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## **Report**

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

**from 29 September to 9 October 2015**

The Government of Bosnia and Herzegovina has requested the publication of this report.

Strasbourg, 5 July 2016

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

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

Strasbourg, 24 March 2016

Dear Ms Smajević,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Bosnia and Herzegovina drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Bosnia and Herzegovina (BiH) from 29 September to 9 October 2015. The report was adopted by the CPT at its 89<sup>th</sup> meeting, held from 7 to 11 March 2016.

The various recommendations, comments and requests for information formulated by the CPT are highlighted in bold type in the body of the report and the Committee requests the BiH authorities to provide within **six 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 authorities of Bosnia and Herzegovina to provide within **one month** a response to paragraph 73 giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the authorities of Bosnia and Herzegovina to provide, in their response, reactions to the comments and requests for information formulated in this report.

The CPT would ask, in the event of the response being forwarded in Bosnian, that it be accompanied by an English or French translation.

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 CPT's fourth periodic visit to the country provided an opportunity to assess progress made since the Committee's previous visits in 2011 and 2012 respectively. To this end, the CPT's delegation reviewed the treatment and conditions of detention of persons deprived of their liberty by the police and in prison establishments. Further, the situation of persons accommodated at two psychiatric establishments in Sarajevo Canton was examined.

The CPT's delegation generally received good co-operation from the authorities at the State and Entity level throughout the visit. Nevertheless, the Committee expresses concern regarding the fact that the bulk of its previous recommendations regarding a purposeful regime for remand prisoners, prison healthcare and safeguards for the prevention of police ill-treatment have not been implemented.

### Law enforcement agencies

The delegation received a considerable number of allegations of widespread physical ill-treatment of detained persons by law enforcement officials. The allegations mostly concerned slaps, punches and truncheon blows but also included prolonged handcuffing in stress positions, the use of non-standard instruments, mock executions and the use of a hand-held electro-shock device. Recommendations are made to promote a culture change within the ranks of law enforcement officials, to enhance professional training in modern scientific methods of criminal investigation and to carry out effective investigations into allegations of ill-treatment. To this end, the CPT is again critical of the lack of action taken by prosecutors and judges to investigate allegations of ill-treatment and, by way of example, notes that the arrangements in place for investigating such allegations in the Canton of Sarajevo are inadequate. The CPT recommends that fully independent police complaints bodies be established and that, until this occurs, prosecutors should seek support from police internal control units when investigating allegations of police ill-treatment.

The delegation also found that safeguards against police ill-treatment, notably the right of access to a lawyer, still do not apply in practice as from the outset of deprivation of liberty. The BiH authorities are again urged to adopt specific legal provisions on access to a doctor during police custody.

The material conditions in most of the police holding facilities visited by the delegation were unfit for holding persons overnight (lack of access to natural light, poor ventilation, deplorable hygienic conditions and an absence of mattresses and bedding). The CPT calls upon the BiH authorities to improve the conditions in all police holding facilities in line with the Committee's standards.

### Prison establishments

The majority of prisoners met by the CPT's delegation stated they were treated correctly by staff; nevertheless, several allegations of ill-treatment of inmates by staff were received at Banja Luka, Bijeljina, Dobož, Mostar, Tuzla and Zenica Prisons, consisting notably of slaps, punches, kicks and blows with truncheons. Not only should a strong message be delivered to penitentiary staff that ill-treatment of prisoners is not acceptable but more training modules on manual control techniques and inter-personal skills should be offered to custodial staff and independent investigations conducted promptly. As regards inter-prisoner violence, increased staffing complements and reduced occupancy levels meant that its incidence had diminished at Foča Prison while at Zenica Prison it remains a serious problem and requires devising a coherent strategy which should include recruiting more prison officers and moving away from large capacity dormitories.

Inmates accommodated in high-security and enhanced supervision departments at Banja Luka, Foča and Zenica Prisons should be informed in writing of the reasons for any placement and of any extension, and be guaranteed the right of appeal to an independent authority. Such basic safeguards were not in place at the time of the visit. Further, all such prisoners should be provided with a purposeful regime and a revised sentence plan should be drawn up to assist the prisoner to successfully reintegrate into the general prison population. The material conditions of certain cells at Foča and Zenica Prisons should be improved.

The low staffing levels encountered in the prisons visited in the FBiH, notably at Zenica Prison, impacted negatively on the ability to guarantee staff safety and the physical and mental integrity of inmates. The ban on recruitment in the public sector in FBiH compounds the situation. Prison staffing levels in all prisons should be reviewed, starting with Zenica Prison. In the RS, prison staffing numbers were generally sufficient. However, at Banja Luka Prison, the CPT is critical of the highly disciplined and martial approach adopted by the prison management which results in the prison not being equipped to defuse and address incidents that challenge its modus operandi. This was brought out clearly by the case of the collective request (*molba*) of June 2015 which the delegation examined in detail. The CPT recommends that the notions of dynamic security be developed and the martial approach ended. Further, prison officers should not carry truncheons inside detention areas.

The CPT's delegation found that remand prisoners still spent 22 hours or more confined to their cells and were offered no purposeful activities. The two hours of daily outdoor exercise provided for by law was not respected at Bijeljina, Doboj, Mostar, Sarajevo, Tuzla and Zenica Prisons. For example, at Sarajevo Prison, some prisoners, including a juvenile, were offered only 30 minutes outside every day. The CPT calls upon the authorities to radically improve activities for remand prisoners. In addition, they should be offered two hours of outdoor exercise every day. For sentenced prisoners, the Committee notes that at Banja Luka, Foča and Zenica Prisons the regime offered to sentenced prisoners was generally good while at Bijeljina, Mostar and Tuzla Prisons it should be improved.

As regards material conditions of detention, the situation was generally satisfactory at Banja Luka Prison, where extensive renovations had taken place, and at Foča Prison. That said, conditions were very poor at Sarajevo Prison due to the bad state of repair of the building and the overcrowding (for example, three or even four prisoners in 8m<sup>2</sup>). The remand section at Tuzla Prison and certain pavilions at Mostar and Zenica Prisons were similarly poor. Conditions at Bijeljina Prison remained cramped. The CPT makes a series of recommendations to improve the conditions in the prisons visited.

As regards health care in prisons, the CPT recommends that the Ministries of Health and Justice jointly improve prison health-care services based on the recommendations made by the Committee. The health-care staffing complements should be reinforced, notably at Mostar, Sarajevo and Zenica Prisons, and the health-care facilities suitably equipped. The CPT also recommends that steps be taken to ensure that medical assessments and the recording of prisoners' injuries (including newly admitted prisoners) are conducted in line with the requirements set out by the CPT. The practice of doctors certifying prisoners as "fit for punishment" should be ended and medical confidentiality needs to be guaranteed. The report also recommends that the way in which medication is distributed in prisons be reviewed and that all prisons screen prisoners for transmissible diseases. The continued lack of a coherent approach towards inmates identified as having a drug-related problem was evident in the prisons visited and the authorities should develop a comprehensive strategy for the provision of assistance to such prisoners. Further, in the RS, judges should not interfere with medical decisions in prisons. The CPT is critical of the current use of padded cells and recommends that a uniform evidence-based protocol, which includes appropriate safeguards, be developed on their use.

The CPT's delegation was appalled by the presence at the remand section of Tuzla Prison of seven chronically psychotic forensic psychiatric patients subject to a court-imposed security measure; their basic mental and physical health-care needs were not being adequately addressed. The CPT recommends that these patients be immediately transferred to an adequate health-care facility pending the official start of operations at the Special Hospital for Forensic Psychiatry at Sokolac.

Disciplinary procedures were generally applied in a fair manner although there is a need to introduce a right of appeal; contact with the outside world should not be restricted as a disciplinary measure unless the offence pertains to the abuse of this right. Further, the maximum possible period of solitary confinement as a punishment should be no higher than 14 days and the RS authorities should amend the relevant legal provision accordingly. There is also a need to harmonise State and Entity legal provisions relating to disciplinary punishments to avoid prisoners within the same establishment receiving different sanctions for the same type of offence.

As regards juveniles in detention, the CPT welcomes the new Law of January 2015 in FBiH and looks forward to receiving information on its full implementation. The delegation found that the situation of juveniles at Zenica Prison was generally satisfactory. However, conditions of detention at Tuzla Prison were particularly poor and the juveniles were offered no purposeful activities; the FBiH authorities should take immediate steps to improve their situation. Further, the CPT emphasises the importance of staff working with juveniles receiving professional training.

### **Psychiatric establishments**

The CPT observed a positive and caring approach by staff towards patients at both Jagomir Psychiatric Hospital and Koševo Psychiatric Clinic. Further, staff reacted appropriately to deal with the few incidents of inter-patient violence.

At Jagomir Hospital, living conditions for patients were generally of a decent standard; however, the intensive care unit should not hold male and female patients in the same dormitory. At Koševo Psychiatric Clinic, conditions were less good as the building was dilapidated and patients had limited living space. Further, patients were not able to benefit from at least one hour of outdoor exercise. The CPT recommends that the capacity of the wards be reduced and that consideration be given to transferring Koševo Psychiatric Clinic to new, modern premises.

The treatment of patients at both establishments was mainly based on pharmacotherapy and included some elements of occupational therapy. However, there was no evidence of individual treatment plans being drawn up for patients. Recommendations are made to draw up such treatment plans and to widen the range of rehabilitative and therapeutic activities at both hospitals. The CPT also recommends the need to develop a comprehensive policy on the recourse to means of restraint, including the proper recording of each measure and ensuring that patients are not restrained in full view of other patients.

The legal safeguards surrounding the placement of patients need to be reinforced. The delegation found that the dysfunctional judicial decision-making over involuntary placements resulted in every effort being made to admit patients on a voluntary basis. Patients were not informed of their rights clearly and their consent to treatment while in hospital was not sought. The CPT recommends that the legal safeguards regulating involuntary placement be reinforced and that the relevant authorities take action to ensure that the courts discharge their duties within the time limits set out in law. Recommendations are also made to ensure that patients are provided with full information about their situation and that all psychiatric establishments are visited by an independent monitoring body.

## I. INTRODUCTION

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

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Bosnia and Herzegovina from 29 September to 9 October 2015. The visit formed part of the Committee’s programme of periodic visits for 2015, and was the CPT’s seventh visit to Bosnia and Herzegovina.

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

- Mykola GNATOVSKYY, President of the CPT, Head of Delegation
- Natalia KHUTORSKAYA
- James McMANUS
- Andrés MAGNUSSON
- Ilvija PŪCE
- Davor STRINOVIĆ
- Olivera VULIĆ.

They were supported by Hugh CHETWYND, Head of Division, and Cristian LODA of the CPT's Secretariat, and assisted by Dr Rachael PICKERING, Secure Environment General Practitioner (expert), United Kingdom.

3. The delegation visited the following places of deprivation of liberty:

#### **Police establishments:**

##### *Federation of Bosnia and Herzegovina (FBiH)*

- Konjic Police Station, Canton of Herzegovina-Neretva
- Mostar Centar Police Station, Canton of Herzegovina-Neretva
- Novo Sarajevo Police Station, Canton of Sarajevo
- Tuzla Judicial Police Headquarters
- Zenica Centar Police Station, Canton of Zenica-Doboj



*Republika Srpska (RS)*

- Banja Luka Centre for Public Security
- Bjeljina Centre for Public Security
- Doboj Police Station
- Istočno Sarajevo Police Station

*Brčko District*

- Brčko Police Station

*Border Police*

- Brčko Border Police Station

**Prosecutor's Offices and District Courts:**

*FBiH*

- Holding cells at Tuzla Cantonal Prosecutor's Office

*RS*

- Holding cells at Banja Luka District Prosecutor's Office
- Holding cells at Doboj District Prosecutor's Office
- Holding cells at Banja Luka District Court

**Prison establishments:**

*FBiH*

- Mostar Prison
- Orašje Prison \*
- Sarajevo Remand Prison
- Tuzla Prison
- Zenica Prison

*RS*

- Banja Luka Prison
- Bjeljina Prison
- Doboj Prison (remand section)
- Foča Prison
- Istočno Sarajevo Prison (targeted interviews)

**Psychiatric establishments:**

*FBiH*

- Koševo Psychiatric Clinic, University of Sarajevo Clinical Centre
- Jagomir Cantonal Psychiatric Hospital, Sarajevo

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\* targeted visit to interview prisoners on remand

**B. Consultations held by the delegation and co-operation encountered**

4. In the course of the visit, the CPT's delegation held consultations with Dragan Lukač, Minister of the Interior of the RS, Anton Kasipović, Minister of Justice of the RS, Mustafa Bisić, Assistant Minister of Justice of Bosnia and Herzegovina, Hidajet Trako, Assistant Minister of Justice of the FBiH, Dr Marina Bera, Assistant Minister of Health of the FBiH and with other senior officials. It also held consultations with the Chiefs of Sectors of Uniformed Police Force and of the Professional Standards Unit of the Ministry of Internal Affairs of the Sarajevo Canton. Further, the delegation met with representatives of the Organization for the Security and Co-operation in Europe (OSCE) and of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina.

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

5. The degree of co-operation received during the visit from the authorities of Bosnia and Herzegovina was, with one main exception, very good at all levels. Consequently, the delegation had rapid access to the establishments it wished to visit, to the documentation it wanted to consult and to individuals with whom it wished to speak. One exception related to Novo Sarajevo Police Station, where on 30 September 2015 the delegation had to wait more than 40 minutes before being granted access to the detention areas. By letter received on 17 December 2015 the Bosnia and Herzegovina authorities informed the Committee that the delayed access to Novo Sarajevo Police Station was due to the fact that the Ministry of the Interior of the Sarajevo Canton had been notified of the CPT's periodic visit to the country only on 1 October 2015 by the relevant FBiH authorities. **The Committee trusts that the Bosnia and Herzegovina authorities will review their modus operandi in relation to the dissemination of information on the CPT's visits and its mandate to all police authorities in the country and take the necessary steps to ensure that such situations are not encountered during future visits.**

6. As was made clear by the CPT in the past, the principle of co-operation 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, after having conducted four periodic visits to the country since 2004, the CPT is concerned to note that the bulk of its recommendations in relation to the development of a purposeful regime for remand prisoners and the improvement of the quality of health-care provided to inmates, as well as basic safeguards for the prevention of police ill-treatment, have still not been implemented.

**Having regard to Articles 3 and 10, paragraph 2, of the Convention, the CPT trusts that the State and Entity authorities of Bosnia and Herzegovina 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 10 October 2015, the CPT's delegation met representatives of the authorities of Bosnia and Herzegovina at State and Entity level to inform them of the delegation's main findings and, on that occasion, it made two immediate observations under Article 8, paragraph 5, of the Convention, notably for the authorities of the FBiH to take immediate steps to:

- provide all juveniles sentenced to a correctional measure with decent living conditions and a full range of purposeful activities including education and sports;
- transfer the seven forensic psychiatric patients held in the remand section of Tuzla Prison to an appropriate hospital setting where they can receive the care and attention they require.

8. These requests were confirmed in a letter dated 20 October 2015. By letter of 17 December 2015, the authorities of Bosnia and Herzegovina responded to the immediate observations and the information contained in this response has been taken into account in his report.

**D. National Preventive Mechanism**

9. Bosnia and Herzegovina ratified the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2008. To date, the Bosnia and Herzegovina authorities have not yet officially designated a national institution mandated to perform the task of National Preventive Mechanism (NPM) under the OPCAT. A new draft State Law on the Ombudsman for Human Rights of Bosnia and Herzegovina, which was adopted by the Council of Ministers of Bosnia and Herzegovina and forwarded to the State Parliament for adoption on 23 December 2015, designates the Ombudsman of Bosnia and Herzegovina as the institution to perform the NPM-related tasks.

**The CPT would like to receive information on the timetable for the adoption of the draft Law on the Ombudsman for Human Rights of Bosnia and Herzegovina and to be informed of the human and financial resources allocated to the Ombudsman institution to enable it to perform its NPM-related tasks under OPCAT. .**

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

### **A. Law enforcement establishments**

#### **1. Preliminary remarks**

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

11. The CPT recalls that competence for police matters lies with the Ministries of Interior of the RS, the ten Cantons of the FBiH and the Brčko District. The Ministry of Interior of the Federation has limited policing competencies (notably, combating international and inter-cantonal crimes). At the level of the State, law enforcement competencies are under the Ministry of Security and carried out by three agencies: the State Investigation and Protection Agency (SIPA), tasked inter alia with facilitating inter-entity and regional cooperation in combating organised crime, human trafficking and international terrorism; the State Border Police, responsible for monitoring the frontiers and for the detention of irregular migrants; and the State Intelligence Service.

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

12. In the course of the visit, the CPT's delegation received a considerable number of allegations of widespread physical ill-treatment of detained persons by law enforcement officials throughout the country. The alleged ill-treatment mostly concerned kicks and punches to various parts of the body as well as blows with batons. However, credible allegations were also received relating to the handcuffing of detained persons in stress positions for hours on end, the use of a hand-held electro-shock device and other non-standard instruments. Once again, several persons stated that they had been subjected to a mock execution with a pistol pointed at their temple and the trigger pulled or they had had the barrel of a pistol inserted into their mouth. A number of allegations of verbal abuse and threats by police officers were also heard.

The allegations of ill-treatment by police officers related to the period following arrest, during transport and when held at police stations and/or during 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 CPT continues to have serious concerns that the infliction of ill-treatment for the purposes of trying to extort a confession remains a frequent practice by crime inspectors throughout the country.

13. In a number of cases, the delegation gathered medical evidence and other documentation which were consistent with the allegations of ill-treatment made by detained persons. The following represents a sampling of such cases:

- i) A person who was arrested on 20 September 2015 in Sarajevo following a car chase, alleged that police officers dragged him from his crashed vehicle, handcuffed his arms tightly behind his back and delivered a number of kicks and truncheon blows to his body. At the police station in Hadžići, he was placed in an office of the criminal police on the top floor and subjected to further ill-treatment, primarily slaps and punches. The following day when he was taken to the emergency clinic he was escorted by two policemen who were present throughout the consultation and who warned him beforehand to state that the injuries were due to the car crash. However, the person still displayed visible injuries which were noted by the delegation's doctor: two parallel reddish tramlines between the shoulder blades (inter-scapular region), reddish hematoma on the left side of the chest and a reddish tramline in the region of the left anterior abdominal wall.
- ii) A person arrested at home in January 2015 was brought to the top floor of the Sarajevo Cantonal Police building where he alleged that in the course of a prolonged interrogation he was punched repeatedly about the upper body primarily by one crime inspector while handcuffed behind his back. The following morning, the judicial police refused to accept him due to his injuries and he was taken to Koševo emergency clinic (KUM). However, the escorting policemen warned him not to talk about the beating and, as they were present throughout the medical consultation, he told the doctor he had fallen down the stairs. The medical record from the KUM, dated 12 January 2015, stated: "Visible haematoma on the left side of the back in the projection of V-IX ribs."<sup>1</sup>
- iii) A person apprehended on the street in Trebinje early in the morning claimed that excessive force was used against him during the arrest and that, during his interrogation at the police station, he was subjected to punches and blows with batons by several officers. Further, he alleged that he was handcuffed to a cupboard and that when he had fallen asleep a police officer poured cold water over him and slapped him about the head. He was transferred to Trebinje Health Centre after the judicial police refused to take him into custody due to his injuries. The medical record noted: "Haematoma on the right forearm, 3 cm long, under the elbow, horizontal. Haematoma in the region of left ankle. Haematoma in the right hip region."
- iv) Four young persons, one of whom was a minor, were apprehended in their hotel room in Banja Luka by armed police on 2 September 2015. The CPT's delegation interviewed the three young adults individually in separate cells in the remand section of Banja Luka Prison. All three stated that they were punched and kicked and subjected to truncheon blows by the arresting officers despite offering no resistance. Further, they alleged that at the police station the crime inspectors repeatedly punched them in the torso and slapped them around the head because they wanted to get them to confess to additional crimes. In addition, one of the young persons alleged that a pistol had been placed in his mouth and another one claimed that he had received several shocks from a hand-held electro-shock device with two contact points<sup>2</sup> and had been handcuffed to the radiator in the duty room of Banja Luka Police Station overnight.<sup>3</sup>

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<sup>1</sup> Diagnosis: *St. post contusio hemithoracis posterior lat. sin; Haematoma posterior lat. sin.*

<sup>2</sup> See also, for example, CPT/Inf (2011) 40, paragraphs 7 and 8v) and ix).

<sup>3</sup> That radiator had markings which were consistent with handcuff scrapings of the paintwork.

- v) An inmate met by the delegation at Tuzla Prison (Kozlovac site) alleged that when he was apprehended on 24 July 2015 in the market square of Turski Lukavac, a police officer punched him several times on the head and upper body despite the fact that he offered no resistance. He was examined by a doctor the same day at the Clinical University Hospital of Tuzla who recorded: "Alleges that he has been beaten by a police officer at Turski Lukavac. The patient alleges that he has fainted and vomited as a result of the hits. He feels pain on his head, left arm and chest." The medical findings noted: "Two laceration-contusion wounds of 1 cm on the upper left eye-lid, feels pain on his sternal bone, cannot move his left arm".

14. Moreover, several persons, interviewed individually and on separate occasions, gave detailed allegations of ill-treatment by the police in Bijeljina. For example, a mother and her son who were arrested together were subsequently interrogated in different offices in Bijeljina Police Station. The son claimed that he was repeatedly slapped, punched and kicked by police officers in the office over a period of three hours, and again the following day at the site of the alleged crime as a means of putting pressure on his mother to confess to the crime and to get him to admit that he was an accessory to the crime. The mother alleged that she had been put under pressure by the crime inspectors to make a confession, threatening to throw her son out of the window.

Another person stated that after being apprehended at home late at night, he was brought to Bijeljina Police Station and placed in a large office at the end of the corridor on the ground floor of the station where he was subjected to repeated blows with a truncheon as well as punches and kicks by some five officers and told to make a confession. The following day he was taken to the local hospital but he remained handcuffed between two police officers and the doctor's examination was limited to taking his blood pressure.

15. Many persons stated that beatings were "normal" practice and that, in most instances, they did not complain to a judge or prosecutor about the alleged ill-treatment as they had apparently been threatened by the police officers concerned that should they do so their situation would worsen. Reference should also be made to a number of allegations of ill-treatment (primarily punches and kicks to the body but also baton blows) made to the delegation by persons detained by the police in the context of the 14 February 2014 disturbances in Sarajevo.

16. The CPT continues to be concerned by the frequency and seriousness of the allegations of ill-treatment received once again in the course of the 2015 visit. As stated in the previous visit reports, the CPT's findings call for immediate and determined action by the authorities. All means should be explored to ensure that the message of zero tolerance of ill-treatment of detained persons reaches all law enforcement officials at all levels; they should be made aware, through concrete action, that the Government is resolved to stamp out ill-treatment of persons deprived of their liberty. The rule of law entails not only the adoption of the appropriate legal norms but also taking the necessary steps to ensure their application.

The Committee has noted that the measures taken by the RS authorities following the December 2012 visit have had an impact as the number of allegations relating to ill-treatment by crime inspectors based at Banja Luka Police Central Station has fallen dramatically. Nevertheless, there is no room for complacency as the CPT's delegation again received credible allegations of abusive treatment by police officers of persons detained at Banja Luka Police Central Station in the course of the 2015 visit.

On the other hand, the delegation gained the impression from the multiple interviews it carried out with persons arrested and detained by the police in Bijeljina and Sarajevo that ill-treatment (kicks, punches, slaps) is a routine occurrence and almost considered a “normal” practice. This should be of great concern to the authorities.

**The CPT reiterates its recommendation that the Ministers of Interior and Police Commissioners actively promote a clear and firm message of zero tolerance of ill-treatment of persons deprived of their liberty. Law enforcement officials should be continuously reminded, including from the highest political level and through appropriate training, that any form of ill-treatment of detained persons – including verbal abuse, racist behaviour, threats, and psychological ill-treatment – constitutes a criminal offence and will be prosecuted accordingly.**

17. The CPT recognises that the apprehension of a criminal suspect is often a hazardous task, in particular if the person concerned resists and/or is someone whom the police have good reason to believe may be armed and dangerous. The circumstances of an apprehension may be such that injuries are sustained by the person concerned without this being the result of any intention to inflict ill-treatment. However, no more force than is strictly necessary is to be used when carrying out an apprehension and, once apprehended persons have been brought under control, there can be no justification for striking or kicking them.

Even in the case of an apprehension which represents a danger to the police officers and the general public, once the suspect has been disarmed and brought under control, the above-cited principles should apply. For example, one person met by the delegation stated that after being pursued by the police through the streets of Sarajevo in a car and on foot, he had surrendered by lying face down in the middle of the street and throwing away his gun. He alleged that while lying on the ground he was shot by a police officer (the bullet entered above the ankle and lodged near the knee) and that he was subsequently kicked and beaten all over the body and head by several police officers. He was taken to the emergency department where, according to his medical record, he was seen by several medical specialists. He was diagnosed with a contusion of the head, facial bruising, a broken jaw bone, contusion of the thorax and a metallic foreign object in the femur and excoriations across the torso.<sup>4</sup> The person said that he had complained about the beatings in court several times without any response.

**The CPT recommends that the basic principles referred to above be reiterated on a regular basis to police officers and that the perpetrators of any form of physical ill-treatment be dealt with in accordance with the relevant legal provisions.**

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<sup>4</sup> The diagnosis in Latin in his medical file read as follows: “*Contusio capitis, hematoma facialis, fractura rami mandibularis et luxatio, contusio thoracica, corpus alienum metallicum reg. femoris immobile*”.

18. Moreover, the Committee reiterates the necessity for the competent authorities to promote a fundamentally different approach towards methods of police investigation. It is self-evident that a criminal justice system which places a premium on confession evidence creates incentives for officials involved in the investigation of crime to use physical or psychological coercion. First and foremost, the precise aim of such questioning must be made crystal clear: that aim should be to obtain accurate and reliable information in order to discover the truth about the matter under investigation, not to obtain a confession from somebody already presumed, in the eyes of the interviewing officers, to be guilty.

Such an approach must involve more rigorous recruitment procedures, improved professional training for police officers and the adoption of detailed instructions on the proper questioning of criminal suspects. Specific training on professional interviewing techniques should be regularly provided to police operational officers and investigators. The training should place particular emphasis on an intelligence-led and physical evidence-based approach, thereby reducing reliance on information and confessions obtained during questioning for the purpose of securing convictions.

A system of ongoing monitoring of police interviewing standards and procedures should also be implemented in order to facilitate the investigation of any allegations of ill-treatment. This would require an accurate recording of police interviews which should be conducted with electronic video recording equipment. It should also be required that a record be systematically kept of the time at which interviews start and end, of any request made by a detained person during an interview, and of the persons present during each interview.

**The CPT recommends that the authorities of the RS, FBiH and its Cantons as well as the State Ministry of Security and the Brčko District act to ensure that police operational officers and crime inspectors carry out their duties in accordance with the relevant provisions of the Criminal Procedure Code. To this end, professional training for these officials should be provided regularly, which should cover appropriate interview and investigation techniques, as well as the prevention of ill-treatment. Greater emphasis should be given to modern, scientific methods of criminal investigation, through appropriate investment in equipment and skilled human resources, so as to reduce the reliance on confessions to secure convictions.**

**Further, it recommends that steps should be taken to monitor police interviewing standards and procedures and introduce electronic video recording of police interviews.**

19. In the Committee's view, it is essential to promote a police culture where it is regarded as unprofessional to resort to ill-treatment. There must be a clear understanding that culpability for ill-treatment extends beyond the actual perpetrators to anyone who knows, or should know, that ill-treatment is occurring/has occurred and fails to act to prevent or report it. The CPT considers that proper conduct by members of the police vis-à-vis detained persons should be fostered, in particular by doing more to encourage police officers to prevent colleagues from ill-treating detained persons and to report, through appropriate channels, all cases of violence by colleagues. This implies the development of a clear reporting line to a distinct authority outside of the police unit concerned as well as a legal framework for the protection of individuals who disclose information on ill-treatment and other malpractice.



**The CPT recommends that the Ministers of Interior and Police Commissioners actively promote a culture change within the ranks of the law enforcement agencies. It also reiterates its recommendation that specific “whistle-blower” protective measures be adopted.**

Moreover, it is essential that effective investigations into allegations of ill-treatment must be undertaken to demonstrate that criminal acts by the police will be punished and to counter the current culture of impunity that pervades parts of the various police forces within the country. This will also back up any message of zero tolerance.

### **3. Investigations into allegations of ill-treatment**

20. In its reports on the 2011 periodic visit and 2012 ad hoc visit, the CPT highlighted fundamental flaws in the system of investigations into allegations of ill-treatment, such as the lack of promptness and expeditiousness in carrying out investigations and the passive role of prosecutorial or judicial authorities as regards starting an investigation into allegations of ill-treatment. The information gathered in the course of the 2015 visit once more indicates that the current system is characterised by systemic failings by the police and judicial authorities to conduct prompt, thorough, independent and impartial investigations, aimed at bringing the perpetrators of ill-treatment to justice.

The existence of effective procedures for examining complaints and other relevant information regarding ill-treatment by the police is an important safeguard against ill-treatment of persons deprived of their liberty. The prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. If the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with very good reasons – that they can do so with impunity.

To avoid any perception of impunity, it is crucial that effective action is taken whenever any information indicative of possible ill-treatment comes to light in line with the procedural obligations under Article 3 of the European Convention on Human Rights.

**The CPT recommends that these obligations be strictly observed by the authorities. It would like to be informed of the steps taken to ensure that this is the case.**

21. In the course of the 2015 visit, many persons interviewed by the delegation stated that they had complained about ill-treatment by law enforcement officials to the prosecutor or to the judge before whom they were brought, but this had met with no response. Even when a detained person displayed visible injuries or made a statement alleging ill-treatment, there was usually no apparent follow-up by the prosecutor or judge other than, at times, to order a medical examination. Moreover, when such an examination was carried out, the person concerned was often escorted by the same police officers whom he or she alleged had inflicted the ill-treatment and the examination was carried out in the presence of the police officers.

**The CPT reiterates its recommendation that the police officers charged with escorting the detained person for a medical examination are not the same ones against whom the allegations of ill-treatment are directed. More generally, in the entire Bosnia and Herzegovina, the task of escorting detained persons to the medical institution concerned should be entrusted to judicial police. Further, the confidentiality of medical examinations should be respected and the results of the examination made available to the detained person and upon request to his or her lawyer.**

22. The CPT wishes to reiterate that the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions.

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

**The CPT recommends that the Chief Prosecutors and the Presidents of the Supreme Courts of both Entities and of the Cantons recall firmly that prosecutors and judges should act in accordance with the above principles.**

23. In the event of an investigation into possible police ill-treatment being initiated by a prosecutor, the question arises of who will be responsible for the operational conduct of that investigation. For an investigation into possible ill-treatment to be effective,<sup>5</sup> it is essential that the persons responsible for carrying it out are independent of those implicated in the allegations.

In its report on the 2012 visit, the CPT recommended, in the context of the RS, that prosecutors who require operational support for the investigation of cases of possible police ill-treatment seek such support from the Internal Control Unit under the Minister of Interior. This approach was viewed as a temporary solution as it would be far preferable for prosecutors to have at their disposal their own operational investigators.

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<sup>5</sup> For a full account of the criteria of an “effective investigation”, see the CPT’s 14th General Report (CPT/Inf (2004) 28, paragraphs 25 to 42).

In the course of the 2015 visit, the CPT's delegation noted that the arrangements in place for investigating allegations of ill-treatment in the Canton of Sarajevo were inadequate. The Police Complaints Unit was directly under the Police Director and the officers in the unit were considered part of the police force. Further, whenever the unit found some *prima facie* evidence that a police officer may have ill-treated someone, it had to relinquish the case to the crime police to investigate whether a crime had been committed. In a number of cases, the alleged perpetrators were named crime inspectors.

**The CPT recommends that the authorities of Bosnia and Herzegovina (including the Entities and Cantons) establish fully independent police complaints bodies which are adequately resourced and would ensure that allegations of police ill-treatment being investigated effectively.<sup>6</sup> Until this occurs, the Committee recommends that prosecutors who require operational support for the investigation of cases of possible police ill-treatment seek that support from the police internal control units. It goes without saying that such units should not be under the responsibility of the Director of Police or housed within a police building. Further, such units should be appropriately staffed with qualified persons.**

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

24. The CPT's delegation found that the formal safeguards against ill-treatment (the rights of access to a lawyer and to a doctor, and the right to have the fact of one's detention notified to a relative or another third party) still do not apply in practice from the very outset of a person's deprivation of liberty. Further, persons deprived of their liberty were still not always informed without delay of their rights. It is high time for the authorities of Bosnia and Herzegovina to take effective action to ensure that these rights are both enshrined in law and applied in practice.

25. As was the case during previous visits, many persons interviewed by the CPT's delegation alleged that the right of notification of custody had not been granted to them as from the outset of their deprivation of liberty. Instead, an opportunity to notify relatives of their custody was apparently only granted after the questioning by the police had been terminated and the statement drawn up.

**The CPT calls upon the authorities of Bosnia and Herzegovina to ensure that all detained persons are granted the right to notify a close relative or third party of their choice of their situation as from the very outset of their deprivation of liberty by the police.**

26. As regards the right of access to a lawyer,<sup>7</sup> in the vast majority of cases access to a lawyer as from the outset of deprivation of liberty was still not being granted. Instead, such access only occurred when the person was brought before a prosecutor to give a statement or at the hearing before a judge. Moreover, it was usually not possible for a person to consult with his or her lawyer in private prior to appearing before a prosecutor or a judge. Juveniles met also alleged that they were interviewed without a lawyer or a person of trust being present.

In the light, once again, of the numerous allegations of ill-treatment by the police during the

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<sup>6</sup> Ibid.

<sup>7</sup> As provided for in Article 5 of the State and Entity Codes of Criminal Procedure.

period immediately following the deprivation of liberty, the possibility for persons taken into custody to have access to a lawyer during this period is a fundamental safeguard against ill-treatment. Interestingly, those persons interviewed who either went to a police station with a lawyer following a summons or who were able to contact a lawyer to visit them soon after they had been detained in a police station stated that they were not physically ill-treated.

The right of access to a lawyer must include the right for any person deprived of their liberty to talk to his or her lawyer in private upon being admitted into the police station. The person concerned should also, in principle, be entitled to have a lawyer present during any interrogation, whether this be before or after he or she is charged. The CPT has taken note of the adoption of the Federation of BiH “Rulebook on the treatment of persons deprived of their liberty by police officers” of 15 September 2015 and, more specifically, Article 39 which provides for the presence of a lawyer during police interviews. However, such a provision does not exist in the RS or the Cantons of the Federation of BiH.

**The CPT calls upon the authorities of Bosnia and Herzegovina to ensure that the right of access to a lawyer is both explicitly granted in law and rendered effective in practice for everyone deprived of their liberty by the law enforcement authorities, from the very outset of their deprivation of liberty. Further, persons detained by the police should be able to talk to a lawyer in private and the lawyer should be present during the police interview. Moreover, all law enforcement officials should be reminded that detained persons may exercise their rights at any stage of their custody.**

**As regards juveniles, they should never be subjected to police questioning or be requested to make a statement or to sign any document concerning the offence he/she is suspected of having committed without the presence of a lawyer and, in principle, a trusted adult person.**

27. Despite clear recommendations made by the CPT since its first visit in 2003, there are still no specific legal provisions regarding the express right of persons held in police establishments to have access to a doctor as from the very outset of their deprivation of liberty. This is distinct from the duty of the police to ensure that detained persons receive the necessary assistance. The findings from the 2015 visit demonstrate clearly the need for such a right to exist. Yet again, many persons met by the delegation stated that they had not been allowed to have access to a doctor when they were held in a police station. Access to medical care (i.e. through recourse to the emergency clinic) was generally only provided when ordered by a prosecutor or, more frequently, when the judicial police refused to accept a particular person from the police because they displayed visible injuries.

Moreover, nearly all persons provided with medical assistance claimed that police officers were present during their medical examination. At Mostar Police Station, police officers made a copy of the medical documentation relating to detained persons accessing emergency medical assistance and attached it to the person’s administrative file as the officers thought it might serve as further evidence in the case against the person. However, the copies appeared to have been made without the consent of the persons concerned. Police officers should only be informed on a need-to-know basis about the state of health of a detained person and the information provided should be limited to that necessary to prevent a serious risk for the detained person or other persons, unless the detained person consents to additional information being given.

**The CPT calls again upon the authorities to adopt specific legal provisions on access to**

**a doctor during police custody.<sup>8</sup> Further, medical confidentiality both during examinations of the detained persons and of medical documentation must be guaranteed. The time has come for the BiH authorities to ensure that these rights are effectively implemented throughout the country.**

28. Once again, most persons met by the delegation claimed that they had neither been informed of their rights verbally upon apprehension nor in the police station.

**The CPT calls upon the authorities of Bosnia and Herzegovina to ensure that all persons detained by the police, for whatever reason, are fully informed in a language they understand of their rights as from the outset of their deprivation of liberty.**

## **5. Material conditions**

29. The CPT recalled in its report on the April 2011 visit that police holding facilities should meet certain elementary material requirements, even if the detention period is relatively short (i.e. usually less than 24 hours).<sup>9</sup> With few notable exceptions, the holding facilities in the police stations visited did not comply with such minimum requirements and the delegation found, once again, that offices in many police stations continued to be used as ad hoc detention facilities.

30. It is positive that, after so many years, three cells have recently been brought into service at Banja Luka Central Police. The cells, measuring between 6.5m<sup>2</sup> and 8m<sup>2</sup> (including a semi-partitioned floor-level toilet), offered acceptable conditions of detention for single occupancy (clean, adequate artificial lighting and well-ventilated and equipped with a call-bell and CCTV). However, they were all equipped with two beds.

The six cells at Novo Sarajevo Police Station (measuring between 6.5 and 10.5m<sup>2</sup>) had been renovated in the course of 2014 but already showed signs of poor maintenance (i.e. mould and damp on the walls). The toilets were also not partitioned. Further, there was limited access to natural light and the artificial lighting was insufficient. At Zenica Central Police Station, the four cells (each measuring a mere 5.5m<sup>2</sup>) located in the basement had very limited access to natural light, poor ventilation and detainees were provided with dirty blankets but no mattress to sleep on. The two cells at Tuzla Judicial Police Headquarters were being renovated at the time of the visit; however, they each measured only 3.5m<sup>2</sup>. The CPT recalls that cells measuring less than 6m<sup>2</sup> should only be used for short periods of detention and never for overnight stays.

At Konjic, Mostar, Bijeljina, Doboje and Istočno Sarajevo Police Stations, the material deficiencies of the conditions in the detention areas remained the same as those described previously by the CPT in its reports.<sup>10</sup>

Further, no arrangements were in place for the provision of food to detained persons at any of the police establishments visited. The delegation observed that inmates were in general offered

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<sup>8</sup> See, inter alia, CPT/Inf (2013) 12, paragraph 27 and CPT/Inf (2012) 15, paragraph 20.

<sup>9</sup> See CPT/Inf (2012) 15, paragraph 40

<sup>10</sup> See, for example, CPT/Inf (2012) 15, paragraph 23 and CPT/Inf (2013) 25, paragraph 33.

cold snacks only after their appearance in front of the court (i.e. more than 24 hours after apprehension).

31. The CPT has taken note that, the FBiH and Sarajevo Canton adopted instructions on the treatment of persons deprived of their liberty by the police in September 2015 and May 2014, respectively. The instructions stipulate that police holding cells should be of an adequate size, with proper access to natural light and artificial lighting, well ventilated and heated, equipped with a means of rest with clean bedding and subject to regular maintenance. Further, it is foreseen that every detained person be provided with a substantial meal every eight hours and with basic personal hygiene items (i.e. toothbrush, toothpaste, soap and toilet paper). **The CPT trusts that these instructions will be properly implemented.**

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

The CPT also recommends that no cell measuring less than 6m<sup>2</sup> be used for overnight accommodation. In fact, the Committee considers that it would be desirable for single-occupancy police custody cells used as overnight accommodation to measure 7m<sup>2</sup>.<sup>11</sup>

The CPT wishes to receive detailed information on the steps taken to ensure that the above minimum requirements have been applied at each of the police stations visited in the course of the 2015 visit.

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<sup>11</sup> A standard the CPT had advocated since the publication of its 2nd General Report (CPT/Inf (92) 3, paragraph 43.

## **B. Prison establishments**

### **1. Preliminary remarks**

33. In the report on its first periodic visit to Bosnia and Herzegovina, the CPT described the administrative arrangements in the country, noting that there were three separate prison administrations.<sup>12</sup> At the time of the 2015 visit, the situation had not changed. However, the continued placement of persons sentenced by the State Court in Entity prisons, notably Foča and Zenica, was posing increasing challenges to prison managers, especially as their number had risen to 331 persons (including 114 on remand). In this context, the lack of harmonisation of the Laws on Execution of Criminal Sanctions (LECS) at the State, FBiH and RS levels results in different rules having to be applied to prisoners within the same establishment (e.g. in terms of duration of solitary confinement, inmates' privileges and alternative and community sanctions, see paragraph 74). Therefore, the CPT welcomes the 2014-2018 BiH Justice Sector Reform which notably envisages three specific actions; namely, the harmonisation of the legal framework for the execution of criminal sanctions within the country, the establishment of a single training unit for prison staff and a system for the collection of prison data.

**The CPT would like to receive detailed information on the timetable for the implementation of the three above-mentioned elements of the 2014-2018 Bosnia and Herzegovina Justice Sector Reform.**

34. At the time of the CPT's visit, the prison population in the FBiH stood at 1,913 (including 278 on remand) for an overall capacity of 1,911 places, and in the RS there were 885 prisoners (including 91 on remand) for an overall capacity of 1,404. The completion of the 350-place State Prison, scheduled now for the end of 2016, will free up some 330 places at the Entity level. The construction of new prison establishments in Mostar (400 places) and Bijeljina (250 places) to replace the current facilities, which are too small and not fit for purpose, will also provide increased capacity.

The Committee has taken note that since its last periodic visit in 2011, courts throughout the country have made greater use of alternatives to imprisonment such as community service, fines and house arrest with electronic monitoring.<sup>13</sup> Further, legislation is currently being prepared to establish a system of probation.

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<sup>12</sup> See CPT/Inf (2004) 40, paragraph 35.

<sup>13</sup> For example, in 2014, 506 persons received an alternative sentence to imprisonment.

35. The CPT has long supported the creation of a single forensic psychiatric institution for Bosnia and Herzegovina.<sup>14</sup> The Special Hospital for Forensic Psychiatry, which is expected to provide treatment for up to 200 patients, was inaugurated in November 2014 in Sokolac but, at the time of the visit, was still not functioning due to staffing problems. As a result, forensic patients subject to a court-imposed security measure of mandatory psychiatric treatment were still accommodated at the forensic psychiatric unit of Sokolac Clinic, in an annexe of Zenica Prison, in civil psychiatric hospitals and even in the remand sections of certain prison establishments (see paragraph 54). Forensic psychiatric patients must be held in an appropriate health-care environment and it is unacceptable for them to continue to be held in prisons five years after the European Court of Human Rights judgment in the case of *Hadžić and Suljić v. BiH*.<sup>15</sup>

**The CPT recommends that the authorities of Bosnia and Herzegovina take proactive steps to ensure that the requisite staff are recruited to enable the Special Hospital for Forensic Psychiatry in Sokolac to become operational as soon as possible. The CPT would like to receive information on the number of persons, including juveniles, in the FBiH who have been served with a court-imposed security measure of mandatory psychiatric treatment and where they are currently placed.**

## **2. Prison establishments under the authority of the Ministry of Justice of the FBiH**

### a. establishments visited

36. In 2015, the CPT's delegation visited Tuzla Prison for the first time and carried out follow up visits to Mostar and Zenica Prisons. It also visited the remand sections of Orašje and Sarajevo Prisons.

37. **Mostar Prison**, located in the centre of the city is more than 100 years old although the two-storey building was extensively renovated in the late 1990s. At the time of the visit, it accommodated 115 sentenced male prisoners and 15 prisoners on remand (of whom two were women) for an overall capacity of 186. The establishment had a small economic unit on the outskirts of Mostar accommodating five male prisoners and was also responsible for the supervision of 18 prisoners under electronic surveillance.

The remand section of **Sarajevo Prison** has been described in previous reports.<sup>16</sup> At the time of the visit, it accommodated 147 prisoners on remand (of whom three were females and one juvenile) for a capacity of 88. It was also holding 29 male sentenced prisoners for a capacity of 32. Further, the establishment was responsible for the supervision of 27 inmates under electronic surveillance.

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<sup>14</sup> See CPT/Inf (2010) 10, paragraphs 60 to 62. In September 2009, the Council of Ministers of Bosnia and Herzegovina and the three Entity Governments signed an Agreement to set up a single forensic institution for the country.

<sup>15</sup> See *Hadžić and Suljić v Bosnia and Herzegovina, Admissibility, no. 39446/06, 7 June 2011*.

<sup>16</sup> See for example CPT/Inf (2009) 25, paragraph 25.



**Tuzla Prison** consisted of two different sites and was holding 277 prisoners for an official capacity of 310, and was also responsible for the supervision of 31 prisoners under electronic surveillance. The original prison consisted of a two-storey building in the centre of the town which accommodated 38 sentenced women, 49 remand prisoners (of whom three were females) and eight juvenile offenders. A second site, inaugurated in 2008, was located outside Tuzla in the hamlet of Kozlovac and consisted of two large inter-connected buildings (A and B) and one admission unit (C) which was holding 151 male convicted prisoners for a capacity of 180.

**Zenica Prison** has been described in previous CPT reports<sup>17</sup> and remains the only high-security prison in the FBiH. At the time of the 2015 visit, it accommodated 844 male prisoners (including 43 on remand and 7 juvenile offenders) for an overall capacity of 830. The establishment was also responsible for the supervision of 45 prisoners under electronic surveillance, as well as for 16 forensic psychiatric patients who were still accommodated in the forensic psychiatric annexe located outside the main perimeter wall.

b. ill-treatment

38. As was the case during previous visits, the vast majority of prisoners interviewed by the CPT's delegation made no allegations of ill-treatment by prison staff. In particular, progress continued to be recorded at Zenica Prison where in most pavilions, inmates interviewed by the delegation spoke positively of the way in which they were treated by prison staff.

However, the CPT's delegation received several credible allegations of physical ill-treatment of inmates by staff at Mostar Prison which consisted notably of slaps, kicks and punches to various parts of the body . The alleged episodes of physical ill-treatment took place in a room next to the garage<sup>18</sup> at the entrance to the prison following a verbal exchange between prisoners and staff.

Further, the delegation also received one allegation of prolonged ankle and wrist handcuffing of a prisoner in a stress position at Mostar Prison. The inmate in question alleged that, following an episode of over-agitation in late August 2015, during which he had banged repeatedly on his cell door, he had been handcuffed by prison officers behind his back with his wrists hyperflexed, ankle-cuffed with a walking chain and placed in an empty cell on the second floor for two days; during this time, he did not receive food and was not allowed to comply with the needs of nature. After being released from the measure of prolonged restraint, he asked for a medical examination which took place in the presence of custodial staff; he subsequently did not raise any allegation of ill-treatment. Upon examination of his limbs by the delegation's doctor on 7 October 2015, the patient still complained of persisting numbness and tingling in his right hand and displayed various findings on both wrists, his right hand and right ankle. The neurological findings in his right hand were suggestive of neuropraxia, which is a form of nerve damage that can result from prolonged handcuffing. Similarly, the other physical findings on his wrists and ankle can be the result of prolonged cuffing. Overall, the findings observed by the delegation's doctor were assessed as being compatible with the allegation.

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<sup>17</sup> See CPT/Inf (2012) 15, paragraph 26 and CPT/Inf (2009) 25, paragraph 59.

<sup>18</sup> The room in question was commonly identified by inmates as *ledena soba* (i.e.the ice room).

The CPT's delegation also received a few allegations of physical ill-treatment of inmates by staff at the Kozlovac site of Tuzla Prison and in Pavilion IV of Zenica Prison, consisting of punches and kicks to various parts of the body and relating mainly to episodes of passive resistance.

**The CPT recommends that the FBiH authorities deliver a clear message to custodial staff at Mostar Prison, as well as at the Kozlovac site of Tuzla Prison and Pavilion IV of Zenica Prison, that the ill-treatment of prisoners is not acceptable. Particular attention should be paid to the situation at Mostar Prison. Further, all necessary steps should be taken to ensure that any indications of ill-treatment are properly investigated and that any such acts found to have occurred are the subject of an appropriate sanction.**

39. The CPT has consistently referred to the problem of combating inter-prisoner violence at Zenica Prison and notably in Pavilion I.<sup>19</sup> The multiple dormitories within the large *kolektivs* in Pavilion I, which were not locked at night, combined with the chronic lack of staffing, continue to be conducive to such violence. Some allegations of inter-prisoner violence in Pavilion IV were also received. For example, an inmate alleged that on 14 August 2015 he had been attacked by two other inmates in the courtyard of Pavilion IV and had received several punches to the head before staff intervened. An entry recorded in his medical file on 14 August 2015 read as follows without drawing any conclusion: "attacked by another prisoner on his head, a visible trace on the head, a swollen nose with dried blood in his nostrils, traumatic injury in the right upper back". When visited by the delegation's doctor on 1 October, the inmate in question still had visible bruising over his right scapula.

**The CPT recommends that the FBiH authorities, together with the management of Zenica Prison, devise a coherent strategy to combat inter-prisoner violence; part of this strategy should include investing far more resources in recruiting additional staff and promoting their training. Further, the CPT recalls that it has long advocated<sup>20</sup> that prison accommodation moves away from large-capacity dormitories towards smaller living units as its findings indicate that the risk of intimidation and violence in such dormitories is high and that proper staff control is extremely difficult.**

c. high-security/segregation and security measures

40. The CPT's delegation paid a follow-up visit to the high-security Pavilion IV of Zenica Prison where inmates continue to be placed by an Internal Commission on the basis of an internal prison order.<sup>21</sup> At the time of the visit the pavilion accommodated 45 inmates including four placed under individual reinforced treatment (PIT)<sup>22</sup> and three on voluntary isolation.

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<sup>19</sup> See for example CPT/Inf (2004) 40, paragraph 53.

<sup>20</sup> See for example CPT/Inf/ (2015) 44, paragraph 7.

<sup>21</sup> According to the Instruction on the Criteria of Distribution and Accommodation of Convicted Persons in the Correctional Departments of Zenica Prison, Pavilion IV accommodates inmates who endanger the security of the establishment, commit several disciplinary sanctions in a limited period of time, commit a new criminal offence while in prison and have been ordered to undergo a measure of administrative solitary confinement in line with Section 99 of the LECS of the FBiH.

<sup>22</sup> According to Sections 173 and 174 of the Rulebook on House Rules of Zenica Prison, inmates who have committed a serious disciplinary offence and who have served a sanction of solitary confinement can be placed under individual reinforced treatment (pojačani individualni tretman) for a maximum period of three months by decision of the Internal Commission.

41. The CPT is pleased to note that inmates now received a written and reasoned decision on their placement to Pavilion IV (including in relation to a PIT placement) which also provided them with information on how to appeal the measure. However, the appeal was sent to the Director only and had to be filed within three days. Further, there was still no hearing and no time limit for the overall placement. In practice, most placements lasted for a minimum of three months with decisions on prolonging the measure taken by the internal commission every one to two months. However, a few inmates had been in the unit since its inauguration due to the nature of the crime for which they had been sentenced.

**The CPT recommends that a revised sentence plan be drawn up together with the prisoner upon their placement in the high-security Pavilion IV (including as regards persons sent there under PIT), setting out the objectives and goals to be achieved in order 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 heard in person by the internal commission in the course of the periodic reviews of their placement.**

42. As was the case in 2011, the material conditions were generally of a good standard.<sup>23</sup> The 28 cells were accommodating 45 inmates, primarily in double-occupancy cells. Four of the inmates had been placed under PIT in three dedicated cells which were deprived of tables and chairs and had no TV set. Further, three inmates were placed in single cells on the ground floor in voluntary solitary confinement.

The regime in force within Pavilion IV depended on a prisoner's categorisation and the arrangements were essentially the same as those observed in 2011.<sup>24</sup> Prisoners were generally granted two hours of outdoor exercise per day in the dedicated courtyard equipped with a basketball court and weightlifting accessories. In addition, category A and B prisoners were allowed two additional hours of association in a community room on a daily basis where they could play board games and read magazines, and also benefit from regular contacts with an educator assigned to the pavilion. That said, there was still no specific sentence plan or targets for prisoners while they were in the unit and no organised activities (work, sports etc.) were on offer.

Inmates placed under a measure of reinforced individual treatment (PIT<sup>25</sup>) had access to a separate courtyard for one hour per day and were not offered any activity apart from irregular contacts with the educators from their respective original pavilions.

**The CPT recommends that the authorities of the Federation of BiH increase their efforts to develop a purposeful regime for inmates placed in the high-security Pavilion IV (including those under a reinforced individual treatment measure (PIT)) with a view to providing them with a diverse range of activities. Every effort should be made to enable prisoners to associate with other inmates and restrictions should not be imposed which are not justified by their security profile.**

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<sup>23</sup> See CPT/Inf (2012) 15, paragraph 37.

<sup>24</sup> All prisoners were classified into one of three categories (A, B and C). Initially, prisoners were placed in category B. Every three months the categories were reviewed and prisoners could progress to Category A or regress to Category C, depending on their behaviour.

<sup>25</sup> PIT stands for *pojačani individualni tretman*.

**Further, cells accommodating inmates subject to individual reinforced treatment measures (PIT) in Pavilion IV of Zenica Prison should be equipped with tables and chairs and a television. To this end the relevant provision of the Rulebook on House Rules in Zenica Prison should be amended accordingly.**

43. The delegation met three inmates in Pavilion IV who, at their request, had been placed in individual cells and who had effectively been held in conditions of prolonged voluntary isolation (for periods of up to one year). They each had access to a 30m<sup>2</sup> metal cage placed in front of their cell but were not offered any other recreational or rehabilitative activities. Although they confirmed to the delegation their wishes to be separated from the rest of the prison population, the delegation had serious concerns about their mental health and the lack of involvement of health-care professionals managing their situation. In particular, one of the inmates suffered from chronic urinary incontinence and was infected with Hepatitis C and was particularly vulnerable. For example, he alleged that he had recently allowed a guard to assault him in exchange for receiving a cigarette. When interviewed by the delegation, the prison doctor was neither aware of nor concerned about the inmate's complex physical and mental health needs. **The CPT would like to receive the comments of the F BiH authorities on the somatic and mental health status of the three above-mentioned inmates accommodated in Pavilion IV of Zenica Prison.**

44. At Tuzla and Zenica Prisons the CPT's delegation reviewed the use of the so-called medical cells (padded cells), in which inmates could be placed in the event of over-agitation, self-harm and/or suicide attempts. The two cells located in Pavilion II of Zenica Prison, each measuring some 9m<sup>2</sup>, had walls and floors covered in linoleum and were equipped with a mattress, a ceramic toilet and a high window. Both cells were fitted with CCTV. At Tuzla Prison, the two cells, one on each prison site and measuring approximately 10m<sup>2</sup>, had padded floors and walls and possessed a mattress fixed to the floor (equipped with restraint loops) and a window. The presence of the window fasteners in the padded cells at both prison establishments offered easy ligature points for inmates who are already at risk of self-harm. Further, the window glass in the padded cell at the Kozlovac site of Tuzla Prison had been recently damaged by an inmate.

There were no protocols in place at either establishment on the use of the padded cells and staff, including health-care personnel, appeared to have little understanding as to their precise purpose. At the time of the visit to Zenica Prison on 1 October 2015, the delegation met one inmate who had just been placed in a padded cell by order of the prison doctor after a suicide attempt. His placement was due to be reviewed by a psychiatrist who was supposed to be visiting him later the same day. That said, the security staff admitted to the delegation that they placed inmates in padded cells on a regular basis in the event of violent behaviour without the prior authorisation of the prison doctor. A review of the dedicated logbooks in use in Pavilion II of Zenica Prison showed that placement of inmates in the padded cells would last from a few hours to up to three days and that there were no regular visits by a doctor.

At Tuzla Prison, the prison doctor told the delegation that the padded cells were being used for cases of over-agitation and suicide attempts after the inmate in question had been assessed by a psychiatrist (from the local community health-care clinic). Further, the doctor informed the delegation that a nurse would visit the inmates placed inside the padded cells on a daily basis. The delegation was not able to consult the existing dedicated logs as these could not be found by the health-care staff. That said, several inmates confirmed to the delegation that they had been placed for extensive periods (i.e. days rather than hours) in a padded cell by security staff when suffering from a serious opiate withdrawal crisis. Further, security staff at the Kozlovac site confirmed to the delegation that they would regularly place inmates in padded cells in such cases without the prior authorisation of health-care staff.

In the CPT's view, the placement of a prisoner in a padded cell should last only until the person concerned has calmed down, and no prisoner should be kept in a padded cell for more than a few hours, except in very exceptional circumstances. Prisoners placed in a padded cell should be regularly monitored (the frequency determined by the nature of the case) and the observations of prison officers clearly recorded in a dedicated register. Further, the placement of a disturbed prisoner inside a padded cell should only be made upon the authorisation of the medical doctor or be immediately brought to the attention of the doctor with a view to obtaining his approval, when all other measures have failed. Finally, padded cells should be designed so as not to offer easy ligature points or other possibilities for self-harm (e.g. window glass and ceramic toilets) to inmates placed in them.

**The CPT recommends that the FBiH authorities adopt a uniform evidence-based protocol on the use of padded cells at all prison establishments concerned in light of the above-mentioned principles. Further, the design of padded cells should be reviewed accordingly (see also paragraph 111)**

d. staffing

45. All the prisons visited were operating at far below their intended staff complement compounded by the recently introduced ban on recruitment imposed by the Government of the FBiH on the entire public administration.<sup>26</sup> For example, at Zenica Prison only 400 of the budgeted 547 posts were filled for a prison population of 844. The impact of the lack of staff was clearly visible on the ground with only 221 officers available. In addition, many of these officers could not work in direct contact with prisoners due to health-related impediments. As a result, in Pavilion I four prison officers were supervising 415 inmates during each of the three daily shifts.

Staffing levels were barely sufficient at Tuzla and Mostar Prisons. Tuzla Prison, with 277 inmates at the time of the visit had a complement of 96 prison officers, with 18 officers working in the city and 12 at the Kozlovac site during the day-shift. At Mostar Prison, which was holding 130 prisoners, there were 60 prison staff with 12 prison officers on duty during the main day shift, nine officers on the second shift and eight officers on the night shift.

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<sup>26</sup> The ban on recruitment was adopted on 16 July 2015 by the Government of FBiH and supposed to last until 1 September 2015, but was later extended until the end of 2015.

At Sarajevo Remand Prison<sup>27</sup>, there were eight prison officers working a 12-hour day shift (7h00 to 19h00) who were supported by 22 officers working from 8h00 to 16h00. For the night shift (19h00 to 7h00), there were eight prison officers on duty. The recent introduction of 12-hour shifts had been in response to managing security for overnight stays of prisoners in hospital and the fact that there was no funding to pay prison officers overtime. Overall, the number of prison officers was too low, especially taking into account the layout of the central prison building and the number of prisoners held. The prison was also waiting for a director to be appointed.

**The CPT reiterates its recommendation that the authorities of FBiH review the current staffing levels at all the prisons visited, starting with Zenica Prison and, subsequently, inform the Committee about the concrete action taken. The number of prison officers employed must be sufficient to guarantee staff safety and the physical and mental integrity of inmates.**

46. Along with increasing the number of staff, it is essential that a greater emphasis be placed upon ensuring that staff are provided with appropriate knowledge and skills to carry out their tasks. In this respect there have been no concrete ameliorations since the last CPT periodic visit in 2011 as the national authorities have not yet developed a regular in-service training programme (nor a training centre) for prison staff and continue to rely on Council of Europe co-operation programmes for the organisation of training seminars on core competencies for prison staff.

**The CPT reiterates its recommendation that the authorities of FBiH, in concert with the authorities of the RS, put in place a comprehensive human resources policy for prison staff in both Entities, which comprises initial training, regular refresher and specialist courses and on-going support.**

47. The development of a professional management approach within the prison system has still not been adequately addressed by the authorities. At present, there is no career development, no job security and no planning among the senior prison managers. Prison directors are not appointed to their posts solely on the basis of their competence, nor are prison directors provided with the necessary management training to ensure that they are able to run their prisons effectively and plan for the future. Such a state of affairs undermines any attempt to reform the prison system. Reference should be made in this context to the provisions of the European Prison Rules; they emphasise the importance of having a director in each prison who has been carefully selected for his or her ability to carry out “what is one of the most complex tasks in public service”, which includes bringing a sense of purpose, leadership and vision to the post.

**The CPT recommends that the FBiH authorities introduce a professional management career path within the prison system and ensure that prison directors and senior managers are recruited, are given security of employment subject to satisfactory performance and are provided with relevant management training to enable them to fulfil their tasks competently.**

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<sup>27</sup> The establishment accommodated 174 prisoners at the time of the visit.

e. conditions of detention

i. *regime*

48. No steps have been taken to improve the regime for remand prisoners since the CPT's previous visit in 2011. In Sarajevo Remand Prison, inmates continued to be deprived of any opportunities for work or recreation, and were only offered between 30 minutes and 90 minutes of outdoor exercise every day. The situation was even worse for the only juvenile, whose activities consisted merely of some 30 minutes of daily exercise with no education, sports or other recreational activities being provided. Such a state of affairs is unacceptable, and demonstrates yet again that Sarajevo Remand Prison is not suitable for holding juvenile inmates.

A similar state of affairs persisted for remand prisoners at Mostar, Tuzla and Zenica Prisons, with only Orašje Prison offering inmates two hours of daily outdoor exercise in a yard equipped with a means of rest and recreational equipment.

In other words, not even the basic legislative requirements set out in Article 157 of the Criminal Procedure Code of the FBiH (i.e. two hours of daily outdoor exercise) were being adhered to, nor were any steps being taken to develop a purposeful regime. The lack of a regime is all the more worrying considering that inmates may be kept in Sarajevo Remand Prison for more than 12 months; for example, 12 prisoners had been held for longer than 12 months and one inmate for nearly four years.

49. The CPT's delegation was informed once again by the prison managements that they were unable to provide more out-of-cell time due to the shortages of staff as well as the requirement of investigative judges to keep separate all inmates associated with the same case, even after they had spent several months and even years in remand custody. The CPT must stress that in addition to the regular reviews of the necessity of continuing remand custody, the judicial authorities should also examine the necessity of maintaining any other restrictions they might have put in place.

**The CPT calls upon the relevant authorities to take steps as a matter of urgency to radically improve activities for remand prisoners. The aim should be to ensure that all prisoners are able to spend a reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature (group association activities; work, preferably with vocational value; education; sport). All exercise yards should be equipped with a shelter against inclement weather and provided with fitness equipment.**

**Further, immediate steps should be taken to ensure that all persons on remand are offered two hours of outdoor exercise every day, in conformity with the provisions of the Criminal Procedure Code of the FBiH.**

**The Committee also calls upon the relevant authorities to ensure that all juveniles who are held in a penal institution are offered educational and recreational activities which take into account the specific needs of their age group. Physical education should form a major part of that programme.**

50. As regards the regime for sentenced prisoners, the situation was positive at Zenica Prison where inmates were offered a minimum of four hours of outdoor exercise per day and a wide range of activities. 368 inmates (i.e. 47 percent) were working (kitchen, maintenance and metalwork) and 53 inmates were attending an occupational technical school and 23 attended primary school. Chess, computer and music workshops were attended by around 80 inmates.

At Tuzla Prison, female prisoners were offered four hours of outdoor exercise per day and some 20 of them participated in a daily sewing and handicraft workshop for four hours. At the Kozlovac site, inmates were offered up to 4.5 hours of outdoor exercise per day while the work at the economy unit (i.e. farming, honey production and vegetable cultivation) was of a seasonal nature (with a peak of 160 places during the summer months and a trough of 50 during the autumn and winter months). Efforts need to be made to organise additional activities during the winter months.

At Mostar Prison, most sentenced prisoners were offered no more than two hours of outdoor exercise per day in a courtyard lacking any shelter against inclement weather. Only inmates serving long sentences (i.e. 15 out of 115 prisoners) were offered a remunerated activity (i.e. kitchen or maintenance work).

**The CPT recommends that the authorities of the Federation of BiH improve the range of activities, including work, on offer to male and female sentenced prisoners, in particular at Mostar and Tuzla Prisons.**

51. The FBiH Law on Execution of Criminal Sanctions clearly defines the right of prisoners to work and to attend educational and vocational training. Further, the authorities have introduced, with the support of the Council of Europe, a system of interdisciplinary risk assessment and individual treatment plans in each prison. The CPT's delegation noted that detailed and comprehensive treatment plans were being drawn up for each sentenced prisoner (based on admission and assessment interviews, periodic behavioural/psychological/pedagogical reports, etc.). However, due to the lack of purposeful activities on offer, the legal provisions, as well as individual treatment plans and risk assessment charts, remained largely aspirational and the declared aim of imprisonment (i.e. the rehabilitation and reintegration of a prisoner into society) unattainable.

**The CPT recommends that in order for the individual treatment plans of inmates to be effectively implemented and reveal their full potential, appropriate staff should be recruited and a full range of activities be put in place.** Reference is made also to the recommendation in paragraph 50 above.

*ii. material conditions*

52. As **Mostar Prison** is nestled between the Cantonal Court and a residential area, the prison authorities had placed shutters over the windows of every cell which restricted ventilation and access to natural light throughout the establishment.



The cells in the remand section offered acceptable conditions of detention in terms of living space and level of hygiene, and the state of repair of the basic equipment (tables, chairs, benches, lockers and a TV set). However, the delegation came across one small cell (7m<sup>2</sup>) recently converted from a storage room which was accommodating two female remand prisoners. The room had extremely limited access to natural light via a tiny window and was totally unsuitable for accommodating prisoners.

As for sentenced prisoners, the cells accommodating working prisoners and inmates with long sentences located on the ground and first floor offered very good conditions in terms of the state of repair of the equipment (wooden lockers and beds, air conditioners and kitchenettes) and sanitary installations. That said, the multi-occupancy cells in Pavilions II and III located on the first and second floor for inmates with short sentences, offered poor conditions in terms of hygiene and state of repair (damaged flooring and splintered walls).

53. The CPT has commented previously on the generally very poor material conditions at **Sarajevo Prison**, caused by the bad state of repair of the 19<sup>th</sup> century building and overcrowding.<sup>28</sup> Due to the very high number of prisoners at the time of the 2015 visit, the situation had if anything deteriorated since the 2011 visit. Cells of 8m<sup>2</sup> (not all of which had a fully partitioned sanitary annexe) were being used to accommodate three or even four prisoners and cells of some 20m<sup>2</sup> were equipped with three sets of bunk beds. One larger cell (No. 69) was in a particularly poor state with water leaking through the ceiling while the sanitary annexe was malodorous, had damp walls and mould on the ceiling, a dilapidated toilet and leaking sewage water. This cell had been accommodating seven prisoners with one inmate sleeping on a mattress on the floor as there were only six beds. The segregation cell (No. 82) also offered extremely poor conditions; it was filthy and dilapidated with ruined floor tiles and the flush on the un-partitioned toilet was broken.

54. At **Tuzla Prison**, cells in the remand section displayed signs of disrepair and poor hygiene (broken furniture, dirty and splintered walls, damaged sanitary installations) and the lighting and ventilation were inadequate. In particular, the three cells used for accommodating forensic patients (measuring 24m<sup>2</sup>, 9m<sup>2</sup> and 8m<sup>2</sup> respectively) were totally unsuitable for holding prisoners, let alone forensic patients; rusty beds, no bedding (one bed's foam mattress had been sliced into pieces by the bed frame's springs, leaving the patient sitting on bare metal wires), appalling hygienic conditions and an infestation of cockroaches (see also paragraph 73).

The cells in the sentenced female section were generally suitably equipped (i.e. lockers, clothes-dryers, chairs and tables), adequately ventilated and in a good state of hygiene. That said, access to natural light in the three cells located on the ground floor was obstructed by an adjacent wall and the artificial lighting was often out of order.

The Kozlovac site, accommodating sentenced male prisoners, offered generally good conditions of detention in terms of access to natural light and ventilation. Most of the cells, measuring some 16m<sup>2</sup> and equipped with beds, tables, chairs and lockers, held three or four inmates but some accommodated up to five. Each floor also had a spacious communal living room. That said, the buildings were already showing signs of disrepair such as broken door handles and furniture, malfunctioning artificial lighting, and damaged installations and mirrors in the sanitary facilities.

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<sup>28</sup> See CPT/Inf (2010) 10, paragraph 24 on the CPT's visit to this prison in 2009.

55. At **Zenica Prison**, the pre-trial section located in Pavilion II offered generally acceptable conditions of detention. The double-occupancy cells measured some 9m<sup>2</sup> (including a sanitary annexe which was not fully-partitioned) and were equipped with a table, chairs, lockers and a TV set. Access to natural light was acceptable but artificial lighting was weak.

As regards sentenced prisoners, conditions of detention varied across the establishment. In the recently renovated Pavilions III and VI, multiple-occupancy cells and sanitary annexes were spacious, well-lit, in good hygienic condition and adequately equipped (i.e. TV, laminated flooring, tables and chairs and a call bell). Pavilions VII and VIII, accommodating inmates placed under a semi-open regime, offered good conditions of detention in terms of space, state of repair, hygiene and ventilation. That said, the conditions of detention in Pavilion I were less good; dormitories and sanitary facilities were in a poor state of repair with broken and dilapidated furniture (chairs, doors and lockers) and damaged sanitary installations. There was also serious overcrowding in the admission unit where 16 prisoners were accommodated in a dormitory measuring less than 40m<sup>2</sup> (i.e. less than 2.5m<sup>2</sup> of living space per person). Further, the CPT's delegation considers that the new large collective shower room, located in Pavilion III, which was equipped with 50 shower heads interconnected through a grill of suspended water pipes, did little to preserve the dignity of inmates. Further, the showering arrangements for disabled prisoners were also ill-designed as tiled walls posed a physical barrier to them accessing the cubicles. Showering in such conditions was disrespectful of the inmates' privacy and dignity.

56. **The CPT recommends that the authorities of FBiH remedy the deficiencies highlighted above and, in particular:**

- **at all prison establishments visited and notably at Sarajevo Prison, take steps to ensure that the minimum requirement of 4m<sup>2</sup> per prisoner in multi-occupancy cells is respected and that cells of 8m<sup>2</sup> do not hold more than one prisoner;**
- **at Mostar Prison, take out of use the small cell accommodating female prisoners in the remand section and refurbish the cells and sanitary facilities in Pavilions II and III;**
- **at Sarajevo Prison, introduce a rolling programme of maintenance of the cells, starting immediately with cells Nos. 69 and 82;**
- **at Tuzla Prison:**
  - **improve the state of repair of furniture and hygienic conditions at the remand section in accordance with the House Rules;<sup>29</sup>**
  - **improve the lighting in the cells located on the ground floor of the female section;**
  - **enhance the standard of maintenance throughout the Kozlovac site;**
- **at Zenica Prison:**
  - **improve the lighting in the cells accommodating remand prisoners at Pavilion II in line with the requirements enshrined in Section 26 of the Rulebook on House Rules in Establishments for the Enforcement of Remand Detention;**
  - **repair the furniture (lockers, doors and chairs) in Pavilion I;**
  - **redesign the large shower room in Pavilion III through, for example, introducing screens in order to preserve the dignity of inmates and altering the disabled prisoners' cubicles in order to afford them easy access.**

f. juveniles

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<sup>29</sup> Sections 33 and 34 of the Rulebook on House Rules in Establishments for the Enforcement of Remand Detention provide for a general disinfection to be carried out every month and for the maintenance of cells to be carried out once a year.

57. The CPT has long advocated that all detained juveniles who are suspected or convicted of a criminal offence should be held in detention centres specifically designed for young persons, offering a non-carceral environment and regime tailored to their needs and staffed by person trained in dealing with the juveniles. In this respect, a new Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings entered into force in the FBiH in February 2015. The law places a ban on the use of solitary confinement and provides for increased entitlements. Notably, according to Section 151, juveniles should have access to at least three hours of outdoor exercise per day and have the right to participate in organised cultural, sporting and other activities as well as educational courses (including outside the institution).

However, the relevant rulebooks for the implementation of the new law were still not in place at the time of the CPT's visit.

**The Committee would like to be informed of the timetable for the adoption and application of the relevant rulebooks provided by the new Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings.**

58. The CPT's delegation visited the designated 28-place juvenile pavilion at Zenica Prison which was accommodating seven young persons serving a sentence of juvenile imprisonment<sup>30</sup> and the juvenile detention unit at Tuzla Prison which was accommodating eight juvenile offenders serving a court-imposed correctional educational measure.<sup>31</sup>

The separate juvenile pavilion at Zenica Prison had only been inaugurated in June 2013; the single-occupancy cells were well equipped with a table, chair, locker a washbasin, had good access to natural light and ventilation and were well decorated and personalised. However, despite the good material conditions and extensive time out-of-cell offered, the small size of the cells, measuring only 5m<sup>2</sup>, is insufficient for accommodating prisoners overnight. The CPT has repeatedly stressed that every prisoner should be afforded a minimum of 6m<sup>2</sup> of living space in a single occupancy-cell, excluding the sanitary facilities.<sup>32</sup> This is even more important in the context of detention of juveniles.

**The CPT recommends that the authorities of FBiH, together with the management of Zenica Prison, take urgent steps to increase the living space afforded to each young person held in the juvenile pavilion, in the light of the above remarks.**

At Tuzla Prison the three-roomed juvenile unit offered poor conditions of detention; each room measured approximately 20m<sup>2</sup> and accommodated three juveniles. The rooms were in a poor state of repair and hygiene, with crumbling and dirty walls, limited access to natural light, poor artificial lighting and inadequate ventilation. Further, they were impersonal and undecorated, and the barred windows served to reinforce the carceral environment.

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<sup>30</sup> A sentence of juvenile imprisonment cannot last more than ten years and the maximum age for serving a juvenile sentence is 23 years and exceptionally 25 years.

<sup>31</sup> A court-imposed juvenile correctional measure can last a maximum of five years and must be subject to a review every six months.

<sup>32</sup> See, most recently, CPT/Inf (2015) 44, paragraph 9, where the Committee has published its standards on living space per prisoner.

59. As regards the regime, juveniles at Zenica Prison could be out of their cell occupied with activities from 7h00 to 22h00, which included access to a basketball pitch and courtyard for five hours, a computer room, a boxing gym and a community room with board games and reading material. Further, the young persons were offered the possibility of remunerated work as cleaners and kitchen assistants, and arrangements with educational establishments were in place for those wishing to complete primary or secondary education. That said, no vocational training activities were on offer to the inmates. **The CPT recommends that offenders serving a sentence of juvenile imprisonment at Zenica Prison are offered the possibility of attending vocational courses. Such courses should be provided by professional teachers/trainers and juveniles should obtain the same type of diplomas or certificates (after successfully completing their education) as juveniles in the community.**

At Tuzla Prison, the juveniles were confined to their unit for the greater part of the day with no purposeful educational, vocational or other recreational activities on offer. The absence of any teachers meant there were no classes despite seven of the eight juveniles having stated their wish to complete their primary and secondary education. The only activity available to the juveniles was to spend between three and five hours a day in a courtyard equipped with a basketball hoop.

60. The 2014 Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings stipulates that a disciplinary sanction must consist only of reprimands and limitation of privileges; no possibility of solitary confinement is envisioned. Further, the use of means of restraint by staff against juveniles must be limited to extreme situations when an immediate danger to life is at stake. The CPT's delegation was able to observe that at the detention unit for juveniles at Tuzla Prison, a separate isolation cell with a metal bed fixed to the ground and equipped with handles for the fixation of inmates was still in place at the time of the visit. Juveniles and staff confirmed that the cell in question had been used to isolate and fixate juveniles prior to the entry into force of the new law.

As mentioned above, the CPT's delegation invoked Article 8 paragraph 5, of the Convention at the end of the 2015 visit and requested the FBiH authorities to take immediate steps to provide all juveniles sentenced to a correctional measure with decent living conditions and access to a full range of purposeful activities, including education and sports. By letter of 12 January 2016, the Ministry of Justice of the Federation of BiH informed the Committee that, in the near future all juveniles detained at Tuzla Prison would be transferred to the new 58-place educational and correctional facility in Orašje. However, at the time of the visit, in addition to completing the installations, the main challenges to getting the new facility operational were the connection to the water supply and the recruitment of qualified staff.

**The CPT wishes to receive information on the measures taken to improve the conditions of detention of the juveniles met by the delegation at Tuzla Prison. Further, it wishes to receive updated information regarding the operation of the Orašje facility. In addition, the CPT wishes to receive confirmation that the isolation room at the juvenile detention unit of Tuzla Prison has been definitely put out of service and the metal bed removed.**

61. In terms of staffing, the CPT's delegation welcomed the fact that custodial staff did not wear a prison uniform; this contributed to a more caring and relaxed atmosphere. That said, not all staff working with juveniles, including those with custodial duties, received professional training and benefited from external support and supervision in the exercise of their duties.

**The CPT recommends that all staff working with juveniles receive such training and external support. Particular attention should be given to staff training in the management of violent incidents.**

g. health-care services

62. The promotion of greater co-ordination between the FBiH Ministries of Health and Justice in the delivery of health-care services in prisons has been a longstanding recommendation of the CPT.<sup>33</sup> Once again, in the course of the 2015 visit, the CPT's delegation noted the lack of a coherent approach concerning the management of communicable diseases, the development of a prison drugs policy and of uniform standards on the training of health-care staff, all of which have a negative impact on the overall quality of health-care provided to inmates.

**The CPT reiterates its recommendation that the FBiH Ministries of Health and Justice jointly take the necessary steps to improve prison health-care services, taking due account of the recommendations contained in this report.**

63. The health-care staff resources at Zenica Prison consisted of one full-time general practitioner and 17 nurses (including one radiographer). The post of psychiatrist/head of health-care was vacant and no psychiatrist visited the prison. Dental clinics were run by a contracted dentist three times a week and the prison was visited on a regular basis by a pool of various specialists for inmate consultations. A forensic psychiatrist visited the forensic psychiatric annexe three times a week.

At Tuzla Prison, the health-care staffing complement consisted of one full-time general practitioner,<sup>34</sup> three nurses and two additional contracted nurses who were present at each prison site. A psychiatrist was visiting the establishment once a week and a gynaecologist was regularly carrying out examinations of the female inmates.

At Mostar Prison, where the health-care staffing complement consisted of one contracted general practitioner and two nurses (including one head nurse), the CPT's delegation was able to observe that the doctor was clearly not complying with the terms of his contract.<sup>35</sup> Further, a contracted psychiatrist<sup>36</sup> was visiting the establishment once a week and a dental clinic was also held once a week.

There was still no full-time general practitioner at Sarajevo Prison. At the time of the visit

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<sup>33</sup> See for example CPT/Inf (2010) 10, paragraph 28.

<sup>34</sup> The full-time general practitioner was on sick leave at the time of the visit and replaced by a contracted doctor who was visiting the establishment three times a week.

<sup>35</sup> The doctor in question was visiting the establishments twice instead of four times a week and at irregular times. This was due to the fact that he was performing another assignment in the community.

<sup>36</sup> The terms of his contract were for two clinics a week.

the health-care staffing complement of the establishment consisted of three nurses. A contracted general practitioner was visiting the establishment every ten days. Further, a psychiatrist offered consultations to inmates once a week and a dentist operated at the dental surgery twice a week.

**The CPT recommends that the FBiH authorities reinforce the health-care staffing complements at the establishments in particular by:**

- **recruiting a full-time general practitioner at Sarajevo Prison;**
- **ensuring that the contracted general practitioner at Mostar Prison comply responsibly with the terms of his contract and be present at the establishment at least four times per week at regular times;**
- **recruiting an additional full-time general practitioner and filling the vacant post of a full-time psychiatrist at Zenica Prison.**

64. The health-care facilities at Mostar, Tuzla and Zenica Prisons generally had good material and hygienic conditions and were adequately equipped. All facilities possessed ECG machines, oxygen cylinders and masks, blood pressure machines and stethoscopes, as well as equipment for basic biological tests. That said, no defibrillators were seen at any of the establishments visited.

At Sarajevo Prison, the health-care unit was in an acceptable level of hygiene and the premises had been recently painted. That said, there was no basic equipment such as an ECG machine and a defibrillator and the sterilisation equipment was mouldy and unusable (forcing nurses to refer inmates externally even for basic interventions such as stitching wounds). Further, the separate dental surgery was dilapidated (e.g. the dental chair was falling apart and the extraction material antiquated and in a bad state of hygiene (there were birds' feathers on the floor).

**The CPT recommends that the FBiH authorities take the necessary steps to equip Sarajevo Prison with an ECG machine and new, regularly maintained sterilisation equipment, as well as to undertake an overall refurbishment of the dental surgery (including the provision of a new dental chair, autoclave and extraction tools). Further, Mostar, Sarajevo, Tuzla and Zenica Prisons should be provided with life-saving equipment and appropriate training for staff to use it.**

65. Newly arrived prisoners were in principle seen by a doctor or a qualified nurse within 24 hours of admission to prison.<sup>37</sup> However, the medical assessment did not usually consist of a proper interview and physical examination by the doctor. Further, the description of injuries, including traumatic injuries sustained upon arrival, as well as those sustained in prison, was incomplete and superficial. In addition, no registers of traumatic injuries were in use at any of the establishments visited.

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<sup>37</sup> Doctors only examined the problematic cases previously highlighted by nursing staff.

The CPT reiterates its recommendation 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.

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 the location of 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. Further, dedicated registers on traumatic injuries should be introduced at all prison establishments at the Entity level.

66. Pursuant to Section 98 of the FBiH LECS, there was mandatory medical examination before the enforcement of the solitary confinement measure. Consequently, prison doctors at all establishments visited continued to be obliged to certify that inmates were fit for punishment prior to the enforcement of a decision on solitary confinement. Some prison doctors expressed to the delegation their disagreement with such a practice and discomfort with the pressure exercised on them by the prison management to issue the above certificates.

Further, at the establishments visited nurses were being required by security staff to perform urine testing of inmates for illicit substances as a security measure.

The Committee wishes to stress that medical practitioners working in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo punishment and nurses to enforce security measures such as drug testing is scarcely likely to promote that relationship. This point was recognised in the Committee of Ministers' Recommendation (2006) 2 of the European Prison Rules; indeed, the rule in the previous version of the Rules, stipulating that prison doctors must certify that a prisoner is fit to sustain the punishment of disciplinary confinement, has now been removed.

**The CPT reiterates its recommendation that the existing regulations and practice concerning the role of medical staff in relation to disciplinary matters and the enforcement of security measures be reviewed. In so doing, regard should be had to the revised European Prison Rules and the comments made by the Committee in paragraph 53 of its 15th General Report (CPT/Inf (2005) 17) as regards ending the practice of prison doctors certifying that prisoners are fit to undergo punishment..**

67. Once again there has been no improvement in relation to the respect of medical confidentiality during medical examinations of prisoners in the establishments visited. With the exceptions of sentenced prisoners at Zenica Prison, who were in principle allowed to be examined by a doctor without the presence of security staff, medical examinations continued to be systematically performed in the presence of custodial staff at all the establishments visited.

The CPT delegation was surprised to learn that security staff at Zenica Prison possessed a spare key to a filing cabinet containing the inmates' personal medical files. Further, at Mostar and Tuzla Prisons, all referral letters of patients to be treated in an outside facility were sent to the prison director for his authorisation displaying the written diagnoses of the patients in question.

It is important that medical confidentiality be observed in prisons in the same way as in the community at large. Particular reference should be made to Recommendation R (98) 7 of the Council of Europe's Committee of Ministers to member states concerning the ethical and organisational aspects of health-care in prison, according to which medical confidentiality should be guaranteed and respected with the same rigour as in the population as a whole.<sup>38</sup> In particular, all medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and – unless the doctor concerned requests otherwise – out of the sight of prison officers. Keeping prisoners' medical files should be the doctor's responsibility and, in the event of transfer and/or external referral of a prisoner, the file should be forwarded in a sealed envelope to the doctor in the receiving establishment.

**The CPT reiterates its recommendation that steps be taken to guarantee confidentiality in accordance with the above precepts.**

68. Pharmacies at Mostar, Tuzla and Zenica Prisons were adequately supplied with basic medication. That said, at Sarajevo Prison, the delegation was able to observe that there was frequent disruption to the supply of essential medication (including insulin) since this task had recently been assigned to a new company. Further, at the Kozlovac site of Tuzla Prison, the delegation found stocks of expired medication (including insulin).

**The Committee recommends that effective steps be taken in order to ensure that Sarajevo and Tuzla Prisons are always supplied with an adequate range and sufficient quantities of non-expired medication.**

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<sup>38</sup> See paragraph 13 of the Appendix to Recommendation No. R (98) 7.



69. The distribution of medication was performed by nurses at all establishments visited. The inmates had to swallow the medication in front of health-care staff; however, at Sarajevo Prison their mouths were not systematically checked.

That said, at Tuzla Prison, the delegation had serious concerns about the dispensing of medication: inmates' identities were not checked prior to the medication being dispensed, often from a communal medication stock rather than a patient's particular supply; benzodiazepines were dispensed, unchecked, from an unlabelled tub that contained both bromazepam and diazepam. Further, all psychotropic medication was crushed into powder using a tablet crusher that was neither completely emptied on each occasion nor washed prior to being used for the next patient.

**The CPT recommends that the FBiH authorities ensure that, in the process of distribution of medication, the identity of patients and their respective prescription be accurately checked by health-care staff. Further, the routine practice of crushing medication prior to its dispensation, at Tuzla Prison, should be ended. .**

70. The quality of medical documentation was in general poor at all establishments visited. Entries in medical files were scant and sometimes unreadable, and sections were often incomplete with missing cover sheets and "new patient checks".

**The CPT recommends that the quality of medical records be improved at all the establishments visited.**

71. At the time of the visit, screening for transmissible diseases at the establishments visited was not always offering in-house testing for Hepatitis B, C, HIV and tuberculosis with the support of various NGOs. In general, there was a lack of availability of interferon treatment for inmates who were diagnosed with Hepatitis C after their incarceration. Further, the delegation was surprised to find inmates being prescribed non-evidence-based treatment such as artichoke tablets which some health-care professionals at the prisons visited believed were curative for Hepatitis C. Further, in none of the establishments visited was HIV treatment available to inmates.

**The CPT recommends that all prisons systematically screen prisoners for Hepatitis B and C, HIV and tuberculosis. Further, uniform availability of curative treatment for Hepatitis C and long-term substantive treatment for HIV should be introduced at all prison establishments.**

72. Once again, no coherent approach was taken by the FBiH authorities in regard to inmates identified as having a drug-related problem and the related policy varied at every establishment. For example, at Orašje Prison, it was possible for inmates to start opiate substitution therapy in prison whereas at Sarajevo, Tuzla and Zenica Prisons, such substitution therapy was granted only to those inmates who had already started it before their incarceration. At Mostar Prison, the treatment of inmates subject to opiate substitution therapy at the time of incarceration was being discontinued. The CPT's delegation received numerous complaints about this policy. Two cases at Mostar Prison illustrated the negative consequences of such an approach. One inmate with a chronic community opiate addiction had his opiate substitution therapy stopped upon incarceration and developed a severe opiate withdrawal crisis; but, rather than prescribing a substitute opiate, the psychiatrist gave him doses of benzodiazepine, anti-psychotic medication and simple painkillers. The second inmate was treated in a similar manner but had his benzodiazepine treatment stopped when he unsurprisingly tested positive for the illicit opiates he had continued to crave.

Further, nothing had been done as regards the provision of psycho-socio-educational assistance to prisoners with a drug addiction problem at any of the establishments visited.

**The CPT calls upon the FBiH 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 (see the remarks in paragraph 110).**

73. None of the establishments visited had an in-house psychiatrist and they generally relied on consultations provided by external experts. In fact, the great majority of these consultations concerned drug-related problems. However, as mentioned in paragraph 54, the CPT's delegation was appalled by the presence of seven forensic psychiatric patients at the remand section of Tuzla Prison who had been subject to a court-imposed measure of mandatory psychiatric treatment in a health-care facility.<sup>39</sup> The patients in question were chronically psychotic and some of them had symptoms compatible with poorly treated psychosis. Some appeared to be constantly distracted by auditory and other hallucinations and one demonstrated his paranoia by expressing to the delegation's doctor his fear of leaving his cell. Further, their medical records showed little evidence that their basic mental and physical health-care needs were being adequately taken care of at Tuzla Prison.

The delegation invoked Article 8, paragraph 5, of the Convention, and requested the FBiH authorities to take immediate measures to transfer the seven forensic patients out of Tuzla Prison to an appropriate hospital setting where they could receive the care and attention they required. By letter received on 17 December 2015, the FBiH authorities informed the Committee that the above patients would be transferred to the Special Hospital for Forensic Psychiatry in Sokolac once it became operational. **Such a response is totally unsatisfactory. These patients require nursing care and immediate steps have to be taken to transfer them to a health-care facility without waiting for the commissioning of the Special Hospital for Forensic Psychiatry in Sokolac.**

**The CPT recommends that the seven forensic psychiatric patients accommodated at Tuzla Prison be transferred immediately to an adequate health-care facility pending the official start of operations at the Special Hospital for Forensic Psychiatry in Sokolac. The Committee would like to receive confirmation of the above-mentioned transfer of patients within one month.**

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<sup>39</sup> The personal files of the seven patients contained the court verdicts issued between 2009 and 2011 imposing a measure of mandatory psychiatric treatment to be executed in an adequate health-care facility. The delegation was informed that the management of the Tuzla University Clinical Centre had repeatedly refused their placement in a psychiatric ward for security reasons.

h. other issues

i. *discipline*

74. Section 96 of the FBiH Law on Execution of Criminal Sanctions envisages three types of disciplinary measure that may be imposed on sentenced inmates: a reprimand, deprivation of privileges and solitary confinement for up to 20 days. However, as mentioned above, the disciplinary commissions at each establishment must apply the State Law on Execution of Criminal Sanctions<sup>40</sup> to those inmates who are serving a sentence imposed by the State Court. These provisions are generally less harsh; for example, the State Law provides for a maximum of 10 days of solitary confinement as a sanction, compared to 20 days in the FBiH Law; it also allows for two hours of outdoor exercise instead of one hour at the Entity level. The CPT's delegation was able to observe that the different legal provisions created tensions among prisoners. Some inmates received harsher sanctions than other inmates for the same type of offence and clearly felt discriminated against.

**The CPT recommends that the authorities of Bosnia and Herzegovina at the State and Entity levels harmonise the provisions regulating the sanction of solitary confinement. In this context, until such time as the laws have been harmonised, the CPT considers that the disciplinary commissions in each prison should restrict themselves to a limit of 10 days. The CPT recalls that the maximum possible period of solitary confinement as a punishment should be no higher than 14 days for a given offence, and preferably lower.<sup>41</sup>**

75. The CPT's delegation found that in the course of 2014, 695 disciplinary proceedings had been instituted at Zenica Prison, 175 at Tuzla and 156 at Mostar Prison.

The disciplinary procedures were generally applied in a fair manner. However, it still remained the case that the only appeal possible against a disciplinary sanction was to the Director of the establishment concerned. In addition, inmates did not receive a written copy of the disciplinary decision and were only verbally informed about how to appeal.

**The CPT recommends that prisoners be always provided as soon as possible with a copy of the disciplinary decision, which should inform them of both the reasons for the decision and the modalities for lodging an appeal. Further, the right of prisoners to appeal to an independent authority against any disciplinary sanction imposed should be introduced.**

76. Section 73 of the FBiH Rulebook on House Rules in Establishments for the Execution of Remand Detention provides that prisoners on remand be restricted in their visit entitlements and contact with the outside world as a punishment if they commit a disciplinary offence. The CPT considers that the restrictions on remand prisoners' contacts with the outside world should be limited to the strict minimum necessary for investigation purposes. Contact with the outside world should not be restricted as a disciplinary measure unless the offence pertains to the abuse of this right.

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<sup>40</sup> In accordance with Section 102 of the Law on Execution of Criminal Sanctions of BiH.

<sup>41</sup> See the CPT's 21<sup>st</sup> General Annual Report 2010-2011, CPT/Inf (2011) 28, paragraph 56.

**The CPT recommends that the authorities of the FBiH amend the above-mentioned provision of the Rulebook on House Rules in Establishments for the Execution of Remand Detention.**

77. As regards material conditions, the solitary confinement cells in Pavilion II of Zenica Prison offered adequate living space (9m<sup>2</sup>) and were in a good of state of repair and hygiene. Cells were equipped with a bed, table and chair fixed to the ground and a call bell. At Tuzla Prison, the two solitary confinement cells located at the Kozlovac site offered good conditions; however, they were not equipped with call bells. The solitary confinement cell located on the second floor of Mostar Prison was spacious (i.e. 12.5m<sup>2</sup>) and equipped with basic furniture and a fully partitioned sanitary annexe and call bell.

However, the CPT's delegation learned in the course of the visit that two cells located in the basement of Mostar Prison were being used for solitary confinement purposes. The cells measured a mere 4m<sup>2</sup> and 3.5m<sup>2</sup>, were only equipped with a sponge mattress on a concrete platform and had no toilet, wash basin or call-bell. Both cells were poorly ventilated and the smaller cell had no access to natural light and no functioning artificial lighting. Such cells are not fit for holding prisoners.

**The CPT recommends that the two above-mentioned cells at Mostar Prison be taken out of use. Further, solitary confinement cells located at the Kozlovac site of Tuzla Prison should be equipped with call bells.**

*ii. contacts with the outside world*

78. In the prisons of the FBiH, visits to remand prisoners are limited to a maximum of fifteen minutes per week upon the approval of the investigative judge.<sup>42</sup> This is insufficient and efforts should be made to increase the time to the equivalent of one hour per week. It is positive that at Mostar and Zenica Prisons, inmates enjoyed open visits, with the possibility of physical contact with their visitors, while, at Tuzla Prison, remand prisoners were only granted closed visits, receiving visitors behind a glass screen which did not allow for any physical contact.

For sentenced prisoners, the visiting arrangements in the establishments visited were on the whole satisfactory: one hour per week with close relatives. Further, arrangements were in place for conjugal visits on a bi-monthly basis. Visiting premises were clean and in a decent state of repair and do not call for particular concerns.

**The CPT recommends that all prisoners, as a rule and irrespective of their regime level, be offered the equivalent of one hour of visiting time per week and preferably be able to receive one visit per week. Only in exceptional cases should an investigative judge place a restriction on visits to a remand prisoner.**

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<sup>42</sup> See Section 55 of the Federation of Bosnia and Herzegovina Rulebook on House Rules in Establishments for the Enforcement of Remand Detention.

79. The delegation found out that inmates and visitors at Zenica Prison were being subjected to systematic full strip-searches by staff prior to and after a visit. First, such searches should be intelligence-driven and not routine-based. Second, every reasonable effort should be made to carry out such searches while respecting the dignity of the individuals. The CPT considers that persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and get dressed before removing further clothing. In addition, more than one officer of the same sex as the person being searched should, as a rule, be present during any strip-search as a protection for detained persons and staff alike.

**The CPT recommends that the management of Zenica Prison take the necessary steps to comply with the above-mentioned requirements in respect of searches.**

*iii. complaints and inspections*

80. A well-functioning complaints system within a prison establishment is in the interests of all parties; it can serve as a valuable source of information for prison management about potential problems in the establishment as well as allaying tension among prisoners by ensuring that their concerns are treated seriously and, where appropriate, that suitable remedies are proposed.

81. Within the FBiH there is a three-tier complaints system in place. First, a complaint is processed by the prison official working in direct contact with the inmate (i.e. educator); a written answer must be provided within three days. If the inmate is dissatisfied with the answer, the complaint is reviewed at the level of the competent assistant director and if still dissatisfied the complaint can be relayed to the director of the establishment. That said, it appeared that not all prison establishments visited were using the internal system and uptake was generally low where it was being used.

Inmates can also lodge complaints at any moment with the FBiH Ministry of Justice, as well as with the Ombudsperson's office.<sup>43</sup>

**The CPT recommends that the new complaints system be applied in all prisons and that greater efforts are invested by the FBiH authorities to publicise the three-tier complaints system and to encourage prisoners to use it.**

82. In terms of inspections, as mentioned in paragraph 9, the NPM was not yet operational at the time of the 2015 periodic visit. That said, officials of the Department for the Execution of Criminal Sanctions of the Ombudsperson's office were regularly visiting inmates who had lodged complaints to the institution. Further, the CPT's delegation was able to ascertain that all prison establishments visited had been object of inspections by the Independent Parliamentary Commission at the State level between 2012 and 2015.

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<sup>43</sup> In accordance with Section 92 of the FBiH Law on Execution of Criminal Sanctions.

### 3. Prison establishments under the authority of the Ministry of Justice of the RS

#### a. establishments visited

83. In 2015, the CPT's delegation carried out follow-up visits to Banja Luka, Bijeljina and Foča Prisons and visited Dobož and East Sarajevo Prisons to interview prisoners on remand.

**Banja Luka Prison** was visited previously in 2007, 2011 and 2012.<sup>44</sup> At the time of the visit, the prison was accommodating 210 sentenced prisoners for a capacity of 266 and 34 inmates on remand for a capacity of 116. The juvenile correctional home located outside the main prison was accommodating 12 boys for a capacity of 20.

**Bijeljina Prison** was described in the report on the 2012 visit<sup>45</sup> and, at the time of the 2015 visit, was accommodating 59 sentenced prisoners and 15 remand prisoners (one of whom was a woman) for an overall capacity of 119. A new prison establishment with a capacity of 200 places was under construction in the neighbourhood of Golo Brdo; however, due to funding shortages no clear information could be provided as to when it would be completed.

**Foča Prison**<sup>46</sup> remains the only high-security prison in the RS and, at the time of the visit, was accommodating 327 sentenced male prisoners in the main prison which had a capacity of 302 and 26 prisoners in the separate 38-place special regime department.

#### b. ill-treatment

84. The vast majority of prisoners interviewed by the CPT's delegation in the course of the 2015 visit made no allegations of ill-treatment by prison staff. On the contrary, most prisoners stated that they felt safe and were treated correctly by prison officers.

However, at Banja Luka Prison, a prisoner on remand alleged that he had been dragged out of his cell by staff<sup>47</sup> on 26 April 2015 and subjected to baton blows to his body while lying on the floor and was beaten again on the ground floor by members of the prison's intervention unit. Subsequently, his clothes were forcibly removed and he was placed in a padded cell in only his underwear for two days. His medical file contained the following description by the prison doctor: "reddishness in the lower back and three parallel tram-line hematomas 6cm x 4cm in size". Moreover, it appeared from the medical file, dated 21 April 2015, that this prisoner had contracted pneumonia after having been placed in the padded cell in only his underwear.

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<sup>44</sup> See CPT/Inf (2012) 15, paragraph 26 for a description of the prison.

<sup>45</sup> See CPT/Inf (2013) 12, paragraph 36 for a description of the prison.

<sup>46</sup> See CPT/Inf (2009) 25, paragraph 25 for a description of the prison.

<sup>47</sup> Apparently this occurred in response of him throwing his food on the floor after learning about a tragic event in his family.

At Bijeljina Prison, several prisoners stated that they had been slapped and punched by certain prison officers. The ill-treatment reportedly had taken place in the offices used by prison staff at the entrances to the remand and sentenced prisoner sections. For example, one sentenced inmate alleged that he had been punched in the face by a prison officer for entering another inmate's cells after dinner on 4 July 2015. The prison doctor recorded the following entry in the prisoner's medical file: "2 cm x 1 cm oedema on the right eyebrow". Some complaints were also heard of verbal abuse of prisoners by staff. At Doboj Prison, several allegations of ill-treatment of inmates by two specific prison officers were received.

**The CPT recommends that the management of Banja Luka, Bijeljina and Doboj Prisons deliver to custodial staff the clear message that physical ill-treatment and verbal abuse of inmates, as well as other forms of disrespectful or provocative behaviour vis-à-vis prisoners, are not acceptable and will be sanctioned appropriately. 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 prison staff training. Independent and in-depth investigations should be conducted promptly.**

85. The CPT considers that when there is a need for a disruptive or violent prisoner to be rapidly transferred to a padded cell, the person concerned should only be kept in the cell until such time as he has calmed down, whereupon he should be placed in an ordinary cell and, if appropriate, managed through the disciplinary process. Further, the prisoner's clothing should not be removed unless this is found to be justified following an individual risk assessment. If the clothing is removed, the prisoner should be provided with rip-proof clothing and blankets.

**The CPT recommends that the legal provisions and practice regulating the placement of a prisoner in a padded cell be amended in the light of the above remarks. A copy of the amended rules should be provided to the Committee.**

86. The CPT's delegation found that Banja Luka Prison was generally well managed with few incidents and little overt tension. However, this was achieved by the prison management and prison officers imposing a highly-disciplined regime which if challenged by the prison population led to excessive reactions by prison management. The case of the collective request (*molba*) of 30 June 2015 is illustrative of this point. The collective request was signed by 44 sentenced prisoners accommodated on the second floor of the main building requesting that a particular prison officer be transferred to other duties as he had apparently slapped a prisoner across the face for violating a house rule.<sup>48</sup>

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<sup>48</sup> The prisoner in question had taken two pancakes instead of one and was unable to explain his actions in writing due to his poor written Serbian as he had lived most of his life in Germany. The prisoner in question was interviewed by the CPT's delegation in another prison.

Faced with this request, the prison management immediately reacted by accusing the prisoners concerned of attempting to destabilise the order and security in the establishment. Five organisers were identified and placed in separate cells in the enhanced supervision unit for an initial period of three months; two weeks later disciplinary proceedings were initiated and a week later the decisions of seven to 10 days of solitary confinement announced. Appeals to the director were rejected; he reasoned that the protest was not really against the action of the prison officer but was in fact a “quiet mutiny aimed at bringing general unrest”. It should be noted that from individual interviews held by the CPT’s delegation, it emerged that prisoners who had signed the petition had been approached by prison staff and threatened with repercussions unless they withdrew their names from the petition and stated they had been coerced by the five ring-leaders.

The CPT considers that the prison management completely over-reacted to the request by the prisoners and confirmed the perception among inmates that prison officers can treat inmates as they desire without being held to account. The substance of the request should have been investigated properly and appropriate action taken. In parallel, the management should have reiterated the avenues open to make a complaint, verified that such avenues permit a prisoner to make a complaint of abusive behaviour by a prison officer without repercussions and recalled that collective requests are not a suitable way to address individual concerns.<sup>49</sup> That said, the findings of the CPT’s delegation point to prisoners at Banja Luka Prison being afraid to complain about the behaviour of prison officers.

87. The Committee notes that the prison management was very defensive when confronted by the findings of its delegation. Nevertheless, modern day prisons can no longer be managed along martial lines when the aim of prison is, within a secure environment, to prepare prisoners for reintegration into the community. A highly disciplined order such as that in place at Banja Luka Prison does not accept criticism or challenges to its modus operandi and hence is not equipped to defuse and address incidents such as the one outlined above.

**The CPT recommends that Ministry of Justice and the prison management of Banja Luka Prison reflect on the manner in which the above-mentioned incident was handled in the light of the Committee’s remarks with a view to putting in place procedures to handle similar such incidents in a more proportionate way (see also paragraph 114). The martial approach to control and management of prisoners should be reviewed.**

88. As regards inter-prisoner violence, the CPT’s delegation found that its incidence had diminished in the dormitories of the *kolektivs* located in buildings I and II of Foča Prison due to the increased presence of prison officers and the reduced occupancy levels (see paragraphs 100 and 113). Further, at Banja Luka Prison both sentenced and remand prisoners interviewed by the delegation indicated that episodes of inter-prisoner violence were rare and that staff intervened promptly whenever they did occur.

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<sup>49</sup> The formal offence of the five ring-leaders was entering other dormitories than their own in order to collect signatures as prisoners are only permitted to enter their own rooms.



- c. special regime department and enhanced supervision unit (with intensive treatment)

89. The report on the 2011 visit described the structure and legal basis for the Special Regime Department in Foča Prison.<sup>50</sup> At the time of the 2015 visit, the provisions of the law had not changed. Placement in the department is authorised by the Minister of Justice upon a proposal of a prison director and is for a six-month period which may be renewed. The Law still provides no limits as to the amount of time a person may be held in the special regime unit, nor does it contain any provisions relating to the possibility to appeal placement in the unit to another authority. Ministry of Justice officials explained to the delegation that as placement was an “order” (*naredba*) and not an administrative decision in Law,<sup>51</sup> additional guarantees were not necessary. The CPT rejects such an approach as it opens the door to administrative abuse with prisoners barred from challenging measures by the prison authorities which may be arbitrary. Therefore, it is imperative that the relevant legislation be amended to permit a placement measure in the Special Regime Department to be surrounded by appropriate guarantees.

An examination of the relevant documentation showed that the proposals for placement in the department were well-reasoned and based on the assessment of a multi-disciplinary team. That said, inmates were only verbally informed of the placement decisions and any extension and did not receive a copy of the decision. Further, there was no appeal procedure in place. Prisoners who had been permanently placed in the department since the end of 2011 complained about the inadequate reasoning for renewing their placement, as orally explained to them by the educators, and the impossibility of challenging it effectively.

**The CPT recommends that the RS authorities amend the Law on the Special Regime in order to provide for appropriate guarantees surrounding placement in the Special Regime Department. In particular:**

- **a prisoner in respect of whom a placement in the Special Regime Department is envisaged or in respect of whom such placement is extended should be given an opportunity to express his/her views on the matter, after having been informed in writing of the reasons for the measure (it being understood that there might be reasonable justification for withholding from the prisoner specific details related to security);**
- **a prisoner should have the right to appeal to an independent authority against the imposition or extension of a placement in the Special Regime Department.**

90. The Special Regime Department was formally inaugurated in September 2011 and was accommodating 26 inmates at the time of the visit for an official capacity of 36. The single cells offered decent conditions.<sup>52</sup>

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<sup>50</sup> See CPT/Inf (2011) 40, paragraph 36.

<sup>51</sup> See Article 5.3 of the Law on Special Regime of the Execution of Criminal Sanction of April 2010.

<sup>52</sup> See CPT/Inf (2011) 40, paragraphs 38.

Inmates were offered two hours of outdoor exercise alone and two hours of recreation with two other inmates in a fitness room (or an hour of table tennis) every day. A daily origami workshop was attended by two or three inmates and it was planned to introduce an English language course. Inmates had regular individual contacts with an educator and a psychologist attached to the department and had daily access to three prayer rooms.

Contacts with the outside world were limited to one telephone call of 10 minutes per week and one closed visit of one hour per month. It is positive that inmates with children were offered open visits in a part of the department's garage which was furnished with a sofa and table. However, "open" visiting arrangements should be the rule and "closed" ones the exception for all legal categories of prisoner, including those placed under a special regime. 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. Further, the visiting entitlement should be increased and the possibility to make additional telephone calls introduced.

**The CPT recommends that the RS authorities increase their efforts to offer prisoners placed in the Special Regime Department with a wider range of purposeful activities (education, vocation, work, recreation and sport). Further, opportunities for contacts with the outside world should be enhanced with open visits the rule and closed visits only being imposed for security-related reasons, and prisoners should be offered the equivalent of one hour of visits per week and more than one telephone call per week.**

91. In terms of staffing, each of the three daily shifts consisted of five officers and, from interviews with prisoners and staff, it appeared that the appointment of a new head of unit in 2013 had resulted in a more professional approach by staff with the prison officers displaying better interpersonal skills. As a consequence, prisoners told the delegation that excessive use of force and verbal abuse by staff had decreased considerably. This is positive and demonstrates the importance of appointing competent prison officer managers.

92. In both Banja Luka and Foča Prisons, the CPT's delegation again visited the enhanced supervision departments (*pojačani nadzor*) in which prisoners could be initially placed for three months in accordance with Section 141 of the RS Law on Execution of Criminal Sanctions. Placement in these departments is decided by the director of the establishment upon the proposal of the security and treatment departments. The measure is intended for prisoners who are a threat to the good order of the prison (i.e. risk of escape or violent behaviour towards other inmates or property) or as a supplementary measure following the enforcement of a solitary confinement sanction if the reasons for the confinement are considered to persist. As was the case in 2012, prisoners with whom the delegation met stated that they had received no written explanation for their placement in the enhanced supervision detention block. Further, there is still no appeal against the order of the director to place a prisoner in enhanced supervision or regarding any extension.

Indeed, the response of the RS authorities to the 2012 visit report stated that the order (*naredba*) is only communicated orally to the prisoner, that “an appeal is not allowed against the order” and that placement should “not be viewed as a disciplinary penalty but as a special form of treatment for high risk prisoners”. The CPT will address the question of treatment below but it is evident that placement in such a department must be surrounded by certain safeguards (see paragraph 41 above). The delegation noted that as regards the group of persons placed in the enhanced supervision department in Banja Luka Prison on 30 June 2015 in the context of the “petition” affair, the decision on their placement was only taken three weeks later on 21 July.

**The CPT reiterates its recommendation that the relevant authorities in the RS take the necessary steps to ensure that a prisoner is informed in writing of the reasons for placement and of any extension of that placement in an enhanced supervision unit, and is guaranteed the right of appeal to an independent authority. Further, a prisoner should be given an opportunity to express his views on the matter of his placement and any extension.**

93. The situation observed in the enhanced supervision unit in Banja Luka Prison was the same as in 2011. The material conditions in the five cells accommodating the seven prisoners placed were generally satisfactory. However, the regime remained impoverished. Prisoners were offered no activities and were confined to their cells for more than 22 hours every day; prisoners stated that they were offered no more than one and a half hours of outdoor exercise every day. An examination of the plans drawn up for the prisoners proved to be devoid of concrete goals and there was no evidence of any intensive counselling to assist prisoners to reintegrate into the general prison population, other than a stated aim to address the prisoners’ “ethical depravity”. The educators rarely met the prisoners for individual counselling and for the most part their communication with the prisoners consisted of opening the cell doors and asking them if they were “OK”.

94. At Foča Prison, the C Block enhanced supervision unit on the ground floor of Building I was accommodating 12 inmates in eight cells (each measuring 9m<sup>2</sup>) and, as was the case in 2011, which were suitably furnished. However, the sanitary annexes in the double occupancy cells were not fully partitioned up to the ceiling and the opaque window panes, designed to prevent contact with other inmates, limited access to natural light and restricted the ventilation.

Despite the authorities having indicated that the three cells adjacent to the solitary confinement wing in Building II - also used for holding prisoners on enhanced supervision - had been refurbished after the 2011 visit, these cells remained seriously dilapidated (rusty furniture, crumbling walls), poorly ventilated, humid and with limited indirect access to natural light.

There was still no purposeful regime for these prisoners who, other than the possibility of two hours walking in a concrete alleyway, were confined to their cells for 22 hours a day. Interestingly, the sentence plans were revised but their content was somewhat basic as the notes referred to “consumption of hot beverages and access to outdoor exercise” as treatment activities.

95. In addition to an absence of activities, prisoners on enhanced supervision were not allowed to associate with other inmates (apart from their cellmate) and their contact with the outside world was restricted to one visit of one hour per month and a weekly telephone call of 10 minutes, as well as written correspondence. It was not unusual for inmates to spend six or more months on enhanced supervision, which amount to conditions akin to solitary confinement if they were placed a cell on their own. Despite the name of these units containing the words “with intensive treatment”, prisoners placed in them did not in fact benefit from additional support or counselling.

**96. The CPT recommends that prisoners placed in enhanced supervision units be provided with a purposeful regime, which includes a diverse range of activities (including work, education, recreation, sport and offender management programmes). A revised sentence plan should be drawn up together with the prisoner by a multi-disciplinary team, setting out the objectives and goals to be achieved in order to successfully reintegrate the prisoner into the general population. Any review of the prisoner’s placement should include a re-evaluation of the plan. In addition, as is the case for the Special Regime Department, prisoners in the enhanced supervision units should be offered increased contacts with the outside world (see paragraph 90 above). The Law on Execution of Sanctions and the relevant rulebooks should be amended accordingly to enable the above-mentioned recommendations to be implemented.**

**Further, every effort should be made to enable prisoners to associate with other inmates. For those inmates accommodated in a cell on their own, opportunities for them to associate with other prisoners during the day should be put in place.**

**The CPT also recommends that, at Foča Prison, the cells on the ground floor of Building II used for enhanced supervision be renovated as a matter of priority and that all cells be provided with sufficient access to natural light to enable prisoners to read.**

97. At Foča Prison, the CPT’s delegation met an inmate who had been subject to the measure of enhanced supervision since 2010. His initial placement in the unit was related to his escape from the establishment in 1995. However, continued placement, extended every three months, was at his own request. He spent 22 hours a day alone in his cell and was only offered two hours outside in the front courtyard, where he could associate with one other inmate. No attempts had been made by the prison management to assist the prisoner in moving back into ordinary accommodation. Indeed, the prisoner told the delegation that he felt under pressure from a particular prison officer to remain in the unit.

**The CPT recommends that the prison management make every effort to assist the prisoner reintegrate into ordinary accommodation and, in the meantime, offer him additional activities and the possibility to associate with more than just one other prisoner.**

d. conditions of detention

i. *regime*

98. No steps have been taken to improve the regime on offer to remand prisoners since the previous visits in 2011 and 2012. Prisoners continued to be confined to their cells for 22 hours or more every day with no purposeful activities. At Bijeljina and Doboj Prisons, remand prisoners were not even offered the legal minimum of two hours of outdoor exercise every day.

The CPT's delegation was informed once again by prison management that they were unable to provide more out-of-cell time due to the requirement of investigative judges to keep separate all inmates associated with the same case, even after they had spent several months or even a year in remand custody. The Committee must stress that, in addition to the regular reviews of the necessity of continuing remand custody, the judicial authorities should also examine the necessity of maintaining any other restrictions they might have put in place.

**The CPT calls upon the relevant authorities to take steps as a matter of urgency to radically improve activities for remand prisoners. The aim should be to ensure that all prisoners are able to spend a reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature (group association activities; work, preferably with vocational value; education; sport).**

**Further, immediate steps should be taken to ensure that all persons on remand are offered two hours of outdoor exercise every day, in conformity with Article 200 of the Criminal Procedure Code of the RS.**

99. The regime offered to sentenced prisoners was generally good. At Banja Luka Prison, 144 prisoners were involved in work (kitchen, bakery, farm, mechanics, metalwork, maintenance) and many prisoners took part in recreation and sports activities, a noticeable improvement of the situation observed by the CPT in 2011. Those prisoners not working were confined to the common rooms on their floor from 7h30 to 14h00 with little to do. From 15h30, on weekdays, all prisoners could be outdoors until dusk and at weekends they could additionally be out from 10h00 to 12h00. At Foča Prison, around 170, i.e. 47 percent, of the inmates had a remunerated activity (metalwork factory, heating, farming and furniture production) and a number was involved in recreational activities (craftsmanship and journalism). Prisoners were offered some five hours a day of access to outdoor exercise when they could play sports and go to the gym.

By contrast, at Bijeljina Prison the situation had not improved since the 2012 visit.<sup>53</sup> Sentenced prisoners were mostly confined to one of two common rooms which were too small for the number of prisoners. Access to the outdoor area (equipped with some fitness equipment and a small shelter) was possible between 08h00 and 11h30 and from 14h30 to 16h30 (and longer during the summer months). However, no education or vocational training was offered and only 25 prisoners had work of some kind.

**The CPT recommends that the RS authorities pursue their efforts to ensure that all sentenced prisoners are offered activities of a purposeful and diverse nature, as provided for by law.**

ii. *material conditions*

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<sup>53</sup> See CPT/Inf (2013) 12, paragraph 43.

100. At Banja Luka Prison, the remand section had been extensively renovated since 2012 and consisted of three floors of cells, although the third floor cells were not used as the number of remand prisoners remained relatively low. The cells were of a sufficient size<sup>54</sup> and all adequately furnished with bunk beds, table, chairs, lockers, television and a call bell. The sanitary annexe was fully partitioned. Access to natural light was good, artificial lighting and ventilation satisfactory. The entire unit was in a good state of cleanliness.

The building accommodating sentenced prisoners offered generally good conditions, especially the recently added third floor. The multi-occupancy rooms contained six to eight beds, individual lockers and a television. The delegation was informed that steps were planned to improve conditions on the two older floors, notably the sanitary facilities, which were dilapidated and in need of repair.

At Foča Prison, the material conditions of detention remained essentially the same as those observed in 2007 and 2011;<sup>55</sup> the *kolektivs* in Buildings I and II were in a reasonable state of repair and prisoners had sufficient living space. However, the sanitary facilities in some of the *kolektivs* were showing signs of disrepair.

**The CPT would like to be informed of the works being undertaken to address the above-mentioned deficiencies.**

101. At Bijeljina Prison, despite some minor refurbishments (floors mended, windows replaced and units repainted) the conditions remained cramped and a number of cells did not provide 4m<sup>2</sup> or more of living space per prisoner. In particular, the small common room in which sentenced prisoners had to spend a large part of the day was too small. To alleviate the situation, sentenced prisoners should be permitted to spend longer periods of the day in their rooms.

**The CPT recommends that the RS authorities make every effort to ensure that all prisoners are provided with a minimum of 4m<sup>2</sup> of living space in multi-occupancy dormitories and that steps be taken to alleviate the cramped conditions in the common room for sentenced prisoners.**

e. health-care services

102. The promotion of greater coordination between the Ministries of Health and Justice in the delivery of health-care services in prisons has been a longstanding recommendation of the CPT.<sup>56</sup> Once again, in the course of the 2015 visit, the CPT's delegation noted the lack of a coherent approach concerning the management of communicable diseases, the development of a prison drug policy and of uniform standards on the training of health-care staff, all of which have a negative impact on the overall quality of health-care provided to inmates.

**The CPT reiterates its recommendation that the RS Ministries of Health and Justice jointly take the necessary steps to improve prison health-care services, taking due account of**

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<sup>54</sup> Cells measured some 15m<sup>2</sup> and accommodated up to three prisoners. However, the rule of 4m<sup>2</sup> of living space per inmate (excluding the sanitary annexe) would not be met if the fourth bed was occupied.

<sup>55</sup> See CPT/Inf (2009) 25, paragraph 61.

<sup>56</sup> See for example CPT/Inf (2010) 10, paragraph 28.

**the recommendations contained in this report.**

103. The health-care staff resources at Banja Luka Prison consisted of a full-time general practitioner and three nurses; a psychiatrist visited the establishment once a week and a dentist twice a week. At Bijeljina Prison, there was a full-time general practitioner and two nurses. For the number of prisoners, the staffing arrangements were generally adequate although Banja Luka Prison could do with one additional nurse.

At Foča Prison, one full-time general practitioner was supported by four nurses; a dentist and a wide range of specialists continued to visit the prison. A psychiatrist from Sokolac Psychiatric Clinic still visited the prison once a month.

**The CPT recommends that the RS authorities reinforce the staffing complements at Banja Luka and Foča Prisons with one additional nurse at each establishment.**

104. The health-care facilities at Banja Luka Prison had been entirely renovated and material conditions (including the dental surgery) were of a good standard and adequately equipped. Likewise, at Foča Prison the health-care unit was in good condition and adequately equipped including an ECG machine and a recently calibrated machine for the analysis of basic blood tests.

At Bijeljina Prison, the health-care unit had been enlarged and was in a good state of hygiene.

105. It is positive that newly arrived prisoners were in principle seen by a doctor within 24 hours of admission to prison.<sup>57</sup> However, the medical assessment did not consist of a proper interview and physical examination by the doctor. Further, the description of injuries, including traumatic injuries upon arrival as well as those sustained in prison, was incomplete and superficial. In particular, it remained the case that prisoners' statements were very often not recorded and injuries not explained.

Further, whenever prison doctors were confronted with injuries indicative of possible police ill-treatment, no information was transmitted to the relevant prosecutors and judicial authorities. At Banja Luka and Bijeljina Prisons, the prison doctors remained convinced that the judicial authorities had already seen the persons in question during a court hearing and that no further action was necessary from their side.

Further, with the exception of Bijeljina Prison none of the prison establishments visited possessed a dedicated register of injuries recorded on newly arrived prisoners.

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<sup>57</sup> As provided by Section 12, paragraph 2 of the RS Rulebook on the Enforcement of Criminal Sanctions of Convicted Prisoners.

**The CPT recommends that the RS authorities ensure that medical assessments and the recording of prisoners' injuries (including newly admitted prisoners) are conducted in line with the requirements set out in the recommendation in paragraph 65 above. Further, dedicated registers on traumatic injuries should be introduced at all prison establishments.**

106. Once again there has been no improvement in relation to prisoners' medical confidentiality in the establishments visited. Medical examinations continued to be systematically performed in the presence of custodial staff. At Foča Prison, all referral letters were sent to the prison director for his authorisation displaying the written diagnoses of the patients in question. Further, copies of the inmates' medical screenings upon admission were forwarded to the treatment department in order to be placed in the inmates' personal files and were accessible to psychologists, educators and social workers.

It is important that medical confidentiality be observed in prisons in the same way as in the community at large. Particular reference should be made to Recommendation R (98) 7 of the Council of Europe's Committee of Ministers to member states concerning the ethical and organisational aspects of health-care in prison, according to which medical confidentiality should be guaranteed and respected with the same rigour as in the population as a whole.<sup>58</sup> In particular, all medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and unless the doctor concerned requests otherwise - out of the sight of prison officers. Keeping prisoners' medical files should be the doctor's responsibility and in the event of transfer and/or external referral of a prisoner, the file should be forwarded in a sealed envelope to the doctors in the receiving establishment.

**The CPT reiterates its recommendation that steps be taken to guarantee confidentiality in accordance with the above precepts.**

107. The pharmacies in the establishments visited were stocked with an appropriate range of medication.

The medication was in principle distributed by health-care staff with the exception of Banja Luka Prison where the distribution of the evening medication was performed by security staff.

Concerning the modality of distribution, the CPT's delegation observed that at Foča Prison the medication, which included benzodiazepines and other psychotropic drugs was distributed from a dispensing stock with prisoners queuing up with a plastic glass of water. However, they were allowed to walk away without taking a sip of water and their mouths were not checked to see if they had swallowed the medication.

**The CPT recommends that the distribution of medication by security staff at Banja Luka Prison be discontinued and performed instead by a qualified member of the health-care personnel. Further, procedures should be put in place to verify that the medication dispensed to prisoners is actually taken.**

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<sup>58</sup> See paragraph 13 of the Appendix to Recommendation No. R (98) 7.



108. Medical documentation was generally detailed and well-kept at Banja Luka and Bijeljina Prisons. However, at Foča Prison, entries in the medical files of inmates were scant and cursory. In addition, notes often did not demonstrate that patients with chronic physical and mental health conditions were having the necessary monitoring (e.g. serial blood tests and ECGs) for remaining on long-term prescribed medication.

**The CPT recommends that the quality of medical recordings be improved at Foča Prison, in particular as regards the details concerning a complaint, diagnosis or examination by a doctor.**

109. As regards transmissible diseases the CPT's delegation observed that routine screening for Hepatitis B and C but not HIV was available at Foča Prison. At Banja Luka and Bijeljina Prisons, kits for the screening of Hepatitis B and C and HIV were provided by NGOs. The CPT's delegation noted that often inmates diagnosed with a transmissible disease were not receiving the appropriate treatment in the prisons visited in the RS: for example, the doctor at Foča Prison was clear that curative treatment for Hepatitis C was not available.

**The CPT recommends that all prisons systematically screen prisoners for Hepatitis B and C, HIV and tuberculosis. Further, uniform availability of curative treatment for Hepatitis C and long-term substantive treatment for HIV should be introduced at all prison establishments.**

110. During the 2015 visit, the delegation was able to observe that an ad hoc approach was taken towards those inmates identified as having a drug-related problem. For example, at Banja Luka Prison, the treatment of inmates subject to an opiate substitution therapy at the time of incarceration was discontinued and they received only a dose of tramadol. By contrast, at Bijeljina Prison the same category of prisoner was allowed to continue methadone or buprenorphine substitution therapy provided that the cost thereof was covered by the health-centre in the community. At Foča Prison, no opiate substitution therapy was on offer at the time of the visit.

Further, little was done as regards the provision of psycho-socio-educational assistance to prisoners with a drug addiction problem at any of the establishments visited.

In this context the 2009-2013 National Strategy of Monitoring of Narcotics, Prevention and Elimination of Drug Abuse adopted by the Parliamentary Assembly of Bosnia and Herzegovina in March 2009 envisages that the treatment of drug-addicted inmates be inspired by the principle of equivalence of care through the creation of drug-free units within prisons, the implementation of socio-therapeutic programmes. This would be implemented through an increased co-operation of the relevant Ministries of Justice and Health. At the time of the 2015 visit these ambitions remained unattained.

The CPT considers that admission to prison is an opportunity to address a person's drug-related problem and it is therefore important that suitable assistance is offered to all persons concerned; consequently, appropriate health care must be available in all prisons. The assistance offered to such persons should be varied; detoxification programmes with substitution programmes for drug-dependent patients should be combined with genuine psycho-social and educational programmes for opiate-dependent patients who are unable to stop taking drugs. Under no circumstance should an opiate substitution programme be severed upon incarceration regardless of the barriers to such continuity of care. Finally, all health-care staff (and prison staff generally) should be given specific training on drug-related issues.

**The CPT calls upon the RS 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.<sup>59</sup> In no case should substitution therapy be abruptly terminated.**

111. At Foča Prison, inmates diagnosed with serious mental health disorders were being subjected to an indefinite enhanced supervision measure with an impoverished regime and no appropriate care (see paragraph 93). Further, they could also be subject to prolonged placements in the padded cell, located in the health-care unit, for several months at a time with the approval of the visiting psychiatrist. For example, an inmate transferred from Sokolac Psychiatric Clinic to Foča Prison in May 2014 was placed in the enhanced supervision department. The prisoner, who had a diagnosis of psychotic de-compensation and borderline personality disorder, was subsequently placed in the padded cell of the health-care unit on 15 July 2014 at 19h00 by order of the prison doctor due to his aggressive behaviour and tendency to self-harm. He was fixated to a bed by his ankles and wrists using cloth straps until the following day at 7h00. Subsequently, he remained confined in the padded cell under the constant supervision of security staff until 23 September 2014 when he was placed in solitary confinement due to a disciplinary offence.<sup>60</sup> On 9 October 2014, he was once again placed in a padded cell for being caught in the act of self-harming with an unauthorised object in his cell. He remained there until 26 March 2015 when the psychiatrist assessed that his mental health status had stabilised. During both placements he remained under the constant supervision of security staff and received regular visits from a nurse and by a psychiatrist who visited him each month and recommended that the measure be extended.

In the CPT's view, the placement of a disturbed prisoner in medical isolation for months on end has no therapeutic justification and could well amount to inhuman and degrading treatment. The RS authorities should draw up a clearly defined policy on the use of means of restraint in prison. This policy should make clear that means of mechanical restraints are to be removed at the earliest opportunity. Doctors should always fix precise time-limits for the restraint measure; any continuation should require a further authorisation by a doctor. Nursing staff (as well as custodial staff, for as long as recourse has to be had to their assistance) should receive specific training in de-escalation as well as both non-physical and manual control techniques vis-à-vis agitated or violent patients.

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<sup>59</sup> See also 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>60</sup> The inmate had been verbally offensive to the psychiatrist at the time of her visit on 24 July 2014.

**The CPT recommends that the RS authorities take urgent steps to implement the above-mentioned precepts at Foča Prison, as well as at other establishments.**

112. The CPT's delegation encountered several examples of court-imposed rules interfering with medical decisions and the autonomy of prison health-care staff in respect of the treatment of remand prisoners. For example, at Banja Luka and Bijeljina Prisons, investigative judges on several occasions denied emergency transfers of remand prisoners to outside hospital facilities. Further, at Bijeljina Prison a remand prisoner with suicidal tendencies was denied access to psychological care by the investigative judge for security reasons.

**The CPT recommends that the RS authorities take the necessary steps, through the appropriate channels, to ensure that remand prisoners receive appropriate and unimpeded access to specialist medical care whenever required and in particular in emergency and life-threatening situations. This decision should be a medical one and judges should have no right to counter such a decision.**

f. other issues

i. *staff*

113. The CPT highlighted in its previous reports the importance of each prison having sufficient number of well-trained prison officers deployed in an effective and efficient manner.

At the time of the 2015 visit, the CPT was pleased to note that the staffing complement at Foča Prison had been reinforced from 98 to 130 prison officers for a prison population of 327. As a result there were 26 officers on duty to supervise prisoners during the day and 14 officers assigned to various activities and the gates (compared to eight and nine respectively at the time of the 2011 visit). At least one prison officer was permanently present on each floor of buildings I and II, where most inmates were accommodated.

Likewise, at Banja Luka Prison staffing levels had been reinforced following the expansion of the prison and remained adequate. At Bijeljina Prison, staffing levels<sup>61</sup> were adequate for the number of prisoners currently held in the establishment.

114. At Banja Luka Prison and, to a lesser extent at Bijeljina Prison, the CPT's delegation was able to observe that custodial staff maintained a martial and detached stance towards prisoners and did not engage in positive human contact. Developing positive relations is not aided by Section 53 of the Rulebook on House Rules in the Establishments for the Enforcement of Criminal Sanctions of the RS which stipulates that "sentenced prisoners must salute and stand at ease presenting oneself in a standing position with hands behind the back whenever meeting a member of the staff". Failure to do so is considered a disciplinary offence.

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<sup>61</sup> 61 prison officers, 12 treatment staff, 20 administrative personnel and 20 work instructors.

In the CPT's view, the development of constructive relations between staff and inmates, based on the notions of dynamic security<sup>62</sup> and care as well as a willingness of staff to engage and communicate with inmates in a relaxed manner, would certainly enhance control and security and render the work of prison officers more rewarding.

Indeed, the findings of the CPT's delegation illustrate that the militaristic approach instilled into the prison officers at Banja Luka Prison resulted, at times, in disproportionate responses such as the incident concerning the prisoner who took two pancakes instead of one.

**The CPT recommends that the RS authorities develop the notions of dynamic security among the penitentiary staff by organising appropriate in-service training courses which focus in particular on inter-personal skills.**

115. 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 de-escalation which would put them in a position to choose the most appropriate response when confronted by difficult situations.**

*ii. discipline*

116. In the report on the 2011 visit, the CPT described the disciplinary process and the disciplinary measures envisaged by the law.<sup>63</sup> In general, the disciplinary procedures were generally applied in a fair manner at all three prisons visited. However, the CPT continues to have strong reservations regarding the fact that the only appeal possible against a disciplinary sanction is to the director of the establishment concerned.

**The Committee recommends that the necessary steps be taken to ensure that prisoners have a right of appeal to an independent authority against any disciplinary sanctions imposed.**

Further, the CPT recalls that in its 21<sup>st</sup> General Report it outlined its thinking with respect to

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<sup>62</sup> Dynamic security is the development by staff of positive relationships with prisoners based on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual prisoners (see Rule 51 of the European Prison Rules and paragraph 18a of the Recommendation Rec (2003) 23 of the Committee of Ministers of the Council of Europe to member states on the management by prison administrations of life sentence and other long-term prisoners).

<sup>63</sup> See for example CPT/Inf (2012) 15, paragraph 69.

the imposition of solitary confinement as a punishment. Given the potentially very damaging effects of solitary confinement, the CPT considers that the principle of proportionality requires that it be used as a disciplinary punishment only in exceptional cases and as a last resort, and for the shortest possible period of time. Indeed, the trend in many member states of the Council of Europe is towards lowering the maximum possible period of solitary confinement as a punishment. Consequently, the CPT considers that the maximum period should be no higher than 14 days for a given offence, and preferably lower.

**The CPT recommends that RS authorities amend the relevant legal provision to ensure that the maximum possible period of solitary confinement as a punishment be no higher than 14 days for a given offence, and preferably lower.**

117. As regards material conditions in the disciplinary units, the CPT has taken note of the response of the RS Ministry of Justice to the preliminary observations of its delegation which points out that the national legislation prescribes exactly 4m<sup>2</sup> as a minimum area for solitary confinement cells. However, the CPT considers that any cell measuring less than 6m<sup>2</sup> (excluding the sanitary annexe) should not be used for overnight accommodation. Cells of 4m<sup>2</sup> in which a prisoner may spend up to 20 days with only one hour of outdoor exercise every day are too small and should be taken out of use.<sup>64</sup>

As regards the four solitary confinement cells (8m<sup>2</sup>) at Foča Prison, they were adequately furnished (bed, chair and table fixed to the floor) but had limited access to natural light, were poorly ventilated and heated, and had high levels of humidity.

**The CPT recommends that, at Banja Luka Prison, all solitary confinement cells measuring less than 6m<sup>2</sup> be taken out of use and that, at Foča Prison, the deficiencies outlined above be remedied.**

*iii. contacts with the outside world*

118. In accordance with Sections 28 and 31 of the Rulebook on House Rules in Establishments for the Enforcement of Remand Detention of RS, pre-trial prisoners are entitled to at least one visit per week of a duration of thirty minutes in closed conditions<sup>65</sup> and one telephone call of a duration of 10 minutes per week upon the approval of the investigative judge. These provisions were applied in all the remand sections visited.

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<sup>64</sup> See the CPT paper on Living space per prisoner in prison establishments – CPT/Inf (2015) 44.

<sup>65</sup> Section 28, paragraph 6 of the Rulebook on House Rules in Establishments for the Enforcement of Remand Detention of RS stipulates that visiting premises for remand prisoners should be equipped with a barrier preventing physical contact with prisoners.

However, as the CPT has stated previously, “open” visiting arrangements should be the rule and “closed” ones the exception, for all legal categories of prisoner. 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 also considers that all prisoners should be offered the equivalent of one hour of visits every week. Visits should only ever be curtailed where the prisoner has abused the visiting right and not as a general disciplinary measure or as a result of a change in category.

**The CPT recommends that the RS authorities, after consultation with the judiciary, take the required steps to enhance remand prisoners’ contacts with the outside world, with open visits the rule and closed visits only being imposed for security-related reasons. In addition, all prisoners should be offered the equivalent of one hour of visits per week. The relevant legal provisions should be amended accordingly.**

*iv. complaints and inspections*

119. In the establishments visited, prisoners are entitled to send complaints to the director of the establishment and to the Ministry of Justice as a second instance body. Further, they can file complaints at any time to the Ombudsman and the relevant judicial authorities. In the course of the 2015 visit, the CPT’s delegation observed that complaints addressed to outside bodies could be sent in sealed envelopes. Nevertheless, the CPT’s delegation found that at Banja Luka Prison inmates had no trust in the system of complaints and stated that making a complaint would only worsen their situation.

**The CPT encourages the management of Banja Luka Prison to take steps to ensure that the complaint system is fully effective by making sure that prisoners receive, within a reasonable time, reasoned answers in writing to written complaints (i.e. feedback on the outcome of their complaints) in a timely manner, and that a proper record is maintained of every complaint. Further, measures should be taken to increase the trust of prisoners in the complaints system and the prison management should be vigilant to guarantee the robustness of the complaints system and ensure that prisoners do not face threats and/or reprisals from prison staff for having exercised their right to lodge an application or a complaint.**

## **C. Psychiatric establishments**

### **1. Preliminary remarks**

120. The CPT visited for the first time Jagomir Psychiatric Hospital of Canton Sarajevo and Koševo Psychiatric Clinic, University of Sarajevo Clinical Center.

Jagomir Psychiatric Hospital is located on the outskirts of Sarajevo in 23 acres of forest and extensive gardens. The hospital, established in 1948, was damaged extensively during the 1990s conflict and has only been partially rebuilt. The current facility consists of two modern buildings and has a capacity to accommodate 70 patients in three wards: Intensive and Semi-intensive care (15), Female rehabilitation (30) and Male rehabilitation (30).

Koševo Psychiatric Clinic is located within one of many buildings of the University of Sarajevo Clinical Center, the main hospital in the city of Sarajevo. The clinic is housed in a four-storey building dating back to 1894 and consists of four in-patient wards: urgent psychiatry ward with 12 intensive care beds and 15 semi-intensive beds (nine of the semi-intensive beds were placed on a different ward); a male and female clinical psychiatry ward each with 20 beds; and a child and adolescent ward with 10 beds. There was also an out-patient ward for stress-related disorders and clinical psychotherapy and a daily hospital, both with 40 beds.

121. The CPT's delegation received no substantiated allegations of ill-treatment of patients by staff at either hospital. On the contrary, it found a positive and caring approach by staff towards patients in both facilities.

There were also few incidents of inter-patient violence and staff reacted appropriately to deal with any incidents.

### **2. Living conditions and treatment**

122. At Jagomir Hospital, the living conditions were generally of a decent standard. The intensive and semi-intensive care wards were located on the ground floor and consisted of three dormitories, a common dining and television room on the side of the corridor overlooking the garden and of consultation rooms, the nursing station and a small visits area on the other side of the corridor. There were two four-bedded dormitories for semi-intensive care patients (one male and one female), both of which were light and airy and suitably furnished with bed, bedside table and an individual wooden cabinet for belongings. Intensive care patients were accommodated in a mixed sex dormitory containing seven hospital beds. Each patient had a metal cabinet space for his or her belongings. However, the room was stark and devoid of any personalisation and provided limited living space for patients. Further, the CPT has some misgivings about placing men and women in the same room.

The female and male rehabilitation wards consisted of five-bedded dormitories and offered good living conditions; bright and well ventilated rooms with large windows, bedside tables and cabinets for personal belongings.

**The CPT recommends that steps be taken to create separate dormitories for male and female patients in the intensive care ward and that efforts be made to personalise the rooms.**

123. At Koševo Psychiatric Clinic, the living conditions were less good. The building was old and dilapidated and the dormitories provided limited living space for patients and in certain rooms, with beds touching, could be described as cramped. This was particularly the case for the two three-bedded dormitories in the intensive care ward. There were also two two-bedded areas of some 8m<sup>2</sup>, separated by a partition, and referred to as “boxes” by staff, through which all patients could wander as they had no doors. It was also possible to look into these areas through large observation windows from the ward’s central corridor. The bathroom area was dilapidated but clean.

The living conditions on the other wards were of a similar standard with patients accommodated in four and six-bedded dormitories on the female clinical psychiatry ward and three and seven-bedded dormitories on the male clinical psychiatry ward. Both wards also possessed a smoking room and a large dayroom, where meals were also eaten, which was equipped with tables and chairs as well as sofa benches and a television. In the child and adolescent unit, there were two rooms with four beds (one for male and one for female patients) which were extremely cramped with the beds touching, and one small room with two beds intended for when a parent remained on the ward with a child. The closed ward also contained an activities room, an occupational therapy room and a small sitting room, and the ward was decorated appropriately. The unit also had access to a small outdoor terrace equipped with a table and chairs, an umbrella and some plants.

**The CPT recommends that the capacity of the wards at Koševo Psychiatric Clinic be reduced to provide for increased living space per patient and that no dormitory should accommodate more than four patients. Steps should also be taken to provide more privacy for the patients accommodated in the “box” areas of the intensive care ward.**

**In the medium term, consideration should be given to either transferring the clinic to new, modern premises or renovating the existing building to provide patients with decent living conditions.**

124. The CPT wishes to stress that, as a matter of principle, every patient, unless there are clear medical contra-indications, should be offered at least one hour of outdoor exercise every day and preferably considerably more.

At Jagomir Hospital, patients in the rehabilitation wards had access to the extensive garden area and a terrace every day. Patients on the intensive and semi-intensive wards were only able to access the gardens if they were accompanied by a staff member or, in most cases, by a family member. However, it appeared that frequently patients were not offered the opportunity to go outside on a daily basis. At Koševo Psychiatric Clinic, there was no garden area and none of the patients could leave the locked wards and go outside. In the past, the clinic had had access to a garden but a Ministerial Decree had transferred its use to another department within the University Hospital.



**The CPT recommends that the Cantonal authorities of Sarajevo and the University Hospital of Sarajevo find an appropriate solution which will enable patients at Koševo Psychiatric Clinic to have the possibility of having access to outdoor fresh air every day.**

125. In the CPT's view, psychiatric treatment should be based on an individualised approach, which implies the drawing up of a treatment plan for each patient. It should involve a wide range of rehabilitative and therapeutic activities, including access to occupational therapy (OT), group therapy, individual psychotherapy, art, drama, music and sport. Patients should have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis; it is also desirable for them to be offered education and suitable work.

Treatment at Jagomir Hospital was primarily based on pharmacotherapy with occupational therapy activities (painting, knitting, sewing, jewellery making, carpentry and physical activities) offered for one and half hours every weekday, music therapy once a week and gardening in the summer months. Weekly psychotherapeutic sessions were offered on the rehabilitation wards. However, in practice, patients on the intensive and semi-intensive ward did not benefit sufficiently from such activities. At Koševo Psychiatric Clinic, the occupational therapy unit on the fourth floor offered patients a range of activities (board games, knitting, painting, table tennis, wood work, listening to music) and patients could access the unit three mornings a week. However, the number of patients attending the unit varied considerably (only 14 and nine patients respectively on the two days the Committee visited).

There was no evidence of individual treatment plans being drawn up for patients in either of the two facilities visited. The responsible psychiatrists reviewed the progress of patients as part of their weekly team meetings. However, it is essential that a multi-disciplinary individual treatment plan be drawn up for each patient. For those patients accommodated in the acute wards, the plan should address the patient's immediate needs and identify any risk factors as well as focusing on treatment objectives and how in broad terms these will be achieved; it being understood that the dynamic nature of treatment and care in an acute patient setting does not require a plan with specific details as these may change rapidly. For patients placed in the rehabilitation wards, the plans should identify early warning signs of relapse and any known triggers, and an action plan that a patient and family members should take in response to relapse. The plan should also specify the follow-up care. It is also important that the patient be involved in the process of developing the treatment plan.

**The CPT recommends that a written individual treatment plan be drawn up for every patient and that the patient be consulted in this process and the plan explained to the patient. Further, increased efforts should be made to widen the range and availability of rehabilitative and therapeutic activities on offer at both hospitals.**

### 3. Staff resources

126. At Jagomir Hospital, staffing levels were generally adequate: there were 12 psychiatrists, five doctors undergoing specialist training, 42 nurses, one psychologist, one social worker and two occupational therapists. For example, the intensive and semi-intensive ward had two doctors and four nurses on duty during the day and a duty doctor and three nurses at night.

At Koševo Psychiatric Clinic, similar staffing levels were in place. For example, in the urgent psychiatry ward, four nurses were on duty during the day and three at night and four doctors were responsible for the patients. Two nurses were always present on the additional nine-bedded semi-intensive ward. The clinic also employed a psychologist and a social worker.

Both psychiatric facilities would benefit from recruiting an additional psychologist and social worker to assist with the rehabilitation and post-release work. **The CPT would appreciate the observations of the relevant authorities on this matter.**

### 4. Means of physical restraint

127. At both psychiatric facilities, means of restraint were applied to patients who were threatening or aggressive to other patients or staff or at risk of harming themselves. Patients were restrained by tying their wrists and ankles to the bed frame using modern, soft padded straps with magnetic locks. An examination of the register at Jagomir Hospital showed that resort to the measure of fixation was not excessive and that patients were usually fixated for periods of less than two hours but on occasion the fixation lasted as long as six to eight hours; on such occasions, the register confirmed the policy that a patient was released for five to ten minutes after two hours before being fixated once again. In many cases, fixation was accompanied by an injection of haloperidol or diazepam to calm the patient down.

At Koševo Psychiatric Clinic, a similar approach towards the use of means of restraint was in place. It appeared that patients were usually fixated for short periods and those restrained for more than two hours were usually patients with organic mental syndromes susceptible to falling out of their beds. As was the case at Jagomir Hospital, only a doctor could authorise the application of means of restraint and nursing staff had to verify the vital parameters every two hours.

However, at neither facility was the register comprehensive in that they did not record all instances of recourse to means of restraint (including rapid tranquillisation). The resort to chemical restraint should also be recorded in a central register and not just in the medical chart of the patient concerned. The entries in the register should include the time 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; staff who participated in the application of the measure; and an account of any injuries sustained by patients or staff. This will greatly facilitate the management of such incidents, the oversight into the extent of their occurrence and the prevention of similar incidents in the future. Such a register would be in addition to the records contained within the patient's personal medical file.

**The CPT recommends that a comprehensive register be introduced at both psychiatric facilities to fully record every instance of the use of mechanical (i.e. fixation) and chemical restraint in line with the above criteria.**

128. The CPT has serious misgivings about the practice observed in both psychiatric facilities to fixate patients in full view of other patients which not only infringes upon the privacy of extremely ill and agitated patients, but may also be disturbing for other patients. The CPT's delegation observed for itself at Jagomir Hospital a female patient transferred from the rehabilitation ward to the intensive care dormitory where she was fixated to a bed in full view of other patients. Indeed a few of the other patients attempted to calm down the agitated female patient, who was thrashing about and screaming, while others appeared to hide their heads under their pillows.

At Koševo Psychiatric Clinic, patients were also usually fixated in full view of other patients.

**The CPT recommends that the fixation of patients never take place in sight of other patients unless there are clear benefits to the person concerned.**

129. As regards the supervision of persons subject to fixation, bearing in mind the potential risks associated with this measure, an individual should, at all times, have his/her mental and physical state continuously and directly monitored by an identified member of the health-care staff, who can offer immediate human contact to the person concerned, 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 patient 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. Further, the person concerned should be given the opportunity to discuss his/her experience as soon as possible after the end of a period of restraint. This debriefing should always be carried out by a member of health-care staff or another member of staff with appropriate training.

At neither facility visited was such a system of supervision in place. At Jagomir Hospital, staff were supposed to be present in the room with the patient who was fixated but the delegation observed that nurses generally monitored the patient via CCTV and could not hear or intervene when other patients approached the restrained patient. Nor was there a formal debriefing session with the patient when he or she was released.

The CPT recommends that a proper supervision and debriefing process be put in place at both psychiatric facilities regarding the fixation of patients.

130. It is important that every psychiatric establishment has a comprehensive, carefully developed, policy on restraint. The involvement and support of both staff and management in elaborating the policy is essential. Such a policy should make clear which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated.

The policy should also contain sections on other important issues such as: staff training; complaints policy; internal and external reporting mechanisms; and debriefing. In the CPT's opinion, such a comprehensive policy is not only a major support for staff, but is also helpful in ensuring that patients and their guardians or proxies understand the rationale behind a measure of restraint that may be imposed.

At the time of the visit, neither psychiatric facility had such a policy in place.

**The CPT recommends that Jagomir Hospital and Koševo Psychiatric Clinic develop a comprehensive policy on restraint and ensure that staff are properly trained to apply the policy.**

## **5. Legal safeguards**

### **a. the initial placement decision and discharge**

131. Within the FBiH, the procedure for involuntary hospitalisation is regulated by the provisions contained within the Law on Protection of Persons with Mental Disorders (Articles 22-37) and the Law on Non-Contentious Proceedings (Articles 45-59).

The Law on Protection of Persons with Mental Disorders stipulates that a person with severe mental difficulties, who seriously and directly endangers his/her own life, health or safety, or the life or the health or safety of others, can be placed in a medical institution without his/her consent. They can be admitted to a medical institution on the basis of the referral made by a doctor who is not employed in the same hospital where the involuntary placement shall take place. A person with a mental disorder, who is reasonably suspected to represent a direct threat to his/her own life or health or the life of other people, in especially urgent cases, can be escorted to the hospital accompanied by the police, without prior psychiatric examination.

A psychiatrist in a medical institution that receives such a person shall be obliged immediately to assess whether there exist reasons for involuntary admission. If this is the case, the psychiatrist is required within 72 hours to make a decision on involuntary admission explaining the rationale behind the measure in the medical record. The health institution shall notify the competent court within 24 hours of the decision on involuntary admission to the hospital and enclose all necessary medical documentation.

The competent court shall initiate the procedure for involuntary hospitalisation immediately upon receiving notification from the psychiatric hospital. The court should, if necessary, appoint an ex officio lawyer and should, if possible, hear the patient in person (Article 30). The court should also obtain a written opinion from a psychiatrist accredited with the court who is not employed by the requesting health institution. Based on the expert's opinion the court shall immediately, but no later than three days, decide whether a person be kept in the institution or released (Article 32). The involuntary hospitalisation may not last longer than one year and the hospital in which the patient is held should submit periodic reports to the court (Article 33). Thirty days prior to the expiry of the involuntary placement decision, the hospital may request a prolongation of the measure and the court must follow the same procedures as outlined above.

According to Article 37, a person may appeal the involuntary placement decision to the Second Instance Court within eight days which should render a decision within three days.

132. The CPT's delegation found that only very few patients were involuntarily placed in the two hospitals visited. To begin with, the court procedures were exceedingly long and did not at all conform to the time limits laid down in law. For example, a patient involuntarily admitted to Jagomir Hospital on 22 August 2015 was only examined by a court appointed psychiatrist on 21 September who recommended involuntary treatment of 60 days, and the court hearing only took place on 1 October. Such delays in the court decisions were common for all involuntary placements.

However, the consequence of such dysfunctional court decision-making over involuntary placements was that, in practice, at both hospitals psychiatrists made every effort to admit patients on a voluntary basis as the procedure was simpler and quicker. Patients were told that their placement in the hospital was likely to be less long if they agreed to be admitted voluntarily. All voluntary patients had to sign a "Consent to placement" form agreeing to be admitted to the hospital. Patients met by the delegation explained that it was better to be voluntary as the treatment would last less long.

133. The CPT has serious misgivings about the operation of the current system of admission to psychiatric hospitals in the FBiH. Clearly the courts are not operating according to the time limits set down in law and this needs to be remedied. Further, the legal safeguards need to be reinforced. Moreover, the approach at both hospitals to avoid involuntary placement procedures and to treat all patients as voluntary meant that patients were not benefiting from the legal safeguards written in law.

First, all patients on the intensive and semi-intensive wards as well as on the rehabilitation wards in the hospitals visited were *de facto* deprived of their liberty. They could not just walk out of the locked wards. Further, if they insisted on their right to be released, the psychiatrists and the patients' relatives or guardian would make every effort to convince them to remain with the ultimate threat that they would be transferred to involuntary status and have to remain much longer in hospital.

Second, some patients were considered "voluntary" even when there was no possibility to obtain their consent and they had been brought to the hospital against their will. For example, one patient who brought by the police to Koševo Psychiatric Clinic at 22h00 on 2 October 2015 was, after being showered and cleaned, fixated from 23h00 until 6h00 the next morning. The admitting psychiatrist noted: "He is uninhibited and unpredictable in behaviour. He hears voices. He talks spontaneously in a very disorganised way. The natural laws of basic logical thought process is defined by the presence of bizarre delusions. He has no insight." Yet, he was admitted under the protocol on voluntary hospitalisation. Five days later he had still not signed the voluntary admission form. At the time of the delegation's visit on 7 and 8 October, the patient was still highly psychotic, disorganised in his behaviour and unable to answer any simple questions. He was certainly not in a position to give his free and informed consent to placement or treatment.

**134. The CPT recommends that the FBiH and the Canton of Sarajevo authorities take the necessary steps to ensure that the Courts discharge their duties under the Law on Protection of Persons with Mental Disorders and the Law on Non-Contentious Proceedings and render decisions on involuntary placement within the time limits set out in the various provisions.**

**Further, patients should be given full and factual information about the procedures regulating involuntary placement and their rights as a voluntary patient in order that they can take an informed decision on whether they want to be hospitalised or not.**

**Patients who are placed in hospital against their will should automatically be treated as involuntary and the relevant legal procedures initiated.**

135. As to the legal provisions regulating involuntary placement in psychiatric establishments, in addition to the court respecting the time limits, the CPT considers that the safeguards should be reinforced. Although the current practice appears to be for involuntary placement orders to be made for periods of 45 to 60 days, the law provides for a period of up to one year. This is too long. The law should be amended and shorter time periods introduced which might include, for example, an initial observation period of 10 days followed by the possibility of compulsory treatment orders for periods of two to three months renewable if necessary by court order. Further, all patients subject to an involuntary placement procedure should be provided with an ex officio lawyer as from the outset of the procedure and the court should endeavour always to hear the patient in person before taking a decision on their involuntary placement.

**The CPT recommends that the authorities of the FBiH and the Canton of Sarajevo review the Law on Protection of Persons with Mental Disorders and the Law on Non-Contentious Proceedings with a view to reinforcing the legal safeguards regulating involuntary placement of persons in a psychiatric establishment.**

b. safeguards during placement

136. The CPT's delegation noted that treatment could be administered at both hospitals without the patient's consent. Indeed, as far as the psychiatrists were concerned when a patient signed the "Consent to placement", she was also consenting to any treatment that the psychiatrist deemed would be in the best interests of the patient. Likewise, a patient who was involuntary placed was considered not to have the right to object to any treatment and hence the patient was not asked to provide her consent.

In the CPT's view, patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a patient to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without the patient's consent. It follows that every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

**The CPT recommends that procedures be established to entrench the principle of consent to treatment for all patients, including those placed on an involuntary basis.**

137. For voluntary patients who wanted to discharge themselves, the hospital would enter into negotiations with the patient and with the help of their families to keep them in the hospital on a “voluntary” basis. If necessary, the “voluntary” status could be transformed into an involuntary status and in that case the hospital had to inform the relevant court within 24 hours of the patient’s withdrawal of consent and the same procedures referred to above on involuntary placement applied. No additional psychiatric opinion was required other than that of the treating doctor.

In the CPT’s view, the rule should be that a voluntarily admitted patient is either able to leave the hospital immediately upon his/her request or, if the conditions for involuntary retention are met, the procedure for involuntary hospitalisation is initiated. **The CPT recommends that legislation and practice are brought in line with this approach.**

**The Committee also recommends that the retention of a voluntarily admitted patient requires an opinion from a second doctor who is independent of the department accommodating the patient. The aim should be to align the safeguards offered in such cases with those of other involuntary patients.**

138. Moreover, voluntary patients should only be restrained with their consent. If the application of restraint to a voluntary patient is deemed necessary and the patient disagrees, the legal status of the patient should be reviewed.

**The CPT recommends that whenever restraint is applied to a voluntary patient, the legal status of that patient should be reviewed (including discharge).**

139. CPT considers that an information booklet setting out the establishment's routine and patients' rights should be issued to each patient on admission, as well as to their families. Any patients unable to understand this booklet should receive appropriate assistance. At the time of the visit, no such booklet existed at either psychiatric facility.

**The CPT recommends that an information booklet setting out the facility’s routine and patients’ rights - including information on legal assistance, review of placement (and the patient’s right to challenge this), consent to treatment and complaints procedures - be drawn up and issued to all patients on admission, as well as to their families. Patients unable to understand this booklet should receive appropriate assistance.**

140. The CPT also attaches considerable importance to psychiatric establishments being visited on a regular basis by an independent outside body (e.g. a judge or supervisory committee or Ombudsman) which is responsible for the inspection of patients’ care. To be fully effective, such supervision should include frequent and unannounced visits to places where involuntary patients are hospitalised, and the authority concerned should be empowered to interview detained patients in private and have access to all necessary documentation. At present, there is no such independent body in Bosnia and Herzegovina visiting psychiatric establishments on a regular basis.

**The CPT recommends that the authorities of Bosnia and Herzegovina ensure that all psychiatric establishments are visited by such an independent monitoring body.**

**APPENDIX**

**LIST OF THE NATIONAL AUTHORITIES  
AND NON-GOVERNMENTAL ORGANISATIONS  
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

**A. National authorities**

**Ministry of Justice of BiH:**

Mustafa BIŠIĆ Assistant Minister

**Ministry of Security of BiH:**

Branka MEDIĆ Advisor for International Affairs  
Elvir MRAKOVIĆ Investigator at State Investigation and Protection Agency (SIPA)

**Ministry of Justice of RS:**

Anton KASIPOVIĆ Minister  
Petar DUNJIĆ Assistant Minister

**Ministry of Justice of FBiH:**

Hidajet TRAKO Assistant Minister

**Ministry of Interior of RS:**

Dragan LUKAČ Minister

**Ministry of Interior of FBiH:**

Nedžad KALABUŠIĆ Inspector

**Ministry of Interior of the Sarajevo Canton:**

Mevludin HALILOVIĆ Chief of Sector of the Uniformed Police Force  
Željko MIJATOVIĆ Chief of Sector of the Professional Standards Unit

**Ministry of Health of FBiH:**

Dr. Marina BERA Assistant Minister

**The Institution of Human Rights Ombudsmen of BiH:**

Rada KAFEDŽIĆ Assistant Ombudsman

**B. International Organisations**

OSCE Mission to BiH