

## **Response**

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

**from 1 to 11 February 2011**

The Government of Serbia has requested the publication of this response. The report of the CPT on its February 2011 visit to Serbia is set out in document CPT/Inf (2012) 17.

Strasbourg, 14 June 2012

**Response  
of the authorities of the Republic of Serbia concerning the Report of the European Committee  
for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment  
on their third regular visit to the Republic of Serbia conducted in the period  
from 1 to 11 February 2011**

**E. National Preventive Mechanism**

We inform you that the National Mechanism for the Prevention of Torture (NPM) has been established in the Republic of Serbia by adopting the Law on Amending the Law on the Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Official Gazette of RS – International Treaties", no. 7/2011), which the National Assembly of the Republic of Serbia adopted on 28 July 2011.

The Law stipulates:

"The Ombudsman shall be appointed to perform activities of the National Mechanism for the Prevention of Torture.

While performing the activities of the National Mechanism for the Prevention of Torture, the Ombudsman shall cooperate with the Ombudsmen of the autonomous provinces and the associations whose statutes aim at the improvement and protection of human rights and freedoms, pursuant to the law. "

The Ombudsman Saša Janković and the Provincial Ombudsman Aniko Muškinja Heinrich signed the **Memorandum of Understanding** between the Ombudsman and the Provincial Ombudsman on Performing Activities of the National Mechanism for the Prevention of Torture on 12 December 2011.

**Public call for Associations was published** on 29 December 2011 in the "Official Gazette of the Republic of Serbia" and on Ombudsman's website [www.zastitnik.rs](http://www.zastitnik.rs). The subject of the public call was the selection of associations the Ombudsman would cooperate with in the activities of the National Mechanism for the Prevention of Torture, including the participation of associations while visiting the places where the persons deprived of their liberty are located, writing reports, recommendations, opinions and other acts as well as performing other activities of the National Mechanism for the Prevention of Torture. Deadline for submitting applications was 15 days following its publication in the "Official Gazette of the Republic of Serbia". Certain associations will be recommended for the systematic monitoring of the situation of persons deprived of their liberty and the occurrences of torture in police stations, institutions for the execution of criminal sanctions, social protection institution of residential type and psychiatric hospitals, as well as the situation of specific vulnerable groups among the persons deprived of their liberty.

Following the public call, **nine non-governmental organisations applied. The selection of the applicants will be conducted on 20 January 2012.**

The adopted budget of the Ombudsman for 2012 foresees special earmarked funds for conducting activities of the National Mechanism for the Prevention of Torture in the amount of 7,670,000 RSD. A van has been purchased from the Ombudsman's funds, which are the result of savings. The van is primarily intended for the work of NPM, but in the available intervals, and when necessary, it will be used for other activities of the Administrative and Professional Service.

## II FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. Establishments under the authority of the Ministry of Interior

11. In order to gather information that could be useful for the successful conduct of criminal proceedings, i.e. taking necessary measures to discover clues and items that could serve as evidence for finding and apprehending criminal offenders, the police has the authority in the phase of pre-trial proceedings to ask citizens for all necessary information pursuant to the provisions of the Article 226 of the Criminal Procedure Code (hereinafter: CPC).

Gathering information from citizens is not the procedural action. The official note or report on gathered information from citizens is submitted to the competent public prosecutor's office along with the criminal charge. Upon the completion of investigation, the investigating judge sets apart the information police gathered from the citizens along with other statements of the defendant, witness or expert that the court cannot base decision on, closes them in a separate envelope and keeps it apart from the other case documents. Thus separated information the police gathered from the citizens cannot be even exceptionally used in the criminal proceedings, i.e. they are for further criminal proceedings without any significance (Article 178 of the CPC).

Citizens, within the meaning of the Article 226 Para. 2 of the CPC, cannot be interrogated in the capacity of a defendant<sup>1</sup>, witness nor expert by the police in the pre-trial proceedings. Hearing of a citizen as a witness or expert is a procedural action, which is available exclusively to the court.

The police carry out hearing of a person in the capacity of a suspect<sup>2</sup> in the pre-trial proceedings, if a suspect, in the presence of a lawyer, agrees to give evidence. The police inform a competent public prosecutor, who may be present at a hearing, about the hearing of a suspect. The record of this hearing is not separated from the case documents and can be used as evidence in the criminal proceedings (Art. 226 Para. 9 of the CPC).

Gathering information from citizens lasts as long as it is necessary to obtain all needed information, but no longer than four hours.

If, in the course of gathering information, it has been assessed that a summoned citizen can be considered a suspect (a person for whom there is well-grounded suspicion that he has committed a criminal offence), a police officer informs them of the criminal offence they are charged with and the grounds for suspicion, the right to have a lawyer present at their further hearings, that they are not obliged to, without counsel, answer questions, and if detained (Article 229 of the CPC) the police officer informs them of the rights stipulated in Article 5 of the CPC and allows them the use of rights arising from the Article 228, Para. 1 of the CPC.

When the police applies the measure of detention against a person up to 48 hours (Art. 229 of CPC), the time up to four hours, the (longest) time to obtain necessary information, is counted into the total time of detention.

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<sup>1</sup> "Defendant is a person against whom a Ruling on instigating the investigation has been issued or against whom a direct indictment, motion to indict or private suit has been filed. The term "defendant" is a general term for a defendant, indictée and convicted person".

<sup>2</sup>"Suspect is a person against whom, before the initiation of criminal proceedings, the competent government authority has taken certain acts due to existence of grounds of suspicion that he committed the criminal offense".

The detention measure is of exceptional character, and is applied for the purpose of gathering information or conducting hearing, in relation to:

- a person deprived of liberty (pursuant to Art. 227, Para. 1 of the CPC, when there is ground for detention decision stipulated in Art. 142 of the CPC)
- a person in the capacity of a suspect (from Art. 226 Para. 7 of the CPC) and
- a person in the capacity of a citizen, who has been assessed as a suspect during the process of gathering information (Art. 226 Para. 8 of the CPC – this is a person for whom there is well-grounded suspicion that he has committed a criminal offence).

The beginning of 48 hours detention, the longest the detention can last in the police, starts from the moment a person is deprived of liberty (Art. 227, Para. 1 of the CPC), i.e. from the moment a person present themselves on police premises upon answering a summons in the cases when a person has been summoned as a suspect or when a person presents themselves upon summons as a citizen to give information and they are assessed as suspects during the process of gathering information (Art. 226 Para. 8 of the CPC).

The last amended Law on Police (“Official Gazette of RS”, no. 92/11, of 7/12/2011) in the Article 53 provides the following: “Unless otherwise provided by other law, authorised officer shall detain a person who disturbs the peace or endangers public order when it is not possible otherwise to establish order or eliminate the disturbance. Detention may not exceed 24 hours.”

13. The provisions of Art. 25 of the Constitution of the Republic of Serbia, Art. 12 and 35 of the Law on Police, Art. 5 Para. 4 and Art. 12 of the Criminal Procedure Code, Art. 176 of the Law on Misdemeanours and Art. 34 of the Code of Police Ethics which, inter alia, stipulate that any violence, torture, inhuman or degrading punishment or treatment of persons who have temporary been restricted freedom of movement of any kind by the police, is prohibited and punishable.

In exercising police powers, police officers have duty and obligation to proceed humanely, with respect for rights and freedoms, dignity, good name and honour of all. Furthermore, it is prohibited to extort confessions of any kind.

Within the Professional Training Programme for Police Officers of the Ministry of Interior of the Republic of Serbia (issued annually by the Minister of Interior), the topics concerning the exercise of police powers are realised as well as the protection of human and minority rights, prevention of torture in the police and the implementation of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles and other regulations. At the end of the calendar year, tests are organised for all police officers in order to check their knowledge.

The provisions of the Law on Police regulate the internal control of the police (Articles 171-179) and the complaint procedures (Article 180).

For this purpose, the Sector of Internal Control has been established, which monitors the legality of police work, especially in terms of the respect and protection of human rights while performing police tasks and applying police powers. As part of this control, the Sector acts preventively to detect and prevent any forms of abuses and irregularities in work, including criminal offences, misdemeanours and violations of official duty by police officers. Furthermore, the Sector acts on suggestions, complaints and petitions of individuals and legal entities, on written requests by members of police and on self-initiative i.e. on gathered information and other intelligence. All citizens, including persons under the age of 18, may submit complaints. Police officers of the Sector of Internal Control monitor the implementation of laws and by-laws in the areas under the purview of the police.

In addition to this specialised unit, executives of the organisational units of the Ministry, Commission for Resolving Complaints, Disciplinary Commission as well as Commission for Monitoring the Implementation of the European Convention for Prevention of Torture, Inhuman and Degrading Treatment or Punishment also monitor the legality of the police work and the respect and protection of human rights while performing police tasks.

### **Pre-trial proceedings – police treatment of juvenile criminal offenders**

The National Assembly of the Republic of Serbia adopted the **Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles** (“Official Gazette of RS”, no. 85/2005, hereinafter “Law on Juveniles”) on 29/09/2005 which, for the first time in the Republic of Serbia, regulates, with a separate legal act, the criminal position of juveniles, both perpetrators and victims of criminal offences and constitutes a separate part in terms of integrating the provisions of substantive, procedural and executive legislation.

The adoption of this Law represented a significant step towards the harmonisation of domestic legislation with the international documents ratified by our state. Thus, the legal preconditions for the construction and creation of a new justice system in the Republic of Serbia have been created, with the fundamental aim to establish juvenile justice, which:

- is based on the rights of the child;
- recognises the best interest of the child as the basic principle of this system;
- is focused on the prevention as a primary goal;
- uses the confinement of children as the last available measure, but in the shortest possible duration;
- applies principles: redirection, diversion and restorative justice, in order to deter children from the formal system of criminal justice and resolve conflicts within the local community;
- is directed towards strengthening of competencies and training of all stakeholders in the justice system for children;
- is based on the strict enforcement of international norms and standards.

Since the beginning of the implementation of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (01/01/2006), the prevention and suppression of juvenile delinquency and criminal protection of juveniles – victims of criminal offences has been done by the police officers, especially trained for the treatment of these juveniles (1750 police officers have obtained relevant certificates after finishing training in the fields of child rights, juvenile delinquency and the protection of juveniles in the criminal proceedings carried out from 2005 until 2010). Exceptionally, other police officers (without certificates) can be engaged when the especially trained police officers for the work with juveniles are not in the position to act due to the circumstances of the case.

For the purpose of the professional, ethical and law-based treatment by the police toward juveniles, the Ministry of Interior adopted two internal binding acts: Guidelines on the Conduct of Police Officers towards Juveniles and Young Adults and the Special Protocol on the Conduct of Police Officers in the Protection of the Juveniles from Abuse and Neglect.

### **Criminal status of juvenile offenders**

Within the pre-trial proceedings, pursuant to the Law on Juveniles, certain limitations in the use of police powers against juveniles were introduced. The detention of juvenile suspects up to 48 hours was abolished. It had been allowed pursuant to the provisions of the Criminal Procedure Code until 01/01/2006.

A juvenile deprived of liberty (under Art. 227 Para. 1 of the CPC, when there are grounds for determining detention provided in the Art. 142 of the CPC), is informed of their rights stipulated in the Art. 5 of the CPC (orally or in writing – they are handed an information sheet “Rights of a juvenile deprived of liberty”), after which he is without delay taken to the judge for juveniles in the High Court, and not later than within eight hours.

If, due to the unavoidable interferences, bringing a juvenile deprived of liberty lasted longer than eight hours, police officers are obliged to explain such a delay to the judge for juveniles, so that a judge can make an official note, i.e. record. The record also includes the statement of a juvenile deprived of liberty on the time and place of deprivation. Summoning a juvenile in the capacity of a citizen or suspect is conducted via parent, adoptive parent or guardian, unless this is not possible due to the reasons of urgency.

Apprehension of a juvenile, who has been sentenced with a criminal sanction of an institutional type, is executed by the police officers in civilian clothes with full respect for the dignity of the juvenile and aiming at the prevention of stigmatisation that could have negative consequences for their development and social status.

Gathering information from a juvenile in the capacity of a citizen, as well as the hearing of a juvenile in the capacity of a suspect in regard to the criminal offences that are prosecuted ex officio, is conducted only in the presence of a parent, adoptive parent or guardian by the police officer with certificate, who has acquired special skills in the field of child rights and juvenile delinquency. A lawyer, of a personal preference of a juvenile or their parent, adoptive parent or guardian, must also be present at the hearing. If they do not have one or cannot provide one, police is obliged to provide lawyer ex officio with certificate who has also acquired special skills in the field of child rights and juvenile delinquency.

If a juvenile is in detention, gathering information or hearing is conducted on the basis of the previously acquired written approval from the judge for juveniles, i.e. president of the Council for Juveniles.

**NOTE: Articles 63-75 of the Chapter VIII in the Law on Misdemeanours regulate the provisions related to juvenile offenders. When the offence is committed by a juvenile, police officers conduct the procedure.**

**Measures for the protection from the inadequate treatment of persons deprived of their liberty**

24. Pursuant to the existing normative-legal framework in the Republic of Serbia, police officers of the Directorate of Police of the Ministry of Interior can determine a measure of detention or deprivation of liberty in the following cases:

Pursuant to the provisions of the **Law on Police**, police can determine the measure of **detention**:

1. **up to 24 hours**, for an adult and juvenile **when they disturb or endanger public order** if it is not possible otherwise to establish order or eliminate the disturbance and when the conditions are provided in the provisions of the Article 165 and Article 168 of the Law on Misdemeanours (Art. 53 Para.1 of the Law on Police)
2. **up to 48 hours**, for a person extradited by foreign security services and who is to be bound over to a competent authority (Art. 53 Para. 2 of the Law on Police).

**When there are elements of a misdemeanour**, pursuant to the provisions of the **Law on Misdemeanours**, police can determine the measure of **detention** for an adult and juvenile:

1. up to 24 hours, if the offender was caught while committing a misdemeanour and cannot immediately be brought before a judge, and there is well-grounded suspicion that they would abscond or that there is a risk they would immediately continue to commit misdemeanours (Art. 165 of the Law on Misdemeanours).
2. up to 12 hours, if the offender was caught while committing a misdemeanour and was under the influence of alcohol or other narcotic agents and if there is a risk that they will continue to commit misdemeanours. Detention of persons in such cases may last until they become sober, but no longer than twelve hours. (Article 168 of the Law on Misdemeanours).

Detention of persons in these cases is done in the premises located within the facilities of police directorates or police stations, and is determined by police officers of general jurisdiction police, traffic and border police. The detainee is informed orally of their rights, provided with detention decision and an official record is prepared signed both by the police officer and the detainee pursuant to the provisions of the Rulebook on Police Powers (Art 30).

**When there are elements of a criminal offence**, pursuant to the **Criminal Procedure Code**, police can determine the measure of **detention for an adult**:

1. up to 48 hours, for the purpose of gathering information or hearing in regard to a criminal offence that is prosecuted ex officio. Police officer determines detention, informs the person orally of their rights and provides them with an information sheet "Rights of a detained person" and within two hours a Detention Decision (Art. 229 of the CPC)

The mentioned measure can be determined for:

- a person deprived of their liberty (Art. 227 Para.1 of the CPC when there are grounds for determining detention provided in Art. 142 of the CPC);
- a person in the capacity of a suspect (Art. 226 Para. 7 of the CPC);
- a person in the capacity of a citizen, when they have been assessed as a suspect during the process of gathering information (Art. 226 Para .8 of the CPC – this is a person for whom there is well-grounded suspicion that they are the perpetrators of the criminal offence).

Detention of adults up to 48 hours in the Police Directorate for the City of Belgrade is done in the premises located within the facilities of police directorates or police stations, while in the other police directorates due to the bad conditions of the premises, the measures of detention are conducted in the detention units located within the facilities of the Administration for Implementation of Criminal Penalties of the Ministry of Justice.

When, pursuant to the provisions of the Criminal Procedure Code, there are elements of a criminal offence upon which the investigating judge or the judge for juveniles can determine detention (Art. 142 of the CPC).

2. **police can deprive an adult and juvenile of their liberty.** In such cases, police officers inform a person orally of their rights, provide an adult with the information sheet “Rights of a person deprived of liberty” and a juvenile “Rights of a juvenile deprived of liberty” and **within eight hours bring an adult before the investigating judge and a juvenile before the judge for juveniles along with the “Report on Deprivation and Apprehension”**. If, due to the unavoidable interferences, bringing a person deprived of liberty lasted longer than eight hours, it is incumbent on the police officer to provide an explanation for such a delay to the investigating judge or the judge for juveniles, so that a judge can make an official note, i.e. record. (Art. 227 of the CPC).

Until persons deprived of their liberty are brought before the investigating judge, i.e. the judge for juveniles, they stay in the police premises intended for conducting interviews with individuals.

When delivering the information sheets “Rights of detained persons” or “Rights of persons deprived of liberty”, it is incumbent on an authorised police officer to ask an adult whether they understood the information in the sheet, and if not, to give them additional oral explanation. The person has the right to refuse to read or sign the sheet, which is stated in the sheet by the police officer.

Depending on a particular case and the type of police powers applied in the pre-trial proceedings (deprivation of liberty, gathering information from citizens, hearing of a suspect), police officer specially trained for the treatment of juveniles (with certificate) delivers the juvenile the appropriate information sheet “Rights of a juvenile in the capacity of a citizen”, “Rights of a juvenile in the capacity of a suspect” or “Rights of a juvenile deprived of liberty” in the presence of their parent, adoptive parent or guardian, as well as a lawyer if a juvenile is deprived of liberty or is questioned in the police. If a parent, adoptive parent or guardian is not present, since their presence could not be provided due to the objective reasons or unavoidable interferences, they will be replaced by the officer of the Guardianship Authority (from the authorised Social Welfare Centre) who, in consultation with the juvenile, can provide them the opportunity to notify the so-called “third party – person of their choice” of their status, if the police temporarily restricted the juvenile’s freedom of movement.

After delivering the information sheet, police officer asks a juvenile whether they understood information stated in the sheet, and if not, gives them additional oral explanation in the manner and language understandable to a juvenile, according to their age and maturity. A juvenile has the right to refuse to read or sign the sheet, which is stated in the sheet by the police officer.

The Committee of the Ministry of Interior for the Monitoring of the Implementation of the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its efforts to implement the abovementioned recommendation of the European Committee for the Prevention of Torture given twice in the reports to the Government of the Republic of Serbia, after the visits in 2004 and 2007, has so far **drawn up information sheets and implemented them into the police practice for the purpose of informing adults and juveniles on their rights in the pre-trial proceedings phase**, when the police implement the provisions of the Criminal Procedure Code and the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles. Information sheets are posted on the Intranet network of the Ministry of Interior of the Republic of Serbia in PDF format and are available to all police officers in Serbian and English languages in Cyrillic and Latin alphabet.

The association of citizens Child Rights Centre and the Faculty of Law in Belgrade provided expert assistance to the abovementioned Committee of the Ministry of Interior in the drawing up of the information sheets “Rights of a juvenile in the capacity of a citizen”, “Rights of a juvenile in the capacity of a suspect” and “Rights of a juvenile deprived of liberty”. Furthermore, children and youth from the organisation “The Children’s Information and Cultural Service – DX” participated as well with their suggestions how to make the text in the information sheets more understandable to those under the age of 18.

**The content of these information sheets is in accordance with the provisions of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles**, which in this field **represents lex specialis**, as well as with the provisions of the Constitution of the Republic of Serbia (Art. 27, Art. 28, Art. 29, Art. 33 and Art. 64), Convention on the Rights of the Child (Art. 37), the Criminal Procedure Code (Art. 4, Art. 5 and Art. 228 Para. 1) and the Law on Police (Art. 38). The Law on Juveniles states that the other laws and general acts will not be applied if they are in contravention with the Law on Juveniles (Art. 4).

The information sheet “Rights of a juvenile deprived of liberty” lists all rights provided in the provisions of the Constitution of the Republic of Serbia, Convention on the Rights of the Child, CPC and the Law on Juveniles, which a person deprived of their liberty is informed of, except the right to a translator or interpreter. (Art. 4 Para. 7 of the CPC).

The Committee of the Ministry of Interior has not yet commenced the drawing up of the comprehensive information sheet for juveniles on their rights when they are in the police, due to the fact that the legislation on misdemeanours is not normatively harmonised with the juvenile justice legislation. Pursuant to the Law on Misdemeanours, it is allowed to detain a juvenile (in terms of Art. 165 Para. 3 and Art. 168) as one of the measures for providing presence of an accused in the criminal proceedings, while the Article 61 of the Law on Juveniles prohibits the detention of juvenile offenders of criminal acts up to 48 hours (in terms of Art. 229 of the CPC). Also, Art. 4 of the Law on Juveniles stipulates that “provisions of the Criminal Code, the Criminal Procedure Code, the Law on Execution of Criminal Sanctions and other general statutes shall apply only if not in contravention with this Act”.

25. Regarding the police authority of “bringing”, the Articles 49 and 50 of the Law on Police regulate the police power of “bringing” and the conditions for its execution.

Rules on Police Powers define, in the Article 18, that “police officer is obliged to inform the person they are bringing of the reasons for bringing, their right to notify family members or other persons, as well as the right to a lawyer and to warn them that this right does not oblige the police officer to delay the bringing. After applying the police powers of bringing, it is incumbent on the police officer to submit a report, which is registered in the records of the applied powers (form 22a). When a person is apprehended, and after that detained in police station premises, police officers write the official record and detention decision, which states that a person has been informed of their rights, the exercised rights of the detainee, right to healthcare, etc. The abovementioned record is signed by the police officer and the citizen to whom the police power has been applied.

Bearing in mind the necessity to refurbish the police detention facilities, the Directorate of the Police in cooperation with the Directorate for General Affairs of the Ministry of Interior of the Republic of Serbia (responsible for finances) has produced a Plan for the Construction and Renovation of Detention Facilities pursuant to the current regulations and international standards and recommendations given by the Committee. The Plan foresees the construction of an annex and adaptation of detention facilities in 2012 and 2013 in a category of **the utmost priority**.

Regarding the recommendations given in the points 16,18,20,23,24 and 26, the Ministry will take measures to pay special attention to the field of human rights in the Professional Training Programme for Police Officers, as it has been done so far, as well as to the analysis of the conduct of police officers while applying police powers, and, through the instructive and control activities, to the control whether the applied powers and communicated rights have been recorded in a proper and lawful manner.

## STATISTICAL APPENDIX

of the Sector of Internal Control of the Police of the Ministry of Interior of the Republic of Serbia

During the performance of duties falling within the scope of work of the Sector of Internal Control of the Police, in the period from 2008 to 2011 and acting on petitions and complaints of citizens and legal entities or by means of verification of findings which they had reached using operational methods, police officers of the Sector have undertaken measures and actions pertaining to establishment of evidence of possible excessive use of police powers by police officers of the Ministry of Interior during the interventions against both adults and juveniles. In that sense, during the detection of the abovementioned oversteppings, police officers of the Sector have filed criminal charges against accountable employees or have proposed undertaking of appropriate disciplinary accountability measures.

### **2008**

During 2008, the Sector filed **12** criminal charges, **20** of which were filed against police officers of the Ministry of Interior, for the following criminal offences they have committed:

- five criminal offences of ill-treatment and torture referred to in Article 137 of the Criminal Code,
- two criminal offences of infliction of great bodily injuries referred to in Article 121 of the Criminal Code,
- one criminal offence of violent behaviour referred to in Article 344 of the Criminal Code ,
- one criminal offence of unlawful deprivation of liberty referred to in Article 132 of the Criminal Code,
- one criminal offence of extortion referred to in Article 214 of the Criminal Code and
- one criminal offence of infliction of minor bodily injuries referred to in Article 122 of the Criminal Code,
- one criminal offence of causing general danger referred to in Article 278 of the Criminal Code.

Among the abovementioned criminal offences, with regard to excessive use of powers in treatment of the juveniles, **two** criminal charges were filed against **two** officers of the Ministry of Interior for the following criminal offences:

- infliction of great bodily injuries referred to in Article 121 of the Criminal Code
- causing general danger referred to in Article 278 of the Criminal Code.

During the given period, while reviewing the well-foundedness of allegations from petitions and complaints of citizens and legal entities, as well as well-foundedness of the data which the Sector had obtained during operations, it was determined that allegations from 18 petitions were well-founded or partially founded, for which reason the undertaking of disciplinary accountability measures of accountable employees was proposed.

Apart from the aforementioned facts, during 2008, allegations from petitions and complaints of citizens, indicating possible excessive use of police powers in treatment of the juveniles, were not confirmed.

## 2009

During this period, the Sector filed **8** criminal charges against **12** police officers for the following criminal offences:

- two acts of ill-treatment and torture,
- three acts of violent behaviour,
- one criminal offence of coercion,
- one attempted extortion,
- and one act of endangering safety.

Among the abovementioned criminal offences, the Sector filed **one criminal charge** for attempted extortion, which one police officer had committed against a juvenile.

Apart from that, during the verification of allegations from petitions filed by citizens, police officers of the Sector established the excessive use of coercion means in **22 cases, 4 of which** pertained to the treatment towards the juveniles. In that respect, undertaking of disciplinary accountability measures was proposed against accountable employees.

## 2010

During 2010, the Sector of Internal Control filed **six** criminal charges against **nine** police officers for committing:

- five criminal offences of ill-treatment and torture and
- one criminal offence of violent behaviour.

Among the abovementioned criminal offences, **one** criminal charge was filed against **two** police officers for committing the criminal offence of ill-treatment and torture of a juvenile.

Apart from that, the Sector of Internal Control established the well-foundedness of allegations from **16** petitions and other documents, **two** of which were declared well-founded and they pertained to unlawful treatment of juveniles by police officers. It was proposed to institute disciplinary procedure against accountable employees.

## 2011

During this period, the Sector filed **five** criminal charges against **six** police officers of the Ministry of Interior for committing:

- three criminal offences of ill-treatment and torture and
- two acts of extortion.

The Sector did not file criminal charges with regard to potential use of force or other forms of unlawful behaviour towards the juveniles by employees of the Ministry of Interior.

During the same period, the Sector established the well-foundedness of allegations from **13** petitions and other documents, where **two petitions** pertained to the overstepping of powers by police officers against the juveniles, which was the reason for proposing the instigation of disciplinary procedure against the accountable employees of the Ministry of Interior.

## **B. Facilities under the authority of the Ministry of Justice**

The Ministry of Justice, the Administration for the Implementation of Criminal Penalties would like to thank the Committee Delegation for unbiased comments after the third periodical visit to correctional institutions in the Republic of Serbia. The Administration for the Implementation of Criminal Penalties puts maximum efforts into the enhancement of the execution of criminal sanctions, according to their material and human resources and in compliance with European standards.

34. the Committee reports the detected contradictions in conditions stipulated for conditional release of the offenders. However, these contradictions do not refer to the stipulation of conditions for conditional release, but to existence of two separate institutes (conditional release and early release).

Conditional release is a basic institute and conditions for deciding on conditional release are stipulated by the Criminal Code (Article 46 governs that the court may order a conditional release of an offender who has served two-thirds of a sentence, if prescribed criteria have been met).

The objection with reference to the insufficient use of conditional release of the offenders is true, therefore on the proposal of the Administration for Implementation of Criminal Penalties, the new Criminal Procedure Code will regulate the conditional release institute in a different way ("Official Gazette of the Republic of Serbia", No. 72/2011). It stipulates that the notice of court hearing, at which it should be decided on conditional release, shall be served to an offender (if the court finds his/her presence mandatory), defender, public prosecutor and a representative of the office of treatment services from prison, instead of the previous strictly written procedure. In this way, the court will have more complete insight into the achieved results of the treatment of an offender during the prison sentence service, on the basis of direct hearing of given entities and other facts, which should be taken into account when issuing a decision.

We would like to inform you that the Republic of Serbia has adopted the Action Plan to Implement the Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions in the Republic of Serbia for the period 2010-2015. Please find attached the text of the Action Plan in the Appendix of the document.

The Action Plan to Implement the Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions provides for the activity of amending the Criminal Code, whereby the condition for the implementation of conditional release will be reduced to the maximum 3-year prison term, so that an offender will be entitled to submit a request for conditional release after he/she has served half of the prison sentence. Also, it stipulates the inclusion of the possibility of executing conditional release under electronic surveillance.

It is expected that the aforementioned amendments to the Law will contribute to the issuance of the greater number of decisions on conditional release, either in the sense of the procedure itself or in the sense of the improved tangible solutions.

Early release is another institute stipulated by Article 173 of the Law on the Execution of Criminal Sanctions, according to which the Head of the Administration may grant an offender an early release from prison, if he/she has served nine-tenth of the sentence, not earlier than three months prior to the end of the sentence, due to good conduct and achieved results in the treatment programme.

During this year, 220 offenders were granted early release from prison by decision of the Head of the Administration.

35. For the purpose of solving the issue of overcrowding in prisons, the Government of the Republic of Serbia has adopted the Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions, for the period 2010-2015 ("Official Gazette of the Republic of Serbia ", No. 53/2010 and 65/11), encompassing comprehensive measures for resolving this issue, which include the following activities: application of alternative measures and sanctions and establishment of the commissioner's office, more intensive resort to institutions of conditional and early release from prison, extension of accommodation capacities and improvement of conditions in prisons, professional capacity building of the administration, establishment of competences of the judge for enforcement of criminal sanctions, introduction of the integrated information system and possible amnesty.

In accordance with the enacted Strategy and Action, the system for enforcement of alternative sanctions is being upgraded. Seven commissioner's offices have been opened (in Belgrade, Subotica, Sombor, Novi Sad, Niš, Kragujevac and Valjevo) and setting up of new offices will continue, according to the determined plan. Creation of organisational preconditions enables the implementation of the community service sanction and conditional sentence with the guardian supervision in the wider territory of the Republic of Serbia. On the other hand, new alternative measures and sanctions have been implemented (serving a maximum of one-year prison sentence without leaving the premises of the place of residence of the offender, so called "house arrest" and a measure for ensuring the presence of the accused person, prohibition of leaving the home or place of residence, so called "home detention curfew") in the whole territory of the Republic of Serbia. At the moment, 160 measures and sanctions are being implemented in this manner (with or without electronic surveillance).

In cooperation with the OSCE Mission and the Judicial Academy, by the end of the year, the training courses will be organised for judges and prosecutors from judicial authorities, in whose head offices, commissioner's offices have been opened, for the purpose of promotion of imposing alternative measures and sanctions. The Action Plan to Implement the Strategy provides for the training of holders of judicial offices in each phase of extension of the network of enforcement of alternative measures and sanctions.

In the section pertaining to extension of accommodation capacities, we would like to inform you that the new high security prison of closed type has been opened in Padinska Skela on 17th November of the current year, which can accommodate 450 persons and it will commence its work by the end of the year.

The plan is to construct two new prisons, the funding of which will be provided from loans of the Council of Europe Development Bank, one of which will be in Kragujevac, for accommodation of 400 persons, at the amount of 12.000.000 EUR and construction timeframe until 2016, while the other will be in Pančevo, for accommodation of 500 persons, at the amount of 13.000.000 EUR and the same construction timeframe. It is also envisaged to construct a new prison in Medveđa, for accommodation of 450 persons, the funding of which will be provided from the fund for promotion of construction industry of the Republic of Serbia, at the amount of 12.000.000 EUR and construction timeframe until 2016.

Three new facilities are under construction in the Educational-Correctional Centre in Kruševac, which EU IPA Pre-accession Fund has funded with 3.000.000 EUR. The construction started in March of the current year, with the determined deadline of 14 months for completion .

The Administration for Implementation of Criminal Penalties, in cooperation with the OSCE Mission to Serbia, has designed a Draft Strategy for the Gradual Admission of Sentenced Persons, which was presented to the professional general public, in late November 2011. According to the plan, the commissioner's office will be given greater competences and coordination role in conceiving and implementation of individual programmes of assistance for sentenced persons after their release. A part of this programme will include training of persons for specific vocations.

36. As regards the organisation of activities for the offenders, we would like to inform you that the administration is introducing new programmes for engagement of the offenders in Correctional Institutions in Sremska Mitrovica, Požarevac-Zabela and Niš. Five manufacturing programmes have been established (concerning mechanical engineering, wood, agriculture, screen print, bakery and confectionery) for which the offenders will be trained. In addition, this programme includes 60 trainings for trainers and 60 trainings for instructors in institutions, who will work with 500 offenders. Funds for this project have been provided from EU IPA Pre-accession Fund, the programme implementation started in October of the current year and its duration is 2 years.

37, 38. In respect of allegations concerning potential physical ill-treatment of persons deprived of liberty, we would like to inform you that employees of institutions have been delivered a clear message to comply with provisions of the Law on the Execution of Criminal Sanctions and the Rulebook on Maintaining Order and Security in cases of resorting to coercion measures. In that respect, regular trainings have been organised for employees of the Security Service in the Centre for Training of the Staff. In accordance with the annual syllabus, during 2010, vocational training was conducted in the Centre for Training and Professional Improvement of the Administration and attended by 162 persons (interns), trained for the rank of commander in of the Security Service, that is 169 persons trained for positions at the Special Department for Execution of Prison Sentences for Criminal Offences of Organised Crime. This training encompasses international conventions from the area of human rights protection, European Prison Rules and national legislation in this field.

Apart from that, in cooperation with the Belgrade Centre for Human Rights, during 2010 and 2011, the administration organised seminars for the employees of the Security Service, Treatment Service and Health Care Service in the field of protection of rights of persons deprived of liberty and prevention of torture, from the aspect of international and national legislation.

The Law on the Execution of Criminal Sanctions stipulates detailed procedures for treatment in the institution, after the application of coercive measures on sentenced persons. The obligation has been introduced pertaining to separate submission of Security Service report and the record of the medical examination to the Head of the Institution, without delay. Medical examination shall be repeated between 12 and 24 hours from the use of coercion means. Mandatory elements of medical records have also been prescribed. Apart from that, the Rulebook on House Rules in Correctional Institutions and District Prisons provides for the possibility for an offender to file a complaint in cases of risks posed to or harm inflicted to body or health, in which case the Head is obliged to immediately order a medical examination and to compose a report thereof.

With regard to certain allegations concerning physical ill-treatment of persons deprived of liberty by the employees of the Belgrade District Prison and one case, for which medical evidence have been collected substantiating these allegations, the District Prison Administration has undertaken necessary measures for elucidating these allegations, for the purpose of instituting disciplinary procedure against accountable perpetrators, actors of this event and their appropriate disciplinary sanctioning.

39. In criminal investigation instigated before the Municipal Court of Požarevac, for the purpose of establishing responsibility in the case of the death of a prisoner of the Požarevac-Zabela Correctional Institution on 17<sup>th</sup> June 2005, 32 witnesses have been examined, out of the total number of 33 proposed witnesses. After examination of the remaining witness, this phase of the procedure will be completed. The issue of assuming the duty of criminal prosecution by the competent prosecutor's office in this case (specified in the Report) is under the exclusive jurisdiction of the Prosecutor's Office.

40. The Belgrade District Prison have taken certain steps in accordance with recommendations regarding custodial staff stop carrying truncheons in a visible manner, while the reported case of custodial staff carrying a truncheon during the visit of the Committee Delegation represents an isolated case and is not a regular practice of custodial staff. Systematic solving of this issue requires amendments to the implementing legislation regulating this area.

41. As regards material conditions of detention and reported overcrowding in the Belgrade District Prison, we would like to point out that the situation has improved. Capacities of the detention unit in the Belgrade District Prison have been increased, by means of reconstruction of the establishment in Belgrade-Padinska Skela, with the capacity of 180 beds. Also, the plan for 2012 is to reconstruct Blocks 2-0 и 3-0, in accordance with international standards, which include direct source of light and air. During the previous period, artificial lighting has been improved on the ground floor of the detention unit.

42. During the previous period, a kitchen of the Belgrade District Prison has been renovated and the quality of food has improved. The food is adjusted to seasonal food items, in respect of fruit selection. Also, dairy products have been added (two types of cheese, yogurt, margarine, various spreads etc.). The quality of food is controlled on an daily basis by a doctor from this institution and at specified time intervals, this control is performed by the authorised city inspection services (in compliance with recommendations referred to in Item 45 of the Report).

44. In accordance with the programme of refurbishment for the Belgrade District Prison, funds have been allocated from the Budget of the Republic of Serbia for 2012, at the amount of 700,000 EUR, for refurbishment of Blocks 2-0 and 3-0, on the ground floor, in accordance with international standards. Also, 650,000 EUR have been appropriated for opening of a new prison canteen, repair of sewer installations, expansion of capacities of the sub-station, water installations and commencement of the project of air-conditioning of detention blocks on the first and second floor.

According to the budgeting for the period 2013 and 2014, financial resources have been designated for refurbishment of two detention blocks per year.

45. As it has already been stated in Item 41, capacities of the Belgrade District Prison have been extended by 180 beds, by means of opening of a separate facility for accommodation of inmates within the Belgrade-Padinska Skela Correctional Institution. In addition, additional reconstruction of part of detention premises, aimed at meeting standard 4 m<sup>2</sup> of living space per inmate. We would like to emphasise that part of the toilets on the ground floor have been repaired, as well as shower units in each block, while the reconstruction plan for the forthcoming period includes the remaining toilets and parts of facilities in Block o, in accordance with appropriated financial resources and the plan for the next year.

At the moment, all inmates of the Belgrade District Prison are provided with beds and beddings with pillows, and they do not sleep on mattresses on the floor. Beddings with pillows are changed on a regular basis.

In accordance with recommendation of the CPT, the cell in Block 3 has been taken out of use until repair works were carried out.

46. During the admission of persons deprived of liberty, much attention has been paid to accommodation in smoking and non-smoking areas, in accordance with the capacities of the prison.

49. During the visit, the Committee noticed the lack of standards regarding living space in part where misdemeanour detainees are accommodated in the Požarevac - Zabela Correctional Institution. In this part of the institution, the number of beds has been reduced in premises, thereby providing the required accommodation standard.

50. Opening of a strictly closed regime type of institution in Belgrade, for accommodation of 450 persons (on 17th November 2011), will solve the problem of overcrowding of cells in the Požarevac - Zabela Correctional Institution.

Refurbishment of the remand section and pavilion with the increased level of security will be continued in the forthcoming period, following the schedule related to the allocated material resources from the Budget of the Republic of Serbia. .

Sanitary conditions of accommodation are provided by means of a regular cleaning of accommodation areas and bed sheets are washed two times a month.

52. The Požarevac Correctional Institution for Women has undertaken measures to refurbish closed regime Section 1 of the institution. A contract on refurbishment works has been concluded with the contractor on 14th April 2011 and old plaster has been removed from walls, areas in the hall and sanitary facilities have been re-plastered and broken-down water heaters have been replaced. Skimming and painting works have been completed. These works are major part of this refurbishment and renovation project which also includes renovation and enlargement of solitary confinement in Section 2 and renovation of accommodation areas for persons with disabilities in the building of infirmary.

During 2010, the process of drawing up the project pertaining to the current situation began, as well as of the project of refurbishment and renovation of the main pavilion building for accommodation of sentenced women, aimed at solving the problem of overcrowding of the Correctional Institution for Women in Požarevac. Overall accommodation needs of the institution have been considered and the plan has been made to design the main pavilion building exclusively for accommodation of sentenced women in closed regime section (instead of accommodation of sentenced women in closed, semi-open and admission section, as it is the case at the moment) and to create new accommodation capacities for semi-open sections by renovating other existing facilities, as well as the main pavilion building. The project was completed in July 2011, thereby initiating the process of the general enlargement and renovation of the whole institution, which will last for several years, depending on the inflow of budgetary resources.

The Proposal for the Law on the Budget for 2012 will provide for the funds required for refurbishment of roof and inter-storey construction, as well as for improvement of the foundation of the building of Pavilion 5. Financial resources have also been provided for reconstruction and remedying of deficiencies of fire protection. During 2012, drawing up of the project concerning refurbishment of the warehouse facility of the semi-open section will be finished.

57. According to their current possibilities, the Belgrade District Prison has organised sports activities for detained persons and they have access to training equipment, basketball court and five-a-side football field.

Time that inmates spend walking outdoors is limited due to a large number of persons in institutions, but managements of institutions undertake measures in order to prolong that time (by renovating new walking paths).

Moreover, as regards the education of juvenile detainees, we would like to stress out that the juveniles are only detained in the Belgrade District Prison for a short period of time, until they are sent to specialised juvenile institutions where education and vocational training is organised.

We would like to report that the Centre for Training of the Administration for Implementation of Criminal Penalties has established cooperation with the Chamber of Crafts Trade, which enables the offenders to learn various crafts and take courses in the institution, while, the Chamber of Crafts Trade will issue course completion certificates, after passing the required examinations. After the offenders have served their sentence, they will have valid craft certificates or course completion certificates enabling them to find jobs in that field.

58. In the section concerning the free exercise of religion, we would like to report that persons deprived of liberty in the Belgrade District Prison have been visited by religious representatives and that a separate facility for conducting of liturgies have been designated.

59. Objections of the sentenced persons, which the CPT Delegation has heard, concerning the lack of information and transparency during classification and re-classification are not grounded, considering that the new Rulebook on Treatment, Individual Treatment Programmes, Classification and Re-Classification stipulates a detailed procedure for adoption of individual treatment programmes, as well as for their review. Pursuant to the provision of the Rulebook, the expert team of the institution shall assess the offender in the admission section, from the psychological, pedagogical, criminological, social, medical and safety perspective. The expert team of the institution shall compose the proposal of the individual treatment programme for the offender, on the basis of the risk, capacity and needs assessments. Risk assessment shall be carried out on the basis of standardised questionnaire forms for the offenders. During the establishment of the treatment programme, the expert team shall encourage the offender in question to participate actively. On the basis of the proposal created in this manner, the Head of the Institution shall adopt the individual treatment programme. The offender shall be introduced to the treatment programme in the admission section and he/she shall receive a decision on the treatment programme. Subsequent amendments to the treatment programme and consequent classification into groups with wider or narrower scope of specific rights, shall be carried out periodically by reviewing this programme (every three months for a prison sentence of up to 3 years, every six months for a prison sentence from 3 to 10 years and every year for those sentenced to terms of imprisonment longer than 10 years). Subsequent classification into a group with the higher level of specific rights shall be recommended by the expert team when an offender has implemented the treatment programme, when he/she has achieved individual goals and when low level of risk has been determined. Subsequent classification into a group with lower level of specific rights shall be carried out due to imposed disciplinary measures and consequently determined higher level of risk. Decision on subsequent classification shall also be given to the offender. Sentenced persons shall be entitled to instigate judicial protection proceedings against the final decision of the administration pertaining to the treatment. New classification system of the offenders shall be transparent, since the offenders participate in their design, they shall be entitled to file a complaint and appeal and to judicial protection, depending on the type of decision that has been issued. The procedure shall be standardised for all institutions, having in mind that unique risk assessment form have been created and decision on classification is reached on the basis of objective criteria stipulated by law and the Rulebook.

Since the new system of classification and preparation of individual treatment programmes for the offenders has been introduced, the Centre for Training and Professional Improvement of the Staff of the Administration for Implementation of Criminal Penalties has organised trainings for the employees of treatment section of institutions, for the purpose of more efficient application of the new Rulebook.

64. In respect of recommendations pertaining to the method of serving a prison sentence in the Special Department of the Požarevac-Zabela Correctional Institution, we would like to inform you that a special Law on the Execution of Prison Sentences for Criminal Offences of Organised Crime ("Official Gazette of the Republic of Serbia", No. 72/2009) has been enacted. Pursuant to this Law, the offenders who have been sent to serve the sentence of imprisonment in the Special Department shall be persons convicted of criminal offences in the sphere of organised crime or war crimes, if the circumstances explicitly specified in the Law have been determined, which refer to the evident risk that these persons could coordinate criminal activities of a criminal group, establish cooperation with another criminal group, organise conflicts with the other criminal group, endanger security of holders of judicial offices or other public office holders who participated in preliminary proceedings or the process of the execution of the prison sentence or that they could incite other persons to commit a criminal offence. Therefore, persons are not automatically sent to serve the

prison sentence in the Special Department if they have been convicted of a criminal offence of organised crime, but if the evidence of specified circumstances has been established by a special decision. The right of appeal against this decision to the immediate higher-instance court has been provided for. Court renders a decision on termination of execution of prison sentence in the Special Department, after it has established that the given circumstances no longer exist. The method of serving the prison sentence in the Special Department is exactly the consequence of the need to limit communication of such persons, in accordance with the Law, since it has been established that there is a risk that they could continue with the organised crime activities, in specified cases and while serving their prison sentence.

66. In the section pertaining to health care, we would like to inform you that in the Požarevac-Zabela Correctional Institution, the number of full-time general practitioners has remained the same (3 doctors), while two nurses have been employed. Furthermore, the working hours of nurses have been changed and they work 12 hours of night shift and 12 hours of day shift, thereby enabling the 24-hours presence of nurses. Infirmary is visited by a surgeon twice a week, by a neurologist, internist and psychiatrist once a week, while a dermatologist comes every other week.

Medical equipment for emergency interventions, such as: an oxygen bottle, ECG machine, a set of instruments for smaller surgical procedures, an ambu-set, a USG machine and a dental x-ray, have been ordered.

The dental office of the Požarevac -Zabela Correctional Institution has been painted and completely refurbished, while devices have been repaired. A dentist with a permanent employment contract works from 7 am to 3 pm.

67. The report states that the two nurses work in the Correctional Institution for Women in Požarevac, one on a full-time and the other one on a part-time basis. There has probably been a misunderstanding since there are three full-time nurses working in the institution. Following the Committee visit, the institution has purchased the oxygen mask.

68. In Požarevac – Zabela Correctional Institution and Belgrade District Prison the vacancies for doctors were announced. It appeared that there is no interest among doctors to work in those institutions. The new vacancy announcements will be published on regular basis until the sufficient number of doctors has been employed in these institutions.

The health care unit in Požarevac– Zabela Correctional Institution is currently being refurbished. The modern medical equipment from the Special Ward is also available for the treatment of inmates who are accommodated in the rest of the institution.

69. The steps have been taken so as to ensure that medicines are distributed by the qualified medical staff. However, due to currently large number of prisoners, we are forced to have a part of medicines distribution being carried out by the prison staff. In accordance with the proposal for the new classification of jobs in the Administration, the number of employed health workers has been increased, which should resolve the issue of distribution of medicines.

The measures have been taken so as to provide sufficient quantities of medicines by inviting the tender for the centralised procurement for all correctional facilities.

70. We underline the fact that the Belgrade District Prison engaged a psychologist to provide their professional services to the persons serving the sentence of imprisonment, as well as a psychiatrist who makes regular visits to the institution. In addition, the services of psychiatrists who are employed in the Special Prison Hospital are available to the prison for 24 hours.

The negotiations concerning the provisions of additional psychiatrist support in treatment of prisoners are currently underway between Požarevac – Zabela Correctional Institution and the Health-Care Centre in Požarevac.

71. In Požarevac – Zabela Correctional Institution there are currently 15 prisoners undergoing methadone therapy. They have regular control examinations by the psychiatrist; however the psychiatrists from the Methadone Centre are consulted as well.

In addition to methadone therapy, which is available to all prisoners who are willing to receive it, the treatment also involves psychiatric-psychological counselling as well as the work performed by the treatment unit staff within the institution.

72. There is a plan for the purchase of a new ambulance vehicle in Požarevac – Zabela Correctional Institution. In Požarevac Correctional Institution for Women in the emergency health care is directed at the Health Care Centre in Požarevac, which is located in the close vicinity of the institution, whereas the emergency care unit of the Health Care Centre provides transport services. The personnel and technical capacities of the Health Care Centre are maximally used by this institution.

73. The institute doctor makes weekly visits to the remand section of Požarevac – Zabela Correctional Institution and in case of an admission in the remand section during the week, the doctor is expected to perform medical examination within the envisaged period.

During the first examination of the prisoner, the patient's record is established and detailed anamnesis information gathered about potential use of physical force and mental harassment of the detainee in the process of deprivation of liberty and during the time spent in police detention. Besides, the information is gathered about potential present or past diseases and their treatment, previous injuries and surgeries, use of psychoactive substances and consequences of abstinence, as well as about received psychiatric treatment.

74. Medical examinations are confidential and performed in the absence of the security service staff, except in cases when the doctor explicitly requires so due to the risk assessment.

75. A unique information system including the database for all correctional institutions, which will be used by the health-care service, is currently being developed. It will comprise an electronic patient's record as well as any information on health condition, treatment and prescriptions.

76. Administration for Implementation of Criminal Penalties addressed the Institute of Forensic Medicine of the Faculty of Medicine in Belgrade, based on the Committee recommendation, requesting that a forensic medical report be submitted to the Administration as well. The Institute of Forensic Medicine stated in its response that according to the applicable laws they are not entitled to submit their reports to the Administration. The amendments to the said laws will provide for submission of the autopsy reports to institutions for implementation of criminal penalties. In the subsequent communication with the Department of Forensic Medicine it was

agreed that in the sixth year of medical studies, the course „medical practice under prison circumstances“ be introduced, which has already been done. Furthermore, it was also agreed that until the law is amended in the sections at question, the Institute of Forensic Medicine will provide to the Administration for Implementation of Criminal Penalties only information about the cause of death, without the autopsy report, for persons who died in the Special Prison Hospital.

With regard to the remark concerning the maintenance of medical records and nonexistent record of prisoners who deceased following their referral to the external hospital, we underline that in any case, whether the death occurred in prison or upon a prisoner’s referral to the external hospital, the autopsy is always systematically performed on the deceased person, and the police and investigative judge as well as relatives of the deceased are immediately informed about the death.

77. The Ministry of Health of the Republic of Serbia, in line with its legal commitments, performs regular and special health supervision of professional work of health departments in penitentiary-correctional institutions. The time schedule and the programme of supervision are determined by the Ministry of Health. The Ministry of Health submits its recommendations and orders to the Administration for Implementation of Criminal Penalties if it finds any irregularities in operation after performed visits and supervision of work by health services in institutions. The doctors who work in correctional institutions have to possess a professional licence issued by the Medical Chamber of Serbia, under the same criteria which are applied in licensing of doctors practicing within the health-care system. The doctors participate in seminars, symposia and congresses, organized by the Ministry of Health, on the basis of which they earn points necessary to renew their licences. In addition, at the head office of the Administration for Implementation of Criminal Penalties, there is a doctor responsible for the tasks of the health-care coordinator, who on one hand monitors and oversees the work of health care service in institutes and on the other arranges cooperation between the Ministry of Health and the Administration.

79. In the Special Prison Hospital the violence among the patients themselves is prevented by all means, from surveillance system monitoring, timely response by the security service members, comprehensive interviews conducted by the educators to the disciplinary sanctioning of prisoners who were involved in any physical confrontation under the Law on *the Execution of Criminal Sanctions and the Rules on Disciplinary Offences, Measures and Procedures Against Prisoners (to whom these Rules are applicable)*. Any person, who was involved in physical confrontation in any way, will immediately receive adequate medical care. However, although the institution staff undertakes all measures so as to prevent violence among the persons deprived of liberty, the problem still persists since the hospital, as well as the most institutions, is over-occupied and due to deprivation and other mental consequences of liberty deprivation, over-occupancy of the institution constitutes an additional problem.

80. The members of the security service enter the living areas of the Special Hospital patients only to provide security of people (of both patients and employees performing their duties in those premises) and property within the patients’ living areas.

81. With regard to use of restraint measures (tying) toward persons deprived of liberty, we would like to inform you that “E” section of the Special Prison Hospital is used for temporary treatment of persons demonstrating aggressive behaviour which requires urgent response in order to prevent self-injury or injury of others. Aggressive psychiatric patients are restrained exclusively on the basis of the psychiatrist order in cases of the patient’s insufficient response to the standard psychiatric therapy. Fixation is undertaken only until the moment the regular therapy starts working. However, the restrained patients are released every day due to hygienic, physiological and

other needs, and medical staff provides them with all necessary care, including the showering of such patients. The treatment methods and a type of therapy administered to psychiatric patients is in accordance with general treatment principles of the Ministry of Health of the Republic of Serbia, which is supported by the reports of regular and special professional supervision performed by the Ministry of Health.

82. With a view to improving the conditions in prisons, the Administration for the Execution of Penitentiary Sanctions earmarked the funds in the budget of the Republic of Serbia for 2012 amounting to 4,300,000 Euros for refurbishment of existing capacities in institutions in accordance with international standards. Refurbishment of the Special Prison Hospital was set as a priority. The works will be executed in several phases, bearing in mind that it is necessary to ensure temporary relocation of patients beforehand. 2012 Budget Plan envisaged the funds for reconstruction of the block 3-3 (internal ward).

Following the refurbishment of this part of hospital, the reconstruction of the admission unit and forensic assessment unit, which are located on the ground floor of the facility, will commence. It is envisaged within the budget planning for 2013 and 2014 to finalise reconstructions of the three more blocks on the third floor of the Special Prison Hospital.

83. The patients on the acute neuropsychiatric ward often require intensive psychiatric treatment, which also implies maintenance of personal hygiene, thus it is better that under those circumstances patients wear hospital pyjamas because of more frequent changing. This is not the case on the wards where security measure of compulsory psychiatric treatment is implemented, in which case the patients wear their own clothes.

84. The hospital patients may spend one hour a day in the hospital courtyard. The patients from "A" and "B" wards (the wards accommodating the patients for whom the measure of compulsory psychiatric treatment and custody was determined), in addition to 90-minute walk, may spend their time in the park on the prison grounds for duration of one hour, accompanied by occupational therapists. However, this privilege is intended only for the patients in the third group, that is, for those patients who may spend their period of absence outside the institution. The hospital courtyard and the park are equipped with benches.

Prisoners and detainees may spend their time outside up to 60 minutes. The walking area is equipped with the goals for five-a-side football, one basket for the game of basketball and there are also other activities which may be performed there (such as chess, volleyball etc.).

85. There is a programme of psycho-social rehabilitative activities for psychiatric patients, but due to insufficient number of employed occupational therapists, it is not possible to arrange such activities in the afternoon hours.

Individual treatment programmes for each psychiatric patient are implemented on the basis of comprehensive clinical assessment (current mental state, a type of mental disorder, cognitive and intellectual preservation, psychological testing and retesting, as well as advantages based on medical criteria, which each patient may possess).

87. Serious efforts are being made to increase the staff in the health-care service, which is supported by the Proposed Rulebook on New Classification of Jobs in the Administration for Implementation of Criminal Penalties, which envisages increasing the number of jobs in the health-care service by 133.

88. With regard to the remark that the patients are not informed about their rights and obligations and that there is no efficient means to file a complaint to independent bodies, we inform you that there is a library for offenders within the Special Prison Hospital, which provides a sufficient number of copies of relevant legal literature, including all national and international regulations pertaining to the implementation of criminal penalties and protection of human rights (Constitution of the Republic of Serbia, Law on the Execution of Criminal Sanctions, Law on Criminal Procedure, Criminal Law, Rulebook on House Rules, Rulebook on Disciplinary Measures, Minimum Prison Rules, Covenant on Civil and Political Rights, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Torture or Punishment and many other national and international sources). Persons are not prevented from filing complaints to independent bodies (court, the Protector of Citizens (Ombudsman) etc.). Any correspondence is carried out in closed envelopes and letters are by no means censored.

Hence, the information on the rights of patients is available to them in written form. However, due to existing psychopathology, it is not possible to provide it to all patients. Those patients may present confidential complaints to external persons in an efficient manner. Nevertheless, depending on current mental state of the patient, this may not always be possible, since such correspondence may directly put at risk persons to whom it is addressed (accusations, threats, orders etc.).

89. Draft Strategy on Post penal Rehabilitation has been developed, which stipulates establishment of more efficient cooperation between the Administration for Implementation of Criminal Penalties and other entities in social community, with a view to overcoming problems concerning the suspension of security measures of compulsory psychiatric treatment in custody and admission of new persons. It envisages that Probation Service will assume the role of coordination body between correctional establishments and other institutions involved in social care of persons.

90. Solitary confinement cells on the ground floor of the Hospital have been refurbished, redecorated and the furniture has been replaced so that they are again put into operation.

92. The delegation found that the institutions are understaffed. We inform you that the Proposed Rulebook of New Job Classification the Administration for Implementation of Criminal Penalties stipulates increased number of positions in all services (in particular in the security service) by 1000 persons. Furthermore, in 2011, 195 of trainees were employed in the security service, 24 employees in the treatment service, 18 employees in the health-care service and 7 employees engaged in the training and occupation of prisoners.

93. Visits to detainees under the Criminal Procedure Code are approved by the investigative judge, that is, the president of the Judicial Panel. In practice, visits are, as a rule, approved and forbidden in exceptional cases when the court determines that they may be detrimental to the conduct of proceedings. The detainee may lodge a complaint against the court ruling. Visits by the lawyer are not subject to any restrictions in terms of frequency and duration and the lawyer is in principle allowed to visit their defendant before the first visit to the institution, only upon inspection of the authorisation to counsel for the purpose of record keeping.

Duration of visits in the District Prison in Belgrade, which constitutes a major problem due to over-occupancy of accommodation capacity, is extended to one hour (Administration of the District Prison in Belgrade informed the courts that it has provided technical conditions to allow one-hour visits).

94. As regards the possibility of making telephone calls by detainees, such possibility is not envisaged in either law or by-law provisions governing the status and rights of detainees, thus the institution is not able to grant more rights to these persons than they were granted by the legislator since the arbitrariness of treatment of these persons is not allowed due to the possibility of mistakes, which may affect the course of criminal procedure.

95. Variations in the number of visits are stipulated by the law and the rulebook with a view to motivating the prisoners to take part in individual treatment programme. Contacts of prisoners with his family are of crucial importance in the process of re-socialisation and the Law on the Execution of Criminal Sanctions guarantees the minimum number of visits. The Rulebook stipulates increase in the number of visits depending on the category to which the inmate is classified. Within the B category, there is a possibility of granting special rights under both subcategories. In this way, the prisoner is encouraged to take more active part in the programme of carrying out of sentence and to understand the significance of his responsibility and potential contribution, by demonstrating commendable behaviour in the process of reclassification. Besides, there is also a possibility, depending on the expert team assessment, and with a view to implementing individual treatment programme, that a person classified under category B2 may be granted an extended visiting entitlement as well as increase a number of persons visiting them.

101. The prisoner undergoing the disciplinary procedure is entitled to professional legal aid, provided to them by the legal assistant. This wording was introduced into the Rulebook on Disciplinary Offences, Measures and Procedure Towards Prisoners in order to provide legal aid to the persons in more unfavourable financial situation as well. Accordingly, beside lawyers the professional legal aid may be also provided by legal assistants (Bachelor of Laws).

102. In respect of the comments regarding the fixation of female prisoners in Požarevac Correctional Institution for Women, we inform you that the length of coercive measure of fixation is stipulated by the Law, which is strictly applied, whereas the length of the measure enforcement is determined by the neuropsychiatrist within the legal limits (up to 24 hours).

This measure is applied in accordance with the opinion and recommendation of the neuropsychiatrist in the most severe cases of suicide threats so as to prevent repeated self-injury of female prisoners where it was not possible to prevent occurrence of more severe health consequences for female prisoners by other measures.

The staff is obliged to immediately, without delay, provide examination by the neuropsychiatrist to the female prisoner whenever they notice there is a threat of self-injury or suicide attempt by the female prisoner.

The measure is always applied upon the proposal of the neuropsychiatrist with the director being informed thereafter. Where the doctor proposes fixation, the decision to apply this measure is made. The length of the measure enforcement as well as its suspension is determined by the neuropsychiatrist.

The Institution administration has taken up several steps to provide intensive monitoring of the said measure. During the measure implementation the female prisoner is intensely monitored by the medical staff and the security service members. The female prisoner is also visited by the educator. The female prisoner is untied during the period of the measure enforcement for the purpose of toilet visits, maintenance of personal hygiene, having a meal, during the doctor's examination, sessions with the educator and administration of regular therapy. The institution staff member visits the female prisoner in average half-hour intervals and unties her throughout the visit. The room in which the measure is implemented is covered by the surveillance system so that the female prisoner is closely monitored, having also the possibility to ring a bell at any time.

104. In respect of the statement that during the external supervision of prisoners, judges do not enter the prisoner accommodation area and do not hold confidential interviews with inmates, we inform you that the Law on Criminal Procedure prescribes this obligation, which is also implemented in practice. During every visit, judges visit the prisoner's accommodation area to see the conditions in which they live, as well as to hold interviews with them and find out what is their diet like, how their other needs are addressed, how they are treated etc. The judge is obliged to inform the Administration for Implementation of Criminal Penalties of any irregularities they notice during the visit, immediately after the prison visit and without any delay. The Administration is then required to submit the information on any measures undertaken to eliminate such irregularities within 15 days.

The National Assembly of the Republic of Serbia elected the members of the Committee on Supervision of Implementation of Criminal Sanctions on its session on September 26<sup>th</sup>, 2011 and in that way obligations prescribed by Article 278 of the Law on the Execution of Criminal Sanctions have been met.

### **C. Establishments under the authority of the Ministry of Health**

The Ministry of Health acknowledges the Committee remarks concerning the further implementation of the Strategy for the Development of Mental Health Care and the Action Plan for the implementation of the said strategy.

106. The comparative analysis of international strategic documents and National Strategy shows that the Republic of Serbia completely follows strategic guidelines in international documents with due respect to its own specificities. Evaluation of implementation of the national strategy proved that there has been a significant improvement, but that some fields of action have not been sufficiently addressed yet. Implemented projects laid the foundation for the reform of the mental health care system in the Republic of Serbia, as the basis for further activities, and covered all fields of action within the national strategy. To this end, the development and implementation of preventive programmes and programmes aimed at improving the mental health in accordance with the needs assessment analysis will be continued, especially in relation to vulnerable groups. These processes will further be supported by reorganisation of mental health care services, insisting on deinstitutionalisation at all levels, development of human resources and information systems and encouraging research in this field.

The field of action concerning the prevention and improvement of mental health, apart from a series of promotional campaigns, is characterised by a number of implemented preventive programmes which still do not address the needs of all groups included in the Strategy, bearing in mind specific needs of the Republic of Serbia population. The analysis of indicators for the fields of action, such as human resources, education, representation and public advocacy, shows that a considerable improvement has been made in implementation with regard to the proposed time frame, i.e., that the strategic requirements have been met. In respect of the fields of action concerning the improvement of quality and information systems, there are still no measurable results. The cooperation has been established with international organizations and the activities implemented by means of projects aimed at active involvement of all relevant sectors in the field of preservation and improvement of mental health.

In the period from five to seven years, through development of internal organisation of health care services, it is envisaged that hospital capacities at secondary and tertiary level of health care will be reduced, that is, will be used for other purposes. In general hospitals that are territorially mapped there are psychiatric wards and over the past few years the process of separating the neurological from psychiatric wards has been finalised. In accordance with the Decree on the Health Care Services Network Plan, the total number of beds for the psychiatric ward across all health care institutions in the Republic equals 5500. The most of those hospital bed capacities are intended for the short-term hospitalisation on the psychiatric wards of general and special hospitals, clinics and institutes. The bed capacities in general hospitals, clinics and institutes for the short-term hospitalisation equal 2100 beds, whereas in the special psychiatric hospitals there is a total of 3400 beds, of which 1500 beds are used for the short-term hospitalisation including the treatment of patients suffering from acute psychoses, addiction diseases, as well as for forensic psychiatry, psychogeriatrics and psycho-social rehabilitation and neurology. Remaining 1900 beds in special psychiatric hospitals are used for extended treatment and long-term hospitalisation of psychiatric patients and these capacities will be further reduced as envisaged by the Strategy.

129. As regards the Committee recommendation to adopt clear written policy/instructions for the use of means of restraint in the psychiatric institutions, the Ministry of Health, that is, Republic Expert Committee on Mental Health Care will take into consideration the Committee remarks with a view to adopting a relevant document which, prior to the adoption of the Law on Protection of Persons with Mental Illnesses, would competently define the use of means of restraint in psychiatric institutions.

140. The positive practice of user involvement in the Patients' Council, which is used in the Special Psychiatric Hospital in Gornja Toponica, Niš, is also present in other special psychiatric hospitals in Kovin, Vršac, Novi Kneževac, as well as the Special Hospital for Addiction Diseases in Belgrade. In the Special Psychiatric Hospital "Dr Laza Lazarević" establishment of the Patients' Council is underway.

According to the information of the **Special Psychiatric Hospital "Dr Slavoljub Bakalović" Vršac**, the Patients' Council was established in January 2011 with a view to addressing patients' issues and concerns not directly related to their disease, but to treatment and conditions of treatment, in a faster and easier way, in cooperation with patients themselves. The most frequent topics discussed at the Patients' Council meetings include: food quality, appearance of hospital grounds, trips, visits to cultural events, relations between the hospital staff and patients, praises, suggestions, trust etc. Bearing in mind universal declaration on the human rights as well as recommendations and declarations of the Council of Europe concerning the protection of human rights and improvement of health of persons with mental illnesses, the Hospital has made a

significant step toward provision of adequate care to hospitalised patients. In terms of provision of greater control, the Hospital managed to alarm the wider community with the aim of signing the protocol on cooperation in case of forced hospitalisation whose signatories include as follows: Health Care Centre (emergency medical service), Vršac Police Station, Primary Public Prosecution Office in Vršac, Social Service and Special Psychiatric Hospital in Vršac.

132. Hospitalised patients are treated with a great care, both in terms of respect for their civil and legal status upon their admission to hospital, which is formally regulated by the appropriate admission protocol, and with regard to their rights to accept or refuse specific treatment therapy, after they have been informed of these rights. Special attention is also given to the issues of physical fixation, by means of appropriate protocols. The patient may lodge a complaint to the protector of patient's rights at any time, either personally or by means of anonymous written complaint using the mailbox on every ward.

Very important aspect of the therapy treatment is care given to preservation of the patient's individuality and to this end, patients have opportunity to express their personal creative potential (various forms of artistic, sport activities etc.) as well as to shape up the area in which they spend their time according to their affinities and will.

With a view to improved socialisation, as well as enabling personal expression, particularly strong engagement is demonstrated by therapeutic communities of patients and the Patients' Council.

According to the information of the **Special Psychiatric Hospital "Dr Laza Lazarević"**, the patients of all wards who are treated in Belgrade Division are mainly treated for acute psychoses. All patients, whose overall clinical condition (mental and somatic) is favourable, have everyday walks for several hours, outside their ward, accompanied by nurses and/or therapists to the recreational premises in the establishment. The patients also have walks in the Hospital courtyard, which are usually short and taken in small groups, due to frequent escapes in which situations relatives, medical associates of the Hospital and police have to be engaged in order to find and return the patient back to hospital. In Padinska Skela Division walks, recreational and exercise activities are performed every day, to a significant degree, in the rooms for recreation and exercise, as well as in the courtyard, that is, the park of hospital pavilions. The patients of this division have almost every week some time organised outside the hospital grounds in the form of recreational and socio-rehabilitative activities (such as visits to other special hospitals, several-day sport competitions between patients, visits to social institutions, recreational time at Ada Ciganlija Beach, organised visits to theatre and cinema, exhibitions etc.).

It has been envisaged, and the initial activities have been taken towards planning of the most adequate physical activities and selecting a set – a group of the most efficient physical exercises specifically for each patient, upon his/her admission to the hospital (especially for the Belgrade division), based on the patient's age and the overall health condition. Using the internal human resources, the development of the belonging forest-park back yards within the Belgrade and the Padinska Skela divisions has started. Aside from the donations from the Agricultural Corporation Belgrade in Padinska Skela and the City Greenery, financial aid allocations from other competent authorities' funds are also necessary for the development of the paths for walking and recreational running, mini soccer field and basketball court in the mentioned parks, in both divisions. The summer stage in the Belgrade division also needs refurbishment in order to enable patients to enjoy daily or weekly recreational and entertainment activities.

138. Setting up a public telephone booth accessible to the patients in the Belgrade division is also in the process. A telephone booth in the Padinska Skela division has been installed.

121. According to the information received from the **Gornja Toponica, Special Psychiatric Hospital, Niš**, internal diseases ward's adaptation and recovery construction and craft works were completed at the end of February 2011, and the ward (in the Report named somatic ward) continued its regular operation within the scope of its activities.

During 2010 and 2011, in addition to the works completed in the internal diseases ward, other facilities, used by the hospital for provision of health services, were refurbished as well, aiming to improve the quality of living and treatment of the patients:

- Male long-term ward (reconstructed ward's sanitary area, plastered and painted, the roof and gutter restored);
- Occupational rehabilitation ward and the psycho-social rehabilitation ward (floors restored);
- Female and male admission wards (the sanitary areas restored, plastered and painted and carpentry work done).

Works have started in the male forensic and female forensic assessment wards (restoration of the sanitary area, painting and plastering and installation of PVC flooring).

During the year, telephone booths were installed in all wards, which enabled the patients to communicate with their family and friends.

A procurement procedure has been initiated for purchasing materials for setting up a safe space for the patients to walk, exercise and spend some time outdoors.

Implementation of the project "Recovery of consumable energy" was envisaged for the hospital as part of the National Investment Plan, which has been financed through the loan received from the European Investment Bank. The project has encompassed works pertaining to the boilers refurbishment, reconstruction of the boiler-room, central heating and replacement of the exterior wood joinery for the greatest number of the facilities and shall be implemented during the year 2012.

It is stipulated in the Rulebook on House Rules and Organisation of the Hospital Operation (displayed for the information and implementation purposes on the announcement boards in all wards ) that, providing their actual conditions so permits, some patients may spend their free time in the common facilities for leisure or in the hospital park subject to an approval of the authorised doctor, while group walks are organised on a daily basis for the patients whose health conditions do not allow them to leave the ward individually.

There are various forms of permitted outdoor movements of the patients: individual walks, shopping or going to the post office with the permission, one - day leave with the permission, weekend therapy, organised walks supervised by the staff, and organised tours to the cultural and sporting events.

In order to ensure that the patients, whose medical condition so permits, are offered the possibility to take outdoor walks, and in accordance to the existing normative frameworks, the hospital director has undertaken the following measures:

- At the regular meeting of all heads of the wards, an order was issued to ensure that all patients should be able to take outdoor walks within the hospital grounds, and for the patients whose actual psychic condition does not permit or the freedom of the patients' movement is restrained due to the safety measures or other reasons, based on the decisions made by the competent authority, outdoor walks and stay is organised under the staff supervision;
  - A written order was also made in line with the above-mentioned statements;
  - Intensified monitoring and supervision measures have been undertaken to enable free walks for the patients;
  - There is a plan to reconstruct the area behind the forensic wards' pavilion, to enable patients, who are under safety and protection measures, to stay outdoors, on the hospital grounds and take walks, at the same time providing protection of the area. It is important so as to prevent a patient from escaping, because, aside from the treatment of the patients, the hospital is responsible for guarding the patients, and it carries a financial responsibility for possible damage caused by the patient.

When entered into a contract with the selected provider of the hospital's physical-technical security for 2011, it was agreed that the individuals responsible for protecting the establishment's property did not carry guns, nor wear black uniforms.

An initiative has been started regarding creation of a brochure which would contain basic information on the hospital's operation and the patients' rights.

109. The staff of the Gornja Toponica Special Psychiatric Hospital was directly informed that each possible type of ill treatment of the patients was unacceptable and would be strictly sanctioned and was a ground for termination of an employment contract, and was an element of an employment contract signed both by the employer and an employee when starting the employment. As part of the internal audit of the quality of professional conduct, the hospital management monitors the staff and reminds the staff they are bound to the human and ethical attitude towards patients, and points out the patients are entitled to the greatest possible standard of respect for human rights and values, physical and mental integrity, respect for their personality, as well as appreciation for their moral, cultural and other beliefs. The Committee was informed that the cases of ill treatment of patients by the hospital staff, which occurred rarely, were condemned in practice and the management of the Hospital even instituted criminal proceedings against the concerned employees. Within the scope of its competencies, the Hospital Ethics Committee has undertaken measures and given instructions in order to prevent violation of the patients' rights.

At the regular Board meetings, and the meetings of the heads of the organizational units, the hospital management, the issue of the staff attitude towards the patients has often been discussed as well as the measures to be undertaken in order to prevent ill treatment of the patients.

Following the visit of the Committee in February 2011, in the forensic male ward a staff meeting was held with the hospital director, where they discussed the staff attitude towards the patients and emphasised accountability for potential ill treatment.

Based on the Committee's recommendations and standards, they have commenced development of the hospital manual concerning treatment of the patients. During the following period, control and education of the staff shall intensify.

In order to improve the conditions of living and treatment of the patients, and to secure their privacy, in line with the financial abilities of the hospital, the public procurement procedure was undertaken for purchasing the lockers for personal use of the patients; and at the beginning of March, 77 lockers were purchased for this purpose.

A procurement procedure for purchasing of the material for screens has been initiated as well, in order to create a separate space within the wards for the patients who require restraint – physical fixation.

As regards the patients clothing, it is obtained from donations and from the hospital's own funds, which additionally burdens this institution's budget, because in most of the cases the patients' families do not take care of them. In all wards, the patients are allowed to keep personal belongings; provided they do not pose a threat to patient's safety, and hygiene requirements are met.

114. All patients are allowed to wear their own clothes. Exceptionally, on admission, a patient puts on pyjamas, until his/her psychic state improves.

119. All patients, whose psychic conditions so permits, are involved in various types of psycho-social rehabilitation treatments: manual, creative, educational, recreational and social activities, at their home wards and at the Centre for psycho-social rehabilitation ward.

New Regulations for Work and Patients' Remuneration have been drafted, which will more precisely regulate the field of work and the material stimulation for patients involved in the program of occupational and social rehabilitation. Aside from the material stimulation, awarding has therapeutic effects on patients. When they start with implementation of new Regulations, an individual treatment plan form for each patient will be introduced.

129. Fixation of the patients in the Hospital is regulated according to the standards, and the detailed register on the fixation has been kept regularly; and the Serbian Ethic Committee gave a positive opinion on the recommendation of the Hospital Ethic Committee concerning the treatment and the patient fixation methods, provided is medically justified, restricted to the limited amount of time; and performed with the authorisation and supervision of the psychiatrist. The issue has been given a substantial consideration in respect of practice and the attitude of the hospital staff.

A procedure concerning a patient's consent, signed by a patient upon the admission to the hospital, has been determined and carried out in the institution. This is also supported by the forms pertaining to the consent for admission to the hospital, found in all histories of illnesses, where it is established whether a patient is admitted to the hospital with or without the personal consent. The histories of illnesses also contain a form for informed consent which relates to the information on a diagnosis and prognosis of an illness and a patient's consent accompanied with the proposed medical measure and diagnostic and therapeutic procedures to be undertaken.

In March 2011, the hospital director handed instructions, related to the procedure of patient's detention for a treatment in the hospital, to all doctors in order to prevent potential mistakes. The register of the issued court decisions has been established in all wards to enable more efficient and updated supervision of the way the decision is carried out, and to allow timely notification of the courts in case there is a need to extend the detention.

Since a number of patients are admitted and hospitalised at the gerontopsychiatric wards for dementia (65 beds), it is impossible to ensure their consent for treatment, due to the nature of their illness, and therefore the procedure of, so called, involuntary hospitalisation is carried out. That is, the patients are not capable to give consent or refuse hospitalisation; and they are treated as “involuntary”, which statistically increases the percentage of involuntary placements.

According to the information received from the **Kovin Special Psychiatric Hospital**, in Kovin, some deficiencies observed by the Committee have been resolved completely, while others have been only partially resolved, as much as it was possible and as much as construction conditions allowed. As previously mentioned, the Patients’ Council has started operating. The hospital has its own security service, and its members do not carry guns. Forced hospitalisation is carried out according to the legal procedure, while the restraints are used based on the medical indications and in accordance with the determined procedure. Patients’ movements have also been restricted to basic needs, during initial recovery of a patient, when it is necessary in order to provide protection and safe treatment of a patient.

According to the information received from the **Sveti Vračevi Special Psychiatric Hospital, Novi Kneževac**, length of treatment of mentally ill individuals has been gradually reduced starting from 2002, when it lasted 159 days on the average, whereas during the first six months of 2011 it lasted 71 days. In the institution, there is not a patient who has been there for more than few years, that is, a number of such patients has been significantly reduced due to the intensified work of the institution’s social services and through cooperation with the Centres for Social Work. During the stated period of time, we worked on the humanisation of the space and humanisation of the staff’s treatment of the patients. Namely, one ward was completely refurbished, while a certain number of other wards have been partially refurbished (change of windows, doors, floors, sanitary annexes and others). Dynamics of other activities in respect of refurbishment of the hospital will depend on the financial resources. Within the limits of the available resources, the hospital has obtained new beds, mattresses, pillows for patients, training suits, shoes and pyjamas; however they were not sufficient due to the restricted financial resources.

A day hospital was established within the hospital, activities of the occupational therapy have been improved in order to provide psycho social rehabilitation, which implicit psycho therapeutic groups, therapeutic community, recreational therapy, leaves and field trips. In respect of leaves, the patients with the stable clinical picture are allowed to move freely. “The Sun”, an association of patients, was established. The medical staff and the associates participate in the continued education. The hospital is a partner in the projects of non governmental organisations, aiming to raise awareness of the staff on the needs of the people with mental illness and activities related to destigmatisation. Legal procedures, which require observation of patients’ rights, and related to the admission and treatment of the mentally ill people, have been observed, such as: a patient’s written consent to admission in the hospital, information on the medical treatment to be carried out and other procedures, and the patient’s consent to the treatment, right to review medical documentation etc. Mandatory notification of the court concerning compulsory hospitalisation has been carried out, as well as obligation of the execution of the court decision of criminal proceedings on the implementation of the compulsory treatment measures and protection of the patients in the institution and those receiving extramural treatment. The hospital has general act which regulates the procedure of fixation of agitated patients.

Medical documentation has been maintained in accordance with the law.

The Patients' Council was established during 2010, it has held regular meeting with the management and examined issues concerning living conditions of the patients in the hospital.

According to the information received from the **Special hospital for addiction diseases, Belgrade**, the hospital has secured participation of the patients in creation and implementation of the therapeutic programmes through therapeutic communities and the Patients' Council.

Since 2002, the Ministry of Health has carried out various activities related to the improvement of the system for protection of the patients' rights through normative actions, introduction of the protector of patients' rights in all medical institutions, promotion of the patients' rights at the national and international events, carrying out the patients' information campaigns and cooperation with the patients' associations.

For assistance in exercising the patients' rights, a patient may contact: managers of the operations in the medical institutions, protectors of the patients' rights in any institution, the Ministry of Health, legal advisors at the level of local self government, the Health Insurance Fund of Serbia, the Medical practitioners' chambers, the court.

In accordance with the decentralisation process, transfer of the competencies over health centres to the local self-governments, and according to the strategic goals for improvement of the quality of the health care and exercise of the patients' right, as part of the project "Delivery of Improved Local Services" – DILS, the Ministry of Health started a pilot project "Protection of the patients' rights at the level of local self-government".

The goals of the pilot project "Protection of the patients' rights at the level of local self-government" are: monitoring and improvement of the health services quality at the level of primary health care, improved patients' awareness of their rights in the area of health protection and health insurance, analysis of the most frequent problems the patients are facing at the level of primary health care and finding the way to systematically resolve and overcome the problems, improvement of coordination of work between all key actors in the area of protection of the patients' rights.

As part of the above mentioned pilot project at the level of the local self-government, provision of legal advice in respect of the patients' rights is ensured. Legal advisor is available for the citizens in the city/municipal administration, and he/she: informs citizens on the range and type of the patients' rights in the area of health protection and health insurance, provides advice regarding health protection and health insurance and concrete legal assistance for the purpose of better exercise of patients' rights, informs citizens on existence and operation of the patients' association, records and examines every application or complaints received from the citizens.

This is also one of the ways the goals of the Strategy on Development of Mental Health Protection have been realised, that is, upgrading of the capacities of out-of-hospital health care has been emphasised, with the purpose to improve the programme of protection, prevention and control of decentralisation at the level of local self-government and introduce an institute of legal representative. The conditions have been created for the local self-government to initiate activities in all institutions on its territory in the area of protection of the patients' rights, and enable exercise of the rights outside the medical institutions as well.

The Ministry of Health and the managements of the special hospitals for psychiatric illnesses consider recommendations and observations provided by the Committee stimulus for improvement of the quality of the work, that is, quality of the treatment and respect for human rights.

#### **D. Facilities under the responsibility of the Ministry of Labour and Social Policy**

##### **Juvenile Educational Institution in Niš**

143. The Ministry of Labour and Social Policy has assessed that there is not a problem in operation of the institution, considering the institution is under the exclusive responsibility of the Ministry of Labour and Social Policy as regards providing structural and functional conditions for its operation. In the particular case, the Ministry of Justice and the Ministry of Internal Affairs do not affect the operation of the institution and have exclusive possibility to use the services of the institution as regards juveniles in conflict with the law subjected to court ordered measure (the Ministry of Justice) or to bring juveniles to be accommodated in the institution, for those found themselves in a situation unaccompanied by parents (the Ministry of Internal Affairs).

However, there is a problem that **affects** the operation of the institution, caused by **abstruse** provisions of the Art. 94 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles. Namely, the provision of the law has not indisputably defined the obligation of the Ministry of Justice to finance the costs of accommodation for the juvenile criminal offenders who are referred to the Institution by virtue of a court decision. In the Republic of Serbia unequal practice exists in respect of higher courts authorised to refer juveniles to the institution, which is demonstrated in the fact that some courts regularly provide finances for the juveniles' accommodation costs in the institutions, while others do that occasionally and the third ones never. Generally, all courts owe this type of institutions substantial amounts of money for accommodation of juveniles, and this is certainly reflected in the conditions for the Institution's operation.

Legal basis for detention of unaccompanied foreign juveniles at the Centre for accommodation of foreign juveniles who are unaccompanied, or without guardian, within the Juvenile Educational Institution in Niš are: Hague Convention on Protection of Children, EU Resolution on unaccompanied foreign minors, UNHCR guidelines, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Law on Foreigners (Official Gazette of the RS, No 97/2008), Law on Asylum (Off. Gazette of the RS, No 109/2007), Law on Social Protection (Off. Gazette of the RS, No 24/11) and related Decision on Social Protection Institutions for Accommodation of Beneficiaries Network of the Government of the RS (Off. Gazette of the RS, No 987/2010).

144. Accommodation in the social protection institution is realized through referral of a beneficiary to an adequate institution where the beneficiary is taken care of (housing, food, clothes, care, assistance and protection); and the following is provided: education and bringing-up, vocational training and health care in accordance with the special regulations, occupational, cultural – entertainment and recreational-rehabilitation activities and social care services (Article 36 of the Law on Social Protection).

Among others, children with social behaviour disorders are entitled to placement in the social protection institution. A placement in the social protection institution is done on the ground of the Centre for Social Work's decree, issued on the basis of the Centre's adequate expert team's findings and opinions as regards the necessity for a child to be accommodated in the institution as a **final resource**, when all other possibilities have been exhausted (in the situations when the treatment activities with the family and the child who displays behaviour disorder, performed by the Centre's multidisciplinary team, have not provided results in correction of the child's behaviour, and therefore the assessment is made that in order to prevent serious misdemeanour and/or criminal deeds, the child should be accommodated in the adequate institution which will have a positive educational influence to the child, until the behaviour is corrected and the conditions are fulfilled in the family for the child to return to his/her primary family or foster family).

The Centre for Social Work's expert assessment must also be supported by a diagnosis confirmed by the child's neuropsychiatrist employed in the relevant medical institution. The measure is commonly applied with the children under the age of 14 who have demonstrated criminal irresponsibility, thus may not be processed before the court bodies, and for the older minors when the court proceeding was not initiated, but the behaviour disorder is evident.

The Centre for Social Work which referred a child to the Institute is obliged to perform **review, every six months**, which implies a visit to the child, coordinated with the Institute's expert team, analysis of all statuses of the child and assessment on whether there was a correction in the child's behaviour and whether the reason for the referral to the institution ceased to exist. The child **actively participates** in the procedure, and is allowed to express his/her opinion and objections; the child signs a consent to the recommended measures and activities, or services that will be provided to him/her during the following 6 months. During the entire stay of the minor in the Institute, Centre for Social Work is obliged to actively work on creating conditions for the child to leave the establishment, whether it being returning to the primary family or foster family. Exactly due to the application of those principles, the official statistics of the Ministry indisputably show that every year there is less children placed in the Juvenile Educational Institutions in the RS.

In the legal proceedings against minors, the courts require expert opinion of a Centre for Social Work and its active participation as a foster body; the opinion is taken into consideration during the court's decision making process about each of the legal measures stipulated, even for the measure: referral to an educational institution.

It is to be mentioned that the Institutes are not shelters, and at any time, the expert team provides a beneficiary with adequate information on his/her rights, whereas the beneficiary may, through his/her case worker or guardian, express his/her objections to the treatment in the institution, and the Ministry of Labour and Social Policy, the Protector of Citizens, associations (non governmental organisations - NGOs) and others. The Ministry is involved in problems of a particular child in the form of an individual case monitoring and in the form of inspectional supervision.

149. As the Committee was informed at the beginning of the year, pursuant to the Decision on Social Protection Institutions for Accommodation of Beneficiaries Network of the Government of the Republic of Serbia, a working unit: "Centre for accommodation of foreign juveniles who are unaccompanied, or without guardian" was established within the Juvenile Educational Institution in Niš, with the capacity of 10 beneficiaries, which has not started operating in full capacity; therefore we, the Ministry, fully agree with the assessment provided in the Committee Report on the visit carried out in February 2011.

We use this opportunity to inform you on the relevant activities which have been carried out following the period after the Committee left to date:

Namely, similar working unit operates rather successfully in the Juvenile Educational Institution in Belgrade since 2006, therefore the Belgrade Institution, as an institution with a good experience in taking care of unaccompanied juvenile foreign citizens, signed so called Memorandum of Cooperation between the two institutions and, until now, it has paid 4 visits to the Institute in Niš. At the occasions, the expert team of the Institute in Belgrade transferred their experiences in working with this group of juveniles and submitted in written form: **Pre-placement procedures for a foreign juvenile individual, Programme basis for treatment** of foreign juveniles who are unaccompanied, or without guardian in the working unit, a document which indicates the activities undertaken during the beneficiary **placement phase**, a document which contains activities pertaining to the phase of the very **treatment** of the beneficiary, specified **duration** of the beneficiary stay in the institution, guidelines related to the beneficiary **discharge** phase, logistics, cooperation with the stakeholders from the outside and reporting. The Ministry considers the documents and the exchange of experiences between the colleagues, a good way to establish the adequate operations within the newly established working unit in the Institute in Niš

In order to enable you to fully review the above mentioned documents, we enclose their originals to the attachment of the official letter, for the purpose of assessment of the regularity of the procedures.

As regards equipping the “Centre for accommodation of foreign juveniles who are unaccompanied, or without guardian” working unit in Niš, depending on the amount of the funding in the budget for 2012, the Ministry shall allocate the funds for refurbishment and adaptation of the space.

150. The Ministry is not familiar with the plans of the Ministry of Education in respect of changes in vocational schools network in the RS, however we will officially request the information from the Ministry. The fact is that closing of one vocational school will not be an obstacle to the educational process of the beneficiaries accommodated in the Institute in Niš because it is one of the mandatory activities for all beneficiaries accommodated in the institutions. Furthermore, the beneficiaries also attend other schools in Niš, therefore, in view of the principle of inclusion of all categories of children and the youth from the system of institutionalised protection in the RS, we do not see it as an obstacle, on the contrary. If the closing of the mentioned school is actually envisaged, the affected youth will have the opportunity to complete their educational process, while other beneficiaries will, based on the treatment plan, enrol in a specific school, immediately upon the placement in the Institution.

157. Pursuant to the Family Act of the RS, Article 65 of the Law:

- 1) The child who is capable of forming his/her own opinion has the right to freely express his/her views.
- 2) The child has the right to timely receive all the information necessary for forming the opinion.
- 3) A due attention should be given to the opinion of the child in all issues that concern him/her and all procedures where it is decided on his/her rights, in compliance with the age and maturity of the child.
- 4) A child over the age of 10 may freely and directly express his/her opinion in any judicial and administrative proceeding concerning his/her rights.

5) A child over the age of 10 may, either in person or through another individual or institution, address the court or an administrative body and request assistance in exercising the right to freedom of expression.

6) The court and the administrative body shall establish the opinion of the child in cooperation with the school psychologist or a body of custodianship (Centre for Social Work), family counseling services or another institution specializing in family mediation, in the presence of the person of the child's own choice.

Based on the previously mentioned, beneficiaries of the accommodation in the Institute have broad spectrum of possibilities as regards the opportunity to express their opinions, objections and similar; and they have access to: home teachers, expert team, the institution's director or, any other member of the staff the beneficiary trusts, as well as the case worker from the Centre for Social Work, guardian and all other administrative bodies. The Ministry, in accordance with its competencies, perform the monitoring in individual cases and orders measures, and when required the Ministry's inspection services are engaged.

**All the above also pertain to the unaccompanied juvenile foreigners, who are, immediately upon the admission, appointed an employee of the institution as a temporary guardian, whereas he/she is also assigned an interpreter.**

*The appendix is available upon request to the CPT Secretariat*