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## **Report**

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

**from 26 May to 5 June 2015**

The Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2016) 22.

Strasbourg, 24 June 2016

**CONTENTS**

<b>Copy of the letter transmitting the CPT's report.....</b>	<b>5</b>
<b>EXECUTIVE SUMMARY.....</b>	<b>6</b>
<b>I. INTRODUCTION.....</b>	<b>10</b>
<b>A. Dates of the visit and composition of the delegation.....</b>	<b>10</b>
<b>B. Consultations held by the delegation and cooperation encountered.....</b>	<b>12</b>
<b>C. Immediate observations under Article 8, paragraph 5 of the Convention.....</b>	<b>13</b>
<b>D. National Preventive Mechanism.....</b>	<b>13</b>
<b>II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED.....</b>	<b>15</b>
<b>A. Law enforcement establishments.....</b>	<b>15</b>
1. Preliminary remarks.....	15
2. Torture and other forms of ill-treatment.....	16
3. Safeguards against the ill-treatment of persons deprived of their liberty.....	22
4. Conditions of detention.....	25
5. Belgrade International Airport "Nikola Tesla".....	28
<b>B. Prison establishments.....</b>	<b>30</b>
1. Preliminary remarks.....	30
a. legislative changes.....	30
b. prison overcrowding.....	31
c. prisons visited.....	32
2. Ill-treatment.....	33
3. Conditions of detention.....	37
a. material conditions of detention.....	37
<i>i. follow-up visit to Belgrade District Prison.....</i>	<i>37</i>
<i>ii. Sremska Mitrovica Correctional Institution.....</i>	<i>37</i>
<i>iii. Niš Correctional Institution.....</i>	<i>38</i>
<i>iv. Pančevo District Prison.....</i>	<i>39</i>
b. activities.....	41
c. classification of prisoners.....	42

4.	Health-care services.....	44
5.	The Special Prison Hospital in Belgrade.....	49
	a. preliminary remarks .....	49
	b. ill-treatment .....	49
	c. living conditions.....	50
	d. treatment and activities .....	52
	e. safeguards in the context of involuntary placement and treatment.....	53
	f. staffing.....	54
	g. restraints and seclusion .....	55
6.	Other issues.....	57
	a. prison staff.....	57
	b. contact with the outside world .....	58
	c. discipline .....	59
	d. special and coercive measures .....	62
	e. complaints and inspection procedures .....	64
<b>C.</b>	<b>Valjevo Juvenile Correctional Institution.....</b>	<b>66</b>
	1. Preliminary remarks .....	66
	2. Ill-treatment .....	66
	3. Conditions of detention .....	69
	a. material conditions of detention.....	69
	b. activities and regime .....	70
	4. Juveniles .....	71
	5. Health-care services.....	72
	6. Other issues of relevance for the CPT's mandate .....	74
	a. prison staff.....	74
	b. discipline .....	75
	c. Increased Supervision Unit .....	75

<b>D. Special hospital for psychiatric diseases “Dr. Slavoljub Bakalović” .....</b>	<b>77</b>
1. Preliminary remarks .....	77
2. Ill-treatment .....	77
3. Living conditions and treatment .....	78
a. living conditions.....	78
b. treatment and activities .....	79
c. suicide prevention .....	80
d. deaths.....	81
4. Staff .....	82
5. Means of restraint .....	83
6. Safeguards .....	86
7. Other issues of relevance to the CPT's mandate.....	87
<b>E. Veternik Residential Facility.....</b>	<b>89</b>
1. Preliminary remarks .....	89
2. Ill-treatment .....	90
3. Means of restraint and seclusion .....	91
4. Living conditions .....	96
5. Activities.....	97
6. Staff .....	98
7. Safeguards in the context of involuntary placement and guardianship .....	99
<b>APPENDIX</b>	
<b>LIST OF THE NATIONAL AUTHORITIES AND ORGANISATIONS</b>	
<b>MET BY THE DELEGATION .....</b>	<b>101</b>

**Copy of the letter transmitting the CPT's report**

Mr Zoran Popović  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative of Serbia  
to the Council of Europe  
26 avenue de la Forêt Noire  
67000 Strasbourg

Strasbourg, 26 November 2015

Dear Ambassador,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have the honour to enclose herewith the report drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Serbia from 26 May to 5 June 2015. The report was adopted by the CPT at its 88<sup>th</sup> meeting, held from 2 to 6 November 2015.

The various recommendations, comments and requests for information formulated by the CPT are highlighted in bold in the body of the report and the Committee requests the national authorities to provide within **6 months** a response giving a full account of action taken to implement them. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 1 of the Convention, the Committee requests the Serbian authorities to provide within **1 month** responses to paragraphs 61, 193 and 197 and within **3 months** responses to paragraphs 73, 135, 149, 190 and 196 giving a full account of action taken to implement them and regular updates on the progress of relevant refurbishment works.

The CPT trusts that it will also be possible for the Serbian authorities to provide, in the above-mentioned response, reactions to the comments and requests for information formulated in this report.

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

Yours sincerely,

Mykola Gnatovskyy  
President of the European Committee for the  
Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment

## **EXECUTIVE SUMMARY**

The fourth CPT's visit to Serbia was of a periodic nature and provided an opportunity to assess the progress made by the country since the Committee's 2011 visit. In the course of the visit, the CPT's delegation reviewed the treatment and conditions of detention of persons deprived of their liberty by law enforcement agencies and of remand and sentenced prisoners in several establishments. It also carried out a visit to a psychiatric hospital and a social care home.

The CPT's delegation generally received good co-operation from the national authorities throughout the visit. Nevertheless, the Committee expresses concern regarding the fact that the bulk of its previous recommendations in the field of prisons have not been implemented. It also finds the response received from the Ministry of Interior in relation to the Committee's preliminary findings concerning police ill-treatment unconvincing.

### **Law enforcement agencies**

A significant number of allegations of physical ill-treatment of criminal suspects by the police were received. The alleged ill-treatment consisted primarily of slaps, punches, truncheon blows but also included hits with non-standard objects, prolonged handcuffing in stress positions, placing of plastic bags over the head of suspects inducing suffocation and infliction of shocks with hand-held electric devices, as well as the so-called "falaka". The CPT stresses the necessity of the adoption of a multi-faceted approach to end ill-treatment by police officials consisting inter alia of delivering a strong message that ill-treatment of detained persons is illegal, unprofessional and will be subject to appropriate sanctions. It recommends that an effective system of investigations into allegations of police ill-treatment be established. Judges and prosecutors should also be reminded of their duty to ensure that allegations of ill-treatment are promptly and properly investigated.

As to the safeguards against the ill-treatment of persons deprived of their liberty, a number of shortcomings were observed in relation to the delayed notification of custody, the access to and the poor performance of ex officio lawyers in preventing ill-treatment, and the lack of confidentiality of medical examinations of detained persons. Further, clear guidelines on the conduct of interrogations of criminal suspects by the police should be adopted.

In terms of material conditions, the CPT acknowledges the efforts invested by the Serbian authorities to refurbish police detention units. That said, most of the cells in the police establishments visited remained unfit for overnight stay due to, inter alia, poor access to natural light, insufficient ventilation and hygiene and absence of mattresses and bedding.

### **Prison establishments**

As regards prison overcrowding the CPT observes that the decrease of the overall prison population (i.e. from 11,500 to 10,600) is mainly related to the enforcement of the 2012 Law on Amnesty rather than to a more frequent recourse to the available alternative measures of detention.

The atmosphere at Belgrade District Prison had improved considerably since the CPT's visit in 2011. However, in the other five prison establishments visited numerous allegations of physical ill-treatment were received. The allegations consisted of slaps, punches and blows with truncheons against recalcitrant inmates or as informal punishment by custodial staff. The CPT stresses in this respect the importance of confidential medical examinations of inmates and accurate recording of injuries following such episodes in prisons as well as the necessity for the management of the prisons visited to demonstrate increased resolve in tackling ill-treatment of inmates by staff. Further, the level of inter-prisoner violence and intimidation was particularly worrying at Sremska Mitrovica Correctional Institution and Pančevo District Prison, and was linked to their understaffing. The CPT recommends that the authorities devise an effective national strategy to curb this phenomenon, which will require additional prison officers.

As regards material conditions, the situation has considerably improved at Belgrade District Prison, where extensive renovation works had been taking place since 2011. However, material conditions of detention were particular poor at Pavilions III, IV, and "Odmaralište" building of Sremska Mitrovica Correctional Institution, Pavilion II of Niš Correctional Institution as well as the closed regime sections of Pančevo District Prison. Cells and sanitary facilities in these sections were found to be in a poor state of repair, with inadequate access to natural light and ventilation, deplorable hygienic conditions and a level of decay which could represent a threat to the safety of prisoners (e.g. collapsing ceilings, concrete dust, large holes in the floor and dripping sewage installations). The situation was further aggravated by the serious levels of overcrowding (e.g. six inmates sharing cells measuring 8m<sup>2</sup> at Pančevo District Prison). Such material conditions could amount to inhuman and degrading treatment; therefore, the authorities should take urgent steps to remedy the situation by reducing the occupancy levels to a minimum of 4m<sup>2</sup> of living space per person in multi-occupancy cells and proceeding to extensive refurbishments.

Remand prisoners were still not offered any purposeful activity and were compelled to spend up to 23 hours per day in their cells; many were not even afforded the two hours of outdoor exercise provided by the law. Similarly, the exception being Niš Correctional Institution where more than 40 percent of the inmates under closed-regime had a permanent working activity, the percentage of sentenced prisoners engaged in work remains very low (up to 17 percent) at the establishments visited. Further, the CPT is also critical of the lack of transparency in and rigid implementation of the system of classification of prisoners.

The staffing complements of the health-care services at Belgrade and Pančevo District Prisons as well as Niš Correctional Institution were basically acceptable. However, the poor staffing levels at Sremska Mitrovica Correctional Institution (e.g. three doctors for 2,055 inmates at the time of the visit) as well as the deplorable material conditions of the health-care unit at the same establishment (e.g. decrepit furniture, broken window glass, thick flakes of mould and damaged flooring) did not benefit a medical institution. The improvement of psychological and psychiatric care for inmates, the adoption of a national strategy for prisoners with drug-related problems, and the removal of obstacles to access to specialised care for remand and sentenced prisoners are the subject of further recommendations by the CPT.

As regards custodial staff, their numbers should be increased at Sremska Mitrovica Correctional Institution and Pančevo District Prison. Recommendations are also made to enhance prisoners' contact with the outside world, to improve the operation of the system of discipline and the application of the measure of enforced supervision.

At the Special Prison Hospital, a couple of allegations of ill-treatment of patients by nursing staff were received and inter-patient violence remained a problem (especially in Ward A). The Serbian authorities should establish a clear strategy on action needed to address the issue of inter-patient violence. Further, urgent steps should be taken to improve the poor living conditions in the hospital, notably in Wards A, C and D, to develop the range of rehabilitative psycho-social activities and to ensure that an individual treatment plan is drawn up for each psychiatric patient. Recommendations are also made to reinforce the health-care staffing levels and to strengthen the effectiveness of the legal safeguards for patients undergoing psychiatric treatment. In addition, the resort to fixation in the Prison Hospital should be reviewed and the principles and minimum safeguards recommended by the CPT applied rigorously.

At Valjevo Juveniles Correctional Institution, a number of allegations of ill-treatment of inmates by custodial staff were received; the allegations included the infliction of baton blows as a form of disciplinary sanction and were in some cases corroborated by documentation. The Committee is critical of the occasional practice of naked strip searches of offenders, the Spartan and dilapidated conditions in the dormitories of the 'School' and 'Workshop' Units, the paucity of purposeful activities on offer (targeting only some 40 percent of offenders). The Serbian authorities should address the disproportionately restrictive regime for those placed under an enforced supervision measure, as well as the poor conditions of this unit, and lack of safeguards around the enforced supervision placement procedure. Urgent steps must be taken to reinforce the custodial and health-care staffing levels. Further, the Committee criticised the accommodation of juveniles with adult inmates, the lack of a tailored regime for juveniles and the restrictive month-long induction procedure, to which all inmates (including juveniles) were subjected.

### **Special Hospital for Psychiatric Diseases "Dr Slavoljub Bakalović"**

The CPT was able to observe that staff at the hospital had, in general, a caring attitude towards patients. That said, some allegations of deliberate ill-treatment of patients by staff (i.e. slaps and verbal assaults) were received. Further, numerous accounts of inter-patient violence and intimidation were noted. The CPT recommends that the level of staffing on all wards be sufficient to adequately care for, supervise and protect the patients.

In terms of material conditions, despite recent renovations in some parts of the hospital, the wards were generally impersonal, un-decorated and the interiors austere. Conditions were particularly poor at the O-ward in terms of hygiene and state of repair in both the dormitories and sanitary facilities. The CPT also observes that most patients were in practice offered few activities to occupy themselves. While their treatment was mainly based on pharmacotherapy, there were some psychotherapeutic approaches as well as occupational and community therapy but they were underdeveloped. A more individualized approach should be taken towards patients' treatment plans. Further, the CPT assessed that the health-care staff levels were insufficient to care for the therapeutic needs of some 800 patients, and recommended that the number of doctors, psychiatrists and nurses should be increased.

Concerning resort to mechanical fixation, the measure was not frequently applied and fundamental safeguards were generally complied with. That said, the CPT observed that an autistic patient had been restrained for prolonged periods in front of other patients and without proper medical supervision. In addition, informal seclusion of patients was also frequently applied by staff in particular at night. The Committee puts forwards concrete recommendations in order to regulate and limit the recourse to the use of means of restraint and seclusion of patients to specific circumstances.

In terms of legal safeguards for involuntarily hospitalised patients, the CPT is critical of the persistent absence in the Serbian legislation of a maximum period of duration of involuntary placement, the lack of an independent external psychiatric expert opinion during the placement (and continuation of placement) proceedings and the apparent systematic extension, by the courts, of mandatory hospitalisation and treatment measures. The CPT also calls upon the Serbian authorities to speed up the implementation of their strategy for de-institutionalisation.

### **Veternik Residential Facility**

The establishment accommodated 542 adult and juvenile residents and continued to admit new residents at the time of the visit in contradiction to the national legal requirement which limits the capacity of social care establishments to 100 places.

The CPT's delegation observed that staff appeared generally to have a caring and professional attitude towards residents. That said, a few allegations of physical ill-treatment (i.e. slaps) and verbal abuse by staff towards residents were received. Further, inter-resident violence also was a daily occurrence in the secure pavilions of the establishment and was linked to the low levels of staff.

Concerning the use of means of restraint, the CPT found that blanket authorisations provided by an off-site psychiatrist in respect of 11 residents (including a few juveniles) resulted in frequent, and sometimes unjustified, recourse to fixation of these residents for prolonged periods (occasionally up to three weeks at a time). The CPT considers that such a practice may amount to inhuman and degrading treatment.

The CPT delegation was also concerned by the widespread recourse to psychoactive medication to residents who did not suffer from a mental health disorder, the lack of regulation of, and safeguards surrounding, the administration of psychoactive medication as well as the high level (and high dosages) of sedation of residents, many of whom were juveniles. Consequently, the CPT has recommended that an external independent body conduct a review into the use of chemical restraints at the establishment. The CPT also made a preliminary observation concerning the need for the immediate cessation of the seclusion of an incontinent female resident in a dilapidated room overnight.

The report describes the poor and cramped material conditions in some pavilions of the establishment (especially A-Old, A1 and A2) which compelled residents to sleep on make-shift mattresses. Further, there is a real need to increase the range of therapeutic and occupational activities for residents. The CPT also deplores the low staffing levels which may result in instances of negligent care of residents with potentially serious consequences to their health. Finally, the report addresses the fundamental safeguards surrounding the placement of residents, recommending that the Serbian authorities ensure that residents can challenge their placement in a social welfare institution and that the placement decision be subject to regular court reviews. It also calls for a better regulation of guardianship issues, including that all decisions on deprivation of legal capacity are subjected to a regular court review.

## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Serbia from 26 May to 5 June 2015. The visit formed part of the Committee’s programme of periodic visits for 2015, and was the CPT’s fourth visit to Serbia.<sup>1</sup>

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

- Mykola GNATOVSKYY, President of the CPT and Head of delegation
- Celso DAS NEVES MANATA
- Haritini DIPLA
- Marzena KSEL
- Davor STRINOVIĆ
- Ivona TODOROVSKA.

They were supported by Cristian LODA and Francesca GORDON of the CPT's Secretariat, and assisted by Pétur HAUKSSON, psychiatrist, former Head of the Psychiatric Department at Reykjalundur Rehabilitation Center, Iceland (expert).

3. The list of the establishments visited by the CPT’s delegation includes:

#### **Establishments under the authority of the Ministry of the Interior**

- Metropolitan Police Headquarters, 29 November Street, Belgrade
- Bečej Police Station
- Belgrade International Airport “Nikola Tesla”, Holding Premises of the Border Police
- Mladenovac Police Station
- Niš District Police Station
- Novi Sad District Police Station
- Pančevo District Police Station
- Ruma Police Station
- Srboboran Police Station

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<sup>1</sup> The CPT has previously carried out three periodic visits (2004, 2007 and 2011) to the country. The reports on these visits and the responses of the national authorities have all been made public and are available on the Committee’s website ([www.cpt.coe.int](http://www.cpt.coe.int)).

**Establishments under the authority of the Ministry of Justice**

- Belgrade District Prison (follow-up visit)
- Niš Penal Correctional Institution
- Pančevo District Prison
- Sremska Mitrovica Penal Correctional Institution
- Valjevo Juvenile Correctional Institution
- Prison Hospital, Belgrade (follow-up visit)

**Establishments under the authority of the Ministry of Health**

- Vršac Special Psychiatric Hospital

**Establishments under the authority of the Ministry of Labour, Employment, Veteran and Social Affairs**

- Veternik Social Care Home

**B. Consultations held by the delegation and cooperation encountered**

4. In the course of the visit, the delegation met with Aleksandar Nikolić, State Secretary of the Ministry of the Interior, Vladimir Pešić, Assistant Minister for Labour, Employment, Veteran and Social Affairs, Milan Stevović, Director of the Administration of the Execution of Criminal Sanctions and senior officials of the Ministry of Health. The delegation also met with Gordana Stevanović, Deputy Ombudsman and representatives of the Serbian NPM. Meetings were also held with international and non-governmental organisations active in areas of concern to the CPT.

A list of the national authorities and organisations met by the delegation is set out in the Appendix to this report.

5. The delegation generally enjoyed good cooperation from the management and staff in the establishments visited, including rapid access to those places the delegation wished to visit as well as the possibility to interview in private persons deprived of their liberty and to consult relevant documentation.

That said, some attempts to mislead the delegation were recorded; for example, a room at Bečej Police Station and a number of cells located in the ground floor of Pavilion II at Niš Correctional Institution appeared to have recently been in use, contrary to the information provided to the delegation by staff (see paragraphs 33 and 58). Further, the list of establishments which was provided to the Committee after some delay by the Ministry of the Interior contained several inaccuracies as to the capacity, address and state of service of police stations and directorates. **The CPT trusts that the Serbian authorities will ensure that future CPT's delegations visiting the country are provided with accurate information regarding places used for accommodating detained persons.**

At Sremska Mitrovica and Niš Correctional Institutions and at Pančevo District Prison the delegation learned that inmates had been warned in advance by prison staff about possible repercussions if they complained to the delegation. **The CPT wishes to stress that any intimidating or retaliatory action before or after contact with its members constitutes a clear violation of the principle of cooperation under the Convention.**

Finally, the CPT regrets once again that its delegation was not able to present its preliminary observations at the end of the visit to officials of the most senior political level.

**The CPT trusts that its report will receive the highest attention from the Ministers and senior political officials responsible for the areas covered by this report.**

6. As was made clear by the CPT in the past, the principle of cooperation is not limited to steps taken to facilitate the task of visiting delegations. It also requires that decisive action be taken in response to the Committee's recommendations. In this respect, the CPT is concerned to note that the bulk of the recommendations made after the 2011 visit with respect to prison overcrowding, refurbishment of the prison estate and the development of a purposeful regime for remand prisoners remain unimplemented. Further, the response received so far by the Minister of the Interior in relation to the finding of the Committee concerning police ill-treatment is not convincing; this is also an issue of cooperation.

**Having regard to Articles 3 and 10, paragraph 2, of the Convention, the CPT trusts that the Serbian authorities will take resolute action to improve the situation in the light of the Committee's recommendations contained in the present report.**

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

7. On 5 June 2015, the CPT's delegation met representatives of the Serbian authorities to inform them of the delegation's main findings. On that occasion, the CPT's delegation made two immediate observations under Article 8, paragraph 5, of the Convention, notably:

- to take the necessary steps to prevent any further decrease in the number of psychiatrists and other doctors at the Special Prison Hospital;
- to ensure that every resident accommodated at Veternik Social Care Home has his/her own bed, and that the incontinent female resident accommodated in a room of the enforced supervision section is no longer locked at night and is provided access to a toilet and diapers, as required.

8. These requests were confirmed in a letter dated 25 June 2015. The Serbian authorities supplied the information requested in two communications dated 17 and 31 July 2015. The information contained in those responses has been taken into account in the drafting of this report.

**D. National Preventive Mechanism**

9. Serbia ratified the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2006. The Office of the Protector of Citizens (Ombudsman) was officially designated as National Preventive Mechanism (NPM) by the National Assembly of the Republic of Serbia and started operating as such in July 2011.

Since 2011, the NPM has carried out more than 300 visits to places of deprivation of liberty throughout Serbia formulating more than 1,000 recommendations to the Serbian authorities. Further, the NPM avails itself of the cooperation of a pool of experts (i.e. psychiatrists, forensic doctors and developmental therapists) and has signed partnership agreements with nine specialised NGOs. That said, no dedicated department for NPM work has yet been created within the Ombudsman's office and while three permanent staff members (i.e. legal advisors) of the Ombudsman are officially assigned to carry out NPM-related tasks, they continue to perform complaints activities.<sup>2</sup>

The CPT is not convinced that this is the best way to ensure an optimal functioning of the NPM. In this connection, reference might be made to paragraph 32 of the Guidelines on national preventive mechanisms adopted by the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) in November 2010, according to which: "Where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget".

**The CPT invites the Serbian authorities to maintain, and possibly increase, the current level of funding devoted to the NPM within the budget of the Ombudsman's Office. Further, the Committee suggests that consideration be given to setting up a separate NPM unit or department within the Ombudsman's Office.**

10. The CPT notes that the NPM has visited Sremska Mitrovica, Niš Correctional Institutions, Pančevo District Prison and the Special Prison Hospital<sup>3</sup> several times since 2012 and had produced detailed reports on its findings. In the course of its visit, the CPT's delegation was able to observe that at Niš Correctional Institution the prison management had, to a large degree, acted upon the NPM's recommendations while at Sremska Mitrovica Correctional Institution, Pančevo District Prison and the Special Prison Hospital, the level of implementation of the recommendations was minimal. This is regrettable as the findings of the CPT's delegation in the course of the 2015 visit largely mirror those of the NPM in respect of the above establishments.

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<sup>2</sup> The CPT's delegation was told that the main obstacle to the creation of an NPM department within the Ombudsman's Office was the necessity to amend the 2007 Rulebook on the Internal Organisation and Systematisation of Posts and Expert Services of the Ombudsman which required a plenary vote by the National Assembly of the Republic of Serbia.

<sup>3</sup> The NPM had visited Sremska Mitrovica Correctional Institution in 2012 and 2013, Niš Correctional Institution in March 2015 and Pančevo District Prison in 2013. Further, it had paid a targeted visit to the Special Prison Hospital in Belgrade in February 2015 in order to follow-up on the level of implementation of the recommendations formulated by the CPT in its report on the 2011 periodic visit.

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. Law enforcement establishments

#### 1. Preliminary remarks

11. The new Criminal Procedure Code (CCP), which entered into force in September 2011, has introduced a number of significant changes to the legal framework governing the detention of criminal suspects by the police, notably through the adoption of the prosecutorial concept of investigation in lieu of the judicial one. The new CCP tasks the police with bringing an arrested criminal suspect without delay and within a maximum period of eight hours before a prosecutor.<sup>4</sup> The police must also immediately, and within a maximum term of two hours, issue the suspect with a provisional detention decision. It is the prosecutor who decides to keep a criminal suspect in police custody for up to 48 hours from the moment of deprivation of liberty.<sup>5</sup> The police custody of criminal suspects is limited to a maximum of 48 hours and is regulated by the Constitution.<sup>6</sup>

The police may also summon a person to a police station for the purpose of obtaining information, for a period not exceeding four hours.<sup>7</sup> When a reasonable suspicion exists that the summoned person is the perpetrator of a criminal offence, he/she may be summoned only in the capacity of a suspect and shall be advised accordingly. In such a case, the summoned person retains the right to a legal counsel in accordance with Section 289 of the CCP.

Pursuant to Section 53 of the Law on Police, the police may detain persons for public order offences for a maximum period of 24 hours.<sup>8</sup> Further, Section 165 of the Law on Misdemeanour allows the detention of a person by the police for up to 24 hours if the identity of the same cannot be established. Finally, the police also retains the right of detaining persons on the basis of the Law on Road Traffic Security for a maximum period of 12 hours.<sup>9</sup>

12. At the outset of the visit, senior officials of the Ministry of the Interior told the CPT's delegation that they were aware that certain police detention premises were not in line with international standards for detention periods of up to 48 hours. Therefore, major renovation works were taking place at several police establishments to remedy the deficiencies. For this reason, the Ministry of the Interior had put in place arrangements with the Ministry of Justice for criminal suspects detained for up to 48 hours to be held in designated cells at various prison establishments (see paragraph 34).

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<sup>4</sup> Pursuant to Section 291, paragraph 3 of the CCP, the failure to comply with these terms requires a written justification by the police.

<sup>5</sup> Pursuant to Sections 294 and 69 of the CCP.

<sup>6</sup> Article 29 of the Constitution of the Republic of Serbia stipulates that: "Any person deprived of their liberty without a decision of the court must be brought before the competent court without delay within no later than 48 hours, otherwise they shall be released".

<sup>7</sup> Pursuant to Section 288 of the CCP, such a period is considered as deprivation of liberty only if it is clearly specified that the person is being summoned to a police station as a criminal suspect.

<sup>8</sup> The person concerned may appeal against the detention to the competent district court.

<sup>9</sup> Mainly for sobering-up purposes whenever a driver is assessed to be in a serious state of inebriation (pursuant to Section 283 of the Law on Road Traffic Security).

## 2. Torture and other forms of ill-treatment

13. The delegation received a significant number of allegations of physical ill-treatment of detained persons by police officers. The ill-treatment consisted primarily of slaps, punches and truncheon blows, but also included striking persons with various non-standard objects (such as bicycle locking cables, wooden floor tiles and baseball bats). Detailed allegations were also received of the handcuffing of criminal suspects in stress positions for hours on end, the placing of plastic bags over their heads, the infliction of shocks with hand-held electric discharge devices and the hit of the soles of their feet with hard objects (i.e. the so-called falaka).

The majority of the allegations concerned the time when suspects were being questioned by crime inspectors in their offices, sometimes for prolonged periods, prior to being placed in holding cells or transferred to the prosecutor's offices. The information gathered by the CPT's delegation indicates that the infliction of ill-treatment for the purposes of trying to extort a confession is a frequent practice of criminal investigators at Pančevo and Niš Police Directorates, and Ruma Police Station. In a number of cases, the delegation gathered medical and other documentation which was consistent with the allegations of ill-treatment made by the detained persons.

14. The following represents a sample of credible allegations of ill-treatment collected by the CPT's delegation in the course of its visit:

- i) a person apprehended on 3 May 2015 on the road between Šabac and Sremska Mitrovica, alleged that he had been hit with the butt of a gun on his head and punched on various parts of his body by a group of policemen. Further, following his transfer to Ruma Police Station he alleged that a criminal investigator had hit him several times with a wooden floor tile (about 25cm in length) on the soles of his feet, his fingers, his buttocks and his head. Upon his admission to Sremska Mitrovica Correctional Institution on 5 May 2015, the following injuries were recorded in his medical file by the doctor as originating from police ill-treatment: hematomas on both eyes (3cm x 3cm each) and a hematoma on the left gluteal region (5cm x 5cm). The injuries were still visible three weeks later when the delegation met the person and the delegation's forensic medical doctor assessed them as being compatible with the alleged ill-treatment. Further, when the delegation visited the police inspector's office of Ruma Police Station where the interrogation had allegedly taken place it found a wooden floor tile (around 25cm long) behind a closet;
- ii) a person apprehended on 20 March 2015 and taken to Niš Police Directorate alleged that two police inspectors had held him down on the floor while he was subjected to truncheon blows on the soles of his feet and palms. Subsequently, he alleged that the investigators had inflicted several shocks with an electric discharge device to his stomach, the lower parts of his legs and right ear. Upon admission to Niš Correctional Institution, the prison doctor noted the following in his medical file: "excoriation on the left stomach region (1cm x 1cm), abrasions in the right ear, reddish area on the left wrist and fist and various hematomas on the soles of both feet". No reference was made to the origin of the injuries;

- iii) a person apprehended by two policemen in his courtyard in Belgrade on 24 May 2015 alleged that they had kicked him repeatedly on his arms, legs and chest while he was lying on the ground. One of them had allegedly repeatedly placed his boot on his face exerting strong pressure. The person was subsequently transported to Palilula Police Station where he was verbally insulted by the same policemen. When met by the CPT's delegation four days later (i.e. on 28 May 2015) the person in question bore the following visible injuries: various hematomas around the left eye and between the right eye and the right cheek, swollen right cheek, difficulty in opening his mouth and in breathing due to persistent pain in the chest; two bluish hematomas on the left elbow and arm (2cm x 2cm). The delegation's forensic doctor assessed the injuries as compatible with the alleged ill-treatment;
- iv) a 19-year-old male arrested on 11 February 2015 by a group of police officers near Pančevo alleged that he was initially forced to lie on the ground in the snow for around 30 minutes. Subsequently, at Pančevo Police Directorate a police inspector allegedly punched and hit him with a "tailed rag ball" on his chest while he was handcuffed to a chair. The following day, he was apparently subjected to another interrogation by a team of police inspectors from Belgrade who allegedly placed a plastic bag over his head on several occasions inducing a sense of being asphyxiated until he fainted. The purpose of the inflicted ill-treatment was to extract a confession in respect of a series of robberies which had taken place in Belgrade. Upon his admission to Pančevo District Prison on 11 February 2015, the prison doctor recorded the following entry in his medical file : "complaints of pain on the left side of the chest, upon examination pain in the region of 8th, 9th, 10th rib on the left side";
- v) a person arrested on 23 May 2015 in the vicinity of Bela Crkva alleged that he had been punched several times by a policeman on various parts of his body. Subsequently, at Bela Crkva Police Station he was allegedly forced to kneel with his hands cuffed behind his back in a stress position in an inspector's office for the entire night, occasionally receiving slaps to his face apparently to persuade him to confess to stealing a sheep. At the time of his admission to Pančevo District Prison, he was not given any physical examination by the prison doctor and he did not complain as the same police officers who allegedly inflicted the ill-treatment were present.

By letter of 31 July 2015, the Serbian authorities informed the CPT that the heads of the relevant regional police directorates had conducted internal investigations in order to establish the veracity of the allegations of ill-treatment of detained persons by police officers at the police directorates of Valjevo, Niš, Sremska Mitrovica and Pančevo. The conclusion was that police officers had acted according to the regulations in force and the instructions of the competent prosecutor's office. **The CPT is dissatisfied with this response** (see paragraph 6).

15. In addition to the above-mentioned wooden floor tile, the delegation found other non-standard items such as wooden sticks, replica guns and bicycle chain locks at Ruma and Bečej Police Stations and Pančevo Police Directorate, in offices where detained persons had specifically alleged that they had been subjected to ill-treatment by law enforcement officials with such items. In a communication received on 31 July 2015, the Serbian authorities provided explanation that the above-mentioned objects found in interrogation rooms by the CPT's delegation had been seized for the purpose of being used as evidence. In this connection, it should be stressed that the above mentioned non-standard objects should always be properly labelled, recorded and kept in a dedicated property store.

**The CPT recommends that appropriate measures be taken to ensure that in the future, any weapons or other items seized during criminal investigations are entered in a separate register, properly labelled (identifying the case to which they refer) and kept in a dedicated place of storage.**

16. In the light of the delegation's findings and observations in the course of the 2015 visit, it is incumbent on the Serbian authorities to take the necessary measures to end ill-treatment by law enforcement officials through a multifaceted approach, comprising: a competitive recruitment process of police officers based upon strict selection criteria; an educational training course for all new recruits with a particular emphasis on advanced methods of crime investigations; the application of appropriate sanctions for the actual perpetrators of ill-treatment and for those who fail to prevent it; the existence of effective and independent procedures for examining complaints and other relevant information regarding alleged ill-treatment by police officers.

In fact, the seriousness of the information gathered in the course of the 2015 visit concerning ill-treatment calls for immediate and determined action by the authorities. Instead of the rejection and denial of the existence of the problem of ill-treatment by police officers (see paragraphs 6 and 15), the authorities should vigorously explore all means to ensure that the message of zero tolerance of ill-treatment of detained persons reaches law enforcement officials at all levels; they should be made aware, through concrete action, that the government is resolved to stamp out ill-treatment of persons deprived of their liberty. Combating ill-treatment entails not only the adoption of the appropriate legal norms but also taking the necessary steps to ensure their implementation.

**The CPT recommends that the Minister of the Interior and regional police directorates deliver a strong message that the ill-treatment of detained persons is illegal, unprofessional, and will be the subject of appropriate sanctions. This message should be reiterated at appropriate intervals at the level of regional police directorates. Further, the relevant authorities should ensure that an investigation is carried out into every allegation of ill-treatment and that senior officers are held accountable for their line-management responsibilities.**

17. The system of complaints against police misconduct has not undergone any changes since the last CPT visit in 2011.<sup>10</sup> Pursuant to Sections 171 to 182 of the Law on Police and the Rulebook on Complaints Procedure Regulations, a citizen is entitled to file a written, oral or electronic complaint recording alleged misconduct of a police officer to the Sector of Internal Control of the Police (SUKP). An internal investigation into the veracity of the allegations is conducted by the relevant hierarchical supervisor of the named police officer(s). If the complainant is dissatisfied with the above-mentioned conclusion, a three-member commission (including a member of the SUKP, a Ministry official and a representative of the civil society) shall take a final decision on the complaint within the following 30 days. In cases in which the SUKP establishes the responsibility of a police officer for a crime which may be prosecuted *ex officio* (e.g. physical ill-treatment of a detained person), criminal charges will be filed by the SUKP to the competent prosecutor. **The Committee would like to receive further information on the composition and working procedures of the above-mentioned three-member commission as well on the number of complaints processed in 2014 and the first six months of 2015 as well as the outcome of the processed complaints.**

At the outset of the 2015 visit, the CPT's delegation was informed that the SUKP had in the period between 2013 and 2015 pressed criminal charges with the prosecutorial authorities in relation to 10 cases of alleged physical ill-treatment and torture and/or extortion of confession by a police official (i.e. in violation of Sections 137 and 214 of the Criminal Code (CC)). By letter received on 22 September 2015, the State Prosecutor's Office informed the Committee that an investigation was ongoing in respect of four cases and deferred in one case while criminal charges had been dismissed in relation to the remaining five cases.

18. The existence of effective procedures for examining complaints and other relevant information regarding alleged ill-treatment by the police is an important safeguard against ill-treatment of persons deprived of their liberty. An effective means of preventing ill-treatment by law enforcement officials lies in the diligent examination by the competent authorities of all complaints of such treatment brought before them and, where evidence of wrongdoing emerges, the imposition of appropriate disciplinary and/or criminal penalties (see paragraph 16). This will have a very strong deterrent effect. Conversely, if the relevant authorities do not take effective action upon complaints referred to them, those minded to ill-treat persons deprived of their liberty will quickly come to believe that they can act with impunity.

In this connection, the CPT considers that in order for a police complaints mechanism to be considered truly independent there should not be any institutional or hierarchical connections between the investigators and the officer complained against.<sup>11</sup> For an investigation into possible ill-treatment to be effective, it is essential that the persons responsible for carrying it out are independent of those implicated in the events. It is important to ensure that the officials concerned are not from the same service as those who are the subject of the investigation. Ideally, those entrusted with the operational conduct of the investigation should be completely independent of the agency implicated. Further, prosecutorial authorities must exercise close and effective supervision of the operational conduct of an investigation into possible ill-treatment by public officials. They should be provided with clear guidance as to the manner in which they are expected to supervise such investigations.<sup>12</sup>

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<sup>10</sup> According to the draft Law on Police which was under public scrutiny at the time of the CPT's visit no major changes were expected to the system of complaints against police misconduct.

<sup>11</sup> See for example the ECtHR decision *Ramsahai v. Netherlands*.

<sup>12</sup> See CPT's 14th General Report (2003-2004).

**The CPT recommends that the Serbian authorities, taking into account the above remarks, establish an independent police complaints mechanism in the new Law on Police.**

19. It is a matter of concern to the CPT that the Serbian authorities do not appear to be taking seriously the necessity of ensuring effective investigations into allegations of ill-treatment. Since the CPT's visit in 2011, there have been several judgments by the European Court of Human Rights (ECtHR) in relation to Serbia being in violation of the procedural aspects of Article 3 of the European Convention on Human Rights (ECHR).<sup>13</sup> Further, the Constitutional Court decided in July 2013 that the right to the inviolability of physical and mental integrity of a complainant, as guaranteed by Article 25 of the Constitution of the Republic of Serbia, had been violated due to the negligence of the judicial authorities to ensure a prompt, thorough, independent investigation into the reiterated episodes of physical ill-treatment against the complainant.<sup>14</sup>

It is important to observe that in the above-mentioned judicial cases, both the ECtHR and the Constitutional Court established a substantive violation of Article 3 in relation to the applicants' complaints and concluded that the relevant prosecutors had failed to institute a separate abuse-related investigation aimed at the identification and punishment of those responsible.

In this respect, several detained persons interviewed by the delegation during its visit, who had alleged physical ill-treatment by police officers at the time of apprehension and/or interrogation, stated that when they had described in detail the allegations to the prosecutors and judges (including showing them their visible injuries), the latter had shown little interest in their complaints and had not ordered any forensic examination.

**The CPT recommends that a message be delivered, through the appropriate channels, to both judges and prosecutors, reminding them that whenever a detained person alleges ill-treatment, a forensic medical examination should be immediately ordered and the necessary steps taken to ensure that the allegations are promptly and properly investigated. Further, such investigations should offer guarantees of effectiveness (i.e. to be prompt, expeditious, thorough, independent and transparent).**

20. Further, pursuant to Section 495 of the CCP,<sup>15</sup> the possibility for a victim of torture and/or other physical ill-treatment to initiate criminal proceedings (i.e. subsidiary prosecution) once a prosecutor rejects the criminal charges or suspends the investigation are limited. The sole legal remedy at the disposal of the injured party in this case is to file a complaint directly to a senior prosecutor pursuant to Section 51 of the CCP.

**The Committee would like to receive the comments of the Serbian authorities on the above-mentioned legal provisions.**

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<sup>13</sup> See the following ECtHR judgments: *Stanimirović v. Serbia*, *Hajnal v. Serbia*, *Lakatoš v. Serbia*, *Habimi v. Serbia* and *Petković v. Serbia*. In one additional case (i.e. *Otašević v. Serbia*) the Court also established that there had been a violation of the procedural aspects of Article 3 of the ECHR although the alleged police ill-treatment had taken place prior to the entry into force of this Convention in respect of Serbia (i.e. 3 March 2004).

<sup>14</sup> The case concerned the citizen M.J. who had been subject to repeated episodes of physical ill-treatment by the police and penitentiary staff at different stages of his detention between 2005 and 2011.

<sup>15</sup> Section 495 of the CCP stipulates that the accelerated procedure will be applied to those criminal proceedings related to criminal offences punishable to a maximum of eight years of imprisonment (as it is the case for crimes sanctioned by Sections 136 and 137 of the CC).

21. In the course of the visit, the delegation was informed by senior officials of the Republic Prosecutor's Office that a working group had been established in order to review the main conclusions of the above-mentioned ECtHR judgments against Serbia. Further, the same prosecutorial authorities were in the process of designing research projects in co-operation with NGOs on the effectiveness of criminal investigations into allegations of ill-treatment by public officials. These are positive steps. **The Committee would like to be informed of the developments concerning the above-mentioned initiatives by the Republic State Prosecutor in particular in respect of the re-opening of investigations in the field of criminal responsibility for alleged acts of torture/physical ill-treatment under the responsibility of custodial staff (prison and police).**

22. The CPT has repeatedly stressed that prison health-care services can make a significant contribution to the prevention of ill-treatment. The findings from the 2015 visit demonstrate that prison health-care services in the establishments visited continued to describe the injuries found on persons detained in a superficial manner. Further, prisoners' statements were not always recorded and there were no doctor's conclusions as to the consistency of the injuries with these statements. Further, with the exception of Belgrade District Prison, none of the prison establishments visited possessed a dedicated register of injuries recorded on newly arrived prisoners and in some prisons, such injuries were not recorded at all. Moreover, where injuries were observed on newly admitted prisoners they were not systematically reported to a prosecutor. For example, not one of the 28 cases of persons admitted to Belgrade District Prison with visible injuries in the course of 2015 allegedly caused by police ill-treatment was officially notified to the competent prosecutor. By letter of 31 July 2015 the Serbian authorities informed the Committee that, according to the relevant legislation,<sup>16</sup> the first medical examination of a detained person upon admission to a prison establishment must consist of a visual examination and that the authorities should invest efforts to ensure compliance with this requirement.

**The CPT recommends that steps be taken to ensure that the prison medical services at the establishments visited, as well as other prison medical services in the rest of the country, fully play their role in the system for preventing ill-treatment, ensuring that the record drawn up after the medical screening contains:**

- i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment);**
- ii) a full account of objective medical findings based on a thorough examination, and**
- iii) the health-care professional's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings.**

**The record should also contain the results of additional examinations carried out, detailed conclusions of specialised consultations, a description of treatment given for injuries and the results of any further procedures performed.**

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<sup>16</sup> In accordance with Section 11 of the Rulebook on House Rules in Correctional Institutions and District Prisons.

A record of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the prisoner. Further, it would be desirable for photographs to be taken of the injuries, which should also be placed in the medical file. In addition, a special trauma register should be kept in which all types of injury observed should be recorded.

The CPT recommends that procedures be in place to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by the prisoner concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecuting authorities, regardless of the wishes of the person concerned.

### 3. Safeguards against the ill-treatment of persons deprived of their liberty

23. In general, the legal provisions containing formal safeguards against ill-treatment of persons deprived of their liberty by the police (in particular the right of detained persons to inform a close relative or another third party of their situation, to have access to a lawyer and to have access to a doctor) have remained unchanged since 2011. However, mention should be made of the Ministry of the Interior's December 2012 "Instruction on the Conduct of Police Officers towards Apprehended and Detained Persons" which defines in greater detail all the operational aspects concerning the apprehension, transfer and detention of persons deprived of their liberty by the police.

24. The right of a detained person to inform without delay a person of his/her choice of the fact of his/her custody is enshrined in Article 27 paragraph 3 of the Constitution.<sup>17</sup> This principle is reiterated in Sections 69, 291 and 293 of the CCP. It is in particular important to stress that both Sections 69 and 291 of the CCP stipulate that an arrested person must be immediately informed of his/her right to inform a family member or third party of the arrest. However, pursuant to Section 293 of the CCP, it is up to the prosecutor only (i.e. at a more advanced stage of deprivation of liberty) to "*ensure that the suspect may notify by telephone in his presence [i.e. the prosecutor's] a defence counsel or a family member of the arrest*". The delegation was able to observe that in practice the notification of custody to a third person was as a rule performed by police officers but no feedback was in general provided to detained persons on the notification. Further, several detained persons told the delegation that their specific requests to inform a third party of their custody, specifically referred to in the minutes of detention, had been denied by police officers.

**The CPT calls upon the Serbian authorities to ensure that all persons deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). Further, detained persons should be provided with feedback on whether a close relative or other person has been notified of the fact of their detention.**

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<sup>17</sup> According to Article 27(3) of the Constitution, "*a person deprived of liberty [...] shall be informed promptly in a language he understands about [...] his right to inform without delay a person of his choice about his arrest or detention*".

25. Pursuant to Sections 68 and 69 of the CCP, the criminal suspect has the right to a defence counsel of his/her own choice, to have a confidential conversation with the same (only visually supervised) and to have the defence counsel present during each interview by the police.<sup>18</sup> As to the exact time when the right of access to a lawyer becomes effective, the police are under an obligation to provide effective access to a legal counsel to persons deprived of their liberty at the time of the issuance of the decision of provisional detention (i.e. within two hours of the formal deprivation of liberty).

It still remains the case that persons summoned to a police station as “witnesses” were not informed in the written summons of their right to be assisted by a lawyer at any stage of their questioning.

**The CPT calls upon the Serbian authorities to take steps to ensure that the right of access to a lawyer applies effectively as from the very outset of the deprivation of liberty by the police. Further, anyone who is under a legal obligation to attend and stay at a police establishment (e.g. as a "witness") should also be expressly granted the right of access to a lawyer.**

26. Many complaints were again received about the performance of ex officio lawyers assigned to detained persons. In particular, the delegation was told that ex officio lawyers only met their clients in court (up to 48 hours after deprivation of liberty) and that in several cases they did not show any interest in having a confidential conversation with their clients and appeared to be dismissive when allegations of ill-treatment by police officers were being raised by their clients.

**The CPT recommends that all *ex officio* lawyers be reminded, through the Bar Association, of the importance of their role in preventing and, if necessary, reporting ill-treatment by the police.**

27. Concerning the right of access to a doctor, pursuant to Section 69(4) of the CCP, *"an arrested person is entitled to demand that he/she be examined without delay by a physician of his/her own choice, and if the physician is not accessible, by a physician designated by the public prosecutor or the court"*.

The CPT's delegation found that prompt medical assistance was provided generally by police officers to detained persons upon their request. On the other hand, the confidentiality of medical examinations remained a problem as they were generally carried out in the presence of police officers. This is not surprising given that point 26, paragraphs 2 and 4 of the “Instruction on the Conduct of Police Officers towards Apprehended and Detained Persons” stipulates that police officers shall be present during the medical examination of apprehended persons and shall be obliged to enforce their prescribed medical therapy. There was also no confidentiality of medical documentation pertaining to detained persons as it was kept in their personal files in police establishments.

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<sup>18</sup> The law enforcement authorities are also under an obligation to provide an ex officio lawyer from the list submitted by the relevant Bar Association.

The CPT must stress once again that the presence of police staff during medical examinations of detained persons could discourage a detained person who has been ill-treated from saying so and, more generally, is detrimental to the establishment of a proper doctor-patient relationship; alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality.

**The CPT recommends that the Serbian authorities amend the Instruction on the Conduct of Police Officers towards Apprehended and Detained Persons in the light of the above-mentioned precepts. All medical examinations should be based on the principle of confidentiality and be conducted out of the hearing and -- unless the doctor concerned expressly requests otherwise in a given case -- out of the sight of police staff.**

28. Written information on rights was generally provided to detained persons shortly after their apprehension by the police, mainly in the form of signed minutes (so called “*Pouka o Pravima Zadržanog Lica*”). That said, several persons told the delegation that they were given the minutes only several hours after the beginning of their deprivation of liberty, after their interrogation by the police. For example, the person apprehended in Pančevo on 11 February 2015, referred to in paragraph 14, signed the so-called “*Pouka o Pravima Zadržanog Lica*” at 16.30 although he had declared that he had been apprehended by the police at 9.30 the same day. **The CPT would like to receive the comments of the Serbian authorities on the above-mentioned case.**

29. Some progress was noted as regards the introduction of an unified electronic system of custody records at the national level. That said, the level of information available in this new system was cursory. For example, information on the provision and current enjoyment of fundamental safeguards could be consulted only in the individual files of detained persons. Further, the delegation noted several inconsistencies and incorrect information in the custody records, such as lack of consistency regarding the time of arrest of detained persons, the absence of detail as to when the relevant prosecutor had been informed of the arrest of a person and the incorrect recording of times for the application of means of restraint and lack of information of transfer of detained persons to other police stations and release.<sup>19</sup>

**The CPT recommends that the Serbian authorities take effective steps in order to redress the above-mentioned inconsistencies and incorrect information in the custody registers.**

30. In terms of conduct of interviews, Section 289 of the CCP stipulates that the public prosecutor may conduct, attend or delegate to the police the questioning of a criminal suspect. In practice, the CPT’s delegation was able to observe that the competent prosecutors delegated by written decision the conduct of interrogations to the police in relation to common criminal offences. The Code on Police Ethics stipulates that additional guidelines should regulate in detail the process of interrogation (Article 40). As far as the CPT is aware, no such guidelines have yet been drawn up in Serbia. In practice, interviewed detained persons and evidence from registers indicated that criminal suspects were subjected to long interrogation sessions (e.g. of up to six hours at a time<sup>20</sup>), forced to stand for prolonged periods or to remain in stress positions and were not offered access to food and water.

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<sup>19</sup> A person detained at Mladenovac Police Station on 17 May 2015, who according to the records was subjected to means of restraint (i.e. handcuffing) for two minutes, had in fact been handcuffed for more than 40 minutes according to the CCTV recording examined by the delegation.

<sup>20</sup> For example, on 28 May 2015, a criminal suspect was interrogated by police inspectors of Novi Sad Police Directorate from 08.20 to 14.30 hours and from 15.30 to 18.10 hours.

The CPT considers that there should be formal guidelines on a number of specific aspects. Their existence would make it possible to consolidate the instruction received by police officers during their professional training.

**The CPT recommends that the authorities draw up a code of conduct for police interviews. The code should deal, inter alia, with the following aspects: systematic notification to the detainee of the identity of the persons present during the interview (name and/or number); the authorised duration of an interview; the rest periods between questioning sessions and breaks during an interview; the place(s) where an interview can be conducted; whether the person held can be required to remain standing while under questioning; questioning of persons under the influence of drugs, alcohol or medicines or affected by recent concussion. The code should also indicate the systematic video recording of the time each interview begins and ends, the identity of every person present during the interview, any request made during it by the person detained and questions asked during the interview. The situation of particularly vulnerable persons (e.g. with mental disorders) should carry specific safeguards. Finally, persons interviewed should not be forced to stand for prolonged periods or placed in stress positions and should have ready access to water and be offered food at appropriate intervals.**

#### **4. Conditions of detention**

31. As mentioned above, renovation works to improve the conditions of detention in police stations were ongoing. Since 2011, detention cells had been renovated at a number of police establishments<sup>21</sup> and funds had been earmarked for the refurbishment of others during 2015 and 2016.<sup>22</sup> Further, the Serbian authorities informed the delegation that in addition to placing criminal suspects in prisons, attempts were being made to limit the use of cells in police establishments for periods of up to 24 hours.<sup>23</sup> The delegation was able to confirm that criminal suspects were being detained in cells under police supervision at Sremska Mitrovica and Niš Correctional Institutions as well as at Pančevo District Prison.

32. At Pančevo Police Directorate, the two renovated cells offered good conditions of detention with direct access to natural light through a glass window, an internal ventilation system, a plinth with mattress, pillow and clean bedding, and an in-cell toilet and washing facility, as well as a table and chair fixed to the floor. Both cells were under CCTV and possessed a call bell. Detention cells at Novi Sad Police Directorate and Belgrade 29<sup>th</sup> November Police Station were adequate for the detention of criminal suspects for up to 24 hours in terms of their state of repair and hygiene but had limited access to natural light.<sup>24</sup>

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<sup>21</sup> At Pančevo, Novi Sad, Belgrade Police Directorates as well as Zemun and Čukarica Police Stations.

<sup>22</sup> In particular Novi Pazar and Kikinda Police Directorates (including Tutin, Sjenica, Kanjiža, Svilajnac Police Stations in their jurisdictions) in the course of 2015 and Belgrade, Sremska Mitrovica, Bor, Čačak, Novi Sad, Kragujevac, Zaječar and Subotica Police Directorates in the course of 2016.

<sup>23</sup> Pursuant to Section 53 of the Law on Police, Section 165 of the Law on Misdemeanour and Section 283 of the Law on Road Traffic Security.

<sup>24</sup> A perforated metal plate was placed on the in-cell windows.

However, other law enforcement establishments visited by the delegation (namely Niš Police Directorate and Srbobran, Mladenovac, Ruma, Belgrade 29<sup>th</sup> November Police Stations) displayed the same deficiencies described by the CPT in its previous visit reports. Cells<sup>25</sup> remained unsuitable for detaining persons for more than a few hours and certainly not for overnight accommodation. Moreover, artificial lighting was poor (e.g. at Niš Police Directorate and Mladenovac, Ruma, Srbobran Police Stations) and ventilation inadequate (e.g. at Niš Police Directorate and Mladenovac, Ruma and Srbobran Police Stations). Further, detained persons were very often not provided with a mattress and had to sleep directly on a concrete and wooden platform overnight (e.g. at Niš Police Directorate, Srbobran, Mladenovac, Ruma, Belgrade 29<sup>th</sup> November Police Stations). Blankets were not changed or washed on a regular basis. The level of hygiene and state of repair of toilets and washing facilities was generally poor, in particular at Mladenovac Police Station (showers and washbasins were not functioning properly and toilets were malodorous and in an unhygienic condition). Further, cells at Mladenovac and Srbobran Police Stations did not possess a call bell system. Section 36 of the Rules on Police Powers stipulates that persons detained in police establishments be allowed physical exercise unless security concerns prevent it. In practice, there were no arrangements in place to offer detained persons access to outdoor exercise in any of the establishments visited.

By letter received on 31 July 2015, the Serbian authorities informed the Committee that the detention unit at Mladenovac Police Station would be completely refurbished in the course of 2016.

33. As already mentioned in paragraph 5, while the two cells located in the basement had apparently been taken out of service pending renovation, the delegation received contradictory information as to the use of one room at Bečej Police Station. The room in question, measuring 7m<sup>2</sup> and located on the ground floor of the establishment, lacked any access to natural light and was covered in graffiti<sup>26</sup> and splatterings of what appeared to be blood and vomit over the walls. The room was equipped with two chairs behind which metal fixtures were attached to the wall for fixating detained persons. The CPT believes that fixating detained persons to metal fixtures on walls at police establishments is totally inappropriate. The custodial officers on duty told the delegation that the room in question had been taken out of service in 2003. The Serbian authorities clarified in their communication of 31 July 2015 that the room had been used in 2013 when detained persons were sent to Srbobran Police Station. However, according to the registers consulted by the delegation, a detained person had spent eighteen hours at Bečej Police Station (including an overnight stay) between 27 and 28 May 2015. **The CPT wishes to receive confirmation that above-mentioned room at Bečej Police Station is not used for holding detained persons.**

34. The conditions in the cells used for police detention purposes at the prison establishments visited varied. At Sremska Mitrovica Correctional Institution and Pančevo District Prison, cells were spacious, equipped with beds, mattresses, tables and chairs, enjoyed access to natural light and the in-cell sanitary annexes were hygienic and in a good state of repair. This is positive. However, the three cells in use at Pavilion II of Niš Correctional Institution were seriously dilapidated: levels of humidity were high, walls unplastered, beds rusty and damaged, mattresses filthy, spiders' webs omnipresent and there were no call bells. By letter received on 4 June 2015 the Director of Niš Correctional Institution informed the delegation that the above-mentioned cells had been taken out of service and their refurbishment initiated on 3 June 2015.

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<sup>25</sup> Cells at the police establishments visited by the delegation measured between 7 to 10 m<sup>2</sup> for single and 12 m<sup>2</sup> for double occupancy.

<sup>26</sup> Some of which indicated precise dates of detention in the course of 2012 and 2013.

35. With the exception of Novi Sad Police Station, no arrangements were in place for the provision of food to detained persons. The delegation observed that inmates were in general receiving one cold snack per day, contrary to the legal requirement stipulating the provision of three meals per day to persons detained at police establishments.<sup>27</sup>

36. **The CPT reiterates its recommendation that the Serbian authorities step up their efforts to improve material conditions in police cells. More specifically, the following measures should be taken as a matter of priority:**

- **improve in-cell lighting (i.e. sufficient artificial lighting to read by – sleeping periods excluded – and preferably access to natural light), ventilation. Further, steps should be taken to ensure that all police cells constructed in the future enjoy access to natural light;**
- **ensure that all cells used for overnight detention are equipped with a means of rest suitable for such stays (e.g. a bed or a sleeping platform), and that persons kept in custody overnight receive a clean mattress and blankets;**
- **introduce in-cell call bells at Srbobran and Mladenovac Police Stations;**
- **remove wall fixtures for attaching persons from all police establishments and, more generally, take effective measures to stamp out the practice of detained persons being attached to fixed objects by the police;**
- **offer food, including at least one full meal, at appropriate intervals to detained persons, as provided for in Serbian regulations; this implies that police establishments should be allocated a specific budget for this purpose;**
- **ensure that persons in police custody are allowed to comply with the needs of nature when necessary in clean and decent conditions, and that the toilet and washing facilities are in a good state of repair;**
- **ensure a satisfactory level of repair and hygiene in cells and sanitary facilities at the national level (cleanliness of bedding; sanitary installations; levels of humidity and plasterwork).**

In addition, the need for outdoor exercise facilities for detained persons should also be taken into account in the above-mentioned renovation plan of police detention facilities. Meanwhile, **the CPT recommends that persons detained by the police for 24 hours or more are offered at least one hour of outdoor exercise per day.**

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<sup>27</sup> Pursuant to Section 36 of the Rules on Police Powers, persons detained more than 12 hours shall be provided with three meals a day.

## **5. Belgrade International Airport “Nikola Tesla”**

37. In the course of the 2015 visit, the CPT’s delegation visited the holding premises of the Border Police at Belgrade International Airport “Nikola Tesla” where persons may be detained for illegal entry into the territory of the Republic of Serbia pending a deportation order.

In one of the holding cells, the delegation met a Swiss-Turkish citizen who was arrested on 3 June 2015 due to his agitated behaviour during a flight which resulted in the plane having to effect an emergency landing at “Nikola Tesla” International Airport. He alleged that he had been punched and hit several times with a truncheon to various parts of his body by two police officers after he had showed “active resistance” during his apprehension and transfer to the transit zone of the airport. The detained person was attended by a doctor at the Military Medical Academy in Belgrade on 3 June 2015, the doctor established that he had sustained during the arrest a contusion of the right side of the face and a lacero-contuse wound on the upper side of the right eye-lid. When met by the CPT’s delegation on 4 June 2015, he displayed numerous “tram-line” hematomas of various sizes in particular: on the right and left sides of the scapula, on the right and left lumbar regions, in the midline of the back, on the lower side of right armpit, on the outer back of the right arm, on the outer side of the right elbow, on the right forearm and its lower part of the forearm, as well as various excoriations of the right wrist. The delegation’s forensic doctor assessed that the above-mentioned injuries could be compatible with the infliction of more than twenty truncheon blows. By letter received on 22 September 2015, the Serbian authorities informed the Committee that an investigation into the alleged ill-treatment allegations of the above-mentioned foreign national had been conducted by the Belgrade Basic Prosecutor’s Office, which had ordered a forensic examination of the person. It established that no misconduct or excessive use of force had been exercised by police officers in respect of this case.

**The Committee would like to receive a copy of the reasoned decision of the Belgrade Basic Prosecutor Office as well as a copy of the relevant forensic examination.**

38. As regards the suspension of police officers under criminal investigation in violation of Section 137 of the CC, the CPT’s delegation has misgivings in relation to the fact that a police officer working at “Nikola Tesla” International Airport who had been found responsible for ill-treatment of a detainee by the SUKP on 28 April 2015 and against whom a criminal investigation was in motion for the same reason by the competent prosecutor, was still in service at the time of the CPT’s visit on 4 June 2015. Questioned by the delegation’s members on the reason for keeping the above-mentioned officer in service, the respective supervisor responded that evidence was still being collected. In the CPT’s view at a minimum, officers under criminal investigation for an act of alleged ill-treatment should, while the case is ongoing, be assigned to duties which do not involve direct contact with the public or detained persons.

**The CPT would like to receive the comments of the Serbian authorities on the above-mentioned case.**

39. The holding premises of the Border Police consisted of two cells measuring 6 m<sup>2</sup> each which had been recently renovated following recommendations by the NPM and including artificial lighting, a ventilation system, CCTV and a wooden platform. That said, the cells did not have access to natural light, and mattresses and bedding were not provided to detained persons in the case of an overnight stay and there was no arrangement for ensuring them access to outdoor exercise.

**The CPT recommends that the Serbian authorities ensure that the holding cells of the Border Police at “Nikola Tesla” International Airport enjoy access to natural light and are provided with clean mattresses and bedding for overnight stays. Further, foreign nationals should be offered at least one hour of outdoor exercise per day if they are required to stay 24 hours or longer at the detention unit.**

40. The CPT’s delegation was informed that foreign nationals refused entry to the country pursuant to Section 46 paragraph 2 of the Law on State Border Protection<sup>28</sup> were kept in the transit zone of the “Nikola Tesla” airport for periods lasting from a few hours to up to several days (i.e. up to five days).<sup>29</sup> Border police informed the delegation that persons placed in the “transit zone”<sup>30</sup> were not systematically informed, in a language they understood, of their legal position and rights. Posters in the English language were displayed with details of a free legal aid provider which foreign nationals could contact by telephone, and persons held in the transit zone were provided with food. Further, foreign nationals did not have an opportunity to go out into the fresh air and there were no arrangements for medical care.

**The CPT recommends that the Serbian authorities take the necessary steps in order to ensure that all persons held at the transit zone of “Nikola Tesla” International Airport:**

- **are offered at least one hour’s outdoor exercise per day if they are required to spend 24 hours or more in the transit zone;**
- **receive an information notice setting out their legal position and rights, this notice should be available in an appropriate range of languages;**
- **have access to a health-care professional should they so require.**

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<sup>28</sup> The section stipulates that: “Persons not fulfilling the requirements for entering the territory of the Republic of Serbia shall be returned to their national destinations at the expense of the airline referred to in paragraph 1 of this section”.

<sup>29</sup> Foreign nationals are generally returned to the same destination from which they had travelled on the first available flight which could take up to five days or according to NGOs even two weeks.

<sup>30</sup> In the course of 2014, a total of 520 foreign nationals had been denied access to the Republic of Serbia and returned to their destination of origin through the transit zone of “Nikola Tesla” International Airport (404 male and 116 female, including 81 juveniles).

## **B. Prison establishments**

### **1. Preliminary remarks**

#### **a. legislative changes**

41. Since the CPT's previous visit to Serbia in 2011, the legislative framework pertaining to imprisonment has seen a number of important changes. In particular, a new Law on the Execution of Criminal Sanctions (LECS) entered into force in November 2014 introducing the position of judge for the enforcement of criminal sanctions.<sup>31</sup>

Further, the above-mentioned new Code of Criminal Procedure introduced a series of alternative pre-trial measures (such as the prohibition on leaving one's residence or on approaching and communicating with other persons<sup>32</sup>) as well as additional rights for remand prisoners (e.g. to perform a remunerated work upon the investigative judge's approval<sup>33</sup>).

Finally, the entering into force of the Law on the Enforcement of Non-Custodial Sanctions provided for the establishment of a national network of offices for alternative sanctions falling under the territorial competence of all 25 Higher Courts (the so-called commissioner's offices). Such offices are tasked with the supervision of the implementation of alternative measures as well as the provision of post-release assistance to inmates. The Government adopted, in March 2013, a Strategy for the further development of the System of Enforcement of Criminal Sanctions in Serbia (2013-2020) which was complemented by an Action Plan adopted by the Government in August 2014. The documents envisage different sets of measures accompanied by indicators and an implementation timetable covering various fields such as the upgrading of the prison estate, the adoption of thematic legislation, the development of treatment and vocational activities for prisoners, alternative measures and sanctions, post-penal care, training of staff, and monitoring and oversight of the prison system.

**The CPT would like to receive information on the level of implementation of the above-mentioned strategic documents.**

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<sup>31</sup> Pursuant to Section 33 of the LECS, the judge for the execution of criminal sanctions is primarily tasked to decide on appeals filed by inmates against decisions of the prison director and to visit every prison establishment under his/her territorial competence at least four times a year.

<sup>32</sup> Such measures were specifically introduced in 2013 through Sections 197-200 of the CCP.

<sup>33</sup> Pursuant to Section 218 paragraph 4 of the CCP.

b. prison overcrowding

42. At the time of the CPT's 2015 visit, the prison population stood at 10,600 (compared to 11,500 at the time of the 2011 visit). The decrease was mainly due to the enforcement of the Law on Amnesty in 2012 which led to the immediate release of some 1,200 inmates.<sup>34</sup> The overall capacity of the prison estate stood at 9,000, an increase of around 500 places<sup>35</sup> since 2011.

In July 2010, a Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions from 2010 to 2015 was adopted by the Serbian Government. The Strategy identified three main reasons for the high rate of prison overcrowding in Serbia: the frequent resort to remand detention (with remand prisoners representing one third of the prison population), an increase in the number of imposed prison sentences<sup>36</sup> and insufficient resort to release on parole.

The 2013-2020 Strategy and related Action Plan on the Enforcement of Criminal Sanctions in Serbia also provides for specific benchmarks related to the fight against prison overcrowding consisting in particular of the construction of new prison facilities. At the outset of the visit, the delegation was informed by the Serbian authorities about the imminent start of the construction of new prisons in Pančevo (for a capacity of 450 inmates) and Kragujevac (500 inmates) as well as the construction of a new pavilion at Požarevac Correctional Institution.

43. The CPT notes that the decrease in the overall prison population since its 2011 visit to Serbia (i.e. from 11,500 to 10,600) is mainly related to the application of the above-mentioned 2012 Law on Amnesty. Further, the Committee takes note positively of the decrease in the number of remand prisoners from 3,332 in 2010 to 1,800 in 2014. That said, the recourse to alternative measures to detention foreseen by the new CCP (e.g. house arrest, ban on residence and ban on contacts) remains low due to the high rate of recidivism among prisoners as well as the reluctance of courts (in particular outside Belgrade) to resort to such measures.<sup>37</sup>

The CPT reiterates the importance of drawing up a coherent strategy covering both admission and release from prison, to ensure that imprisonment really is the measure of last resort. Emphasis should be placed on the full range of non-custodial measures capable of providing judicial supervision during the period preceding the imposition of a sentence, as well as on measures to accelerate a prisoner's release, including through supervisory means tailored, inter alia, to the prisoner's personality and the nature of the sentence.

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<sup>34</sup> The Law on Amnesty was adopted by the Serbian Parliamentary Assembly on 8 November 2012 and provided for the immediate release of around 1,200 persons convicted to sentences of a maximum of three months and the reduction of sentences in respect of another 2,400 persons convicted to sentences ranging from three to six months.

<sup>35</sup> This was due to the opening of the new prison establishment in Padinska Skela and the renovation of Pavilion V at Požarevac Correctional Institution.

<sup>36</sup> The total number of imposed prison sentences per year increased from 5,537 in 2010 to 10,539 in 2013.

<sup>37</sup> For example, out of 31,934 short sentences delivered by Serbian Courts from 2010 to 2014, 3,325 consisted of alternative sanctions (house arrest or work in the public interest). Further, there remain several courts in Serbia which have not imposed a single alternative detention measure other than pre-trial detention.

44. The CPT recommends that the Serbian authorities step up their efforts to tackle overcrowding effectively, based on the full set of principles listed in the Council of Europe Committee of Ministers Recommendation Rec(1999) 22 concerning prison overcrowding and prison population inflation, Recommendation Rec(2000) 22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, Recommendation Rec(2003)22 on conditional release (parole),<sup>38</sup> and Recommendation Rec(2010)01 on the Council of Europe probation rules.

The CPT also recommends that the Serbian authorities exploit to their full potential the services of the commissioner's offices in providing prisoners with post-sentence assistance upon their re-integration into society. Further, the Committee encourages the Serbian authorities to invest further efforts into promoting among the judiciary the application of the existing front- and back-door mechanisms for the reduction of prison population.

c. prisons visited

45. During its 2015 periodic visit to Serbia, the CPT's delegation carried out follow-up visits to Belgrade District Prison, Sremska Mitrovica Correctional Institution and the Special Prison Hospital. First time visits were conducted to Niš and Correctional Institution and to Pančevo District Prison as well as to the Valjevo Juvenile Correctional Institution which is the subject of a separate section of this report (see paragraph 125).

*Belgrade District Prison* accommodated 803 prisoners (of whom 32 were females) at the time of the visit (199 convicted and 604 on remand detention) for a capacity of 1,090 places. This represented a drastic reduction since the CPT's visit in 2011 when the establishment accommodated 1,656 inmates. The District Prison also included a Special Detention Unit for organised crime which was holding 66 prisoners for a capacity of 110.

*Sremska Mitrovica Correctional Institution*, the biggest penitentiary establishment in the country, accommodated 2,055 male inmates at the time of the visit (of whom 84 were on remand and 24 for misdemeanour offences) for an overall capacity of 1,500 places. The CPT's delegation visited the closed regime prison complex accommodating 1,478 inmates. The establishment also consisted of two separate semi-open and open regime pavilions as well as a detached unit in Soko Banja.

*Niš Correctional Institution*, the second biggest prison establishment in the country, was inaugurated in 1934 and accommodated 1,249 male inmates at the time of the visit for a capacity of 1,033. This included 107 prisoners detained on remand, of whom 42 were accommodated in a separate pre-trial detention unit in Pirot. It also held persons for misdemeanour offences.

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<sup>38</sup> In Recommendation Rec(2003)22, the Committee of Ministers stresses in particular that "the financial cost of imprisonment places a severe burden on society and that research has shown that detention often has adverse effects and fails to rehabilitate offenders" and that "conditional release is one of the most effective and constructive means of preventing re-offending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community".

*Pančevo District Prison* accommodated 190 male inmates (including one juvenile) for a capacity of 164. The CPT's delegation visited the part of the prison located in the centre of Pančevo in a historical building dating back to 1825 which was accommodating 95 inmates.

## **2. Ill-treatment**

46. The atmosphere at Belgrade District Prison was better than that observed during the 2011 visit, and no allegations of physical ill-treatment of prisoners by staff were received at this establishment in the course of the 2015 visit. This is positive.

On the other hand, the delegation received numerous allegations of physical ill-treatment of inmates by staff at Sremska Mitrovica and Niš Correctional Institutions and at Pančevo District Prison. The alleged ill-treatment mainly consisted of slaps, punches and blows with truncheons, and clearly indicated a practice by some officers of resorting to violence and excessive use of force as a means to control recalcitrant and/or agitated inmates or as an informal punishment. In a number of cases, inmates bore visible marks on their bodies which were assessed by the delegation's forensic doctor as being compatible with the alleged ill-treatment.

47. For example, at Sremska Mitrovica Correctional Institution, one inmate met by the delegation at Pavilion IV alleged that he had been subjected to several baton blows to various parts of his body by a custodial officer in the community room for not complying with an order to return to his cell. At the time of the CPT's visit 10 days later, the inmate in question still bore a "tram-line" hematoma on his right leg which was assessed by the delegation's forensic doctor as being consistent with his allegation.

Another inmate, located in Pavilion III, alleged that he had been slapped several times about the head by a prison officer following a verbal altercation on 26 March 2015. He was examined at his request by the prison doctor on 27 March and a note in his medical file indicated "suspected rupture of the timpanus".

At Niš Correctional Institution, one inmate alleged that on 19 November 2014 he had received several blows with a truncheon to various parts of his body by a prison officer after he committed an act of self-harm. Upon examination by the prison doctor on 20 November 2014, the following injuries were recorded in his personal medical file: hematoma on the right scapular region (4cm x 4cm), hematoma on the left-lumbar region (8cm x 2cm) and hematoma on the left gluteal region (10cm x 3cm). The register on use of means of restraint consulted by the delegation indicated that the recourse to use of force in respect of this case had been excessive and unjustified. Four prison guards had been suspended in relation to this incident and a criminal investigation was being conducted by the Niš State Prosecutor.

Another inmate at Niš Correctional Institution alleged that during his admission to the establishment on 22 November 2014, he had been beaten by a group of six officers. The inmate stated that following a verbal altercation with staff over the search of his luggage, he was taken to the visiting room where, after having his hands cuffed behind his back, the officers banged his head several times against the wall and delivered kicks to his right leg. Upon examination by the prison doctor the following day, a contusion of the left-frontal region of the head was recorded in his personal file together with swelling and cuts of 1 cm on the left ear, and a 3cm x 1cm excoriation under the left eye, as well as numerous excoriations on the right lip and right side of the chin. At the time of his interview with the delegation, the inmate in question still bore the signs of the above-mentioned injuries which were assessed by the delegation's doctor to be compatible with the inmate's description and timing of the alleged events. It was noted in the register on the use of means of restraint that use of force and handcuffing of the inmate in question was justified. However, the CCTV recording of the incident was no longer available.

An inmate from Pančevo District Prison alleged that he had been subjected to kicks, punches and blows with truncheons to various parts of the body by three custodial officers on 20 May 2015 in the staff rest room and later in the visitors' room. The prison doctor saw him that day in the presence of the custodial officers who had allegedly beaten him and no injuries were recorded in his medical file. At the time of the CPT's visit to the establishment on 3 June 2015, the delegation's forensic doctor noted the following injuries on the inmate's body: a greenish-yellow hematoma on the left upper leg (10cm x 3cm), a yellowish-brownish hematoma of the left elbow (3cm x 2cm), a yellowish-greenish hematoma on the left upper leg (7cm x 1cm), on the left back side in the vicinity of the armpit, a yellowish hematoma the size of a palm, on the inside of the right upper leg a yellowish-brownish hematoma the size of two palms. The injuries were consistent with the inmate's allegations.

48. The CPT wishes to highlight that its delegation heard many allegations of physical ill-treatment of prisoners by staff in particular at Pavilion III of Sremska Mitrovica Correctional Institution. The ill-treatment alleged consisted of truncheon blows, kicks and punches and was related to minor violations of prison discipline. It was apparently meted out in a specific classroom situated on the right side of the entrance to the pavilion, which was not covered by CCTV and which was referred to by inmates as the "crying room". The CPT's delegation observed traces that appeared to be blood on the walls of the room, for which the prison staff could not provide a reasonable explanation.

49. **The CPT recommends that the Serbian authorities take action to ensure that the management of Sremska Mitrovica and Niš Correctional Institutions, as well as Pančevo District Prison, demonstrate increased resolve in tackling ill-treatment of inmates by staff, by ensuring the regular presence of prison managers in the detention areas, their direct contact with prisoners, the effective investigation of complaints made by prisoners, and improved prison staff training in particular in the field of manual techniques on managing agitated inmates and inter-personal skills. Further, the management of these establishments should deliver a clear reminder to all custodial staff that the ill-treatment of prisoners in any form is illegal, and that anyone committing, aiding and abetting or tolerating such abuses will be punished accordingly. Finally, the Committee would like to be informed of the results of the investigation being conducted by the Niš Prosecutor in respect of the above-mentioned incident at Niš Correctional Institution.**

50. In its previous visit reports<sup>39</sup> to the Serbian authorities, the CPT has stressed that health-care services can make a significant contribution to the prevention of ill-treatment through the conduct of confidential medical examinations and the accurate and systematic recording of injuries as well as, if appropriate, the provision of information to the relevant authorities. Regrettably, there has been no progress in putting in place such a system. Inmates met by the delegation were unanimous in stating that the presence of custodial staff during medical examinations following an episode of physical ill-treatment discouraged them from describing the circumstances of the incident. At Sremska Mitrovica Correctional Institution, members of the health-care staff confirmed to the CPT's delegation that pressure was exerted on them by security staff to describe injuries as accidental rather than related to any physical ill-treatment by staff. Further, as already stated in paragraph 22 no dedicated register on injuries of inmates was in place at any of the establishments visited. Consequently, there was no procedure in place ensuring the accurate and timely reporting of injuries and ill-treatment cases to the relevant authorities (see paragraph 22).

**The CPT recommends that steps be taken by the Serbian authorities to ensure that medical examinations of prisoners are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff. The CPT reiterates its recommendation that the Serbian authorities remind medical staff in all prison establishments that they should record all injuries observed on prisoners, both upon admission and during their stay in the establishments. Further, the CPT recommends that procedures be put in place to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by the prisoner concerned (or which, even in the absence of an allegation, are indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecuting authorities, regardless of the wishes of the person concerned. The results of the examination should also be made available to the prisoner concerned and his or her lawyer.**

51. Episodes of inter-prisoner violence and intimidation were a frequent occurrence at all the prison establishments visited, notably at the so-called “Odmaralište” of Sremska Mitrovica Correctional Institution. For example, the delegation received several allegations of theft, intimidation and physical confrontations between inmates which were directly related to the absence of security staff on that ward.<sup>40</sup> During the CPT's visit to Pančevo District Prison an inmate hit another prisoner on the head with a coffee mug following a verbal altercation.

52. Inter-prisoner violence, to a large extent, continues to be fuelled by a number of factors, notably the existence of stronger groups of prisoners, poor material conditions, a lack of activities, chronic understaffing and a high prevalence of illicit drug use. The Committee must reiterate that the duty of care which is owed by the State to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm. In the current situation in the prisons visited, the Serbian authorities seem unable to fulfil their minimum obligation to keep both prisoners and staff safe.

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<sup>39</sup> See paragraphs 91 of CPT/Inf (2006) 18 and 20 of CPT/Inf (2009) 1, 18 of CPT/Inf (2012) 17.

<sup>40</sup> An interphone communication system was in place allowing for the intervention of custodial staff from the nearby Pavilion A within 20 minutes on average.

Addressing the phenomenon of inter-prisoner violence requires that prison staff must be alert to signs of trouble and both resolved and properly trained to intervene. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. It is also obvious that an effective strategy to tackle inter-prisoner violence and intimidation should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. In addition, the prison system as a whole needs to develop the capacity to ensure that potentially incompatible categories of prisoners are not accommodated together.

The CPT urges the Serbian authorities to provide the necessary resources and guidance to prison managers to ensure a more proactive approach to the safety and security of all prisoners. In addition to increasing the staffing levels, the existing skills and expertise of prison staff should be expanded by providing further specialised training.

**The CPT recommends that the Serbian authorities devise an effective national strategy concerning the prevention of inter-prisoner violence and intimidation, in the light of the above comments. This will without doubt require additional prison officers. Further, the CPT recommends that any injury indicative of inter-prisoner violence be immediately brought to the attention of the competent prosecutor and properly investigated. Further, every incident of inter-prisoner violence should be diligently recorded in the relevant registers.**

53. The Committee was also particularly concerned by the practice in place at Pančevo District Prison of systematically hand- and ankle-cuffing prisoners to metal rods when transporting them in a compartment of a van with no lighting, no ventilation and no interphone communication. This practice was not based on any security assessment of the prisoner by the prison staff and concerned transfers of up to several hundred kilometres. In the Committee's view, such a practice could amount to inhuman and degrading treatment and is not justified by any security concern.

**The CPT recommends that the Serbian authorities ensure that the use of handcuffs and transportation belts during prisoners' transportation outside and within prisons is resorted to only when the risk assessment in an individual case clearly warrants it; and the application of any means of restraint should not pose additional risks of injury to the prisoners during their transfers. As regards in particular the handcuffing of prisoners behind the back during transportation, given the potential for discomfort to the prisoner concerned and the risk of injury in the case of accident, this practice should be avoided; prisoners should be transported instead in secure vans, thereby obviating the need for them to be handcuffed during the journey. Further, vans used for the transporting of inmates should be adequately ventilated and equipped with an interphone.**

54. Once again, the CPT's delegation observed that custodial staff in all the prison establishments visited continued to carry truncheons in full view of inmates inside detention areas. Such a practice is not conducive to developing good relations between staff and prisoners and should be ended. The visible wearing of truncheons in a prison setting could well be seen as a sign of weakness rather than one of strength, demonstrating a lack of confidence in the ability of prison officers to control a situation without possible recourse to a weapon. On the other hand, prison officers who are properly trained in control and restraint techniques (i.e. manual control) are in a position to choose the most appropriate response when confronted by difficult situations, thereby significantly reducing the risk of injuries to both prisoners and staff. Moreover, such skills will complement and reinforce the confidence of prison officers in interacting with prisoners.

**The CPT recommends that steps be taken without further delay to ensure that prison staff do not carry truncheons inside detention areas. Further, prison officers should be properly trained in control and restraint techniques (i.e. manual control) and are in a position to choose the most appropriate response when confronted by difficult situations.**

### **3. Conditions of detention**

#### a. material conditions of detention

##### *i. follow-up visit to Belgrade District Prison*

55. The delegation was positively impressed by the refurbishment works which had taken place at Belgrade District Prison since the CPT's previous visit in 2011. In particular, wings 0 and 2 had been entirely renovated; cells were now provided with direct access to natural light, ventilation had been improved and in-cell heating had been introduced in most of the cells. Further, sanitary facilities (both in-cell and separate showers) had also been renovated and were found to be in an adequate state of hygiene. It was also positive that occupancy levels within these wings were correct - four persons in 17 m<sup>2</sup> and eight in 37 m<sup>2</sup>. That said, most renovated cells still did not possess a call bell. The delegation was informed that the remaining blocks would be renovated by mid-2016. **The CPT would like to receive information on the progress of refurbishment works in the remaining wings. It also recommends that all the cells be equipped with a call bell.**

##### *ii. Sremska Mitrovica Correctional Institution*

56. Conditions of detention varied considerably at the establishment in light of the age and level of decay in the different pavilions. In general, cells, sanitary facilities and community rooms at the recently renovated Pavilions II, C and A were found to be in an adequate state of repair, well ventilated and with proper access to natural light. Pavilions VI and the so called "Fire-brigade" buildings had not been renovated but offered adequate conditions of detention to inmates in terms of their state of repair, hygiene, access to natural light and ventilation; they were also adequately equipped (tables, chairs, lockers and sofas in the community rooms).

That said, in the rest of the establishment and in particular in Pavilions III, IV and the so-called "Odmaralište" building, conditions of detention were generally poor. For example, in Pavilion IV, cells were found to be dilapidated (large chunks of plaster were missing from walls), insufficiently ventilated (due to the small windows), the in-cell flooring was uncovered and there were no personal lockers; in the community rooms, the windows and furniture were broken. Further, the in-cell sanitary facility, consisting of a washbasin and a toilet, was separated by a plastic curtain providing no privacy to prisoners. The situation was no better in the un-renovated sections of Pavilion III. The corridors of the admission ward (located within Pavilion C) were inundated with piles of uncollected rubbish thrown on the floor; custodial staff told the delegation that this was due to the lack of containers and the fact that garbage was collected at irregular intervals. Further, no hygienic products were provided to inmates.

However, the worst conditions were observed at the so-called “hospital” (see paragraph 73) and in the so-called “Odmaralište” building. Cells were dilapidated and damp, ventilation was poor, the mattresses filthy and the furniture worn and falling apart. The sanitary facilities were in an appalling state (clogged toilets and drains and holes in the floor). In addition, the security of prisoners was endangered by the progressively collapsing ceiling with chunks of plaster and other materials falling down. The conditions of detention observed by the CPT’s delegation at the so called “hospital” and “Odmaralište” buildings of Sremska Mitrovica Correctional Institution could well amount to inhuman and degrading treatment.

57. Over and above the very poor material conditions, due to the high levels of prison overcrowding, and with the exception of Pavilions II and A, the occupancy levels in the cells far exceeded an acceptable level. In particular, in the admission ward, all cells measuring a standard of 13m<sup>2</sup> were accommodating between eight and nine inmates (and, according to the registers, up to 11 inmates two weeks before the CPT’s visit). As only six beds were present in each cell, three additional mattresses were placed on the floor. Inmates would normally spend an average of 45 days locked in these cells with less than half an hour of access to outdoor exercise per day. The situation was not any better in Pavilion IV where four inmates were accommodated in cells measuring a mere 7m<sup>2</sup>. Such conditions are totally unacceptable and fall way short of the CPT’s standard of 4m<sup>2</sup> of living space in multi-occupancy cells.

*iii. Niš Correctional Institution*

58. In general, the establishment offered acceptable material conditions of detention. Cells in the main Pavilions A and B and the admission ward, as well as the first and second floor of Pavilion II, were in an adequate state of repair, enjoyed good access to natural light, were well ventilated and were equipped with basic furniture (beds, tables, chairs, individual lockers and occasionally a TV set). The fully-partitioned sanitary facilities in the pavilions were in an appropriate state of repair and hygiene. Inmates could also access spacious community rooms in both pavilions.

However, conditions of detention in Pavilions D and B4 were sub-standard. In particular, the sanitary facilities in these pavilions were in an advanced state of dilapidation with missing tiles, dripping washbasins, damaged flooring, broken windows, cracked walls, non-functioning artificial lighting and several non-working boilers. Further, inmates were not receiving adequate and regular supplies of cleaning products and hygienic items.

Further, the conditions in the un-renovated parts of Pavilion II (i.e. the basement and part of the ground floor) were particularly poor. Some of the cells had been taken out of use following a recommendation by the NPM in March 2015 but the CPT’s delegation observed that six cells on the ground floor, located at the end of a narrow corridor, were still accommodating inmates. These cells appeared to be crumbling around the inmates, with damaged walls producing concrete dust and broken windows, poor ventilation and insalubrious levels of humidity. Despite these very poor conditions, inmates were locked for up to 23 hours per day in these cells. Three cells on the ground floor of the same pavilion offered similarly poor conditions of detention. Further, the above-mentioned cells did not possess electric sockets and inmates had only access to battery-operated TV sets and radios.

59. Occupancy levels at the establishment were high due to the refurbishment of Pavilion C which had compelled the administration to redistribute inmates across other pavilions. As a consequence, prison overcrowding was observed in all parts of the establishment but levels were particularly serious on the ground floor of Pavilion II. Cells measuring 7m<sup>2</sup> were accommodating three inmates and, in the remand section, cells measuring 9m<sup>2</sup> were accommodating three inmates. Moreover, inmates held in these cells were offered less than one hour out-of-cell time per day. In Pavilion B4 (accommodating elderly inmates) dormitories measuring 27m<sup>2</sup> were accommodating 10 inmates and, in Pavilion D, dormitories measuring 46m<sup>2</sup> were accommodating 19 inmates.

iv. *Pančevo District Prison*

60. At Pančevo District Prison, the material conditions of the building visited were generally very poor. All cells lacked direct access to natural light. Cells presented other serious structural deficiencies, such as insufficient ventilation, non-functioning artificial lighting, high levels of humidity (in particular on the ground floor), no in-cell heating system, sewage sipping from the ceiling, a rancid stench from an open garbage container located in the courtyard, and the absence of in-cell call bells. The sanitary facilities, with the exception of those used by remand prisoners which had been recently renovated, were found to be in a poor state of repair with broken windows in the shower rooms, poor hygienic conditions and dilapidated washbasins and broken taps. The extremely poor material conditions of detention were aggravated by the fact that inmates were spending 23 hours and or more per day in their cells, with nothing purposeful to do.

61. The poor conditions and lack of activities were further exacerbated by the overcrowding observed throughout the establishment. For example, cells measuring 9m<sup>2</sup> were accommodating four inmates (and at times up to six) and the dormitory measuring 56 m<sup>2</sup> accommodated 26 prisoners.

The conditions of detention observed by the CPT's delegation at Pančevo District Prison could well amount to inhuman and degrading treatment. At the end of the visit, the delegation requested **to be informed within one month of the concrete steps taken and planned by the Serbian authorities in the short and medium term in order to provide acceptable accommodation for the prison population currently held at Pančevo District Prison.** By letter received on 17 July 2015, the authorities informed the Committee that steps had been taken to refurbish two empty cells (normally used for the accommodation of female prisoners). Further, the reparation of the sanitation and sewage installations were due to be completed shortly and steps had been taken to request the necessary permissions from the relevant authorities to modify the cells in order to provide them with direct access to natural light and to introduce an in-cell ventilation system. While taking note of the measures taken by the Serbian authorities, **the CPT would like to emphasise that the prison building located in the centre of Pančevo does not provide adequate conditions for the detention of persons.**

62. Further, by letter received on 17 July 2015 the Serbian authorities informed the Committee that the refurbishment of the cells at Pavilion II of Niš Correctional Institution had started on 3 June 2015. Similarly, a project was being prepared for the construction of an additional block at Sremska Mitrovica Correctional Institution with a capacity of 300 places which would include an infirmary on the ground floor (50 places) and was intended to accommodate inmates from Pavilions III and IV.

The CPT takes note of the adoption of the Rulebook on the Referral of Convicted, Remand and Misdemeanor Prisoners to Penal Correctional Institutions (SG 31/2015) in April 2015 which envisages new criteria for the distribution of prisoners to establishments in accordance with the respective territorial catchment areas. This would apparently enable the transfer of convicted prisoners from Sremska Mitrovica Correctional Institution to Belgrade District Prison and from Pančevo to Smederevo District Prison.

63. At Sremska Mitrovica Correctional Institution, the delegation was inundated by complaints about the poor quality of the food as well as the unhygienic manner in which it was distributed. Further, the menu appeared to be monotonous and the provision of fresh vegetables and fruit rare. In particular, the separate facilities accommodating the prison kitchen, canteen and the preparation room were found to be in a poor state (walls covered in mould, uncovered flooring, worn-out installations). Food was generally distributed in metal buckets which did not retain the heat.

64. **The CPT calls upon the Serbian authorities to take urgent steps in order to:**

- **reduce the occupancy levels to a minimum of 4m<sup>2</sup> of living space per person in multi-occupancy cells of Pavilions III and IV, and the admission ward of Sremska Mitrovica Correctional Institution as well as Pavilion II of Niš Correctional Institution and at Pančevo District Prison. Further, the authorities should ensure that each inmate has his/her own bed in the admission ward of Sremska Mitrovica Correctional Institution;**
- **undertake a systematic refurbishment of the cells and sanitary facilities in Pavilion IV, “Odmaralište” and the un-renovated section of Pavilion III at Sremska Mitrovica Correctional Institution. In particular, all cells should be covered with adequate flooring, windows enlarged, walls repainted and plastered, fully-partitioned sanitary annexes introduced (in Pavilion IV), furniture replaced in cells and community rooms, ceilings repaired, floor tiles laid in sanitary facilities and water installations repaired;**
- **supply all inmates with a range of personal hygiene items and products to clean their cells;**
- **upkeep and maintain the cleanliness of premises on the admission ward of Sremska Mitrovica;**
- **guarantee that the quality and quantity of food distributed to prisoners at Sremska Mitrovica Correctional Institution comply with minimum standards on daily food intake as regards proteins and vitamins, and that food is distributed to inmates at an adequate temperature and respecting hygiene standards;**

Further, the CPT would like to receive information on the refurbishment works undertaken at Pavilion II of Niš Correctional Institution, Pančevo District Prison and Pavilions III and IV and the “Odmaralište building” at Sremska Mitrovica Correctional Institution.

b. activities

65. As mentioned above, the law now permits remand prisoners to work.<sup>41</sup> However, in practice remand prisoners were still not offered any work or purposeful activity at any of the establishments visited. Further, there was no possibility for them to spend any time in the community rooms. The only out-of-cell activity available to remand prisoners in any of the establishments visited was outdoor exercise for periods ranging from 20 minutes at Niš Correctional Institution to one hour per day at Belgrade District Prison. Such periods are far below the statutory two hours provided for in the legislation.<sup>42</sup> Further, the yards were not equipped with any sports equipment. To sum up, remand prisoners continued to spend at least 23 hours per day inside their cells, with nothing to occupy themselves other than watching television, listening to the radio or reading newspapers. It is high time that this state of affairs changed.

The CPT recognises that the provision of organised activities in remand prisons, where there is likely to be a high turnover of inmates, poses particular challenges. Nevertheless, the aim should be to ensure that all prisoners (including those on remand) spend a reasonable part of the day (i.e. 8 hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with a vocational value; education; sport; recreation/association, tailored to the needs of each category of prisoner (adult remand or sentenced prisoners, inmates serving life sentences, sentenced prisoners held in special conditions of high security or control, female prisoners, juveniles, etc.).

**The CPT calls upon the Serbian authorities to take concrete measures to offer remand prisoners out-of-cell activities. Further, it recommends that steps be taken to ensure that all remand prisoners in Serbia are offered at least two hours of outdoor exercise per day in accordance with the law.**

66. In terms of activities on offer to sentenced prisoners, at Niš Correctional Institution, 536 inmates out of 1,249 (i.e. 43 percent of the closed population) were assigned work (farming, textile production, metalwork, furniture production and greenhouse planting). It is notable that the establishment had recently managed to become self-sufficient in terms of food and furniture production. Further, 190 inmates were attending various vocational training activities (printing, furniture production, bakery, vegetable production and welding); around 60 inmates were attending primary and secondary school classes.

67. At Sremska Mitrovica Correctional Institution, 349 out of 2,055 inmates (17 percent) had a remunerated job in farming, wood and metal processing and printing factories. Further, primary and secondary classes were attended by 66 inmates and vocational training activities (in bakery, vegetable planting and installation of air conditioning) were on offer as well as painting, literary, journalism and music workshops.

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<sup>41</sup> Pursuant to Section 218 paragraph 4 of the CCP as well as Section 44 of the Rulebook on the Enforcement of Remand Detention.

<sup>42</sup> Pursuant to Section 80 of the Law on the Execution of Criminal Sanctions and Section 218 of the CCP.

At Belgrade District Prison, only 64 out of 803 inmates were working (mainly in food distribution and in-house maintenance works), 19 attended one of the cultural workshops (literary and drama) and various organised sports activities (basketball, weightlifting, football) were on offer in the courtyards accessible to convicted prisoners.

The worst situation was observed at Pančevo District Prison where, with the exception of inmates involved in food distribution, no prisoner was offered any remunerated work, nor any vocational, cultural or sports activity with the exception of table-tennis. Consequently, the individual treatment plans remained a dead letter.

The CPT recommends that the Serbian authorities increase their efforts to provide more work opportunities (preferably of a vocational value) to all sentenced prisoners at Sremska Mitrovica Correctional Institution as well as Belgrade and Pančevo District Prisons.

68. The delegation noted positively that a Christian Orthodox Chapel had been constructed at Belgrade District Prison and that a religious representative was visiting the establishment on a daily basis. At Niš and Sremska Mitrovica Correctional Institutions, the existing Christian Orthodox Churches were holding religious services for inmates on a weekly basis and other religious representatives (e.g. Catholic and Islamic) were also visiting the establishments upon request. That said, at Pančevo District Prison several inmates complained to the delegation that their requests to meet a religious representative and to organise collective liturgies during festivities had been rejected due to the alleged absence of an available chaplain. **The CPT would welcome the comments of the Serbian authorities on this.**

69. At Niš Correctional Institution a pre-release programme had recently been introduced consisting of a series of conferences over a period of 14 weeks on issues such as psychological, social welfare and employment search support.<sup>43</sup> However, it appeared that very little consideration was being given to the preparation of inmates for release at Sremska Mitrovica Correctional Institution and at Pančevo District Prison. **The CPT recommends that pre-release courses for sentenced prisoners be introduced at all prisons.**

c. classification of prisoners

70. The delegation was informed at the outset of the visit that a new “Rulebook on the treatment, the individual treatment programmes, classification and re-classification of prisoners”, as envisaged by Section 75 of the 2013 Law on the Execution of Criminal Sanctions, was being drafted and would be adopted by the end of 2015. In the meantime, the 2010 Rulebook was still in force.

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<sup>43</sup> The programme enjoyed the support, amongst others, of the local authorities.

The system in place<sup>44</sup> provided for an initial risk assessment of inmates based on a standard questionnaire<sup>45</sup> followed by a decision<sup>46</sup> on the inmate's treatment programme and assignment to one of the three classification categories (A, B, V, each being subdivided into 2 sub-categories)<sup>47</sup> and a detention regime (i.e. closed, semi-open and open). Periodic assessments of the inmate's treatment programme are performed by the classification team at least once a year.

In practice, it appeared that only at Niš Correctional Institution was the system functioning properly with the classification team making reasoned proposals in relation to the inmate's performance and behaviour.

By contrast, at Sremska Mitrovica Correctional Institution the delegation received numerous complaints about the lack of information and opaque nature of the classification system, in particular complaints that inmates did not advance to a better regime despite fulfilling the individual objectives of the treatment programme. The prison director informed the delegation that there were at least 200 inmates who could be potentially transferred from a closed to a semi-open regime due to their progress in their risk assessment but for reasons such as recidivism and the nature of their criminal offence, the classification team was opposing their advancement.

71. The system of classification of prisoners has been a matter of concern for the Committee since its first visits to the country.<sup>48</sup> The CPT wishes to reiterate that a classification system of prisoners in accordance with the principles laid down in the European Prison Rules (Rules Nos. 103 and 104), either at the time of their admission to prison or during their subsequent incarceration, is the first, absolutely essential, step for implementing individualised custody plans. That said, even a sophisticated classification system of prisoners can fail to meet its expectations if the progress of inmates towards detention regimes, combining greater autonomy and responsibility, is frustrated by an excessively rigid implementation of its regulations. The delegation was informed that some prison directors intended to enlarge the classification team to five members in order to increase the transparency of their work. This is positive.

**The CPT reiterates its recommendation to the Serbian authorities to invest more efforts in the practical implementation of the system of classification of prisoners and the individualised sentence planning taking into consideration the above remarks. Further, it would like to receive a copy of the new “Rulebook on the treatment, the individual treatment programmes, classification and re-classification of prisoners” once it is adopted.**

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<sup>44</sup> See paragraph 65 of CPT/Inf (2009) 1 and 59 of CPT/Inf (2012) 17.

<sup>45</sup> The questionnaire is based on criteria such as the nature of the criminal offence committed, the duration of the sentence, the modality by which the inmate has attained to the execution of the sentence, criminal antecedents and the existence of other pending criminal proceedings.

<sup>46</sup> The decision is taken by the director of the establishment upon the proposal of the classification team comprising a psychologist, a pedagogue, a social worker, a doctor, and a member of the security service.

<sup>47</sup> The groups differ in terms of privileges granted to inmates (i.e. additional parcels, additional visits and a broader circle of permitted visitors, additional unsupervised visits (in short-term visiting rooms or in special rooms for private visits), better accommodation.

<sup>48</sup> See paragraphs 65 of CPT/Inf (2009) 1 and 59 of CPT/Inf (2012) 17.

#### 4. Health-care services

72. A prison health-care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision of medical, nursing and technical staff, as well as premises, installations and equipment, should be organised accordingly. There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/nurse, etc.).

73. The health-care staff resources at Belgrade District Prison had considerably increased from two to eight full-time doctors (including a pathologist and a specialist in internal medicine) and from seven to eight nurses since 2011. This is positive and was sufficient to address the needs of the inmates accommodated in the prison. In addition, a psychiatrist was visiting the establishment twice a week.

At Niš Correctional Institution, six full-time doctors (four general practitioners, one radiologist and one dentist) were working at the establishment assisted by nine nurses (one head nurse and eight technicians), and various specialists visited the establishment on a fortnightly basis (pharmacist, radiologist, ophthalmologist, as well as ultrasound and internal medicine specialists). At Pančevo District Prison, one full-time doctor and a nurse were present on working days and ensured an on-call system on weekends in order to cover emergencies. The staffing levels at these three establishments were basically good although the number of nurses could be reinforced.

However, the situation at Sremska Mitrovica Correctional Institution was worse as regards general practitioners and the existing four full-time doctors (working on a rotational 24-hour shift) were being reduced to three as of June 2015 due to austerity measures. Three doctors are not at all sufficient for a prison population of 2,055 inmates. Further, the staff component of 18 nurses was not adequate for an establishment of that size.<sup>49</sup> One laboratory technician, two part-time pharmacists and one dental technician were also employed and various specialists in the fields of urology, internal medicine, surgery, orthopedics, dermatology and pulmonology were visiting the establishment as required.

74. The health-care units generally possessed adequate medical equipment, although the delegation noted that neither Pančevo District Prison nor Sremska Mitrovica Correctional Institution possessed a defibrillator.

That said, the level of hygiene and the state of repair of the health-care units at Belgrade District Prison and Niš Correctional Institutions were in general acceptable. That said, the sanitary facilities at the in-patient unit of Niš Correctional Institution were dilapidated (dripping washbasins and missing tiles) and in poor hygienic conditions and there were no call bells in patients' rooms. The recently installed consultation room at Pančevo District Prison was cramped and consisted only of a desk and lacked any medical equipment.

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<sup>49</sup> They were working on 24-hour shifts with a presence of two nurses in the closed section of the establishment.

The two-storey in-patient facility (so-called “hospital”) at Sremska Mitrovica Correctional Institution (accommodating 25 patients at the time of the visit) was found to be in a state of disrepair with poor levels of hygiene. Decrepit furniture, broken window glass, walls covered with thick flakes of mould, damaged flooring and pieces of ceiling falling down were features present throughout the facility. In addition, the ventilation was poor and levels of humidity high, the sanitary facilities were in a pitiful state of hygiene and repair, with clogged toilets and washbasins. The medical equipment (the surgeon’s table, dental chair, x-ray machine, and surgery tools) were covered in dust and dirt. Not all patients were provided with bedding and one in particular was also deprived of a mattress due to his incontinence.

Such a state of affairs does not befit a medical institution and would raise an issue under Article 3 of the ECHR. The Serbian authorities had informed the delegation that a brand new in-patient facility with a capacity of 50 places was envisaged within the new pavilion at Sremska Mitrovica Correctional Institution; construction was supposed to start by the end of 2015. Given the appalling state of the current in-patient unit, patients cannot be held in the unit until the new one becomes operational. An interim solution is urgently required.

**The CPT recommends that the Serbian authorities urgently identify a temporary location for the in-patient unit at Sremska Mitrovica Correctional Institution facility pending the construction of the new pavilion. The Committee would like to receive a response on this issue within three months.**

**75. The Committee calls upon the Serbian authorities to substantially increase the number of full-time general practitioners at Sremska Mitrovica Correctional Institution.**

**In addition, steps should be taken to:**

- **reinforce the staffing complement of nurses at Niš and Sremska Mitrovica Correctional Institution as well as at Pančevo District Prison;**
- **supply the in-patient facilities of Pančevo District Prison and Sremska Mitrovica Correctional Institution with basic life-saving equipment;**
- **undertake an overall refurbishment of sanitary facilities at the in-patient unit of Niš Correctional Institution.**

76. The delegation was pleased to note that the distribution of medicines to prisoners was now entirely performed by health-care staff at all the prisons visited.

Further, the pharmacies in the establishments visited were stocked with an appropriate range of medication. The vast majority of medication required was reimbursed by the health-insurance authority and families stepped in to fill the gap when special medication was required. That said, the delegation received numerous complaints from inmates without families concerning the lack of medicines provided by the prison health-care authorities (e.g. asthma inhalers and antibiotics for chronic infections).

**The CPT recommends that the Serbian authorities verify that all prisoners are guaranteed the provision of the medication required by their state of health; this implies that the funds allocated to prisons should be sufficient to enable medication to be provided free-of-charge to prisoners.**

77. The provision of psychiatric and psychological care to prisoners remains problematic. With the exception of Belgrade District Prison, psychiatrists were working at other prison establishments but there were no psychologists as was the case during the CPT's previous visits. The majority of patients in the hospital of Sremska Mitrovica and health-care unit of Niš Correctional Institutions (i.e. some 15 and 7 respectively) were patients suffering from a mental health disorder and their treatment was exclusively based on pharmacotherapy. Indeed, the lack of appropriate treatment at Sremska Mitrovica Correctional Institution led the CPT's delegation to invoke Article 8, paragraph 5, of the Convention and request the immediate transfer of two inmates to the Special Prison Hospital in Belgrade. By letter of 17 July, the Serbian authorities informed the CPT that the above-mentioned patients had been transferred to the Special Prison Hospital. Prison health-care centres are not hospitals so it is appropriate for prisoners with mental health disorders to be moved to specialised psychiatric facilities.

**The CPT recommends that the Serbian authorities take the necessary action to ensure the provision of appropriate psychiatric and psychological care at the establishments visited. Further, prisoners suffering from severe mental illnesses should be cared for and treated in a closed hospital environment, suitably equipped and with sufficient qualified staff to provide them with the necessary assistance. In this connection, high priority should be given to projects to increase the capacity at specialised psychiatric facilities and establishments for the enforcement of measures.**

78. As was the case during previous visits by the CPT, there was still no comprehensive strategy in place for the provision of assistance to prisoners with drug-related problems. In practice, the only treatment consisted of providing methadone substitution therapy and counselling exclusively to those inmates who were registered as drug addicts upon their entry into the prison system. For example, at Niš Correctional Institution, 37 inmates were receiving methadone therapy whereas 340 prisoners had been identified as drug-addicts by the prison health-care department. Nothing was done as regards the provision of psycho-socio-educational assistance to prisoners with a drug addiction problem.

The approach towards substance misuse in prison should be part of a national drugs strategy, and should have as its goals, inter alia: eliminating the supply of drugs into prisons; dealing with drug abuse through identifying and engaging drug misusers, providing them with treatment options and ensuring that there is appropriate throughcare; developing standards, monitoring and research on drug issues; and the provision of staff training and development.

**The CPT calls upon the Serbian authorities to develop a comprehensive strategy for the provision of assistance to prisoners with drug-related problems (as part of a wider national drugs strategy) in the light of the above remarks as well as relevant publications by renowned international bodies.<sup>50</sup>**

79. In terms of transmissible diseases, tests for Hepatitis B, C and HIV were on offer to all prisoners upon admission and were being generally performed at all the establishments visited. Further, tests for tuberculosis were being conducted at Niš Correctional Institution. All establishments appeared to have an accurate picture of the number of inmates affected by transmissible diseases. That said, only HIV positive inmates were regularly receiving treatment in the framework of a State funded programme and apparently the funding of peg-interferon treatment for Hepatitis C in relation to newly detected cases was being stopped. **The CPT would like to receive the comments of the Serbian authorities on alternative therapies to be provided in relation to newly detected cases of hepatitis C.**

80. As regards treatment in outside hospital facilities, some delays in transfers were evident at all the prisons visited. However, at Sremska Mitrovica Correctional Institution, remand prisoners were systematically being denied external consultations and treatment by the investigative judge. In the CPT's view, a prison's health-care service should at least be able to provide regular out-patient consultations and emergency treatment and prison doctors should be able to call upon the services of specialists. There is no justification for prisoners, whether sentenced or on remand, being denied external specialist medical consultations.

**The CPT recommends that the Serbian authorities take the necessary steps, through the appropriate channels, to ensure that prisoners receive appropriate and unimpeded access to specialist medical care whenever required.**

81. As was the case in 2011, newly arrived prisoners were in principle seen by a doctor within 48 hours of admission but the medical examination upon admission remained superficial, consisting merely of an interview, and there was no physical examination. Such an approach is not at all in line with Section 12 of the Rulebook on House Rules in Correctional Institutions and District Prisons.<sup>51</sup> Steps should be taken in order to make sure that doctors and nurses reporting to a doctor are properly trained in carrying out medical assessments on newly arrived prisoners in line with the Rulebook.

**The CPT recommends that the Serbian authorities ensure that prison health-care personnel at all establishments comply with the above-mentioned provisions of the Rulebook. In particular, the medical examination on admission should be comprehensive, including appropriate screening for transmissible diseases.<sup>52</sup>**

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<sup>50</sup> See for example the publication "Mental Health and Drugs in Prison" from the Council of Europe Pompidou Group as well as chapters 13 and 14 of "Prison and Health" by the WHO Regional Office in Europe which contain important suggestions by international experts.

<sup>51</sup> Article 12 of the Rulebook on House Rules in Correctional Institutions and District Prisons stipulates: "the first medical examination consists of visual examination of the body of the convicted person, taking the anamnestic data, data on acute and chronic diseases, checking and measuring the basic bodily functions (breathing, blood pressure, motorics and the like). At the first examination a medical record of the convicted person shall be opened and data of the first examination entered."

<sup>52</sup> See also paragraph 79.

82. As regards medical confidentiality, Section 114 paragraph 4 of the LECS stipulates that a medical examination of an inmate be conducted solely in the presence of medical staff unless it is specifically requested by the doctor/nurse. In practice, medical examinations in all prisons continued to be systematically performed in the presence of custodial staff as was the case during all previous visits by the CPT. Further, a general practitioner working at Sremska Mitrovica Correctional Institution told the CPT's delegation that he was personally intimidated and threatened by custodial staff for insisting on conducting confidential consultations with inmates. This is unacceptable and the time has come for the Serbian authorities to ensure that medical consultations of prisoners are no longer carried out in the presence of custodial staff.

**The CPT calls upon the Serbian authorities to instruct the custodial staff that no pressure should be exercised on health-care personnel to force them to conduct medical examinations of prisoners in the presence of custodial staff. Further, there can be no justification for custodial staff being systematically present during such examinations;** their presence is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security point of view.

83. Medical documentation was generally detailed and well-kept at both Belgrade District Prison and Niš Correctional Institution. However, at Sremska Mitrovica Correctional Institution, the delegation found personal medical files of (former) inmates discarded in broken closets in a room located on the first floor of the health-care unit.. Moreover, entries in medical files of inmates accommodated at Pančevo District Prison and Sremska Mitrovica Correctional Institution were cursory and schematic and failed to provide an adequate overview of the inmate's anamnesis and physical status.

**The CPT recommends that steps be taken at Sremska Mitrovica and Pančevo District Prison to ensure that medical documentation is properly stored and that all registers are diligently filled in respecting the general criteria of medical confidentiality.**

84. All establishments were registering prisoners who had died in an outside hospital or while on leave. That said, the prison health-care units were still not receiving copies of the autopsy reports performed on deceased prisoners (including those who had died at the respective prison establishment). More generally, **the Committee recommends that the Serbian authorities institute a practice of carrying out a thorough inquiry into every death of a patient, in particular with a view to ascertaining whether there are lessons to be learned as regards working procedures. In particular, the CPT reiterates its recommendation that prison management and prison doctors be systematically provided with the conclusions of autopsy reports (or at least information on the cause of death), as well as any results of the judicial investigation into such cases, concerning prisoners who die in custody in prison or in an outside hospital after having been transferred from their establishments.**

85. According to Section 276 of the Law on the Execution of Criminal Sanctions the Ministry of Health is responsible for the supervision of the work of the health-care services in correctional institutions as well as of the Special Prison Hospital (see paragraph 86). However, the CPT's delegation found that the only visits performed by inspectors of the Ministry of Health related to individual complaints by inmates and not the overall functioning of health-care services.

Further, the CPT's delegation was informed at the outset of its visit that the Ministry of Justice was analysing the possibility of a transfer of responsibility for prison health-care to the Ministry of Health in light of the comparative experience of France. This would be in line with point 8 of the conclusion RS no. 74 of 23 October 2014 passed by the Parliamentary Assembly of Serbia.

**The CPT recommends that the Ministry of Health inspectors look into all aspects of the functioning of prison health-care services in all establishments on an ongoing basis. Further, the CPT would like to receive detailed information on the current state of play concerning the implementation of the above-mentioned conclusion of the Parliamentary Assembly of the Republic of Serbia.**

## **5. The Special Prison Hospital in Belgrade**

### a. preliminary remarks

86. The delegation paid a targeted follow-up visit to the Special Prison Hospital in Belgrade (the Prison Hospital) to assess the implementation of the CPT's recommendations made following previous visits, and notably that of 2011.<sup>53</sup>

At the time of the visit, the Prison Hospital had 502 patients for an official bed capacity of 450. This represents a significant improvement from the situation observed in 2011 when there were 718 patients. Some 250 patients were undergoing mandatory treatment measures for psychiatric disorders. Patients with tuberculosis, diagnosed at any penitentiary establishment in Serbia, were also kept at a specialised ward of the Prison Hospital. In 2014 there had been approximately 1,700 admissions.

87. The Prison Hospital had seven wards: Wards A and B, for patients undergoing mandatory psychiatric treatment; Ward C for patients suffering from alcohol abuse (remand and sentenced); Ward D for patients suffering from drug addiction; Ward E for patients with acute psychiatric needs (remand and sentenced prisoners, who had been transferred from other prisons); Ward G was designated for initial observation but was closed for refurbishment at the time of the visit; Ward I for patients suffering from somatic diseases, with patients transferred from all Serbian prisons. There was a separate corridor for patients with tuberculosis.

### b. ill-treatment

88. The delegation received hardly any allegations of deliberate physical ill-treatment of patients by staff. Nevertheless, a couple of allegations were received from patients on Ward A, who stated that they had been slapped by nursing staff as a punishment for agitated behaviour.

**The CPT recommends that the Hospital management deliver a clear reminder to staff in Ward A that the ill-treatment of patients, in any form, is illegal and that the perpetrators of ill-treatment will be punished accordingly.**

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<sup>53</sup> See paragraphs 78 to 90 of the report on the CPT's 2011 visit to Serbia (CPT Report CPT/Inf (2012) 17).

89. The delegation found that inter-patient violence, as acknowledged by the management, staff and patients, still remained a problem, especially in Ward A. From reports received from patients and staff, fights did occur between patients, including on ethnic grounds. These incidents, however, were not recorded in any centralised register. Further, some of the female patients interviewed by the delegation feared for their personal security due to incidents of inter-prisoner violence, and one had bruises on both arms inflicted allegedly by another patient.

The CPT wishes to emphasise that the duty of care, which is owed by the authorities to patients in their charge includes the responsibility to protect them from other patients who might wish to cause them harm. The authorities must act in a proactive manner to prevent violence by patients against other patients. Addressing the phenomenon of inter-patient violence and intimidation requires that Prison Hospital staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. Consequently, the level of staffing must be sufficient (including at night-time) to enable custodial staff and health-care staff to adequately supervise patients and support each other effectively in the exercise of their tasks. Both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-patient violence (see also paragraph 100).

**The CPT recommends that efforts be made to combat the phenomenon of inter-patient violence at the Prison Hospital in Belgrade, which should include the establishment of a clear strategy on action needed to concretely address the issue of inter-patient violence. This should include ensuring that staff are present on each ward day and night and will require an increase in staff levels (see also paragraph 100).**

**Hospital management should also ensure that allegations of inter-patient violence are followed up promptly, thoroughly investigated and that swift action is taken regarding the perpetrators.**

c. living conditions

90. As regards the living conditions within the Prison Hospital, the delegation observed that some refurbishment works have been undertaken since the CPT's last visit in 2011, notably the wards for somatic diseases (Ward I) and acute psychiatric patients (Ward E), as well as the area for outdoor exercise.

The refurbished wards generally offered reasonable conditions: each room was equipped with an individual sanitary annexe with a toilet, shower facilities, and a sink. On Ward E the refurbished rooms were designed for six beds, were relatively spacious, and had access to good natural and artificial light. There was a table with six chairs and a fully partitioned sanitary annexe with shower, sink and a toilet. However, it was clear that the quality of refurbishment was low and that the sanitary facilities were already deteriorating; the showers were damaged and lacked showerheads. The rooms also had a number of ligature points.

By communication of 20 July 2015, the Serbian authorities confirmed that funds had been provided for the reconstruction of the wards for treatment of alcohol (C) and drug (D) abuse, as well as the women's ward; and that the work would be undertaken in 2016 and 2017.

91. In the main wing of Ward A, the delegation observed that the living conditions were poor. The rooms were cramped; for example, a dormitory measuring 40m<sup>2</sup> was accommodating 11 patients and another of 28m<sup>2</sup> accommodated eight patients. The communal shower room was dirty and had only one functioning shower. The communal toilet facility was filthy and smelly, with leaking pipes and no doors on the toilet stalls.

“The isolator” in Ward A had been converted into a regular dormitory and accommodated seven persons.<sup>54</sup> The room was poorly ventilated and was extremely hot; the state of hygiene was unacceptable and many patients had lice. Patients held in “the isolator” dormitory had no access to any purposeful activities and did not have access to television.

92. The conditions on Wards C and D had further deteriorated since the 2011 visit and were in a deplorable state of advanced dilapidation (damaged walls and ceilings, decrepit and unsanitary sanitary facilities, leaking pipes, insufficient hot water, etc.). Each dormitory had a floor-level toilet (often without a working flush system) inside a fully partitioned – but invariably malodourous – sanitary annexe.<sup>55</sup> Further, nothing had been done to address the lack of direct access to natural light, poor artificial lighting, insufficient heating and ventilation and extremely poor hygiene since the 2007 CPT’s visit. The overcrowding exacerbated the situation; for example, the largest room in Ward C measured some 50 m<sup>2</sup> and was equipped with 18 beds<sup>56</sup> (i.e. offering patients less than 3m<sup>2</sup> of living space).

Not all beds had mattresses and the beds were generally of a low quality (cardboard bases and thin foam mattresses) and were in a bad state of repair and cleanliness. Patients were not provided with toilet paper, and the only hygiene product provided by the Hospital was one bar of soap every month.

93. In sum, in a number of wards visited by the delegation (in particular Wards A, C and D) the combination of dilapidated facilities, poor state of hygiene, overcrowded wards and the lack of staff (see paragraph 100) led to patients being held in conditions that may amount to inhuman and degrading treatment.

**The CPT again calls upon the Serbian authorities to attach the highest priority to the complete refurbishment of the Special Prison Hospital in Belgrade.**

**It recommends that urgent steps be taken to ensure that every patient is provided with a proper bed, lockable space and sufficient hygiene products; and that steps be taken to fix the broken pipes, toilets and to institute general repair work. More generally, the CPT recommends that the authorities establish a rolling and regular programme of maintenance for each ward. Further, the level of occupancy should be reduced to be in line the Special Prison Hospital’s official capacity.**

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<sup>54</sup> The room had a capacity of eight beds.

<sup>55</sup> For example in Ward D, Room 3 was quite literally falling apart and had a particularly unhygienic sanitary annexe.

<sup>56</sup> At the time of the visit, 11 patients were accommodated there.

d. treatment and activities

94. The delegation noted that approximately 25% of the patients benefited from some form of activity or work, such as work therapy and art therapy. Some of these patients participated in amateur theatre and worked under the supervision of occupational therapists in painting and wood-carving or were involved in working in the laundry or canteen.

Nevertheless, despite the increase in activities offered since the 2011 visit,<sup>57</sup> the availability of psycho-social rehabilitative activities remained underdeveloped, and too many patients spent their days in their rooms or on corridors, without any organised activities and with few distractions available. This was especially apparent among the 250 patients with court-ordered mandatory psychiatric treatment measures, who were left to their own devices in very large units and cramped dormitories on wards A and B; many were seen sleeping heavily in the middle of the day. Lastly, many patients observed to the delegation that they had no idea of the time; there was a complete absence of clocks on the wards which contributed to a lack of structure during their days.

95. The administration and doctors acknowledged that the treatment of most psychiatric patients at the hospital continued to be based almost solely on pharmacotherapy. Also, the delegation noted that few patients were offered individual and group psychotherapy. Further, they acknowledged that there was a lack of multi-disciplinary staff required for other meaningful therapies (psychological or social) for psychiatric patients undergoing the measure of mandatory treatment. The decreasing staff/patient ratio impacted negatively on the patients' treatment (see paragraph 99).

Further, the delegation was also concerned to note that there were still generally no regularly updated individual treatment plans for psychiatric patients. For example, a patient, who had arrived in 1989, had had his first treatment plan drawn up in 2007 and this had not been reviewed since.

**96. The CPT recommends that the Serbian authorities make further efforts to develop the range of rehabilitative psycho-social activities for psychiatric patients at the Special Prison Hospital in Belgrade; occupational therapy should be an integral part of the rehabilitation programme.**

**Further, the CPT reiterates its recommendation that an individual treatment plan be drawn up for each psychiatric patient, including the goals of the treatment, the therapeutic means to be used and the staff members responsible. Patients should be involved in the drafting of their individual treatment plans and the evaluation of their progress, and such treatment plans should be reviewed and updated on a regular basis.**

**Also, it recommends that the authorities give more information to patients about the structure of the day and install clocks on the wards.**

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<sup>57</sup> Some 60 patients benefited from some form of activity in 2011, see paragraph 85 of the CPT's 2011 Report on its visit to Serbia, CPT/Inf (2012) 17.

- e. safeguards in the context of involuntary placement and treatment

97. As regards the legal safeguards for patients undergoing compulsory psychiatric treatment at the Prison Hospital, the situation was very much the same as that observed during the 2007 and 2011 visits and this was acknowledged by the hospital management during the visit. This was the case despite the introduction of a new Law on Protection of Mental Health Disorders (2013), which had had no practical impact on forensic patients, in particular.<sup>58</sup>

Mandatory treatment of such patients remained unlimited in time<sup>59</sup> and the courts still appeared to be reluctant to grant the Hospital's request to release the patient in cases where he/she had committed a serious violent crime. Several of the patients' files showed that the courts simply referred to the crimes committed prior to placement in the Hospital and disregarded the opinion of the treating psychiatrists.

In practice, it appeared that patients were effectively subjected to indefinite and potentially interminable mandatory treatment detention; this situation needs to be changed urgently.

98. The CPT remains concerned by the fact that, due to the absence of appropriate structures in the outside community, many of the patients on the psychiatric wards continued to stay in the hospital for prolonged periods of time (for example, one of the longest stays dated back to 1989), despite the lack of medical grounds for continuing hospitalisation.

Further, as was the case in 2007 and 2011, the Hospital's recommendations for release of forensic psychiatric patients were often rejected by courts on non-medical grounds, e.g. the refusal of the family to take the patient back or the lack of a place to live and work. The Committee considers such a state of affairs to be totally unacceptable; it should not be allowed to continue any longer.

**99. The CPT calls again upon the Serbian authorities to take decisive steps to implement its recommendations dating back to its 2007 visit.<sup>60</sup> Further, the patient (and his or her lawyer) should have access to the deliberations and recommendation of the Hospital's internal commission, and be allowed to request an examination by an outside psychiatric expert. In addition, the patient him/herself should be able, in practice, to request at reasonable intervals that the necessity for placement be considered by a judicial authority.**

**The CPT also calls, once again, upon the Serbian authorities to take immediate and effective measures to set up appropriate structures in the outside community in order to ensure that patients who no longer require hospitalisation may be discharged and cared for in the community.**

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<sup>58</sup> Involuntary placement and treatment of persons having committed a criminal offence is regulated by the Criminal Code, Sections 79-84 (as amended), the Code of Criminal Procedure, Sections 521-532 (as amended) and the Law on the Execution of Penal Sanctions (as amended), Sections 195-201 (as amended).

<sup>59</sup> Every nine months, the court that imposed the security measure must review whether treatment and confinement in a medical institution is still necessary; there is no maximum duration. The mentally ill person, the medical institution and the guardian may also submit a motion for discontinuance of the measure. If the motion for discontinuance of the measure is denied by the court, it may be submitted again after six months since the day the decision was rendered (Code of Criminal Procedure). Compulsory inpatient psychiatric treatment and confinement is regulated by the LECS.

<sup>60</sup> See paragraphs 95 of the CPT's 2007 report on its visit to Serbia and paragraph 88 of the CPT's 2011 report on its visit to Serbia.

Further, **the CPT recommends that the Serbian authorities take the necessary steps to address the issue of the courts' apparent systematic disregard of the opinions of psychiatrists of the Prison Hospital recommending that patients should be released to undergo treatment in the community.**

f. staffing

100. The health-care staff numbers remained totally insufficient, despite the reduction in the overall number of patients; at the time of the visit, there were eight psychiatrists and doctors specialising in psychiatry and some 60 nurses to care for 502 patients. While there were 176 staff posts available, only 127 posts were filled and the Prison Hospital was not allowed to fill the 49 vacant posts (including a shortage of 11 psychiatrists). Government plans for 'rationalisation of employees in public administration' envisaged that certain doctors would have to retire early, which would effectively reduce the number of psychiatrists at the Prison Hospital to less than one psychiatrist per ward.

It is the Committee's view that such staffing levels are clearly inadequate to ensure that patients in the Prison Hospital are provided with the care and assistance they require. The current lack of psychiatrists and other doctors combined with their proposed further reduction in the near future led the CPT's delegation to invoke Article 8, paragraph 5, of the Convention, and request that the Serbian authorities take the necessary steps to prevent any further decrease in the number of psychiatrists and other doctors at the Special Prison Hospital.

By communication of 17 July 2015, the Serbian authorities informed the Committee that they no longer foresee a reduction in the number of psychiatrists and doctors at the Prison Hospital and that these staff will be excluded from the process of rationalisation of employees in public administration. Further, the Serbian authorities informed the Committee that approval had been received for the employment of more civil servants and that the Ministry of Justice planned to announce a competition for six additional doctors.

The Committee welcomes these steps. It also trusts that the nursing levels and number of occupational therapists will be reinforced.

**The CPT recommends that the Serbian authorities ensure that all the vacant posts are filled at the Prison Hospital.**

101. Many patients informed the delegation that custodial staff carried their truncheons openly including inside patients' living areas and that they had been hidden during the Committee's visit. The Committee trusts that such a trial period will be viewed positively and enable a smooth transition to a permanent end to custodial staff wearing truncheons (see paragraph 54).

**The CPT reiterates its recommendation<sup>61</sup> that custodial staff should not carry truncheons inside the patients' living areas.**

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<sup>61</sup> See CPT/Inf (2012) 17, paragraph 80.

g. restraints and seclusion

102. The Committee welcomed the adoption of the new Rule Book on the Use of Restraints,<sup>62</sup> pursuant to the recommendation made in its report on the 2011 visit.<sup>63</sup> That said, the delegation found that the new rules did not in fact result in a change in practice; mechanical restraint continued to be applied and registered in the same way as it had during the CPT's 2011 visit.

103. In October 2014, a special room for restraint, consisting of six beds equipped with magnetic belts and a one-way mirror adjacent to the nurses' office, was established on the third floor of Ward E (acute psychiatry) on the third floor. Unfortunately, for the nurses to gain access to the 'restraints room' (through a barred gate), they needed the assistance of a custodial staff member. This in practice delayed or prevented direct personal contact between those persons restrained and nursing supervision.

Further, it emerged that several patients had been restrained in the 'restraints room' at the same time, in full view of each other, despite the CPT having recommended that an end should be brought to this practice.<sup>64</sup> Patients in Wards A and B who were restrained in the "isolator" room were also fixated in full view of other patients, and female patients alleged that they were being fixated to their own dormitory beds in full view of the other female patients.

Moreover, allegations were received, including from the female ward, that in some cases other patients from the same dormitory had been asked by health-care staff to care for the fixated patients, notably to help clean and feed them in the nurses' absence.

104. Contrary to the initial assertions by the administration, the delegation also found from interviews with patients and staff, and from an examination of the relevant records, that overnight restraint, often without breaks, continued to be applied on a regular basis. This took place both in the specially designated 'restraints rooms' and in the dormitories.

In some cases, patients were continuously fixated to their own bed for prolonged periods of many hours or even days, with interruptions for feeding and washing. For example, the registers showed that in 2015 one patient was fixated for 99 hours and 5 minutes (i.e. 4 days, 3 hours and 5 minutes) and another patient was fixated for 64 hours and 30 minutes, with only the occasional brief release (measured in minutes). The register of restraints also indicated that Patient M., for example, was fixated almost permanently between 29 May and 1 June 2015. At night, the patient was fixated continuously from between 10.30 p.m. and 8 a.m.

105. Further, the reason given for the prolongation of use of restraint every two hours<sup>65</sup> was, in almost all cases, that the medication had 'not yet yielded the desired effects'.

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<sup>62</sup> Bylaw On Specific Conditions For Use Of Physical Restraint And Seclusion On Persons With Mental Health Problems Placed In Psychiatric Institutions For Medical Treatment, ("Official Gazette of RS", No. 94/13) in force as of 7 November 2013.

<sup>63</sup> See CPT/Inf (2012) 17, Paragraph 81.

<sup>64</sup> See paragraph 81, CPT/Inf (2012) 17.

<sup>65</sup> According to the policy followed at the establishment.

106. Lastly, the delegation was concerned to find that various means of restraints at the Prison Hospital continued to be applied by custodial staff (as well as by health-care staff), despite its previous recommendation that this should only be applied by duly trained healthcare staff.<sup>66</sup>

107. In response to the above issues raised by the delegation in its Preliminary Observations to the Serbian authorities, the Serbian authorities, by communication of 20 July 2015, merely replied that mechanical fixation of patients in the presence of other patients only occurred in the women's ward of the Prison Hospital, due to the lack of a special room designated for restraint of female inmates.

108. The findings of the visit demonstrate that **the Serbian authorities should, as a matter of priority, review the current approach towards the resort to fixation in the Prison Hospital and put in place far stricter rules governing its application. In particular, the CPT recommends that the following issues should be reviewed:**

- **regarding its appropriate use, fixation should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain those risks; it should never be used as a punishment or to compensate for a shortage of trained staff;**
- **any resort to fixation should always be either expressly ordered by a doctor, and the doctor should in all cases visit the fixated prisoner and order the release from fixation, where appropriate ;**
- **the duration of fixation should be for the shortest possible time (usually minutes rather than hours). The exceptional prolongation of restraint should warrant a further review by a doctor. Fixation for more than a period of one day cannot have any justification and may amount to ill-treatment;**
- **patients subject to fixation should receive full information on the reasons for the intervention;**
- **fixation of patients should never take place within the sight of other patients and fixated patients should be under continuous direct monitoring by staff;**
- **health-care staff should never be assisted by, or rely on, other patients when applying means of restraint to a patient or rely on other patients to provide care to restrained patients;**
- **the application of restraints should only be applied by adequately trained health-care staff;**
- **the management of the Prison Hospital should revise its formal written guidelines, taking account of the above criteria.**

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<sup>66</sup> Paragraph 81, CPT/Inf (2012) 17.

Further, the patient concerned should be given the opportunity to discuss his/her experience, during and, in any event, as soon as possible after the end of a period of restraint. In addition, the patient concerned should be informed of the relevant procedure, and avenues available, to make a complaint, if necessary.

The Committee recommends that the Serbian authorities take the necessary steps to ensure that all the principles and minimum safeguards set out above are applied rigorously in the Prison Hospital and ensure that the above-mentioned deficiencies are remedied.

## 6. Other issues

### a. prison staff

109. The delegation noted that the custodial staffing levels in the establishments visited impacted negatively on the running of the prisons, notably at Sremska Mitrovica Correctional Institution and at Pančevo District Prison where high levels of inter-prisoner violence existed.<sup>67</sup>

At Sremska Mitrovica Correctional Institution, the total complement of prison officers was 316 (for 420 budgeted posts), with each 12-hour shift composed of 40 officers responsible for the supervision of 2,055 inmates. These numbers are totally insufficient. For example, in Pavilion A a mere three custodial officers were in charge of supervising 377 inmates as well as being responsible for the Odmaralište building (accommodating 56 inmates at the time of the visit) to which they were only connected by interphone.

At Pančevo District Prison, only four custodial officers were present at the establishment during the two 12-hour daily shifts (two on each floor for a total of 95 inmates). Prisoners told the delegation that it had taken more than 10 minutes to alert custodial staff when an inmate had violently attacked his cell-mate; “bar-banging” was the only “call bell” in place.

At Niš Correctional Institutions, 50 prison officers were present in pavilions on each of the two 12-hour working shifts.<sup>68</sup>

At Belgrade District Prison three teams of 24 prison guards were ensuring a daily presence on three eight-hour working shifts.

**The CPT recommends that the Serbian authorities take urgent steps to increase the custodial staffing levels at Sremska Mitrovica Correctional Institution and Pančevo District Prison.**

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<sup>67</sup> See paragraph 51.

<sup>68</sup> On average two prison officers were supervising approximately 107 inmates per shift at the respective pavilions.

110. In the course of its visit the delegation had a meeting with the Director of the Staff Training Centre of the Directorate of the Execution of Criminal Sanctions located adjacent to the Niš Correctional Institution. The Centre was providing both induction and in-service intensive courses for prison officers at different levels as well as for other categories of employees of the prison administration. That said, as far as the delegation could gather, no dedicated course on manual control techniques and inter-personal skills was provided to prison guards. This is unfortunate in particular in light of the numerous incidents described by the delegation in the present report in which such skills could have been beneficial for prison staff (see paragraph 52). **The CPT would like to receive the comments of the Serbian authorities on the above-mentioned issue.**

b. contact with the outside world

111. The CPT is of the opinion that unless there is a specific prohibition for a specified period by a judicial authority in an individual case, remand prisoners should receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners. Therefore, it is positive that the new CCP has improved the visiting rights of remand prisoners. Section 219 of the CCP now stipulates that remand prisoners are entitled to three visits per month of a duration of one hour upon the approval of the investigative judge. Further, visits can be of a closed or open type at the discretion of the competent judge pursuant to Sections 47-49 of the Rulebook on Remand Detention.

The information gathered by the CPT's delegation shows that in practice remand prisoners were granted three visits per month. However, the visits were generally closed, apart from at Pančevo District Prison, and usually lasted between 30 and 60 minutes depending on staff availability. At Niš Correctional Institution, remand prisoners were impeded from seeing their visitors as the screen in the visiting booths consisted not only of Plexiglas but also of metal bars. The CPT's delegation requested the prompt removal of the bars. By letter of 17 July 2015, the Serbian authorities informed the Committee that the above-mentioned metal bars had been removed in the course of June 2015.

While acknowledging the improved opportunities for visits for remand prisoners, the CPT nevertheless considers that the aim should be for all prisoners to be able to receive at least one visit of one hour every week. Further, the CPT accepts that in certain cases it will be justified, for security-related reasons or to protect the legitimate interests of an investigation, to have visits take place in booths and/or be monitored. However, "open" visiting arrangements should be the rule and "closed" ones the exception, for all legal categories of prisoners. Any decision to impose closed visits must always be well-founded and reasoned, and based on an individual assessment of the potential risk posed by the prisoner.

**The CPT recommends that the Serbian authorities take the necessary steps in order to comply with the above-mentioned principles at all prison establishments at the national level and to make sure that the minimum visit entitlements for prisoners provided by the legislation are strictly complied with.**

112. Pursuant to Section 90 of the Law on the Execution of Criminal Sanctions, the visiting entitlements for sentenced prisoners consisted in two one-hour per month visits by relatives.<sup>69</sup> The visiting premises in all the prisons visited were spacious, clean, and provided sufficient amenities for both inmates and family members (e.g. a coffee-bar was recently inaugurated at Niš Correctional Institution within the visiting area for convicted prisoners).

**The CPT recommends that visit entitlements for sentenced inmates be increased to at least one hour per week.**

113. In accordance with Section 48 of the Rulebook on House Rules in Correctional Institution and District Prisons, sentenced prisoners were also now entitled to a three-hour family visit every two months (previously every three) with their spouses, partners and children in special premises within the institution.<sup>70</sup> However, Pančevo District Prison did not possess such rooms and, at Sremska Mitrovica Correctional Institution, the 12 rooms were in a deplorable state of repair (broken beds, closets and bedside table, missing door handles, torn curtains and linen) and unhygienic (filthy mattresses and carpet, dust, rusty stains in shower tubs, broken taps). Several inmates told the delegation that they were distressed by the fact that their family members had felt humiliated by such conditions. Urgent action should be taken to remedy these deficiencies.

**The CPT recommends that the Serbian authorities rapidly refurbish the 12 rooms used for special visits at Sremska Mitrovica Correctional Institution. The prison authorities should ensure that efforts be made in the future to maintain the rooms in a decent state. Further, measures should be taken in order to equip one room for family visits at Pančevo District Prison.**

114. The legal provisions as regards access to a telephone for sentenced prisoners remained unchanged (two weekly 15-minute conversations for inmates in closed regime and daily conversation for inmates in semi-open and open regimes). The delegation was able to observe that these provisions were respected in practice. Further, remand prisoners were in general allowed one telephone conversation per week upon the approval of the competent judge. Inmates did not raise complaints about the duration of telephone calls and telephone booths were present in all accommodation areas of the establishments visited.

c. discipline

115. Pursuant to Section 162 of the LECS a disciplinary measure of solitary confinement of an inmate cannot exceed 15 days.<sup>71</sup> The delegation did not find any evidence of excessive recourse to solitary confinement as a disciplinary sanction in the establishments visited.<sup>72</sup>

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<sup>69</sup> Further, the Rulebook on “Treatment, Treatment Programme, Classification of Inmates” provides for extended visiting entitlements in terms of frequency of visits and range of visitors for inmates belonging to the V classification category.

<sup>70</sup> Section 48 paragraph 2 of the Rulebook.

<sup>71</sup> Section 162 of the LECS also stipulates that solitary confinement can be exceptionally last up to 30 days in case of concurrence of disciplinary offences.

<sup>72</sup> For example, at Niš, Sremska Mitrovica Correctional Institutions and Pančevo District Prison, a solitary confinement measure was imposed 121, 290 (out of which 64 were suspended) and 7 times respectively, in the course of 2014.

However, it was still an obligation<sup>73</sup> in practice for a prison doctor from the same establishment to certify that an inmate was fit for punishment prior to a decision on solitary confinement being taken. The CPT has repeatedly stressed in its previous reports to Serbia that obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote a positive doctor-patient relationship.<sup>74</sup>

**The CPT calls upon the Serbian authorities to review the existing regulations concerning the role of prison doctors in relation to disciplinary matters. In so doing, regard should be had to the revised European Prison Rules and the comments made by the CPT in paragraph 53 of its 15<sup>th</sup> General Report.<sup>75</sup> Pending the legislative review, the CPT invites the prison authorities to end the practice of doctors certifying inmates as being fit for punishment. Further, the CPT invites the Serbian authorities to take into consideration its comments in paragraph 56 of its 21<sup>st</sup> General Report in relation to the maximum duration of solitary confinement as a disciplinary punishment (i.e. 14 days and preferably lower for a single offence).**

116. The LECS also still stipulated that it would be possible to deprive inmates of certain benefits and in particular to restrict visiting entitlements as a general disciplinary sanction (i.e. unrelated to the conduct of visits by the inmate in question). In the CPT's view, disciplinary punishment of prisoners should not involve a total prohibition of family contacts, and any restrictions on family contacts should be imposed only where the offence relates to such contacts.

**The CPT recommends that steps be taken to amend the relevant legislation accordingly.**

117. As regards disciplinary proceedings, the delegation noted that inmates, notably at Pančevo District Prison, were generally not informed in writing of their right to avail themselves of the services of a legal counsel. Further, it observed that in the course of other proceedings the disciplinary commission of this prison did not take into account as evidence official documents (such as medical reports or CCTV recordings) and provided no explanations for their decisions.

It was common practice in the establishments visited that all the hearings of the disciplinary commissions and, subsequently, the enforcement of any sanction, took place several months after the initiation of procedures. For example, at Niš Correctional Institution, an inmate served a period of 15 days of solitary confinement in May 2015 in relation to an offence dating back to November 2014. Moreover, at Niš and Sremska Mitrovica Correctional Institutions, inmates were placed under a measure of enforced supervision for several months prior to the hearing of the disciplinary commission. Holding a hearing into a disciplinary offence up to two months after the alleged offence does not serve the needs of maintaining good order in the prison; disciplinary offences should be dealt with rapidly, through fair and transparent procedures.

**The CPT recommends that the Serbian authorities address the above-mentioned shortcomings observed in the conduct of disciplinary proceedings and amend the current regulations with a view to ensuring that disciplinary commissions hear cases of alleged breaches of discipline within days rather than weeks or months of the offence.**

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<sup>73</sup> Pursuant to Section 163 paragraph 2 of the LECS.

<sup>74</sup> See for instance paragraph 99 of CPT/Inf (2012) 17 and paragraph 104 of CPT/Inf (2009) 1.

<sup>75</sup> See CPT/Inf (2005) 17.

118. Pursuant to Section 168 of the LECS, the director of a prison has the power to impose a measure of preventive isolation for up to 48 hours on an inmate from a closed ward, who is suspected having committed a disciplinary offence, for security reasons.<sup>76</sup> Further, Section 20 of the Rulebook on Order and Maintenance of Security Measures in Correctional Institutions stipulates that a director or a delegated person has the right to place an inmate for good order and security reasons in a special unit or cell for up to 24 hours.

In practice, in all the prisons visited the two above-mentioned preventive measures were imposed cumulatively (i.e. for up to 72 hours) in respect of inmates suspected of having committed a disciplinary offence. For example, at Sremska Mitrovica Correctional Institution, in 102 out of 158 cases, where preventive isolation had been ordered by the prison director in relation to a disciplinary offence or for security reasons, it had been applied for 72 hours. Further, the measure was also being applied in respect of minor offences which did not pose a threat to the safety of other inmates or the security of the establishment (e.g. an attempt to introduce unauthorised beverages upon return from leave). By letter received on 31 July 2015, the Serbian authorities informed the Committee that all prison establishments at the national level had been instructed not to apply the above-mentioned preventive measures cumulatively and to resort to the measure of separation of an inmate for up to 24 hours only in relation to the most serious disciplinary offences and in the presence of justified reasons in terms of maintaining order and security. **The CPT welcomes these instructions and trusts that they will be duly implemented in all prison establishments.**

119. Section 164 of the LECS lists the minimum requirements for a cell used for solitary confinement in terms of space (i.e. 4m<sup>2</sup>), ventilation, furniture and access to natural light.<sup>77</sup> The delegation was able to observe that in general these requirements were respected in all the establishments visited with the exception of Belgrade District Prison, where the three cells used for the solitary confinement of inmates lacked direct access to natural light. Further, they were not equipped with call bells.

**The CPT recommends that the Serbian authorities redress these material deficiencies in the context of the ongoing refurbishment at Belgrade District Prison. Further, the CPT recommends that Section 164 of the LECS be amended in order to increase the minimum size of a solitary confinement cell to 6m<sup>2</sup> (excluding the sanitary facility).**

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<sup>76</sup> Inmates from semi-open and open wards should be transferred to closed ones.

<sup>77</sup> Section 164 of the LECS reads as follows: “The cell used for the enforcement of a disciplinary measure of solitary confinement must have a standard of at least four square metres in floor space and ten cubic metres in room space. The cell must be aired, with natural light and artificial lighting, heated according to the climatic conditions, equipped with a bed and bed linen, a desk and a chair. The convicted person must be provided with unlimited access to drinking water and sanitary appliances. During the time spent in solitary confinement, the convicted person may read and write and is entitled to spend at least one hour a day outdoors.”

At Sremska Mitrovica Correctional Institution, inmates serving either a disciplinary sanction of solitary confinement or a security measure of enforced supervision were accommodated in Pavilion III. They told the delegation that during the daily hour of outdoor exercise in the yard they were not allowed to speak to one another and were instructed by prison officers to walk in circles, face down, with hands crossed behind their backs. Prison officers met by the delegation confirmed this information. In the CPT's view, imposing such a restriction on inmates is designed to punish or humiliate them over and above the disciplinary sanction of solitary confinement and should be ended.

**The CPT recommends that the Serbian authorities put an end to the restrictions imposed during outdoor exercise for inmates serving a disciplinary sanction of solitary confinement or a security measure of enforced supervision at Sremska Mitrovica Correctional Institution. Further, the courtyard should be equipped with benches and shelter against inclement weather.**

d. special and coercive measures

120. The use of special and coercive measures in prison establishments is regulated by Sections 142 to 155 of the LECS as well as the thematic Rulebook on Measures for the Keeping of Good Order and Security in the Correctional Institution adopted in September 2014. Nevertheless, in essence the rules governing the application of special and coercive measures have remained unchanged since the CPT's previous visits.<sup>78</sup>

121. Pursuant to Sections 16 and 17 of the above-mentioned Rulebook, inmates can be fixated with leather straps to a bed as a last resort when they are at risk of self-harm or are likely to attack another person. The measure can be applied only in designated premises and must be ordered by a psychiatrist.<sup>79</sup> The mental and somatic status of the inmate must be monitored constantly by medical staff and once an hour by security staff. A dedicated register should include all observations concerning the start, finish and constant monitoring of the measure.

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<sup>78</sup> In sum, according to Sections 149 to 155 of the LECS, coercive measures are used against an inmate in order to prevent an escape of the convicted person; physical attack against another person; injury to another person; self-inflicted injuries; causing significant material damage; active and passive resistance of the convicted person. Coercive measures consist of the use of physical force; restraining; isolation; the use of a rubber baton; the use of water hoses; the use of chemical agents and the use of firearms. Special measures consist of removal and temporary seizure of items which are otherwise allowed; placement in a specially secured room without any dangerous objects for a maximum period of 48 hours; placement under increased supervision of an inmate for a renewable period of three months ; isolation of an inmate for a maximum of six months; testing for communicable diseases or psychoactive substances.

The use of special measures is ordered by the Governor of the Correctional Institution or the person authorised by him/her upon the written proposal, which includes the justification, made by the head of an organisational unit of the Institution. More than one special measure may be used against the convicted person simultaneously.

<sup>79</sup> In exceptional cases, it can be ordered by security staff and the psychiatrist has to be informed within two hours.

In practice, the delegation was able to observe that at Niš Correctional Institution, the periods of fixation did not exceed three hours and inmates were under constant monitoring by a member of the health-care team. The measure was implemented in a specific room separated from the health-care unit and the doctor's observations were correctly inserted in the dedicated register. At Sremska Mitrovica Correctional Institution, three specially equipped beds for the fixation of inmates were in place (two in Pavilion III and one at the so-called "hospital"). The delegation received allegations that inmates were being fixated in Pavilion III by security staff despite assurances by the management of the establishment that the two beds were not in use. No documentation was kept in that respect. Although it appeared that the fixation of inmates at the in-patient unit was rarely resorted to (two cases in the course of 2014), inmates could be fixated for lengthy periods of up to 28 hours under the supervision of health-care staff. That said, no dedicated register was in place and from an examination of the medical files, it appeared that inmates were not subject to constant and regular monitoring by health-care staff.

122. The CPT considers that a special register should be kept to record all cases in which recourse is had to means of restraint; the entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the person who ordered or approved it, and an account of any injuries sustained by the prisoner or staff. An individual subject to immobilisation should, at all times, have his/her mental and physical state continuously and directly monitored by an identified member of the health-care staff or another suitably trained member of staff who has not been involved in the circumstances which gave rise to the application of immobilisation. The staff member concerned should offer direct human contact to the immobilised person, reduce his/her anxiety, communicate with the individual and rapidly respond, including to the individual's personal needs regarding oral intake, hygiene and urination and defecation. Such individualised staff supervision should be performed from within the room or, if the inmate so wishes, very near the door (within hearing and so that personal contact can be established immediately). The supervising staff member should be required to maintain a written running record.

**The CPT recommends that the Serbian authorities comply with the above-mentioned precepts when executing a measure of mechanical fixation at a prison establishment at the national level. Further, the fixation measure should only be resorted to in a medical setting (i.e. in the health-care centre of a prison) and the two beds equipped for the fixation of inmates located at Pavilion III of Sremska Mitrovica Correctional Institution should be removed. As regards more general safeguards relating to the recourse of fixation of inmates, reference should be made to paragraph 108.**

123. The delegation has serious misgivings about the application of the measure of enforced supervision at Pavilion III of Sremska Mitrovica and at Pavilion II of Niš Correctional Institutions for renewable periods of three months. The measure was enforced in cells accommodating two to six inmates and up to two hours of outdoor exercise was offered to inmates every day in terms of regime. Inmates were locked for 22 hours per day in their cells with nothing to do and were not even allowed to sit or lie on their beds during the day (apart from two hours during afternoons).

Prisoners placed under enhanced supervision received a written decision signed by the director which did not contain any specific reasoning for the application of the measure apart from a reference to disciplinary proceedings or problems of overcrowding. In practice, several inmates were being placed under enhanced supervision in relation to disciplinary offences which had no specific security link (e.g. delayed return from leave). On the positive side, the decision could now be appealed to the judge for the enforcement of criminal sanctions and was subject to a revision every three months<sup>80</sup> but renewal orders contained no reasoning for the prolongation of the measure.

In the CPT's view, prisoners who have been placed under enhanced supervision at Pavilion III of Sremska Mitrovica and at Pavilion II of Niš Correctional Institutions should, within the confines of their detention units, enjoy a relatively relaxed regime by way of compensation for their severe custodial situation. In particular, they should be able to meet their fellow prisoners in the unit and be granted a good deal of choice about activities. Special efforts should be made to develop a good internal atmosphere within high-security units. The aim should be to build positive relations between staff and prisoners. This is in the interests not only of the humane treatment of the unit's occupants but also of the maintenance of effective control and security and of staff safety. Further, a satisfactory programme of diverse activities should be offered (education, sports, work of vocational nature, etc.). In sum, there should be a proactive positive process designed to address the prisoner's problems and permit his return to the mainstream prison population.

**The CPT recommends that the Serbian authorities increase their efforts to develop a purposeful regime for inmates placed under enhanced supervision which includes a diverse range of activities. Every effort should be made to enable prisoners to associate with other inmates and excessive restrictions should not be imposed which are not justified by their security profile.**

**Further, a revised sentence plan should be drawn up together with the prisoner, setting out the objectives and goals to be achieved in order for them to successfully reintegrate into the general prison population. Any review of the prisoner's placement should include a re-evaluation of the plan and inmates should be allowed to challenge any decision on the prolongation of the measure through clearly established avenues of complaint. Finally, every inmate subject to an enforced supervision measure should receive a written reasoned decision and information on how the decision might be appealed.**

e. complaints and inspection procedures

124. The introduction of the position of judge for the execution of criminal sanctions in the LECS provides for an additional avenue of complaint for both sentenced and remand prisoners in addition to the existing remedies (i.e. complaints to the director of the establishment, the Ministry of Justice or to the Ombudsman). As already mentioned (see paragraph 41) the judge for the enforcement of criminal sanctions acts as a second instance body in deciding on appeals filed by inmates against a decision of the prison director (or the director of the prison administration). The judge also decides on appeals filed directly to him/her by inmates for their judicial protection if the right to life or integrity to health is in danger.<sup>81</sup>

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<sup>80</sup> In general the measure was renewed two or three times depending on the nature of the disciplinary offence.

<sup>81</sup> Pursuant to Section 37 paragraph 4 of the Law on Execution of Criminal Sanctions.

Prisoners interviewed by the delegation in the establishments visited were well informed of the avenues of complaint available and complaint boxes were present in the majority of pavilions of the prisons. For example, the judge for the execution of criminal sanctions responsible for Sremska Mitrovica Correctional Institution had received approximately 30 complaints from inmates during the first six months of his activity. Further, the judge competent for Niš Correctional Institution had recently ordered that an inmate, who alleged that his mental health was at risk due to his placement under enforced supervision, be reintegrated into the ordinary regime in accordance with Section 37, paragraph 4 of the LECS.

125. As regards external supervision, the competent judges for the execution of criminal sanctions regularly visited the establishments under their responsibility in accordance with the legal requirement and, after each visit, submitted a report to the President of the High Court and the Directorate for the Execution of Criminal Sanctions.<sup>82</sup> Judges also entered the accommodation premises in order to evaluate the conditions of detention at Sremska Mitrovica Correctional Institution and Pančevo District Prison.

The NPM had also visited Sremska Mitrovica and Niš Correctional Institution as well as Pančevo District Prison and the Special Prison Hospital over the last two years and had produced reports on these establishments (see paragraph 10). In respect of Sremska Mitrovica Correctional Institution, it had also produced a follow-up report on the level of implementation of its recommendations.

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<sup>82</sup> I.e. four times a year in accordance with Section 42 of the Law on Execution of Criminal Sanctions.

## C. Valjevo Juvenile Correctional Institution

### 1. Preliminary remarks

126. Pursuant to the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (the Juvenile Law), a juvenile of 16 or 17 years of age or a young adult under 23 years of age, who has committed a criminal offence punishable by imprisonment of over five years, may be sentenced to juvenile imprisonment. There are two juvenile prisons in Serbia, one of which is *Valjevo Juvenile Correctional Institution*.

127. *Valjevo Juvenile Correctional Institution* is located in the remote outskirts of Valjevo, nestled in a valley by a river, which had flooded in 2013 causing structural damage to many parts of the prison. With an official capacity of 271 prisoners, it was holding 236 inmates at the time of the visit, only two of whom were juveniles (aged 16 and 17 years old respectively). The prison held a variety of types of offenders: 186 young persons serving juvenile sentences, who were under 23 years old at the time of the offence pursuant to the Juvenile Law; 44 adult repeat offenders, who had been sentenced to one to two years imprisonment and had previously served one or more prison sentences; and six adult inmates sentenced for administrative misdemeanours.

128. The accommodation units comprised J-Block, the 'School' Unit, the 'Workshops' Unit, the Infirmary and Infirmary cells and the Increased Supervision Unit. The institution also had a remand section which was damaged by the floods in 2013 and closed down in 2014.

### 2. Ill-treatment

129. From the information gathered during its visit, the delegation gained the distinct impression that an accepted culture had developed whereby custodial staff would mete out truncheon blows as an informal punishment to inmates (including juveniles) who misbehaved, or threaten them with such punishment. The delegation received a number of allegations of deliberate ill-treatment which consisted of truncheon blows, slaps and kicks by custodial staff; as well as reports of staff intimidation of inmates.

Some of the allegations were corroborated by documentation found in the relevant prison and medical registers; for example, Prisoner M., according to the discipline register, was hit by prison staff with a baton for 'passive resistance'<sup>83</sup> on the 'allowed parts of the body'<sup>84</sup> for allegedly refusing to clean his cell. The doctor's report in the prisoner's medical file also described the injuries sustained including 'visible bruises on the back in 3 ways, one bruise in gluteal area, and 2 bruises on the thighs'. In the CPT's view, inflicting baton blows on a prisoner as a disciplinary sanction, whether formal or informal, is totally unacceptable and can never be justified. Any breach of the prison's rules should be addressed through the prison's disciplinary system. Moreover, prison officers should not resort to the use of baton blows in response to non-violent behaviour by inmates and the relevant rulebooks authorising such a response should be amended accordingly. Prison officers should be trained to resolve instances of "passive resistance" by prisoners through verbal negotiations and, if necessary, through the application of manual control and restraint techniques.

130. National legislation stipulates that only coercive measures 'which pose the least threat to the life and health of the person should be applied' and 'which successfully eliminate resistance while being proportionate to the threat the resistance poses'.<sup>85</sup> Yet, from the information gathered from interviews with prisoners and staff and an examination of the relevant registers, baton use had increased from 23 times in 2013 to 51 times in 2014 and was, in some instances, used excessively and disproportionately to the situation faced.

For example, in May 2013, two prisoners (B.S. and V.M.) had been shot at by custodial staff as they attempted to escape and one of them was shot in the ankle. The prison's medical reports showed that the injuries sustained by the prisoners included a bullet wound but also evidence of injuries caused by the baton blows 'in multiple directions'.<sup>86</sup> The delegation noted that an internal investigation had been undertaken into this case, which found that the use of force was justified. Nevertheless, upon examination of the relevant documents, the delegation found that the investigation was superficial, lacking any thorough examination into the justification of the use of batons after the prisoners had been captured.

It is the Committee's long-held view that **no more force than is strictly necessary and proportionate should be used to bring an agitated and/or violent prisoner under control.** Further, the Committee also believes that the situations in which prison officers may use physical force and truncheons should be defined precisely, and that detailed instructions on their use issued. **The Committee requests information from the authorities on whether a judicial, or other external, inquiry has been conducted into the above-mentioned incident, and if so, requests information on outcome of this inquiry.**

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<sup>83</sup> Listed in the Law on Execution of Penal Sanctions Article 142 (6) as a reason for means of use of coercive force.

<sup>84</sup> Rulebook on the Measures for the Maintaining of Order and Security in Correctional Institutions (105/2014) adopted in October 2014, Article 21, 'blows cannot be directed to the head of the inmate, spine, genitals, kidneys, elbows unless as a last resort measure'.

<sup>85</sup> Law on Execution of Criminal Sanctions, Article 143.

<sup>86</sup> The medical report on Prisoner B.S. showed clinical findings "caused by use of rubber baton": including 'visible mechanical injuries on the upper and middle part of the back hematomas from use of rubber baton in multiple directions in red colouring interlinked. On right thigh there is redness in 3-4 directions'. The medical report on Prisoner V.M. stated "on the back in three ways visible light red bruising from use of rubber batons. In the gluteal region from the right side there is a visible redness in three ways. On the left zygomatic region there is a visible swelling light red colour in the size of a pea'.

131. Overall, the delegation gained the distinct impression that this was an establishment in which a very strict code of behaviour was enforced, with any breach - no matter how minor - likely to meet with physical punishment. Such methods are unacceptable; any prisoner considered to display disobedience should be dealt with only in accordance with the prescribed disciplinary procedures.

**The CPT recommends that the Serbian authorities take the necessary steps to change the culture in the prison away from one governed by physical punishment to one based upon a dynamic security approach, with prison officers trained in verbal de-escalation techniques and proportionate physical control and restraint methods.**

**It also recommends that a clear reminder be delivered to all custodial staff that the ill-treatment of prisoners, in any form, is illegal and that the perpetrators of ill-treatment will be punished accordingly.**

Further, the Committee recommends that the Serbian authorities take steps to ensure that the situations in which prison officers may use physical force is defined precisely, and that detailed instructions concerning its use are issued as a matter of priority. The CPT recommends that steps be taken to ensure that staff do not carry truncheons inside detention areas (see paragraph 54). Further, the Rulebook on the Measures for the Maintaining of Order and Security in Correctional Institutions (105/2014) should be revised to exclude the infliction of baton blows as a response to non-violent behaviour of inmates.

In addition, the establishment's management should demonstrate increased vigilance in this area by ensuring the regular presence of prison managers in the detention areas, their direct contact with prisoners, the investigation of complaints made by prisoners, and improved staff training. Consideration should also be given to more extensive CCTV coverage, coupled with secure recordings and an adequate policy of storage of the recorded data.

132. The delegation also received several allegations of strip searches of inmates conducted by prison staff where the prisoners had to fully undress in full view of other prisoners.

It is the Committee's long-held view that whenever strip searches are considered necessary, they should be conducted in private and all clothing should not be removed at the same time. A strip search is a very invasive - and potentially degrading - measure. Therefore, resort to strip searches should be based on an individual risk assessment and subject to rigorous criteria and supervision. Every reasonable effort should be made to minimise embarrassment; prisoners who are searched should not normally be required to remove all their clothes at the same time (i.e. a person should be allowed to remove clothing above the waist and to get dressed before removing further clothing). In addition, more than one officer should, as a rule, be present during any strip search as a protection to prisoners and staff alike.

**The CPT recommends that whenever strip searches are considered necessary, they should be conducted in private, in the presence of at least two staff members, and all clothing should not be removed at the same time.**

133. From interviews with staff and prisoners as well as from an examination of the relevant registers, it appeared that the level of inter-prisoner violence in the Institution had decreased in recent years. This was in part due to the refurbishment work on the new J-Block building and the introduction of smaller cells that held between three and five inmates. It was also due in part to a strategic risk assessment and cell allocation scheme undertaken by the prison management to deal with gang or known 'collective' membership. Inter-prisoner violence was still, however, in existence with physical fights between prisoners taking place in the exercise yards.<sup>87</sup>

**The CPT recommends that the prison management continue their efforts to reduce incidents of inter-prisoner violence; and initiate the training of staff in verbal de-escalation techniques** (see recommendations in paragraph 131 and paragraph 52).

### **3. Conditions of detention**

#### a. material conditions of detention

134. Significant refurbishments were underway in the establishment at the time of the visit, notably of J-Block. The renovated sections of J-Block comprised three floors each with 10 cells; the cells, the largest of which measured 32m<sup>2</sup>, held from three to five inmates, and were equipped with a modern callbell system, beds, table and chairs, lockers and wardrobes, a television and partitioned sanitary annexes. The cells were bright, well-ventilated, had heating and were clean, and generally provided decent conditions.

However, the rest of the building was in a dilapidated state. Cells and common areas had no heating, walls were crumbling, doors were broken and windows lack panes. It was due to be refurbished with renovation works scheduled to be completed by the end of the summer 2015.

**The CPT would like to receive confirmation that the refurbishment works have been completed in J-Block, and to be informed of the new layout and occupancy rates in the building.**

135. The 'School' Unit held, primarily, repeat offenders and comprised three large inter-connected dormitories accommodating 52 inmates in a total space of 135m<sup>2</sup>,<sup>88</sup> the average space per inmate was a mere 2.5m<sup>2</sup>. Conditions were dilapidated and spartan, with little privacy and no space for personal lockers or wardrobes. Ill-fitting window panes created extreme temperature fluctuations in the summer and winter months and the exposed live wires in the showers were dangerous.

The 'Workshop' Unit accommodation, situated above the metal and carpentry workshops, was in an even worse condition. The Unit comprised two large dormitories measuring 58m<sup>2</sup> and 32m<sup>2</sup> equipped with 27 beds and 14 beds respectively, and a dilapidated communal area. The average living space per inmate was little more than 2m<sup>2</sup> for each of the 41 inmates. The dormitories were extremely dilapidated, and minimal heating and missing windows-panes meant that inmates were extremely cold especially during winter months.

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<sup>87</sup> In 2014, there had been nine registered inter-prisoner fights and, in 2015, there had been five up to the end of May.

<sup>88</sup> The three dormitories measured 55m<sup>2</sup>, 52m<sup>2</sup> and 28m<sup>2</sup> and were equipped with 25 beds, 24 beds and 12 beds respectively. It should be noted that the official capacity of the three dormitories was 61 inmates.

By communication of 20 July 2015, the Serbian authorities informed the CPT that the inmates held in the 'Workshop' rooms would be moved to the two floors of the north wing of the 'School' by the end of July 2015, upon completion of renovation works. The CPT welcomes this initiative. That said, in light of the above concerns regarding the cramped and unsuitable living environment for the inmate population in the 'School', **the Committee would like to be informed how the transfer will affect the living space per inmate in the 'School' Unit.**

**The CPT recommends that, in principle, the use of large dormitories be ceased and such dormitories be converted into smaller unit rooms. If dormitories have to be used, the CPT recommends that the Serbian authorities significantly reduce the occupancy level in the 'Workshop' and 'School' Units, the objective being to comply with the minimum standard of 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells, and ensure access to personal lockers for every inmate.**

Further, it recommends that the Serbian authorities remedy the material deficiencies highlighted in the context of the refurbishment programme of the 'School' and 'Workshop' Units.

**The CPT would like to be informed of the progress of implementation of the refurbishment of the different Units (J-Block, 'Workshops' Unit and 'School' Unit) every 3 months.**

b. activities and regime

136. The delegation noted the existence of certain purposeful activities, including workshops in carpentry, metalwork, and window construction training, amongst others. There was also an indoor and outdoor sports hall and terrain, a gym and a theatre with various cultural activities available. Further, most prisoners (save for the prisoners on Induction, see paragraph 139) had effective access to at least one hour of outdoor exercise every day.

That said, the organised activities were available in practice to around 40% of the prison population, which meant that the majority of inmates were left to their own devices while locked in their cells for 22 or more hours a day.

The inadequate provision of activities for prisoners has been the subject of recommendations in previous CPT visit reports. Although the Serbian authorities have made certain efforts, especially as regards the provision of outdoor exercise, there remains much scope for improvement.

**The CPT once again calls upon the Serbian authorities to increase the possibilities for all prisoners to have effective access to organised purposeful activities.**

#### 4. Juveniles

137. The two juveniles<sup>89</sup> held at *Valjevo Juvenile Correctional Institution* at the time of the visit were accommodated together with young adult inmates. The CPT believes that juveniles in detention should, as a rule, be accommodated separately from adults. The general requirement that juveniles be separated from adults is a principle enshrined in international human rights law.<sup>90</sup>

By communication of 17 July 2015, the Serbian authorities confirmed that juveniles held in the Institution were accommodated with adults. The reason given for this was that one juvenile (the 17-year-old) was undergoing the admission process at the time of the visit and that the other juvenile (the 16-year-old), according to Serbian legislation, could not be accommodated by himself. He had been accommodated with young adults serving juvenile sentences after a risk assessment had been undertaken.

In this respect it is the CPT's view that juveniles (whether on remand or sentenced) should as a rule not be held in institutions for adults but in facilities specially designed for this age group.<sup>91</sup> Although in name Valjevo is a juvenile prison, in fact it holds mainly young adult and older prisoners. The CPT considers that when, exceptionally, juveniles are held in prisons for adults, they should always be accommodated separately from adults, in a distinct unit. Further, adult prisoners should not have access to this unit.

That said, the Committee acknowledges that there can be arguments in favour of juveniles participating in out-of-cell activities with adult prisoners, on the strict condition that there is appropriate supervision by staff. Such situations occur, for example, when there are very few or only one juvenile offender in an establishment; steps need to be taken to avoid juveniles being placed *de facto* in solitary confinement, especially during the day which may include the participation in out-of-cell activities with suitably risk assessed young adult inmates. Nevertheless, this should not extend to accommodation of juveniles with young adult prisoners.

**In light of these remarks, the CPT recommends that the management of Valjevo Juvenile Correctional Institution take steps to ensure that juveniles are accommodated separately from the adult inmates. It would be preferable for juveniles to be accommodated in a separate area of the institution specifically designed and managed for juvenile offenders.**

138. National law establishes that a juvenile imprisonment sentence should enable education and vocational training, leaving sufficient time for physical training, arts' activities, religious needs and leisure time and up to three hours in the fresh air<sup>92</sup>. National legislative provisions in the Juvenile Law specify that juvenile offenders should have an individualised programme of treatment adapted to their character.<sup>93</sup> This was not the case at the time of the visit. Only some of the education classes were on offer to the juveniles.

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<sup>89</sup> Aged 16 and 17 at the time of the visit.

<sup>90</sup> Cf. Article 10, paragraphs 2(b) and 3, of the International Covenant on Civil and Political Rights, and Article 37 (c) of the Convention on the Rights of the Child; Rule 18.8(c) of the Revised European Prison Rules (Recommendation Rec (2006) 2 of the Committee of Ministers of the Council of Europe).

<sup>91</sup> Paragraph 101, 24th General Report of the CPT, CPT/Inf (2015)1.

<sup>92</sup> Sections 141 to 143, Juvenile Act.

<sup>93</sup> Section 93, Juvenile Act.

**The CPT recommends that the Serbian authorities take steps to ensure that all juvenile prisoners are offered a full programme of educational, vocational and recreational activities taking into account the specific needs of their age group. Physical education should be part of that programme.**

139. The 17-year-old juvenile was in an induction period known as “quarantine” which applied to all inmates, including juveniles, upon arrival at Valjevo prison. This “quarantine” period lasted at least one month and meant that the newly arrived inmates were locked in a cell for 23 ½ hours a day, with 30 minutes of exercise allowed and only two visits a month.

The CPT considers that an induction procedure, if properly performed, can identify at least certain of those at risk of self-harm and relieve the anxiety experienced by all newly arrived prisoners. That said, the Committee believes that it should be possible within a few days to determine the needs of juvenile inmates and finds that both the blanket application of at least one month’s induction in cellular confinement conditions, save for 30 minutes of exercise per day, to be excessive and unjustified.

**The CPT recommends that the Serbian authorities review the induction or “quarantine” procedure for juveniles at Valjevo Juvenile Correctional Institution with the aim of reducing its length substantially. Further, juvenile prisoners should be offered at least two hours of outdoor exercise every day, as well as other out-of-cell activities, from the moment they arrive in a prison establishment.**

## **5. Health-care services**

140. The health-care staff consisted of a full-time doctor, three full-time nurses and a part-time dentist. The number of nursing staff was hardly sufficient for a prison of some 250 inmates. Further, there was no visiting psychiatrist despite a clear need for onsite psychiatric advice to replace the cumbersome referral procedures to external specialists (see paragraph 79 concerning the need for psychiatric care and psychological support for prisoners).

By communication of 17 July 2015, the Serbian authorities confirmed that a medical technician (male nurse), head technician (head nurse), sanitary technician and dental technician will be recruited to fill the current staff vacancies at *Valjevo Juvenile Correctional Institution*. Further, it was anticipated that the Institution would enter a service agreement with a psychiatrist. The CPT welcomes these developments and **would like to receive updated information on the actual number of health-care staff working at Valjevo Juvenile Correctional Institution on a full- or part-time basis.**

141. The delegation noted that prompt health-care screening was systematically undertaken upon an inmate’s arrival and it observed that medical confidentiality appeared to be well-respected. That said, the health-care screening procedure had stopped using diagrammatic body charts five years previously.

**The CPT recommends that the use of diagrammatic body charts be included in the prison’s health-care screening procedure.**

142. The delegation found that a number of inmates were on the neuroleptic clozapine, without being subject to regular oversight and blood tests. The CPT believes that regular blood tests should be obligatory for those on the neuroleptic clozapine, because of the risk for potentially fatal side effects, i.e. lack of white blood cells.

**In this respect, the CPT recommends that the Serbian authorities take urgent steps to render regular blood tests mandatory in the prison whenever clozapine is used. Further, staff should be trained to recognise the early signs of the potentially lethal side effects of clozapine.**

143. The infirmary itself was in a deplorable state of disrepair. The Serbian authorities acknowledged the situation in their communication of 17 July 2015, and informed the CPT that the infirmary was undergoing refurbishment and would be moved to the ground floor of the 'School' Unit by the end of July 2015. At the time of the visit, the ground floor of the 'School' Unit was being used to accommodate 52 inmates in three dormitories, and was already severely overcrowded. **The CPT would like to receive detailed information on the current status of the infirmary and the situation in the 'School' Unit.**

144. As for suicide prevention procedures, the delegation noted the recent suicide at the establishment in March 2015 in the Increased Supervision Unit. A review of the files and existent procedures in place revealed the limited suicide risk-awareness of both custodial staff and health-care staff and the lack of suicide prevention procedures in place.

The prevention of suicide, including the identification of those at risk, should not rest with the health-care service alone. All prison staff coming into contact with inmates – and as a priority staff who work in the reception and admissions units – should be trained in recognising indications of suicidal risk. In this connection, it should be noted that the periods immediately before and after trial and, in some cases, the pre-release period, are associated with an increased risk of suicide.

The Committee also believes that it is essential that every death of a prisoner should be the subject of a thorough investigation (to ascertain, inter alia, the cause of death, the facts leading up to the death, including any contributing factors, and whether the death might have been prevented). Further, whenever a person dies in prison (or soon after transfer from prison), an autopsy should be carried out and the prison's management and medical services should be informed of the outcome. Finally, an analysis should be undertaken of each death in prison to consider what general lessons may be learned.

**The CPT recommends that the Serbian authorities draw up a comprehensive suicide prevention policy at Valjevo Juvenile Correctional Institution, as well as in other penitentiary establishments in Serbia. Further, the management of the prison, including the head of the health service, should ensure that there is an adequate awareness of the subject of suicide prevention among all staff, and that appropriate procedures are in place. Steps should also be taken to ensure a proper flow of information within a given establishment about persons who have been identified as potentially at risk. All persons identified as presenting a suicide risk should be monitored and should benefit from counselling, support and appropriate association.**

Further, **the CPT recommends that the Serbian authorities ensure that every death in custody is the subject of an investigation by an independent body.**

## 6. Other issues of relevance for the CPT's mandate

### a. prison staff

145. The custodial staffing levels in the establishment were extremely low given the number of inmates (236) and the capacity of the prison (271); only 95 of the 145 custodial staff positions were filled at the time of the visit, which resulted in considerable pressure on staff and led to an insecure and dangerous living environment for prisoners.

At the time of the visit, the 41 prisoners in the 'Workshops' unit were left completely unsupervised from 3.30p.m. until the following morning on weekdays, and over the weekends from Friday 3.30p.m. until the following Monday morning. The CPT believes that that all accommodation units should be permanently staffed and that staff should not rely on selected groups of prisoners to assist them, as was the case in the 'Workshops' Unit. Further, a system of dormitory representatives or heads can have pernicious effects unless closely supervised by staff (see paragraph 134 in respect of large dormitories).

It is a long-held view of the CPT that there must be enough staff to correctly supervise the activities of prisoners and support each other in the performance of their duties. An overall low staff complement and/or specific staff attendance systems which diminish the possibilities of direct contact with prisoners will not only certainly impede the development of positive relations; more generally, it will generate an insecure and dangerous environment for both staff and prisoners. The delegation found that the situation in the 'Workshops' Unit, where stronger groups of prisoners could exercise their power unchecked over other inmates risked becoming unsafe.

**The CPT recommends that the Serbian authorities take immediate steps to increase staffing levels at Valjevo Juvenile Correctional Institution. At a minimum, no accommodation should be left without supervision by staff and the 50 vacant custodial officer posts should be filled as soon as possible.**

As for the practice of relying on prisoners to assist staff in certain custodial tasks, the Committee wishes to stress that such a partial abrogation of the responsibility for order and security - which properly falls within the ambit of custodial staff - is unacceptable. It exposes weaker prisoners to the risk of being exploited by their fellow inmates.

**The CPT recommends that the Serbian authorities take steps to ensure that no prisoner is put in a position to exercise power over other prisoners.<sup>94</sup>**

146. As concerns the wearing of truncheons, the delegation was informed by some staff that they had been requested not to wear truncheons during the delegation's visit. Nevertheless, truncheons worn openly in all areas of the establishment were clearly a standard part of the uniform and steps should be taken to change such an approach (see recommendation in paragraphs 54 and 131).

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<sup>94</sup> In this context, see Rule 62 of the revised European Prison Rules.

b. discipline

147. The disciplinary procedure at *Valjevo Juvenile Correctional Institution* comprised a system of warnings, reprimands, cautions, withdrawal of privileges and up to 10 days of solitary confinement (save for in respect of juveniles)<sup>95</sup> after an adjudication hearing. From an examination of the relevant documentation, the official disciplinary procedure appeared to be generally well followed.

The CPT remains, however, concerned by the continued requirement for a mandatory medical examination before the enforcement of the measure of solitary confinement (see paragraph 115).

c. Increased Supervision Unit

148. The Increased Supervision Unit comprised five cells,<sup>96</sup> which were extremely dilapidated. Each bunk bed had much of its base missing; cardboard or makeshift alternatives had been fabricated by the inmates to keep the mattresses from falling through the base of the beds. The mattresses were filthy and vermin infested the cells. Mould had spread over the ceiling and walls. Live exposed wires and out-of use light sockets hung from the ceilings (one artificial light per room was provided). Further, the screened toilets were filthy, with blocked drains and open sewage flowing, and the showers lacked shower-heads. The staff room had a large window that looked directly into the largest cell, placing those held there effectively under 24 hours' supervision; and earning that cell the nickname "Aquarium". In addition, there was no shelter to protect inmates from the sun or rain in the external exercise yard of the Unit.

149. The appalling material conditions were exacerbated by the severe regime, whereby the inmates spent 23 hours a day locked in their cells for periods of up to one year with no possibility of any activities; they did not even receive the two hours of outdoor exercise every day to which they were entitled under the LECS.<sup>97</sup>

By communication of 17 July 2015, the Serbian authorities informed the CPT that renovation work had commenced on the Increased Supervision Unit and was due to be completed shortly. Further, they stated that inmates of the Increased Supervision Unit were not receiving their full entitlement of outdoor exercise due to a 'full capacity' in the Unit.

The CPT is not convinced by such reasoning given the existence of a sizeable yard and the small number of inmates in the Unit; it believes it should be possible, subject to a thorough risk assessment, to combine exercise times, if necessary, for some of the inmates of the Increased Supervision Unit to allow all of them to benefit from their full two-hour entitlement. Moreover, they should be offered a range of activities and programmes, which should increase as they approach re-integration into ordinary accommodation.

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<sup>95</sup> Pursuant to Section 91, Juvenile Act, solitary confinement is prohibited for use on juveniles.

<sup>96</sup> Four cells measured between 14 m<sup>2</sup> and were equipped with four beds affording inmates 3.5m<sup>2</sup> of living space per inmate, while the fifth cell measured 28m<sup>2</sup> and was equipped with eight beds, affording the inmates there with 3.5m<sup>2</sup> of living space each.

<sup>97</sup> Law on the Execution of Criminal / Penal Sanctions (LECS), Article 80.

In the CPT's view, prisoners who are in the Increased Supervision Unit at *Valjevo Juvenile Correctional Institution* should, within the confines of their detention unit, enjoy a relatively relaxed regime by way of compensation for their severe custodial situation. In particular, they should be able to meet their fellow prisoners in the Unit and be granted a good deal of choice as regards activities. The aim should be to build positive relations between staff and prisoners. This is in the interests not only of the humane treatment of the Unit's occupants but also of the maintenance of effective control and security and of staff safety. Further, a satisfactory programme of diverse activities should be offered (education, sport, work of vocational nature, etc.). In sum, there should be a proactive positive process designed to address the prisoner's problems and permit his return to the mainstream prison population.

**The CPT recommends that the Serbian authorities review the regime at the Increased Supervision Unit of Valjevo Juvenile Correctional Institution, and also ensure that these prisoners can meet other inmates in the Unit, in the light of the above remarks. In particular, a purposeful programme of activities should be put in place for each inmate, elaborated upon arrival in the unit by a multi-disciplinary team and which is the subject of monthly reviews (see paragraph 123).**

**It also recommends that steps be taken to ensure that all inmates in the Increased Supervision Unit are offered two hours of outdoor exercise, in line with Serbian law.**

**Further, the CPT would like to receive confirmation, within 3 months, that renovation works of the Increased Supervision Unit have been completed, together with a description of the works carried out to remedy the material deficiencies.**

150. As concerns the placement procedure and safeguards afforded to prisoners placed in the Unit, the delegation found no evidence of a clear or thorough placement procedure and review system in place. None of the prisoners interviewed in the Unit knew how long they were going to be kept there and merely assumed that it would be for one year; many of them had already been there for over six months. This was the case despite stipulations in Serbian law<sup>98</sup> that prisoners placed in Increased Supervision may file an appeal with the enforcement judge against the decision on the placement and that every Increased Supervision measure should be reviewed every three months.<sup>99</sup>

**The CPT recommends that the Serbian authorities institute rigorous procedural safeguards regarding the placement of prisoners, and any extension thereof, in the Increased Supervision Unit at Valjevo Juvenile Correctional Institution (including a written reasoned decision of placement/extension and the possibility to appeal the decision). Further, there should be a regular multi-disciplinary review of each placement every three months.**

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<sup>98</sup> LECS, Article 151.

<sup>99</sup> LECS, Article 151.

## **D. Special hospital for psychiatric diseases “Dr. Slavoljub Bakalović”**

### **1. Preliminary remarks**

151. The CPT’s delegation visited, for the first time, the Special Hospital for Psychiatric Diseases “Dr. Slavoljub Bakalović” (“the Special Psychiatric Hospital”). It is located on the outskirts of the town of Vršac. With a capacity of 900 beds, it is one of the largest psychiatric institutions in Serbia and is one of only five special psychiatric hospitals in the country.

The Special Psychiatric Hospital is made up of 15 wards and includes an outpatient service. At the time of the visit the hospital was accommodating 771 adult patients, including inter alia 65 forensic (50 male and 15 female) and 35 patients undergoing the compulsory drug or alcohol treatment measure.

152. The authorities informed the delegation that the most common length of stay was approximately four months; the delegation noted, however, that the length of stays varied and ranged from some three days to over 30 years. Many patients had stayed longer than 10 years and some even for decades. Most of these patients had lost their family and social ties. There were also 50 elderly patients who were accommodated in the psycho-geriatric Ward G.

### **2. Ill-treatment**

153. The delegation found that staff, working in a challenging environment and with a large number of persons with complex needs, appeared generally to have a caring approach towards patients at the Hospital.

That said, the delegation did receive some allegations of deliberate physical ill-treatment of patients by some staff, consisting primarily of slaps, as well as some allegations of verbal insults. For example, the delegation was told by a female patient that she engaged in sexual relations with other patients in exchange for cigarettes and coffee, due to her own lack of financial resources. She alleged that the staff mocked her for this and called her offensive names.

**In this respect, the Committee recommends that the authorities deliver a clear reminder to all staff that the ill-treatment of patients, in any form including verbal abuse, is unacceptable and illegal and that the perpetrators of ill-treatment will be punished accordingly.**

154. Further, the delegation received numerous accounts from patients and staff of inter-patient violence, which was prevalent in many of the wards visited. For example, on Wards L and R, the delegation received allegations of inter-patient violence (consisting of punches and slaps) and intimidation towards two female patients. On O-Ward, inter-patient violence was so frequent, occurring on almost a daily basis according to the staff there, that it could even be considered as endemic.

At the time of the visit, many of the 30 patients on O-Ward,<sup>100</sup> who had a combination of learning disabilities and psychiatric illnesses, were in need of constant twenty-four-hour support. However, staffing levels were low and while there were two to three staff members on the ward during the day, there was only one male technician/nurse present at night. According to staff, at night the low staffing levels (see paragraph 165) necessitated the use of restraints for some of the learning disabled or autistic patients, who would otherwise wander around and in some cases attack other patients.

The CPT is not convinced that the argument for preventive use of restraints due to low staffing levels and to stop patients wandering at night is the correct approach. **The CPT recommends that routine “preventive” fixation at night of persons with disabilities can have no justification and should be ceased (see also paragraphs 108, 169 189 and 191)."**

155. The CPT wishes to emphasise that the duty of care which is owed by the Serbian authorities to patients in their care includes the responsibility to protect them from other patients who might wish to cause them harm. The authorities must act in a proactive manner to prevent violence by patients against other patients. Addressing the issue of inter-patient violence and intimidation requires that Hospital staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. The level of staffing must be sufficient (including at night-time) to enable staff to supervise adequately the activities of patients and support each other effectively in the exercise of their tasks. Both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-patient violence.

**The CPT recommends that the Serbian authorities take steps to ensure that the level of staffing is sufficient (including at night-time) in all wards at the Special Psychiatric Hospital to enable staff to adequately care for, supervise and protect the patients** (see paragraphs 163, 164 and 165).

**It also recommends that training programmes for staff of all grades are undertaken to address the issue of managing inter-patient violence.**

### **3. Living conditions and treatment**

#### **a. living conditions**

156. Although some wards had recently been renovated, generally the wards' interiors were austere and impersonal (no photos, pictures or personal items) and lacked any decoration. Personal space was cramped; for example, two dormitories in the O-Ward measured 42m<sup>2</sup> and 30m<sup>2</sup> and were equipped with 11 and eight beds respectively (i.e. less than 4m<sup>2</sup> per patient). Many patients had no lockers or bedside tables. There were no curtains or blinds in many of the male and female wards, which allowed direct view from the outside into the sleeping areas of the patients. Further, the bars on the windows in some of the wards, including the so-called voluntary or non-secure wards, contributed to creating a carceral environment.

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<sup>100</sup> O-Ward had a capacity of 53 patients.

157. The living conditions on O-Ward were particularly poor. The rooms were sterile, lacking any decoration or any personal items and there were no individualised lockers or wardrobes. Cockroaches ran everywhere in the communal association room, and there was a permeating stench from the three unhygienic and filthy toilets. Patients slept or sat squashed together on wooden benches placed around a table tennis table in the internal communal area (see paragraph 136).

**The CPT recommends that the Serbian authorities take concrete measures at the Special Psychiatric Hospital in order to:**

- **remedy the deficiencies in the living conditions identified in the O-Ward;**
- **reduce the occupancy levels in the dormitories;**
- **address the privacy issues identified above, by installing curtains or blinds in the wards; and**
- **offer a more congenial and personalised environment to all the patients, in particular by providing them with lockable space for personal items and allowing a reasonable number of personal belongings and decoration.**

b. treatment and activities

158. As concerns recreational activities, in general patients could watch television in the wards' common rooms, play board games and, in some wards, table tennis. Patients could walk in the wooded grounds or in the secure gardens of each ward, depending on their legal status. The grounds were extensive and there were sports fields in evidence; however, these were clearly not in use and covered with overgrown weeds. As an illustration, although there was an outside area for the O-Ward, none of the patients went outside during the delegation's visit.

Nevertheless, a large proportion of patients spent most of their day with little else to occupy their time other than watching TV and sleeping slumped on chairs and benches, as the sleeping areas were often locked for certain periods of the day.

**The CPT recommends that the Serbian authorities ensure that patients have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis, as well as ensuring the general upkeep of the grounds. The CPT also recommends that the authorities take measures to proactively encourage the patients to use the gardens and outside areas.**

159. The medical treatment for most patients was based essentially on pharmacotherapy. Nevertheless, the delegation noted that the Special Psychiatric Hospital followed some psychotherapeutic approaches and that occupational and community therapy were available. There was a range of rehabilitative and occupational therapy activity classes available in certain of the wards (for example in Z-Ward, which held patients suffering from drug abuse) and in the Work Therapy Department. These included drawing and painting classes, music classes and recitals, pottery, needlework and tapestry classes, woodwork and furniture restoration training, computer training, English language classes and amateur theatre workshops.

That said, at the time of the visit only 200 out of the 771 patients took part in some form of psycho-social rehabilitative activity at the Hospital.

The CPT believes that it is essential to develop a range of therapeutic options and involve long-term patients in rehabilitative psycho-social activities, in order to prepare them for independent life or return to their families; occupational therapy should be an integral part of the rehabilitation programme, providing for motivation, development of learning and relationship skills, acquisition of specific competences and improvement of self-image.

**The CPT recommends that the Serbian authorities invest the necessary resources to increase the number of patients who can benefit from psycho-social rehabilitative activities.**

160. So-called treatment plans used for each patient consisted of a one-page check sheet, revised weekly, with 16 items to be checked. Clearly such a checklist cannot meet the needs of a proper individualised approach. Indeed, such an approach implies the drawing up of a treatment plan for each patient (taking into account the special needs of acute, long-term and forensic patients including, with respect to the last-mentioned, the need to reduce any risk they may pose), indicating the goals of treatment, the therapeutic means used and the staff member responsible. The treatment plan should also contain the outcome of a regular review of the patient's mental health condition and a review of the patient's medication. Further, patients should be informed of their individual treatment plans and progress and involved in the drafting and implementation and review of these plans.

**The CPT recommends that the Serbian authorities ensure that a more individualised approach is taken to the patients' treatment plans, in line with the above remarks.**

c. suicide prevention

161. The delegation found that suicide prevention procedures at the Special Psychiatric Hospital were generally inadequate. As an example, a patient who had recently committed suicide immediately after the court rejected his appeal for release had not been identified as being at risk of committing suicide. The patient had made noticeable progress and had a positive report for de-hospitalisation and treatment in the community from his treating doctor at the Hospital. Consequently, the Hospital should have been alert to the fact that a rejection of his release request by the court might have placed him at risk of self-harming or attempting to commit suicide. His body was found two hours after he hanged himself.

The CPT is of the view that a State owes a duty of care towards all persons it deprives of their liberty. In respect of involuntary psychiatric patients, this duty of care calls for effective measures to prevent patients from causing themselves harm. Failure by the authorities to identify persons at risk of suicide, or to deal adequately with those identified as being at risk, would constitute therapeutic neglect.

All staff in a psychiatric facility should be on the lookout for (which implies being trained in recognising) indications of risk of suicide. A person identified as a suicide risk should, for as long as necessary, be kept under a special observation scheme with appropriate psychological support. Steps should also be taken to ensure a proper flow of information within the establishment concerning persons who have been identified as potentially at risk. Furthermore, a full debriefing of relevant staff and patients should be conducted after a suicide or a suicide attempt, and staff and patients offered appropriate counselling.

**The CPT recommends that the Serbian authorities take steps to establish a more robust suicide prevention policy in the Special Psychiatric Hospital, which can effectively identify those patients at risk of suicide and subsequently put in place a special observation scheme with appropriate psychological support for such patients.**

d. deaths

162. The delegation noted that there were a high number of deaths in the Hospital. In Ward B(a), for example, there had been 17 deaths from January until May 2015; in ward N (neurology) there had been 95 deaths in 2014; and in the dementia and internal medicine ward 75 persons had died in 2014. The management explained that the Hospital accommodated a high number of patients who had suffered strokes or were severely ill and in need of palliative care. Nevertheless, the delegation was concerned to note that only one autopsy had been performed between 2012 and 2015 and the Hospital had not received a copy of the report in that case.

In the CPT's view, just as is the case with other closed institutions, when a patient in a psychiatric hospital dies, an autopsy should follow, unless a medical authority independent of the hospital decides that an autopsy is unnecessary.<sup>101</sup>

**The CPT reiterates its recommendation that such an approach be adopted and rigorously applied in all psychiatric establishments in Serbia.**

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<sup>101</sup> See also paragraph 76 and Recommendation Rec(99)3 of the Committee of Ministers of the Council of Europe to member states on the harmonisation of medico-legal autopsy rules.

163. The delegation found that many patients were left on their own without proper care and in some cases the neglect could have fatal consequences. For example, Patient D., a patient with residual schizophrenia, died in 2013 as a consequence of a neck fracture resulting from a fall in his room a day earlier. The patient's brother has sued the hospital for negligence claiming that the hospital failed to promptly detect that he had sustained a fracture and to appropriately treat it.<sup>102</sup> The management of the Special Psychiatric Hospital shared an excerpt from the CCTV footage with the delegation, which showed the patient - who was in a fragile physical state and emaciated - getting up from his bed and shakily moving toward the direction of the camera. When he turned around to return to his bed he fell down.

Due to the angle of the CCTV it was impossible to assess if he had indeed slipped and fell or to exclude the possibility that someone may have pushed him. The latter is particularly important as the patient's brother has made reports that the patient has previously complained of physical assaults by other patients. The incident took place during dinner time when the nurses were engaged in distributing dinner to patients. From the video excerpt also it was not possible to ascertain for how long Patient D. was left unattended by a nurse or another medical person, nor how he was handled afterwards. The Ministry of Health conducted an internal investigation and concluded that "the therapeutic part was adequate but intensive supervision should have included the presence of a nurse beside him".

**The CPT recommends that whenever there is a death of a psychiatric patient there should be an independent inquiry carried out in addition to an autopsy. Further, the institution should take appropriate steps to implement any recommendations resulting from the inquiry to ensure that, as far as possible, similar incidents do not recur and whether there are lessons to be learned.**

**The CPT wishes to be informed about the measures taken pursuant to the above-mentioned internal inquiry.**

#### **4. Staff**

164. At the time of the visit, the Special Psychiatric Hospital had a full complement of 373 staff members; including 46 doctors (psychiatrists or neuro-psychiatrists and clinical doctors), 215 nurses, one pharmacist, 13 health-care associates and occupational therapists and 99 non-medical staff.

The management of the Special Psychiatric Hospital underlined that the institution needed more staff and, in particular, more psychiatrists and informed the delegation that generally there was only one psychiatrist and one clinical doctor on duty per ward (to cover a range of 50 to 100 patients). The CPT also considers that the number of doctors, nurses and occupational therapists was insufficient to provide care for some 800 patients in the Hospital.

165. The delegation found that the low levels of staff had a direct impact on staff-patient relationships and was insufficient to provide the therapeutic care needed. For example, the delegation observed an incident of a patient in need of intensive care, who completely occupied the already limited number of doctors and nurses on the ward for a long period of time; this left all the other patients to their own devices, some of them acutely ill themselves.

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<sup>102</sup> In particular, the patient had been examined only the next day and the examining doctor concluded only that there were no significant changes in his neurological state were registered.

The CPT believes that staff resources in psychiatric establishments should be adequate in terms of numbers, categories of staff (psychiatrists, general practitioners, nurses, psychologists, occupational therapists, social workers, etc.), and experience and training. Deficiencies in staff resources will often seriously undermine attempts to offer activities; further, they can lead to high-risk situations for patients, notwithstanding the good intentions and genuine efforts of the staff in service. No doubt the low nursing / auxiliary staffing levels at night were a contributing factor to the extent of inter-patient violence (see paragraph 154).

**The CPT recommends that the Serbian authorities take steps at the Special Psychiatric Hospital to increase the number of doctors and psychiatrists, as well as to ensure a greater presence of nurses and auxiliary staff on the wards at night.**

## 5. Means of restraint

166. As mentioned above, a new Regulation on Specific Conditions for Use of Physical Restraint and Seclusion of Persons with Mental Health Problems placed in Psychiatric Institutions for Medical Treatment<sup>103</sup> was adopted in 2013 and includes specific provisions stipulating that restraints may not be used as a means of coercion or discipline; that they shall be used only as an emergency intervention and only to ensure the physical safety of a person with mental health problems provided that all less restrictive interventions have been tried; shall be used exceptionally in the best interests of a person with mental health problems, and only when there is deemed to be an immediate threat of serious self-harm or injury to another person.<sup>104</sup>

Further, the Regulation stipulates that ‘measures of restraint shall be used only by specially trained professional health-care workers; and prior to the immediate use, a competent psychiatrist shall communicate the reasons for its use to a person with mental health problems in an understandable way, as well as its supposed duration. During the use of the measure of physical restraint on a person with mental health problems, his/her physical health shall be continuously monitored and visits shall be carried out at intervals of no longer than 15 minutes’.<sup>105</sup>

167. In most of the wards visited, the delegation found that resort to mechanical fixation (with fabric wrist straps tied to a bed) was not frequently applied and that when it was applied, the procedures were generally properly followed. For example, there had been one case of fixation recorded in the forensic ward in the previous eight months; it had been ordered by a doctor and the records show that during the two-hour timeframe, the patient’s blood pressure and temperature had been checked every 15 minutes and the fixation had not been extended thereafter by the doctor.

Nevertheless, the CPT considers that any fixated patient should be placed under continuous and direct supervision by a staff member and that the measure for fixation should be terminated once it is no longer considered necessary. In this respect, the chief nurse on a ward should be authorised to end a patient’s fixation and not be required to wait for the permission of a doctor (as is currently the case at the Special Psychiatric Hospital), especially at night, when few doctors are available.

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<sup>103</sup> “Official Gazette of RS”, No. 94/13.

<sup>104</sup> Article 8, Regulations on Specific Conditions for Use of Physical Restraint and Seclusion of Persons with Mental Health Problems placed in Psychiatric Institutions for Medical Treatment.

<sup>105</sup> See Articles 21 and 23.

**The CPT recommends that the Serbian authorities amend the policy that requires a doctor's authorisation to release a patient from a measure of mechanical restraint.**

168. However, the exception was O-Ward where the use of fixation had been applied for prolonged periods of up to 12 hours or more. For example, a severely autistic patient had been fixated for prolonged periods five times in five months. On each occasion, the patient had been fixated to his dormitory bed, with padded belts, untied for short breaks every two hours during the day and every four hours at night. The measure had lasted for several days and nights, in full view of other patients and without continuous and direct monitoring by the staff.

169. The CPT is of the opinion that immobilisation of patients should never take place in sight of other patients. Further, the duration of the actual means of restraint should be for the shortest possible time (usually minutes rather than hours), and should always be terminated when the reason for the use of restraint has ceased. The exceptional prolongation of restraint should warrant a further review by a doctor. Any prolongation of restraint beyond six hours should be the subject of a review by two medical doctors. The maximum period should generally not exceed six hours, and under no circumstances should patients continuously be subjected to mechanical restraint for more than 24 hours. The practice of prolonged consecutive and regular periods of fixation should stop, as applying means of restraint for more than a day cannot have any justification and, may amount, in the Committee's view, to inhuman and degrading treatment.

**The CPT recommends that the Serbian authorities ensure that the above-mentioned precepts are applied in practice. Reference is also made to the recommendations in paragraphs 108 and 122.**

**Further, there must be continuous, direct and personal supervision by staff during the restraint measure. Special vigilance should be exercised when applying mechanical restraints to physically ill patients because of the much higher risk of complications (e.g. pulmonary embolism).**

170. The delegation found that there was an apparently routine use of sedating injections across all wards, and on occasion, in combination with the resort to mechanical fixation, which was not always accompanied by adequate recording. In some cases, the delegation observed that the injected medication was intended as a form of chemical restraint rather than as a treatment for specific symptoms. Numerous allegations were received by the delegation of sedating injections – referred to as “shots” – being applied to patients outside their normal medication times; health-care staff acknowledged that they did occasionally need to sedate violent, agitated or aggressive patients with the appropriate patient-specific medication. Further, this was not systematically recorded in the restraints' register. **The CPT considers that there can be no justification for an automatic recourse to the use of chemical restraint.**

171. It is a long-held view of the Committee that the method chosen of controlling agitated and/or violent patients should be the one most proportionate (among those available) to the situation encountered; for example, automatic resort to chemical restraint is not called for in cases when a brief period of manual control combined with the use of psychological means of calming the person down would suffice. Moreover, if recourse is had to chemical restraint such as sedatives, antipsychotics, hypnotics and tranquillisers, the CPT is of the opinion that these should be subjected to the same safeguards as mechanical restraints. The side-effects that such medication may have on a particular patient need to be constantly borne in mind, particularly when medication is used in combination with mechanical restraint or seclusion.

**The CPT recommends that the Serbian authorities regulate the use of chemical restraints, taking into account the above remarks.**

**Further, every recourse to the use of sedatives, antipsychotics, hypnotics and tranquillisers should be systematically recorded.**

172. Seclusion was not an official measure at the Hospital and there was no specific register for seclusion. However, the delegation was informed by staff and patients alike that informal seclusion measures were applied on every ward, usually in a dormitory that was locked during the daytime. For example, in the forensic ward, Room 1 was used for secluding agitated patients.

The CPT believes that locking up a vulnerable mentally-disordered patient alone in a room must be very carefully applied and should only be a measure of last resort and for the shortest possible period. Seclusion should not be resorted to because there is a lack of alternative strategies, staff and regime provision. Further, patients should always be debriefed after the end of the seclusion measure, in order to explain the rationale behind it. It goes without saying that the existence of a systematic recording system would allow for a proper monitoring of the seclusion procedures and would ensure the emergence of a complete picture of resort to such measures in a psychiatric hospital.

**The CPT recommends that the Serbian authorities take steps to ensure that the measure of seclusion be properly regulated and subject to the same safeguards as other means of use of restraint; and:**

- **a systematic recording system should be established for every use of seclusion;**
- **patients held in seclusion rooms should have ready access to a toilet without undue delay at all times;**
- **ensure the existence of appropriate human contact for, and individualised staff supervision of, those patients placed in seclusion; and**
- **the place where a patient is secluded should be specially designed for that specific purpose. It should be safe and promote a calming environment for the patient.**

## 6. Safeguards

173. The legal framework for involuntary psychiatric hospitalisation and treatment has undergone significant reform since the 2011 visit with the adoption of new laws on the Protection of Mental Health Disorders and on Patients' Rights.<sup>106</sup> The CPT welcomes the fact that the new legislation has strengthened the rights afforded to patients, especially as regards civil procedures.

That said, there is still no limit on the duration of involuntary placement. The delegation found that the situation had not changed since the 2007 and 2011 CPT visits<sup>107</sup> to Serbia.

The 24-hour time limit for submitting requests for involuntary hospitalisation to the courts was generally respected by the Special Psychiatric Hospital's internal consilium. Judges came regularly to conduct hearings in the presence of patients, guardians (if any) and a representative of the Centre for Social Welfare. The courts were obliged to make their involuntary hospitalisation decision within three working days of the hearing.

The court based its decisions on the expert opinion of a psychiatrist appointed by the court as an expert in the specific case. The expert would always be one of the Hospital's doctors, but not the treating doctor of the patient concerned. The delegation noted that no independent external medical expert was involved in the involuntary psychiatric hospitalisation procedure.<sup>108</sup> The management informed the delegation that in practice the court always agreed with the psychiatrist's opinion for civil involuntary placement and that, to date, there had been no successful appeals on substance to the court's placement decision. Moreover, the delegation found that involuntary psychiatric patients had no effective legal assistance, were not provided with copies of the court decisions and were unaware of the legal remedies available, which rendered their right of appeal ineffective in practice.

Further, indefinite extensions were issued almost automatically, despite the hospital's medical experts recommending otherwise. The delegation found that the courts' apparent systematic extension of mandatory hospitalisation and treatment measures was an additional indication of the lack of community services needed for properly de-institutionalising this group of persons. It seemed that the apparent systematic extensions were due to the lack of effective alternatives in the community.

**174. The CPT recommends that the Serbian authorities undertake measures to review the systematic extension of mandatory hospitalisation and treatment measures.**

**The CPT also reiterates its recommendation that continuation of the initial involuntary placement requires the opinion of an independent psychiatrist – external to the hospital.**

**Further, every patient who is the subject of an involuntary placement measure should be systematically informed of the recommendations of the psychiatric/medical consiliums and of the court decisions (and be given copies of these documents), as well as of the legal remedies available to challenge them.**

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<sup>106</sup> Law On Protection Of Persons With Mental Health Problems, in the Official Gazette of the Republic of Serbia, No. 45/2013; the Law on Patients' Rights, in force in 2013.

<sup>107</sup> See paragraph 132, CPT/Inf (2012) 17.

<sup>108</sup> Although the system put in place – whereby doctors deciding on admissions were not involved in the treatment of patients on the wards – went some way towards meeting this concern.

175. The new legislation regulates the procedure for transforming a patient's legal status from involuntary to voluntary and vice versa; however, in practice the delegation met many patients who were classified as voluntary but who were *de facto* involuntary. Further, as was the case in 2011, the consent forms that the patients were asked to sign on admission were drafted in a manner requiring their blanket agreement to any diagnostic and treatment measures, and failed to address specifically the issue of consent to hospitalisation. In the CPT's view, **consent to hospitalisation and consent to treatment are two distinct issues and patients should be requested to express their position on both of these issues separately.**

Further, although consent was sought on admission by use of consent forms, the text of the forms was such that many patients were unable to understand the meaning and consequences of their signing such forms. It was also the case that a number of patients interviewed by the delegation were unaware of their diagnosis and the treatment they were receiving. Generally, patients met by the delegation were unaware of their right to withdraw their consent at any time.

**The CPT reiterates its recommendation that steps be taken to ensure that psychiatric patients (and if they are legally incompetent, also their guardians) are provided with full, clear and accurate information before consenting to treatment (including on the possibility to withdraw their consent), both at the time of hospitalisation and prior to any treatment in the course of hospitalisation. Relevant information should also be provided to patients (and their guardians) during and following the treatment.**

## **7. Other issues of relevance to the CPT's mandate**

176. As concerns de-institutionalisation, during initial meetings with the authorities, the delegation was informed of the developments made regarding the legal framework around mental health and de-institutionalisation in particular. There has been a focus at the national level on how to concretely implement Serbia's de-institutionalisation strategy, especially concerning long-term patients in the large Serbian psychiatric institutions and to promote better community care. To this end, various laws and policies have been adopted.<sup>109</sup> However, significant challenges remain in creating sustainable and effective alternatives in order for patients to live semi-independently in the community.

The Special Psychiatric Hospital continued to serve in practice as an asylum for many short-term and long-term chronic and acute patients who stayed for extensive periods of time in the hospital despite no longer requiring hospitalisation, due to the fact that they had nowhere else to go.

Further, many of these patients had been deprived of their legal capacity and the guardian was often the local Centre for Social Welfare (CSW), this meant that the same body that was responsible for providing them with social support was also deciding on their deprivation of liberty. Consequently, a dysfunctional guardianship system contributed to the institutionalisation of many of the residents (in this regard, see the CPT's recommendation in paragraph 205).

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<sup>109</sup> Including the Law On Protection Of Persons With Mental Health Problems, in the Official Gazette of the Republic of Serbia, No. 45/2013; the Law on Patients' Rights, in force in 2013; the Bylaw On Specific Conditions for use of physical restraint and seclusion on Persons With Mental Health Problems Placed In Psychiatric Institutions For Medical Treatment, in the "Official Gazette of RS, No. 94/13; as well as in the General Strategy for the Development of Mental Healthcare and of De-institutionalisation (2007-2015) and accompanying 10-year Action Plan.

**The CPT calls upon the Serbian authorities to speed up the concrete implementation of their strategy for de-institutionalisation, which should include establishing sustainable effective services in the community.**

**Further, the CPT would like to be provided details of the measures taken in this respect, including information on the number of places that have been created in the community for independent or semi-independent living and a projection of the number of places available for January 2017.**

## **E. Veternik Residential Facility**

### **1. Preliminary remarks**

177. The CPT's delegation visited, for the first time, the Veternik Social Welfare Residential Facility (the Residential Facility) which falls under the responsibility of the Ministry of Labour, Employment, Social and Veteran Affairs and the Provincial Secretariat of Vojvodina for Health, Social Policy and Demography. The Residential Facility, located on the outskirts of Veternik town near the city of Novi Sad, is a large institution set within extensive gardens. It comprises five residential pavilions ("A-Old", A1 and A2, B and C),<sup>110</sup> and has an administrative/technical building, education facilities and outdoor sports and recreation areas, as well as laundry and kitchen facilities.

178. Veternik Residential Facility was primarily established as an institution for children from 10 to 18 years of age with light to severe developmental and physical disabilities. That said, the Residential Facility now accommodates more adults than children, as the children initially placed there have grown up in the Facility due to the absence of effective alternatives in the community. At the time of the visit, the Residential Facility accommodated 542 residents ranging from 11 to 68 years old,<sup>111</sup> of whom only 44 were juveniles. The majority of the adults have been at the Residential Facility for several decades.

179. According to the recently adopted Decree on the Network of Institutions for Social Protection and the Law on Social Protection, social welfare homes accommodating juveniles should not exceed a maximum number of 50 residents; and for adults the maximum number of residents is 100. Instead, and contrary to the law, the Residential Facility's official capacity was 500 juvenile and adult residents.

180. Moreover, despite being overcrowded, the Residential Facility was in practice obliged to continuously accept more residents sent by the relevant Centre for Social Welfare. This stretched the already limited staff resources and lack of space to such an extent that the living and working environment was unsafe for residents and staff alike, and was becoming increasingly precarious (see paragraph 201).

**The CPT recommends that the Serbian authorities, as a matter of priority, take urgent steps to reduce current occupancy levels at Veternik Residential Facility; to this end, measures should be taken to transfer residents out of the Facility and new admissions should be suspended.**

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<sup>110</sup> Pavilion A1 is a female ward for the most severe cases of developmental and physical disabilities and also holds older patients; Pavilion A2 is a male ward for residents with the most severe learning disabilities; Pavilion Old "A" holds younger residents, both male and female (youngest 11 years of age); Pavilion B holds a mixed number of sub-wards including the bed-ridden residents and residents with combination of learning and physical disabilities; and Pavilion C accommodates eight small housing units for persons who are considered to be able to live semi-independently.

<sup>111</sup> One resident was admitted as a toddler in 1954, when the institution was established and is still in the Facility.

181. The delegation was informed by the authorities at the outset of the visit that the de-institutionalisation process still faced many obstacles; in particular, that there were too few special homes to care for children with disabilities.

A further obstacle, according to the authorities, was that many persons with disabilities were deprived of their legal capacity. Therefore, the current legislation needed to be amended in order to prevent the automatic institutionalisation of persons deprived of their legal capacity as well as to regulate partial deprivation of legal capacity. This would permit a focus on the individual's remaining capacity and enable the community services to support them more effectively. However, these ideas had yet to be turned into concrete plans and no financial resources had been earmarked.

Indeed, the situation at the Veternik Residential Facility clearly demonstrated that de-institutionalisation was a concept that had yet to see the light of day. Meanwhile, the establishment was forced to admit new residents, and many of the current residents were acknowledged by the Facility to be capable of living in the community provided there were sufficient support services available.

By ratifying, in 2010, the United Nations Convention on the Rights of Persons with Disabilities (CRPD), the Serbian authorities committed themselves to taking steps to meet the objectives of de-institutionalisation and of support for persons with disabilities to live independently in the community (as set out in Article 19 of the CRPD).

**The CPT recommends that the Serbian authorities step up their efforts to reorganise the system for provision of care to persons with mental disabilities, in the light of the above remarks.**

## **2. Ill-treatment**

182. The delegation found that the staff, who were working in an extremely challenging environment, appeared generally to have a caring, professional and dedicated approach towards the residents.

Further, the management of the Facility appeared determined to take action whenever cases of mistreatment were brought to their attention. For example, in 2014, a staff member had been investigated by an internal and external inquiry for beating a resident and the staff member had been punished accordingly and dismissed.

That said, a few allegations of verbal abuse were received by the delegation as were some recent allegations of physical ill treatment of residents by staff members, consisting primarily of slaps by way of informal punishment, especially in Pavilion A-Old.

**The CPT recommends that the management of Veternik Residential Facility deliver a clear reminder to staff that ill-treatment of residents, in any form including verbal abuse, is unacceptable and illegal and that the perpetrators of ill-treatment will be punished accordingly.**

183. On the other hand, the delegation found that inter-resident violence was a daily occurrence in the Residential Facility, and that there were also frequent attacks on staff members. The violence was directly related to the extremely low staffing levels with too few staff available to care for and manage the many residents with complex needs.

Inter-resident violence was particularly prevalent in the secure pavilions of A1 (female) and A2 (male), which held residents with severe developmental and physical disabilities. Both pavilions shared the same exercise yard and were separated from the rest of the Residential Facility by large metal gates and high fencing. The approximately 150 residents used the same outdoor exercise yard at the same time and the few members of staff (one or two care-takers and two nurses) often could not prevent physical incidents between male residents or attacks by male residents on female residents. Staff informed the delegation that, on occasion, the attacks on female residents were of a sexual nature.<sup>112</sup>

**The CPT recommends that the Serbian authorities put in place a strategy to tackle inter-resident violence. In particular, this will require reinforcing the staffing levels in the Residential Facility and notably in Pavilions A1 and A2.**

**Further, the management of the Residential Facility should take steps to reduce inter-resident violence, through, for example, allocating additional staff during outdoor exercise or providing male or female residents with separate exercise times.**

### **3. Means of restraint and seclusion**

184. The use of means of restraint is regulated in the Rulebook on Conditions and Standards in Social Welfare Provision (Article 18) and the Bylaw on Prohibited Behaviour of Employees in the Field of Social Protection.<sup>113</sup> These establish that ‘employees are not allowed to inflict emotional abuse, including, in particular, through restricting and preventing movement by binding or by other means, except where this is done according to the statutory procedure for the shortest possible duration and under the supervision of an authorised person, as well as through locking-up and seclusion of users in separate rooms’.

Means of restraint used at the Residential Facility included manual holding, chemical restraint, cotton diapers (used as straight-jackets), belts, and padded and unpadded isolation rooms, and were often used in combination.

185. The use of mechanical restraints was recorded in ‘short-term’ and ‘long-term’ restraints’ logs, which were kept in the pavilions. In most cases, the delegation observed that the use of restraints was authorised on a case-by-case basis by the visiting doctor or psychiatrist. Further, checks were made on restrained residents on average every hour and duly recorded.

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<sup>112</sup> Such as the inappropriate touching of breasts or the genital area.

<sup>113</sup> Official Gazette of the Republic of Serbia (No. 8/2012); Articles 6 and 7.

186. However, as concerns eleven residents, including a few juveniles, there was a blanket authorisation by an off-site neuro-psychiatrist stating that these residents could be restrained without the need for an individual doctor's approval and there were no time limits specified. In many cases, there was no end date or time recorded in the restraints' logbook and, in some cases, it was clear that residents, including juveniles, who were placed in a cotton-cloth restraint used as a makeshift straight-jacket, could wander around in full view of other residents. For example, according to the records, Resident J.P. was fixated in April 2015 with a cloth straight jacket to prevent him from putting his hands in his mouth and chewing his scarred hands. His upper body was restrained for a 24-hour-period upon the order of the doctor and no end date or time was recorded in the relevant register. The resident was located in Pavilion B where, according to staff, he was left to wander about in full view of other residents.

187. The staff informed the delegation that physical restraint in the form of manual holding was most commonly used, often with the help of other residents, and that the resident was subsequently sedated with an injection and placed in a padded or other isolation room. The reliance of staff on some residents for help with controlling other residents was observed first-hand by the delegation. The CPT believes that staff should never be assisted by other residents when applying means of restraint to a resident.

188. The delegation found that that in some cases residents were mechanically restrained and sedated with an injection (see paragraph 170), for prolonged periods. For example, a 21-year-old resident was fixated to a bed in an increased supervision room located in A-Old continuously for eight days and nights. According to the records this resident had been fixated 19 times for lengthy periods over the course of 12 months. In another case, an 18 year-old resident was fixated to a bed in the Increased Supervision room of Pavilion A-Old for four days and nights continuously. In a third case, a resident was fixated to his bed, more or less continuously day and night, for a three-week period.

Moreover, the reasons given for the continued use of mechanical restraints included 'being unstable and prone to falling', 'epilepsy attack', 'disobedience', 'aggression' or 'trying to remove hand bandages with teeth'. Such reasons hardly justify the resort to means of restraint at all, let alone for days and even in some cases, weeks on end.

189. The Committee is of the view that resort to instruments of mechanical restraint (straps, makeshift straight-jackets, etc.) should only very rarely be justified and must always be either expressly ordered by a doctor or immediately brought to the attention of a doctor with a view to seeking his/her approval. If, exceptionally, recourse is had to instruments of mechanical restraint, they should be removed at the earliest opportunity; they should never be applied, or their application prolonged, as a punishment. The duration of the actual means of restraint should be for the shortest possible time (usually minutes to a few hours), and should always be terminated when the reason for the use of restraint has ceased.

In addition, every instance of restraint of a resident (manual control, mechanical or chemical restraint) should be recorded in a specific register established for this purpose (as well as in the resident's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by residents or staff. This will greatly facilitate both the management of such incidents and an oversight as to the frequency of their occurrence.

The CPT considers that applying means of restraint for days and even weeks on end, as was the case in the Residential Facility, cannot have any justification and may amount to inhuman and degrading treatment.

190. It was of particular concern to the delegation that the majority of residents received various types of psychoactive medication, most often without having been diagnosed with a mental disorder. In many cases, anti-psychosis medication in combination with various tranquillising medicines was administered, including to juvenile residents. For instance, approximately half of the residents on unit A1 were on medication normally used to treat psychotic disorders such as schizophrenia, even though only one resident in the whole establishment had been diagnosed with schizophrenia, and none with other types of psychotic illness. Further, almost all the residents were taking at least one, if not several, types of sedative.

The delegation was of the opinion that the widespread use of sedatives and anti-psychotic medication was an indication of the widespread use of chemical restraint as a tool to control disturbed behaviour among residents, rather than to treat symptoms of a psychiatric illness.

The widespread and long-term use of chemical restraints has no medical justification; its deliberate use to subdue residents without therapeutic justification may amount to inhuman and degrading treatment.

Further, the use of chemical restraint was unregulated and remained generally unrecorded at the Residential Facility. If recourse is had to chemical restraint such as sedatives, antipsychotics, hypnotics and tranquillisers, they should be subjected to the same safeguards as mechanical restraints. The side-effects that such medication may have on a particular patient need to be constantly borne in mind, particularly when medication is used in combination with mechanical restraint or seclusion.

**The CPT recommends that an urgent and thorough review should be conducted, by an external body, into the types of medication administered to residents at Veternik Residential Facility; in this respect, psychoactive medication should only be given to residents who have been diagnosed with a mental disorder. The CPT would like to receive the outcome of the review within 3 months.**

191. In light of the above remarks, the CPT also recommends that the Serbian authorities take steps to ensure that:

- clear regulations are drawn up governing the use of chemical restraint (such as sedatives, antipsychotics, hypnotics and tranquillisers); if recourse is had to chemical restraint they should be subjected to the same safeguards as mechanical restraint;
- every use of means of restraint, including chemical restraint, is always expressly ordered by a doctor or immediately brought to the attention of a doctor with a view to seeking his/her approval and that the practice of blanket authorisation for resort to means of restraint on certain residents be immediately ceased; and the prescription of "PRN medication"<sup>114</sup> can never justify such medication being used as a chemical restraint;
- means of restraint are not applied to a resident in sight of other residents, unless he/she explicitly requests otherwise or when the resident is known to have a preference for company, and it is safe;
- staff are never assisted by other residents when applying any means of restraint to a resident, including manual holding;
- a reminder to staff is issued that automatic resort to chemical restraint is not called for in cases when a brief period of manual control combined with the use of psychological means of calming the person down would suffice;
- if, exceptionally, recourse is had to instruments of mechanical restraint, they should be removed at the earliest opportunity;
- instruments of mechanical restraint should never be applied, or their application prolonged, as a punishment;
- residents subject to mechanical restraint are not exposed to other residents and that fixated residents are under continuous and direct monitoring by staff;
- the exceptional prolongation of mechanical restraint requires a further review by a doctor. Any prolongation of restraint beyond six hours should be the subject of a review by two medical doctors;
- entries into restraints' registers include the times at which the measure began and ended, the circumstances of the case, the legitimate reasons for resorting to the measure, the name of the doctor who ordered or approved it, on an individual case-by-case basis; and
- the resident concerned is given the opportunity to discuss his/her experience, during and, in any event, as soon as possible after the end of a period of restraint.

Further, **the Serbian authorities should ensure that formal written guidelines concerning the use of means of restraints in social care settings are issued, which elaborate the safeguards afforded to residents, taking account of the above criteria.**

192. Although all the pavilions possessed seclusion rooms, mainly residents who were violent, aggressive, at risk of self-harm or harm to others were placed in one of the three isolation rooms in Pavilion A-Old.

Residents were often secluded for several days and, in some cases, several weeks at a time. For example, Resident S. was placed in a seclusion room from 17 December 2014 until 6 January 2015; and Resident F. was held continually in seclusion from 31 March to 5 April 2015. Staff acknowledged that isolation was used regularly and for long periods but stated that they had no alternative means or sufficient staff resources (see paragraph 201) to deal with the most violent residents in their care.

The CPT is of the view that seclusion used for days and even weeks on end, especially for those suffering from severe mental and physical disabilities, is totally inappropriate.

193. Further, the delegation found that in the Increased Supervision room of Pavilion A1, an incontinent female resident had been locked in every night alone for the preceding two years. The dilapidated room, equipped with a bed and a filthy mattress, had no artificial light, no ventilation or heating and no call bell; the walls were crumbling and there was a permeating stench of raw sewage. The resident was locked in the room for 12 hours each night without access to a toilet or water and without diapers, which meant that she defecated in her bed every night. Staff informed the delegation that on many occasions they ran out of diapers and the Facility could not afford to buy more. Given that just under half of all the residents were incontinent, this situation - in the CPT's view – may amount to inhuman and degrading treatment.

The delegation invoked Article 8, paragraph 5, of the Convention, and requested that the above-mentioned female resident no longer be locked in at night in such a dilapidated room and be provided access to a toilet and diapers, as required. It is the CPT's view that, preferably, this resident should not be locked up at night alone and should be placed with other residents. To date, no response has been received from the Serbian authorities on this issue.

**The CPT wishes to receive, within a period of one month, confirmation that action has been taken by the Serbian authorities to implement the immediate observation made by its delegation at the end of the visit to Serbia.**

194. The CPT believes that the measure of seclusion is not necessarily a proper alternative to the use of mechanical, chemical or other means of restraint. Placing a resident in seclusion may produce a calming effect in the short term, but is also known to cause disorientation and anxiety, at least for certain residents. In other words, placement in a seclusion room without appropriate accompanying safeguards may have an adverse result.

Further, the CPT is of the view that, as regards the use of seclusion, social welfare homes should have instructions that spell out particularly: the types of cases in which seclusion may be used; the objectives sought; its duration and the need for regular reviews; the existence of appropriate human contact; and the need for staff to be especially attentive. Further, residents held in seclusion rooms should have ready access to a toilet without undue delay at all times (including at night).

**195. The CPT recommends that the Serbian authorities adopt written instructions regulating the use of seclusion in social welfare settings; and**

- **ensure that any resort to any use of seclusion for any period of time be subject to the same safeguards surrounding the use of other means of restraint, notably, that each measure is properly recorded, subject to regular reviews and imposed for the shortest time necessary;**
- **ensure the existence of appropriate human contact for, and individualised supervision by staff of, those residents placed in single rooms for increased supervision (see also paragraph 201); and**
- **that residents held in increased supervision and seclusion rooms should automatically have ready access to a toilet without undue delay at all times.**

#### **4. Living conditions**

196. Residents were accommodated in rooms for three to eight persons and the quality of the living conditions varied across the institution. In Pavilion B, where the younger residents and those with light to moderate mental disabilities were generally placed, the rooms were usually spacious, well-lit, adequately ventilated and were suitably decorated. Some were equipped with personal lockers and wardrobes.

Pavilion B also housed the 104 completely bed-ridden patients accommodated in cots, who were entirely dependent on the six nurses for their daily needs (food, changing of diapers and clothes, turning) and occasionally putting them into push-chairs or wheel-chairs. The conditions in these units were generally good, with changing seasonal decorations, and rooms that were well-ventilated, had good lighting and were clean.

That said, half of the bed-ridden residents were accommodated on the second floor, requiring the (female) nurses to carry an immobile bed-ridden resident in his or her wheelchair down two flights of steep steps to enable them to get out into the fresh air. Such a constraint impeded staff from getting the resident outside every day. In fact, the bed-ridden residents were only carried to the common room on average once a week for an hour or less. The staff in this pavilion were extremely dedicated and professional but were exhausted and were too over-stretched to be able to adequately deal with the 104 bed-ridden residents who, on average, needed individual attention for 40 minutes to feed and change them at each meal.

Clearly, more staffing is required and an alternative location on the ground floor should be found. To this end, the director informed the delegation that due to on-going refurbishment works, the bed-ridden patients were due to be moved to ground floor accommodation.

**The CPT would like to receive confirmation, within 3 months, that the bed-ridden residents in Veternik Residential Facility have been moved to a ground floor location. As concerns staffing for the bed-ridden residents' pavilion, see paragraph 201 below.**

**The CPT recommends that these residents have effective daily access to the outside environment.**

197. Material conditions in the three secure pavilions of A-Old, A1 and A2 were poor and many rooms were overcrowded; one measured 23m<sup>2</sup> for seven residents (and was equipped with only six beds). Some residents were forced to sleep on thin make-shift foam mattresses on the floor or were required to share beds. For example, in Pavilion A1, there were only 70 beds for the 75 female residents.

The delegation invoked Article 8, paragraph 5 of the Convention, and requested that the Serbian authorities ensure that every resident has his or her own bed. **The CPT wishes to receive within a period of one month confirmation that action has been taken by the Serbian authorities to implement the immediate observation made by its delegation at the end of its visit to Serbia.**

**The CPT recommends that the above-mentioned deficiencies be corrected as a matter of priority; every resident should be provided with their own bed and mattress.**

## **5. Activities**

198. Some 60 of the 542 residents attended the primary and secondary school nearby, and approximately a third of the residents took part in daily education classes and activities held in each pavilion, which included repair workshops (bicycles, machines, and mechanics), tailoring, knitting and art classes. Excursions were also occasionally organised by the Residential Facility, but due to the number of residents each resident only participated in such outings on average once a year. In their free time, those on Pavilion B, under a relatively open regime, could go to the local shop, access activities and wander freely in the premises and gardens.

However, most of the premises and external activities were inaccessible to the majority of the residents, who remained locked in their wards and internal exercise yards for 24 hours a day. This was notably the case for the male and female residents placed in the secure units in Pavilions A-Old, A1 and A2, who have only ever left their pavilions once or twice a year to go on an excursion. Many of the residents lay around on day mattresses in the two common rooms per pavilion with little to occupy their time and less than a third of residents in Pavilions A1 and A2 participated in internal pavilion activities or education classes.

**The CPT recommends that steps be taken to develop the programme of activities at Veternik Residential Facility, with a view to ensuring that all residents are offered daily activities.**

199. It is the CPT's view that occupational therapy should play an important part in the long-term treatment programme with provision being made for motivational work, evaluation of learning and relational skills, the acquisition of specific knowledge and improvement of self-esteem. Further, proper treatment for physical disabilities such as physiotherapy is an important issue, as lack of proper care can lead to a deterioration in the residents' health and disability and thus ultimately shorten life-expectancy.

Regrettably, the Residential Facility had no occupational therapists and only few physiotherapists, which was grossly insufficient in light of the severe disabilities of many residents. Neglect was inevitable due to the low staffing levels (see paragraph 201), despite the efforts of the hard-working staff. This situation, in the Committee's view, may amount to inhuman and degrading treatment.

**The CPT recommends that the Serbian authorities take steps to ensure that all residents at Veternik Residential Facility who suffer from severe physical disabilities receive proper treatment such as physiotherapy. Further, occupational therapy should be introduced at the Residential Facility.**

## **6. Staff**

200. At the time of the visit the Institution employed five full-time doctors, 38 nurses, one laboratory technician, one dentist nurse, 88 caretakers and 20 cleaners. A part-time external psychiatrist visited three times a month, and was on call if required.

201. Many staff commented to the delegation that the low health-care and caretaker staff numbers was a root cause of many of the Residential Facility's problems given the complex needs and support that residents required; and the management concurred with these statements. It was also plainly obvious to the visiting delegation that there was a shortage of specialised staff, particularly in the closed A1, A2 and A-Old pavilions where there was only one nurse and two caretakers on duty in each Pavilion accommodating some 80 residents. The number of staff (six nurses per shift) caring for the 104 completely bed-ridden residents was far too low. Further, one part-time off-site psychiatrist was also hardly sufficient for 542 residents. The number of physiotherapists (four in total) was insufficient to adequately meet the complex needs of the residents, especially as concerns the bed-ridden residents.

The CPT considers that such low staffing levels are a matter of serious concern; residents are not being cared for properly as staff are over-stretched. The consequences were visible to the delegation: frequent and prolonged resort to mechanical and chemical restraints to deal with challenging residents; reliance on the assistance of certain residents to maintain control within the wards; care being reduced to the bare minimum of actions of changing diapers, feeding and turning notably for the bed-ridden residents; and the lack of engagement and activities for residents. For certain residents, the lack of appropriate support could have serious consequences on their health.

In sum, the low staffing levels were responsible for instances of negligent care and were creating an unsafe living and working environment for residents and staff.

202. **The CPT recommends that the Serbian authorities take steps, as a matter of priority, to increase the staffing levels in the Residential Facility in order to create a proper caring environment where staff have sufficient time to work with residents. In particular, the Committee recommends the employment of one full-time psychiatrist at the Residential Facility.**

**Further, staff should receive appropriate training to manage challenging residents humanely and safely. It is also important that staff themselves be provided with the necessary support and counselling to avoid burn-out and to maintain high standards of care.**

## **7. Safeguards in the context of involuntary placement and guardianship**

203. The placement procedures have in practice not changed since the CPT's 2007 visit. Further, at the time of the delegation's visit, the vast majority of the residents had been declared legally incompetent.

Indeed, 512 out of the 542 residents had been deprived of their legal capacity, and thus had no say in their placement at Veternik Residential Facility; as their guardians had consented to their placement these residents were considered as voluntary.

204. Overall, the delegation found that various deficiencies remained in the placement procedure. In particular: the placement was still unlimited in its duration; and lacked an effective right to challenge the lawfulness of the placement and a regular review mechanism, despite the introduction of the new Law on Social Protection.<sup>115</sup>

Further, placement was decided by the Centre for Social Welfare (CSW) following a request by the resident's relatives or legal guardian and after an assessment performed by the CSW's expert team, which did not involve the courts.

It is the CPT's view that placing legally incompetent persons in a specialised institution based on the request of the guardian deprives such persons of essential procedural safeguards. Although such a placement may go against the expressed will of the resident and the person cannot leave the institution without permission from the guardian, it is still considered "voluntary" under Serbian law.

From the facts found during the visit, it is clear that in most cases the placement in the Veternik Residential Facility was a *de facto* deprivation of liberty, with many residents opposed to their placement and unable to leave. Such persons should have the right to bring proceedings by which the lawfulness of their placement could be decided speedily by a court.

**The CPT reiterates its recommendation that steps be taken without delay to ensure that persons placed in social welfare institutions in Serbia have an effective right to bring proceedings to have the lawfulness of their placement decided by a court<sup>116</sup> and that the placement decision be subject to regular court reviews.**

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<sup>115</sup> The Law on Social Protection entered into effect in 2011.

<sup>116</sup> Also, pursuant to the principles enshrined in the CRPD (in particular Article 14), which was ratified by Serbia in 2010 and the Council of Europe Committee of Ministers' Recommendation No. R. 99(4) on Principles Concerning the Legal Protection of Incapable Adults, principles 2, 13 and 14.

**Further, the Committee recommends that the existing placement procedure be amended in such a way as to introduce an automatic notification to the competent court – with a view to seeking the court’s approval – of all decisions to place a person in a specialised institution against the person’s will.**

205. The procedure and legislation regulating the deprivation of legal capacity and the appointment of a guardian have hardly changed since the CPT criticised the existing system in its report on the 2007 visit to Serbia.<sup>117</sup> In brief, once a person has had his or her legal capacity removed by a court, the decision is not subject to regular court review.

Many of residents without legal capacity informed the CPT’s delegation that they did not receive any visits from their guardians; in many cases, appointed guardians are members of staff of the Centre for Social Welfare who have many official protégées and are not in contact with the residents. Some of these residents have been in Residential Facility for over twenty years and have never seen their guardian; other residents did not know who their guardians were.

**The CPT reiterates its recommendation that the relevant legislation be amended so as to ensure that all decisions on deprivation of legal capacity are subjected to a regular court review.**

**Further, the Committee recommends that the Serbian authorities take the necessary steps to ensure that all persons who are the subject of proceedings with a view to being deprived of their legal capacity are systematically heard in person by the court, given a copy of the court decision and informed, verbally and in writing, of the possibility and modalities for appealing against a decision to deprive them of their legal capacity.**

**The legal provisions currently in force should also be amended so as to put in place the right for the persons concerned to initiate the procedure for the review of the court decision on deprivation of their legal incapacity. Steps should be taken to ensure that persons concerned have effective access to legal assistance in the context of the above-mentioned procedures.**

**Lastly, the Committee recommends that in principle, social welfare officers should not act as guardians to persons placed in institutions, where those officers have been involved, or had influence, in the placement decision. If social welfare officers have to act as a guardian, the authorities should take the necessary steps to ensure that these guardians meet their responsibility and effectively act in the interests of the persons put under their care.**

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<sup>117</sup> See CPT/Inf (2009) 1, paragraphs 176 to 178.

**APPENDIX**  
**LIST OF THE NATIONAL AUTHORITIES AND ORGANISATIONS**  
**MET BY THE DELEGATION**

**A. National authorities**

**Ministry of Health**

Vesna KNJEGINJIĆ	Assistant Minister
Danijela UROŠEVIĆ	Head of Department for European Integration and International Co-operation
Nebojša JOKIĆ	Advisor for Public Health and Health Protection

**Ministry of Interior**

Aleksandar NIKOLIĆ	State Secretary
Nebojša PANTELIĆ	Head of the Sector of the Internal Control of the Police (SUKP)
Dragan OBRADOVIĆ	Member of the Cabinet of the Minister of Interior
Zoran PETKOVIĆ	Chairman of the Working Group on Persons Deprived of their Liberty

**Ministry of Justice**

Milan STEVOVIĆ	Director of the Administration of the Execution of Criminal Sanctions (UIKS)
Dušanka GARIĆ	Head of Department for Treatment and Alternative Sanctions (UIKS)
Aleksandra STEPANOVIĆ	Head of Department for Protection and Enforcement of Rights of Detained Persons (UIKS)
Milan TANASKOVIĆ	Head of Department for Financial Affairs (UIKS)

**Ministry of Labour, Employment, Veterans and Social Affairs**

Vladimir PEŠIĆ	Assistant Minister
Dragana SAVIĆ	Head of Department for International Co-operation, European Integration and Projects
Dragan VULEVIĆ	Head of Department for Administrative Affairs in the field of Family Protection

**Republic Public Prosecutor**

Gordana JANIĆIJEVIĆ	Deputy Republic Public Prosecutor
Tamara MIROVIĆ	Deputy Republic Public Prosecutor

**Office for Human and Minority Rights**

Gordana MOHOROVIĆ  
Vladimir SOĆ

Head of International Agreement and Treaty Division  
Advisor

**Other authorities**

Gordana STEVANOVIĆ  
Jelena UNIJAT

Deputy Ombudsman  
Legal Advisor of the National Preventive Mechanism (NPM)

**B. International and Non-governmental organizations**

OSCE Mission to Serbia  
Belgrade Center for Human Rights  
Disability Rights Promotion International  
MDRI, Serbia