

## **Report**

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

**from 17 to 27 September 2021**

The Government of Bosnia and Herzegovina has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2023) 09.

Strasbourg, 11 May 2023

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## EXECUTIVE SUMMARY

In the course of the visit, the CPT's delegation examined the treatment of persons deprived of their liberty by police agencies, notably in the Federation of BiH (FBiH), and it looked into the effectiveness of prosecutorial and administrative investigations into allegations of ill-treatment by the police. Further, the delegation examined the treatment of remand prisoners in four prison establishments under the FBiH and State Ministries of Justice.

The cooperation received by the authorities throughout the visit was excellent. However, cooperation also entails an obligation to take steps to address the deficiencies found by the Committee. In this respect, the CPT notes a lack of effective action and progress in relation to the recommendations previously formulated, most recently in the report on the 2019 visit. The continued lack of action to address the Committee's long-standing concerns may lead to the CPT considering to open the procedure under Article 10, paragraph 2 of the Convention.

### Police

In the course of the visit, the CPT's delegation once again received numerous allegations of physical ill-treatment of detained persons by police officers, notably concerning the Sarajevo Cantonal Police. These consisted of slaps, punches, kicks and blows with batons and service weapons inflicted by police officers against criminal suspects either at the time of their apprehension or during interrogation. The report describes several concrete cases supported by medical evidence. The CPT considers that police ill-treatment remains a serious problem requiring resolute action by the BiH authorities, including a formal statement at the highest political level on zero tolerance towards police misconduct, targeted training activities of police officers and the introduction of an investigative interviewing approach towards criminal suspects. Further, in numerous instances, persons met by the CPT's delegation alleged that they had spent several hours, and even overnight, handcuffed to a piece of furniture in a crime inspector's office or in a police detention cell without being offered food or water or access to a toilet.

A follow-up assessment of the prosecutorial and administrative investigations into allegations of ill-treatment revealed that in numerous instances such investigations cannot not be considered as effective, notably in the light of their lack of promptness and thoroughness. There is a lack of proactive action by prosecutors in using special investigative measures and a formalistic approach in their communication and cooperation with the police. The CPT recommends that a mandatory instruction on the methodology of investigations into cases of alleged police ill-treatment should be adopted by the High Judicial and Prosecutorial Council and the Ministries of the Interior. Thereafter, prosecutors and members of police oversight mechanisms should be trained on applying the methodology.

As regards safeguards against ill-treatment, action is required to guarantee the right of access to a lawyer as from the very outset of detention and to ensure that a lawyer is present during any interview of a suspect by police officers. Further, any waiver of legal assistance must be systematically signed by a detained person if he/she does not wish to exercise this right. Steps should also be taken to ensure that medical examinations of detained persons at hospitals are always conducted out of the hearing of police officers and that, during such examinations, detained persons are not handcuffed in the absence of an individual security risk assessment. In addition, all persons should be fully informed of their rights as from the very outset of their deprivation of liberty, custody records should be diligently filled out and police interviews subject to audio and video recording.

The CPT once again recommends that steps be taken to ensure that all police cells comply with minimum requirements in terms of size, state of repair, cleanliness and lighting. In addition, persons detained in police custody should be offered at least one hot meal per day.

### **Persons held in prison on remand**

The CPT's delegation received a few allegations of excessive use of force (punches and slaps) and verbal insults of persons on remand at Sarajevo and Zenica Prisons and at the BiH State Prison. The CPT recommends that the BiH authorities ensure that a clear message is delivered to all custodial staff at the FBiH and State level that excessive use of force, unjustified resort to means of restraint and verbal abuse of inmates are not acceptable. The CPT further recommends that every prison officer in BiH should be provided with regular training on the use of means of restraint, manual control techniques and de-escalation skills.

The material conditions of detention offered to remand prisoners were of a very good standard at the new BiH State Prison in terms of design, state of repair and equipment. At the other establishments visited (Bihać, Mostar, Sarajevo and Zenica Prisons) the conditions in the multi-occupancy cells were in general appropriate and efforts were made to maintain the accommodation and communal facilities in a satisfactory level of repair and hygiene.

The CPT notes once again that a regime of comprehensive out-of-cell activities for remand prisoners was still not in place at the time of its visit. The Committee is partially encouraged by the timid efforts invested at the State Prison where remand prisoners could spend at least two to three hours per day in a communal room or alternatively in a small gym in addition to their outdoor exercise entitlement. By contrast, in the other prisons visited, remand prisoners continued to be locked in their cells for more than 22 hours per day with no purposeful activity on offer. The authorities of BiH should take steps to improve radically the regime on offer to remand prisoners by ensuring a range of purposeful activities (group association activities; work, preferably with vocational value; education; sport). Further, a gender-specific approach should be put in place for women held in remand detention to compensate for the prolonged periods of de facto solitary confinement to which they are exposed.

As regards health care, little progress has been achieved by the BiH authorities since the Committee's previous visits. The FBiH Ministries of Justice and Health need to work together to improve the delivery of health care for persons in remand detention. To begin with, every newly admitted person to prison should undergo a prompt and thorough examination, including a screening for transmissible diseases. Urgent attention is also required to redress the financial shortages affecting the procurement of medication for persons on remand and to enable persons with drug-related problems to access substitution therapy.

The report also highlights the shortages of custodial staff in the prisons visited and the importance of promoting contacts with the outside world, through inter alia increasing visit entitlements for remand prisoners and promoting greater use of alternative means of communications, such as Voice-over-Internet Protocol. Further, the suspension of visits as a disciplinary punishment should be ended and the relevant legislation amended accordingly.

The CPT is critical of the current application of the measure of solitary confinement of persons on remand for investigation purposes and recommends that it should be limited to the strict minimum necessary and that there should be a rigorous supervision of its application. It also recommends that the competence for imposing disciplinary sanctions against remand prisoners be transferred from the judiciary to the relevant prison management as is the case for persons remanded in custody in the BiH

State Prison

## **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 Bosnia and Herzegovina (BiH) from 17 to 27 September 2021. The visit was considered by the Committee as one “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention) in order to assess the level of the implementation of the previous CPT’s recommendation concerning the allegations of police ill-treatment raised by persons deprived of their liberty by police agencies notably in the Federation of BiH (FBiH) and the effectiveness of prosecutorial and administrative investigations into the same.

In addition, in the Una-Sana Canton, the delegation interviewed numerous migrants of different nationalities who claimed that they had been apprehended by Croatian law enforcement officials within the territory of Croatia and forcibly returned to Bosnia and Herzegovina. The related findings have been transmitted to the Croatian authorities as part of the confidential dialogue between the CPT and the Croatian authorities and are thus not included in this report.

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

- Therese Rytter, 2<sup>nd</sup> Vice-President of the CPT and Head of delegation,
- Ömer Müslümanoğlu,
- Alexander Minchev,
- Juan Carlos da Silva,
- Chila van der Bas.

They were supported by Christian Loda of the Committee's Secretariat, and assisted by Boštjan Škrlec, Vice-President of Eurojust and former Director General at the Supreme State Prosecutor’s Office of the Republic of Slovenia (expert).

3. In the course of the visit the following places of deprivation of liberty were visited:

Law enforcement establishments:

- Detention Unit of the Federal Ministry of the Interior, Sarajevo (Federation of BiH)
- Bihać Police Station (Una-Sana Canton)
- Mostar Centar Police Station (Herzegovina-Neretva Canton)
- Centar Police Station (Sarajevo Canton)
- Ilidža Police Station (Sarajevo Canton)
- Novo Sarajevo Police Station (Sarajevo Canton)
- Novigrad Police Station (Sarajevo Canton)
- Zenica Police Station (Zenica-Doboj Canton)

Prison establishments:

- State Prison of Bosnia and Herzegovina (pre-trial detention unit)
- Bihać Prison, FBiH
- Mostar Prison, FBiH
- Sarajevo Remand Prison, FBiH
- Zenica Prison, FBiH

4. The report on the visit was adopted by the CPT at its 107<sup>th</sup> meeting, held from 28 February to 4 March 2022, and transmitted to the authorities of Bosnia and Herzegovina on 30 March 2022. 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 authorities from Bosnia and Herzegovina 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. Consultations held by the delegation and co-operation encountered**

5. In the course of the visit, the CPT's delegation held consultations with Saliha Đuderija, Assistant Minister of Human Rights and Refugees of Bosnia and Herzegovina, as well as senior officials of the Ministries of Interior of the FBiH and of the Sarajevo Canton. It also held consultation with Mr Halil Lagumdžija President of the High Judicial and Prosecutorial Council and Ms Sabina Sarajlija, Chief Prosecutor of the Sarajevo Canton.

6. The co-operation received throughout the visit, from both the authorities and staff at the establishments visited, was excellent. The CPT's delegation would particularly like to thank the CPT's liaison officer Mr Dino Borovina from the Ministry of Human Rights and Refugees for his assistance before and during the visit.

That said, the principle of co-operation laid down in Article 3 of the Convention also requires that action be taken to improve the situation in the light of the Committee's recommendations. The CPT is particularly concerned by the lack of effective action to implement its recommendations as regards combatting ill-treatment by police officers. This requires that the various preventive measures adopted are both strengthened and implemented in practice, and that investigations into allegations of ill-treatment by police officers of persons apprehended and detained are carried out effectively. There is also a need to implement the longstanding recommendations in the field of prison health-care and to promote a radical change as regards the regime offered to remand prisoners. The CPT considers that a continued lack of action by the authorities of Bosnia and Herzegovina to take concrete measures to address the long-standing concerns referred to above may result in the Committee considering the opening of the procedure under Article 10, paragraph 2, of the Convention.<sup>1</sup>

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<sup>1</sup> Article 10, paragraph 2 of the European Convention on the Prevention of Torture and Inhuman and Degrading Treatment or Punishment reads as follows: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter."

**C. National Preventive Mechanism**

7. There have been no new developments since the 2019 visit concerning the establishment of a National Preventive Mechanism (NPM) under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment OPCAT.<sup>2</sup> Consequently, **the CPT once again calls upon the authorities of Bosnia and Herzegovina to proceed with the adoption of the amendments to the State Law on the Human Rights Ombudsman of Bosnia and Herzegovina and to comply with its longstanding international obligation pursuant to Article 17 of the OPCAT. Further, pending the set up and operation of the NPM, the Department for the Rights of Persons Deprived of their Liberty within the Human Rights Ombudsman Office should be provided with the necessary staff and financial resources to conduct visits to places of deprivation of liberty at regular intervals and subsequently to draw up detailed public reports containing its findings and recommendations.**

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

8. At the end of the visit, the CPT's delegation presented its preliminary observations to the authorities of Bosnia and Herzegovina. On that occasion, the delegation made one immediate observation under Article 8, paragraph 5, of the Convention, in relation to the extremely poor conditions of detention of the detention facilities of Bihać Police Station (see paragraph 48) and notably:

- to upgrade or replace the detention facilities of Bihać Police Station and to end the resort to the degrading practice of handcuffing detained persons to radiators in police premises during overnight stays

9. These requests were confirmed in a letter dated 6 October 2021 when transmitting the delegation's preliminary observations to the authorities of Bosnia and Herzegovina. On 5 November 2021, the authorities of Bosnia and Herzegovina informed the CPT on the actions taken in response to the immediate observation and on other matters raised by the delegation at the end-of-visit talks. The response has been taken into account in the drafting of this report, in particular in paragraph 48.

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<sup>2</sup> BiH ratified the OPCAT back in 2008 and made a declaration under Article 24 of the OPCAT in April 2011, postponing the designation of its National Preventive Mechanism for three years. To date the relevant amendments to the State Law on the Ombudsman for Human Rights of Bosnia and Herzegovina are pending in front of the State Parliament for adoption.

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

### A. Law enforcement agencies

#### 1. Preliminary remarks

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

11. In the period since the 2019 periodic visit, the CPT's delegation was informed that several police agencies have undertaken targeted training activities on fundamental rights of detained persons and on interview techniques, disseminated circular notes to police officers on the unacceptable nature of police ill-treatment and drafted guidelines on the treatment of persons detained by the police with the assistance of the Council of Europe (CoE) Office in Sarajevo.<sup>3</sup>

12. The basic legal framework of deprivation of liberty by the police is set forth in the criminal codes and criminal procedure codes at the level of the State, FBiH, RS and the Brčko District and remained unchanged since the 2019 visit. In general, persons deprived of their liberty by the police on suspicion of having committed a criminal offence must be brought within 24 hours before a prosecutor,<sup>4</sup> who must, within the following 24 hours, either submit a request to the preliminary proceedings judge to remand the suspect in custody or order release. The preliminary proceedings judge may, within 24 hours, remand the individual concerned in custody; the decision may be appealed to a panel of judges who must decide on the appeal within 48 hours.<sup>5</sup> Finally, the police may still summon citizens for the purpose of providing information or checking their identity for a maximum period of six hours.<sup>6</sup>

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<sup>3</sup> The CoE Office had contributed to the drafting of a practical guidance under the title "Human Rights of Persons Deprived of their Liberty" which has been translated and distributed to all interested police agencies in BiH. The document aims at providing guidance on the treatment of persons in police custody (during the whole chain of detention) combining elements of international standards as well as examples of good practice developed in BiH. The Sarajevo Cantonal Police had taken for example the document in question as the basis for drafting its own new instructions on the treatment of persons deprived of liberty.

<sup>4</sup> In the case of terrorism-related offences this period is extended to a maximum of 72 hours.

<sup>5</sup> The legal provisions applying to juveniles are similar with the exception that the competent judge for minors must decide within 12 hours on the motion for remand to custody previously issued by the competent prosecutor.

<sup>6</sup> Pursuant to Articles 15 and 16 of the FBiH and RS Law on Police Officials.

All sixteen law enforcement agencies in BiH, at Cantonal, Entity and State levels, have adopted “Instructions on the Treatment of Persons Deprived of their Liberty” regulating issues such as access to legal safeguards, material conditions of detention and compilation of custody registers. The content of the instructions in question varies and certain police agencies such as the Sarajevo Cantonal Police are still in the process of drafting new instructions based on the above-mentioned guidelines produced under the aegis of the CoE Office in Sarajevo.<sup>7</sup>

## 2. Ill-treatment

13. In the course of the 2021 ad hoc visit, the CPT’s delegation interviewed a great number of persons on remand in Bihać, Mostar and Sarajevo Prisons as well as at the BiH State Prison. The majority of the persons interviewed by the delegation stated that they had been treated correctly by police officers at the time of their apprehension and while in the custody of the police.

However, the CPT’s delegation once again received numerous allegations of ill-treatment of detained persons by police officers,<sup>8</sup> notably by the Sarajevo Cantonal Police and by the special intervention units of the Una-Sana and Herzegovina-Neretva Cantonal Police as well as members of the RS *Gendarmerie*. The alleged physical ill-treatment generally consisted of slaps, punches, kicks and blows with batons and the butts of service weapons. The ill-treatment was allegedly inflicted by members of special intervention units or uniformed police officers notably at the time of apprehension and to a lesser extent by criminal inspectors purportedly to coerce suspects to confess to certain criminal offences. Further, in numerous instances, persons met by the CPT’s delegation alleged that they had spent several hours, and even overnight, handcuffed to a piece of furniture in a crime inspector’s office or in a police detention cell without being offered food or water or access to a toilet.

As it had been the case during previous visits, the great majority of detained persons who alleged physical ill-treatment had been escorted to a health-care facility by the same law enforcement officials allegedly responsible for the ill-treatment. These officers were not only often present during the medical examinations but allegedly also instructed the detained persons on what to recount to the medical staff as to the cause of the injuries and, more specifically, not to reveal that the injuries had been inflicted by the police. Consequently, in the numerous medical certificates examined by the CPT’s delegation, the injuries were cursorily described, and their origin was systematically attributed to vague circumstances, such as “*in the course of deprivation of liberty*” or “*during a confrontation with a third person*”.

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<sup>7</sup> The Instructions on the Treatment of Persons Deprived of their Liberty adopted by the RS Police in the course of 2018 contain important novelties in line with the CPT’s previous recommendations such as separate information sheets on the rights of detained persons and the requirements of photographing visible injuries observed on detained persons and ensuring that persons are not escorted to a hospital by the same police patrol that executed his/her arrest.

<sup>8</sup> 31 of the 81 persons interviewed alleged that they had been ill-treated by the police.

14. During its visit to Zenica Police Station<sup>9</sup> on 22 September 2021, the delegation met three persons who had been arrested earlier that day by two police officers of Hadžići Police Station (Sarajevo Cantonal Police) and transferred to Zenica due an existing arrest warrant. The minutes on deprivation of liberty issued at the time of arrest in respect of the three detained persons clearly stated that they displayed no visible injuries and had no prior health related problems. Two of the three persons interviewed by the CPT's delegation gave the following accounts of their treatment by the police at the time of their arrest:

- i. A person alleged that after being stopped and handcuffed by a police patrol from Hadžići Police Station, the officers had proceeded to repeatedly strike him with truncheons to his back and to kick him on various parts of his body. The alleged ill-treatment was purportedly inflicted to coerce him to reveal information concerning an accomplice involved in a previous criminal act. When examined by one of the delegation's forensic doctors on 22 September 2021 at Zenica Police Station, the following injuries were noted and were assessed as compatible with the timing and circumstances of the allegation:

*“Approximately 15cm x 2cm reddish transversal bruise and 5cm x 2cm reddish transversal tramline like bruise under the right scapula on the right side of the back; approximately 5cm x 1cm transversal reddish area just 10cm on the left crista iliaca ant. sup; approximately 10cm x 2cm vertical reddish bruise on the anterior face of the right cruris.”*

- ii. A person, who was apprehended at the same time as the person above, alleged that he was struck several times with a truncheon on his back by an officer while lying prone on the ground with his hands cuffed behind his back. When examined by one of the delegation's forensic doctors later that same day he displayed the following injuries which were assessed as compatible with the ill-treatment alleged:

*“Approximately 15cm x 2cm oblique reddish tramline bruise under the right scapula and 10cm x 2cm transversal reddish tramline bruise on mid lumbar area and approximately 5cm x 1cm, 5cm x 1cm and 3cm x 1cm reddish transversal tramline like bruises on lateral site of right scapula, right posterior axillary line.”*

15. In a number of other cases, the delegation gathered medical evidence and supporting documentation which was 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>10</sup> others provided information on the condition that their names would not be divulged.

- i. A person on remand detention met at Bihać Prison alleged that on 9 July 2021,<sup>11</sup> at the time of his apprehension by a patrol of the Special Intervention Unit of the Una-Sana Canton in the courtyard of his house in Cazin, he had been kicked twice in the head while lying prone on the ground with his hands cuffed behind his back. He was examined on 11 July 2021 at Bihać Medical Centre before being admitted to prison in the presence of escorting police officers and a medical certificate was issued with the following entry: *“the person alleges to have sustained injuries at the time of his deprivation of liberty, various bruises and excoriations are visible on his face and around his head”*.

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<sup>9</sup> Under the authority of the Zenica-Doboj Cantonal Police.

<sup>10</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>11</sup> The persons referred to in cases i), ii) and iii) had been apprehended separately in different locations and timing in relation to the same criminal offence.

- ii. A person on remand detention met at Bihać Prison alleged that at the time of his apprehension on 9 July 2021 in the area of Cazin, he had been kicked several times in his chest, ribs and kidneys while lying prone on the ground with his hands cuffed behind his back by members of the Special Intervention Unit of the Una-Sana Cantonal Police. On 11 July 2021, he was examined at Bihać Medical Centre prior to being admitted to prison. The medical certificate contained the following entry: *“alleges to have received physical injuries after being deprived of his liberty and pain in his right rib costal arch. Following personal examination several excoriation and bruises are found in the area of the right thigh, right side of the face, chin, right arm, left hip and left knee”*.
- iii. A person on remand detention at Bihać Prison alleged that, at the time of his arrest on 9 July 2021 by members of the Special Intervention Unit of the Una-Sana Cantonal Police, he had been punched and kicked in various parts of his body while lying prone on the ground with his hands cuffed behind his back. During his medical examination at Bihać Medical Centre on 11 July 2021, before being remanded in prison, he alleged in front of the doctor that he had sustained injuries at the time of his deprivation of liberty and complained of pain in the right and left kidney zone, left thigh, right shoulder as well as headache which was recorded by the doctor. The medical certificate also contained the following description of injuries *“several hematomas in the area of both kidneys from 5cm to 6cm in size, hematoma on the right thigh of 4cm in size, excoriations on the right shoulder”*.
- iv. A person on remand detention at Sarajevo Prison alleged that he had been beaten at the time of the arrest in his car in Ivan Sedlo on 24 August 2021 by a patrol of two officers of the Sarajevo Cantonal Police from Hadžići Police Station. He claimed that he had been punched and kicked on several parts of his body by the two police officers reportedly to force him to reveal the location of certain narcotic substances. The same police officers intimated to him not to request the assistance of the doctor once transported to Hadžići Police Station. At the time of his medical examination at the emergency medical centre of the Sarajevo Canton on the same day in presence of the escorting police officers, the following entry was included in his medical file without further details: *“excoriation in the region of the right shoulder”*.
- v. A person on remand detention at Sarajevo Prison alleged that on 25 July 2021 he had been apprehended by two members of the Special Intervention Unit of the Sarajevo Cantonal Police, reinforced shortly afterwards by another two members. The police officers in question had allegedly punched him several times in the face, kidneys and on the legs and kicked him in the ribcage. The alleged ill-treatment continued in a conference room on the first floor of Novigrad Police Station. Allegedly, the beating was a punishment for a previous altercation with a police colleague. Later that day he was escorted to the Sarajevo Clinical Centre by the same police officers responsible for the alleged ill-treatment, and they clearly instructed him not to reveal the origin of the injuries. The following entry was recorded in the medical certificate issued by the examining doctor at the above-mentioned medical facility: *“The patient comes escorted by the police and does not recall the events in full. He alleges to have received injuries from third persons. The following injuries are visible: excoriation and bruises on right frontal area, excoriation on the posterior part of the thorax and laments pain on the right shoulder and forearm”*. He was referred to a CT-scan of the head and an x-ray of the thorax which excluded additional complications.

- vi. A person on remand detention at Sarajevo Prison alleged that on 26 July 2021 he had received multiple punches and kicks to various parts of his body from two police officers at the time of his apprehension. Subsequently, after his transfer to Novigrad Police Station, he claimed he was again punched and kicked while handcuffed to the railing of the stairway. He was later examined at the emergency department of Sarajevo Clinical Centre and the following entry was included in his medical file: *“the patient alleged to have been physically attacked by other persons and displays injuries on his head in the form of excoriations as well as several hematomas on his back in the area of the thorax.”* He was referred for a facial x-ray which excluded fractures.
  - vii. A person on remand detention at Sarajevo Prison alleged that at the time of his arrest on 20 March 2021 by a patrol of the Sarajevo Cantonal Police, an officer had hit him on his left ear with the barrel of a service weapon and he had been punched twice on his left shoulder causing him to fall to the ground. The person claimed that he had been instructed by the police to tell the examining doctor at the Abdullah Nakaš Hospital in Sarajevo that he had sustained injuries after falling while attempting to escape from the police patrol. The following injuries were recorded in his medical file: *“contusio capitis, contusio cum hematoma genus sx, excoriatio cruris bill”*.<sup>12</sup> Further he was referred to an otolaryngology specialist examination due to the pain in his left ear which showed a *“mild swelling in the external ear canal and painful tenderness when placing the otoscope”*.
  - viii. A person on remand detention at Zenica Prison alleged that on 13 August 2020 at the time of his arrest in the courtyard of his house in Rajlovac by a patrol of the Sarajevo Cantonal Police, one police officer had pressed down his boot with force on his face while he was lying prone on the ground with his hands cuffed behind his back. Subsequently, following his transfer to Novigrad Police Station, he was handcuffed to a radiator in the corner of an inspector’s office and was subjected to punches to his thorax and shoulder by two inspectors every few minutes. During his police custody, he had been escorted on two occasions by the police to the emergency department of the Sarajevo Clinical Centre. During the first examination in the morning of 13 August 2020, the doctor recorded a *“periorbital hematoma”*. In the course of the second examination that same afternoon, the doctor included the following entry in his medical record: *“The patient is brought back to the medical centre accompanied by members of the police due to the recording of additional injuries. The patient complains of pain in the posterior wall (in the projection of the right shoulder blade) and the anterior wall of the chest (lower part of the left hemithorax), also an excoriation and hematoma of the left thigh dorsally are seen. Chest X-ray”*.
16. At the State Prison of BiH, the CPT’s delegation met two persons on remand who were facing extradition to Slovenia and Montenegro respectively and who alleged that they were severely ill-treated by the RS *Gendarmerie* at the time of their arrest in Banja Luka in July 2021. In particular:
- i. A person stated that on 1 July 2021, after being intercepted by a RS police patrol on the street in Banja Luka and attempting to escape by foot, he was apprehended by a group of the RS *Gendarmerie*. After being immobilised on the ground, he alleged that the Gendarmes inflicted multiple punches and kicks to various parts of his body (i.e. thorax, legs and arms) and that one of them struck him in the head with the barrel of an automatic weapon. When examined at the Banja Luka Clinical Centre, the fracture of his ribs was noted and later that same day at 19h00 he was taken to the Sarajevo Clinical Centre by the judicial police where a medical certificate was issued confirming the fracture of the VII and VIII ribs and describing a

<sup>12</sup>

I.e. *“contusion of the head, contusion with hematoma of the left knee, excoriation of the leg”*.

*“hematoma on the left side of the thorax at the level of the injured ribs as well as a subcutaneous erythema. Both forearms are covered in bandage due to sustained injuries”.* Following his admission to the State Prison of BiH, a medical screening was performed by the prison doctor on 2 July 2021 and the following injuries recorded in his medical file: *“In addition to the fracture of the VII rib sin, the patient also displays a contusion of the left knee, contusion and excoriation on the left elbow, the patient has reduced mobility and breathes with difficulty due to the pain, profound excoriation on the right forearms, profound excoriation on the right hand and right thumb, various excoriations on the left thigh, on the right part of the back in the area of the spine circular red hematoma 3cm x 3cm in size, on the back of the right hand, dark red hematoma 5cm x 5cm in size, on the entire length of the right thigh dark blue hematoma 5cm x 20cm in size with excoriations in some places”.*

- ii. A person stated that at the time of his apprehension in a car in a parking lot of Banja Luka on 17 July 2021, he had received several kicks while lying prone on the ground with his hands cuffed behind his back. At the time of his admission to the State Prison of BiH the following injuries were recorded in his medical file by the prison doctor: *“hematoma of the right eye, circular hematoma on upper part of the right eyelid, 2cm excoriation in the area of the right eyelid, on both elbows skin damage with various hematomas, on the back in the area of the left scapula contusion of the side of a palm, skin damage and excoriation on the left knee”.*

17. Several persons met by the CPT’s delegation alleged that they had been subjected to psychological ill-treatment by crime inspectors of different police agencies in the course of their interviews as a means to get them to confess to one or multiple offences. The treatment complained about consisted of threats to resort to the use of force as well as specific racial insults.

The delegation recalls that the aim of police questioning must be to obtain accurate and reliable information in order to discover the truth about matters under investigation, and not to obtain a confession from someone already presumed to be guilty in the eyes of the interviewing officers. However, this is not the prevailing mode of operation for certain police inspectors of the Sarajevo, Herzegovina-Neretva and Zenica-Doboj Cantonal Police.

18. The delegation examined once again the procedure surrounding the transfer of criminal suspects from the police in Sarajevo to the Judicial Police Sector of the Sarajevo Cantonal Court (within 24 hours of a person’s apprehension).<sup>13</sup> Unfortunately, the practice observed during previous visits has not evolved.

An examination of 18 files at the Headquarters of the Judicial Police Sector of the Sarajevo Cantonal Court in respect of persons interviewed by the delegation at Sarajevo Prison, who had alleged physical ill-treatment by officers of the Sarajevo Cantonal Police, revealed that all of them had had a medical certificate issued by one of the Sarajevo emergency health-care centres with a description of injuries at the time they had been handed over to the judicial police. In one case, the person had stated in the questionnaire of the judicial police that he had been ill-treated and that he had sustained injuries at the time of his apprehension by the police. However, such a declaration did not entail any further request for explanations or any follow-up by the judicial police.

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<sup>13</sup> See paragraph 20 of the CPT’s report on its 2019 periodic visit to BiH CPT/Inf (2021) 21.

19. As to the role of prosecutors and judges of preliminary proceedings in the prevention of physical ill-treatment, a number of detained persons told the delegation that when they had raised an allegation at the time of the interview in front of a prosecutor or the confirmation hearing before a judge, the allegations had been reportedly dismissed or deemed irrelevant to the case and that no forensic medical examination had been ordered.<sup>14</sup>

**The CPT reiterates its recommendation that when prosecutorial and judicial authorities are confronted with direct allegations of physical ill-treatment by police officials, they take immediate action to record the allegations, order a forensic medical examination of the detained person and ensure that the allegations are promptly and thoroughly investigated.**

20. The CPT has repeatedly criticised the practice observed in BiH of the same police officers responsible for the alleged ill-treatment escorting apprehended persons to health-care centres as well as the lack of confidentiality of the medical examinations. At the outset of the 2021 visit, senior officials of the Sarajevo Cantonal Police informed the delegation about the set-up of secured examination rooms at the two Sarajevo medical health-centres. Further, a new memorandum between the Sarajevo Clinical Centre and the Cantonal Prosecutor of 8 October 2019 stipulated that there was an obligation on doctors to examine criminal suspects in a confidential setting and to clarify any elements which might indicate possible criminal offences from the side of police officers. The findings of the delegation during the 2021 visit confirmed that in some cases criminal suspects had been examined in private at a community health-care centre or hospital which is positive. That said, most of the persons interviewed told the delegation that the practice of having the same police patrol escorting them to the health-care centres persisted and that they had been instructed by the escorting officers to remain silent on the origin of the injuries. Further, in numerous instances the same escorting police officers continued to be present during the medical examination of detained persons in breach of the principle of medical confidentiality. Finally, the medical certificates drawn up by medical doctors describing the injuries observed on detained persons brought by the police to the relevant health-care centres were cursory and scant. The certificates did not contain any causal link as to the origin of the observed injuries but simply referred to vague and generic circumstances such as “in the course of the deprivation of liberty” or “injuries sustained from a third person”.

**The CPT reiterates its recommendation that the police officers charged with escorting the detained person to a medical examination are not the same ones against whom the allegations of ill-treatment are directed. For this reason, in all of Bosnia and Herzegovina, the task of escorting detained persons to the medical institution concerned should be entrusted to the judicial police. Alternatively, the judicial police should call a doctor to their premises to carry out a medical examination of the person concerned. Moreover, the judicial police should always inform the judicial authorities whenever a person is admitted to them who bears injuries or who makes an allegation of ill-treatment. Further, the confidentiality of medical examinations should be respected, and the results of the examination be made available to the detained person and to his or her lawyer.**

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<sup>14</sup> It is also important to note that in paragraph 87 of its Decision No. AP 511615/18 of 10 April 2018 the BiH Constitutional Court had decided that prosecutorial and judicial authorities should immediately start an official investigation into an allegation of ill-treatment of a detained person which is brought to their attention even in the absence of the relevant medical documentation.

**Finally, doctors working in hospital emergency units, notably in major urban centres such as Sarajevo, should be required to describe any injuries in full and, 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. If necessary, a secure room in the hospital should be set aside where such examinations may be carried out in a safe, secure and confidential manner.**

21. Consequently, the CPT notes that, on the whole, persons deprived of their liberty by police officers in Bosnia and Herzegovina continue to run an appreciable risk of being ill-treated. In addition to sending a clear message of zero tolerance to all police officers that all acts of ill-treatment will be investigated and prosecuted, the CPT repeats that it is necessary for the competent authorities to promote a fundamentally different approach towards methods of police investigation. Such an approach must involve the adoption of detailed instructions on the proper questioning of criminal suspects. While the CPT welcomes the training on investigative interviewing, which is being undertaken, it is clear that the training activities conducted so far have not yielded the expected results. This is partly due to the fact that the senior management of the relevant police agencies is not involved in the delivery of such training and also the lack of focus on the practical aspects related to the treatment of detained persons.

22. In sum, the CPT acknowledges the efforts invested by the BiH authorities to eradicate police ill-treatment in line with the Committee's recommendations contained in previous visit reports. That said, the findings of the CPT's 2021 ad hoc visit demonstrate clearly that ill-treatment by the police remains a serious problem, which requires the authorities to take more resolute action.

First and foremost, in the CPT's view it is incumbent on the BiH authorities to clarify that the responsibility for the eradication of ill-treatment lies with the senior management of the Ministries of the Interior and the Police Directorates. The BiH authorities should urgently adopt a Strategy on the Eradication of Police Ill-treatment which should include the following elements:

- No one must be left in any doubt concerning the commitment of the authorities at the State, Entity and Cantonal levels to combating impunity. Therefore, a formal statement at the highest political level should be delivered sending the clear message to all police officers nationwide that there must be zero tolerance of torture and other forms of ill-treatment of detained persons including physical ill-treatment, threats and verbal abuse.
- Further, all 16 police agencies should develop, if this has not been already done, a training course for managers on the exercise of police powers with a particular accent on the theoretical and practical aspects of the prevention of ill-treatment based on existing European standards and taking into account the specificities of the BiH complex institutional setting.

- In contexts where criminal investigations are geared towards obtaining confessional evidence or other information, the CPT has underlined the necessity of a shift of paradigm from the principle of proceeding “from the suspect to the evidence” to one focused on “from the evidence to the suspect”. The CPT has observed that the use of investigative interviewing techniques by some police services in Europe enhance information flows and communication and reduce the risk of human error. By using such techniques which advocated by eminent legal and police experts in the field of torture prevention<sup>15</sup> the police may effectively prevent false confessions.
- In the Committee’s view, specific training on professional interviewing techniques should be developed and integrated into the basic training curricula of all police officers at the national level. Furthermore, all police investigators and operational police officers entrusted with interviewing of suspects, victims or witnesses should receive advanced professional training and refresher courses.<sup>16</sup> 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.
- Further, 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 audio and 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 (see also paragraph 44).
- The “Guidelines on the Treatment of Persons Deprived of their Liberty” developed by the CoE Office in Sarajevo should be adopted as mandatory instructions to guide police officers with concrete examples and scenarios in each phase of the chain of detention of persons deprived of their liberty. The mandatory instructions should be based on the existing legal framework and include chapters on all areas where issues of ill-treatment may arise such as the application of means of restraint and the use of force upon apprehension, interview techniques, the responsibilities of the judicial police, the provision of fundamental safeguards, standardisation of procedures for the reporting and investigation of police misconduct, and the adoption of whistle-blower protection measures.

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<sup>15</sup> See in this respect the “Principles on Effective Interviewing for Investigations and Information Gathering” (the Méndez Principles) adopted in May 2021 by a group of eminent international legal and police experts in the field of policing and torture prevention. The Méndez Principles have since been welcomed and cited by several United Nations bodies as well as the CPT.

<sup>16</sup> Critical elements for continuous professional development should include commitment from leadership, regular training reinforcement and refresher training to refine techniques, correct errors and present interviewers with the latest relevant research in the field of investigative interviewing.

Combating ill-treatment entails the timely transmission of information on allegations of ill-treatment to the competent judicial and prosecutorial authorities (see paragraph 27). In the Committee's view, 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.

**23. The CPT calls upon the BiH authorities and in particular the Ministries of the Interior at the FBiH, RS, Cantonal levels as well as the State Ministry of Security to adopt a Strategy on the Eradication of Police Ill-treatment taking due account of the detailed remarks set out in paragraph 22 above, and notably the necessity to:**

- **deliver a clear statement at the highest political level to police officers from all police agencies nationwide that there is zero tolerance of torture and other forms of ill-treatment, and that such acts will be investigated and those responsible will be prosecuted and where appropriate sanctioned accordingly;**
- **integrate professional interviewing techniques into the basic training curricula for all police officers and into the advanced training curricula for all crime inspectors and operational police officers charged with interviewing suspects;**
- **introduce systematic audio-video electronic recording of all police interviews, including initial questioning by operative officers in police stations;**
- **adopt mandatory instructions at the level of each police agency on the use of force and means of restraint, on the treatment and fundamental safeguards of persons in police custody and on professional interviewing techniques, all in accordance with "Guidelines on the Treatment of Persons Deprived of their Liberty" developed by the CoE Office in Sarajevo.**

### **3. Effective investigations into allegations of ill-treatment**

24. 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. In its report on the 2019 periodic visit, the CPT made several recommendations to improve the effectiveness of the investigations into allegations of ill-treatment by prosecutorial authorities and the quality of investigations performed by the relevant internal oversight mechanisms existing at the level of each police agency in BiH.<sup>17</sup> In the course of the 2021 visit, the CPT's delegation conducted a follow up assessment of the administrative and prosecutorial investigations into allegation of ill-treatment in particular as regards the conduct of police agencies in the FBiH.

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<sup>17</sup> See in particular paragraph 28 of the CPT's report on its 2019 periodic visit to BiH CPT/Inf (2021) 21.

25. At the outset of the visit, the delegation received information on the statistics concerning criminal proceedings initiated by the prosecutorial authorities throughout the country (i.e. at the State, Entity and Cantonal levels) against police officers from all 16 police agencies between 1 January 2019 and 30 June 2021 in respect of cases of alleged ill-treatment of detained persons.<sup>18</sup> These amounted to 109 criminal reports (in respect of 176 police officers), out of which 42 concerned the order for conducting an investigation (in respect of 71 police officers),<sup>19</sup> 23 cases the cessation of the investigation (in respect of 45 police officers),<sup>20</sup> and 16 cases where an indictment was raised (in respect of 21 individuals). Further, in respect of two cases, the court had acquitted the officers while in 13 cases the officers had been found guilty by a court (in respect of 21 police officers).<sup>21</sup>

Similarly, the number of complaints received and investigated by the police internal oversight mechanisms (i.e. professional standards units or JPS<sup>22</sup>) of the Sarajevo Cantonal Police concerning cases of alleged ill-treatment and abusive behaviour by police officers for the period 1 January 2019 to 30 June 2021 amounted to 16 cases.

26. The delegation examined all 16 prosecutorial investigative files from the Sarajevo Cantonal Prosecutor between January 2019 and June 2021, as well as 9 out of 16 cases of alleged physical ill-treatment investigated by the JPS of the Sarajevo Cantonal Police over the same timeframe. Further, meetings were held with the President of the High Judicial and Prosecutorial Council (HJPC) in order to discuss the implementation of the previous recommendations made by the CPT as well as the main obstacles impeding effective prosecutorial investigation of cases of alleged police ill-treatment and related training needs. The President of the HJPC recognised the importance of raising the awareness of all prosecutors on the recommendations made by the CPT in this area and of ensuring that there was an effective methodology in place throughout the country. Within FBiH, reference should be made to a mandatory instruction of the Federal Prosecutor of FBiH from June 2007<sup>23</sup> stressing the need to initiate prompt, thorough and independent investigations into any allegation of police ill-treatment brought to their knowledge. However, the instruction appeared to being implemented only occasionally.

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<sup>18</sup> I.e. in relation to the following criminal offences from the CC of the FBiH and RS: Articles 172 (serious bodily injury); 173 (slight bodily injury); 179 (illegal deprivation of liberty); 181 (coerced confession); 182 (maltreatment in discharge of duty); 183 (endangering security) of the CC of FBiH; Articles 131 (serious bodily injury); 132 (light bodily injury); 141 (coerced confession); 143 (illegal deprivation of liberty); 149 (torture, ill-treatment and degrading treatment) of the CC of RS.

<sup>19</sup> Pursuant to Article 231 of the CCP.

<sup>20</sup> Pursuant to Article 239 of the CCP.

<sup>21</sup> All imposed sentences were conditional and ranged from 5 to 11 months in duration.

<sup>22</sup> JPS stands for *Jedinica za Profjesjonalne Standarde*.

<sup>23</sup> The Instruction A-234/07 was issued on 22 June 2007 and was mandatory in respect of all Cantonal Prosecutors.

27. The delegation examined the follow-up undertaken to the case it had raised in the 2019 visit report concerning the alleged ill-treatment of several persons by the Sarajevo Cantonal Police.<sup>24</sup> The Sarajevo Cantonal Prosecutor had opened a criminal report on 1 November 2018 and received information from the lawyers of the plaintiffs and from the Federal Prosecutor of FBiH. The Cantonal Prosecutor had requested the JPS for information on the outcome of their investigations, medical documentation of three additional potential victims (filed on 3 June 2020) as well as a request to the Cantonal Police about the presence of police officers of different agencies in their premises at the time of the allegations. In the light of the information received,<sup>25</sup> a decision was issued by the Cantonal Prosecutor on 11 August 2020, concluding that the available evidence did not constitute a sufficient basis for ordering a formal investigation into the allegations.<sup>26</sup>

The CPT's delegation found that the investigation had been neither prompt nor thorough. For example, it took five months for the Cantonal Prosecutor to request the JPS about the outcome of their investigation into the case (see paragraph 34). Further, the prosecutor made no proactive efforts to interview the alleged victims, clarify the veracity of the photographic documentation submitted by their lawyer or reach out to other potential witnesses and victims.<sup>27</sup> This is even more surprising in the light of the fact that two prosecutors from the same pool of the Sarajevo Cantonal Prosecutor were presumably present in the premises of the Sarajevo Cantonal Police Headquarters at the time of the alleged ill-treatment on 26 October 2018. A decision of the Chief Cantonal Prosecutor in August 2021 to re-open the case, in response to a complaint lodged by the lawyer of the victims,<sup>28</sup> is positive but is severely hampered by the poor investigation undertaken following the alleged ill-treatment.

28. The delegation also analysed the investigative file relating to the alleged ill-treatment and extraction of a confession from a person summoned for "informative talks" on 25 April 2018 at the Police Station "Dom Policije" of the FBiH Police.<sup>29</sup> The examination of the investigative actions indicated that a file had been promptly opened on 27 April 2018, after the alleged victim approached the Sarajevo Cantonal Prosecutor and that a final decision was issued on 23 December 2020 concluding that the relevant facts could not be established in order to order a criminal investigation. An examination of the case showed that the lack of information and evidence collected by the Cantonal Prosecutor could have been overcome by taking more rigorous investigative actions. For example, although the victim had been physically present in the premises of the Cantonal Prosecutor only two days after the alleged ill-treatment took place, no interview had been conducted with him. Further, no forensic medical expertise had ever been ordered to assess the existence and compatibility of the injuries with the alleged ill-treatment.

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<sup>24</sup> See paragraphs 24 and 25 of the CPT's report on the 2019 periodic visit to BiH CPT/Inf (2021) 21.

<sup>25</sup> As mentioned in paragraph 34 the JPS had concluded that there were no elements to support the credibility of the allegations.

<sup>26</sup> In parallel, the Constitutional Court of BiH, invested of the case by the same lawyer, had issued on 7 July 2021 a decision stigmatizing the violation of the victims' rights in the light of the untimely nature of the investigation and requesting to be informed within three months on steps taken to conduct an effective investigation into the facts occurred in November 2018. On 26 January 2022 the Constitutional Court of BiH issued another decision stating that the Sarajevo Cantonal Prosecutor had not complied with its previous decision of July 2021 since it did not conduct any further investigative action in relation to the above-mentioned allegations.

<sup>27</sup> I.e. more than 40 persons had been apprehended or summoned in relation to the murder of the two police officers during the following days from the tragic event.

<sup>28</sup> The Chief Cantonal Prosecutor requested to undertake further investigative actions.

<sup>29</sup> The CPT's delegation had also interviewed the alleged victim of ill-treatment and described the allegation in its report on the 2019 visit. See in this respect paragraph 12 of the report on the 2019 CPT's periodic visit to BiH CPT/Inf (2021) 21.

29. As concerns the remaining 14 prosecutorial investigative files examined by the CPT's delegation, three cases could be assessed as examples of good practice in terms of timeliness and thoroughness of the investigation. However, this was mainly due to the ease with which it was possible to acquire the evidence and the straightforward nature of the cases.

For example, in respect of one case in which a criminal suspect had alleged physical ill-treatment in the course of an interrogation at Sarajevo Novigrad Police Station on 27 April 2017, the Cantonal Prosecutor by promptly ordering the acquisition of CCTV recordings from the police station in question managed to acquire evidence of the ungrounded nature of the allegation.<sup>30</sup>

Further, in relation to a case of alleged physical ill-treatment of a person by a police officer on 2 October 2019 in front of a building of the Cantonal Court and signalled by the Judicial Police, the competent prosecutor promptly ordered the acquisition of CCTV recording and acquired important evidence confirming the allegation and ordering and concluding the investigation in relatively short time frame.<sup>31</sup>

Finally, in respect of a prominent and widely reported case of ill-treatment of a citizen deprived of liberty in Mostar by two police officers of the Herzegovina-Neretva Cantonal Police which had occurred on 10 April 2021.<sup>32</sup> The fact that the alleged ill-treatment had been covered by a CCTV camera in a nearby building contributed to the acceleration of the investigation from the Herzegovina-Neretva Cantonal Prosecutor and the raising of the indictment against the two police officers involved in October 2021 as well as the start of the trial.<sup>33</sup>

30. That said, in respect of the remaining 11 cases the investigations could not be deemed as being carried out effectively. The cases were more complex than those examined in paragraph 29 and the evidence harder to secure. The investigation files revealed a lack of a proactive approach to deploying special investigative measures (such as the ordering of a forensic medical examination of the victim), a formalistic stance in communications with the police oversight mechanisms as well as other prosecutors who were conducting parallel investigations on the same events. The investigations quickly lost momentum even when they had been promptly initiated. For example:

- a detained person alleged to have received verbal threats from a police inspector in the course of an interrogation occurred on 22 October 2019 and reported on the same day to the Cantonal Prosecutor<sup>34</sup> the alleged victim was interviewed as a witness on the same day by the prosecutor. After this prompt step, the prosecutor limited himself to requesting information from the JPS about the outcome of its investigation which responded in a memo that no irregularity had existed on 28 January 2020. After that no further investigative actions had been undertaken;

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<sup>30</sup> The injuries in question were in fact the result of the detainee's self-harming.

<sup>31</sup> I.e. in the course of January 2020.

<sup>32</sup> The citizen had been apprehended on the street in violation of the COVID curfew restrictions.

<sup>33</sup> The two police officers had also been promptly suspended by the Herzegovina-Neretva Cantonal Police and the trial had started on 13 October 2021 in front of the Herzegovina-Neretva Cantonal Court.

<sup>34</sup> Immediately upon his release the alleged victim had approached the headquarters of the Sarajevo Cantonal Ministry of Interior where he filed official complaint against police officers by name. The Cantonal prosecutor invited him for an interview on the next day.

- in relation to a report filed by the lawyer of a victim<sup>35</sup> of alleged ill-treatment that occurred at a police station on 6 March 2020 with a report on injuries sustained,<sup>36</sup> the Cantonal Prosecutor had requested the relevant police logbook on detained persons on 4 June 2020 and ordered a forensic medical examination on 10 July 2020 in order to exclude that the injuries were in fact related to an episode of self-harming. In parallel, another criminal investigation was being conducted in respect of the same incident in relation to the abuse of police powers of the two police officers concerned which led to the dispersion of efforts and of crucial information. After a first short interview of the victim by the prosecutor on 18 December 2020, the investigation pertaining to physical ill-treatment was closed and reopened when the Chief Cantonal Prosecutor gave precise instructions on how to interview the victim. A second interview took place on 23 June 2021 by the prosecutor and clarified more details in relation to the alleged ill-treatment. Both criminal cases were finally reunited in the course of July 2021 but had not gathered yet enough elements to prove the criminal responsibility of the police officers. Further, the prosecutor also missed the opportunity of identifying an important eyewitness of the alleged ill-treatment who had been interviewed by the JPS in the course of its autonomous investigation but which information was never provided to the prosecutor.<sup>37</sup> The case exemplified an extremely formalistic and bureaucratic approach towards such investigations and a lack of co-ordination between prosecutorial authorities and the JPS.

31. As mentioned in paragraph 25 the CPT's delegation also met with the representatives of the internal oversight mechanism of Sarajevo Cantonal Police (i.e. JPS or *Jedinica za Profesionalne Snadarde*) charged with the investigation of complaints for police misconduct either lodged by citizens or on behalf of the prosecutorial authorities. The JPS, staffed by five senior police officers, is under the obligation to provide a response to a complaint within 30 days and three months in case of appeal to the second instance body (i.e. the Committee on Complaints of the Sarajevo Cantonal Assembly or *Odbor*).

32. The examination of nine complaints and investigative files related to alleged police misconduct of detained persons since the beginning of 2019 revealed that some cases were effectively investigated while others were not. In particular, the analysis showed that in case of the existence of clear evidence (such as CCTV recordings) the JPS was able to establish facts in a prompt and effective manner. That said, in case of more complex cases requiring cross-examinations of witnesses, establishing the compatibility of injuries with the allegations the JPS appeared to rely mainly on the testimonies provided by the relevant police officers and on the written reports produced by the police on the alleged incident. Further, the CPT's delegation also noted a formalistic and passive approach by the JPS in its communications and exchange of information with the prosecutorial authorities about crucial aspects of their investigations.

For example, in relation to a complaint filed by the parent of an alleged victim who alleged to have received punches and kicks by the police on 22 September 2020 at the time of his apprehension, the JPS managed to timely secure CCTV evidence and disprove the allegations as unfounded.

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<sup>35</sup> The criminal report had been filed on 17 March 2020.

<sup>36</sup> The detained person in question alleged to have been punched and kicked while lying on the floor handcuffed and to have sustained injuries to his head and body. The medical certificate drawn up at the health-care centre of the Sarajevo Clinical Centre confirmed injuries to the head and thorax of the alleged victim without any possible causal link as to their origin.

<sup>37</sup> The lawyer of the victim had filed complaints both to the Sarajevo Cantonal Prosecutor and the JPS at the same time.

Further, in relation to a case of alleged physical ill-treatment inflicted by a patrol of the Sarajevo Cantonal Police in the course of an anti-drug operation on the street,<sup>38</sup> the JPS had declared the complaint as unfounded on the basis of the testimonies of the relevant police officers and their written reports on the operation. However, it had failed to interview two important eye-witnesses signalled by the victim as well as to acquire CCTV recording from a nearby building.

33. One case also evidenced the lack of communication between the JPS and prosecutorial authorities in respect of the investigation referred to in paragraph 30 resulting in parallel ineffective investigations by the JPS and prosecutorial authorities.<sup>39</sup> The investigation of the JPS which had been timely and effective led to the discovery of a key witness present at the time of the incident inside the police establishment in question who confirmed the allegation of ill-treatment of the detained person. However, this crucial information was never communicated to the prosecutor in the context of his criminal investigation which as referred to in paragraph 30 was inconclusive.

34. The CPT's delegation also examined the investigation conducted by the JPS in relation to the prominent case of torture and ill-treatment described in paragraph 27 that occurred on 26 October 2018 at the Headquarters of the Sarajevo Cantonal Police. The JPS had concluded on 9 May 2019 that there were insufficient elements to sustain the allegations.<sup>40</sup> The analysis of all investigative actions undertaken by the JPS and Committee on Complaints of the Sarajevo Cantonal Assembly concluded that the JPS had not started the investigation in a proactive manner but upon reaction to a newspaper article (i.e. only in February 2019). The investigation conducted also could not be considered thorough: some of the victims were not interviewed as they were in remand custody (in relation to different criminal charges) and this was considered as incompatible by the JPS with their criminal proceedings. Further, no search of the police premises was ordered to discover the existence of instruments that might have been used to inflict ill-treatment although the alleged ill-treatment had taken place in the same building where the JPS is located. Finally, the JPS came swiftly to the conclusion that the injuries sustained by one of the victims were in fact related to a previous fight in a restaurant in Pale (without ordering a forensic assessment). The JPS based its conclusions mainly on the interview conducted with police officers, who denied the allegations, and on the fact that all victims had signed the relevant "minutes on interrogation" without any remarks about their treatment on 26 October 2018 by the police.

35. The CPT was pleased to note the openness and constructive pledge of the President of the HJPC to improve the effectiveness of the investigations into allegations of ill-treatment by prosecutorial authorities. The findings of the 2021 visit indicate the necessity to adopt a specific methodology for both prosecutors and internal oversight mechanisms (JPSs) in the investigation of allegations of ill-treatment.

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<sup>38</sup> The emergency health-care centre of Sarajevo Canton had informed the JPS that one of the individuals had requested medical assistance upon his release and complained to have received injuries from the police

<sup>39</sup> The lawyer of the victim had filed both a complaint on 9 March 2020 to the Cantonal Prosecutor and 16 March 2020 to the JPS.

<sup>40</sup> The Committee on Complaints of the Sarajevo Cantonal Assembly confirmed the JPS' conclusion on 9 May 2019.

The Committee considers that a Methodology for the Conduct of Investigations into Allegations of Torture and Ill-treatment by the Police (Methodology) should be adopted as a mandatory instruction by the HJPC as well as by the Ministries of the Interior at the Entity and Cantonal levels as well as by the Ministry of Security. The Methodology should provide practical guidelines *inter alia* on issues such as securing evidence and interviewing witnesses, victims and perpetrators in ill-treatment cases, reacting promptly to allegations and arguable claims, addressing double loyalty issues when confronting testimonies of health-care staff and the so called “blue wall” in terms of loyalty among police officers who in practice provide identical and concordant statements. Further, action should be taken to ensure that all prosecutors and investigators of internal oversight mechanisms (JPSs) are both properly trained on and applying the mandatory instruction on the Methodology on the Investigation of Cases of Ill-treatment. The adoption of the Methodology should not exclude that the BiH authorities invest efforts in improving the effectiveness of investigations into allegations of ill-treatment in the light of the CPT’s recommendations on this topic included in its 2019 report.<sup>41</sup>

**The CPT recommends that the BiH authorities namely the HJPC and the relevant Ministries of Interior at the Entity level and the Ministry of Security take effective steps in the light of the above remarks and inform the Committee on the measures taken towards the improvement of the effectiveness of prosecutorial and administrative investigations into allegations of ill-treatment at the national level.**

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<sup>41</sup> See in particular paragraphs 25 and 27 of the report on the 2019 periodic visit to BiH CPT/Inf (2021) 21.

#### 4. Safeguards against ill-treatment

##### a. introduction

36. The legal framework governing the formal legal safeguards advocated by the CPT against ill-treatment (i.e. the rights of access to a lawyer and to a doctor and the right to have the fact of one's detention notified to a relative or a third person) remained unchanged since the 2019 visit and is regulated by Article 5 of the State and Entities Code of Criminal Procedure (CCP). In addition, there exist specific instructions on the treatment of persons deprived of their liberty at the level of each police agency.<sup>42</sup>

In particular, the CPT notes that the Sarajevo Cantonal Police was working on a new instruction based on the Committee's standards. Further, the CoE Office in Sarajevo had produced "Guidelines for the Treatment of Persons Deprived of Liberty in a closed Environment" which were being used by several police agencies in their curricula for the training of police officers.<sup>43</sup>

37. In the course of the 2021 visit the CPT's delegation paid special attention to the safeguards afforded to criminal suspects in the course of their deprivation of liberty by the respective police agencies. In doing so, the account of the interviewed detained person was cross-checked in accordance with the custody register at the respective police stations. Further, a statistical and qualitative review of the compilation and content of custody registers was conducted at every police establishment visited.

##### b. notification of custody

38. The majority of persons interviewed by the delegation reported to have had the possibility of informing a third party of their custody shortly after their admission to a police station. That said, in respect of numerous cases detained persons alleged that their requests to inform a member of their family or a third person had been denied by police officers. Further, several foreign nationals, detained in various parts of the country, alleged that their requests to inform a consular authority had been denied by police officials.

The CPT's delegation found that in some of the police establishments visited the notification box was simply not checked in custody registers and information on the phone call and timing was missing or left blank in numerous instances.<sup>44</sup>

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<sup>42</sup> See in particular paragraph 28 of the report on the 2019 periodic visit to BiH CPT/Inf (2021) 21.

<sup>43</sup> E.g. the RS Police as well as the FBiH and RS Judicial Police.

<sup>44</sup> For example, in approximately 10 percent of the relevant cases examined in the custody registers.

**The CPT calls upon the BiH authorities to ensure that all persons deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). Police officers should always record in writing whether or not notification of custody has been performed in each individual case, with the indication of the exact time of notification and the identity of the person who has been contacted. 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.**

c. access to a lawyer

39. The CPT recalls that in its experience it is during the period immediately following the deprivation of liberty - and, a fortiori, during which the individual is subjected to police questioning under an investigation procedure – that the risk of intimidation and ill-treatment is at its greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility which is clearly stipulated in Article 5 of the CCP, will have a dissuasive effect on those minded to ill-treat detained persons; moreover, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

In spite of repeated recommendations made by the CPT following previous visits, the fundamental safeguard of a prompt access to a lawyer (ex officio or of one's choice) from the very outset of deprivation of liberty remains generally unimplemented. It was not uncommon for police officers, notably from Cantonal police agencies to deny or delay the request of detained persons to contact a lawyer during the first 24 hours of police custody. Some police inspectors also told the delegation they did not consider this safeguard to be applicable in the first 24 hours of police custody. Not surprisingly, the great majority of persons deprived of their liberty waived their right to be assisted by a lawyer in the first phase of police custody as shown in the custody registers.<sup>45</sup> Criminal suspects were in general being offered the possibility of being assisted by a lawyer only at the time of their interrogation by a prosecutor (i.e. 24 hours after their deprivation of liberty) and only in cases of mandatory defence.<sup>46</sup>

Moreover, it was usually not possible for a person to consult his or her lawyer in private prior to appearing before a prosecutor or a judge.<sup>47</sup>

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<sup>45</sup> For example, at Zenica Police Station none of the 219 criminal suspects detained between 1 May and 21 September 2021 had requested the assistance of a lawyer. Similarly, at Ilidža Police Station in Sarajevo only six out of the last 109 criminal suspects detained had requested the assistance of a lawyer.

<sup>46</sup> Pursuant to Article 59 of the CCP a criminal suspect must be obligatorily provide with a defence counsel in the course of criminal proceedings he/she is mute or deaf or if he is suspected of a criminal offense for which a penalty of long-term imprisonment may be pronounced (i.e. above three years of imprisonment).

<sup>47</sup> Contrary to the provisions of Article 62, paragraph 2 of the CCP.

40. The CCP clearly provides for *ex officio* lawyers to assist criminal suspects at the phase of criminal proceedings to be appointed upon the request of a prosecutor to the judge on preliminary proceedings.<sup>48</sup> At the time of the 2021 visit, several persons complained about the performance of *ex officio* lawyers, namely in the Sarajevo Canton, being passive to their allegations of ill-treatment or asking for additional pecuniary funds to be provided to them. Further, in the few isolated cases in which criminal suspects had requested the assistance of a legal counsel the relevant custody registers did not show systematically the steps undertaken to contact the *ex officio* (or a private lawyer), and at which time a specific lawyer had been designated and attended the police station.

The CPT wishes to recall that any attempt to prevent persons in detention from exercising their right to access a lawyer is illegal. The right of access to a lawyer must include the right for any detained person to talk to his/her lawyer in private as from the very outset of his/her deprivation of liberty. The person concerned should, in principle, be entitled to have a lawyer present during any interview,<sup>49</sup> whether this be before or after he/she is charged and the waiver of the right to legal assistance should be systematically signed by the detained person if he/she does not wish to exercise his/her right to access to a lawyer.

**The CPT calls upon the BiH 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 as enshrined in Article 5 of the CCP and in line with the above remarks. Further, the time at which police officers contacted the *ex officio* (or private) lawyer, and the time at which a specific lawyer had been designated and attended the police station should be clearly indicated in the custody registers. Detained persons must also be afforded the opportunity to speak with their lawyer in private once the legal counsel attends a police station. Further, all *ex officio* lawyers operating at the national level should be reminded through the relevant bar associations of the importance to represent persons in police custody and perform their functions in a diligent and timely manner and, furthermore, that it is unacceptable to offer their services on condition of receiving additional informal fees.**

d. access to a doctor

41. The right of access to a doctor is still not recognized in the relevant CCP as a statutory right. All 16 relevant instructions on the treatment of persons deprived of their liberty provide for emergency medical assistance to persons deprived of their liberty in detention as well as upon their request.<sup>50</sup>

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<sup>48</sup> Pursuant to Articles 5, paragraph 2; 7, paragraph 2, 59 and 60 of the CCP. It is the duty of the police to relay the request of appointment of an *ex officio* lawyer to the competent prosecutor and the judge on preliminary proceedings who decides on the eligibility of a criminal suspect to the assistance of an *ex officio* legal counsel.

<sup>49</sup> This also includes any interview/interrogation performed by an authorised law enforcement official as stipulated by Article 92, paragraph 1 of the CCP.

<sup>50</sup> That said, only the RS instruction provided for the necessity for criminal suspects to be escorted to a hospital by a different police unit than the one which had carried out the arrest of the suspect.

In principle, with the exception of emergency medical assistance, persons deprived of their liberty were in general provided access to a doctor only for the purpose of issuing a certificate on injuries (see paragraph 20) upon the request of the judicial police or for the purposes of including such a certificate in the medical file upon admission to prison. In this respect, it is essential that further efforts be made to ensure that such examinations are carried out confidentially by, for example, systematically using secure rooms in hospitals and ensuring that the escorting police officers remain out of hearing and – unless the doctor concerned expressly requests otherwise in a given case - of sight during the physical examination of detained persons as clearly stipulated in the above-mentioned memorandum between the Sarajevo Clinical Centre and the Cantonal Prosecutor of 8 October 2019 (see paragraph 20). Further, in some cases detained persons alleged to have been medically examined by a doctor while handcuffed.

**The CPT once again calls upon the authorities to adopt specific legal provisions on access to a doctor during police custody.<sup>51</sup> Further, medical confidentiality both during examinations of the detained persons and of medical documentation must be guaranteed. The time has come for the authorities of Bosnia and Herzegovina to ensure that these rights are effectively implemented throughout the country. Finally, the Committee considers that there is in principle no justification for detained persons being medically examined while handcuffed, in particular in the absence of an individual security risk assessment.**

e. information on rights

42. As it has been the case during previous visits, the majority of detained persons interviewed by the delegation had been informed verbally of their rights at the time of their arrival at a police station and the relevant box in the custody register confirmed this. That said, no written brochures were handed over or shown persons in either Bosnian/Croatian/Serbian or in a foreign language as appropriate. Senior police officers told the delegation that the minutes of deprivation of liberty drawn up upon the admission to a police establishment and signed by the criminal suspect served as a written confirmation on the information on rights stipulated in Article 5 of the CCP. Finally, several migrants deprived of liberty by the Border Police alleged to have received only verbal information in Bosnian about their rights by police officers.

**The CPT reiterates its recommendation that the BiH authorities take steps to ensure without further delay that all persons deprived of their liberty by the police are fully informed of their fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon their arrival at police premises) by provision of a written form setting out their rights in a straightforward manner. Further, the Committee also recommends that written information sheets be drawn up, with clear reference to the right of a detained person to notify a third party and to access a lawyer as stated in Article 5 of the CCP and be available in the most commonly spoken languages.**

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<sup>51</sup> See, inter alia, CPT/Inf (2013) 25, paragraph 27, CPT/Inf( 2012) 15, paragraph 20, and CPT/Inf (2016) 17, paragraph 27.

f. custody records

43. The instruction on the filling in of custody registers foresees that all entries must be timely, clearly and accurately recorded by the competent police officer and that each page of the register must be stamped and signed by a senior police officer. Custody registers at the police establishments visited were generally poorly kept (e.g. records signed by detainees without any clear indication of what they were signing, records left blank or incomplete). Further, important developments in the chain of detention (rubric No. 43) of criminal suspects, such as being escorted to hospital, was often not recorded properly in the relevant box of the custody register on escort and transfer of persons deprived of their liberty.

The instruction on the filling custody registers on persons deprived of their liberty clearly also stipulates that the respective boxes (rubrics Nos. 39, 40, 41, 42) should include the time and hour of the provision of a specific safeguard as well as details on their provision and feedback to the detained persons such as the time the Bar Association or lawyer was contacted, the notification of custody to a third party, the transfer to see a doctor. These details were not being recorded in the register. Further, the box (rubric No. 43) on all other events including all movements, transfer, contact with persons, provision of food and beverages etc, was often missing important events in the chain of custody.

**The CPT reiterates its recommendation that the BiH authorities take action to ensure that the custody registers of persons deprived of their liberty in police stations provide a complete and accurate account of all significant events that take place during a detained person's time in police custody. Particular care should be taken to record accurately the time of the official start of the deprivation of liberty, the time at which an ex officio or private lawyer is contacted, the time at which a named lawyer is officially designated<sup>52</sup> and the time(s) that a lawyer actually attends the police station.**

g. police interviews

44. At the outset of the visit, senior officials of the Sarajevo Cantonal Police informed the delegation that a great number of police officers had undergone training activities on investigative interviewing techniques.<sup>53</sup> In the course of the 2021 visit, the CPT's delegation found that criminal suspects were often interviewed while handcuffed or placed in stress positions (such as standing in front of a wall or handcuffed to a radiator). Further, numerous allegations were received of derogatory language, insults as well as threats and manipulative phrases addressed to them by police officers in the course of the interview.<sup>54</sup> Finally, in the corner of an office of Ilidža Police Station, the CPT's delegation found an unlabelled baseball bat.

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<sup>52</sup> I.e. the time of the arrest or response to summons in criminal proceedings.

<sup>53</sup> Approximately 170 police officers since 2018. The training in question had been provided by academic professors in Criminology from the University of Sarajevo.

<sup>54</sup> Such interviews had been conducted in accordance with Article 91, paragraph 1 of the CCP and police officers were being authorised by the competent prosecutor.

45. As regards the audio and video recording of police interviews, despite the commitments made by the authorities<sup>55</sup> to equip designated rooms for such procedures, and, in practice audio/video recording of interviews is only used for suspected juvenile offenders.<sup>56</sup> All adult criminal suspects continue to be interviewed in the offices of crime inspectors and without the use of audio and video-recording equipment.

**The CPT reiterates its recommendation that the authorities draw up an instruction for police interviews of criminal suspects in the line with the provisions of Article 92 of the CCP of FBiH.<sup>57</sup>**

**The instruction 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 instruction 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.**

**The Committee would like to be informed of the police establishments where the interview rooms have been equipped with audio and video-recording facilities, if any, and to be informed whether all interviews of persons suspected of a crime are conducted in these rooms.**

**Finally, the CPT recommends that any non-standard issue objects capable of being used for inflicting ill-treatment (such as baseball bats) be immediately removed from all police premises where persons may be held or questioned. Any such items seized during criminal investigations should be entered in a separate register, properly labelled (identifying the case to which they refer) and kept in a dedicated store.**

## **5. Conditions of detention**

46. In its report on the 2019 visit, the CPT recommended that in addition to the necessary refurbishment of the existing police establishments to meet minimum standards, the BiH authorities should seriously consider a planned new building programme to provide modern, centralised facilities for temporary detention which meet international standards and provide staff and detained persons with proper conditions

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<sup>55</sup> See for example page 16 of the response of the BiH authorities to the CPT's report on the 2019 periodic visit to BiH CPT/Inf (2021) 22.

<sup>56</sup> Further, Article 93, paragraph 2 of the CCP stipulates that "*as a general rule the questioning of a suspect should be electronically recorded*".

<sup>57</sup> As well as the relevant provisions of the CCPs of BiH and RS.

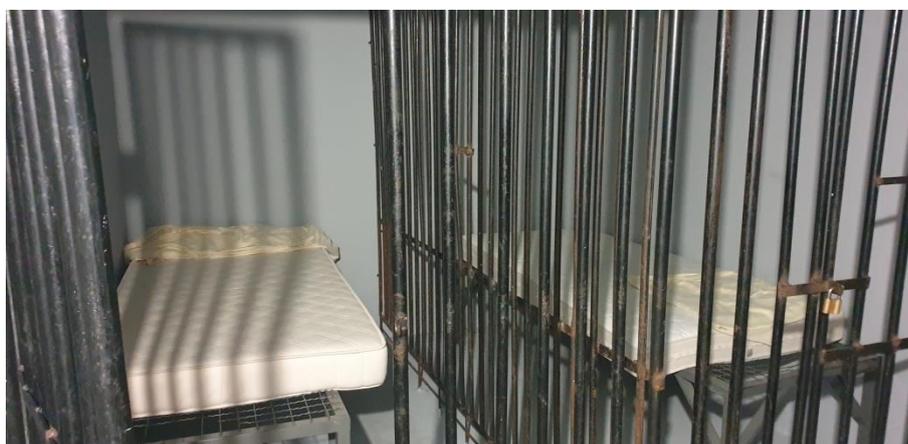
In the course of the 2021 visit, the delegation assessed the conditions of detention of police cells in Bihać, Novo Sarajevo, Zenica and Mostar Centar Police Stations. Further, it also paid a follow-up visit to the six cells of the Judicial Police at Sarajevo Cantonal Court and to the four cells at the Headquarters of the FBiH.<sup>58</sup> The remainder of the police establishments visited did not possess detention cells and criminal suspects deprived of liberty would normally be detained in inspector's offices for processing purposes.

47. The six double occupancy cells of Novo Sarajevo Police Station (serving as the main detention unit the entire Sarajevo area) offered in principle satisfactory conditions of detention and the authorities were investing continuous efforts in their maintenance (in terms of new ventilation system, artificial lighting, painting of walls and partitioning of toilets, procurement of new mattresses and pillows). That said, some of the toilets showed already signs of decay.

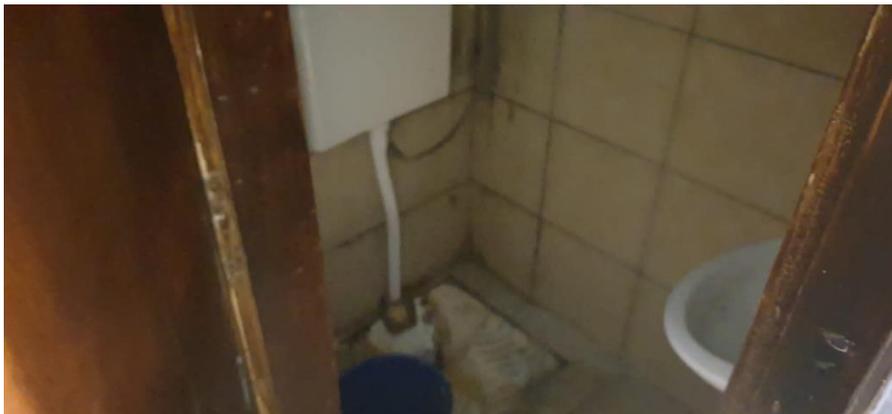
The eight cells of the detention unit of the Judicial Police in Sarajevo as well as the four cells of the FBiH Federal Police remained the same as in 2019 and offered generally good conditions of detention.

On the other hand, the detention cells at Mostar Centar and Zenica Police Stations displayed the exact same deficiencies as those observed by the CPT in the course of its 2015 and 2019 visits. The two very small cells in the basement of Mostar Centar Police Station (measuring a mere 4 m<sup>2</sup> and 4.5 m<sup>2</sup>) were not only too small for overnight detention, but had little access to natural light, poor ventilation and were dirty and malodorous. The cells had no call bells and staff were not present in the detention area and only performed visual checks every 30 minutes. At Zenica Central Police Station, the four small cells (each measuring a mere 5.5m<sup>2</sup>) located in the basement had very limited access to natural light and poor ventilation.

48. The two small cells at Bihać Police Station offered unacceptable conditions even for short periods of detention due to their size (4.5 m<sup>2</sup>) and their cage-like design. The toilets in the detention area were filthy and dilapidated. As mentioned in paragraph 8 the CPT's delegation invoked Article 8, paragraph 5, of the Convention and made an immediate observation requesting that these two cells be taken out of service and the detention unit be significantly upgraded. By letter received on 5 November 2021 the Una-Sana Cantonal authorities informed the Committee that funds had been earmarked for the reconversion of a storage facility on the ground floor of the building of the Una-Sana Cantonal MoI for a new detention unit.



<sup>58</sup> See paragraph 40 of the CPT's report on its 2019 periodic visit to BiH CPT/Inf (2021) 21.



49. Further, no arrangements were in place for the provision of food to detained persons at any of the police establishments visited, with the exception of Novo Sarajevo Police Station. The delegation observed that detained persons were in general offered cold snacks only after their appearance before the court (i.e. more than 24 hours after apprehension).

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

The CPT also recommends that no cell measuring less than 6m<sup>2</sup> be used for overnight accommodation. In fact, the Committee considers that it would be desirable for single-occupancy police custody cells used as overnight accommodation to measure 7m<sup>2</sup>.<sup>59</sup> In this respect, the CPT wishes to receive confirmation that the two cells at Mostar Centar Police Station are no longer being used for overnight detention.

The CPT wishes to receive detailed information on the steps taken to ensure that the above minimum requirements have been applied at each of the police stations visited in the course of the 2021 visit. It would also like to be informed when the new detention unit in the ground floor of the building of the Una-Sana Cantonal MoI is brought into service.

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<sup>59</sup> A standard the CPT had advocated since the publication of its 2nd General Report (CPT/Inf (92) 3, paragraph 43.

## **B. Prison establishments**

### **1. Preliminary remarks**

51. The 2021 visit focussed exclusively on the assessment of the treatment and conditions of detention of remand prisoners<sup>60</sup> and to this end the delegation visited the pre-trial detention units of the new State Prison (under the authority of the State Ministry of Justice) and the remand section of Bihać Prison for the first time. It also carried out follow-up visit to the remand sections of Mostar and Zenica Prison and to Sarajevo Remand Prison (under the authority of the FBiH Ministry of Justice). The legal framework surrounding the conditions of detention, regime and rights of remand prisoners is regulated by the specific provisions of the CCP<sup>61</sup> as well as the relevant rulebooks on the enforcement of remand detention at the State and Entity levels: The maximum duration of pre-trial custody under the BiH criminal proceedings amounts to three years since the issuance of the indictment.

**BiH State Prison** is located in the outskirts of Sarajevo within the territory of the RS, the establishment came into service in July 2020 and accommodated at the time of the CPT's visit 27 remand prisoners in the respective pre-trial unit of a capacity of 50 places. The pre-trial prisoners in question were serving remand detention imposed by the BiH Court mainly for offences related to organised crime. The delegation also paid a short visit to the three parallel detention blocks for sentenced prisoners which accommodated 237 male prisoners for a capacity of 300 places as well as to the rest of the facility.

**Bihać Prison**, the only prison establishment in Una-Sana Canton in the north-western part of BiH, is composed of two separate two-storey buildings.<sup>62</sup> At the time of the visit, it accommodated 15 remand prisoners in the six dedicated cells for a capacity of 21 places.<sup>63</sup>

**Mostar Prison** is located in the centre of the city adjacent to the Cantonal Court building. The remand section consists of five cells on the second floor of the detention block and accommodated 13 persons for a capacity of 24 places.<sup>64</sup> The establishment in principle accommodates persons remanded to detention from the judicial authorities of the Cantons of Hercegovina-Neretva, Western Herzegovina and Canton 10. A new prison establishment was under construction in the hamlet of Rodoč-Jasenica south of the city which should come into service by 2023 and in principle should accommodate up to 120 sentenced prisoners.<sup>65</sup>

**Sarajevo Remand Prison** accommodated 107 men and one woman for a capacity of 120 places in the three-storey building adjacent to the Sarajevo Cantonal Court. A new pre-trial detention unit of 200 places was being constructed on Mount Igman where remand prisoners would be accommodated as of 2023.

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<sup>60</sup> See section on remand detention in the 26th General Report on the CPT's Activities (2016)

<sup>61</sup> In particular articles 154 to 161 of the FBiH CCP regulating issues such as the material conditions of detention, regime, contact with the outside world, discipline and judicial supervision during remand detention.

<sup>62</sup> One object was accommodating sentenced and remand prisoners and the second consisted of an admission, release and disciplinary units.

<sup>63</sup> The establishment also accommodated 79 sentenced prisoners for a capacity of 104 places.

<sup>64</sup> The establishment also accommodated 65 prisoners for a capacity of 155 places.

<sup>65</sup> Remand prisoners would supposedly continue to be accommodated in the current facility in the center of Mostar due to the vicinity of the court.

**Zenica Prison** was accommodating 545 persons at the time of the visit for an overall capacity of 813 places;<sup>66</sup> Pavilions II and III for pre-trial detention accommodated 27 remand prisoners (including two females) at the time of the CPT's visit for an overall capacity of 117.<sup>67</sup> The prison establishment had undergone several renovations in recent years and Pavilion III initially intended to accommodate elderly prisoners was reconverted for the purposes of remand detention. The establishment accommodated remand prisoners under the jurisdiction of the courts of the Zenica-Doboj, Central Bosnia and occasionally the Sarajevo Canton.

## 2. III-treatment

52. As it was the case during previous visits, the great majority of remand prisoners interviewed by the delegation at the establishments visited spoke positively about the treatment of custody officers and were complimentary about their professionalism.

That said, the delegation did receive a few allegations of excessive use of force (such as hits with truncheons and slaps) and verbal insults concerning primarily of foreign nationals and Roma at Sarajevo, Zenica and the State Prisons. The incidents in question pertained to prisoners displaying challenging and recalcitrant behaviour or committing acts of self-harm and they had been recorded and documented and the relevant judicial authorities informed. In one case, disciplinary actions had been initiated by the prison management of Zenica Prison against two custodial officers for failing to report an episode of resort to physical force and use of means of restraint on 7 March 2021 in respect of a foreign national.

**The CPT recommends that the BiH authorities ensure that a clear message is delivered to all custodial staff at the FBiH and State level that that excessive use of force, unjustified resort to means of restraint and verbal abuse of inmates, as well as other forms of disrespectful or provocative behaviour vis-à-vis prisoners, are not acceptable and will be dealt with accordingly. Further, every application of the use of force and means of restraint should be fully documented and subject to rigorous oversight by the prison management. The Committee also recommends that every prison officer at the FBiH and State level should be provided with regular training on the use of means of restraint, including manual control techniques and de-escalation skills, to ensure that all interventions to deal with challenging prisoners are managed professionally.**

53. Episodes of inter-prisoner violence and intimidation among remand prisoners were rare at the prison establishments and the staff appeared to intervene promptly. All incidents reviewed were adequately documented and brought to the attention of the relevant judicial authorities and disciplinary action had been initiated against the relevant remand prisoner. This is positive.

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<sup>66</sup> Zenica Prison was at its lowest occupancy ever after the opening of the BiH State Prison and transfer of prisoners under the jurisdiction of the BiH Court. A new Pavillion IX for a capacity of 236 had just been inaugurated a couple of days before the CPT's visit.

<sup>67</sup> Pavilion II consisted of 30 double occupancy cells and Pavilion III of 19 triple-occupancy cells.

### 3. Conditions of detention

#### a. material conditions

54. The 50 cells of the remand block of the State Prison offered very good conditions of detention; the single-occupancy cells (measuring 11 m<sup>2</sup>) were equipped with a bed, table, chair, TV, fully-partitioned sanitary annex, call-bell and intercom, air-conditioning and floor heating. Access to natural light was good as was the artificial lighting and ventilation. Similarly, at Zenica Prison, the 19 triple-occupancy cells of Pavilion III were spacious (19 m<sup>2</sup>), well-lit, in a good state of repair and hygiene and adequately equipped (i.e. TV, laminated flooring, tables and chairs and a call bell). The double-occupancy cells of Pavilion II of Zenica Prison measured some 9m<sup>2</sup> (including a sanitary annexe which was not fully partitioned) and were equipped with a bunk bed, table, chairs, lockers and a TV set. Access to natural light was acceptable but **the artificial lighting was not sufficient to read a book and should be upgraded.**

At Mostar Prison, the cells varied from 8m<sup>2</sup> to 36 m<sup>2</sup> (accommodating from two to six remand prisoners) and were equipped with bunk beds, tables, benches, individual metal lockers, TV, fans and a full-partitioned sanitary annexe with toilet and sink; the cells were in an acceptable state of repair and hygiene and had sufficient lighting and ventilation. The seven multi-occupancy cells of the remand section at Bihać Prison measuring approximately 14m<sup>2</sup> each contained bunk-beds, a table, plastic chairs, personal lockers, a TV and a call-bell, and possesses a fully-partitioned sanitary annex. The state of repair and hygiene, as well as access to natural light and ventilation were satisfactory.

55. The situation at Sarajevo Prison remained the same as described in the report on the 2019 visit and the director's efforts towards ensuring an appropriate state of repair and hygiene of the facility remained visible. The larger multi-occupancy cells,<sup>68</sup> were in an acceptable state of repair and hygiene and generally well lit. The delegation did find that the artificial lighting was malfunctioning in certain cells and some toilets were leaking. Regrettably, the CPT's delegation again found that the smaller cells located on the western side of Sarajevo Prison, measuring 8m<sup>2</sup>, were still accommodating two to three persons and that no measures had been taken to remedy the structural deficiencies outlined in the CPT's report on the 2019 visit such as crumbling walls, non-partitioned sanitary annexes and occasionally decrepit or old and worn mattresses.

**The CPT reiterates its recommendation that the authorities of the FBiH take steps to ensure that the smaller cells located on the western side of the building of Sarajevo Remand Prison are refurbished, the sanitary installation replaced and sanitary annexes fully-partitioned as the current conditions are not adequate in which to accommodate persons. Further, these cells should only be used for accommodating one person.**

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<sup>68</sup> Measuring approximately 24m<sup>2</sup> and accommodating up to six remand prisoners.

b. regime

56. Since the beginning of its activities in BiH, the CPT has emphasised the importance of devising and implementing a comprehensive regime of out-of-cell activities for prisoners held in remand detention notably by ensuring 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).<sup>69</sup> The delegation was disappointed to conclude, once again, that such a regime did not exist in any of the establishments visited.

With respect to outdoor exercise, the delegation was encouraged to see that at the State Prison of BiH 27 remand prisoners were offered approximately five hours of out-of-cell entitlement per day (consisting of two hours of outdoor exercise and two to three hours in a communal room equipped with a TV and small kitchen or alternatively a small gym and computer room).

The majority of remand prisoners at Zenica Prison were offered two hours of outdoor exercise in one of the two spacious courtyards (equipped with table tennis and exercise bars) plus an additional hour in a gym in the afternoon. By contrast, the situation at Sarajevo, Mostar and Bihac Prisons was not good, with persons on remand only offered access to outdoor fresh air for one to two hours per day (the courtyards did not really offer any sport or exercise equipment).

Further, at Mostar Prison the prison management had not yet installed a shelter from the sun or rain as previously recommended by the CPT. Remand prisoners also complained that they were not allowed to use the gym facility located on the ground floor of the prison despite the lower number of sentenced prisoners meaning that there were free time slots for the use of the facility.

**The CPT calls upon the authorities of Bosnia and Herzegovina and the FBiH to improve radically the regime on offer to remand prisoners. The aim should be to ensure that all prisoners are able to spend a reasonable part of the day (i.e. 8 hours) outside their cells, engaged in purposeful activities of a varied nature (group association activities; work, preferably with vocational value; education; sport). The exercise yards should be maintained in an adequate state of repair and cleanliness, and steps taken to install shelters from the rain and sun, a means of rest and basic physical exercise equipment in each yard.**

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

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<sup>69</sup> See in this respect paragraph 58 of the 26<sup>th</sup> General Report on the CPT's Activities CPT/Inf(2017)5.

57. At Sarajevo and Zenica Prisons, the delegation met two women on remand who had each spent prolonged periods in conditions akin to solitary confinement due to the absence of other women prisoners. At Sarajevo Remand Prison, the female prisoner<sup>70</sup> was not offered any compensatory measure in terms of activities, association together or interaction with staff apart from more visual checks by the custodial staff. A similar situation pertained to the one woman held at Zenica Prison<sup>71</sup> and she was additionally distressed by the fact that she had been refused permission to have any contact with her children since her arrest on 20 May 2021 apparently for investigative purposes. Such a state of affairs is totally unacceptable especially when the youngest of her children was only one and a half years old at the time of her arrest.

The CPT understands that Sarajevo and Zenica Prisons were designed for male prisoners to be managed by male staff and that there are no specific rules and regulations to address the particular needs of women prisoners. However, women have particular biological and gender-specific needs that require an alternative prison policy oriented towards their requirements especially when they are forced for contingent reasons to spend prolonged periods of de facto solitary confinement.<sup>72</sup>

**The CPT reiterates its recommendation that the authorities of the FBiH develop a gender-specific approach towards women prisoners in remand detention offering them more meaningful human contact and psychological assistance in order to compensate for the prolonged periods of de facto solitary confinement to which they might be occasionally exposed. Further, specific arrangements need to be put in place to mitigate the effects of any de facto solitary confinement of women on remand, including whether it is absolutely necessary for the purposes of an investigation to prevent a mother from seeing her children. The CPT would like to be informed of the number of women held in remand in Sarajevo and Zenica Prisons on 1 April and 1 June 2022 and the daily regime afforded to them.**

#### 4. Health care services

58. In the course of the 2021 ad hoc visit, the CPT's delegation conducted an assessment of the quality of healthcare provided to remand prisoners and whether the Committee's previous recommendations in relation to admission procedures had been implemented. Progress was minimal and the delegation gained the distinct impression that health-care staff at Sarajevo and Mostar Prisons had not been made familiar with the previous reports of the CPT and that the directors of the prisons, despite their efforts and good will, had not fully understood the implications of the report's recommendations.

More generally, there has been little progress in the field of prison health care, and it is necessary for a new *modus operandi* to be developed between the FBiH Ministries of Justice and Health on issues such as the development of a centralised procurement and distribution system of medicines, a manual for health-care workers in prisons (enabling the harmonisation of treatment and application of uniform records and protocols at all establishments), quality control and inspection of health care facilities in prisons.

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<sup>70</sup> She had been on remand detention for organized crime since April 2019 and in de facto solitary confinement since 16 July 2021.

<sup>71</sup> She had been held in de facto solitary confinement from 21 May 2021 to 9 September 2021 before being accommodated with a newly admitted remand prisoner.

<sup>72</sup> See in particular the thematic factsheet produced by the CPT under the title "Women in Prison".

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

**Further, the Committee trusts that the health care findings and recommendations outlined in this report will be brought to the attention of the prison health-care staff of all prison establishments under the authority of the FBiH Ministry of Justice.**

59. The staffing complements of health-care staff were in generally adequate at all visited establishments. Zenica Prison and the State Prison had a full-time general practitioner, a sufficient complement of nurses<sup>73</sup> as well as dentist and psychiatrist and specialist doctors paying regular visits. At Sarajevo Prison, the staffing levels remained the same as during the 2019 visit: three full-time nurses, one part-time general practitioner (visiting the establishment twice a week) and one part-time psychiatrist (visiting on a weekly basis). At Mostar and Bihać Prisons, the general practitioners, psychiatrists and dentist were visiting the establishments twice and once a week as was respectively, and each establishment had two full-time nurses who also remained on call during weekends.

In terms of health-care facilities, the State Prison's fully equipped infirmary was of a high standard (i.e. ECG machines, oxygen cylinders and masks as well as equipment for basic biochemical blood tests). Further, on a positive note at Sarajevo Prison, a new dental chair had been acquired and two examination rooms renovated, and a door with a transparent glass window installed to permit visual supervision only of medical examinations by custodial staff and a defibrillator had been procured. The resources at Mostar and Bihać Prisons were basic and both prisons lacked a defibrillator and in addition Bihać Prison also lacked an oxygen mask.

**The CPT recommends that the authorities of the FBiH reinforce the health-care staffing at Mostar and Bihać Prison by ensuring the presence of a general practitioner four times per week at regular intervals as well as the recruitment of an additional full-time nurse at each prison. Further, the CPT also recommends that both Mostar and Bihać Prisons be equipped with a defibrillator and Bihać Prison with an oxygen mask in and that staff in both establishments be trained in their use.**

60. At the State Prison, the prison doctor showed a good understanding and sensitivity towards the importance of medical screening of newly admitted prisoners and examinations were performed in principle within one or two days of admission, Examinations consisted of a full anamnestic assessment and physical examination which were conducted in a confidential setting. Injuries were described in detail but there was not always a clear nexus as to their origin and an assessment of their compatibility.

That said, at the remainder of the establishments visited, the situation had not evolved since previous visits. Health-care staff at Mostar, Sarajevo and Zenica Prisons did not conduct prompt and thorough examinations of prisoners upon admission and they were not diligent in describing and recording traumatic injuries observed on newly admitted prisoners. No registers of traumatic injuries were in use, no photographs of injuries undertaken and medical files of prisoners (including those admitted with a medical certificate from a civil hospital indicating injuries in general terms) contained a standard phrase indicating that the person in question "*had not been ill-treated by the police*".

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<sup>73</sup> There were 14 full-time nurses at Zenica Prison and eight at the State Prison caring for the need of the entire prison population.

Further, the health-care staff in all the prisons visited were not aware of their reporting obligations to the competent judicial and prosecutorial authorities in cases where injuries were detected on new arrivals to prison.<sup>74</sup> Further, there was no screening for sexual abuse or other forms of gender-based violence for female prisoners newly admitted to prison.

**The CPT reiterates its recommendation that steps be taken to ensure that the prison medical services at Bihać, Mostar, Sarajevo and Zenica Prisons, as well as other prison medical services in the rest of the FBiH, fully play their role in preventing ill-treatment, by ensuring that:**

- **the doctors in prisons 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;**
- **a register on traumatic injuries observed on prisoners is introduced at all prison establishments of the FBiH.**

**Further, the results of the medical examination should be made available to the detained person and upon request to his/her lawyer. Finally, the medical examination of female prisoners upon admission should include screening for sexual abuse or other forms of gender-based violence inflicted prior to entry to prison.<sup>75</sup>**

61. As regards the confidentiality of medical examinations upon admission, in addition to the State Prison where such a requirement was fully respected, some improvement was noted at Sarajevo Prison following the installation of an opaque glass screen on the door of the infirmary. At Bihać, Mostar and Zenica Prisons medical examinations continued to be systematically performed in the presence of custodial staff. In particular, at these prisons, the delegation found that the duty nurses were attending the initial search of newly admitted prisoners by custodial staff and filling in a basic questionnaire on health-care parameters in front of security staff.

**The CPT reiterates its recommendation that the confidentiality of medical examinations be respected in all prisons.**

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<sup>74</sup> See in particular paragraphs 73 to 84 of the 23th General Report on the CPT's activities CPT/Inf (2013) 29.

<sup>75</sup> See for example Rule 6 of United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/RES/65/229 of 16 March 2011.

62. There was still no testing for transmissible diseases available at any of the prisons visited due to the lack of financial resources or simply lack of understanding.<sup>76</sup> The delegation was told that, in the case of serious doubt or concern raised, persons on remand would be referred to an external ambulatory to test for hepatitis, HIV or tuberculosis. Interferon-based treatment for HCV could be in principle be continued after imprisonment but could not be initiated in prison. **The CPT recommends that systematic screening for tuberculosis, voluntary counselling and testing on the blood borne infections HIV and hepatitis B/C should be offered at all prisons in the FBiH. Further, uniform availability of treatment for hepatitis C and antiretroviral treatment for HIV should be offered at all prison establishments.**

63. The information gathered by the CPT's delegation indicates that the BiH authorities adopted an appropriate response to the Covid-19 pandemic at the prison establishments visited taking timely preventive measures and reacting promptly whenever cases were detected upon admission to prison.<sup>77</sup>

Further, the CPT's delegation took positive note of the efforts being made to vaccinate sentenced persons and staff working in places of detention against the Covid-19 virus both during its visits as well as in the light of the information provided by the BiH authorities in relation to the entire penitentiary system.<sup>78</sup> That said, the vaccination of remand prisoners against Covid-19 was not possible to be carried out without the prior agreement of the relevant investigative judge.

**The Committee considers that in the context of the vaccination programmes against the Covid-19 virus the basic principle must be to take all possible action to protect the health and safety of all persons deprived of their liberty. Taking such action also contributes to preserving the health and safety of staff. Therefore, there is no justification for imposing restrictions and requiring prior approval by the judicial authorities in the context of the vaccination policy of remand prisoners. The CPT reiterates its recommendation that the involvement of courts in health-care matters of remand prisoners be brought to an end.**

64. The pharmacies were generally adequately equipped with medicines and the distribution of medication was performed by nurses, except at weekends at Bihac and Mostar Prisons where it was performed by custodial staff. That said, the Director of Mostar Prison told the delegation that due to financial shortages in the respective budget line, the prison management had been compelled on several occasions to purchase medication (such as insulin and anti-tetanus vaccine) in nearby Croatia with personal funds of staff or had to request families to fund medication for remand prisoners. **The CPT recommends that the authorities of FBiH verify that all prisoners are guaranteed the provision of the medication required by their state of health; this implies that the funds allocated to prisons should be sufficient to enable medication to be provided free-of-charge to prisoners.**

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<sup>76</sup> At the State Prison, testing for transmissible diseases upon admission had just been terminated in the course of June 2021 due to financial constraints.

<sup>77</sup> In principle remand prisoners upon admission to prison were subject to an antigenic test and a subsequent PCR test in case of suspicious infection following a period of 10 to 14 days of quarantine in case of detected infection before being accommodated in the relevant section.

<sup>78</sup> For example, at the State Prison 95 percent of staff and sentenced prisoners had been vaccinated against Covid-19.

65. Once again, the CPT's delegation found that there was no coherent approach towards remand prisoners identified as having a drug-related problem. At the State Prison, persons on remand could start an opioid agonist treatment (OAT) after admission without restriction. At Sarajevo and Zenica Prisons, the possibility for inmates to start drug OAT was granted to those persons who were enrolled in such a programme with the health-care authorities prior to their imprisonment and the possibility was offered to initiate the treatment following the approval of the competent Cantonal institute for the treatment of addictions. On the other hand, at Mostar and Bihać Prisons, persons on OAT at the time of their imprisonment had their treatment discontinued. Withdrawal crisis on admission to prison was treated by benzodiazepines, antipsychotics and in some cases non-steroidal anti-inflammatory drugs (i.e. *diclofenac* in the forms of suppositories or intra-muscular injections).

According to the medical files, persons whose OAT had been discontinued upon admission, often resorted to obtaining opioids, including buprenorphine, from the prison's black market, and as a consequence had had all their medication taken away if they produced a positive urine test. Opioid use disorder is a recognized disease requiring therapeutic interventions and such a punitive approach should be discontinued. There is strong evidence that OAT leads to reduction or cessation of opioid use and can allow for patients to reach sustained long-term remission. By contrast, involuntary discontinuation of OAT decreases likelihood of abstinence from illicit opioids.

The 2018-2023 National Strategy of Monitoring of Narcotics, Prevention and Elimination of Drug Abuse<sup>79</sup> adopted by the Parliamentary Assembly of Bosnia and Herzegovina in 2017 envisages that the treatment of inmates with substance use disorders should be provided according to the principle of equivalence of care through the provision of opioid substitution treatment from the period of remand detention as well as that harm reduction measures should be available to all persons in prison. Persons with substance use disorders at Mostar Prison were still not treated in line with the National Strategy or good clinical practice.

Providing support to persons who have drug-related problems is far from straightforward, particularly in a prison setting. The approach towards substance use in prison should be part of a national drugs strategy, and should have, *inter alia*, as its goals:

- decreasing the supply of drugs into prisons
- provision of medical and non-medical interventions (i.e. psycho-social and educational programmes)
- provision of OAT to opioid-dependent prisoners at any stage of their imprisonment and other harm reduction measures
- ensuring there is appropriate throughcare
- developing standards, monitoring and research on drug issues
- provision of staff training and development.

**The CPT recommends that the FBiH authorities to urgently reconsider their approach towards the assistance offered to inmates with substance use disorders in the light of the above remarks.**

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<sup>79</sup> Available at: <http://www.msb.gov.ba/PDF/bosStrategija%20droge%20BiH%202018-2023.pdf>.

66. It is also disappointing that some basic questions concerning medical ethics have not yet been resolved satisfactorily. For example, at all prison establishments health-care staff continued to issue fit-for-punishment certificates for prisoners serving a disciplinary sanction of solitary confinement following a mandatory medical examination prior to the serving of the measure (see Article 98 of the Law on the Execution of Criminal Sanctions (LECS) of the FBiH). Further, health-care staff were also issuing certificates confirming the absence of contra-indications for the placement of prisoners in the so-called rubber room. Further, at Mostar Prison requests by remand prisoners to see a doctor still had to be addressed to, and triaged by, custodial staff.

In the CPT's view, a prison doctor acts as a patient's personal doctor. Consequently, in the interests of safeguarding the doctor/patient relationship, he/she should not be asked to certify that a prisoner is fit to undergo punishment. Nor should he/she carry out any body searches or examinations requested by an authority, except in an emergency situation when no other doctor can be called in.

**The CPT reiterates its recommendation that the FBiH and State authorities amend their legislation accordingly and pending the amendment issue clear instructions to all prisons about the role and function of health-care staff, taking into account the above remarks. The Committee also considers that remand prisoners should be able to approach the health-care service on a confidential basis, for example, by means of a request form placed in a sealed envelope or directly to a nurse. Further, prison officers should not seek to screen requests to consult a doctor. The CPT recommends that the system of requests to consult the health-care service at Mostar Prison be reviewed accordingly.**

## 5. Other issues

### a. prison staff

67. The shortages of custodial officers remained at similar levels to those observed during previous visits, with vacancy rates of 40 % at Sarajevo (102 of 143 posts filled) and Mostar Prisons (40 out of 56 posts filled) and a 30 % vacancy rate at Bihać Prison (67 out of 104 posts filled). At the State Prison, the complement of custodial officers stood at 130 for 200 budgeted posts.

**The CPT recommends that the FBiH Ministry of Justice act to fill custodial officer positions in the prison establishments under its jurisdiction, ensuring that the number of prison officers employed is sufficient to guarantee staff safety and the physical and mental integrity of all prisoners. Such action must be taken prior to the entry into service of the new Mostar and Sarajevo Prisons.**

68. As mentioned above, induction training of prison staff continues to be left in the hands of external actors and international partners, and there was still no training facility within the country.<sup>80</sup> Further, it appears that prison staff was in need of more training activities focussed on manual control and inter-personal skills especially in respect of foreign nationals whose number was increasing within the system.

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<sup>80</sup> The majority of prison guards at the State Prison consisted of new recruits who had received a three-week induction training provided through the services of international consultants.

**The CPT reiterates its recommendation that the authorities of FBiH, in concert with the authorities of the RS, put in place a comprehensive human resources policy for prison staff in both Entities, which comprises initial training, regular refresher and specialist courses and on-going support. Further, special attention should be given to modules related to manual control techniques and inter-personal skills and cross-cultural communication as well as the management of challenging prisoners.**

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

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

b. contact with the outside world

70. The visit entitlements of remand prisoners at the FBiH and State level remained the same as during previous visits and amounted to a weekly visit of 15 minutes with a close relative. The competent judicial authorities retain the right to increase the visit and telephone entitlements after a person is indicted. That said, every single visit remained subject to judicial authorisation which posed an excessive administrative burden on prison staff. Further, at the State Prison, visits were suspended at the time of the CPT’s visit due to the Covid-19 pandemic and arrangements were in place to provide prisoners with the possibility of making video-calls as a compensatory measure for the suspended visits.

At the State Prison, the visiting facilities for remand prisoners consisted of a room with tables and chairs permitting physical contact. That said, at Bihać Mostar and Sarajevo Prisons, all visits still took place in rooms equipped with a glass screen up to the ceiling separating the prisoner from any visitors. Further, at Sarajevo Prison an additional metal grille had been placed in front of the glass screen.

71. The telephone entitlement of one call of five minutes per day was respected in practice but there were no arrangements in place for foreign national prisoners to make international calls nor for free of charge calls for indigent prisoners. The CPT considers that it would be desirable to offer foreign national prisoners the possibility to maintain contact with their families abroad through using Voice over Internet Protocol (VoIP).

**The CPT recommends that all prisoners, as a rule and irrespective of their regime level and classification, be offered the equivalent of one hour of visiting time per week and preferably be able to receive one visit per week. Only in exceptional cases should an investigative judge place a restriction on visits to a remand prisoner. Further, the metal grilles placed in front of the glass screens in the visiting facilities of Sarajevo Prison should be removed as a matter of urgency. Moreover, remand prisoners should have open visits unless there are specific security reasons for not doing so.**

**Further, the CPT recommends that the authorities of Bosnia and Herzegovina consider introducing the use of VoIP communication for foreign national prisoners to maintain contact with their families abroad as well as the possibility for free of charge telephone calls for indigent prisoners.**

**Finally, any restrictions on contact with the outside world, including visits, should always be compensated for by increased access to alternative means of communication (such as telephone or VoIP communication).<sup>81</sup> The CPT encourages the BiH authorities to maintain and further develop the possibility of making VoIP calls for prisoners.**

c. discipline

72. The delegation noted that there was no excessive resort to disciplinary sanctions for persons on remand at the establishments visited.<sup>82</sup> Remand prisoners were informed in writing of the initiation of proceedings and the sanction was imposed by the relevant judicial authority as per the relevant legislation in principle within a reasonable delay of one month. The delegation was pleased to note that at the State of BiH level the Court of BiH had finally delegated the management of disciplinary proceedings to the prison management. The Committee welcomes such development.

The most common disciplinary proceeding consisted of a reprimand, but it was not uncommon that the sanction consisted in the suspension of visiting entitlements for periods of up to one month as provided for in the relevant CCP.<sup>83</sup> The Committee recalls, once again, that restrictions on family contact in the context of a disciplinary offence should be imposed only where the offence relates to such contact and should never amount to a total prohibition of contact.<sup>84</sup> Sanctions of solitary confinement of up to ten days were rarely imposed<sup>85</sup> and were being served in one of the dedicated cells at Sarajevo Prison or in the disciplinary unit of the State Prison.<sup>86</sup>

**The CPT reiterates its recommendation that the competence of imposing disciplinary sanctions against remand prisoners be transferred from the judiciary to the relevant prison management as it is the case at the State level. In this respect, the relevant provisions of the**

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<sup>81</sup> See in particular the “Statement of principles related to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic” issued by the CPT on 20 March 2020.

<sup>82</sup> For example, at Sarajevo Prison, 25 disciplinary proceedings had been initiated since the beginning of 2019 and 11 disciplinary sanctions had been imposed in respect of remand prisoners.

<sup>83</sup> I.e. pursuant to Article 159, paragraph 1 of the CCP.

<sup>84</sup> See also Rule 60.4 of the European Prison Rules (2020) “Punishment shall not include a total prohibition on family contact”.

<sup>85</sup> For example, at Sarajevo Prison a sanction of solitary confinement of a remand prisoner had been imposed in two instances since the beginning of 2020.

<sup>86</sup> At Mostar and Bihać Prisons no disciplinary sanction of solitary confinement in respect of remand prisoners had been executed in recent years.

**CCP of the FBiH should be amended accordingly. Further, it recommends that the authorities of the FBiH no longer suspend the right to visits for inmates as a disciplinary punishment, in the light of the above remarks.<sup>87</sup>**

*d. security measures/use of means of restraint*

73. Article 72 of the Rulebook on the House Rules in the Establishments for the Enforcement of Remand Detention in the FBiH provide for resort to the security measure of segregation in a cell in cases of a disturbance of the public order of the establishment. The measure should last for the minimum period of time necessary to reduce the security risks and the director of the establishment and the competent judge should be immediately informed.<sup>88</sup> In the course of the 2021 visit, the delegation interviewed persons on remand who had been subjected to segregation measures for reasons of public order at Sarajevo and Zenica Prisons and at the State Prison. The enforcement of the security measure appeared to be proportionate and adequately documented<sup>89</sup> and in each case was brought to the attention of the judicial authorities and the relevant Ministry of Justice.

74. At Zenica Prison, the delegation met a Turkish citizen who had spent more than eight months<sup>90</sup> of remand detention in de facto solitary confinement due to an isolation measure that had been imposed on him by the competent judge of preliminary proceedings for investigative purposes.<sup>91</sup> The person in question was offered one hour of outdoor exercise alone every day and was receiving sporadic psychological assistance. Further, he was visited by the President of the Zenica Cantonal Court on a monthly basis. That said, he complained about the lack of human contact and the impossibility to share his cell with another prisoner.

The CPT considers that the resort to solitary confinement of persons on remand for investigation purposes should be limited to the strict minimum necessary and that there should be a rigorous supervision of their application. Moreover, the longer the measure is imposed on a prisoner in remand custody, the more rigorous should be the tests as to whether such a measure remains necessary and proportionate. **The Committee would like to receive information on the individual justification of the imposition of solitary confinement on the Turkish citizen at Zenica Prison, the possibility to appeal against the court decision in question as well as the periodic review by the court on the necessity to impose such restriction.**

**Further, given the very harmful effects a solitary confinement regime can have on the prisoner concerned, the CPT recommends that specific arrangements be put in place to mitigate the effects of any court-imposed solitary confinement of a remand prisoner for investigative purposes. These arrangements should consist of a structured programme of purposeful and preferably out-of-cell activities as well as meaningful human contact for at least two hours every day and preferably more, with staff (including psychologists).**

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<sup>87</sup> I.e. Article 159, paragraph 1 of the CCP.

<sup>88</sup> The competent judge must endorse the prolongation of the segregation measure beyond 24 hours.

<sup>89</sup> The relevant reports contained incident reports, statements of prison staff, written testimonies of witnesses and the relevant medical documentation.

<sup>90</sup> He had been admitted at Zenica Prison on 16 January 2021.

<sup>91</sup> The remand prisoner in question was suspected of a double murder.

*e.* inspection procedures

75. Under the legislation,<sup>92</sup> Presidents of the relevant Cantonal and Municipal and BiH State Court are under the obligation to pay regular visits every 15 days to remand prisoners and to meet them in private as well as to assess with a remark the relevant pre-trial detention unit. The delegation was able to consult the relevant dedicated registers at all visited establishments and ascertain that with the exception of Zenica Prison visits of judicial authorities had stopped at the beginning of the pandemic.

The Ombudsman office had also suspended its visits since the beginning of the pandemic. The relevant independent Parliamentary Commission on the Monitoring of Conditions of Detention, Treatment and Respect of Human Rights in Prison Establishments under the authority of the Court of BiH” of the BiH Assembly had paid a visit to the State Prison in July 2020. That said from the report it had produced it was clear that its members had only reviewed written documentation and personal files of inmates and had not spoken with prisoners in private.

The CPT attaches particular importance to regular visits to all prison establishments by a supervisory judge with authority to receive - and, if necessary, take action on - prisoners' complaints and to visit the premises.<sup>93</sup> **The Committee encourages the BiH authorities and the HJPC to reiterate to all Presidents of the Cantonal Courts the importance of their supervisory role in the light of the relevant provisions of the CCP and to resume as soon as possible their visits to the remand sections of Sarajevo, Mostar, Bihać and the State Prison.**

**Similarly, the Committee would like to be informed about the plans of the Ombudsman office to resume its visits to prison establishments and in particular remand prisoners. Finally, the Committee requests information on the methodology of inspection and monitoring of prison establishments by the Parliamentary Commission of the BiH Assembly.**

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<sup>92</sup> Pursuant to Article 201 of the CCP of FBiH and the corresponding article in the CCPs of RS and BiH.

<sup>93</sup> See in this respect point 10 of the CPT’s “Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic” CPT/Inf 2020(13).