COUNCIL OF EUROPE CONSEIL DE L'EUROPE

CPT/Inf (2013) 25

Report

to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

from 5 to 11 December 2012

The Government of Bosnia and Herzegovina has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2013) 26.

Strasbourg, 12 September 2013

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Copy of the letter transmitting the CPT's report

Ms Minka Smajević
State Ministry for Human Rights and Refugees
Trg Bosne I Hercegovine br. 1
Sarajevo
Bosnia and Herzegovina

Strasbourg, 22 March 2013

Dear Ms Smajević,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Bosnia and Herzegovina drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Bosnia and Herzegovina from 5 to 11 December 2012. The report was adopted by the CPT at its 80th meeting, held from 4 to 8 March 2013.

The recommendations, comments and requests for information formulated by the CPT are listed in the Appendix of the report. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the authorities of Bosnia and Herzegovina to provide within **three months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the authorities of Bosnia and Herzegovina to provide, in that response, reactions and replies to the comments and requests for information.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Lətif Hüseynov
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

Copy: Mr Almir Šahović, Ambassador Extraordinary and Plenipotentiary,
Permanent Representative of Bosnia and Herzegovina to the Council of Europe

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Bosnia and Herzegovina from 5 to 11 December 2012. The visit was one which appeared to the CPT "to be required in the circumstances" (see Article 7, paragraph 1, of the Convention).[1]

2. The visit was carried out by the following members of the CPT:

- Mykola GNATOVSKYY, Head of delegation
- Dan DERMENGIU
- Branka ZOBEC HRASTAR.

They were supported by Hugh CHETWYND (Head of Division), and Petr HNÁTÍK of the CPT's Secretariat and assisted by:

- Vojislav BOLJANIĆ, interpreter
- Ksenija KEIVANZADEH, interpreter
- Amira SADIKOVIĆ, interpreter.

B. Context of the visit

3. The report on the April 2011 periodic visit to Bosnia and Herzegovina[2] referred to a considerable number of credible allegations of serious physical ill-treatment by the police and other law enforcement officials. The report made particular reference to the fact that the infliction of ill-treatment for the purposes of trying to extort a confession was a frequent practice by crime inspectors at Banja Luka Central Police Station. Further, it raised concerns over the effectiveness of the safeguards in place to prevent ill-treatment.

However, the response by the authorities of Bosnia and Herzegovina to that visit report failed to address adequately the concerns identified by the Committee, notably as regards the methods used by crime inspectors at Banja Luka Central Police Station.

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1 Reports on the CPT's previous visits to Bosnia and Herzegovina which have been made public and the related Government responses are available on the CPT's website: http://cpt.coe.int/en/states/bih.htm

2 See CPT/Inf (2012) 15.

4. In the light of the above, the CPT decided to carry out an ad hoc visit to Bosnia and Herzegovina, and more particularly the Republika Srpska, to examine the steps taken by the authorities to implement the recommendations made by the Committee after the April 2011 periodic visit. The delegation focused on the treatment of persons deprived of their liberty by law enforcement agencies and the application in practice of the formal provisions regarding safeguards against ill-treatment. Attention was also paid to the situation of remand prisoners.

C. Establishments visited

5. The delegation visited the following places of detention:

Police establishments

- Banja Luka Central Police Station
- Bijeljina Police Station
- Doboj Police Station
- Gradiška Police Station
- Istočno Sarajevo Police Station
- Prnjavor Police Station

Prosecutor's Offices

- Holding cells at Banja Luka District Prosecutor's Office
- Holding cells at Banja Luka Special Prosecutor's Office for Organised Crime
- Holding cells at Doboj District Prosecutor's Office

Courts

- Holding cells at Banja Luka District Court
- Holding cells at Doboj District Court
- Holding cells at Supreme Court of Republika Srpska, Banja Luka

Prison establishments

- Banja Luka Prison (remand section)
- Bijeljina Prison
- Doboj Prison (remand section)
- Istočno Sarajevo Prison (remand section).

D. Consultations and co-operation

6. In the course of the visit, the CPT's delegation held consultations with Radmila MITROVIĆ, State Deputy Minister of Human Rights and Refugees, and in the Republika Srpska with Stanislav ČAĐO, Minister of the Interior, Pero DUNJIĆ, Assistant Minister of Justice, Gojko VASIĆ, Director of Police, and Darko ČULUM, Director of Police Administration. It also met Svetlana BRKOVIĆ, Deputy Chief Prosecutor of the Republika Srpska.

7. The co-operation provided to the CPT's delegation in order for it to carry out the visit was, on the whole, good. In general, information about a possible visit by the CPT, and the Committee's mandate and powers, had been provided to places where persons may be deprived of their liberty. Consequently, the delegation had rapid access to the establishments it wished to visit, to the persons with whom it wished to speak in private and to all documentation it wished to consult.

8. However, the CPT has emphasised on numerous occasions that the principle of cooperation set out in Article 3 of the Convention also requires that decisive action be taken to improve the situation in the light of the Committee's recommendations. In this regard, the delegation observed that little progress has been made in implementing the recommendations made by the CPT in the report on its 2011 visit, in particular those relating to the prevention of ill-treatment; the Committee has been obliged to reiterate many of those recommendations. The CPT has already indicated[3] that such a state of affairs could well raise an issue under Article 10, paragraph 2, of the Convention[4] if it persists.

During its discussions with the Deputy State Minister for Human Rights and Refugees, the CPT's delegation stressed that it was imperative for the Committee to be provided with complete[5] and accurate information in relation to the various issues raised in its reports. Responses to the CPT's reports represent a key component of the Committee's ongoing dialogue with States. If the information provided to the Committee is incomplete or unreliable, there can be no proper basis for co-operation. The CPT trusts that it will receive a comprehensive response to this visit report.

Moreover, having regard to Articles 3[6] and 10, paragraph 2, of the Convention, **the CPT urges the authorities of Bosnia and Herzegovina to significantly intensify their efforts to improve the situation in the light of the Committee's recommendations.**

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3 See, for example, the report on the 2009 visit to Bosnia and Herzegovina (CPT/Inf (2010) 10, paragraph 9).

4 Article 10, paragraph 2, reads as follows: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter."

5 In this connection, it should be noted that a number of recommendations made in the report on the 2011 visit were left unaddressed in the response submitted by the authorities.

6 Article 3 reads as follows: "In the application of this Convention, the Committee and the competent national authorities of the Party concerned shall co-operate with each other."

E. Immediate observations under Article 8, paragraph 5, of the Convention

9. At the end of the visit, at a meeting with the Minister of the Interior of the Republika Srpska, the CPT's delegation made an immediate observation, in pursuance of Article 8, paragraph 5, of the Convention, and requested that the authorities of the Republika Srpska undertake an independent inquiry into the methods used by crime inspectors at Banja Luka Central Police Station when detaining and interviewing suspects. This request was subsequently confirmed in writing by letter, dated 11 December 2012, addressed to the State Minister of Human Rights and Refugees, and the authorities of Bosnia and Herzegovina were requested to provide, within two months, a detailed account of the steps taken to carry out this inquiry.

By letter of 11 February 2013, the Minister of Interior of the Republika Srpska provided a response to the immediate observation and to other comments raised by the CPT's delegation in its preliminary observations. The response has been taken into account in the relevant sections of the report.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

10. The basic legal framework of deprivation of liberty by the police is set forth by the criminal codes and criminal procedure codes at the level of the State, Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District and remained unchanged since the last visit. Persons deprived of their liberty by the police on suspicion of having committed a criminal offence must be brought before a prosecutor within 24 hours, who must, within the following 24 hours, either submit a request to the preliminary proceedings judge to remand the suspect in custody or order release.[7] The preliminary proceedings judge may, within 24 hours, remand the individual concerned in custody; the decision may be appealed to a panel of judges who must decide on the appeal within 48 hours.

11. In the course of the visit, senior police officers confirmed to the delegation that the 24-hour period of deprivation of liberty by the police runs from the moment the person concerned is apprehended and not from the time he or she arrives at a police station. However, in practice, it appeared that many persons were deprived of their liberty by the police for periods in excess of 24 hours as the period prior to a person's arrival at a police station was usually not counted. For example, a person alleged that he was apprehended and handcuffed at his home in Doboj at 6.20 a.m. and remained present while a search of his house was carried out. However, the relevant documentation at Doboj Police Station noted 10.25 a.m. as the time of arrival at the station and the beginning of the period of deprivation of liberty. Such cases were noted in most of the police stations visited by the delegation.

The CPT recommends that the Republika Srpska authorities take the necessary steps to ensure that the maximum possible period of deprivation of liberty on the authority of the police, i.e. 24 hours as from the moment of apprehension, is strictly observed in practice.

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[7] See Articles 134, 135 and 139 of the State Criminal Procedure Code; Articles 148 and 153 of the Federation of Bosnia and Herzegovina Criminal Procedure Code; Articles 191 and 196 of the Republika Srpska Criminal Procedure Code and Articles 134 and 139 of the Brčko District Criminal Procedure Code.

2. Torture and other forms of ill-treatment

12. The information gathered by the CPT's delegation in the course of the 2012 visit indicates that ill-treatment by the police remains a frequent occurrence and that little, if any, progress has been made since the visit in April 2011.

The delegation again received a considerable number of detailed, coherent and consistent allegations of serious physical ill-treatment by the police and other law enforcement officials in the Republika Srpska.[8] The alleged ill-treatment mostly took the form of slaps, punches and kicks as well as blows with hard objects (such as baseball bats) to various parts of the body. Several consistent allegations of the use of small hand-held electroshock devices during interrogations were also received. Further, detailed allegations were received of handcuffing in stress positions for hours on end and of the placing of plastic bags over the heads of suspects. Several persons stated that they had been subjected to a mock execution with a pistol pointed at their temple and the trigger pulled or they had had the barrel of a pistol inserted into their mouth. A number of allegations of verbal abuse and threats by police officers were also heard. The majority of allegations concerned the time when suspects were being questioned by crime inspectors, prior to being transferred to the prosecutor's offices.

It should be emphasised that some of the ill-treatment alleged was of such severity that it would amount to torture.

13. The information gathered by the CPT's delegation once again indicates that the infliction of ill-treatment for the purposes of trying to extort a confession is a frequent practice by crime inspectors at Banja Luka Central Police Station. The findings of the 2012 visit further indicated a similar practice by crime inspectors at Gradiška Police Station.

Several allegations were also received of relatives or other third persons being invited to a police station and threatened, verbally abused or slapped by police officers in an attempt to make them produce a witness statement against a suspect held in police custody.

14. The following cases, some of which include medical evidence consistent with the allegations of ill-treatment made by detained persons, are illustrative of the situation encountered by the delegation during the visit.

i. A person arrested on 13 October 2012 in Zenica was brought to Gradiška Police Station by crime inspectors from that station. He alleged that during the journey to Gradiška he was threatened, and that upon arrival at the station he was taken to a crime inspector's office where allegedly one officer punched him twice in the head and another officer carried out a mock execution – placing a pistol against his temple and pulling the trigger. Further, he alleged that he received kicks to various parts of the body by several crime inspectors in the corridor of the police station, and that later that evening he was slapped by uniformed police officers. The following day, he was taken to the District Prosecutor and informed her about the ill-treatment after she inquired about his visible nose injury. However, no doctor was called and the court appointed lawyer merely told him that "this is what the police do".

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[8] The delegation also received allegations of ill-treatment by law enforcement officials under the authority of the State of Bosnia and Herzegovina (SIPA) and of Brčko District.

The documentation pertaining to the handover of the person to the Gradiška police in Zenica on 13 October stated that the detained person had no visible injuries. However, on 15 October 2012, when the person was transferred into the custody of the judicial police, the handover form referred to "visible injury on the right side of the nose". Further, the medical record at Banja Luka Prison of 16 October 2012, drawn up on admission, stated: "claims to have been beaten in Gradiška Police Station, 7 x 9 cm pale haematoma on the left thigh (inner side above knee) and 1 x 1 cm superficial abrasion on the right side of the nose".

A second person involved in the same case, interviewed independently by the delegation, alleged that upon arrival at Gradiška Police Station, he was taken to an office, placed in a chair with his hands cuffed behind his back and received several electric shocks to his legs from a hand-held device when he did not answer certain questions. Further, he claimed that while two crime inspectors held his legs apart a third one had kicked him in the genitalia, that he had received blows with an axe handle to the back and chest while wearing a bullet-proof vest and that a plastic bag had been placed over his head and pulled tight.

ii. A person detained in Banja Luka Police Station on 22 October 2012 alleged that she had been subjected to blows with a wooden stick to her arms, legs and body by crime inspectors. Prior to appearing before a prosecutor, she was taken to an emergency medical clinic by one crime inspector who apparently told her to say that the visible injury to her arm was a burn mark caused by a radiator. The medical record drawn up on admission at Banja Luka Prison stated that she had "a burn on the right forearm [sustained] in the prosecutor's office (prolonged contact with a hot radiator)". The woman was subsequently examined by a forensic doctor in the CPT's delegation; it was evident that the wound (5 cm long) on the right forearm was not the result of a burn but consistent with the allegation of having been hit by an object such as a stick.

iii. A person detained in Banja Luka Central Police Station on 11 November 2012 alleged that he was repeatedly punched and kicked in various parts of the body by crime inspectors in the course of the day and following night while handcuffed to a chair. Further, he claimed that these same officers had previously come to his home in August 2012, had punched and kicked him and had delivered several electric shocks with a hand-held device to his right arm. On 12 November, he gave a detailed account of the alleged ill-treatment he had received to the district prosecutor and he was taken to the Banja Luka Clinical Centre, where the following injuries were recorded: "contusion of the left hemi thorax, contusion of the left femoral area". His medical record drawn on up admission at Banja Luka Prison states: "no visible injuries on thorax; on left thigh, posterolateral, pale hematoma 4/5-6 cm".[9]

iv. A person detained in Banja Luka Central Police Station on 12 November 2012 alleged he was beaten by crime inspectors until such time as he signed a confession. A medical report issued by the Clinical Hospital stated: "Beaten in Banja Luka Central Police Station on 12 November 2012. Fracture of the nasal bone, two visible haematomas under the left and right eye." The X-ray contained in the medical file confirmed a fracture of the nasal bone.

v. A person detained in Banja Luka Central Police Station alleged that he had received several blows from a baseball bat to the legs and torso by two crime inspectors and that he had been threatened with a hand-held electroshock device. The prosecutor apparently had not reacted to his allegations of ill-treatment.

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[9] Another person, detained in Banja Luka Central Police Station on 11 November 2012, described to the delegation in a separate interview how he had witnessed this person being punched by crime inspectors and claimed that he had been threatened with the same treatment unless he confessed.

vi. A person arrested *in flagrante* in Bijeljina in November 2012, claimed that he was repeatedly kicked by a number of police officers after he had been handcuffed and forced to lie prone on the ground. At the police station, he alleged he was taken to the basement detention area where he received punches and kicks to his ribs from several crime inspectors while still handcuffed. And, that the next morning, during interrogation, he was again punched and kicked in the body and threatened with being beaten with a baseball bat and with being drowned in the Drina river.

15. The CPT is concerned by the frequency and seriousness of the allegations of ill-treatment received once again in the course of the 2012 visit. As stated in the previous visit report, the CPT's findings call for immediate and determined action by the authorities. All means should be explored to ensure that the message of zero tolerance of ill-treatment of detained persons reaches all law enforcement officials at all levels; they should be made aware, through concrete action, that the government is resolved to stamp out ill-treatment of persons deprived of their liberty. The rule of law entails not only the adoption of the appropriate legal norms but also taking the necessary steps to ensure their application.

In the light of the findings of the 2012 visit, **the CPT reiterates its recommendation that the Minister of Interior of the Republika Srpska deliver a strong message that all forms of ill-treatment of detained persons, whether at the time of apprehension or transportation or during subsequent questioning, are illegal and unprofessional and will be the subject of severe sanctions. This message should be repeated at appropriate intervals by the Director of Police.**

16. As noted above, at the end of the 2012 visit, the CPT's delegation requested the authorities to carry out an independent inquiry into the methods used by crime inspectors at Banja Luka Central Police Station when detaining and interviewing suspects. By letter of 11 February 2013, the Minister of Interior informed the Committee that the Director of Police had been charged with ensuring police officers apply the law strictly, disciplining any abuses that emerge and considering how to improve the work of crime inspectors. Further, "an objective analysis of citizen's complaints had been undertaken by the Bureau for Appeals and Complaints of Citizens[10]". The Bureau had reviewed the eight complaints made against officers in Banja Luka Police Station in the course of 2012 and concluded that in *one case* there was evidence of ill-treatment of a detained person and that in *two other cases* disciplinary proceedings should not have been suspended just because criminal proceedings were ongoing. The CPT is grateful for the information provided. However, it does not directly address the substance of the immediate observation, which concerned the way in which crime inspectors had been carrying out their functions. As regards investigations into allegations of ill-treatment, reference should be made to paragraphs 20 to 22 below.

The CPT reiterates its recommendation that an independent professional assessment be carried out of the working methods used by crime inspectors at Banja Luka Central Police Station when detaining and interviewing suspects. The Committee would like to be informed of the outcome of that assessment. It would also like to be informed of the outcome of the three above-mentioned cases referred to by the Bureau for Appeals and Complaints of Citizens.

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10 The Bureau, set up with the assistance of the European Union Police Mission in 2004, oversees the work of the Internal Control Unit of the Ministry of Interior which is charged with investigating all disciplinary complaints, including those relating to allegations of ill-treatment.

17. The CPT's delegation also received allegations of ill-treatment in respect of other law enforcement agencies in Bosnia and Herzegovina. In particular, as regards the Brčko District, one person alleged that, in November 2012, after being brought under control and handcuffed by Brčko police officers, he received punches, kicks and blows from batons to the legs, ribs and back, and that the barrel of a pistol was put into his mouth. After being taken to the local hospital he was apparently brought to an office on the second floor of the police station where he was poked in the ribs and stomach with various batons and slapped in the face. The medical record drawn up five days after his admission to Bijeljina Prison states: "admitted with minor injuries: small haematoma left eye, right inguinal area and lower back; pain in the left hemi thorax and right upper calf and knee".

The recommendation made in paragraph 15 should be read as also applying, *mutatis mutandis*, to the Brčko District and other relevant authorities of Bosnia and Herzegovina.

18. As stated in previous reports, it is essential that police officers view ill-treatment as an unprofessional means of carrying out their duties, as well as being a criminal act. This implies strict selection criteria at the time of recruitment and the provision of adequate professional training, both initial and in-service. Such training should seek to put across and develop two points: firstly, that all forms of ill-treatment are an affront to the human dignity of both the victim and the perpetrator and, as such, are incompatible with the values enshrined in the Constitution and laws as well as in international instruments ratified by Bosnia and Herzegovina and binding upon all its constituent parts ; secondly, that resort to ill-treatment is a fundamentally flawed method of obtaining reliable evidence for combating crime. In this respect, particular emphasis should be placed on advanced methods of crime investigation, thereby reducing reliance on information and confessions obtained via interrogations for the purpose of securing convictions.

The CPT calls upon the authorities to pursue a multifaceted approach, comprising: a competitive recruitment process based upon strict selection criteria; an educational training course for all new recruits; and the provision of specific competency courses, on a regular basis, for serving police officers, both to update their skills and knowledge and to provide them with new competencies.

19. Combating impunity must start at home, that is within the agency concerned. Too often the *esprit de corps* leads to a willingness to stick together and help each other when allegations of ill-treatment are made, to cover up the illegal actions of colleagues. Positive action is required, through training and by example, to promote a culture where it is regarded as unprofessional – and unsafe from a career path standpoint – to work and associate with colleagues who have resort to ill-treatment, and where it is correct and professionally rewarding to belong to a team which abstains from such acts. An atmosphere must be created in which the right thing to do is to report ill-treatment by colleagues; there must be a clear understanding that culpability for ill-treatment extends beyond the actual perpetrators to anyone who knows or ought to have known that ill-treatment is occurring and fails to act to prevent or report it. This implies the existence of a clear reporting line as well as the adoption of whistle-blower protective measures (i.e. a framework for the legal protection of individuals who disclose information on ill-treatment and other malpractice). **In this context, the CPT again recommends the adoption of whistle-blower protection legislation.**

3. Investigations into allegations of ill-treatment

20. Many persons interviewed by the delegation stated that they had complained about ill-treatment by law enforcement officials to the prosecutor or to the judge before whom they were brought, but this had met with no response. Even when a detained person displayed visible injuries or made a statement alleging ill-treatment, there was usually no apparent follow-up by the prosecutor or judge other than, at times, to order a medical examination. Moreover, when such an examination was carried out, the person concerned was often escorted by the same crime inspectors who he or she alleged had inflicted the ill-treatment and the examination was carried out in their presence. In addition, the medical examination was carried out at the emergency clinic of the local hospital where the medical personnel are not trained to describe in detail bruising and other external injuries. When the delegation met the Deputy Chief Prosecutor, she acknowledged that it would be extremely difficult to obtain a timely forensic medical examination due to the lack of forensic doctors in the Republika Srpska and the prohibitive cost.

The CPT reiterates its recommendation that the police officers charged with escorting the detained person for a medical examination are not the same ones against whom the allegations of ill-treatment are brought. In such cases, the task of escorting detained persons to the medical institution concerned should be entrusted to judicial police officers. Further, the confidentiality of medical examinations should be respected and the results of the examination made available to the detained person and upon request to his or her lawyer (see also paragraph 27).

Of course, it is also essential that the forensic institute of the Republika Srpska is able to provide all the support required by the criminal justice system, including in relation to the investigation of cases of possible police ill-treatment. In the short term, steps should be taken to provide training to doctors in emergency hospital clinics on how to describe injuries in a competent manner.

21. The CPT wishes to reiterate that the credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. If the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with very good reason – that they can do so with impunity.

Therefore, it is self-evident that prosecutors and judges should take appropriate action when there are indications that ill-treatment by the police may have occurred. In this regard, whenever criminal suspects brought before prosecutorial or judicial authorities allege ill-treatment, those allegations should be recorded in writing, a forensic medical examination (including, if appropriate, by a forensic psychiatrist) should be immediately ordered, and the necessary steps taken to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the prosecutor/judge should adopt a proactive approach; for example, whenever there are other grounds to believe that a person brought before him or her could have been the victim of ill-treatment, a forensic medical examination should be requested.

The CPT recommends that the Chief Prosecutor and the President of the Supreme Court of the Republika Srpska recall firmly that prosecutors and judges should act in accordance with the above principles.

22. In the event of an investigation into possible police ill-treatment being initiated by a prosecutor, the question arises of who will be responsible for the operational conduct of that investigation. For an investigation into possible ill-treatment to be effective,[11] it is essential that the persons responsible for carrying it out are *independent* of those implicated in the events. Ideally, those entrusted with the operational conduct of such an investigation should be completely separate from the agency concerned.

In this context, reference might be made to the case of a person arrested on 25 March 2011, mentioned in the report on the 2011 visit, and concerning Istočno Sarajevo Police Station. In this particular case, the District Prosecutor in Istočno Sarajevo had not been satisfied with the investigation carried out by the local Public Security Centre and had therefore addressed directly the Internal Control Unit of the Ministry of Interior of the Republika Srpska[12] to investigate the case. However, the delegation was informed that such involvement of the Ministry's Internal Control Unit at the initiative of a prosecutor was extremely rare.

The CPT recommends that, for the time being, prosecutors who require operational support for the investigation of cases of possible police ill-treatment seek that support from the Internal Control Unit. Of course, **it would be far preferable for prosecutors to have at their disposal their own operational investigators.**

Further, **the Committee would like to be informed of the outcome of the above-mentioned case.**[13]

4. Safeguards against ill-treatment

23. The CPT remains concerned that formal safeguards against ill-treatment (the rights of access to a lawyer and to a doctor, and the right to have the fact of one's detention notified to a relative or another third party) do not apply in practice from the very outset of a person's deprivation of liberty. These safeguards should apply not only to persons detained by the police in connection with a criminal or administrative offence, but also to those who are obliged to remain with the police for other reasons (e.g. as a witness or for identification purposes). Further, persons deprived of their liberty were still not always informed without delay of their rights.

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11 For a full account of the criteria of an "effective investigation", see the CPT's 14th General Report (CPT/Inf (2004) 28, paragraphs 25 to 42).

12 The unit is one part of the Professional Standards Department under the direct authority of the Director of Police and may investigate any case which is a breach of police duty. The unit is composed of 15 experienced crime inspectors, six in Banja Luka and the remainder stationed in the five Public Security Centres located throughout the Entity who report directly to the Head of Internal Control.

13 At the time of the visit, a decision of the prosecutor was awaited in the light of the results of the investigation carried out by the Internal Control Unit.

24. Many persons interviewed by the delegation were apprehended by the police at their homes or on the street and subsequently taken home for a house search. Thus, their families became aware of their detention shortly after the deprivation of liberty became effective. However, several persons apprehended outside their home and escorted directly to a police station alleged that they had not been given the opportunity to inform a relative or other third party of their choice of their detention.

The CPT calls upon the authorities of Bosnia and Herzegovina to ensure that all persons deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation, as provided for by law.[14] This right should apply as from the very outset of the deprivation of liberty (that is, from the moment when the person concerned is obliged to remain with the police). The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and made subject to appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the specific reasons therefor, and to require the approval of a prosecutor or judge) and strictly limited in time.

Further, whenever the notification is carried out by a police officer, the detained person should be provided with feedback on whether it has been possible to inform a close relative or other person of the fact of his or her detention.

25. As regards the right of access to a lawyer,[15] the situation remains unsatisfactory. Access to a lawyer as from the outset of deprivation of liberty was not being granted in the vast majority of cases. Instead, such access only occurred when the person was brought before a prosecutor to give a statement or at the hearing before a judge. Moreover, it was usually not possible for a person to consult with his or her lawyer in private prior to appearing before a prosecutor or a judge.

The CPT recalls that it is during the period immediately following the deprivation of liberty that the risk of intimidation and ill-treatment is at its greatest. Consequently, the possibility for persons taken into custody to have access to a lawyer during this period is a fundamental safeguard against ill-treatment. It is interesting to note in this context that those persons interviewed who either went to a police station with a lawyer following a summons or who were able to contact a lawyer to visit them soon after they had been detained in a police station stated that they were not physically ill-treated.

The right of access to a lawyer must include the right for any person deprived of their liberty to talk to his or her lawyer in private upon being admitted into the police station. The person concerned should also, in principle, be entitled to have a lawyer present during any interrogation, whether this be before or after he or she is charged.[16]

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14 See Article 5 of the State and Entity Codes of Criminal Procedure.

15 As provided for in Article 5 of the State and Entity Codes of Criminal Procedure.

16 Naturally, the fact that a detained person has stated that he or she wishes to have access to a lawyer should not prevent the police from beginning or continuing to question him or her on urgent matters before the lawyer arrives. Provision could also be made for the replacement of a lawyer who impedes the proper conduct of an interrogation, on the understanding that such a possibility should be strictly circumscribed and subject to appropriate safeguards.

The CPT calls upon the authorities of Bosnia and Herzegovina to ensure that the right of access to a lawyer, as defined above, is both explicitly granted in law and rendered effective in practice for everyone deprived of their liberty by the law enforcement authorities, from the very outset of their deprivation of liberty. Moreover, **all law enforcement officials should be reminded that detained persons may exercise their basic rights at any stage of their custody (even if they have initially chosen not to avail themselves of those rights at the time of their arrest and detention).**

26. The CPT's delegation again received many complaints about the quality of the advice provided by ex officio lawyers. It is particularly worrying that in some cases, despite the alleged presence of visible injuries on the face of the detained person concerned, the only "advice" purportedly provided by a lawyer was that "there was nothing that could be done about it". **The CPT recommends that all ex officio lawyers be reminded, through the appropriate channels, of the importance of their role in preventing and, if necessary, reporting ill-treatment by the police.**

27. Many persons met by the delegation stated that they had not been allowed to have access to a doctor when they were held in a police station. Access to medical care (i.e. through recourse to the emergency services) was generally only provided when ordered by a prosecutor or judge or when the judicial police refused to accept a particular person from the police because they displayed visible injuries.

Moreover, nearly all persons provided with medical assistance claimed that police officers were present during their medical examination.

Ever since its first visit to Bosnia and Herzegovina in 2003, the CPT has been recommending that specific legal provisions be adopted regarding the right of persons held in police establishments to have access to a doctor as from the very outset of their deprivation of liberty. Detained persons should enjoy an express right of access to a doctor, as distinct from the duty of the police to ensure that detained persons receive the necessary assistance. And that right of access should include the right, if the detained person so wishes, to be examined by a doctor of his/her choice (in addition to any medical examination carried out by a doctor called by the police).

The CPT calls upon the authorities to adopt specific legal provisions on access to a doctor during police custody, stipulating inter alia that:

- **a doctor must be called or a person taken to a medical facility without delay if a detained person requests a medical examination;**[17]

- **a person taken into police custody has the right to be examined, if he or she so wishes, by a doctor of his or her own choice, in addition to any medical examination carried out by a doctor called by the police authorities** (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his or her own expense);

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[17] Of course, even in the absence of such a request, the above-mentioned action must be taken if a person in police custody is in apparent need of medical treatment.

- **all medical examinations of persons in police custody, whether carried out on police premises or in a health care facility, shall take place out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police officers;**

- **the results of every examination, as well as any relevant statements by the person in custody and the doctor's observations, are to be recorded in writing by the doctor and made available to the detained person and upon request to his or her lawyer.**

28. Once again, most persons met by the delegation claimed that they had not been informed of their rights verbally upon apprehension or in the police station.

The CPT calls upon the authorities of Bosnia and Herzegovina authorities to ensure that all persons detained by the police, for whatever reason, are fully informed in a language they understand of their fundamental rights as from the outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of a written form setting out the rights in a straightforward manner.

Moreover, **the information on rights should be properly explained to detained persons to ensure that they are in a position to understand their rights and to exercise them effectively.**

29. As regards the standardised custody registers (*registar/knjiga osoba lišenih slobode*) kept in all police stations,[18] the information gathered by the delegation shows that there has been no progress in the Republika Srpska in ensuring that the entries in the custody records in police stations were accurately and comprehensively filled out. Further, police stations did not contain one unique custody register for persons deprived of their liberty on their premises. For example, at Bijeljina Police Station, the duty police officer was responsible for the custody register pertaining to persons held in the detention cells while the criminal police maintained their own register of persons in their custody. Moreover, an examination of the criminal police register revealed that a person's deprivation of liberty was only recorded once a statement had been provided, which could be some hours after the actual deprivation of liberty. In addition, the delegation noted in several police stations that if a person had originally been detained in another police station, the custody record in the station to which he or she was transferred had no record of his or her presence.

The CPT calls upon the authorities to take all the necessary steps to ensure that the custody registers are scrupulously filled out and that a single and comprehensive record is maintained in each law enforcement establishment of every person detained at any given time on its premises.

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[18] The standardised custody registers contain, *inter alia*, sections concerning the time of arrest and release of a person, their rights (the right of access to a lawyer, and the right to notify someone of the deprivation of liberty) and access to a doctor. All detained persons should sign the relevant parts of the custody register, indicating whether or not they wish to avail themselves of the rights concerned.

Further, **the Committee recommends that steps be taken to ensure that whenever a person is deprived of his or her liberty by law enforcement agency, for whatever reason (even for a short period of time), this fact is formally recorded without delay.**

30. In the course of the visit, the delegation noted that an electronic custody register was being introduced in the police stations visited. The system did not appear to be fully operational and it was not clear how the operation of the electronic register would function in practice to ensure that all the safeguards surrounding the detention of an individual are properly applied and recorded.

The CPT would like to receive detailed information on the functioning of the new electronic custody register system.

31. The detention of persons in holding cells in prosecutors' offices or courts (for example, the Special Prosecutor for Organised Crime in Banja Luka, Doboj Prosecutor's Office, Banja Luka District Court) should also be properly recorded in a custody register; this was not the case at the time of the visit. **The CPT recommends that such recording be introduced.**

5. Material conditions

32. In the report on the April 2011 visit,[19] the CPT recalled that police holding facilities should meet certain elementary material requirements, even if the detention period is relatively short (i.e. usually less than 24 hours). Regrettably, the holding facilities in the police stations visited often did not comply with such minimum requirements; moreover, offices in many police stations continued to be used as ad hoc detention facilities. Further, apart from Istočno Sarajevo Police Station, none of the police stations visited had a budget to provide detained persons with something to eat and many persons complained that they had been offered no food while detained by the police.

33. At *Bijeljina Police Station*, the three holding cells (each 8.5m²), located in the basement of the building, had no access to natural light, were foul-smelling and lacked ventilation; further, the artificial lighting in the cell occupied at the time of the visit was not functioning. At *Doboj Police Station*, a new single-occupancy cell had recently been brought into service which was of sufficient size (10m²), suitably equipped (mattress on a raised plinth, floor level toilet and wash basin) and possessed a call bell; however, the artificial lighting was poor. The two cells in *Gradiška Police Station* were filthy, as were the blankets and mattresses; moreover, access to natural light was very poor (due to the metal grille covering the window) and the artificial lighting was inadequate. Further, there was no heating in the cells and as a result, during winter months, detained persons often had to spend the night in an office attached to a chair. At *Prnjavor Police Station*, the main cell (7m²) was dirty, foul-smelling and had poor ventilation; the artificial lighting was not functioning, access to natural light was inadequate, and the mattress and blankets were extremely unhygienic. A second cell (7.5m²), located in an adjoining building, was in an even worse state of repair and possessed no heating; it should not be used until it has been properly refurbished.

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[19] See CPT/Inf (2012) 15, paragraph 22.

The CPT was pleased to note that at *Istočno Sarajevo Police Station*, the two holding cells had been suitably equipped with a means of rest and blankets since the 2011 visit. However, the smaller cell (4.5m²) continued to be used for overnight stays, as confirmed by the custody register; on one occasion in the recent past a person had been held in this cell for nearly 48 hours (24 hours of police custody and 24 hours of detention under the authority of the relevant prosecutor).

The CPT recommends that the above-mentioned deficiencies in the police stations visited be remedied. More generally, the Committee reiterates its recommendation that the authorities take the necessary steps to ensure that all police holding facilities are clean and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, such facilities should enjoy natural light. When the need arises, police holding facilities should be adequately heated. Further, all cells used for overnight detention should be equipped with a means of rest suitable for such stays (e.g. a bed or a sleeping platform) and blankets. In addition, arrangements should be made to ensure that all persons detained in police stations are offered food and water at appropriate times.

The CPT also recommends that no cell measuring less than 5 m² be used for overnight accommodation. In fact, the Committee considers that it would be desirable for single-occupancy police custody cells used as overnight accommodation to measure 7 m².[20]

34. In the response to the report on the 2011 visit,[21] the Ministry of Interior of the Republika Srpska assured the CPT that *Banja Luka Central Police Station* did contain a holding cell which would be equipped in 2012. However, at the time of the 2012 visit no such cell existed. Persons apprehended by the police continued to be held in crime inspectors' offices or in the conference room on the fourth floor for up to 24 hours, often handcuffed to various objects (chair, table, safe, radiator). Such a state of affairs is not acceptable. At the end of the visit, the Minister of Interior informed the delegation that a solution would be found within the next few months to create a proper holding area for detained persons. By letter of 11 February 2013, the CPT was informed that three facilities would be brought into service in March 2013 and that in the meantime, the detention facilities in the prosecutors' offices in Banja Luka would be used.

The CPT recommends once again that the necessary steps be taken to ensure that offices are not used as ad hoc detention facilities and that detained persons are not handcuffed to radiators or items of furniture. Detained persons should be accommodated in rooms/cells designed specifically for that purpose and offering appropriate security conditions. The CPT looks forward to receiving detailed information on the holding area(s) used for persons detained at Banja Luka Central Police Station.

35. As for the holding facilities in the various prosecutor's offices and courts visited,[22] they provided a satisfactory standard of accommodation for detained persons for the short period of custody involved (i.e. up to 24 hours).

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20 See also paragraph 43 of the CPT's 2nd General Report (CPT/Inf (92) 3).

21 For the response, see CPT/Inf (2012) 16, page 35.

22 Five cells of the Special Prosecutor's Office for Organised Crime in Banja Luka, one cell of the District Prosecutor's Office in Banja Luka, two cells of Banja Luka Supreme Court and the single cells of Banja Luka District Court and of the District Court and the District Prosecutor's Office in Doboj.

B. Prison establishments

1. Preliminary remarks

36. The delegation carried out targeted visits to the remand sections of Banja Luka, Doboj and Istočno Sarajevo Prisons. It also visited for the first time Bijeljina Prison, where it looked into the situation of remand and sentenced prisoners.

The prisons of Banja Luka, Doboj and Istočno Sarajevo were visited by the CPT in 2011 and a description of each one was provided in the report on that visit.[23] The most noticeable change in the remand sections of these prisons as compared to the situation observed in 2011 was the reduction in occupancy levels. At the time of the 2012 visit, the remand section of the Banja Luka Prison was holding 46 inmates (including two women) for an official capacity of 80; at Doboj Prison, there were 19 prisoners on remand for a capacity of 68; and at Istočno Sarajevo Prison, 22 remand prisoners were being held for a capacity of 30.

Bijeljina Prison, located in the northern part of the town, consists of two accommodation blocks (one for remand and one for sentenced prisoners) within a secure perimeter wall. It also has two semi-open units which were not visited by the delegation. The official capacity of the establishment is 77 places for sentenced prisoners (58 in the closed section and 19 in the semi-open units) and 50 for remand prisoners. At the time of the visit, the closed section for sentenced prisoners was accommodating 52 inmates and the remand section held 24 prisoners (including one female prisoner). The establishment holds convicted prisoners with sentences of up to three years or inmates transferred from another prison who have less than three years of their sentence left to serve.

The CPT's delegation was informed by the management of Bijeljina Prison that the construction of a new prison campus had started in Golo Brdo and was expected to take three to four years. The new facility is expected to have an official capacity of 270, with 200 places for sentenced prisoners and 70 for those held on remand. **The CPT would like to receive information on the new prison, including the timeline for its completion.**

2. Ill-treatment

37. The vast majority of prisoners interviewed by the CPT's delegation in the course of the 2012 visit made no allegations of ill-treatment by prison staff. On the contrary, most prisoners stated that they felt safe and were treated correctly by prison officers.

However, at Bijeljina Prison, several remand and sentenced prisoners complained to the delegation about acts of deliberate physical ill-treatment by certain prison officers. The alleged ill-treatment concerned mostly slaps and punches to various parts of the body and was purportedly inflicted on recalcitrant prisoners or upon certain prisoners upon admission. It reportedly took place in various locations: solitary confinement rooms, offices of prison staff at the entrances to the remand and sentenced prisoner sections or the cabin used for searching prisoners. Some complaints were also heard of verbal abuse of prisoners by staff.

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[23] See CPT/Inf (2012) 15, paragraph 26.

The CPT recommends that the Republika Srpska authorities deliver a clear message to custodial staff at Bijeljina Prison that the ill-treatment of prisoners, including verbal abuse, is not acceptable. Further, **all necessary steps should be taken to ensure that any indications of ill-treatment are properly investigated and that any such acts found to have occurred are the subject of a suitable penalty.**

38. The CPT has repeatedly stated that a remand prison can play an important role in combating ill-treatment prior to the arrival of inmates to the facility. In particular, all indications of ill-treatment must be reported to the relevant authorities.

At Bijeljina Prison, the delegation met separately several remand prisoners who alleged to have been ill-treated by the police[24] and who claimed that upon admission to the prison in October and November 2012, they had been kept isolated from other prisoners in a cell in the remand section (cell no. 6) for periods of up to a few days. The cell in question was only furnished with a mattress on the floor and was reportedly intended for placing agitated prisoners or inmates at risk of self-harming. All placements in this room were supposedly recorded in a specific register; however, for 2012, there were only five entries, the last of which was made in September. The delegation gained the impression that cell 6 was also being used to hide persons with injuries from other inmates. Further, during their time in this cell, the newly-admitted remand prisoners were not seen by a doctor or a nurse. Such a practice is unacceptable.

The CPT recommends that the necessary steps be taken to ensure that persons entering a prison establishment with visible injuries or complaining of ill-treatment by police officers are immediately seen by a member of the health-care service and that any injuries are properly recorded and, where appropriate, brought to the attention of the relevant prosecutor (see also paragraphs 48 and 49). Further, it wishes to receive information on the procedures regulating placement in cell no. 6 of the remand section and confirmation that all such placements are properly recorded.

3. Conditions of detention

39. Material conditions in the remand sections of *Banja Luka*, *Doboj* and *Istočno Sarajevo Prisons* were described in the report on the CPT's 2011 visit,[25] and remained essentially unchanged at the time of the 2012 visit. They can be qualified as adequate and it should be noted in particular that the legal requirement of 4 m² of living space per inmate was respected in each of the sections.

40. By contrast, material conditions at *Bijeljina Prison* were far from satisfactory. The vast majority of remand and sentenced prisoners were held in multi-occupancy cells measuring from 13 to 16 m². Living space per prisoner was inadequate; for example, one cell measuring some 13 m² was accommodating four inmates at the time of the visit and, in fact, contained three sets of bunk beds, and cells of 16 m² were accommodating up to seven prisoners. Moreover, many of the cells seen by the delegation were not adequately equipped, beds and small metal lockers sometimes being the only pieces of furniture. Further, none of the cells possessed a call bell.

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[24] The allegations that they bore visible injuries were lent credence by witness statements and some medical evidence.

[25] See document CPT/Inf (2012) 15, paragraphs 49-52.

With the exception of the cell accommodating the only female remand prisoner held in the establishment at the time of the visit, the cells contained no toilets or washbasins. Communal sanitary facilities were located in the corridors; however, several complaints were heard that inmates had on occasion to use buckets in the cells to satisfy the needs of nature.

The cells in the remand and sentenced sections of the prison had good access to natural light, artificial lighting was sufficient and the cells were adequately ventilated. However, some complaints about the heating in the cells were received.

The CPT recommends that the authorities of the Republika Srpska take the necessary steps to ensure that, at Bijeljina Prison:

- **the occupancy levels in the cells in the remand and sentenced sections are significantly reduced so that the legal requirement of 4 m² of living space per inmate is respected;**

- **all cells are suitably furnished, i.e. with a table and chairs, in addition to beds and lockable storage space for personal belongings, and equipped with call bells;**

- **all prisoners have ready access to proper toilet facilities, including at night;**

- **all cells are adequately heated, including at night.**

Further, **the Committee recommends that the official capacity of Bijeljina Prison be revised to take into account the legal requirement of 4m² of living space per inmate.**

41. As for the regime of remand prisoners, it was impoverished in all the establishments visited. No organised activities and work were offered to inmates, despite the fact that they could spend up to three years in a pre-trial detention facility.[26]

As regards more specifically *Banja Luka*, *Doboj* and *Istočno Sarajevo Prisons*, the findings during the December 2012 visit indicate that no improvements have been made since the April 2011 visit. Apart from the two hours of outdoor exercise a day offered in accordance with the law (and an additional hour a day of access to a gym at Istočno Sarajevo Prison), remand prisoners remained locked up in their cells for the rest of the day, with little to distract them. In some of the prisons visited, the daily outdoor exercise still took place only together with the other persons sharing the cell (at Banja Luka Prison, communication between inmates of different cells being considered a disciplinary offence). Moreover, at Banja Luka Prison, prisoners were still not permitted to keep a pen or pencil in their cell (for letters, notes on their cases, crossword puzzles, etc.); as noted in the report on the 2011 visit, no justifiable reason could be provided for this restriction.

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[26] See Articles 192 and 194 of the Criminal Procedure Code of the Republika Srpska.

At *Bijeljina Prison*, remand prisoners were only offered one hour of outdoor exercise a day and an additional 30 minutes every third day (only the single female remand prisoner held in the establishment at the time of the visit was offered the legal requirement of two hours of daily outdoor exercise). Otherwise, remand prisoners were locked in their rooms for up to 23 hours a day with nothing to do.

The outdoor exercise yards for remand prisoners in the establishments visited possessed no effective shelter against inclement weather or a means of rest.

The CPT calls upon the authorities of the Republika Srpska to radically improve activities for remand prisoners. The aim should be to ensure that all such prisoners are able to spend a reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport, recreation/association. Further, **the restriction applied to remand prisoners at Banja Luka Prison as regards access to means of writing should be removed.**

The Committee also recommends that steps be taken to ensure that:

- **remand prisoners in Bijeljina Prison are offered two hours of outdoor exercise every day, in compliance with the relevant national legislation;**

- **in all the prisons visited, the outdoor exercise areas are equipped with shelters against inclement weather and a means of rest.**

42. As stated in the report on the 2011 visit, the CPT recognises that prison management was apparently constrained in its efforts to provide more out-of-cell time for remand prisoners by the requirement of investigative judges to keep separate all inmates associated with the same case, even after the persons concerned had spent several months in remand custody. The CPT must stress that in addition to the regular reviews of the necessity of continuing remand custody, the competent judicial authorities should also examine the necessity of maintaining any other restrictions that might have been put in place.

The CPT reiterates its recommendation that appropriate steps be taken to ensure that restrictions on remand prisoners are only applied when this is strictly necessary for the maintenance of good order or the administration of justice, and for the shortest period of time necessary for this purpose.

43. Sentenced prisoners in the closed section at *Bijeljina Prison* spent every morning between 8 a.m. and 2 p.m. in one of two common rooms (smoking or non-smoking), each equipped with tables, chairs, benches, a television and some board games.[27] The rooms were far too small for the numbers of prisoners and the delegation observed for itself the stifling and cramped conditions. The outdoor exercise area, which was accessible daily between 8 and 11.30 a.m. and in the afternoon between 2.30 and 4.30 p.m.,[28] was equipped with a shelter, a basketball hoop, a table-tennis and some exercise weights; however, this equipment was in a poor state of repair. The sentenced prisoners were offered no education or vocational training and only 13 prisoners[29] had work of some kind (e.g. in the prison's kitchen, laundry, boiler house or canteen).

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27 During that time, inmates were not allowed to enter their cells unless authorised by the administration, for example, for health reasons.

28 Until 6.30 p.m. during summer months.

29 Out of the 52 inmates held in the closed section for sentenced prisoners.

A regime which provides for varied activities is essential for the well-being of all prisoners. As regards more specifically sentenced prisoners, the existence of such a regime is the only way of giving true meaning to a term of imprisonment. Reference should be made in this context to the Republika Srpska 2010 Law on Execution of Criminal Sanctions, which clearly states that sentenced prisoners should be provided with educational, cultural, sport, entertainment and other activities (notably, work).

The CPT recommends that the Republika Srpska authorities take the necessary measures to ensure that all sentenced prisoners at Bijeljina Prison are offered activities of a purposeful and diverse nature, as provided for by law.

4. Health care

44. At the level of health-care policy development and inspection in the Republika Srpska, no uniform set of standards has been adopted concerning, inter alia, training of health-care staff, personal and environmental hygiene, prevention of communicable diseases, the role of doctors with respect to disciplinary procedures and the development of a prison drugs policy. Further, there appeared to be little coordination between the Ministries of Health and Justice in relation to prison health-care matters. Reference was made by certain doctors met to a framework plan of activities for improving health care in establishments for enforcement of criminal sanctions in Bosnia and Herzegovina; however, no details could be provided.

The CPT recommends that the Republika Srpska Ministries of Health and Justice jointly take the necessary steps to improve prison health-care services, based upon the guidelines laid down in the 2004 assessment report by the Council of Europe and the recommendations contained in the CPT's reports on previous visits to the country. Further, it would be interested to receive information on the framework plan and its timetable for implementation.

45. Health-care staffing levels at *Banja Luka Prison* still consisted of one full-time doctor but only two nurses; for a prison establishment with some 350 inmates, such a nursing complement is insufficient. A similar staffing complement was envisaged at *Bijeljina Prison*, which would be adequate for an establishment with an official capacity of 127; however, at the time of the visit, one of the two nursing posts had been vacant since 2011.

At *Doboj Prison*, an external general practitioner visited the establishment three times a week and there were two nurses who worked alternate 12-hour shifts from 7 a.m. to 7 p.m. every other day, including weekends. Given the occupancy levels within the prison at the time of the visit (101 prisoners), the staffing levels can be considered adequate; that said, in view of the capacity of the establishment,[30] it would be desirable for the vacant post of a general practitioner to be filled. At *Istočno Sarajevo Prison*, an external general practitioner visited the establishment twice a week and two nurses worked daily between 7 a.m. and 3 p.m. For an inmate population of some 150 persons, including 20 female prisoners, the presence of the general practitioner should be increased.

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30 The official capacity was 190 (122 places for sentenced prisoners and 68 for those held on remand).

In the light of the above, **the CPT recommends that the relevant authorities take the necessary steps to ensure that:**

- **at least two additional qualified nurses are recruited at Banja Luka Prison;**

- **the vacant nursing post at Bijeljina Prison is filled;**

- **the presence of a doctor at Istočno Sarajevo Prison is increased to at least the equivalent of a half-time post.**

It would also be desirable for the vacant post of a general practitioner at Doboj Prison to be filled.

Further, **in each prison, there should always be someone present on the premises who is competent to provide first aid, preferably a person with a recognised nursing qualification;** at present, there are no health-care staff present in the prisons after 7 p.m., if not earlier.

46. Requests to see a doctor could be made orally or in writing to nurses or prison staff. In this connection, **care should be taken to ensure that, if they so wish, prisoners are able to approach the health-care service on a confidential basis, for example by means of a message in a sealed envelope.**

47. Conditions in the health-care facility at Banja Luka Prison continued to be of a satisfactory standard. However, at Bijeljina, Doboj and Istočno Sarajevo Prisons, the facilities were clearly inadequate; in each of these establishments, the health-care service was confined to one small room shared by the doctor and nurses, and used for carrying out medical examinations and treatment, filing of medical records, storage of medication and sanitary materials. Further, at Istočno Sarajevo Prison, the medical records need to be properly filed; at the time of the visit, certain records could not be located.

The CPT recommends that the necessary steps be taken at Bijeljina, Doboj and Istočno Sarajevo Prisons to ensure that the health care facility in each of these establishments is of a sufficient size and adequately equipped, and that it provides proper conditions for carrying out medical consultations and a suitable working environment for the health-care professionals.

48. The importance of medical screening of newly arrived prisoners has already been emphasised by the CPT in the past. However, with the exception of Banja Luka Prison, where medical examinations of newly arrived prisoners were generally carried out within 24 to 48 hours upon admission, many inmates in the establishments visited were only medically examined several days after their admission.[31]

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[31] By way of example, at Bijeljina, more then half of the medical examinations were carried out more then 72 hours after admission and at Doboj Prison, the delegation noted that one prisoner had still not been examined 11 days after his arrival.

It goes without saying that newly-admitted prisoners should be properly interviewed and physically examined by a medical doctor (or a fully-qualified nurse reporting to a doctor) as soon as possible after their admission; save for exceptional circumstances, the interview/examination should be carried out within 24 hours of admission, especially insofar as remand establishments are concerned. **The CPT reiterates its recommendation that the Republika Srpska authorities ensure that such an approach is carried out in every prison establishment.**

49. As regards the recording and reporting of injuries, the CPT must stress, notably in the light of the findings made during the 2012 visit in respect of police ill-treatment (see paragraphs 14 and 17), that prison health-care services can make a significant contribution to the prevention of ill-treatment of persons deprived of their liberty, through the systematic recording of injuries and, when appropriate, the provision of information to the relevant authorities. However, the CPT's delegation found that the description of objective findings, including traumatic injuries observed upon arrival as well as those sustained in prison, was incomplete and superficial. The statements of the inmates concerned were usually absent, as were *a fortiori* the doctor's conclusions as to the consistency of any such statements with injuries recorded.

The record drawn up by a doctor after a thorough medical examination of a prisoner, whether vis-à-vis new arrivals or following a violent episode in prison, should contain:

(i) an account of statements made by the person concerned which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment),

(ii) a full account of objective medical findings based on a thorough examination, and

(iii) the doctor's observations in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings.

Whenever injuries are recorded by a doctor in a prison which are consistent with allegations of ill-treatment made by the prisoner (or which, even in the absence of the allegations, are indicative of ill-treatment), the record should be immediately and systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned. Moreover, the results of every examination, including the above-mentioned statements and the doctor's opinions/observations, should be made available to the prisoner and, upon request, to his/her lawyer.

The CPT calls upon the Republika Srpska authorities to take the necessary steps (including through the issuance of instructions and the provision of training to relevant staff) to ensure that the practice in all prisons is brought into line with the above requirements.

50. The delegation found once again[32] that prison officers were generally present during medical examinations of prisoners and that medical confidentiality was not respected. Therefore, **the CPT must reiterate its recommendation that all medical examinations of prisoners be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers.**

51. There has been no improvement in the screening or provision of information on transmissible diseases in the prisons visited since April 2011. Screening for transmissible diseases (HIV, hepatitis, tuberculosis), if done at all, was not carried out on a regular basis in any of the establishments visited. Moreover, neither prisoners nor staff were provided with information on transmissible diseases.

The CPT recommends that the Republika Srpska authorities ensure that prison health-care services carry out appropriate screening for transmissible diseases upon a person's admission to prison. Further, **the Committee reiterates its recommendations that prison health-care services institute a health information programme on the subject of transmissible diseases and provide prison staff with specific training on this issue.**

5. Contact with the outside world

52. As regards visits for remand prisoners held under the jurisdiction of the courts of the Republika Srpska at *Banja Luka* and *Doboj Prisons*, the monthly entitlement had been doubled since the 2011 visit to two hours (one visit a week for 30 minutes). However, the visits still took place under closed conditions, i.e. in a booth and with prisoners and visitors being physically separated. Similar arrangements pertained in the pre-trial section of *Bijeljina Prison*, and many prisoners complained that they were often permitted no more than 10 to 15 minutes of visiting time a week. In contrast, remand prisoners held under the jurisdiction of State-level courts were entitled to two 30-minute visits a week, albeit under closed conditions.

Visiting arrangements for remand prisoners were better at *Istočno Sarajevo Prison*, where all remand prisoners could receive open visits for one hour a week and an unsupervised partner visit once a month for five hours.

The visiting entitlement for sentenced prisoners at *Bijeljina Prison* was satisfactory; this category of inmate was allowed, as a minimum,[33] one open visit a week for one hour and an unsupervised partner visit once a month for four hours.

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32 See also CPT/Inf (2012) 15, paragraph 66.

33 Further visiting time could be gained as a privilege.

53. The CPT accepts that in certain cases it will be justified, for security-related reasons or to protect the legitimate interests of an investigation, to have visits take place in booths and/or monitored. However, "open" visiting arrangements should be the rule and "closed" ones the exception, for all legal categories of prisoners. Any decision to impose closed visits must always be well-founded and reasoned, and based on an individual assessment of the potential risk posed by the prisoner.

Therefore, **the CPT reiterates its recommendation that the relevant authorities review the arrangements for visits, with a view to:**

- **increasing the amount of visiting time offered to all remand prisoners to at least one hour every week;**

- **ensuring that all remand prisoners are, as a rule, allowed to receive visits under reasonably open conditions.**

54. The delegation received a number of complaints in the remand section of *Bijeljina Prison* that inmates were routinely strip searched after each visit (including after those with lawyers), although they did not have any physical contact with the visitors whatsoever, and upon return from court. Further, prisoners stated that they often had to remove all their clothes at once and stand naked in the search cabin.

In the CPT's view, resort to strip searches should be based on an individual risk assessment and subject to rigorous criteria as well as supervision, and they should be carried out in a manner respectful of human dignity. In this connection, the Committee can see no justification for strip searching prisoners after a closed visit. Further, those inmates who are strip searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and to get dressed before removing further clothing.

The CPT recommends that the Republika Srpska authorities take the necessary steps at Bijeljina Prison to put an end to the routine practice of strip-searching and to introduce a policy of risk-assessed strip searches only, in light of the above remarks.

55. Access to the telephone did not seem to pose a major problem in any of the establishments visited.

That said, in the sentenced section of Bijeljina Prison, several complaints were heard about poor quality of phone-line connection, very high prices and the lack of privacy for prisoners making phone calls.[34] **The CPT would like to receive the observations of the authorities of the Republika Srpska on those complaints.**

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[34] Pay phones were located on the wall in the corridor of the sentenced section of the prison and had no means of ensuring privacy, such as a plastic screen.

APPENDIX

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

Co-operation

comments

- the CPT urges the authorities of Bosnia and Herzegovina to significantly intensify their efforts to improve the situation in the light of the Committee's recommendations (paragraph 8).

Law enforcement agencies

Preliminary remarks

recommendations

- the Republika Srpska authorities to take the necessary steps to ensure that the maximum possible period of deprivation of liberty on the authority of the police, i.e. 24 hours as from the moment of apprehension, is strictly observed in practice (paragraph 11).

Torture and other forms of ill-treatment

recommendations

- the Minister of Interior of the Republika Srpska to deliver a strong message that all forms of ill-treatment of detained persons, whether at the time of apprehension or transportation or during subsequent questioning, are illegal and unprofessional and will be the subject of severe sanctions. This message should be repeated at appropriate intervals by the Director of Police (paragraph 15);

- an independent professional assessment to be carried out of the working methods used by crime inspectors at Banja Luka Central Police Station when detaining and interviewing suspects (paragraph 16);

- the recommendation made in paragraph 15 to be read as applying, *mutatis mutandis*, to the Brčko District and other relevant authorities of Bosnia and Herzegovina (paragraph 17);

- the authorities to pursue a multifaceted approach vis-à-vis the police service, comprising: a competitive recruitment process based upon strict selection criteria; an educational training course for all new recruits; and the provision of specific competency courses, on a regular basis, for serving police officers, both to update their skills and knowledge and to provide them with new competencies (paragraph 18);

- whistle-blower protection legislation to be adopted (paragraph 19).

requests for information

- the outcome of the independent professional assessment of the working methods used by crime inspectors at Banja Luka Central Police Station when detaining and interviewing suspects (paragraph 16);

- the outcome of the three cases highlighted in paragraph 16 which were referred to by the Bureau for Appeals and Complaints of Citizens (paragraph 16).

Investigations into allegations of ill-treatment

recommendations

- when a detained person complains of ill-treatment, the police officers charged with escorting that person for a medical examination should not be the same ones against whom the allegations of ill-treatment are made. In such cases, the task of escorting detained persons to the medical institution concerned should be entrusted to judicial police officers (paragraph 20);

- the confidentiality of medical examinations to be respected and the results of the examination made available to the detained person and upon request to his or her lawyer (paragraph 20);

- steps to be taken to ensure that the forensic institute of the Republika Srpska is able to provide all the support required by the criminal justice system, including in relation to the investigation of cases of possible police ill-treatment (paragraph 20);

- in the short term, steps to be taken to provide training to doctors in emergency hospital clinics on how to describe injuries in a competent manner (paragraph 20);

- the Chief Prosecutor and the President of the Supreme Court of the Republika Srpska to recall firmly that prosecutors and judges should act in accordance with the principles referred to in paragraph 21 (paragraph 21);

- for the time being, prosecutors who require operational support for the investigation of cases of possible police ill-treatment to seek that support from the Internal Control Unit of the Ministry of the Interior (paragraph 22).

comments

- it would be far preferable for prosecutors to have at their disposal their own operational investigators (paragraph 22).

requests for information

- on the outcome of the case of a person arrested on 25 March 2011, mentioned in the report on the 2011 visit, and concerning Istočno Sarajevo Police Station (paragraph 22).

Safeguards against ill-treatment

recommendations

- the authorities of Bosnia and Herzegovina to ensure that all persons deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation, as provided for by law. This right should apply as from the very outset of the deprivation of liberty (that is, from the moment when the person concerned is obliged to remain with the police). The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and made subject to appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the specific reasons therefor, and to require the approval of a prosecutor or judge) and strictly limited in time (paragraph 24);

- whenever the notification of custody is carried out by police officers, the detained person to be provided with feedback on whether it has been possible to inform a close relative or other person of the fact of his or her detention (paragraph 24);

- the authorities of Bosnia and Herzegovina to ensure that the right of access to a lawyer, as defined in paragraph 25, is both explicitly granted in law and rendered effective in practice for everyone deprived of their liberty by the law enforcement authorities, from the very outset of their deprivation of liberty (paragraph 25);

- all law enforcement officials to be reminded that detained persons may exercise their basic rights at any stage of their custody (even if they have initially chosen not to avail themselves of those rights at the time of their arrest and detention) (paragraph 25);

- all ex officio lawyers to be reminded, through the appropriate channels, of the importance of their role in preventing and, if necessary, reporting ill-treatment by the police (paragraph 26);

- the authorities to adopt specific legal provisions on access to a doctor during police custody, stipulating inter alia that:

  - a doctor must be called or a person taken to a medical facility without delay if a detained person requests a medical examination;

  - a person taken into police custody has the right to be examined, if he or she so wishes, by a doctor of his or her own choice, in addition to any medical examination carried out by a doctor called by the police authorities;

  - all medical examinations of persons in police custody, whether carried out on police premises or in a health care facility, shall take place out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police officers;

- the results of every examination, as well as any relevant statements by the person in custody and the doctor's observations, are to be recorded in writing by the doctor and made available to the detained person and upon request to his or her lawyer.

(paragraph 27);

- the authorities of Bosnia and Herzegovina to ensure that all persons detained by the police, for whatever reason, are fully informed in a language they understand of their fundamental rights as from the outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of a written form setting out the rights in a straightforward manner (paragraph 28);

- the information on rights to be properly explained to the detained persons to ensure that they are in a position to understand their rights and to exercise them effectively (paragraph 28);

- the authorities to take all the necessary steps to ensure that the custody registers are scrupulously filled out and that a single and comprehensive record is maintained in each law enforcement establishment of every person detained at any given time on its premises (paragraph 29);

- steps be taken to ensure that whenever a person is deprived of his or her liberty by a law enforcement agency, for whatever reason (even for a short period of time), this fact is formally recorded <u>without delay</u> (paragraph 29);

- the detention of persons in holding cells in prosecutors' offices or courts to be recorded in a custody register (paragraph 31).

<u>requests for information</u>

- detailed information on the functioning of the new electronic custody register system (paragraph 30).

Material conditions

<u>recommendations</u>

- the deficiencies observed in the police stations visited and referred to in paragraph 33 to be remedied (paragraph 33);

- the authorities to take the necessary steps to ensure that all police holding facilities are clean and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, such facilities should enjoy natural light. When the need arises, police holding facilities should be adequately heated. Further, all cells used for overnight detention should be equipped with a means of rest suitable for such stays (e.g. a bed or a sleeping platform) and blankets. In addition, arrangements should be made to ensure that all persons detained in police stations are offered food and water at appropriate times (paragraph 33);

- no cell measuring less than 5 m^2 to be used for overnight accommodation (paragraph 33);

- the necessary steps to be taken to ensure that offices in police stations are not used as ad hoc detention facilities and that detained persons are not handcuffed to radiators or items of furniture. Detained persons should be accommodated in rooms/cells designed specifically for that purpose and offering appropriate security conditions (paragraph 34).

requests for information

- detailed information on the holding area(s) used for persons detained at Banja Luka Central Police Station (paragraph 34).

Prison establishments

Preliminary remarks

requests for information

- on the new prison in Golo Brdo, near Bijeljina, including the timeline for its completion (paragraph 36).

Ill-treatment

recommendations

- the Republika Srpska authorities to deliver a clear message to custodial staff at Bijeljina Prison that the ill-treatment of prisoners, including verbal abuse, is not acceptable. Further, all necessary steps should be taken to ensure that any indications of ill-treatment are properly investigated and that any such acts found to have occurred are the subject of a suitable penalty (paragraph 37);

- the necessary steps to be taken to ensure that persons entering a prison establishment with visible injuries or complaining of ill-treatment by police officers are immediately seen by a member of the health-care service and that any injuries are properly recorded and, where appropriate, brought to the attention of the relevant prosecutor (paragraph 38);

requests for information

- the procedures regulating placement in cell no. 6 of the remand section at Bijeljina Prison and confirmation that all such placements are properly recorded (paragraph 38).

Conditions of detention

recommendations

- the authorities of the Republika Srpska to take the necessary steps to ensure that, at Bijeljina Prison:
  - the occupancy levels in the cells in the remand and sentenced sections are significantly reduced so that the legal requirement of 4m² of living space per inmate is respected;

- all cells are suitably furnished, i.e. with a table and chairs, in addition to beds and lockable storage space for personal belongings, and equipped with call bells;
- all prisoners have ready access to proper toilet facilities, including at night;
- all cells are adequately heated, including at night.

(paragraph 40);

- the official capacity of Bijeljina Prison to be revised to take into account the legal requirement of 4m² of living space per inmate (paragraph 40);

- the authorities of the Republika Srpska to radically improve activities for remand prisoners. The aim should be to ensure that all such prisoners are able to spend a reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport, recreation/association (paragraph 41);

- the restriction applied to remand prisoners at Banja Luka Prison as regards access to means of writing to be removed (paragraph 41);

- steps be taken to ensure that:
  - remand prisoners in Bijeljina Prison are offered two hours of outdoor exercise every day, in compliance with the relevant national legislation;
  - in all the prisons visited, the outdoor exercise areas are equipped with shelters against inclement weather and a means of rest.

  (paragraph 41);

- appropriate steps to be taken to ensure that restrictions on remand prisoners are only applied when this is strictly necessary for the maintenance of good order or the administration of justice, and for the shortest period of time necessary for this purpose (paragraph 42);

- the Republika Srpska authorities to take the necessary measures to ensure that all sentenced prisoners at Bijeljina Prison are offered activities of a purposeful and diverse nature, as provided for by law (paragraph 43).

Health care

<u>recommendations</u>

- the Republika Srpska Ministries of Health and Justice jointly to take the necessary steps to improve prison health-care services, based upon the guidelines laid down in the 2004 assessment report by the Council of Europe and the recommendations contained in the CPT's reports on previous visits to the country (paragraph 44);

- the relevant authorities take the necessary steps to ensure that:
  - at least two additional qualified nurses are recruited at Banja Luka Prison;
  - the vacant nursing post at Bijeljina Prison is filled;
  - the presence of a doctor at Istočno Sarajevo Prison is increased to at least the equivalent of a half-time post.

- in each prison, someone competent to provide first aid to be always present on the premises, preferably a person with a recognised nursing qualification (paragraph 45);

- the necessary steps to be taken at Bijeljina, Doboj and Istočno Sarajevo Prisons to ensure that the health care facility in each of these establishments is of a sufficient size and adequately equipped, and that it provides proper conditions for carrying out medical consultations and a suitable working environment for the health-care professionals (paragraph 47);

- the Republika Srpska authorities to ensure that, in every prison establishment, newly-admitted prisoners are properly interviewed and physically examined by a medical doctor (or a fully-qualified nurse reporting to a doctor) as soon as possible after their admission; save for exceptional circumstances, the interview/examination should be carried out within 24 hours of admission, especially insofar as remand establishments are concerned (paragraph 48);

- the Republika Srpska authorities to take the necessary steps (including through the issuance of instructions and the provision of training to relevant staff) to ensure that the practice in all prisons as regards the recording and reporting of injuries is brought into line with the requirements set out in paragraph 49 (paragraph 49);

- all medical examinations of prisoners to be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers (paragraph 50);

- the Republika Srpska authorities to ensure that prison health-care services carry out appropriate screening for transmissible diseases upon a person's admission to prison (paragraph 51);

- prison health-care services to institute a health information programme on the subject of transmissible diseases and provide prison staff with specific training on this issue (paragraph 51).

<u>comments</u>

- it would also be desirable for the vacant post of a general practitioner at Doboj Prison to be filled (paragraph 45);

- care should be taken to ensure that, if they so wish, prisoners are able to approach the health-care service on a confidential basis, for example by means of a message in a sealed envelope (paragraph 46).

<u>requests for information</u>

- on the framework plan of activities for improving health care in prisons and its timetable for implementation (paragraph 44).

Contact with the outside world

recommendations

- the relevant authorities to review the arrangements for visits, with a view to:
  - increasing the amount of visiting time offered to all remand prisoners to at least one hour every week;
  - ensuring that all remand prisoners are, as a rule, allowed to receive visits under reasonably open conditions.

  (paragraph 53);

- the Republika Srpska authorities to take the necessary steps at Bijeljina Prison to put an end to the routine practice of strip-searching and to introduce a policy of risk-assessed strip searches only, in light of the remarks set out in paragraph 54 (paragraph 54).

requests for information

- observations on the complaints heard about poor quality of phone-line connection, very high prices and the lack of privacy for prisoners making phone calls in Bijeljina Prison (paragraph 55).