

Response

of the Government of Montenegro to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Montenegro

from 15 to 22 September 2008

The Government of Montenegro has requested the publication of this response. The report of the CPT on its September 2008 visit to Montenegro is set out in document CPT/Inf (2010) 3.

Strasbourg, 9 March 2010

Note:

In accordance with Article 11, paragraph 3, of the Convention, certain names have been deleted.

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Ministry of Internal Affairs and Public Administration

In relation to the Report of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment and Punishment about the Situation in Montenegro, forwarded with the request to submit requested information/comments, we are enclosing the replies from the Ministry of Interior Affairs and Public Administration and the Police Directorate.

Assistant minister of interior affairs and public administration, Nada Vukanić and assistant director of the Police Directorate, Slavko Stojanović presented the portfolio of the Ministry of Interior Affairs at the meeting with the CPT representatives that took place in the premises of the Police Directorate on 22. September 2008. In compliance with the scope of competence of this Ministry, the Committee representatives heard the presentation in which stated that the Ministry performs administrative supervision over the Police Directorate, proposes and passes legislation and by-laws pertaining to the organization and the work of the police, which concretely means that the Ministry of Interior Affairs and Public Administration does not have authority to pass decisions on "police detention" and the Ministry has no direct authority to implement standards pertaining to hygiene and technical and other conditions that the custodial premises should meet but, instead, these activities fall within the sole responsibility of the Police Directorate.

Having in mind that those facts have not changed in the meantime, the comments regarding the part of the CPT Report about the situation in Montenegro, page 1, line 7 of the report i.e. page 10, line 9 of the Committee's report in English refer to the competence of this Ministry.

Namely, the Report stated that "the legislation related to deprivation of liberty by the police in Montenegro has undergone some developments". However, despite the fact that the new Law on Police (Official Gazette of the RoM, No. 28/05) and the Police Ethics Code (Official Gazette of the RoM, No. 1/06) were adopted, the provisions regarding detention have not been changed substantially as compared to the situation that the CPT delegation found in 2004.

Comment

The Report's assertion that "the rules governing the detention of persons by the police continued to be basically the same as those described in the report on the 2004 visit.", did not precisely indicate as to whether Montenegrin legislation should be revised in this regard. Thus, we understood it as a statement that does not bear recommendation for changing that situation. However, we think it is necessary to state some facts that led us to believe the opposite should be true.

Montenegrin legislation has mostly been harmonized with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment because:

- the Constitution of Montenegro that was published in the Official Gazette of Montenegro No. 1/2007 in its article 9 stipulates that: "The ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation". Given that Montenegro is party to this Convention (succeeded in 03.06.2006), the Convention is an integral part of internal legal order of Montenegro.
- The authority for deprivation of liberty is defined in the Law on Police and the Criminal Procedure Code (Official Gazette of the RoM, No. 71/03, 77/04 and 47/06) and in a way that provides for the compliance of these legislative solutions with international standards, particularly with Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms – liberty and security of person to the effect of protecting persons deprived of liberty. Namely, every police officer is obliged to inform a person deprived of liberty about the reasons for his/her detention in his/her language and alphabet, that s/he is not obliged to give statement, that s/he is entitled to have an attorney, and to have his/her closest ones notified about his/her deprivation of liberty.
- The procedure thereof entails that the decision on deprivation of liberty has to be passed promptly, including the clause on right to complaint and the obligation of investigating judge to act upon the complaint thereof within four hours. A person can be deprived of liberty only after court passes a decision on detention, issues order for bringing that person before the court, issues court arrest warrant or once there is reasonable suspicion that that person has committed criminal offence for which law prescribes obligatory detention. Exceptionally, police is authorised to detain these persons in pre-trial procedure for up to 48 hours after apprehension, after they respond to the request for collecting information or after they show up after being summoned in capacity of suspects.
- Possibility of detention for the purpose of establishing identity, disturbing public peace and order if public peace and order cannot be kept in any other way is prescribed as an exception rather than rule. This type of detention can last for up to six hours and, exceptionally on the grounds prescribed by law, up to 12 hours.
- It provides legal presumptions for human treatment of persons deprived of liberty who are "held by police" since the conditions that the police detention premises have to meet are defined by the Regulation on Mandatory Conditions in Detention Facilities (Official Gazette of the RoM, No. 57/06).

In addition, competent authorities and institutions are continuously working on legislative reform in order to provide protection of persons deprived of liberty. Regarding that, a new Criminal Procedure Code (Official Gazette of Montenegro, No. 57/09) was adopted and it will enter into force on 26.08.2010, which stipulates that the institute of "police detention" which was first introduced by the Criminal Procedure Code in 2003 to replace classical police custody vests the authority for issuing a detention decision on prosecutor instead on police. If a prosecutor finds that there are reasons for detention, the detention can last for up to 48 hours from the moment of deprivation of liberty.

Pursuant to Article 264 of the Criminal Procedure Code, authorised police officers can deprive someone of liberty provided that any of the reasons for detention is met but they are obliged to inform a prosecutor thereupon without delay, to make official note and to bring that person before a prosecutor promptly. In case that a person deprived of liberty is not brought before a prosecutor within 12 hours after deprivation of liberty, police has to release that person. Investigating judge is obliged to decide within 24 hours after a person detained by decision of prosecutor is brought before him/her to decide whether to order detention or to turn down the request for detention.

Concretely, this means that police will not be in charge, not even in exceptional cases, of interrogating a suspect in the procedure proper, whereby the need to keep a suspect in the police detention for any longer time ceases to exist as the institute of deprivation of liberty as prescribed in the quoted article provides that police does only those activities that it is authorised for.

Having these facts in mind, the Police Directorate is directly authorised to give valid comments on that part of the CPT Report regarding realization of measures and activities from the Action Plan on Implementing the CPT's Recommendations adopted by the Government of Montenegro, which was submitted to this Committee by the Ministry of Justice.

Head of the Department for Strategic, Development
and Normative Activities

Miomirka Rovcanin

<i>Police Directorate</i> <i>Department for International Police Cooperation and EU Integrations</i>

Enclosed herewith is the information drawn up by the Department for Planning, Development and Analytics of the Police Directorate that is related to the Report of the European Commission for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) about the Situation in Montenegro.

Having analyzed the Report and information on realization of measures and activities from the Action Plan for Implementation of the CPT's Recommendations, the Police Directorate concluded that:

Montenegro has made a significant progress in field of human rights and liberties after it renewed its independence by acceding to crucial international conventions of the UN and Council of Europe and by creating normative and institutional framework for the promotion and protection of fundamental values that modern democracies rest upon and to the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ratified on 3. 06. 2006). The framework of the internal legal order was set by Article 9 of the Constitution of Montenegro by means of principle that ratified and published international treaties and generally accepted rules of international law make integral part of internal legal order and they shall be directly implemented if they regulate matters different than internal legislation.

During 2008 and 2009, the Police Directorate stepped up its activities and took comprehensive steps and measures within its competence to implement recommendations from the Report with CPT standards (physical conditions in police custody, detention regime and legal protection in custody).

The Police Directorate of Montenegro invested significant efforts with a view to eliminating shortcomings in procedures for detained persons, particularly in relation to improving hygiene and technical conditions in police custody. In compliance with the Rulebook on Conditions that the Custodial Premises Should Meet (Official Gazette of the RoM, No. 57/06) concrete activities on reconstruction were undertaken in compliance with the conclusions of the Government of Montenegro adopted on 15. January 2009 and relevant to the obligations of Montenegro ensuing from the status of a party/signatory of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Police Directorate has intensified its activities and undertaken more comprehensive steps on refurbishing all custodial premises with the aim of meeting CPT standards and in compliance with the recommendation of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment and Punishment that ensued from its first periodic visit to Montenegro from 15 to 22 September, 2008.

The Law on Police (Articles 27, 28 and 29) and the Law on Criminal Proceedings defines the authority to deprive of liberties in such a way to provide that these legislative solutions are brought in compliance with international standards, particularly Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Each apprehended person is given so called "information sheet on the rights of a detained person" (notification of custody) and each detained person thereof has to confirm the receipt of it by his/her signature. The information sheet thereof is written in Montenegrin and in foreign language and its purpose is to inform a detained person of his/her rights once again. A police officer has to inform a detained person in his/her language or alphabet or in a language s/he understands about

the fact that s/he is deprived of liberty and explain to them the reasons for deprivation of liberty, that s/he does not have to give any statement and that s/he is entitled to have a defense attorney that s/he chooses and to inform the closest ones about the fact that s/he has been apprehended.

With a view to ensuring legality of procedures concerning detained person, a separate forms 1 and 2 were drawn up and disseminated – a Notification of custody. The form registers information about all aspects of detention i.e. starting from their admission conducted by an officer on duty, placement in any of the premises of police, taking away of personal belongings, provision of meals, information about possible medical intervention, information about complaint against the decision of detention, records of possible injuries that have been detected during a takeover/admission and an entry that has to do with further referral of an apprehended person to competent bodies for administering the procedure further (State Administration for the Execution of Penal Sanctions, competent courts, other bodies concerned with interior affairs). This form is the basis for files for each detained person. The case file has to serve as the basis for a file for each detained person. The file contains a deprivation decision pronounced about grounds for his/her detention in compliance with the law On Criminal Procedure or the Law on Police, alcohol-test (provided that s/he was tested), medical doctor's report if a person was examined by a doctor, a copy of detained person's application contesting the decision on detention and a decision on termination of detention.

A person can be deprived of liberty only after the court passes decision on detention and orders that a person be brought before court or after an arrest warrant had been issued or if there is reasonable suspicion that a person committed a criminal offence and the law prescribes that detention is mandatory. By exception, police is authorized to keep a person for maximum 48 hours after apprehension in pre trial procedure or in case that a person does not show up after being summoned for collection of information or for being a suspect. Possibility to deprive of liberty, as an exception though, is prescribed in the case of establishing identity of persons who disturb public peace and order and if peace and order cannot be restored otherwise.

Since 2006 the activities on refurbishing and installation of CCT system of monitoring started in all police establishments, local and regional, in compliance with the Rulebook on conditions that the custodial premises should meet. The Rulebook prescribed that detention settings have to meet certain conditions regarding hygiene and technical capacities, particularly in terms of cubic volume of air, minimum surface, light and airing. All premises were painted and the railings and fittings painted in anti-corrosive paint in neutral colours and the lighting installations have been fixed.

Having in mind how important it is to provide for lawful treatment of the detainees, and helping them keep their psycho-physical integrity and enabling them to exercise their rights during the police custody, the Police Directorate invested considerable efforts to eliminate shortcomings, particularly those regarding conditions in police custody facilities.

In relation to that, we can argue that in Police establishments in Podgorica, Nikšić, Budva, Bar, Herceg Novi, Bijelo Polje, Berane and Pljevlja as well as in police stations in Ulcinj, Kotor, Tivat, Cetinje, Danilovgrad, Kolašin, Mojkovac, Andrijevića, Plav, Rožaje, Žabljak, Plužine and Šavnik, we have provided the detention facilities with the following, as much as it was possible in given setting:

1. Access to drinking water,
2. Day light by putting so called "anti-vandal" glass –window,
3. Ventilating system and flow of warm/cold air (except in Šavnik and Žabljak),
4. Wooden platforms/beds,
5. Sanitary fittings either in detention premises or in annexed rooms.

During last year, media campaign promoted the help phone for complaints and objections of citizens related to police treatment with particular emphasis given to the fact that each citizen has right *inter alia* to lodge complaint if s/he considers that s/he was unlawfully deprived of liberty (Help-phone numbers are: 19820 and 19821). Having in mind that every form of torture, ill-treatment or degradation or subjecting person to medical or scientific experiment is prohibited and punishable, a convicted person who was victim in any of these cases is entitled to redress. A convicted person is entitled to all granted human rights and freedom and the issue of their limitation as stipulated by the Law on Execution of Penal Sanctions, which also regulates the system of execution of penal sanctions, security measures and correctional measures.

The CCT video surveillance was purchased as a technical support to providing security of detained persons, installed and put into operation in police establishments in: Podgorica, Bar, Herceg Novi, Nikšić, Budva, Bijelo Polje, Pljevlja, Berane and in police stations in Tivat, Kotor, Ulcinj, Danilovgrad, Kolašin, Cetinje, Mojkovac, Plav, Rožaje and Žabljak. By using a video surveillance system we enabled monitoring of detainees and possibility to make an electronic recording, saving it, searching recorded materials and viewing video recordings.

As a part of the CCT video surveillance in all organizational units of the Police Directorate we enabled direct relay (internal phone network) communication between the detention rooms i.e. detainees and the duty officers.

Besides this, during 2009 the Police Directorate continued its activities on addressing the following:

- purchase of mattresses in all detention rooms;
- regular control visits by the Ombudsman of Montenegro or his deputies every first Wednesday in a month or surprise visits to any detention facility or facility for treatment of detainees in two organizational units of the Police Directorate they choose to visit;
- making more room for detention in police establishment in Bar in such way that the existing premises were converted into one big room. The refurbishment has been completed in terms of construction works, including sanitary fittings and the air ventilation for conditioned air and ventilation as well as video surveillance and interphone communication;
- the request of the Committee for Prevention of Torture that (besides English and Albanian) we provide information sheets for detained persons in French, German and Russian and the translation into Romani language is under way;
- that rooms have floor fixed tables apart from wooden platforms for detainees;
- tender procedures for moving all detention premises of police station in Rožaje from basement to the ground floor, adjacent to the duty office. The premises thereof are made in the basement only for temporary use and due to the level of sanitary facilities it is impossible to provide drinking water and sanitary facilities for detainees.

Planned activities related to refurbishment of custody premises in the new police facility in Podgorica have not been carried out having in mind that the new facility has not been put into operation. . However, the contractor got concrete instructions and suggestions from Police Directorate in compliance with standards regulating this area.

In cooperation with the Accommodation and Canteen Unit of the Police Directorate, this unit provides meals for detainees in regular intervals. In organizational units which do not have such a unit, the Directorate ensured that police stations purchase food locally and send invoices to the Police Directorate.

Police establishments and stations have been informed by means of instructions and telegraph messages that the Commission for Prevention of Torture (CPT) might pay a visit and about their rights during control visits and about visits of the Ombudsman and the members of the Council for Civil Control of Police. Each duty office has a copy of the international Convention for Prevention of Torture and Other Inhuman and Degrading Treatment as well as a list of questions and answers that the Committee members might want to get during the visit to certain organizational unit.

Protection measures are strictly applied in compliance with the Police Law. If anyone abuses or oversteps duty, criminal or disciplinary measures will be applied against that person.

In compliance with Article 10, paragraph 3 of the Law on Police, and at the proposal of the police director, Ministry of the Interior adopted the Police Ethics Code (Official Gazette of the RoM, No. 1/2006). The Code thereof stresses the Police's commitment to respect human rights and liberties and, particularly, to act lawfully, professionally, in tolerant and fair way.

The Police Ethics Code enshrines principles of police procedures based on norms of international and national law and as such they are indispensable ingredient of the ethical work of police officers.

The Police Ethics Code that police officers have to abide by prescribes conditions for exercising human rights and freedoms of all citizens regardless of differences in terms of nationality, race, skin color, religion, sex, education, social status or any other personal feature or trait.

The Code thereof has also stressed that police officer has to deliver police duties in politically neutral way and police officers receive instructions to refrain from execution of those orders that are in conflict with legislation in force.

Pursuant to Article 21 of the Code, Minister of the interior established the Ethics Council vested with the task to make assessment of police conduct from the aspect of ethics. The Council is composed of seven members, four of whom are from the Police Directorate, one from the Ministry of the Interior, one representative of NGO sector and one representative of the Police Academy.

The Council applies the provisions of the European Convention on Human Rights, European Police Ethics Code, Law on Police and the Police Ethics Code.

Pursuant to Article 93 of the Law on Police, the Council of Civil Control of Police makes sure that the police is subject to control of citizens. Members of the Council are appointed by the Parliament of Montenegro. The Council has the authority to make and assessment of the cases of applied or overstepped police authority with the aim of protection of human rights and freedoms of citizens. The Council comprises five members who are appointed by the Chamber of Lawyers, Association of Lawyers of Montenegro, Chamber of Medical Doctors, University of Montenegro and non-governmental organizations active in the field of human rights. At the request of the Council, the Police Directorate provided required information (recommendations in items 17 and 35).

In 2009, the Internal Control department of Police Directorate conducted assessment of police actions in 137 cases.

Out of those cases, 20 cases related to citizens' complaints that in essence might be treated as cases reporting police torture.

Out of the examined cases:

- 8 complaints were founded,
- 12 complaints – unfounded.

In two cases the complaints were found unjustified having in mind that they contained serious accusations and for the sake of checking whether there are elements of criminal liability, the case-file was submitted to state prosecutor for final decision.

Regarding founded complaints, the following was established:

- Department for Internal Control proposed disciplinary proceedings to be launched against six police officers,
- Department for Internal Control proposed the cases to be forwarded to competent prosecutors in four cases,
- Department for Internal Control proposed that the case files be submitted to the Ethics Council of the Police Directorate in one case - for that body to decide about whether the implicated police officer acted ethically or not,
- In one case the superior official has already ordered measures, the procedure was carried out and as a result one police officer was dismissed from service,
- In one case the superior official forwarded case file to the Ethics Council of the Police Directorate for examining whether the implicated police officer acted ethically.

Based on proposed measures so far the following irrevocable disciplinary measures were pronounced:

- Two police officers were fined with 30% off their monthly salary in the month when serious disciplinary breach was committed, and
- One police officer was punished with dismissal from service.

In other cases, disciplinary procedures that seek to determine disciplinary responsibility are under way (recommendations from items 11, 12, 13, 14, 18).

Competent state institutions and authorities took measures to reform legislation seeking to ensure protection of persons deprived of liberty. In the Criminal Procedure Code that will enter into force on 26. August 2010, the institute of "detention of a person" by police (substitute for police custody) can last up to 48 hours after deprivation of liberty. Pursuant to Article 264 of the Criminal Procedure Code, authorized police officers can deprive a person of liberty if the grounds for ordering detention are met but they have to inform prosecutor about that without delay, to make official record and to bring that person before prosecutor promptly. In case that a person deprived of liberty is not brought before a prosecutor within 12 hours after deprivation of liberty, the police has to release that person. Investigating judge has to decide whether a person who was brought before him after an order of prosecutor to put him/her in custody should be put into remand or the prosecutor thereof will turn down the request for remand custody. Consequently, the police will not be authorized to interrogate a suspect, not even in exceptional cases, whereby there will be no need to keep that person in police custody any longer.

Building administrative capacities, training and professional education is one of the priorities of the Police Directorate. The Police Directorate makes considerable efforts to implement modern investigating means and techniques that will provide more efficient work of the police. The "criminal intelligence system" has been established to ensure quality use of information and a large number of officers have successfully finished training thereof. The establishment of the Forensic Centre, implementation of special investigating techniques, specialist training in Police Academy in Danilovgrad and abroad, new Criminal Procedure Code etc. enable police to work

efficiently even without information and confessions taken from interrogations. Interrogations are done with full respect of human rights and in compliance with pertinent legislation.

All police officers within their competences and authority have to take measures to detect and prevent all irregularities – unlawful actions, even those that have been committed by police officers themselves. Police officers are obliged to report to their superiors about all facts that might indicate to torture, inhuman or degrading treatment.

Head of Department
Radovan Ljumović

COMMENTS ON THE REPORT OF THE COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

**GOVERNMENT OF MONTENEGRO
MINISTRY OF JUSTICE****Direct observations in accordance with the Article 8, paragraph 5 of the Convention**

9. With regard to the quotation from this point, we can state that the Government of Montenegro, at its session held on 12 February 2009, adopted the Action Plan for the Prevention of Torture, which is attached, since the Committee expressed willingness to receive this Action Plan after the Government adoption.

Prison facilities (organizational units)

Preliminary remarks

43. With regard to the overcrowded capacities, it has been stated that the solving of that problem will require reconsideration of the current law and practice related to the detention. In relation to that, we have already pointed out that the revision of the criminal-process legislation, i.e. adoption of the new Law on Criminal Procedure, is one of the objectives – measures from the Action Plan for the implementation of the Strategy of the Judiciary Reform (2007-2012).

Therefore, we can state that the Government of Montenegro, at its session held on 5 of March 2009, passed the Bill of the Law on Criminal Procedure, which has been adopted by the Parliament of Montenegro. We expect that the new items in this Law will significantly contribute to the resolution of the problem of overcrowdings, considering the fact that, within the measures for providing the presence of the convict and for clear conduct of criminal procedure, the new monitoring measure has been envisaged – prohibition of vacation, with the opportunity to control it by electronic surveillance.

With regard to intensifying the education of judges and prosecutors, aimed at promotion of using alternatives to the prison sanctions, it can be stated that the education of mentioned institutions is defined by the Law on Education in Judiciary (O.J. of Montenegro, no. 27/06), which envisages that judiciary have the right and obligation to vocational training, and that the education is organized in the special organizational unit of the Supreme Court of Montenegro (Centre for Judiciary Education), and the education is continuous, based on annual program and special programs of education. Thus, the Law provides very important areas for the establishment of modern and efficient judiciary.

Ill-treatment

46. With regard to the recommendation from this point, which says that competent bodies should take care of efficient investigation related to the case from the Prison Podgorica, dated from 5 September 2008, the Ministry of Justice have requested from the Basic Prosecution Office Podgorica (the letter no. 04-5801/08 from 17 of June 2009) and received the information (letter no. 1542/08 of 23 of June 2009) that the Basic Prosecution Office Podgorica has submitted to the Main Court in Danilovgrad, on 6 of April 2009, the indictment against A and B, the authorized officers of the Institute for Execution of Criminal Sanctions Spuž (ZIKS), for the criminal offence of torture and maltreatment from the Article 167, paragraph 3, point 2 of the Criminal Code, with regard to the criminal offence of light body injury from the Article 152, paragraph 2, point 1 of the Criminal Code performed against the detainee concerned, and that the main discussion for this criminal offence has not been yet scheduled.

49. With regard to the submission of complaints about ill-treatment of prison officers against convicted inmates during 2007 and 2008, we can state that there were not such requests from the Ministry of Justice.

With regard to the detained persons, during 2008, the local non governmental organization has sent the letter with regard to the case from the Prison Podgorica, as of 5 September 2008, and information was given about that issue under the point 46.

Also, in 2008, the Ministry of Justice recorded the written notice by the parents of one detainee, in relation to the alleged ill-treatment by the security officers of the Prison Podgorica. Therefore, the Ministry of Justice has forwarded this letter for the competent procedure to the Higher Court in Podgorica, taking into consideration the mandate of the court when it comes to the monitoring of the detention unit. Also, we have obtained from ZIKS the declaration related to this case, which says that the head of Prison Podgorica submitted criminal charges against the mentioned detainee and some other detained persons to the Basic Prosecutor Office in Podgorica for the attack against the officer.

Other issues relevant to the CPT mandateb. contact with the outside world

71. With regard to the rights of detained persons to be visited by unmarried partners, it can be stated that the new Law on Criminal Procedure envisages that the detainee can be visited by the spouse or person with whom he/she lives in extra marital community or their relatives if approved by the investigation judge, and if needed under his/hers monitoring or persons he/she determines.

72. With regard to the issue of confidentiality of contacts between inmates and lawyers, it can be stated that the new Law on Criminal Procedure envisages that if the convict is in prison, the defender can contact him/her without supervision, that the defender has the right to confident conversation with the suspect who is deprived of freedom and before the hearing of the suspect, and that the control of this conversation, before the first hearing, is allowed only by watching, not audio elements.

d. complaints and inspection procedures

82. Regarding the development of the monitoring system of the prison by independent bodies, it can be stated that certain steps have been made according to the Protocol to the UN Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Namely, aimed at establishment of the national mechanism for the prevention of torture the Law on Ratification of the Optional Protocol has been adopted at the end of 2008, which means that it has become the part of domestic law. Afterwards, the definition of measures and activities has started, i.e. establishment of the national mechanism against torture, within the Action Plan for the Prevention of Torture. To that effect, the measures and activities, which realization is planned for 2009, are defined as following:

- Amendment of the Law on Ombudsperson,
- Adoption of relevant by-laws for the implementation of the amended Law on Ombudsperson,
- Amendment of the Rule on organization and systematization of working positions of the Ombudspersons Office.

In defining those measures we have based our determination on the fact that the Ombudsperson can perform tasks of the national mechanism for the prevention of torture, i.e. that it can adequately respond to the requests of the Optional Protocol, and with additional strengthening of capacities of this institution in normative and organizational terms.

INSTITUTE FOR EXECUTION OF CRIMINAL SANCTIONS MONTENEGRO

In the context of final report adopted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), on the occasion of the first periodic visit to Montenegro from 15 to 22 September 2008, we are sending the comments on certain parts of the report.

5. The cooperation during the visit was very good according to our opinion, and the delegation stated that as well in the report. Delegation was provided with access to all rooms in the Institute, as well as the communication with all persons deprived of freedom, without presence of the Institute employees.

Once again we express our regrets that the CPT delegation had an impression that there were “attempts by the officers to mislead the delegation with regard to usages of certain small cells for disciplinary purposes”¹ and we made our observation with regard to this issue.

The cases when juveniles are serving the sentence in detention or prison are very rare in the prison system of Montenegro. Although, the building for juveniles was put in place in 2008, due to the fact that there were no juvenile convicts during the period of couple of months, and that the detention measure is issued very rare and lasts for a short period of time, we have put the mentioned building in place for the Prison Podgorica. More accurately, this building is occupied by the detainees. Temporary adaptation of this building is justified by the fact that for longer period of time there is no juvenile in prison, and at the same time there is a problem of overcrowded space of the Prison Podgorica. We considered it justified to make this building used for resolving priority problem, and not to be out of use.

¹ CPT Report, C. Consultations made by delegation and cooperation, point 5

In the case if the one or more juveniles come to the prison for serving the sentence, the conditions for their housing will be made in accordance with current legislative. CPT recommendations related to the housing of convicted and detained juveniles, the Institute management will take care of that once it appears in the practice, when this recommendation can be applied.

The Committee stated in the Report that there we no torture, inhuman or degrading treatment in organizational units of the Institute, ZIKS and Prison Bijelo Polje, and that many imprisoned and convicted inmates considered positively officer's treatment towards them.

The Committee states in the Report that the delegation representatives have heard some statements during the visit about alleged ill-treatment against some detained persons, among whom there was a person mentioned in the point 46 of the Report. In the response to the preliminary statement delivered by CPT we provided detailed information about this person.

The court procedure is underway, according to the charge pressed by the Basic Prosecutor against mentioned person for suspicion that she committed criminal offence – attack against officer before the Basic Court in Danilovgrad. The evidence obtaining at the main discussion is in progress.

Institute management has the information that this person submitted private charge and the procedure is in progress.

The respect of human rights and dignity of every person deprived of freedom is the main principle of the Institute officer's work.

The fact that the Institute management, in cooperation with the OSCE Mission in Montenegro, initiated the establishment of the National mechanism for the prevention of torture in Montenegro, which will be in charge for periodical visit to the persons deprived of freedom for the purposes of prevention of torture and other inhuman or degrading treatment, shows how serious we deal with issue in the prison system.

Our activities are directed towards elimination of any form of torture by the Institute officers. The officers are aware that any kind of ill-treatment against persons deprived of freedom is not acceptable, and that he/she will be sanctioned if this happens. Thus, we place great emphasis on the education, in particular members of security sector, on the issue of human rights with emphasis on combating torture and inhuman and degrading treatment or punishment of inmates. Also, the persons deprived of freedom have an opportunity to report cases of torture to the Institute authorities over mail-boxes, which are placed in all organizational units of the Institute, as well as in state administration and NGOs.

Laws and by-laws clearly define in what cases the Institute officers can apply force and in what measure. The Institute management has accepted recommendations regarding keeping records in all organizational units housed by inmates, and introduced special register for recording cases of coercion, where, inter alia, the data about beginning and duration of the coercion are registered.

49. Neither person deprived of freedom addressed the Institute management during 2007 and 2008 due to ill-treatment by officers. We don't exclude the possibility that some person appealed to the Ombudsperson or the officer in charge in the Ministry of Justice, about which the CPT will be informed through the reports of these two institutions.

50. Institute management puts significant efforts aimed at prevention of violence among inmates. While entering the Institute, and before their housing, the circumstances are being discussed about their possible conflicts with persons who are already in Prison, aimed at taking prevention measures in order to prevent violence between inmates. Once we have the information that some persons are in conflict from earlier, or these conflicts have started in prison, they are immediately separated and housed in different pavilions and collectives in order to disable any form of communication and contact. Aimed at prevention of violence among convicted persons, the Institute management can transfer them from one to the other organizational unit, in compliance with the law.

Security assessment is performed at least once a month, and frequently if needed, when analysis are being performed about the relations between persons, and adequate resolutions are being recommended to the manager of the Institute for the purposes of prevention of violence among persons deprived of freedom.

All persons who come to the prison are introduced with the prohibition of any form of violence among inmates, which means the violation of house rules and causes the disciplinary responsibility.

The Institute management considered very seriously the CPT recommendation for the development of the strategy aimed at combating violence between persons deprived of freedom, so that it will start the development of such a document in the upcoming period.

54. So far, the Institute management has put an emphasis on resolving material conditions of the convicted persons. These activities will be followed up in the upcoming period, which means the reconstruction of the Pavilion A in the closed part of the Penalty-Penitentiary House (KPD).

One of the activities performed so far was the building of new facilities in the KPD. The one facility places convicts from the first classification group, so called half-open department, which started working in December 2008. The other facility for women and juveniles has started working in September 2008. In this facility the women convicts from the first classification group are placed in the ground floor, while the others from second and third group are at the first floor. The facility has nine rooms that have plumbing fixture, two living rooms, library, and computer room which is currently used for training of eight women for computer skills, visits room, ambulance, and office for the treatment officer, two bathrooms and laundry. Convicts are provided with free time for using the gym, and yard as well, in accordance with the home rules. This means that convicts from the first classification group can spend time in fresh air during whole day until 9 p.m., and female convicts from second and third classification group three hours a day, i.e. one hour and a half in the morning and in the afternoon. By transferring into the other facility the convicts are not deprived of the opportunity for communicating and walking. The Institute management is aware that women convicts represent vulnerable group, and that they require the treatment adapted to their characteristics.

The activity, on which we will place the emphasis on in the upcoming period, is the renovation of the workshop circle, opening of new working positions for convicts, and female convicts, and organization of courses for vocational training as well. Aware of the fact that the education of convicts represents one of the important factors for continuing life in freedom, the Institute management helps the convicts who have or show the interest for any kind of education and training. Certain number of convicts is completing elementary, secondary or high school.

58. The problem that the Prison Podgorica is facing recently is the lack of space. Series of measures undertaken, aimed at resolving this issue, are directed towards creation of adequate housing conditions, which bring other adequate conditions related to the treatment of these persons. The conditions have been created for being in fresh air for at least one hour for all detainees, and gym gadgets are available in four rooms in the Prison Podgorica.

The problem of lack of space is currently resolving in a way that certain number of detainees have been placed in the facility for juveniles and foreigners. What is encouraging in this issue is the fact that in the upcoming period the Law on Criminal Procedure will be changed and will introduce alternative measures for providing the presence of the convict in the criminal procedure (bail, home lock up, electronic monitoring etc).

The Institute management has estimated that it is necessary to undertake measures related to the building of another facility of the Prison Podgorica, which will be close to the current prison.

By relieving of housing capacities we will resolve other problems related to their treatment caused by the lack of space.

59. and 60.

The Prison Bijelo Polje dates from 50-ies of the last century. Many reconstructions and adaptations, as well as the very needs and standards, made us to start realization of the project related to the building up the new Prison in Bijelo Polje, that will fulfil all standards and recommendations given by CPT. We are undertaking many activities with this regard with the aim to create better conditions through different forms of adaptations, in particular sanitary knots in the current facility of the Prison Bijelo Polje. With the new furnace, that is now working, the conditions has been created for the adequate heating. And we continuously provide certain amount of materials for personal hygiene for the inmates.

Action Plan for the Prevention of Torture for 2009, adopted by the Government of Montenegro, envisages that the new facility of the Prison in Bijelo Polje starts working in IV quarterly this year. Besides the fact that the project documentation has been developed, the procedure of selection of the best constructor and provided funds, there is the delay of realization of the project due to property problems that came out because of the location of the property where the mentioned facility was supposed to be built. We are hoping that the local authorities in Bijelo Polje will resolve this problem very fast and that will start the realization of the project.

64. and 67.

The CPT Report referring to the part related to the health protection of persons who are deprived of freedom for this Institute is affirmative. Activities that have been undertaken by now and those planned for the upcoming period, related to the strengthening of human resources and material conditions, are directed towards creation of more qualitative conditions for health protection.

Currently in the Special Hospital, one doctor specialist and dentist, 14 medicine technicians and one pharmacist are working full time. Besides this, health services are provided by the following doctors: gynaecologist, rondenologist, radiologist, psychiatrist, dentist, who are coming twice a week, and more if needed.

Since February this year, in the Prison Bijelo Polje two medicine technicians have been working full time, and the new Rule on Internal Organization and Systematization of the Institute, which is in progress, envisages five working positions for medicine technicians and one doctor with full time. In this way the conditions for health protection will be made 24 hours a day in the Prison Bijelo Polje.

CPT recommendations related to the increase of the number of medicine technicians in the Special Hospital in Podgorica were taken into consideration and integrated in the new Rule on Internal Organization and Systematization, which envisages the increase by two employees.

Aware of the need for employment of at least one specialist in the Special Hospital we undertook series of measures in order to solve this issue. However, besides our readiness to provide the specialist with the own apartment, there was no interest for this working position whatsoever. In the upcoming period, we will direct our activities towards resolving this issue, as well as on strengthening capacities and the role of psychiatrist and psychologist in the process of treatment of persons who are deprived of freedom.

65. After the CPT visit and the first preliminary report, we have undertaken activities regarding keeping records in compliance with international standards. Thus, we established special registers for records of traumatic injuries of prisoners, while entering the Institute and during their stay as well. Special registers are the part of personal health card and are placed in all organizational units of the Institute, where prisoners are placed. This activity is performed in accordance with the Action Plan for the Prevention of Torture adopted by the Government.

68. The detained person, mentioned in the CPT report, is in the Prison Podgorica as of January 2006. According to the Decision of the Appeal Court in Podgorica he was delivered a measure of obligatory psychiatrist treatment and keeping in the health centre, but it is emphasized that he has to be placed in the special adequate room within the Prison Podgorica or the psychiatrist closed hospital until the procedure is completed and the decision for the security measure comes into effect. Since the Special hospital for psychiatry Dobrota – Kotor has the Court Department of closed type with only 21 beds which are occupied for longer period of time, so that there were not material conditions for the placement of mentioned person, as well as the conditions for keeping the patient of high level of danger who needs intensive and strengthened control, i.e. special security measures. This person has had aggressive and even suicidal intentions which were fixed in certain periods of time, aimed at prevention and according to the recommendation of the practitioner. This person is provided with staying in fresh air 60 minutes a day.

69. Employees in the Institute are daily responsible for the security, adequate functioning of services, security of persons deprived of freedom, and for fast and efficient resolving of all actual problems. Aware that only trained and highly professional officers can adequately respond to all demands of the work in the prison system, we have placed the emphasis on the education and training of the Institute employees.

The Institute for the Execution of Criminal Sanctions, in cooperation OSCE Office in Montenegro, has established the Centre for Education and Training of Institute officers on 18 October 2002, which was the only one in the region at that time beside the Centre for Education of Prison Personnel of Croatia.

For the purposes of education of personnel, the Centre organizes courses, study visits to developed European countries, participation at seminars and other forms of improvement.

The Institute organized for all employees the introductory course where they meet with tasks from the mandate and competences of the Institute, which lasts seven days.

The main course is attended by the new employees in the Sector for Security and consists of theory, exercises and practical work which last four months. This program provides the knowledge from the following:

- Legal subjects: Criminal Law, Criminal-Process Law, Law on Execution of Criminal Sanctions;
- Penology – Psychology - Medicine group of subjects: Basis of Penology, General Psychology and Psychopathology, Penologist andragogy with the methods of re-education, first aid;
- Rules of service: Basis of Criminology, Arming with the shooting lectures, Special physic education.

Specialist courses have been organized for the purposes of gaining specialist knowledge and skills needed for performing expert work in the field of execution of criminal sanctions. Specialist education, training and vocational training is being organized in the Centre, according to special programs, or out of the Institute in educational and scientific institutions. Thus, we can mention specialist courses organized by international and domestic experts from different fields: prevention of drug addiction, identification of basic types of drugs, work with the prisoners who are taking drugs, abuse of drugs in prisons, and subject related to human rights with special emphasis on the torture. The following courses were organized with regard to this issue: establishment of national mechanisms for prevention of torture according to the Optional Protocol, European prison rules, international standards for torture and other bad behaviours, human rights in prisons – education of trainers.

As of September 2009, in cooperation with Police Academy in Danilovgrad, the pilot project will be implemented during four months where 30 candidates, newly employees of the Institute, will be trained for the work in the Institute. This pilot project is implemented with the intention to establish the department for education of officers, until 2010 within the Academy, for the work in the prison system.

70. Convicts are entitled to achieve the marital visit in accordance with the provisions of the Law on Execution of Criminal Sanctions, which envisages that the convict can use this right only with the person with whom is in marriage. This law has been passed in 1994 when the conditions haven't yet been made for effective implementation of this provision because of the lack of space. However, it is evident that recently the visits have been approved for the convicts living in extra-marital relationship, that lasts longer period of time, and when having children.

Aimed at prevention of abuse of this right it is necessary to give the paper proving that they live jointly.

71. CPT suggestions related to the visit permits to the detainees are accepted in cooperation with competent courts. As of June this year, the permits have been issued for the permanent visits to the detainees.

76. The CPT's notice related to the maximum disciplinary sanction of taking the prisoner to the lone cell for detainees and convicts is accepted. The development of the Law on Amendments to the Law on Execution of Criminal Sanctions is in progress, thus we consider that the commission will have in regard the CPT's recommendation. The law also regulates the right of the convict to be informed about the disciplinary notice at least 24 hours before making the disciplinary briefing, as well as to have the right to engage lawyer or other person from the Institute who was present at the disciplinary briefing aimed at his/her defence.

77. After the disciplinary briefing the decision is being brought on the outcome of the briefing, which is to be submitted to the person against whom the procedure is been made. We don't exclude the possibility to fail in submitting the conclusion, i.e. if it happens that the person doesn't sign that he/she received the conclusion, upon which we will pay special attention to in the upcoming period. Records on the housing of persons deprived of freedom in the Disciplinary Department have been kept in two books². It can be that the members of CPT didn't have the insight into the main book, i.e. main register of disciplinary offences where all necessary data are put, and inter alia, the time when the person entered the cell, and cessation of the sanction as well, the number of cell in which the person was placed during the disciplinary sanction.

78. CPT cited in its report that four convicted persons have been transferred from the KPD Podgorica to the Prison Centre Bijelo Polje, in accordance with the article 59a of the Law on the Amendment of the Institute for the Execution of Criminal Sanctions. For the mentioned persons the decisions have been made on the transfer with clear and precise explanation on the reasons of transfers and were submitted timely to them. Before the transfer, the meeting has been organized with those persons, and the reasons about the transfers have been explained to them which were of security nature, and they agreed because it was the issue of their personal security. The transfer of convicts in the other prison unit is organized with the aim to prevent violence among inmates, and so far this measures proved to be good.

Legislative doesn't envisage time limits regarding the housing of persons in the other organizational unit. However, the decisions on the transfer in the other organizational unit are been reconsidered at least once in three months, and further housing in the other organizational unit depends on the fact about the reasons for which the persons have been transferred.

79. Suggestion of CPT related to the walking area in the Disciplinary Department related to the lack of covered space is being accepted. Now, each of seven walking areas has one part which is covered, allowing staying in fresh air for the convicts during bad weather conditions.

Disciplinary measures in the Prison Podgorica are organized in single rooms who are equipped with the bed, table, chair and which have enough light and heating. Four rooms, two at the first and two at second floor, of the Prison Podgorica, for which the suggestions have been made by CPT regarding to the execution of disciplinary sanctions, are being adapted and equipped after the CPT visit, aimed at more qualitative usage of free time, in a way that the doors were moved, the disinfection and painting has been made, and the training devices have been placed as well.

The last disciplinary measure in the Prison Podgorica has been undertaken on 12 November 2008.

All disciplinary punished persons are allowed to be in fresh air at least one hour a day.

² One book registers only data related to the name and surname of the person, time of the beginning and cessation of the disciplinary sanction

81. In the KPD and Special Hospital there are boxes for “suggestions, remarks, and praises on the system of sanction execution, which can be anonymous or signed. The box is being emptied on Tuesdays and Fridays”.³

The mail from the boxes is timely signed to the recipient and is selected according to the urgency, and kept in the special register. Every person is informed about the decisions related to his/her request.

After the CPT report, the recommendation has been accepted to put boxes in other organizational units.

Director
Bozidar Vuksanovic

³ The title appearing at the each box. The guideline for the usage of mail from the box brought in KPD, no. 0501-1474/2 of 12 March 2009



Ministry of Health

Dear Sirs,

We are sending to you comments to the Report of the European Committee for Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) adopted on 06.03.2009. The Comments are numbered in accordance with the numbering pattern in the CPT's Report.

84. Mental Health Centres are integral part of the primary health care reform whose aim is to stimulate deinstitutionalization of mental health protection and promote principles of mental health in society. At present, there are two centres for mental health – one in Kotor, and one in Podgorica. The establishment of such a centre in Pljevlja is in the pipeline.

Since this requires radical changes in health care system, we started (2009) with the review of legislative and organizational frameworks for service provision in field of mental health in Montenegro. The process has come to its final stage and the findings and recommendations will be developed in cooperation with national and regional offices of the World Health Organization. The report is expected to be released in the end of February 2010. The findings and recommendations from that report will serve as starting points for amending the Action Plan of the Strategy for Mental Health Improvement. At the same time, the plan thereof will be one of the basic requirements for qualification for the EU Commission's support for the Ministry of Health (combined with the assistance from WHO) focused on implementing concrete measures in this field in near future. The European Commission's commitment for this has been identified in contacts with the EC representatives during their reassessment mission delivered by the WHO consultant in Montenegro in 2009.

Ministry of Health signed a Biannual Cooperation Agreement for 2010-2011 with the WHO in which mental health protection in Montenegro was earmarked as one of the fields for cooperation.

Concrete activities that have been carried out by Special Psychiatric Hospital regarding its clients' rehabilitation and re-socialization require construction of a new multi-functional facility where different psycho-therapeutic and socio-therapeutic activities will be conducted (film viewing, IT literacy, access to internet and library, literary sessions). The funds for the construction of this facility have been provided based on a project, and donated by the Lottery of Montenegro.

Since April 2009, the Hospital launched the project of clients' re-socialization in cooperation the non-governmental organization "GIP" (Global Initiative on Psychiatry) from Netherlands. The project will last for 18 months and it will cover the following activities:

1. Drafting information brochures on most frequent psychiatric diseases and how to identify them, the dissemination of the brochures in society;
2. Education of hospital staff by means of trainings delivered by Dutch experts and related to activities involving potential for re-socialization of clients from that institution.
3. Organization of open-day activities as a way to integrate the institution with community.
4. Setting up a Patient Council in the institution and staff and patients' training (learning about functions and mandate of this Council).
5. Training for journalists and media about covering mental health themes;

6. Establishing an NGO that would work exclusively on mental health issues in Montenegro.
7. Establishing a help-line for all users in society who need consultations about mental health issues.

We would like to get clarification about the Report's assertion regarding the letter that Montenegrin authorities sent on 6. 02. 2009 about plans for the adoption of a Strategic Plan for Development and Advancement of Neuropsychiatry in Montenegro. During 2009, some significant changes were made in terms of team re-composition in the Ministry of Health in Montenegro, which resulted in the discontinuation of management in authorities within this portfolio.

85. The contract that the hospital had with private security guards for 2009 was based on legal provisions stipulated in the Law on Protection of Persons and Property (Official Gazette of the RoM No. 01-470/2 dated 5. 05. 2005) and it was made in compliance with the Law on Protection of Rights of Mentally Ill Persons (Official Gazette of the RoM 01-530/2), Article 42 and 46 of this Law, and with other legislation pertaining to this field.

The part stipulating mutual obligations stipulates that a security guard can “use means of coercion (rubber bat, aerosol, handcuffs) in self-defence only when it is absolutely necessary and inevitable, **with prior warning** and before a person is restrained and danger ceases, whereupon a guard is obliged to promptly inform a doctor on duty and a paramedic”.

The recruitment criterion for all private security guards was to have finished training and passed a professional examination at the Police Academy in Danilovgrad before they were hired. As a part of training, security guards have to pass examination in fire protection, first aid, self-defence, foreign languages and training for working specific clients and training for guard dog handlers.

Education for work with psychiatric patients is an ongoing activity and it is delivered by in-house professionals (doctors, psychologists). Security staff was also informed and involved in education and formation of the patients' council of this institution in November 2009. Hospital staff and security staff will have training delivered by Norwegian experts in February 2010. The training will be titled “Communication Skills for Working with Aggressive Patients”.

87. The remark regarding the access to toilet in the forensic psychiatric unit over night when the (barred) gates of patient's rooms are locked has in the meantime been taken into consideration and the situation has been improved in such way that patients can now use toilet at night and the guard comes by call to open the gate.

Also, we should note that, even though this comment was based on information coming from some patients who, they allege, had to urinate in bottles over night – it does not reflect the practice in this unit. However, we would not eliminate possibility that such isolated incidents did happen.

88. The CPT recommends that Montenegrin authorities focus their particular attention to the selection, training and supervision of uniformed guards in forensic unit. The reason for this is that it seems that their presence at this unit had more dominant role *vis a vis* medical staff and therapeutic atmosphere that should have absolute primacy.

At present, without categorization of forensic patients on the basis of their propensity for repeating crime (since they are all placed in the same unit – ranging from family violence perpetrators to serial killers) and with no standardized risk assessment instrument (HCR 20), it is simply impossible to marginalize the role of security i.e. make their presence more discrete.

89. In the meantime, the patient whose bed was separated from the rest of the room with bars (as he is said to have attempted homicide twice so far by attempted strangling of other patients) has been moved out of the barred area after two other patients had been moved out of the room and this patient is accommodated alone in the room, in the area with no bars around.

90. The information from the letter dated 14. 11. 2009, in which the CPT was informed about the Memorandum of Cooperation that had been signed with Dutch NGO "GIP" (Global Initiative on Psychiatry) focusing on the forensic psychiatry reform was not fully correct since the memorandum pledged only a provisional acceptance of an initiative and did not mean that the final version of the Memorandum on cooperation was signed. NGO "GIP" launched this initiative through the Dutch government with the aim to provide funds for a four-year program for the reform of forensic psychiatry in Serbia and Montenegro and as the precondition for applying for that we needed a memorandum on cooperation signed by this organization and national ministries of labor and health respectively. This memorandum was not signed since the Ministry of Justice gave up the idea of signing such a document.

With this NGO, Ministry of Health and Special Psychiatric Clinic signed the Memorandum on Cooperation but related to a project regarding re-socialization of clients of the Special Psychiatric Hospital in Kotor. This project is under way.

91. The CPT recommends the authorities to continue efforts to refurbish the remaining non-renovated parts of the hospital.

The CPT's recommendation that apart from having bedside cabinets, all patients should have wardrobes for their belongings can generate certain risk from the aspect of security (in the context of understaffed institution). Regardless of the fact that the hospital has closed units, the searching of items that are brought into the unit is not stringent and on the basis of our own experience when patients got into possession of items that were potentially dangerous for themselves and their environment - these recommendations should be further analyzed.

94. The CPT's recommendation regarding individual patient's treatment plans has not been implemented yet. However, as a part of the project with Dutch NGO "GPI" (Global Initiative on Psychiatry) the first training of hospital staff was delivered by Dutch experts in November 2009 and it was focused on learning about individual patient's treatment plans and how to develop them and, relevant to that, the implementation has commenced. However, having in mind that units are understaffed in terms of medical staff the future will show how realistic the realization of each individual treatment plan might be.

95. In relation to the part referring to the staffing, the CPT refers to the letter dated 14. 11. 2008 by which the authorities informed the CPT that all staff working in Dobrota Special Hospital receive a special remuneration of 15% on top of their salaries, which is also an inaccurate information because only the staff working in the forensic psychiatry unit gets a bonus of 15% on salary, as regulated by law.

In relation to our efforts to help the staff get their housing issue solved, we can say that the process of negotiations between Ministry of Health, local authorities in Kotor and representatives of the Psychiatric Hospital and two other medical institutions in Kotor (General Hospital and Outpatient Medical Centre) are being prepared. Also, the plans to build a residential building for employees are said to be in preparation.

96. The initiative of the Special Psychiatric Hospital to hire Dr Ivana Timotijevic from the Institute for Mental Health from Belgrade as potential permanent consultant of this institution has not set in since the hospital does not have fixed budget for continuation of this practice.

However, regardless of that, the institution was visited by many experts and professors from the field of mental health who gave their contribution to the process of continuous medical education.

Medical staff with high-school and university degree have been educated in the meantime through their participation in congresses and conferences in the country and abroad (World Congress of Psychiatry in Praha – 2008, Croatian Days of Psychiatry in Opatia – 2009, Macedonian Congress of Psychiatry – 2009, Psychiatry Congress of the SEE and the Balkans – Moscow – 2009, Conference of Psychiatric Institute in Belgrade – 2009 and study visit to Lovisenberg Foundation in Oslo, Norway).

In May 2009, Special Psychiatric Hospital organized scientific sessions, 4th Adriatic Conference on Addiction Diseases, 6th Symposium of SEE countries on Addiction Diseases and the first Days of Psychiatry in Montenegro which lasted for three days and gathered mental health experts from 19 countries.

Existing protocols for recording the use of physical restraint has in the meantime been improved in compliance with the CPT recommendations in so much as they are now kept more regularly and all meaningful information is recorded as recommended by the CPT.

A workshop “Techniques for approach and treatment of an aggressive patient” was held in the Special Psychiatric Hospital in Kotor on 17.02.2010. The workshop is fully in line with the recommendations provided by CPT Report as of 06 March 2009 and in accordance to the recommendation ref. No. 96. Trainers were experts from Norway, The Foundation Lovisenberg from Oslo the long-term partner of the Special Hospital in Kotor. The number of attendees was 25 and they belong to the security staff or to medical technicians. The management has also an idea to organize refreshment courses for the staff on the monthly basis.

The plan for continual education of the staff in the Hospital during 2010 is to train medical technicians on following topics:

- Mental functions
- Basics of care and treatment of psychiatric patient
- Antipsychotics of the first generation
- Antipsychotics of the second generation
- Anti-depressives , anti- anxiety drugs
- Schizophrenic disorders
- MOPS and EPI
- Manic disorders/psychoses
- Mood disorders and bipolar affective disorders
- Personality disorders
- Alcohol abuse
- Drug abuse
- Basics of psychotherapy

The aforementioned lectures will be held by neuro-psychiatrists, psychiatrists and senior medical technicians from the Hospital in Kotor.

101. In relation to the remarks regarding the appearance of judges in cases of involuntary hospitalization we should note that the Special Psychiatric Hospital regularly informs the competent court – Basic Court in Kotor about each involuntary hospitalization within 24 hours after it is made but the Hospital can by no means urge a judge to show up within 48 hours.

102. The review of admission protocols (voluntary or involuntary hospitalization) for chronic patients who were admitted to the Hospital before the entry into force of the Law on Protection of Rights of the Mentally Ill Persons will be made in shortest possible time. It has not been done so far because we did not know about this remark that the CPT made having in mind that the CPT's Report was sent to the Ministry of Health of Montenegro (and to the Special Psychiatric Clinic as it is) only as late as the second half of December 2009.

107. In relation to the existence of the Council for Human Rights Protection of Patients as an independent multidisciplinary body in this institution, the CPT mentioned that this body was appointed by the Executive Board of the Hospital and it recommended that authorities should take steps to ensure that this body be truly independent.

In compliance with the Statute in force in the Special Psychiatric Hospital this Council was composed of three representatives of the institution and two representatives from other institutions and it was appointed by the Executive Board. The process of amending the Statute is under way (on the basis of the request that the Special Hospital submitted to the Ministry of Health on 18. 01.2010). The amended statute envisages that the Council will mostly consist of the members from other institutions and that its composition will be made in compliance with the provisions of the LPRMI (Official gazette of the RoM 32/2005, Article 48, 49 and 50).

108. The CPT recommended Montenegrin authorities to develop a system of regular visits by an independent outside body to supervise the work and give recommendations for improving the present situation. Also, the Commission for Mental Health is about to be established at national level. The Commission thereof will be established by the Ministry of Health in compliance with the law and its role is to make an additional external control of the work of the public institution Special Psychiatric Hospital from the aspect of protection of the hospital patient's rights.

Sincerely yours,

MINISTER
Dr. Miodrag Radunovic



Ministry of Labor and Social Welfare

Report of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) about the situation in Montenegro

In relation to the Report of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) about the situation in Montenegro that *inter alia* concerns public establishment „Komanski most“ and public establishment Centre for Children and Youth „Ljubović“, Ministry of Labor and Social Welfare presents the following comments and answers:

Public establishment „Komanski most“

1. Introductory remarks:

Government of Montenegro has adopted a series of strategic documents that relevant for this subject matter: Strategy for Developing Social and Child Welfare 2008/2012, Strategy for Integration of Disabled Persons 2008/2016 with a follow-up Action Plan to be adopted for each two years. These documents promote the principle of decentralization and establishment of services locally. One example of good practice is the establishment of the network of day care centres for children with development irregularities who cannot integrate into the mainstream education. In addition to the day care centre in Bijelo Polje, new centres are soon to be opened in Nikšić, Pljevlja, Berane, Ulcinj, Bar and Cetinje. There are ongoing activities that are carried out in cooperation with UNICEF and municipality Danilovgrad to provide space for building a small common house: a small family-like community for children with development irregularities who need to be placed away from their families.

Having in mind the fact that establishment of new services takes time, public establishment „Komanski most“ has undertaken activities to separate children from adults. The establishment has already reconstructed and refurbished its facilities for accommodating children.

The reconstructed area includes dormitories, living room – playroom, dining room with kitchen, bathroom, toilettes and a laundry room for children’s laundry. The wing that is fitted to children’s needs has its separate exit into the backyard where the establishment plans to do landscaping and to put appropriate fixtures.

Wardrobes have been put into the dormitories and a cupboard next to each bed so that children can put personal belongings there. Daycare is used for interactive work with children and for playing. In the beginning interactive work was done by the UNICEF team. Now carers-educators are working with them. The carers have passed an advanced training in England that was provided for them.

Every day six children are taken to public institution Centre “Prvi Jun” so that they can be taught there.

In cooperation with centres for social work, individual plans have been made for children.

2. Bad treatment

Staff is clearly aware that bad physical and psychological treatment of users for service is not unacceptable and that each such case will be strictly punished. The Managing Board of the institution has stepped up its activities and UNICEF experts' frequent visits have contributed to education of the staff and to changing the way they work with inmates.

Separating children from adults reduced the risk of incidents among inmates.

In relation to CPT queries about a complaint of an inmate's mother, we want to inform the CPT that we have made a thorough check in the establishment, Ministry of Labour and Social Welfare, NGO sector, Ombudsman and we made direct contact with the inmate's mother in order to investigate about the allegations comprehensively. After thorough analyses, it was stated that since the daughter's admission, the mother was allowed to participate in hygienic treatment, preparation of visits/leaves out of establishment and in planning daily activities. Good cooperation with her lasted for a while until her mother's activities disturbed life and work of inmates around her. At her request we changed the inmates in the room and moved her daughter to other room that would suit her. Day after day the level of obstruction in relation to teacher's work and inmates' living quality increased.

As for the allegations that her daughter has been sexually abused, they are untrue and mean. In her complaint the mother quoted the name of an inmate who allegedly physically and sexually abused her daughter. Sadly, the inmate concerned is an orphaned child and he perceives any visit as his own and in his reactions he tends to be more forcible than other inmates. He expresses that by tapping hand on shoulder and leaning his head on peoples' shoulder.

That is perceived as brutality, and it is devoid of sexual orientations (sic!) or urges that could indicate towards any trace of abuse. Also, we found that the (girl) inmate concerned demonstrated violence towards her mother, too. The violence takes form of physical assaults and, we found, that is the effect of her placement in institutional care and being left by her mother. Having in mind the quoted things, several times the mother was proposed to take her child with her and take her home since the mother is a retired teacher, does some part-time work and she has appropriate accommodation to take her daughter back. Since she got such proposal, the misunderstandings disappeared and her daughter receives the same treatment as the other inmates. It is important to point out that mother and daughter still keep their regular contact.

3. Living conditions for inmates

Living conditions and accommodation in both pavilions have been improved. For that purpose the old iron beds have been replaced with new wooden ones with new (plastic) bedding, which contributed to better hygiene. Regular use of diapers has considerably contributed to higher hygiene level. Also, the establishment regularly hires an agency for thorough cleaning and disinfection of all premises. Deratization and disinfection are done every six months and after shorter while if needed.

Sanitary fitting have been fixed and old wooden frames/fittings replaced (23 new doorframes). The heating has been refurbished in both pavilions.

Also, inmates have been separated by sex and pavilion "A" (ground floor) accommodates men, while the women are accommodated at the first floor. Pavilion "B" also separates inmates by sex: right wing – women; left wing – men.

With a view to improve capacities to accommodate inmates the establishment has commissioned a project idea for a detailed reconstruction of Pavilion “B”. The realization of these activities is expected to start in 2010.

4. Care for inmates
and
5. Staffing

With a view to providing better care to inmates the priority was to increase the number of staff. Apart from filling five vacancies (one nurse, two guards and one carer) there is an open advertisement for recruitment of three more carers. Improving the status of employees will be in the focus of new legislation pertaining to this field and it is to be drafted in 2010.

Daily activities and rehabilitation are determined by individual care plans and programs that are tailored to individual psycho-physical capacities of inmates. The professionals from the establishment and from the centres for social work are actively involved in drafting new plans for protection of adults.

The inmates are provided with seven day holidays in summer or winter resorts by the line ministry. 25 inmates stayed at seaside in summer and their winter holiday is being planned.

Reconstruction of one facility (carpenter’s workshop) provided for a “living room” for inmates that will be separated from the pavilion.

Increased uncontrolled sexuality (urge) is an accompanying symptom of mental retardation and autism. That phenomenon is suppressed by medication and contraceptives as prescribed by consultants and therefore the cases of pregnancies are quite rare.

6. Means for restraining inmates

Fixation is used for protection against self-injury. Six inmates were fixed to bed as by the Protocol on Procedures in Cases of Inmate’s Agitation and Aggressive Behaviour – by applying a leather fixator and that is duly recorded in inmates file. Fixations are temporary interventions deemed appropriate for given moment. The establishment does not have rooms for isolation any more. It is now used for keeping cleaning items.

There are four inmates in the establishment who cannot stand clothes on them so that whenever they get dressed they immediately tear clothes and stay naked. They do that now and again every day.

The Management Board adopted the Action plan for eliminating shortcomings in public establishment “Komanski most” and it closely scrutinizes its implementation.

7. Protection measures

The Law on Social and Child Welfare in its Article 25 prescribes right to placement in an institution as a basic right in social protection area. The quoted provision prescribes *inter alia* that children and youth who have mental or sensor disability as well as persons with bodily, mental and sensor disability who cannot be cared for in any other way are entitled to be placed in an institution. The request related to that right is considered by centre for social work at first instance and if contested the request for service is considered by the Ministry of Labour and Social Welfare. Also, if the decision of the Ministry of Labour and Social Welfare is contested concerned party can launch administrative procedure before the Administrative Court of Montenegro. This Law provides for administrative and judicial protection in the placement procedure.

Family Law of Montenegro in its Article 92 provides that parental right can be extended even after child comes of age if a child due to mental illness, mental retardation or due to any other reason is incapable of looking after him/herself, his/her rights and his/her interests. Article 93 of the Law prescribes that decision on extending parental rights is to be passed by court in a non-contentious procedure.

Article 178 of the Family Law places parentless child or an adult person who cannot look after him/herself or his/her interests and obligations under custody. Article 235 of the same Law prescribes that adult person who due to mental illness or mental retardation does not have capacity to work - as documented in a decision on inability to work to be passed by a competent court - is placed under custody by centre for social work. Custody is regulated in detail by provisions of the Family Law. By placing persons under custody, the Law provides protection of status and property rights and other interests of inmates.

From the above, it can be concluded that children and adults are fully covered by legal protection of their personality and property and in terms of placement in appropriate institution of social care. When it comes to the protection of this category of children, centres for social work act upon the decision of commission for categorization of children with special needs. It is defined by Article 16 of the Regulation of Criteria for Determining Form and Degree of Disability or Impairment of Children and Youth with Special Needs and their Educational Inclusion. This Commission works under the Ministry of Education and Science.

Within its portfolio, Ministry of Labour and Social Welfare has an ongoing communication with centres for social work in respect of changing regulations relevant for protection of the quoted category of children and adults. Also, the protocols for treating these cases have been drafted and disseminated to centres for social work.

With a view to explain the terms and conditions of admission, stay and discharge, public establishment "Komanski most" plans to draw up information brochure and disseminate it to inmates-custodians, professionals and public at large. Also, the establishment plans to draw up cooperation plan that will encourage contacts between inmates and the public at large, to solicit the support of volunteers, NGOs, media etc.

Adopted strategic documents in the area of social and child protection and the Law on Social and Child Protection – Article 69 and 72 prescribed the establishment of a counselling ward that will be counselling, research and expertise hub that will also supervise the work of institutions of social protection.

Public institution Centre for Children and Youth “Ljubović”

Criminal Code of Montenegro in its Article 92 envisages educational measure of referral to a correctional institution to a period from 6 months to 2 years. The measure is pronounced by court solely. If a juvenile person is at school, the management of the Centre can extend stay at correctional institution until the end of school year if requested by a juvenile concerned or centre for social work. Juveniles who are to serve their educational measure are then assigned to mixed groups that are looked after by two pedagogues and their assistants and they stay in separate rooms.

The Centre delivers upon measures of increased supervision with day care in premises of the centre pursuant to Article 90 of the Criminal Code. This measure is pronounced by court solely and the children stay in separate rooms, too.

In addition, the Law on Social and Child Welfare in its Article 25 prescribes right to placement in an institution as a basic right in social protection area. The quoted provision prescribes *inter alia* that children who have behavioural disorder are entitled to placement in an institution, too. The request related to that right is considered by centre for social work at first instance and if contested the request for placement is considered by the Ministry of Labour and Social Welfare. Also, if the decision of the Ministry of Labour and Social Welfare is contested concerned party can launch administrative procedure before the Administrative Court of Montenegro. This Law provides for administrative and judicial protection relevant to the placement procedure.

If a parentless child has a behavioural disorder, pursuant to Article 178 of the Family Law s/he is to be placed under custody. By placing a child under custody his/her status and property rights and other interests are protected.

According to the arguments above, it can be concluded that full provision of legal protection of personality and property of these children is provided together with possibility to place them in an appropriate institution of social protection. When it comes to the protection of this category of children, centres of social work apply protection measures in compliance with the decision of a competent court.

The Centre has a separate Admission Station that accommodates juveniles in social need who were caught as vagrants, who ran away from home, committed criminal offence, who are foreign nationals etc. Admission Station is the only facility of the kind in Montenegro and as such it accommodates children of diverse profiles. Mixing children, as the report stated did not create any problems as their stay there is short, before competent agencies or their parents take them back. Centres for social work and Police accommodate children in Admission Station for temporary stay only.

Having in mind the fact that accommodation capacity is not satisfactory (particularly concerning the quality of buildings, furniture, water, electrical and sewage system), Ministry of Labour and Social Welfare launched initiative for tearing down old and constructing new buildings for the Centre. The Feasibility study has already been made with the help of UNICEF experts, professors from University of Zagreb.

The project has been drafted and reviewed and it remains to get building permission so that the tender can be called and contractor selected. The project envisaged five new buildings, four of which would be made for stay of children (admission station, diagnostic centre and two buildings for two mixed groups) and one for administration with adjacent gymnasium and an ambulance (a room for patients and dispensary). The buildings will meet recognized standards of special pedagogy and it will enable creating atmosphere that resembles the one in family. We want to note that the funds for construction works have already been provided and that the works will start in the first half of 2010.

Like other residential institutions for children in Podgorica, food (three meals a day) is taken from the Student Hostel's canteen where the preparation of food and its nutritive values are controlled by nutritionists. In addition to that, the snacks by children's choice are prepared in the Centre.

Annual programs are made for each instruction group respectively and they are kept by instructors. With the help of a UNICEF expert, in four months in 2009 the Centre amended all work programs in compliance with international instruments relevant for children in conflict with law. The programs are child-focused and not system-focused and they envisage a full participation of centres for social work, family, Centre for Children and Youth and local community. Individual programs that are made for each child respectively define in detail what a child can expect from the Centre and what the Centre expects from a child. Programs particularly focus on participation of NGO sector and organizations that work with protection of children. The plan envisaged camping, summer and winter holidays, subsidized housing, half-way homes etc. Some of them have been implemented already. In the beginning of 2010, the program of conceptual-methodological work with children in conflict with law as implemented in Centre for Children and Youth "Ljubović" will be published by UNICEF and it is going to be used as a reference material for professionals who work in field of social work and with children. As one of the segments of the program, the Centre produced a theatre play „On Good and on Bad Path“ in cooperation with the Academy of Theatrical Arts from Cetinje and under the auspices of Ministry of Labour and Social Welfare and UNICEF. In the play 15 inmates from the Centre play along with their peers from elementary schools in Podgorica and Danilovgrad and they play their own life. The play strongly impressed the audience at its performances staged in the Centre for Children and Youth, Culture Centre in Podgorica and in Nikšić. The play has been extensively covered by media.

Punishment measures are rarely used. Punishment measures are very limited (prohibition to leave the centre, compensation for damage, prohibition of home leave) and they are all regulated in the Rules of Procedure for Rewards and Punishments.

The Centre registers staff on duty every day.