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## **Report**

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

**from 31 May to 7 June 2017**

The Government of Serbia has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2018) 22.

Strasbourg, 21 June 2018

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## EXECUTIVE SUMMARY

The primary purpose of the CPT's 2017 ad hoc visit to Serbia was to examine the treatment of persons deprived of their liberty by the police and to look into the manner in which complaints of ill-treatment of detained persons by police officers were handled, as regards both disciplinary and criminal investigations and proceedings. Further, the treatment of remand prisoners and their conditions of detention were also examined, as were the material conditions in police stations.

The co-operation received by the delegation throughout the visit was, on the whole, excellent. However, the principle of co-operation set out in Article 3 of the Convention also requires that decisive steps be taken to improve the situation in the light of the Committee's key recommendations. In this context, the CPT trusts that the Serbian authorities will take concrete measures to address long-standing recommendations such as those concerning the use made of remand detention and tackling seriously the issue of ill-treatment by police officers.

### **Law enforcement agencies**

The CPT's delegation received a significant number of allegations of physical ill-treatment of detained persons by police officers, notably in larger urban areas. The physical ill-treatment alleged consisted of slaps, punches, kicks and truncheon blows, strikes with various non-standard objects (such as baseball bats) and also several claims of criminal suspects being subjected to shocks from electrical discharge devices at the time of apprehension or during questioning. The intended purpose of the ill-treatment was apparently to coerce suspects to admit to certain offences or to punish them. The report refers to a number of cases where the CPT's delegation gathered medical evidence and other documentation which were consistent with the allegations of ill-treatment made by detained persons.

The Serbian authorities must recognise that the existence of ill-treatment by police officers is a fact; it is not the work of a few rogue officers but rather an accepted practice within the current police culture, notably among crime inspectors. Therefore, the competent authorities must promote a fundamentally different approach towards methods of police investigation, which is not based on confession evidence but upon obtaining accurate and reliable information in order to discover the truth about the matter under investigation. The Serbian authorities need to take determined action to combat police ill-treatment, which should include training for crime inspectors on appropriate interview and investigation techniques, and holding senior officers accountable for their line-management responsibilities. Further, the Serbian authorities should establish dedicated interview rooms with audio and/or video equipment for recording police interviews.

In order to counter the current culture of impunity that permeates parts of the various police forces within the country, it is essential that effective investigations into allegations of ill-treatment are undertaken and that criminal acts by the police are punished. Ideally, the Serbian authorities will establish an independent police complaints body. However, the CPT recognises that this is a longer-term objective and considers that, in the shorter term, the Serbian authorities should take action to reinforce the capabilities of the Sector of Internal Control of the Ministry of the Interior (SUKP) and to end the practice of senior officers from the same organisational unit investigating subordinate officers accused of acts of ill-treatment. To carry out effective investigations in a timely and thorough manner, the SUKP should be sufficiently resourced, including reinforcing its staffing levels, ensuring its investigators are properly trained and enhancing its investigative capabilities (such as by ordering forensic medical examinations of alleged victims of police ill-treatment).

As regards the effectiveness of prosecutorial investigations, the CPT found that preliminary criminal investigation activities frequently did not meet the requirements of thoroughness. Consequently, the CPT considers that prosecutors should always conduct investigative actions themselves, regardless of whether or not the “shortened procedure” applies, and such investigations should be conducted in a comprehensive manner. The CPT also examined a number of judicial decisions which revealed several problem areas such as the excessive length of proceedings, and the leniency of sentences. The CPT recalls the importance of ensuring that adequate sanctions are imposed on law enforcement officials found guilty of having ill-treated a person.

In respect of safeguards against ill-treatment of persons deprived of their liberty by the police, a number of shortcomings were observed in relation to the delayed notification of custody, access to and poor performance by *ex officio* lawyers in preventing ill-treatment, and the lack of confidentiality of medical examinations of detained persons. Further, steps should be taken to render custody records comprehensive and effective in recording a detained person’s time in police detention. In addition, a code of conduct for police interviews should be drawn up.

Material conditions in certain police stations, such as Pančevo District Police Station, were acceptable. However, the cells in many of the police stations visited were dilapidated and in a poor state of repair, with little or no access to natural light, poor artificial lighting and inadequate ventilation. Action also needs to be taken to ensure that all detained persons are offered water and food at appropriate intervals.

### **Prisons (Pre-trial sections)**

In the pre-trial sections of the establishments visited, overcrowding remained a problem and concrete action should be taken to ensure that all remand prisoners are afforded a minimum of 4m<sup>2</sup> of living space each in multiple-occupancy cells, excluding the sanitary annexe. This is all the more important given that pre-trial detainees are locked in their cells for 22 or more hours a day for months on end, with no access to purposeful activities and numerous judicially-imposed restrictions throughout the pre-trial period. The CPT considers that such a regime is a relic of the past. The Serbian authorities should devise and implement a comprehensive regime of out-of-cell activities for remand prisoners. As for juveniles on remand, immediate steps should be taken to offer educational and recreation activities tailored to them. Likewise, female inmates on remand should be offered purposeful activities and appropriate human contact, particularly when they are held in conditions akin to solitary confinement.

Material conditions were satisfactory in the renovated sections of Belgrade and Prokuplje District Prisons. However, the remand sections in the other prisons visited had inadequate ventilation, insufficient lighting, poor hygienic conditions and signs of dilapidation. The Serbian authorities should pursue their efforts to improve the conditions of detention in prisons and remedy the specific issues highlighted in the report.

The important role of health care services in prisons is highlighted. It is essential that every newly admitted prisoner is properly interviewed and physically examined by a medical doctor within 24 hours of admission. Further, steps must be taken to ensure that there is systematic recording of all injuries and that the traumatic injury reports relating to injuries likely to have been caused by ill-treatment are automatically forwarded to the body empowered to conduct investigations. Such a procedure has been instituted recently at Belgrade and Novi Sad District Prisons, which is a positive development. Recommendations are also reiterated concerning the confidentiality of medical examinations and the development of a comprehensive strategy for the provision of assistance to prisoners with drug-related problems.

In order to further promote contact with the outside world, visiting arrangements at all remand detention units should be reviewed to ensure that prisoners receive at least three visits of one hour every month, as provided for in the 2014 Code of Criminal Procedure, and preferably the equivalent of one hour every week. Further, the Serbian authorities should institute a rule of open visits for all prisoners, with closed visits as the exception.

## **I. INTRODUCTION**

### **A. The visit, the report and follow-up**

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Serbia from 31 May to 7 June 2017. The visit was considered by the Committee “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention). See Appendix I for the list of police and prison establishments visited by the CPT’s delegation and Appendix II for information on the national authorities and organisations met.

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

- Marzena Ksel, 1<sup>st</sup> Vice President of the CPT (Head of the delegation)
- Nico Hirsch
- Davor Strinović.

They were supported by Hugh Chetwynd, Head of Division, and Christian Loda of the Committee's Secretariat, and assisted by Boštjan Škrlec, Senior State Prosecutor, Slovenia (expert) and Dusica Lisjak, Biljana Obradovic and Jasna Soptrajanova (interpreters).

2. The report on the visit was adopted by the CPT at its 94<sup>th</sup> meeting, held from 6 to 10 November 2017, and transmitted to the Serbian authorities on 22 November 2017. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the Serbian authorities to provide within four months a response containing a full account of action taken by them to implement the Committee’s recommendations and replies to the comments and requests for information formulated in this report.

### **B. Context of the visit and cooperation encountered**

3. The primary objective of the visit was to examine the treatment of persons deprived of their liberty by the police and the practical application of safeguards surrounding their detention. It also looked into the manner in which complaints of ill-treatment of detained persons by police officers were handled, as regards both disciplinary and criminal investigations and proceedings. Further, the treatment of remand prisoners and their conditions of detention were also examined, as were the material conditions in police stations.

4. In its report on the 2015 visit, the CPT noted that its delegation had received a significant number of allegations of physical ill-treatment of detained persons by police officers. Detailed allegations were received of the handcuffing of persons in stress positions for hours on end, the placing of plastic bags over their heads, the infliction of shocks with hand-held electric discharge devices, the infliction of *falaka* and the striking of persons with various non-standard objects (such as bicycle locking cables, wooden floor tiles and baseball bats). Recommendations were made to the Serbian authorities to adopt a multi-faceted approach to end ill-treatment by police officials, including the establishment of an effective independent system of complaints against police misconduct, and to improve practical implementation of formal safeguards against ill-treatment. The steps reportedly taken by the Serbian authorities to address the very serious allegations made in the report both in respect of investigating the practices and in taking measures to put an end to police ill-treatment were totally insufficient. Indeed, the Committee was disappointed by the response of the Ministry of the Interior on this question and the fact that many recommendations were not addressed.

Further, in the period following the 2015 visit to Serbia, the media and non-governmental organisations have repeatedly reported cases of alleged ill-treatment by the police. For example, in a recent case from May 2017, a Roma couple taken to a Belgrade police station alleged that the husband was racially abused and kicked in the stomach, his hands whipped with a leather strap, a plastic bag placed over his head and tightened inducing a sensation of asphyxiation, and a gun cocked and pointed at his hand. They were apparently denied access to a lawyer and ended up signing six documents, the contents of which they did not understand.

Therefore, in the light of all the above elements, the Committee decided to carry out an ad hoc visit to determine for itself whether the situation regarding ill-treatment of persons by the police remained a serious problem.

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

However, the CPT has emphasised on numerous occasions that the principle of cooperation set out in Article 3 of the Convention also requires that decisive action be taken to improve the situation in the light of the Committee's recommendations. In this respect, the delegation noted that over the past two years concrete steps have been taken to upgrade the material conditions of detention for remand prisoners at Belgrade and Pančevo District Prisons as well as at Niš Correctional Institution. Nevertheless, there is still a need to review fundamentally the current approach towards remand detention and to increase the commitment towards tackling the issue of ill-treatment by police officers.

6. In the course of the visit, the delegation held consultations with Radomir Ilić, State Secretary of the Ministry of Justice; Vladimir Rebić, Director of Police; Miloš Oparnica, Assistant Minister and Head of the Internal Control Sector of the Police; and Milan Stevović, Director of the Administration for the Execution of Criminal Sanctions as well as other senior officials from the above-mentioned Ministries. Meetings were also held with two deputies of the Republic State Prosecutor; Miloš Janković, the Acting Ombudsman and Head of the National Preventive Mechanism and representatives of the Belgrade Centre for Human Rights.

7. At the end of the visit, the delegation presented its preliminary observations to the Serbian authorities. At that meeting, it made an immediate observation under Article 8, paragraph 5, of the Convention and requested the Serbian authorities to take out of service immediately the two cells in Stari Grad Police Station in Belgrade until such time as they have been properly renovated.

By letter of 1 September 2017, the Serbian authorities provided information on the action taken in respect of the above immediate observation as well as on other matters raised by the CPT's delegation during its preliminary observations. This information has been taken into account in the relevant sections of the present report.



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

### A. Law enforcement agencies

#### 1. Preliminary remarks

8. The legal situation has not changed since the 2015 visit. In brief, the new Criminal Procedure Code (CCP), which entered into force in 2014, introduced a shift away from an inquisitorial system to one that is more adversarial with the investigation phase now being led by the prosecutor's office. The CCP tasks the police with bringing an arrested criminal suspect without delay and within a maximum period of eight hours before a prosecutor. The police must also within a period of two hours issue the suspect with a provisional detention decision. It is the prosecutor who decides to keep a criminal suspect in police custody for up to 48 hours from the moment of deprivation of liberty.<sup>1</sup> The police custody of criminal suspects is limited to a maximum of 48 hours and is regulated by Article 29 of the Constitution.

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

Pursuant to Section 53 of the Law on Police, the police may detain persons for public order offences for a maximum period of 24 hours. Further, Section 165 of the Law on Misdemeanour allows the detention of a person by the police for up to 24 hours if the identity of the person cannot be established. Finally, the police also retains the right of detaining persons on the basis of the Law on Road Traffic Security for a maximum period of 12 hours.<sup>2</sup>

#### 2. Ill-treatment

9. The majority of persons met by the delegation indicated that they had been treated correctly by police officers at the time of their apprehension and while in police custody. However, the delegation received a significant number of allegations of physical ill-treatment of detained persons by police officers, notably in the larger urban areas (i.e. Belgrade, Niš and Novi Sad). Some allegations were also received in smaller towns such as Čuprija, Leskovac, Prokuplje and Vranje.

The alleged physical ill-treatment consisted of slaps, punches, kicks and truncheon blows, strikes with various non-standard objects (such as baseball bats) and also several claims of criminal suspects being subjected to electrical discharge devices at the time of apprehension or during questioning. The purpose of the ill-treatment was apparently intended to coerce suspects to admit to certain offences or as a punishment for their behaviour.

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<sup>1</sup> Pursuant to Sections 294 and 69 of the CCP.

<sup>2</sup> Mainly for sobering-up purposes whenever a driver is assessed to be in a serious state of inebriation (pursuant to Section 283 of the Law on Road Traffic Security).

10. 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 cases below are for the purposes of illustration. While some of the persons met by the delegation stated that they wanted to make a complaint about the ill-treatment,<sup>3</sup> others provided information on the condition that their names would not be divulged.

- i) A 16-year-old juvenile, arrested around 11 p.m. on 20 April 2017 on the street in Novi Sad stated that he was handcuffed and allegedly kicked and punched while on the ground and kept in a stress position for one hour until he was transferred to Novi Sad District Police Station. He was taken to the second floor where he was handcuffed to a blue coloured safe in a crime inspector's office,<sup>4</sup> a bullet proof vest was placed over his head and he was subjected to numerous blows with a baton as well as punches and kicks to the body by several officers until such time as he confessed.<sup>5</sup> He remained attached to the safe until 9 a.m. the next morning and stated that he heard his two companions being beaten in nearby offices on the same floor. He was not provided with a lawyer nor allowed to contact a trusted adult, contrary to the specific legal safeguards set out in Article 49 of the Law on Juvenile Criminal Offenders. It was only at 10 a.m. the next morning that he saw a lawyer and his parents.
- ii) A young woman arrested at her home on 25 May 2017 in Belgrade, alleged that the police officers threw her to the floor and subjected her to several punches in the presence of her mother. She also complained that she was threatened with various kinds of treatment if she did not confess, and claimed that the handcuffs were deliberately applied tightly to cause her pain. Upon admission to prison, the following injuries were noted: two excoriations on the nose, a greenish hematoma between the eyebrows (5cm x 1cm), a hematoma on the right cheek (1cm x 0.5cm), dark blue hematoma around both wrists (1cm x 0.5cm and 2cm x 2cm), a hematoma on the right upper arm (1cm x 1cm), and excoriations on the right elbow (5cm x 1cm), on the right knee (2cm x 1cm) and on the left knee (1cm x 1cm).
- iii) A young man apprehended on the street in Belgrade on 5 January 2017 alleged that he was thrown to the ground, handcuffed behind his back and subsequently subjected to multiple kicks from several police officers. Further, during the transport to Rakovica Police Station he was slapped across the ear and punched on the head. Later he was taken to an emergency medical centre where he was diagnosed as having a ruptured ear membrane. Upon entry to Belgrade District Prison, his medical record noted an excoriation on the left knee, hematoma around both eyes, swelling of the left ear, reddish in colour. He was later examined by an ear, nose and throat (ENT) specialist who diagnosed a rupture of the left eardrum.

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<sup>3</sup> In this respect, it is incumbent upon each person to lodge a complaint with the relevant authorities as providing the CPT with details of an allegation of ill-treatment does not constitute an official complaint. This was made clear to the persons met by the CPT's delegation during the visit.

<sup>4</sup> When the CPT's delegation visited Novi Sad District Police Station it located the crime inspector's office and found the safe which had markings on the handles consistent with handcuff scrapings of the paintwork.

<sup>5</sup> When subjected to being beaten in such a manner, the injuries are to the internal organs and are less likely to produce external visible bruising. Further, in this particular case, the juvenile's upper body was not examined for injuries by health care staff upon his admission to Novi Sad District Prison.

- iv) A person arrested in his car in April 2017 in Belgrade, alleged that after being taken out of the car, he was punched and kicked all over his body by the arresting plain clothes officers until he lost consciousness. He was transported to the hospital where he saw various specialists and underwent a CT scan. The hospital medical certificate noted: “bruises with superficial excoriation in the frontal and right zygomatic region of the head. CT of the head - subcutaneous hematoma in frontal region, bone structure – no signs of acute traumatic lesions.” His medical record upon admission to prison also noted: “greenish hematoma (3cm x 1cm) beyond the left ribs. The official police record says that he fell out of the car which is hardly credible given the nature of the injuries.
- v) A 68-year-old man arrested in Vranje on 21 May 2017 alleged he was hit several times with truncheons by three officers on the chest, left arm and left buttock upon apprehension at his house and during transport to the police station. Upon examination by the delegation’s forensic doctor on 2 June 2017 the following injuries were noted: on the left forearm, a reddish to greenish colour hematoma (10cm x 4cm); on the inner left upper arm, multiple hematomas (4cm x 3cm, 1cm x 1cm and 2cm x 1cm); on the scapular region, a red-green hematoma (4cm x 2cm); on the left outer thigh, a hematoma (10cm x 3cm); and a hematoma on the left buttock. The injuries were assessed as consistent with his allegations. He further explained that when the police had taken him to the emergency clinic he had told the doctor that the injuries were inflicted by his wife as the policemen who had beaten him were present during the consultation and he was afraid. However, the nature of the injuries lends far more credence to having been beaten by three police officers.
- vi) A man arrested in a flat in Belgrade alleged that after he was handcuffed, the police officers punched, kicked and threw him to the floor, that they continued to strike him during the journey to the Metropolitan Police Headquarters and that he was insulted, slapped and punched while being interrogated in the crime inspector’s office. His medical record upon admission to Belgrade District Prison noted “hematoma in the front side of the neck and excoriations on both legs and on the right knee”.
- vii) A person arrested in a high profile case in a restaurant at the beginning of June 2017 alleged that during his interrogation by three police officers at the police station he was repeatedly punched and kicked, threatened with being raped with a broomstick and had a plastic bag placed over his head to induce a sensation of asphyxiation. Upon admission to Belgrade District Prison, he bore the following injuries: greenish colour hematoma on the left shoulder (2cm), two greenish hematoma on the abdominal region, two greenish hematoma (both 2cm x 1cm) on the right side of the chest, a greenish hematoma (3cm) on the right side of the neck, three excoriations on the forehead, hematoma on the nose, hematoma (1cm) above left eye, an excoriation (3cm) on the right wrist and an oedema excoriation on the right side of the upper jaw.

Another person arrested during the same operation and interviewed separately in another cell alleged that he too had been similarly ill-treated. Upon admission to Belgrade District Prison, he bore the following injuries: excoriations on the right knee, on the right lower leg two linear excoriations, on the left wrist a hematoma with swelling. An x-ray revealed a fracture of the right radial bone (the bone had been fractured two weeks prior to the arrest and the person stated he had begged the police not to twist his right hand which was in a splint but they had twisted it and re-broken the bone).

These two persons were examined by the delegation’s forensic medical doctor who concluded that their injuries were compatible with their allegations.

11. The delegation received several detailed allegations from persons concerning the use of an electro-shock device by police officers to force them to confess to certain crimes.

- i) A person arrested on the street in Belgrade in March 2017 and brought to the Metropolitan Police Headquarters alleged that, while handcuffed behind his back and sitting on a chair, he received several punches to the body and was subjected to repeated electrical charges from a hand-held torch-like device (measuring around 20 cm) to the ribs, legs and lower back.
- ii) A person arrested and taken to the Metropolitan Police Headquarters alleged that, while handcuffed behind his back, a bullet-proof vest had been placed over his upper body and several police officers had proceeded to deliver punches and baton blows to his body. Further, he stated that they used a torch device « Police 20000W » to deliver electro-shocks to his genitals; he claimed that he had blood in his urine for several days thereafter.
- iii) Another person who was arrested at the Hungarian border and taken to Novi Sad District Police Station alleged that he was subjected to repeated electro shocks from a hand-held device (which also served as a torch) to the inner part of his legs and his testicles both during transportation and while handcuffed to a safe in a crime inspector's office.

12. The above two paragraphs merely refer to a sample of the cases of alleged ill-treatment noted by the delegation. At Belgrade District Prison alone there were some 80 cases of persons arriving at the prison with injuries in the first five months of 2017, the vast majority of which apparently related to alleged police ill-treatment. In addition, the CPT's delegation met a number of detained persons who alleged ill-treatment but who had not complained upon entry to prison. Further, many cases at Belgrade District Prison prior to the introduction of the reporting system to the investigative judge in April 2017 were not properly documented. At Novi Sad District Prison, where the delegation received multiple allegations of ill-treatment by the police, the recording of injuries upon admission was neither systematic nor comprehensive. Moreover, in other remand prisons, the medical examination upon entry remains superficial and does not involve a full physical examination (see paragraphs 59 and 60).

13. In the course of the visit, the delegation again found non-standard items such as baseball bats, electrical extension cords, batons, a knuckle-duster (*bokser*), etc. in the offices of crime inspectors where detained persons had specifically alleged that they had been subjected to ill-treatment by law enforcement officials with such items. In a communication received on 1 September 2017, the Serbian authorities provided an explanation that the above-mentioned objects found in interrogation rooms by the CPT's delegation had been seized for the purpose of being used as evidence. In this connection, it should be stressed that the above mentioned non-standard objects should always be properly labelled, recorded and kept in a dedicated property store. The CPT has taken note that a lack of space within many police stations means that there is no dedicated property store. However, steps should be taken to remedy this deficiency.

**The CPT recommends that the Serbian authorities create a dedicated property store for all confiscated items in every police station, starting with the district police headquarters. At the same time, they should ensure that any weapons or other items seized during criminal investigations are entered in a separate register and properly labelled (identifying the case to which they refer), and placed in the dedicated property store. Confiscated electro-shock devices, knuckle-dusters, baseball bats, electrical extension cords etc. should never be kept in offices where detained persons may be interviewed or held.**

14. The CPT recognises that the arrest of a 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 arrest may be such that injuries are sustained by the person concerned (and by police officers), without this being the result of an intention to inflict ill-treatment. However, no more force than is strictly necessary should be used when effecting an arrest. Furthermore, once arrested persons have been brought under control, there can be no justification for their being struck by police officers.

In light of the information gathered during the 2017 visit, **the CPT recommends that police officers be regularly reminded of these basic principles, including through practical training exercises. Further, every use of force by law enforcement officials should be properly documented (description of facts; any injuries sustained; whether the detained person was brought to hospital, etc.).**

15. In the light of the delegation's findings and observations in the course of the 2017 visit, which reinforce the findings from the CPT's 2015 visit,<sup>6</sup> it is incumbent on the Serbian authorities to take the necessary measures to end ill-treatment by law enforcement officials through a multifaceted approach, comprising: a competitive recruitment process of police officers based upon strict selection criteria; an educational training course for all new recruits and existing police officers with a particular emphasis on advanced methods of crime investigation (see paragraph 16); the accountability of senior officers for their line management responsibilities; the application of appropriate sanctions (criminal and disciplinary) for the perpetrators of ill-treatment and for those who fail to prevent it; and the existence of effective and independent procedures for examining complaints and other relevant information regarding alleged ill-treatment by police officers.

In fact, the seriousness of the information gathered in the course of the 2015 and 2017 visits concerning ill-treatment calls for immediate and determined action by the authorities. The Serbian authorities must recognise that the existence of ill-treatment by police officers is a fact, that it is not the result of a few rogue officers but appears to be an accepted practice within the current police culture, notably among crime inspectors. The authorities should vigorously explore all means to ensure that the message of zero tolerance of ill-treatment of detained persons reaches law enforcement officials at all levels; they should be made aware, through concrete action, that the government is resolved to stamp out ill-treatment of persons deprived of their liberty. Combating ill-treatment entails not only the adoption of the appropriate legal norms but also taking the necessary steps to ensure their implementation including the timely transmission of information on allegation of ill-treatment to the competent judicial and prosecutorial authorities (see paragraph 61).

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

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<sup>6</sup> See, in particular, paragraph 14 of the CPT's report on the 2015 periodic visit to Serbia CPT/Inf (2016) 21.

16. Moreover, the Committee reiterates that it is necessary 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.

In addition to the measures highlighted above in paragraph 15, such an approach must involve 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 Serbian authorities act to ensure that 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.**

**More generally, the CPT would like to be informed of the different elements that make up the rigorous recruitment procedures for police officers.**

**Further, the Serbian authorities should establish dedicated interview rooms with audio and/or video equipment for recording police interviews.**

17. 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 the 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 Minister of the Interior, the Director of Police and regional police directors actively promote a culture change within the ranks of the law enforcement agencies.**

**Moreover, it is essential that effective investigations into allegations of ill-treatment are 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**

18. The effectiveness of action taken when ill-treatment may have occurred constitutes an integral part of the CPT's preventive mandate, given the implications that such action has for future conduct. The credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. If the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with very good reason – that they can do so with impunity.

Conversely, when officials who order, authorise, condone, perpetrate or tolerate torture and ill-treatment are brought to justice for their acts or omissions, an unequivocal message is delivered that such conduct will be punished accordingly.

19. In its report on the May 2015 visit, the CPT described the system of internal complaints against police misconduct and the efforts of the Serbian authorities to establish an effective system of investigations into police ill-treatment, notably in the light of several judgments by the European Court of Human Rights<sup>7</sup> and the Constitutional Court. However, taking into account the information received since the 2015 visit, the CPT was not convinced that investigations into allegations of ill-treatment by law enforcement officials were effective.

20. In the course of the 2017 visit, the CPT decided to examine the system of investigation of allegations of ill-treatment by the police and to see whether such investigations met the criteria of effectiveness.<sup>8</sup> That is, are the persons responsible for carrying out such an investigation impartial and independent of those implicated in the events, and are the investigations carried out promptly and thoroughly (i.e. whether all reasonable steps have been taken to secure evidence concerning the incident).

To this end, the CPT's delegation held meetings with the Assistant Minister of the Interior and Head of the Sector of Internal Control of the Ministry of the Interior (SUKP) and his team, and examined a number of investigations into allegations of physical ill-treatment. Further, the delegation also held meetings with senior officials of the Republican Public Prosecutor (*Republičko Javno Tužilaštvo*) and examined the majority of investigative and judicial proceedings undertaken since 2010 in respect of Articles 136 (coerced confession) and 137 (torture and ill-treatment) of the Criminal Code concerning law enforcement officials. It also analysed several court judgments concerning law enforcement officials accused of acts of torture and ill-treatment of detained persons between 2010 and 2016.

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<sup>7</sup> See, for example, the decisions of the European Court of Human Rights in the cases of *Stanimirović v. Serbia* of 18 October 2011, *Hajnal v. Serbia* of 19 June 2012, *Lakatoš v. Serbia* of 7 January 2014, *Habimi v. Serbia* of 3 June 2014 and *Petković v. Serbia* of 15 July 2014..

<sup>8</sup> See the EU Screening Report on Chapter 23 of the EU accession negotiations (items 3.1.1.8 and 3.3.1.24).

The CPT's delegation also received a copy of the draft Methodology for the Investigation of Ill-treatment drafted by representatives of the Republic Public Prosecutor, Ministry of the Interior, the SUKP and the OSCE. The methodology will serve as a guideline for prosecutors and police officers conducting investigations into allegations of torture and ill-treatment as it provides practical information and advice on issues such as securing evidence and interviewing witnesses, victims and perpetrators in those cases. If applied properly, the methodology will be an important resource in carrying out effective investigations.

21. The SUKP is mandated to investigate any type of police misconduct on its own initiative, at the request of the competent prosecutor or based upon complaints lodged by citizens. The legal framework regulating the SUKP has slightly changed since 2015. According to the 2016 Law on Police, complaints of police misconduct lodged with the Ministry are processed by the relevant head of the organisational unit in which the police officer, who is the object of the complaint, is located. Persons may appeal<sup>9</sup> the decision to a three-member territorial commission appointed by the Minister of the Interior.<sup>10</sup> Complaints containing elements of criminal responsibility by police officials must be immediately forwarded to the competent prosecutor, the Minister and the SUKP.<sup>11</sup>

The SUKP has 127 budgeted positions but is currently staffed by 85 police officers operating in two divisions (one for preventive activities and one for criminal investigations into police misconduct, the latter being staffed by 12 investigators) located in Belgrade and three regional centres (Kragujevac, Novi Sad and Niš). In the course of discussions with the SUKP, the CPT's delegation was told of several initiatives to enhance the Sector's effectiveness, notably the filling of all vacant positions, the creation of a central database recording all complaints lodged by citizens throughout the country, and the signature of a protocol of co-operation with the prosecutorial authorities to enable the SUKP to have the possibility, inter alia, of ordering forensic medical examinations. Finally, the CPT takes note of the coming into force in June 2017 of a new Rulebook on the Processing of Complaints against officials of the Ministry of Interior which under Article 7, paragraph 7, stipulates that the Minister of the Interior, Director of Police and the SUKP be immediately informed of any complaint containing an allegation of torture and inhuman or degrading treatment.

22. The CPT's delegation examined all 35 cases of alleged ill-treatment by police officers processed by the SUKP in the course of 2016 and the first semester of 2017, out of which 12 had resulted in criminal reports being filed with the competent prosecutorial authorities. The investigations into the 12 cases by the SUKP appeared to have been thorough although they had not always been timely. For example, nine of the 12 cases had taken almost one year to investigate from the date the allegations of ill-treatment were made to the filing of the criminal report with the competent prosecutor.<sup>12</sup>

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<sup>9</sup> See Article 235, paragraph 4 of the Law on Police.

<sup>10</sup> It is composed of a police officer (acting as President), an official of the Ministry of Interior and a representative of civil society. Commissions operate at the level of each police district and a central one in Belgrade.

<sup>11</sup> See Article 234 of the Law on Police.

<sup>12</sup> In the remaining three cases the investigation lasted from two to six months.



However, in relation to the 23 cases in which the SUKP had taken no further action, investigations could not be considered thorough (e.g. taking police reports at face value, absence of interviewing of suspected police officers, etc.). Further, it appeared that in some cases, the complainants were dissuaded by police officers at the District level in the course of first instance complaints proceedings not to pursue their cases with the SUKP. For example:

- i) a remand prisoner who displayed visible injuries on the right part of his face upon admission to Novi Sad Prison alleged he was punched by police officers of Novi Sad/Klisa Police Station at the time of his apprehension on 16 February 2017. The SUKP, investigating upon the request of the Novi Sad District Prosecutor, decided not to file a criminal report despite the clearly determined fact that the injuries were inflicted during apprehension of the suspect (more specifically, while he was lying face down on the tarmac). Instead, they relied upon the fact that the remand prisoner in question had declared at the time of his interrogation at Novi Sad Police Station that he had no complaints against the treatment by police officers. The SUKP contented itself with this statement and did not seek to interview the injured party nor determine how the injuries had been sustained;
- ii) the mother of a young adult filed a complaint concerning the alleged ill-treatment of her son by police officers at Vrbas Police Station at the time of his arrest and later during interrogation in early January 2017, excessive use of force during the apprehension, slaps to his face, directing a laser pointer towards his eyes and simulating a mock execution with a pistol. The SUKP was content to approve the report of the supervisor of the alleged perpetrators stating that no irregularities in terms of excessive use of force and means of restraint had been committed. Neither the complainant nor the alleged victim was interviewed. Further, from the documentation examined it also appeared that a police officer at Vrbas Police Station had admitted the veracity of the allegations to the complainant and had tried to dissuade her from pursuing further her case with the SUKP.

23. In the CPT's view, an independent authority responsible for the investigation of complaints against the police can make a significant contribution to preventing ill-treatment, provided it is genuinely independent and adequately resourced to conduct effective investigations. Ideally, the CPT would wish the Serbian authorities to establish such an independent police complaints body. However, the CPT recognises that this is a longer-term objective and considers that in the shorter term the Serbian authorities should take action to reinforce the capabilities of the SUKP. In the CPT's opinion, the SUKP should be informed about and responsible for all investigations of alleged cases of ill-treatment made against police officers. The current practice of senior officers from the same police district investigating subordinate officers accused of acts of ill-treatment should be ended.<sup>13</sup>

**The CPT recommends that the Serbian authorities take the following steps to:**

- **reinforce the staffing of the SUKP by filling all vacant positions notably as regards the division charged with criminal investigations;**
- **enable the SUKP to create a central database of all complaints lodged which would allow the SUKP a real time overview of the investigation of complaints and grant it the possibility to intervene at any stage of the proceedings;**
- **enhance the investigative capabilities of the SUKP through the possibility to order forensic medical examinations of the injured party and resort to audio and video devices for the collection of evidence.**

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<sup>13</sup> See, for example, the case of *Ramsahai and others v. The Netherlands*, no. 52391/99, ECtHR (Third Section), Judgment of 10.11.2005.

**Further, the Serbian authorities should ensure that SUKP investigators are properly trained and the SUKP sufficiently resourced to carry out effective investigations into cases of alleged torture and ill-treatment in a timely and thorough manner.**

24. As to the effectiveness of prosecutorial investigations into allegations of ill-treatment, the legal framework has not changed since the 2015 periodic visit. Namely, pursuant to Article 495 of the CCP, the criminal offences of torture and ill-treatment (Article 137 of the CC) are subject to a shortened procedure which in practice means that certain investigative actions are not carried out by the prosecutors themselves but delegated to the police such as the interviewing of relevant witnesses. Prosecutors also do not order forensic medical examinations of the alleged victim. Further, it still remains the case that if a prosecutor rejects the criminal charges or suspends the investigation into torture and/or ill-treatment, the injured party cannot initiate criminal charges but may only lodge a complaint to a senior prosecutor.<sup>14</sup>

In terms of statistics, a total of 258 criminal proceedings for the criminal offences of coerced confession and torture and ill-treatment were initiated between October 2013 and December 2016 against law enforcement officials. Of these, 145 resulted in the dismissal of criminal proceedings by the prosecutors, seven in deferred prosecutions, 93 remain pending and 13 entered the adjudication phase.

25. With the welcome assistance of the Belgrade Centre for Human Rights,<sup>15</sup> the CPT's delegation had the possibility to examine the investigation files in relation to 85% of the above 258 proceedings and was able to establish that the preliminary criminal investigation activities frequently did not meet the requirements of thoroughness, especially when the shortened procedure under Section 495 of the CCP was applied. For example:

- i) the District Prosecutor of Kruševac dismissed a criminal report filed by the injured party (i.e. subsidiary prosecution) including forensic documentation on the alleged ill-treatment (i.e. blows with truncheons) inflicted upon him by prison guards at Kruševac District Prison on 27 February 2014. The decision of the prosecutor relied solely on the written report of the prison justifying the use of force by prison guards in light of the aggressive behaviour of the inmate towards custodial officers. No witness had been interviewed by the prosecutor and the discrepancies in the statements were not cross-examined;
- ii) the District Prosecutor of Niš dismissed a criminal report filed by the mother of a victim of alleged physical ill-treatment by police officers from Niš District Police Station which had taken place on 8 March 2014. The report was supported by expert forensic medical documentation confirming the compatibility of the sustained injuries. The decision of the prosecutor was only adopted on 19 February 2015 and was based exclusively on the written statements of the police officers involved. The prosecutor did not attempt to address the possible origin of the injuries and qualified the above-mentioned forensic medical report as "inconclusive", when in fact this was not the case;

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<sup>14</sup> See Article 51 of the CCP.

<sup>15</sup> The NGO collected all relevant investigative files from courts nationwide in respect of all criminal proceedings initiated under Articles 136 and 137 of the CC between 2010 and the end of 2016.

iii) a detained person alleged he was ill-treated by police officers of Novi Beograd Police Station while being interrogated on 4 July 2013 and had filed a criminal report to the police station six days after the incident. The alleged perpetrators of the physical ill-treatment were interviewed by the Department of the Control of Legality of the Ministry of the Interior; they declared that there had been no use of physical force vis-à-vis the complainant. Officials from the Ministry of Interior only attempted to consult the relevant video-surveillance material on 22 August 2013, more than a month after the filing of the criminal report, whereas such surveillance material is only stored for 10 days. The prosecutor issued a decision on the dismissal of the criminal report on 19 November 2014, without examining the origin of the certified injuries of the complainant; certainly, a more timely investigation by the Ministry of the Interior officials would have secured crucial video-surveillance evidence and not to have done so should have been considered in itself an obstruction of justice. Further, the prosecutor did not challenge the contradictory statements made by the police officers who allegedly carried out the ill-treatment.

26. To ensure that investigations by prosecutors into allegations of ill-treatment by law enforcement officials are effective, **the CPT recommends that the Serbian authorities take the necessary measures to ensure that:**

- **prosecutors investigating cases of alleged torture and ill-treatment should always in practice conduct investigative actions (*istražne radnje*) themselves, especially as regards interviews of relevant witnesses, injured parties and police officers; in such cases, they should also always order a forensic medical examination; further, such an approach should be applied regardless of whether the shortened procedure applies or not;**
- **prosecutorial investigations into cases under Articles 136 and 137 of the Criminal Code are conducted in a comprehensive manner, i.e. by ensuring that significant episodes and surrounding circumstances indicative of ill-treatment are not disregarded, and in a prompt and reasonably expeditious manner.**

27. An additional indication of the lack of effectiveness in the investigation of alleged cases of ill-treatment by prosecutors is illustrated by the fact that in the period between January 2010 and December 2016, some 46% of the indictments raised in respect of police officers for an offence of alleged ill-treatment under Articles 136 and 137 of the Criminal Code were brought by the injured parties themselves through subsidiary prosecution. As such a system of bringing subsidiary prosecutions is no longer possible following the entry into force of the new CPC in 2014, it is all the more essential that prosecutors effectively investigate cases of alleged ill-treatment by police officers.

28. Further, the CPT considers that the crime of torture under Article 137 of the Criminal Code should be amended so that the statute of limitations is extended beyond 10 years, as is the case for the offence of coerced confession under Article 136 of the CC, and prosecutors do not have to apply the shortened procedure when investigating cases of alleged torture and ill-treatment. The CPT also recalls that under international customary law the crime of torture should not be subject to a statute of limitations and the definition of torture should be in line with Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>16</sup>

**The CPT recommends that Article 137 of the Criminal Code be amended in light of the above remarks.**

29. In the course of the 2017 visit, the CPT's delegation also examined a number of final decisions (judgments) issued by the courts in respect of cases of coerced confession and ill-treatment and torture. A total of 136 judicial decisions (concerning 271 defendants) were issued between 2010 and the end of 2016 concerning law enforcement officials accused of violating Articles 136 and 137 of the CC. The outcome of these cases was 36 convictions, 35 acquittals, 44 discontinuations of criminal proceedings and 21 rulings on the dismissal of proceedings on the merits. In this respect, it is important to note that almost half of the indictments raised (46%) concerned cases in which the injured parties had initiated criminal proceedings (i.e. subsidiary prosecution) following a previous dismissal by the competent prosecutor. Further, 18 out of the 44 discontinued criminal proceedings (i.e. 41%) were due to the expiration of the statute of limitations.<sup>17</sup>

As regards the 36 convictions, 29 of these consisted of conditional sentences (encompassing a total of 39 police officers), one community service sentence, one sentence of house arrest, three deferrals of criminal prosecution and two sentences ordering imprisonment. An analysis of the court verdicts and investigative files in the above-mentioned cases revealed several problem areas such as the excessive length of proceedings, and the leniency of the sentences, some of which were below the minimum penalty envisaged by Articles 136 and 137 of the CC. Further, conditional sentences were also applied by courts in relation to police officers who had previously been found guilty of the same criminal offence. For example:

- i) The Belgrade Appellate Court sentenced two police officers to a conditional sentence of 11 months of imprisonment for a probation period of five years after having ascertained that they had coerced a detained criminal suspect to confess several burglaries by punching him, hitting him with truncheons and slamming his head against a sink which caused him serious life threatening injuries (i.e. fracture of the skull, fracture of the temple bone, subdural hematoma of the head). The court decided to apply a sentence lower than the minimum set out in the CC<sup>18</sup> in the light of mitigating factors - both police officers were family men and parents and had no prior convictions. The sentence was delivered 14 years after the crime after a previous acquittal by the Belgrade District Court;

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<sup>16</sup> See in particular paragraph 10 of the UNCAT Concluding observations on the second periodic report of Serbia CAT/C/SRB/CO/2. Further, in the case of *Cestaro v. Italy*, no. 6884/11, ECtHR (Fourth Section), Judgment of 7 July 2015, the European Court of Human Rights clearly sets out in its decision that the lack of adequate penalties in respect of torture as well as the application of a statute of limitations to the crimes in question had *de facto* ensured impunity for the police officers responsible for the violence.

<sup>17</sup> The statute of limitations for the prosecution of criminal offences related to Articles 136 and 137 of the CC ranges from three to ten years pursuant to Article 103 of the CC.

<sup>18</sup> Article 136, paragraph 2 of the CC stipulates that the minimum sentence for the crime of coerced confession causing serious physical injury is two years of imprisonment.

ii) A police officer was convicted by the Sremska Mitrovica District Court for the offence of torture and ill-treatment (pursuant to Article 137 of the CC) for hitting a detained person on the back with a truncheon inflicting light bodily injuries. The officer received a conditional sentence of six months of imprisonment and a probation period of four years which would in such a case comply with the existing legal requirements. That said, the police officer in question had previously been convicted for the same criminal offence.<sup>19</sup> The court reasoning for applying another conditional sentence on the police officer was rather generic and referred to mitigating factors such as the police officer being a father of a child and his partial confession of the crime.

30. It is axiomatic that no matter how effective an investigation may be, it will be of little avail if the sanctions imposed for ill-treatment are inadequate. When there is an identified case of ill-treatment, criminal proceedings should be initiated immediately, followed by the imposition of a suitable penalty. This will have a very strong dissuasive effect. Conversely, the imposition of light sentences can only engender a climate of impunity.

Of course, judicial authorities are independent, and hence free to fix, within the parameters set by law, the sentence in any given case. However, via those parameters, the intent of the legislator must be clear: that the criminal justice system should adopt a firm attitude with regard to torture and other forms of ill-treatment. Similarly, sanctions imposed following the determination of disciplinary culpability should be commensurate to the gravity of the case.

**The CPT recommends that judges be made aware of these precepts when adjudicating cases of alleged ill-treatment by law enforcement officials under Articles 136 and 137 of the Criminal Code. It requests that the Serbian authorities transmit this recommendation through appropriate channels to the High Court Council (*Visoki Savet Sudstva*). The CPT would appreciate the comments of the High Court Council on this matter.**

31. As regards disciplinary proceedings brought against police officers, **the CPT would like to be informed of the procedures in place whenever a police officer is accused of having ill-treated a person and at what moment a police officer would be suspended from duty pending the outcome of the investigation or court judgment. Further, the CPT would like to be informed about the disciplinary procedures undertaken whenever a police officer is found guilty under either Articles 136 or 137 of the CC, regardless of whether the police officer is sentenced to a term of imprisonment.**

32. The CPT's delegation examined once again the Constitutional Court decision of July 2013 establishing the violation of physical and mental integrity of the complainant M.J. due to the negligence of the judicial authorities to ensure a prompt, thorough, independent investigation into the repeated episodes of physical ill-treatment and in particular the serious beating inflicted by custodial staff at Pavilion VII of Požarevac Correctional Institution on 24 December 2011. In its decision the Constitutional Court ordered "the relevant authorities to take all necessary measures to ensure that the investigation into the events which occurred on 24 December 2011 is efficiently carried out as soon as possible". At the time of the 2017 visit, the perpetrators had still not been identified and the delegation was unable to learn about any follow-up to the Constitutional Court decision.

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<sup>19</sup> The crime in question had been committed only three months after the expiration of the probation period set by the previous sentence.

**The Committee would like to receive information on the steps taken to comply with the above-mentioned Constitutional Court decision in terms of carrying out an effective investigation into what happened at Požarevac Correctional Institution on 24 December 2011.**

#### **4. Safeguards against ill-treatment**

33. In general, the legal provisions containing formal safeguards against ill-treatment of persons deprived of their liberty by the police (in particular the right of detained persons to inform a close relative or another third party of their situation, to have access to a lawyer and to have access to a doctor) have remained unchanged since the 2015 visit. Mention should again be made of the Ministry of the Interior's December 2012 "Instruction on the Conduct of Police Officers towards Apprehended and Detained Persons" which defines in greater detail all the operational aspects concerning the apprehension, transfer and detention of persons deprived of their liberty by the police.

34. The right of a detained person to inform a family member or other person of their choice without delay about his/her arrest is set down in Section 69, paragraph 3, of the Code of Criminal Procedure (CCP). In the course of the visit, many of the persons who had been arrested in the larger urban areas outside of their homes claimed that they had not been able to contact a member of their family during the initial stages of detention. Indeed, several detained persons told the delegation that their specific requests to inform a third party of their custody had been denied by police officers.

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

35. Pursuant to Sections 68 and 69 of the CCP, the criminal suspect has the right to a defence counsel of his/her own choice, to have a confidential conversation with the same (only visually supervised) and to have the defence counsel present during each interview by the police.<sup>20</sup> As to the exact time when the right of access to a lawyer becomes effective, the police are under an obligation to provide effective access to a legal counsel to persons deprived of their liberty at the time of the issuance of the decision of provisional detention (i.e. within two hours of the formal deprivation of liberty). In practice, it appeared that most persons only saw a lawyer for the first time once they were brought before the prosecutor and in a number of cases not until they were in court. Very few detained persons had a lawyer present while they were being interviewed by crime inspectors and those that did stated they were treated correctly. Further, several persons complained that they were obliged to take an *ex officio* lawyer by the police and were not allowed to contact their own lawyer prior to the court hearing.

**The CPT calls upon the Serbian authorities to take steps to ensure that the right of access to a lawyer applies effectively as from the very outset of the deprivation of liberty by the police.**

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<sup>20</sup> The law enforcement authorities are also under an obligation to provide an *ex officio* lawyer from the list submitted by the relevant Bar Association.

36. Many complaints were again received about the performance of *ex officio* lawyers assigned to detained persons. In particular, the delegation was told that *ex officio* lawyers only met their clients in court and that in several cases they did not show any interest in having a confidential conversation with their clients and appeared to be dismissive when allegations of ill-treatment by police officers were being raised by their clients. Allegations were also made about certain *ex officio* lawyers being more interested in maintaining good relations with police officers than representing their clients. The Bar Association of Belgrade is aware of these challenges and is working on a more transparent system for the appointment of *ex officio* lawyers.

**The CPT recommends that all *ex officio* lawyers be reminded, through the Bar Association, of the importance of their role in preventing and, if necessary, reporting ill-treatment by the police. In particular, steps should be taken – in consultation with the relevant Bar Associations – to ensure that *ex officio* lawyers appointed to represent persons in police custody perform their functions in a diligent and timely manner. Further, the CPT would be interested to learn more about the proposals of the Belgrade Bar Association to improve the effectiveness of the *ex officio* lawyer system.**

37. The right of access to a doctor, including access to a doctor of his/her own choice, is laid down in Section 69, paragraph 4, of the CCP. The CPT's delegation found that detained persons requesting access to a doctor or in need of medical care were usually brought by police officers to the local emergency clinic. However, as was the case in 2015, these medical examinations were carried out in the presence of the police officers, who were often the same police officers who had allegedly ill-treated the detained person. The lack of confidentiality is not surprising given the duty of police officers to be present during medical examinations and to supervise all medication contained in Section 26, paragraphs 2 and 4, of the 2012 Instruction on the Conduct of Police Officers towards Apprehended and Detained Persons.

The CPT must stress once again that all medical examinations should be based on the principle of confidentiality and be conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of police staff. The presence of police staff during medical examinations of detained persons could discourage a detained person who has been ill-treated from saying so and, more generally, is detrimental to the establishment of a proper doctor-patient relationship; alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. For example, the establishment of a secure consultation room within an emergency clinic or hospital. Further, under no circumstances should a copy of the medical report be given to the law enforcement officials accompanying the detained person. All doctors should have a clear obligation to record all injuries on persons brought to hospital by police officers in accordance with the approach set out in paragraphs 59 and 60 below.

In the CPT's view, information concerning detained persons' health should be kept in a manner which ensures respect for medical confidentiality. Ideally, health-care staff may inform custodial police officers on a need-to-know basis about the state of health of a detained person; however, 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. Further, non-medical staff should not be involved in the distribution of medication.

**The CPT recommends that the Serbian authorities ensure that the principle of medical confidentiality is strictly respected, in the light of the above remarks. To this end, the Instruction on the Conduct of Police Officers towards Apprehended and Detained Persons should be amended accordingly.**

38. Many persons met by the CPT's delegation claimed that they were not informed of their rights at the outset of their detention. Written information on rights was generally provided to detained persons by the police in the form of signed minutes (so-called "*Pouka o pravima zadržanog lica*") but that was often only after an initial interview by the police. There is a need to introduce a more effective notification procedure. **The CPT recommends that all detained persons be provided with information, including in a written format in an appropriate language they understand, on their rights from the very outset of their detention.**

39. The unified electronic system of custody records was still not complete and did not maintain a comprehensive record of an individual's custody. Information on the provision and current enjoyment of fundamental safeguards could still only be consulted in the individual files of detained persons. The CPT considers that the fundamental guarantees of persons placed in police custody would be reinforced if a single and comprehensive custody record were to be kept for each of these persons. In this record would be entered all aspects of custody and all measures taken in connection with it (when and for what reason(s) the custodial measure was taken; when the person arrived on police premises; when he/she was informed of his/her rights ; whether he/she showed signs of injuries, health problems, mental disorder, etc.; in which cell(s) he/she was placed; when fed; when questioned; when he/she had contacts with and/or visits from close relatives, a lawyer, a doctor, an interpreter or a representatives of the consular services; when transferred; when brought before a prosecutor or the relevant judge; when remanded or released, etc.).

For various matters (e.g. the personal effects confiscated; having been informed of one's rights and having availed oneself of or waived them; having been able to inform a close relative or another third party), the detainee's signature should be required and, if necessary, its absence duly accounted for. All this information should be entered in the electronic custody record. To this end, a person who is arrested and brought to the police station should first of all be brought to the custody cell area where he or she would be registered and informed of their rights and whether they wished to exercise them and placed in detention. This task would be carried out by an experienced officer. Thereafter, the person could be taken an interview room for questioning by the crime inspectors or other officers. **The CPT recommends that the Serbian authorities take effective steps to render the unified electronic system of custody records comprehensive and effective in recording the above-mentioned information on a detained person's time in police detention.**

40. More generally, in the longer term, the CPT considers that the security and safety surrounding the holding of apprehended persons by the police would be enhanced if police custody areas were equipped with interview rooms, a medical consultation room, etc. This would enable all arrested persons to be brought directly to the custody cell area of a police station and not to the offices of crime inspectors, where he or she would be registered and informed of their rights, whether they wished to exercise them, etc. and placed in a detention cell. This task would be carried out by an experienced officer who knew the police procedures well. Thereafter, the person could be taken to an interview room for questioning by the crime inspectors or other competent officers and returned to the detention cell once the interview was completed. This would facilitate the maintenance of a comprehensive record and better protect the integrity of the procedure as well as the rights of the individual. **The CPT would appreciate the comments of the Serbian authorities on this matter.**



41. In terms of conduct of interviews, Section 289 of the CCP stipulates that the public prosecutor may conduct, attend or delegate to the police the questioning of a criminal suspect. In practice, the CPT's delegation was able to observe that the competent prosecutors delegated by written decision the conduct of interrogations to the police in relation to common criminal offences. The Code on Police Ethics stipulates that additional guidelines should regulate in detail the process of interrogation (Article 40). As far as the CPT is aware, such guidelines have yet to be drawn up. In practice, interviewed detained persons and evidence from registers indicated that criminal suspects were subjected to long interrogation sessions, forced to stand for prolonged periods or to remain in stress positions (e.g. handcuffed to a safe in an office overnight) and were not always offered access to food and water.

The CPT considers that there should be formal guidelines on a number of specific aspects concerning interviewing methods by the police (see also paragraph 16). Their existence would make it possible to consolidate the instruction received by police officers during their professional training.

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

**As mentioned above, interviews should be conducted in dedicated interview rooms which are suitably equipped and have the necessary audio / video equipment installed.**

## **5. Conditions of detention**

42. As was the case in 2015, the detention cells at Pančevo District Police Station offered good conditions and those at Novi Sad District Police Station and the Metropolitan Police Headquarters in Belgrade were adequate for the detention of criminal suspects for up to 24 hours in terms of their state of repair and hygiene. However, access to natural light in these latter two facilities remained poor. Further, at the Metropolitan Police Headquarters in Belgrade, the cells were not equipped with mattresses, and cell no. 8 should only be used for short stays as the wooden bench was too short (1.2 m) for a person to lie down.

By contrast, the two cells at Novi Beograd Police Station did not provide appropriate conditions for holding persons longer than a few hours. They were dilapidated, dirty and poorly lit (very limited access to natural light due to a metal mesh over the windows and dim artificial lighting). The CPT notes that on 11 July 2017, a letter was addressed to the Police Logistics Department in Belgrade requesting that the above deficiencies be remedied.

At Niš District Police Station, the four cells located in the basement had no access to natural light, poor artificial lighting and inadequate ventilation. Persons wishing to access the toilet had to be escorted upstairs to the main building. The cells were used primarily for persons in need of sobering up as criminal suspects were held in one of three cells at Niš Prison. At Leskovac and Pirot Police Stations, there were no holding cells and criminal suspects were placed in designated cells in the prisons.

**The CPT recommends that steps be taken to ensure that detention cells in the police stations where persons may be kept for longer than a few hours provide adequate conditions in terms of state of repair and hygiene, access to light, clean blankets and a mattress. The CPT would like to be informed about the steps taken by the Serbian authorities to ensure that this is the case in all police stations visited.**

43. As regards Stari Grad Police Station in Belgrade, the two basement cells were completely dark (with no access to artificial lighting or natural light), lacked any ventilation, and were unhygienic and very smelly. The detention area also had no lighting, possessed no toilets and had no access to water. They were totally unacceptable for holding detained persons even for a few hours. The CPT's delegation invoked Article 8, paragraph 5, of the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and requested that the two cells be taken out of service immediately until such time as they have been properly renovated.

By letter of 1 September 2017, the Serbian authorities informed the CPT that as from 7 June 2017 persons were no longer detained at Stari Grad Police Station. Various arrangements were being put in place in order to proceed with a renovation of the whole police station which is deemed as not being fit for purpose to meet the demands of the police service.

**The CPT would like to be updated on the steps taken to renovate the detention cells at Stari Grad Police Station.**

44. The CPT received a number of complaints from persons who had been held overnight in police stations in Belgrade that they were not offered any water<sup>21</sup> or food or only very little during their period of detention.

In addition, at present none of the police stations possessed an outdoor yard in which persons held longer than 24 hours could be offered some exercise. The need for outdoor exercise facilities for detained persons should also be taken into account in the ongoing renovation of police detention facilities. Efforts should be made to offer all persons detained longer than 24 hours access to outdoor exercise.

**The CPT reiterates its recommendation that steps be taken to ensure that all detained persons are offered water and food, including at least one full meal, at appropriate intervals, as provided for in Serbian regulations. Further, persons detained by the police for 24 hours or more should be offered outdoor exercise.**

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<sup>21</sup> For example, at the Metropolitan Police Headquarters in Belgrade, cells were not equipped with water points and complaints were heard of police officers not providing water as apparently there were no cups available.

## **B. Prison establishments**

### **1. Preliminary remarks**

45. The reform of the penitentiary system in Serbia is guided by two main policy documents: the 2013-2020 Strategy and related Action Plan on the Enforcement of Criminal Sanctions and the 2017 Strategy for the Reduction of Prison Overcrowding until 2020. The CPT has noted that the recent expansion of the prison estate combined with the further development of the probation system has produced positive results in tackling overcrowding. Thus, the overall prison population has remained stable at 10,600 inmates since June 2015 while the capacity of the prison estate has increased by nearly 10% to 9,800 places.

The proportion of pre-trial detainees remains at 15% of the prison population and at the time of the visit stood at 1,600. The above-mentioned Strategy aims to reduce further the number of remand prisoners mainly through the training of judges on recourse to alternatives to detention and increasing the use of electronic monitoring measures.

**The CPT encourages the Serbian authorities to pursue their prison reform agenda to ensure that all prisoners are held in decent conditions, treated with respect and offered a purposeful range of activities which prepares them for reintegration into the community. To this end, the CPT considers that it is essential to introduce fundamental changes to the current concept of remand detention** (see also paragraphs 50 to 52 below).

46. In the course of the 2017 visit to Serbia, the CPT's delegation focused its attention on the situation of pre-trial prisoners. According to the law, a criminal suspect may be remanded to prison based on a ruling by the judge for preliminary proceedings for an initial period of three months which might be extended to a maximum of six months by a court panel, during which time an indictment should be filed.<sup>22</sup> Following the filing of the indictment, a court panel must review the reasons for detention every 60 days. There is no maximum period for remand detention except that it cannot exceed the duration of the sentence that would apply in the case of the first instance judgement.<sup>23</sup>

47. In the course of the 2017 visit to Serbia, the CPT's delegation visited the remand sections of eight prisons in central and southern Serbia which combined accounted for some 70% of the total pre-trial prison population.

- *Belgrade District Prison* was accommodating 568 remand prisoners at the time of the visit for a capacity of 700. It is by far the largest pre-trial detention facility in the country.
- *Čuprija Penal Correctional Institution* accommodated 22 remand prisoners in a designated section on the first floor of the main building of the establishment.
- *Leskovac District Prison* accommodated 21 male and one female remand prisoners in a designated two-storey building separated from sentenced prisoners.

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<sup>22</sup> See Article 215 of the CCP.

<sup>23</sup> See Article 216, paragraph 6, of the CCP.

- *Niš Penal Correctional Institution* accommodated 44 male and three female remand prisoners in Pavilion II, a building with two landings of cells. The *Pirot pre-trial facility*, which also comes under the authority of Niš Prison, was accommodating 24 remand prisoners in a single corridor one-storey building.
- *Novi Sad District Prison* has the second largest pre-trial detention facility and was accommodating 160 remand prisoners. Overall numbers had reduced significantly over the past two years but conditions in the cells remained cramped.
- *Pančevo District Prison*<sup>24</sup> accommodated 23 remand prisoners in four multiple-occupancy cells.
- At *Prokuplje District Prison*, the pre-trial detention unit consisted of three cells accommodating 14 male and one female remand prisoners.
- *Vranje District Prison*, in southern Serbia, accommodated 35 male and four female remand prisoners for a capacity of 47 places in a dedicated pre-trial wing which was partly under renovation.

48. In all of the pre-trial facilities visited, inmates stated that prison officers treated them correctly and the delegation received no allegations of physical ill-treatment. This is a positive development.

## 2. Conditions of detention

49. The conditions of detention are naturally impacted negatively whenever a prison is overcrowded. The CPT's delegation found that in all the establishments visited many of the cells were providing cramped living accommodation with the national norm of 4m<sup>2</sup> of living space per inmate in multiple-occupancy cells not adhered to. This was particularly the case at Novi Sad where cells of 10m<sup>2</sup> were accommodating four persons and cells of 18m<sup>2</sup> accommodating up to eight persons. Other examples include: at Leskovac District Prison, five persons in a cell of 15m<sup>2</sup>; at Niš Correctional Institution, two remand prisoners were sharing a cell measuring 7,5m<sup>2</sup>; at Pančevo District Prison, five or six persons in a cell of 17m<sup>2</sup>; at Prokuplje District Prison, six persons in a cell of 18m<sup>2</sup>; and, at Vranje District Prison, six persons in a cell of 16m<sup>2</sup>. At Pirot pre-trial detention unit, five persons were accommodated in a cell of 11.5m<sup>2</sup> (excluding the sanitary annexe) and two persons in a cell of 6m<sup>2</sup>. Further, in some of the above-mentioned cells, additional empty beds were present for the accommodation of other inmates, possibly in even more cramped conditions.

The CPT has consistently stressed the importance of prison cells providing a minimum amount of living space;<sup>25</sup> this is all the more important whenever inmates are forced to spend long periods of the day confined to their cells as is the case in Serbia. At a minimum, single-occupancy cells should offer 6m<sup>2</sup> of living space, not including the sanitary annexe and multiple-occupancy cells must offer 4m<sup>2</sup> of living space per inmate, not including the sanitary annexe which should be fully partitioned.

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<sup>24</sup> The delegation had an opportunity to visit the building site of the new prison, located just outside the town, which will have a capacity of 500 places and should be inaugurated in 2018.

<sup>25</sup> See, for example, paragraph 61 of the CPT's report on the 2015 periodic visit to Serbia CPT/Inf (2016) 21.

**The CPT recommends that the Serbian authorities take concrete action to ensure that all remand prisoners are afforded the minimum requirement of 4m<sup>2</sup> of living space each in multiple-occupancy cells, in accordance with the law, and excluding the sanitary annexe. The CPT would like to be informed of the official capacity of each pre-trial section within every prison establishment based on the above requirement of 4m<sup>2</sup> of living space per prisoner in multiple-occupancy cells and 6m<sup>2</sup> in single-occupancy cells, always excluding the sanitary annexe.**

a. regime

50. The regime offered to inmates on remand remains a relic of the past. Pre-trial detainees are locked in their cells for 22 or more hours a day for months on end<sup>26</sup> with no access to purposeful activities and numerous restrictions imposed by judges remain in place throughout the pre-trial period.

In all the establishments visited, the only activity remand prisoners were offered was outdoor exercise of one<sup>27</sup> to two hours per day. No activities of any sort were offered to inmates; the possibility for them to access work and purposeful activities as provided for by Article 218, paragraph 5, of the CCP has yet to see the light of day. Their days were spent reading, listening to the radio, playing board games and watching television (if someone in the cell could afford one). The delegation also noted that in a number of prison establishments (i.e. Niš Correctional Institution, Novi Sad and Vranje District Prisons) the outdoor yards were not equipped with any physical exercise equipment.

In its 26<sup>th</sup> General Report published in April 2017, the CPT addresses the issue of remand detention in detail.<sup>28</sup> The CPT considers that it is not acceptable to lock up prisoners in their cells for 22 hours or more a day and to leave them to their own devices for months on end. Instead, the aim should be to ensure that remand prisoners are able to spend a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activity of a varied nature (work, preferably with vocational value, education, sport, recreation/association). The longer the period of remand detention, the more varied the regime should be.

**The CPT recommends that the Serbian authorities devise and implement a comprehensive regime of out-of-cell activities for remand prisoners. Further, they should ensure that all prisoners, without exception, are offered at least two hours of outdoor exercise a day, in accordance with the law.<sup>29</sup> The outdoor yards should be suitably equipped with appropriate exercise/sports equipment.**

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<sup>26</sup> For example, at Novi Sad District Prison, 19 of the 160 remand prisoners had been held for 12 months or longer at the time of the visit and another 41 in excess of five months.

<sup>27</sup> At Novi Sad District Prison, remand prisoners were offered one and a half hours of outdoor exercise every day while at Vranje District Prison it was only one hour a day.

<sup>28</sup> See the 26<sup>th</sup> General Report of the CPT: CPT/Inf (2017)5, paragraphs 52 to 73.

<sup>29</sup> See Article 80 of the Law on the Execution of Criminal Sanctions and Article 218 of the CCP.

51. The CPT has repeatedly emphasised that a lack of purposeful activities is especially harmful for juveniles, who have a particular need for physical activity, intellectual stimulation and meaningful human contact. Consequently, juvenile inmates on remand should be provided throughout the day with a full programme of education, sport, vocational training, recreation and other purposeful out-of-cell activities. However, at present, juvenile remand prisoners in Serbia are not offered any activities or support in prison and remain locked in their cells for 22 hours or more a day. For example, the two juveniles met at Novi Sad District Prison had been held in such conditions for six weeks at the time of the visit.

**The CPT reiterates its recommendation that the Serbian authorities take immediate steps to ensure that all juveniles who are held on remand 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. To this end, the CPT would be interested to learn whether the two juveniles held at Novi Sad District Prison were offered any activities following the delegation's visit in June 2017 and to be informed how long they were held on remand.**

52. In the course of its visit, the CPT's delegation also met a number of female remand prisoners who were held alone in conditions akin to solitary confinement in single cells and were not offered any purposeful activity apart from their regular outdoor exercise entitlements. Further, they did not receive regular visits from a psychologist.

**The CPT recommends that the Serbian authorities provide female inmates in remand detention with purposeful activities and appropriate human contact including regular access to a psychologist. This is all the more important when they are held in conditions akin to solitary confinement.**

b. material conditions

53. The material conditions of detention observed by the delegation in the renovated sections of Belgrade (i.e. wings 3.0, 3.1 and the majority of block 2 as well as block 4) and Prokuplje District Prisons were satisfactory in terms of access to natural light, hygiene, ventilation and state of repair. At Belgrade District Prison, the contrast between the renovated and non-renovated wings<sup>30</sup> (such as 1.2.1 and 1.2.2) was stark, and the upgrading of the remaining wings should be a priority for the authorities. In particular, those cells without electrical sockets and with no direct access to natural light, such as in wing 2.2, should be renovated rapidly; in the meantime, prisoners accommodated in these cells should as far as possible not be kept in them for prolonged periods.

The material conditions in the other remand sections displayed a number of deficiencies; in particular:

- at the remand section of *Čuprija Correctional Institution*, certain cells were in a poor state of repair (damaged sanitary annexe and rusty water installations) and unhygienic (walls covered with dirt and patches of mould);

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<sup>30</sup> See the CPT's report on the 2015 visit to Serbia: CPT/Inf (2016) 21, paragraph 55.

- at *Leskovac District Prison* cells in the pre-trial detention unit displayed high levels of humidity (walls flaking and patches of seeping fluids and mould) as well as limited access to natural light due to double metal grilles placed in front of the windows;
- at *Pavilion II of Niš Correctional Institution*, in-cell ventilation and access to natural light were poor due to the small windows and malfunctioning artificial lighting; many of the cell walls were crumbling. Further, the two courtyards for remand prisoners lacked shelters against the rain or sun as well as equipment for physical exercise;
- at *Piroć pre-trial detention unit*, cells had poor access to natural light and the sanitary annexes were only semi-partitioned. The 70m<sup>2</sup> caged yard had no shelter from the rain or sun;
- at *Novi Sad District Prison*, cells in the remand section were poorly ventilated and affected by extremely high levels of humidity. Temperatures of up to 34° Celsius and levels of humidity over 80% were recorded in many cells prior to midday. Further, some of the in-cell furniture (stools and tables) was damaged and artificial lighting was malfunctioning.
- at *Panćevo District Prison*, the material conditions remained poor and had only slightly improved since the CPT's 2015 visit. However, the opening of a new prison in 2018 should lead to much better conditions.
- at *Vranje District Prison*, the recent renovation (wooden tile flooring and installation of in-cell showers) did not address the ventilation which was hampered by the metal grilles placed in front of the cell windows. On the morning of the visit, certain cells were already stifling with temperatures of 32° Celsius.

**54. The CPT calls upon the Serbian authorities to pursue their efforts to ameliorate the conditions of detention in the remand sections. More specifically, it recommends that steps be taken to improve the conditions in the establishments visited, notably by:**

- **improving the access to natural light (for example by removing the double metal grilles on windows) at Niš Penal Correctional Institution, the Piroć pre-trial detention unit, and at the Leskovac and Vranje District Prisons;**
- **repairing and repainting the cell walls in Pavilion II of Niš Correctional Institution and Leskovac District Prison;**
- **improving the in-cell ventilation at Vranje and Novi Sad District Prisons;**
- **repairing sanitary installations at Čuprija Penal Correctional Institution and Panćevo District Prison, and ensuring the full-partitioning of the sanitary annexes at Piroć pre-trial detention unit;**
- **accelerating the process of renovation of Belgrade District Prison and notably the installation of electrical sockets in the cells of wing 2.2;**
- **repairing damaged furniture and the malfunctioning artificial lighting in the cells of Novi Sad District Prison;**
- **providing all exercise yards with shelter from rain and sun and fitness / sports equipment (e.g. basketball hoops) for the remand sections of all prisons.**

**Further, the CPT would like to be informed about the conditions offered to remand prisoners in the new Panćevo District Prison, once it is opened in 2018.**

55. At a number of prison establishments,<sup>31</sup> separate cells were set aside for the accommodation of criminal suspects under the authority of the police for periods of up to 48 hours.<sup>32</sup> The three cells at Niš Correctional Institution, which had been renovated since the CPT's 2015 visit, were in an acceptable state. However, the cell at the Pirot pre-trial detention unit measured a mere 5m<sup>2</sup> including a semi-partitioned sanitary annexe and should not be used for accommodating persons overnight. The cells at Leskovac and Prokuplje District Prisons were in a poor state of repair (damaged furniture and flooring) and lacked call bells. At Vranje District Prison, criminal suspects were being accommodated in multiple-occupancy cells together with remand prisoners.

The CPT considers that it would be better for persons detained by the police to be held in police stations. However, as long as police stations do not provide appropriate conditions and criminal suspects continue to be held in prisons under police detention for up to 48 hours, **the CPT recommends that the Serbian authorities take the necessary steps to ensure that such persons are not mixed with remand prisoners. Further, the cells should meet minimum norms in terms of material conditions and all persons held longer than 24 hours should be offered outdoor exercise. Such persons should also have the right to see a doctor if they so require and the prison authorities should ensure that they have been informed of their rights and have an opportunity to exercise them. More specifically, the cell at Pirot pre-trial detention unit should no longer be used to hold persons overnight cells and the deficiencies noted at Leskovac and Prokuplje District Prisons should be remedied.**

### 3. Health-care services

56. As was the case in 2015, it appeared that the Ministry of Health still did not carry out inspections on the overall functioning of health-care services in prisons as set out in Section 276 of the Law on the Execution of Criminal Sanctions. Further, there were no developments concerning the possible transfer of responsibility for prison health-care to the Ministry of Health.<sup>33</sup> **The CPT considers the Ministry of Health's supervision and involvement in prison health-care as important and would like to receive information on both of these matters.**

57. Health-care staffing resources for the needs of remand prisoners were satisfactory at all establishments visited. In principle, every newly admitted remand prisoner underwent a medical examination within 24 hours which consisted of a visual examination, anamnesis and an interview with a general practitioner, in accordance with Article 12 of the Rulebook on the Execution of Remand Detention. However, a number of pre-trial prisoners in every remand section stated that that the medical screening upon admission had consisted of only an interview with the medical staff and no physical examination.

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<sup>31</sup> At Čuprija and Niš Correctional Institutions (including the separate Pirot pre-trial detention unit), and at Leskovac and Prokuplje District Prisons.

<sup>32</sup> The agreement in question was stipulated between the Ministry of the Interior and the Ministry of Justice in 2014 and mainly concerns those parts of the country where the material conditions of police detention cells do not offer adequate conditions for overnight detention of criminal suspects.

<sup>33</sup> The Parliamentary Assembly of Serbia assessed the transfer of responsibility for prison health care to the Ministry of Health as "one of the preconditions for the conduct of an effective investigation in cases of alleged ill-treatment of persons deprived of their liberty" and invited "the Government to consider the issue of transfer of responsibility as soon as possible by submitting to the Parliament the necessary legal amendments" (see point 8 of the conclusion RS no. 74 of 23 October 2014).



**The CPT recommends that the Serbian authorities ensure that all medical examinations of newly arrived prisoners be conducted in accordance with the requirements enshrined in Article 12 of the Rulebook on the Execution of Remand Detention.**

58. The CPT's delegation noted positively that all establishments possessed a dedicated register of injuries where doctors should record injuries found on inmates upon admission to prison or during their time in prison. However, injuries observed on newly admitted prisoners continue to be described in a superficial manner and doctors do not draw any conclusions as to the compatibility of the injuries with the allegations of police ill-treatment made by detained persons.

The importance of medical screening of newly admitted prisoners, particularly in establishments which constitute points of entry to the prison system, is paramount. Such screening is essential, particularly to prevent the spread of transmissible diseases,<sup>34</sup> prevent suicides, and for the accurate recording of injuries in good time.

The CPT wishes to stress that every newly admitted prisoner should be properly interviewed and physically examined by a medical doctor as soon as possible after admission; save for exceptional circumstances, the interview/examination should be carried out on the day of admission, especially insofar as remand establishments are concerned. Further, the CPT recalls that prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons both before admission and during incarceration, through the systematic recording of injuries and, when appropriate, the provision of information to the relevant authorities.

59. The record drawn up after the medical screening should contain:
- 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 and a description of treatment given for injuries and any further procedures performed.

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the prisoner. Further, it would be desirable for photographs to be taken of the injuries, and the photographs 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.

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<sup>34</sup> Tests for Hepatitis B and C and for HIV were on offer to all prisoners upon admission and were being generally performed at the establishments visited. Further, tests for tuberculosis were being conducted at Niš Correctional Institution. All establishments appeared to have an accurate picture of the number of inmates affected by transmissible diseases.

**60. The CPT reiterates its recommendation that steps be taken to ensure that the prison medical services at the establishments visited, as well as other prison medical services in the rest of Serbia, fully play their role in preventing ill-treatment in line with the remarks above, ensuring that:**

- **the doctors indicate at the end of their traumatic injury reports, whenever they are able to do so, any causal link between one or more objective medical findings and the statements of the person concerned;**
- **traumatic injury reports relating to injuries likely to have been caused by ill-treatment (even in the absence of statements) are automatically forwarded to the body empowered to conduct investigations, including criminal investigations, into the matter, regardless of the wishes of the person concerned;**
- **the doctors advise the prisoner concerned that the writing of such a report falls within the framework of a system for preventing ill-treatment, that this report automatically has to be forwarded to a clearly specified investigating body and that such forwarding does not substitute for the lodging of a complaint in proper form.**

**It would also be advisable that the prison doctors may, at regular intervals, receive information in return about the measures taken by the bodies concerned following the forwarding of their reports.**

61. The transmission of relevant information to the competent prosecutorial and judicial authorities is essential for combating police impunity. At Belgrade and Novi Sad District Prisons, information pertaining to persons who displayed injuries and alleged police ill-treatment upon admission to prison was sent to the investigative judge and the competent prosecutor on cases of persons admitted with visible injuries.<sup>35</sup> Although there is a need for injuries to be better recorded and for doctors to make a clearer statement of compatibility between the injuries noted and the allegations made, this is a positive development. Of course, to be effective, it requires the judge or prosecutor to take up the cases, which was not happening at the time of the visit. In none of the other prison establishments visited were injuries observed on newly admitted prisoners being properly recorded or reported to prosecutorial and judicial authorities.

**The CPT recommends that the Serbian authorities take steps in all prisons to introduce clear reporting practices to the judicial authorities of all cases of alleged ill-treatment where injuries are recorded.**

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<sup>35</sup> Article 12, paragraph 4 of the Rulebook on the Execution of Remand Detention stipulates that the doctor must inform the prison director in writing in the case of injuries observed on an inmate in the course of a medical examination.

62. Further, the confidentiality of medical examinations of newly admitted prisoners was not always respected in the prisons visited.<sup>36</sup> **The CPT recommends that the Serbian authorities ensure that the confidentiality of medical examinations of newly admitted prisoners is fully respected.** Alternative solutions, such as Plexiglas doors in front of medical consultation rooms and the installation of call systems whereby a doctor can easily and rapidly alert prison guards in those exceptional cases when a prisoner becomes agitated or threatening during a medical examination, can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality.

63. The provision of assistance to prisoners with drug-related problems has not evolved since the 2015 visit: the provision of methadone substitution therapy and counselling was reserved for those inmates who were registered as drug addicts upon their entry into the prison system but still no comprehensive strategy for the provision of assistance to prisoners with drug-related problems was in place. **The CPT once again calls upon the Serbian authorities to develop a comprehensive strategy for the provision of assistance to prisoners with drug-related problems** (see also paragraph 78 of the 2015 visit report: CPT/Inf (2016) 21).

#### 4. Other issues

##### a. prison staff

64. The CPT's delegation noted once again that the custodial staffing levels in the pre-trial detention units were rather low and remained affected in particular by the ban on recruitment of new prison staff which had been in force since 2014. At Belgrade District Prison, there were 348 staff for 1,000 prisoners and at Niš Penal Correctional Institution 397 staff for more than 1,500 prisoners. This inevitably had an impact on the organisation and supervision of outdoor exercise activities of remand prisoners. The CPT's delegation was informed that around 150 newly recruited prison officers would take up their duties once they had been fully trained. In light of the need to develop a full programme of activities for remand prisoners, the staffing requirements will have to be reviewed. **The CPT would like to receive information on the training provided to the above-mentioned 150 newly recruited prison officers and on their deployment.**

65. The CPT's delegation noted positively that custodial staff at Belgrade District Prison and most of the other prisons visited no longer carried batons within the pre-trial detention areas. However, at Leskovac District Prison, prison officers continued to openly carry truncheons. The open display of batons is not conducive to developing positive relations between staff and inmates and **the CPT recommends that custodial staff in Leskova District Prison stop carrying truncheons in detention areas.**

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<sup>36</sup> Article 26, paragraph 1 of the Rulebook on the Execution of Remand Detention provides for the presence of a member of the security staff during the medical examination of a detained persons only upon the explicit request of the medical doctor for reasons of security and physical integrity.

b. contact with the outside world

66. The CPT welcomed the provisions of the 2014 CCP increasing visit entitlements for remand prisoners to three visits a month of at least one hour. Whether a visit can be of an open or closed type remains at the discretion of the competent judge pursuant to Articles 47-49 of the Rulebook on Remand Detention. However, the above-mentioned provisions were being implemented in a restrictive manner with remand prisoners being offered three visits per month of an average of only 15 to 30 minutes. Further, the visits took place systematically under closed conditions (i.e. through a glass screen and without physical contact with the visitors). At Leskovac District Prison, remand prisoners had to stand up during visits in order to speak to their visitors through a metal net which seriously hampered visibility and communication.

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

**The CPT recommends that the Serbian authorities review the visiting arrangements at all remand detention units to ensure that prisoners receive at least three visits of one hour every month and preferably the equivalent of one hour every week. Further, the Serbian authorities should institute a rule of open visits for all prisoners, with closed visits as the exception. In addition, the metal nets on the booths at Leskovac District Prison should be removed and adequate seating arrangements put in place for remand prisoners and their visitors.**

**APPENDIX**  
**LIST OF THE ESTABLISHMENTS VISITED BY THE CPT'S DELEGATION**

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

- Metropolitan Police Headquarters, 29 November Street, Belgrade
- Stari Grad Police Station, Belgrade
- Novi Beograd Police Station, Belgrade
- Leskovac Police Station (Sever)
- Niš District Police Station
- Novi Sad District Police Station
- Pančevo District Police Station
- Pirot Police Station

**Establishments under the authority of the Ministry of Justice (remand sections only)**

- Belgrade District Prison
- Čuprija Penal Correctional Institution
- Leskovac District Prison
- Niš Penal Correctional Institution (including the detention unit in Pirot)
- Novi Sad District Prison
- Pančevo District Prison
- Prokuplje District Prison
- Vranje District Prison