**Ministry for Human and Minority Rights and Social Dialogue**

Belgrade

24 March 2023

**Responses to the Questionnaire**

**of the Special Rapporteur on extrajudicial, summary or arbitrary executions seeking in accordance with the Human Rights Council Resolution 44/5 input of Member States on deaths in custody**

**1.**

Obligations and duties of police officers towards brought in persons and persons in custody related to exercising the right of the respective persons to medical examinations and providing medical assistance are elaborated in detail under the Rulebook on Police Powers (*Official Gazette of the Republic of Serbia*, No. 41/2019) as follows:

- Article 19 paragraph 1 point 6 / Article 29 paragraph 1 point 8: Brought in person/ person in custody shall be acquainted and/or informed in the language he/she understands on his/her rights orally and by delivery of a written notice, *inter alia* on the right to be examined by a physician;

- Article 22 paragraph 2: "If the person has visible injuries or complains of pain, the police officer shall enable provision of professional medical assistance.";

- Article 30 paragraph 5: "The police officer who carries out the measure of placing a person in custody shall be responsible for exercising the rights of the person in custody (safety, health, etc.) from accommodation in the custody premises until the termination or revocation of custody.";

- Article 33 paragraph 1 point 4: "The existence of visible injuries and possible damage to clothing and footwear of the respective person shall be determined by visual examination"; point 5: "Shall interview the person and ask if he/she feels pain or has health issues, if he/she receives medical therapy and if he/she needs a specific medication or medical assistance"; and/or point 6.: "When a person has visible injuries or other health issues, the police officer shall organise the provision of medical assistance";

- Article 33 paragraph 5: "If a person is brought in the custody premises in wet clothing and footwear or in clothing and footwear inappropriate in other manner for his/her health, it is necessary to provide him/her with adequate clothing and footwear during custody through his/her family members or in other manner."; and paragraph 6: "The police officer shall enter in the custody records data on visible bodily injuries as well as injuries and changes in health condition which have occurred during custody; provided medical assistance; damage to clothing and footwear.";

- Article 36: "A sick or injured person who is obviously in need of medical assistance or a person showing signs of severe alcohol or other intoxication shall not be kept in custody premises. The police custody officer shall organise to the respective persons prompt provision of necessary medical assistance and accommodation in an adequate healthcare institution. During the transport and during the time the person in custody is found in an adequate health institution, the police officers shall undertake measures and actions to prevent self-harm of these persons, attack on police officers or other persons, as well as escape of these persons. Police officers may be present at the medical examination of the respective person only at request of the medical staff, for reasons of safety of the medical staff, and the police officer shall be of the same sex as the person being examined. If in the physician’s opinion the person in custody does not need accommodation in an adequate healthcare institution, keeping in custody shall continue in the custody premises with obligatory supervision by the police officer. Police officers shall enable the use of the prescribed medical therapy to the person in custody."

Data on applied police powers of bringing in and keeping in custody are registered in electronic records: Brought In Persons and Persons in Custody, whereby, *inter alia*, data on visible injuries of the brought in persons and persons in custody are kept, as well as data on provided medical assistance and other data of significance for persons in custody, *inter alia* data on the termination of custody, where the basis for termination may be death of the person in custody as well.

In case of death in the custody premises of the Ministry of Internal Affairs, the police officers shall promptly notify about the event the competent public prosecutor’s office; secure the place of death; and undertake other measures and actions in accordance with the public prosecutor’s office order. As regards such events, according to the public prosecutor’s office order forensic autopsy of the deceased shall be performed.

In terms of responsibility of the police officers, in each individual case the existence of criminal or disciplinary responsibility in cooperation with the competent public prosecutor’s office shall be determined

The Republic Public Prosecutor’s Office, OSCE Mission to Serbia and the Internal Affairs Sector developed in 2017 the **Methodology for conducting investigations in cases of abuse by the police,** which has been applied as of 18 October 2017. The Methodology is intended for public prosecutors and police officers and relates to investigations of cases of alleged abuse by the police officers.

We would also like to inform you that the Internal Affairs Sector of the Ministry of Internal Affairs acts in the mentioned cases at the Request for collecting necessary information issued by the public prosecutor’s office authorities.

In the period from 2018 to 2023, in one case, a person in custody died in custody premises of the Ministry of Internal Affairs. Investigation was carried out in the place of death and there were no indications that the death occurred by force, and forensic autopsy was performed according to the order of the public prosecutor’s office.

The Administration for the Enforcement of Penal Sanctions of the Ministry of Justice, in cooperation with the Council of Europe, developed the **Manual for prison health care workers**, which includes multidisciplinary approach in the section related to monitoring specific prison indicators, such as: Prevention of suicide, self-harm, fatalities, separation, fixations, etc. This Manual foresees procedures undertaken after a death in custody and introduces the obligation of the institution to obtain the post-mortem report from the public prosecutor’s office which ordered the forensic autopsy, with the aim of carrying out an internal analysis of the death of a person deprived of liberty.

**2.**

As regards conducting a detailed investigation of deaths in custody, we would like to emphasise that in all cases deaths are reported to the police and the competent public prosecutor, and that a complete forensic autopsy is always carried out pursuant to the public prosecutor’s order. The competent public prosecutor is authorised to undertake actions within the investigation procedure if there is reasonable suspicion indicating possible violent death or failures in action by the institution. The institution promptly notifies on the death of a person deprived of liberty the Operational Centre and the Director of the Administration for the Enforcement of Penal Sanction, who is responsible to order internal supervision over the institution’s work.

The families of victims may also file criminal complaints to the competent public prosecutor’s office, i.e. they have the right to legal remedies in a civil procedure for compensation for damages suffered.

Pursuant to Article 223 of the Criminal Procedure Code (*Official Gazette of the Republic of Serbia*, Nos. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14, 35/19, 27/21 – Constitutional Court, 62/21 – Constitutional Court, 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14), Rulebook on the enforcement of the measure of detention (*Official Gazette of the Republic of Serbia*, No. 132/14), governing the enforcement of the measure of detention, was adopted.

Article 73 of the Rulebook prescribes that in the event of death of a detained person, the institution shall, in accordance with the Law, promptly notify the police, public prosecutor, spouse, children and adopted children of the death of the detained person; and in cases where a detained person does not have them, the institution shall notify his/her parents, adoptive parent, sibling, i.e. distant relatives. In accordance with the Law, the court before which the procedure is conducted, the execution judge who performs supervision over detained persons and the registrar shall also be notified of the death of the detained person. The governor of the institution shall undertake measures to preserve the trace evidence and objects found in the place of death of the detained person.

The Rulebook prescribes the obligation of the governor of the institution to provide conditions for unhindered supervision and control to the judge performing supervision over detained persons, the Ombudsman’s Team in performing duties of the National Preventive Mechanism (NPM) against torture and the Commission for the Control of the Enforcement of Penal Sanctions established by the Decision of the National Assembly of the Republic of Serbia (*Official Gazette of the Republic of Serbia*, No. 49/11).

The Ombudsman’s Team performing duties of the National Preventive Mechanism (NPM) against torture shall make periodic visits to organisational units of the Ministry of Internal Affairs to gain insight into the conduct of police officers toward brought in persons and persons in custody, by inspecting the custody premises, interviewing the persons in custody and having insight into the case files of brought in persons and persons in custody.

The Ombudsman shall perform duties of the National Preventive Mechanism (NPM) against torture in accordance with 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 Agreements, Nos. 16/05 and 2/06, and *Official Gazette of the Republic of Serbia* – International Agreements, No. 7/11), while the task of the Commission for the Control of the Enforcement of Penal Sanctions, in performing control of the enforcement of penal sanctions and custody measures, is to determine the status in the field of enforcement of penal sanctions and propose measures for the elimination of irregularities and measures for the improvement of conditions of life, treatment and protection of rights of persons deprived of liberty.

The Commission for the Control of the Enforcement of Penal Sanctions shall submit to the National Assembly reports on work, status and issues in the field of enforcement of penal sanctions and detention measures and shall indicate the need for amending laws and undertaking other measures for the protection of rights of persons subject to the enforcement of penal sanctions and detention measures.

In case of death of a person in custody, the decision on carrying out an investigation shall be made by the public prosecutor. If the public prosecutor needs police assistance (forensic, analytical, etc.) or assistance of other state authorities related to the investigation, the latter are obliged to provide assistance to the public prosecutor at his/her request.

Please find below statistics related to death cases in institutions for the enforcement of penal sanctions in the period 2018−2022.