513_Izvestaj.pdf).



In the course of the reporting period, the NPM paid special attention to the protection of the most vulnerable groups of refugees and migrants, particularly the children and women. During the NPM visit, the conditions for the accommodation of children, pregnant women and mothers of new-born babies were checked including the provision of health care to female migrants and children and whether the competent authorities provided adequate and timely interventions in the cases of domestic violence, human trafficking and abuse and neglect of children.

It was noted that identification of unaccompanied children was performed with difficulties, due to which the NPM addressed the Ministry of Labour, Employment, Veteran and Social Affairs with the recommendation to take measures to establish specific procedures and develop mechanisms for having a more efficient identification of minors as well as of other particularly vulnerable categories of people requiring additional assistance and care.

#### **GENERAL RECOMMENDATIONS FOR ELIMINATION OF SHORTCOMINGS**

**The Government needs to develop a Plan for providing care to migrants who either found themselves in Serbia or who were returned to Serbia and the Action Plan for the treatment of those who were not approved protection.**

**The Ministry of Interior should establish an efficient asylum system.**

**The Ministry of Interior should take measures to move the Asylum Office out the Police Department - the Border Police Administration**

**Asylum Office should undertake all the legally prescribed actions towards all migrants who were issued the confirmations of expressed will to seek asylum.**

**The Ministry of Interior should enable the unhindered communication between the police officers and migrants.**

**The Ministry of Interior should ensure the permanent presence of medical staff in the Reception Centre for foreigners in Padinska Skela.**

**The Ministry of Interior should provide premises for the accommodation of foreigners who were denied their entry into the country at the "Nikola Tesla" Airport, in accordance with the current standards and to ensure that these persons have access to the open air.**

**Commissariat for Refugees and Migrations and the Ministry of Interior should take measures to accommodate all migrants in the institutions provided by the system.**

**Commissariat for Refugees and Migrations should establish the procedure in all the reception and care centres for migrants regarding reporting complaints to the work of persons engaged at the centres.**

**Commissariat for Refugees and Migrations should provide the psychological support to migrants accommodated in the centres.**

## 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 in Kruševac<sup>106</sup>**

PA Kruševac and PSs in its composition shall deliver written notifications on the rights to persons detained in line with the LCP, which shall contain the rights stipulated by the LCP and all the rights envisaged under Item 4 of the Instructions.

PA Kruševac and PSs in its composition shall make to all detained persons written notifications on their rights in two copies, of which one shall be delivered to a detained person, and the other enclosed to the case file on detention. Both copies of the written notification on the rights have to be signed on the part of the detained person, or otherwise shall be noted that the person refused to sign them.

Ministry of the Interior shall modify the existing Instructions on treatment of the detained and brought in persons and put it in line with the relevant standards of the Council of Europe, by prescribing that police officers must not be present during medical check-ups of the persons deprived of liberty, unless the doctor who performs the examination requires otherwise.

Police officers of PA Kruševac, PS Aleksandrovac, PS Brus, PS Trstenik and PS Čičevac shall not be present during medical check-ups of the detained persons, unless the doctor who performs the examination requires otherwise.

Police officers of PA Kruševac, PS Aleksandrovac, PS Brus, PS Trstenik and PS Čičevac are obliged to warn the doctor on all the security aspects relevant for doctor's decision-making on the presence of non-medical staff during the medical check-up. Police officers of PA Kruševac and PSs in its composition shall, in cases when the doctor requires their presence during medical check-up of detained person, be present in a way that they are unable to hear the conversation between the doctor and the detained person. Police officers of PA Kruševac and PSs in its composition shall, in cases when the medical check-up of detained person is performed, notify in writing whether the police officer was present during the check-up.

PS Brus shall permit the detained persons to keep in their possession the decision on detention, as well as other relevant documentation (e.g. certificate on seized items, form on the rights etc.).

PA Kruševac and PSs in its composition shall calculate the beginning of detention since the moment the person has been deprived of liberty, i.e. from the moment he/she was summoned to police premises, in cases when the person was summoned as a suspect or as a citizen for the purpose of gathering information based on which he could be considered a suspect.

In the headquarters of PA Kruševac, PS Aleksandrovac, PS Brus, PS Trstenik, and PS Varvarin shall be made a record on the detained person, when a person is being detained according to the LCP, and in line with the Rulebook on the Police Authorities.

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<sup>106</sup> Report on the visit to Police Administration in Kruševac, No. 281-11/16, ref. no. 6894 of 29th February, 2016.

NPM standpoint is that in future work, police officers in the headquarters of PA Kruševac, PS Aleksandrovac, PS Brus, PS Trstenik, PS Varvarin and PS Čičevac should obtain the written statements of the persons that have undergone the coercive measures and the circumstances of their use as well as potential injuries with the aim of having a deeper insight in all the case circumstances, in order to give more objective assessment on the justification and regularity of coercive measures.

Having in mind that the Law on the Protection of Persons with Mental Disorders prescribes the police assistance, as well as bringing-in the persons to a medical institution for a check-up, when it is suspected that the person is with mental disorders, NPM standpoint is that it is necessary to organize the training for police officers of all the PA in the Republic of Serbia on treatment of persons with mental disorders.

PA Kruševac shall undertake the necessary measures in order to improve artificial illumination within the detention premises.

PA Kruševac shall put a visible notification within the detention premises that they are under the video surveillance.

PA Kruševac, in cooperation with the Ministry of the Interior, shall undertake measures that the police building in Aleksandrovac is adapted without a delay, in order to provide conditions for efficient work of police officers in PS Aleksandrovac.

PA Kruševac, in cooperation with the Ministry of the Interior, shall establish the detention premise in the adapted police building in Aleksandrovac in accordance with applicable standards.

PS Brus shall undertake measures in order to improve the inflow of natural light and fresh air in the detention premise.

PS Brus shall undertake appropriate measures in order to remove the moisture from the wall around the sanitary knot in the detention premise and regularly maintain its hygiene.

PS Brus shall install button for activating the sanitary flushing within the detention premise.

PA Kruševac, in cooperation with the Ministry of the Interior, shall undertake the necessary measures in order to improve in PS Brus video surveillance system of detention premise and provide that these video recordings are kept/archived for a period of not less than 30 days.

PS Brus shall put a visible notification within the detention premise that they are under the video surveillance.

PS Trstenik shall undertake measures in order to improve the inflow of natural light and fresh air in the detention premise.

PA Kruševac, in cooperation with the Ministry of the Interior, shall undertake measures in order to provide PS Trstenik with the sufficient number of blankets and pillows for detained persons, as well as the sufficient number of clothes and footwear for these persons when they are brought-in wet and in inappropriate clothes.

PS Trstenik shall install the sanitary flushing within the detention premise.

PS Trstenik shall undertake appropriate measures in order to separate by the wall the sanitary knot in the detention premise from the rest of the premise.

PA Kruševac, in cooperation with the Ministry of the Interior, shall undertake appropriate measures in order to improve in PS Trstenik video surveillance system of detention premise and provide that these video recordings are kept/archived for a period of not less than 30 days.

PS Varvarin shall undertake measures in order to improve natural and artificial illumination and enable appropriate inflow of fresh air in the detention premise.

PS Varvarin shall undertake appropriate measures in order to remove the moisture from the wall around the sanitary knot in the detention premise and regularly maintain its hygiene.

PS Varvarin shall undertake appropriate measures in order to repair the sanitary flushing within the detention premise.

PS Varvarin shall put a visible notification within the detention premise that they are under the video surveillance.

PS Čičevac shall undertake appropriate measures in order to provide the detention premise with enough artificial illumination, as well as regularly maintain hygiene and provide inflow of fresh air in the premise.

PA Kruševac, in cooperation with the Ministry of the Interior, shall undertake necessary measures, in order to cover the detention premise in PS Čičevac with the video surveillance system, and provide that these video recordings are kept/archived for a period of not less than 30 days.

PA Kruševac shall improve the fire protection system by putting in an appropriate visible place in PA headquarters building and PSs buildings in its composition, the evacuation plan and instructions for acting in case of fire, and all for the purpose of physical protection of the detained persons.

PA Kruševac and PSs in its composition shall organize and carry out the appropriate training of police officers in the area of fire protection.

PA Kruševac, in cooperation with the Ministry of the Interior, shall undertake appropriate measures in order to provide the sufficient number of vehicles in PS Aleksandrovac, PS Brus, PS Trstenik, PS Varvarin and PS Čičevac.

### **Police Administration in Leskovac<sup>107</sup>**

PA Leskovac and PSs in its composition shall deliver to all detained persons, on all grounds of deprivation of liberty, a written notification on their rights envisaged under Item 4 of the Instructions. PA Leskovac and PSs in its composition shall deliver to all persons detained in line with the LCP written notifications on their rights, which contain the rights stipulated by the valid LCP.

Ministry of the Interior shall modify the existing Instructions on treatment of the detained and brought in persons and put it in line with the relevant standards, by prescribing that police

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<sup>107</sup> Report on the visit to Police Administration in Leskovac, No. 281-40/16, ref. no. 23301 of 20th June, 2016.

officers shall not be present during medical check-ups of the persons deprived of liberty, unless the doctor who performs the examination requires otherwise.

Police officers shall not be present during medical check-ups of the detained persons, unless the doctor who performs the examination requires otherwise. Police officers are obliged to warn the doctor on all the security aspects relevant for doctor's decision-making on the presence of non-medical staff during the medical check-up. Police officers shall, in cases when the doctor requires their presence during medical check-up of detained person, be present in a way that they are unable to hear the conversation between the doctor and the detained person. Police officers shall, in cases when the medical check-up of detained person is performed, notify in writing whether the police officer was present during the check-up.

PA Leskovac and PSs in its composition shall escort to medical check-up all detained persons who are found to have more than 2 % BAC (blood alcohol concentration).

PA Leskovac shall synchronize treatment practices in police stations in its composition, when it comes to medical findings and opinions of physicians on the medical condition of the detained person, such as in case files made regarding the deprivation of liberty and detention of a person medical documentations shall not be attached, and which is made in connection with examinations conducted concerning the detention. Exceptionally, information about the health condition of detained person shall be available to the police officers only if it is important for the treatment of the person deprived of liberty during the detention. Insight into data about the health condition of persons deprived of liberty police officers should have only to the extent necessary for carrying out their work.

Police officers should obtain from the doctor information relevant to further conduct of the police, namely: medical opinion whether the person is in the state of health that allows him/her to be kept in police and whether he/her during the detention needs a special attention or care (e.g. therapy, special nutrition, or likewise)

Police officers of PSs within PA Leskovac shall in their future treatment issue and deliver decisions on detention to detained persons not later than two hours from the beginning of detention.

PA Leskovac shall synchronize calculation practice of detention period based on provisions of LCP, so that all PSs in its composition shall calculate the beginning of detention since the moment he/she was summoned, but not from the moment the person was informed of being a suspect, i.e. that he/she would be given the detention order.

Ministry of the Interior, in cooperation with the Ministry of Justice, shall within its legal competences, provide means and the necessary technical equipment for audio and video recording of the hearings of the defendants.

PA Leskovac and PSs in its composition shall carry out audio and video recording of the hearings of the defendants.

Ministry of the Interior shall modify the Instructions on treatment of the detained and brought in persons by prescribing that the means of cuffing shall be used only when really necessary, not during transportation, i.e. transport of each person being brought-in, as it is determined now.

In PA Leskovac police officers shall not cuff every person during bringing-in by the official vehicle, but shall do it only from the justified reasons, in cases envisaged by the Law.

NPM standpoint is that in future work, police officers in PA Leskovac should obtain the written statements of the persons that have undergone the coercive measures and the circumstances of their use as well as potential injuries with the aim of having a deeper insight in all the case

circumstances, in order to give more objective assessment on the justification and regularity of coercive measures.

PA Leskovac shall undertake appropriate measures and activities in order to improve artificial illumination and inflow of fresh air.

PS Lebane shall undertake measures in order to improve natural and artificial illumination and enable the inflow of fresh air in the detention premise.

PS Lebane shall improve heating in the detention premises.

PA Leskovac shall undertake necessary measures, in order to provide audio-video surveillance coverage of detention premise in PS Lebane, as well as that video recordings are kept/ archived for a period of not less than 30 days.

### **Police Administration in Niš<sup>108</sup>**

PA Niš and PSs in its composition shall deliver to all detained persons, on all grounds of deprivation of liberty, a written notification on their rights envisaged under Item 4 of the Instructions. PA Niš and PSs in its composition shall deliver to all persons detained in line with the LCP, written notifications on their rights, which contain the rights stipulated by the valid LCP.

Upon receiving the notification on rights, a detained person shall confirm by his/her signature on the copy that remains in the case file of detention, and in case that detained person refuses to confirm the receipt of the form on rights, on the form shall be notified that the person refused to sign it.

Ministry of the Interior shall modify the existing Instructions on treatment of the detained and brought in persons and put it in line with the relevant standards, by prescribing that police officers shall not be present during medical check-ups of the persons deprived of liberty, unless the doctor who performs the examination requires otherwise. Police officers shall not be present during medical check-ups of the detained persons, unless the doctor who performs the examination requires otherwise. Police officers are obliged to warn the doctor on all the security aspects relevant for doctor's decision-making on the presence of non-medical staff during the medical check-up. Police officers, in cases when the doctor requires their presence during medical check-up of detained person, shall be present in a way that they are unable to hear the conversation between the doctor and the detained person. Police officers, in cases when the medical check-up of detained person is performed, shall notify in writing whether the police officer was present during the check-up.

PA Niš and PSs in its composition shall in future escort to medical check-up all the persons who show signs of severe alcohol poisoning.

PA Niš shall synchronize treatment practices in police stations in its composition, when it comes to medical findings and opinions of physicians on the medical condition of detained person, in a way that such reports shall not be stored in case files on detention unless they are relevant for police detention.

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<sup>108</sup> Report on the visit to Police Administration in Niš, No. 281-24/16, ref. no. 18085 of 17th May, 2016.

PA Niš shall synchronize calculation practice of detention period based on the LCP, so that all PSs in its composition shall calculate the beginning of detention since the moment he/she was summoned, but not from the moment the person was informed of being a suspect, i.e. that he/she would be given the detention order.

Ministry of the Interior, in cooperation with the Ministry of Justice, shall within its legal competences, provide means and the necessary technical equipment for audio and video recording of the hearings of the defendants. PA Niš and PSs in its composition shall carry out audio and video recording of the hearings of the defendants.

PA Niš and PSs in its composition shall in future attach to all the detention case files, properly filled in and standardized records on detention, which shall after they have been made, be confirmed by the signature of the detained person, with a possibility of entering recommendations on it in writing. In the event that the person refuses to sign the record, the official shall note it in writing by stating the reason of the refusal to sign it. The signed copy of the record on detention shall be attached to case file on the detention.

NPM standpoint is that in future work, police officers in PA Niš should obtain the written statements of the persons that have undergone the coercive measures and the circumstances of their use as well as potential injuries with the aim of having a deeper insight into all the case circumstances, in order to give more objective assessment on the justification and regularity of coercive measures.

Ministry of the Interior shall without a delay create a plan and program of training of police officers about police treatment of persons with mental disorders in the procedure of bringing them in to the medical institution for check-up, as well as other police activities in accordance with the Law on Protection of Persons with Mental Disorders.

PA Niš and PSs in its composition shall send on training the required number of police officers, in order to improve the police treatment of persons with mental disorders.

Ministry of the Interior shall within its competences undertake appropriate measures and activities with the aim of adaptation and furnishing of detention premises in PA Niš, in accordance with the valid standards.

PS Merošina shall undertake measures in order to improve natural and artificial illumination in the detention premise and enable the inflow of fresh air. Also, painting of the premises shall be performed and hygiene shall be improved.

PS Merošina shall install heating in the detention premise. PA Niš shall undertake the necessary measures in order to improve video surveillance system in the detention premises in PS Merošina, and video recordings shall be kept/archived for a period of not less than 30 days.

PS Svrljig shall undertake measures in order to improve artificial illumination, enable the inflow of natural light and fresh air in the detention premise, install the heating in the detention premise and provide the detained persons an access to decent and clean sanitary knot.

PA Niš shall undertake necessary measures in order to provide video surveillance coverage of detention premise in PS Svrljig as well as that video recordings are kept/archived for a period of not less than 30 days, and shall install the alarm button for calling the duty police officer.

PS Ražanj shall undertake measures in order to enable the inflow of natural light and fresh air in the detention premise and shall perform painting, and in future the hygiene of premise shall be regularly maintained.

PA Niš shall undertake necessary measures in order to improve video surveillance system in the detention premise in PS Ražanj and video recordings shall be kept/archived for a period of not less than 30 days.

PS Doljevac shall undertake measures in order to improve natural and artificial illumination in the detention premise and enable the inflow of fresh air.

PS Doljevac shall undertake appropriate measures in order to enable the detained persons the access to the sanitary knot, which shall be located either in the detention premise or in its close vicinity. Ministry of Interior shall undertake measures and activities in order to provide the detention premise in PS Aleksinac, according to the valid standards.

### **Police Administration in Novi Pazar<sup>109</sup>**

PA Novi Pazar and PSs in its composition shall deliver written notifications on the rights to persons detained based on LCP, the rights stipulated by the LCP as well as those envisaged under the Item 4 of the Instructions on treatment of the detained and brought in persons.

In PA Novi Pazar and PS Sjenica the person who came to police station as a citizen for the purpose of gathering information, and whose status changed into a suspect during gathering of information thus being kept in detention, the beginning of detention period shall be calculated from the moment of summoning.

PA Novi Pazar shall undertake measures in order to improve the inflow of natural and artificial illumination in detention premise in the headquarters of Police Administration.

PA Novi Pazar shall undertake measures in order to improve the inflow of artificial illumination in detention premise in PS Tutin.

PA Novi Pazar shall undertake measures in order to improve the inflow of natural and artificial illumination in detention premise in PS Sjenica.

PA Novi Pazar shall improve the fire protection system in PS Sjenica and PS Tutin, by putting in the appropriate visible places in PSs buildings the evacuation plan and instructions for acting in the case of fire.

Police Administration in Novi Pazar shall provide food to detained persons in PSs Sjenica and Tutin, at the expense of Police Administration.

Police officers in PS Sjenica shall not inform close persons of detainees about their detention, if detainees are against it.

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<sup>109</sup> Report on the visit to Police Administration in Novi Pazar, No. 281-72/16, ref.. no. 36334 of 21th September, 2016.



### **Police Administration in Pirot<sup>110</sup>**

PA Pirot and PSs in its composition shall deliver written notifications on the rights to persons detained based on LCP, as well as all the rights stipulated under the Item 4 of the Instructions on treatment of the detained and brought in persons.

### **Police Administration in Požarevac<sup>111</sup>**

PA Požarevac and PSs in its composition shall deliver written notifications on the rights to persons detained based on LCP, which shall contain the rights stipulated by the LCP and all the rights envisaged under the Item 4 of the Instructions. PA Požarevac and PSs in its composition shall deliver notifications on rights to persons detained based on Law on Misdemeanours envisaged under the Item 4 of the Instructions.

Police officers shall note in the record on detention whether the police officer was present at the medical check-up of detained person, and if it is the case, the police officer shall note the reasons for such acting.

PA Požarevac and PSs in its composition shall in future escort to medical check-up all the persons who show signs of severe alcohol poisoning.

PA Požarevac shall synchronize calculation practice of detention period based on LCP, by ordering to all PSs in its composition to calculate the beginning of detention since the moment he/she summoned, and not from the moment the person was informed of being a suspect, i.e. that he/she would be given the detention order.

PA Požarevac and PSs in its composition shall in future enter into detention records all data prescribed by the Instructions on treatment of the detained and brought in persons, including information on nutrition, visit, escorting and medical check-up of detained persons.

PA Požarevac shall undertake necessary measures in order to enable inflow of fresh air and natural light within the detention premises. Measures shall be undertaken in order to improve the sanitary knot hygiene within the premise and regularly maintain it. Also, within the premise shall be installed the button for activating the sanitary flushing.

PS Veliko Gradište shall undertake measures in order to enable inflow of natural light and fresh air within the detention premise, painting of the premise shall be carried out and improved the maintaining of hygiene in the premise.

PS Veliko Gradište shall undertake measures and install the heating in the detention premise, as well as the button for activating the sanitary flushing.

PS Kučevo shall undertake measures in order to enable inflow of natural light and fresh air within the detention premise. Also, PS Kučevo shall undertake measures and install the heating in the detention premise.

Ministry of the Interior shall in PS Petrovac without a delay improve working conditions for police officers, as well as accommodation conditions of detained persons.

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<sup>110</sup>Report on the visit to Police Administration in Pirot, No. 281-61/16, ref. no. 31204 of 15th August, 2016.

<sup>111</sup> Report on the visit to Police Administration in Požarevac, No. 281-17/16, ref. no. 11717 of 30th March, 2016.

PS Petrovac shall put a visible notification within the detention premise that it is under the video surveillance.

PA Požarevac, PS Veliko Gradište and PS Kučevo shall undertake necessary measures in order to improve video surveillance system in detention premises and video recordings shall be kept/archived for a period of not less than 30 days.

PA Požarevac shall improve the fire protection system by putting in an appropriate visible place in PA headquarters building and PSs buildings in its composition, the evacuation plan and instructions for acting in case of fire, and all for the purpose of physical protection of the detained persons.

PA Požarevac and PSs in its composition shall organize and carry out the appropriate training of police officers in the area of fire protection.

NPM standpoint is that in future work, police officers in PA Požarevac should obtain the written statements of the persons that have undergone the coercive measures and the circumstances of their use as well as potential injuries with the aim of having a deeper insight into all the case circumstances, in order to give more objective assessment on the justification and regularity of coercive measures.

Having in mind that the Law on the Protection of Persons with Mental Disorders prescribes the police assistance, as well as bringing-in the persons to a medical institution for a check-up, (when it is suspected that the person is with mental disorders), NPM standpoint is that it is necessary to organize the training for police officers of all the PA in the Republic of Serbia on the treatment of persons with mental disorders.

### **Police Administration in Subotica<sup>112</sup>**

Ministry of the Interior shall inform all the PSs that the duty police officers should have keys of all the official premises, i.e. shall establish mechanism which shall in case of NPM visits to PSs provide timely access to all the premises and installations.

In PA Subotica detained persons shall be allowed during detention period to keep in their possession all the relevant documentation (decision on detention, form on the rights of detained persons, certificate of seized items, medical reports and so on).

Ministry of the Interior shall modify the existing Instructions on treatment of the detained and brought in persons and put it in line with the relevant standards, by prescribing that police officers shall not be present during medical check-ups of the persons deprived of liberty, unless the doctor who performs the examination requires otherwise. Police officers in PA Subotica, shall not be present during medical check-ups of the detained persons, unless the doctor who performs the examination requires otherwise. Police officers in PA Subotica are obliged to warn the doctor on all the security aspects relevant for doctor`s decision-making on the presence of non-medical staff during the medical check-up. Police officers in PA Subotica, in cases when the doctor requires their presence during medical check-up of detained person, shall be present in a way that they are unable to hear the conversation between the doctor and the detained person. Police officers shall note in the record on detention whether the police officer was present at the medical check-up of detained person, and if it is the case, the police officer shall note the reasons for such acting.

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<sup>112</sup> Report on the visit to Police Administration in Subotica, No. 281-20/16, ref. no. 14689 of 19th April, 2016.

PA Subotica shall properly mark the existing forms on rights of detained persons made in minority and foreign languages, i.e. on each form shall be noted clearly the language, in order to enable the acting police officers, in case when the detained person does not understand Serbian language, to print and deliver the form in the language he/she understands.

NPM reiterates the recommendation relating to the use of cuffing means, addressed to PA Subotica in its previous Report No. 71-14/14 of 07. 3. 2014. During the implementation of the authorization of cuffing it is necessary to note in the Report the exact time of the beginning and the end of the authorization implementation.

Police officers in PA Subotica shall in their future acting issue and deliver to detainees decisions on detention not later than two hours since the beginning of detention.

### **Police Station in Vršac<sup>113</sup>**

Ministry of the Interior shall provide detention unit in PS Vršac, which shall fulfil modern standards with regard to special and material conditions.

Police Station in Vršac shall deliver to all detainees, and not to their legal representatives, one copy of the written notification on their rights, and the other with person`s signature and confirmation on receipt shall be kept in the case file on detention, as evidence that he/she has received it.

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<sup>113</sup> Report on the visits to Police Station in Vršac and Regional Centre of Border Police towards Romania - North, No. 281-107/16, ref. no. 51770 of 28th December, 2016.

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

### **The Penal and Correctional Institution in Belgrade<sup>114</sup>**

The Penal and Correctional Institution in Belgrade will enable the convicts serving the prison sentence to spend the available time outside the dormitories, in the common daily room space together with other convicts, unless in individual case and for a limited time, contrary with the special or disciplinary measure, health condition of the convict, the established treatment program or other legally prescribed reason.

The Penal and Correctional Institution in Belgrade will allocate the convicts to common rooms for their daily stay taking due care of all relevant circumstances, the age, personal characteristics and inclinations, including other characteristics of the convicts relevant for the positive mutual influence and non-existence of threats as regards any physical or psychological menace between them.

The Penal and Correctional Institution in Belgrade will take measures to involve as many of convicts as possible into common purposeful activities outside the dormitories.

### **The Penal and Correctional Institution in Niš<sup>115</sup>**

PCI Niš will, immediately after having developed the project and study for the supply and installation of the audio and video surveillance, submit it to the Administration for Enforcement of Criminal Sanctions and notify thereof the Protector of Citizens, without delay. The Administration for enforcement of criminal sanctions will take the necessary measures and activities to ensure the required funds for the supply and installation of adequate audio and video surveillance.

In addition to the cooperation with Orthodox priests, PCI Niš will establish the cooperation with other religious communities, in particular the Islamic community.

The Administration for enforcement of criminal sanctions will take measures under its competence to enable additional work engagement at PCI Niš aimed at maintaining the security and observing the rights of persons deprived of liberty, pursuant to the addressed requirements

### **The Penal and Correctional Institution in Belgrade – Padinska Skela<sup>116</sup>**

The Penal and Correctional Institution in Belgrade – Padinska Skela will provide in common toilets the conditions for having privacy during showers, by installing cabins or separating the shower space by the partition walls or in any other available way.

The areas designated for the stay in the open air (walking area) used by the convicts and offenders placed in the facility where the reception unit, confined unit and unit for offenders are located, the Penal and Correctional Institution in Belgrade – Padinska Skela will install shades of the size that will be appropriate for protecting all the persons let outside for a walk, from precipitations.

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<sup>114</sup> Recommendation no. 281-46/16, Ref. no. 25085 dated July 1, 2016.

<sup>115</sup> Report on the visit to Penal and Correctional Institution in Niš, no. 281-32/16, Ref. no. 15858 of April 27, 2016

<sup>116</sup> Report on the visit to Penal and Correctional Institution in Belgrade – Padinska Skela, no. 281-51/16, Ref. no. 25664 of July 6, 2016.

The Penal and Correctional Institution in Belgrade – Padinska Skela shall allow transgendered women upon being brought to the Institution, to choose whether they will undergo personal and body search only by a male officer or whether they would undergo a combined personal and body search in which parts of a transgendered woman’s body having distinctively female gender characteristics examined and searched by a female officer, while the remaining body parts will be examined by a male officer, and that neither male nor female officers are present at the personal search and examination of the transgender female during the phase of search and examination in which they do not take part.

The officers of the Penal and Correctional Institution in Belgrade – Padinska Skela will refer to the transgender females in female gender, other than if the transgender woman requests otherwise.

The Administration for enforcement of criminal sanctions will organize and deliver training for the staff at institutions for enforcement of criminal sanctions, about the standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity, including the training on how to communicate effectively and professionally with lesbian, gay, bisexual, transgender and intersex detainees and how to identify and respond to their legitimate needs.

The Administration for enforcement of criminal sanctions will deliver the afore mentioned training in cooperation with organizations of civil society having experience and relevant knowledge in the field of protecting and enhancement of the rights of LGBT persons with special focus on the rights of transgender persons.

In Penal and Correctional Institution in Belgrade – Padinska Skela will provide for the offenders sentenced to shorter prison time, clean underwear and clothes, if they do not have their own spare underwear and clothes.

#### **District Prison in Leskovac**<sup>117</sup>

DP Leskovac needs to develop the education program for the staff of the Treatment units, pursuant to their needs, in order to raise the quality of the educational work that will be sent to the Administration for enforcement of criminal sanctions. The Administration for enforcement of criminal sanctions will, in accordance with the estimated requirements of the employees in the Treatment units, take measures to ensure that the employees of this unit are trained.

The treatment unit of DP Leskovac will regularly insert into the files of convicts the follow-up list of individual treatment activities as prescribed by the Directive, to enable the oversight of the treatment implementation during the time of prison service.

DP Leskovac will, after the finalization of the construction of the new facility and moving the convicts from the confined unit to the new building, take any required measures to engage the convicts allocated to group B in work.

#### **District Prison in Vranje**<sup>118</sup>

DP Vranje will take any measures and activities to enable that any person deprived of liberty has the legally prescribed minimum of eight cubic meters and four square meters of space, not

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<sup>117</sup> Report on visit to District Prison in Leskovac, no. 281-33/16, Ref. no. 18284 dated May 18, 2016.

<sup>118</sup> Report on visit to District Prison in Vranje, no. 281-95/16, Ref. no. 46136 dated November 25, 2016.

counting the floor area of the sanitation facility located in each room – dormitory, and the separate bed for each person.

The Administration for enforcement of criminal sanctions will take appropriate measures under its field of competence to ensure that DP Vranje complies with the addressed recommendation, as soon as possible.

DP Vranje will form the space – dormitory in the basement of the Institution that will be adjusted to the requirements of persons having walking disorders that is, who require wheelchairs or other orthopaedic aid.

### **District Prison in Smederevo<sup>119</sup>**

District Prison in Smederevo will take any measures and activities to enable that any person deprived of liberty has the legally prescribed minimum of eight cubic meters and four square meters of space, not counting the floor area of the sanitation facility located in each room – dormitory, and the separate bed for each person.

District Prison in Smederevo will improve the system for airing the rooms - dormitories.

District Prison in Smederevo will provide appropriate sanitary fixtures and fittings and the required preconditions to ensure privacy while having showers in the joint bathroom.

District Prison in Smederevo will refurbish the common bathroom in the Institution Economy.

District Prison in Smederevo will ensure for the persons deprived of their liberty the food which is adequate in order to maintain their good health and strength, among other, fresh fruit twice a week.

District Prison in Smederevo will introduce and maintain the records of motions, complaints, appeals and requests for providing court protection of persons deprived of liberty.

All the written mail (letters) in the District Prison Smederevo belonging to persons deprived of liberty, other than those referred to the Institution or those the Institution is obliged to act upon, will be received by the officials from the persons (senders) in closed envelopes and deliver concurrently with their reception the receipts confirming their admission. If there is any doubt as to an illegal content of the envelope the official will open the envelope and inspect it in presence of the sender, without reading the content of the letter and make an official note thereof.

The governor of the District Prison in Smederevo will talk to the persons deprived of their liberty where they requested to talk with the prison governor.

The Administration for enforcement of criminal sanctions will provide to the members of security service working at the District Prison in Smederevo, the uniforms and replacement of the parts of uniforms in accordance with the regulated expiration dates.

In the District Prison in Smederevo, the employees whose insured length of service is calculated with the prolonged time, so that each 12 month effectively spent in discharging their duties, the insured service time is counted up to 16 months, will be referred to medical

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<sup>119</sup> Report on visit to District Prison in Smederevo, no 281-53/16, Ref. no. 31382 of August 16, 2016.

examination and in the future, be referred to the medical examinations minimum once in 3 years.

The District Prison in Smederevo shall, for each case of implementing the measures for maintaining the order and security, form a separate case, placed in the file, in which any acts referring to the implementation of special measure in the particular case will be inserted.

Persons deprived of their liberty in the District Prison in Smederevo who have been under the special measure of being placed under intensified supervision, will be placed in rooms / dormitories where they will be under the intensified supervision by the officers.

District Prison in Smederevo rooms/dormitories for applying special measure of intensified supervision, shall not accommodate persons who are not subjected to this measure.

District Prison in Smederevo will move the convict who has not been under the special measure of being placed under intensified supervision who, at the time of NPM visit was placed in dormitory accommodating convicts who have been placed under such measure, to the appropriate dormitory that complies with the treatment program defined for such person and in accordance with other prescribed criteria.

District Prison in Smederevo will include, towards the persons under special measure of being placed under intensified supervision, include in the activities the treatment programs in place and take measures to increase the attention of competent services to these persons. The competent services of the District Prison in Smederevo will, in the proposals for implementation, extension or cancellation of special measure of placing under intensified supervision, as well as in the proposals for implementation or cancellation of special confinement measure, also specify the facts and circumstances relevant for evaluating the reasoning for taking the respective decision. The explanation for such decisions to take special measure of placing under intensified supervision and confinement, shall include the statement of facts and where necessary, the decisive reasons for making the assessment of evidence, appropriate legal grounds and reasons which in consideration of the stated facts, brought to the decision to in the particular case, establish, prolong or cancel the intensified supervision that is, to establish or cancel the confinement.

District Prison in Smederevo will introduce and maintain the Records of disciplinary sanctions of persons deprived of liberty.

In the District Prison in Smederevo, the disciplinary reports are being filed and the disciplinary procedures conducted against the convicts even if there is obvious evidence that the circumstances exclude the disciplinary responsibility of the convicts (such as causing the unintentional damage to the property of the Institution).

The officers of the District Prison in Smederevo will not file disciplinary reports against the convicts when it is obvious that the given circumstances exclude the disciplinary responsibility (such as the unintentional damage to the property of the Institution). The body managing the disciplinary procedure against the convicts in the District Prison in Smederevo will make record of any prescribed details in the report from the hearing.

The Administration for enforcement of criminal sanctions will take the necessary Action to fill in the vacancies in the Treatment unit of the District Prison in Smederevo as provided for in the current job classification document.

The tutoring staff in the District Prison in Smederevo will in the future, after any interview with the convicts, make a note about the conversation and add it to the file of the convict and maintain the list of conducted individual, group and other treatment activities set forth by the individual treatment programs.

The District Prison in Smederevo will introduce group form of educational and correctional work with the convicts.

The Treatment unit of the District Prison in Smederevo will in the future, when determining the treatment program towards the convicts, define special treatment and activities, taking care of the capacities of the Institution in terms of their feasibility and will not set to the convict's individual goals without having available conditions in place for their realization.

The District Prison in Smederevo will, within the treatment program, define the preparation program for release and provide assistance after the release of convicts in accordance with their estimated needs.

District Prison in Smederevo will include the convicts into individual or group advisory work regarding their preparation for release.

District Prison in Smederevo will take measures to enable the persons deprived of their liberty to attend educational programs for vocational training.

District Prison in Smederevo will take measures to engage a larger number of persons deprived of liberty in work.

The areas designated for the stay in the open air (walking area) of the District Prison in Smederevo used by the persons deprived of liberty, the shades of the size appropriate for protecting all the persons let outside for a walk, from precipitations will be installed.

District Prison in Smederevo will enable the persons deprived of liberty to stay in the open air for minimum two hours a day.

District Prison in Smederevo will enable the persons deprived of liberty to have physical exercises in the confined space.

District Prison in Smederevo will take measures for the involvement of persons deprived of their liberty into purposeful activities during their free time.

District Prison in Smederevo will provide conditions for the detainees to receive visits in the duration of one hour and notify the competent court about the possibility of having the duration of visits aligned with the regulations. The District Prison in Smederevo will enable the convicts to have the visits of minimum 1 hour.

District Prison in Smederevo provide for and adequately furnish the room for visits of close persons in order to enable the persons deprived of liberty to exercise their rights to spend their time in special rooms.

The Administration for enforcement of criminal sanctions will hire sufficient number of medical technicians in the District Prison in Smederevo to enable the Institution to have a continual presence (in working and non-working days) - 24 hours a day - of minimum one officer having medical qualifications.



The medical records of persons deprived of liberty in the District Prison in Smederevo will be entered all the information identified at the medical checkup.

The medical records of convicts will be kept together with the medical documents formed during their stay in the detention.

The District Prison in Smederevo will introduce and maintain the Record of injuries of persons deprived of liberty that will contain records of any identified injuries.

District Prison in Smederevo will provide for and equip a special room for patients in line with the regulations.

District Prison in Smederevo will provide any missing equipment for the prison outpatient office of the Institution.

District Prison in Smederevo will without delay, supply the sufficient quantity of testing straps for measuring the blood sugar of prisoners suffering from diabetes.

The District Prison doctor will enter in the written report about the completed the medical examination following the coercive measures against the prisoners in addition to the objective medical findings also specify:

- statement of the person against whom the coercive measure was taken about the way in which the injury was inflicted;
- opinion about the connection between the applied measure and inflicted injuries.

The governor of the District Prison in Smederevo will, along with the written report of the Security Service on the applied coercive measure, enclose the medical documentation and reports following the medical checkups after the applied measures. Any injuries will be photographed in the District Prison in Smederevo of persons deprived of liberty, both those made during the extraordinary situations and those made by applying the coercive measures and such photographs will be kept in the medical records of the persons.

At the District Prison in Smederevo, people suffering from epilepsy will be able to stay in the fresh air, as well as spend a reasonable amount of days out of the dormitory – in walks, within the common rooms or engaged in the activities envisaged by the treatment program unless exceptionally, in the concrete case, this is detrimental for their health. If there is a risk of injuries, the Institute will provide assistance to these persons (special supervision by officials). Epilepsy patients placed in the District Prison in Smederevo will be provided with accommodation appropriate to their state of health and needs, that is, if, according to the doctor's assessment, staying in the smoky premises in the particular case may provoke epileptic seizures, such person should be placed in a dormitory with non-smokers and be allocated the common room used by non-smokers.

The Ministry of Health will conduct an external control of the quality of work performed by the health care workers in the District Prison in Smederevo. The Ministry of Health will submit a copy of such report on the quality of performance to the National Preventive Mechanism.

### **District Prison in Subotica<sup>120</sup>**

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<sup>120</sup> Report on visit to District Prison in Subotica, no. 281-19/16, Ref. no. 22251 of June 14, 2016.

DP Subotica will provide appropriate sanitary facilities in the common bathroom to ensure conditions for the privacy of beneficiaries when taking shower, as well as the adequate time for taking showers in order to enable the convicts to maintain the personal hygiene.

DP Subotica will improve the content of hygiene packaging for maintaining the personal hygiene of persons deprived of liberty.

DP Subotica will provide space for cleaning and maintaining the clothes of the persons deprived of liberty, as well as the required hygienic agents and devices for cleaning the rooms where the persons are staying.

The Administration for enforcement of criminal sanctions will conduct measures and take actions to ensure a facility for the needs of DP Subotica, to accommodate persons deprived of liberty, where the living conditions will be in line with the applicable standards.

DP Subotica will, in the event of absence of a professional cook, hire another professional cook to prepare meals to the prisoners. The Administration for enforcement of criminal sanctions will take measures so that the DP Subotica could hire and/or where necessary, engage another professional cook.

DP Subotica will make sure that the prisoners receive meals that are adequate for maintaining their good health and strength, among other, they will receive fresh fruit twice a week.

The Administration for enforcement of criminal sanctions will take appropriate steps to fill the vacant position of a graduated lawyer to an indefinite period.

DP Subotica will introduce and maintain records of the provision of legal assistance, in line with the Law.

DP Subotica will provide to the convict undergoing a disciplinary procedure the professional legal assistance by the graduated lawyer.

DP Subotica will, without delay, undertake to upgrade the video surveillance system. The recorded videos will be kept for minimum 30 days.

DP Subotica will take necessary steps to ensure privacy of the persons in the premises for serving disciplinary and other special measures, by making sure that the space around the toilet is not clearly visible on the monitor (for example, by blurring that part of image).

The doctor at DP Subotica will immediately after applied coercive measures against the person deprived of liberty, and again after 12 and 24 hours from the applied measure examine that person. The report shall specify the exact time of medical checkups. The doctor's report shall also specify the statements of persons against whom the coercive measure was applied, about the way of inflicting the injury and opinion of the doctor about the connection between the applied measures and inflicted injuries.

Decisions issued at DP Subotica must contain provision about legal remedy.

The accommodation in the rooms at the DP Subotica, specially secured by eliminating hazardous items will be applied under the doctor's supervision and due records will be maintained about the completed medical checkups and the visits by authorized officials.

Special measure of confinement at DP Subotica will be applied under the supervision of a doctor and due records will be maintained about the completed medical checkups and the visits made by the prison governor.

Decisions delivered upon the disciplinary measures at DP Subotica will contain the legal remedy provision.

Persons at DP Subotica who received a disciplinary measure of confinement, will be daily checked by the doctors and the prison governor and the tutor will visit that person once in seven days. The medical checkups and visits by officials will be duly recorded pursuant to the law.

The Ministry of Justice needs to notify the judge for the enforcement of criminal sanctions of the High Court in Subotica, about the measures taken upon his/her letter. The amendments to the Rulebook on criteria, norms, procedures and bodies evaluating the work of judges and court presidents should be introduced, to modify the part referring to the monthly norms and also include the evaluation of judges in the cases referring to the enforcement of criminal sanctions.

The employees of the Treatment unit will in the future specify under the line 'deadline for the accomplishment of defined individual goal' in the proposed Treatment program the precise timeframe for its accomplishment.

Facilitators of workshops should also enter in the lists on follow-up of treatment group activities the comments of convicts to such workshops, in order to enable periodic reviews and evaluations of the effectiveness of delivered workshops.

When defining the goals (carried out both in groups and individually) care will be taken to have them defined pursuant to the estimated risks and requirements of convicts. After having accomplished one individual goal, new one shall be set up depending on the next field assessed as high or medium risk level.

The Treatment unit at DP Subotica will, in its future work, when developing the individual goal, make sure that it is correct, that is, that the expected change is specified with the achievement of the set goal and the timeline for its accomplishment.

The Treatment unit at DP Subotica will set up the criteria for assessing whether the goal performed in a group has been achieved.

The Administration for enforcement of criminal sanctions should develop additional instruments for the risk assessment and needs when making subsequent allocation of convicts taking into consideration the behaviour and engagement of persons during the time of serving the sanctions and achievements of the adopted treatment program.

The Administration for enforcement of criminal sanctions and DP Subotica will take measures to enable that the maximum possible number of convicts attend education and professional training.

The convicts who have not completed primary school will be able to attend both trainings, depending on the expressed interests and potentials.

At DP Subotica, each case will undergo security risk assessments for the work engagement of convicts of the group B and they will be reviewed in periodical intervals of maximum three months, which shall be recorded in writing.

In both areas designated for the stay in the open air (walking area) of the DP Subotica, used by the persons deprived of liberty, the shades of the size appropriate for protecting all the persons let outside for a walk, from precipitations will be installed.

DP Subotica will enable the persons deprived of their liberty to use the existing special purpose area (gyms) furnished with the exercising equipment.

DP Subotica will enable the detainees to stay in the open air for minimum two hours a day.

DP Subotica will enable the detainees to use the available sports equipment while staying outside.

DP Subotica will enable all the convicts placed in confined areas to watch TV and listen to radio programs.

DP Subotica will provide and adequately furnish special rooms for the visits of the convict's close persons.

DP Subotica will provide conditions for visits to detainees for one hour and notify the competent court about the possibility for the Institution to organize visits to the detainees in line with the regulations.

The Administration for enforcement of criminal sanctions will take measures not to place the persons deprived of liberty having walking disorders, who have to use wheelchairs or other orthopaedic aids at DP Subotica until the construction of the new facility that will comply with the standards.

The Administration for enforcement of criminal sanctions will analyse the requirement to use sign language.

Pursuant to the defined needs, the Administration will organize trainings in sign language for the employees.

The Administration for enforcement of criminal sanctions will ensure at DP Subotica the provision of translation services to languages predominantly used by foreigners /migrants.

Technical conditions will be provided at DP Subotica for the foreign prisoners to make calls abroad and to exercise the right to, immediately upon being brought in call his/her family or any other person he/she selects. The Administration for enforcement of criminal sanctions will provide technical conditions at all institutions for the enforcement of criminal sanctions to ensure that foreign persons deprived of their liberty may have telephone calls abroad, to be able to call their families or any other selected person immediately upon being brought in.

DP Subotica will hire sufficient number of medical nurses (technicians) to ensure their continuing presence in the Institution. DP Subotica will ensure that the staff providing health care possess legal licenses for their work issued by the competent Chamber of medical workers.

DP Subotica will provide for the services of minimum one psychiatrist, by employing the doctor of appropriate qualifications, whereby it will be ensured that the specialist of psychiatry

(or neuro-psychiatry) is present in the Institution pursuant to the defined requirements of the convicts.

DP Subotica will ensure that each person placed in the Institution, regardless of the length of service, upon the first medical checkup at the admission, have their medical records opened.

The doctor at DP Subotica will submit to the governor the written periodic reports on the health condition of convicts, including any findings and recommendations regarding the necessary physical activities of the convicts. The copies of submitted recommendations will be kept in the archives of the Health Care unit.

DP Subotica ensure that all funds used for the provision of health care are within the period of use designated by the manufacturer, and that any items that have expired are withdrawn from use and from the health care facilities.

DP Subotica provide a dental office, with appropriate equipment, accessories and materials for the treatment, repair and extraction of teeth.

At DP Subotica, it is necessary to ensure the continuous presence of a person having medical qualification who will, in addition to other activities, perform the distribution of medications, to avoid that this work is performed by non-medical staff.

DP Subotica will place the visible notification prohibiting the non-medical staff to attend medical examinations of a person deprived of their liberty, in front of the doctor's office and / or outside of the door of the office, as well as in the office and inform all members of the Security Service about this. The door of the doctor's office must be closed during the medical activities.

Members of the Security Service are obliged to warn the doctors of all security aspects that are relevant for the doctor to make a decision about the presence of non-medical staff during the medical examination.

Should the doctor require the presence of non-medical staff during the examination and / or other medical activities, it is necessary that the fact of such a request, as well as the data of the present non-medical staff, are recorded in the medical records for the particular person deprived of liberty.

When conducting the first medical examination at DP Subotica, the doctor will enter in the medical record, any information identified at such first examination.

DP Subotica will ensure that any person deprived of liberty for which the health service has been scheduled outside the Institute (such as the specialist examination, X-ray and other) is carried out at the scheduled time.

DP Subotica will introduce a list of specialist examinations and other medical interventions scheduled outside the Institute in order to have the data about the required referral outside the Institution for providing the treatment, centralized.

DP Subotica will introduce and maintain special records on the persons refusing treatment, food or water.

DP Subotica will ensure mandatory checkups of convicts referred to the solitary confinement by a doctor, at least once during the entire duration of the disciplinary procedure.

DP Subotica will maintain individual dental records.

The Administration for enforcement of criminal sanctions will, together with the Ministry of Health ensure that all persons serving prison sentences, when there are such medical indications, are provided the access to contemporary treatment of drug addiction under the same conditions as citizens living in the community and first of all, the possibility of inclusion in the substitution programs.

DP Subotica will, in the case persons deprived of liberty inflict self-injuries, in addition to the initial medical examinations, assess the degree of injuries and determine the psychological state and provide the necessary therapeutic psychiatric / psychological treatment approach.

At the first medical examination upon admission to DP Subotica, in addition to the usual elements (indicated in the relevant section of the Report), where bodily injuries have been identified, they must be described in detail in the medical record, and in addition to this, the examined person should provide information about the circumstances under which the injuries were inflicted. Also, it is necessary for the doctor to indicate his/her conclusion about the connection between the established injuries and the information provided by the examined person regarding the circumstances under which the injuries were caused.

The doctor will submit to the prison governor a written report on the findings and the recommendations about the improvement of the hygiene in the Institution, the condition of the sanitary fixtures and fittings, heating, lighting and airing of premises where persons deprived of liberty are placed.

The Ministry of Health will carry out expert oversight of the work of doctors in the District Prison in Subotica, without delay. The Ministry will send a copy of the oversight reports to the National Prevention Mechanism.

### **District Prison in Vranje<sup>121</sup>**

DP Vranje will take any measures and activities to enable that any person deprived of liberty has the legally prescribed minimum of eight cubic meters and four square meters of space, not counting the floor area of the sanitation facility located in each room – dormitory, and the separate bed for each person.

The Administration for enforcement of criminal sanctions will undertake appropriate measures under its competence to ensure that DP Vranje acts upon the recommendation as soon as possible.

DP Vranje will form the space – dormitory in the basement of the Institution that will be adjusted to the requirements of persons having walking disorders that is, who require wheelchairs or other orthopaedic aid.

### **Penal and Correctional Institution Niš – detention unit in Pirot<sup>122</sup>**

PCI Niš – Detention Unit in Pirot, will adjust the room – dormitory, designated for the detention based on LCP to the accommodation needs of one person, in accordance with the standards.

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<sup>121</sup> Report on the visit to District Prison in Vranje, no. 281-95/16, Ref. no. 46136 of November 25, 2016.

<sup>122</sup> Report on visit to PA Pirot, no. 281-61/16, Ref. no. 31204 of August 15, 2016

Persons, against whom the detention measure has been taken at the institutions for enforcement of criminal sanctions will, during the detention, be provided the possibility to have walks within the institution and the basic hygiene provisions (soap, toilet paper, showers etc.).

Dormitories in the institutions designated for detention in accordance with the Law on Criminal Procedure (LCP) will be covered by the video surveillance system, with the possibility of keeping / archiving the recorded material for minimum 30 days.

### ***I-3 – Recommendations to social welfare homes***

#### **Home for adult persons Kulina<sup>123</sup>**

Ministry of Labour, Employment, Veteran and Social Affairs will draft a plan to relocate beneficiaries of the Home Kulin, considering that due to the inadequate location of the Home, beneficiaries are not able to have an adequate participation in the social community or contact with the outside environment.

Ministry of Labour, Employment, Veteran and Social Affairs will take measures to, without delay, enact a Rulebook to regulate the issue of providing the funds for personal needs of the beneficiaries of homes and family accommodations and the amount of such allowance.

Ministry of Labour, Employment, Veteran and Social Affairs will develop a plan to ensure the presence of a sufficient number of employees. To this end, the Ministry will conduct an analysis of whether the existing norms allow for the provision of sufficient presence and adequate care for beneficiaries.

The beneficiaries who do not leave their beds must, without delay, be provided with an adequate accommodation and spending the time outside, in the fresh air.

The Home will take measures to ensure that as many as possible staff members working with beneficiaries, pass training to work in the sensor room, so that more beneficiaries could use this room.

The Home will, subject to interests and capacities of beneficiaries, develop individual activity plans and accordingly, determine the required funds and human and material resources in order to involve as many beneficiaries and possible in the organized activities.

The Home will take measures to provide continuous training for medical technicians / nurses in acquiring knowledge and developing skills necessary for successful rehabilitation of beneficiaries.

The Home will ensure that the chiropractic therapy room is also equipped with devices for adults.

The Home will ensure that all beneficiaries are enabled to implement preventive health care in accordance with the standards envisaged by the Rulebook on the content and scope of the right to health care from compulsory health insurance and on participation in 2016.

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<sup>123</sup> Report on visit to Home for adult persons in Kulina, no. 281-36/16, Ref. no. 26834 of July 14, 2016.

The Home will provide all beneficiaries with dental health care services without delay, as soon as these services are required.

The Home will ensure that the services of a physical medicine and rehabilitation are provided in accordance with the needs of the beneficiaries and minimum twice a month.

The Home will ensure that a full-time physiotherapist will be employed, to provide the required number of services that correspond to daily and-or annual level of the legally prescribed interventions.

Additional caution is required with any problem of polypharmacy in the pharmacotherapy of the patients since a large number of medications could potentiate or reduce the therapeutic effects, or have adverse effects of each individual drug. Particular consideration should be taken of the antipsychotics polypharmacy.

To enable an adequate and rational treatment, it is necessary to use Guides for the best clinical practices.

The Home will introduce an individual treatment plan for each beneficiary, which will contain psycho-social rehabilitation programs, among other, related to occupational (work) therapy, group therapy, individual psychotherapy, sports activities and other.

The Home will, when drafting the individual therapy plan of treatment, respect the will and preferences of beneficiaries, regardless their legal status.

The data contained in the Records of injuries kept in the Home must correspond to the information the Home provided to the competent authorities, including the Regional Public Health Institute.

The Home will make sure that the Records of injuries inflicted to beneficiaries, contain the data about the circumstances under which the injuries occurred (with reference to sources of data - anamnestic / heteroanamnestic), a detailed description of the established injuries, as well as the doctor's conclusion on the connection of the circumstances of the injuries and the identified injuries.

The Home will maintain records of the deceased beneficiaries in the form of the Protocol of the deceased persons i.e. it will manage it so that at least the following data are recorded (ordinal year number, full names of the deceased's parents, date of birth of the deceased, day and time of death, place of death, cause of death on the basis of the information entered in the death certificate form, information about whether the autopsy was requested, the full name of the doctor who performed the examination of the deceased and issued the death certificate, information on whether the autopsy was performed, and if so, by which institution, including the conclusion on the cause of death on the basis of autopsy, and the remarks). The doctors of the Home shall not issue death certificates for beneficiaries whose death occurred in the Home, but the Home will call the doctor of medicine designated within the territory of CM Aleksinac to provide expert determination of the time and cause of death. The Ministry of Labour, Employment, Veterans and Social Affairs will, in cooperation with relevant authorities, draw a Protocol on acting in the cases of unexpected (sudden) deaths of beneficiaries in social welfare institutions.

The Home will conduct the mechanical restraint measure, or the so-called fixation, fully in compliance with the regulations and established standards of treatment of persons with mental disorders, and in particular:



- measure of mechanical restraint against the beneficiary will be used exceptionally, when this is the only means to prevent the beneficiary to seriously harm his/her own life and safety and lives of other persons;
- before applying a measure of mechanical restraint, it is necessary to consider and try to use a less restrictive measure;
- ensure of mechanical restraint of a beneficiary will be applied using medical interventions that will allow the period of application of measures to be as short as possible;
- measure of mechanical restraint of the patient will be conducted in a safe place and in a way that that is least threatening for the life and health of the patient;
- measure of mechanical restraint of the beneficiary will be carried out with designated means (straps, etc.) to ensure that the intervention is administered in a way that is least threatening for the life and health of the patient;
- the psychiatrist will decide about the application of the mechanical restraint measure and duration of such restraint, taking care that the period of application is as short as possible, in accordance with the applicable standards and rules of the medical profession;
- where in the absence of a psychiatrist, another healthcare practitioner performs a mechanical restraint of a patient as deemed necessary and urgent at the given moment, he is obliged to immediately inform the closest psychiatrist, who is obliged to approach the beneficiary without delay and assess whether the applied mechanical restraint is justified, as well as whether it is still necessary, and accordingly, make the appropriate decision;
- psychiatrist who made the decision to apply the measure of a mechanical restraint is obliged to, as long as the respective measure is applied, as well as within the appropriate period after the suspension of the measure, make periodical visits of the beneficiary subjected to such measure and monitor his health condition with due care;
- when in the course of the measure of mechanical restraint the psychiatrist determines that the beneficiary subjected to the measure no longer poses a threat to himself or other persons, the beneficiary will be released from such measure, without delay;
- immediately prior to the expiration of the deadline for the application of the mechanical restraint measure, the psychiatrist will review the necessity of continuing with the application of the measure and make appropriate decision, being understood that he will order that the beneficiary subjected to the restraint is immediately released if no further application of the measure is required;
- during the application of the mechanical restraint measure, medical staff will provide increased attention and, to the extent possible, attend the beneficiary subjected to the mechanical restraint, so that this measure would not include another measure of isolation (solitary confinement);
- the mechanical restraint measure will not be applied in the room accommodating beneficiaries that are not subjected to such measure, nor shall other beneficiaries be allowed the access to this room;
- the psychiatrist who made a decision to apply the mechanical restraint measure shall notify the director of the Hospital or any other person authorized by the director without delay, who shall then immediately inform the legal representative of the beneficiary of the measure applied, or the member of the immediate family of the beneficiary subjected to such measure;
- special records shall be maintained about the application of the mechanical restraint measure, in which any important information on the application of the measure must be entered, in particular:

1. reasons for applying the mechanical restraint measure;
2. description of measures applied before the mechanical restraint;
3. type of devices used for mechanical restraint;
4. data about the location (room) where the mechanical restraint measure was applied;
5. exact time (day/hour/minute) of the beginning of the mechanical restraint;
6. name of the psychiatrist who made the decision to apply the mechanical restraint;
7. name of the health care worker who, in the absence of the psychiatrist, for urgency reasons, performed the mechanical restraint of the agitated patient before such decision was made by the psychiatrist; time of notifying the psychiatrist about the measure taken; opinion of the psychiatrist regarding whether the mechanical restraint measure was justified;
8. description of medical measures applied during the mechanical restraint;
9. description of any injuries of the patient subjected to the mechanical restraint (inflicted before and during the applied measure), including any injuries caused to other beneficiaries or health staff (during the event that preceded the mechanical restraint);
10. data about the periodical visits to beneficiary who was subjected to the measure of mechanical restraint and monitoring his condition by the psychiatrist (number of visits, exact time of visits, actions taken);
11. information about the time of notifying the Home director or other person authorized by him about the applied measure of mechanical restraint including the information whether and when the legal representative was notified thereof, and/or the member of immediate family of the patient subjected to such measure;
12. statements and comments of beneficiaries during and immediately after the measure of mechanical restraint applied against him;
13. exact time (day/hour/minute) of cancelling the measure of mechanical restraint.

The Home will provide training for the health care staff about the conditions and procedure of applying the physical restraint against the agitated beneficiaries, as well as on the application of advanced techniques of non-violent physical inhibition, pursuant to the special plan of trainings for health care staff on the method and procedure for applying the physical restraints.

Kulina Home will cease with the practise of holding the female beneficiaries in isolation.

The Home will establish special books – records in each pavilion to make record of any attacks of staff by the beneficiaries, including any conflicts that have arisen among the beneficiaries.

It is necessary to establish appropriate formal procedures for filing complaints, objections and appeals against the work of the institution and its employees, which can be submitted by beneficiaries or their parents or guardians, as well as appropriate procedures for acting upon them. It is necessary to establish records of submitted complaints, objections and appeals.

#### **Institution for adult and elderly persons "Gvozden Jovančičević", Veliki Popovac<sup>124</sup>**

The Ministry of Labour, Employment, Veteran and Social Affairs will take measures to enact, without further delay, a Rulebook that will regulate in detail the issue of providing funds for

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<sup>124</sup> Report on visit to Home for elderly and "Gvozde Jovančičević" Veliki Popovac, no 281-70/16, Ref. no. 36367 dated September 21, 2016.

the personal needs of the home and family accommodation for beneficiaries and the amount of such funds.

The institution will make an analysis of the required number of employees of different profiles in order to provide the beneficiaries with adequate treatment in accordance with current regulations and standards. The Institution will submit a full analysis to the Ministry of Labour, Employment, Veterans and Social Affairs and the Protector of Citizens. The Ministry of Labour, Employment, Veterans and Social Affairs will take the necessary measures to provide the required number of medical, nursing and other staff in accordance with the assessment of requirements for having an adequate treatment of beneficiaries and functioning of the Institution.

The Institution will provide cabinets for the beneficiaries where they will keep their personal belongings.

The Institution will provide conditions for respecting the privacy of beneficiaries when using the bathroom and toilet.

The Institution will place notifications about having installed the video surveillance in visible places in all rooms having the video surveillance.

The Institution will provide a sufficient number of aids (wheelchairs, walking sticks with three and four legs, including walking frames, etc.), as required by the beneficiaries.

The Institution will introduce keeping special and regular Records of injuries of patients, to record all cases of injuries suffered by the beneficiaries. Each injury will be described in detail, as well as the time of the occurrence, the exact place, manner of inflicting the injury, and the circumstances under which the injury occurred;

The management of the Institution will request from the local self-governments of its territory, to provide availability of authorized doctors to provide the expert determination of time and cause of deaths, who will perform examinations and issue death certificates for beneficiaries who passed away in the Institution. Ministry of Labour, Employment, Veteran and Social Affairs will, in cooperation with the relevant authorities, develop a Protocol on acting in the event of an unexpected (sudden) death of beneficiaries, including to ensure the sufficient number of medical, nursing and other staff.

The consent to medical interventions by the Institution will be obtained from beneficiaries or authorized persons, upon previous notifications provided to them in accordance with the Law on Rights of Patients. The data about the obtained consent with medical interventions or its refusal will be included in the files of the beneficiary's medical records. These data will also include the information about the legal status of the beneficiary, whether he/she is authorized to provide consent to medical interventions.

### **Home for the blind and persons with impaired vision "Zbrinjavanje", Pančevo<sup>125</sup>**

The Home will make an analysis of the required number of employees of different profiles in order to provide the beneficiaries with adequate treatment in accordance with current regulations and standards.

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<sup>125</sup> Report on visit to Home for the blind and persons with vision disorders "Zbrinjavanje", no 281-80/16, Ref. no. 42684 of November 2, 2016.

A completed analysis of the Home will be submitted to the Ministry of Labour, Employment, Veterans and Social Affairs, the Provincial Secretariat for Social Policy, Demography and Gender Equality and the Protector of Citizens.

The Ministry of Labour, Employment, Veterans and Social Affairs and the Provincial Secretariat for Social Policy, Demography and Gender Equality will take the necessary measures to provide the required number of medical, nursing and other staff in accordance with the assessment of the needs for adequate treatment of beneficiaries and the functioning of the institution.

The Home will provide conditions for observing the privacy of beneficiaries when changing and using the bathroom.

The Home will organize accommodation in residential homes so that mental disorders do not pose an obstacle for housing and the beneficiaries with mental disabilities will even be offered the opportunity to be accommodated there.

The Home will take appropriate measures to ensure more frequent psychiatric examinations of particularly vulnerable categories of beneficiaries (the elderly, somatic comorbidity), in line with the health monitoring needs.

In the future, the medical staff will not engage beneficiaries to assist them with medical interventions.

The Home will take measures to obtain a sufficient number of orthopaedic aids for immobile and semi-mobile beneficiaries (wheelchairs, walking frames, etc.), to facilitate easier movement of beneficiaries within and outside the home, as well as the ECG.

The House Administration shall request from the local self-government authority in whose territory it is located, to ensure the availability of authorized physicians for the purpose of establishing the cause and the time of death, who shall carry out examinations and issue death certificates for beneficiaries who passed away in the Home.

### **Gerontology Center Novi Sad<sup>126</sup>**

The Home will make an analysis of the staffing requirement and the structure of the necessary staff and submit it to the Ministry of Labour, Employment, Veterans and Social Affairs and the Provincial Secretariat for Social Policy, Demography, Gender Equality.

The Ministry of Labour, Employment, Veterans and Social Affairs and the Provincial Secretariat for Social Policy, Demography and Gender Equality will assess the justification of expressed staffing requirements and take measures to ensure sufficient staff for the performance of activities in the Home, in accordance with its capacities and the applicable standards and legislation.

Semi-mobile and immobile beneficiaries will be able to take bath several times a week.

The Home will use folding screens when changing diapers, changing and cleaning rooms of beneficiaries, in order to protect their privacy.

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<sup>126</sup> Report on the visit to Gerontology Center Novi Sad – Working Unit of the Home for Pensioners and the Elderly in Novo Naselje, no. 281-58/16, Ref. no. 31070 of August 12, 2016.

Any beneficiary whose medical condition allows it, will be allowed to regularly spend time out on the fresh air and outdoors, with the assistance of the Home staff.

The Home will make a staffing and technical needs' analysis to ensure that all beneficiaries spend two hours a day on fresh air.

The Home will conduct the mechanical restraint measure, or the so-called fixation, only exceptionally, when this is the only means to prevent the beneficiary to seriously harm his/her own life and safety and lives of other persons and fully in compliance with the regulations and established standards of treatment of persons with mental disorders, and in particular:

- measure of mechanical restraint against the beneficiary will be used exceptionally, when this is the only means to prevent the beneficiary to seriously harm his/her own life and safety and lives of other persons;
- before applying a measure of mechanical restraint, it is necessary to consider and try to use a less restrictive measure;
- ensure of mechanical restraint of a beneficiary will be applied using medical interventions that will allow the period of application of measures to be as short as possible;
- measure of mechanical restraint of the patient will be conducted in a safe place and in a way that that is least threatening for the life and health of the patient;
- measure of mechanical restraint of the beneficiary will be carried out with designated means (straps, etc.) to ensure that the intervention is administered in a way that is least threatening for the life and health of the patient;
- the psychiatrist will decide about the application of the mechanical restraint measure and duration of such restraint, taking care that the period of application is as short as possible, in accordance with the applicable standards and rules of the medical profession;
- where in the absence of a psychiatrist, another healthcare practitioner performs a mechanical restraint of a patient as deemed necessary and urgent at the given moment, he is obliged to immediately inform the closest psychiatrist, who is obliged to approach the beneficiary without delay and assess whether the applied mechanical restraint is justified, as well as whether it is still necessary, and accordingly, make the appropriate decision;
- psychiatrist who made the decision to apply the measure of a mechanical restraint is obliged to, as long as the respective measure is applied, as well as within the appropriate period after the suspension of the measure, make periodical visits of the beneficiary subjected to such measure and monitor his health condition with due care;
- when in the course of the measure of mechanical restraint the psychiatrist determines that the beneficiary subjected to the measure no longer poses a threat to himself or other persons, the beneficiary will be released from such measure, without delay;
- immediately prior to the expiration of the deadline for the application of the mechanical restraint measure, the psychiatrist will review the necessity of continuing with the application of the measure and make appropriate decision, being understood that he will order that the beneficiary subjected to the restraint is immediately released if no further application of the measure is required;
- during the application of the mechanical restraint measure, medical staff will provide increased attention and, to the extent possible, attend the beneficiary subjected to the mechanical restraint, so that this measure would not include another measure of isolation (solitary confinement);

- the mechanical restraint measure will not be applied in the room accommodating beneficiaries that are not subjected to such measure, nor shall other beneficiaries be allowed the access to this room;
- the psychiatrist who made a decision to apply the mechanical restraint measure shall notify the director of the Hospital or any other person authorized by the director without delay, who shall then immediately inform the legal representative of the beneficiary of the measure applied, or the member of the immediate family of the beneficiary subjected to such measure;
- special records shall be maintained about the application of the mechanical restraint measure, in which any important information on the application of the measure must be entered, in particular:
  1. reasons for applying the mechanical restraint measure;
  2. description of measures applied before the mechanical restraint;
  3. type of devices used for mechanical restraint;
  4. data about the location (room) where the mechanical restraint measure was applied;
  5. exact time (day/hour/minute) of the beginning of the mechanical restraint;
  6. name of the psychiatrist who made the decision to apply the mechanical restraint;
  7. name of the health care worker who, in the absence of the psychiatrist, for urgency reasons, performed the mechanical restraint of the agitated patient before such decision was made by the psychiatrist; time of notifying the psychiatrist about the measure taken; opinion of the psychiatrist regarding whether the mechanical restraint measure was justified;
  8. description of medical measures applied during the mechanical restraint;
  9. description of any injuries of the patient subjected to the mechanical restraint (inflicted before and during the applied measure), including any injuries caused to other beneficiaries or health staff (during the event that preceded the mechanical restraint);
  10. data about the periodical visits to beneficiary who was subjected to the measure of mechanical restraint and monitoring his condition by the psychiatrist (number of visits, exact time of visits, actions taken);
  11. information about the time of notifying the Home director or other person authorized by him about the applied measure of mechanical restraint including the information whether and when the legal representative was notified thereof, and/or the member of immediate family of the patient subjected to such measure;
  12. statements and comments of beneficiaries during and immediately after the measure of mechanical restraint applied against him;
  13. exact time (day/hour/minute) of cancelling the measure of mechanical restraint.

The Home will provide training for the health care staff about the conditions and procedure of applying the physical restraint against the agitated beneficiaries, as well as on the application of advanced techniques of non-violent physical inhibition, pursuant to the special plan of trainings for health care staff on the method and procedure for applying the physical restraints.

A sufficient number of aids for immobile and semi-mobile beneficiaries will be acquired (trolleys, crutches, walking sticks, etc.), in order to facilitate their easier movement inside and outside the Home they will be provided with antidecubitus mattresses and medical beds for immobile users in the Home.

The informed consent for treatment and medical treatment shall be obtained by the Home from beneficiaries or authorized persons, with prior notification, in accordance with the Law. The information regarding the received consent to the treatment or refusal of treatment will form the part of the beneficiary's medical record. These data will also include information about the legal status of the beneficiary or a person authorized to provide consent to a treatment.

#### ***I-4 - Recommendations addressed to psychiatric institutions***

##### **General hospital in Subotica <sup>127</sup>**

In the future, doctors of the General Hospital in Subotica shall not hand over to the police officers the medical reports on the health condition of detained persons who have been brought to the medical examination escorted by the police. The medical reports will be handed over exclusively to the examined person.

The doctor will only provide to the police officer an opinion about whether a person is capable of being detained taking into consideration his/her the current health status, along with any information relevant for further treatment of that person (for example, whether he/she requires special care during the detention - a therapy, special diet, or such).

In the future, the General Hospital in Subotica will allow the NPM to visit the hospital, whether announced or unannounced, day or night, in accordance with applicable regulations.

The management of the General Hospital in Subotica will inform all employees about the powers and competencies of the NPM, so that to avoid any obstructions during NPM visits in the future. The Ministry of Health will inform all the health care institutions in which persons with mental disorders are placed, as well as persons deprived of their liberty (the apprehended persons, detainees, persons serving prison sentences) undergoing hospital treatment about this recommendation.

In the future, doctors of the General Hospital in Subotica will not perform medical examinations of patients - detained persons and other persons escorted by the police in front of the hospital or in the police vehicle, but will do so exclusively in the appropriate premises of the hospital, without the presence of police officers.

Police officers will attend a medical examination only at the express request of a doctor, provided that they cannot hear the conversation between the doctor and the patient, and only if there is a justified reason for their presence (such as the risk of an escape, attacking the doctor, self-inflicted injuries, etc.), which the police officer is required to communicate to them and as recorded in medical examination Protocol.

Upon admission to the hospital, the hospital will provide patients with a written confirmation of their belongings and documents left at the hospital. The staff of the General Hospital in Subotica will pay due attention at the dismissal of patients from the hospital when returning items and documents that were that they had left at the hospital.

In the future, the General Hospital in Subotica, the Psychiatric unit, will not keep or hospitalize patients without a legal grounds, but instead, they will implement procedures for admission to a psychiatric institution in accordance with legal regulations.

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<sup>127</sup> Report on the visit to Psychiatric unit of the General Hospital in Subotica, no. 281-42/16, Ref. no. 19490 of May 25, 2016.

Medical measures will be applied only upon such consent provided by the patient, except where otherwise prescribed by the Law, when the treatment of these persons is permitted without their consent.

Doctors of the General Hospital in Subotica will conduct physical examination of persons deprived of their liberty, brought to the examination escorted by police officers. When there are indications that this person have suffered violence, a detailed physical examination will be carried out without exception, in order to identify and document bodily injuries and report any illegal deed to the competent authority.

The medical documentation shall include the doctor's opinion on the cause-and-effect relationship between allegations of the injured person about the way in which the injuries were inflicted and the identified injuries.

The Hospital will conduct the mechanical restraint measure, or the so-called fixation, fully in compliance with the regulations and established standards of the treatment of persons with mental disorders, and in particular:

- measure of mechanical restraint against the beneficiary will be used exceptionally, when this is the only means to prevent the beneficiary to seriously harm his/her own life and safety and lives of other persons;
- before applying a measure of mechanical restraint, it is necessary to consider and try to use a less restrictive measure;
- measure of mechanical restraint of a beneficiary will be applied using medical interventions that will allow the period of application of measures to be as short as possible;
- measure of mechanical restraint of the patient will be conducted in a safe place and in a way that that is least threatening for the life and health of the patient;
- measure of mechanical restraint of the beneficiary will be carried out with designated means (straps, etc.) to ensure that the intervention is administered in a way that is least threatening for the life and health of the patient;
- the psychiatrist will decide about the application of the mechanical restraint measure and duration of such restraint, taking care that the period of application is as short as possible, in accordance with the applicable standards and rules of the medical profession;
- where in the absence of a psychiatrist, another healthcare practitioner performs a mechanical restraint of a patient as deemed necessary and urgent at the given moment, he is obliged to immediately inform the closest psychiatrist, who is obliged to approach the beneficiary without delay and assess whether the applied mechanical restraint is justified, as well as whether it is still necessary, and accordingly, make the appropriate decision;
- psychiatrist who made the decision to apply the measure of a mechanical restraint is obliged to, as long as the respective measure is applied, as well as within the appropriate period after the suspension of the measure, make periodical visits of the beneficiary subjected to such measure and monitor his health condition with due care;
- when in the course of the measure of mechanical restraint the psychiatrist determines that the beneficiary subjected to the measure no longer poses a threat to himself or other persons, the beneficiary will be released from such measure, without delay;
- immediately prior to the expiration of the deadline for the application of the mechanical restraint measure, the psychiatrist will review the necessity of continuing with the application of the measure and make appropriate decision, being understood that he will order that the beneficiary subjected to the restraint is immediately released if no further application of the measure is required;



- during the application of the mechanical restraint measure, medical staff will provide increased attention and, to the extent possible, attend the beneficiary subjected to the mechanical restraint, so that this measure would not include another measure of isolation (solitary confinement);
- the mechanical restraint measure will not be applied in the room accommodating beneficiaries that are not subjected to such measure, nor shall other beneficiaries be allowed the access to this room;
- the psychiatrist who made a decision to apply the mechanical restraint measure shall notify the director of the Hospital or any other person authorized by the director without delay, who shall then immediately inform the legal representative of the beneficiary of the measure applied, or the member of the immediate family of the beneficiary subjected to such measure;
- special records shall be maintained about the application of the mechanical restraint measure, in which any important information on the application of the measure must be entered, in particular:
  1. reasons for applying the mechanical restraint measure;
  2. description of measures applied before the mechanical restraint;
  3. type of devices used for mechanical restraint;
  4. data about the location (room) where the mechanical restraint measure was applied;
  5. exact time (day/hour/minute) of the beginning of the mechanical restraint;
  6. name of the psychiatrist who made the decision to apply the mechanical restraint;
  7. name of the health care worker who, in the absence of the psychiatrist, for urgency reasons, performed the mechanical restraint of the agitated patient before such decision was made by the psychiatrist; time of notifying the psychiatrist about the measure taken; opinion of the psychiatrist regarding whether the mechanical restraint measure was justified;
  8. description of medical measures applied during the mechanical restraint;
  9. description of any injuries of the patient subjected to the mechanical restraint (inflicted before and during the applied measure), including any injuries caused to other beneficiaries or health staff (during the event that preceded the mechanical restraint);
  10. data about the periodical visits to beneficiary who was subjected to the measure of mechanical restraint and monitoring his condition by the psychiatrist (number of visits, exact time of visits, actions taken);
  11. information about the time of notifying the Home director or other person authorized by him about the applied measure of mechanical restraint including the information whether and when the legal representative was notified thereof, and/or the member of immediate family of the patient subjected to such measure;
  12. statements and comments of beneficiaries during and immediately after the measure of mechanical restraint applied against him;
  13. exact time (day/hour/minute) of cancelling the measure of mechanical restraint.

The Home will provide training for the health care staff about the conditions and procedure of applying the physical restraint against the agitated beneficiaries, as well as on the application of advanced techniques of non-violent physical inhibition, pursuant to the special plan of trainings for health care staff on the method and procedure for applying the physical restraints.

### ***I-5 - Recommendations addressed to state authorities to enhance the treatment of refugees / migrants***

#### **Asylum Centre in Krnjača<sup>128</sup>**

Asylum Centre in Krnjača will charge any accommodated person with the key of the room where he/she is placed.

The opinion of NPM is that the Center beneficiaries do not provide complete, clear and unambiguous information about their position, which, given the situation in which they are, creates additional anxiety. In order not to create wrong expectations of the beneficiaries of the Centre, it is necessary that the management makes additional efforts to, in a mindful and clear way, with the help of interpreters, explain to the person the situation in which they are, as well as the way to overcome or mitigate the problems.

#### **Asylum Centre in Tutin<sup>129</sup>**

The Social Welfare Center in Tutin will conduct, without delay, any necessary measures aimed at protecting juvenile unaccompanied minors who are accommodated in the Asylum Center.

Asylum Office, all persons who are in the Asylum Center in Tutin who have received a confirmation on the expressed will to seek the asylum in the Republic of Serbia need to be registered and issued the ID cards for asylum seekers.

#### **Asylum Centre in Sjenica<sup>130</sup>**

The Social Welfare Center in Sjenica will conduct, without delay, any necessary measures aimed at protecting juvenile unaccompanied minors who are accommodated in the Asylum Center in Sjenica.

Asylum Office, all persons who are in the Asylum Center in Sjenica who have received a confirmation on the expressed will to seek the asylum in the Republic of Serbia need to be registered and issued the ID cards for asylum seekers.

Asylum Centre in Sjenica, in cooperation with the Health Care Centre in Sjenica, will take any required measures to perform the full medical examination of persons seeking the asylum at the admission to the Centre.

#### **Asylum Centre in Bogovađa<sup>131</sup>**

Asylum Center and Bogovađa will immediately initiate record keeping for the persons placed in the Center.

An authorized person at the Asylum Center in Bogovoda will notify the Asylum Office in case of non-compliance with the prescribed house rules.

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<sup>128</sup> Report on the visit to Asylum Centre in Krnjača, number 281-4/16, Ref. no. 3422 of February 3, 2016.

<sup>129</sup> Report on the visit to Asylum Centre in Tutin, number 281-74/16, Ref. no. 36338 of September 21, 2016.

<sup>130</sup> Report on the visit to Asylum Centre in Sjenica, number 281-73/16, Ref. no. 36356 of September 21, 2016.

<sup>131</sup> Report on the visit to Asylum Centre in Bogovađa, number 281-71/16, Ref. no. 36344 of September 21, 2016.

At the Asylum Center in Bogovađa, medical reports and findings following the specialist examinations of migrants will be available exclusively to the medical staff working at the Center.

Asylum Center and Bogovađa will display a visible notice in languages that migrant / asylum seekers understand, that the meals they receive is adjusted to religious beliefs of Islamic religion members.

The Commissariat for Refugees and Migrations should provide the Asylum Center in Bogovađa with unhindered use of the "*children's corner*" by engaging a person qualified for the work with children.

The Commissariat for Refugees and Migrations will provide a continuous presence, or the availability of translators/interpreters at the Asylum Center in Bogovađa, in order for the foreigners accommodated there to have an unhindered communication.

Asylum Office, all persons who are in the Asylum Center in Bogovađa who have received a confirmation on the expressed will to seek the asylum in the Republic of Serbia need to be registered and issued the ID cards for asylum seekers.

#### **Reception Centres in Adaševci and Šid<sup>132</sup>**

All the acting bodies shall report to the competent authority the offenses prosecuted *ex officio*.

The competent authorities will ensure in their future actions that any case of abuse and torture of refugees and migrants occurring on the territory of the Republic of Serbia is adequately recorded and documented through the reports, photographs of injuries, statements, medical findings and other relevant documentation.

#### **Reception Centres in Principovci, Šid and Adaševci<sup>133</sup>**

The Commissariat for Refugees and Migrations will take measures to ensure the conditions for accommodation of persons with disabilities in reception centres Principovci, Šid and Adaševci.

The Commissariat for Refugees and Migrations will take appropriate measures to ensure that sufficient quantity of hot water is provided for the persons staying in the centres in the Reception Centres in Principovci, Šid and Adaševci.

The Commissariat for Refugees and Migrations will analyse the needs of Reception Centres in Principovci, Šid and Adaševci for interpreters, taking into account the number and structure of migrants located in these centres and engage translators/interpreters for the necessary language based on the requirements.

The Commissariat for Refugees and Migrations will hire experts to provide psychological assistance to migrants who are accommodated in Reception Centres in Principovac and Adaševci.

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<sup>132</sup> Report on visits to Reception Centres in Adaševci and Šid, no. 281-8/16, Ref. no. 8608 of March 11, 2016.

<sup>133</sup> Report on visits to Reception Centres in Adaševci and Šid, no. 281-98/16, Ref. no. 48887 of December 12, 2016.

The Commissariat for Refugees and Migrations will organize a special office in the reception centres in Principovac, Šid and Adaševci for conducting confidential interviews with migrants by professional psychological experts.

The Commissariat for Refugees and Migrations shall, within the premises of the Prison Center in Princevec, which are under visible surveillance in a visible place, display the appropriate notification in the languages that migrants who are located in the Center understand.

The Commissariat for Refugees and Migrations will take steps to ensure that sufficient quantities of drugs are available for the treatment of migrants located in the Reception Center in Šid.

The Commissariat for Refugees and Migrations will take measures to ensure that doctors engaged in the Reception Center in Šid who identified traumatic injuries on migrants suspected of being caused by violence, are reported to the head of the Center.

The Commissariat for Refugees and Migrations will set up video surveillance of all common areas and yards in the Reception Center of Šid, and place visible information about it in the languages that migrants who are located in the Center understand.

The Commissariat for Refugees and Migrations will ensure that video surveillance recordings are kept for at least 30 days.

The Commissariat for Refugees and Migrations will establish an effective mechanism for complaints filed against the work of persons employed in institutions for the accommodation of migrants and asylum seekers and any allegations of mistreatment will be examined with due care.

The Commissariat for Refugees and Migrations will notify all migrants and asylum seekers in all the institutions for their accommodation about the possibility and procedure of complaints about the work of persons employed in institutions including the information on relevant organizations that can provide assistance to them.

The Ministry of Interior will investigate allegations on the participation of police officers who used official vehicle with registration plate number BG 330-ŠN in the forced return of migrants from the Republic of Serbia to the Republic of Bulgaria.

The Asylum Office will undertake actions stipulated by the Law on Asylum towards migrants who have been issued certificates of intent to seek asylum in the Republic of Serbia and who are sent to the Reception Center and Adasevci.

The Commissariat for Refugees and Migrations will provide sufficient quantities of linens and personal care products for personal hygiene and cleaning of the rooms in the Reception Center in Adaševci.

The Commissariat for Refugees and Migrations will increase the number of female employees in Reception Center in Adaševci.

The Commissariat for Refugees and Migrations will, in the premises of the Reception Center in Adaševci that are under the video surveillance, provide a visible notification about this in the languages that the migrants who are located in the Center understand.

The Commissariat for Refugees and Migrations will examine allegations on disabling specialist medical examinations for migrants located in the Reception Center in Adaševci, and in case of identified shortcomings, they shall take measures in order to improve access to specialist health care.

#### **Reception Centre in Subotica**<sup>134</sup>

In the Reception Center, the House Order will be displayed in a noticeable way and translated into English, Arabic and Farsi languages.

#### **Reception Centre in Subotica**<sup>135</sup>

At the Reception Center in Subotica, house rules, translated into English, Arabic and Farsi languages, will be prominently displayed, in a place that is supervised by employees at the Center (at the entrance of the administrative building, on the inside of the Window of the administrative building, etc.).

Ministry of Interior and the Police Administration in Subotica will, in order to protect the safety of migrants and other persons and their property, ensure the continued presence of uniformed police officers in the Reception Center in Subotica.

In order to protect vulnerable groups of migrants (the elderly, women, minors, victims of violence and others), the Ministry of Labour, Employment, Veterans and Social Affairs and the Social Welfare Center of Subotica will ensure the continued presence of the staff of the Center for Social Welfare Centre in the Reception Center in Subotica.

The Commissariat for Refugees and Migrations will take measures to provide a toilet for people with disabilities in the Reception Center in Subotica.

#### **Reception Centres in Subotica and Sombor**<sup>136</sup>

The Ministry of Labour, Employment, Veterans and Social Affairs and the Social Welfare Center of Subotica will take measures to enable the officers working in the field with migrants, to spend more time in providing professional support to vulnerable groups of migrants in the Reception Center in Subotica.

The Commissariat for Refugees and Migrations will visibly display the House Rules and daily activity regime in the Reception Center in Sombor, in languages understood by migrants.

#### **Reception Centres in Preševo and Bujanovac**<sup>137</sup>

Commissariat for Refugees and Migrations and the Ministry of Labour, Employment, Veteran and Social Affairs shall take necessary measures to ensure sufficient quantity of hot water for the persons staying in the Centre in the Reception Centre in Preševo.

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<sup>134</sup> Report on the visit to Reception Centre in Subotica, no. 281-21/16, Ref. no. 13230 dated April 8, 2016.

<sup>135</sup> Report on the visit to Reception Centre in Subotica, BCPs Horgoš and Kelebija and Home for Children with Disabilities "Колевка" – Subotica, no. 281-62/16, Ref. no. 35361 of September 13, 2016.

<sup>136</sup> Report on the visits to Reception Centres in Subotica and Sombor and BCPs Horgoš and Kelebija, no. 281-99/16, Ref. no. 51783 of December 27, 2016.

<sup>137</sup> Report on the visits to Reception Centres in Preševo, Temporary Reception Centre in Bujanovac, Police Administration in Vranje, Regional Centre of Border Police at the BCPs with Macedonia and near the Social Welfare Centre in Preševo, no. 281-91/16, Ref. no. 47301 dated December 2, 2016.

The Ministry of Interior will investigate allegations on forcible removal of migrants from the Republic of Serbia to the Republic of Macedonia by the police officers.

The Commissariat for Refugees and Migrations will adjust the name of the act issued to migrants upon the temporary exit from the Temporary Registration Center in Bujanovac to its actual purpose.

The Commissariat for Refugees and Migrations and the Ministry of Labour, Employment, Veterans and Social Affairs will, for the purpose of communication between the officials and migrants at the Temporary Registration Center in Bujanovac that do not speak Arabic or Farsi language, provide translators for the languages spoken by these migrants first of all for Urdu and Pashto languages.

### **Luka Ćelović Park and Sveti Nikola Square in Belgrade<sup>138</sup>**

The NPM's opinion is that the increased presence of members of the Ministry of Interior, near Belgrade's bus and train stations, would increase the safety of migrants / refugees and other persons.

NPM's view is that by installing the mobile toilets, the hygiene conditions would be improved and potential health risks prevented.

The NPM's position is that the competent authorities should take immediate steps to accommodate migrants into the institutions of the system (asylum centres and reception centres).

### **Police Station in Vršac<sup>139</sup>**

The police station in Vršac will forthwith inform the competent social welfare centre about the fact or suspicion of an unaccompanied minor migrant, and take other necessary measures to enable the Social Work Center to provide protection to such a minor.

The Ministry of Interior will provide the Police Station in Vršac with the equipment necessary for issuing certificates of stated will to seek the asylum in the Republic of Serbia.

### **Police Administration in Pirot and Regional Border Police Centre at BCP with Bulgaria<sup>140</sup>**

The Ministry of Interior will provide a form on rights translated into Arabic, Farsi, Urdu and Pashto, which the police officers will be able to distribute to migrants / asylum seekers and inform them of the legal situation in which they are and the rights they have, including, but not limited to:

- notification of misdemeanour liability for the illegal crossing of the state border
- readmission procedure
- the right to medical examination;
- they must not be forcibly removed to a territory where they are threatened by their race, gender, religion, nationality, citizenship, membership to a particular social group or political

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<sup>138</sup> Report on visit to informal gathering place of refugees and migrants in Belgrade, number 281-60/16, Ref. no. 30616 of August 10, 2016.

<sup>139</sup> Report on visits to the Police Administration in Vršac and Regional Border Police Centre at the BCP to Romania ' north, number 281-107/16, Ref. no. 51770 of December 28, 2016.

<sup>140</sup> Report on visits to the Police Administration in Pirot and Regional Border Police Centre at the BCP to Bulgaria, number 281-59/16, Ref. no. 30620 of August 10, 2016.

affiliation, nor to the territory where there is a risk of their being subjected to torture, inhuman or degrading treatment or punishment, as well as of being able to apply for asylum in the Republic of Serbia;

- if they consider that they have been violated their human and minority rights and freedoms by actions or by failing to act of the officials performing their duties, they are entitled to file a complaint to the competent person.

#### **Police Administration in Vranje and Regional Border Police Centre at the BCP with Macedonia<sup>141</sup>**

The Ministry of Interior will provide language translators for the languages predominantly spoken by migrants, primarily for Arabic, Farsi, Urdu and Pashto, for the purpose of communication between the police officers of the Police Administration in Vranje and the Regional Border Police Center towards Macedonia, with migrants who do not speak English.

The Ministry of Interior will provide brochures in the languages most frequently spoken by migrants, which will be handed over by the police officers of the Police Administration in Vranje and the Regional Border Police Center at the BCP with Macedonia, for the migrants found at that location and inform them of the legal situation in which they are and the rights they have.

Police officers of the Police Administration in Vranje and the Regional Border Police Center towards Macedonia will determine the identity of the migrants and other relevant facts, including the possible existence of their intention to seek asylum in the Republic of Serbia by interviewing each migrant individually, in the presence of a translator/interpreter for the language the migrant is using.

#### **Border Police Station Belgrade at the "Nikola Tesla" Airport<sup>142</sup>**

The Ministry of Interior will prepare a form on the rights and legal status of foreigners refused to enter the Republic of Serbia at the Airport "Nikola Tesla" and will translate it into the languages spoken by most foreigners (English, Arabic, Farsi, Urdu ...).

The Ministry of Internal Affairs will take measures under its jurisdiction in order to provide space for the accommodation of foreigners who were refused entry into the Republic of Serbia, in accordance with the applicable standards.

The Ministry of Interior will ensure that foreigners who are denied access to the Republic of Serbia at the Nikola Tesla Airport spend at least one hour a day in the fresh air, if they stay longer than 24 hours in the transit zone.

#### **Border Police Station Belgrade at the "Nikola Tesla" Airport<sup>143</sup>**

The Border Police Station Belgrade at the "Nikola Tesla" Airport will, in cases of the need for a clear and precise communication of police officers with foreigners, engage an interpreter for

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<sup>141</sup> Report on the visits to Reception Centres in Preševo temporary registration centre in Bujanovac, Police Administration in Vranje, Regional Border Police Centre to Macedonia and Social Welfare Centre in Preševo, number 281-91/16, Ref. no. 47301 of December 2, 2016.

<sup>142</sup> Report on visit to Border Police Station Belgrade at the "Nikola Tesla" Airport", number 281-88/16, Ref. no. 40611 of October 19, 2016.

<sup>143</sup> Report on visit to Border Police Station Belgrade at the "Nikola Tesla" Airport", number 281-94/16, Ref. no. 45687 of November 22, 2016.

the language they understand. The Ministry of Interior will enable the engagement of translators/interpreters for the purpose of communicating between the police officers and foreigners.

The Ministry of Interior and Nikola Tesla Airport are undertaking measures to improve the nutrition of foreigners denied entry into the Republic of Serbia, which are located in the transit zone of the Airport for more than 24 hours. It is necessary for the nutrition to be provided in the quantity sufficient to maintain their health and strength, to consist of at least one cooked meal a day and, if necessary, be adapted to their religious beliefs and specific health needs.

The Border Police Station Belgrade at the "Nikola Tesla" Airport will visibly display the notifications in the room where persons denied entry to the Republic of Serbia are placed, about their rights and procedures for exercising these rights, as well as the possibility of contacting the relevant national and international Organizations that provide migrants with assistance in exercising their rights.

### **Reception Centre for Foreigners in Padinska Skela<sup>144</sup>**

The Ministry of Interior will provide for foreigners who are admitted to the Reception Center for Foreigners a form containing their rights that shall be distributed to them immediately upon their receipt, notifying them of the legal situation in which they are and the rights they have, including, but not limited to:

- information on the legal bases for determining, duration, reasons for extending the duration and ways to terminate their stay in the Reception Center;
- the right to immediately notify one of the family members or another close person about the accommodation in the Reception Centre at the expense of the Reception Centre;
- the right to require that a diplomatic-consular representative of the state whose nationals or states protect their interests are informed of their accommodation in the Reception Centre and to notify the foreigners whose interests are not protected by any State about the competent international organization;
- the right to contact with a legal representative, and have an unhindered and unattended conversation with him, including that legal representative can attend the hearings before the authorities;
- the right to demand that they be examined without delay by a doctor who is freely chosen, and if he is not available, a doctor appointed by the police;
- if they have health or other special needs, provide them with adequate housing;
- that a minor foreigner is placed in the Reception Centre with his / her parent, or other legal representative, unless the competent guardian authority estimates that it is more favourable to him to be placed in another accommodation;
- they must not be forcibly removed into a territory where they are threatened by their race, gender, religion, nationality, citizenship, membership to a particular social group or political affiliation, or in a territory where there is a risk of being subjected to torture, inhuman or degrading treatment or punishment, as well as having the opportunity to apply for asylum in the Republic of Serbia;
- that a minor foreigner must not be returned to the country of origin or to a third country that is willing to accept him until he receives the appropriate reception;
- if they consider that they have been violated by human rights or minorities' rights and freedoms by acting or failing to act on the basis of official duties, they may file a complaint with the head of the Reception Centre.

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<sup>144</sup> Report on visit to Reception Centre for foreigners in Padinska Skela, number 281-48/16, Ref. no. 25669 of July 6, 2016.



The Reception Center for Foreigners will, in the annex for accommodating males, improve the hygiene condition of the dormitories by doing hygienic painting, replacing the worn-out cassettes for keeping personal belongings, as well as the worn-out sanitary facilities.

The Reception Center for Foreigners will carry out available measures to encourage the persons in the Reception Center to maintain personal hygiene, as well as hygiene in the place where they reside and will create conditions for cleaning by providing the necessary means and equipment.

The position of NPM position is that in the new Instructions, in addition to the above, should include the provisions on personal items that a foreigner who resides in the Reception Center can keep with himself / herself, and about the way of keeping the temporarily seized items, as well as provisions on how to exercise and protect the rights to protect them (the possibility and method of addressing the police officers to exercise their rights and the possibility to complain to the head of the Reception Center, if a foreigner finds that his or her Human or minority rights and freedoms have been violated by acting or by failing to act of an employee when performing official duties). Furthermore, having in mind that the current Instructions stipulate that a foreigner may take a bath at least twice a week during the summer and once a week during the winter period, which is insufficient to maintain a good level of hygiene, the new Instructions require more frequent bathing. Also, enabling the visit of a priest should not be conditioned by the existence of a large number of foreigners of the same religion, as the case is currently, but every and every stranger should be allowed to, within the house rules of the Reception Center have a visit and a conversation with a priest.

The Ministry of Interior will ensure that forms of record on the release of a foreigner from the Reception Centre, certificates of temporarily seized objects from a foreign person, and a form about the rights of a foreigner are translated and made available in languages understood by the majority of foreigners residing in the Reception Center (English, Arabic, Farsi, Urdu, etc.).

The Ministry of Interior will, in cases of the necessity of clear and precise communication between the Reception Centre and Health Workers' employees working with foreigners who do not understand the Serbian or English language, provide the interpreters for the language that they understand.

The Ministry of Interior will amend the Instruction on the treatment of brought in and detained persons by prescribing that the means of binding will be used only when it is really necessary, and not always when transporting each person, as currently prescribed.

At the Reception Centre for Foreigners, the police officers will not always tie each person while providing their transport in the official vehicle, but will do so only when they consider it necessary, where prescribed by the law.

An authorized police officer at the Reception Centre for Foreigners will check every use of coercive means by police officers working in the Reception Center and assess whether the coercive means in a specific case is used justly and correctly.

The Ministry of Interior will provide in the Reception Center for Foreigners the provision of continuous health care to foreigners residing in this institution.

Medical records and records on the treatment of foreigners will be handled by a healthcare worker, and the data from health records and records will not be available to non-medical staff.

Medical treatment (medicines and the like) for foreigners staying at the Reception Centre will be shared exclusively by medical staff.

### **Reception Centre for Foreigners in Padinska Skela<sup>145</sup>**

The Reception Center for Foreigners will carry out available measures to influence people in the Reception Center to maintain personal hygiene, as well as hygiene in the premises in which they reside.

The Reception Center for Foreigners will provide funds and equipment.

All persons placed in the Reception Centre will be allowed to watch the television program, and in accordance with the available capabilities, be able to watch foreign television channels.

The Reception Center for Foreigners will allow women with children to stay longer in the fresh air.

The Reception Center for Foreigners will equip a children's rooms with adequate content for children.

The Ministry of Interior will provide periodic visits by psychologists to provide psychological support to persons accommodated in the Reception Centre for Foreigners.

The Ministry of Interior will, if necessary, hire a larger number of police officers and officers at the Reception Centre for Foreigners, in accordance with real needs, to ensure an uninterrupted work.

The Ministry of Interior will, for the purpose of communication between the officers of Reception Centres and foreigners who do not understand Serbian or English, provide translators for the languages they understand, especially Arabic and Farsi.

The Reception Center for Foreigners will maintain the existing records in electronic form.

The Ministry of Interior will provide in the Reception Center for Foreigners the continuous health care to foreigners residing in this institution.

The Ministry of Interior shall make available to the Reception Center for Foreigners the appropriate number of official vehicles necessary for smooth performance of official tasks.

### **Institute for children and youth education in Niš<sup>146</sup>**

Given that the Institute provides unaccompanied minors with accommodation services, health care, nutrition and transport costs, NPM believes that the Ministry of Labour, Employment, Veterans and Social Affairs should take measures to increase the funds allocated for the Institute, in order to satisfy the needs of underage foreigners and the provision of social care services while they are accommodated in the Institute.

### **Institute for children and youth education in Belgrade<sup>147</sup>**

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<sup>145</sup> Report on visit to Reception Centre for foreigners in Padinska Skela, number 281-65/16, Ref. no. 32003 of August 19, 2016.

<sup>146</sup> Report on visit to Institute for children and youth education in Niš – Centre for unaccompanied foreign minors, number 281-25/16, Ref. no. 17953 of May 16, 2016.

Given that the Institute provides unaccompanied minors with accommodation services, health care, nutrition and covers transport costs from the Institute to the Foreigners' Office if they express their intention to seek asylum in Serbia, as well as to the asylum centres for their further accommodation, NPM believes that the Ministry of Labour, Employment, Veterans and Social Affairs should take measures to increase the funds allocated to the Institute in order to meet the needs of minors and provide social care services while accommodating them in the Institute.

#### **District Prison in Vranje<sup>148</sup>**

DP Vranje will make available to the foreign nationals the information concerning the exercise of their rights within the Institute in the language they understand by engaging appropriate translators, where necessary.

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<sup>147</sup> Report on visit to Institute for children and youth education in Belgrade – Centre for unaccompanied foreign minors, number 281-6/16, Ref. no. 3428 of February 3, 2016.

<sup>148</sup> Report on the visit to District Prison in Vranje, no. 281-95/16, Ref. no. 46136 of November 25, 2016.

## ANNEX II

### *II-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 shall 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,  
 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, 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.
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 of 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:

- (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
- (b) When the alleged offender is a national of that State;
- (c) When the victim is 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 I 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 I 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, with 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 States and shall indicate whether it intends to exercise jurisdiction.

#### **Article 7**

1. The State Party in the 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 offences. 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 criminal 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 I 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 person.

### **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 by, 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 persons 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 I, 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 of 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 prohibits cruel, inhuman or degrading treatment or punishment or which relates 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 re-nominated. 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 I 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 practiced 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 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 favors 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<sup>149</sup>

### 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

The implementation of the provisions hereof shall be ensured by the Federal Secretariat of Justice and Administration.

## ***II-2 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment***

### 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:

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<sup>149</sup> Сл. лист СФРЈ – Међународни уговори по. 9/91

## **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 re-nominated. 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**

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 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 defense, 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.

## LAW ON AMENDING THE LAW ON RATIFICATION Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>150</sup>

### Article 1

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 Serbia and Montenegro - International Treaties", no. 16/05 and 2/06), after Article 2 Article 2a is added as follows:

#### "Article 2a

**The Protector of Citizens (Ombudsman) shall operate a National mechanism for the prevention of torture.**

**In performing the duties of the National Mechanism for the Prevention of Torture Protector of Citizens (Ombudsman) shall cooperate with the ombudsman of autonomous provinces and associations whose statute intended goal is the promotion and protection of human rights and freedoms, in accordance with the law. "**

### Article 2

This Law shall come into force eight days after its publication in "Official Gazette of the Republic of Serbia - International Treaties".

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<sup>150</sup> „Official Gazette of the Republic of Serbia - International Treaties", no. 7/2011 Adopted on 28 July 2011, on eight session of the National assembly of Republic of Serbia Entered into force: 9 August 2011.

## *II-3 Model of Cooperation Agreement*



**REPUBLIC OF SERBIA  
THE PROTECTOR OF CITIZENS**

285 - 7 / 16  
Belgrade



Заштитник грађана  
Zaštitnik građana

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Ref. no. 6744 dated 24 February 2016.

### COOPERATION AGREEMENT

Enter into by and between:

**Republic of Serbia and the Protector of Citizens**

and

Association of **Belgrade Centre for Human Rights** (hereinafter: the Association)

This Agreement is to regulate the cooperation the Protector of Citizens with the Association in performing the activities of the National Preventive Mechanism (hereinafter: NPM), based on the Decision of the Protector of Citizens no. 285-7/2016, of 23 February 2016, on the selection of Association with which the Protector of Citizens will cooperate in discharging the NPM activities, and in accordance with Article 2a, Para 2 of the Law on Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or degrading Treatments and Punishments („Official Gazette of Serbia and Montenegro- International Treaties“, no. 16/05 and 2/06 and „ Official Gazette of RS - International Treaties“, no. 7/11).

The cooperation between the Protector of Citizens with the Association on discharging the NPM activities shall be carried out through the participation of the representatives and standing expert associates of the Association in:

- visits to locations where persons deprived of their liberty are placed or may be placed (hereinafter: PDL);
- drafting of reports or parts of reports on conducted visits to places where PDL may be located;
- drafting of recommendations for the elimination of identified deficiencies in the work of the institutions that accommodate or may accommodate PDL;
- providing expert findings and opinions on the health condition, particularly with respect to physical injuries and suffered psychological pain and consequences of any form of abuse;
- maintaining dialogue between NPM and competent authorities on the occasion of implementing the recommendations of NPM and enhancement of the position of PDL;
- drafting reports or parts of thematic reports on the status in the area of PDL;
- drafting of annexes for annual NPM reports;
- training of NPM team members in visiting the locations where PDL are located or may be located PDL;
- participating and delivering presentations at gatherings organized by NPM for the purpose of promoting the prevention of torture and fighting impunity for torture, including through performing other NPM tasks in line with Article 2a, Para 2 of the Law on Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or degrading Treatments and Punishments.

All the acts of NPM created with the participation of the Association will have an indication about its contribution and its logo shall be displayed in the visible place of the document.

Association shall be entitled to present its role in discharging the activities of NPM in its acts and public announcements.

Association shall keep any data made available to it based on its participation in discharging the activities of NPM confidential, and any adverse acting in this respect shall constitute the grounds for the immediate termination of the Agreement.

Association shall be entitled to the remuneration of its costs incurred in performing the activities arising from this Agreement, in accordance with the act of the Protector of Citizens regulating the compensation of costs incurred in performing the activities of NPM by the associations.

The cooperation established on the basis of this Agreement shall be without prejudice to the powers assigned to the Protector of Citizens and activities of the Association based on the applicable legislation.

Upon the effective date of this Agreement, the Association shall nominate an authorized person to maintain the cooperation with the Protector of Citizens in discharging the NPM activities and accordingly notify the Protector of Citizens.



Any amendments to this Agreement shall be made upon the mutual agreement reached by the Parties and in writing.

The Agreement is concluded to the period between 1<sup>st</sup> February 2016 and 31<sup>st</sup> January 2018 and may be extended to the period of another two years, where mutually agreed so by the Parties.

The Agreement has been executed in two counterparts, one for each signing Party.

**THE PROTECTOR OF CITIZENS**

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**BELGRADE CENTRE FOR HUMAN  
RIGHTS**

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## ***II-4 DECISION on Amount of Remuneration for discharging NPM activities NPM<sup>151</sup>***

Pursuant to Article 3. Para 4. Of the Decision on forming the Expert Service of the Protector of Citizens ("Official Gazette of RS", no. 105/07), The Protector of Citizens, hereby passes

### **DECISION**

#### **on remunerations and fees for Discharging of activities of National Preventive Mechanism**

##### **Article 1**

This Decision is to regulate the amount of remuneration for the costs and fees for the work of experts engaged to perform activities based on the Agreement signed between the Protector of Citizens and the civil society associations on performing the activities of the National Preventive Mechanism (hereinafter: NPM), in accordance with Article 2a, Para 2 of the Law on Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or degrading Treatments and Punishments („Official Gazette of Serbia and Montenegro- International Treaties“, no. 16/05 and 2/06 and „ Official Gazette of RS - International Treaties“, no. 7/11).

##### **Remuneration of costs**

##### **Article 2**

Travel costs of the hired expert of the Association shall be refunded based on the mileage (number of kilometres) using the shortest roads.

The mileage shall be refunded in the amount of 10% of the price of 1 litre of the prime quality fuel per kilometre of the journey or a commenced kilometre.

##### **Article 3**

The costs of meals for the hired expert of the Association shall be refunded outside the place of temporary or permanent residence in the duration of more than eight hours, counting the time necessary to reach the place of the assignment and the time required for the return.

The costs of food shall be refunded as per diem for the business trip in the Country, as regulated by the Decree on the refund of costs and severance pay for civil servants and employees.

##### **Article 4.**

The costs of overnight stay for the expert engaged from the Association shall be refunded if the expert could not return to his/her place of residence on the same day, including if for the performance of these activities he/she required the stay of more than one day outside the place of temporary or permanent residence.

##### **Article 5**

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<sup>151</sup> Decision no. 285-7/16, Ref. no. 6756 of February 2, 2016

The calculated costs shall be increased by the amount of any taxes or other fiscal charges.

## **Fee**

### **Article 6**

The Association shall be paid the fee for the work of the engaged expert, according to the number of commenced hours the expert spent on the activity and/or per number of pages of drafted text in the A4 format.

The basis for the calculation of fee shall be the double amount of average monthly wages per employee in the Republic of Serbia, excluding taxes and contributions, paid for the month that preceded the activities of the engaged expert, according to the data of the competent statistics office.

Visits made to institutions accommodating persons deprived of their liberty with whom they shall conduct unattended interviews, including the activities conducted by night and on non-working days shall be increased by 100%.

The calculated fee for the work shall be the net amount belonging to the hired expert that shall be paid to the Association in its amount increased by taxes and contributions.

### **Article 7**

The Association shall pay the fee for the work of the hired expert assigned to perform NPM activities:

1. preparation for visits to places where persons deprived of their liberty are placed or to participate in other activities;
2. visits to places where persons deprived of their liberty are placed;
3. Participation in other activities (dialogue with authorities, participation on gatherings and trainings...)
4. review of findings collected during the visits or other activities;
5. preparation of structured reports, preparation and designing of recommendations for the elimination of identified deficiencies or to improve the existing actions;

### **Article 8**

The Association shall be paid the fee for drafting written acts by hired experts for the needs of the NPM:

1. analysis, classification and structuring of material for the preparation of visits or other activities;
2. structuring and development of questionnaires and other accompanying material;
3. drafting reports on visits and recommendations for improving the actions;
4. drafting of expert findings and opinions about the treatment of persons deprived of their liberty;
5. development of analyses and opinions on regulations and standards and their implementation;
6. drafting of other written acts;

### **Article 9**

The funds for the compensation of costs and the fee for the work of the expert engaged from the associations shall be planned and provided for by the financial plan of the Protector of Citizens for each annual budget.

#### **Article 10**

The amount of remuneration of costs and the fee for the work of the expert engaged from the associations shall be calculated and transferred to the Association based on the invoice issued by the Association and the accompanying calculation of the costs and the fee for the completion of assigned tasks.

In addition to the completed work confirmed by the authorized person of NPM, the accuracy of the calculation of remuneration for the completed tasks shall be confirmed by the authorized person from the Department for Material and Financial Affairs and the payment shall be made by the authorized person of the Protector of Citizens.

The transfer of the established remuneration of costs shall be made by the Section for Material and Financial Affairs in accordance with the regulations on functioning of the payment system of the Treasury.

Where the scope of the agreement covers several months of assignment with the fee paid periodically for each month, the Calculation shall be made for each period in which the payment shall be made.

#### **Article 11**

This Decision has been made pursuant to the provisions of the Regulation on the court fees adopted by the Ministry of Justice, no. 110-00-13/2016-05, on 1<sup>st</sup> February 2016.

#### **Article 12**

This Decision shall enter into force on the date of its announcement on the announcement board of the Expert Section of the Protector of Citizens.

SECRETARY GENERAL

Jasminka Jakovljević