



Report

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

from 14 to 17 December 2004

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 (2016) 3.

Strasbourg, 23 February 2016

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Copy of the letter transmitting the CPT's report

Strasbourg, 24 March 2005

Dear Ms Sidran-Beslagić,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I enclose herewith the report to the Government of Bosnia and Herzegovina drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to Bosnia and Herzegovina from 14 to 17 December 2004. The report was adopted by the CPT at its 56th meeting, held from 7 to 11 March 2005.

I would like to draw your attention in particular to paragraph 30 of the report, in which the CPT requests the authorities of Bosnia and Herzegovina to provide within **three months** a response containing an account of action taken to implement the Committee's recommendations and setting out their reactions to its comments and requests for information. The CPT would ask, in the event of the response being forwarded in one of the official languages of Bosnia and Herzegovina, that it be accompanied by an English or French translation. It would also be most helpful if the authorities of Bosnia and Herzegovina could provide a copy of the responses in a computer-readable form.

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

Yours sincerely,

Silvia CASALE
President of the European Committee for the
prevention of torture and inhuman
or degrading treatment or punishment

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I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Bosnia and Herzegovina¹ from 14 to 17 December 2004. The visit was one which appeared to the CPT "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention), and was the second visit to Bosnia and Herzegovina to be carried out by the Committee.²

The visit was essentially of a follow-up nature, its main purpose being to re-examine the situation in certain psychiatric establishments, which were found to display major deficiencies when the Committee first visited them in the Spring of 2003. The delegation also had a general dialogue with the authorities of Bosnia and Herzegovina and with representatives of international organisations regarding the implementation of the CPT's recommendations; in this context, the principal points made by the delegation were confirmed in a letter dated 21 February 2005 from the President of the CPT to the national authorities.

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

- Renate KICKER (Head of delegation)
- Pétur HAUSSON.

They were supported by Bojana URUMOVA of the CPT's Secretariat and assisted by

- Clive MEUX, Consultant Forensic Psychiatrist, Oxford, United Kingdom (expert)
- Spomenka BEUS (interpreter)
- Ksenija Keivanzadeh (interpreter)
- Amira SADIKOVIĆ (interpreter).

¹ Bosnia and Herzegovina comprises two constituent entities - the Federation of Bosnia and Herzegovina and Republika Srpska - and an autonomous district, Brčko.

² The first visit to Bosnia and Herzegovina, which was of a periodic nature, took place from 27 April to 9 May 2003. The visit report and the response of the Government were published on 21 December 2004 (documents CPT/Inf (2004) 40 and 41).

B. Establishments visited

3. The delegation visited the following psychiatric establishments:

- Jakeš Institution for the Treatment, Rehabilitation and Social Protection of chronic mental patients, Modriča
- Sokolac Psychiatric Hospital.

C. Cooperation between the CPT and the authorities of Bosnia and Herzegovina

4. The cooperation received from the authorities during the visit was very good.

The CPT's delegation met representatives of the competent Ministries of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and Republika Srpska, including Marin KVATERNIK, Minister of Health of Republika Srpska, as well as officials responsible for psychiatric hospitals, prisons, police establishments, and finance and treasury. The delegation also held consultations with representatives of international organisations. A list of the authorities and organisations with which the delegation held consultations is set out in the Appendix to this report.

Cooperation from management and staff at both of the psychiatric establishments visited was also very good.

5. In respect of more substantive aspects of cooperation, the CPT notes the positive measures which have been taken by the relevant authorities in response to the previous visit report; in particular, the delegation observed a number of improvements made in accordance with the Committee's recommendations at Jakeš Institution, despite limited resources. In contrast, only minimal changes had taken place at Sokolac Psychiatric Hospital; the vast majority of the CPT's recommendations concerning that establishment had not been met.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

1. Preliminary remarks

6. **Jakeš Institution** and **Sokolac Psychiatric Hospital**, both of which are located in Republika Srpska, have been described in some detail in the report on the CPT's 2003 visit.³ In the course of the December 2004 visit, the CPT's delegation re-examined the "locked" acute wards at both establishments,⁴ as well as the Forensic Psychiatric Unit (FPU) at Sokolac Psychiatric Hospital; it may be recalled that the FPU comprises two wards, one "locked" (high security) and the other "open" (low security).

On 14 December 2004, Jakeš Institution was accommodating 21 patients in the male acute ward and 15 in the female acute ward. At Sokolac Psychiatric Hospital, the number of patients registered in the male acute ward on 15 December 2004 was 15, and there were 88 male patients in the FPU (26 of whom were placed in the locked ward).

7. At the outset of the visit to Sokolac Psychiatric Hospital, the Hospital Director made reference to certain budgetary insufficiencies which were to the detriment of both patients and staff; for example, her request for funds to repair certain facilities had been rejected by the Ministry of Finance of Republika Srpska.⁵ The funding per patient was less for forensic patients than for general psychiatric patients, which was considered to be inappropriate; as regards the funding for the general psychiatric patients, it did not adequately reflect the actual number of patients. Another unresolved problem was the absence of an inter-entity funding agreement, which meant that the hospital did not receive resources for patients from the Federation of Bosnia and Herzegovina. **The CPT would like to receive the comments of the relevant authorities on the foregoing issues.**

The Committee has noted with interest the "Report on the inspection of the forensic unit of Sokolac Psychiatric Hospital" prepared by the Ministry of Justice of Republika Srpska,⁶ in which a number of shortcomings of the FPU are pointed out, and recommendations made to address the situation. **The CPT would like to be informed of the action taken upon those recommendations.**

³ Cf. paragraphs 116 to 163 of CPT/Inf (2004) 40.

⁴ At Sokolac Psychiatric Hospital, the delegation concentrated primarily on the male acute ward.

⁵ Cf. also page 32 of CPT/Inf (2004) 41.

⁶ The report (dated October 2004) is based on a visit by two inspectors from the Ministry of Justice of Republika Srpska to Sokolac Psychiatric Hospital FPU which took place on 22 September 2004.

2. Ill-treatment

8. The delegation received no allegations of ill-treatment of patients by staff at **Jakeš Institution**.

In contrast, at **Sokolac Psychiatric Hospital**, certain allegations were heard to the effect that, following attempts to escape from the FPU locked ward, patients were handcuffed for prolonged periods - sometimes for several days - including being continuously handcuffed to another patient throughout the day, and to their bed at night.⁷ There were also accounts of patients being struck punitively (following such escape attempts) on their outstretched hands with a baton by certain security guards. Apart from being totally unacceptable, such behaviour undermines the efforts of the forensic psychiatrist to create a therapeutic environment.

The CPT recommends that the clear message that ill-treatment will not be tolerated be reiterated at Sokolac Psychiatric Hospital. Any allegations of ill-treatment by security guards should be properly investigated, and perpetrators of such treatment should be subject to appropriate sanctions.

9. A serious incident had taken place on the male acute ward at Jakeš Institution in July 2004, involving a male patient who had set his mattress on fire, thereby causing second-degree burns to another patient on 15 % of his body. Nevertheless, the general risk of violence between patients had been reduced, apparently due to an improvement in the monitoring of patients on the wards, achieved by fitting the ward doors with windows, installing a video surveillance system, and some reinforcement of staffing levels within the areas concerned. As for Sokolac, although there were no further reports of serious violence between patients since the 2003 visit, the authorities have indicated that present staffing levels make it "impossible to continuously secure adequate surveillance of the patients" in the FPU⁸, and a number of patients interviewed by the delegation appeared to be fearful for their safety.

The introduction of video surveillance at Jakeš is certainly a welcome development, and should be supplemented with an appropriate alarm system⁹ to enable patients and staff on the wards concerned to summon assistance; **the CPT recommends that such a system be installed in the relevant wards in both establishments.** However, as a general principle, there is no substitute for adequate numbers of ward-based nursing staff. **The CPT recommends that sustained efforts be made, at both establishments, to ensure that there are nursing staff present within the respective wards at all times** (cf. in this regard paragraphs 15 and 16 below).

⁷ Cf. in this regard paragraph 20 below.

⁸ Cf. pages 30 to 31 of CPT/Inf (2004) 41.

⁹ The relevant wards at Sokolac Psychiatric Hospital also lacked an alarm system, although staff could use the telephone to summon assistance.

3. Living conditions

10. In **Jakeš Institution**, certain improvements had brought living conditions closer to meeting the requirement of providing a safe and decent material environment for patients and staff. For one, there was a significant reduction of overcrowding, due to the departure of some 80 women with learning disabilities, who had been placed in Jakeš during the 1992-1995 conflict;¹⁰ this had also lifted a significant financial burden from the institution. In general, the acute wards were cleaner, patients had better bedding, and a television set had been provided to female patients.

Nevertheless, certain shortcomings remained; for example, the décor on the wards continued to be sparse, occupancy levels remained somewhat high, patients still had no lockable personal storage space, and a secure exercise area had yet to be found for those patients who were prohibited from leaving the wards unescorted. The delegation was informed of certain measures envisaged to address some of these issues, e.g. painting of murals in the wards and the delivery of new dining furniture. **The CPT recommends that the initiatives for further improvements to the living conditions at Jakeš Institution be given full support, in the light of the foregoing remarks.**

11. The CPT is greatly concerned by the fact that only minimal changes have taken place at **Sokolac Psychiatric Hospital** since the previous visit. For example, although the male acute ward was less crowded¹¹ and each patient was guaranteed a bed, the living conditions remained totally unacceptable, and could be considered as inhuman and degrading. The living environment was particularly stark and dirty. Some of the windows in the empty "day room" were devoid of glass, letting in the cold; more generally, the daytime temperature measured inside the ward barely surpassed 13° Celsius. Windowpanes were also missing in the sanitary area, which - moreover - remained in a bad state of repair and hygiene, as well as lacking artificial lighting. There was still no secure outdoor exercise area, which meant that a number of patients could be deprived of this activity, if they could not be adequately escorted outside.

Conditions in the locked ward of the Forensic Psychiatric Unit remained poor; in fact, the situation in the FPU had deteriorated since the 2003 visit. Levels of natural light and perimeter security were still unsatisfactory, and the increase in the number of patients combined with the total lack of renovations had resulted in an even greater degree of dilapidation. In addition, a sewage drain leaking into the centre of the ward, next to the dining room, created a serious hazard and exacerbated the already wretched environment.

As for the hospital refectory, which was used by over 100 patients, it continued to pose a serious danger due to its structural instability. Many of the delegation's interlocutors expressed concern that the roof would collapse under a heavy snowfall, possibly with many patient casualties.

¹⁰ Cf. paragraph 118 of CPT/Inf (2004) 40.

¹¹ This reflected a reduction of patients in the hospital as a whole.

12. At its end-of-visit talks, the delegation strongly urged the authorities to secure funding for the year 2005, to fully implement the recommendations set out in the report on the CPT's 2003 visit concerning the material improvements required in the relevant areas of Sokolac Psychiatric Hospital. The delegation requested the relevant authorities to provide information as soon as possible as to whether such funding has been allocated. This request was confirmed in a letter dated 11 January addressed by the Executive Secretary of the CPT to the authorities of Bosnia and Herzegovina.

13. The CPT would like to receive confirmation that the necessary steps have been taken, in order to implement the following recommendations in respect of the Forensic Psychiatric Unit, the Male Acute Ward, and the refectory at Sokolac Psychiatric Hospital:

- **maintain occupancy levels in the dormitories at an acceptable standard (at least 4 m² living space to be provided for each patient);**
- **immediately offer all patients accommodated in locked units, health permitting, at least one hour a day of outdoor exercise in a reasonably spacious setting, which should also offer shelter from inclement weather;**
- **ensure adequate temperature (through heating and window repair) and lighting;**
- **offer better conditions, in particular as regards space and decoration, in the day-rooms of the respective locked units;**
- **equip the FPU locked ward with a television set;**
- **give particular attention to the decoration of patients' accommodation;**
- **take immediate measures to ensure that the physical safety of patients taking their meals is fully guaranteed, either by repairing or replacing the existing refectory;**
- **maintain an adequate level of hygiene in all parts of the wards, including in the sanitary facilities.**

The CPT wishes to receive details of the specific action that will be taken concerning the above, with a corresponding timescale, including how any shortfall in the funding required is to be addressed, e.g. via international assistance.

As a further step, the CPT invites the authorities to renovate the unused part of the Forensic Psychiatric Unit, with a view to setting up, for example, workshops aimed at offering occupational activities to patients held in the locked ward and to reducing the level of overcrowding in the Unit's dormitories.

14. With regard to patients in the relevant wards at both Jakeš Institution and Sokolac Psychiatric Hospital, **the CPT recommends that they be provided with personal lockable space in which they can keep their belongings.**

4. Staff and treatment

15. Since the 2003 visit, staffing levels at **Jakeš Institution** had been reinforced by two new doctors, and there was now a doctor on call on a 24-hour basis. These are certainly steps in the right direction, and the momentum must not be lost. With a view to further reinforcement of the establishment's health care team, **the CPT recommends that the authorities support existing proposals for the recruitment of two more psychiatrists at Jakeš Institution. The number of nurses and other staff involved in patient care should also be increased.**

16. Although there had been general staffing reinforcements within **Sokolac Psychiatric Hospital**, this did not significantly alter the situation on the wards visited. At the male acute ward, there were two new nurses, though apparently this did not constitute an actual increase in posts; moreover, there was only one doctor, whereas previously there had been two. As for the FPU, staffing was still very limited, with 88 patients being cared for by one psychiatrist, one or two nurses, and two guards. Apparently, recent arrangements to increase input from a general practitioner and other clinical disciplines were not being sustained. Further, staffing levels were not being maintained during certain periods (e.g. holidays).

Given the current situation, one can reasonably expect that staff stress and disharmony throughout Sokolac Psychiatric Hospital will only intensify, thereby adversely affecting patient care. It is imperative that immediate attention be given - and the necessary funds allocated - to address the above-mentioned problems.

The CPT recommends that staffing at Sokolac Psychiatric Hospital be reinforced, in the light of the foregoing remarks, with the following measures to be implemented as a matter of urgency at the Forensic Psychiatric Unit:

- **an increase in the psychiatric input;**
- **reinstatement of a general practitioner;**
- **an increase in the number of nurses;**
- **maintenance of appropriate staffing levels at all times.**

Further, in the light of the information gathered during the visit, **the CPT recommends that there be a substantial increase in multidisciplinary clinical input.**

17. Working with mentally ill persons will always be a difficult task for all categories of staff involved. Bearing in mind the challenging nature of their work, it is of crucial importance that staff assigned to security-related tasks in a psychiatric hospital be carefully selected and that they receive appropriate training before taking up their duties as well as in-service courses. Further, during the performance of their tasks, they should be closely supervised by - and subject to the authority of - qualified health-care staff. **The CPT recommends that appropriate steps be taken to ensure that the foregoing precepts are strictly observed in practice.**

18. As regards treatment, there had been an increase in psychosocial therapy at Sokolac Psychiatric Hospital, which had been of positive benefit to patients on the male acute ward. Nevertheless, there was still considerable room for improvement in this area at both establishments, especially in terms of occupational therapy. For many patients, pharmacotherapy continued to be the sole form of treatment applied.

At the male acute ward in Sokolac, individual treatment plans were not in evidence in the records examined. Further, patients regularly spent 23 hours a day inside the locked ward within the FPU and, when outdoor exercise was not offered, they remained on the ward around the clock; occupational therapy was only offered to them for less than an hour per fortnight. Given the absence of any structured treatment programme, their main diversion was watching television on a small set provided by a patient's relatives.

To sum up, the visit clearly showed that there must be further progress towards satisfactory levels of care. In most respects, the specific recommendations on these issues made in the previous report continue to be valid (cf. paragraphs 139 to 147 of CPT/Inf (2004) 40). **The CPT calls upon the relevant authorities to review those recommendations and ensure that they are systematically followed at Jakeš Institution and Sokolac Psychiatric Hospital.**

5. Restraint of agitated or violent patients

19. It is positive that the new Law on the Protection of Persons with Mental Disorders¹² contains provisions related to the restraint of patients;¹³ moreover, Jakeš Institution had a written policy on the subject.¹⁴ The CPT does have misgivings, however, regarding the fact that the relevant provisions in the above-mentioned law refer primarily to the use of "physical force" (*fizička sila*) vis-à-vis patients; it is preferable to use the phrase "physical restraint" (*fizičko obuzdavanje*), as in Section 49 of the law, or "restriction" (*ograničenje*), which is the term used in the written policy at Jakeš. Consequently, **it would be advisable to issue appropriate interpretive instructions pertaining to the Law on the Protection of Persons with Mental Disorders (Republika Srpska), in the light of the foregoing remarks.**

¹² The law entered into force on 29 May 2004. Cf. also paragraph 27 below.

¹³ Cf. Sections 47 to 51 of the 2004 Law on the Protection of Persons with Mental Disorders (Republika Srpska).

¹⁴ The policy applicable at Jakeš Institution, i.e. the "Regulation on the restriction/isolation of agitated patients," provides that restriction may take place only when "medication, psychotherapy, and social intervention are insufficient" (cf. Section 1 of the Regulation).

In other respects, the guidance provided by the law on this subject broadly conforms to the CPT's standards, as does the Jakeš policy. For example, the relevant instruments stipulate that: patients should be warned prior to the application of a particular measure;¹⁵ resort to physical restraint must always be either expressly ordered by a doctor or immediately brought to the attention of a doctor with a view to seeking his or her approval;¹⁶ there are strict time limits¹⁷ and recording requirements;¹⁸ etc.

Sokolac Psychiatric Hospital did not appear to have its own written policy on the restraint of violent or agitated patients. In this context, the delegation was informed that a revision of the House Rules of the FPU had been recommended;¹⁹ **the CPT requests the relevant authorities to confirm that the Rules have been revised and, if so, to provide it with a copy of the new Rules.**

20. Staff at Sokolac Psychiatric Hospital still had to resort to the use of handcuffs on the occasions when it becomes necessary to restrain a patient, given that no proper straps were available for this purpose. As was emphasised in the report on its previous visit,²⁰ the use of handcuffs in a psychiatric establishment is unacceptable and should be discontinued immediately; if necessary, soft restraints, leather straps or other clinically-approved equipment should be made available. **The CPT would like to receive confirmation that handcuffs are no longer used to restrain patients at Sokolac Psychiatric Hospital.**

21. Both establishments had dedicated registers for recording resort to means of restraint. However, the format of those at Sokolac (ordinary notebooks with a series of hand-written entries) did not facilitate supervision; the layout of the "Restriction/Isolation Register" at Jakeš, which contained proper columns (for recording the patient's name, type of measure applied, start and end time, circumstances/reasons for resort to restriction/isolation, injuries to patient or staff if applicable, and the doctor who authorised the measure), was much better in this regard. **The CPT recommends that the relevant registers at Sokolac Psychiatric Hospital be adapted accordingly.**

¹⁵ Cf. Section 50 of the 2004 Law on the Protection of Persons with Mental Disorders (Republika Srpska).

¹⁶ Cf. Section 48, *ibid.*, as well as Section 2 of the Jakeš policy.

¹⁷ The time limit for restraint or isolation set by the law is four hours, which may be extended in exceptional cases for a further four hours (cf. Section 48); the Jakeš policy sets a three-hour limit (cf. Section 4).

¹⁸ Cf. Sections 50 and 51 of the 2004 Law on the Protection of Persons with Mental Disorders (Republika Srpska) and Section 2 of the Jakeš policy.

¹⁹ Cf. "Report on the inspection of the forensic unit of Sokolac Psychiatric Hospital", Ministry of Justice of Republika Srpska (October 2004). The House Rules being applied at the FPU date from 1982.

²⁰ Cf. paragraph 157 of CPT/Inf (2004) 40.

6. Zenica Prison Forensic Psychiatric Annexe

22. Reference should also be made to the continuing impasse surrounding the relocation of Zenica Prison Forensic Psychiatric Annexe,²¹ an establishment under the authority of the Federation of Bosnia and Herzegovina. Even before the 2003 periodic visit, the authorities of the Federation acknowledged that it was totally inappropriate to hold a large group of forensic psychiatric patients in such conditions in a prison; this was fully borne out by the CPT's findings.²² Further, the conditions in the Annexe were described as "extremely inhuman and untenable" by the Ministry of Health expert team which inspected it after the CPT's 2003 visit; similar conclusions were reached by Federation Ombudspersons.²³ Nevertheless, despite funding allocation,²⁴ no agreement had been reached as to a new site, and the drafting of the corresponding "Law on Establishment of a Social-Health Facility"²⁵ had not yet commenced. Even if these obstacles were surmounted, there would invariably be further delays because of necessary refurbishments. The CPT is greatly concerned by the resulting prolongation of inadequate care to the patients held in the Annexe, as well as the concomitant strain on the general inmate population in Zenica Prison.²⁶

During the visit, the authorities of the Federation of Bosnia and Herzegovina informed the delegation that they proposed to improve living conditions and staff input in the current facility as an interim measure. However, they fully agreed that the facility is unworkable in the longer term. At its end-of-visit talks, the delegation called upon those authorities to redouble their efforts to identify and refurbish a suitable facility as a matter of urgency, and asked to be informed of the stage of implementation of this project as soon as possible. To date, this information has not been received by the Committee.

The CPT requests the relevant authorities to provide the above information forthwith.

²¹ The establishment, which was not visited on this occasion, is mentioned for the sake of providing a more complete and up-to-date picture of the situation in psychiatric establishments throughout the State.

²² The CPT found that material conditions did not meet hospital standards, staffing levels were totally inadequate, and treatment for the vast majority of patients was limited to pharmacotherapy (cf. paragraphs 84 to 100 of CPT/Inf (2004) 40).

²³ Cf. the "Special Report on violations of rights of persons ordered by court to execution of security measure of obligatory psychiatric treatment and accommodation in mental institutions" issued by the Ombudsman Institution of the Federation of Bosnia and Herzegovina on 28 January 2004.

²⁴ Cf. paragraph 96 of CPT/Inf. (2004) 40.

²⁵ Cf. page 8 of CPT/Inf (2004) 41.

²⁶ Once the Annexe's occupants are relocated, the present facility (Pavilion IV) could be adapted as general prisoner accommodation, thereby reducing overcrowding at Zenica Prison.

7. Impact of recent legislative developments

23. The legal framework for involuntary placement in a psychiatric establishment had undergone a substantial transformation since the 2003 visit, and further changes are due to occur. As the relevant authorities have acknowledged, the proper implementation of the new laws has thus far been greatly obstructed by the inadequacy of present institutional structures. Some of the most significant difficulties will be raised in the following paragraphs.

24. With the entry into force of new criminal legislation at the level of the State and in both entities,²⁷ significant changes have been introduced in the area of criminal proceedings involving mentally ill persons. The separate security measures of "mandatory psychiatric treatment and placement in a health institution" and "mandatory psychiatric treatment at liberty" - applicable under previous legislation - have been discarded and replaced by the single security measure of "mandatory psychiatric treatment". However, it is not yet clear where treatment of mentally incapable criminal offenders should be carried out, due to the fact that existing psychiatric institutions are not currently equipped to fulfil this purpose. Moreover, the Laws on Execution of Criminal Sentences - as well as other legal instruments (subsidiary regulations) which regulated this area previously - have yet to be revised to "harmonise" with the Criminal Codes and Criminal Procedure Codes.

25. Under current legislation, a court in Republika Srpska may order mandatory psychiatric treatment in respect of a person who perpetrated a criminal offence in a state of "considerably diminished mental capacity" (*bitno smanjena uračunljivost*), if the court determines that there is a danger of commission of further offences.²⁸ Mandatory psychiatric treatment may be carried out concurrently with sentence of imprisonment, community service or a suspended sentence,²⁹ and its duration is linked to the length of the sentence concerned.³⁰

²⁷ Following the entry into force of the new State Criminal Code and State Criminal Procedure Code on 1 March 2003, the corresponding laws entered into force in Republika Srpska on 1 July 2003, and in the Federation of Bosnia and Herzegovina on 1 August 2003.

²⁸ Cf. Section 58(1) of the 2003 Criminal Code of Republika Srpska. Section 74(1) of the 2003 Criminal Code of the Federation of Bosnia and Herzegovina is identical but for the fact that it applies to persons with "diminished mental capacity" *in addition to* persons with "considerably diminished mental capacity". The legal category "diminished mental capacity" does not exist in Republika Srpska.

²⁹ Cf. Section 58(2) of the 2003 Criminal Code of Republika Srpska and Section 74(2) of the 2003 Criminal Code of the Federation of Bosnia and Herzegovina.

³⁰ Cf. page 4 of the "Report on the inspection of the forensic unit of Sokolac Psychiatric Hospital" prepared by the Ministry of Justice of Republika Srpska (October 2004).

Given that persons who have perpetrated acts which would constitute a criminal offence in a state of "mental incapacity" (*neuračunljivost*) do not meet the legal elements of criminal responsibility,³¹ they do not come within the ambit of the criminal justice system; instead, the case must be referred for further procedure to the "body responsible for social welfare."³² Similarly, accused persons who are unable to stand trial due to a serious deterioration of their mental health (even if they were mentally capable at the time of commission of the offence) must be referred to a social welfare body.³³ At the time of the visit, this system was not yet operational. This meant inter alia that persons suspected or accused of a criminal offence who were being held in a remand prison or in a psychiatric institution at the time of a court finding of mental incapacity were being held in "temporary custody" in excess of the prescribed legal limits,³⁴ or released despite the potential risks to public safety.

26. The situation is further complicated by the uncertainty surrounding persons in respect of whom the previously-applicable measure of "mandatory psychiatric treatment and placement in a health institution" was ordered prior to the entry into force of the new criminal legislation; in effect, such persons are in a legal vacuum. By way of example, the Ministry of Justice of Republika Srpska has indicated that, on 22 September 2004, there were still 85 persons at Sokolac Psychiatric Hospital in respect of whom mandatory psychiatric treatment and placement was ordered pursuant to the previous legislation. The Ministry of Justice of Republika Srpska rightly concluded that the new criminal legislation "has not resolved the question of enforcement of the measure of mandatory psychiatric treatment and placement in a mental institution of persons already subject to the measure at the time of the entry into force of the new law," is resulting in "a parallel existence of two types of status and treatment of the same category of persons," and that "maintaining such a situation would only lead to greater problems".³⁵ The same difficulties exist in the Federation of Bosnia and Herzegovina, as concluded by the Federation Ombudspersons in respect of persons placed in Zenica Prison Forensic Psychiatric Annexe under the old criminal legislation³⁶ (cf. in this regard paragraph 22 above).

³¹ Cf. Section 13(1) of the 2003 Criminal Code of Republika Srpska: "A perpetrator who is mentally capable and who committed a criminal offence with intent or out of negligence shall be held criminally responsible." Similarly, Section 35(1) of the 2003 Criminal Code of the Federation of Bosnia and Herzegovina provides that "[a] perpetrator who is mentally capable and guilty of perpetrating a criminal offence shall be held criminally responsible."

³² Cf. Section 400(1) of the 2003 Criminal Code of Republika Srpska and 410(1) of the 2003 Criminal Code of the Federation of Bosnia and Herzegovina.

³³ Cf. Section 399(1) of the 2003 Criminal Procedure Code of Republika Srpska and Section 409(1) of the 2003 Criminal Procedure Code of the Federation of Bosnia and Herzegovina.

³⁴ The limits are 10 days (State and Republika Srpska) and 30 days (Federation of Bosnia and Herzegovina). Cf. Section 389(3) of the Criminal Procedure Code of Bosnia and Herzegovina, Section 400(3) of the 2003 Criminal Procedure Code of Republika Srpska and Section 410(3) of the 2003 Criminal Procedure Code of the Federation of Bosnia and Herzegovina.

³⁵ Cf. "Report on the inspection of the forensic unit of Sokolac Psychiatric Hospital", Ministry of Justice of Republika Srpska (October 2004).

³⁶ The conclusions of the Ombudspersons of the Federation of Bosnia and Herzegovina are virtually identical to those of the Ministry of Justice of Republika Srpska (cf. the "Special Report on violations of rights of persons ordered by court to execution of security measure of obligatory psychiatric treatment and accommodation in mental institutions" issued by the Ombudsman Institution of the Federation of Bosnia and Herzegovina on 28 January 2004). Even though the new Criminal Code of the Federation of Bosnia and Herzegovina stipulates that the previously-applicable measure must be brought into conformity with it (cf. Section 420 of the 2003 Criminal Code of the Federation of Bosnia and Herzegovina), this is "clearly not an easy task" (cf. "Research paper: The Concept of Mental Incapacity Introduced by the New BiH Mental Legislation" prepared by Maja Kapetanović of the Council of Europe Sarajevo Office (September 2004)).

27. In Republika Srpska, involuntary placement on a civil basis is now governed by Sections 22 to 37 of the new Law on Protection of Persons with Mental Disorders (2004). The relevant provisions stipulate that persons who have a severe mental disorder and endanger the life or health of self or others may be placed in a psychiatric institution without their consent³⁷ following a reasoned referral by an outside doctor prepared on an appropriate form.³⁸ In an exceptional emergency, law enforcement officials may forcibly bring such persons to the relevant health institution.³⁹ In any event, the person admitted to the institution must be immediately examined by a psychiatrist;⁴⁰ if the latter determines that involuntary placement is necessary, the relevant court must be notified within 24 hours.⁴¹ The court must decide within three days whether to authorise continued hospitalisation.⁴² Similar procedures apply if a voluntary in-patient withdraws consent to placement.⁴³ The new law contains a number of provisions which are in conformity with the criteria set out by the CPT concerning the safeguards to be offered to patients in the context of involuntary placement (cf. paragraphs 51 to 57 of CPT/Inf (98) 12). Those provisions concern issues such as consent to treatment,⁴⁴ the right to appeal against involuntary placement,⁴⁵ information pertaining to patients' rights and the nature and side effects of the treatment proposed,⁴⁶ etc. The law also provides that the implementation of the relevant provisions will be supervised by a Commission for Protection of Persons with Mental Disorders.⁴⁷

A number of health professionals from Republika Srpska complained to the delegation that the lack of subsidiary regulations made the task of implementing the new law difficult; for example, they still had no proper forms for involuntary admission, even though the forms should have been issued by 29 August 2004 according to the above-mentioned law.⁴⁸ Further, as far as the delegation could ascertain, a supervisory Commission had not yet been set up.

As for the Federation of Bosnia and Herzegovina, its Law on Protection of Persons with Mental Disorders dates from 2001; the CPT understands that a revision is envisaged **and would like to receive further details on this subject.**

28. More generally, **the Committee would like to receive up-to-date information about all further legislative developments in the area of involuntary placement in psychiatric establishments in Bosnia and Herzegovina and their implementation.**

³⁷ Cf. Section 22 of the Law on the Protection of Persons with Mental Disorders of Republika Srpska (2004).

³⁸ Cf. Section 23, *ibid.*

³⁹ Cf. Section 24, *ibid.*

⁴⁰ Cf. Section 25, *ibid.*

⁴¹ Cf. Section 27, *ibid.*

⁴² Cf. Section 32, *ibid.*

⁴³ Cf. Section 28, *ibid.*

⁴⁴ Cf. Section 9, *ibid.*

⁴⁵ Cf. Section 37, *ibid.*

⁴⁶ Cf. Section 12, paragraphs 3 and 4, *ibid.*

⁴⁷ Cf. Section 3(20), *ibid.*

⁴⁸ Cf. Section 59, *ibid.*

29. Since their entry into force, the new laws referred to above have given rise to a number of thorny questions; by all accounts, the uncertainty generated by the haphazard implementation of the new laws has often been to the detriment of patient welfare and even public safety. While some questions can - and should - be answered by completing the process of legislative reform, it is essential that the new laws and regulations form part of a realistic national strategy for provision of in-patient mental health care. Clearly, this should take into account those patients who require such care on a longer-term basis, e.g. in locked or forensic units; further, there should be avenues for the departure of such patients and their reintegration in the community. The strategy must be properly resourced (both financially and in terms of structural and human resources), consistently applied, as well as linked to other aspects of mental health reform, such as Community-Based Rehabilitation (CBR). **The CPT can only encourage the authorities of Bosnia and Herzegovina to rapidly devise and vigorously pursue such a strategy.**

8. Conclusion

30. The patients accommodated in the wards visited in December 2004 constitute the most challenging and vulnerable category of psychiatric patients, who are deemed to require institutional care. The measures which have already been taken at Jakeš Institution are a positive sign, but further efforts must be made in order to ensure consistent provision of satisfactory levels of care. As for the patients accommodated in the wards visited at Sokolac Psychiatric Hospital, they are presently languishing in an unsafe and totally inappropriate environment; the authorities have yet to meet their duty to provide proper care and protection for them.

The CPT will continue to monitor closely developments in Sokolac Psychiatric Hospital and other psychiatric establishments in Bosnia and Herzegovina. It requests the authorities to provide within three months a response containing an account of action taken to implement the Committee's recommendations and setting out their reactions to its comments and requests for information. The recommendations, comments and requests for information are set out in **bold type** in the text of the report (cf. paragraphs 7 to 10, 13 to 22 and 27 to 29).

APPENDIX

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

A. State authorities

Ministry for Human Rights and Refugees

Slobodan NAGRADIĆ
Minka SMAJEVIĆ

Assistant Minister
Expert Adviser (Principal Liaison Officer to
the CPT)

Ministry of Finance and the Treasury

Jusuf KUMALIĆ

Deputy Minister of Finance

Ministry of Justice

Amir PILAV

Head of Department for International Legal
Assistance

B. Federation of Bosnia and Herzegovina

Ministry of Interior

Dragoljub TOMIĆ

Inspector (Liaison Officer to the CPT)

Ministry of Justice

Rešad FEJZAGIĆ

Assistant Minister (Liaison Officer to the
CPT)

Ministry of Finance

Maida ĆUREVAC

Expert Adviser for cooperation with
international financial organisations

Ministry of Health

Zlata KUNDUROVIĆ
Marina BERA
Vesna ŽULJEVIĆ-SERTIĆ

Assistant Minister
Health Inspector
Expert Adviser (Liaison Officer to the CPT)

C. Republika Srpska

Ministry of Finance

Ranko KRSMAN Assistant Minister for budget and public
finance

Ministry of the Interior

Petar ŠIKMAN Inspector (Liaison Officer to the CPT)

Ministry of Justice

Duško RADOŠEVIĆ Assistant Minister for misdemeanours

Ministry of Health and Social Protection

Marin KVATERNIK Minister
Stevan JOVIĆ Assistant Minister (Liaison Officer to the
CPT)

D. Intergovernmental organisations

European Union Force in Bosnia and Herzegovina (EUFOR)

European Union Police Mission (EUPM)

North Atlantic Treaty Organisation (NATO) Headquarters Sarajevo

Office of the High Representative (OHR)

Office of the United Nations High Commissioner for Human Rights (OHCHR), Bosnia and Herzegovina

United Nations High Commissioner for Refugees (UNHCR) Representation in Bosnia and Herzegovina

World Bank Country Office

E. Other organisations

International Committee for Human Rights

International Red Cross Committee (ICRC)